

STATE OF NEBRASKA

DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT

**APPROVAL OF PETITION VAR-11907 FOR LEAVE TO FILE AN APPLICATION
FOR A PERMIT TO APPROPRIATE WATER**

WATER DIVISION 2-E

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 May 21, 2026, Amanda Gehrt, on behalf of the United States Forest Service (Petitioner), filed Petition VAR-11907 for Leave to File an Application for a Permit to Appropriate Water. The proposed application is for a **permit to store 65.5 acre-feet of water in Agate Reservoir for the purpose of stock water, fire protection, and recreation from a tributary to Long Branch Creek at a point of diversion located in the SE¹/₄NW¹/₄ of Section 01, Township 34 North, Range 53 West of the 6th P.M. in Sioux 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 new water use, in conjunction with an examination of good cause shown.

CONCLUSIONS

1. The dam that holds water in Agate Reservoir is shown on aerial imagery taken in 1974, and existed prior to the formal moratorium.
2. The proposed application is for a dam rehabilitation project. 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-11907 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-11907 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



June 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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