

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER NUNC PRO TUNC IN THE MATTER OF THE MARCH 10, 1972,

ORDER APPROVING MAP NUMBER 10990 AND

ORDER DIVIDING AND CHANGING OWNERSHIP OF APPROPRIATION A-12403

WATER DIVISION 1-D

Background

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-12403 is currently held by Raymond and Kenneth Engel.
2. Appropriation A-12403 with a priority date of October 19, 1971, authorizes the use of water for irrigation of 226.5 acres of land. The water may be diverted from a tributary to School Creek at a point of diversion located on the left bank of the stream in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, Township 7 North, Range 8 West of the 6th P.M. in Clay 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 3.23 cfs. Total annual volume of water diverted may not exceed 3 acre-feet per acre irrigated.
3. A review of the Department's records indicates that a section number was omitted in the description of the appurtenant land authorized for irrigation in the Order approving map number 10990, dated March 10, 1972, and as described in Column A below. The appurtenant land was correctly plotted on map number 10990 and is described in Column B.

<u>COLUMN A</u>		<u>COLUMN B</u>	
Township 7 North, Range 8 West of the 6 th P.M., Clay County	Acres	Township 7 North, Range 8 West of the 6 th P.M., Clay County	Acres
Section 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$	32.50	Section 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$	32.50
SW $\frac{1}{4}$ SW $\frac{1}{4}$	38.00	SW $\frac{1}{4}$ SW $\frac{1}{4}$	38.00
NW $\frac{1}{4}$ NW $\frac{1}{4}$	38.00	Section 12: NW $\frac{1}{4}$ NW $\frac{1}{4}$	38.00
NE $\frac{1}{4}$ NW $\frac{1}{4}$	39.00	NE $\frac{1}{4}$ NW $\frac{1}{4}$	39.00
SW $\frac{1}{4}$ NW $\frac{1}{4}$	39.00	SW $\frac{1}{4}$ NW $\frac{1}{4}$	39.00
SE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>40.00</u>	SE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>40.00</u>
TOTAL	226.50	TOTAL	226.50

4. Cynthia M. Meyer filed a Notice of Change of Ownership indicating that she is the owner of a portion of the land authorized to be irrigated by appropriation A-12403.
5. Carol A. Engel filed a Notice of Change of Ownership indicating that she is the owner of a portion of the land authorized to be irrigated by appropriation A-12403.
6. Megan A. Estep, on behalf of United States Fish and Wildlife Service (USFWS) filed a Notice of Change of Ownership indicating that USFWS is the owner of a portion of the land authorized to be irrigated by appropriation A-12403.

Order

IT IS HEREBY ORDERED:

1. The Order dated March 10, 1972, for appropriation A-12403 is hereby CORRECTED. The land authorized for irrigation under appropriation A-12403 is amended as follows:

<u>Township 7 North, Range 8 West of the 6th P.M. in Clay County</u>	<u>Acres</u>
Section 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$	32.50
SW $\frac{1}{4}$ SW $\frac{1}{4}$	38.00
Section 12: NW $\frac{1}{4}$ NW $\frac{1}{4}$	38.00
NE $\frac{1}{4}$ NW $\frac{1}{4}$	39.00
SW $\frac{1}{4}$ NW $\frac{1}{4}$	39.00
SE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>40.00</u>
TOTAL	226.50

2. Appropriation A-12403 is divided into three appropriations, A-12403A A-12403B and 12403C.
3. Appropriation A-12403A is held by Cynthia M. Meyer.
 - A. She is allowed to divert 2.23 cfs (1001 gallons per minute) from a tributary to School Creek to irrigate the 156.00 acres of land described below and as depicted on map number 17533 which is hereby made a part of this Order. The total rate that water may be diverted shall not exceed one cfs per 70 acres irrigated. Total annual volume of water diverted may not exceed 3 acre-feet per acre irrigated, nor the least amount of water necessary for the production of crops in the exercise of good husbandry.

