STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF PLAN NUMBER 20517

AND PETITION FOR A WAIVER OF OUTLET WORKS

BACKGROUND

1. On April 15, 2020, Ernie Eilers filed in the Department of Natural Resources (Department) an Application for Approval of Plans for Dams, plan P-20517, and associated specifications and a Petition for a Waiver of Outlet Works.

2. The plan, P-20517, is for the reconstruction of the Eilers Multi-purpose Dam, which is subject to the *Safety of Dams and Reservoirs Act*. The dam is located in the SW¼ of Section 23, Township 34 North, Range 12 West of the 6th P.M. in Boyd County.

3. Robert L. Atkeson, P.E. of United States Department of Agriculture, Natural Resource Conservation Service, 107-A East Highway 20, O'Neill, Nebraska 68763, prepared the plans and specifications.

4. Ernie Eilers, 90249 US Highway 281, Spencer, Nebraska 68777, owns 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. 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 the Application for Approval of Plans for Dams, plan P-20517 and associated specifications and the Petition for a Waiver of Outlet Works are APPROVED subject to the following limitations and conditions:

1. This approval will remain in effect for purposes of construction until November 1, 2021.

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 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-20517.

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.

E. A waiver of the requirement for outlet works 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. 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.

4. 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

May 21, 2020

Jesse Bradley, P.G., Interim Director

A copy of this approval was posted on the Department's website. Copies of this approval, plan P-20517, and a "Construction Certification Form for Dams" were mailed on May 21, 2020, to Ernie Eilers, 90249 US Highway 281, Spencer, Nebraska 68777. Copies of this approval and a "Construction Certification Form for Dams" were mailed to Robert L. Atkeson, P.E. of United States Department of Agriculture, Natural Resource Conservation Service, 107-A East Highway 20, O'Neill, Nebraska 68763. Copies of this approval, engineering review report, and plan P-20517 were provided to the Department's field office in Ord, Nebraska.