

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Preliminary) Case #006-09CC
Determination of Nonuse of)
Surface Water Appropriation) ORDER SETTING ASIDE PROCEEDING
A-4164.)
Water Division 2-A.)

Background

The above captioned matter comes before the Director of the Department of Natural Resources. This is a proceeding held under the provisions of Neb. Rev. Stat. §§ 46-229 to 46-229.04.

Findings of Fact

The Director, after an examination of the record, makes the following FINDINGS OF FACT:

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-4164 is held by David Erickson.
2. Appropriation A-4164 authorizes the use of water for irrigation of the 77 acres of land described below. The water may be diverted from the Cedar River at points of diversion located on the north bank of the stream in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, and on the south bank of the stream in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, both in Township 21 North, Range 11 West of the 6th P.M. in Wheeler County. The rate that water may be diverted shall not exceed 0.2 cubic foot per second (cfs) of water.

Township 21 North, Range 11 West of the
6th P.M. in Wheeler County Acres

Section 29: NW $\frac{1}{4}$ SW $\frac{1}{4}$	3.0
NE $\frac{1}{4}$ SW $\frac{1}{4}$	5.0
SW $\frac{1}{4}$ SW $\frac{1}{4}$	31.0
SE $\frac{1}{4}$ SW $\frac{1}{4}$	36.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	<u>2.0</u>
TOTAL	77.0

3. On March 20, 2009, the Department issued a Notice of Preliminary Determination of Nonuse of appropriation A-4164. The notice was mailed by certified mail on March 23, 2009, to David Erickson, 121 Scuffleboro Road, Eatonton, Georgia 31024, with a copy mailed to Bob Bernt, 82228 499th Avenue, Spalding, Nebraska 68665.
4. On April 6, 2009, David Erickson filed a Contest of preliminary Determination of Nonuse in the Department (Exhibit 7).

5. On April 6, 2009, the Department issued a notice of hearing scheduling the hearing for May 6, 2009. The hearing on A-4164 was to be combined with the hearing on A-15840. On May 6, 2009, the hearing officer received an email from Mr. Erickson requesting the hearing be rescheduled until June 2 (Exhibit 2) and stating that Mr. Erickson would participate by telephone. On May 20, 2009, the Department issued a Reschedule Hearing Order setting the hearing by telephone for June 2, 2009 (Exhibit 1). The hearing was held on June 2, 2009. Mr. Erickson did not appear.

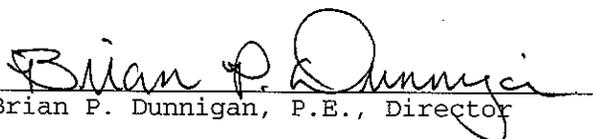
Conclusions of Law

After review by the Director, it is apparent that errors were made by the Department in this proceeding sufficient to necessitate setting aside the entire proceeding.

It is therefore ORDERED that this proceeding is set aside.

DEPARTMENT OF NATURAL RESOURCES

March 17, 2010


Brian P. Dunnigan, P.E., Director

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's field office in Ord, Nebraska, and to the Department's Attorney, Jean Angell. A copy of this Order was mailed on March 18, 2010, to the following:

David Erickson
121 Scuffleboro Road
Eatonton, Georgia 31024