

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO FILE AN APPLICATION FOR
A TEMPORARY SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A
MORATORIUM BY PETITION VAR-9453

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 October 19, 2021, Devin Brundage, on behalf of The Central Nebraska Public Power and Irrigation District (Petitioner), filed petition VAR-9453 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 for the purpose of diverting Environmental Account water into the Phelps Canal and into Cottonwood Ranch to test infrastructure, specifically gate calibration and butterfly valve cavitation issues. The overall purpose will be for the benefit of Fish and Wildlife and reductions to shortages to target flows on the Platte River via the Cottonwood Ranch Complex.
4. 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.

ANALYSIS

1. The source of the water is appropriation A-2374 with a priority date of April 27, 1934.

2. Pursuant to terms of the license to operate the Kingsley Hydroelectric Power Plant issued by the Federal Energy Regulatory Commission an Environmental Account was created to apportion water stored under Petitioner's appropriation A-2374 for the purpose of instream uses for fish and wildlife.
3. The draft application attached to the petition proposes that a portion of the water accrued to the Environmental Account (A-2374) be released from Kingsley Reservoir (Lake McConaughy) and routed through the North Platte River, Nebraska Public Power District's (NPPD) systems, the Platte River and Petitioner's canal system to the Phelps Canal and finally delivered to the Cottonwood Ranch Complex.
4. The expected benefit from the use of water under the requested application would be to further test, adjust and calibrate the infrastructure constructed at the Cottonwood Ranch Complex. The overall future purpose for water use at the Cottonwood Ranch Complex will be for the benefit of Fish and Wildlife and reductions to shortages to target flows on the Platte River.

CONCLUSIONS

1. Environmental Account Water under A-2374 stored in Lake McConaughy proposed for use in the draft application existed prior to the formal moratorium.
2. The requested appropriation would be a secondary appropriation of water already stored under A-2374. This storage-use appropriation would not divert natural flow or cause limitation in other appropriator's diversions of natural flow.
3. The proposed project is sought to further test and calibrate the infrastructure constructed at the Cottonwood Ranch Complex. The overall long term purpose for the Cottonwood Ranch Complex would be for the benefit of Fish and Wildlife and reductions to shortages to target flows on the Platte River, which is in the public interest. Petitioner has shown good cause, thereby meeting the requirements of Department of Natural Resources Rules for Surface Water 457 Neb. Admin. Code Chapter 23.
4. For these reasons, Petitioner should be granted leave to file a temporary application to divert a portion of water under appropriation A-2374 from the Environmental Account to further test, adjust and calibrate the infrastructure constructed at the Cottonwood Ranch Complex for the benefit of fish and wildlife.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-9453 meets the requirements of *Department of Natural Resources Rules of Surface Water, Title 457 Neb. Admin. Code Chapter 23, § 001.04*, has shown sufficient good cause, and 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-9453 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



November 29

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 November 29, 2021, to the following:

Devin Brundage, General Manager
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