

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART

OF WATER APPROPRIATIONS A-18504A AND A-18504B

WATER DIVISION 2-F

Background

1. On April 16, 2007, Kevin Klabenes filed application A-18504 in the Department of Natural Resources (Department) for a Permit to Appropriate Water.
2. On August 14, 2007, the Department approved application A-18504, dividing it into two appropriations, A-18504A and A-18504B, to allow for a distinction between the portion of the appropriation providing additional water to a prior appropriation.
3. Appropriation A-18504A authorizes the use of water for irrigation of the 113.9 acres of land described below. The water may be diverted from Bazile Creek at points of diversion located on the right bank of the stream in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, Township 28 North, Range 5 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 70 acres irrigated at a maximum combined rate of 1.63 cfs from all points of diversion.

Township 28 North, Range 5 West of the 6 th P.M. in Antelope County		Acres
Section 17:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	38.5
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	19.0
	NW $\frac{1}{4}$ NE $\frac{1}{4}$	38.7
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>17.7</u>
	TOTAL	113.9

4. Appropriation A-18504B authorizes the use of water for irrigation of the 61.0 acres of land described below. The water may be diverted from Bazile Creek at points of diversion located on the right bank of the stream in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, Township 28 North, Range 5 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 0.44 cfs from all points of diversion. A-18504B provides additional water for land included under appropriation A-7609.

<u>Township 28 North, Range 5 West of the</u>		<u>6th P.M. in Antelope County</u>	<u>Acres</u>
Section 17:	NE $\frac{1}{4}$ NE $\frac{1}{4}$		39.0
	SE $\frac{1}{4}$ NE $\frac{1}{4}$		<u>22.0</u>
	TOTAL		61.0

5. The approval of appropriations A-18504A and A-18504B were conditional upon the irrigation of the above land by September 1, 2009.
6. Department personnel performed a field investigation and determined a portion of the land approved for irrigation under appropriations A-18504A and A-18504B had not been irrigated by September 1, 2009.
7. Nebraska Revised Statutes Section 46-229.02(7) provide for the cancellation of unused portions of surface water appropriations.

Order

IT IS HEREBY ORDERED:

1. Part of appropriation A-18504A at the rate of 0.94 cfs for use upon the land described below is CANCELLED.

<u>Township 28 North, Range 5 West of the</u>		<u>6th P.M. in Antelope County</u>	<u>Acres</u>
Section 17:	NW $\frac{1}{4}$ NW $\frac{1}{4}$		38.5
	NE $\frac{1}{4}$ NW $\frac{1}{4}$		19.0
	NW $\frac{1}{4}$ NE $\frac{1}{4}$		5.2
	SE $\frac{1}{4}$ NE $\frac{1}{4}$		<u>3.3</u>
	TOTAL		66.0

2. Part of appropriation A-18504B at the rate of 0.08 cfs for use upon the land described below is CANCELLED.

<u>Township 28 North, Range 5 West of the</u>		<u>6th P.M. in Antelope County</u>	<u>Acres</u>
Section 17:	NE $\frac{1}{4}$ NE $\frac{1}{4}$		4.9
	SE $\frac{1}{4}$ NE $\frac{1}{4}$		<u>5.9</u>
	TOTAL		10.8

3. Appropriation A-18504A now permits Kevin Klabenes to divert water from Bazile Creek to irrigate the 47.9 acres of land described below and depicted on map number 17551 which is made a part of this Order. The points of diversion remain in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, Township 28 North, Range 5 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 0.68 cfs (305 gallons per minute) from all points of diversion and an annual volume not to exceed 3 acre-feet per acre irrigated.

Township 28 North, Range 5 West of the 6 th P.M. in Antelope County		Acres
Section 17:	NW $\frac{1}{4}$ NE $\frac{1}{4}$	33.5
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>14.4</u>
	TOTAL	47.9

4. Appropriation A-18504B now permits Kevin Klabenes to divert water from Bazile Creek to irrigate the 50.2 acres of land described below and depicted on map number 17552 which is made a part of this Order. The points of diversion remain in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, Township 28 North, Range 5 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 0.36 cfs (162 gallons per minute) from all points of diversion and an annual volume not to exceed 3 acre-feet per acre irrigated. A-18504B provides additional water for land included under appropriation A-7609.

Township 28 North, Range 5 West of the 6 th P.M. in Antelope County		Acres
Section 17:	NE $\frac{1}{4}$ NE $\frac{1}{4}$	34.1
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>16.1</u>
	TOTAL	50.2

5. All terms and conditions of appropriations A-18504A and A-18504B remain in effect unless specifically changed by this Order.
6. The appropriator must comply with all relevant statutes. This includes, but is not limited to, the following:
- Notify the Department of any change in ownership or address.
 - 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).
 - 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

April 26, 2010


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 17551 and 17552 were provided to the Department's field office in Norfolk, Nebraska. Copies of the field investigation, this Order and maps number 17551 and 17552 were mailed on April 26, 2010, to the following:

Kevin Klabenes
52940 868 Road
Creighton, Nebraska 68729