

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

APPROVAL OF APPLICATION A-19969 AND MAP NUMBER 21371

WATER DIVISION 1-C

BACKGROUND

1. On December 26, 2023, Duane Rippe, on behalf of Cole Creek, LLC, filed in the Department of Natural Resources (Department) application A-19969 for a Permit to Appropriate Water.
2. On February 26, 2024, Duane Rippe filed in the Department map number 21371 showing location of use under application A-19969.
3. The applicant agreed to following conservation measures specified by the Nebraska Game and Parks Commission pursuant to the Nongame and Endangered Species Conservation Act Neb. Rev. Stat. § 37-807, as described in NGPC Project No. DNR24003 concurrence letter dated February 26, 2024, as shown in Attachment A.

ORDER

IT IS HEREBY ORDERED that application A-19969 and map number 21371 are APPROVED subject to the following limitations and conditions:

1. The source of water is Cole Creek.
2. The water shall be used for domestic purposes to provide water for livestock.
3. The priority date is December 26, 2023.
4. Water may be diverted from Cole Creek at a point of diversion located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, Township 01 North, Range 03 East of the 6th P.M. in Jefferson County, as depicted on map number 21371 which is made a part of this Order. Water shall be transported to stock tanks located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, E $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 20 and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17 all in Township 01 North, Range 03 East. Water diverted shall not exceed the rate of 0.11 cubic foot per second (50 gallons per minute).
5. The appropriator must comply with all relevant statutes. The statutes include, but are not limited to, the following:
 - A. Notify the Department of any change in ownership or address.
 - B. Notify the Department of the name and address of the person responsible for the use of the water appropriation (this may include farm managers, tenants, or relatives that actually apply the water to the approved use).

6. The appropriator must comply with the following deadlines:
- A. The appropriation is not considered perfected until water has been beneficially used for the purpose stated in this Order. The water appropriated under A-19969 must be beneficially used by September 1, 2026.
 - B. After September 1, 2026, a field investigation will be conducted to determine that water has been beneficially used.
 - C. If the appropriation is found to have water beneficially used, a Certificate of Perfected Appropriation will be issued by the Department for A-19969.
 - D. If no portion of the appropriation is found to have water beneficially used, the Department will issue an Order of Cancellation in Full for A-19969.

ADDITIONAL INFORMATION

Failure to comply with all laws and regulations pertaining to surface water appropriations, any orders issued by the Director of the Department of Natural Resources, or the provisions of this Order may result in the cancellation of the appropriation, temporary closing of the appropriation, administrative penalty, criminal prosecution, or any combination thereof.

Nebraska law provides that failure to use a portion or all of a perfected appropriation for more than five consecutive years may result in cancellation of the appropriation.

This appropriation is not a guarantee that water will be available. Nebraska law gives priority to senior appropriations. This appropriation may be closed if there is insufficient water to satisfy senior appropriations. If in the future you are not able to divert sufficient amounts of water, and if there are junior appropriations upstream, you may call for water by contacting your local field office.

DEPARTMENT OF NATURAL RESOURCES



March 18, 2024

Thomas E. Riley, P.E., Director

A copy of this Order was posted on the Department's website. Copies of this Order and map number 21371 were provided to the Department's field office in Lincoln, Nebraska. Copies of this Order, map number 21371 and Surface Water Administration brochure were mailed to the following:

Duane Rippe
Cole Creek LLC
6775 Road D
Hubbell, Nebraska 68375



2200 N. 33rd St. • P.O. Box 30370 • Lincoln, NE 68503-0370 • Phone: 402-471-0641

February 26, 2024

John Miller
Nebraska Department of Natural Resources
245 Fallbrook Blvd., Suite 201
Lincoln, NE 68521

RE: Rippe Water Appropriations, A-19967, A-19969, A-19970, A-19971, NGPC Project No. DNR24003, Jefferson County

Dear John Miller:

Please make reference to your CERT Environmental Review Reports (ERRs) NE-CERT-011472, 011473, 011474, 011475, and subsequent email dated January 22, 2024. This letter is in response to your request for further consultation based on the results of the ERRs. As we understand it this project would appropriate water from Cole Creek, Coon Creek, and an unnamed tributary to Coon creek, to fill livestock tanks in Jefferson County, Nebraska. Water at each of the four locations would be diverted with a portable pump at 0.11 cubic feet per second. We have completed our review of the proposed project under Neb. Rev. Stat. §37-807(3) the Nongame and Endangered Species Conservation Act (NESCA) and we offer the following comments. This letter should be used in combination with the CERT ERRs to constitute a complete environmental review for this project.

