

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER GRANTING PETITION VAR-5564 FOR LEAVE TO FILE OR CONSIDER

AN APPLICATION FOR A NEW SURFACE WATER APPROPRIATION

WATER DIVISION 2-C

BACKGROUND

1. On March 14, 2014, the Department of Natural Resources (Department) issued an Order adopting Lower Niobrara Natural Resources District's (District) Integrated Management Plan and Associated Surface Water Controls (IMP) which became effective on May 1, 2014. The controls under the IMP state that if the District should issue a restriction on the number of additional acres irrigated from groundwater, the Department will issue a similar restriction on the development of additional acres for surface water irrigation per year to 1/3 of the amount the District allows for additional groundwater irrigated acres. For calendar year 2016 the District will allow no additional acres irrigated from groundwater; therefore, the Department will allow no additional acres for surface water irrigation.
2. On January 28, 2016, Jim Galyen, on behalf of Brookfield, LLC, (Petitioner) filed petition VAR-5564 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 appropriate 1.71 cubic feet per second of water from Camp Creek for the purpose of irrigation of 120 acres of land located in the SW $\frac{1}{4}$ of Section 06, Township 31 North, Range 11 West of the 6th P.M. in Holt County. The point of diversion is located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said legal description.
3. An aerial photograph of Section 06, Township 31 North, Range 11 West of the 6th P.M. in Holt County, taken in 2003, was filed with petition VAR-5564 and shows that a pivot was being used to irrigate the SW $\frac{1}{4}$ of said legal description.
4. On June 17, 2016, correspondence was received in the Department from the Lower Niobrara Natural Resources District (District) that the Board denied Mr. Galyen's variance application for adding new irrigated acres within the District.
5. On June 20, 2016, additional correspondence was received in the Department from the District stating the basis for denial of Mr. Galyen's variance application to add new irrigated acres located in the SW $\frac{1}{4}$ of Section 06, Township 31, Range 11 West of the 6th P.M. in Holt County.

6. *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.
7. 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 appropriate water, in conjunction with an examination of good cause shown.

CONCLUSIONS

1. Petitioner has shown good cause in that the project has been providing the benefit of irrigation for many years.
2. The irrigation project existed prior to the IMP restrictions.
3. Therefore, petition VAR-5564 should be granted and the Petitioner should be allowed to file an application for a permit to impound water.

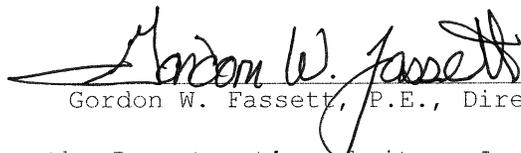
ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-5564 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-5564 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

August 15, 2016


Gordon W. Fassett, 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 Ord, Nebraska. A copy of this Order was mailed on August 15, 2016, to the following:

Jim Galyen
Brookfield, LLC
305 North 37th Street
Norfolk, Nebraska 68703