

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-5878  
AND APPROVAL OF MAP 19433  
CASE NUMBER 2015-25-PD-1

WATER DIVISION 2-A

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-5878 is held by Werner Land & Cattle Co.
2. A review of the Department's records indicates a scrivener's error was made on the Order dated September 29, 1954. The **total number of acres** authorized for irrigation is corrected to **166** rather than **160**. The rate that water may be diverted is corrected to 1.84 cubic feet per second.
3. Appropriation A-5878 has a priority date of January 18, 1954, and authorizes the use of water for irrigation of the 166.0 acres of land described below. The water may be diverted from the Middle Loup River at points of diversion on the south bank of the stream in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, and in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, Township 23 North, Range 28 West of the 6<sup>th</sup> P.M. in Thomas County. The rate that water may be diverted shall not exceed 1.84 cubic feet per second (cfs) from all points of diversion.

Township 23 North, Range 28 West of the 6 <sup>th</sup> P.M. in Thomas County	Acres	Township 23 North, Range 28 West of the 6 <sup>th</sup> P.M. in Thomas County	Acres
Section 10: NW $\frac{1}{4}$ SE $\frac{1}{4}$	38.0	Section 11: NW $\frac{1}{4}$ SW $\frac{1}{4}$	38.0
NE $\frac{1}{4}$ SE $\frac{1}{4}$	15.0	NE $\frac{1}{4}$ SW $\frac{1}{4}$	15.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	15.0	SW $\frac{1}{4}$ SW $\frac{1}{4}$	15.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	15.0	SE $\frac{1}{4}$ SW $\frac{1}{4}$	<u>15.0</u>
		TOTAL	166.0

4. The Department has received information concerning the use of surface water appropriation A-5878 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.

5. On November 25, 2015, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-5878 had not been irrigated for at least five years:

<u>Township 23 North, Range 28 West of the 6<sup>th</sup> P.M. in Thomas County</u>	<u>Acres</u>	<u>Township 23 North, Range 28 West of the 6<sup>th</sup> P.M. in Thomas County</u>	<u>Acres</u>
Section 10: NW $\frac{1}{4}$ SE $\frac{1}{4}$	14.9	Section 11: NW $\frac{1}{4}$ SW $\frac{1}{4}$	<u>7.7</u>
SW $\frac{1}{4}$ SE $\frac{1}{4}$	1.5		
		TOTAL	24.1

6. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Werner Land & Cattle Co., 83848 Werner Avenue, P.O. Box 123, Thedford, Nebraska 69166, and to Bartak Brothers, c/o Joel Bartak, 42550 Pioneer Road, Anselmo, Nebraska 68813.

7. No contest of the Preliminary Determination of Nonuse was received in the Department.

8. *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

1. Part of appropriation A-5878 at the rate of 0.26 cfs for use upon the land described below is CANCELLED.

<u>Township 23 North, Range 28 West of the 6<sup>th</sup> P.M. in Thomas County</u>	<u>Acres</u>	<u>Township 23 North, Range 28 West of the 6<sup>th</sup> P.M. in Thomas County</u>	<u>Acres</u>
Section 10: NW $\frac{1}{4}$ SE $\frac{1}{4}$	14.9	Section 11: NW $\frac{1}{4}$ SW $\frac{1}{4}$	<u>7.7</u>
SW $\frac{1}{4}$ SE $\frac{1}{4}$	1.5		
		TOTAL	24.1

2. Appropriation A-5878 now authorizes the appropriator to divert water from the Middle Loup River to irrigate the 141.9 acres of land described below and depicted on map number 19433 which is made a part of this Order. The points of diversion remain in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 10, and the NWS $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 11, both in Township 23 North, Range 28 West of the 6<sup>th</sup> P.M. in Thomas County. The rate that water may be diverted shall not exceed 1.58 cubic feet per second (cfs) from all points of diversion.

<u>Township 23 North, Range 28 West of the 6<sup>th</sup> P.M. in Thomas County</u>	<u>Acres</u>	<u>Township 23 North, Range 28 West of the 6<sup>th</sup> P.M. in Thomas County</u>	<u>Acres</u>
Section 10: NW $\frac{1}{4}$ SE $\frac{1}{4}$	23.1	Section 11: NW $\frac{1}{4}$ SW $\frac{1}{4}$	30.3
NE $\frac{1}{4}$ SE $\frac{1}{4}$	15.0	NE $\frac{1}{4}$ SW $\frac{1}{4}$	15.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	13.5	SW $\frac{1}{4}$ SW $\frac{1}{4}$	15.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	15.0	SE $\frac{1}{4}$ SW $\frac{1}{4}$	<u>15.0</u>
		TOTAL	141.9

3. All terms and conditions of appropriation A-5878 remain in effect unless specifically changed by this Order.
4. The appropriator must comply with all relevant statutes. These relevant statutory requirements include, but are 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

January 25, 2016

  
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 Gordon W. Fassett, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 19433 were provided to the Department's docket clerk and field office in Ord, Nebraska. Copies of this Order and map number 19433 were mailed on January 25, 2016, to the following:

Werner Land & Cattle Co.  
 83848 Werner Avenue  
 P.O. Box 123  
 Thedford, Nebraska 69166

Bartak Brothers  
 c/o Joel Bartak  
 42550 Pioneer Road  
 Anselmo, Nebraska 68813