



Dave Heineman
Governor

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
Brian P. Dunnigan, P.E.
Director

April 30, 2013

IN REPLY TO:

Dear Reservoir Owner:

You are invited to attend one of three "Small Reservoir Permitting Workshops" conducted by the Department of Natural Resources (Department).

This letter is being sent to persons who have previously been contacted by the Department regarding unpermitted reservoirs. The Department has sent regulating notices and instructions for filing a variance petition to begin the permitting process. Since sending the original letters in December 2012 and January 2013, the Department has been contacted by many affected landowners or their representatives. In addition, staff has been working diligently to provide information and guidance to make the permitting process as streamlined and inexpensive as possible. The first step identified in the January mailing is the petition for leave to file an application (variance petition). If you have done this step, you will be receiving an answer to your petition in the near future, along with further specific instructions on how to proceed.

If you have not yet contacted the Department, or submitted a petition form, please do not hesitate to call the Surface Water Program Specialists listed at the end of this letter. In addition, the Department will be holding three workshops to assist with the petition and application filing process. You are not required to attend any of the workshops; their purpose is to assist reservoir owners who wish to attend. The workshops will be open house style, so you can attend at any time during the session. The Small Reservoir Permitting Workshops will be held at the following locations and times:

Tuesday, May 14, 2013, 11:00 a.m. – 1:00 p.m.
Franklin County Fairgrounds
1217 G Road
Franklin, Nebraska

Tuesday, May 14, 2013, 5:00 p.m. – 7:00 p.m.
Ella Missing Community Center
411 6th Street
Arapahoe, Nebraska

Wednesday, May 15, 2013, 11:00 a.m. – 1:00 p.m.
McCook Community College, Center for Enterprise
McMillen Hall
1205 East 3rd Street
McCook, Nebraska

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[dsfp/members/workshop invitation](#)

There will be a check-in table and three tables for assistance regarding questions about:

- Surface Water Storage Applications
- Filing Plans with the Safety of Dams Program
- Water Administration

The open house setting is an opportunity for those who have not contacted the Department, along with those who have, to meet with us face to face. The workshop is designed to assist those with ongoing questions about the permitting of their small dams and to allow owners and their representatives to get instructions tailored to their situation. It will be helpful if you bring the correspondence you have already received as it will have the reference numbers Department staff need to look up specific information regarding your reservoir.

In the event that you have already contacted the Department or have filed your variance petition, you do not need to come to the workshop. As a reminder, here are the two Surface Water Program Specialists who are the main points of contact for the variance petitions and applications:

Beth Eckles - (402) 471-0591

Christine Southwick - (402) 471-1692

For those who wish to begin the process sooner, please contact Beth or Christine at the above telephone numbers. Again, it is helpful to have the original letter with the reference numbers.

We look forward to assisting you in the permitting process and meeting with you in person at the workshop!

Frequently Asked Questions Regarding Small Dam Permitting

Why me? My reservoir has not had water in it for years, do I really need a permit? What is the deadline? How long has the law been in effect? Is my reservoir/pond/dam “grandfathered” in? What happens if I do not fulfill Nebraska Department of Natural Resources’ requirements for permitting?

Since 1895 Nebraska law has held that “the water of every natural stream not heretofore appropriated within the State of Nebraska ... is hereby declared to be the property of the public and is dedicated to the use of the people of the state, subject to appropriation.” In most circumstances when someone wishes to store, divert, or pump surface water, a permit from the State is required. The laws requiring a permit to store water have been in place since 1919. The requirement for plans to be filed with the State for dams has been in place since 1941. The age of the dam has no bearing on whether or not a permit to store water is required. The goal of the Department of Natural Resources (Department) is for the necessary permits to be obtained and water administration notices to be followed. The Department has not set any deadlines at this time. As long as individuals are cooperative and are working towards obtaining the necessary permits, the Department does not plan to take punitive action.

My reservoir has been here for 50 years, why now? Is this just for the Republican River Basin? Why do I have to pass water? The water won’t make it to Kansas. Is my reservoir a non-consumptive use?

