

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19029

AND PETITION FOR A WAIVER OF OUTLET WORKS DWV-4622

WATER DIVISION 2-C

BACKGROUND

1. On February 25, 2013, Cody W. Christensen, on behalf of Drillem, LLC, filed in the Department of Natural Resources (Department) application A-19029 for a permit to impound water.
2. On April 4, 2013, Cody W. Christensen, on behalf of Drillem, LLC, filed in the Department DWV-4622, a petition for a waiver of the requirement of outlet works for application A-19029.
3. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19029 and Petition DWV-4622 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to the Niobrara River.
2. The priority date is February 25, 2013.
3. The water to be stored under this appropriation is for the purpose of providing water for irrigation and recreation.
4. The amount of water that may be diverted shall not exceed 14.0 acre-feet per year stored in Sandbox Pond. The Dam that impounds water in Sandbox Pond is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 12, Township 31 North, Range 7 West of the 6<sup>th</sup> P.M. in Knox 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 downstream 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-19029 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 of outlet works, by petition DWV-4622, 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, 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 deadline:
  - A. A plan of reservoir and specifications according to *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code Chapter 11* must be filed within six months of the signing date of this application approval. The plan shall be prepared by a professional engineer and shall include a statement as to the hazard classification of the dam and whether it is subject to the *Safety of Dams and Reservoirs Act*. If the stage-storage table indicates normal pool capacity is less than **14.0 acre-feet**, then the amount of water that may be diverted will be reduced. No rights shall be deemed to have been acquired until the provisions of this paragraph have been complied with, and a failure to do so shall cause a forfeiture of the appropriation and all rights thereof.

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

December 12, 2014

  
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. A copy of this approval was provided to the Department's field office in Ord, Nebraska. A copy of this approval was mailed on December 12, 2014, to the following:

Drillem, LLC  
88005 Highway 57  
Hartington, Nebraska 68739

Cody W. Christensen  
104 North Greenlee Drive  
Hartington, Nebraska 68739