

7420

NeDNR SW-001
March 2018

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

**PETITION REQUESTING LEAVE TO FILE OR CONSIDER AN APPLICATION FOR
A NEW SURFACE WATER APPROPRIATION WITHIN A MORATORIUM OR STAY AREA
UNDER TITLE 457 N.A.C. CHAPTER 23**

Instructions:

1. Complete items 1 through 5 by printing in ink or typing the appropriate information and by placing an X in the appropriate box.
2. Attach a copy of the completed proposed application for a new surface water appropriation.
3. Attach any supporting documentation.
4. Include a \$10 non-refundable filing fee.

FOR DEPARTMENT USE ONLY

Filed in the office of the Department of Natural Resources
at 08 : 30 on May 10, 20 19
Modification VAR- 7420
SW Application: _____ RightID: _____
Water Division: 1-A
Receipt Number: A-5185 Amount: \$ 10.00

1. Name and contact information of petitioner:

Name: North Platte Natural Resources District

Address 1: 100547 Airport Rd.

Address 2: _____

City & State: Scottsbluff, Nebraska

Zip Code: 69363

Phone Number: (308) 632 - 2749

E-Mail Address: _____

Cell Phone: () _____ - _____

2. Check the situation that applies:

- ☐ Application already filed. Application Number: _____
- ☒ Application not filed. (Enclose copy of proposed application)

3. Description of proposed project:

Temporary appropriation to divert excess flows outside of irrigation season for groundwater recharge and stream baseflow enhancement. Winters Creek Canal Co. will divert up to 50cfs at its headgate located in the SW1/4NE1/4 of Section 17, Township 22N, Range 55W in Scotts Bluff County, Nebraska

4. The proposed project must meet at least one of the following criteria. (Check all that apply)

- ☐ 1. The proposed project is for a non-consumptive use. (Attach description of use)
- ☐ 2. The applicant has a credible proposal for replacing any consumptive use that will occur in a manner such that the project will not harm other users. (Attach offset plan)
- ☒ 3. The Applicant has credible information that indicates there **may be** unappropriated water available at the proposed location at the time the depletion is likely to occur. (Attach analysis)
- ☐ 4. The project existed prior to any informal moratorium, formal moratorium or stay. (Attach proof)
- ☐ 5. There is a public safety issue that must be addressed and the proposed project addresses that issue. (Attach explanation)
- ☐ 6. The proposed use is a temporary use for public construction and the total volume requested is less than ten (10) acre-feet.

5. Other reason(s) to show good cause why a variance should be granted:

See attached supplemental information on anticipated excess flows and the benefits of recharge for reaching integrated management plan and PRIP goals.

Date

5/8/19

Signature of Petitioner (or authorized agent)

Megan A. Dockery

Print Name

Megan A. Dockery, Attorney for North Platte NRDC

If you have any questions regarding this form, please contact the Surface Water Permitting Section at the Department of Natural Resources (402) 471-2363

Forward this petition, all supplemental documentation and a \$10 non-refundable filing fee to:

State of Nebraska
Department of Natural Resources
301 Centennial Mall South
P.O. Box 94676
Lincoln, Nebraska, 68509-4676

THIS AGREEMENT entered into on this 22nd day of March, 2017, by the **NORTH PLATTE NATURAL RESOURCES DISTRICT**, hereinafter referred to as the "**DISTRICT**," and **WINTER CREEK CANAL COMPANY**, hereinafter referred to as the "**IRRIGATOR**."

WITNESSETH:

WHEREAS, the Irrigator has surface water appropriation(s) for natural flow from the North Platte River and/or its tributaries and the necessary conveyance structure(s) to transmit such natural flow; and

WHEREAS, the District and the Nebraska Department of Natural Resources have jointly developed and agreed to implement an integrated management plan (IMP) which describes investigating projects to enhance and improve water supply, including the development of new infrastructure and other groundwater projects for the purpose of providing net accretions to the river; and

WHEREAS, the District or the Nebraska Department of Natural Resources may request the Irrigator to 1) divert natural flow into the Irrigator's delivery system during periods when streamflow is in excess of US Fish and Wildlife Service target flows and state-protected flows, without subsequent consumptive use for irrigation, in order to assist the District with 1) flood prevention and groundwater recharge and/or groundwater discharge to streamflow, or 2) other projects with the purpose of meeting the goals and objectives of the IMP; and

WHEREAS, the Irrigator is willing to assist the District to meet the objectives of the IMP in exchange for compensation;

NOW THEREFORE, in consideration of the mutual covenants made, the compensation agreed to, and other good and valuable consideration the receipt of which is hereby acknowledged, the parties agree as follows:

