

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-16430

CASE NUMBER 2013-43-CC-1

WATER DIVISION 1-F

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-16430 is held by JEMS Farms, Inc.
2. Appropriation A-16430 with a priority date of July 15, 1985, authorizes the use of water for irrigation of the 255.0 acres of land described below. The water may be diverted from Rock Creek at a point of diversion located on the west bank of the stream in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, Township 6 North, Range 14 East of the 6th P.M. in Nemaha County. Water diverted shall not exceed the ratio of one cubic foot per second (cfs) for every 70 acres irrigated at a maximum rate of 3.64 cfs.

Township 6 North, Range 14 East of the 6 th P.M. in Nemaha County		Acres
Section 29:	SW $\frac{1}{4}$ SW $\frac{1}{4}$	12.0
	SE $\frac{1}{4}$ SW $\frac{1}{4}$	35.0
Section 32:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	40.0
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	40.0
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	40.0
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.0
	NW $\frac{1}{4}$ NE $\frac{1}{4}$	23.0
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	<u>25.0</u>
TOTAL		255.0

3. The Department has received information concerning the use of surface water appropriation A-16430 that indicates a portion of the appropriation has not been used for its required purpose for more than five consecutive years.

4. On July 17, 2013, the Department issued a Notice of Preliminary Determination of Nonuse that the following portion of land authorized for irrigation under appropriation A-16430 had not been irrigated for at least five years:

<u>Township 6 North, Range 14 East of the 6th P.M. in Nemaha County</u>		<u>Acres</u>
Section 29:	SW ¹ / ₄ SW ¹ / ₄	7.6
	SE ¹ / ₄ SW ¹ / ₄	28.3
Section 32:	NW ¹ / ₄ NW ¹ / ₄	4.4
	NE ¹ / ₄ NW ¹ / ₄	0.9
	SW ¹ / ₄ NW ¹ / ₄	13.3
	SE ¹ / ₄ NW ¹ / ₄	7.9
	NW ¹ / ₄ NE ¹ / ₄	18.7
	SW ¹ / ₄ NE ¹ / ₄	<u>23.0</u>
TOTAL		104.1

5. The Notice was displayed on the Department's website for over 30 days and was delivered by certified mail to Jim Biere, JEMS Farms, Inc., 63919 732nd Road, Auburn, Nebraska 68305.
6. On July 25, 2013, James Biere, on behalf of JEMS Farms, Inc., filed in the Department a Contest of the Preliminary Determination of Nonuse.
7. The Department and the applicant worked together to determine the correct portion and location of the acres not subject to cancellation and those subject to cancellation.
8. On August 19, 2013, James Biere, on behalf of JEMS Farms, Inc., filed in the Department relinquishment REL-4800 relinquishing the right to divert water under that portion of appropriation A-16430, mutually determined to be subject to cancellation, to irrigate the 91.2 acres of land described below.

<u>Township 6 North, Range 14 East of the 6th P.M. in Nemaha County</u>		<u>Acres</u>
Section 29:	SW ¹ / ₄ SW ¹ / ₄	6.1
	SE ¹ / ₄ SW ¹ / ₄	26.3
Section 32:	NW ¹ / ₄ NW ¹ / ₄	2.7
	NE ¹ / ₄ NW ¹ / ₄	0.4
	SW ¹ / ₄ NW ¹ / ₄	10.0
	SE ¹ / ₄ NW ¹ / ₄	5.3
	NW ¹ / ₄ NE ¹ / ₄	17.8
	SW ¹ / ₄ NE ¹ / ₄	<u>22.6</u>
TOTAL		91.2

ORDER

1. Part of appropriation A-16430 at the rate of 1.03 cfs for use upon the land described below is CANCELLED.

<u>Township 6 North, Range 14 East of the</u>		
<u>6th P.M. in Nemaha County</u>		<u>Acres</u>
Section 29:	SW ¹ / ₄ SW ¹ / ₄	6.1
	SE ¹ / ₄ SW ¹ / ₄	26.3
Section 32:	NW ¹ / ₄ NW ¹ / ₄	2.7
	NE ¹ / ₄ NW ¹ / ₄	0.4
	SW ¹ / ₄ NW ¹ / ₄	10.0
	SE ¹ / ₄ NW ¹ / ₄	5.3
	NW ¹ / ₄ NE ¹ / ₄	17.8
	SW ¹ / ₄ NE ¹ / ₄	<u>22.6</u>
	TOTAL	91.2

2. Appropriation A-16430 now authorizes the appropriator to divert water from Rock Creek to irrigate the 163.8 acres of land described below and depicted on map number 18618 which is made a part of this Order. The point of diversion remains on the right bank of the stream in the NW¹/₄NE¹/₄ of Section 32, Township 6 North, Range 14 East of the 6th P.M. in Nemaha County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum rate of 2.34 cfs (1,050 gallons per minute).

<u>Township 6 North, Range 14 East of the</u>		
<u>6th P.M. in Nemaha County</u>		<u>Acres</u>
Section 29:	SW ¹ / ₄ SW ¹ / ₄	5.9
	SE ¹ / ₄ SW ¹ / ₄	8.7
Section 32:	NW ¹ / ₄ NW ¹ / ₄	37.3
	NE ¹ / ₄ NW ¹ / ₄	39.6
	SW ¹ / ₄ NW ¹ / ₄	30.0
	SE ¹ / ₄ NW ¹ / ₄	34.7
	NW ¹ / ₄ NE ¹ / ₄	5.2
	SW ¹ / ₄ NE ¹ / ₄	<u>2.4</u>
	TOTAL	163.8

3. All terms and conditions of appropriation A-16430 remain in effect unless specifically changed by this Order.

4. 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

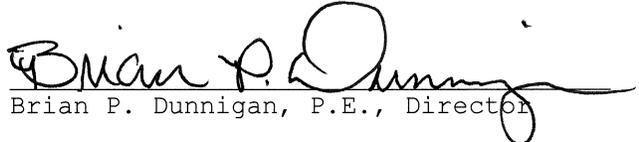
Failure to comply with all laws and regulations pertaining to surface water appropriations and any orders issued by the Director of the Department of Natural Resources may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, 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

September 4, 2013


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 18618 were provided to the Department's docket clerk and field office in Lincoln, Nebraska. Copies of this Order and map number 18618 were mailed on September 4, 2013, to the following:

Jim Biere
JEMS Farms, Inc.
63919 732nd Road
Auburn, Nebraska 68305