STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION RLP-2121 TO CHANGE THE LOCATION OF

DIVERSION FOR WATER APPROPRIATION A-4628

WATER DIVISION 2-A

The Director Finds:

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-4628 is held by Paul Arterburn.

2. Appropriation A-4628 has a priority date of March 29, 1950, and authorizes the use of water for irrigation of 155.7 acres of land. The water may be diverted from the North Loup River at a point of diversion located on the left bank of the stream in the SE¼SE¼ of Section 15, Township 15 North, Range 10 West of the 6th P.M. in Howard County. The rate that water may be diverted shall not exceed one cubic foot per second (cfs) for every 135 acres irrigated at a maximum rate of 1.15 cfs (516 gallons per minute).

3. On May 31, 2011, Paul Arterburn filed petition RLP-2121 in the Department for a permit to change the location of diversion and source for appropriation A-4628 from the point of diversion described above, to the headgate of the Mirdan Canal located in the NW¼NW¼ of Section 06, Township 21 North, Range 16 West of the 6th P.M. in Garfield County. The Mirdan Canal headgate, which is owned and operated by Twin Loups Reclamation District and Twin Loups Irrigation District, is physically located on the downstream side of the Virginia Smith Dam, which is across the Calamus River, and approximately four miles upstream of the confluence with the North Loup River.

4. The delivery of water will be through the Fullerton Canal system, which is also operated by Twin Loups Reclamation District and Twin Loups Irrigation District.

5. The proposed new location of diversion and source (Calamus River) is over 60 river miles upstream of the current location. There are over 100 appropriations between the current diversion for appropriation A-4628 and the proposed diversion point at the release point from Calamus River into Mirdan Canal.

6. The proposed location is upstream of numerous tributary sources of water, including the North Loup River itself. Furthermore, it is upstream from a significant amount of baseflow contribution from the alluvial aquifer system along these gaining streams.

7. The Department's experience indicates that moving a senior water appropriation upstream of junior and senior water appropriations to a location with a generally smaller water supply creates the possibility that during times of shortage, the intervening water appropriators may be harmed.

8. The appropriator has provided the Department with a copy of a signed agreement for delivery of water under appropriation A-4628 via the facilities owned and operated by Twin Loups Reclamation District and Twin Loups Irrigation District.

9. There is no storage-use appropriation serving the land appurtenant to appropriation A-4628.

Conclusions:

1. The Calamus and North Loup Rivers have no history of water administration; however the Calamus River, to which the diversion is proposed, generally has a lower amount of flow than the North Loup River at the original point of diversion for A-4628. Therefore, to mitigate any potential harm in the future or disruption of long-standing diversion practices by other users on the potentially affected river reaches, the right to divert natural flow under appropriation A-4628 should be conditioned such that no harm can come to these potentially affected appropriators. These appropriators would be junior to A-4628, but senior to the filing date of this petition. Appropriators who are downstream, senior to A-4628, and are short of water can place a call on the river and A-4628 should be closed.

2. To prevent harm to intervening junior appropriators within the river reaches between the original diversion from the North Loup River to the new diversion at the headgate of the Mirdan Canal (at Virginia Smith Dam), the appropriator of A-4628 should be required to release 1.15 cfs, into the river above any diversion or headgate for any junior appropriator in said river reaches who is short of water and placing a call for water administration with the Department. This should mitigate any potential harm. The requirement to pass 1.15 cfs into the described river reach should only apply to junior irrigators who are junior in priority to A-4628, but senior to the filing date of this petition (May 31, 2011). The requirement to pass 1.15 cfs should not be required if the affected junior appropriators are already subject to a closing order by another senior appropriator.

3. Furthermore, this approval should be conditioned such that the exercise of priority of use under A-4628 shall not affect any other appropriator in a manner that would not have occurred before the approval of this relocation petition. This can be accomplished by limiting the availability of water from a call for water under A-4628 such that the Department will not administer a call by the appropriator holding A-4628 unless the same amount of natural river flow (1.15 cfs) is not available at the original point of diversion.

4. If appropriation A-4628 is out of priority, the Twin Loups Reclamation District and Twin Loups Irrigation District should be held accountable and be responsible for preventing delivery of water to land under appropriation A-4628. Under this circumstance, there should be no surface water delivered to the appurtenant land, because there is no storage-use appropriation serving the same land.

ORDER

IT IS HEREBY ORDERED:

1. Petition RLP-2121 for a permit to change the location of diversion for appropriation A-4628 is APPROVED under the conditions described below.