I. SCOPE OF SERVICES

The Irrigator will make available the diversion structures of the Winter Creek Canal and the services of a ditch rider or staff member, for the term of this Agreement, to assist District efforts to meet the objectives of the IMP, which may include, but not be limited to, the diversion of streamflows in excess of target flows and state-protected flows for the purpose of retiming streamflow, and any monitoring activities necessary to further understanding of the effects of such activities on streamflow. These efforts will be carried out in accordance with Task Authorizations developed under this Agreement and approved by the Irrigator and District. The purpose of this Agreement is to set forth the terms and conditions applicable to such efforts. During the term of this Agreement, the details of timing and payment shall be described and set forth in separate, numbered Task Authorizations, issued pursuant to the terms of this Agreement. Should a particular Task Authorization ever require revision, such revision shall be accomplished through an amendment to that individual Task Authorization.

II. DURATION OF AGREEMENT

This Agreement is effective on the date signed by the last party and remains effective for five (5) years from the effective date. This Agreement shall automatically renew for additional five (5) year increments (terms), unless either party provides written notice of non-renewal to the other party no later than six (6) months prior to the end of the then-current term.

III. THE IRRIGATOR AGREES TO PERFORM AS FOLLOWS:

- A. The Irrigator agrees to divert, only upon request from the District and in accordance with a particular Task Authorization then in operation, up to 50 cfs of natural flow surface water and convey such water through its delivery system.
- B. The Irrigator further agrees not to apply to consumptive use for irrigation any of the water diverted subject to this Agreement.
- C. The Irrigator represents and affirms that, in accordance with all relevant regulations, statutes, and/or procedures, the Irrigator has complied or will comply with all requirements necessary to allow it to enter into this Agreement and perform all actions herein required. If the Irrigator has not complied, or in the future fails to comply, with all relevant regulations, statutes, and/or procedures, this contract is null and void.
- D. The Irrigator retains the right to suspend or terminate its performance under this Agreement 1) in the event of threatened damage to any of its facilities; 2) threatened injury or damage to the person or property of third parties; 3) if any provisions of the Agreement subjects any part of the Irrigator's appropriation to cancellation, reduction, or loss under the laws of the State of Nebraska then in effect; or 4) adversely affects its ability to provide irrigation service during its irrigation season. The Irrigator's sole judgement in these matters will control. In the event that the Irrigator must suspend or terminate its performance pursuant to this paragraph, then it shall promptly notify the District by telephone and in writing.

IV. THE DISTRICT AGREES TO PERFORM AS FOLLOWS:

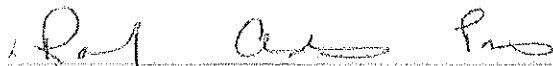
- A. The District's total annual payment under each five (5) year term of this contract cannot exceed \$150 per cfs of excess flows diverted for flood relief and canal recharge.
- B. Payment will be made according to the terms of each Task Authorization, but not later than 6 months after the last date the Irrigator has diverted under the terms of any individual Task Authorization.

- C. The Irrigator, with the assistance of the District, shall obtain all necessary permits from the Department for the purpose of diverting excess flows under this agreement.

V. THE PARTIES MUTUALLY AGREE AS FOLLOWS:

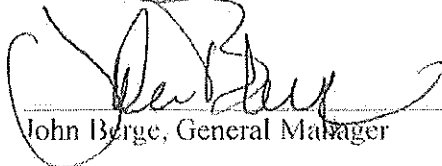
- A. The parties agree that Irrigator has retained and reserved the rights to any additional water that it would be entitled to receive under agreements and contracts between the Bureau of Reclamation or any other entity and the Irrigator that are outside of the provisions of this Agreement.
- B. In executing this Agreement, the parties shall comply with all other applicable state and federal laws.

WINTER CREEK CANAL COMPANY (IRRIGATOR)


Name and Title

3-22-17
Date

NORTH PLATTE NATURAL RESOURCES DISTRICT (DISTRICT)


