

# Nebraska's Clean Water Act 404 Assumption Journey

Nebraska Department of Environment and  
Energy

Jim Macy

Director

# Types of 404 Permits

Individual Permits (IP)

Nationwide Permits (NWP)

General Permits (GP)

# Common Nebraska NWP

- Maintenance of existing structures (NWP 3)
- Oil or natural gas pipelines (NWP 12)
- Bank Stabilization (NWP 13)
- Linear Transportation Projects (NWP 14)
- Minor Dredging (NWP 19)
- Aquatic habitat restoration, establishment, and enhancement activities (NWP 27)
- Boat Ramps (NWP 36)
- Living Shorelines (NWP 54)
- Electric Utility Line and Telecommunications Activities (NWP 57)
- Utility Line Activities for Water and Other Substances (NWP 58)

# Nebraska Regional General Permit

- Similar to Nationwide Permits but region-specific activities
- Streamlined review
- Reauthorized every 3-5 years
  - Flood Protection and Repair for Flood Damaged Areas
  - Bank Protection for Central Nebraska Public Power and Irrigation District
- 6 in Nebraska
  - Duck Blinds
  - Bank Protection on Game and Parks Water Bodies – Game and Parks
  - Manmade lake and pond maintenance and rehabilitation
  - Maintenance of existing Flood Control Facilities – Papio Missouri River NRD

# Nebraska Legislative Bills

- LB302
  - July 2019
  - Granted authority to investigate assumption of the CWA 404 program
- LB809
  - April 12, 2022, passed
  - July 21, 2022, went into effect
  - Develop rule and regulations for 404 program
  - Provides funding 1.7 million
    - To hire staff
    - Develop permitting software

# 404 Program Assumption

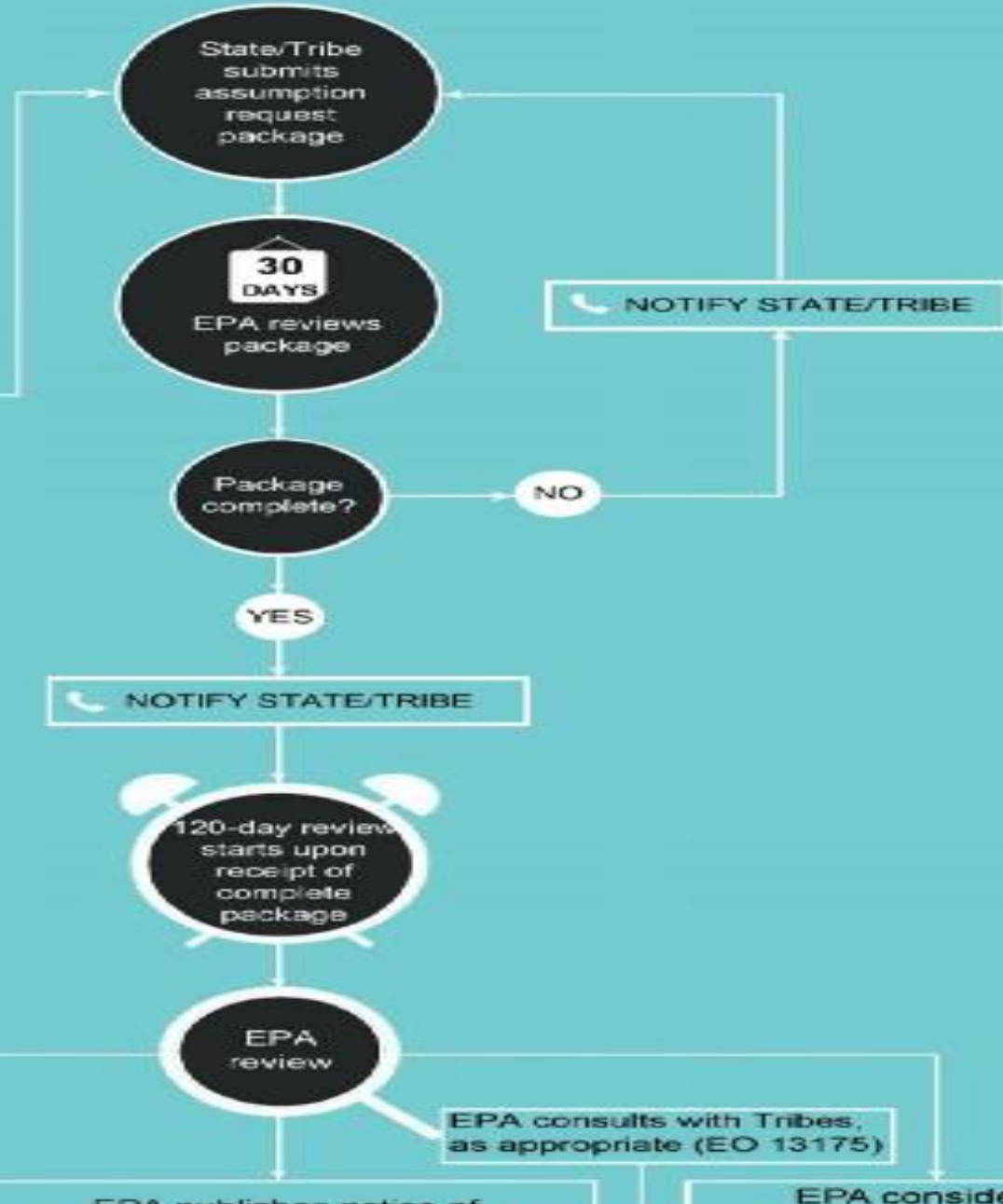
- Requires a program application to EPA (40 CFR §233.10)
  - Letter from the Governor requesting program approval
  - A complete program description
  - Attorney General's Statement
  - MOAs with EPA & USACE
  - Copies of state statutes and regulations

