

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18503

WATER DIVISION 2-C

BACKGROUND

1. On April 16, 2007, Brian L. Barels on behalf of Nebraska Public Power District (NPPD) filed in the Department of Natural Resources (Department) application A-18503 for a Permit to Appropriate Water for Power at the existing Northern Nebraska Plant No. 1 (Spencer Hydro).
2. Application A-18503 requests an additional 425 cubic feet per second (cfs) of natural flow to be utilized in hydro-electric power generation, which would bring the total of appropriations for the Spencer Hydro to 2,460 cfs. The applicant asserts that 2,460 cfs is the maximum combined capacity of the two power generating units.
3. Construction has been completed.
4. On December 31, 2014, the Department denied application A-18503.
5. On January 20, 2015, NPPD filed its Request for Contested Case Hearing.
6. On April 28, 2015, NPPD and the Department stipulated that the basis of the denial of Application A-18503 on December 31, 2014, was an evaluation which incorrectly used the wrong Annual Evaluation of Availability of Hydrologically Connected Water Supplies. The stipulation further specified that the denial should be vacated and the application returned to the Permits and Registration Division of the Department for further consideration and an Order to that effect was entered on April 30, 2015.

FINDINGS

1. Based on the current evaluation, the 2007 Annual Evaluation of Availability of Hydrologically Connected Water Supplies dated December 13, 2006, the Niobrara River Basin is not fully appropriated.
2. On April 30, 2015, Stephen D. Mossman, on behalf of NPPD, filed a joint stipulation in which "NPPD requests that a condition be added to appropriation A-18503 such that if flow in the Niobrara River is not adequate to satisfy appropriation A-18503, NPPD would not place a call for administration for A-18503 and the Department would not administer the portion of the Niobrara River Basin upstream of the Spencer Hydro to satisfy A-18503."
3. Pursuant to the stipulation the Order denying application A-18503 dated December 31, 2014, was set aside.

CONCLUSIONS

1. The joint stipulation includes "NPPD requests that a condition be added to appropriation A-18503 such that if flow in the Niobrara River is not adequate to satisfy appropriation A-18503, NPPD would not place a call for administration for A-18503 and the Department would not administer the portion of the Niobrara River Basin upstream of the Spencer Hydro to satisfy A-18503." Therefore, granting this application should not harm future or existing appropriators.
2. The Niobrara River Basin below the Mirage Flats diversion dam is not declared fully appropriated.
3. The historical stream data indicates that there is unappropriated water available for power generation under this application.
4. The generation of electrical power is a beneficial use.
5. There are no known public interest or public welfare issues that would demand denial of this application.

ORDER

IT IS HEREBY ORDERED that application A-18503 is APPROVED subject to the following limitations and conditions:

1. The source of the water is the Niobrara River.
2. The water appropriated shall be used for generating power at the Spencer Hydro constructed under plan number 3650B.
3. The priority date is April 16, 2007.
4. Water may be diverted from the Niobrara River at a point of diversion located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, Township 33 North, Range 11 West of the 6th P.M. in Boyd County.
5. The maximum amount of water shall not exceed 425 cfs and the head shall not exceed eighteen (18) feet.
6. NPPD shall not place a call for administration for appropriation A-18503 and the Department will not administer the portion of the Niobrara River Basin upstream of the Spencer Hydro to satisfy A-18503.
7. NPPD shall enter into a contract with the State of Nebraska, through the Department, for leasing the use of all water appropriated within six months of the signing date of this application approval.
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.

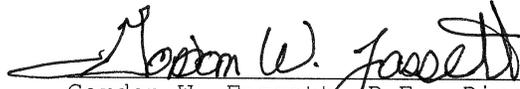
- B. Receive approval prior to taking any action that changes the storage capacity of this reservoir, the specifications, plan number 3650B, or the type of appropriation.
- C. Construct, operate and maintain the structure in accordance with *Neb. Rev. Stat. § 46-241* and the *Safety of Dams and Reservoirs Act, §§ 46-1601 to 46-1670*.
- D. Assume liability for all damages due to leakage, overflow or structural failure of the structure.

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 28, 2016


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 order 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 order and be accompanied by a filing fee of \$10.

A copy of this approval was posted on the Department's website and provided to the Department's field office in Ord, Nebraska. A copy of this approval was mailed on July 28, 2016, to the following:

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