John Berge, General Manager

3/22/17
Date

MARCH 1, 2017, TASK ORDER #17-1 TO NORTH PLATTE NATURAL RESOURCES
DISTRICT AGREEMENT #22 FOR EXCESS FLOW DIVERSIONS

I. THE IRRIGATOR AGREES TO PERFORM AS FOLLOWS:

- A. The Irrigator agrees to divert natural flow surface water and convey such water through its delivery system, beginning when directed by the Nebraska Department of Natural Resources (NDNR) Bridgeport Field Office Supervisor after April 1, 2017, as needed to alleviate flooding conditions on the North Platte River, or to take advantage of excess flows available in the North Platte River. The period of diversion for this purpose will be the duration of the excess flow event, from the beginning date of this task order and until the excess flows of such event are no longer available. To receive any compensation under North Platte Natural Resources District (District) Agreement #22, the Irrigator must in good faith divert flows into its system and convey such water for the period of time designated above and as directed by NDNR's Bridgeport field office and the District but which cannot be quantified precisely at this time. A flat rate fee payable to the Irrigator will be agreed upon by all parties prior to diversion of any excess flows.
- B. Prior to the date of the end of the excess flow event, as determined by NDNR, the Irrigator retains the right to suspend or terminate its performance under this Agreement 1) in the event of threatened damage to any of its facilities; 2) threatened injury or damage to the person or property of third parties; 3) if any provisions of the Agreement subjects any part of the Irrigator's appropriation to cancellation, reduction or loss under the laws of the State of Nebraska, then in effect; 4) adversely affects its ability to provide irrigation service during its irrigation season; or 5) the Irrigator commences irrigation deliveries. The Irrigator's sole judgement in these matters will control. In the event that the Irrigator must suspend or terminate its performance pursuant to this paragraph, then it shall promptly notify the District by telephone and in writing. In such events, the District will accordingly determine, based upon the benefit received, any reduction in the payment made to Irrigator.

II. THE DISTRICT AGREES TO PERFORM AS FOLLOWS:

- A. Payment will be for no more than \$150 per cfs diverted for flooding mitigation and canal recharge, and will be provided not later than ninety (90) days following the conclusion of diversion for these purposes.
- B. The District will work with NDNR to determine the measurements or methods needed to estimate project benefits (e.g. diversions and return flows). The District will make the agreed-upon measurements in conjunction with NDNR.

III. OTHER CONDITIONS

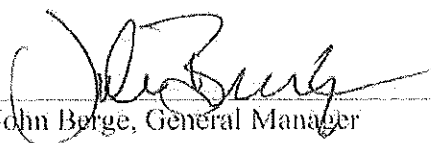
- A. FORCE MAJEURE - The Irrigator shall not be liable for any delay or failure to perform its obligations under this Agreement caused by an event or condition beyond the reasonable control, and not caused by the fault or negligence, of the Irrigator, including, but not limited to, failure of facilities, flood, earthquake, storm, lightning, fire, severe cold or other weather event, which delays or prevents performance, which the Irrigator could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of the Irrigator under this Agreement shall be excused and suspended without penalty or damages, provided that the Irrigator shall give the District prompt notice of such event or condition. In such events, the District will accordingly determine, based upon the benefit received, any reduction in the payment made to Irrigator.
- B. LIABILITY - Except for injury or damage caused by the District's intentional or grossly negligent acts, the District shall not be liable or held responsible for any injury or damage to the Irrigator's facilities, personnel, or equipment, or any other person or entity's property.

WINTER CREEK CANAL COMPANY (Irrigator)


Name and Title

3-22-17
Date

NORTH PLATTE NATURAL RESOURCES DISTRICT (District)


John Berge, General Manager

3/22/17
Date

***Petition for Leave to File an Application for a New Surface Water Appropriation
Within a Moratorium or Stay Area***

Supplemental Information

The North Platte Natural Resources District, Petitioner submits this Petition for Leave to File an Application for a New Surface Water Appropriation Within a Moratorium or Stay Area, pursuant to Department Rules Title 457 N.A.C. 23, to request leave to file a temporary natural-flow appropriation for the purpose of diverting excess flows during the non-irrigation season. Petitioner desires to partner with Irrigation Districts and Canal Companies to divert excess flows into their canals and allow such diverted water to seep through the canal perimeter and recharge the aquifer beneath the canal, less any spills back to the river or its tributaries that may occur during operation of the canal. Petitioner provides the following information in support of this Petition for Leave to File an Application for a New Surface Water Appropriation Within a Moratorium or Stay Area, along with a copy of the draft Application for a Permit to Appropriate Water (Temporary); a copy of the five-year agreement which the North Platte Natural Resources District and the Irrigation District or Canal Company has executed to take advantage of excess flows when available; and a copy of the executed Task Order for anticipated Spring 2019 excess-flow diversion opportunities.

Title 457 N.A.C. 23.001.03, Unappropriated water: The Petitioner has reason to believe that unappropriated water in excess of “state-protected flows,” including those flows necessary to meet appropriations held by Central Nebraska Public Power and Irrigation District when in priority, and target flows required for compliance with the Platte River Recovery Implementation Program (PRRIP) may be available, prior to the beginning of the 2019 irrigation season. As of May 6, 2019, the snowpack in the upper North Platte Basin was at 114% of average (Figure 1), and more snow is expected in the mountains which feed the North Platte drainage before snowmelt season begins. This forecast does not include any spring precipitation event that may add to the total water supply in the North Platte Basin prior to the beginning of irrigation season.

