

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19061, PETITION FOR A WAIVER OF DRAWDOWN DWV-4623

AND PLAN NUMBER 18487

WATER DIVISION 1-D

BACKGROUND

1. On April 8, 2013, Earl Spitsnogle filed in the Department of Natural Resources (Department) application A-19061 for a permit to impound water, application for approval of plans for dams, specifications and plan P-18487.
2. On April 8, 2013, Earl Spitsnogle filed DWV-4623, a petition for a waiver of drawdown requirement.
3. The plan is for an existing dam subject to the *Safety of Dams and Reservoirs Act*.
4. Anthony Duever, P.E., CES Group P.A., 1102 Broadway, Marysville, Kansas 66508, prepared the drawings and specifications.
5. Earl Spitsnogle, 48678 SW 45<sup>th</sup> Road, Odell, Nebraska 68415, owns the reservoir and dam.
6. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.
7. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19061, the Application for Approval of Plans for Dams, DWV-4623 and plan P-18487 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Big Indian Creek.
2. The priority date is April 8, 2013.
3. The amount of water that may be diverted shall not exceed 38.1 acre-feet per year to be stored in Spitsnogle Irrigation Reservoir. Spitsnogle Irrigation Dam is located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 19, Township 1 North, Range 6 East of the 6<sup>th</sup> P.M. in Gage County.

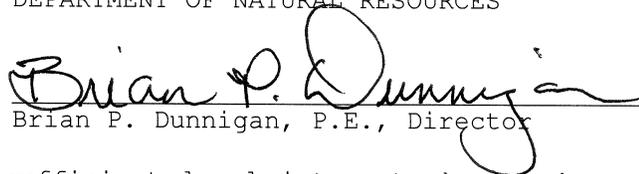
4. *Neb. Rev. Stat. § 46-241(5)* states in part, "The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir 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-19061 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-4623, 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, the specifications, plan P-18487, 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.

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 26, 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. Copies of this approval, engineering review report and plan P-18487 were provided to the Department's field office in Lincoln, Nebraska. A copy of this approval was mailed to the following:

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

Copies of this approval and plan P-18487 were mailed on July 26, 2013, to the following:

Earl Spitsnogle  
48678 SW 45 Road  
Odell, Nebraska 68415