

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-6873

CASE NUMBER 2014-30-PD-1

WATER DIVISION 1-F

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-6873 is held by John F. and Judith M. Stukenholtz, Trustees of the John F. and Judith M. Stukenholtz Revocable Trust Dated February 15, 2013.
2. Records on file in the Department show that a portion of land located in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 31, Township 7 North, Range 14 East of the 6th P.M. in Otoe County appurtenant to appropriation A-6873 is owned by Stukenholtz Farms, LLC.
3. Records on file in the Department show that a portion of land located in the W $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, Township 7 North, Range 14 East of the 6th P.M. in Otoe County appurtenant to appropriation A-6873 is owned by Alan Stukenholtz.
4. Appropriation A-6873 with a priority date of November 26, 1954, authorizes the use of water for irrigation of the 108.0 acres of land described below. The water may be diverted from Rock Creek at points of diversion located on both banks of the stream in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, Township 7 North, Range 14 East of the 6th P.M. in Otoe 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 0.77 cfs from all points of diversion.

Township 7 North, Range 14 East of the 6 th P.M. in Otoe County	Acres
Section 31: NE $\frac{1}{4}$ NE $\frac{1}{4}$	34.0
Section 32: NW $\frac{1}{4}$ NW $\frac{1}{4}$	36.0
SW $\frac{1}{4}$ NW $\frac{1}{4}$	38.0
TOTAL	108.0

5. The Department has received information concerning the use of surface water appropriation A-6873 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.

6. On September 4, 2014, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-6873 had not been irrigated for at least five years:

<u>Township 7 North, Range 14 East of the 6th P.M. in Otoe County</u>	<u>Acres</u>
Section 31: NE $\frac{1}{4}$ NE $\frac{1}{4}$	34.0
Section 32: NW $\frac{1}{4}$ NW $\frac{1}{4}$	10.6
SW $\frac{1}{4}$ NW $\frac{1}{4}$	<u>10.3</u>
TOTAL	54.9

7. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Alan Stukenholtz, 6284 R Road, Nebraska City, Nebraska 68410; John F. & Judith M. Stukenholtz, Trustees, 1515 South 66th Road, Nebraska City, Nebraska 68410; and Marc F. Stukenholtz, Stukenholtz Farms, LLC, 1906 South 66th Road, Nebraska City, Nebraska 68410.
8. On September 30, 2014, the notice addressed to Marc F. Stukenholtz, Stukenholtz Farms, LLC, 1906 South 66th Road, Nebraska City, Nebraska 68410 was returned, unclaimed.
9. On November 18, 2014, the Department issued a second Notice of Preliminary Determination of Nonuse of appropriation A-6873. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Otoe County Sheriff James Gress, 1021 Central Avenue, Nebraska City, Nebraska 68410.
10. On November 24, 2014, Greg Kotschwar personally delivered to Marc Stukenholtz one Notice of Preliminary Determination of Nonuse of appropriation A-6873.
11. No contest of the Preliminary Determination of Nonuse was received in the Department.

ORDER

1. Part of appropriation A-6873 at the rate of 0.39 cfs for use upon the land described below is CANCELLED.

<u>Township 7 North, Range 14 East of the 6th P.M. in Otoe County</u>	<u>Acres</u>
Section 31: NE $\frac{1}{4}$ NE $\frac{1}{4}$	34.0
Section 32: NW $\frac{1}{4}$ NW $\frac{1}{4}$	10.6
SW $\frac{1}{4}$ NW $\frac{1}{4}$	<u>10.3</u>
TOTAL	54.9

2. Appropriation A-6873 now authorizes the appropriator to divert water from Rock Creek to irrigate the 53.1 acres of land described below and depicted on map number 19025 which is made a part of this Order. The points of diversion remain on both banks of the stream in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, Township 7 North, Range 14 East of the 6th P.M. in Otoe County. The rate that water may be diverted shall not exceed one cfs for every 140 acres irrigated at a maximum combined rate of 0.38 cfs (171 gallons per minute) from all points of diversion.

Township 7 North, Range 14 East of the 6 th P.M. in Otoe County		Acres
Section 32:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	25.4
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	<u>27.7</u>
	TOTAL	53.1

3. All terms and conditions of appropriation A-6873 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

February 10, 2015



James C. Schneider, Ph.D.
Acting Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 19025 were provided to the Department's docket clerk and field office in Lincoln, Nebraska. Copies of this Order and map number 19025 were mailed on February 10, 2015, to the following:

Alan Stukenholtz
6284 R Road
Nebraska City, Nebraska 68410

John F. & Judith M. Stukenholtz, Trustees
1515 South 66th Road
Nebraska City, Nebraska 68410

Marc F. Stukenholtz
Stukenholtz Farms, LLC
1906 South 66th Road
Nebraska City, Nebraska 68410