

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES

DENIAL OF APPLICATION A-18503

WATER DIVISION 2-C

BACKGROUND

1. On April 16, 2007, Brian Barels on behalf of Nebraska Public Power District (NPPD) filed in the Department of Natural Resources (Department) application A-18503 for a Permit to Appropriate Water for Power at the existing Northern Nebraska Plant No. 1 (Spencer Dam).
2. Construction has been completed.

FINDINGS

1. The application requests an additional 425 cfs of natural flow to be utilized in hydro-electric power generation, which would bring the total of appropriations for the Northern Nebraska Plant No. 1 to 2460 cfs. The applicant asserts that 2460 cfs is the maximum combined capacity of the two power generating units.
2. NPPD has requested nearly continuous water administration to protect its' existing power appropriations at Spencer Dam, since the spring of 2007.
3. Pursuant to *Neb. Rev. Stat.* 46-714(12)(f) following a status change in any river basin from fully appropriated to not fully appropriated, the Department is obligated to "ensure that any new appropriation granted will not cause the basin, subbasin, or reach to be fully appropriated based on the most recent basin determination."
4. By Order of the Department dated June 29, 2011, the Niobrara River Basin from Spencer Dam upstream to the pre-existing fully appropriated area of the Upper Niobrara White Natural Resources District was declared not fully appropriated.
5. The June 29, 2011, Order changed the status of the aforementioned portion of the Niobrara River Basin from a status of "fully appropriated" to a status of "not fully appropriated." This constitutes a status change as described in *Neb. Rev. Stat.* § 46-714(12)(f).
6. Northern Nebraska Plant No. 1 (Spencer Dam) is within the status change area affected by the June 29, 2011, Order.
7. The Department has determined that based on the most recent basin determination of October 16, 2007, granting application A-18503 could cause the basin to be determined fully appropriated.

CONCLUSION

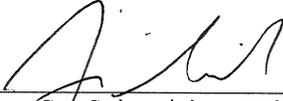
Within the four-year period after a fully appropriated status change *Neb. Rev. Stat. 46-714(12)(f)* does not allow the Department to approve an application that would cause the basin to be determined to be fully appropriated based upon the most recent determination. Based on the most recent basin determination, the Department cannot ensure the basin will not be determined to be fully appropriated if it grants application A-18503. The application must, therefore, be denied.

ORDER

IT IS HEREBY ORDERED that application A-18503 is DENIED.

DEPARTMENT OF NATURAL RESOURCES

December 31, 2014

  
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James C. Schneider, Ph.D.  
Acting 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 Title 454 Admin. Code Chapter 7*. The request must be received by the Department at its Lincoln office (Nebraska State Office Building, 4<sup>th</sup> 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 and provided to the Department's field office in Ord, Nebraska. A copy of this approval was mailed on December 31, 2014, to the following:

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