

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19954 AND MAP OF RESERVOIR NUMBER 21320

WATER DIVISION 1-C

BACKGROUND

1. On October 2, 2023, Brian Livingston, on behalf of the Brian and Traci Livingston Trust, filed in the Department of Natural Resources (Department) application A-19954 for a permit to impound supplemental water in Livingston Section 8 Pond (storage permit A-19141) in an amount not to exceed 34.1 acre-feet per year for the purpose of irrigation.
2. Application A-19954 has an off-channel point of diversion and will require water to be diverted and pumped via pipeline to Livingston Section 8 Pond.
3. Application A-19954, if approved, would allow the appropriator to store a total of 68.2 acre-feet per year, based on two (2) fills in Livingston Section 8 Pond.
4. The supplemental storage would be used to provide additional irrigation water to land that is already permitted for irrigation under existing storage and storage-use appropriations.

ORDER

IT IS HEREBY ORDERED Application A-19954 and map of reservoir number 21320 are APPROVED subject to the following limitations and conditions:

1. The priority date is October 2, 2023.
2. The source of water is Rose Creek.
3. The water may be diverted at a pumpsite located on the left bank of the stream in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, Township 01 North, Range 01 East of the 6th P.M. in Jefferson County, into an underground pipeline and discharged into Livingston Section 8 Pond in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 08 of said legal description as depicted on map number 21320.
4. Appropriation A-19954 is an off-channel diversion from Rose Creek that provides supplemental water to storage appropriation A-19141 (Plan Number 18675) that is on-channel on a tributary to Rose Creek. The rate that water may be diverted shall not exceed 650 gallons per minute and be limited to 34.1 acre-feet per year. The total amount of water stored in Livingston Section 8 Pond under A-19141 and A-19954 shall not exceed 68.2 acre-feet per year.

5. The water to be stored under this appropriation is for the purpose of providing additional water for subsequent irrigation from Livingston Section 8 Pond under storage use application A-19142, which provides supplemental irrigation water to land authorized for irrigation under appropriation A-19953.
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-19954 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. Approval of A-19954 does not authorize any modification to the dam or appurtenant structures. The owner or possessor of the dam must receive written approval from the Department prior to taking any action that changes the storage capacity of the reservoir or the original approved plan (Plan Number 18675) for the dam.
9. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
10. 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.
11. A measuring device approved by the Department is required at the diversion point from Rose Creek. Contact the Lincoln Field Office before acquiring a measuring device to ensure the device will be acceptable.
12. Within two weeks after the first diversion of water under this application the appropriator must file written notice with the Lincoln Field Office informing the Department that the first irrigation diversions have occurred. The written communication must be signed by the appropriator and may be delivered by U.S. Postal Mail, hand delivered or sent via e-mail attachment to the Lincoln Field Office Supervisor.
13. 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. Assume liability for all damages due to leakage, overflow or structural failure of the structure.
 - C. Release a portion of the reservoir inflows for livestock where required, unless appropriator is a political subdivision.

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



December 18, 2023

Thomas E. Riley, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and map of reservoir number 21320 were provided to the Department's field office in Lincoln, Nebraska. Copies of this Order and map of reservoir number 21320 were mailed to the following

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