
PUBLIC NOTICE



**US Army Corps
of Engineers**

Omaha District

Application No: 2007-3248-WEH
Applicant: Papio-Missouri Natural Resources District
Waterway: Jones Creek
Issue Date: September 23, 2009
Expiration Date: October 14, 2009

21 DAY NOTICE

Reply To:
NEBRASKA REGULATORY OFFICE – WEHRSPANN
8901 SOUTH 154TH STREET, SUITE 1, OMAHA, NEBRASKA 68138-3621

JOINT PUBLIC NOTICE: This public notice is issued jointly by the U.S. Army Corps of Engineers, Omaha District, and the Nebraska Department of Environmental Quality (NDEQ), P.O. Box 98922, State House Station, Lincoln, Nebraska 68509. They will review the proposed project for state certification in accordance with the provisions of Section 401 of the Clean Water Act. NDEQ hereby incorporate this public notice as its own public notice and procedures by reference thereto. For the purposes of the NDEQ, their public notice will expire 30 days from the issue date shown above.

AUTHORITY: Section 404 of the Clean Water Act (33 USC 1344).

APPLICANT: Mr. Marlin Petermann, Papio-Missouri Natural Resource District, 8901 South 154th Street, Omaha, Nebraska 68138.

PROJECT LOCATION: The project is located in south ½ of Section 23, SW ¼ of Section 24, and Section 26, Township 28 North, Range 28 North, Range 7 East, Dakota County, Nebraska.

PROJECT DESCRIPTION: The project will consist of placing 15,200 cubic yards of clean fill to construct an earthen dam known as Pigeon Jones Creek #15. The placement of fill will impact 0.11 acres of linear riverine PEMA wetlands, 1,194 linear feet of perennial stream channel and 423 linear feet of intermittent stream channel. This project will inundate 2.04 acres of linear riverine PEMA wetlands, 11,215 linear feet of perennial stream channel, and 4,468 linear feet of intermittent stream channel. The construction of the earthen dam will create a 230 acre lake and retain over 340 acre-feet of sediment below the normal pool of the lake during the life of the structure.

PROJECT PURPOSE: The purpose of this project is sediment control in the Jones Creek Watershed, and water-based recreation within sub-district one of the Papio-Missouri River Natural Resources District. The need to control erosion in the Pigeon-Jones Creek Watershed is

due to the amount of sediment delivered downstream to the Pigeon-Jones Levee System and drainage district. The water-based recreation need arises from the Nebraska Game and Parks Commission's Statewide Comprehensive Outdoor Recreation Plan, which the applicant believes identifies a shortage of water based recreation in this part of the state. Also a 30-mile recreation market analysis prepared by the applicant for Site #15 states that there is an unmet demand of nearly 20,000 acres of lake fishing.

SPECIAL AQUATIC SITES: A total of 2.15 acres of linear riverine PEMA wetlands will be impacted by this project (0.11 acres filled and 2.04 acres inundated).

AVOIDANCE, MINIMIZATION, AND MITIGATION: The watershed this project is located in is the Blackbird-Soldier 10230001. The applicant is considering alternatives that would avoid, minimize, and mitigate impacts to Water of the United States, including wetlands. The avoidance alternatives include no-build, land treatment, multiple smaller sediment storage structures in uplands, and recreational alternatives consistent with the purpose and need. The alternatives are split into on-site and off-site. The off-site alternatives include stream stabilization/restoration, small weir structures elsewhere in the watershed, multiple smaller sediment storage structures elsewhere in the watershed, and recreational alternatives consistent with the purpose and need. The on-site alternatives include various configurations/locations of the impoundment within the same site, various configurations of the roadways and ancillary features, and impoundment at current location. Wetland mitigation alternatives considered are wetland mitigation in sediment ponds above the structure, wetland mitigation off-site or from a wetland mitigation bank, wetland mitigation in the main pool of the lake as sediment accumulates, and wetland mitigation on shelves in the main pool of the lake. Stream mitigation alternatives considered are stream mitigation per acceptable stream functional assessment methodology and stream mitigation off-site or from a mitigation bank.

