

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF PARTIAL CANCELLATION AND REASSIGNMENT

OF WATER APPROPRIATIONS D-645B AND A-2726

WATER DIVISION 1-A

Background

1. Appropriations D-645B and A-2726 are held by Nebraska Public Power District (NPPD) to divert water from the Platte River and Sutherland Reservoir into and through the Gothenburg Canal at its headgate located in Section 19, Township 12 North, Range 26 West of the 6th P.M. in Lincoln County for incidental underground storage and irrigation:

<u>Appropriation Number</u>	<u>Priority Date</u>	<u>Source</u>	<u>Permitted Acres</u>	<u>Grant in CFS¹</u>
D-645B	09-22-1894	Platte River	17,384	238.43
A-2726	03-31-1937	Sutherland Reservoir	17,637	--

¹ Cubic feet per second

² Provides supplemental water for irrigation under D-645A and D-645B

2. On January 11, 2008, NPPD and individual landowners filed in the Department of Natural Resources (Department) Relinquishments of Surface Water Appropriations in Part REL-1433 and REL-1435 relinquishing the right to divert a portion of the water under D-645B and A-2726 for the land described below:

REL-1433 (A-2726)

REL-1435 (D-645B)

Township 11 North, Range 24 West of the
6th P.M. in Dawson County

	<u>Acres</u>
Section 8: 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	160.0

3. On July 6, 2009, NPPD and individual landowners filed in the Department Relinquishments of Surface Water Appropriations in Part REL-1695 and REL-1696 relinquishing the right to divert a portion of the water under D-645B and A-2726 for the land described below:

REL-1695 (D-645B)

REL-1696 (A-2726)

Township 11 North, Range 23 West of the		
<u>6th P.M. in Dawson County</u>		<u>Acres</u>
Section 15:	SW $\frac{1}{4}$ SW $\frac{1}{4}$	6.0
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	17.0
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	38.0
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	29.0
Section 16:	NW $\frac{1}{4}$ SE $\frac{1}{4}$	21.8
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	2.0
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	28.6
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>39.0</u>
TOTAL		181.4

4. On January 11, 2008, NPPD filed in the Department Notification of Assignment of Rights, AOR-1441, for D-645B and A-2726 to reassign a portion of these water appropriations previously relinquished to the land described below:

AOR-1441 (D-645B and A-2726)

Township 12 North, Range 24 West of the		
<u>6th P.M. in Dawson County</u>		<u>Acres</u>
Section 35:	SE $\frac{1}{4}$ NW $\frac{1}{4}$	7.0

5. On March 30, 2009, NPPD filed in the Department Notification of Assignment of Rights, AOR-1660, for D-645B and A-2726 to reassign a portion of these water appropriations previously relinquished to the land described below:

AOR-1660 (D-645B and A-2726)

Township 11 North, Range 23 West of the		
<u>6th P.M. in Dawson County</u>		<u>Acres</u>
Section 21:	NW $\frac{1}{4}$ NE $\frac{1}{4}$	19.9
	NE $\frac{1}{4}$ NE $\frac{1}{4}$	33.4
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	2.6
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>20.1</u>
TOTAL		76.0

6. On July 6, 2009, NPPD filed in the Department Notification of Assignment of Rights, AOR-1692, for D-645B and A-2726 to reassign a portion of these water appropriations previously relinquished to the land described below:

AOR-1692 (D-645B and A-2726)

Township 12 North, Range 26 West of the
6th P.M. in Lincoln County Acres

Section 27:	SW $\frac{1}{4}$ SW $\frac{1}{4}$	10.9
Section 28:	SE $\frac{1}{4}$ SE $\frac{1}{4}$	3.6
Section 34:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	14.0
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	15.2

Township 11 North, Range 23 West of the
6th P.M. in Dawson County Acres

Section 16:	NE $\frac{1}{4}$ SW $\frac{1}{4}$	38.2
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	39.2
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	6.0
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	8.0

Township 11 North, Range 22 West of the
6th P.M. in Dawson County Acres

Section 19:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	20.4
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	18.2
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	7.3
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	9.7
	TOTAL	190.7

IT IS HEREBY ORDERED:

1. Part of appropriations D-645B in the amount of 9.7 cfs for irrigation and incidental underground storage under U-4; and A-2726 for use upon the land described below and shown on aerial photographs filed with REL-1433, REL-1435, REL-1695 and REL-1696 are CANCELLED.

REL-1433 (A-2726)

REL-1435 (D-645B)

Township 11 North, Range 24 West of the
6th P.M. in Dawson County Acres

Section 8:	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
	SUB TOTAL	160.0

REL-1695 (D-645B)

REL-1696 (A-2726)

Township 11 North, Range 23 West of the
6th P.M. in Dawson County

	Acres
Section 15: SW $\frac{1}{4}$ SW $\frac{1}{4}$	6.0
SE $\frac{1}{4}$ SW $\frac{1}{4}$	17.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	38.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	29.0
Section 16: NW $\frac{1}{4}$ SE $\frac{1}{4}$	21.8
NE $\frac{1}{4}$ SE $\frac{1}{4}$	2.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	28.6
SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>39.0</u>
SUB TOTAL	<u>181.4</u>

TOTAL RELINQUISHED 341.4

2. The Department acknowledges the Notification of Assignment of Rights, AOR-1441 filed by NPPD on January 11, 2008, to reassign a portion of the appropriations for D-645B and A-2726 previously relinquished¹ to the land described below. The location of the land is shown on the aerial photographs submitted with AOR-1441.

