STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER DENYING PETITION VAR-2234 FOR LEAVE TO FILE AN APPLICATION FOR A NEW SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A MORATORIUM OR STAY

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. On August 13, 2009, integrated management plans (IMPs) were adopted by order of the Department, pursuant to *Neb. Rev. Stat.* § 46-718(2) for the following NRDs: the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. As part of the surface water controls adopted by the Department pursuant to *Neb. Rev. Stat.* § 46-716(1)(b), the moratorium on issuing new surface water appropriations was continued.

3. On September 11, 2009, a Basin-Wide Integrated Management Plan (BWIMP) for the overappropriated area of the Platte River Basin was adopted by order of the Department. The BWIMP was also adopted by the following NRDs: the North Platte NRD, the South Platte NRD, the Twin Platte NRD, the Central Platte NRD, and the Tri-Basin NRD. These NRDs are collectively referred to in the BWIMP as the "Platte River Basin NRDs."

4. On December 9, 2011, North Platte Natural Resources District (Petitioner) filed a Petition for Leave to File or Consider an Application for a New Surface Water Appropriation within a Moratorium or Stay Area, VAR-2234 (variance petition). The draft application attached to the petition is for a permit to appropriate water from the North Platte River for the purpose of recharge via a pipeline to constructed pits within the Pumpkinseed (Pumpkin) Creek watershed.

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.

ANALYSIS

1. The formal moratorium issued by the Department in 2004 has been continued in the surface water controls included in the individual NRD IMPs adopted by the Platte River Basin NRDs and the Department.

   Because the Platte River Basin is currently undergoing integrated management for the purposes of reducing depletions to streamflow, any new consumptive use must be examined for its potential effects on extant surface and groundwater users and upon all matters of significant public interest and concern. This includes assessing both positive and negative impacts on the State's ability to comply with interstate agreements, programs, decrees and compacts, including the Platte River Recovery and Implementation Program (PRRIP). Thus, any proposed project must be scrutinized to prevent conflict with (a) the goals and actions necessary to implement the IMPs adopted by the Platte River Basin NRDs and the Department and (b) the water needs of Water Action Plan projects that will be implemented under PRRIP. Applications for potential beneficial uses that are not clearly non-consumptive will be presumed to be at least partially consumptive. Therefore, an analysis of the effects of a proposed new diversion on these existing uses and responsibilities is required in order to determine whether sufficient good cause exists to grant a variance to apply for a new use.

2. Petitioner provided a paragraph describing (1) the proposed project, and (2) good cause reasoning.

CONCLUSIONS

1. Petitioner has not provided evidence to substantiate the proposed project is a non-consumptive use.

2. Petitioner has not provided evidence to substantiate the possibility that unappropriated water is available for the proposed project.

3. For these reasons, variance petition VAR-2234 should be denied.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-2234 does not meet the requirements of *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code* Chapter 23 and is therefore DENIED.

2. This decision shall not preclude the Petitioner from filing a related petition in the future. Future petitions should address the deficiencies referenced above.

DEPARTMENT OF NATURAL RESOURCES

December 12, 2014

James C. Schneider, Ph.D.
Acting 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 12, 2014, to the following:

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