STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-18587

WATER DIVISION 2-B

BACKGROUND

1. On March 31, 2006, the Department of Natural Resources (Department) approved the application for approval of plans for dams, specifications, plan P-16660 and application A-18353 for a permit that allows the Lower Platte South Natural Resources District to impound 67.87 acre-feet of water from a tributary to the North Branch of Middle Creek, to be stored in Piening Reservoir, to be located in the SW¼SW¼ of Section 30, Township 11 North, Range 5 East of the 6th P.M. in Lancaster County. This approval was conditional upon construction beginning by September 31, 2006.

2. On February 29, 2008, the Department cancelled application A-18353 for not being in compliance with the terms of the approval and Neb. Rev. Stat. § 46-238 and § 46-229.02(7). The plan P-16660 and specifications for Piening Reservoir stand approved.

3. On April 9, 2008, Glenn Johnson, Manager, Lower Platte South Natural Resources District, filed in the Department application A-18587 for a permit to impound water in Piening Reservoir.

ORDER

IT IS HEREBY ORDERED Application A-18587 is APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to the North Branch of Middle Creek.

2. The priority date is April 9, 2008.

3. The amount of water that may be diverted shall not exceed 67.87 acre-feet per year to be stored in Piening Reservoir. Piening Dam will be located in the SW¼SW¼ of Section 30, Township 11 North, Range 5 East of the 6th P.M. in Lancaster County.

4. 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-16660, 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.

5. The appropriator must comply with the following deadlines.

A. 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.

B. Written notice shall be provided to the Department at least 10 days before the start of construction.

C. Construction of the structure must be completed by October 1, 2013.

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.

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, 2014.

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 3, 2012

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-16660 were provided to the Department's field office in Lincoln, Nebraska. Copies of this approval and a Construction Certification Form for Dams were mailed to the following:

Paul J. Gonzales, P.E., CFS
Schemmer Associates Inc.
134 South 13th Street, Suite 100
Lincoln, Nebraska 68508-1931

Copies of this approval and plan P-16660 were mailed on January 4, 2012, to the following:

Glenn Johnson, Manager
Lower Platte South Natural Resources District
3125 Portia Street
Lincoln, Nebraska 68501-3581