

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF PARTIAL CANCELLATION AND ASSIGNMENT

OF WATER APPROPRIATIONS D-622 AND A-2726

WATER DIVISION 1-A

Background

1. Appropriations D-622 and A-2726 are held by Nebraska Public Power District (NPPD) to divert water from the Platte River and Sutherland Reservoir into and through the Dawson County Canal at its headgate located in Section 18, Township 10 North, Range 23 West of the 6th P.M. in Dawson County for irrigation and underground storage:

Appropriation Number	Priority Date	Source	Use	Appurtenant Portion Prior to this Order	
				Acres	Grant ¹
D-622	06/26/1894	Platte River	IR ²	18,681.3	266.88
			US ³	-	104.28
A-2726 ⁴	03/31/1937	Sutherland Reservoir	UI ⁵	18,469.3	-
A-2726 ⁶	03/31/1937	Sutherland Reservoir	SO ⁷	9.0	-

¹ Grant is in cubic feet per second

² IR = Irrigation from naturally flowing source

³ US = Incidental underground storage

⁴ The portion of A-2726 providing supplemental water for irrigation under D-622 via the Dawson County Canal

⁵ UI = Supplemental (from a reservoir) irrigation, on lands also covered by a natural flow appropriation, and incidental underground storage

⁶ The portion of A-2726 that provides water for irrigation the Dawson County Canal for land not covered by a natural flow appropriation

⁷ SO = Stor-Only irrigation, with water stored in a reservoir, on lands not covered by a natural flow appropriation

2. On May 11, 2010, NPPD and individual landowners filed in the Department of Natural Resources (Department) Relinquishments of Surface Water Appropriations in Part REL-1918 through REL-1929 relinquishing the right to divert water for irrigation of 742.0 acres under D-622 and the right to irrigate 745.0 acres under A-2726.
3. On May 11, 2010, NPPD filed in the Department Notification of Assignment of Rights, AOR-1931, to assign water appropriated under D-622 to irrigate 320.1 acres of land, and the right to irrigate 320.1 acres of land under A-2726.
4. Pursuant to Neb. Rev. Stat. § 46-229.04(5) NPPD may assign, within 5 years of the Order of Cancellation by the Department, the relinquished portion of an appropriation. NPPD has requested that the portions with the earliest cancellation date are the first to be assigned.

5. Because two previous Orders (dated August 26, 2007, and August 26, 2009) resulted in a net balance of assignable portions of the appropriations D-622 and A-2726 (served by the Dawson County Canal) and did not include the following charts, they are included in this Order for clarity.
6. The following is a summary of amounts of appropriations relinquished and assigned in the Order titled "In the Matters of Water Appropriations D-622 and A-2726, Permits to Divert Water from the Platte River and Sutherland Reservoir; Applications T-1144 and T-1145; Relinquishments R-38, R-39, R-40, R-41, R-42 and R-43; and Notification of Assignment of Rights AR-8" dated August 26, 2007:

Appropriation Number	Use	Appurtenant Portion Prior to 8/26/2007 Order		Available for Assignment Prior to 8/26/2007 Order		Amount Relinquished in 8/26/2007 Order		Amount Assigned in 8/26/2007 Order		Available for Assignment with a cancellation date of 8/26/2007	
		Acres	Grant ¹	Acres	Grant	Acres	Grant	Acres	Grant	Acres	Grant
D-622	IR ²	18,837.0	269.10	0	0	254.0	3.63	198.0	2.83	56.0	0.80
	US ³	-	105.11	0	0	-	1.42	-	1.10	-	0.31
A-2726 ⁴	UI ⁵	18,625.0	-	0	-	254.0	-	198.0	-	56.0	-

¹ Grant is in cubic feet per second

² IR = Irrigation from naturally flowing source

³ US = Incidental underground storage

⁴ The portion of A-2726 providing supplemental water for irrigation under D-622 via the Dawson County Canal

⁵ UI = Supplemental (from a reservoir) irrigation, on lands also covered by a natural flow appropriation, and incidental underground storage

7. The following is a summary of amounts of appropriations relinquished and assigned in the Order titled "Order of Partial Cancellation and Reassignment of Water Appropriations D-622, D-624R and A-2726" dated August 26, 2009:

Appropriation Number	Use	Appurtenant Portion Prior to 8/26/2009 Order		Available for Assignment Prior to 8/26/2009 Order		Amount Relinquished in 8/26/2009 Order		Amount Assigned in 8/26/2009 Order		Available for Assignment with a cancellation date of 8/26/2009	
		Acres	Grant ¹	Acres	Grant	Acres	Grant	Acres	Grant	Acres	Grant
D-622	IR ²	18,781.0	268.30	56.0	0.80	290.7	4.15	191.0	2.73	155.7	2.22
	US ³	-	104.80	0	0.31	-	1.04	-	-	-	0.83
D-624R	IR	1,164.1	16.63	0	0	40.0	0.57	40.0	0.57	0	0
	US	-	7.28	0	0	-	0.22	-	0.22	-	0
A-2726 ⁴	UI ⁵	18,569.0	-	56.0	-	290.7	-	191.0	-	155.7	-
A-2726 ⁶	UI	511.6	-	0	-	40.0	-	40.0	-	0	-

