

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19262 AND MAP OF RESERVOIR 19012

WATER DIVISION 1-D

BACKGROUND

1. On June 4, 2014, Alfred Daubendiek, Jr., filed in the Department of Natural Resources (Department) application A-19262 for a permit to impound supplemental water in Daubendiek Reservoir Number 3 for an amount not to exceed 16.6 acre-feet per year.
2. Previously, on May 28, 2014, Alfred Daubendiek, Jr., filed in the Department application A-19258 for a permit to impound 16.6 acre-feet of water from a different source in Daubendiek Reservoir Number 3.
3. Appropriations A-19258 and A-19262, if approved, would allow the appropriator to store a total of 33.2 acre-feet per year based on two fills of 16.6 acre-feet. Application A-19262 has off-channel points of diversion for the proposed pump sites.
4. On August 5, 2014, Alfred Daubendiek, Jr. filed in the Department map of reservoir number 19012.
5. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19262 is APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Mud Creek.
2. The priority date is June 4, 2014.
3. The purpose is to provide additional stored water for subsequent appropriation for irrigation from Daubendiek Reservoir Number 3.
4. Daubendiek Reservoir Number 3 and the points of diversion are located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 34, Township 3 North, Range 7 East of the 6<sup>th</sup> P.M. in Gage County. The pump sites for the points of diversion are north of the dam on an off-channel tributary to Mud Creek that flows eastward. The amount of supplemental water that may be diverted and stored under appropriation A-19262 shall not exceed 16.6 acre-feet of water.

5. Appropriation A-19262 provides supplemental storage water to appropriation A-19258. Appropriation A-19258 is an on-channel diversion to a different tributary to Mud Creek which flows northward into Daubendiek Reservoir Number 3. The total amount of storage allowed in Daubendiek Reservoir Number 3 under both appropriations is 33.2 acre-feet per year.
6. A measuring device, approved by the Department, is **required** to be installed at both pumpsites on the tributary to Mud Creek as depicted on map number 19012 to meter the amount of water diverted from the stream under supplemental storage appropriation A-19262 into Daubendiek Reservoir Number 3.
7. Additional measuring, instrumentation or reporting requirements may be required as needed for the Department to efficiently administer water use in Water Division 1-D.
8. Approval of A-19262 is based on the information included in application A-19262 and representations made on map number 19012 signed by Alfred Daubendiek, Jr., on January 5, 2015. That information and those representations are considered terms of this approval, to which the permit holder must adhere.
9. Plan of reservoir number 18958 for appropriation A-19258 depicts the dam structure and fulfills the requirements according to *Title 457 Neb. Admin. Code Chapter 11*.
10. *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 ...."
11. The owner or possessor of the reservoir storing water pursuant to A-19258 and A-19262 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.
12. 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.
13. 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.

14. 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

  
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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, 4<sup>th</sup> 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