

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

CORRECTED ORDER OF CANCELLATION IN FULL

AND APPROVAL OF ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-19658

AND APPROVAL OF MAP NUMBER 21449

WATER DIVISION 2-F

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-19658 is held by Foxhoven Land Company, LLC.
2. Appropriation A-19658, with a priority date of May 22, 2019, authorizes the use of water for irrigation of 243.0 acres of land. The water may be diverted from Beaver Creek at points of diversion located on both banks of the stream in the SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> and NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 05, and the left bank of the stream in the NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> of Section 06, all in Township 32 North, Range 01 West of the 6<sup>th</sup> P.M. in Cedar County. 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 3.47 cfs from all points of diversion.

<u>Township 32 North, Range 01 West of the</u>		
<u>6<sup>th</sup> P.M. in Cedar County</u>		<u>Acres</u>
Section 05:	NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	18.6
	SW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	4.9
	SE <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	20.1
	NW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	21.2
	SW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	40.2
	SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	39.9
Section 06:	SW <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	37.3
	SE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	22.6
	NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	23.1
	NE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	<u>15.1</u>
	TOTAL	243.0

3. The approval of appropriation A-19658 was conditional upon the irrigation of the above land by September 1, 2022.
4. On November 17, 2022, the Department's Norfolk field office personnel performed a field investigation and determined **a portion** of the land approved for irrigation under appropriation A-19658 had not been irrigated by September 1, 2022.

5. A review of the Department's Order of Cancellation in Full of Water Appropriation A-19658 dated December 13, 2022, was issued in error.
6. On June 28, 2024, Norfolk field office personnel filed an addendum to the November 30, 2022, field investigation report correcting the number of acres subject to cancellation.
7. *Nebraska Revised Statutes* § 46-229.02(7) provides for the cancellation of unused portions of surface water appropriations.

ORDER

IT IS HEREBY ORDERED:

1. The Order of Cancellation in Full of Water Appropriation A-19658 dated December 13, 2022, is SET ASIDE.
2. Part of appropriation A-19658 at the rate of 0.93 cfs for use upon 65.0 acres of land is CANCELLED.
3. Appropriation A-19658 now permits the appropriator to divert water from Beaver Creek to irrigate the 178.0 acres of land described below and depicted on map number 21449 which is made a part of this Order.

Township 32 North, Range 01 West of the 6 <sup>th</sup> P.M. in Cedar County	Acres
Section 05: NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	18.6
SW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	0.7
SE <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	20.1
NW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	0.6
SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	39.9
Section 06: SW <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	37.3
SE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>	22.6
NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	23.1
NE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	15.1
TOTAL	178.0

4. The water may be diverted from Beaver Creek at points of diversion located on both banks of the stream in the SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> and the NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 05 and the NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> of Section 06, all in Township 32 North, Range 01 West of the 6<sup>th</sup> P.M. in Cedar County, as depicted on map number 21449. Water diverted shall not exceed a maximum rate of 2.54 cfs (1140 gallons per minute).
5. All terms and conditions of the approval of appropriation A-19658 remains in effect unless specifically changed by this Order.
6. 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, and there are junior appropriations upstream, you may call for water by contacting your local field office.

DEPARTMENT OF NATURAL RESOURCES



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Thomas E. Riley, P.E., Director

July 2, 2024

A copy of this Order was posted on the Department's website. Copies of this Order and map number 21449 were provided to the Department's field office in Norfolk, Nebraska. Copies of the field investigation, this Order and map number 21449 were mailed to the following:

Derek Foxhoven  
Foxhoven Land Company, LLC  
55939 897 Road  
Fordyce, Nebraska 68736