



Dale Rubesh
Rubesh Family Trust
1837 Worms Road
St. Libory, NE 68872

RE: State Water Quality Certification for Section 404 Application NWO-2024-01832-WEH
Rubesh Family Trust Middle Loup Riverbank Stabilization

Dear Mr. Rubesh,

We have reviewed the information submitted to this office regarding the above-referenced project to clean and stabilize the embankment of the Middle Loup River that is eroding. As outlined in your permit application, the proposed activities will result in 0.1 acres of impact to waterbodies identified as waters of the U.S. (WOTUS).

Pursuant to § 401 of the Clean Water Act of 1977, as amended by the Water Quality Act of 1987, and Title 120, *Rules and Regulations Pertaining To Certification by The State of Nebraska*, NDEE will provide certification to an applicant for a federally issued and administered permit or license to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in a discharge into navigable waters, if the discharge will not violate Title 117, *Nebraska Surface Water Quality Standards*.

The Department's certification may specify any special condition necessary to assure that the applicant for a federal license or permit will comply with Title 117. **The Department has determined the proposed activity will comply with Title 117, with the following conditions:**

1. Construction activities will employ Best Management Practices (erosion and sediment controls), maintained in effective operating condition during construction, to reduce to the maximum extent practicable the erosion of land into water bodies located within or adjacent to the construction site (Title 117, Chapter 3, Section 001).
2. Riprapping activities should employ controls to reduce the sediment concentration of any water returning to the river. If concrete is used as riprap, it shall be clean and free of exposed rebar, asphalt, and any other potential contaminants (Title 117, Chapter 3, Section 001).
3. No individual action which may jeopardize the continued existence of a state listed Endangered or Threatened Species (pursuant to the Nebraska Nongame and Endangered Species Conservation Act, or NESCA, Neb. Rev. Stat. 37-801 to 37-811 and Title 117, Chapter 4, Section 003.01J, Neb. Rev. Stat. 81-1505 (1)(2)), or results in the destruction or modification of habitat of such species which is determined by the commission to be critical, or results in a take of such species shall be allowed.

If conducted in accordance with the conditions listed above, this activity will not violate the water quality standards of all temporary and permanently impacted Title 117 waterbodies. If a waterbody does not have a designated use, Title 117 requires that they be protective of the downstream uses of designated waterbodies and

does not allow direct discharges into lakes or impoundments, except as authorized by National Pollutant Discharge Elimination System (NPDES) permits.

If the area of disturbance will be greater than 1.0 acre, we remind the applicant that a NPDES Construction Stormwater Permit will be required under §402 of the Clean Water Act. For more information and to apply online, please go to: <https://dee.nebraska.gov/permitting/online-general-permit/construction-storm-water>

In addition, Title 117 includes an antidegradation provision to ensure that water quality of surface waters is to be maintained and protected consistent with the uses applied under Title 117 standards and water quality degradation which would adversely affect existing uses will not be allowed. If the proposed project activities may impact waters of the State, not specifically identified as WOTUS, we encourage you to contact the department's 401 Coordinator for a voluntary review to evaluate impacts to State waters and how best to comply with state water quality standards.

We, therefore, by this letter, provide §401 Water Quality Certification. This certification does not constitute authorization to conduct your project, nor does it supersede additional local, state, federal, or Tribal permits as required by law. It is a statement of compliance with Nebraska Surface Water Quality Standards only, which is one requirement to gain authorization from the U.S. Army Corps of Engineers in the form of a §404 permit. If you have any questions, please feel free to call our 401 Coordinator, Cydney Calhoun, at (402) 471-2875. Thank you for your assistance in Nebraska Department of Environment and Energy's review of your project.

Pursuant to the Delegation Memorandum dated June 20, 2024, and signed by the Director, the undersigned hereby executes this document on behalf of the Director.

Sincerely,

Sarah Starostka
Administrator
NDEE Planning & Aid Division

ECC: Mandy Nolan, U.S. Army Corps of Engineers
Brooke Stansberry, U.S. Fish & Wildlife Service
Ruby Rolland, Nebraska Game & Parks Commission
Gabriel DuPree, U.S. Environmental Protection Agency
Kaycee Zuschlag, Natural Resources Conservation Service
Joe Dush, Natural Resources Conservation Service