

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PLAN NUMBER P-21138

BACKGROUND

1. On January 19, 2023, Kyle Schwarting filed in the Department of Natural Resources (Department) an Application for Approval of Plans for Dams and plan P-21138.
2. The plan, P-21138, is for Schwarting Holding Lagoon 1 Dam, a proposed livestock waste control dam. The dam will be located in the Southeast 1/4 of Section 31, Township 33 North, Range 41 West of the 6th P.M. in Sheridan County.
3. Jacob John Mayer, P.E. of Settje Agri-Services and Engineering, Inc., 15460 Northwest 48th Street, Raymond, Nebraska 68428, prepared the plans.
4. Kyle Schwarting, 6272 Agnew Road, Ceresco, Nebraska 68017, will own the dam.
5. The plans were examined by a registered professional engineer of the Department and were found to be consistent with current standards. The dam will have a maximum height of 6 feet and a maximum storage capacity of 29.2 acre-feet above the lowest elevation of the downstream toe of the dam. The dam will have additional storage capacity of 38.4 acre-feet that is excavated below the elevation of the downstream toe of the dam for a total storage capacity of 67.6 acre-feet.
6. The dam is not subject to the Safety of Dams and Reservoirs Act as it will be less than 25 feet in height, and it will have less than 50 acre-feet of maximum storage capacity above the lowest elevation of the downstream toe of the dam.
7. The dam is subject to Neb. Rev. Stat. § 54-2430, which generally requires surface water runoff from upstream areas not related to the livestock facility to be adequately diverted around the livestock facility and not allowed to enter the waste control reservoir.
8. There will be surface water runoff from up to 109.8 acres not related to the livestock facility that will not be diverted and will be allowed to enter the waste control reservoir. This non-feedlot drainage area is allowed per Neb. Rev. Stat. § 54-2430 (3)(a), (b) and (c)(i). The Department finds the applicant has no reasonable way to limit the amount of additional runoff, the applicant has no reasonable alternative for relocating the livestock waste control facility, and an increase in the permitted runoff acreage will not reduce water supplies to the detriment of existing water users.
9. The Department consulted with the Nebraska Game and Parks Commission as required by the Nebraska Nongame and Endangered Species Act. As a result of this consultation, the Nebraska Game and Parks Commission determined that the project is "Not Likely To Adversely Affect" any state-listed

threatened or endangered species or their critical habitat as long as a survey is conducted to assure no active swift fox dens are present.

ORDER

IT IS HEREBY ORDERED the Application for Approval of Plans for Dams and plan P-21138 are APPROVED subject to the following limitations and conditions:

1. This approval will remain in effect for purposes of construction until November 1, 2024.
2. The owner of a dam shall provide written notice to the Department at least ten days before construction 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.
3. The owner must comply with the requirements of the Nebraska Nongame and Endangered Species Act. Based on the Nebraska Game and Parks recommendation, the owner can meet the requirements of the Act by conducting a survey for active swift fox dens within 250 yards of the construction site by a trained biologist following current Nebraska Game and Parks Commission protocols. If an active den is found, work shall not proceed until consulting with the Nebraska Game and Parks Commission.
4. 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 written approval prior to taking any action that changes the storage capacity of the reservoir or plan P-21138.
 - 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 dam.
5. Upon completion of the construction, 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

Thomas E. Riley

Thomas E. Riley, P.E., Director

March 30, 2023

A copy of this approval was posted on the Department's website. Copies of this approval, plan P-21138 and a "Construction Certification Form for Dams" were mailed on March 30, 2023, to Kyle Schwarting, 6272 Agnew Road, Ceresco, Nebraska 68017. Copies of this approval, engineering review report, and plan P-21138 were provided to the Department's field office in Bridgeport, Nebraska. Copies of this approval and a "Construction Certification Form for Dams" were mailed to Jacob John Mayer, P.E., Settje Agri-Services and Engineering, Inc., 15460 Northwest 48th Street, Raymond, Nebraska 68428. Copies of this approval were mailed to the Upper Niobrara White Natural Resources District, 430 East 2nd Street, Chadron, NE 69337; and to Patrick Ducey, Nebraska Department of Environment and Energy, INTERAGENCY, 245 Fallbrook Boulevard, Suite 100, Lincoln, Nebraska 68521.