STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19283,

PETITION FOR A WAIVER OF OUTLET WORKS DWV-5140,

PLAN NUMBER 19042 AND MAP OF RESERVOIR 19359

WATER DIVISION 1-C

BACKGROUND

1. On August 18, 2014, John D. Krogh, on behalf of Krogh and Krogh, Inc., filed in the Department of Natural Resources (Department) application A-19283 for a permit to impound water, petition DWV-5140 for a waiver of the requirement for outlet works, application for approval of plans for dams, specifications and plan number 19042.

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

3. Mathew D. Goeller, Settje Agri Services & Engineering, Inc., 4700 West Rock Creek Road, Raymond, Nebraska 68428, prepared the drawings and specifications.

4. Krogh and Krogh, Inc., owns the reservoir and dam.

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

6. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19283, Petition DWV-5140, plan number 19042 and map of reservoir 19359 are APPROVED subject to the following limitations and conditions:

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

2. The priority date is August 18, 2014.

3. The water to be stored under this appropriation is for the purpose of providing water for an irrigation project authorized under storage use appropriation A-19284.

4. The amount of water that may be diverted shall not exceed 63.0 acre-feet per year to be stored in Krogh North Pond. The dam that impounds water in Krogh North Pond is located in the NE¼NW¼ of Section 09, Township 02 North, Range 05 West of the 6th P.M. in Nuckolls 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-19283 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-5140, 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.

8. A continuous recording device approved by the Department to monitor reservoir levels may be required if so ordered by the Department.

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, the specifications, plan number 19042, 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.

DEADLINE

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.

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

December 22, 2015

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 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, plan number 19042, and map of reservoir 19359 were provided to the Department's field office in Lincoln, Nebraska. A copy of this approval was mailed to the following:

Matthew D. Goeller
Settje Agri Services & Engineering, Inc.
4700 West Rock Creek Road
Raymond, Nebraska 68428

Copies of this approval, plan number 19042, and map of reservoir 19359 were mailed on December 22, 2015, to the following:

Krogh and Krogh, Inc.
c/o John D. Krogh
4436 Highway 136
Nelson, Nebraska 68961

Scholl Brothers Feedlot
c/o Jeff Scholl
4536 Highway 136
Nelson, Nebraska 68961