The requirements to obtain a storage permit for reservoirs apply to the entire State. The efforts by the Department to bring all structures into compliance with state law is a large, ongoing effort across the entire State. In establishing priorities to focus available staff, the Department identified public safety as the highest priority. Next in priority is the need to administer the available water supply. At this time, all surface water appropriations (permitted and unpermitted) in the Republican River Basin are being regulated. It would be unfair to regulate permitted structures, while ignoring reservoirs that are not in compliance with State law. In the Republican River Basin, the loss from evaporation from the water surface of all dams storing 15 acre-feet or more is counted as a consumptive use. Nebraska’s compliance with the Republican River Compact is not judged by how much water is flowing into another state. To determine Compact compliance, Nebraska’s consumption of streamflow is compared to Nebraska’s allocation of streamflow on an ongoing basis. Storing water in these reservoirs creates evaporation, which counts as consumptive use against Nebraska’s total water allocation.

Why do I need to file the Variance Petition?

The Republican River Basin’s water supply was designated as fully appropriated in 2004 and a moratorium on new surface water appropriations was declared; thus preventing the State from granting any additional water rights in the basin. In basins where there is a moratorium preventing filing a new application to divert or store water, there is a variance process that must be followed. The variance petition must be filed, which requests permission to file the application. The Department must make sure that certain criteria are met in order to allow a new application to be filed. In the case of most unpermitted dams, if the dam serves a useful purpose that benefits the owner and it pre-exists the declaration of the moratorium, the variance petition should receive a favorable ruling.

You have been out here inspecting/surveying my dam, why do I have to file for an application?

The safety of dams program has been inspecting dams across the state for decades to insure public safety. The dam safety program is separate from the surface water permitting program. The programs are coordinating and comparing information to ensure that all permits are obtained, whether safety related or related to surface water storage statutes. In addition, detailed elevation data was recently developed which allows for more precise determinations of storage capacities. This capability gives

Department staff more certainty regarding which structures are statutorily required to obtain permits. This is an ongoing statewide initiative.

Do I have to breach my dam? Do I have to modify my dam? Can I modify my reservoir so I don't have to get a permit?

The Department's efforts are focused on helping owners of unpermitted dams come into compliance with State law by obtaining the necessary permits. If an owner prefers to modify or remove a structure, so as to eliminate the permitting requirements, it will be necessary to discuss this possibility with Department staff. In some instances plans to modify dams will need to be filed with the Department before the work can begin.

Do I have to hire a surveyor? Do I have to hire an engineer? What type of information would be necessary for plans if an engineer is hired?

The Department is utilizing detailed elevation data and other information on file to assist landowners once they have initiated the permitting process by filing a variance petition in the Department, to minimize the cost of obtaining the necessary permits. Each project is unique, so landowners should work with the Department to identify the requirements specific to their situation. In some cases the Department will be able to supply all the required data to applicants, thus minimizing the cost to come into compliance. In other cases, State law and Department Rules require plans to be prepared by a professional civil engineer due to the dam's size, potential to cause downstream damages, or specific structural features of the dam. If you are required to have an engineer certify aspects of your structure, you should work with Department staff to identify specifically what is needed.

What do I do if I think my pond cannot store 15 acre-feet of water?

The Department did a significant amount of analysis and review before you were first contacted. One important aspect to consider: If the dam is capable of storing 15 acre-feet or more at the lowest open overflow, then it needs a storage permit. This is regardless of whether the reservoir is dry at the moment or normally dry. If you believe your structure was incorrectly identified as needing a permit, then you should contact the Department to discuss your situation. The Department can share the information that was used to make its determination.

What is the lowest open overflow?

The lowest open overflow depends on the features of the dam and how each feature is operated. There are two common configurations for small dams. The first type will only have an emergency spillway overflow, which typically exists on one end of the dam. The emergency spillway typically is a grass-lined earthen channel or depression (compared with the crest of the dam) that allows excess water to pass around the dam. The other common overflow (type of spillway) is a conduit passing through the dam, often corrugated metal pipe. The conduit allows water to flow through the dam and on downstream if the water gets above a certain level. If a dam has a spillway conduit with a gate that is left in the closed (store water) position, then the lowest open overflow will be the emergency spillway, as described above.

I do not know how to fill out these forms. Who/how do I contact the Department with further questions?

You should have received a letter in January that specified a surface water program specialist to contact. If you still have that letter, please contact that person. If you don't have a letter with a reference identification number, please call the Department's main number: (402) 471-2363.