

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18992

WATER DIVISION 1-D

BACKGROUND

1. On December 4, 2012, Robbie Hofling filed Application A-18992 for a Permit to Impound Supplemental Water in the existing Hofeling Pond Number 1, permitted under appropriation A-18728, by diverting water from a separate source.
2. On May 2, 2013, Robbie Hofling filed in the Department map number 18381 showing the location of the pumpsite from which the supplemental water will be diverted.

ORDER

IT IS HEREBY ORDERED Application A-18992 is 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 4, 2012.
3. The amount of water that may be diverted shall not exceed 5.07 acre-feet per year to be stored in Hofeling Pond Number 1 (storage appropriation A-18728). Hofeling Pond Number 1 is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 33, Township 3 North, Range 8 East of the 6<sup>th</sup> P.M. in Gage County.
4. Appropriation A-18992 provides supplemental storage water to appropriation A-18728, from another tributary to Wildcat Creek. The amount of storage allowed in Hofeling Pond Number 1 includes both appropriations for a total of 10.14 acre-feet of water per year.
5. Water appropriated under A-18992 will be diverted via a portable pump to be located in on a tributary to Wildcat Creek on the left bank of the stream in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 33, Township 3 North, Range 8 East of the 6<sup>th</sup> P.M. in Gage County, as shown on map number 18381, and is made a part of this Order. Department staff have verified that the appropriator has obtained permission for access to the proposed pumpsite. A pipe will carry the water from the pumpsite north to Hofeling Pond Number 1.

6. Plan P-17751 and specifications prepared according to *Title 457 Neb. Admin. Code Chapter 11* were approved by the Department of Natural Resources (Department) on June 8, 2011, for Hofeling Pond Number 1 (storage appropriation A-18728). No modification to the structure of Hofeling Pond Number 1 is required for this supplemental storage appropriation, therefore plan P-17751 remains in effect.
7. On June 8, 2011, a waiver of the requirement for a drawdown, DWV-2018, for Hofeling Pond Number 1 was granted by the Department. 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.
8. *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 ... ."
9. 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.
10. 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-17751, 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.

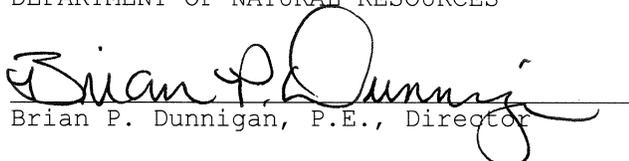
11. The appropriator must comply with the following deadlines.
- A. Construction of the diversion works for supplemental water must begin within twelve months of the signing date of this application approval. The appropriator must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.
  - B. Construction of the diversion works for supplemental water must be completed by October 1, 2014.

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 16, 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 and map number 18381 were provided to the Department's field office in Lincoln, Nebraska. Copies of this approval and map number 18381 were mailed on July 16, 2013, to the following:

Michael Jess, P.E.  
2840 Kucera Drive  
Lincoln, Nebraska 68502

Robbie Hofeling  
15970 East Juniper Road  
Filley, Nebraska 68357