

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18671

WATER DIVISION 2-B

Background

1. On April 8, 2009, the Department of Natural Resources (Department) issued an Order of Final Determination that the Lower Platte River Basin is Not Fully Appropriated. With this final determination and pursuant to Neb. Rev. Stat. Section 46-714(12)(b) as a result of L.B. 483, which was signed by the Governor and became effective April 6, 2009, the Department was required to place a new stay on the issuance of any new natural-flow, storage or storage-use appropriations in the stay area. The new stay remains in effect until:
 - a. 120 days from the date the Natural Resources Districts (Districts) received notice of the final determination, OR
 - b. A District adopts rules and regulations regarding stays on ground water wells in accordance with Neb. Rev. Stat. Section 46-714(12)(f).

The Department will not issue any surface water appropriation causing the Lower Platte River basin to be fully appropriated; nor grant any more appropriations for irrigation within an affected District that would result in an annual net increase of more than 834 acres of appurtenant land.

2. On April 7, 2009, Carter M. Hubbard, P.E., CFM, on behalf of Nebraska Department of Roads, filed petition VAR-1663 for Leave to Consider an Application for a Permit to appropriate Water within a Stay Area. The application is for a storage reservoir already in existence.
3. Petitions for leave to consider an application for a permit to appropriate water in areas that are subject to stays and moratoriums are covered under Neb. Rev. Stat. Sections 46-714(3)(n) and 61-206. Department Rule 457 N.A.C. 23 establishes guidelines under which variances can be approved.
4. Petition VAR-1663 was granted by the Department on June 24, 2009.
5. On July 1, 2009, Robert Carnazzo, on behalf of the Nebraska Department of Roads, filed application A-18671 in the Department of Natural Resources (Department) for a permit to impound water, application for approval of plans for dams, specifications and plan P-17446.
6. On July 31, 2009, Robert Carnazzo, on behalf of the Nebraska Department of Roads, filed DWV-1706, a petition for a waiver of drawdown requirement.

7. The stay that began on April 8, 2009, is no longer in effect.
8. Construction has been completed.

Order

IT IS HEREBY ORDERED:

Application A-18671, the application for approval of plans for dams, DWV-1706 and plan P-17446 are APPROVED subject to the following limitations and conditions.

1. The source of water is Dry Creek.
2. The priority date is July 1, 2009.
3. The amount of water that may be diverted shall not exceed 17.5 acre-feet per year to be stored in Chambers Wetland. Chambers Wetland Dam is located in the SE¼ of Section 1, Township 25 North, Range 12 West of the 6th P.M. in Holt County.
4. A waiver of the requirement for a drawdown, DWV-1706, 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.
5. 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-17446, or the type of appropriation.
 - C. Construct, operate and maintain the structure in accordance with Section 46-241 RSS and the Safety of Dams and Reservoirs Act, Sections 46-1601 to 46-1670 RSS.
 - D. Assume liability for all damages due to leakage, overflow or structural failure of the structure.
 - E. Release a portion of the reservoir inflows for livestock where required, unless appropriator is a political subdivision.

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

September 22 , 2009

/s/
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 Nebraska Administrative Procedures Act (Sections 84-901 et. seq. RSS) and the Department's Rules of Practice and Procedure (454 N.A.C. Chapter 007). The request must be received by the Department at its Lincoln office (301 Centennial Mall South, 4th Floor State Office Building, Lincoln, NE 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, engineering review report and plan P-17446 were provided to the Department's field office in Norfolk, Nebraska. A copy of this approval was mailed to the following:

Carter Hubbard P.E., CFM
Olsson Associates
PO Box 84608
Lincoln, Nebraska 68501-4608

Copies of this approval and plan P-17446 were mailed on September _____, 2009, to the following:

Nebraska Department of Roads
c/o Bob Carnazzo
PO Box 94759
Lincoln, Nebraska 68509-4759