02092006-9937-DRD
Department of Natural Resources

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matters of A-18319, an Application for a Permit to Impound Water and Plans Number P-16613. Water Division 1-A.	)))))	APPROVAL

These matters came on for consideration before the Director of the Department of Natural Resources pursuant to Neb. Rev. Stat. § 46-233 (Reissue 2004) which requires any person intending to appropriate any of the public waters of the state of Nebraska to make an application to the Department for a permit to make such appropriation; Neb. Rev. Stat. § 46-241 (Supp. 2005) which generally requires every person intending to construct and operate a storage reservoir to make an application to the Department; and Neb. Rev. Stat. § 46-1652 (Supp. 2005) which generally requires any owner intending to construct or enlarge a dam to apply for and obtain written application approval of plans and specifications of a dam. The Director FINDS:

1. On June 30, 2005, N.P. Land Development, Inc. (Applicant) filed application A-18319 for a permit to impound 201.55 acre-feet of water from a tributary to Wood River in Stoneridge Lake. On the same date, the Applicant filed an application for approval of plans for dams, project specifications and plan number P-16613. Stoneridge Dam is proposed to be located in the SE¼ of Section 24, Township 9 North, Range 16 West of the 6th P.M. in Buffalo County. This location is within an area that, on July 14, 2004, became subject to a formal moratorium on the filing of new applications for surface water appropriations. The Department also issued an order on September 30, 2004, that designated this area fully appropriated and that continued a stay on the issuance of new surface water appropriations that took effect in July of 2004.

   Due to the stay, the Applicant filed and received Department approval of variance petition V-6 prior to the submission of application A-18319, pursuant to Neb. Rev. Stat. § 46-714(3)(n) (Reissue 2004), § 61-206 (Cum. Supp. 2004) and Department rule 457 N.A.C. 23. In petition V-6, the Applicant proposed to initially fill the lake with water from the tributary and to thereafter maintain the level of the lake with water from one or two registered wells (G-034343 and G-124097) located in the same quarter section. The Applicant further stated in petition V-6 that these two wells were previously used for irrigation of cropland that will be taken out of production in order to subdivide this area for a housing development and that the wells would be used to maintain the level of the lake.

The petition also stated that the one-time fill of the lake with surface water would only occur after the Applicant is advised by the Department, in response to an inquiry from the Applicant, that water may be stored in priority or without impacting any downstream water right. Any water inadvertently stored out of priority will either be released from the reservoir or replaced with ground water from the two wells.

2. On September 30, 2005, the Department sent a copy of application A-18319 to the Central Platte Natural Resources District (NRD) and requested comments from the NRD as to whether or not the application would conflict with its management area rules. On October 12, 2005, the NRD responded that it had no concerns regarding A-18319 and its issuance.

3. The specifications and plan number P-16613 were examined by a Registered Professional Engineer of the Department and found to be consistent with current standards and Department rule 457 N.A.C. 12.

4. The Nebraska Game and Parks Commission was consulted regarding the impact of approval of application A-18319 on threatened and endangered species as provided by Neb. Rev. Stat. § 37-807 (Reissue 2004). The Commission issued a nonjeopardy opinion.

5. On October 14, 2005, notice of application A-18319 was issued. On October 17, 2005, Jeff Sikes filed a formal request for hearing on application A-18319 to determine what impacts would potentially occur to property he was developing. On December 5, 2005, Mr. Sikes requested that his request for hearing be withdrawn.

It is CONCLUDED:

1. Based on Finding 5, Sike's request for hearing should be dismissed.

2. It is determined from Finding 4 that approval of A-18319 will not adversely impact any threatened or endangered species or their habitat.

3. Application A-18319 meets the filing requirements of Neb. Rev. Stat. § 46-241 (Supp. 2005). An application for a water appropriation may be approved pursuant to Neb. Rev. Stat. § 46-235(1) (Supp. 2005) if the following conditions are met: a) there is unappropriated water in the source of supply named in the application; b) it is not detrimental to the public welfare; and c) denial of it is not demanded by the public interest.

With regard to unappropriated water in the source of supply, despite being located in a fully appropriated basin, Stonebridge Dam is located on a flowing stream and has the potential for storing unappropriated surface water in it for a one-time fill during times of the year when water is not needed for other appropriations. During normal years there are times when all downstream surface water appropriations are met. By conditioning the approval of A-18319 to meet the proposals outlined in Finding number 1, paragraphs 2 and 3, negative impacts to downstream appropriators will be avoided. The NRD's response indicates the proposed offsets are consistent with its rules. In addition, under the provisions of Neb. Rev. Stat. § 46-241(1), the Applicant may store any surface water that is not needed for other appropriations. Therefore, the Department must maintain its jurisdiction over such reservoir even after the initial fill requested by the Applicant is completed.

Regarding public welfare, the Department issued a public notice and received no objections or information from the public concerning public welfare issues. The Department's review of the application did not reveal any public welfare issues.

