

STATE OF NEBRASKA

DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT

**ORDER GRANTING PERMITS MT-51 TO TRANSFER GROUNDWATER FOR
RURAL DOMESTIC USE AND TA-56 TO TRANSFER GROUNDWATER FROM
NEBRASKA TO KANSAS**

This matter came on for consideration before the Department of Water, Energy, and Environment (DWEE). The Chief Water Officer of DWEE finds and orders as follows:

I. Procedural History

1. On February 11, 2025, the Little Blue Natural Resources District (Applicant) filed an application for a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act, Neb. Rev. Stat. §§ 46-638 to 46-650. A corrected filing of the application was received on April 29, 2025. Application MT-51 requests a permit to withdraw a maximum of 60,000,000 gallons (184.13 acre-feet) per year from two proposed supply wells and transport the water for rural domestic use through the Little Blue Public Water Project (Project). The wells are proposed to be constructed in the **SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, and the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 04 North, Range 01 East of the 6th P.M. in Jefferson County.**
2. On February 11, 2025, the Applicant also filed application TA-56 for a permit to transfer a maximum of 46.21 acre-feet (15,057,575 gallons) of ground water to northern Washington County, Kansas under Neb. Rev. Stat. § 46-613.01. A corrected filing of the application was received on April 29, 2025. The groundwater is proposed to be transported from the two wells under MT-51 via the existing Project infrastructure. Application TA-56's proposed amount of water is part of the MT-51 request and is not an additional amount of water to be withdrawn from the proposed wells.
3. Applicant presently operates under two groundwater transfer permits, which are paired with a transfer permit for the Kansas portion of the Project. A-17560 with TA-23, and A-17840 with TA-28 are associated with the existing City of Fairbury-supplied system (collectively referred to as Fairbury Source Permits). As stated in the application materials, the withdrawal and transfer authorized under MT-51 and TA-56 are intended to serve as the replacement source for the Project.
4. Notice of applications MT-51 and TA-56 were published in accordance with Neb. Rev. Stat. § 46-640.
5. DWEE received eight (8) objections and requests for hearing for applications MT-51 and TA-56 under Title 454 Neb. Admin. Code Ch. 7.
6. On March 13, 2026, the remaining objectors filed a withdrawal of their objections as the parties reached settlement.
7. On March 20, 2026, DWEE issued an Order approving the withdrawal of objections and dismissed the contested case.

8. As provided in Neb. Rev. Stat. § 37-807(3), DWEE consulted with the Nebraska Game & Parks Commission (Commission). The Commission determined that applications MT-51 and TA-56 are not likely to adversely affect threatened or endangered species or result in the destruction or modification of their critical habitat. Some cautionary advice was offered relative to the construction activity for the Project, which was passed on to the Applicant. Therefore, applications MT-51 and TA-56 may be approved as it relates to Neb. Rev. Stat. § 37-807(3).

II. Transfer Statutes

1. Under the Municipal and Rural Domestic Ground Water Transfers Permit Act (Act), Neb. Rev. Stat. § 46-638 to 46-650, the Chief Water Officer may grant and administer permits to public water suppliers to locate, develop, and maintain ground water supplies through water wells and to transport water into the area served and to continue existing use of ground water and the transportation of ground water into the area served. Permits granted under the Act must comply with Neb. Rev. Stat. § 46-642, which states:

(1) If the Chief Water Officer finds that the withdrawal and transportation of ground water requested by the applicant are reasonable, are not contrary to the conservation and beneficial use of ground water, and are not otherwise detrimental to the public welfare, he or she shall grant a permit to the applicant to withdraw and transport water in the amount applied for or in a lesser amount. The permit so granted shall have a priority date as of the time when the application is filed with the Chief Water Officer.

(2) In determining whether to grant or deny a permit under subsection (1) of this section, the Chief Water Officer shall consider the factors set forth in subdivisions (1) through (7) of section 46-613.01.

2. Neb. Rev. Stat. § 46-613.01 provides factors that the Chief Water Officer must consider in determining whether to deny or grant a permit to withdraw ground water from any water well with the intent to transport it for use in another state including:

- (1) The nature of the proposed use and whether it is a beneficial use of ground water;
- (2) The availability to the applicant of alternative sources of surface or ground water;
- (3) Any negative effect of the proposed withdrawal on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

- (4) Any negative effect of the proposed withdrawal on surface water supplies needed to meet present or reasonable future demands within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;
- (5) Any adverse environmental effect of the proposed withdrawal or transportation of ground water;
- (6) The cumulative effect of the proposed withdrawal and transfer relative to the matters listed in subdivisions (3) through (7) of this section when considered in conjunction with all other transfers subject to this section; and
- (7) Any other factors consistent with the purposes of this section that the Chief Water Officer deems relevant to protect the health, safety, and welfare of the state and its citizens.

