

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18825

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 December 16, 2004, an integrated management plan (IMP) was adopted by Order of the Department, pursuant to *Neb. Rev. Stat. § 46-718(2)* for the Middle Republican Natural Resource District (MRNRD). 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 20, 2010, a revised IMP was adopted by Order of the Department. The moratorium on issuing new surface water appropriations was continued.
4. On August 24, 2011, Don Felker, Manager of Frenchman Valley Irrigation District, filed petition VAR-2155 in the Department for leave to file or consider an application for a new surface water appropriation within a Moratorium Area. The petition requested leave to file an application for a temporary permit to appropriate water from Frenchman Creek for the purpose of groundwater recharge via the Culbertson Canal.
5. On September 21, 2011, the Department granted petition VAR-2155 for leave to file an application for a permit to appropriate water.
6. On October 24, 2011, Don Felker, Manager of Frenchman Valley Irrigation District, filed in the Department application A-18825 for a temporary permit to appropriate water.
7. Temporary permits may not be granted for a term of more than one year.

FINDING OF FACT

1. Construction of the Culbertson Canal has been completed.
2. The temporary diversion project sought in the application is in cooperation with and support of local natural resources districts, irrigation districts and the State. Information and data obtained from the proposed project will be valuable in conjunctive management studies being implemented within the Republican River Basin. Such data may be incorporated in the design of future projects intended to help the State fully utilize its annual allocation available under the terms of the Republican River Compact and the Final Settlement Stipulation.

In addition, recharge from this project is expected to return as stream flow in the future and may result in increased flows when water is limited.

3. The project is largely non-consumptive and there is likely to be unappropriated water in the Republican River Basin prior to and after the normal irrigation season. The benefits expected from the project outweigh the minimal consumptive use from evaporation before the diverted water seeps into the groundwater aquifer. Diversion may not occur if other appropriators could be harmed or if Compact constraints occur.
4. The diversion of water for the purpose of groundwater recharge is beneficial.
5. In concurrence with the procedures agreed upon at the 2011 Republican River Compact Administration (RRCA) meeting on August 31, 2011, and the Final Settlement Stipulation, Section III.C., Nebraska notified the RRCA and the U.S. Bureau of Reclamation of this application and provided the RRCA 60 days from the date of the variance Order to provide comments on the application.
6. The 60-day period has expired and no comments were received.
7. For these reasons, the application is in the public interest and should be approved.

ORDER

IT IS HEREBY ORDERED that application A-18825 is APPROVED subject to the following limitations and conditions:

1. The source of water is Frenchman Creek.
2. The water shall be used for the purpose of groundwater recharge.
3. The priority date is October 24, 2011.
4. When the specified conditions of this appropriation are met, water may be diverted, at a maximum rate of 28 cubic feet per second, into the Culbertson Canal headgate located in Section 31, Township 5 North, Range 33 West of the 6th P.M. in Hayes County.
5. The water under appropriation A-18825 may be diverted prior to and after the 2012 irrigation season, if all conditions of this Order are met. Appropriator must coordinate with Department personnel to determine the beginning and end of the irrigation season for the Culbertson Canal system for the purpose of administering this permit.
6. If a relinquishment is not submitted first, then A-18825 will EXPIRE one year from the date of this Order, and appropriation A-18825 will be CANCELLED without further action by the Department as of that date.

7. No diversion shall occur if the Department determines that, at the time of intended diversion, no unappropriated water is available in Frenchman Creek or if the appropriation is out of priority. Total diversion into Culbertson Canal during use of this permit will be limited to the permitted amount of A-18825.
8. The water diverted under A-18825 through the Culbertson Canal and lateral system may not be used for direct irrigation by Frenchman Valley Irrigation District's customers. The water diverted under A-18825 will flow through the headgate, canal and lateral system. Any water diverted for the purpose authorized under this permit that does not seep into the groundwater aquifer will be returned to the river at established spills and drains.
9. Within six months after the final date of diversion under this temporary permit, the appropriator shall file a map that depicts where water was routed.
10. The appropriator must comply with all relevant statutes. The statutes include, but are not limited to, the following:
 - A. Notify the Department of any change in ownership or address.
 - B. Notify the Department of the name and address of the person responsible for the use of the water appropriation.
 - C. Obtain approval from the Department prior to taking any action that changes the location of the point of diversion, the location of the place of use, the type of use, or the type of appropriation.

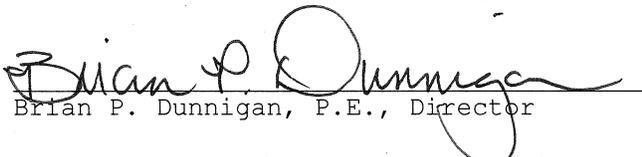
ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this Approval may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. This appropriation may be closed if there is insufficient water to satisfy senior appropriations.

DEPARTMENT OF NATURAL RESOURCES

February 24, 2012


Brian P. Dunnigan, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this order may request a contested case hearing in accordance with the *Neb. Admin. Procedures Act* §§ 84-901 et. seq. RRS and the Department's *Rules of Practice and Procedure Title 454 Admin. Code Chapter 7*. The request must be received by the Department at its

Lincoln office (Nebraska State Office Building, 4th Floor, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of \$10.

A copy of this approval was posted on the Department's website and provided to the Department's field office in Cambridge, Nebraska. A copy of this approval was mailed on February 24, 2012, to the following:

Frenchman Valley Irrigation
District
P.O. Box 297
Culbertson, Nebraska 69024

Mr. Aaron Thompson, Area Manager
Bureau of Reclamation
P.O. Box 1607
Grand Island, Nebraska 68802

Mr. Dick Wolfe
State Engineer, Director
Colorado Division of Water
Resources
1313 Sherman Street, Room 818
Denver, Colorado 80203

Mr. David Barfield
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture
109 SW 9th Street, 2nd Floor
Topeka, Kansas 66612-1283