

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Preliminary)	Case #005-09CC
Determination of Nonuse of)	
Surface Water Appropriation)	ORDER SETTING ASIDE PROCEEDING
A-13489B.)	
Water Division 1-B.)	

Background

The above captioned matter comes before the Director of the Department of Natural Resources (Department). This is a proceeding held under the provisions of Neb. Rev. Stat. §§ 46-229 to 46-229.04.

Findings of Fact

The Director, after an examination of the record, makes the following FINDINGS OF FACT:

1. Records on file in the Department show that surface water appropriation A-13489B is held by Bernard E. and Mary Lou Jones.
2. Appropriation A-13489B authorizes the use of 0.90 cubic foot per second of water for irrigation of the 63 acres of land described below. The water may be diverted from Medicine Creek at a point of diversion located on the left bank of the stream in the NW¼SW¼ of Section 28, Township 4 North, Range 25 West of the 6th P.M. in Furnas County.

<u>Township 4 North, Range 25 West of the 6th P.M. in Furnas County</u>	<u>Acres</u>
Section 28: SW¼NW¼	31.0
SE¼NW¼	22.5
NW¼SW¼	7.0
NE¼SW¼	<u>2.5</u>
TOTAL	63.0

3. On February 5, 2009, the Department issued a Notice of Preliminary Determination of Nonuse of appropriation A-13489B. The notice was delivered by certified mail to Bernard E. and Mary Lou Jones, 4103 Highway 6 and 34, Cambridge, NE 69022.
4. On March 9, 2009, a Contest of Preliminary Determination of Nonuse was filed in the name of Bernard E. and Mary Lou Jones, but signed by Operator Kurtis Huxoll. The contest claimed that irrigation was not required because of climatic conditions and due to good husbandry.

5. On April 8, 2009, a hearing was held. Bernard Jones and Kurtis Huxoll appeared.

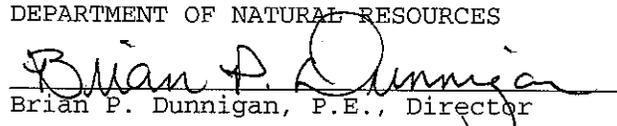
Conclusions of Law

After review by the Director, it is apparent that errors were made by the Department in this proceeding sufficient to necessitate setting aside the entire proceeding.

It is therefore ORDERED that this proceeding is set aside.

DEPARTMENT OF NATURAL RESOURCES

March 17, 2010


Brian P. Dunnigan, P.E., Director

A copy of this Order was posted on the Department's website. A copy of this Order was provided to the Department's Attorney, Jean Angell, and to the Department's field office in Cambridge, Nebraska. A copy of this Order was mailed on March 18, 2010, to the following:

Bernard E & Mary Lou Jones
41043 Highway 6 & 34
Cambridge, Nebraska 69022