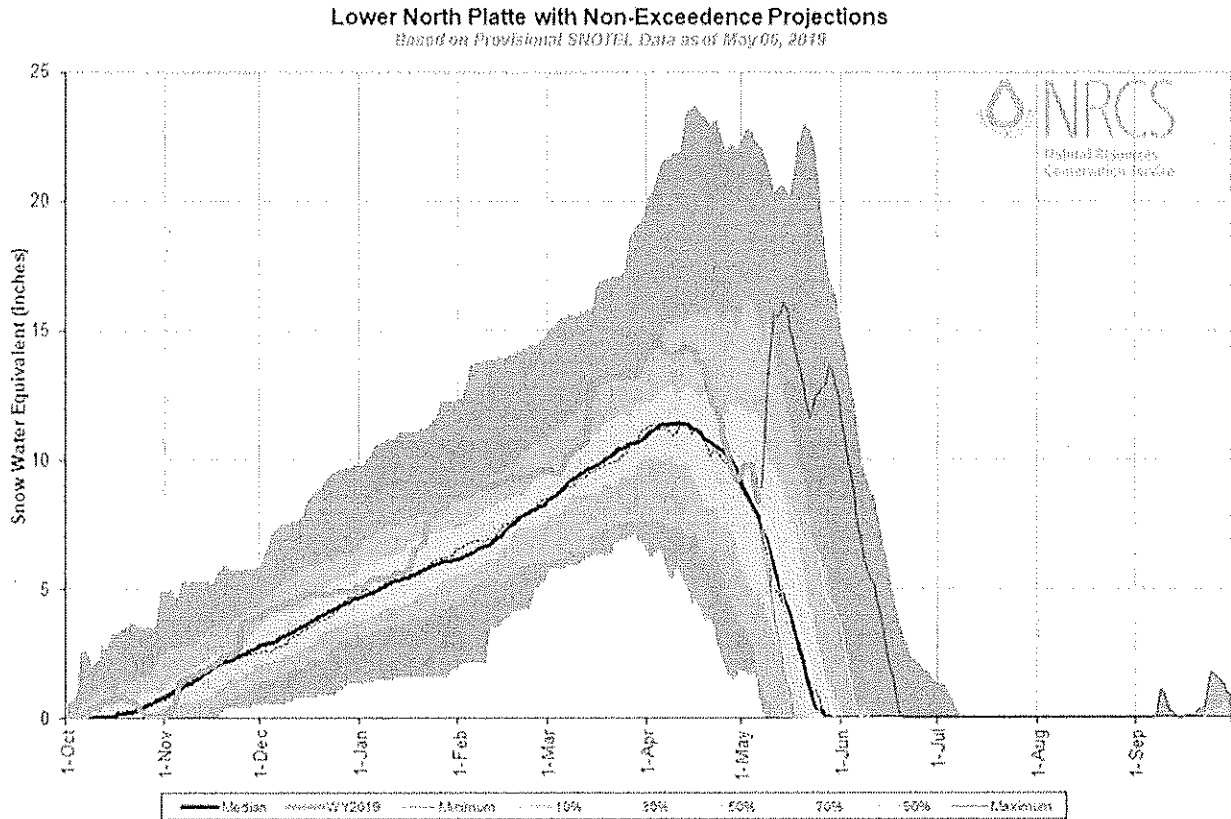


Figure 1: Current and projected snow-water equivalent of snowpack in the lower North Platte Basin below Seminoe Reservoir. (http://www.weather.gov/riw/cms_snotel_quicklinks_graphs, accessed May 6, 2019)

To compound the current state of above-average snowpack, all the US Bureau of Reclamation reservoirs in Wyoming are already full, except for Guernsey, which has been drained for spillway reconstruction (Figure 2).

