

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING PETITION VAR-3573 FOR LEAVE TO FILE OR CONSIDER
AN APPLICATION FOR A NEW SURFACE WATER APPROPRIATION WITHIN
A MORATORIUM OR STAY AREA

WATER DIVISION 1-B

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued an Order declaring a formal moratorium in the Republican River Basin on the issuance of all new surface water appropriations.
2. On February 14, 2013, Richard R. Endacott, Executive Secretary of the Nebraska Board of Educational Lands and Funds (Petitioner), filed petition VAR-3573 in the Department for Leave to File or Consider an Application for a New Surface Water Appropriation within a Moratorium Area (Petition). The draft application and documentation attached to the petition is for a permit to impound approximately 75 acre-feet of water from a tributary to Boevau Canyon in the existing BELF Boevau Canyon Reservoir No. 1 located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 36, Township 4 North, Range 34 West of the 6th P.M. in Hitchcock County for the purpose of water for livestock.
3. Department records of aerial photography from the area dating from 1993 show that BELF Boevau Canyon Reservoir No. 1 was constructed and impounding water at that time.
4. *Nebraska Revised Statutes* § 46-714(3)(n) allows for new surface water appropriations if the Department grants leave to file an application and subsequently approves a permit for such use.
5. When filing such a petition, a project proponent must offer a clearly stated basis for such request and must offer sufficient good cause shown. *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code Chapter 23* lists six circumstances that may be put forward as justification for granting a petition to apply for a permit to impound water, in conjunction with an examination of good cause shown.

CONCLUSIONS

1. Petitioner has shown good cause in that the impoundment has been providing the benefits of water for livestock for many years.
2. BELF Boevau Canyon Reservoir No. 1 existed prior to the formal moratorium.

3. Therefore, petition VAR-3573 should be granted and the Petitioner should be allowed to file an application for a permit to impound water.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-3753 meets the requirement of *Department of Natural Resources Rules of Surface Water, Title 457 Neb. Admin. Code Chapter 23, § 001.04*, and is GRANTED.
2. This Order granting leave to file or consider an application for a new surface water appropriation within a moratorium or stay area pursuant to petition VAR-3573 shall be in effect for two years from the date this order is signed.
3. 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.

DEPARTMENT OF NATURAL RESOURCES

June 4, 2015



James C. Schneider, Ph.D.,
Acting Director

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field office in Cambridge, Nebraska. A copy of this Order was mailed on June 4, 2015, to the following:

Richard R. Endacott, Executive Secretary
Nebraska Board of Educational Lands and Funds
555 North Cotner Boulevard
Lincoln, Nebraska 68505