

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-9108

AND APPROVAL OF MAP NUMBER 20316

CASE NUMBER 2018-17-CC-1

WATER DIVISION 2-B

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-9108 is held by WM Farms, Inc.
2. A search of the records of the Cass County Register of Deeds indicates the land appurtenant to appropriation A-9108 was divided into distinct parcels and includes names of owners that are different than the owner listed in Department records. These individuals are listed on **Attachment A.**
3. Appropriation A-9108 with a priority date of January 17, 1957, authorizes the use of water for irrigation of the 200.0 acres of land described below. The water may be diverted from Eight Mile Creek at points of diversion located on both banks of the stream in the SE $\frac{1}{4}$ of Section 19 and in the SW $\frac{1}{4}$ of Section 20, both in Township 12 North, Range 13 East of the 6th P.M. in Cass 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 2.86 cfs from all points of diversion.

Township 12 North, Range 13 East of the 6 th P.M. in Cass County	Acres	Township 12 North, Range 13 East of the 6 th P.M. in Cass County	Acres
Section 19: NW $\frac{1}{4}$ SE $\frac{1}{4}$	18.0	Section 20: NW $\frac{1}{4}$ SW $\frac{1}{4}$	30.0
NE $\frac{1}{4}$ SE $\frac{1}{4}$	28.0	NE $\frac{1}{4}$ SW $\frac{1}{4}$	28.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	26.0	SW $\frac{1}{4}$ SW $\frac{1}{4}$	15.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	22.0	SE $\frac{1}{4}$ SW $\frac{1}{4}$	<u>33.0</u>
		TOTAL	200.0

4. The Department has received information concerning the use of surface water appropriation A-9108 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.

5. On August 29, 2018, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-9108 had not been irrigated for at least five years:

Township 12 North, Range 13 East of the 6 th P.M. in Cass County	Acres	Township 12 North, Range 13 East of the 6 th P.M. in Cass County	Acres
Section 19: NW $\frac{1}{4}$ SE $\frac{1}{4}$	18.0	Section 20: NW $\frac{1}{4}$ SW $\frac{1}{4}$	8.4
NE $\frac{1}{4}$ SE $\frac{1}{4}$	3.0	NE $\frac{1}{4}$ SW $\frac{1}{4}$	28.0
SW $\frac{1}{4}$ SE $\frac{1}{4}$	26.0	SW $\frac{1}{4}$ SW $\frac{1}{4}$	15.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	22.0	SE $\frac{1}{4}$ SW $\frac{1}{4}$	33.0
		TOTAL	153.4

6. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to the individuals listed on **Attachment B**.
7. Certified mail to the individuals listed on **Attachment C** were returned to the Department 'not deliverable as addressed'.
8. The U.S. Postal Service attempted to deliver certified mail to the individuals listed on **Attachment D** but were returned to the Department 'unclaimed'.
9. On September 10, 2018, Gary L. and Janice L. Petersen, Trustees of the Gary L. and Janice L. Petersen Living Trust filed in the Department a Contest of Preliminary Determination of Nonuse, Case Number 2018-17-CC-1.
10. No other contests of the Preliminary Determination of Nonuse were received in the Department.
11. On October 12, 2018, Gary L. and Janice L. Petersen, Trustees of the Gary L. and Janice L. Petersen Living Trust filed in the Department relinquishment REL-7109 relinquishing the right to divert water under a portion of appropriation A-9108 to irrigate land located in Copper Dollar Cove Lot 144.
12. *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. Case number 2018-17-CC-1 is DISMISSED.
2. Part of appropriation A-9108 at the rate of 2.19 cfs for use upon 153.4 acres of land is CANCELLED.

3. Appropriation A-9108 now authorizes the appropriator to divert water from Eight Mile Creek to irrigate the 46.6 acres of land described below and depicted on map number 20316 which is made a part of this Order. The water may be diverted from Eight Mile Creek at a point of diversion located on the left bank of the stream in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, Township 12 North, Range 13 East of the 6th P.M. in Cass County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum rate of 0.67 cfs (301 gallons per minute).

<u>Township 12 North, Range 13 East of the 6th P.M. in Cass County</u>	<u>Acres</u>	<u>Township 12 North, Range 13 East of the 6th P.M. in Cass County</u>	<u>Acres</u>
Section 19: NE $\frac{1}{4}$ SE $\frac{1}{4}$	25.0	Section 20: NW $\frac{1}{4}$ SW $\frac{1}{4}$	<u>21.6</u>
		TOTAL	46.6

4. All terms and conditions of appropriation A-9180 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

November 15, 2018


Gordon W. Fassett, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 20316 were provided to the Department's docket clerk and field office in Lincoln, Nebraska. Copies of this Order and map number 20316 were mailed on November 15, 2018, to the individuals listed on **Attachment E**.