

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19958, PLAN OF RESERVOIR 21328

AND MAP OF RESERVOIR 21335

WATER DIVISION 1-C

BACKGROUND

1. On October 26, 2023, David Malchow, on behalf of the David D. and Heather L. Malchow Family Trust, filed in the Department of Natural Resources (Department) application A-19958 for a permit to impound water and plan of reservoir 21328 according to *Title 457 Neb. Admin. Code Chapter 11*.
2. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19958, plan of reservoir 21328 and map of reservoir 21335 are APPROVED subject to the following limitations and conditions:

1. 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.
2. The priority date is October 26, 2023.
3. The water to be stored under this appropriation is for the purpose of providing water for an irrigation project authorized under storage use appropriation A-19959.
4. The amount of water that may be diverted shall not exceed 24.63 acre-feet per year to be stored in Malchow Pond. Malchow Dam is be located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 23, Township 02 North, Range 02 East of the 6<sup>th</sup> P.M. in Jefferson County.
5. *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 ..."
6. The owner or possessor of the reservoir storing water pursuant to A-19958 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.

7. 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.
8. 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 written approval prior to taking any action that changes the storage capacity of this reservoir, plan of reservoir 21328 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.

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 10, 2024

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Thomas E. Riley, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and plan of reservoir 21328, and map of reservoir 21335 were provided to the Department's field office in Lincoln, Nebraska. A copy of this Order was mailed to the following:

Travis Hazard, P.E.  
Hazard Engineering, LLC  
6250 West Little Salt Road  
Valparaiso, Nebraska 68065

Copies of this Order and plan of reservoir 21328 and map of reservoir 21335 were mailed to the following:

David D. and Heather Malchow  
12332 East Hickory Road  
Filley, Nebraska 68357  
[dmalchow@protonmail.com](mailto:dmalchow@protonmail.com)