

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19138 AND MAP OF RESERVOIR 18660

WATER DIVISION 2-C

BACKGROUND

On August 30, 2013, Mary Ann and William H. Birkel filed in the Department of Natural Resources (Department) application A-19138 for a permit to impound water.

ORDER

IT IS HEREBY ORDERED Application A-19138 and map of reservoir 18660 are APPROVED subject to the following limitations and conditions:

1. 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 or appropriation A-19138 will be CANCELLED.
2. The source of water is a tributary to Eagle Creek. The tributary to Eagle Creek and dam structure are located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, Township 32 North, Range 12 West of the 6<sup>th</sup> P.M. in Holt County.
3. Appropriation A-19138 has a priority date of August 30, 2013.
4. The water to be stored under this appropriation is for the purpose of providing water for fish culture.
5. The amount of water that may be impounded shall not exceed 24 acre-feet per year to be stored in Stewart Reservoir No. 2. This amount is based on a reservoir that stores 12 acre-feet and may be filled two times per year. Such amount may be further limited by the Department upon approval of the required plan of reservoir. Stewart Dam No. 2 is located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, Township 32 North, Range 12 West of the 6<sup>th</sup> P.M. in Holt County.
6. *Nebraska Revised Statutes § 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 ... ."

7. The owner or possessor of the reservoir storing water pursuant to A-19138 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.
8. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
9. 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.

DEADLINE

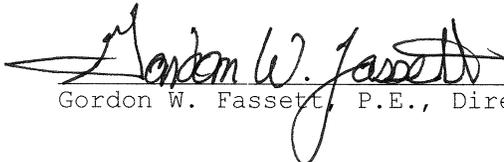
A plan of reservoir and specifications according to *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code Chapter 11* must be filed within six months of the signing date of this application approval. The plan shall be prepared by a professional engineer and shall 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 12 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

October 29, 2015

  
Gordon W. Fasset, 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, 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 map of reservoir number 18660 were provided to the Department's field office in Ord, Nebraska. Copies of this approval, map of reservoir number 18660 and the Department's *Rules of Practice and Procedure Title 454 Admin. Code Chapter 11* were mailed on October 29, 2015, to the following:

Mary Ann and William H. Birkel  
3761 L Road  
David City, Nebraska 68632