

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19289

PETITION FOR WAIVER OF OUTLET WORKS DWV-5219

AND PLAN NUMBER 19048

WATER DIVISION 1-D

BACKGROUND

1. On July 3, 2014, a Notice of Violation was signed by the Director of the Department of Natural Resources (Department) and sent by certified United States Mail to James Wiebe, 9753 W. Hickory Road, DeWitt, Nebraska 68341, regarding the impoundment of water behind a dam, known as Wiebe Dam, located across Bottle Creek in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 3 North, Range 5 East of the 6th P.M. in Gage County. The Notice of Violation provided that it had been determined that James Wiebe was violating the *Safety of Dams and Reservoirs Act* and *Neb. Rev. Stat. §46-241*. The notice specified that James Wiebe had 30 days from the date of the Notice to respond or request a hearing before the Department. No response was received from James Wiebe.
2. On August 19, 2014, James R. and Karen K. Wiebe filed in the Department application A-19289 for a permit to impound water, application for approval of plans for dams, and plan 19048.
3. On August 27, 2014, the Department issued to James Wiebe an Order to Cease and Desist the violation of the *Safety of Dams and Reservoirs Act* no later than **November 15, 2014**, by completing the following requirements not already satisfied by the filing of the applications and plans on August 19, 2014. The requirements are: (1) constructing any necessary modifications, breach opening, or removal of the dam without delay upon Department approval of the plans and specifications; (2) submitting a *Construction Certification Form for Dams* signed by a professional engineer and associated filing fee; and (3) immediately pass all inflows and not store any additional water until such time as James Wiebe has complied with the provisions of the *Safety of Dams and Reservoirs Act*.
4. The plan is for the modification of Wiebe Dam.
5. Anthony Duever, P.E., CES Group P.A., 1102 Broadway, Marysville, Kansas 66508, prepared the plan.
6. James R. and Karen K. Wiebe, 9753 W. Hickory Road, DeWitt, Nebraska 68341, own the reservoir and dam.
7. The plan was examined by a Registered Professional Engineer of the Department.

8. The plan shows the top of the dam will be lowered so that the dam is no longer subject to the *Safety of Dams and Reservoirs Act*.
9. The plan shows the dam will be capable of storing 22.5 acre-feet of water below the lowest open overflow after the modifications are completed.

ORDER

IT IS HEREBY ORDERED Application A-19289, Petition DWV-5219 and Plan 19048 are APPROVED subject to the following limitations and conditions:

1. The source of water is Bottle Creek.
2. The priority date is August 19, 2014.
3. The water to be stored under this appropriation is for the purpose of recreation.
4. The amount of water that may be diverted shall not exceed 22.5 acre-feet per year to be stored in Wiebe Reservoir. The dam that impounds water in Wiebe Reservoir is located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 3 North, Range 5 East of the 6th P.M. in Gage 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-19289 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-5219, 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. A measuring device approved by this Department must be installed upon completion of this structure.

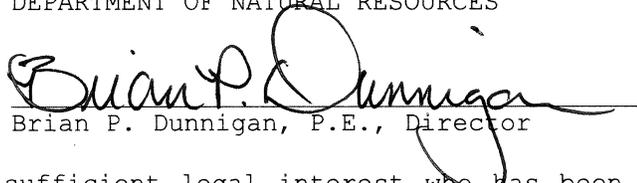
10. This appropriation is subject to the provisions of the Blue River Compact and the appropriator could be required to pass inflows if Compact flows are not being met.
11. The appropriator must comply with all relevant statutes. This includes, but is not limited to, the following:
 - A. Notify the Department of any change in ownership or address.
 - B. Receive approval prior to taking any action that changes the storage capacity of this reservoir, plan 19048, 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.
12. The appropriator must comply with the following deadlines:
 - A. Pursuant to the Order to Cease and Desist dated August 27, 2014, modification construction must be completed no later than **November 15, 2014**.
 - B. No later than **November 15, 2014**, and upon completion of the modifications, the appropriator shall file with the Department the enclosed *Construction Certification Form for Dams*.

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

October 24, 2014


 Brian P. Dunnigan, 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 and plan 19048 were provided to the Department's field office in Lincoln, Nebraska. Copies of this approval and a *Construction Certification Form for Dams* were mailed to the following:

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

Copies of this approval, plan 19048 and a *Construction Certification Form for Dams* were mailed on October 28, 2014, to the following:

James R. and Karen K. Wiebe
9753 W. Hickory Road
DeWitt, Nebraska 68341