STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION VAR-2148 FOR LEAVE TO FILE AN APPLICATION

FOR A TEMPORARY PERMIT TO APPROPRIATE WATER

WATER DIVISION 2-D

BACKGROUND

1. On November 3, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in portions of the Upper Niobrara White Natural Resources District (UNWNRD). The moratorium included the White River Basin.

2. The Department's November 3, 2004, Order and the provisions of *Neb. Rev. Stat.* § 46-714(3)(n) allow for new surface water appropriations and increases in irrigated acres if the Department grants a variance and subsequently approves a permit for such new use.

3. On August 8, 2011, an integrated management plan (IMP) was adopted by Order of the Department, pursuant to *Neb. Rev. Stat.* § 46-718(2) for the UNWNRD.

4. On August 8, 2011, Larry Hankin, on behalf of the Dawes County Roads Department (Petitioner), filed Petition VAR-2148 for Leave to File an Application for a Permit to Appropriate Water. The proposed application is for a temporary permit to appropriate less than 10 acre-feet of water for the purpose of public road construction from Dead Horse Creek at a point of diversion located in the SE¼NE¼ of Section 5, Township 31 North, Range 49 West of the 6th P.M. in Dawes County.

5. When filing a variance request, a project proponent must offer a clearly stated basis for such request and must offer sufficient good cause shown. *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code* Chapter 23 lists six circumstances that may be put forward as justification for granting a variance to apply for a new water use, in conjunction with an examination of good cause shown.

FINDINGS

1. As part of the surface water controls of the IMP adopted by the Department pursuant to *Neb. Rev. Stat.* § 46-716(1)(b), the moratorium on issuing new surface water appropriations was continued.

2. The maintenance of roads constitutes a public safety issue.

3. The proposed application is for a temporary permit to appropriate less than 10 acre-feet of water for public road construction. The Petitioner asserts that water use is a necessary component of the construction project which addresses a public safety issue.

CONCLUSIONS

1. The proposed application is for a temporary permit for less than 10 acre-feet of water.

2. The proposed project addresses a public safety issue and the Petitioner has shown good cause, thereby meeting the requirements of *Department Rules for Surface Water* 457 *Neb. Admin. Code* Chapter 23.

3. Petition VAR-2148 should be granted.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-2148 for Leave to File an Application for a Permit to Appropriate Water is GRANTED.

2. The granting of petition VAR-2148 shall not bind the Director to approve any application to which it relates, or in any way be used as evidence of prejudice for the Director's future decisions concerning the specific approval requirements of such application. Allowance of leave to file an application does not negate the necessity to meet the specific approval requirements for an appropriation.

DEPARTMENT OF NATURAL RESOURCES

August 18, 2011

Brian P. Dunnigan

Brian P. Dunnigan, P.E., Director

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field office in Bridgeport, Nebraska.

A copy of this Order was mailed on August 18, 2011, to the following:

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