STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Application TA-39 for a Permit to Transfer Ground Water to Colorado and Application I-16 for an Industrial Ground Water Transfers Permit for David Wieser.	)	ORDER GRANTING PERMIT

These matters came on for consideration before the Director of the Department of Natural Resources (Department) pursuant to Neb. Rev. Stat. § 46-613.01 and §§ 46-675 to 46-690 (Reissue 2004).

The Department has reviewed Application TA-39, an application for a permit to transfer ground water to an adjoining state filed by David Wieser, and Application I-16, an application for a permit under the provisions of the Industrial Ground Water Regulatory Act.

Based on the Applicant's filings, TA-39 and I-16 pertain to a single proposed ground water transfer project. For the purposes of consideration herein, these matters should be joined.

The Director FINDS that Application I-16 meets the requirements for approval described in Neb. Rev. Stat. § 46-683(1) and § 46-715(3)(c) (Cum. Supp. 2006). Specifically:

1. No surface water users are located in the area of the proposed withdrawal of ground water. The nearest surface water feature to the Applicant's well is the ephemeral upstream end of Sidney Draw, which does not support surface water appropriations at this time. Thus, adverse effects on existing surface water users are considered to be unlikely.

   Drawdown is steep immediately adjacent to the Applicant's well, but the radius of influence outward from the well is limited to the extent of the fracture zone from which well A-007534 draws water. The nearest registered ground water well to the Applicant's well is a small-capacity livestock well located approximately 0.75 mile south, placing it crossgradient of the Applicant's well and likely outside the potential radius of influence. The aquifer in which the Applicant's well is screened is the unconfined, fractured Brule Formation, which begins approximately 10 to 15 feet below land surface. The proposed industrial use will be balanced by a reduction in irrigation use, thus not increasing the pressure on the local aquifer.

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The Applicant's wells are located in a portion of the South Platte Natural Resources District that has been determined to be overappropriated. In order to balance water supply and water use and not increase pressure on the local aquifer, the Applicant will retire the irrigation of 34.2 acres to offset the proposed temporary industrial use. In addition, the South Platte NRD will reduce the Applicant's irrigation allocation by an amount equivalent to the amount of water transferred for industrial use.

2. The South Platte NRD, in which the Applicant's well is located, was determined to be fully appropriated in 2004 but had a ground water management area in place before that determination. As a consequence of the fully appropriated determination, a new use of ground water must be offset with an existing use in order to maintain a balance. The Applicant has agreed not to irrigate 34.2 acres under the center pivot also supplied by well A-007534. In addition, the South Platte NRD will reduce the Applicant's irrigation allocation by an amount equivalent to the amount of water transferred for industrial use. The NRD has mapped the exact location of the acres volunteered and will monitor water application on the field throughout the season. In addition, the NRD will collect meter records to ensure compliance with the required offset. The offset and allocation reduction are intended to ensure that no additional impacts to the aquifer will result from the proposed industrial transfer.

   The ephemeral stream near the Applicant's well, the upstream reach of Sidney Draw, has no surface water appropriations that would be dependent on its flow. Moreover, the current moratorium on new surface water appropriations prevents potential future appropriations in the area. Lodgepole Creek, along which surface water appropriators are located, is located over 12 miles north of the Applicant's well. Given the temporary nature of the transfer and the offset of the temporary use by retirement of irrigated acres and deduction from irrigation allocations, the proposed withdrawal and transfer for industrial purposes will likely not affect surface water appropriators in the region. Thus, the proposed withdrawal and transfer is expected to have no adverse effects on ground water and surface water supplies in the area.

3. No surface water features with reliable flow are located in either the proposed withdrawal area or in the area of use. Ground water is not readily available at the construction site in Colorado, and the contractors responsible for the construction of the wind farm have sought to buy water from local users on both sides of the state line. The Applicant has agreed to sell water to the construction company to supply a portion of the construction project's needs. Buying water from multiple sources in the project area will ultimately have the advantage of spreading any impacts to local aquifers across a very wide area, rather than concentrating withdrawals in a single location.

