

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19153

WATER DIVISION 1-B

BACKGROUND

1. On April 25, 1955, the Department of Roads and Irrigation, now the Department of Natural Resources (Department), approved plan number 7144 and specifications for a detention dam 2-A (Dry Creek 2A Reservoir) to be constructed across a ravine in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 5 North, Range 27 West of the 6th P.M. in Frontier County. No permit to impound water was sought at that time.
2. On July 14, 2004, the Department issued an Order declaring a formal moratorium in the Republican River Basin on the issuance of all new surface water appropriations.
3. On February 8, 2013, Robert D. Merrigan, on behalf of the Middle Republican Natural Resources District (MRNRD), filed petition VAR-3537 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 79 acre-feet of water from Dry Creek in the existing Dry Creek 2A Reservoir located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 5 North, Range 27 West of the 6th P.M. in Frontier County for the purpose of flood control.
4. On October 17, 2013, the Department granted petition VAR-3537 for leave to file an application for a permit to appropriate water.
5. On October 28, 2013, Robert D. Merrigan, on behalf of the MRNRD, filed in the Department application A-19153 for a permit to impound water.
6. On June 30, 2015, MRNRD submitted as-built plans for Dry Creek 2A Dam and Reservoir. The plan is for an existing dam subject to the *Safety of Dams and Reservoirs Act*.
7. MRNRD, P.O. Box 81, Curtis, Nebraska 69025, owns the dam and holds easements for the reservoir.
8. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19153 is APPROVED subject to the following limitations and conditions:

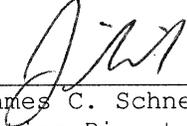
1. The source of water is Dry Creek.
2. The priority date is October 28, 2013.
3. The water to be stored under this appropriation is for the purpose of flood control.
4. The amount of water that may be diverted shall not exceed 79 acre-feet per year to be stored in Dry Creek 2A Reservoir which is the storage capacity below the lowest open outlet. The dam that impounds water in Dry Creek 2A Reservoir is located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 5 North, Range 27 West of the 6th P.M. in Frontier 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-19153 shall maintain structural controls in place and will continue to immediately release the inflows as ordered by the Department in its letter dated April 9, 1979.
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 number 7144, 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 23, 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. A copy of this approval was provided to the Department's field office in Cambridge, Nebraska. A copy of this approval was mailed on July 23, 2015, to the following:

Robert D. Merrigan
Middle Republican Natural Resources District
P.O. Box 81
Curtis, Nebraska 69025