

STATE OF NEBRASKA  
DEPARTMENT OF NATURAL RESOURCES  
APPROVAL OF APPLICATION A-19319  
PETITION FOR A WAIVER OF DRAWDOWN DWV-5270  
AND PLAN NUMBER 19145  
WATER DIVISION 1-B

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued an Order declaring a formal moratorium in the Republican River Basin on the issuance of all new surface water appropriations.
2. On February 11, 2013, Harlan Ponstein filed petition VAR-3539 in the Department for Leave to File or Consider an Application for a New Surface Water Appropriation within a Moratorium Area. The draft application attached to the petition is for a permit to impound 27.9 acre-feet of water from a tributary to Elk Creek in the existing Ponstein Reservoir located in the SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 28, Township 1 North, Range 20 West of the 6<sup>th</sup> P.M. in Harlan County for the purpose of providing water for livestock.
3. On November 22, 2013, the Department granted petition VAR-3539 for leave to file an application for a permit to appropriate water.
4. On December 29, 2014, Harlan J. and Beth A. Ponstein filed in the Department application A-19319 for a permit to impound water, application for approval of plans for dams, plan number 19145 and petition for a waiver of drawdown requirement DWV-5270, pursuant to the proposed application filed with VAR-3539.
5. Ponstein reservoir as constructed is subject to the *Safety of Dams and Reservoirs Act*.
6. Plan number 19145 depicts a proposed modification of the dam to lower the top by 0.8 foot, so that maximum storage capacity is below 50 acre-feet.
7. The reservoir is existing, however the modification of the dam has not been completed.

ORDER

IT IS HEREBY ORDERED Application A-19319, plan number 19145, and DWV-5270 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Elk Creek.
2. The priority date is December 29, 2014.

3. The amount of water that may be diverted shall not exceed 23.8 acre-feet per year to be stored in Ponstein Reservoir. The dam that impounds water in Ponstein Reservoir is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 28, Township 1 North, Range 20 West of the 6<sup>th</sup> P.M. in Harlan County.
4. The water stored under this appropriation is for the purpose of providing water for livestock.
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-19319 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 waiver of the requirement for a drawdown, DWV-5270, 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.
8. 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 19145, 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.
9. The appropriator must comply with the following deadlines:
  - A. Renovation of the structure must begin within twelve months of the signing date of this application approval. The appropriator must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.

- B. November 1, 2016, is the date construction must be completed.
- C. Upon completion of the renovation of the dam structure, the appropriator shall file with the Department the enclosed "Construction Certification Form for Dams." Following receipt of this form, the Ponstein Reservoir and Dam will then no longer be subject to the *Safety of Dams and Reservoirs Act*, but is subject to the *Safety of Dams and Reservoirs Act* until such time.

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 14, 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, 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, engineering review report and plan number 19145 were provided to the Department's field office in Cambridge, Nebraska. Copies of this approval and a "Construction Certification Form for Dams" were mailed to the following:

Anthony Duever, P.E.  
CES Group P.A.  
1102 Broadway  
Marysville, Kansas 66508

Copies of this approval, plan number 19145 and a "Construction Certification Form for Dams" were mailed on April 14, 2015, to the following:

Harlan J. and Beth A. Ponstein  
1143 West Hunter  
Long Island, KS 67647