

STATE OF NEBRASKA

DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT

APPROVAL OF PETITION VAR-11869 FOR LEAVE TO FILE AN APPLICATION

FOR A TEMPORARY PERMIT TO APPROPRIATE WATER

WATER DIVISION 2-D

BACKGROUND

1. On November 3, 2004, the Department of Natural Resources (Department) issued a formal moratorium on all new surface water appropriations in portions of the Upper Niobrara White Natural Resources District (UNWNRD). The moratorium included the Niobrara River Basin above the Mirage Flats diversion dam.
2. The Department's November 3, 2004, Order and the provisions of Neb. Rev. Stat. § 46-714(3)(n) allow for new surface water appropriations and increases in irrigated acres if the Department grants a variance and subsequently approves a permit for such new use.
3. On April 20, 2026, Wade Yada, on behalf of the Dawes County Road Department (Petitioner), filed Petition VAR-11869 for Leave to File an Application for a Permit to Appropriate Water. The proposed application is for a **temporary permit** to appropriate **less than 10 acre-feet of water** for the purpose of **public road construction** from **Little Bordeaux Creek** at a point of diversion located in the **NW¹/₄NW¹/₄ of Section 13, Township 33 North, Range 48 West of the 6th P.M. in Dawes County**.
4. When filing a variance request, 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 variance to apply for a new water use, in conjunction with an examination of good cause shown.

CONCLUSIONS

1. The maintenance of roads constitutes a public safety issue.
2. The proposed application is for a temporary permit to appropriate **less than 10 acre-feet** of water for public road construction. The Petitioner asserts that water use is a necessary component of the construction project which addresses a public safety issue.
3. For these reasons, Petitioner should be granted leave to file an application for a permit to appropriate water.

ORDER

IT IS HEREBY ORDERED:

1. Petition VAR-11869 for Leave to File an Application for a Permit to Appropriate Water 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-11869 shall be in effect for **one year** from the date this order is signed.
3. This decision shall not bind the Department to approve any application to which it relates, or in any way be used as evidence of prejudice for future decisions concerning the specific approval requirements of such an application.

DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT



April 30, 2026

Matthew T. Manning, PE, JD
Chief Water Officer

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 Bridgeport, Nebraska. A copy of this Order was mailed to the following:

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