STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19268,

PETITION FOR A WAIVER OF OUTLET WORKS DWV-5098 AND PLAN OF RESERVOIR 18993

WATER DIVISION 1-D

BACKGROUND

1. On July 8, 2014, Jay and Carol Boyer filed in the Department of Natural Resources (Department) application A-19268 for a permit to impound water, and DWV-5098, a petition for a waiver of the requirement of outlet works for application A-19268.

2. On August 8, 2014, Anthony D. Duever, P.E., CES Group P.A., on behalf of Jay and Carol Boyer filed in the Department plan of reservoir number 18993 and specifications according to *Title 457 Neb. Admin. Code* Chapter 11.

ORDER

IT IS HEREBY ORDERED Application A-19268, Petition DWV-5098 and plan of reservoir 18993 are APPROVED subject to the following limitations and conditions:

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

2. The priority date is July 8, 2014.

3. The water to be stored under this appropriation is for the purpose of providing water for an irrigation project authorized under natural-flow appropriation A-19269.

4. The amount of water that may be diverted shall not exceed 24.5 acre-feet per year to be stored in Boyer Irrigation Reservoir. Boyer Irrigation Dam will be located in the NW¼SW¼ of Section 22, Township 1 North, Range 8 East of the 6th P.M. in Gage 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-19268 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 waiver of the requirement of outlet works, by petition DWV-5098, 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.

9. This appropriation is subject to the provisions of the Blue River Compact and the appropriator could be required to pass inflows if Compact flows are not being met.

10. 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, plan of reservoir number 18993, 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.

11. 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. November 1, 2016 is the date construction of the structure must be completed.

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 29, 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 18993 were provided to the Department's field office in Lincoln, Nebraska. A copy of this approval was mailed to the following:

Anthony D. Duever
1102 Broadway
Marysville, KS 66508

Copies of this approval and plan of reservoir 18993 were mailed on January 29, 2015, to the following:

Jay and Carol Boyer
15464 East Highway 8
Liberty, NE 68381