STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING PETITION VAR-3473 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 January 17, 2013, Richard A. and Debra N. Hersh (Petitioners) filed petition VAR-3473 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 attached to the petition is for a permit to impound 50.1 acre-feet of water from Hungry Creek in the existing Sibert Pond located in the NW¼SE¼ of Section 13, Township 1 North, Range 12 West of the 6th P.M. in Webster County for the purpose of providing water for livestock and erosion control.

3. An aerial photograph of Section 13, Township 1 North, Range 12 West of the 6th P.M. in Webster County, taken in 1993, was filed with petition VAR-3473 and shows that Sibert Pond 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 erosion control and water for livestock for many years.

2. The Sibert Pond existed prior to the formal moratorium.

3. Therefore, petition VAR-3473 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-3473 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 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

June 20, 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 June 20, 2013, to the following:

Richard A. and Debra N. Hersh
427 River Road
Invale, Nebraska 68952