

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO FILE AN APPLICATION FOR
A NEW SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A
MORATORIUM BY PETITION VAR-10071

WATER DIVISION 1-A

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in the Platte River Basin upstream of the confluence with the Loup River near Columbus, Nebraska. The moratorium included all tributary streams above the Loup River confluence including the North and South Platte Rivers and tributaries.
2. The Department's July 14, 2004, Order and the provisions of Neb. Rev. Stat. § 46-714(3)(n) allow for new surface water appropriations and increases in irrigated acres if the Department grants a variance and subsequently approves a permit for such new use.
3. On August 7, 2023, Devon Brundage, on behalf of The Central Nebraska Public Power and Irrigation District, filed in the Department petition VAR-10071 for leave to file an application for a permit to appropriate water. The petition requested leave to file an application for a temporary permit to appropriate less than 10 acre-feet of water for the purpose of construction.
4. When filing a variance request, 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 variance to apply for a new water use, in conjunction with an examination of good cause shown.

FINDINGS

1. The formal moratorium issued by the Department in 2004 has been continued in the surface water controls included in the integrated water management plans adopted by the Platte River Basin Natural Resources Districts and the Department.
2. The proposed application is for a temporary permit to appropriate less than 10 acre-feet of water for Elwood Dam seepage mitigation construction. The Petitioner asserts that water use is a necessary component of the construction project.

CONCLUSIONS

1. The proposed application is for a temporary use for public construction and the total volume requested is for less than 10 acre-feet of water.
2. Petition VAR-10071 should be granted.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-10071 for Leave to File an Application for a Permit to Appropriate Water 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-10071 shall be in effect for one year from the date this Order is signed.
3. The granting of petition VAR-10071 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 application. Allowance of leave to file an application does not negate the necessity to meet the specific approval requirements for an appropriation.

DEPARTMENT OF NATURAL RESOURCES



August 30, 2023

Thomas E. Riley, P.E., Director

A copy of this Order was posted on the Department's website, provided to the Department's field offices in Bridgeport, Nebraska, and mailed to the following.

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