

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Petition V-6                    )  
For Leave to File or Consider                )  
An Application to Impound Water.            )  
Water Division 1-A.                            )

ORDER

This matter came on for consideration before the Director of the Department of Natural Resources pursuant to Neb. Rev. Stat. § 46-714(3)(n) (Reissue 2004) and Department rules 457 N.A.C. 23. The Director FINDS:

1. On July 14, 2004, the Department issued an order declaring a formal moratorium on the filing of applications for surface water appropriations in the Platte River Basin above the mouth of the Loup River.
2. On September 30, 2004, the Department issued an order designating a portion of the area within Central Platte Natural Resources District (CPNRD) fully appropriated. In accordance with Neb. Rev. Stat. Section 46-714(5) (Reissue 2004), the order continued a stay on the issuance of new surface water appropriation permits and a stay on increasing the number of acres historically irrigated by existing surface water appropriations. All stays remain in effect until terminated by law or an integrated management plan has been adopted by the Department and the CPNRD.
3. On February 10, 2005, LeRoy Sievers, Attorney for petitioner N. P. Land Development, Inc., filed petition V-6 requesting a variance from the Department in order to file an application for a permit to impound 265 acre-feet of water from an unnamed tributary to the Wood River in Stoneridge Lake. Included with V-6 was an Application for a Permit to Impound Water, an Application for Approval of Plans for Dams, and plans and specifications.

The lake will be part of the development of a new subdivision sited in the SE¼ of Section 24, Township 9 North, Range 16 West of the 6<sup>th</sup> P.M. in Buffalo County. In the petition, it is proposed to fill the lake initially with water from the tributary and to maintain the level of the lake thereafter with water from one or two registered ground water wells (G-034343 and G-124097) located in the same quarter section.

The petition also states that the one-time fill of the lake with surface water will 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 or replaced with ground water.

Further, the petition states that the subdivision will be sited on 135 acres that were previously irrigated from the two ground water wells described above, and that water will be supplied to the subdivision by the City of Kearney's water supply.

In V-6, the petitioner asserts that converting the use of water by the two ground water wells from production agriculture to maintaining the level of water in the lake would save on average 1,282.5 acre-inches (106.9 AF) per year. The petitioner further asserts that the average annual net evaporation for this lake, 598 acre-inches (49.8 AF), deducted from this volume would result in an average annual net water savings of 684.5 acre-inches (57.1 AF). Department staff reviewed these data and their sources and determined the assertions to be reasonable.

4. After initial Department review of the plans and specifications, Department staff determined that the capacity of the lake would be only 190.05 AF. Consequently, on April 26<sup>th</sup>, Sievers filed a revised petition and applications based upon the 190.05 AF of volume. The average annual net evaporation for the lake was also recalculated at 44.2 AF, resulting in a revised net annual water savings of 62.7 AF.
5. Upon further review of the plans, it was found that the lake's capacity would be 201.55 AF. Sievers subsequently filed a second revised application and stage-storage table based on this revised volume. No changes were needed to petition V-6 based on this increased volume.
6. Variances for filing applications to divert surface water in areas that are subject to stays are covered under Neb. Rev. Stat. § 46-714(3)(n) (Reissue 2004) and § 61-206 (Cum. Supp. 2004). Department rules 457 N.A.C. 23 establish guidelines under which variances can be approved.

It is CONCLUDED:

1. The petitioner's filing was in accordance with the procedures outlined in the Department's rules.
2. A variance petition may be approved if it meets one or more of the conditions listed in Department rules 457 N.A.C. 23. The use of water described in petition V-6 complies with Department rules, paragraphs 23.001.02 and 23.001.03. For the former, the petitioner has provided information that ground water may be used to offset average annual net evaporation and such use will be offset by the conversion of irrigated cropland to a housing development. For the latter, the petitioner has indicated that the one-time fill utilizing surface water will only occur when advised by the

Department that water may be stored without impacting any downstream water right.

It is therefore ORDERED:

1. The petitioner's request for a variance to file an application to impound water in Stoneridge Lake is hereby APPROVED. This approval is conditioned upon applications, plans and specifications being filed within one year from the date of this Order. Failure to file such applications will negate this approval.
2. This decision 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 a leave to file does not negate the necessity to meet the specific approval requirements for an appropriation.

DEPARTMENT OF NATURAL RESOURCES

June 30, 2005

  
Roger K. Patterson, Director

A copy of this Order was sent on June 30, 2005, to LeRoy Sievers, Knudsen, Berkheimer, Richardson and Endacott, L.L.P., 1248 O Street, Suite 1000, Lincoln, Nebraska 68508-1474; N.P. Development, Inc., 3811 Central Avenue, Suite A, Kearney, Nebraska 68847; and to the Department's field offices in Bridgeport, North Platte and Ord, Nebraska.