

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19476,

PLAN OF RESERVOIR 19738 AND MAP OF RESERVOIR 19744

WATER DIVISION 1-B

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued an Order declaring a formal moratorium in the Republican River Basin on the issuance of all new surface water appropriations.
2. On February 14, 2013, Richard R. Endacott, on behalf of the Nebraska Board of Educational Lands and Funds, filed petition VAR-3578 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 46.0 acre-feet of water from a tributary to Prairie Dog Creek in the existing Atkinson Reservoir located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 01 North, Range 21 West of the 6th P.M. in Furnas County for the purpose of erosion control and water for livestock.
3. On November 30, 2015, the Department granted petition VAR-3578 for leave to file an application for a permit to appropriate water.
4. On October 21, 2016, Kelly Sudbeck, on behalf of Nebraska Board of Educational Lands and Funds, filed in the Department of Natural Resources (Department) application A-19476 for a permit to impound water, plan of reservoir number 19738 and specifications according to *Title 457 Neb. Admin. Code* Chapter 11.
5. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19476, plan of reservoir 19738 and map of reservoir 19744 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Prairie Dog Creek.
2. The priority date is October 21, 2016.
3. The water to be stored under this appropriation is for the purpose of erosion control and providing water for livestock.
4. The amount of water that may be diverted shall not exceed 30.5 acre-feet per year to be stored in Atkinson Reservoir. The dam that impounds water in Atkinson Reservoir is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 01 North, Range 21 West of the 6th P.M. in Furnas 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-19476 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, plan of reservoir number 19738.
 - 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.

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

November 10, 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 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, plan of reservoir 19738 and map of reservoir 19744 were provided to the Department's field office in Cambridge, Nebraska. Copies of this approval, plan of reservoir 19738 and map of reservoir 19744 were mailed on November 10, 2016, to the following:

Kelly Sudbeck
Nebraska Board of Educational Lands and Funds
555 North Cotner Boulevard
Lincoln, Nebraska 68505
INTERAGENCY