

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF EXPEDITED TRANSFER EXT-2004 FOR WATER APPROPRIATION A-3071,
ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-16752 AND
APPROVAL OF EXPEDITED TRANSFER EXT-2005 FOR WATER APPROPRIATION A-16752

WATER DIVISION 2-A

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriations A-3071 and A-16752 are held by the Galen E. and Gwendolyn M. Frenzen Revocable Trusts.
2. **Appropriation A-3071** has a priority date of January 8, 1940, and authorizes the use of water for irrigation of the 74.0 acres of land described below. The water may be diverted from the Cedar River at a point of diversion located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, Township 17 North, Range 6 West of the 6th P.M. in Nance County. The rate that water may be diverted shall not exceed one cubic foot per second (cfs) for every 140 acres irrigated at a maximum rate of 0.53 cfs (238 gallons per minute).

Township 17 North, Range 6 West of the	
<u>6th P.M. in Nance County</u>	
	Acres
Section 29: NE $\frac{1}{4}$ SE $\frac{1}{4}$	1.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	22.0
Section 32: NE $\frac{1}{4}$ NE $\frac{1}{4}$	29.0
SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>22.0</u>
TOTAL	74.0

3. On November 8, 2010, Galen E. Frenzen, on behalf of the Galen E. and Gwendolyn M. Frenzen Revocable Trusts, filed application EXT-2004 for a permit for an expedited transfer of the location of use for land authorized to be irrigated by appropriation A-3071 and map number 17729 showing the land proposed to be irrigated under appropriation A-3071 through transfer EXT-2004.
4. A review of the Department's records for **appropriation A-16752** indicates that a scrivener's error was made in the description of the appurtenant land authorized for irrigation in the Order approving map number 14607 dated June 16, 1989. The SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, Township 17 North, Range 6 West of the 6th P.M. is authorized for irrigation rather than the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29.

5. **Appropriation A-16752** has a priority date of March 10, 1989, and provides water to the 149.0 acres of land described below. The water may be diverted from the Cedar River at a point of diversion located in the NW¼SE¼ of Section 29, Township 17 North, Range 6 West of the 6th P.M. in Nance County.

Provides Additional Water to A-3071

Land Permitted at 1:70

<u>Township 17 North, Range 6 West of the 6th P.M., Nance County Acres</u>		<u>Township 17 North, Range 6 West of the 6th P.M., Nance County Acres</u>	
Section 29: NE¼SE¼	1.0	Section 28: NW¼SW¼	17.0
SE¼SE¼	22.0	SW¼SW¼	30.0
Section 32: NE¼NE¼	29.0	Section 29: NW¼SE¼	1.0
SE¼NE¼	<u>22.0</u>	NE¼SE¼	21.0
		SE¼SE¼	5.0
TOTAL	74.0	Section 32: NE¼NE¼	<u>1.0</u>
		TOTAL	75.0

6. Water diverted for the portion of A-16752 that provides additional water to A-3071, shall not exceed one cfs for every 140 acres irrigated at a maximum rate of 0.53 cfs (238 gallons per minute).
7. Water diverted for the remaining portion of land authorized for irrigation under A-16752 shall not exceed one cfs for every 70 acres irrigated at a maximum rate of 1.07 cfs (480 gallons per minute).
8. On November 8, 2010, Galen E. Frenzen, on behalf of the Galen E. and Gwendolyn M. Frenzen Revocable Trusts, filed a partial relinquishment of water appropriation A-16752, REL-2006, relinquishing the right to divert water under appropriation A-16752 to irrigate the 2.0 acres of land described below and permitted at a rate of one cfs for every 70 acres irrigated.

<u>Township 17 North, Range 6 West of the 6th P.M. in Nance County</u>		<u>Acres</u>
Section 29: SE¼SE¼		1.0
Section 32: NE¼NE¼		<u>1.0</u>
TOTAL		2.0

9. On November 8, 2010, Galen E. Frenzen, on behalf of the Galen E. and Gwendolyn M. Frenzen Revocable Trusts, filed application EXT-2005 for a permit for an expedited transfer of the location of use for 74 acres of land under appropriation A-16752, which provides additional water to appropriation A-3071, and map number 17732 showing the land proposed to be irrigated under appropriation A-16752 through transfer EXT-2005.