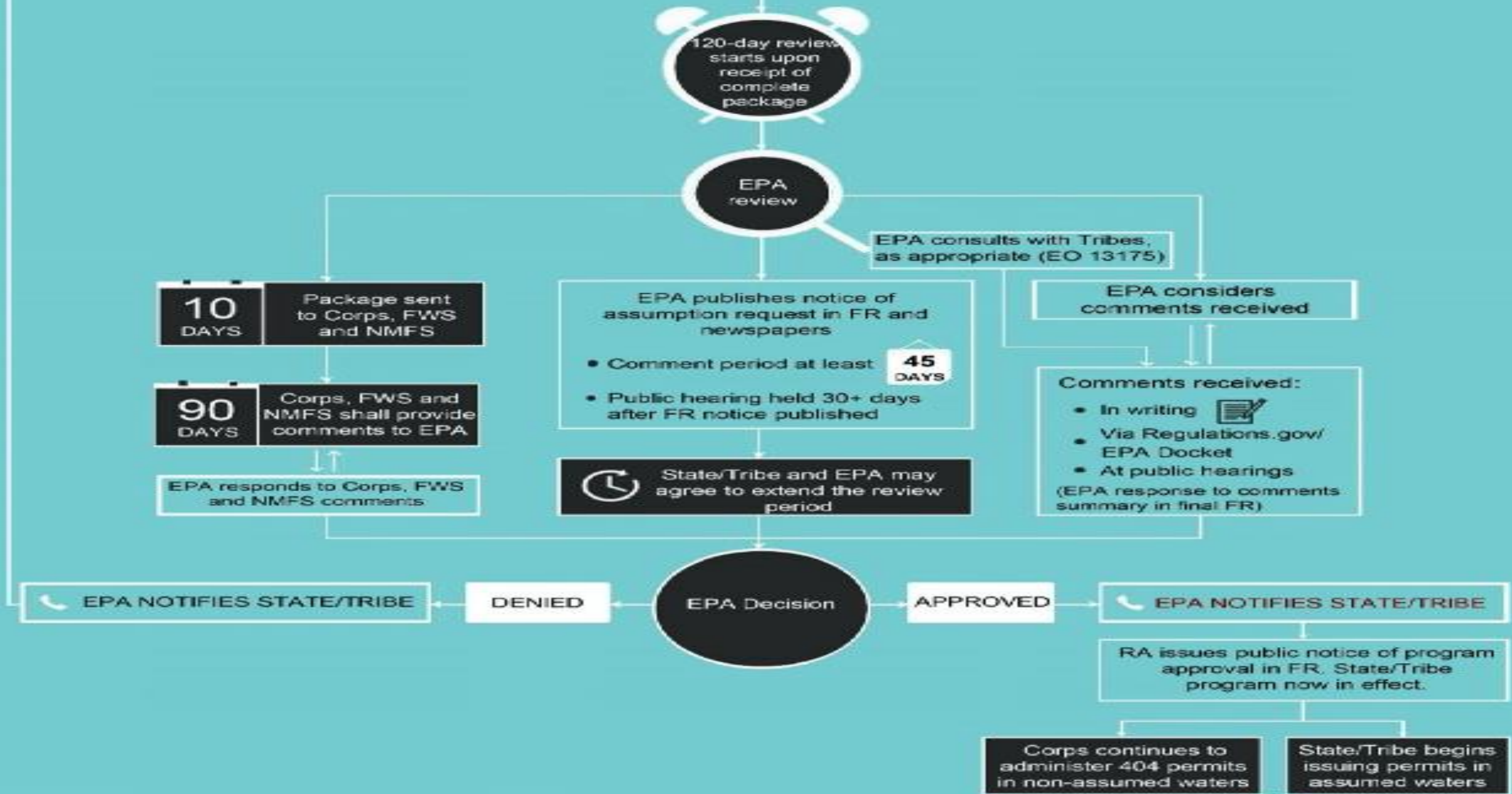
404 Program Application		
Element	40 CFR Section	Element Description
A		Governor letter requesting program approval
B	§233.11	Complete program description
	a	Scope and structure of state program
	b	Permitting, administration, & judicial review procedures
	c	State agency organization
	d	Funding and staffing description
	e	Estimated workload
	f	Permit application form, permit template, & reporting forms
	g	Description of compliance & enforcement & Coordination with EPA & Corps
	h	Description of waters in State vs. Corps jurisdiction
	i	BMPs for exempt provisions in 404(f)(1)(E)
C	§233.12	Attorney General's Statement
	a	Laws & Regulations provide proper authority
	b	Acknowledgement that tribal land is not a state assumption option
	c	Legal analysis of prohibition of taking private property without just compensation
	d	Multiple agency responsibility and authorities
D	§233.13	MOA with EPA Regional Administrator
	a	Identify permit applications which EPA will waive federal review
	b	Reports & files to be submitted to EPA
	c	Roles & coordination for compliance monitoring & enforcement
E	§233.14	MOA with Secretary of the Army
	a	Description of waters the Corps maintains jurisdiction over