¹ Grant is in cubic feet per second

² IR = Irrigation from naturally flowing source

³ US = Incidental underground storage

⁴ The portion of A-2726 providing supplemental water for irrigation under D-622 via the Dawson County Canal

⁵ UI = Supplemental (from a reservoir) irrigation, on lands also covered by a natural flow appropriation, and incidental underground storage

⁶ The portion of A-2726 providing supplemental water for irrigation under D-624R via the Dawson County Canal

8. The portions of appropriations D-622 and A-2726 served by the Dawson County Canal that are available for assignment in this Order are described below:

Appropriation Number	Use	Net Available for Assignment Prior to this Order		Date of Cancellation Order
		Acres	Grant	
D-622	IR	155.7	2.22	8/26/2009
	US	-	0.83	8/26/2009
A-2726	UI	155.7	-	8/26/2009
	SO	0	-	-

IT IS HEREBY ORDERED:

1. Part of appropriations D-622 in the amount of 10.6 cfs for irrigation and 4.14 cfs for incidental underground storage under U-5; and A-2726 for use upon the land described below and shown on aerial photographs filed with REL-1918 through REL-1929 are CANCELLED.

REL-1918 (D-622)

REL-1919 (A-2726)

Township 10 North, Range 21 West of the 6th P.M. in Dawson County Acres

Section 31: SW¹/₄NW¹/₄ 26.2
 SE¹/₄NW¹/₄ 19.8

 NW¹/₄SW¹/₄ 40.0
 NE¹/₄SW¹/₄ 28.0
 SW¹/₄SW¹/₄ 38.0

 SUB TOTAL 152.0

REL-1920 (D-622)

Township 10 North, Range 22 West of the 6th P.M. in Dawson County Acres

Section 36: NW¹/₄SW¹/₄ 8.0
 NE¹/₄SW¹/₄ 12.0
 SW¹/₄SW¹/₄ 17.0
 SE¹/₄SW¹/₄ 38.0

 SUB TOTAL 75.0

REL-1921 (A-2726)

Township 10 North, Range 22 West of the 6th P.M. in Dawson County Acres

Section 36: NW¹/₄SW¹/₄ 8.0
 NE¹/₄SW¹/₄ 12.0
 SW¹/₄SW¹/₄ 17.0
 SE¹/₄SW¹/₄ 38.0

REL-1921 (A-2726)

Township 9 North, Range 22 West of the 6th P.M. in Dawson County Acres

Section 1: NW¹/₄NW¹/₄ 3.0

 SUB TOTAL 78.0

REL-1922 (D-622)

REL-1923 (A-2726)

Township 10 North, Range 21 West of the 6th P.M. in Dawson County Acres

Section 14: NW¹/₄SW¹/₄ 40.0
 NE¹/₄SW¹/₄ 40.0
 SW¹/₄SW¹/₄ 40.0
 SE¹/₄SW¹/₄ 40.0

 SUB TOTAL 160.0

REL-1924 (D-622)

REL-1925 (A-2726)

Township 10 North, Range 21 West of the 6th P.M. in Dawson County Acres

Section 29: NW¹/₄SE¹/₄ 40.0
 NE¹/₄SE¹/₄ 13.0
 SW¹/₄SE¹/₄ 39.0
 SE¹/₄SE¹/₄ 26.0

 SUB TOTAL 118.0

REL-1926 (D-622)
REL-1927 (A-2726)

Township 10 North, Range 21 West of the 6 th P.M. in Dawson County		Acres
Section 8:	SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.0
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	40.0
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	33.0
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	34.0
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	7.0
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	25.0
	SUB TOTAL	179.0

REL-1928 (D-622)
REL-1929 (A-2726)

Township 10 North, Range 21 West of the 6 th P.M. in Dawson County		Acres
Section 17:	SW $\frac{1}{4}$ NW $\frac{1}{4}$	35.0
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	23.0
	SUB TOTAL	58.0
	TOTAL RELINQUISHED D-622	742.0
	TOTAL RELINQUISHED A-2726¹	745.0

¹Of the 745.0 acres relinquished under A-2726, 3.0 acres affect the portion that has the use of SO (Stor-Only), and 742.0 acres affect the portion that has the use of UI, and is also covered by D-622

2. The Department acknowledges the Notification of Assignment of Rights, AOR-1931 filed by NPPD on May 11, 2010, to assign a portion of the appropriations for D-622 and A-2726 previously relinquished to the land described below. The location of these lands is shown on the aerial photographs submitted with AOR-1931.

