

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN FULL OF WATER APPROPRIATION A-10224

CASE NUMBER 2014-1-PD-1

WATER DIVISION 2-A

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that a portion of land located in the NW $\frac{1}{4}$  of Section 18, Township 13 North, Range 15 West of the 6<sup>th</sup> P.M. in Sherman County appurtenant to surface water appropriation A-10224 is owned by the Jean Tesmer Revocable Trust.
2. Records on file in the Department show that a portion of land located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 18, Township 13 North, Range 15 West of the 6<sup>th</sup> P.M. in Sherman County appurtenant to surface water appropriation A-10224 is owned by David Allan Cross and Mary A. Fales.
3. Appropriation A-10224 with a priority date of July 26, 1963, authorizes the use of water for irrigation of the 142 acres of land described below. The water may be diverted from Mud Creek at a point of diversion located on the left bank of the stream in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 12, Township 13 North, Range 16 West of the 6<sup>th</sup> P.M. in Sherman County. The rate that water may be diverted shall not exceed one cubic foot per second (cfs) for every 70 acres irrigated at a maximum rate of 2.03 cfs.

Township 13 North, Range 15 West of the 6 <sup>th</sup> P.M. in Sherman County		Acres
Section 18:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	36
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	39
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	28
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>39</u>
	TOTAL	142

4. The Department has received information concerning the use of surface water appropriation A-10224 that indicates the appropriation has not been used for its required purpose for more than five consecutive years.
5. On January 6, 2014, the Department issued a Notice of Preliminary Determination of Nonuse of appropriation A-10224. The Notice was delivered by certified mail to Jean Tesmer, Trustee, Jean Tesmer Revocable Trust, 46794 777<sup>th</sup> Road, Hazard, Nebraska 68844; David Allan Cross & Mary A. Fales, 46820 778<sup>th</sup> Road, Litchfield, Nebraska 68852; and Miles Marshall, Marshall Land Brokers & Auctioneers, P.O. Box 261, Kearney, Nebraska 68848.

6. No contest of the Preliminary Determination of Nonuse was received in the Department.
7. The Department has determined that appropriation A-10224 has not been used for its required purpose for more than five consecutive years.
8. *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

IT IS HEREBY ORDERED appropriation A-10224 is CANCELLED.

DEPARTMENT OF NATURAL RESOURCES

February 6, 2014

  
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 docket clerk and field office in Ord, Nebraska. A copy of this Order was mailed on February 6, 2014, to the following:

Jean Tesmer, Trustee  
Jean Tesmer Revocable Trust  
46794 777<sup>th</sup> Road  
Hazard, Nebraska 68844

Miles Marshall  
Marshall Land Brokers & Auctioneers  
P.O. Box 261  
Kearney, Nebraska 68848

David Allan Cross & Mary A. Fales  
46820 778<sup>th</sup> Road  
Litchfield, Nebraska 68852