

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-7588

AND APPROVAL OF MAP 19330

CASE NUMBER 2015-24-PD-1

WATER DIVISION 2-F

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-7588 is held by Stephen M. Marsh and Thomas C. Marsh.
2. The Department has received information that Joanne Marsh, wife of Stephen M. Marsh, and Lea L. Marsh, wife of Thomas C. Marsh, may have a spousal interest in appropriation A-7588.
3. Appropriation A-7588 has a priority date of May 24, 1955, and authorizes the use of water for irrigation of the 131.0 acres of land described below. The water may be diverted from Bow Creek at points of diversion located on both banks of the stream in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17, Township 30 North, Range 01 East of the 6th P.M. in Cedar County. The rate that water may be diverted shall not exceed 0.94 cubic foot per second (cfs) from all points of diversion.

Township 30 North, Range 01 East of the
6th P.M. in Cedar County

	Acres
Section 17: NW $\frac{1}{4}$ NW $\frac{1}{4}$	24.0
NE $\frac{1}{4}$ NW $\frac{1}{4}$	39.0
SW $\frac{1}{4}$ NW $\frac{1}{4}$	38.0
SE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>30.0</u>

TOTAL 131.0

4. The Department has received information concerning the use of surface water appropriation A-7588 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.

5. On November 17, 2016, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-7588 had not been irrigated for at least five years:

<u>Township 30 North, Range 01 East of the</u>	
<u>6th P.M. in Cedar County</u>	
	Acres
Section 17: NW ¹ / ₄ NW ¹ / ₄	0.8
NE ¹ / ₄ NW ¹ / ₄	4.1
SW ¹ / ₄ NW ¹ / ₄	10.5
SE ¹ / ₄ NW ¹ / ₄	<u>17.5</u>
TOTAL	32.9

6. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Stephen M. Marsh, 88048 559 Avenue, Hartington, Nebraska 68739; Joanne Marsh, 88048 559 Avenue, Hartington, Nebraska 68739; Thomas C. Marsh, 56321 Circle Drive, Hartington, Nebraska 68739; Lea L. Marsh, 56321 Circle Drive, Hartington, Nebraska 68739.
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-7588 at the rate of 0.24 cfs for use upon the land described below is CANCELLED.

<u>Township 30 North, Range 01 East of the</u>	
<u>6th P.M. in Cedar County</u>	
	Acres
Section 17: NW ¹ / ₄ NW ¹ / ₄	0.8
NE ¹ / ₄ NW ¹ / ₄	4.1
SW ¹ / ₄ NW ¹ / ₄	10.5
SE ¹ / ₄ NW ¹ / ₄	<u>17.5</u>
TOTAL	32.9

2. Appropriation A-7588 now authorizes the appropriator to divert water from Bow Creek to irrigate the 98.1 acres of land described below and depicted on map number 19330 which is made a part of this Order. The water may be diverted from Bow Creek at points of diversion located on both banks of the stream in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 17, Township 30 North, Range 01 East of the 6th P.M. in Cedar County. The rate that water may be diverted shall not exceed 0.70 cubic foot per second (cfs) from all points of diversion.

<u>Township 30 North, Range 01 East of the</u>		
<u>6th P.M. in Cedar County</u>		<u>Acres</u>
Section 17:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	23.2
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	34.9
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	27.5
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>12.5</u>
	TOTAL	98.1

3. All terms and conditions of appropriation A-7588 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


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 19330 were provided to the Department's docket clerk and field office in Norfolk, Nebraska. Copies of this Order and map number 19330 were mailed on January 25, 2016, to the following:

Stephen M. Marsh
88048 559 Avenue
Hartington, Nebraska 68739

Thomas C. Marsh
56321 Circle Drive
Hartington, Nebraska 68739

Joanne Marsh
88048 559 Avenue
Hartington, Nebraska 68739

Lea L. Marsh
56321 Circle Drive
Hartington, Nebraska 68739