STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

ORDER OF CANCELLATION IN PART OF WATER APPROPRIATION A-18390

WATER DIVISION 2-C

Background

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriation A-18390 is held by Joe McClaren Ranch Company.

2. Appropriation A-18390 authorizes the use of water for irrigation of the 635.4 acres of land described below. The water may be diverted from the Niobrara River at a point of diversion located on the left bank of the stream in the SE¼NW¼ of Section 35, Township 33 North, Range 33 West of the 6th P.M. in Cherry 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 9.08 cfs.

Township 33 North, Range 33 West of the 6th P.M. in Cherry County		Acres
Section 23:	NW¼SW¼	16.6
	NE¼SW¼	9.3
	SW¼SW¼	31.5
	SE¼SW¼	22.9
	SW¼SE¼	35.1
	SE¼SE¼	18.6
Section 26:	NW¼NW¼	10.9
	NE¼NW¼	16.9
	SW¼NW¼	38.2
	SE¼NW¼	35.5
	NW¼NE¼	33.9
	NE¼NE¼	11.1
	SW¼NE¼	39.5
	SE¼NE¼	23.1
	NW¼SW¼	37.8
	NE¼SW¼	30.6
	SW¼SW¼	15.8
	SE¼SW¼	24.2
	NW¼SE¼	27.1
	NE¼SE¼	3.9
	SW¼SE¼	22.5

Township 33 North, Range 33 West of the 6th P.M. in Cherry County		Acres
Section 27:	NW¼NE¼	0.7
	NE¼NE¼	16.6
	SW¼NE¼	16.1
	SE¼NE¼	40.3
	NW¼SE¼	10.9
	NE¼SE¼	40.0
	SE¼SE¼	4.0
Section 35:	NW¼NE¼	1.8
	TOTAL	635.4

3. The approval of appropriation A-18390 was conditioned upon the irrigation of the above lands by September 1, 2009.

4. Department personnel performed a field investigation and determined a portion of the land approved for irrigation under appropriation A-18390 had not been irrigated by September 1, 2009.

5. 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-18390 at the rate of 1.92 cfs for use upon the land described below is CANCELLED.

Township 33 North, Range 33 West of the 6th P.M. in Cherry County		Acres
Section 23:	NW¼SW¼	16.6
	NE¼SW¼	9.3
	SW¼SW¼	31.5
	SE¼SW¼	22.9
	SW¼SE¼	35.1
	SE¼SE¼	18.6
	TOTAL	134.0

2. Appropriation A-18390 now permits Joe McClaren Ranch Company to divert water from the Niobrara River to irrigate the 501.4 acres of land described below and depicted on map number 17659 which is made a part of this Order. The point of diversion remains in the SE¼NW¼ of Section 35, Township 33 North, Range 33 West of the 6th P.M. in Cherry County. The rate that water may be diverted shall not exceed one cfs for every 70 acres irrigated at a maximum rate of 7.16 cfs (3,213 gallons per minute).

Township 33 North, Range 33 West of the 6th P.M. in Cherry County		Acres
Section 26:	NW¼NW¼	10.9
	NE¼NW¼	16.9
	SW¼NW¼	38.2
	SE¼NW¼	35.5
	NW¼NE¼	33.9
	NE¼NE¼	11.1
	SW¼NE¼	39.5
	SE¼NE¼	23.1
	NW¼SW¼	37.8
	NE¼SW¼	30.6
	SW¼SW¼	15.8
	SE¼SW¼	24.2
	NW¼SE¼	27.1
	NE¼SE¼	3.9
	SW¼SE¼	22.5
Section 27:	NW¼NE¼	0.7
	NE¼NE¼	16.6
	SW¼NE¼	16.1
	SE¼NE¼	40.3
	NW¼SE¼	10.9
	NE¼SE¼	40.0
	SE¼SE¼	4.0
Section 35:	NW¼NE¼	1.8
	TOTAL	501.4

3. All terms and conditions of appropriation A-18390 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

June 30, 2010

Brian P. Dunnigan

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 17659 were provided to the Department's field office in Ord, Nebraska. Copies of the field investigation, this Order and map number 17659 were mailed on June 30, 2010, to the following:

Joe McClaren Ranch Company
c/o James Timmerman
PO Box 367
Springfield, Nebraska 68059

Gerald Timmerman
Timmerman & Sons Feeding Co Inc
PO Box 367
Springfield, Nebraska 68059

Don Blankenau
Blankenau Wilmoth LLP
206 South 13th Street, Suite 1425
Lincoln, Nebraska 68508

Tom Cody, Manager
HC 74 Box 38
Cody, Nebraska 69211