

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19391

WATER DIVISION 2-B

BACKGROUND

1. On May 20, 1985, the Department of Water Resources approved plan EX-1-85 for Ada Happel Dam located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 23 North, Range 04 East of the 6th P.M. in Cuming County.
2. On September 28, 2015, Shane and Tammie Batenhorst filed in the Department of Natural Resources (Department) application A-19391 for a permit to impound water in Ada Happel Reservoir.
3. Shane and Tammie Batenhorst own the reservoir and dam.
4. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19391 is APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to the Elkhorn River located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 23 North, Range 04 East of the 6th P.M. in Cuming County.
2. The priority date is September 28, 2015.
3. The water stored under this appropriation is for the purpose of erosion and flood control.
4. The amount of water that may be diverted shall not exceed 48 acre-feet per year to be stored in Ada Happel Reservoir. The dam that impounds water in Ada Happel Reservoir is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 23 North, Range 04 East of the 6th P.M. in Cuming County.
4. *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"
5. The owner or possessor of the reservoir storing water pursuant to A-19391 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.

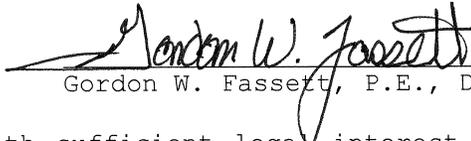
6. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
7. The appropriator must comply with all relevant statutes. These relevant statutory requirements include, but are not limited to, the following:
 - A. Notify the Department 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 number EX-1-85, 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.

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

October 29, 2015


Gordon W. Fasseit, 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, 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 Norfolk, Nebraska. A copy of this approval was mailed on October 29, 2015, to the following:

Shane and Tammie Batenhorst
1392 6th Road
Wisner, Nebraska 68791