



Date of Signature: [Insert Date of Signature Here]

Sent via email to: Jeff Jackson, Nebraska Game and Parks Commission (jeff.jackson@nebraska.gov)

RE: State Water Quality Certification for Section 404 Application Niobrara Pond Improvement Project (NWO-2026-00425-WEH)

Dear Mr. Jackson,

We have reviewed the information submitted to this office regarding the above-referenced project to implement various pond improvement measures to protect the Niobrara State Park pond shoreline from wind and wave action erosion and to protect the downstream end of an upstream existing pond outlet from erosion and scour. As outlined in your permit application, the proposed activities will result in 0.183-acres of impact to wetlands and waterbodies identified as waters of the U.S. (WOTUS) and as a State Resource Water (SRW) Class A waterbody.

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 0.183-acres of impacts will be to open-water-type wetlands (PADFh and R5UBH). The US Army Corps of Engineers (USACE) does not have a threshold for open-water impacts and is therefore not requiring mitigation. After reviewing the anticipated impacts to the SRW, **the Department has determined that 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 stream or river. If concrete is used as riprap, it shall be clean and free of exposed rebar, asphalt, and any other potential contaminants.
3. The project will impact a waterbody designated as a State Resource Water A. These are surface waters identified in Title 117 which constitute an outstanding State or National resource. The existing water quality of these surface waters shall be maintained and protected. As such, the project shall not employ any activities that permanently impact the temperature (Title 117,

Chapter 4, Section 003.04C), bacteria levels (Title 117, Chapter 4, Section 002.01), or Class A agricultural water supply properties (Title 17, Chapter 4, Section 004.02B) of the waterbody.

4. 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)
5. 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. Thank you for your assistance in Nebraska Department of Water, Energy, and Environment's review of your project.

Pursuant to the Delegation Memorandum dated February 26, 2026, and signed by the Chief Water Officer, the undersigned hereby executes this document on behalf of the Nebraska Department of Water, Energy, and Environment.

Sincerely,

Jennifer J. Schellpeper
Administrator
DWEE Water Planning Division

ECC: Rylee Smith, U.S. Army Corps of Engineers (rylee.d.smith@usace.army.mil)
Brooke Stansberry, U.S. Fish & Wildlife Service (brooke_stansberry@fws.gov)
Ruby Micek, Nebraska Game & Parks Commission (ruby.micek@nebraska.gov)
Gabriel DuPree, U.S. Environmental Protection Agency (dupree.gabriel@epa.gov)
Gordon Coke, The Flatwater Group (gcoke@flatwatergroup.com)

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