ORDER

IT IS HEREBY ORDERED:

1. **For appropriation A-3071**, application EXT-2004 for a permit for an expedited transfer of the location of use and map number 17729 are APPROVED.
2. Appropriation A-3071 through transfer EXT-2004 authorizes the use of water to irrigate 74.0 acres of land described below and depicted on map number 17729, which is made a part of this Order. The water may be diverted from the Cedar River at a point of diversion located on the left bank of the stream in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, Township 17 North, Range 6 West of the 6th P.M. in Nance County. The rate that water may be diverted shall not exceed one cfs for every 140 acres irrigated at a maximum rate of 0.53 cfs (238 gallons per minute). The total volume may not exceed 3 acre-feet per irrigated acre per year.

Township 17 North, Range 6 West of the 6 th P.M. in Nance County		Acres
Section 28:	SW $\frac{1}{4}$ SW $\frac{1}{4}$	3.1
Section 29:	NE $\frac{1}{4}$ SE $\frac{1}{4}$	1.0
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	26.8
Section 32:	NE $\frac{1}{4}$ NE $\frac{1}{4}$	29.0
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>14.1</u>
	TOTAL	74.0

3. All terms and conditions of appropriation A-3071 remain in effect unless specifically changed by this Order.
4. **Part of Appropriation A-16752**, at the rate of 0.03 cfs for use upon the land described below is CANCELLED.

Township 17 North, Range 6 West of the 6 th P.M. in Nance County		Acres
Section 29:	SE $\frac{1}{4}$ SE $\frac{1}{4}$	1.0
Section 32:	NE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>1.0</u>
	TOTAL	2.0

5. Application EXT-2005 for a permit for an expedited transfer of the location of use and map number 17732 are APPROVED.

6. Appropriation A-16752 through transfer EXT-2005 authorizes the use of water to irrigate 147.0 acres of land described below and depicted on map number 17732, which is made a part of this Order. The water may be diverted from the Cedar River at a point of diversion located on the left bank of the stream in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, Township 17 North, Range 6 West of the 6th P.M. in Nance County

Provides Additional Water to A-3071

Land Permitted at 1:70

<u>Township 17 North, Range 6 West of the 6th P.M., Nance County Acres</u>		<u>Township 17 North, Range 6 West of the 6th P.M., Nance County Acres</u>	
Section 28: SW $\frac{1}{4}$ SW $\frac{1}{4}$	3.1	Section 28: NW $\frac{1}{4}$ SW $\frac{1}{4}$	17.0
		SW $\frac{1}{4}$ SW $\frac{1}{4}$	30.0
Section 29: NE $\frac{1}{4}$ SE $\frac{1}{4}$	1.0		
SE $\frac{1}{4}$ SE $\frac{1}{4}$	26.8	Section 29: NW $\frac{1}{4}$ SE $\frac{1}{4}$	1.0
		NE $\frac{1}{4}$ SE $\frac{1}{4}$	21.0
Section 32: NE $\frac{1}{4}$ NE $\frac{1}{4}$	29.0	SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>4.0</u>
SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>14.1</u>		
		TOTAL	73.0
TOTAL	74.0		

7. Water diverted for the portion of A-16752 that provides additional water to A-3071, shall not exceed one cfs for every 140 acres irrigated at a maximum rate of 0.53 cfs (238 gallons per minute).
8. Water diverted for the remaining portion of land authorized for irrigation under A-16752 shall not exceed one cfs for every 70 acres irrigated at a maximum rate of 1.04 cfs (467 gallons per minute).
9. All terms and conditions of appropriation A-16752 remain in effect unless specifically changed by this Order.
10. The appropriator must comply with all relevant statutes. This includes, but is not limited to, the following:
- A. Notify the Department of any change in ownership or address.
 - B. Notify the Department of the name and address of the person responsible for the use of the water appropriation (this may include farm managers, tenants, or relatives that actually apply the water to the approved use).
 - C. Obtain approval from the Department prior to taking any action that changes the location of the point of diversion, the location of the place of use, the type of use, or the type of appropriation.

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

DEPARTMENT OF NATURAL RESOURCES

December 21, 2010


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* 454 *Neb. Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln office (P.O. Box 94676, 301 Centennial Mall South, 4th Floor State Office Building, 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 17729 and 17732 were provided to the Department's field office in Ord, Nebraska. Copies of this Order and maps number 17729 and 17732 were mailed on December 21, 2010, to the following:

Galen E. & Gwendolyn M. Frenzen Revocable Trusts
50802 North Edgewood Road
Fullerton, Nebraska 68638