There are no available mitigation banks, in-lieu fee programs, or approved watershed plan that would provide opportunities for compensatory mitigation. Therefore, the applicant has on-site or off-site mitigation available to them for compensatory mitigation of unavoidable impacts to waters of the United States. The applicant is proposing to mitigate the 2.15 acres of linear riverine PEMA wetland impacts (fill and inundation) by the creation of at least 4.30 acres of PEMA/C wetlands around the perimeter of the lake (using a 2:1 ratio). The ratio would increase to 4:1 due to the out of kind replacement proposed (riverine to lacustrine). If so, the applicant would mitigate 8.60 acres of PEMA/C wetlands around the perimeter of the lake. The mitigation areas will be created by planting wetland species in the areas 1-2 feet below the elevation of the permanent pool of the lake.

The applicant is proposing to mitigate for the loss (both direct fill and inundation) of 12,409 linear feet of perennial stream channel and 4,891 linear feet of intermittent stream channel through the use of an approved functional assessment methodology. Possible mitigation activities could include buffers, riparian habitat restoration, aquatic habitat restoration, grade/bank stabilization, legal protection, and other measures. The applicant will also address potential erosion impacts downstream of the dam, due to the possibility of reduced sediment load, by monitoring increased erosion. If increased erosion is observed, corrective measures will be developed in coordination with USACE and implemented appropriately.

The applicant will be required to prepare and submit a draft mitigation plan in accordance with the 12 components of the Mitigation Rule 33 CFR part 332.4(c)(2) through (c)(14). After addressing comments provided the applicant must prepare a final mitigation plan, which must be approved by the Corps prior to issuing the individual permit. The approved final mitigation plan will be incorporated into the individual permit by reference.

CULTURAL RESOURCES: The Corps of Engineers, Omaha District will comply with the National Historic Preservation Act of 1966 and 36 CFR 800. We have checked the National Register of Historic Places and its current supplements and no property listed or proposed for listing in the Register is located in the project area. This is the extent of our knowledge about historic properties in the permit area at this time. However, we will evaluate input by the State Historic Preservation Officer and the public in response to this public notice, and may require a reconnaissance survey of the project area to check for unknown historic or prehistoric properties, if warranted.

ENDANGERED SPECIES: Pursuant to the Endangered Species Act, a preliminary determination has been made that the described work will not affect species designated as threatened or endangered or adversely affect critical habitat. In order to complete our evaluation of this activity, comments are solicited from the U.S. Fish and Wildlife Service and other interested agencies and individuals. This project will contribute to the number of acres necessary for the Corps to comply with the Missouri River Biological Opinion.

FLOODPLAIN: This activity is being reviewed in accordance with Executive Order 11988, Floodplain Management, which discourages direct or indirect support of floodplain development whenever there is a practicable alternative. By this notice, comments are requested from individuals and agencies that believe the described work will adversely impact the floodplain.

WATER QUALITY CERTIFICATION: Section 401 of the Clean Water Act (33 USC 1341) requires that all discharges of fill material must be certified by the appropriate state agency as complying with applicable effluent limitations and water quality standards. This public notice serves as an application to the state in which the discharge site is located for certification of the discharge. The discharge must be certified before a Department of the Army permit can be issued. Certification, if issued, expresses the state's opinion that the discharge will not violate applicable water quality standards.

PUBLIC INTEREST REVIEW: The decision whether to issue the Corps' permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed/completed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against their reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline

erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the work on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the Clean Water Act (40 C.F.R. Part 230).

COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State, and Local agencies and officials, Indian Tribes and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

Anyone whose interests may be affected by the proposed/completed work is invited to submit favorable or unfavorable written comments to the Nebraska Regulatory Office – Wehrspann, 8901 South 154th Street, Suite 1, Omaha, NE 68138-3621. The District Engineer is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic system's functional values, cumulative and secondary effects and endangered species. All comments received will be considered public information; copies of all comments, including names and addresses of commentors, may be provided to the applicant unless confidentiality is requested. Comments must be submitted on or before the expiration date (located at the top of the first page) of this notice to be considered in the subsequent actions on this application.

PUBLIC HEARING: Before the expiration date of this notice, anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state the reason(s) for holding a public hearing. If the District Engineer determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location.

ADDITIONAL INFORMATION: Additional information about this application may be obtained by writing to Matt Wray at the address shown on page one or by calling him at (402) 896-0896. You can also e-mail him at matt.t.wray@usace.army.mil.

REQUEST TO POSTMASTERS: Please post this notice conspicuously and continuously until the expiration date specified at the top of page one.

NOTICE TO EDITORS: This notice is provided as background information for your use in formatting news stories. This notice is not a contract for classified display advertising.