STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING PETITION VAR-3508 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 February 4, 2013, John E. Boehler (Petitioner) filed petition VAR-3508 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 46.7 acre-feet of water from a tributary to Flag Creek in the existing Boehler Reservoir located in the NW¼SE¼ of Section 35, Township 3 North, Range 19 West of the 6th P.M. in Harlan County for the purpose of providing erosion control.

3. An aerial photograph of Section 35, Township 3 North, Range 19 West of the 6th P.M. in Harlan County, taken in 1993, was filed with petition VAR-3508 and shows that the Boehler Reservoir 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 benefit of providing erosion control for many years.

2. Boehler Reservoir existed prior to the formal moratorium.

3. Therefore, petition VAR-3508 should be granted and Petitioner should be allowed to file an application for a permit to impound water.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-3508 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-3508 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

January 17, 2014

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 January 17, 2014, to the following:

John E. Boehler
71050 L Road
Orleans, Nebraska 68966