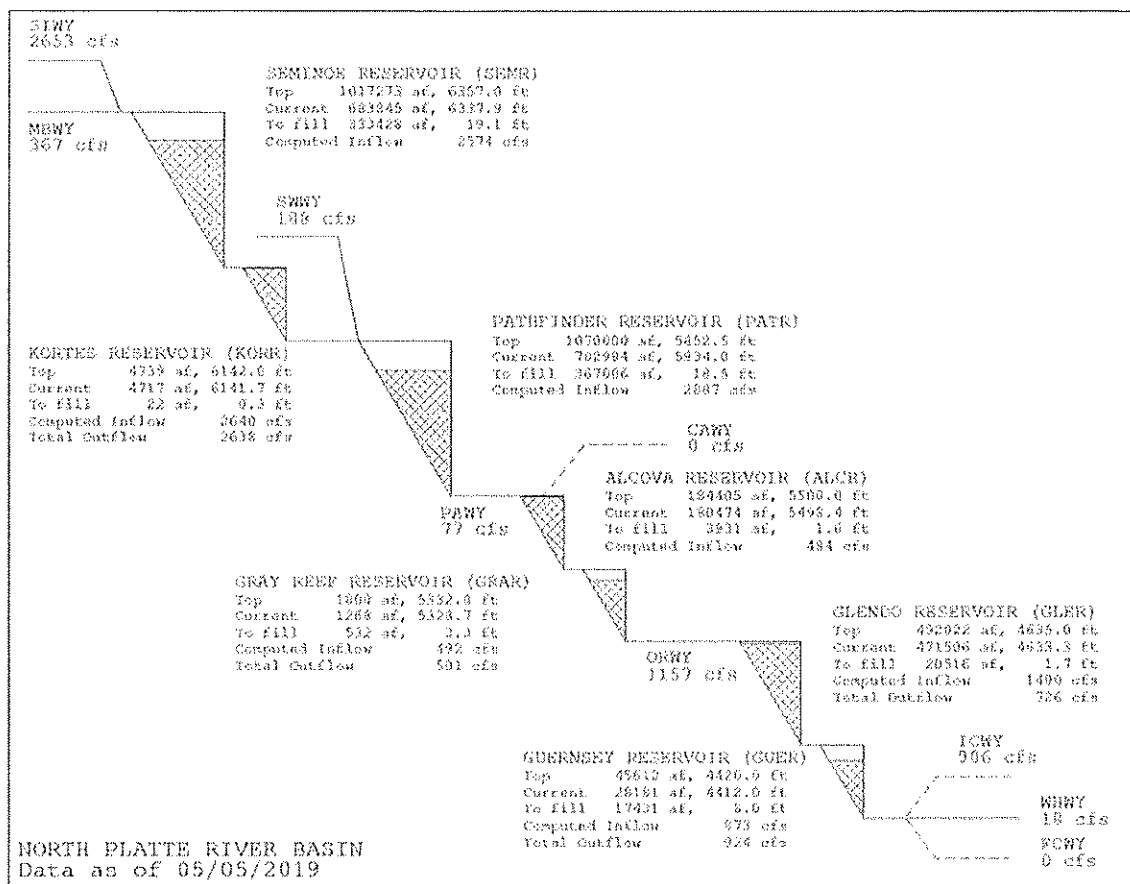


Figure 2: TEACUP model of current Wyoming reservoir levels in the North Platte River system. (<https://www.usbr.gov/gp-bin/hydromet/teacup.pl?NP> accessed May 6, 2019)

The Bureau has stated that it will need to release water from storage to make room for snowmelt runoff later in the season, though no flooding conditions are currently forecast for the North Platte system as a result of these releases or snowmelt runoff (Figure 3). These releases, along with any additional releases that may be required to maintain the desired level of storage in the reservoir system through spring and early summer, may generate additional excess flows through the North Platte River system beyond what existing appropriations could either store or beneficially use.

