

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19480,

PLAN NUMBER 19778 AND MAP OF RESERVOIR 19787

WATER DIVISION 1-F

BACKGROUND

1. On October 31, 2016, Scott D. Nelson, Assistant Manager, Nemaha Natural Resources District (NRD), filed in the Department of Natural Resources (Department) application A-19480 for a permit to impound water, application for approval of plans for dams, and specifications and plan number 19778.
2. The plan is for modifying an existing dam subject to the *Safety of Dams and Reservoirs Act*.
3. Robert Sullivan, P.E., Natural Resources Conservation Service, 448 North 12th Street, Suite A, Tecumseh, Nebraska 68450, prepared the drawings and specifications.
4. Arlo W. and Diane G. Biere, Trustees of the Arlo W. and Diane G. Biere Trust, 2605 Woodhaven Court, Manhattan, Kansas 66502, own the land on which the reservoir and dam reside.
5. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.

ORDER

IT IS HEREBY ORDERED Application A-19480, plan number 19778, and map of reservoir 19787 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Fox Creek.
2. The priority date is October 31, 2016.
3. The amount of water that may be diverted shall not exceed 15.9 acre-feet per year to be stored in Wilson Creek 6-8 Reservoir for the purpose of grade control. The dam that impounds water in Wilson Creek 6-8 Reservoir is located in the ~~W¹/₂SW¹/₄~~ of Section 09, Township 08 North, Range 13 East of the 6th P.M. in Otoe 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"

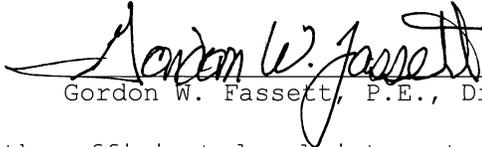
5. The owner or possessor of the reservoir storing water pursuant to A-19480 shall have structural controls in place or other mechanical means to immediately release a portion of the measured inflows in such amounts and at such times if so ordered by the Department.
6. The appropriator must comply with 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 19778, 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.
7. 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.

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 18, 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, 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, plan number 19778 and map of reservoir number 19787 were provided to the Department's field office in Norfolk, Nebraska. Copies of this approval and a "Construction Certification Form for Dams" were mailed to the following:

Allen Gehring, P.E. State Conservation Engineer Natural Resources Conservation Service 345 Federal Building 100 Centennial Mall North Lincoln, Nebraska 68508-3866	Robert Sullivan, P.E. Natural Resources Conservation Service 448 North 12 th Street, Suite A Tecumseh, Nebraska 68450
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Copies of this approval, plan number 19778, map of reservoir 19787 and a "Construction Certification Form for Dams" were mailed on January 18, 2017, to the following:

Nemaha Natural Resources District Scott D. Nelson, Assistant Manager 62161 Highway 136 Tecumseh, Nebraska 68450	Arlo W. and Diane G. Biere Arlo W. and Diane G. Biere Trust 2605 Woodhaven Court Manhattan, KS 66502
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