

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-8899

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. Subsequently, integrated water management plans have continued the moratorium on issuing new surface water appropriations.
2. 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 March 2, 2020, Brett Birch, on behalf of Paul Reed Construction and Supply, Inc., (Petitioner) filed petition VAR-8899 for Leave to File or Consider an Application for a Permit to appropriate Water within a Moratorium Area or Stay Area. The petition requests leave to file an application for a temporary permit to appropriate less than 10 acre-feet of water for the purpose of road 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 management plans (IMPs) adopted by the Platte River Basin Natural Resources Districts and the Department.
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 proposed application is for a temporary permit for public construction for less than 10 acre-feet of water. 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 § 001.06*.
2. Petition VAR-8899 should be granted.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-8899 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-8899 shall be in effect for one year 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

March 16, 2020



Jesse Bradley, Interim 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 Bridgeport, Nebraska. A copy of this Order was mailed on March 16, 2020, to the following:

Brett Birch
Paul Reed Construction and Supply, Inc.
2970 North 10th Street
Gering, Nebraska 69341