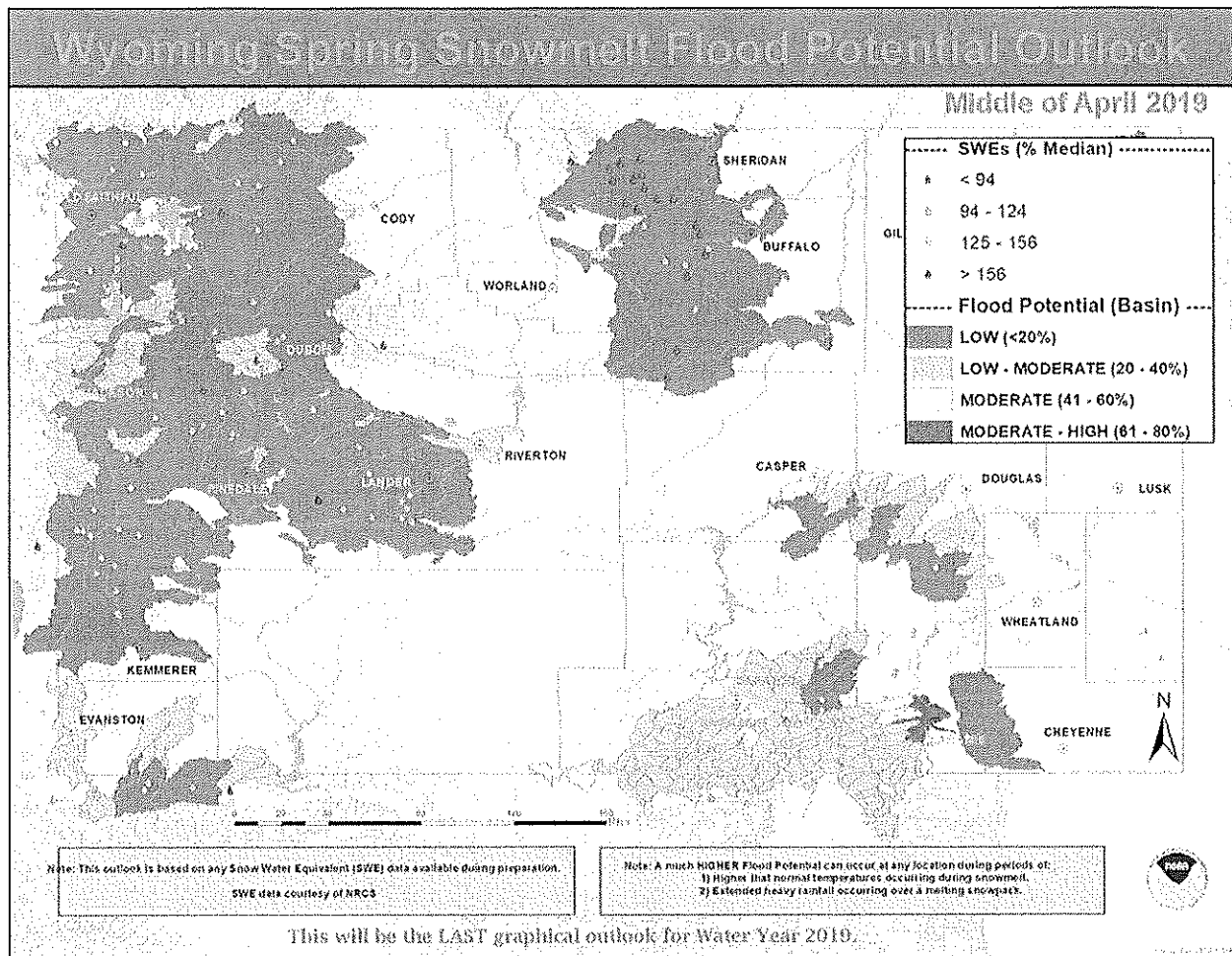


Figure 3: Spring flood potential forecast for the upper North Platte basin, based on anticipated rate of snowmelt and reservoir storage. Note that this outlook does not incorporate abnormally high temperatures, which would accelerate snowmelt, or heavy precipitation events occurring during the snowmelt season. (http://www.weather.gov/riw/cms_snotel_quicklinks_graphs, accessed May 6, 2019)

Because of the factors discussed above, high spring flows along the North Platte River are anticipated to occur before irrigation season begins. Petitioner and its partner, the North Platte NRD, believe that these flows will be in excess of both PRRIP target flows and state-protected flows that are required to be available prior to June 1.

