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DEPT. OF WATER, ENERGY, AND ENVIRONMENT



Jim Pillen, Governor

11440 W Center Road #C
Omaha, NE 68144

January XX, 2026

RE: State Water Quality Certification for Section 404 Application (NWO-2025-00304-WEH), Millard Park Bank Stabilization Project

Dear Nancy Wackerhagen,

We have reviewed the information submitted to this office regarding the above-referenced project to implement several bank stabilization measures along South Papillion Creek in Sarpy County, Nebraska. As outlined in your permit application, the proposed activities will result in 0.081 acres of permanent impact on wetlands, 0.218 acres of permanent impact on waterbodies, and 0.012 acres of temporary impact on 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*, DWEE 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 impacts to wetlands are below the mitigation threshold of 0.1-acres, so no mitigation is required for these impacts. The impacts to other waterbodies determined to be WOTUS, while above the mitigation threshold of 0.03 acres, have been found to result in a net increase in stream function. This was determined through the conduction of a pre- and post- construction Nebraska Stream Condition Assessment Procedure (NeSCAP); therefore, no mitigation is required for these impacts.

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 that the proposed activity will comply with Title 117, so long as the following conditions are met:**

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. Temporary impacts to surface waters shall be restored to pre-project conditions following construction (Title 117, Chapter 3, Section 001).
3. Surface waters are to be free from toxic substances, alone or in combination with other substances, in concentrations that result in acute or chronic toxicity to aquatic life. Drilling fluids and additives used in the construction will be non-toxic to the aquatic environment. All aquatic life use classes shall be protected from human induced water pollution which would significantly degrade the biological integrity of a body of water or significantly impact or displace an identified key species. This includes but is not

limited to drilling fluids and other substances associated with pipeline construction activities. (Title 117 4-003.01)

4. In the event of an accidental discharge, immediate actions will be taken to minimize negative impacts. NDWEE will be notified as soon as possible but no later than 24 hours following the discharge event. (Title 117 4-003.01 and Title 126 18-002)
5. Should permanent impact to wetlands or streams exceed an area greater than that noted above due to project activities, notify our office in writing immediately. Any such loss may require additional compensatory mitigation. (Title 117 3.001)
6. Riprappling activities should employ controls to reduce the sediment concentration of any water returning to the stream or river. If concrete is used as riprap, it shall be clean and free of exposed rebar, asphalt, and any other potential contaminants.
7. Compliance with all conditions of the Federal § 404 Permit, and other state and Federal Permits must be met.

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 the 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, Jessica Russell, at (402) 471-3382. Thank you for your assistance in Nebraska Department of Water, Energy, and Environment'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
DWEE Planning & Aid Division

ECC: Katrina Stantek, U.S. Army Corps of Engineers
Brooke Stansberry, U.S. Fish & Wildlife Service
Ruby Micek, Nebraska Game & Parks Commission
Gabriel DuPree, U.S. Environmental Protection Agency
Joe Manning, E&A Consulting Group