STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19185

PETITION FOR A WAIVER OF OUTLET WORKS DWV-4916

AND PLAN OF RESERVOIR 18815

WATER DIVISION 1-B

BACKGROUND

1. On July 14, 2004, the Department of Natural Resources (Department) issued an Order declaring a formal moratorium in the Republican River Basin on the issuance of all new surface water appropriations.

2. On February 26, 2013, Janet L. Exstrom and Sheryl A. Ohrt filed petition VAR-3567 in the Department for Leave to File or Consider an Application for a New Surface Water Appropriation within a Moratorium Area. The draft application and documentation attached to the petition is for a permit to impound approximately 23 acre-feet of water from a tributary to Rope Creek in the existing Exstrom Ohrt Reservoir located in the SW¼NE¼ of Section 6, Township 3 North, Range 18 West of the 6th P.M. in Harlan County for the purpose of water for livestock.

3. On January 16, 2014, the Department granted petition VAR-3567 for leave to file an application for a permit to appropriate water.

4. On January 20, 2014, Janet L. Exstrom and Sheryl A. Ohrt filed in the Department DWV-4916, a petition for a waiver of the requirement of outlet works for application A-19185.

5. On January 27, 2014, Janet L. Exstrom and Sheryl A. Ohrt filed in the Department of Natural Resources (Department) application A-19185 for a permit to impound water, plan of reservoir 18815 and specifications according to *Title 457 Neb. Admin. Code* Chapter 11.

6. The plan is for an existing dam subject to the *Safety of Dams and Reservoirs Act*.

7. Janet L. Exstrom and Sheryl A. Orht own the reservoir and dam.

8. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19185, Petition DWV-4916 and plan of reservoir 18815 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Flag Creek.

2. The priority date is January 27, 2014.

3. The water stored under this appropriation is for the purpose of providing water for livestock.

4. The amount of water that may be diverted shall not exceed 23 acre-feet per year to be stored in Exstrom Ohrt Reservoir. The dam that impounds water in Exstrom Ohrt Reservoir is located in the SW¼NE¼ of Section 6, Township 3 North, Range 18 West of the 6th P.M. in Harlan 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-19185 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 waiver of the requirement for outlet works, by petition DWV-4916, has been granted. This waiver does not relieve the owner from the responsibility to pass a portion of the reservoir inflow by some method for downstream appropriators should there be a need for water administration; or if water should be required for livestock needs, unless the appropriator is a political subdivision. The Department may rescind the waiver and require installation of appropriate outlet works at a later date if it is determined that the responsibility to pass inflows is not being met or cannot be met by another method.

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

February 13, 2015

James C. Schneider, Ph.D.
Acting 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 and plan of reservoir 18815 were provided to the Department's field office in Cambridge, Nebraska. Copies of this approval and plan of reservoir 18815 were mailed on February 13, 2015, to the following:

Janet L. Exstrom and Sheryl A. Orht
1106 Tilden Street
Holdrege, Nebraska 68949