

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19455 AND PLAN NUMBER 19596

WATER DIVISION 1-C

BACKGROUND

1. On July 29, 2016, James H. Barber filed in the Department of Natural Resources (Department) application A-19455 for a permit to impound water, application for approval of plans for dams, specifications and plan number 19596.
2. The plan is for a proposed dam subject to the *Safety of Dams and Reservoirs Act*.
3. Nathan Garrett, P.E., Natural Resources Conservation Service (NRCS), 2550 North Diers, Suite L, Grand Island, Nebraska 68803, prepared the drawings and specifications.
4. James H. Barber, 56662 Highway 136, Fairbury, Nebraska 68352, owns the reservoir and dam. The Natural Resources Conservation Service, 345 Federal Building, 100 Centennial Mall North, Lincoln NE 68508-3866 holds easements for the reservoir and dam.
5. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.
6. The NRCS will consider the following conservation measures specified by the Nebraska Game and Parks Commission pursuant to the Nongame and Endangered Species Conservation Act Neb. Rev. Stat. § 37-807:
  - A. Northern Long-eared Bat (NLEB): Do not clear trees from June 1 to July 31. There is a record of NLEB in the vicinity of the project area. NLEB use trees with cavities or peeling bark as maternity roost sites from June 1 to July 31.
  - B. Massasauga: Survey the excavation area for crayfish burrows. If crayfish burrows are present, there is potential for massasauga to be using them over winter. In this case, excavation in areas with the burrows should wait until late next spring after snakes have the chance to come out of hibernation and move away from the burrows. Work in areas without burrows could commence.
  - C. River Otter: Survey for dens in areas where ground disturbance will occur, including tree removal. There is a record of river otter on the border of the project area. River otters could be using the wetland area, pond, or nearby upland areas as denning sites. River otters can also use "root dens," either along a water body or in an upland site.

ORDER

IT IS HEREBY ORDERED Application A-19455 and plan number 19596 are APPROVED subject to the following limitations and conditions:

1. The source of water is runoff from upstream drainage to a tributary to the Little Blue River.
2. The priority date is July 29, 2016.
3. The amount of water that may be diverted shall not exceed 76.4 acre-feet per year to be stored in Barber Wetland Reservoir for the purpose of wetland habitat. The dam that impounds water will be located in the SE¼ of Section 16, Township 02 North, Range 02 East of the 6<sup>th</sup> P.M. in Jefferson County.
4. *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 ... ."
5. The owner or possessor of the reservoir storing water pursuant to A-19455 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.
6. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
7. 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.
8. The appropriator must comply with all relevant statutes. These relevant statutory requirements include, but are 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 19596, 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.

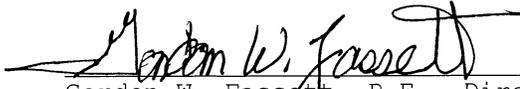
- E. Release a portion of the reservoir inflows for livestock where required, unless appropriator is a political subdivision.
9. The appropriator must comply with the following deadlines:
- A. The owner of the dam shall provide written notice to the Department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is to begin. Notices must be in writing and addressed to the Chief Engineer or the Construction Inspector of the Department's Dam Safety Section. Notices may be delivered to the Department by mail, facsimile or electronic mail.
- B. Construction of the structure must begin within twelve months of the signing date of this application approval. The appropriator must proceed diligently with the construction unless interrupted by some unavoidable and natural cause.
- C. November 1, 2018, is the date construction of the structure must be completed.
- D. Upon completion of the structure, the appropriator shall file with the Department the enclosed "Construction Certification Form for Dams." Following receipt of this form, an approval to operate shall be issued by the Department if it determines that the dam is safe to impound within the limitations outlined in this approval. No impoundment in the structure shall occur prior to issuance of the approval to operate.
- E. The applicant has a preferred right to file an application for a permit to appropriate the water stored for some useful purpose until April 1, 2018.

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

January 10, 2017

  
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, 4<sup>th</sup> 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, plan number 19596 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:

Tim Haakenstad	Nathan Garrett, P.E.
State Conservation Engineer	Natural Resources Conservation Service
Natural Resources Conservation Service	2550 North Diers, Suite L
345 Federal Building	Grand Island, Nebraska 68803
100 Centennial Mall North	
Lincoln, Nebraska 68508-3866:	

Copies of this approval, plan number 19596, and a "Construction Certification Form for Dams" were mailed on January 10, 2017, to the following:

James H. Barber	Ritch Nelson
56662 Highway 136	State Wildlife Biologist
Fairbury, Nebraska 68352	Natural Resources Conservation Service
	152 Federal Building
	100 Centennial Mall North
	Lincoln, Nebraska 68508-3866