



Date of Signature: [Insert Date of Signature Here]

Sent via Email to: Mark Arps, Colfax County (marps@colfaxne.com)

RE: State Water Quality Certification for Section 404 Application Howells Southeast (NWO-2025-01745)

Dear Mr. Arps,

We have reviewed the information submitted to this office regarding the above-referenced project to stabilize the southwest bank of East Fork Maple Creek located southwest of structure C001903325 in Colfax County, Nebraska. As outlined in your permit application, the proposed activities will result in 0.047-acres of permanent impacts and 0.080-acres of temporary impacts to wetlands 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 other waterbodies determined to be WOTUS are anticipated to total 0.3643-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.

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. Title 117, Ch. 5, identifies key species that are associated with a particular waterbody and its aquatic life use class. Key species are endangered, threatened, sensitive, or recreationally important aquatic species. The following key species have been found to occur in the vicinity of, or be affected by, the proposed activity: Bluntnose minnow. In order to protect the biological integrity of the waterbody, and the associated key species in accordance with Title 117 Ch. 4, Section 003.01J, the project shall:

- a. Avoid activities that could permanently alter the pH of the waterbody (Title 117 Ch. 4, 003.01A).
 - b. Avoid activities that would increase the temperature of the receiving water by a total of more than 5 degrees Fahrenheit (3 degrees Celsius) from natural background outside the mixing zone (Title 117 Ch. 4, 003.01B).
 - c. Avoid activities that would introduce toxic substances into the impacted waterbody (Title 117 Ch. 4, 003.01C).
 - d. Adhere to all conditions listed in this letter.
3. 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, this project will adhere to the following specifications:
 - a. Conductivity is not to exceed 2,000 umhos/cm between April 1 and September 30 (Title 117 Ch. 4, 004.02B1).
 - b. Nitrate and Nitrite as Nitrogen concentrations are not to exceed 100 mg/L (Title 117 Ch. 4, 004.02B2).
 - c. Selenium concentrations are not to exceed 0.02 mg/L (Title 117 Ch. 4, 004.02B3).
 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 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.
 9. All temporary disturbances to wetlands or waterways shall be restored to their pre-project contours and conditions, including the planting of native plant species, following construction.

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

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