STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-17302 AND PLAN NUMBER 15042

WATER DIVISION 1-A

BACKGROUND

1. On July 28, 1993, the City of Gothenburg filed in the Department of Natural Resources (Department) application A-17302 for a permit to impound water, specifications, and plan P-15042. The application requests to impound 300 acre-feet (af) of water from the Platte River, via Nebraska Public Power District's Gothenburg Canal, in the existing Lake Helen located in the NW¼ of Section 10, Township 11 North, Range 25 West of the 6th P.M. in Dawson County. The applicant has requested to appropriate 300 af of water under this application, which is based upon a reservoir that stores 136 af at normal pool elevation, has a net evaporation of 65 af, and seepage accounting for a range of 51 af to 99 af, for a total of 300 af per year.

2. Through actions taken beginning in approximately 1993, the Department has effectively maintained informal moratoriums on the issuance of new surface water appropriations through its discussions with possible applicants and through its orders regarding applications filed in the North Platte River and its tributaries, the South Platte River and its tributaries, and the Platte River and its tributaries above the mouth of the Loup River.

3. On July 14, 2004, the 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.

4. On August 13, 2009, an integrated management plan was adopted by order of the Department, pursuant to *Neb. Rev. Stat.* § 46-718(2) for the Central Platte Natural Resources District. 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 February 1, 2012, Joyce E. Hudson, on behalf of the City of Gothenburg, filed in the Department petition VAR-2270 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area. The petition requested consideration of application A-17302.

6. On May 11, 2012, the Department granted leave to consider application A-17302 for a permit to appropriate water by approving petition VAR-2270.

7. The applicant has provided information that indicates the reservoir was constructed in 1891 to regulate flows to the Gothenburg Power Station, which is no longer in operation.

8. Records on file in the Department indicate that recreational and aesthetic uses of Lake Helen have existed for many decades.

9. Construction has been completed.

CONCLUSIONS

1. The diversion of water for aesthetic and recreational uses predates any informal or formal moratorium.

2. The expected benefits from the continued use of Lake Helen include the enjoyment of the recreational facility by residents of Gothenburg and the surrounding area.

3. For these reasons application A-17302 for a permit to impound water is in the public interest and should be approved.

ORDER

IT IS HEREBY ORDERED

Application A-17302 and plan P-15042 are APPROVED subject to the following limitations and conditions:

1. The source of water is the Platte River, via the Gothenburg Canal owned and operated by the Nebraska Public Power District (NPPD).

2. The priority date is July 28, 1993.

3. The amount of water that may be diverted shall not exceed 300 acre-feet per year to be stored in Lake Helen. This is based upon a reservoir that impounds 136 acre-feet of water and is filled 2.2 times per year. Lake Helen Dam is located in the NW½ of Section 10, Township 11 North, Range 25 West of the 6th P.M. in Dawson County. The headgate of NPPD's Gothenburg Canal is located on the Platte River in the NW¼SW¼ of Section 19, Township 12 North, Range 26 West of the 6th P.M. in Lincoln County.

4. *Neb. Rev. Stat.* § 46-241(5) states in part, "The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass ... a portion of the measured inflows to furnish water for livestock ... ."

5. The water stored in Lake Helen is held in an off-channel structure, therefore the requirement that the owner or possessor of the reservoir storing water pursuant to A-17302 shall have structural controls in place or other mechanical means to immediately release a portion of the measured inflows in such amounts and at such times if so ordered by the Department is mute.

6. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.

7. A measuring device approved by this Department must be installed to measure inflow from the Gothenburg Canal.

8. The appropriator must comply with all relevant statutes. This includes, but is not limited to, the following:

   A. Notify the Department of any change in ownership or address.

   B. Receive approval prior to taking any action that changes the storage capacity of this reservoir, the specifications, plan P-15042, or the type of appropriation.

   C. Construct, operate and maintain the structure in accordance with *Neb. Rev. Stat.* § 46-241 and the *Safety of Dams and Reservoirs Act*, §§ 46-1601 to 46-1670.

   D. Assume liability for all damages due to leakage, overflow or structural failure of the structure.

   E. Release a portion of the reservoir inflows for livestock where required, unless appropriator is a political subdivision.

ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations and any orders issued by the Director of the Department of Natural Resources may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

DEPARTMENT OF NATURAL RESOURCES

October 2, 2012

Brian P. Dunnigan

Brian P. Dunnigan, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this order may request a contested case hearing in accordance with the *Neb. Admin. Procedures Act* §§ 84-901 et. seq. RRS and the Department's *Rules of Practice and Procedure 454 Neb. Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln

office (Nebraska State Office Building, 4th Floor, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of $10.

A copy of this approval was posted on the Department's website. Copies of this approval, engineering review report and plan P-15042 were provided to the Department's field office in Bridgeport, Nebraska. A copy of this approval was mailed to the following:

Brian Barels
Nebraska Public Power District
P.O. Box 499
Columbus, Nebraska 68601

Copies of this approval and plan P-15042 were mailed on October 2, 2012, to the following:

Bruce Clymer, City Administrator
City of Gothenburg
409 9th Street
Gothenburg, Nebraska 69138

Chris Miller, P.E.
Miller and Associates Consulting Engineers
1111 Central Avenue
Kearney, Nebraska 68847