

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-17941 AND MAP OF RESERVOIR 15933

WATER DIVISION 2-B

BACKGROUND

1. On December 27, 2000, James Pofahl, on behalf of the Rose Pofahl Estate, filed in the Department of Natural Resources (Department) application A-17941 for a permit to impound water and map of reservoir number 15933.
2. On May 10, 2001, a Deed of Distribution by Personal Representative was filed in the County Court of Madison, Nebraska. The land appurtenant to appropriation A-17941 located in Rose's Fifth Addition, in the east half of Section 2, Township 23 North, Range 1 West of the 6th P.M. in Madison County was conveyed, assigned and transferred to Louis Pofahl, Pamela Nelson, Paula Olvany, James Pofahl, Robert Pofahl, Debra Wentling, Maxine Reeker and Michael Pofahl, equally, as tenants in common to share and share alike.
3. On February 27, 2002, Ronald J. Albin, Court Appointed Referee, filed in the County Court of Madison, Nebraska, Referee's Deed granted, sold and conveyed the land appurtenant to appropriation A-17941 located in Rose's Fifth Addition of said legal description to Pofahl Farms, Inc.
4. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-17941 and map of reservoir 15933 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to the Elkhorn River.
2. The priority date is December 27, 2000.
3. The water to be stored under this appropriation is for the purpose of providing supplemental water for an irrigation project authorized under natural-flow appropriation A-17845.
4. The amount of water that may be diverted shall not exceed 39.3 acre-feet per year to be stored in Pofahl Oxbow Lake located in the SE $\frac{1}{4}$ of Section 2, Township 23 North, Range 1 West of the 6th P.M. in Madison 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-17941 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. 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, map of reservoir number 15933, 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.

DEADLINE

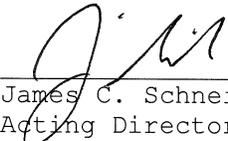
A plan of reservoir and specifications according to *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code Chapter 11* must be filed within six months of the signing date of this application approval. The plan shall be prepared by a professional engineer and shall 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 indicates normal pool capacity is less than 39.3 acre-feet, 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

May 14, 2015


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. Copies of this approval and map of reservoir 15933 were provided to the Department's field office in Norfolk, Nebraska. Copies of this approval and map of reservoir 15933 were mailed on May 14, 2015, to the following:

James Pofahl
Pofahl Farms, Inc.
83786 550 Avenue
Norfolk, Nebraska 68701