

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18755

WATER DIVISION 2-C

BACKGROUND

1. On March 10, 2011, William H. and Mary Ann Birkel filed in the Department of Natural Resources (Department) application A-18755 for a permit to impound water and petition DWV-2061 for a waiver of drawdown requirement.
2. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-18755 and DWV-2061 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Eagle Creek.
2. The priority date is March 10, 2011.
3. The amount of water that may be diverted from this source shall not exceed 12 acre-feet per year to be stored in Stewart Reservoir No. 1. Stewart Dam is located in the E $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, Township 32 North, Range 12 West of the 6th P.M. in Holt County.
4. Pursuant to *Neb. Rev. Stat. §.46-241(5)*, the owner or possessor of a reservoir does not have the right to store water in such reservoir during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right.
5. A continuous recording device approved by the Department to monitor reservoir levels may be required.
6. A waiver of the requirement for a drawdown, DWV-2061, has been granted. This waiver does not relieve the owner from the responsibility to pass a portion of the reservoir inflow by some method for downstream appropriators should there be a need for water administration; or if water should be required for livestock needs, unless the appropriator is a political subdivision. The Department may rescind the waiver and require installation of appropriate outlet works at a later date if it is determined that the responsibility to pass inflows is not being met or cannot be met by another method.

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 or the type of appropriation.
 - 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.

8. The appropriator is required to file a map in accordance with *Title 457 Neb. Admin. Code* Chapter 11 within six months of the signing date of this application approval. The project map must be prepared and signed by a professional engineer.

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

June 17, 2010


 Brian P. Dunnigan, 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* 454 *Neb. Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln office (4th Floor, Nebraska State Office Building, 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 and provided to the Department's field office in Ord, Nebraska. A copy of this approval was mailed on June 17, 2011, to the following:

William H. and Mary Ann Birkel
 3761 L Road
 David City, Nebraska 68632

Chris Kozisek
 217 North 4th Street
 O'Neill, Nebraska 68763