

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-10635

AND APPROVAL OF MAP NUMBER 20072

CASE NUMBER 2017-15-PD-1

WATER DIVISION 2-A

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-10635 is held by Calvin Clinger.
2. Appropriation A-10635 with a priority date of May 25, 1965, authorizes the use of water for irrigation of the 106.0 acres of land described below. The water may be diverted from Mud (Beaver) Creek at points of diversion located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 15 North, Range 18 West of the 6th P.M. in Custer County. Water diverted shall not exceed the ratio of one cubic foot per second (cfs) for every 70 acres irrigated at a maximum rate of 1.51 cfs.

Township 15 North, Range 18 West of the 6 th P.M. in Custer County		Acres
Section 14:	NW $\frac{1}{4}$ SW $\frac{1}{4}$	32.0
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	20.0
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	23.0
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	<u>31.0</u>
	TOTAL	106.0

3. The Department has received information concerning the use of surface water appropriation A-10635 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.
4. On July 17, 2017, the Department issued a Notice of Preliminary Determination of Nonuse requiring a response by **August 16, 2017**, that the following portion of land authorized for irrigation under appropriation A-10635 had not been irrigated for at least five years:

Township 15 North, Range 18 West of the 6 th P.M. in Custer County		Acres
Section 14:	NW $\frac{1}{4}$ SW $\frac{1}{4}$	32.0
	NE $\frac{1}{4}$ SW $\frac{1}{4}$	20.0
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	12.3
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	<u>21.3</u>
	TOTAL	85.6

5. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Calvin Clinger, 615 South Willow Street, North Platte, Nebraska 69103 on July 20, 2017; and Gail Reed on July 19, 2017, Operator, 5320 Drive 789, Ansley, Nebraska 68814.
6. The Notice of July 17, 2017, clearly indicated an August 16, 2017, deadline for filing a contest.
7. No signed and notarized contest of the Preliminary Determination of Nonuse was received in the Department by the close of business by August 16, 2017, thirty days after the mailing of the Notice.
8. On August 22, 2017, the Department received a *Contest of Preliminary Determination of Nonuse* signed by Calvin Clinger but it was not notarized.
9. Documentation sent by the Department with the Notice included a copy of *Nebraska Revised Statutes* § 46-229.04 regarding excusable reasons for nonuse of a surface water appropriation. However, the information provided by Mr. Clinger neither disputed the content of the determination nor demonstrated an excusable reason for nonuse. Furthermore, the information arrived late and was not notarized.
10. *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-10635 at the rate of 1.22 cfs for use upon the land described below is CANCELLED.

<u>Township 15 North, Range 18 West of the 6th P.M. in Custer County</u>	<u>Acres</u>
Section 14: NW $\frac{1}{4}$ SW $\frac{1}{4}$	32.0
NE $\frac{1}{4}$ SW $\frac{1}{4}$	20.0
SW $\frac{1}{4}$ SW $\frac{1}{4}$	12.3
SE $\frac{1}{4}$ SW $\frac{1}{4}$	<u>21.3</u>
TOTAL	85.6

2. Appropriation A-10635 now authorizes the appropriator to divert water from Mud (Beaver) Creek to irrigate the 20.4 acres of land described below and depicted on map number 20072 which is made a part of this Order. The point of diversion remains in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 15 North, Range 18 West of the 6th P.M. in Custer County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum rate of 0.29 cfs (130 gallons per minute).

<u>Township 15 North, Range 18 West of the 6th P.M. in Custer County</u>	<u>Acres</u>
Section 14: SW $\frac{1}{4}$ SW $\frac{1}{4}$	10.7
SE $\frac{1}{4}$ SW $\frac{1}{4}$	<u>9.7</u>
TOTAL	20.4

3. All terms and conditions of appropriation A-10635 remain in effect unless specifically changed by this Order.
4. 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

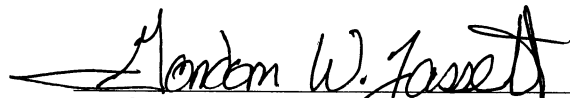
Failure to comply with all laws and regulations pertaining to surface water appropriations and any orders issued by the Director of the Department of Natural Resources may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, 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

August 24, 2017


Gordon W. Fassett, F.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 20072 were provided to the Department's docket clerk and field office in Ord, Nebraska. Copies of this Order and map number 20072 were mailed on August 24, 2017, to the following:

Calvin Clinger
615 South Willow Street
North Platte, Nebraska 69103

Gail Reed, Operator
45320 Drive 789
Ansley, Nebraska 68814