

STATE OF NEBRASKA

file



DEPARTMENT OF NATURAL RESOURCES
Roger K. Patterson
Director

March 17, 2003

IN REPLY REFER TO:

Mike Johanns
Governor

Roger Benjamin
Attorney at Law
415 Silver Street
P.O. Box 275
Oxford, NE 68967-0275

Dear Roger,

This letter is a follow-up to our February 27 telephone conversation. In that conversation you asked for a letter describing the nature of the Department's request relative to the Percival Dam located on the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 25, Township 3 North, Range 21 West in Furnas County. That request is that the Department's survey crew be permitted to enter the Percival property to inspect and possibly survey the dam located on that property.

My understanding is that the Percivals do not pump or otherwise release water from that dam for irrigation or other consumptive use purposes and that the structure simply fills and spills as water supply conditions dictate. If that is correct, the Percivals need permits for the dam only if it is: (1) 25 feet or more in height, measured from the natural bed of the stream or watercourse at the downstream toe of the dam to the top of the dam; (2) has a water storage impounding capacity of 15 acre-feet or more, measured below the crest of the lowest open outlet or overflow; or (3) has a total storage capacity, including surcharge storage through any emergency spillway, below the top of the dam, of 50 acre-feet or more.

In the event that the inspection and survey of the dam indicates that it is of such a size and/or storage capacity that permits from the Department are needed, the Percivals would have the option of (1) applying for those permits and bringing the dam into compliance, if and as necessary, with the conditions required for issuance of those permits or (2) modifying the structure so that it no longer falls within either the size or storage capacities noted above. If option (2) is selected, we would allow the Percivals a reasonable period of time to decide how they want to modify the structure and to complete that modification.

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Roger Benjamin
March 17, 2003
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You and/or the Percivals are welcome to accompany the survey crew when it makes the requested inspection and the survey if that proves to be necessary. Please contact Mark Noble or me in our office as soon as possible concerning the requested permission to enter the Percival property or if you have any additional questions. Mark's phone number is (402) 471-0581. Mine is (402) 471-3930.

Sincerely,



James R. Cook
Legal Counsel

lg

cc: Dennis Hurtz
Mark Noble

STATE OF NEBRASKA



DEPARTMENT OF NATURAL RESOURCES
Roger K. Patterson
Director

June 11, 2003

IN REPLY REFER TO:

Mike Johanns
Governor

Roger Benjamin
Attorney-At-Law
415 Silver St.
PO Box 275
Oxford, NE 68967-0275

Dear Roger,

You did not respond to my March 17, 2003, letter concerning the inspection and possible survey of the Percival Dam located on the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25, Township 3 North, Range 21 West in Furnas County. As that letter indicated, the Department needs to inspect and, if necessary, survey the dam to determine if it is in compliance with applicable state statutes, i.e. Sections 46-257 and 46-277, Nebraska Revised Statutes. Our survey crew expects to be in the area where the Percival Dam is located later this summer and will be entering the property to conduct the inspection and the survey if needed.

Section 61-205 of the Nebraska Revised Statutes provides in part as follows:

"The Director of Natural Resources and his or her duly authorized assistants shall have access at all reasonable times to all dams, reservoirs, hydroelectric plants, and headgates, and other devices for diverting water, for the purpose of performing the duties assigned to the department."

As a matter of courtesy to you and the Percival's we will notify you no less than three days prior to the intended entry on the property for the purposes noted. You and/or the Percivals may accompany the survey crew during the inspection and the survey if needed.

Sincerely,

A handwritten signature in cursive script that reads "James R. Cook".

James R. Cook
Legal Counsel

pjb

cc: Alan Ruhge
Brian Dunnigan
Mark Noble

chrshare\cook

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