

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER CANCELLING IN PART AND DIVIDING APPROPRIATION A-1656

WATER DIVISION 1-A

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that an 11.6 acre tract of land appurtenant to A-1656 is owned by Virginia M. and Jerrold W. Pawley and located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5, Township 9 North, Range 16 West of the 6<sup>th</sup> P.M. in Buffalo County.
2. Records on file in the Department show that a 7.2 acre tract of land appurtenant to A-1656 is owned by Heath L. and Tracy J. Schake and located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5, Township 9 North, Range 16 West of the 6<sup>th</sup> P.M. in Buffalo County
3. Appropriation A-1656 with a priority date of April 17, 1922, authorizes the use of water for irrigation of the 18.8 acres of land described below. The water may be diverted from Wood River at a point of diversion located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5, Township 9 North, Range 16 West of the 6<sup>th</sup> P.M. in Buffalo County. Water diverted shall not exceed the ratio of one cubic foot per second (cfs) for every 70 acres irrigated at a maximum rate of 0.27 cfs.

Township 9 North, Range 16 West of the 6 <sup>th</sup> P.M. in Buffalo County	Acres
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Section 5: NE $\frac{1}{4}$ NE $\frac{1}{4}$	18.8
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4. On June 3, 2013, Heath L. and Tracy J. Schake filed in the Department relinquishment REL-4727, relinquishing the right to divert water under a portion of appropriation A-1656 to irrigate the 1.7 acres of land described below.

Township 9 North, Range 16 West of the 6 <sup>th</sup> P.M. in Buffalo County	Acres
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Section 5: NE $\frac{1}{4}$ NE $\frac{1}{4}$	1.7
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5. The water right attaches to the land and the diversion rate is limited by the amount of acres irrigated. Therefore, it is in the best interest of the owners and the State to divide the water appropriation between separate parcel owners so that each owner's rights are distinguishable. However, all rights should retain the same priority as to one another.

ORDER

IT IS HEREBY ORDERED:

- 1. Part of appropriation A-1656 at the rate of 0.02 cfs for use upon the land described below is CANCELLED.

Township 9 North, Range 16 West of the  
6<sup>th</sup> P.M. in Buffalo County                      Acres

Section 5:    NE $\frac{1}{4}$ NE $\frac{1}{4}$     1.7

- 2. Appropriation A-1656 is divided into two appropriations, A-1656A and A-1656B.

- 3. Appropriation A-1656A is held by Heath L. and Tracy J. Schake.

- A. They are allowed to divert 0.08 cfs (36 gallons per minute) from Wood River to irrigate the 5.5 acres of land described below and as depicted on map number 18564 which is hereby made a part of this Order. Water diverted shall not exceed the ratio of one cfs per 70 acres irrigated. Total annual volume of water diverted may not exceed 3 acre-feet per acre irrigated.

Township 9 North, Range 16 West of the  
6<sup>th</sup> P.M. in Buffalo County                      Acres

Section 5:    NE $\frac{1}{4}$ NE $\frac{1}{4}$     5.5

- B. All terms and conditions of appropriation A-1656 remain in effect unless specifically changed by this Order.
- C. The point of diversion remains on the left bank of Wood River in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5, Township 9 North, Range 16 West of the 6<sup>th</sup> P.M. in Buffalo County. If the owners of appropriation A-1656A do not have access to this point of diversion, they must either obtain permission from the landowner or file a Petition for Relocation of the Point of Diversion with the Department, and have it approved prior to any diversion. This Order does not authorize access to the existing point of diversion.

- 4. Appropriation A-1656B is held by Virginia M. and Jerrold W. Pawley.

- A. They are allowed to divert 0.17 cfs (76 gallons per minute) from Wood River to irrigate the 11.6 acres of land described below and as depicted on map number 18565 which is hereby made a part of this Order. Water diverted shall not exceed the ratio of one cfs per 70 acres irrigated. Total annual volume of water diverted may not exceed 3 acre-feet per acre irrigated.

Township 9 North, Range 16 West of the  
6<sup>th</sup> P.M. in Buffalo County                      Acres

Section 5:    NE $\frac{1}{4}$ NE $\frac{1}{4}$     11.6

- B. All terms and conditions of appropriation A-1656 remain in effect unless specifically changed by this Order.
- C. The point of diversion remains on the left bank of Wood River in the NW-NE<sup>4</sup> of Section 5, Township 9 North, Range 16 West of the 6<sup>th</sup> P.M. in Buffalo County. If the owners of appropriation A-1656B do not have access to this point of diversion, they must either obtain permission from the landowner or file a Petition for Relocation of the Point of Diversion with the Department, and have it approved prior to any diversion. This Order does not authorize access to the existing point of diversion.

ADDITIONAL INFORMATION

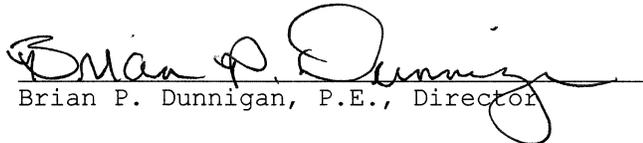
Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this approval may cause cancellation of part or all of this appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

Nebraska law provides that failure to use an appropriation for more than five consecutive years may result in cancellation of the appropriation.

These appropriations are not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. These appropriations may be closed if there is insufficient water to satisfy senior appropriations.

DEPARTMENT OF NATURAL RESOURCES

October 10, 2013

  
 Brian P. Dunnigan, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this Order may request a contested case hearing in accordance with the *Neb. Admin. Procedures Act* §§ 84-901 et. seq. RRS and the Department's *Rules of Practice and Procedure Title 454 Admin. Code Chapter 7*. The request must be received by the Department at its Lincoln office (Nebraska State Office Building, 4<sup>th</sup> Floor, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of \$10.

A copy of this Order was posted on the Department's website. Copies of this Order and maps number 18564 and 18565 were provided to the Department's field office in Bridgeport, Nebraska. Copies of this Order and maps number 18564 and 18656 were mailed on October 10, 2013, to the following:

Virginia M. and Jerrold W. Pawley  
 11490 46<sup>th</sup> Avenue  
 Kearney, Nebraska 68845

Heath L. and Tracy J. Schake  
 3285 West 100<sup>th</sup> Street  
 Kearney, Nebraska 68845