2. Appropriation A-4628 through petition RLP-2121 is now A-4628R.

3. Appropriation A-4628R has a priority date of March 29, 1950, and authorizes the use of water to irrigate 155.7 acres of land described below. The water may be diverted from the Calamus River at a point of diversion located at the headgate of the Mirdan Canal located in the NW¼NW¼ of Section 06, Township 21 North, Range 16 West of the 6th P.M. in Garfield County, at a maximum rate of 1.15 cfs (516 gallons per minute).

Township 15 North, Range 10 West of the 6th P.M. in Howard County		Acres
Section 14:	NW¼SW¼	32.3
	NE¼SW¼	3.6
	SW¼SW¼	19.9
	SE¼SW¼	1.1
Section 15:	NW¼SE¼	25.2
	NE¼SE¼	34.9
	SW¼SE¼	17.4
	SE¼SE¼	21.3
	TOTAL	155.7

4. Water diverted shall not exceed the ratio of one cfs for every 135 acres irrigated nor the least amount of water necessary for the production of crops in the exercise of good husbandry. Therefore, in any year when less than the maximum permitted acres are being irrigated, the quantity of water diverted at any time may be restricted to 1/135 cfs for each permitted acre being irrigated that year. This appropriation of water under any circumstance shall be limited annually to three acre-feet per acre of land on which water is actually and beneficially applied.

5. The quantity of water diverted at any time shall be restricted to the amount of available natural flow, in priority at the headgate of Mirdan Canal. Furthermore, the appropriator under A-4628R will be required to cause a release of 1.15 cfs of water, into the river above any diversion or headgate for any junior appropriator within the following described river reaches who is short of water and placing a call for water administration by the Department. For the purpose of this paragraph, "junior appropriator" means any appropriator in the following described reach that is junior to A-4628R, but senior to May 31, 2011. The release of water will not be required if the junior appropriator is already closed by another priority call. The condition of releasing 1.15 cfs into the affected stream reach applies to the following reaches of the North Loup River and Calamus River: from the formerly approved location of diversion under A-4628R from the North Loup River at a point located in the SE¼SE¼ of Section 15, Township 15 North, Range 10 West of the 6th P.M. in Howard County; upstream to the headgate of the Mirdan Canal on the Calamus River located in the NW¼NW¼ of Section 06, Township 21 North, Range 16 West of the 6th P.M. in Garfield County.

6. Appropriations upstream and junior to A-4628R shall not be administered on behalf appropriation A-4628R unless the same amount of natural river flow (1.15 cfs) is not available at the formerly approved point of diversion on the North Loup River at a point located in the SE¼SE¼ of Section 15, Township 15 North, Range 10 West of the 6th P.M. in Howard County. Furthermore, such call will not be honored if the Department would determine that a call at the formerly approved point of diversion would have been a futile call to get water to the formerly approved diversion point.

7. If appropriation A-4628R is out of priority, Twin Loups Reclamation District and Twin Loups Irrigation District, along with the appropriator of A-4628R will be held accountable and be responsible for preventing delivery of water to land under appropriation A-4628R. Under this circumstance, there should be no surface water delivered to the appurtenant land, because there is no storage-use appropriation serving the same land.

8. Failure to prevent delivery of natural flow water to land appurtenant to A-4628R when it is out of priority may result in the revocation of the approval of RLP-2121 and would also be subject to any applicable penalties under relevant state statutes.

9. Land irrigated under appropriation A-4628R receives additional water from appropriation A-10234R.

10. All terms and conditions of appropriation A-4628 remain in effect unless specifically changed by this Order.

11. A map prepared according to *Department of Natural Resources Rules of Surface Water, Title 457, Neb. Admin. Code* Chapter 10 must be filed in the office of the Department by six months past the signing date of this approval, which clearly indicates the new delivery works and the irrigated fields appurtenant to appropriation A-4628R. Failure to provide the required map may result in the revocation of the approval of RLP-2121.

12. 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

May 27, 2016

Gordon W. Fassett, 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 Neb. 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 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 office in Ord, Nebraska. A copy of this Order was mailed on May 27, 2012, to the following:

Paul Arterburn
P.O. Box 21
St. Paul, Nebraska 68873

Twin Loups Reclamation District
P.O. Box 98
Scotia, Nebraska 68875-0098

Twin Loups Irrigation District
P.O. Box 98
Scotia, Nebraska 68875-0098