

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION VAR-2156 FOR LEAVE TO FILE AN APPLICATION FOR A NEW
SURFACE WATER APPROPRIATION WITHIN A MORATORIUM AREA

WATER DIVISION 1-A

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in the Platte River Basin upstream of the confluence with the Loup River near Columbus, Nebraska. The moratorium included all tributary streams above the Loup River confluence including the North and South Platte Rivers and tributaries.
2. On September 15, 2004, the Department designated the Platte River Basin upstream of the Kearney Canal diversion, including areas determined by the Department to be hydrologically connected to the basin, as overappropriated, pursuant to *Neb. Rev. Stat. § 46-713(4)(a)*. As part of the overappropriated designation, the Department continued the moratorium on issuing new surface water appropriations in the overappropriated area of the Platte River Basin. In order to manage the overappropriated reaches of the Platte River Basin, the Department and the natural resources districts (NRDs) affected by the overappropriated designation initiated a basin-wide planning process, as required by *Neb. Rev. Stat. § 46-715(5)(a)*.
3. In two separate orders, the first on September 30, 2004, and the second on April 21, 2006, the Platte River Basin upstream of the confluence with the Loup River and downstream of the overappropriated area, including all areas determined by the Department to be hydrologically connected to the basin, was finally determined to be fully appropriated. As part of this determination, the Department continued the moratorium on issuing new surface water appropriations.
4. On August 13, 2009, an integrated management plan (IMP) was adopted by Order of the Department, pursuant to *Neb. Rev. Stat. § 46-718(2)* for the Twin Platte NRD. As part of the surface water controls adopted by the Department pursuant to *Neb. Rev. Stat. § 46-716(1)(b)*, the moratorium on issuing new surface water appropriations was continued.
5. On August 25, 2011, Harvey A. Michlitsch, on behalf of Upper Plains Contracting, Inc. (Petitioner), filed Petition VAR-2156 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 Sand Creek at a point of diversion located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, Township 14 North, Range 36 West of the 6th P.M. in Keith County.

6. 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-2156 should be granted.

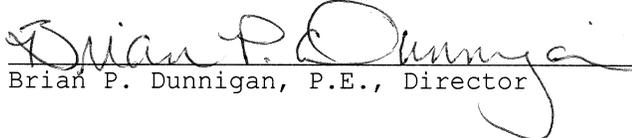
ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-2156 for Leave to File an Application for a Permit to Appropriate Water is GRANTED.
2. The granting of petition VAR-2156 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 25, 2011


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 26, 2011, to the following:

Upper Plains Contracting, Inc.
Harvey A. Michlisch
5325 Hwy 12 East
Aberdeen, South Dakota 57401