

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18308,

PETITION FOR A WAIVER OF OUTLET WORKS DWV-4694 AND PLAN NUMBER 17009

WATER DIVISION 1-D

BACKGROUND

1. On May 12, 2005, David Dickinson, on behalf of Dickinson Seward LTD., filed in the Department of Natural Resources (Department) application A-18038 for a permit to impound water.
2. On May 22, 2013, David Dickinson filed in the Department DWV-4694, a petition for a waiver of the requirement of outlet works for application A-18308.
3. On September 19, 2013, Steve K. Westerbuhr, on behalf of Dickinson Seward LTD., filed application for approval of plans for dams, specifications and plan P-17009 for Horseshoe Dam.
4. The plan is for a dam subject to the *Safety of Dams and Reservoirs Act*.
5. Steve K. Westerbuhr, P.E., Settje Agri-Services & Engineering, Inc., 4700 W. Rock Creek Road, Raymond, Nebraska 68428, prepared the drawings and specifications.
6. Robert J. and Margaret S. Dickinson own the dam and reservoir.
7. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.
8. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-18308, Petition DWV-4694 and plan P-17009 are APPROVED subject to the following limitations and conditions:

1. The source of water is the Big Blue River.
2. The priority date is May 12, 2005.
3. The water to be stored under this appropriation is for the purpose of providing supplemental water for irrigation projects authorized under natural-flow appropriations A-4121, A-8695 and A-12161 as well as storage water only to lands not under these appropriations.

4. The amount of water that may be diverted shall not exceed 300 acre-feet per year to be stored in Horseshoe Reservoir. This is based upon a reservoir that stores 172.3 acre-feet at normal pool, and is filled approximately twice per year. The dam that impounds water in Horseshoe Reservoir is located in the NE¼ of Section 35, Township 10 North, Range 3 East of the 6th P.M. in Seward County. Horseshoe Reservoir is an off-channel reservoir that is fill using water pumped from the Big Blue River from a point of diversion located on the right bank of the Stream in the NE¼ of Section 35, Township 10 North, Range 3 East of the 6th P.M. in Seward 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-18308 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-4694, 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. This appropriation is subject to the provisions of the Blue River Compact and the appropriator could be required to pass inflows if Compact flows are not being met.
10. 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 number 17009, 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

July 27, 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, engineering review report and plan number 17009 were provided to the Department's field office in Lincoln, Nebraska. Copies of this approval and a "Construction Certification Form for Dams" were mailed to the following:

Steve K. Westerbuhr, P.E.
Settje Agri-Services & Engineering, Inc.
4700 W. Rock Creek Road
Raymond, Nebraska 68428

Copies of this approval, plan number 17009 and a "Construction Certification Form for Dams" were mailed on July 27, 2015, to the following:

David Dickinson
Midwest Feeding Co.
851 238th Street
Milford, Nebraska 68405

Robert J. and Margaret S. Dickinson
Dickinson Seward Ltd.
22102 Harrison Street
Gretna, Nebraska 68028