

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19338, DWV-5335 PETITION FOR A WAIVER OF OUTLET
WORKS, MAP OF RESERVOIR NUMBER 19351 AND PLAN NUMBER 19214

WATER DIVISION 1-B

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued an Order declaring a formal moratorium in the Republican River Basin on the issuance of all new surface water appropriations.
2. On March 22, 2013, Doug Lennemann, Highway Superintendent for Harlan County Road Department, filed petition VAR-4613 in the Department for Leave to File or Consider an Application for a New Surface Water Appropriation within a Moratorium Area. The draft application and documentation attached to the petition is for a permit to impound approximately 33.3 acre-feet of water from a tributary to Foster Creek in the existing Lueking West Reservoir located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 04 North, Range 20 West of the 6th P.M. in Harlan County for the purpose of water for livestock.
3. Subsequent to the filing, Tim Burgeson succeeded Doug Lennemann as Highway Superintendent of Harlan County Road Department.
4. On January 17, 2014, the Department granted petition VAR-4613 for leave to file an application for a new surface water permit within a moratorium area.
5. On March 16, 2015, Tim Burgeson, Highway Superintendent for Harlan County Road Department, and John Lueking, landowner, filed in the Department application A-19338 for a permit to impound water, petition DWV-5335 for waiver of outlet works, application for approval of plans for dams, and plan number 19214.
6. The plan is for an existing dam subject to the *Safety of Dams and Reservoirs Act*.
7. Harlan County Road Department owns the dam; the inundation pool is on land owned by John Lueking.
8. The plan was examined by a Registered Professional Engineer of the Department and was found to be consistent with current standards. The plan indicates the accumulated sediment obstructing the spillway outlet pipe will be removed by the dam owner.

ORDER

IT IS HEREBY ORDERED Application A-19338, Petition DWV-5335, map of reservoir number 19351 and plan number 19214 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Foster Creek.
2. The priority date is March 16, 2015.
3. The water to be stored under this appropriation is for the purpose of providing water for livestock and erosion control.
4. The amount of water that may be diverted shall not exceed 25.6 acre-feet per year to be stored in Lueking West Reservoir. The dam that impounds water in Lueking West Reservoir will be located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, Township 04 North, Range 20 West of the 6th P.M. in Harlan County.
5. *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"
6. The owner or possessor of the reservoir storing water pursuant to A-19338 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 waiver of the requirement for outlet works, by petition DWV-5335, 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.
8. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
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.

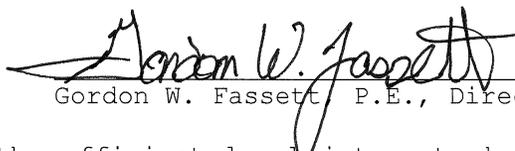
- B. Receive approval prior to taking any action that changes the storage capacity of this reservoir, plan number 19214, or the type of appropriation.
 - C. Construct, operate and maintain the structure in accordance with *Neb. Rev. Stat. § 46-241* and the *Safety of Dams and Reservoirs Act, §§ 46-1601 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.
10. The appropriator must comply with the following deadlines:
- A. The removal of the accumulated sediment obstructing the spillway outlet pipe must be completed by November 1, 2016.
 - B. Upon completion of the removal of the sediment in the outlet pipe, the appropriator must provide written notice to the Department that the work has been completed. Notice must be provided in writing and addressed to the Chief Engineer of the Department's Dam Safety Section. Notice may be delivered to the Department by mail, facsimile or electronic mail. Following receipt of this notice, an approval to operate shall be issued by the Department if it determines that the dam is safe to impound within the limitations outlined in this approval.

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 16, 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 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. Copies of this approval, engineering review report and plan number 19214 were provided to the Department's field office in Cambridge, Nebraska. Copies of this approval and plan number 19214 were mailed on October 16, 2015, to the following:

Harlan County Roads
c/o Tim Burgeson, Highway Superintendent
P.O. Box 227
Alma, Nebraska 68920

John Lueking
10597 722 Road
Oxford, Nebraska 68967