

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION VAR-7538 FOR LEAVE TO FILE AN APPLICATION

FOR A PERMIT TO APPROPRIATE WATER

WATER DIVISION 2-E

BACKGROUND

1. On November 3, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in portions of the Upper Niobrara White Natural Resources District (UNWNRD). The moratorium included the Hat Creek Basin.
2. The Department's November 3, 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 8, 2011, an integrated management plan (IMP) was adopted by Order of the Department, pursuant to *Neb. Rev. Stat. § 46-718(2)* for the UNWNRD.
4. On August 15, 2019, Bell Island, on behalf of Todd and Sharon Semroska, (Petitioners), filed Petition VAR-7538 for Leave to File an Application for a Permit to appropriate Water. The proposed application is for a permit to appropriate 42 acre-feet of water from Wickersham Reservoir No. 2 (storage appropriation A-4918) for the purpose of irrigation. The point of diversion is located in the SW<sup>1</sup>/<sub>4</sub> of Section 31, Township 33 North, Range 54 West of the 6th P.M. in Sioux County.
5. 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. 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. Pursuant to *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code Chapter 23 § 001.04*, Petitioners contend that the project existed prior to an informal moratorium, formal moratorium or stay.

3. Storage application A-4918, filed on November 7, 1951, states water stored was for the purpose of irrigation and stock water.
4. On November 7, 1951, the Bureau of Irrigation received correspondence from the Law Offices of Schnurr & Mumby stating that "[t]he stored water will be used to irrigate lands now covered by direct flow appropriation A-701 and also to irrigate lands lying south of A-701 not now covered by any appropriation."
5. On June 9, 2020, Department personnel conducted a field investigation and determined that water from Wickersham Reservoir No. 2 has been used to irrigate lands covered by A-701 and A-2204 prior to an informal moratorium, formal moratorium or stay.

#### CONCLUSIONS

1. The proposed application is for a permit to appropriate impounded water from Wickersham Reservoir No. 2 (storage appropriation A-4918) for supplemental irrigation of land approved for irrigation under A-701 and A-2204 and does not represent an increase of irrigated acres.
2. The project existed prior to an informal moratorium, formal moratorium or stay, thereby meeting the requirements of Department of Natural Resources Rules for Surface Water 457 Neb. Admin. Code Chapter 23.
3. Petition VAR-7538 should be granted.

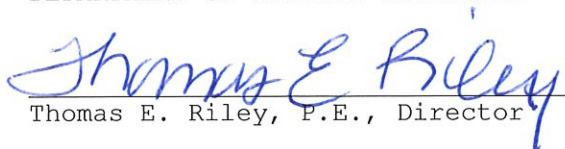
#### ORDER

#### IT IS HEREBY ORDERED:

1. Petition VAR-7538 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-7538 shall be in effect for one year from the date this Order is signed.
3. The granting of petition VAR-7538 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

December 21, 2020

  
Thomas E. Riley, P.E., 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 December 21, 2020, to the following:

Todd and Sharon Semroska  
570 Hat Creek Road  
Harrison, Nebraska 69346

Bell Island  
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