

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN FULL OF WATER APPROPRIATION A-3958

WATER DIVISION 2-B

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-3958 is held by M AND D, Inc.
2. Appropriation A-3958 with a priority date of September 11, 1946, authorizes the use of water for irrigation of the 256 acres of land described below. The water may be diverted from the North Fork of the Elkhorn River at points of diversion located on both banks of the stream in the W½ of Section 32, Township 27 North, Range 02 West of the 6<sup>th</sup> P.M. in Pierce County. The rate that water may be diverted shall not exceed one cubic foot per second (cfs) for every 140 acres irrigated at a maximum combined rate of 1.83 cfs from all points of diversion.

<u>Township 27 North, Range 02 West of the</u>	
<u>6<sup>th</sup> P.M. in Pierce County</u>	
	<u>Acres</u>
Section 32: NW¼NW¼	30
NE¼NW¼	15
SW¼NW¼	35
SE¼NW¼	37
NW¼SW¼	39
NE¼SW¼	30
SW¼SW¼	38
SE¼SW¼	<u>32</u>
TOTAL	256

3. The Department has received information concerning the use of surface water appropriation A-3958 that indicates the appropriation has not been used for its required purpose for more than five consecutive years.
4. On February 16, 2024, the Department issued a Notice of Preliminary Determination of Nonuse of appropriation A-3958. The Notice was delivered by certified mail to Zachary Tilts, M AND D, Inc., 10828 Old Mill Road, Suite 6, Omaha, Nebraska 68154; Tim Becker, 2120 Clearfield Drive, Norfolk, Nebraska 68701; and Kellogg & Palzer, P.C., 10828 Old Mill Road, Suite 6, Omaha, Nebraska 68154.
5. No contest of the Preliminary Determination of Nonuse was received in the Department.
6. The Department has determined that appropriation A-3958 has not been used for its required purpose for more than five consecutive years.

7. *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-3958 is CANCELLED.

DEPARTMENT OF NATURAL RESOURCES



March 21, 2024

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Thomas E. Riley, 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 Norfolk, Nebraska. A copy of this Order was mailed to the following:

Zachary Tilts  
M AND D, Inc.  
10828 Old Mill Road, Suite 6  
Omaha, Nebraska 68154

Kellogg & Palzer, P.C.  
10828 Old Mill Road, Suite 6  
Omaha, Nebraska 68154

Tim Becker  
2120 Clearfield Drive  
Norfolk, Nebraska 68701