

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-11047

CASE NUMBER 2013-5-CC-1

WATER DIVISION 2-C

1. Records on file in the Department of Natural Resources (Department) show that Carma James owns a portion of the land located in Section 19 and Section 20, both in Township 32 North, Range 19 West of the 6<sup>th</sup> P.M. in Keya Paha County appurtenant to appropriation A-11047.
2. Records on file in the Department show that the Sandra J. Geib Living Trust owns the land located in Lot 6 of Section 19, Township 32 North, Range 19 West of the 6<sup>th</sup> P.M. in Keya Paha County appurtenant to appropriation A-11047.
3. A search of the records of the Keya Paha County Register of Deeds indicates that a portion of the land appurtenant to appropriation A-11047 is owned by the Nebraska Department of Roads.
4. A review of the Department's records indicates an error was made on the Order dated November 30, 1967. According to a survey dated April 23, 1936, the correct location of one of the points of diversion is **Lot 2 of Section 30**, Township 32 North, Range 19 West of the 6<sup>th</sup> P.M. in Keya Paha County rather than **Lot 6 of Section 19**, Township 32 North, Range 19 West of the 6<sup>th</sup> P.M. in Keya Paha County.
5. Appropriation A-11047 has a priority date of February 23, 1967, and authorizes the use of water for irrigation of the 165.4 acres of land described below. The water may be diverted from the Niobrara River at points of diversion located on the left bank of the stream in the Lot 2 of Section 30 and Lot 7 of Section 19, both in Township 32 North, Range 19 West of the 6<sup>th</sup> P.M. in Keya Paha County. The rate that water may be diverted shall not exceed 2.36 cubic feet per second (cfs) from all points of diversion.

Township 32 North, Range 19 West of the 6 <sup>th</sup> P.M. in Keya Paha County	Acres	Township 32 North, Range 19 West of the 6 <sup>th</sup> P.M. in Keya Paha County	Acres
Section 19: SE <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	9.9	Section 20 NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	6.0
SW <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	32.7	NE <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	9.5
SE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	22.6	TOTAL	165.4
NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	33.0		
NE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	3.5		
Lot 6	25.8		
Lot 7	22.4		

6. The Department has received information concerning the use of surface water appropriation A-11047 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.
7. On March 26, 2013, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-11047 had not been irrigated for at least five years:

Township 32 North, Range 19 West of the 6 <sup>th</sup> P.M. in Keya Paha County	Acres
Section 19: SE $\frac{1}{4}$ NW $\frac{1}{4}$	0.7
SW $\frac{1}{4}$ NE $\frac{1}{4}$	1.9
NW $\frac{1}{4}$ SE $\frac{1}{4}$	3.7
Lot 6	7.7
TOTAL	14.0

8. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Carma James, 44567 Riverview Road, Springview, Nebraska 68778; Sandra J. Geib Benson, Trustee, Sandra J. Geib Living Trust, 44469 State Highway 7, Springview, Nebraska 68778; and Robert Frickel, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska 68509.
9. On April 15, 2013, Sandra J. Benson filed in the Department a contest of the Preliminary Determination of Nonuse.
10. On April 24, 2013, Department staff filed a reply to the response to the Preliminary Determination of Nonuse.
11. On April 29, 2013, the Department issued a Notice of Hearing.
12. On May 13, 2013, Sandra J. Benson filed in the Department correspondence withdrawing her contest.
13. On May 17, 2013, the Department issued an Order setting aside the contest and cancelling the hearing.

ORDER

1. Part of appropriation A-11047 at the rate of 0.20 cfs for use upon the land described below is CANCELLED.

Township 32 North, Range 19 West of the 6 <sup>th</sup> P.M. in Keya Paha County	Acres	Township 32 North, Range 19 West of the 6 <sup>th</sup> P.M. in Keya Paha County	Acres
Section 19: SE $\frac{1}{4}$ NW $\frac{1}{4}$	0.7	Section 19: NW $\frac{1}{4}$ SE $\frac{1}{4}$	3.7
SW $\frac{1}{4}$ NE $\frac{1}{4}$	1.9	Lot 6	7.7
		TOTAL	14.0

2. Appropriation A-11047 now authorizes the appropriator to divert water from the Niobrara River to irrigate the 151.4 acres of land described below and depicted on map number 18279 which is made a part of this Order. The points of diversion remain on the left bank of the stream in Lot 2 of Section 30 and Lot 7 of Section 19, both in Township 32 North, Range 19 West of the 6<sup>th</sup> P.M. in Keya Paha County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum combined rate of 2.16 cfs (969 gallons per minute) from all points of diversion.

<u>Township 32 North, Range 19 West of the 6<sup>th</sup> P.M. in Keya Paha County</u>		<u>Acres</u>
Section 19:	SE $\frac{1}{4}$ NW $\frac{1}{4}$	9.2
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	30.8
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	22.6
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	29.3
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	3.5
	Lot 6	18.1
	Lot 7	22.4
Section 20:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	6.0
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	<u>9.5</u>
	TOTAL	151.4

3. All terms and conditions of appropriation A-11047 remain in effect unless specifically changed by this Order.
4. 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 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 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. If you are not able to divert sufficient amounts of water, you may call for water by contacting your local field office.

DEPARTMENT OF NATURAL RESOURCES

July 10, 2013

  
Brian P. Dunnigan, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 18279 were provided to the Department's docket clerk and field office in Ord, Nebraska. Copies of this Order and map number 18279 were mailed on July 10, 2012, to the following:

Carma James  
44567 Riverview Road  
Springview, Nebraska 68778

Sandra J. Geib Benson, Trustee  
Sandra J. Geib Living Trust  
P.O. Box 369  
Bassett, Nebraska 68714

Robert Frickel  
Nebraska Department of Roads  
P.O. Box 94759  
Lincoln, Nebraska 68509  
INTERAGENCY