STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19038

AND MAP OF RESERVOIR 19378

WATER DIVISION 1-F

BACKGROUND

1. On March 18, 2013, Wayne Haveman, on behalf of Haveman Farms Inc., filed in the Department of Natural Resources (Department) application A-19038 for a permit to impound supplemental water in Haveman Pond No 1., for an amount not to exceed 200.0 acre-feet per year.

2. On March 18, 2013, Wayne Haveman, on behalf of Haveman Farms Inc., filed in the Department application A-19037 for a permit to impound 100.0 acre-feet of water from a different source in Haveman Pond No. 1.

3. Applications A-19037 and A-19038, if approved, would allow the appropriator to store a total of 300.0 acre-feet per year. Application A-19038 has an off-channel point of diversion for the proposed pump site.

ORDER

IT IS HEREBY ORDERED that application A-19038 and map of reservoir 19378 are APPROVED subject to the following limitations and conditions:

1. A plan of reservoir prepared according to *Title 457 Neb. Admin. Code* Chapter 11 must be filed in the office of the Department by six months past the signing date of this application approval or appropriation A-19038 will be CANCELLED. Should it be determined that the structure impounding water under A-19038 is of sufficient size to be subject to *Rules for the Safety of Dams and Reservoirs*, a plan of reservoir prepared according to *Title 458 Neb. Admin. Code* Chapter 4 must be filed in the office of the Department in lieu of the above mentioned plans.

2. The source of supplemental storage water is the South Branch of Weeping Water Creek located in the SW¼SW¼ of Section 36, Township 10 North, Range 12 East of the 6th P.M. in Cass County, Nebraska.

3. Appropriation A-19038 has a priority date of March 18, 2013.

4. The water to be stored under this appropriation is for the purpose of providing supplemental water for an irrigation project authorized under natural flow appropriation A-19122. Appropriation A-19038 provides additional stored water for subsequent appropriation for irrigation from Haveman Pond No. 1.

5. The amount of water that may be impounded under A-19038 shall not exceed 200.0 acre-feet per year to be stored in Haveman Pond No. 1. Haveman Pond No. 1, authorized under A-19037 is an on-channel diversion from a tributary to the South Branch of Weeping Water Creek and will be located in the SW¼NW¼ of Section 36, Township 10 North, Range 12 East of the 6th P.M. in Cass County, Nebraska. The total amount of storage allowed in Haveman Pond No. 1, under both appropriations shall not exceed 300.0 acre-feet per year.

6. Water may not be withdrawn from Haveman Pond No. 1 for irrigation until an appropriation to do so is obtained.

7. *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 ... ."

8. The owner or possessor of the reservoir storing water pursuant to A-19038 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.

9. The appropriator must comply with all relevant statutes. The statutes 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 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.

10. The appropriator must comply with the following deadlines:

   A. A plan of reservoir and specifications according to *Department of Natural Resources Rules of Practice and Procedure, Title 457 Neb. Admin. Code* Chapter 11 must be filed within six months of the signing date of this application approval. The plan shall be prepared by a professional engineer and shall include a statement as to the hazard classification of the dam and whether it is subject to the *Safety of Dams and Reservoirs Act*. If the stage-storage table indicates normal pool capacity is less than 200.0 acre-feet, then the amount of water that may be diverted will be reduced. No rights shall be deemed to have been acquired until the provisions of this paragraph have been complied with, and a failure to do so shall cause a forfieture of the appropriation and all rights thereof.

B. Construction of the diversion works 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. Construction of the project must be completed by two years past the signing date of this application approval.

ADDITIONAL INFORMATION

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

Nebraska law provides that failure to use a portion or all of a perfected appropriation for more than five consecutive years may result in cancellation of the appropriation.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. This appropriation may be closed if there is insufficient water to satisfy senior appropriations. If in the future you are not able to divert sufficient amounts of water, and if there are junior appropriations upstream, you may call for water by contacting your local field office.

DEPARTMENT OF NATURAL RESOURCES

December 22, 2015

Gordon W. Fassett

Gordon W. Fassett, P.E., Director

The applicant and any person with sufficient legal interest who has been or may be substantially affected by this order 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 order 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 and map of reservoir 19378 were provided to the Department's field office in Ord, Nebraska. Copies of this approval, map of reservoir 19378, and the Department's *Rules of Practice and Procedure Title 454 Admin. Code* Chapter 11 were mailed on December 22, 2015, to the following:

Haveman Farms Inc.
c/o Wayne Haveman
71801 647 Avenue
Shubert, NE 68783