

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18844

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 25, 2011, Aaron M. Thompson, Area Manager of the Bureau of Reclamation (Reclamation), filed petition VAR-2157 in the Department for Leave to File or Consider an Application for a New Surface Water Appropriation within a Moratorium Area. The draft application and documentation attached to the petition is for a permit to appropriate storage water from Hugh Butler Lake for the purpose of reconstruction of Red Willow Dam.
5. On October 5, 2011, the Department granted petition VAR-2157 for leave to file an application for a permit to appropriate water.
6. On December 5, 2011, Michael D. Kube, P.E., Manager Resources Division, Reclamation, acting for Aaron M. Thompson, Area Manager, Reclamation, filed in the Department of Natural Resources application A-18844 for a Permit to Appropriate Water.
7. On December 21, 2011, Michael D. Kube, P.E., Manager Resources Division, Reclamation, filed in the Department map number 18019 showing the proposed locations of diversion for the proposed project under application A-18844.

FINDINGS OF FACT

1. Appropriation A-4885 authorizes Reclamation to store 26,400 acre-feet of water in Hugh Butler Lake and the appropriated water is stored for "some useful purpose" as stated in the approval Order. Reclamation proposes to use 30 acre-feet per year of the water under storage

appropriation A-4885 for the purpose of compacting soil, controlling dust, and seeding disturbed areas during the construction of Safety of Dams modifications on Red Willow Dam. Corrective actions are required due to the presence of deep cracks running upstream and downstream through the embankment of the dam which has restricted the reservoir elevation in the target range of 2,552.00 feet (5,185 acre-feet) to 2,554.00 feet (6,316.00 acre-feet).

2. In concurrence with the procedures agreed upon at the 2011 Republican River Compact Administration (RRCA) meeting on August 31, 2011, and the Final Settlement Stipulation, Section III.C., Nebraska notified the RRCA and the U.S. Bureau of Reclamation of this application and provided the RRCA 60 days from the date of the variance Order to provide comments on the application.
3. The 60-day period has expired and no comments were received.

CONCLUSIONS

1. The diversion of water for the purpose of repair and reconstruction of Red Willow Dam is a beneficial use and is in the public interest.
2. No harm to downstream appropriators is anticipated because Reclamation will reduce the maximum reservoir elevation as stored water is released for construction purposes.
3. For these reasons application A-18844 to use storage water from Hugh Butler Lake for the purpose of repair and reconstruction of Red Willow Dam should be granted.

ORDER

IT IS HEREBY ORDERED that application A-18844 is APPROVED subject to the following limitations and conditions:

1. The source of water is Hugh Butler Lake, constructed under storage appropriation A-4885.
2. The water shall be used for the purpose of construction.
3. The priority date is December 5, 2011.
4. This appropriation shall be limited to an amount of water not to exceed 30 acre-feet per annum.
5. Upon completion of the reconstruction of Red Willow Dam, Reclamation shall file a Relinquishment of Water Appropriation in the Department relinquishing the right to divert water under appropriation A-18844.

6. The appropriator must comply with all relevant statutes. The statutes include, but are not limited to, the following:
 - A. Notify the Department of any change in ownership or address.
 - B. Notify the Department of the name and address of the person responsible for the use of the water appropriation.
 - C. Obtain approval from the Department prior to taking any action that changes the location of the point of diversion, the location of the place of use, the type of use, or the type of appropriation.

7. The appropriator must comply with the following deadlines.
 - A. Construction of the diversion works must begin within twelve months of the signing date of this application approval. The appropriator must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.
 - B. Construction of the project must be completed by two years past the signing date of this application approval.
 - C. The appropriation is not considered perfected until water has been beneficially applied for the purpose stated in this approval. The water appropriated under A-18844 must be beneficially used by September 1, 2014.
 - D. After September 1, 2014, a field investigation will be conducted to determine whether or not water has been put to beneficial use under appropriation A-18844.

ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this Approval may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

Nebraska law provides that failure to use a portion or all of a perfected appropriation for more than five consecutive years may result in cancellation of the appropriation.

DEPARTMENT OF NATURAL RESOURCES

January 27, 2012


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 Title 454 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 Cambridge, Nebraska. A copy of this approval was mailed on January 27, 2012, to the following:

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Bureau of Reclamation
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