

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-8797

WATER DIVISION 1-D

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-8797 is held by Louis LeRoy and Marilyn D. Klinzman.
2. Appropriation A-8797 has a priority date of September 4, 1956, and authorizes the use of water for irrigation of the 36.00 acres of land described below. The water may be diverted from the West Fork of the Big Blue River at a point of diversion located on the left bank of the stream in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, Township 9 North, Range 2 West of the 6th P.M. in York County. The rate that water may be diverted shall not exceed 0.51 cubic foot per second (cfs).

<u>Township 9 North, Range 2 West of the 6th P.M. in York County</u>	<u>Acres</u>
Section 18: NE $\frac{1}{4}$ SW $\frac{1}{4}$	11.57
NW $\frac{1}{4}$ SE $\frac{1}{4}$	<u>24.43</u>
TOTAL	36.00

3. The Department has received information concerning the use of surface water appropriation A-8797 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.
4. On March 20, 2012, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-8797 had not been irrigated for at least five years:

<u>Township 9 North, Range 2 West of the 6th P.M. in York County</u>	<u>Acres</u>
Section 18: NW $\frac{1}{4}$ SE $\frac{1}{4}$	13.23

5. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Louis Leroy Klinzman, 1681 County Road J, Wahoo, Nebraska 68066 and Marilyn D. Klinzman, 1681 County Road J, Wahoo, Nebraska 68066.

6. On April 4, 2012, Louis L. Klinzman and Marilyn D. Klinzman filed a Contest of the "Notice of Preliminary Determination of Nonuse."
7. On May 25, 2012, Department staff filed a "Reply to Response to Preliminary Determination of Nonuse." The reply requested a hearing.
8. On May 31, 2012, the Department issued a "Notice of Hearing."
9. On June 13, 2012, Louis Klinzman filed a letter requesting cancellation of the hearing and requesting that the contest be set aside.
10. On June 13, 2012, the hearing officer sent a letter to Louis and Marilyn Klinzman asking whether Marilyn Klinzman also wanted to cancel the hearing and set aside the contest, or whether she wanted to proceed with the hearing.
11. On June 18, 2012, a letter from Marilyn Klinzman was received which also requested cancellation of the hearing and setting aside the contest.
12. On June 19, 2012, the Department issued an Order setting aside the contest and cancelling the hearing.

ORDER

1. Part of appropriation A-8797 at the rate of 0.18 cfs for use upon the land described below is CANCELLED.

Township 9 North, Range 2 West of the 6 th P.M. in York County	Acres
Section 18: NW $\frac{1}{4}$ SE $\frac{1}{4}$	13.23

2. Appropriation A-8797 now authorizes the appropriator to divert water from the West Fork of the Big Blue River to irrigate the 22.77 acres of land described below and depicted on map number 18124 which is made a part of this Order. The point of diversion remains on the left bank of the stream in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, Township 9 North, Range 2 West of the 6th P.M. in York County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum rate of 0.33 cfs (148 gallons per minute).

Township 9 North, Range 2 West of the 6 th P.M. in York County	Acres
Section 18: NE $\frac{1}{4}$ SW $\frac{1}{4}$	11.57
NW $\frac{1}{4}$ SE $\frac{1}{4}$	<u>11.20</u>
TOTAL	22.77

3. This appropriation is subject to the provisions of the Blue River Compact and could be closed if Compact flows are not being met.

4. All terms and conditions of appropriation A-8797 remain in effect unless specifically changed by this Order.
5. 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

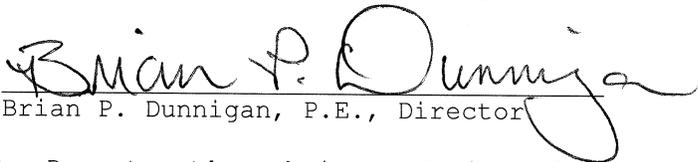
Failure to comply with all laws and regulations pertaining to surface water appropriations and any orders issued by the Director of the Department of Natural Resources may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, 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, you may call for water by contacting your local field office.

DEPARTMENT OF NATURAL RESOURCES

July 3, 2012


 Brian P. Dunnigan, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 18124 were provided to the Department's field office in Lincoln, Nebraska. Copies of this Order and map number 18124 were mailed on July 3, 2012, to the following:

Louis LeRoy Klinzman
 1681 County Road J
 Wahoo, Nebraska 68066

Marilyn D. Klinzman
 1681 County Road J
 Wahoo, Nebraska 68066