

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19851 AND MAP NUMBER 20999

WATER DIVISION 2-A

BACKGROUND

1. On May 9, 2022, Monty Kirby, on behalf of the Ramona Kirby Irrevocable Living Trust, filed in the Department of Natural Resources (Department) application A-19851 for a Permit to Appropriate Water.
2. On June 21, 2022, Monty Kirby filed in the Department map number 20999 showing land proposed to be irrigated under application A-19851.
3. Land proposed for irrigation is already under water appropriations held by the Middle Loup Irrigation District (District) for delivery through the District's Canal No. 2.

ORDER

IT IS HEREBY ORDERED that application A-19851 and map number 20999 are APPROVED subject to the following limitations and conditions:

1. The following land is authorized to be irrigated (appurtenant land) under surface water appropriation A-19851 as depicted on map number 20999 which is made a part of this Order.

<u>Township 18 North, Range 17 West of the</u>		
<u>6th P.M. in Custer County</u>		<u>Acres</u>
Section 14:	NE $\frac{1}{4}$ SW $\frac{1}{4}$	18.9
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	27.0
Section 23:	NE $\frac{1}{4}$ NW $\frac{1}{4}$	16.5
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>33.4</u>
	TOTAL	95.8

2. Appropriation A-19851 has a priority date of May 9, 2022, and authorizes the appropriator the use of 1.37 cubic feet per second (cfs) (615 gallons per minute) of water for irrigation of the 95.8 acres of land described above. The water may be diverted from the Middle Loup River at a point of diversion located on the left bank of the stream in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 18 North, Range 17 West of the 6th P.M. in Custer County, as depicted on map number 20999.
3. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated not to exceed 1.37 cubic feet per second 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 1/70 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.

4. Only the land shown on map number 20999 may be irrigated under appropriation A-19851 unless a change is authorized by subsequent Order of the Department.
5. If during the course of construction of the irrigation project it is determined that there is a difference in the number and/or location of acres from the approved map, an amended project map may be filed for an equal or lesser number of acres prior to the beneficial use investigation deadline. The Department, at its sole discretion, must determine that the change from the original map remains within the original project concept and does not violate any rules and/or statutes and will not harm another appropriator. The amended map may then be approved by Order of the Department for an equal or lesser number of acres of land or amount of water than originally granted.
6. A measuring device, approved by the Department, may be required if so ordered by the Department.
7. The appropriator may not divert under this appropriation if the District's Canal No. 2 is diverting water. Under no circumstance shall the District's delivery of water to land under A-19851 coincide with diversion from the Middle Loup River under A-19851. Each year the appropriator must contact the Ord Field Office in writing and receive written permission before beginning diversion of water in the spring. Appropriator must cease diversions under A-19851 if the District's Canal No. 2 has commenced diverting water. Appropriator must contact the field office in writing again, and receive written permission if diversion is desired after the Middle Loup Canal No. 2 has ended diverting water at the conclusion of the District's irrigation season. Written communication with the Department must occur within regular business hours and may be delivered by U.S. Postal Mail, in person or via e-mail exchange.
8. Failure of the appropriator to follow all conditions set forth in this Order may result in cancellation without further action by the Department.
9. The appropriator must comply with all relevant statutes. The statutes include, but are 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).
10. The appropriator must comply with the following deadlines:
 - A. The appropriator must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.

- B. The appropriation is not considered perfected until water has been beneficially applied for the purpose stated in this Order. The water appropriated under A-19851 must be beneficially used by September 1, 2025.
9. After September 1, 2025, a field investigation will be conducted to determine the lands where water has been beneficially applied.
- A. If the entire appropriation is found to have water beneficially applied, a Certificate of Perfected Appropriation will be issued by the Department for A-19851.
- B. If a portion of the appropriation is found to have had water beneficially applied within the original project concept the Department may, at its discretion, modify the project map and land listing to represent the conditions found during the field investigation. The number of acres and diversion rate determined by the Department will not exceed what is granted by this Order. A Certificate of Perfected Appropriation specifying the final number of acres, location of acres and diversion rate will be issued by the Department for A-19851.
- C. If no portion of the appropriation is found to have water beneficially applied, the Department will issue an Order of Cancellation in Full for A-19851.

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 Order 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 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. If in the future you are not able to divert sufficient amounts of water, and if there are junior appropriations upstream, you may call for water by contacting your local field office.

DEPARTMENT OF NATURAL RESOURCES



Thomas E. Riley, P.E., Director

December 13, 2022

A copy of this Order was posted on the Department's website. Copies of this Order and map number 20999 were provided to the Department's field office in Ord, Nebraska. Copies of this Order, map number 20999 and Surface Water Administration brochure were mailed to the following:

Ramona Kirby Irrevocable Living Trust
46034 Road 807
Comstock, Nebraska 68828

Monty Kirby
46034 Road 807
Comstock, Nebraska 68828