STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18483 AND PLAN NUMBER P-18456

WATER DIVISION 2-C

BACKGROUND

1. On March 5, 2007, Tim Reiser filed in the Department of Natural Resources (Department) application A-18483 for a permit to impound water in the proposed Reiser Reservoir No. 2 for an amount not to exceed 150 acre-feet per year.

2. On March 6, 2013, Tim Reiser filed in the Department application for approval of plans for dams, specifications and plan P-18456.

3. The first revision of plan P-18456 was received in the Department on May 17, 2013; the second revision was received on June 17, 2013.

4. The plan is for a proposed dam subject to the *Safety of Dams and Reservoirs Act*.

5. Steve K. Westerbuhr, P.E., Settje Agri-Services & Engineering, Inc., 4700 West Roack Creek Road, Raymond, Nebraska 68428, prepared the drawings and specifications.

6. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.

ORDER

IT IS HEREBY ORDERED Application A-18483, the Application for Approval of Plans for Dams, and plan P-18456 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to the Niobrara River.

2. The priority date is March 5, 2007.

3. The water to be stored under this appropriation is for the purpose of providing water for an irrigation project proposed under application A-18892.

4. The amount of water that may be diverted shall not exceed 150 acre-feet per year to be stored in Reiser Reservoir No. 2. Reiser Dam No. 2 will be located in the NW¼NE¼ of Section 8, Township 33 North, Range 13 West of the 6th P.M. in Boyd County.

5. *Neb. Rev. Stat.* § 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 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-18483 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. A measuring device approved by the Department may be required if so ordered by the Department.

9. The appropriator must comply with all relevant statutes. This includes, but is 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 specifications, plan P-18456, 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.

10. 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, 2015 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 approval. No impoundment in the structure shall occur prior to issuance of the approval to operate.

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

August 23, 2013

Brian P. Dunnigan, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this approval may request a contested case hearing in accordance with the *Neb. Admin. Procedures Act* §§ 84-901 et. seq. RRS and the Department's *Rules of Practice and Procedure Title 454 Admin. Code* Chapter 7. The request must be received by the Department at its Lincoln office (Nebraska State Office Building, 4th Floor, 301 Centennial Mall South, P.O. Box 94676, Lincoln, Nebraska 68509-4676) within 30 days of the date of the Approval and be accompanied by a filing fee of $10.

A copy of this approval was posted on the Department's website. Copies of this approval, engineering review report and plan P-18456 were provided to the Department's field office in Ord, Nebraska. Copies of this approval and a "Construction Certification Form for Dams" were mailed to the following:

Steve Westerbuhr, P.E.
Settje Agri-Services & Engineering, Inc.
4700 West Roack Creek Road
Raymond, NE 68428

Copies of this approval and plan P-18456 were mailed on August 23, 2013, to the following:

Tim Reiser
90001 State Highway 11
Butte, NE 68722