

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

DISMISSAL OF APPLICATION NEX-7539 FOR A CHANGE OF APPROPRIATION

AND

APPROVAL OF APPLICATION NEX-8959 FOR A CHANGE OF APPROPRIATION

FOR WATER APPROPRIATION D-645B

WATER DIVISION 1-A

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation D-645B is held by Nebraska Public Power District (NPPD).
2. Appropriation D-645B with a priority date of September 2, 1894, authorizes the appropriator to divert water from the Platte River into and through the Gothenburg Canal at its headgate located in the NW<sup>1</sup>SW<sup>1</sup>4 of Section 19, Township 12 North, Range 26 West of the 6<sup>th</sup> P.M. in Lincoln County for the purposes of irrigation and incidental underground storage.
3. On August 20, 2019, NPPD filed application NEX-7539 requesting a temporary change of the location of use and to change the purpose of appropriation D-645B to augment the flow in a specific stream reach for a period of 30 years.
4. On May 11, 2020, NPPD filed application NEX-8959 requesting a temporary change of the location of use of water granted under appropriation D-645B for the purpose of increasing the frequency that a diversion rate or rate of flow specified in another valid appropriation is achieved.
5. On May 11, 2020, NPPD submitted correspondence requesting withdrawal of NEX-7539 conditioned upon the Department accepting application NEX-8959.
6. The Department, as provided by Neb. Rev. Stat. § 37-807, consulted with the Nebraska Game and Parks Commission to ensure that approval would not jeopardize the continued existence of endangered or threatened species or result in the destruction or modification of their critical habitat.
7. The Department published notice of the application as provided in Neb. Rev. Stat. § 46-290(2), as amended. The notice specified that persons could participate either under Option 1 (informally) or Option 2 (formally). There were no objectors.

8. On June 5, 2020, The Central Nebraska Public Power and Irrigation District filed in the Department comments under Option 1 in support of the Department's approval of application NEX-8959. The comments included the following: "Central supports approval of NEX-8959 subject to the lack of a transfer of the storage use appropriations, and the proposed condition regarding how the water is to be administered. Such provisions limit the risks to Central's appropriations and water supply that might otherwise result from a transfer."

#### FINDINGS

1. Application NEX-8959 proposes to transfer a portion of Appropriation D-645B that has been preliminarily canceled by the Department after filing a voluntary relinquishment and not appurtenant to any lands in the amount of 11.89 cubic feet per second (cfs). NPPD cited *Neb. Rev. Stat.* 46-290(5) (b) in the description of stream reach.
2. The stated purpose of the transfer application is to increase the frequency that the diversion rate or rate of flow for valid junior appropriations located within an identified stream reach are achieved. The transfer documents propose to benefit a reach of the North Platte and Platte Rivers beginning at the outlet from Lake McConaughy in the SW<sup>1</sup>/<sub>4</sub> of Section 03, Township 14 North, Range 38 West of the 6th P.M. in Keith County and ending at the headgate of the Dawson County Canal in the NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 18, Township 10 North, Range 23 West of the 6<sup>th</sup> P.M. in Dawson County.
3. NPPD has requested conditions for approval that water transferred under NEX-8959 not be protected against diversion and use by junior appropriators. The application specifically states: "NPPD proposes that any natural flow that is not diverted for use under D-645B as a result of this transfer not be separately tracked, protected, or assigned to any particular appropriation(s) or use(s); but rather, that it be treated and administered the same as all other ordinarily occurring natural flow in the river, and available to other appropriations in accordance with normal administration."
4. NPPD is not proposing to transfer any storage-use appropriations that were coincident with the relinquished portion of D-645B natural flow appropriation proposed to be transferred under NEX-8959.
5. NPPD further states in their application: "NPPD proposes to forego irrigation under D-645B so that the quantity of water available for junior irrigation appropriations in the reach between Lake McConaughy and the Dawson County Canal is increased." NPPD provided a list of junior appropriations within the reach.
6. Transfers for the purpose of increasing the frequency that the diversion rate is available for other valid appropriations is authorized under the provisions of *Neb. Rev. Stat.* § 46-290(5) (b).

## CONCLUSION

The Department has reviewed application NEX-8959 and other pertinent information and determined that the transfer request meets requirements for approval pursuant to *Neb. Rev. Stat. § 46-290 to 46-294*. Upon approval of NEX-8959, application NEX-7539 should be dismissed as requested by the applicant.

## ORDER

### IT IS HEREBY ORDERED:

1. Application NEX-7539 is DISMISSED.
2. Application NEX-8959 for transfer of a portion of Appropriation D-645B is APPROVED.
3. The total amount of water under D-645B subject to NEX-8959 is 11.89 cubic feet per second (cfs); changing from irrigation and incidental underground storage to the purpose of increasing the frequency that a diversion rate or rate of flow specified in other valid appropriations are achieved.
4. Water transferred through NEX-8959 will remain in the river as natural flow available for diversion and use by other valid appropriations and shall not be used for direct irrigation of lands from the Gothenburg Canal.
5. The water transferred under NEX-8959 shall not be protected and will be treated the same as all other ordinarily occurring natural flow in the river.
6. This temporary use is approved for a term of 30 years.
7. When the term of this temporary use has expired NPPD will have 5 years to re-establish a beneficial use of the transferred portion of D-645B.
8. All terms and conditions of previous orders for D-645B remain in effect unless specifically changed by this Order.
9. Nothing in this order should be construed as defining the specific hydrologic benefits of this transfer for the purpose of meeting Integrated Management Plan and Basin-Wide Plan goals.
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. 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



December 13, 2021

Thomas E. Riley, P.E., Director

A copy of this Order was posted on the Department's website, provided to the Department's field offices Bridgeport and North Platte, Nebraska and mailed on December 13, 2021, to the following:

Jeff Shafer  
Nebraska Public Power District  
P.O. Box 608  
York, Nebraska 68647-0608

Nebraska Public Power District  
3400 Newell  
Cozad, Nebraska 69130

Joe L. Citta Jr.  
Nebraska Public Power District  
P.O. Box 499  
Columbus, Nebraska 68602