

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PLAN P-18733 FOR APPROPRIATIONS A-9944, A-17043, AND A-18116

This matter comes before the Director of the Department of Natural Resources (Department) pursuant to *Neb. Rev. Stat.* § 46-1653 which generally requires anyone intending to reconstruct, alter, breach, or remove a dam to file an application for approval of plans and specifications prior to beginning such modifications.

BACKGROUND

1. Records on file in the Department of Natural Resources (Department) show that surface water appropriations A-9944, A-17043, and A-18116 are held by Capitol Beach Community Association, Inc., 721 Westgate Boulevard, P.O. Box 81141, Lincoln, NE 68501-1141.
2. Appropriations A-9944, A-17043, and A-18116 authorize the appropriator to store a total of 2,105 acre-feet of water per year from Oak Creek in Capitol Beach Lake. The Department has previously approved Plans P-8865, P-8865A, P-8865B, and P-16223 for the dam and reservoir. The location of the diversion for all three appropriations is in the SW1/4 of Section 15, Township 10 North, Range 6 East of the 6th P.M. in Lancaster County.
3. On November 24, 2013, Capitol Beach Community Association filed in the Department an application for approval of plans for dams, specifications and plan P-18733 for reconstruction of Capitol Beach Dam which is subject to the *Safety of Dams and Reservoirs Act*.
4. Plan P-18733 and associated specifications have been examined. The examination shows that:
 - A. John G. Petersen, P.E., of JEO Consulting Group Inc., 11717 Burt Street, Suite 210, Omaha, Nebraska 68154-1510, prepared the drawings and specifications.
 - B. The drawings and specifications were examined by a Registered Professional Engineer of the Department and were found to be consistent with current standards.
 - C. The plan, P-18733, is for the reconstruction of the principal spillway conduit.
 - D. The reconstruction will not change the lowest open overflow elevation for the reservoir and the reservoir storage volume will not change.
 - E. Following consultation with the Nebraska Game and Parks Commission, the Department finds the project will have "No Effect" on any state listed threatened or endangered species or their critical habitat.

ORDER

IT IS HEREBY ORDERED that Plan P-18733 is hereby APPROVED subject to the following limitations and conditions:

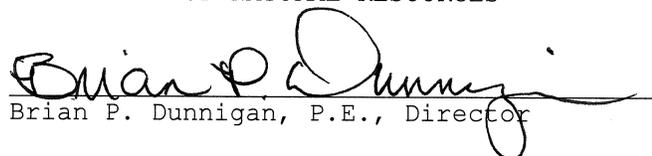
1. This approval will remain in effect for purposes of construction until November 1, 2015.
2. Appropriations A-9944, A-17043, and A-18116 in the total amount of 2,105 acre-feet of water per year stored in Capitol Beach Lake shall remain in full force and effect. All terms and conditions of appropriations A-9944, A-17043, and A-18116 remain in effect unless specifically changed by this Order.
3. Plans P-8865, P-8865A, P-8865B, and P-16223 remain in effect.
4. The owner of a dam shall provide written notice to the Department at least ten days before reconstruction of the dam is to begin. Notices must be in writing and addressed to the Chief Engineer of the Department's Dam Safety Section. Notices may be delivered to the Department by mail, facsimile, or electronic mail.
5. The dam owner 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, or plans P-8865, P-8865A, P-8865B, P-16223, and P-18733.
 - C. 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.
6. Upon completion of the reconstruction, the owner shall file with the Department the enclosed "Construction Certification Form for Dams." Following receipt of this form, an approval to operate will be issued by the Department if it determines that the dam is safe to impound within the limitations outlined in this approval.

ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to any orders issued by the Director of the Department of Natural Resources may result in administrative penalty, criminal prosecution, or any combination thereof.

DEPARTMENT OF NATURAL RESOURCES

January 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* 454 *Neb. 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, plan P-18733, and a "Construction Certification Form for Dams" were mailed on January 24, 2014, to Capitol Beach Community Association, Inc., % Gregory L. Osborn, 721 Westgate Boulevard, P.O. Box 81141, Lincoln, NE 68501-1141. Copies of this approval, engineering review report and plan P-18733 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 John G. Petersen, P.E., of JEO Consulting Group Inc., 11717 Burt Street, Suite 210, Omaha, Nebraska 68154-1510.