4. Many of the construction workers from the wind farm project will lodge in Sidney, Nebraska, during the project because of the greater availability of hotel and rental space in Sidney. Thus, revenue to the area surrounding the Applicant's community can be expected from the project, in addition to the revenue generated in Colorado. Moreover, the Applicant's income from the proposed transfer contract is likely to be greater than the income that would have been generated if the water were used to irrigate the 34.2 acres being set aside as an offset for the proposed use.

5. Existing uses of ground water in the area of the Applicant's well are for livestock and irrigation purposes. Increased demand for water for existing uses in the immediate area is unlikely, both because of the decline in rural population and because water availability in the area is limited to fracture zones. Several factors limit increasing demand for irrigation, including local aquifer properties and NRD regulations; although demand could increase in the future, any such increased demand would likely take place after the temporary industrial transfer was accomplished and water withdrawn from well A-007534 has reverted solely to irrigation use. Thus, any benefits accrued from existing water uses in the area should not be adversely affected by the proposed transfer.

6. No waivers of liability were received in the Department, and no objections were filed regarding the proposed transfer.

7. The Applicant's well is located far to the west of the portion of the NRD covered by the Platte River Recovery Implementation Program. Consequently, Nebraska's compliance with any interstate agreements will not be affected by the proposed transfer.

The Department has determined that the withdrawal and transportation of ground water meets all necessary requirements and that permits may be granted pursuant to Neb. Rev. Stat. § 46-613.01 (Reissue 2004) and Neb. Rev. Stat. § 46-683 (Cum. Supp. 2006).

It is therefore ORDERED that TA-39 and I-16 are APPROVED with the following conditions:

1. Permits TA-39 and I-16 are requested for a temporary transfer of ground water for industrial purposes. The total rate of withdrawal from David Wieser's one existing water well shall not exceed 1,000 gallons per minute maximum, nor shall the maximum rate of withdrawal exceed 40,000 gallons per day. The total quantity withdrawn and transferred to Colorado for industrial use shall not exceed 40 acre-feet.

2. Ground water may be withdrawn and transferred from the existing water well identified as A-007534 and located in the SW¼NW¼ of Section 2, Township 12 North, Range 53 West of the 6th P.M. in Cheyenne County, Nebraska. The water shall be used for road and wind-tower construction at a proposed wind power-generation facility being constructed in Logan County, Colorado.

3. The Applicant shall properly register any replacement water well constructed for the purpose of withdrawal of ground water under permits TA-39 and I-16, pursuant to the requirements of Neb. Rev. Stat. § 46-602(1) (Cum. Supp. 2006).

4. The Applicant shall notify the Department of the need for any abandonment or replacement of the permitted wells and any changes in the place of use or nature of use as provided in Neb. Rev. Stat. § 46-683.01 (Reissue 2004).

5. The Applicant shall provide access to the property described herein at reasonable times for purposes of inspection by officials of the South Platte Natural Resources District or of the Department, including for verifying water use on the 34.2 acres to be used as the offset for the water withdrawn and transferred under permits TA-39 and I-16.

6. The Applicant shall not irrigate, for the duration of the 2007 irrigation season, 34.2 acres under the center pivot currently supplied by irrigation well A-007534 and located in the NW¼ of Section 2, Township 12 North, Range 53 West of the 6th P.M. in Cheyenne County, Nebraska.

7. The Applicant shall install any additional flow meter as needed to measure all ground water withdrawn from well A-007534 and transferred to Colorado for industrial use. By January 31 of each year, the Applicant shall file in the office of the Department a completed "Industrial Ground Water Well Report" on a form provided by the Department, listing the amount of ground water transferred by month over the course of the construction project.

8. The Applicant shall comply with all rules and regulations of the South Platte Natural Resources District, and such future allocations or other controls required to comply with the Ground Water Management and Protection Act and any interstate compacts, decrees, or other cooperative agreements.

9. Failure to meet any conditions of this Approval may cause modification or revocation of the permit pursuant to Neb. Rev. Stat. § 46-684 (Reissue 2004).

10. Permits TA-39 and I-16 shall expire on December 31, 2007.

DEPARTMENT OF NATURAL RESOURCES

June 25, 2007

Ann Bleed

Ann Bleed, Director

A copy of this Order granting Permits TA-39 and I-16 was mailed on June 25, 2007, to the Department's field office in Bridgeport, Nebraska, and to the following:

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