



**Date of Signature:** [Insert Date of Signature Here]

**Sent via Email to:** Jim Theiler, City of Omaha Public Works (james.theiler@cityofomaha.org)

**RE:** State Water Quality Certification for Section 404 Application, Cole Creek at Hillside Drive Project (NWO-2006-11092-WEH)

Dear Mr. Theiler,

We have reviewed the information submitted to this office regarding the above-referenced project to stabilize a portion of Cole Creek between Blondo Street and Seward Street in Douglas County, Nebraska. This project includes culvert and road embankment removal at the Hillside Drive crossing and stabilization of the creek using structural and natural channel design methods. As outlined in your permit application, the proposed activities will not have any impacts on wetlands identified as waters of the U.S. (WOTUS).

The impacts to other waterbodies determined to be WOTUS are anticipated to total 0.548-acres. While above the mitigation threshold of 0.03 acres, the impacts have been found to result in a net increase in stream function. This was determined based on pre- and post-construction Nebraska Stream Condition Assessment Procedure (NeSCAP) assessments; therefore, no mitigation is required for these impacts.

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 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. This waterbody supports the Agricultural Water Supply Class A classification. These are waters used for general agricultural purposes (e.g., irrigation and livestock watering) without treatment. In order to maintain this designated use as set forth in Title 117, wastes or toxic substances introduced directly or indirectly by human activity in concentrations that would degrade the use (i.e., would produce undesirable physiological effects in crops or livestock) will not be allowed (Title 117 Ch. 4, 004.02A).

3. This waterbody supports the Warmwater Class B classification. These are waters where the variety of warmwater biota is presently limited by water volume or flow, water quality (natural or irretrievable human-induced conditions), substrate composition, or other habitat conditions. These waters are only capable of maintaining year-round populations of tolerant warmwater fish and associated vertebrate and invertebrate organisms and plants. Key species may be supported on a seasonal or intermittent basis (e.g., during high flows) but year-round populations cannot be maintained. In order to maintain this designated use as set forth in Title 117, this project will adhere to the Dissolved Oxygen criteria as outlined in Title 117 Ch. 4, 003.04D1.
4. The “aesthetics” use classification set forth in Title 117 applies to all surface waters of the state (Title 117 Ch. 4, 005). To be aesthetically acceptable, waters are to be free from human-induced pollution which causes: 1) noxious odors; 2) floating, suspended, colloidal, or settleable materials that produce objectionable films, colors, turbidity, or deposits; and 3) the occurrence of undesirable or nuisance aquatic life (e.g., algal blooms). Surface waters are also to be free of junk, refuse, and discarded dead animals. This project will adhere to these specifications in order to maintain the aesthetics use of the impacted waterbody(s).
5. Temporary impacts to surface waters shall be restored to pre-project conditions following construction (Title 117, Chapter 3, Section 001).
6. Riprapping 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. In the event of an accidental discharge, immediate actions will be taken to minimize negative impacts. DWEE will be notified as soon as possible but no later than 24 hours following the discharge event. (Title 117 Chapter 4-003.01 and Title 126 18-002)
8. 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 is 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) 471-2875. Please contact the department if the scope of the project changes or adverse impacts to surface waters are greater than originally projected. Thank you for your assistance in Nebraska Department of Water, Energy, and Environment's review of your project.

Sincerely,

Matthew T. Manning, PE, JD  
Chief Water Officer  
Department of Water, Energy, and Environment

ECC: Eric Soe, U.S. Army Corps of Engineers (eric.k.soe@usace.army.mil)  
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