This project is located within the range of the state and federally listed endangered northern long-eared bat (*Myotis septentrionalis*); and the state listed threatened timber rattlesnake (*Crotalus horridus*), and western massasauga (*Sistrurus tergeminus*). Northern long-eared bats roost during the spring, summer, and fall in live or dead deciduous or pine trees with loose or peeling bark along riparian corridors. Timber rattlesnakes utilize deciduous and riparian woodlands associated with upland prairies in conjunction with rocky outcrops or talus slopes that provide winter denning opportunities. Western massasauga utilize crayfish burrows in wet mesic soils for winter denning and move among warm season grasslands during the summer in search of prey and mates.

The proposed project area consists of the four pump locations along the above-mentioned creeks, and the fourteen livestock tanks that will receive the water located in established grazing areas. There is potentially suitable habitat for all species listed above in the proposed project area. In email correspondence dated February 22, 2024, the Nebraska Department of Natural Resources confirmed the permit holder, Mr. Duane Rippe, would implement the following conservation measure to prevent negative impacts to northern long-eared bats (NLEB), timber rattlesnakes (TR), and western massasauga (WM):

NLEB CM-2: No removal of suitable trees or suitable roosting structures between June 1 to July 31 during the maternity roosting period

WM CM-1: Minimize ground disturbance in the wet areas and if a ponding structure, then fill during summer when the snakes are mobile.

WM/TR CM-104: Please be aware massasauga or timber rattlesnakes may enter or move through the project area even if hibernating (wet sites/rocky outcrops, log or rock piles) or foraging (grassland, pasture, prairie) habitats are not present. If massasaugas or timber rattlesnakes are encountered at any time, people working on-site should take the following actions to avoid impacts to these snakes and to avoid personal injury:

- a) Cease activity until the snake has moved 50 m (appx. 160 ft) away from the work site.
- b) Contact Shaun Dunn, Zoologist, Nebraska Game and Parks Commission at (402) 471-5419 to report the finding. If the snake does not/will not leave the area, further instruction will be provided on how to proceed.
- c) Unless there is imminent threat to human health or safety, massasaugas and timber rattlesnakes should not be harmed or destroyed. They are protected under law, and “take” (as defined in Neb. Rev. Stat. § 37-802 (6)) is prohibited under Neb. Rev. Stat. § 37-806 (8b) of the Nongame and Endangered Species Conservation Act.
- d) Under no circumstances should a massasauga or timber rattlesnake be handled by inexperienced persons. This is for the safety of the workers as well as the snakes. Western Massasauga and Timber Rattlesnakes are venomous.

Based on the information provided, we concur with the project proponent’s determination that the proposed project **“May Affect but is Not Likely to Adversely Affect”** northern long-eared bats, timber rattlesnakes, or western massasauga, and we acknowledge no impact is anticipated on all other state listed endangered or threatened species. Our concurrence was based on a review of the material you sent, aerial photographs, and data found in the Nebraska Natural Heritage Database. If the proposed project changes or new information regarding endangered or threatened species becomes available, then this evaluation is no longer valid and further coordination with the Nebraska Game and Parks Commission Planning and Programming Division will be necessary.

All federally listed endangered or threatened species are also state-listed. For an assessment of potential impacts to habitats and species protected under federal wildlife laws, including federally listed, candidate or proposed endangered or threatened species, please contact the Nebraska Field Office (nebraskaes@fws.gov), U.S. Fish and Wildlife Service, 9325 South Alda Road, Wood River, NE 68883.

Thank you for the opportunity to review this project. If you have any questions regarding these comments, please contact me at (402) 471-5554 or ruby.rolland@nebraska.gov.

Sincerely,



Ruby Rolland
Environmental Specialist III
Planning and Programming Division