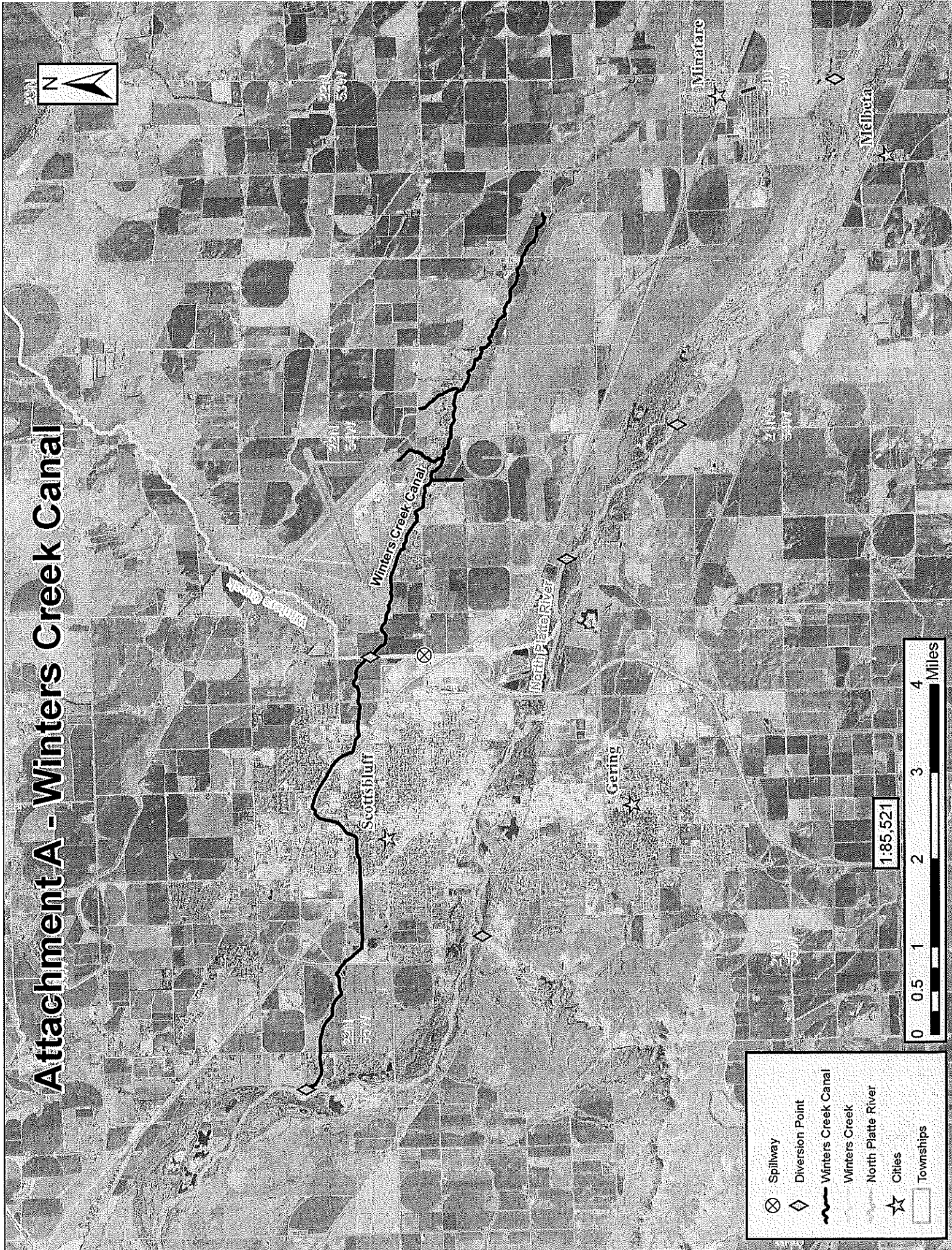
Title 457 N.A.C. 23.002, Good cause: The North Platte NRD is currently implementing a joint integrated management plan (IMP) and a basinwide integrated management plan (BWP) with the Department of Natural Resources (DNR). As part of this plan, the NRD is required to offset depletions to streamflow caused by groundwater uses begun after July 1, 1997; subsequent increments of the IMP and BWP will include additional offset requirements to achieve or

maintain a fully appropriated condition. In addition, Nebraska's compliance with PRRIP requires that shortages to target flows be reduced by 130,000 to 150,000 acre-feet per year. To accomplish both of these purposes, Petitioner and the North Platte NRD will partner once again to divert excess flows this spring, if available, to recharge the aquifer. Recharge gained will return as baseflow to the North Platte River, thereby retiming excess spring flows back to the river at other times of the year when flows are needed and reducing potential shortages during key seasons (e.g., irrigation).

The North Platte NRD has previously partnered with irrigation districts and canal companies to divert excess flows to alleviate flood conditions on the North Platte River and recharge the aquifer through canal seepage. In 2011, spring and fall diversions resulted in approximately 11,341 acre-feet of accretion to the North Platte River over fifty years (see Table 2, *Upper Platte River Recharge and Flood Mitigation Demonstration Project*, DNR Technical Memorandum January 2013). Diversions in the spring of 2016 added approximately 18,000 acre-feet of recharge to the aquifer, based on preliminary estimates. Petitioner and the North Platte NRD see an additional opportunity during Spring 2019 to divert anticipated excess flows for additional recharge and retiming benefits to the aquifer and the river. These benefits will ensure that the NRD and the state of Nebraska continue to meet depletion-offset targets for integrated management planning and PRRIP.

Conclusion: Petitioner presents this information in support of its variance petition for leave to file an application for a temporary, one-year, appropriation to divert excess flows in the nonirrigation season. Diversions and, as applicable, spills will be monitored to provide a record of the amount available for recharge, and these data will be reported to DNR as part of the integrated-management annual reporting requirements. Diversions will provide recharge to the alluvial aquifer, which will become baseflow accretions to the North Platte River over time. Previous such recharge diversions have provided ample benefit to streamflow and have assisted the North Platte NRD in meeting the goals of its IMP and of the BWP, as well as providing another mechanism for Nebraska to comply with PRRIP streamflow goals.

Attachment A - Winters Creek Canal



STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
APPLICATION FOR A PERMIT TO APPROPRIATE WATER

Complete items 1 through 10 by printing in ink or typing the appropriate information and by placing an X in the appropriate box.

For Department Use Only

1. Name and address of owner of land under proposed project. Names must be exactly as described on the deed or document transferring ownership of property. Landowner must sign the application.

