

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN FULL OF WATER APPROPRIATION A-12815

CASE NUMBER 2016-5-PD-1

WATER DIVISION 2-B

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-12815 is held by Ermin C. Benes.
2. The Department has received information that Ermin C. Benes is deceased.
3. The Department has received information that Dolores M. Benes, wife of Ermin C. Benes, holds a spousal interest in the land appurtenant to appropriation A-12815.
4. A search of the records of the Saunders County Register of Deeds indicates the land appurtenant to appropriation A-12815 includes names of owners that are different than the owner listed in Department records. These individuals are Mitchel J. Benes and Andrea K. Benes.
5. Appropriation A-12815 with a priority date of February 23, 1973, authorizes the use of water for irrigation of the 73.5 acres of land described below. The water may be diverted from North Oak Creek at a point of diversion located on the left bank of the stream in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 15, Township 13 North, Range 05 East of the 6th P.M. in Saunders County. The rate that water may be diverted shall not exceed one cubic foot per second (cfs) for every 70 acres irrigated at a maximum rate of 1.05 cfs.

<u>Township 13 North, Range 05 East of the</u>		
<u>6th P.M. in Saunders County</u>		<u>Acres</u>
Section 15:	NE $\frac{1}{4}$ NW $\frac{1}{4}$	23.0
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	10.5
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	<u>40.0</u>
	TOTAL	73.5

6. The Department has received information concerning the use of surface water appropriation A-12815 that indicates the appropriation has not been used for its required purpose for more than five consecutive years.

7. On March 17, 2016, the Department issued a Notice of Preliminary Determination of Nonuse of appropriation A-12815. The Notice was delivered by certified mail to Dolores M. Benes, 419 County Road 31, Valparaiso, Nebraska 68065; Andrea K. Benes, 699 Oak Road, Valparaiso, Nebraska 68065; and to Mitchel J. Benes, 699 Oak Road, Valparaiso, Nebraska 68065.
8. No contest of the Preliminary Determination of Nonuse was received in the Department.
9. The Department has determined that appropriation A-12815 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-12815 is CANCELLED.

DEPARTMENT OF NATURAL RESOURCES

April 28, 2016


Gordon W. Fassett, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order were provided to the Department's docket clerk and field office in Lincoln, Nebraska. A copy of this Order was mailed on April 28, 2016, to the following:

Dolores M. Benes
419 County Road 31
Valparaiso, Nebraska 68065

Andrea K. Benes
699 Oak Road
Valparaiso, Nebraska 68065

Mitchel J. Benes
699 Oak Road
Valparaiso, Nebraska 68065