

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATIONS A-17863A AND A-17863B

WATER DIVISION 2-B

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriations A-17863A and A-17863B are held by Melvern and Dorothy Heithoff and Keith and Lynne Heithoff.
2. Appropriation A-17863A, with a priority date of June 2, 2000, authorizes the use of water for irrigation of the 32.1 acres of land described below. The water may be diverted from Cedar Creek at points of diversion located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 23 North, Range 6 West of the 6th P.M. in Antelope County. The rate that water may be diverted shall not exceed one cubic foot per second (cfs) for every 140 acres irrigated at a maximum combined rate of 0.23 cfs from all points of diversion.

<u>Township 23 North, Range 6 West of the</u>	
<u>6th P.M. in Antelope County</u>	
	<u>Acres</u>
Section 10: NW $\frac{1}{4}$ NE $\frac{1}{4}$	3.5
NE $\frac{1}{4}$ NE $\frac{1}{4}$	19.1
SW $\frac{1}{4}$ NE $\frac{1}{4}$	5.6
SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>3.9</u>
TOTAL	32.1

3. Appropriation A-17863B, with a priority date of June 2, 2000, authorizes the use of water for irrigation of the 42.5 acres of land described below. The water may be diverted from Cedar Creek at points of diversion located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 23 North, Range 6 West of the 6th P.M. in Antelope County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum combined rate of 0.61 cfs from all points of diversion.

<u>Township 23 North, Range 6 West of the</u>	
<u>6th P.M. in Antelope County</u>	
	<u>Acres</u>
Section 10: NW $\frac{1}{4}$ NE $\frac{1}{4}$	36.5
NE $\frac{1}{4}$ NE $\frac{1}{4}$	3.0
SW $\frac{1}{4}$ NE $\frac{1}{4}$	2.0
SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>1.0</u>
TOTAL	42.5

4. The approval of appropriation A-17863A and appropriation A-17863B was conditional upon the irrigation of the above lands by September 1, 2010.
5. Department personnel performed a field investigation and determined a portion of the land approved for irrigation under appropriation A-17863A and appropriation A-17863B had not been irrigated by September 1, 2010.
6. *Nebraska Revised Statutes* § 46-229.02(7) provides for the cancellation of unused portions of surface water appropriations.

ORDER

IT IS HEREBY ORDERED:

1. Part of appropriation A-17863A at the rate of 0.07 cfs for use upon the land described below is CANCELLED.

<u>Township 23 North, Range 6 West of the 6th P.M. in Antelope County</u>	<u>Acres</u>
Section 10: NW $\frac{1}{4}$ NE $\frac{1}{4}$	3.5
SW $\frac{1}{4}$ NE $\frac{1}{4}$	<u>5.6</u>
TOTAL	9.1

2. Appropriation A-17863A now permits the appropriator to divert water from Cedar Creek to irrigate the 23.0 acres of land described below and depicted on map number 17767 which is made a part of this Order. The points of diversion remain in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 23 North, Range 6 West of the 6th P.M. in Antelope County. The rate that water may be diverted shall not exceed one cfs for every 140 acres irrigated at a maximum combined rate of 0.16 cfs (72 gallons per minute) from all points of diversion.

<u>Township 23 North, Range 6 West of the 6th P.M. in Antelope County</u>	<u>Acres</u>
Section 10: NE $\frac{1}{4}$ NE $\frac{1}{4}$	19.1
SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>3.9</u>
TOTAL	23.0

3. Part of appropriation A-17863B at the rate of 0.55 cfs for use upon the land described below is CANCELLED.

<u>Township 23 North, Range 6 West of the 6th P.M. in Antelope County</u>	<u>Acres</u>
Section 10: NW $\frac{1}{4}$ NE $\frac{1}{4}$	36.5
SW $\frac{1}{4}$ NE $\frac{1}{4}$	<u>2.0</u>
TOTAL	38.5

4. Appropriation A-17863B now permits the appropriator to divert water from Cedar Creek to irrigate the 4.0 acres of land described below and depicted on map number 17768 which is made a part of this Order. The points of diversion remain in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 23 North, Range 6 West of the 6th P.M. in Antelope County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum combined rate of 0.06 cfs (27 gallons per minute) from all points of diversion.

Township 23 North, Range 6 West of the
6th P.M. in Antelope County Acres

Section 10: NE $\frac{1}{4}$ NE $\frac{1}{4}$	3.0
SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>1.0</u>
TOTAL	4.0

5. All terms and conditions of appropriation A-17863A remain in effect unless specifically changed by this Order.
6. All terms and conditions of appropriation A-17863B remain in effect unless specifically changed by this Order.
7. The appropriator must comply with all relevant statutes. This includes, but is 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

February 8, 2011


Brian P. Dunnigan, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and maps number 17767 and 17768 were provided to the Department's field office in Norfolk, Nebraska. Copies of the field investigation, this Order and maps number 17767 and 17768 were mailed on February 8, 2011, to the following:

Melvorn and Dorothy Heithoff
52319 839 Road
Elgin, Nebraska 68636

Keith and Lynne Heithoff
52147 843 Road
Elgin, Nebraska 68636