Winters Creek Canal Company
230710 Highland Rd.
Scottsbluff, Nebraska 69361

E-mail address: _____ Telephone No. (308) 632-7604

Filed in the office of the Department of
Natural Resources at _____ a.m./p.m.

on _____

Application No. _____

2. Name, address, and telephone number of applicant if different than landowner.

North Platte Natural Resources District
100547 Airport Rd.
Scottsbluff, NE 69363

E-mail address: jberge@npnrd.org Telephone No. (308) 632-2749

Map No. _____

Water Division _____

Receipt No. _____ Amount _____

Right ID _____

- 3a. A permit is sought to:

☒ Use natural flow ☐ Use impounded water*

- 3b. A permit is sought for the purpose of:

☐ Irrigation ☐ Manufacturing ☐ Domestic
☐ Other _____

☒ Temporary** baseflow enhancement through groundwater recharge

- 4a. Identify the source of water (name of stream or reservoir).

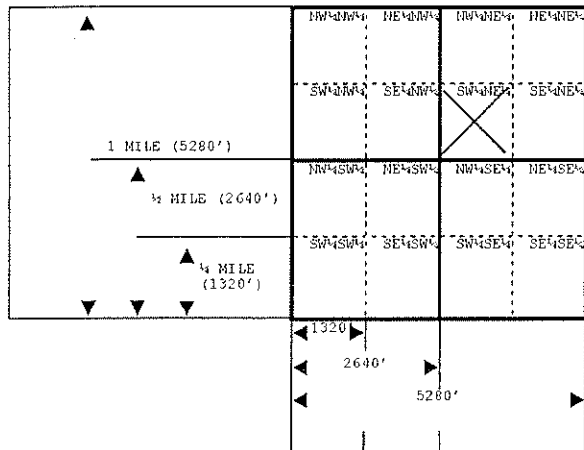
North Platte River

- 4b. If applicable, identify the facility name for transporting water from the source (portable pump, name of canal or pipeline).

Winter's Creek Canal

5. Identify the location of the ☒ Headgate ☐ Pump

Section 17, Township 22 North, Range 55 E ☐ W ☒ County Scotts Bluff



The box at left represents one square mile (section). Place an X within each appropriate 40-acre tract to indicate the location(s) of each headgate or pump.

If applicable, indicate the height, in feet, of any diversion or check dams on the line below.

* A separate permit to impound water must be obtained.

** A temporary permit may be granted for a maximum of one year.

LEGAL SUBDIVISIONS	Sec.	Twp.	Rge.	No. of Acres	LEGAL SUBDIVISIONS	Sec.	Twp.	Rge.	No. of Acres
					TOTAL NUMBER OF ACRES TO BE IRRIGATED:				0.0

☐ Enclosed is an aerial photograph that I have marked to show the approximate location of land to be irrigated as described above.

<input type="checkbox"/>	Gallons per minute
<input checked="" type="checkbox"/>	Cubic feet per second
<input type="checkbox"/>	Acre-feet (impounded water)

appropriation.⁵⁰

8b. State the earliest date when water will have been used for beneficial purposes.

completed

April 1, 2019 or as soon as water is available

☒ No ☐ Yes If yes, explain: _____

10. I certify that am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete and accurate.

Date _____ Signature of owner or owner's authorized agent (with proper documentation) _____

A final project map may accompany this application or must be filed within six months following departmental approval of this application, drawn in accordance with NAC Title 457 – Rules for Surface Water, Chapter 10, (<http://dnr.nebraska.gov/sw/surface-water-rules>). At the request of the applicant, the Department will assist with preparation of the project map.

This form must be completed in full. An incomplete or defective application will be returned with 90 days being allowed for resubmission. Failure to resubmit a corrected application within this period shall cause dismissal of the application and consequent loss of priority and fees.

A non-refundable filing fee, payable to the Department of Natural Resources, computed from the table below must accompany this application. Forward this application and applicable fees to: **State of Nebraska**

State of Nebraska
Department of Natural Resources
301 Centennial Mall South / P.O. Box 94676
Lincoln, Nebraska 68509-4676
(402) 471-2363

Nature of Use	<u>Cost</u>	Nature of Use	<u>Cost</u>
Domestic.....	\$10	Manufacturing	
Agricultural		General.....	\$10
Irrigation from Stream		Power Generation for each theoretical 50 horsepower.....	\$5
0-1,000 acres.....	\$200	Other.....	\$10
Each additional 1,000 acre unit.....	\$100		
or portion thereof in excess of the first 1,000 acre unit			
Irrigation from Storage Reservoir			
0-1,000 acres.....	\$50		
or portion thereof in excess of the first 1,000 acre unit			
Each additional 1,000 acre unit.....	\$25		
or portion thereof in excess of the first 1,000 acre unit			