

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-7609

CASE NUMBER 2013-28-PD-1

WATER DIVISION 2-F

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-7609 is held by Kevin Klabenes.
2. Appropriation A-7609 with a priority date of May 31, 1955, authorizes the use of water for irrigation of the 61.0 acres of land described below. The water may be diverted from the West Branch of Bazile Creek at points of diversion located on both banks of the stream in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 17, Township 28 North, Range 5 West of the 6th P.M. in Antelope County. Water diverted shall not exceed the ratio of one cubic foot per second (cfs) for every 140 acres irrigated at a maximum combined rate of 0.44 cfs from all points of diversion.

Township 28 North, Range 5 West of the 6 th P.M. in Antelope County		Acres
Section 17:	NE $\frac{1}{4}$ NE $\frac{1}{4}$	39.0
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>22.0</u>
	TOTAL	61.0

3. The Department has received information concerning the use of surface water appropriation A-7609 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.
4. On June 13, 2013, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-7609 had not been irrigated for at least five years:

Township 28 North, Range 5 West of the 6 th P.M. in Antelope County		Acres
Section 17:	NE $\frac{1}{4}$ NE $\frac{1}{4}$	4.9
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>5.9</u>
	TOTAL	10.8

5. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Kevin Klabenes, 52940 868th Road, Creighton, Nebraska 68729.
6. No contest of the Preliminary Determination of Nonuse was received in the Department.

ORDER

1. Part of appropriation A-7609 at the rate of 0.08 cfs for use upon the land described below is CANCELLED.

<u>Township 28 North, Range 5 West of the 6th P.M. in Antelope County</u>		<u>Acres</u>
Section 17:	NE $\frac{1}{4}$ NE $\frac{1}{4}$	4.9
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>5.9</u>
	TOTAL	10.8

2. Appropriation A-7609 now authorizes the appropriator to divert water from the West Branch of Bazile Creek to irrigate the 50.2 acres of land described below and depicted on map number 18540 which is made a part of this Order. The points of diversion remain in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 17, Township 28 North, Range 5 West of the 6th P.M. in Antelope County. The rate that water may be diverted shall not exceed one cfs for every 140 acres irrigated at a maximum combined rate of 0.36 cfs (162 gallons per minute) from all points of diversion.

<u>Township 28 North, Range 5 West of the 6th P.M. in Antelope County</u>		<u>Acres</u>
Section 17:	NE $\frac{1}{4}$ NE $\frac{1}{4}$	34.1
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>16.1</u>
	TOTAL	50.2

3. All terms and conditions of appropriation A-7609 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

September 4, 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 18540 were provided to the Department's docket clerk and field office in Norfolk, Nebraska. Copies of this Order and map number 18540 were mailed on September 4, 2013, to the following:

Kevin Klabenes
52940 868th Road
Creighton, Nebraska 68729