

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-17280

AND APPROVAL OF MAP NUMBER 21065

WATER DIVISION 2-C

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-17280 is held by Rodney J. and Cameron G. Palmer; Ryan C. Richey; Traci A. Booth; James and Lindsey Costello; James Dubas; Leanne S. Dubas; Suzette L. White; Diette M. Glenn; Rodney J. Palmer; Bruce M. and Donna J. Niesen; Steve and Laurie Hergott; Scott D. Nelson; James J. and Delonna J. Costello; James M. Costello; and Joshua J. and Courtney Peters.
2. Appropriation A-17280 with a priority date of April 29, 1993, authorizes the use of water for irrigation of the 40.5 acres of land described below. The water may be diverted from Niobrara River at points of diversion located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, both in Township 32 North, Range 22 West of the 6th P.M. in Keya Paha Count. Water diverted shall not exceed the ratio of one cubic foot per second (cfs) for every 70 acres irrigated at a maximum combined rate of 0.58 cfs from all points of diversion.

Township 32 North, Range 22 West of the 6 th P.M. in Keya Paha County		Acres
Section 11:	NE $\frac{1}{4}$ SE $\frac{1}{4}$	3.0
Section 12:	NW $\frac{1}{4}$ SW $\frac{1}{4}$	17.0
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	<u>20.5</u>
	TOTAL	40.5

3. The Department has received information concerning the use of surface water appropriation A-17280 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.

4. On July 24, 2022, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-17280 had not been irrigated for at least five years:

<u>Township 32 North, Range 22 West of the</u>	
<u>6th P.M. in Keya Paha County</u>	
	<u>Acres</u>
Section 11: NE ¹ / ₄ SE ¹ / ₄	3.0
Section 12: NW ¹ / ₄ SW ¹ / ₄	7.8
SW ¹ / ₄ SW ¹ / ₄	<u>5.7</u>
TOTAL	16.5

5. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Rodney J. and Cameron G. Palmer, P.O. Box 127, Ainsworth, Nebraska 69210; Ryan C. Richey, 89248 Meadville Circle, Ainsworth, Nebraska 69210; Traci A. Booth, 409 East 3rd Street, Ainsworth, Nebraska 69210; James and Lindsey Costello, 217 Vermont Street, Spearfish, South Dakota 57783; James Dubas, 168 Lakeshore Drive, Columbus, Nebraska 68601; Leanne S. Dubas, 710 2nd Street, Duncan, Nebraska 68634; Suzette L. White, 19411 Whitetail Lane, Belle Plain, Minnesota 56011; Diette M. Glenn, 428 East 8th Street, Ainsworth, Nebraska 69210; Rodney J. Palmer, 428 East 8th Street, Ainsworth, Nebraska 69210, Bruce M. and Donna J. Niesen, 306 North Main Street, Wilcox, Nebraska 68982; Steve and Laurie Hergott, #3 Robin Lane, Columbus, Nebraska 68601; Scott D. Nelson, 43102 River Road, Ainsworth, Nebraska 69210; James J. and Delonna J. Costello, 609 North Oneida Avenue, Pierre, South Dakota 57501; James M. Costello, 217 Vermont Street, Spearfish, South Dakota 57783; and Joshua J. and Courtney Peters, 813 Richmond Avenue, Hastings, Nebraska 68901.
6. On August 26, 2022, Scott Nelson filed in the Department a contest of the Preliminary Determination of Nonuse.
7. No other contests of the Preliminary Determination of Nonuse were received in the Department.
8. On March 6, 2023, Scott and Tracy A. Nelson filed in the Department a voluntary relinquishment REL-9774, which relinquished their right to divert water under a portion of appropriation A-17280 to irrigate an 0.8 acre-tract of land described below. The contested case was dismissed.

<u>Township 32 North, Range 22 West of the</u>	
<u>6th P.M. in Keya Paha County</u>	
	<u>Acres</u>
Section 12: Lot 05	0.8

9. *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-17280 at the rate of 0.01 cfs for use upon the 0.8-acre tract of land described above is CANCELLED.
2. Part of appropriation A-17280 at the rate of 0.23 cfs for use upon 15.7 acres of land is CANCELLED. This is the remainder of the 16.5 acres of land described above.
3. Appropriation A-17280 now authorizes the appropriator to divert water from the Niobrara River to irrigate the 24.0 acres of land described below and depicted on map number 21065 which is made a part of this Order. Water may be diverted from the Niobrara River at a point of diversion located in the SW¹/₄SW¹/₄ of Section 12, Township 32 North, Range 22 West of the 6th P.M. in Keya Paha County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum rate of 0.34 cfs (153 gallons per minute).

<u>Township 32 North, Range 22 West of the</u>		
<u>6th P.M. in Keya Paha County</u>		<u>Acres</u>
Section 12:	NW ¹ / ₄ SW ¹ / ₄	9.2
	SW ¹ / ₄ SW ¹ / ₄	<u>14.8</u>
	TOTAL	24.0

4. All terms and conditions of previous orders for appropriation A-17280 remain in effect unless specifically changed by this Order.
5. 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



March 30, 2023

Thomas E. Riley, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 21065 were provided to the Department's docket clerk and field office in Ord, Nebraska. Copies of this Order and map number 21065 were mailed to the following:

Rodney J. and Cameron G. Palmer
P.O. Box 127
Ainsworth, Nebraska 69210

Rodney J. Palmer
428 East 8th Street
Ainsworth, Nebraska 69210

Ryan C. Richey
89248 Meadville Circle
Ainsworth, Nebraska 69210

Bruce M. and Donna J. Niesen
306 North Main Street
Wilcox, Nebraska 68982

Traci A. Booth
409 East 3rd Street
Ainsworth, Nebraska 69210

Steve and Laurie Hergott
#3 Robin Lane
Columbus, Nebraska 68601

James and Lindsey Costello
217 Vermont Street
Spearfish, South Dakota 57783

Scott D. Nelson
43102 River Road
Ainsworth, Nebraska 69210

James Dubas
168 Lakeshore Drive
Columbus, Nebraska 68601

James J. and Delonna J. Costello
609 North Oneida Avenue
Pierre, South Dakota 57501

Leanne S. Dubas
710 2nd Street
Duncan, Nebraska 68634

James M. Costello
217 Vermont Street
Spearfish, South Dakota 57783

Suzette L. White
19411 Whitetail Lane
Belle Plain, Minnesota 56011

Joshua J. and Courtney Peters
813 Richmond Avenue
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Diette M. Glenn
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