

STATE OF NEBRASKA

DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-13397

AND APPROVAL OF MAP NUMBER 21702

WATER DIVISION 2-B

BACKGROUND

1. Records on file in the Department of Water, Energy, and Environment (Department) show that surface water appropriation A-13397 is held by Fascianella Farm, LLC; Labrador Bay Barn LLC; Chris Kelsay; Chad Wegener; and Beau Baltzell.
2. Appropriation A-13397 has a priority date of **February 11, 1975**, and authorizes the use of water for irrigation of the 95.2 acres of land described below. The water may be diverted from **the Elkhorn River** at points of diversion located on **the left bank of the stream in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 14 North, Range 10 East of the 6th P.M. in Sarpy 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 1.36 cfs from all points of diversion. The total annual volume may not exceed **three acre-feet per acre** of land on which water is actually and beneficially applied.

Township 14 North, Range 10 East of the		Acres
6 th P.M. in Sarpy County		
Section 16:	NW $\frac{1}{4}$ NE $\frac{1}{4}$	13.0
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	30.1
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	5.8
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	37.0
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	<u>9.3</u>
	TOTAL	95.2

3. The Department has received information concerning the use of surface water appropriation A-13397 and determined that the appropriation **has not been used for irrigation purposes for more than five consecutive years** as required under Nebraska law. At this time, the Department knows of no reason that constitutes sufficient cause for nonuse under Neb. Rev. Stat. § 46-229.04

4. On October 17, 2025, Leo Fascianella, on behalf of Fascianella Farm, LLC, and Chris Kelsay filed relinquishments REL-11494 and REL-11496, respectively, relinquishing the right to divert water under a portion of appropriation A-13397 to irrigate the 54.6 acres of land described below.

Township 14 North, Range 10 East of the 6 th P.M. in Sarpy County		Acres
Section 16:	SE $\frac{1}{4}$ NE $\frac{1}{4}$	17.0
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	4.1
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	24.2
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	<u>9.3</u>
	TOTAL	54.6

5. Upon completion of this Order of Cancellation for the preceding portion of land authorized for irrigation under A-13397, the **Department will proceed with issuing a Notice of Preliminary Determination of Nonuse (PDNU)** for the remaining appurtenant land owned by Labrador Bay Barn LLC; Chad Wegener; and Beau Baltzell in accordance with Neb. Rev. Stat. § 46-229.02

ORDER

IT IS HEREBY ORDERED:

1. Part of appropriation A-13397 at the rate of 0.78 cfs for use upon the 54.6 acres of land described above is **CANCELLED**.
2. **Authorized Land for Irrigation, Priority and Diversion Rate**
Appropriation A-13397 now authorizes the appropriator to divert water from **the Elkhorn River** to irrigate the **40.6** acres of land described below and depicted on map number 21702 which is made a part of this Order. The points of diversion are in the **SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 14 North, Range 10 East of the 6th P.M. in Sarpy County**, as depicted on map number 21702. Water diverted shall not exceed the ratio of one cfs for every **70** acres irrigated at a maximum combined rate of **0.58** cfs (260 gallons per minute) from all points of diversion. The total volume may not exceed three acre-feet per irrigated acre per year nor to exceed the least amount of water necessary for the production of crops in the exercise of good husbandry.

Township 14 North, Range 10 East of the 6 th P.M. in Sarpy County		Acres
Section 16:	NW $\frac{1}{4}$ NE $\frac{1}{4}$	13.0
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	13.1
	NW $\frac{1}{4}$ SE $\frac{1}{4}$	1.7
	NE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>12.8</u>
	TOTAL	40.6

3. **Terms & Conditions of Previous Order(s)**

All terms and conditions of the approval of appropriation A-13397 remain in effect unless specifically changed by this Order.

4. **Ongoing Statutory Requirements**

- 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 Department 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 WATER, ENERGY, AND ENVIRONMENT



December 8, 2025

Matthew T. Manning, PE, JD
Chief Water Officer

A copy of this Order was posted on the Department's website. Copies of this Order and map number 21702 were provided to the Department's field office in Norfolk, Nebraska. Copies of this Order and map number 21702 were mailed to the following:

Leo Fascianella
Fascianella Farm, LLC
10234 Polk Street
Omaha, Nebraska 68127

Chad Wegener
6902 240th street
Gretna, Nebraska 68028

Chris Kelsay
7790 South 240th Street
Gretna, Nebraska 68028

Beau Baltzell
24305 Leavenworth Circle
Waterloo, Nebraska 68069

Todd Lavigne
Labrador Bay Barn LLC
12330 Cary Circle
Lavista, Nebraska 68128