

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-10268

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 August 23, 2021, an integrated management plan (IMP) was adopted by Order of the Department, pursuant to *Neb. Rev. Stat. § 46-718(2)* for the Lower Republican Natural Resources District.
3. The Department's August 23, 2021, 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.
4. On June 13, 2024, Peter Leising, on behalf of Leising, Inc., filed petition VAR-10268 for Leave to File or Consider an Application for a Permit to Appropriate Water within a Moratorium Area or Stay Area. The proposed application is for a temporary permit to appropriate less than 10 acre-feet of water for the purpose of public road construction from Medicine Creek at a point of diversion located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, Township 07 North, Range 27 West of the 6th P.M. in Frontier County.
5. *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 new use.
6. 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 new water use, in conjunction with an examination of good cause shown.

FINDINGS

1. As part of the surface water controls of the IMP adopted by the Department pursuant to *Neb. Rev. Stat. § 46-716(1)(b)*, the moratorium on issuing new surface water appropriations was continued.
2. The maintenance of roads constitutes a public safety issue.

3. The proposed application is for a temporary permit to appropriate less than 10 acre-feet of water for public road construction. The Petitioner asserts that water use is a necessary component of the construction project which addresses a public safety issue.

CONCLUSIONS

1. The purpose application is for a temporary permit for less than 10 acre-feet of water.
2. The proposed project addresses a public safety issue, and the Petitioner has shown good cause, thereby meeting the requirements of Department of Natural Resources Rules for Surface Water 457 Neb. Admin. Code Chapter 23.
3. Petition VAR-10268 should be granted.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-10268 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-10268 shall be in effect for one year from the date this order is signed.
3. The granting of petition VAR-10268 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. 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



Thomas E. Riley, P.E., Director

June 18, 2024

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 to the following:

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Leising, Inc.
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