

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION RLP-9380 TO CHANGE THE LOCATION OF
DIVERSION AND MAP NUMBER 20768 FOR WATER APPROPRIATION A-11408BR

WATER DIVISION 2-A

THE DIRECTOR FINDS

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-11408BR is held by Twin Loups Reclamation District.
2. Appropriation A-11408BR has a priority date of May 2, 1968, and authorizes the use of water for irrigation of the 28.0 acres of land described below. The water may be diverted from Dane Creek at points of diversion located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 01, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 02, both in Township 18 North, Range 15 West of the 6th P.M. in Valley County. Water diverted shall not exceed the ratio of one cfs for every 70 acres irrigated at a maximum combined rate of 0.40 cfs from all points of diversion.

Township 18 North, Range 15 West of the 6 th P.M. in Valley County		Acres
Section 01:	NW $\frac{1}{4}$ SW $\frac{1}{4}$	16.2
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	10.2
Section 02:	NE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>1.6</u>
	TOTAL	28.0

3. On May 4, 2021, Bernard Glos, Office Administrator, Twin Loups Reclamation District (TLRD) and Twin Loups Irrigation District (TLID), filed in the Department petition RLP-9380 for a permit to change the location of diversion and source for appropriation A-11408BR 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 TLRD and 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 August 19, 2021, Bernard Glos filed map number 20768 in the Department showing the proposed location of diversion at the headgate of the Mirdan Canal and the land to be irrigated under appropriation A-11408BR through petition RLP-9380.

5. 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 are no surface water diversions above A-11408BR.
6. 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-11408BR and the proposed diversion at the release point from the Calamus River into Mirdan Canal.
7. 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.
8. There is no storage-use appropriation serving the land appurtenant to appropriation A-11408BR.

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 11408BR should be conditioned such that no harm can come to these potentially affected appropriators. Appropriators who are downstream, senior to A-11408BR, and are short of water can place a call on the river and A 11408BR 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-11408BR should be required to release 0.40 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 0.40 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-11408BR 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-11408BR.
4. If appropriation A-11408BR is out of priority, TLRD and TLID should be held accountable and be responsible for preventing delivery of water to land under appropriation A-11408BR. 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.

ORDER

IT IS HEREBY ORDERED:

1. Petition RLP-9380 for a permit to change the location of diversion under appropriation A-11408BR and map number 20768 are APPROVED under the conditions described below.
1. Appropriation A-11408BR authorizes the use of water to irrigate the 28.0 acres of land described below and depicted on map number 20768, which is made a part of this Order. The water may be diverted from the Calamus River at a point of diversion located at the headgate of the Mirdan Canal located in the NW¹/₄NW¹/₄ of Section 06, Township 21 North, Range 16 West of the 6th P.M. in Garfield County, at a maximum rate of 0.40 cfs (180 gallons per minute).

Township 18 North, Range 15 West of the 6 th P.M. in Valley County		Acres
Section 01:	NW ¹ / ₄ SW ¹ / ₄	16.2
	NE ¹ / ₄ SW ¹ / ₄	10.2
Section 02:	NE ¹ / ₄ SE ¹ / ₄	<u>1.6</u>
	TOTAL	28.0

2. Water diverted shall not exceed the ratio of one cfs for every 70 acres irrigated 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.
3. The quantity of water diverted at any time shall be restricted to the amount of available **natural flow** in priority at the headgate of the Mirdan Canal. Furthermore, the appropriator under A-11408BR will be required to cause a release of 0.40 cfs of water into the river above any diversion or headgate for any junior appropriator within the following described river reach who is short of water and placing a call for water administration by the Department. For the purpose of this paragraph, "junior appropriator" means any appropriator in the following described reach that is junior to A-11408BR, but senior to May 4, 2021. The release of water will not be required if the junior appropriator is already closed by another priority call. The condition of releasing 0.40 cfs into the affected stream reach applies from the headgate of the Mirdan Canal on the Calamus River downstream to the confluence of Dane Creek and the North Loup River.
4. To prevent harm to appropriations upstream and junior to A-11408BR the Department will not administer a call on behalf of appropriation A-11408BR.

5. If appropriation A-11408BR is out of priority, TLRD and TLID, will be held accountable and be responsible for preventing delivery of water to land under appropriation A-11408BR. 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. Failure to prevent delivery of natural flow water to land appurtenant to A-11408BR when it is out of priority may result in the revocation of the approval of RLP-9380 and would also be subject to any applicable penalties under relevant state statutes.
7. All terms and conditions of previous orders for appropriation A-11408 remain in effect unless specifically changed by this Order.
8. 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



Thomas E Riley, P.E., Director

October 14, 2021

A copy of this Order was posted on the Department's website. Copies of this Order and map number 20768 were provided to the Department's field office in Ord, Nebraska. Copies of this Order and map number 20768 were mailed on October 14, 2021, to the following:

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