

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19144

AND PLAN NUMBER 18654

WATER DIVISION 2-F

BACKGROUND

1. On August 22, 2013, Boyd County Highway Department, on behalf of the parties of the interlocal agreement dated April 24, 2012, between Boyd County, Spencer Area Development Corporation, and the Village of Spencer, (Parties), filed in the Department of Natural Resources (Department) an application for approval of plans for dams, specifications and plan P-18654 for the renovation of the existing Klasna Reservoir located in the SE $\frac{1}{4}$ of Section 34, Township 34 North, Range 12 West of the 6th P.M. in Boyd County.
2. On September 20, 2013, Spencer Area Development Corporation, on behalf of the Parties, filed in the Department application A-19144 for a permit to impound 65.4 acre-feet of water from Crooked Creek in the existing Klasna Reservoir located in the SE $\frac{1}{4}$ of Section 34, Township 34 North, Range 12 West of the 6th P.M. in Boyd County.
3. On November 8, 2013, the Department issued a temporary stay on all new surface water appropriations within in the Lower Niobrara Natural Resources District boundary. The temporary stay remains in effect through January 31, 2014.
4. On December 24, 2013, Boyd County Highway Department, on behalf of the Parties, filed in the Department petition VAR-4889 for Leave to Consider an Application for a Permit to Appropriate Water within a Stay Area. The petition requests consideration of application A-19144.
5. On January 3, 2014, the Department granted petition VAR-4889 for leave to consider application A-19144.
6. The plan P-18654 is for the renovation of an existing dam subject to the *Safety of Dams and Reservoirs Act*.
7. Stephen H. Nickel, P.E., Nickel Engineering, 7941 Portsche Lane, Lincoln, Nebraska 68516, is the coordinating professional for the preparation of the drawings and specifications.
8. The Boyd County Highway Department, the Village of Spencer, and the Spencer Area Development Corporation have entered into an inter-local agreement for this project. This agreement states that Boyd County Highway Department, PO Box 141, Butte, Nebraska 68722, holds easements for the road right-of-way across the dam. The Spencer Area Development Corporation, PO Box 48, Spencer, Nebraska 68777, is responsible for obtaining easements associated with the rehabilitation construction.

The Village of Spencer, 100 East Main Street, Spencer, Nebraska 68777, will provide long-term maintenance and ultimate ownership of the reservoir, currently owned by Spencer Area Development Corporation.

9. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.
10. The dam and reservoir have been in existence for many years, however the construction of the renovation has not been completed.

ORDER

IT IS HEREBY ORDERED Application A-19144, the Application for Approval of Plans for Dams and plan P-18654 are APPROVED subject to the following limitations and conditions:

1. The source of water is Crooked Creek.
2. The priority date is September 20, 2013.
3. The water to be stored under this appropriation is for the purpose of recreation.
4. The amount of water that may be diverted shall not exceed 65.4 acre-feet per year to be stored in Klasna Reservoir. The dam that impounds water in Klasna Reservoir is located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 34, Township 34 North, Range 12 West of the 6th P.M. in Boyd County.
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-19144 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. 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-18654, 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.

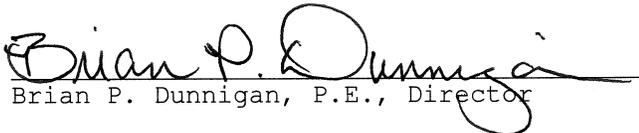
- D. Assume liability for all damages due to leakage, overflow or structural failure of the structure.
 - E. Release a portion of the reservoir inflows for livestock where required, unless appropriator is a political subdivision.
8. The appropriator must comply with the following deadlines:
- A. The owner of the dam shall provide written notice to the Department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is to begin. Notices must be in writing and addressed to the Chief Engineer or the Construction Inspector of the Department's Dam Safety Section. Notices may be delivered to the Department by mail, facsimile or electronic mail.
 - B. Construction of the renovation of the structure must begin within twelve months of the signing date of this application approval. The appropriator must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.
 - C. November 1, 2015 is the date construction of the structure must be completed.
 - D. Upon completion of the structure, the appropriator shall file with the Department the enclosed "Construction Certification Form for Dams." Following receipt of this form, 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. No impoundment in the structure shall occur prior to issuance of the approval to operate.

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

January 14, 2014


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, 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 P-18654 were provided to the Department's field office in Ord, Nebraska. Copies of this approval and a "Construction Certification Form for Dams" were mailed to the following:

Stephen H. Nickel, P.E.
Nickel Engineering
7941 Portsche Lane
Lincoln, Nebraska 68516

Copies of this approval, plan P-18654 and a "Construction Certification Form for Dams" were mailed on January 14, 2014, to the following:

Gary P. Connot, Superintendent
Boyd County Highway Department
P.O. Box 141
Butte, Nebraska 68722

Village of Spencer
100 East Main Street
P.O. Box 15
Spencer, Nebraska 68777

Spencer Area Development Corporation
P.O. Box 48
Spencer, Nebraska 68777