

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION VAR-2142 FOR LEAVE TO FILE AN APPLICATION FOR A NEW
SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A MORATORIUM

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 5, 2011, Brad Edgerton, on behalf of Frenchman-Cambridge Irrigation District (Petitioner), filed petition VAR-2142 in the Department for Leave to File or Consider an Application for a New Surface Water Appropriation within a Moratorium Area (Petition). The draft application and documentation attached to the Petition is for a temporary permit to appropriate water from Red Willow Creek for the purpose of groundwater recharge via the Red Willow Canal.
5. *Nebraska Revised Statutes § 46-714(3)(n)* allows for new surface water appropriations and increases in irrigated acres 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 Middle Republican NRD IMP adopted by the Department.

2. Petitioner cited two circumstances as justification for granting petition VAR-2142 to apply for a new water use: a) the proposed project is for a non-consumptive use and b) the likelihood of unappropriated water.
3. Petitioner stated that Harlan County Reservoir is currently 96.3% full of conservation pool and that the irrigation pool in the reservoir is expected to be above 130,000 acre-feet, thereby indicating the expected presence of unappropriated water.
4. The Department recognizes that the Final Settlement Stipulation of the Republican River Compact lawsuit does not preclude issuance of new appropriations. However, Nebraska must not exceed its allocation; therefore, careful consideration must be given before approving new appropriations. It is expected that water diverted and recharged into the aquifer during periods of plentiful supply will return as stream flow in the future and may increase stream flows in years when flows are limited.
5. The expected benefits from projects such as this are (a) to assist in the study and understanding of retiming stream flows in the Republican River Basin, (b) to assist a joint conjunctive management study that is being implemented within the Republican River Basin and (c) to provide data to assess potential permanent sites for recharge projects.
6. Based on Contract 009D6B0122 between Petitioner and the United States Bureau of Reclamation, water may be diverted prior to and after the normal irrigation season has concluded.

CONCLUSIONS

1. Petitioner has indicated 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. Petitioner acknowledges that diversion would not be allowed if other appropriators could be harmed or if Compact constraints occur.
2. The temporary diversion project described in the draft application attached to the Petition 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. The project will be monitored in order to ascertain whether recharge from this activity will return as stream flow in the future and whether it will result in increased flows when flows are otherwise limited.
3. For these reasons, Petitioner should be granted leave to file an application to temporarily divert water from Red Willow Creek for the purpose of groundwater aquifer recharge.

4. According to the Final Settlement Stipulation, Section III.C., Nebraska may issue new surface water appropriations as long as "such use can be made within the State's Compact Allocation."

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-2142 meets the requirements of *Department of Natural Resources Rules for Surface Water, Title 457 Neb. Admin. Code Chapter 23, §§ 001.01 and 001.03*, has shown sufficient good cause, and is GRANTED.
2. 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. An application filed pursuant to this ORDER must include a specific analysis and recommendation of conditions of operation that would assure the proposed use can be made within Nebraska's compact allocation.

DEPARTMENT OF NATURAL RESOURCES

November 7, 2011


Brian P. Dunnigan, 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 Cambridge, Nebraska. A copy of this Order was mailed on November 8, 2011, to the following:

Frenchman-Cambridge Irrigation District
Brad Edgerton
P.O. Box 116
Cambridge, Nebraska 69022