

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PETITION RLP-9715 TO ADD A LOCATION OF
DIVERSION FOR A PORTION OF WATER APPROPRIATION A-3979A

WATER DIVISION 2-A

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-3979A, right identification number 10147, is held by the Middle Loup Public Power and Irrigation District (District).
2. Appropriation A-3979A has a priority date of October 11, 1946, and authorizes the use of water for irrigation of 6,204.8 acres of land. The water may be diverted from the Middle Loup River through the District's Canal No. 1 and No. 2 headgates located on both banks of the stream in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, Township 19 North, Range 18 West of the 6th P.M. in Custer County. The rate that water may be diverted shall not exceed 58.97 cfs.
3. On August 12, 2022, Gerry Sheets, on behalf of the District, filed petition RLP-9715 in the Department for a permit to add a location of diversion for irrigation of 86.1 acres of land appurtenant to A-3979A. The proposed additional pumpsite will be located on the left bank of the Middle Loup River in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 18 North, Range 17 West of the 6th P.M. in Custer County as shown on map number 21135.
4. *Nebraska Revised Statutes* § 46-250 allows the owner of any ditch, storage reservoir, storage capacity, or other device for appropriating water to petition the Department for a change of the point at which the water under any water appropriation of record is diverted from a natural stream or reservoir.
5. *Nebraska Administrative Code Title 457, Chapter 6, § 002*, requires that the requested change shall not adversely affect any other water appropriator.
6. A review of the Department's records indicates there are currently appropriators upstream of this pump site but downstream of the current point of diversion into Canals No. 1 and No. 2. This would include a junior appropriator along Wagner Creek.

CONCLUSIONS

1. Unconditionally granting this petition could have adverse effects on other appropriators.
2. The additional point of diversion from the Middle Loup River proposed under RLP-9715 is located approximately 13 river miles downstream of the Canal No. 1 and No. 2 headgates. Therefore, to mitigate any potential harm in the future or disruption of long-standing diversion practices by other users on the potentially affected river reach, the right to divert natural flow under appropriation A-3979A should be conditioned such that no harm can come to these potentially affected appropriators.

ORDER

IT IS HEREBY ORDERED that petition RLP-9715 for a permit to change the location of diversion for a portion of appropriation A-3979A is APPROVED subject to the following limitations and conditions:

1. Appropriation A-3979A authorizes the Middle Loup Public Power and Irrigation District the use of water for irrigation of 6,204.8 acres of land. The water may be diverted from the Middle Loup River through the District's Canal No. 1 and No. 2 headgates located on both banks of the stream in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, Township 19 North, Range 18 West of the 6th P.M. in Custer County. The rate that water may be diverted shall not exceed 58.97 cfs.
2. Appropriation A-3979A through petition RLP-9715 authorizes the District the use of water for irrigation of no more than 86.1 acres of land appurtenant to A-3979A. The water shall be measured at a point of diversion located on the left bank of the Middle Loup River in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 18 North, Range 17 West of the 6th P.M. in Custer County. The rate that water may be diverted shall not exceed 0.97 cfs (435 gallons per minute).
3. The combined instantaneous diversion rate through the headgates of Canal No. 1 and No. 2 and the additional pumpsite granted under RLP-9715 may not exceed 58.97 cfs of natural flow for A-3979A.
4. This approval does not allow the appropriator to divert more water or to irrigate additional lands than would otherwise be permitted. If there is an administrative call on the Middle Loup River, below the new pumpsite, there must be natural flow available at the Canal No. 1 and No. 2 headgates in sufficient quantity to match the amount of available natural flow that is diverted at the pumpsite or no diversion under petition RLP-9715 may be made.
5. The District must obtain written permission from the Department prior to utilizing the diversion at the new pumpsite for appropriation A-3979A through petition RLP-9715.
6. The District may not call for natural flow under A-3979A through petition RLP-9715 at the new pumpsite.

7. In the event that there is insufficient flow at the Canal No. 1 and No. 2 headgates, the Department reserves the right to limit or prevent diversion at the point of diversion under A-3979A through petition RLP-9715 in order to prevent harm to other appropriators.
8. The Middle Loup Public Power and Irrigation District will timely furnish to the Department any requested diversion data or other operational information relative to the operation of the new pumpsite approved under RLP-9715.
9. All terms and conditions of appropriation A-3979A remain in effect unless specifically changed by this Order.
10. 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



March 13, 2023

Thomas E Riley, P.E., Director

A copy of this Order was posted on the Department's website, provided to the Department's field office in Ord, Nebraska and mailed to the following:

Gerry D. Sheets, Manager
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