STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING PETITION VAR-3537 FOR LEAVE TO FILE OR CONSIDER

AN APPLICATION FOR A NEW SURFACE WATER APPROPRIATION WITHIN

A MORATORIUM OR STAY AREA

WATER DIVISION 1-B

BACKGROUND

1. On April 5, 1955, the Frontier County Soil Conservation District filed before the Department of Roads and Irrigation petition P-7144 for the approval of plans and specifications for a proposed dam to be constructed across Dry Creek located in the SE¼NE¼ of Section 21, Township 5 North, Range 27 West of the 6th P.M. in Frontier County. An application for a permit to impound water was not filed at that time.

2. On April 25, 1955, the Department of Roads and Irrigation approved plan number P-7144 and specifications for Dry Creek 2A Dam.

3. 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.

4. On February 8, 2013, Robert D. Merrigan, on behalf of the Middle Republican Natural Resources District, (Petitioner) filed petition VAR-3537 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 permit to impound approximately 79 acre-feet of water from Dry Creek in the existing Dry Creek 2A Reservoir located in the SE¼NE¼ of Section 21, Township 5 North, Range 27 West of the 6th P.M. in Frontier County for the purpose of flood control.

5. Department records of aerial photography dating back to 1993 for this location show this dam and reservoir in existence and impounding water.

6. *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 use.

7. 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 permit to impound water, in conjunction with an examination of good cause shown.

CONCLUSIONS

1. Petitioner has shown good cause in that the impoundment has been providing the benefits of flood control for many years.

2. The Dry Creek 2A Reservoir existed prior to the formal moratorium.

3. Therefore, petition VAR-3537 should be granted and the Petitioner should be allowed to file an application for a permit to impound water.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-3537 meets the requirement of *Department of Natural Resources Rules of Surface Water, Title 457 Neb. Admin. Code* Chapter 23, § 001.04, 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-3537 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

October 17, 2013

Brian P. Dunnigan

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 October 17, 2013, to the following:

Robert D. Merrigan
Middle Republican Natural Resources District
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Curtis, Nebraska 69025