

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN FULL OF WATER APPROPRIATION A-5093

CASE NUMBER 2012-42-CC-1

WATER DIVISION 2-A

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-5093 is divided into two distinct parcels owned by Jerry A. and Diane R. Pospisil and by Michael J. and Lucille G. Rudloff.
2. Appropriation A-5093 authorizes the use of water for irrigation of the 31 acres of land described below. The water may be diverted from Bazile Creek at points of diversion located on the north and west banks of the stream in the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 16, Township 29 North, Range 5 West of the 6th P.M. in Knox County. The rate that water may be diverted shall not exceed 0.22 cubic foot per second (cfs) from all points of diversion.

Township 29 North, Range 5 West of the 6 th P.M. in Knox County	Acres
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Section 16: SW $\frac{1}{2}$ NW $\frac{1}{4}$	31
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3. The Department has received information concerning the use of surface water appropriation A-5093 that indicates the appropriation has not been used for its required purpose for more than five consecutive years.
4. On October 23, 2013, the Department issued a Notice of Preliminary Determination of Nonuse of appropriation A-5093. The notice was delivered by certified mail to Jerry A. and Diane R. Pospisil, P.O. Box 134, Creighton, Nebraska 68729; and to Michael J. and Lucille G. Rudloff, 87374 530 Avenue, Creighton, Nebraska 68729-3945.
5. Jerry Pospisil and Diane Pospisil filed a contest of the Preliminary Determination of Nonuse. The contest was filed in a timely manner prior to the November 22, 2012, deadline.
6. The Department replied to the contest and a Hearing was scheduled.
7. On January 30, 2013, and February 5, 2013, Jerry Pospisil and Diane Pospisil, respectively, withdrew from the proceedings.

8. On February 8, 2013, an Order Setting Aside the Contest was entered cancelling the prehearing and setting aside the proceedings.
9. At this time there is no contest of the Department's findings that appropriation A-5093 has not been used for its required purpose for more than five consecutive years.
10. *Nebraska Revised Statutes* § 46-229.02 provides that an appropriation not used for a beneficial purpose for more than five consecutive years may be cancelled.

ORDER

IT IS HEREBY ORDERED appropriation A-5093 is CANCELLED.

DEPARTMENT OF NATURAL RESOURCES

February 26, 2013


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 docket clerk and field office in Ord, Nebraska. A copy of this Order was mailed on February 26, 2013, to the following:

Jerry A. and Diane R. Pospisil
P.O. Box 134
Creighton, Nebraska 68729

Michael J. and Lucille G. Rudloff
87374 530 Avenue
Creighton, Nebraska 68729-3945