

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-20043 AND MAP NUMBER 21539

WATER DIVISION 2-C

BACKGROUND

1. On September 23, 2024, Edwin Brown, on behalf of Amorak, Inc., filed in the Department of Natural Resources (Department) application A-20043 for a Permit to Appropriate Water.
2. On November 20, 2024, Edwin Brown filed in the Department map number 21539 showing the location of water use under application A-20043.
3. The applicant agreed to following conservation measures specified by the Nebraska Game and Parks Commission pursuant to the Nongame and Endangered Species Conservation Act Neb. Rev. Stat. § 37-807, as described in NGPC Project No. DNR24029 concurrence letter dated October 10, 2024, as shown in Attachment A.

ORDER

IT IS HEREBY ORDERED that application A-20043 and map number 21539 are APPROVED subject to the following limitations and conditions:

1. The source of water is the Niobrara River.
2. The water shall be used for the purpose of providing water for livestock.
3. The priority date is September 23, 2024.
4. Water may be diverted from the Niobrara River at a point of diversion located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, Township 33 North, Range 29 West of the 6th P.M. in Cherry County, as depicted on map number 21539 which is made a part of this order. Water shall be transported to a stock tank located in the abovementioned legal description. Water diverted shall not exceed the rate of 0.13 cubic feet per second (58 gallons per minute) from all points of diversion.
5. A measuring device, approved by the Department, may be required if so ordered by the Department.
6. The appropriator must comply with all relevant statutes. The statutes include, but are not limited to, the following:
 - A. Notify the Department of any change in ownership or address.
 - B. Notify the Department of the name and address of the person responsible for the use of the water appropriation (this may include farm managers, tenants, or relatives that actually apply the water to the approved use).

7. The appropriator must comply with the following deadlines:
- A. The appropriation is not considered perfected until water has been beneficially used for the purpose stated in this Order. The water appropriated under A-20043 must be beneficially used by September 1, 2027.
 - B. After September 1, 2027, a field investigation will be conducted to determine that water has been beneficially used.
 - C. If no portion of the appropriation is found to have water beneficially applied, the Department will issue an Order of Cancellation in Full for A-20043.

ADDITIONAL INFORMATION

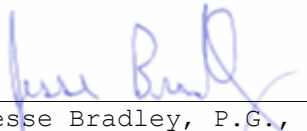
Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this Order may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

Nebraska law provides that failure to use a portion or all of a perfected appropriation for more than five consecutive years may result in cancellation of the appropriation.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. This appropriation may be closed if there is insufficient water to satisfy senior appropriations. If in the future you are not able to divert sufficient amounts of water, and if there are junior appropriations upstream, you may call for water by contacting your local field office.

DEPARTMENT OF NATURAL RESOURCES

December 2, 2024



Jesse Bradley, P.G., Interim Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 21539 were provided to the Department's field office in Ord, Nebraska. Copies of this Order, map number 21539 and Surface Water Administration brochure were mailed to the following:

Edwin Brown
Amorak, Inc.
6030 Village Drive 201
Lincoln, Nebraska 68516



ATTACHMENT A

2200 N. 33rd St. • P.O. Box 30370 • Lincoln, NE 68503-0370 • Phone: 402-471-0641

October 10, 2024

Christine Southwick
Nebraska Department of Natural Resources
245 Fallbrook Blvd., Suite 201
Lincoln, Nebraska 68521

RE: Amorak Livestock, A-20040, A-20041, A-20042, A-20043, NGPC Project No. DNR24029, Cherry County

Dear Christine Southwick:

Please make reference to your CERT Environmental Review Reports (ERRs) NE-CERT-13255, 13257, 13258, and 13261 dated September 23, 2024, and subsequent email dated October 8, 2024. This letter is in response to your request for further consultation based on the results of the ERRs. As we understand it, the project would involve the placement of four pumps, each of which would appropriate 0.13 cfs of water from the Niobrara River, for the purpose of watering livestock. We recognize this review is being requested on behalf of the Nebraska Department of Natural Resources to fulfill consultation requirements. We have completed our review of the proposed project under Neb. Rev. Stat. § 37-807(3)(c) of the Nongame and Endangered Species Conservation Act and we offer the following comments. This letter should be used in combination with the CERT ERR to constitute a complete environmental review for this project.

This project is within range of the state and federally listed endangered blowout penstemon (*Penstemon haydenii*), northern long-eared bat (*Myotis septentrionalis*), and whooping crane (*Grus americana*); the state and federally listed threatened American burying beetle (*Nicrophorus americana*) and western prairie fringed orchid (*Platanthera praeclara*); and the state listed threatened finescale dace (*Chrosomus neogaeus*), and northern redbelly dace (*Chrosomus eos*). No suitable habitat for blowout penstemon (sand blowouts) is present within the project area.

Suitable habitat for American burying beetle, northern long-eared bat, and western prairie fringed orchid exists within or near the project area. However, as stated in email correspondence with DNR dated October 9, 2024, the project will not be disturbing ground or removing any trees; therefore negative impacts to American burying beetle, northern long-eared bat, or western prairie fringed orchid are not anticipated.

Suitable habitat for finescale dace, northern redbelly dace and whooping crane may exist within the Niobrara River or near the project area. However, while finescale and northern redbelly dace can use the Niobrara River to move between streams, these small, bodied fish generally do not inhabit the Niobrara River due to predation risks. Additionally, these pumps will be moving a small amount of water for livestock troughs and will not be likely to suck in small fish. Therefore, negative impacts to finescale and northern redbelly dace are not anticipated.

TIME OUTDOORS IS TIME WELL SPENT

OutdoorNebraska.org

Additionally, while whooping cranes use the Niobrara River for foraging or roosting, the individual pump locations are located within fairly tree-lined or narrow sections of the river that the cranes would deem unfavorable for roosting or feeding due to predation risk; therefore, negative impacts to whooping crane are not anticipated.

Based on the information provided, we concur with the project proponent's determination that the proposed project "**May Affect, but is Not Likely to Adversely Affect**" finescale dace, northern redbelly dace, or whooping crane and acknowledge no impacts are anticipated on all other state-listed endangered or threatened species.

Our review was based on an evaluation of the material you provided, aerial photographs, and information found in the Nebraska Natural Heritage database. If the proposed project changes or new information regarding endangered or threatened species becomes available, then this evaluation is no longer valid and further coordination with the Nebraska Game and Parks Commission Planning and Programming Division will be necessary.

All federally listed endangered or threatened species are also state listed. The information in this letter does not satisfy any necessary consultation obligation between a lead federal agency and the U.S Fish and Wildlife Service pursuant to the Endangered Species Act (ESA). For an assessment of potential impacts to habitats and species protected under federal wildlife laws, including federally listed, candidate or proposed endangered or threatened species, please visit the USFWS Information for Planning and Consultation Tool (IPAC) at <https://ipac.ecosphere.fws.gov/>.

Thank you for the opportunity to review this project. If you have any questions or need additional information, please contact me at (402) 471-5554 or ngpc.envreview@nebraska.gov.

Sincerely,

A handwritten signature in cursive script that reads "Ruby Rolland".

Ruby Rolland
Environmental Specialist III
Planning and Programming Division

EC: Melissa Marinovich (NGPC)