As for public interest factors, public notice of application A-18319 was given with the one applicable request for hearing being withdrawn. That request did not set forth any public interest issues. In addition, the review of variance petition V-6 found that converting the use of water by the two ground water wells from production agriculture to the dedicated use of maintaining water levels in Stonebridge Lake would result in a net water savings (deducting net annual evaporation) of 57.1 acre-feet per year. This is in the public interest in a fully appropriated basin. Further, storage of water in Stoneridge Lake would maintain the beneficial use of the State's water.

Thus, application A-18319 meets the conditions for approval.

4. Based on Finding 3, plan number P-16613 meets the standards of the Department's rules and pursuant to Neb. Rev. Stat. § 46-1654(2) should be approved along with application A-18319.

It is therefore ORDERED:

1. The request for hearing is DISMISSED.

2. Application A-18319, the engineering drawings, specifications and plans number P-16613 are hereby APPROVED subject to the following limitations, conditions and notice:

   a. The source of water is a tributary to Wood River.

   b. The priority date is June 30, 2005.

c. The amount of the appropriation shall not exceed 201.55 acre-feet to be stored once in the Stoneridge Lake. Stoneridge Dam will be located in the N½SE¼ of Section 24, Township 9 North, Range 16 West of the 6th P.M. in Buffalo County.

Stoneridge Lake shall be initially filled with water from the tributary to Wood River. The level of the lake will thereafter be maintained with water from registered wells G-034343 and G-124097. These wells may only be used to maintain water levels in Stoneridge Lake. Applicant shall complete the enclosed Water Well Registration Modification forms and return them to this office indicating that the use of water from these wells is maintaining the level of a lake.

The Department's Bridgeport Field Office shall be contacted at least three days prior to the initial fill of the lake with surface water. Any water inadvertently stored out of priority will either be released from the reservoir or replaced with ground water from G-034343 or G-124097. The field office shall also be contacted before ground water is pumped from the wells to maintain the lake.

d. Measuring devices, approved by the Bridgeport Field Office, must be of the following type and installed at the following locations:

1) Cipolletti weirs at the points where water flows into and out of Stoneridge Lake;
2) A staff gauge on the reservoir;
3) Flowmeters on ground water well G-034343 and G-124097 that record gallons per minute and the cumulative totals of outflow.

e. Construction must begin by August 9, 2006.

f. Construction of the project must be completed by October 1, 2008.

g. Nebraska statute § 46-242 (Reissue 2004) gives the Applicant a preferred right to file an application for a permit to appropriate the water stored for some useful purpose by April 1, 2009. However, the Applicant should be aware that if it wishes to file such an application, a variance petition must first be filed and approved pursuant to Neb. Rev. Stat. § 46-714(3)(n) (Reissue 2004) and Department rule 457 N.A.C. 23, due to the stay and the moratorium in this watershed.

h. Impoundment of water under A-18319 may be denied for the benefit of downstream appropriators requiring water for direct irrigation and for senior rights.

i. The structure is to be constructed, operated and maintained in accordance with Nebraska Statutes, specifically § 46-241 Neb. Rev. Stat. (Supp. 2005), and the Safety of Dams and Reservoirs Act, Neb. Rev. Stat. § 46-1601 through 46-1670 (Supp. 2005).

j. Owners of reservoirs and dams are liable for all damages arising from leakage, overflow, or structural failure.

Failure to comply with the provisions of this Approval may cause cancellation of this Approval. If unable to meet the conditions of approval due to an unavoidable and natural cause, a petition for an extension of time may be filed with the Department. Petitions must be filed prior to the expiration dates stated in the Approval and accompanied by a $10 filing fee.

DEPARTMENT OF NATURAL RESOURCES

February 9, 2006

Ann Bleed

Ann Bleed, Acting Director

A copy of this Approval, a copy of application number A-18319, Dam Construction Certification form, a copy of approved engineering drawings and plans number P-16613, and Water Well Registration Modification forms were mailed on February 9, 2006, to N.P. Development, Inc., 3811 Central Avenue, Suite A, Kearney, Nebraska 68847. A copy of this Approval was mailed to LeRoy Sievers, Knudsen, Berkheimer, Richardson and Endacott, L.L.P., 1248 O Street, Suite 1000, Lincoln, Nebraska 68508-1474; and Jeff Sikes, 1019 E. 65th Street Place, Kearney, Nebraska 68847. A copy of this Approval and Dam Construction Certification form were mailed to Bradley Blakeman, Novotny Engineering Group, 10423 Hansen Avenue, Omaha, Nebraska 68124. Copies of this Approval, Engineering Review Report and approved drawings and plan number P-16613 were provided to the Department's field offices in Bridgeport and North Platte, Nebraska. A copy of this Approval was also provided to the Department's field office in Ord, Nebraska.