

STATE OF NEBRASKA
DEPARTMENT OF WATER RESOURCES

In the Matter of the Request for a)
Moratorium on the Upper Niobrara)
River.)
Water Division 2-C.)

ORDER GRANTING
MORATORIUM

This matter came on for consideration before the Director of the Department of Water Resources. The Director FINDS:

1. The Board of Directors of the Mirage Flats Irrigation District requested a moratorium be imposed on issuance of new water appropriations from the Niobrara River between the Wyoming-Nebraska state line and the District's headgate diversion near Dunlap. The principal reason for the request stemmed from continued drought conditions which have resulted in low river flows. Insufficient supplies in Box Butte Reservoir were noted. The District also claimed that the river was over-allocated now.
2. Notice of the request was published in newspapers circulated in the geographic area. No responses, objections or requests for hearing were filed.
3. The Department consulted with Game and Parks Commission as required by § 37-435. The Commission determined that allowing the request would result in no adverse effects.

It is CONCLUDED that although there is no express statutory authority for declaration of a moratorium, there is precedence. The Department has declared moratoriums on two other streams in the state. Article XV, Section 6 states: "The right to divert unappropriated waters of every natural stream for beneficial use shall never be denied except when such denial is demanded by the public interest." Therefore, whether the request for moratorium should be granted must be based on public interest factors.

Department records show that the Box Butte Reservoir has completely filled only once in the last 25 years. For the benefit of Box Butte Reservoir and Mirage Flats Canal, water administration of upstream, junior appropriations occurs every year. The hydrologic experience since Box Butte Reservoir was completed in 1945 gives no indication that greater flows can be expected. Public interest is not well served by granting "paper water rights." A moratorium will avoid additional state costs from the added administration of junior appropriations and the likely cancellation of unused appropriations in the future. Therefore, the request for a moratorium is reasonable and should be granted.

11-30-90 / OK'd (2) ^{Granting} _{the request}

The Department agrees with the Game and Parks Commission's determination of no adverse effect on threatened or endangered species will result from imposing a moratorium.

Under the following conditions, it is therefore ORDERED that a moratorium to the granting of a new water appropriations be imposed.

1. The stream reach of the Niobrara River (including its tributaries) included within this moratorium shall extend from the Nebraska-Wyoming state line downstream to the headgate of the Mirage Flats Canal in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 29 North, Range 48 West of the 6th P.M. in Dawes County.
2. The moratorium shall include all applications to use natural flow for irrigation, storage, and other beneficial uses.
3. The Department shall not approve any applications for permits for new water appropriations on this stream reach while the moratorium remains in effect.
4. Any person having an interest in this matter may petition the Department to reconsider the moratorium designation. The petition must clearly state the basis for such request.

For sufficient cause shown, the Director may re-examine the action imposed by this Order at any time.

DEPARTMENT OF WATER RESOURCES



J. Michael Jess, Director

November 30, 1990

A copy of this Order was mailed to Leon Glenn, President, Mirage Flats Irrigation District, Hay Springs, Nebraska 69347, and the Department's Division Offices at Bridgeport and Crawford, Nebraska.