

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER NUNC PRO TUNC IN THE MATTER OF THE JANUARY 10, 1997,

ORDER APPROVING MAP NUMBER 15324 AND

APPROVAL OF EXT-1894 AND RLP-1895 FOR WATER APPROPRIATION A-17550

WATER DIVISION 2-F

Background

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-17550 is held by Foley Family Limited Partnership.
2. Appropriation A-17550 has a priority date of December 11, 1996, and authorizes the use of water for irrigation of 70.0 acres of land. The water may be diverted from the Missouri at points of diversion located on the north bank of the stream in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1, Township 33 North, Range 1 West of the 6th P.M.; the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 33 North, Range 1 East of the 6th P.M. in Cedar County. The rate that water may be diverted shall not exceed one cubic foot per second (cfs) for every 70 acres irrigated at a maximum combined rate of 1.0 cfs from all points of diversion (70 gallons per minute).
3. A review of the Department's records indicates that a scrivener's error was made on in the description of the appurtenant land authorized for irrigation in the Order approving map number 15324, dated January 10, 1997, and as described in Column A below. The appurtenant land was correctly plotted on map number 15324 and is described in Column B.

<u>COLUMN A</u>		<u>COLUMN B</u>	
Township 33 North, Range 1 East of the 6 th P.M., Cedar County Acres		Township 33 North, Range 1 West of the 6 th P.M., Cedar County Acres	
Section 1: NW $\frac{1}{4}$ SE $\frac{1}{4}$	12.0	Section 1: NW $\frac{1}{4}$ SE $\frac{1}{4}$	12.0
NE $\frac{1}{4}$ SE $\frac{1}{4}$	38.0	NE $\frac{1}{4}$ SE $\frac{1}{4}$	38.0
Township 33 North, Range 1 West of the 6 th P.M., Cedar County Acres		Township 33 North, Range 1 East of the 6 th P.M., Cedar County Acres	
Section 5: SW $\frac{1}{4}$ NE $\frac{1}{4}$	2.0	Section 5: SW $\frac{1}{4}$ NE $\frac{1}{4}$	2.0
NE $\frac{1}{4}$ NW $\frac{1}{4}$	1.0	NE $\frac{1}{4}$ SW $\frac{1}{4}$	1.0
NW $\frac{1}{4}$ SE $\frac{1}{4}$	13.0	NW $\frac{1}{4}$ SE $\frac{1}{4}$	13.0
NE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>4.0</u>	NE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>4.0</u>
TOTAL	70.0	TOTAL	70.0

4. On March 3, 2010, Robert Foley, on behalf of Foley Family Limited Partnership, filed application EXT-1894 for a permit for an expedited transfer of the location of use, RLP-1895 for a permit to change the location of diversion and map number 17618 showing the location of diversion and the land proposed to be irrigated under appropriation A-17550 through EXT-1894.

Order

IT IS HEREBY ORDERED:

1. Petition RLP-1895 for a permit to change the location of diversion, application EXT-1894 for a permit for an expedited transfer of the location of use and map number 17618 are APPROVED.
2. Appropriation A-17550 through petition RLP-1895 is now A-17550R.
3. Appropriation A-17550R, through transfer EXT-1894, authorizes the use of water to irrigate 70.0 acres of land described below and depicted on map number 17618, which is made a part of this Order. The water may be diverted from the Missouri River at points of diversion located on the left bank of the stream in the SW¹/₄SE¹/₄ and the NE¹/₄SE¹/₄ of Section 5, Township 33 North, Range 1 East of the 6th P.M. in Cedar County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum combined rate of 1.0 cfs from all points of diversion (449 gallons per minute). The total combined volume may not exceed 3 acre-feet per irrigated acre per year.

Township 33 North, Range 1 East of the
6th P.M. in Cedar County Acres

Section 5:	NW ¹ / ₄ NW ¹ / ₄	1.5
	SW ¹ / ₄ NW ¹ / ₄	2.7
	SW ¹ / ₄ SW ¹ / ₄	2.6
	SE ¹ / ₄ SW ¹ / ₄	13.7
	NW ¹ / ₄ SE ¹ / ₄	1.1
	SW ¹ / ₄ SE ¹ / ₄	10.7
Section 6:	SW ¹ / ₄ NW ¹ / ₄	19.7
	SE ¹ / ₄ NW ¹ / ₄	1.8
	NE ¹ / ₄ NE ¹ / ₄	4.9
	SE ¹ / ₄ NE ¹ / ₄	10.3
	NW ¹ / ₄ SW ¹ / ₄	<u>1.0</u>
	TOTAL	70.0

4. All terms and conditions of appropriation A-17550 remain in effect unless specifically changed by this Order.

5. 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

April 27, 2010



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, Nebraska 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 map number 17618 were provided to the Department's field office in Norfolk, Nebraska. Copies of this Order and map number 17618 were mailed on April 27, 2010, to the following:

Don Foley
Foley Family Limited Partnership
PO Box 7
Tyndall, South Dakota 57066