

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19233 AND PLAN OF RESERVOIR 18909

WATER DIVISION 1-B

BACKGROUND

1. On October 12, 1937, the Department of Water Resources (now known as the Department of Natural Resources) approved plan number P-ERA for Smith Reservoir 1191 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, Township 3 North, Range 26 West of the 6th P.M. in Red Willow County for erosion control. An application for a permit to impound water was not filed at that time.
2. 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.
3. On March 13, 2013, Richard Johnson, AFM, on behalf of the Edward Arthur Bewley Smith Trust filed petition VAR-3603 in the Department for Leave to File or Consider an Application for a New Surface Water Appropriation within a Moratorium Area. The draft application and documentation attached to the petition is for a permit to impound approximately 64.4 acre-feet of water from a tributary to the Republican River in the existing Smith Reservoir 1191 located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, Township 3 North, Range 26 West of the 6th P.M. in Red Willow County for the purpose of erosion control and water for livestock.
4. On March 28, 2014, the Department granted petition VAR-3603 for leave to file an application for a permit to appropriate water.
5. On April 24, 2014, Dana S. Bewley, on behalf of the Edward Arthur Bewley Smith Trust filed in the Department application A-19233 for a permit to impound water, application for approval of plans for dams, specifications and plan of reservoir 18909.
6. On July 28, 2014, Richard Johnson, AFM, on behalf of the Edward Arthur Bewley Smith Trust filed in the Department petition DWV-5118 for a waiver of the requirement for outlet works.
7. The Edward Arthur Bewley Smith Trust, Dana S. Bewley, Trustee, 595 Calle Aparejo, Santa Barbara, California 93111, owns the reservoir and dam.
8. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19233, Petition DWV-5118 and plan of reservoir 18909 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to the Republican River.
2. The priority date is April 24, 2014.
3. The amount of water that may be diverted shall not exceed 64.4 acre-feet per year to be stored in Smith Reservoir 1191. The dam that impounds water in Smith Reservoir 1191 is located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, Township 3 North, Range 26 West of the 6th P.M. in Red Willow County.
4. *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"
5. The owner or possessor of the reservoir storing water pursuant to A-19233 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.
6. A waiver of the requirement for outlet works, by petition DWV-5118, 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.
7. 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, the specifications, plan of reservoir 18909, or the type of appropriation.
 - C. Construct, operate and maintain the structure in accordance with *Neb. Rev. Stat. § 46-241* and the *Safety of Dams and Reservoirs Act*, §§ 46-1601 to 46-1670.

- D. Assume liability for all damages due to leakage, overflow or structural failure of the structure.
- E. 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

August 19, 2014


Brian P. Dunnigan, P.E., 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, engineering review report and plan of reservoir 18909 were provided to the Department's field office in Cambridge, Nebraska. Copies of this approval, plan of reservoir 18909 were mailed on August 19, 2014, to the following:

Dana Bewley, Trustee
Edward Arthur Bewley Smith Trust
595 Calle Aparejo
Santa Barbara, California 93111

Rick Johnson, AFM
#10 Mashie Drive
McCook, Nebraska 69001