

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PLAN NUMBER P-21145

BACKGROUND

1. On January 26, 2023, Eric Behlke, on behalf of Blackshirt Feeders LP filed in the Department of Natural Resources (Department) an Application for Approval of Plans for Dams, plan P-21145, and associated specifications.
2. The plan, P-21145, is for Blackshirt Lagoon 5 Dam, a proposed livestock waste control dam subject to the *Safety of Dams and Reservoirs Act*. The dam will be located in the NW 1/4 of Section 35, Township 2 North, Range 42 West of the 6<sup>th</sup> P.M. in Dundy County.
3. Matthew D. Goeller, P.E. of Settje Agri-Services and Engineering, 15460 Northwest 48th Street, Raymond, Nebraska 68428, prepared the plans and specifications.
4. Blackshirt Feeders LP, 33668 Road 710, Benkelman, Nebraska 69021, will own the dam.
5. The plans and specifications were examined by a registered professional engineer of the Department and were found to be consistent with current standards.
6. 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.
7. All of the contributing drainage area into the lagoon will be from the livestock facility and incidental drainage associated with the waste control facility.

ORDER

IT IS HEREBY ORDERED the Application for Approval of Plans for Dams, plan P-21145, and associated specifications 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, the specifications, or plan P-21145.
  - 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



March 6, 2023

Thomas E. Riley, P.E., Director

A copy of this approval was posted on the Department's website. Copies of this approval, plan P-21145, and a "Construction Certification Form for Dams" were mailed on March 6, 2023, to Blackshirt Feeders LP, c/o Eric Behlke, 33668 Road 710, Benkelman, Nebraska 69021. Copies of this approval, engineering review report, and plan P-21145 were provided to the Department's field office in Cambridge, Nebraska. Copies of this approval and a "Construction Certification Form for Dams" were mailed to Matthew D. Goeller, P.E., Settje Agri-Services and Engineering, 15460 Northwest 48th Street, Raymond, Nebraska 68428. Copies of this Approval were mailed to the Upper Republican Natural Resources District, 511 East 5th Street, Imperial, Nebraska 69033; and to Patrick Ducey, Nebraska Department of Environment and Energy, INTERAGENCY, 245 Fallbrook Boulevard, Suite 100, Lincoln, Nebraska 68521.