3. DWEE has reviewed applications MT-51 and TA-56 in relation to the foregoing statutes and has determined that they should be approved subject to the following conditions as set forth below.

III. Applications MT-51 and TA-56 are Reasonable, not Contrary to the Conservation and Beneficial Use of Ground Water, and not Otherwise Detrimental to the Public Welfare.

Applications MT-51 and TA-56's proposed groundwater withdrawal will provide a reliable water source for rural domestic use to an area of southern Jefferson County, Nebraska and northern Washington County, Kansas, as depicted on the map included in the applications. The proposed water use is designed to meet the essential daily demands within the service area. The proposed withdrawal and transfer of groundwater is deemed reasonable.

The amount of groundwater requested per capita is not excessive. The rural domestic supply requested by Applicant is meant to serve residents with water for human consumption, fire protection, sanitation, domestic livestock, and other domestic uses that are beneficial. The proposed Project is essentially a replacement source for the water system that has been used for decades under the Fairbury Source Permits.

No evidence exists in the applications to show that the proposed withdrawal and use of groundwater would otherwise be detrimental to public welfare. The applications demonstrate that the aquifer can support the withdrawals with little impact on neighboring water users. Applicant outlined proactive measures that will be followed to reduce risk from increases in nitrate concentration. Furthermore, domestic use is of a higher preference than agricultural use, so the public welfare will be supported by development of this Project.

IV. The Proposed Use of Ground Water is a Beneficial Use

Use of ground water for rural domestic purposes including water for human consumption, fire protection, sanitation, domestic livestock, and other domestic uses are all beneficial.

The factor under Neb. Rev. Stat. § 46-613.01(1) has been met.

V. There are no Suitable Alternative Sources of Surface or Groundwater Available to Applicant

Applicant assessed several alternatives to meet the Project's long-term supply needs. Historical challenges with Fairbury's system—including diminishing capacity, nitrate concerns requiring blending, and limited well availability—rendered continued reliance on the municipal supply impractical. No adequate surface water sources are available in the service area. Based on exploration drilling and hydrologic analysis, the proposed wellfield provided the most feasible and economically viable option capable of supplying the Project's multi-county rural domestic users.

The factor under Neb. Rev. Stat. § 46-613.01(2) has been met.

VI. No Negative Effects on Surface or Ground Water Supplies

The proposed withdrawal of ground water is intended to replace the source of water for the existing rural water Project and the amounts requested are specified as a replacement for the current supply. There is no change to the amount requested from the proposed wells that would be transferred for use in Kansas when compared to the Applicant's Fairbury Source Permits. Therefore, the effects on surface or ground water supplies would change location, rather than amounts.

No cumulative effects with other transfers are anticipated due to limiting conditions to be imposed as set forth below. The cumulative effects evaluation considers the Applicant's existing transfers under the Fairbury Source Permits. As the withdrawal amounts under MT-51 and TA-56 do not exceed and merely replace the Fairbury Source Permits, the cumulative effect remains unchanged. Aquifer pump tests and groundwater modelling were conducted at the proposed wellfield, which concluded that the proposed withdrawals would not harm nearby groundwater and surface water users. No negative effect on an interstate compact or decree or formal state contract is known.

The factors under Neb. Rev. Stat. § 46-613.01(3) (4) (6) have been met.

VII. No Adverse Environmental Effects

The Applicant's Environmental Report, prepared for federal and state funding review, concluded that the limited new construction required for the wellfield and transmission line will not adversely affect threatened or endangered species or modify critical habitat. Consultation with the Commission confirmed no expected adverse environmental effects associated with Project operations. The recommendations for precautionary measures during construction will be required.

The factor under Neb. Rev. Stat. § 46-613.01(5) has been met.

VIII Other Factors

If the Applicant intends to maintain the existing connection to the City of Fairbury's municipal supply wells for emergency back-up purposes, then DWEE must ensure through the conditions of this Order that the total withdrawal and use of groundwater does not exceed what is requested by applications MT-51 and TA-56. The existing permits with corresponding transfers to Kansas are: A-17560 with TA-23, and A-17840 with TA-28, Fairbury Source Permits.

The Chief Water Officer also finds that approving MT-51 and TA-56 protects public health and welfare by providing a reliable rural domestic water supply, reducing dependence on a municipal source with documented quantity and nitrate challenges, and ensuring operations remain within previously authorized withdrawal volumes.

The factor under Neb. Rev. Stat. § 46-613.01(7) has been met.

