

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19388 AND PLAN NUMBER 19358

WATER DIVISION 1-F

BACKGROUND

1. On August 13, 2015, Klaus Hartmann, on behalf of Hartmann Family LLC, filed in the Department of Natural Resources (Department) application A-19388 for a permit to impound 145.8 acre-feet of water.
2. On September 21, 2015, Klaus Hartmann filed application for approval of plans for dams, specifications and plan number 19358 pursuant to application A-19388.
3. The plan is for a proposed dam subject to the *Safety of Dams and Reservoirs Act*.
4. Anthony D. Duever, P.E., CES Group P.A. Engineers & Surveyors, 1102 Broadway, Marysville, Kansas 66508, prepared the drawings and specifications.
5. Hartmann Family LLC owns the land where the reservoir and dam are to be located.
6. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.

FINDINGS

1. Project data provided in plan number 19358 for Hartmann Reservoir show the structure capacity at the primary spillway to be 48.6 acre-feet of water.
2. The application requested 145.8 acre-feet of water based on normal reservoir storage of 48.6 acre-feet, plus 2 additional fills for recreation and an irrigation project to be developed in the future.
3. There is no pending application for a permit to appropriate water from Hartmann Reservoir.

CONCLUSION

1. The proposed application is for a permit to store water in Hartmann Reservoir. Storage of water for recreation is a beneficial use of water.

2. Hartmann Reservoir has capacity to store 48.6 acre-feet at normal pool. Without definite plans and a corresponding application to appropriate water from Hartmann Reservoir, there is no basis for storing more water than the reservoir can hold at its normal storage capacity.
3. Application A-19388 should be approved for impoundment of 48.6 acre-feet of water, the amount that can be beneficially used.

ORDER

IT IS HEREBY ORDERED Application A-19388 and plan number 19358 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to the Sampson Branch.
2. The priority date is August 13, 2015.
3. The water to be stored under this appropriation is for the purpose of providing water for recreation.
4. The amount of water that may be diverted shall not exceed 48.6 acre-feet per year to be stored in Hartmann Reservoir. The dam that impounds water in Hartmann Reservoir will be located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, Township 04 North, Range 10 East of the 6th P.M. in Johnson County.
5. *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"
6. The owner or possessor of the reservoir storing water pursuant to A-19388 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 continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
8. The appropriator must comply with all relevant statutes. These relevant statutory requirements include, but are 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 number 19358, 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.
9. The appropriator must comply with the following deadlines:
- A. The owner of the dam shall provide written notice to the Department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is to begin. Notices must be in writing and addressed to the Chief Engineer or the Construction Inspector of the Department's Dam Safety Section. Notices may be delivered to the Department by mail, facsimile or electronic mail.
 - B. Construction 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.
 - C. November 1, 2017, is the date construction of the structure must be completed.
 - D. Upon completion of the structure, the appropriator shall file with the Department the enclosed "Construction Certification Form for Dams." Following receipt of this form, an approval to operate shall be issued by the Department if it determines that the dam is safe to impound within the limitations outlined in this approval. No impoundment in the structure shall occur prior to issuance of the approval to operate.
 - E. The applicant has a preferred right to file an application for a permit to appropriate the water stored for some useful purpose until April 1, 2018.

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, 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 number 19358 were provided to the Department's field office in Lincoln, Nebraska. Copies of this approval and a "Construction Certification Form for Dams" were mailed to the following:

Anthony D. Duever, P.E.
CES Group P.A. Engineers & Surveyors
1102 Broadway
Marysville, Kansas 66508

Copies of this approval, plan number 19358 and a "Construction Certification Form for Dams" were mailed on October 29, 2015, to the following:

Hartmann Family LLC
6105 Andrew Court
Lincoln, Nebraska 68512