

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19135 AND

PETITION FOR A WAIVER OF DRAWDOWN DWV-5248

WATER DIVISION 2-F

BACKGROUND

1. On August 29, 2013, William H. Birkel filed in the Department of Natural Resources (Department) application A-19135 for a permit to impound water in the existing Morrison Reservoir No. 1 for an amount not to exceed 43.5 acre-feet per year. This is based on a reservoir that would store 14.5 acre-feet and may be filled three times per year.
2. On December 8, 2014, William H. Birkel filed in the Department petition DWV-5248, for a waiver of drawdown requirement.
3. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19135 and petition DWV-5248 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Randall Creek.
2. The priority date is August 29, 2013.
3. The water to be stored under appropriation A-19135 is for the purpose of irrigation.
4. The amount of water that may be diverted shall not exceed 43.5 acre-feet per year to be stored in Morrison Reservoir No. 1. located in Lot 1 of Section 21, Township 35 North, Range 11 West of the 6th P.M. in Boyd County. This amount is based on a reservoir that stores 14.5 acre-feet and will provide three fills per year if water is available.
5. *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"
6. The owner or possessor of the reservoir storing water pursuant to A-18998 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.

7. A continuous recording device, approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
8. A waiver of the requirement for a drawdown, DWV-5248, 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 file a plan of reservoir and specifications according to *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code Chapter 11* 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 is less than 14.5 acre-feet of storage, then the amount of water that may be diverted 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

December 16, 2014



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 Ord, Nebraska. A copy of this approval was mailed on December 16, 2014, to the following:

Triple B, Inc.
3761 L Road
David City, Nebraska 68632