

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19924 AND MAP OF RESERVOIR 21253

WATER DIVISION 1-C

BACKGROUND

1. On May 19, 2023, David D. Malchow, on behalf of the David D. and Heather L. Malchow Family Trust, filed in the Department of Natural Resources (Department) application A-19924 for a permit to impound water for the purpose of irrigation.
2. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19924 and map of reservoir 21253 are APPROVED subject to the following limitations and conditions:

1. A plan of reservoir according to *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code Chapter 11* must be filed within six months of the signing date of this application approval or appropriation A-19924 will be CANCELLED.
2. The source of water is Brawner Creek located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, Township 02 North, Range 02 East of the 6th P.M. in Jefferson County.
3. Appropriation A-19924 has a priority date of May 19, 2023.
4. The amount of water that may be impounded shall not exceed 15 acre-feet per year to be stored in Malchow Pond. Such amount may be further limited by the Department upon approval of the required plan of reservoir.
5. Water may not be withdrawn from Malchow Pond for irrigation until an appropriation to do so is obtained.
6. *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"

7. The owner or possessor of the reservoir storing water pursuant to A-19924 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.
8. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
9. 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.
10. 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, map of reservoir number 21253 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.

DEADLINE

A plan of reservoir according to *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code Chapter 11* must be filed within six months of the signing date of this application approval. The plan shall be prepared by a professional engineer and shall include a statement as to the hazard classification of the dam and whether it is subject to the Safety of Dams and Reservoirs Act. If the stage-storage table indicates normal pool capacity is less than 15 acre-feet, then the amount of water that may be diverted will be reduced. No rights shall be deemed to have been acquired until the provisions of this paragraph have been complied with, and a failure to do so shall cause a forfeiture of the appropriation and all rights thereof.

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



Thomas E. Riley, P.E., Director

August 30, 2023

A copy of this Order was posted on the Department's website. Copies of this Order and map of reservoir 21253 were provided to the Department's field office in Lincoln, Nebraska. Copies of this Order, map of reservoir 21253 and the Department's *Rules of Practice and Procedure Title 457 Admin. Code Chapter 11* were mailed to the following:

David D. and Heather L. Malchow
Malchow Family Trust
12332 East Hickory Road
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