

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19182

PETITION FOR A WAIVER OF OUTLET WORKS DWV-4918

WATER DIVISION 2-B

BACKGROUND

1. On January 27, 2014, Daniel L. and Jody Kouma filed in the Department of Natural Resources (Department) application A-19182 for a permit to impound water and DWV-4918, a petition for a waiver of the requirement of outlet works for application A-19182.
2. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19182 and Petition DWV-4918 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Oak Creek.
2. The priority date is January 27, 2014.
3. The water to be stored under this appropriation is for the purpose of irrigation.
4. The amount of water that may be stored shall not exceed 16.5 acre-feet per year in Kouma East Reservoir. Kouma East Dam is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, Township 12 North, Range 4 East of the 6th P.M. in Seward County.
5. Water may not be withdrawn from Kouma East Reservoir for irrigation until an appropriation to do so is obtained.
6. *Nebraska Revised Statutes* § 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 downstream 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-19182 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 waiver of the requirement of outlet works, by petition DWV-4918, 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.
9. 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.
10. The appropriator must comply with the following deadlines:
 - A. A plan 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 plan 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 indicates normal pool capacity is less than 16.5 acre-feet, then the amount of water that may be stored 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.

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 22, 2015



James C. Schneider, Ph.D.
Acting 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, 4th 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 mailed on July 22, 2015, to the following:

Daniel L. and Jody Kouma
2141 280 Road
Bee, Nebraska 68314