

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18756

WATER DIVISION 2-C

BACKGROUND

1. On March 10, 2011, William H. and Mary Ann Birkel filed in the Department of Natural Resources (Department) application A-18756 for a permit to impound water.
2. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-18756 is APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Eagle Creek.
2. The priority date is March 10, 2011.
3. The rate of diversion for this appropriation shall not exceed 0.89 cubic foot per second (399 gallons per minute). The amount of water that may be diverted from this source shall not exceed 36 acre-feet per year to be stored in Stewart Reservoir No. 1 (storage appropriation A-18755). This is based upon a reservoir that stores 12 acre-feet and is filled 3 times per year. Stewart Dam is located in the E $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{4}$  of Section 32, Township 32 North, Range 12 West of the 6<sup>th</sup> P.M. in Holt County.
4. A pump, located on a different tributary to Eagle Creek, will be used to withdraw water and will travel via pipeline into Stewart Reservoir No. 1. A measuring device approved by the Department may be required for the pumping equipment.
5. The supplemental storage under this application is in addition to the Stewart Reservoir No. 1 (storage appropriation A-18755). The total amount of water for combined appropriations A-18755 and A-18756 is 48 acre-feet.
6. Pursuant to Neb. Rev. Stat. §.46-241(5), the owner or possessor of a reservoir does not have the right to store water in such reservoir during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right.
7. A continuous recording device approved by the Department to monitor reservoir levels may be required.

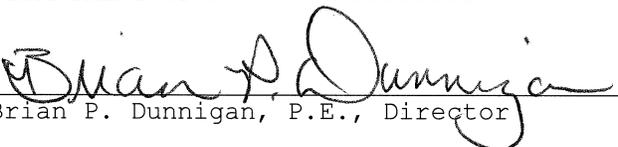
8. The appropriator must comply with all relevant statutes. This includes, but is not limited to, the following:
  - A. Notify the Department of any change in ownership or address.
  - B. Receive approval prior to taking any action that changes the storage capacity of this reservoir, map of reservoir number 17819, 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.
  
9. The appropriator is required to file a map of Stewart Reservoir No. 1 in accordance with *Title 457 Neb. Admin. Code Chapter 11* within six months of the signing date of this application approval. The project map must be prepared and signed by a professional engineer.

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

June 17, 2011

  
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 454 Neb. Admin. Code Chapter 7*. The request must be received by the Department at its Lincoln office (4<sup>th</sup> Floor, Nebraska State Office Building, 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 and provided to the Department's field office in Ord, Nebraska. Copies of this approval and map of reservoir number 17819 were mailed on June 17, 2011, to the following:

William H. and Mary Ann Birkel  
3761 L Road  
David City, Nebraska 68632