STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19486,

PETITION DWV-6047 FOR WAIVER OF OUTLET WORKS,

PLAN 19756 AND MAP OF RESERVOIR 19794

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 October 21, 2016, Kelly Sudbeck, on behalf of the Nebraska Board of Educational Lands and Funds, filed petition VAR-5794 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 45.8 acre-feet of water from a tributary to the East Branch of Muddy Creek in the existing BELF Muddy Creek Dam located in the NW¼SE¼ of Section 16, Township 06 North, Range 23 West of the 6th P.M. in Gosper County for the purpose of erosion control and water for livestock.

3. On November 9, 2016, the Department granted petition VAR-5794 for leave to file an application for a permit to appropriate water.

4. On November 16, 2016, Kelly Sudbeck, on behalf of the Nebraska Board of Educational Lands and Funds, filed in the Department application A-19486 for a permit to impound water, petition DWV-6047 for waiver of outlet works, application for approval of plans for dams, specifications and plan 19756.

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

6. The Nebraska Board of Educational Lands and Funds, 555 North Cotner Boulevard, Lincoln, Nebraska 68505, owns the reservoir and dam.

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

8. Construction has been completed.

ORDER

IT IS HEREBY ORDERED Application A-19486, petition DWV-6047 for waiver of outlet works, plan 19756 and map of reservoir 19794 are APPROVED subject to the following limitations and conditions:

1. The source of water is a tributary to the East Branch of Muddy Creek.

2. The priority date is November 16, 2016.

3. The water to be stored under this appropriation is for the purpose of erosion control and providing water for livestock.

4. The amount of water that may be diverted shall not exceed 45.8 acre-feet per year to be stored in BELF Muddy Creek Reservoir No. 1. The dam that impounds water in BELF Muddy Creek Reservoir No. 1 is located in the NW¼SE¼ of Section 16, Township 06 North, Range 23 West of the 6th P.M. in Gosper 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 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-19486 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-6047, 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. 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 19756, 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.

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 26, 2017

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 19756 and map of reservoir 19794 were provided to the Department's field office in Cambridge, Nebraska. Copies of this approval, plan 19756 and map of reservoir 19794 were mailed on January 26, 2017, to the following:

Kelly Sudbeck
Nebraska Board of Educational Lands and Funds
555 North Cotner Boulevard
Lincoln, Nebraska 68505
INTERAGENCY