STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19331,

PETITION FOR A WAIVER OF OUTLET WORKS DWV-5301

AND PLAN OF RESERVOIR NUMBER 18916

WATER DIVISION 1-D

BACKGROUND

1. On February 9, 2015, Charles L. Barber, on behalf of Marcy Barber and Angela and Chris Clifford, filed in the Department of Natural Resources (Department) application A-19331 for a permit to impound 21 acre-feet of water from a tributary to Big Indian Creek, plan of reservoir number 18916 and specifications according to *Title 457 Neb. Admin. Code* Chapter 11, and petition DWV-5301 for a waiver of the requirement for outlet works.

2. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19331, plan of reservoir number 18916 and DWV-5301 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to Big Indian Creek.

2. The priority date is February 9, 2015.

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

4. The amount of water that may be diverted shall not exceed 21 acre-feet per year to be stored in Barber Farms Reservoir under appropriation A-19331. Barber Farms Dam is located in the NW¼SE¼ of Section 19, Township 2 North, Range 4 East of the 6th P.M. in Jefferson County.

5. *Neb. Rev. Stat.* § 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 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-19331 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 for outlet works, DWV-5301, 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 18916 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.

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

June 3, 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 number 18916 were provided to the Department's field office in Lincoln, Nebraska. A copy of this approval was mailed to the following:

Tony Duever, P.E.
CES Group P.A.
1102 Broadway
Marysville, Kansas 66508

Copies of this approval and plan of reservoir number 18916 were mailed on June 3, 2015, to the following:

Marcy Barber
c/o Charles L. Barber
71000 577th Avenue
Diller, Nebraska 68342

Angela and Chris Clifford
57610 709 Road
Diller, Nebraska 68342