

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER DIVIDING AND CHANGING OWNERSHIP OF APPROPRIATION A-18327A

AND APPROVAL OF MAPS NUMBER 20604 AND 20605

WATER DIVISION 2-C

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) shows the land located in the S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 34, Township 33 North, Range 12 West of the 6th P.M. appurtenant to surface water appropriation A-18327A is owned by Triple B, Inc.
2. Records on file in the Department shows the land located in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, Township 33 North, Range 12 West of the 6th P.M. appurtenant to surface water appropriation A-18327A is owned by the James L. Birkel Trust.
3. Appropriation A-18327A with a priority date of August 23, 2005, authorizes the use of water for irrigation of the 275.7 acres of land described below. The water may be diverted from the Niobrara River at a point of diversion located on the right bank of the stream in the Lot 04 of Section 27, Township 33 North, Range 12 West of the 6th P.M. in Holt County. Water diverted shall not exceed the ratio of one cubic foot per second (cfs) for every 70 acres irrigated at a maximum rate of 3.94 cfs.

Township 33 North, Range 12 West of the 6 th P.M. in Holt County	Acres
Section 34: NW $\frac{1}{4}$ NE $\frac{1}{4}$	23.0
NE $\frac{1}{4}$ NE $\frac{1}{4}$	19.6
SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.0
SE $\frac{1}{4}$ NE $\frac{1}{4}$	33.1
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.0
NE $\frac{1}{4}$ SE $\frac{1}{4}$	40.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.0
TOTAL	275.7

4. On November 5, 2020, James L. Birkel, Secretary, filed a *Notice of Change of Ownership Water/Resources Update Notice* indicating that a portion of land authorized to be irrigated by appropriation A-18327A is owned by Triple B, Inc.
5. On November 5, 2020, James L. Birkel, Trustee, filed a *Notice of Change of Ownership Water/Resources Update Notice* indicating that a portion of land authorized to be irrigated by appropriation A-18327A is owned by the James L. Birkel Trust.

- Appropriation A-18327 was originally granted to a single landowner. Subsequently, an Order dividing A-18327 into two appropriations, A-18327A and A-18327B was approved on May 13, 2009. The appurtenant land under A-18327A was later divided into distinct parcels to two owners. Because of the multiple owners, the Department determined that it is in the best interest of the owners and the State to divide appropriation A-18327A among the owners so that each owner's rights are distinguishable.

ORDER

IT IS HEREBY ORDERED:

- The entirety of appropriation A-18327A is divided into two appropriations, A-18327C and A-18327D.
- Appropriation A-18327C authorizes the use of water to irrigate the 233.1 acres of land described below and depicted on map number 20604, which is made a part of this Order. Water diverted from the Niobrara River shall not exceed the ratio of one cfs for every 70 acres irrigated at a maximum rate of 3.33 cfs (1,495 gallons per minute).

<u>Township 33 North, Range 12 West of the 6th P.M. in Holt County</u>		<u>Acres</u>
Section 34:	SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.0
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	33.1
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.0
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	40.0
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	40.0
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>40.0</u>
	TOTAL	233.1

- Appropriation A-18327D authorizes the use of water to irrigate the 42.6 acres of land described below and depicted on map number 20605, which is made a part of this Order. Water diverted from Niobrara River shall not exceed the ratio of one cfs for every 70 acres irrigated at a maximum rate of 0.61 cfs (274 gallons per minute).

<u>Township 33 North, Range 12 West of the 6th P.M. in Holt County</u>		<u>Acres</u>
Section 34:	NW $\frac{1}{4}$ NE $\frac{1}{4}$	23.0
	NE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>19.6</u>
	TOTAL	42.6

- All terms and conditions of the approval of appropriations A-18327 and A-18327A remain in effect unless specifically changed by this Order.
- The point of diversion for A-18327C and A-18327D remains in Lot 04 of Section 27, Township 33 North, Range 12 West of the 6th P.M. in Holt County, as depicted on maps number 20604 and 20605. Total annual volume of water diverted may not exceed 3 acre-feet per acre irrigated per year.

6. If the appropriators of A-18327C and A-18327D do not have access to the points of diversion, they must either obtain permission from the landowner or file a Petition for Relocation of the Point of Diversion and have it approved by the Department prior to any diversion. The Order does not authorize access to the existing points of diversion.

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 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. These appropriations are not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. These appropriations may be closed if there is insufficient water to satisfy senior appropriations.

DEPARTMENT OF NATURAL RESOURCES



Thomas E. Riley, P.E., Director

March 24, 2021

A copy of this Order was posted on the Department's website. Copies of this Order and maps number 20605 and 20605 were provided to the Department's field office in Ord, Nebraska. Copies of this Order and maps number 20604 and 20605 were mailed on March 24, 2021, to the following:

Triple B, Inc.
3761 Road
David City, Nebraska 68632

James L. Birkel, Trustee
40502 North Blaze Trail
Anthem, Arizona 85086