

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION RLP-5239 TO CHANGE THE LOCATION OF
DIVERSION FOR A PORTION OF WATER APPROPRIATION A-3869DR

WATER DIVISION 1-B

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-3869DR is held by the Frenchman-Cambridge Irrigation District.
2. Appropriation A-3869DR has a priority date of April 3, 1946, and authorizes the use of water for irrigation of 6,129.9 acres of land. The water may be diverted from the Republican River through the headgate of Bartley Canal located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, Township 3 North, Range 27 West of the 6th P.M. in Red Willow County. The rate that water may be diverted shall not exceed 62.3 cfs (27,960 gallons per minute).
3. On November 10, 2014, Brad Edgerton, on behalf of the Frenchman-Cambridge Irrigation District, filed petition RLP-5239 in the Department for a permit to change the location of diversion for a portion of the water diverted under appropriation A-3869DR.
4. Construction has been completed.

FINDINGS

1. *Nebraska Revised Statutes* § 46-250 allows the owner of any ditch, storage reservoir, storage capacity, or other device for appropriating water to petition the Department for a change of the point at which the water under any water appropriation of record is diverted from a natural stream or reservoir.
2. *Nebraska Administrative Code Title 457, Chapter 6, § 002*, requires that the requested change shall not adversely affect any other water appropriator.
3. A review of the Department's records indicates there are currently appropriators upstream of this pump site but downstream of the current Bartley diversion dam. This would include junior appropriators along Medicine Creek.

CONCLUSIONS

1. Unconditionally granting this petition could have adverse effects on other appropriators.
2. Conditionally approving this petition with constraints that would preclude harm to other water appropriators would enable the Frenchman-Cambridge Irrigation District to more effectively deliver water to its patrons and not hamper Nebraska's ability to comply with the Republican River Compact.

ORDER

IT IS HEREBY ORDERED that petition RLP-5239 for a permit to change the location of diversion for a portion of appropriation A-3869DR is APPROVED subject to the following limitations and conditions:

1. Appropriation A-3869DR authorizes the Frenchman-Cambridge Irrigation District the use of water for irrigation of 6,129.9 acres of land. The water shall be measured at the Bartley Diversion Dam located on the right bank of the Republican River in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, Township 3 North, Range 27 West of the 6th P.M. in Red Willow County. The rate that water may be diverted shall not exceed 62.3 cfs (27,960 gallons per minute).
2. Appropriation A-3869DR through petition RLP-5239 authorizes the Frenchman-Cambridge Irrigation District the use of water for irrigation of no more than 3,000.7 acres of land appurtenant to A-3869DR. The water shall be measured at the Bartley Canal Pumping Station located on the right bank of the Republican River in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, Township 4 North, Range 25 West of the 6th P.M. in Furnas County. The rate that water may be diverted shall not exceed 23.4 cfs (10,500 gallons per minute).
3. The combined instantaneous diversion rate through both Bartley Diversion Dam and Bartley Canal Pumping Station may not exceed 62.3 cfs of natural flow for A-3869DR.
4. This approval does not allow the appropriator to divert more water or to irrigate additional lands than would otherwise be permitted. If there is an administrative call on the Republican River, at or below the Bartley Canal Pumping Station, there must be natural flow available at the Bartley Diversion Dam in sufficient quantity to match the amount of available natural flow that is diverted at the Bartley Canal Pumping Station or no diversion under this petition RLP-5239 may be made. Under this scenario, the combined instantaneous diversion rate must not exceed the available natural flow at the Bartley Diversion Dam.
5. The Frenchman-Cambridge Irrigation District must obtain written permission from the Department prior to utilizing the diversion at the Bartley Canal Pumping Station for appropriation A-3869DR through petition RLP-5239.

6. The Frenchman-Cambridge Irrigation District may not call for natural flow under A-3869DR through petition RLP-5239 at the Bartley Canal Pumping Station.
7. In the event that there is insufficient flow at the Bartley Diversion Dam the Department reserves the right to limit or prevent diversion at the Bartley Canal Pumping Station under A-3869DR through petition RLP-5239.
8. The Department reserves the right to limit or prevent diversion at the Bartley Canal Pumping Station under A-3869DR through petition RLP-5239 as necessary for Republican River Compact compliance purposes.
9. The Department reserves the right to issue a closing notice relevant to pumping under RLP-5239 if conditions warrant.
10. Any diversion at the Bartley Canal Pumping Station that is greater than available natural flow must be documented as diversion of previously released storage water from an upstream Bureau of Reclamation reservoir.
11. The Frenchman-Cambridge Irrigation District will timely furnish to the Department any requested diversion data or other operational information relative to the operation of the Bartley Canal Pumping Station.
12. All terms and conditions of appropriation A-3869D and A-3869DR remain in effect unless specifically changed by this Order.
13. 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 points 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 any reassignment 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, 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.

DEPARTMENT OF NATURAL RESOURCES

April 30, 2015


James C. Schneider, Ph.D.
Acting 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, 4th 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. A copy of this Order was provided to the Department's field office in Cambridge, Nebraska. A copy of this Order was mailed on April 30, 2015, to the following:

Brad Edgerton, Manager
Frenchman-Cambridge Irrigation District
P.O. Box 116
Cambridge, Nebraska 69022