

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18951

WATER DIVISION 1-C

BACKGROUND

1. On August 10, 2012, Daniel L. and Jeanette A. Shaw filed in the Department of Natural Resources (Department) application A-18951 for a permit to impound supplemental water in Dan Shaw Pond for an amount not to exceed 68.0 acre-feet per year. This is based on a reservoir that would store 34.0 acre-feet and may be filled two additional times per year with water from a nearby stream. A prior on-channel storage appropriation, A-17752, allows the appropriator to store 34.0 acre-feet per year in Dan Shaw Pond. Appropriations A-17752 and A-18951, if approved, would allow the appropriator to store a total of 102.0 acre-feet per year based on three fills of 34.0 acre-feet. Application A-18951 has an off-channel point of diversion for a proposed pump site.
2. On August 10, 2012, Daniel L. and Jeanette A. Shaw filed application A-18953 to appropriate water from Dan Shaw Pond (storage application A-18951) for the purpose of irrigation.
3. Previously, on August 6, 2012, Daniel L. and Jeanette A. Shaw also filed application A-18952 to appropriate water from Dan Shaw Pond (storage appropriation A-17752) for the purpose of irrigation.
4. Plan P-15700 was approved by the Department on May 11, 1999, for storage appropriation A-17752 to store 34.0 acre-feet per year at normal pool in Dan Shaw Pond at the riser crest elevation of 88.0 feet (local datum) as shown on the plan.
5. Daniel L. and Jeanette A. Shaw of 30460 Road Q, Edgar, Nebraska, 68935, own the reservoir and dam.
6. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.
7. Construction has been completed.

ORDER

IT IS HEREBY ORDERED that Application A-18951 is APPROVED subject to the following limitations and conditions:

1. The source of water is a Tributary to Elk Creek.
2. The priority date is August 10, 2012.

3. The purpose is to provide additional stored water for subsequent appropriation for irrigation from Dan Shaw Pond.
4. Dan Shaw Dam is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  and the point of diversion is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 17, Township 3 North, Range 7 West of the 6<sup>th</sup> P.M. in Nuckolls County. The pump site for the point of diversion is off-channel and south of the dam. It is located on a Tributary to Elk Creek that flows eastward into a fork that meets the Tributary to Elk Creek on which Dan Shaw Pond is located. The amount of supplemental water that may be diverted and stored under appropriation A-18951 shall not exceed a total of 68.0 acre-feet per year to be stored in Dan Shaw Pond. This amount is based on a reservoir that stores 34.0 acre-feet and this appropriation provides for two additional fills if water is available.
5. Appropriation A-18951 provides supplemental storage water to appropriation A-17752. Appropriation A-17752 is an on-channel diversion of a Tributary to Elk Creek which flows southward into Dan Shaw Pond. Supplemental storage appropriation A-18951 is an off-channel diversion of a Tributary to Elk Creek that flows eastward into the Tributary of Elk Creek where Dan Shaw Pond is located. The total amount of storage allowed in Dan Shaw Pond under both appropriations is 102.0 acre-feet per year.
6. Plan P-15700 approved under appropriation A-17752 depicts the dam structure, and fulfills the requirements for *Neb. Rev. Stat. § 46-241* and the *Safety of Dams and Reservoirs Act, §§ 46-1601 to 46-1670*, for Dan Shaw Pond.
7. This appropriation does not grant the owner of the dam permission to alter the structure of the dam in any way or raise the principal spillway riser to a height greater than shown on plan P-15700.
8. *Neb. Rev. Stat. § 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 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 ...."
9. The owner or possessor of the reservoir storing water pursuant to A-18951 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.
10. A measuring device approved by the Department is required. Water may not be stored under appropriation A-18951 until the measuring device is installed. All diversions of water under A-18951 must be recorded by this device. By December 31<sup>st</sup> of each calendar year the appropriator shall file a report of the total amount of water stored under A-18951 in the Lincoln Field Office, Department of Natural Resources, P.O. Box 94676, Lincoln, Nebraska 68509-4676.

11. This appropriation is subject to the provisions of the Blue River Compact and the appropriator could be required to pass inflows if Compact flows are not being met.
12. 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-15700, or the type of appropriation.
  - C. Construct, operate and maintain the structure in accordance with *Neb. Rev. Stat. § 46-241* and the *Safety of Dams and Reservoirs Act, §§ 46-1601 to 46-1670*.
  - 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.
13. The appropriation is not considered perfected until water has been stored for the purpose stated in this approval. The appropriation must be perfected by September 1, 2015. After September 1, 2015, a field investigation will be conducted to determine if water has been stored as approved under this appropriation.

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

March 14, 2013

  
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 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 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 was mailed on March 14, 2013, to the following:

Daniel L. and Jeanette A. Shaw  
30460 Road Q  
Edgar, Nebraska 68935