AOR-1441 (D-645B and A-2726)

Township 12 North, Range 24 West of the
6th P.M. in Dawson County

Section 35: SE $\frac{1}{4}$ NW $\frac{1}{4}$	7.0
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3. The Department acknowledges the Notification of Assignment of Rights, AOR-1660 filed by NPPD on March 30, 2009, to reassign a portion of the appropriations for D-645B and A-2726 previously relinquished to the land described below. The location of the land is shown on the aerial photographs submitted with AOR-1660.

AOR-1660 (D-645B and A-2726)

Township 11 North, Range 23 West of the
6th P.M. in Dawson County

Section 21: NW $\frac{1}{4}$ NE $\frac{1}{4}$	19.9
NE $\frac{1}{4}$ NE $\frac{1}{4}$	33.4
SW $\frac{1}{4}$ NE $\frac{1}{4}$	2.6
SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>20.1</u>
SUB TOTAL	76.0

¹ NPPD may reassign acres relinquished within 5 years of the Order of Cancellation by the Department. The acres with the earliest cancellation date are the first to be reassigned.

4. The Department acknowledges the Notification of Assignment of Rights, AOR-1692 filed by NPPD on July 6, 2009, to reassign a portion of the appropriations for D-645B and A-2726 previously relinquished to the land described below. The location of the land is shown on the aerial photographs submitted with AOR-1692.

AOR-1692 (D-645B and A-2726)

Township 12 North, Range 26 West of the
6th P.M. in Lincoln County Acres

Section 27:	SW $\frac{1}{4}$ SW $\frac{1}{4}$	10.9
Section 28:	SE $\frac{1}{4}$ SE $\frac{1}{4}$	3.6
Section 34:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	14.0
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	15.2

Township 11 North, Range 23 West of the
6th P.M. in Dawson County Acres

Section 16:	NE $\frac{1}{4}$ SW $\frac{1}{4}$	38.2
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	39.2
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	6.0
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	8.0

Township 11 North, Range 22 West of the
6th P.M. in Dawson County Acres

Section 19:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	20.4
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	18.2
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	7.3
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	9.7

SUB TOTAL 190.7

TOTAL ASSIGNED 273.7

With REL-1433, REL-1435, REL-1695 and REL-1696, NPPD has relinquished 341.4 acres under D-645B and A-2726, but only reassigned 273.7 acres under those appropriations with AOR-1441 and AOR-1660 and AOR-1692. This leaves a balance of 67.7 acres that will not be served under the appropriations.

5. Water appropriation D-645B shall now be shown in Department records as a permit to divert 237.50 cfs of water for incidental underground storage (U-4) and irrigation of 17,316.30 acres from the Platte River through the Gothenburg Canal at its headgate.
6. Water appropriation A-2726 shall now be shown in Department records as a permit to supply water for incidental underground storage (U-4) and supplemental irrigation of 17,569.30 acres (of which 17,316.30 are supplemental to land under D-645B) from the Sutherland Reservoir through the Gothenburg Canal.

7. Land entitled to irrigation from the Platte River and the Sutherland Reservoir via the Gothenburg Canal are described on the Attachment which is made a part of this Order.
8. All terms and conditions of appropriations D-645B and A-2726 remain in effect unless specifically changed by this Order.
9. The appropriator must comply with all relevant statutes. This includes, but is not limited to, the following:
 - a. Receiving approval prior to taking any action that changes the location of the point of diversion, a transfer of the location of the place of use, a relinquishment of a portion of the appropriation, the type of use, or the type of appropriation.
 - b. Notify the Department of Natural Resources of any reassignment of relinquished portions of an appropriation.
 - c. Comply with all relevant notices and orders of the Department.

Additional Information

Failure to comply with all laws and regulations pertaining to surface water appropriations and any orders issued by the Director of the Department of Natural Resources may result in the cancellation of the 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 five consecutive years may result in cancellation of the appropriation.

DEPARTMENT OF NATURAL RESOURCES

November 23 , 2009

/s/
Brian P. Dunnigan, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this order may request a contested case hearing in accordance with the Nebraska Administrative Procedures Act (Sections 84-901 et. seq. RSS) and the Department's Rules of Practice and Procedure (454 N.A.C. Chapter 007). The request must be received by the Department at its Lincoln office (301 Centennial Mall South, 4th Floor State Office Building, Lincoln, NE 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of \$10.

A copy of this Order was posted on the Department's website. Copies of this Order and Attachment A were provided to the Department's field offices in Bridgeport, and North Platte Nebraska. Copies of this Order and Attachment A were mailed on November _____, 2009, to the following:

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