

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-11406

WATER DIVISION 2-C

BACKGROUND

- Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-11406 is held by Jack A. and Judith R. Englehaupt.
- Appropriation A-11406 has a priority date of April 24, 1968, and authorizes the use of water for irrigation of the 288.7 acres of land described below. The water may be diverted from the Niobrara River at points of diversion located on the left bank of the stream in the SW¹/₄SW¹/₄ and the NE¹/₄SE¹/₄ of Section 8, and in the NE¹/₄SW¹/₄ of Section 9, both in Township 33 North, Range 13 West of the 6th P.M. in Boyd County. The rate that water may be diverted shall not exceed 4.12 cubic feet per second (cfs) from all points of diversion.

Township 33 North, Range 13 West of the 6 th P.M. in Boyd County		Acres	Township 33 North, Range 13 West of the 6 th P.M. in Boyd County		Acres
Section 8:	SW ¹ / ₄ NW ¹ / ₄	34.0	Section 9:	NW ¹ / ₄ SW ¹ / ₄	15.8
	SE ¹ / ₄ NW ¹ / ₄	31.7		NE ¹ / ₄ SW ¹ / ₄	18.0
				SW ¹ / ₄ SW ¹ / ₄	2.0
	SW ¹ / ₄ NE ¹ / ₄	12.5		TOTAL	288.7
	SE ¹ / ₄ NE ¹ / ₄	17.5			
	NW ¹ / ₄ SW ¹ / ₄	33.2			
	NE ¹ / ₄ SW ¹ / ₄	40.0			
	SW ¹ / ₄ SW ¹ / ₄	5.0			
	SE ¹ / ₄ SW ¹ / ₄	15.0			
	NW ¹ / ₄ SE ¹ / ₄	22.0			
	NE ¹ / ₄ SE ¹ / ₄	22.0			
	SW ¹ / ₄ SE ¹ / ₄	17.0			
	SE ¹ / ₄ SE ¹ / ₄	3.0			

- The Department has received information concerning the use of surface water appropriation A-11406 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.

4. On March 20, 2012, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-11406 had not been irrigated for at least five years:

<u>Township 33 North, Range 13 West of the 6th P.M. in Boyd County</u>		<u>Acres</u>	<u>Township 33 North, Range 13 West of the 6th P.M. in Boyd County</u>		<u>Acres</u>
Section 8:	SW ¹ / ₄ NW ¹ / ₄	34.0	Section 9:	SW ¹ / ₄ SW ¹ / ₄	<u>2.0</u>
	SE ¹ / ₄ NW ¹ / ₄	31.7			
	SW ¹ / ₄ NE ¹ / ₄	12.5		TOTAL	252.5
	SE ¹ / ₄ NE ¹ / ₄	17.4			
	NW ¹ / ₄ SW ¹ / ₄	33.2			
	NE ¹ / ₄ SW ¹ / ₄	40.0			
	SW ¹ / ₄ SW ¹ / ₄	5.0			
	SE ¹ / ₄ SW ¹ / ₄	15.0			
	NW ¹ / ₄ SE ¹ / ₄	22.0			
	NE ¹ / ₄ SE ¹ / ₄	19.7			
	SW ¹ / ₄ SE ¹ / ₄	17.0			
	SE ¹ / ₄ SE ¹ / ₄	3.0			

5. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Jack A. and Judith R. Englehaupt, P.O. Box 104, Butte, NE 68722.
6. No contest of the Preliminary Determination of Nonuse was received in the Department.

ORDER

1. Part of appropriation A-11406 at the rate of 3.60 cfs for use upon the land described below is CANCELLED.

<u>Township 33 North, Range 13 West of the 6th P.M. in Boyd County</u>		<u>Acres</u>	<u>Township 33 North, Range 13 West of the 6th P.M. in Boyd County</u>		<u>Acres</u>
Section 8:	SW ¹ / ₄ NW ¹ / ₄	34.0	Section 9:	SW ¹ / ₄ SW ¹ / ₄	<u>2.0</u>
	SE ¹ / ₄ NW ¹ / ₄	31.7			
	SW ¹ / ₄ NE ¹ / ₄	12.5		TOTAL	252.5
	SE ¹ / ₄ NE ¹ / ₄	17.4			
	NW ¹ / ₄ SW ¹ / ₄	33.2			
	NE ¹ / ₄ SW ¹ / ₄	40.0			
	SW ¹ / ₄ SW ¹ / ₄	5.0			
	SE ¹ / ₄ SW ¹ / ₄	15.0			
	NW ¹ / ₄ SE ¹ / ₄	22.0			
	NE ¹ / ₄ SE ¹ / ₄	19.7			
	SW ¹ / ₄ SE ¹ / ₄	17.0			
	SE ¹ / ₄ SE ¹ / ₄	3.0			

2. Appropriation A-11406 now authorizes the appropriator to divert water from the Niobrara River to irrigate the 36.2 acres of land described below and depicted on map number 18086 which is made a part of this Order. The points of diversion remain on the left bank of the stream in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8, and in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, both in Township 33 North, Range 13 West of the 6th P.M. in Boyd County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum combined rate of 0.52 cfs (233 gallons per minute) from all points of diversion.

Township 33 North, Range 13 West of the 6 th P.M. in Boyd County		Acres
Section 8:	SE $\frac{1}{4}$ NE $\frac{1}{4}$	0.1
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	2.3
Section 9:	NW $\frac{1}{4}$ SW $\frac{1}{4}$	15.8
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	<u>18.0</u>
	TOTAL	36.2

3. All terms and conditions of appropriation A-11406 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

June 4, 2012


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 18086 were provided to the Department's field office in Ord, Nebraska. Copies of this Order and map number 18086 were mailed on June 4, 2012, to the following:

Jack A. and Judith R. Engelhaupt
P.O. Box 104
Butte, NE 68722