

STATE OF NEBRASKA
DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT

APPROVAL OF APPLICATION A-20092, PLAN NUMBER 21607
AND MAP OF RESERVOIR NUMBER 21608

WATER DIVISION 1-D

BACKGROUND

1. On April 24, 2025, Donald K. Ham, on behalf of TM & DH Farms, LLC, filed in the Department of Water, Energy, and Environment (Department) application A-20092 for a permit to impound water, application for approval of plans for dams, construction specifications and plan number 21607.
2. The plan is for reconstruction of an existing dam subject to the *Safety of Dams and Reservoirs Act*.
3. Jacob C. Robison, P.E., 62451 Highway 62, Elk Creek, NE 68348, prepared the drawings and construction specifications.
4. TM & DH Farms LLC, PO Box 535, 508 East Maple Street, Sutton, NE 68979, is the owner of the reservoir and dam.
5. The drawings and construction specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.
6. Consultation with the Nebraska Game and Parks Commission has determined that suitable habitat is present for whooping cranes (meadows, wetlands, hay fields and ponds/lakes) within or near the project area. Pursuant to the Nongame and Endangered Species Conservation Act Neb. Rev. Stat. § 37-807, the applicant has agreed if project or management actions/activities must occur during the spring (March 6 - April 29) or fall (October 9 - November 15) migration periods, then a survey must be conducted according to the standard protocol as referenced in Environmental Review Report (ERR) NE-CERT-014646.

ORDER

IT IS HEREBY ORDERED Application A-20092, plan number 21607, and map of reservoir number 21608 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to School Creek.
2. The priority date is April 24, 2025.
3. The water to be stored under this appropriation is for the purpose of providing flood control and livestock water.

4. The amount of water that may be diverted shall not exceed 25.5 acre -feet per year to be stored in Ham Reservoir. The dam that impounds water in Ham Reservoir is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, Township 07 North, Range 06 West of the 6th P.M. in Clay 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-20092 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. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.
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 approval prior to taking any action that changes the storage capacity of this reservoir, the construction specifications, plan number 21607, or the type of appropriation.
 - C. Construct, operate and maintain the structure in accordance with *Neb. Rev. Stat.* § 46-241 and the *Safety of Dams and Reservoirs Act*, §§ 46-1601 to 46-1670.
 - D. Assume liability for all damages due to leakage, overflow or structural failure of the structure.
 - E. Release a portion of the reservoir inflows for livestock where required, unless appropriator is a political subdivision.
9. The appropriator must comply with the following deadlines:
 - A. The owner of the dam shall provide written notice to the Department at least ten days before construction, reconstruction, enlargement, alteration, breach, removal, or abandonment of the dam is to begin. Notices must be in writing and addressed to the Chief Engineer or the Construction Inspector of the Department's Dam Safety Section. Notices may be delivered to the Department by mail, facsimile or electronic mail.
 - B. 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.

- C. November 1, 2027, is the date construction of the structure must be completed.
- D. Upon completion of the structure, the appropriator shall file with the Department the enclosed "Construction Certification Form for Dams." Following receipt of this form, an approval to operate shall be issued by the Department if it determines that the dam is safe to impound within the limitations outlined in this Order. No impoundment in the structure shall occur prior to issuance of the approval to operate.
- E. The applicant has a preferred right to file an application for a permit to appropriate the water stored for some useful purpose until April 1, 2028.

ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations and any orders issued by the Department may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT



July 18, 2025

Matthew T. Manning, PE, JD
Chief Water Officer

A copy of this Order was posted on the Department's website. Copies of this Order, engineering review report, plan number 21607 and map of reservoir 21608 were provided to the Department's field office in Lincoln, Nebraska. Copies of this Order and a "Construction Certification Form for Dams" were mailed to the following:

Jacob C. Robison, P.E.
Twin Oaks Consulting
62451 Highway 62
Elk Creek, NE 68348
jrobison@twinoaksconsultingllc.com

Copies of this Order, plan number 21607, map of reservoir 21608 and a "Construction Certification Form for Dams" were mailed to the following:

Donald K. Ham
TM & DH Farms LLC
PO Box 535
Sutton, NE 68979
Don.ham70@gmail.com