

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION RLP-2337 TO CHANGE THE LOCATION OF
DIVERSION AND MAP NUMBER 18209 FOR WATER APPROPRIATION A-11282

WATER DIVISION 2-A

THE DIRECTOR FINDS

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-11282 is held by Wagon-R Farms Inc.
2. Appropriation A-11282 has a priority date of December 8, 1967, and authorizes the use of water for irrigation of 22.0 acres of land. The water may be diverted from Dane Creek at a point of diversion located on the right bank of the stream in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 01, Township 18 North, Range 15 West of the 6th P.M. in Valley County. The rate that water may be diverted shall not exceed one cubic foot per second (cfs) for every 70 acres irrigated at a maximum rate of 0.31 cfs (139 gallons per minute).
3. On May 14, 2012, Donald L. Wagner, on behalf of Wagon-R Farms Inc., filed petition RLP-2337 in the Department for a permit to change the location of diversion and source for appropriation A-11282 from the point of diversion described above, to the headgate of the Mirdan Canal located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ 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 (TLRD) and Twin Loups Irrigation District (TLID), is physically located on the downstream side of Virginia Smith Dam, which is across the Calamus River, and approximately four miles upstream of the confluence with the North Loup River.
4. On March 3, 2014, Donald L. Wagner filed map number 18209 in the Department showing the location of diversion at the headgate of the Mirdan Canal and the land to be irrigated under appropriation A-11282 through petition RLP-2337.
5. On August 16, 2016, Matt Wagner corrected filed map number 18209 in the Department including the location of the Mirdan and Scotia Canals, buried pipeline and pumpsite delivering water to the land to be irrigated under appropriation A-11282 through petition RLP-2337.
6. The current point of diversion is located upstream of the confluence of Dane Creek and the North Loup River. The diversion is located on the upper reaches of the creek and there is only one appropriation above A-11282.

7. The proposed new location of diversion and source (Calamus River) is over 30 river miles upstream of the current location. There are over 50 appropriations between the current diversion for appropriation A-11282 and the proposed diversion at the release point from the Calamus River into Mirdan Canal.
8. The Department's experience indicates that moving a water appropriation upstream of junior and senior water appropriations to a location with a different water supply creates the possibility that during times of shortage, the intervening water appropriators may be harmed.
9. The appropriator has provided the Department with a copy of a signed agreement for delivery of water under appropriation A-11282 via the facilities owned and operated by TLRD and TLID.
10. There is no storage-use appropriation serving the land appurtenant to appropriation A-11282.

CONCLUSIONS

1. The Calamus and North Loup Rivers have no history of water administration; however the Calamus River, to which the diversion is proposed, has a greater amount of flow than Dane Creek. 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-11282 should be conditioned such that no harm can come to these potentially affected appropriators. Appropriators who are downstream, senior to A-11282, and are short of water can place a call on the river and A-11282 should be closed.
2. To prevent harm to intervening junior appropriators within the river reach between the confluence of Dane Creek and the North Loup River to the new diversion at the headgate of the Mirdan Canal (at Virginia Smith Dam), the appropriator of A-11282 should be required to release 0.31 cfs, into the river above any diversion or headgate for any junior appropriator in said river reach 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 0.31 cfs into the described river reach should only apply when junior irrigators are short of water. This 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-11282 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 the Department not administering a call by the appropriator holding A-11282.
4. If appropriation A-11282 is out of priority, TLRD and TLID should be held accountable and be responsible for preventing delivery of water to land under appropriation A-11282. 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.

6. To prevent harm to appropriations upstream and junior to A-11282R the Department will not administer a call on behalf appropriation A-11282R.
7. If appropriation A-11282R is out of priority, TLRD and TLID, along with the appropriator of A-11282R will be held accountable and be responsible for preventing delivery of water to land under appropriation A-11282R. 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-11282R when it is out of priority may result in the revocation of the approval of RLP-2337 and would also be subject to any applicable penalties under relevant state statutes.
9. All terms and conditions of appropriation A-11282 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

September 16, 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. Copies of this Order and map number 18209 were provided to the Department's field office in Ord, Nebraska. Copies of this Order and map number 18209 were mailed on September 16, 2016, to the following:

Wagon-R Farms Inc.
Donald L. Wagner
47289 809 Road
Ord, Nebraska 68862

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

Twin Loups Irrigation District
P.O. Box 98
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