<u>Township 7 North, Range 8 West of the 6th P.M. in Clay County</u>	<u>Acres</u>
Section 12: NW $\frac{1}{4}$ NW $\frac{1}{4}$	38.00
NE $\frac{1}{4}$ NW $\frac{1}{4}$	39.00
SW $\frac{1}{4}$ NW $\frac{1}{4}$	39.00
SE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>40.00</u>
TOTAL	156.00

- B. The quantity of water diverted at any time shall be restricted in the proportion which the acreage irrigated bears to the total acreage enumerated herein.
 - C. All terms and conditions set out in the application approval for A-12403 remain in effect unless specifically changed by this Order.
 - D. The point of diversion remains on the left bank of a tributary to School Creek in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, Township 7 North, Range 8 West of the 6th P.M. in Clay County. If the owner of appropriation A-12403A does not have access to this point of diversion, she must either obtain permission from the landowner or file a Petition for Relocation of the Point of Diversion with the Department, and have it approved prior to any diversion. This Order does not authorize access to the existing point of diversion.
4. Appropriation A-12403B is held by Carol A. Engel.

- A. She is allowed to divert 0.96 cfs (431 gallons per minute) from a tributary to School Creek to irrigate the 67.25 acres of land described below and as depicted on map number 17534 which is hereby made a part of this Order. The total rate that water may be diverted shall not exceed one cfs per 70 acres irrigated. Total annual volume of water diverted may not exceed 3 acre-feet per acre irrigated, nor the least amount of water necessary for the production of crops in the exercise of good husbandry.

Township 7 North, Range 8 West of the 6 th P.M. in Clay County	Acres
Section 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$	29.25
SW $\frac{1}{4}$ SW $\frac{1}{4}$	<u>38.00</u>
TOTAL	67.25

- B. The quantity of water diverted at any time shall be restricted in the proportion which the acreage irrigated bears to the total acreage enumerated herein.
- C. All terms and conditions set out in the application approval for A-12403 remain in effect unless specifically changed by this Order.
- D. The point of diversion remains on the left bank of a tributary to School Creek in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, Township 7 North, Range 8 West of the 6th P.M. in Clay County. If the owner of appropriation A-12403B does not have access to this point of diversion, she must either obtain permission from the landowner or apply for a new point of diversion with this department, and have it approved prior to any diversion. This Order does not authorize access to the existing point of diversion.

5. Appropriation A-12403C is held by USFWS.

- A. USFWS is allowed to divert 0.05 cfs (22 gallons per minute) from a tributary to School Creek to irrigate the 3.25 acres of land described below and as depicted on map number 17535 which is hereby made a part of this Order. The total rate that water may be diverted shall not exceed one cfs per 70 acres irrigated. Total annual volume of water diverted may not exceed 3 acre-feet per acre irrigated, nor the least amount of water necessary for the production of crops in the exercise of good husbandry.

Township 7 North, Range 8 West of the
6th P.M. in Clay County Acres

Section 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$ 3.25

- B. The quantity of water diverted at any time shall be restricted in the proportion which the acreage irrigated bears to the total acreage enumerated herein.
- C. All terms and conditions set out in the application approval for A-12403 remain in effect unless specifically changed by this Order.
- D. The point of diversion remains on the left bank of a tributary to School Creek in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, Township 7 North, Range 8 West of the 6th P.M. in Clay County. If the owner of appropriation A-12403C does not have access to this point of diversion, USFWS must either obtain permission from the landowner or apply for a new point of diversion with this department, and have it approved prior to any diversion. This Order does not authorize access to the existing point of diversion.

Additional Information

Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this approval may cause cancellation of part or all of this appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

Nebraska law provides that failure to use an appropriation for more than five consecutive years may result in cancellation of the appropriation.

These appropriations are not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. These appropriations may be closed if there is insufficient water to satisfy senior appropriations.

DEPARTMENT OF NATURAL RESOURCES

February 1, 2010


Brian P. Dunnigan, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this Order may request a contested case hearing in accordance with the Nebraska Administrative Procedures Act (Sections 84-901 et. seq. RSS) and the Department's Rules of Practice and Procedure (454 N.A.C. Chapter 007). The request must be received by the Department at its Lincoln office (301 Centennial Mall South, 4th Floor State Office Building, Lincoln, Nebraska 68509-4676) within 30 days of the date of the order and be accompanied by a filing fee of \$10.

A copy of this Order was posted on the Department's website. Copies of this Order and maps number 17533, 17534 and 17535 were provided to the Department's field office in Lincoln, Nebraska. Copies of this Order and maps number 17533, 17534 and 17535 were mailed on February 2, 2010, to the following:

Carol A. Engel
706 Briarwood
Hastings, Nebraska 68901

Cynthia M. Meyer
3580 South Wabash Avenue
Hastings, Nebraska 68901

US Fish and Wildlife Service
Megan Estep Water Resource Division
PO Box 25486
Denver, Colorado 80225