

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION NEX-7543 FOR A CHANGE OF APPROPRIATION TO AUGMENT

STREAMFLOW PURSUANT TO CREP WATER USE CONTRACT NUMBER 1137

WATER APPROPRIATION A-10109

WATER DIVISION 1-B

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-10109 is held by Flag Creek Ranch, Inc.
2. Appropriation A-10109 with a priority date of October 1, 1962, authorizes the use of 0.71 cubic-foot per second (cfs) of water from Flag Creek for irrigation of 56.9 acres of land.
3. On August 22, 2019, James Dunlay, on behalf of Flag Creek Ranch, Inc., filed application NEX-7543, which is authorized under the provisions of *Neb. Rev. Stat. § 46-290(5)* and *457 Neb. Admin. Code Chapter 9.002.01*, and requested a temporary change of use and location of use of water for appropriation A-10109 in order to **enroll in the Nebraska Platte-Republican Resources Area Conservation Reserve Enhancement Program (CREP)** for the improvement of water quantity and quality, and the enhancement of wildlife habitat, through establishment of vegetative cover to reduce irrigation water consumptive use and agricultural chemical and sediment runoff into waters of Nebraska. The CREP contract is pursuant to an agreement between the State of Nebraska and U.S. Department of Agriculture Commodity Credit Corporation. Flag Creek Ranch, Inc., desires to participate in CREP and agrees not to irrigate specific land for a specific period of time.
4. The proposed location of use is downstream of the current point of diversion to Harlan County Reservoir. Under provisions of *Neb. Rev. Stat. § 46-294(1)(e)* only the historic consumptive use may be transferred to the new use and location of use. In order to meet CREP eligibility requirements the enrolled cropland must have been irrigated at the rate of not less than one-half acre-foot per acre per year for four years out of the same six-year period established for CRP cropping history eligibility, as provided in National FSA CRP Directives at the time of enrollment of the original Contract.
5. The Department has reviewed application NEX-7543 and other pertinent information and determined that the transfer request meets all necessary requirements for approval pursuant to *Neb. Rev. Stat. § 46-294(1)* and all other applicable laws and regulations.

ORDER

IT IS HEREBY ORDERED Application NEX-7543 and map number 20470 are APPROVED:

1. Application NEX-7543 is a transfer for the purpose of benefiting fish and wildlife habitat through stream flow augmentation in a specific stream reach pursuant to a CREP contract.
2. Flag Creek Ranch, Inc., entered into CREP Water Use Contract 1137 with the Department and a CRP-1 Contract with the U.S. Department of Agriculture (hereinafter collectively referred to as "the Contracts" agreeing not to use appropriation A-10109 for irrigation in accordance with the terms of the Contracts.
3. Appropriation A-10109 (on lands appurtenant to CREP Water Use Contract 1137) through transfer NEX-7543 shall be a flow augmentation appropriation for the amount of water shown below, not to exceed 49.8 acre-feet per annum, for meeting the purposes of the CREP goals. The Department has determined the amount of historic consumptive use of surface water for these acres shall not exceed the following:

<u>A-10109</u>	<u>Month</u>	<u>CFS</u>
	June	0.17
	July	0.32
	August	0.32

4. The location of use shall be downstream of the current point of diversion to Harlan County Reservoir. Such water may be stored in Harlan County Reservoir upon the agreement of the Department and the owners of Harlan County Reservoir.
5. This temporary use is coincident with the beginning of the Contracts and is effective through the end of the Contracts. After termination of the Contracts, appropriation A-10109 shall automatically revert back to its previous use and location of use without further action by the Department.
6. The following described land shall not be irrigated during the term of this temporary CREP transfer as shown on map number 20470.

<u>Township 02 North, Range 19 West of the</u>		
<u>6th P.M. in Harlan County</u>		<u>Acres</u>
Section 10:	SW $\frac{1}{4}$ SW $\frac{1}{4}$	34.7
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	3.9
Section 15:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	16.3
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>2.0</u>
	TOTAL	56.9

7. All terms and conditions of A-10109 remain in effect unless specifically changed by this Order.

8. 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).
 - 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 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

DEPARTMENT OF NATURAL RESOURCES

November 4, 2019


Gordon W. Fassett, P.E., Director

A copy of this Order was posted on the Department's website. A copy of this Order and map number 20470 was provided to the Department's field office in Cambridge, Nebraska. A copy of this Order and map number 20470 was mailed on November 4, 2019, to the following:

James Dunlay
Flag Creek Ranch, Inc.
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Orleans, Nebraska 68966