

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19454,

PETITION FOR A WAIVER OF OUTLET WORKS DWV-5930, PLAN NUMBER 19588

AND MAP OF RESERVOIR 19720

WATER DIVISION 1-D

BACKGROUND

1. On July 18, 2016, Tyler and Michelle Stewart filed in the Department of Natural Resources (Department) application A-19454 for a permit to impound water, application for approval of plans for dams, specifications and plan number 19588.
2. On September 15, 2016, Tyler and Michelle Stewart filed DWV-5930, a petition for a waiver of the requirement for outlet works.
3. The plan is for a proposed dam subject to the *Safety of Dams and Reservoirs Act*.
4. Nicholaus J. Rowe, P.E., ProAg Engineering Inc., P.O. Box 181, Jackson, Minnesota 56143, prepared the drawings and specifications.
5. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.

ORDER

IT IS HEREBY ORDERED Application A-19454, Petition DWV-5930, plan number 19588, and map of reservoir 19720 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Cub Creek.
2. The priority date is July 18, 2016.
3. The amount of water that may be diverted shall not exceed 95.3 acre-feet per year to be stored in Tyler Stewart Reservoir. The dam that impounds water in the reservoir will be located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, Township 03 North, Range 02 East of the 6th P.M. in Jefferson County.

4. *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"
5. The owner or possessor of the reservoir storing water pursuant to A-19454 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-5930, 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. This appropriation is subject to the provisions of the Blue River Compact and the appropriator could be required to pass inflows if Compact flows are not being met.
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 19588, 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.

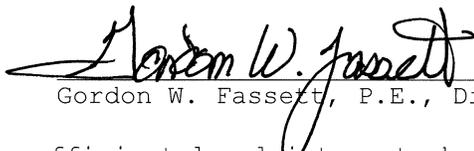
9. The appropriator must comply with the following deadlines:
- A. The owner of the dam shall provide written notice to the Department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is to begin. Notices must be in writing and 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, 2018, 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, 2019.

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 7, 2016


Gordon W. Fassett, 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, plan number 19588 and map of reservoir 19720 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:

Nicholaus J. Rowe, P.E.
ProAg Engineering Inc.
P.O. Box 181
Jackson, Minnesota 56143

Copies of this approval, plan number 19588, map of reservoir 19720 and a "Construction Certification Form for Dams" were mailed on October 7, 2016, to the following:

Tyler and Michelle Stewart
71675 Highway 15
Fairbury, Nebraska 68352