AOR-1931 (D-622 and A-2726)

Township 10 North, Range 21 West of the 6 th P.M. in Dawson County		Acres
Section 27:	NW $\frac{1}{4}$ NE $\frac{1}{4}$	5.8
	NE $\frac{1}{4}$ NE $\frac{1}{4}$	3.7
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	6.6
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	3.9
Township 10 North, Range 22 West of the 6 th P.M. in Dawson County		Acres

Section 4:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	17.0
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	10.0

Township 9 North, Range 20 West of the 6 th P.M. in Dawson County		Acres
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Section 19:	SE $\frac{1}{4}$ NE $\frac{1}{4}$	35.5
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	37.4
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	36.7
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	38.5
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	37.0

AOR-1931 (D-622 and A-2726)

Township 9 North, Range 20 West of the 6 th P.M. in Dawson County		Acres
Section 20:	NE $\frac{1}{4}$ SW $\frac{1}{4}$	23.5
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	24.7
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	4.1
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	31.2
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	4.5

TOTAL 320.1

TOTAL ASSIGNED D-622 320.1

TOTAL ASSIGNED A-2726 320.1

3. The land that has the water appropriations relinquished under REL-1918, REL-1919 REL-1920, REL-1921, REL-1922, REL-1923, REL-1924, REL-1925, REL-1926, REL-1927, REL-1928 and REL-1929 also lie within NPPD's U-5 (incidental underground storage) boundary for the Dawson County Canal. The U-5 permit was conditioned such that "when the amount of water dedicated to direct service is reduced because of the number of acres served, . . . the amount of water dedicated for incidental underground storage shall be reduced proportionately."

Based on the conditions of the U-5 permit for D-622, the 104.28 cfs currently granted under U-5 should be reduced by an amount proportionate to the 421.9 acres relinquished above that have not been assigned. The proportional reduction is 2.36 cfs. Therefore, the diversion rate for U-5 under D-622 is 101.92 cfs.

When and if all or part of the 421.9 acres under D-622 are assigned to lands served by the Dawson County Canal, a percentage of water under U-5 will be proportionately restored.

4. The following is a summary of the appropriations' acres and grants as a result of NPPD's filings in the Department before and after this Order:

Appropriation Number	Use	Appurtenant Portion Prior to this Order		Available for Assignment Prior to this Order		Amount Relinquished in this Order		Amount Assigned in this Order		Available for Assignment after this Order	
		Acres	Grant	Acres	Grant	Acres	Grant	Acres	Grant	Acres	Grant
D-622	IR	18,681.3	266.88	155.7	2.22	742.0	10.60	320.1	4.57	577.6	8.25
	US	-	104.28	-	0.83	-	4.14	-	1.78	-	3.19
A-2726	UI	18,469.3	-	155.7	-	745.0	-	320.1	-	580.6	-
	SO	9.0	-	0	-	3.0	-	0	-	3.0	-

5. Water appropriation D-622 shall now be shown in Department records as a permit to divert 260.85 cfs of water for irrigation of 18,259.4 acres and 101.92 cfs for incidental underground storage (U-5) from the Platte River through the Dawson County Canal at its headgate. All other rights remain the same.

6. Water appropriation A-2726 shall now be shown in Department records as a permit to supply water for incidental underground storage (U-5) and supplemental irrigation of 20,927.40 acres from the Sutherland Reservoir through the Dawson County Canal. Of these acres, 18,047.4 receive water supplementing D-622, and 6.0 acres receive storage water only. All other rights remain the same.

Appropriation Number	Priority Date	Source	Use	Appurtenant Portion Effective this Order	
				Acres	Grant ¹
D-622	06/26/1894	Platte River	IR	18,259.4	260.85
			US	-	101.92
A-2726	03/31/1937	Sutherland Reservoir	UI	18,047.4	-
			SO	6.0	-

7. Pursuant to Neb. Rev. Stat. § 46-229.04(5) NPPD may assign, within 5 years of the Order of Cancellation by the Department, the relinquished portion of an appropriation. The portions of appropriations D-622 and A-2726 that are available for future assignment or transfer are described below:

Appropriation Number	Use	Available for Assignment After this Order		Date of Cancellation
		Acres	Grant	
D-622	IR	577.6	8.25	This order's date
	US	-	3.19	This order's date
A-2726	UI	580.6	-	This order's date
	SO	3.0	-	This order's date

8. All terms and conditions of appropriations D-622 and A-2726 remain in effect unless specifically changed by this Order.
9. The appropriator must comply with all relevant statutes. This includes, but is not limited to, the following:
- A. Receiving approval prior to taking any action that changes the location of the point of diversion, a transfer of the location of the place of use, a relinquishment of a portion of the appropriation, the type of use, or the type of appropriation.
 - B. Notify the Department of Natural Resources of any assignment of relinquished portions of an appropriation.
 - C. Comply with all relevant notices and orders of the Department.

Additional Information

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

Nebraska law provides that failure to use a portion or all of a perfected appropriation for five consecutive years may result in cancellation of the appropriation.

DEPARTMENT OF NATURAL RESOURCES

July 13, 2012


 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 (4th Floor Nebraska State Office Building, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the Approval and be accompanied by a filing fee of \$10.

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field offices in Bridgeport, and North Platte Nebraska. A copy of this Order was mailed on July 13, 2012, to the following:

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Jeff Shafer
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