

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-18486

WATER DIVISION 2-F

Background

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-18486 is held by Foley Family Limited Partnership.
2. Appropriation A-18486 authorizes the use of water for irrigation of 30.0 acres of land. The water may be diverted from the Missouri River at a point of diversion located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, Township 33 North, Range 1 East of the 6th P.M. in Cedar 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 0.43 cfs.
3. A review of the Department's records indicates that a scrivener's error was made on map number 16978 and in the description of the appurtenant land authorized for irrigation in the Order approving map number 16987, dated June 19, 2007, and as described in Column A below. The appurtenant land is correctly described in Column B.

<u>COLUMN A</u>		<u>COLUMN B</u>	
Township 33 North, Range 1 East of the 6 th P.M., Cedar County Acres		Township 33 North, Range 1 East of the 6 th P.M., Cedar County Acres	
Section 6: SW $\frac{1}{4}$ SE $\frac{1}{4}$	10.0	Section 6: SW $\frac{1}{4}$ SE $\frac{1}{4}$	10.0
SE $\frac{1}{4}$ SE $\frac{1}{4}$	8.0	SE $\frac{1}{4}$ SE $\frac{1}{4}$	8.0
Section 7: SW $\frac{1}{4}$ NE $\frac{1}{4}$	1.0	Section 7: NW $\frac{1}{4}$ NE $\frac{1}{4}$	1.0
NW $\frac{1}{4}$ NE $\frac{1}{4}$	<u>11.0</u>	NE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>11.0</u>
TOTAL	30.0	TOTAL	30.0

4. The approval of appropriation A-18486 was conditional upon the irrigation of the above lands by September 1, 2009.
5. Department personnel performed a field investigation and determined a portion of the land approved for irrigation under appropriation A-18486 had not been irrigated by September 1, 2009.
6. Nebraska Revised Statutes Section 46-229.02(7) provides for the cancellation of unused portions of surface water appropriations.

Order

IT IS HEREBY ORDERED:

1. Part of appropriation A-18486 at the rate of 0.10 cfs for use upon the land described below is CANCELLED.

<u>Township 33 North, Range 1 East of the</u>	
<u>6th P.M. in Cedar County</u>	
	<u>Acres</u>
Section 6: SW $\frac{1}{4}$ SE $\frac{1}{4}$	4.1
Section 7: NE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>2.7</u>
TOTAL	6.8

2. Appropriation A-18486 now permits Foley Family Limited Partnership to divert water from the Missouri River to irrigate the 23.2 acres of land described below and depicted on map number 17621 which is made a part of this Order. The points of diversion remain in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, Township 33 North, Range 1 East of the 6th P.M. in Cedar 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).

<u>Township 33 North, Range 1 East of the</u>	
<u>6th P.M. in Cedar County</u>	
	<u>Acres</u>
Section 6: SW $\frac{1}{4}$ SE $\frac{1}{4}$	5.9
SE $\frac{1}{4}$ SE $\frac{1}{4}$	8.0
Section 7: NW $\frac{1}{4}$ NE $\frac{1}{4}$	1.0
NE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>8.3</u>
TOTAL	23.2

3. All terms and conditions of appropriation A-18486 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

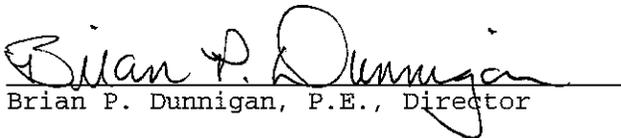
Failure to comply with all laws and regulations pertaining to surface water appropriations and any orders issued by the Director of the Department of Natural Resources may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution,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

DEPARTMENT OF NATURAL RESOURCES

March 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 map number 17621 were provided to the Department's field office in Norfolk, Nebraska. Copies of the field investigation, this Order and map number 17621 were mailed on March 26, 2010, to the following:

Foley Family Limited Partnership
Don Foley
PO Box 7
Tyndall, South Dakota 57066