

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING LEAVE TO CONSIDER AN APPLICATION FOR
A NEW SURFACE WATER APPROPRIATION WITHIN AN AREA SUBJECT TO A
STAY, BY PETITION VAR-4889

WATER DIVISION 2-F

BACKGROUND

1. On August 22, 2013, Boyd County Highway Department, on behalf of the parties of the interlocal agreement dated April 24, 2012, between Boyd County, Spencer Area Development Corporation, and the Village of Spencer, (Parties), filed in the Department of Natural Resources (Department) an application for approval of plans for dams, specifications and plan P-18654 for the renovation of the existing Klasna Reservoir located in the SE¼ of Section 34, Township 34 North, Range 12 West of the 6th P.M. in Boyd County.
2. On September 20, 2013, Spencer Area Development Corporation, on behalf of the Parties, filed in the Department application A-19144 for a permit to impound 65.4 acre-feet of water from Crooked Creek in the existing Klasna Reservoir located in the SE¼ of Section 34, Township 34 North, Range 12 West of the 6th P.M. in Boyd County.
3. On November 8, 2013, the Department issued a temporary stay on all new surface water appropriations within in the Lower Niobrara Natural Resources District boundary. The temporary stay remains in effect through January 31, 2014.
4. On December 24, 2013, Boyd County Highway Department, on behalf of the Parties (Petitioner), filed in the Department petition VAR-4889 for Leave to Consider an Application for a Permit to Appropriate Water within a Stay Area (variance petition). The petition requests consideration of application A-19144.
5. *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.
6. When filing such a petition, a project proponent must offer a clearly stated basis for such request and must offer sufficient good cause. *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.

CONCLUSIONS

1. Petitioner provided information that indicates the reservoir was constructed in 1932, and has stability issues that the renovation will correct.
2. Records on file in the Department indicate that Klasna Reservoir existed prior to the temporary stay.
3. The safety of the county road located over the top of the dam should be addressed.
4. Therefore, petition VAR-4889 should be granted and Petitioner should be granted leave to proceed with the consideration of application A-19144 for a permit to impound water.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-4889 meets the requirement of *Department of Natural Resources Rules of Surface Water, Title 457 Neb. Admin. Code Chapter 23, §§ 001.04 and 001.05*, and is GRANTED.
2. This Order granting leave to consider an application for a new surface water appropriation within a stay area pursuant to petition VAR-4889 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 3, 2014


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 454 Neb. 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 Ord, Nebraska. A copy of this approval was mailed on January 3, 2014, to the following:

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