

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Petition V-13 for)
Leave to File or Consider an) ORDER
Application to Impound Water.)
Water Division 1-A.)

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 the area within the Central Platte Natural Resources District (CPNRD) fully appropriated. In accordance with Neb. Rev. Stat. § 46-714(5) (Reissue 2004) the order continued a stay on new surface water uses and a stay on increasing the number of irrigated acres 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 October 23, 2006, CPNRD filed petition V-13 requesting a variance from the Department for leave to file an application to impound 3,650 acre-feet of flood flow from Silver Creek in four cells located in Sections 1, 2 and 11, all in Township 11 North, Range 11 West of the 6th P.M. in Hall County. The petition states that water will be able to flow unimpeded between the cells.
4. 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 rule 457 N.A.C. 23 establishes 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 rule 457 N.A.C. 23. In its petition, CPNRD requests leave to file an application to appropriate water based on Department rules 23.001.01 and 23.001.05. Rule 23.001.01 allows for applications if the proposed project is for a non-consumptive use, and rule 23.001.05 allows for applications if there is a public

safety issue that must be addressed and the proposed project addresses such issue.

The CPNRD petition asserts that flooding has occurred several times in this area, and construction of this project would provide protection from the 100-year flood to more than 1,500 homes and 55 businesses in the Grand Island area, as well as protect farmland, roads and bridges from flood flows and remove portions of Hall County from the Federal Emergency Management Agency floodplain. Based on this information, the conditions of rule 23.001.05 have been met.

As to rule 23.001.01, Department staff need additional time to review and analyze the information provided. Specifically, the Department wants to ensure that the amount of consumptive use is less than what would occur without the project or that there are offsets, if needed, for any new consumptive use.

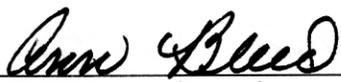
This analysis can, however, be done as part of the application process since this variance can be approved on the basis of Department rule 23.001.05.

It is therefore ORDERED:

1. The petitioner's request for a variance for leave to file an application to impound meets the conditions of Department rule 457 N.A.C. 23 and is APPROVED.
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 an 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

December 20, 2006



Ann Bleed, Acting Director

A copy of this Order was sent on December 20, 2006, to Milt Moravek, Assistant Manager, Central Platte Natural Resources District, 215 North Kaufman Avenue, Grand Island, Nebraska 68803; Mike Placke, JEO Consulting Group, Inc., 650 J Street, Suite 211, Lincoln, Nebraska 68508; and to the Department's field offices in Bridgeport and Ord, Nebraska.