

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

**NOTICE OF PRELIMINARY DETERMINATION OF NONUSE
OF SURFACE WATER APPROPRIATION A-10233**

WATER DIVISION 2-A

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-10233 is held by Horky Farms, Ltd.
2. A search of the records of the Custer County Register of Deeds includes names of owners that are different than the owner listed in Department records. These individuals are Larry and Connie Bottorf.
3. Appropriation A-10233 has a priority date of August 12, 1963, and authorizes the use of water for irrigation of the 31 acres of land described below. The water may be diverted from Sand Creek at a point of diversion located on the right bank of the stream in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 04, Township 19 North, Range 18 West of the 6th P.M. in Custer County. The rate that water may be diverted shall not exceed 0.44 cubic foot feet per second (cfs).

Township 19 North, Range 18 West of the
6th P.M. in Custer County Acres

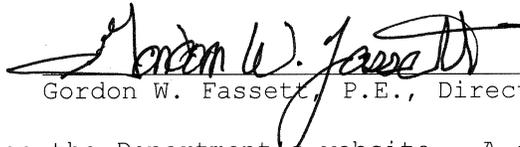
Section 04: SW $\frac{1}{4}$ SE $\frac{1}{4}$ 31

4. The Department has received information concerning the use of surface water appropriation A-10233 and determined that the appropriation has not been used for its required purpose for more than five consecutive years.
5. At this time the Department knows of no reason for not using the appropriation that would be considered sufficient cause for nonuse under *Nebraska Revised Statutes* § 46-229.04.
6. In accordance with state law (*Nebraska Revised Statutes* § 46-229.02) this notice is to inform you that appropriation A-10233 will be cancelled unless the Department's determination is successfully contested.

7. The owner(s) of the land that may be irrigated under water appropriation A-10233 may:
 - A. Choose not to respond to this Notice. **If no timely response is received the Department will proceed to enter an order cancelling all of water appropriation A-10233.**
 - B. Contest the Department's Preliminary Determination by filing the enclosed contest form in the Department at its Lincoln office (Nebraska State Office Building, 301 Centennial Mall South, 4th Floor, P.O. Box 94676, Lincoln, Nebraska 68509-4676) by the close of business on October 28, 2016. No filing fee is required.
8. Enclosed are: (1) a copy of the laws governing cancellation of appropriations, *Nebraska Revised Statutes* §§ 46-229, 46-229.02, 46-229.03, 46-229.04 and 46-229.05; (2) a blank contest form; and (3) a copy of the report of Field Investigation which is the basis for the determination.
9. Further information concerning the laws governing cancellation of appropriations can be found at the Nebraska Legislature Website at <http://nebraskalegisature.gov/laws>.
10. Requests for additional information regarding this proceeding may be directed to the Department of Natural Resources, P.O. Box 94676, Lincoln, Nebraska 68509-4676 or by calling the permits section at (402) 471-2363. Business hours for the Department are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

DEPARTMENT OF NATURAL RESOURCES

September 28, 2016


Gordon W. Fassett, P.E., Director

A copy of this Notice was posted on the Department's website. A copy of this Notice was provided to the Department's field office in Ord, Nebraska. Copies of this Notice and three enclosures were mailed by certified mail on September 28, 2016, to the following:

Horky Farms, Ltd.
Joseph Horky, Sr.
1501 West Main Street
Sargent, Nebraska 68874

Larry and Connie Bottorf
45275 West Sargent Main Street
Sargent, Nebraska 68874