

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18913

WATER DIVISION 1-C

BACKGROUND

1. On May 4, 2012, Jeremy W. Heitmann, on behalf of Heitmann Brothers, L.L.C., filed in the Department of Natural Resources (Department) application for approval of plans for dams, DWV-2333, specifications and plan P-18200 in compliance with *Department of Natural Resources Rules of Practice and Procedure, Title 458* and the *Safety of Dams and Reservoirs Act*.
2. On May 10, 2012, Jeremy W. Heitmann, on behalf of Heitmann Brothers, L.L.C., filed in the Department application A-18913 for a permit to impound water.
3. On July 16, 2012, Anthony D. Duever, P.E., CES Group, P.A., on behalf of Heitmann Brothers, L.L.C., filed amended specifications and map of reservoir 18200 (formerly plan P-18200) that indicates the reservoir complies with *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code Chapter 11*.
4. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-18913, DWV-2333 and map of reservoir number 18200 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Spring Creek.
2. The priority date is May 10, 2012.
3. The amount of water that may be diverted shall not exceed 24.5 acre-feet per year to be stored in Heitmann Reservoir No. 1. Heitmann Dam No. 1 is located in the S½SE¼ of Section 8, Township 1 North, Range 3 West of the 6<sup>th</sup> P.M. in Thayer 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-18913 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 a drawdown, DWV-2333, 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. 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, map of reservoir number 18200 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.

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

July 19, 2012

  
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, 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 Lincoln, Nebraska, and mailed to the following:

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

Copies of this approval and map of reservoir 18200 were mailed on July 19, 2012, to the following:

Jeremy W. Heitmann  
Heitmann Brothers, L.L.C.  
5520 Highway 8  
Chester, Nebraska 68327