

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18998 AND  
PETITION FOR A WAIVER OF DRAWDOWN DWV-3464

WATER DIVISION 1-D

BACKGROUND

1. On December 26, 2012, Darrell D. Bruns, on behalf of Sue A. Bruns and himself, filed in the Department of Natural Resources (Department) application A-18998 for a permit to impound water in the proposed Wildcat Reservoir No. 2 for an amount not to exceed 14.0 acre-feet per year and petition DWV-3464, for a waiver of drawdown requirement. Water stored in Wildcat Reservoir No. 2 would be released into a tributary to Wildcat Creek, travel down a natural channel and be withdrawn from Wildcat Reservoir No. 1.
2. On December 26, 2012, Darrell D. Bruns also filed in the Department the following applications:
  - A. A-18996 for a permit to impound water in the proposed Wildcat Reservoir No. 1 from a different source for an amount not to exceed 14.0 acre-feet per year.
  - B. A-18999 for a permit to appropriate water from the proposed Wildcat Reservoir No. 1 (storage application A-18996) for the purpose of irrigation.
  - C. A-19002 for a permit to appropriate water from the proposed Wildcat Reservoir No. 2 (storage application A-18998) for the purpose of irrigation

ORDER

IT IS HEREBY ORDERED Application A-18998 and petition DWV-3464 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Wildcat Creek.
2. The priority date is December 26, 2012.
3. The water to be stored under appropriation A-18998 is for the purpose of providing supplemental water for an irrigation project authorized under natural-flow appropriation A-18745.

4. The amount of water that may be diverted shall not exceed 14 acre-feet per year to be stored in Wildcat Reservoir No. 2. Wildcat Dam No. 2 is located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 20, Township 2 North, Range 8 East of the 6<sup>th</sup> P.M. in Gage County.
5. Water stored in Wildcat Reservoir No. 2 will be released into a tributary to Wildcat Creek, flow westward down a natural channel into Wildcat Creek and be withdrawn from Wildcat Reservoir No. 1 (storage appropriation A-18996) at a point of diversion located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 20, Township 2 North, Range 8 East of the 6<sup>th</sup> P.M. in Gage County.
6. *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 ... ."
7. The owner or possessor of the reservoir storing water pursuant to A-18998 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. A waiver of the requirement for a drawdown, DWV-3464, 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.
10. 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.
11. 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.

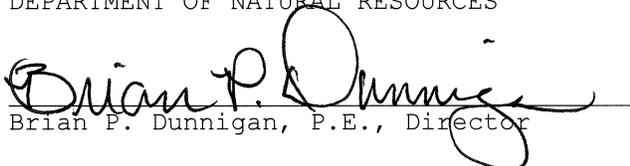
12. The appropriator must comply with the following deadlines:
- A. A map of reservoir and specifications according to *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code Chapter 11* must be filed within six months of the signing date of this application approval. The map 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 is less than 14 acre-feet of storage, 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.
  - 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. October 1, 2014, is the date construction of the structure must be completed.

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

May 30, 2013

  
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. A copy of this approval was mailed on May 30, 2013, to the following:

Darrell D. and Sue A. Bruns  
P.O. Box 552  
Beatrice, Nebraska 68310