STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING PETITION VAR-3602 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 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 March 11, 2013, Gary W. and Sharon S. Jensen (Petitioners), filed petition VAR-3602 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 21.5 acre-feet of water from a tributary to Turkey Creek in the existing Jensen's Pond 1967 located in the NW¼NW¼ of Section 35, Township 4 North, Range 18 West of the 6th P.M. in Harlan County for the purpose of water for livestock and erosion control.

3. An aerial photograph taken in 1977 was filed with VAR-3602. It shows that Jensen's Pond 1967 was constructed and impounding water at that time.

4. *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.

5. 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 water for livestock and erosion control for many years.

2. Jensen's Pond existed prior to the formal moratorium.

3. Therefore, petition VAR-3602 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-3602 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-3602 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

February 27, 2015

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 Cambridge, Nebraska. A copy of this Order was mailed on February 27, 2015, to the following:

Gary W. and Sharon S. Jensen
307 West Linn Street
Wilcox, Nebraska 68982