ORDER

It is hereby ORDERED that applications MT-51 and TA-56 are APPROVED subject to the following conditions:

1. The priority date for MT-51 is February 11, 2025, as required by Neb. Rev. Stat. § 46-642(1).
2. The water authorized under MT-51 and TA-56 shall be used exclusively for rural domestic purposes defined in the applications, including human consumption, sanitation, fire suppression, domestic livestock watering, and other customary domestic uses within the service area identified on the Project map.
3. As part of this approval, Applicant shall comply with the construction-related recommendations provided by the Commission during the consultation required under Neb. Rev. Stat. § 37-807(3). These recommendations are precautionary and intended to avoid disturbance of habitat near the Project's new infrastructure.
4. Applicant may proceed with development of the two proposed production wells. One well will be completed in the **SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33**, and the other in the **NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 04 North, Range 01 East of the 6th P.M. in Jefferson County**. The well water will be withdrawn and transported for rural domestic use through the Project infrastructure. The combined instantaneous rate of withdrawal from the two permitted groundwater wells under MT-51 shall not exceed 400 gallons per minute into the Project delivery system, nor shall the total annual quantity of groundwater withdrawn and transferred to the system exceed 60,000,000 gallons (184.13 acre-feet).
5. The total permitted annual quantity of groundwater transferred to the Project system may not exceed 60,000,000 gallons (184.13 acre-feet) under any combination of use through MT-51 or the Fairbury Source Permits (A-17560 and A-17840).
6. The total annual quantity transferred for rural domestic use in Kansas under TA-56 shall not exceed 46.21 acre-feet (15,057,575 gallons), nor

shall the annual volume transferred to Kansas from any combination of withdrawal under TA-56 or the Fairbury Source Permits (A-17560 and A-17840, with associated transfers TA-23 and TA-28) exceed 46.21 acre-feet.

7. Wells developed for this Project must be registered with DWEE as required by Neb. Rev. Stat. § 46-602(1).
8. Operation of the wells shall be bound by all applicable statutes, DWEE rules and regulations, and rules and regulations promulgated by the Applicant.
9. As per Neb. Rev. Stat. § 46-613.01, this Order is conditioned on the Applicant's compliance with its rules and regulations. The Applicant shall be required to provide access to its property at reasonable times for purposes of inspection by the Chief Water Officer or the Chief Water Officer's representatives.
10. Applicant will install flow meters on each well, and by January 31 of each year, shall file in the office of DWEE a completed "Public Water Supplier Ground Water Well Report" on a form provided by DWEE, including a report of the previous year's total volume of groundwater transported to Kansas from the two wells developed under MT-51 and TA-56. Reporting under existing Fairbury Source Permits will continue as long as the permits are in place to ensure the aggregate pumping for the Project from all sources does not exceed the limits established herein.
11. Approval of these permits is based on the information included and representations made in the applications. Such information and representations are considered terms and conditions of this Order.
12. Permit MT-51 shall be valid for five years after the date of this Order and as long thereafter as the water is put to beneficial use. If the Applicant has not used water for beneficial purposes and in accordance with the terms of this permit for more than five years, the permit may be revoked or modified by the Chief Water Officer pursuant to Neb. Rev. Stat. § 46-644. The procedure for such revocation or modification is provided for in Neb. Rev. Stat. §§ 46-229.02 to 46-229.05.
13. Applicant shall relinquish the Fairbury Source Permits, A-17560 and A-17840, and associated transfer permits to Kansas TA-23 and TA-28, if these permits are no longer needed or no longer able to be used under the terms of the agreement between Applicant and the City of Fairbury. The Fairbury Source Permits may be revoked after more than five years of nonuse pursuant to Neb. Rev. Stat. § 46-644. The procedure for such revocation or modification is provided for in Neb. Rev. Stat. §§ 46-229.02 to 46-229.05.

14. Failure to meet any condition of this Order may cause modification or cancellation of the permits.

DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT

A handwritten signature in black ink, appearing to read "Matthew T. Manning". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

August 3, 2026

Matthew T. Manning, P.E., J.D.
Chief Water Officer

CERTIFICATE OF SERVICE

A copy of this Order was posted on DWEE's website and provided to DWEE's field office in Lincoln, Nebraska. Copies of this Order were mailed by first class mail to the following:

Scott Nelson, General Manager
Little Blue NRD
100 East 6th Street
Davenport, Nebraska 68335

Donald Blankenau
Woods | Aitken LLP
301 S. 13th Street, Suite 500
Lincoln, Nebraska 68508

Justin Hladik
Department of Water, Energy, and
Environment
245 Fallbrook Blvd., Suite 100
Lincoln, Nebraska 68521

Chris Miller, P.E.
Miller & Associates
1111 Central Avenue
Kearney, Nebraska 68847