STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Appropriation A-2664.	)	Case 2013-35-CC-1
	)	
	)	ORDER OF CANCELLATION
Water Division 1-F.	)	

This matter came on for consideration before the Director of the Department of Natural Resources (Department) pursuant to *Neb. Rev. Stat.* §§ 46-229 to 46-229.06.

STATEMENT OF THE CASE

On June 28, 2013, the Department issued a Notice of Preliminary Determination under the provisions of *Neb. Rev. Stat.* §§ 46-229.02 and 46-229.03 to landowners Donald and Michelle Lechner, Vostrel Prairie Farms, LLC, and the Nebraska Department of Roads. Carla Wostrel for Vostrel Prairie Farms, LLC filed a contest in the Department regarding the lands owned by Vostrel Prairie Farms, LLC. The Lechner's and the Nebraska Department of Roads did not file a contest.

Following review of the Vostrel Contest, Department staff submitted a Requests for Admission to Vostrel Prairie Farms, LLC and a response was filed. Department Legal Counsel then filed a motion requesting a hearing. A hearing was held on May 27, 2014, under the provisions of *Neb. Rev. Stat.* §§ 46-229 to 46-229.06.

FINDINGS OF FACT

1. Water appropriation A-2664 is a permit currently shown in the Department's records with a priority date of November 27, 1936, to divert 0.57 cubic foot per second (cfs) of water from Weeping Water Creek at a point of diversion located in the SW¼NW¼ of Section 36, Township 10 North, Range 13 East of the 6th P.M. in Cass County, for irrigation of the following described lands (Exhibit 2):

Township 10 North, Range 13 East of the 6th P.M. in Cass County		Acres
Section 36:	NW¼SW¼	40
	SW¼SW¼	40
	TOTAL	80

2. The Lechner's own Lot 10 which is part of the west half of the SW¼ (Exhibit 5), Vostrel Prairie Farm LLC owns Lot 11 which is 56.43 acres of the west half SW¼ (Exhibits 5 and 6), and the Nebraska Department of Roads also owns some lands in the west half of the SW¼ (Exhibit 9).

3. Based upon a verified field investigation report, a Notice of Preliminary Determination was issued on June 28, 2013, in accordance with *Neb. Rev. Stat.* §§ 46-229.02 and 46-229.03 stating that it appeared that all of the water appropriation for irrigation of lands described above had not been used for more than five consecutive years and that the Department knew of no reason that constitutes sufficient cause as provided in *Neb. Rev. Stat.* § 46-229.04.

3. A contest was filed on July 29, 2013, by Carla Wostrel for Vostrel Prairie Farms, LLC.

4. Department legal counsel filed a motion for a hearing on April 10, 2014.

5. Notice of a hearing was issued on April 14, 2014, in accordance with *Neb. Rev. Stat.* §§ 46-229.02(5) and 46-229.03.

6. A hearing was held on May 27, 2014, as provided by *Neb. Rev. Stat.* § 46-229.04. The hearing officer made note in the hearing record that she had received a telephone voice message from Carla Wostrel asking about the procedure to request a continuance of hearing. The hearing officer returned the call and left a voice message informing Ms. Wostrel that she would need to file a written request. No request was received.

7. Two Department staff were called as witnesses. A verified field investigation report was entered into evidence as Exhibit 3.

8. No one appeared at the hearing to show cause why the water appropriation should not be cancelled.

CONCLUSIONS OF LAW

It is CONCLUDED that there are two processes in play for this one water appropriation. The Lechner's and the Nebraska Department of Roads did not file a contest and the process to be followed in such instance is to cancel the appropriation or part thereof under *Neb. Rev. Stat.* § 46-229.02(2). For that portion of the appropriation owned by Vostrel Prairie Farms LLC, the controlling statute is *Neb. Rev. Stat.* § 46-229.04(1) that states in part, "If no person appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled." In both instances, the appropriation should be cancelled. The two processes should be joined in this instance for purposes of this order.

It is therefore ORDERED that water appropriation A-2664 in the amount of 0.57 cfs from Weeping Water Creek for irrigation of lands described in paragraph 1 is hereby CANCELLED.

DEPARTMENT OF NATURAL RESOURCES

Dated: June 11, 2014

Brian P. Dunnigan, P.E., Director

A copy of this Order was delivered on June 11, 2014, to the Department's Field Office, Lincoln, Nebraska. A copy of this Order and Appeal Procedures were mailed on June 11, 2014, to:

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