

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
APPROVAL OF APPLICATION A-19258
PETITION FOR A WAIVER OF OUTLET WORKS DWV-5093
AND PLAN OF RESERVOIR 18958

WATER DIVISION 1-D

BACKGROUND

1. On May 28, 2014, Alfred Daubendiek, Jr., filed in the Department of Natural Resources (Department) application A-19258 for a permit to impound water.
2. Subsequently, on June 4, 2014, Alfred Daubendiek, Jr., filed in the Department the following applications:
 - A. A-19262 for a permit to impound supplemental water in Daubendiek Reservoir Number 3 from a different source than application A-19258 for an amount not to exceed 16.6 acre-feet per year.
 - B. A-19263 for a permit to appropriate water from Daubendiek Reservoir Number 3 (storage applications A-19258 and A-19262) for an amount not to exceed 33.2 acre-feet per year for the purpose of supplemental irrigation (natural flow appropriation A-16742 and natural flow application A-19259).
3. On June 11, 2014, Alfred Daubendiek, Jr., filed in the Department DWV-5093, a petition for a waiver of the requirement of outlet works for application A-19258.
4. On August 7, 2014, Tony Duever, P.E., CES Engineering Group, on behalf of Alfred Daubendiek, Jr., filed in the Department plan of reservoir 18958 and specifications according to *Title 457 Neb. Admin. Code Chapter 11*.
5. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19258, Petition DWV-5093, and plan of reservoir 18958 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Mud Creek.
2. The priority date is May 28, 2014.

3. The water to be stored under this appropriation is for the purpose of providing supplemental water for irrigation projects authorized under natural-flow appropriation A-16742 and natural flow application A-19259.
4. The amount of water that may be diverted shall not exceed 16.6 acre-feet per year to be stored in Daubendiek Reservoir Number 3. Daubendiek Reservoir Number 3 Dam is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 3 North, Range 7 East of the 6th P.M. in Gage County.
5. Neb. Rev. Stat. § 46-241(5) states in part, "The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass ... a portion of the measured inflows to furnish water for livestock"
6. The owner or possessor of the reservoir storing water pursuant to A-19258 shall have structural controls in place or other mechanical means to immediately release a portion of the measured inflows in such amounts and at such times if so ordered by the Department.
7. A measuring device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
8. A waiver of the requirement of outlet works, by petition DWV-5093, has been granted. This waiver does not relieve the owner from the responsibility to pass a portion of the reservoir inflow by some method for downstream appropriators should there be a need for water administration; or if water should be required for livestock needs, unless the appropriator is a political subdivision. The Department may rescind the waiver and require installation of appropriate outlet works at a later date if it is determined that the responsibility to pass inflows is not being met or cannot be met by another method.
9. This appropriation is subject to the provisions of the Blue River Compact and the appropriator could be required to pass inflows if Compact flows are not being met.
10. 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. Receive approval prior to taking any action that changes the storage capacity of this reservoir, plan of reservoir 18958 or the type of appropriation.
 - C. Assume liability for all damages due to leakage, overflow or structural failure of the structure.

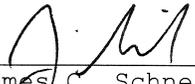
- D. Release a portion of the reservoir inflows for livestock where required, unless appropriator is a political subdivision.

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.

DEPARTMENT OF NATURAL RESOURCES

April 28, 2015



James C. Schneider, Ph.D.
Acting Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this approval may request a contested case hearing in accordance with the *Neb. Admin. Procedures Act* §§ 84-901 et. seq. RRS and the Department's *Rules of Practice and Procedure Title 454 Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln office (Nebraska State Office Building, 4th Floor, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the Approval and be accompanied by a filing fee of \$10.

A copy of this approval was posted on the Department's website. Copies of this approval and plan of reservoir 18958 were provided to the Department's field office in Lincoln, Nebraska. A copy of this approval was mailed to the following:

Tony Duever, P.E.
CES Group P.A.
1102 Broadway
Marysville, KS 66508

Copies of this approval and plan of reservoir 18958 were mailed on April 28, 2015, to the following:

Alfred Daubendiek, Jr.
1805 East Linden Drive
Beatrice, NE 68310