

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO CONSIDER SURFACE WATER APPLICATION A-18535

WATER DIVISION 2-C

Background

1. On September 17, 2007, Dana Krueger, on behalf of Nebraska Game and Parks Commission (NGPC), filed in the Department of Natural Resources (Department) application A-18535 for a permit to appropriate water from Minnechaduza Creek for the purpose of fish production.
2. On October 17, 2007, the Department issued Notice of Preliminary Determination That a Portion of the Lower Niobrara River Basin Is Fully Appropriated. This action required an immediate stay on the issuance of any new surface water appropriations in that portion of the Niobrara River Basin between Mirage Flats Diversion Dam and the Spencer Hydropower Plant.
3. The project proposed under application A-18535 falls within the fully appropriated area.
4. On January 25, 2008, the Department issued an Order of Final Determination That a Portion of the Lower Niobrara River Basin Is Fully Appropriated. The stays on new surface water uses that took effect as a result of the Department's preliminary determination that the portion of the Lower Niobrara River Basin remain in effect.
5. On June 1, 2010, Dana Krueger, on behalf of NGPC, filed petition VAR-1943 for leave to consider an application to appropriate water.
6. Petitions for leave to consider an application for a permit to appropriate water in areas that are subject to stays and moratoriums are covered under *Neb. Rev. Stat. §§ 46-714(3)(n) and 61-206. Department Rules for Surface Water 457 Neb. Admin. Code Chapter 23*, establishes guidelines under which variances can be granted.

Order

IT IS HEREBY ORDERED:

1. Petition VAR-1943 meets the conditions of Department *Rules for Surface Water 457 Neb. Admin. Code ch.23, § 001.04* and is GRANTED.
2. The granting of petition VAR-1643 does not bind the Department in any way to approve application A-18565 nor may be used as evidence of prejudice for the Director's future decisions concerning the specific approval requirements of the application.

DEPARTMENT OF NATURAL RESOURCES

August 30, 2010


Brian P. Dunnigan, P.E., Director

A copy of this Order was posted on the Department's website and provided to the Department's field office in Ord, Nebraska. A copy of this Order was mailed on August 30, 2010, to the following:

Dana Krueger
Nebraska Game & Park Commission
Valentine State Fish Hatchery
HC 13 Box 15B
Valentine, Nebraska 69201