

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19003

WATER DIVISION 2-C

BACKGROUND

On January 9, 2013, Larry L. and Marilyn K. Frank filed in the Department of Natural Resources (Department) application A-19003 for a permit to impound water.

ORDER

IT IS HEREBY ORDERED that application A-19003 is APPROVED subject to the following limitations and conditions:

1. A plan of reservoir prepared according to *Title 457 Neb. Admin. Code Chapter 11* must be filed in the office of the Department by six months past the signing date of this application approval or appropriation A-19003 will be CANCELLED.
2. The source of water is a tributary to the North Branch of Verdigre Creek located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 01, Township 30 North, Range 08 West of the 6<sup>th</sup> P.M. in Knox County.
3. Appropriation A-19003 has a priority date of January 9, 2013.
4. The water to be stored under this appropriation is for the purpose of providing supplemental water for irrigation projects authorized under natural flow appropriations A-17555, A-17791 and A-18666 located in the S $\frac{1}{2}$ NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 01, Township 30 North, Range 08 West of the 6<sup>th</sup> P.M. in Knox County.
5. The amount of water that may be impounded shall not exceed 14.75 acre-feet per year to be stored in Frank Reservoir. Such amount may be further limited by the Department upon approval of the required plan of reservoir. Frank Dam will be located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 01, Township 30 North, Range 08 West of the 6<sup>th</sup> P.M. in Knox County.
6. Water may not be withdrawn from Frank Reservoir for irrigation until an appropriation to do so is obtained.
7. *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 ... ."

8. The owner or possessor of the reservoir storing water pursuant to A-19003 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.
9. The appropriator must comply with all relevant statutes. The statutes include, but are not limited to, the following:
  - A. Notify the Department of any change in ownership or address.
  - B. Notify the Department of the name and address of the person responsible for the use of the water appropriation (this may include farm managers, tenants, or relatives that actually apply the water to the approved use).
  - C. Obtain approval from the Department prior to taking any action that changes the location of the point of diversion, the location of the place of use, the type of use, or the type of appropriation.
10. The appropriator must comply with the following deadlines:
  - A. A plan of reservoir prepared according to *Title 457 Neb. Admin. Code Chapter 11* must be filed in the office of the Department by six months past the signing date of this application approval. 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.
  - B. Construction of the diversion works 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.
  - C. Construction of the project must be completed by two years past the signing date of this application approval.

#### ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this Approval may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

Nebraska law provides that failure to use a portion or all of a perfected appropriation for more than five consecutive years may result in cancellation of the appropriation.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. This appropriation may be closed if there is insufficient water to satisfy senior appropriations. If in the future you are not able to divert sufficient amounts of water, and if there are junior appropriations upstream, you may call for water by contacting your local field office.

DEPARTMENT OF NATURAL RESOURCES

October 15, 2015

  
Gordon W. Fassett, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this order 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 order 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. A copy of this approval and the Department's *Rules of Practice and Procedure Title 454 Admin. Code Chapter 11* was mailed on October 15, 2015, to the following:

Larry L. and Marilyn K. Frank  
87948 517<sup>th</sup> Avenue  
Verdigre, Nebraska 68783