

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION 18894

WATER DIVISION 2-C

BACKGROUND

On March 20, 2012, Jim Sibbel, on behalf of Crooked Elm, LLC, filed in the Department of Natural Resources (Department) application A-18894 for a permit to impound water, map of reservoir number 18155 and specifications according to *Title 457 Neb. Admin. Code Chapter 11 and DWV-2294*, a petition for a waiver of drawdown requirement.

ORDER

IT IS HEREBY ORDERED Application A-18894, map of reservoir number 18155 and DWV-2294 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 20, 2012.
3. The amount of water that may be diverted shall not exceed 11.8 acre-feet per year to be stored in Crooked Elm Reservoir. Crooked Elm Dam will be located in the SW¹/₄NW¹/₄ of Section 32, Township 32 North, Range 12 West of the 6th P.M. in Holt County.
4. *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"
5. The owner or possessor of the reservoir storing water pursuant to A-18894 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 waiver of the requirement for a drawdown, DWV-2294, 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, map of reservoir number 18155, 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 must comply with the following deadlines:
 - A. 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.
 - B. October 1, 2013 is the date construction of the structure must be completed.

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 13, 2012


 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 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 and map of reservoir 18155 were provided to the Department's field office in Ord, Nebraska. A copy of this approval was mailed to the following:

Tim Haakenstad
State Conservation Engineer
Natural Resources Conservation Service
345 Federal Building
100 Centennial Mall North
Lincoln NE 68508-3866:

Copies of this approval and map of reservoir 18155 were mailed on June 13, 2012, to the following:

Jim Sibbel
Crooked Elm, LLC
1002 East Mayo Street
O'Neill, Nebraska 68763