	b	Procedures to transfer pending permit applications upon program approval
	c	Existing Corps general permits & how the state will administer them
F		Copies of all applicable state statutes and regulations

## Flowchart: CWA section 404(g) Approval Process

### ACRONYMS:

- U.S. Environmental Protection Agency (EPA)
- U.S. Army Corps of Engineers (Corps)
- U.S. Fish and Wildlife Service (FWS)
- National Marine Fisheries Service (NMFS)
- Regional Administrator (RA)
- Federal Register (FR)







**Clean Water Act Section 404  
Program Assumption Investigation Report**



Photo Credit: Warner Wetland Lincoln, NE by Josh Wilhelm, NDEE

# Investigation Report

# Collaborations

- Meet bi-monthly with EPA
  - Assisting with process
  - Giving early input so process will be smoother in end
- Met bi-monthly with Corps to Develop MOA
  - 90% complete will revisit closer to end
  - Agreed upon administrative line
- Meet monthly with internal Assumption Advisory Committee
  - Get input from other permitting programs
  - Also, water quality standards, process improvement, legal, fiscal and public information officers

# Current Status

MOA w/ EPA & SHPO in progress

MOA w/ USACE 85% done

Meeting w/ NE Game and Parks and US Fish and Wildlife Service on Threatened and Endangered Species Coordination

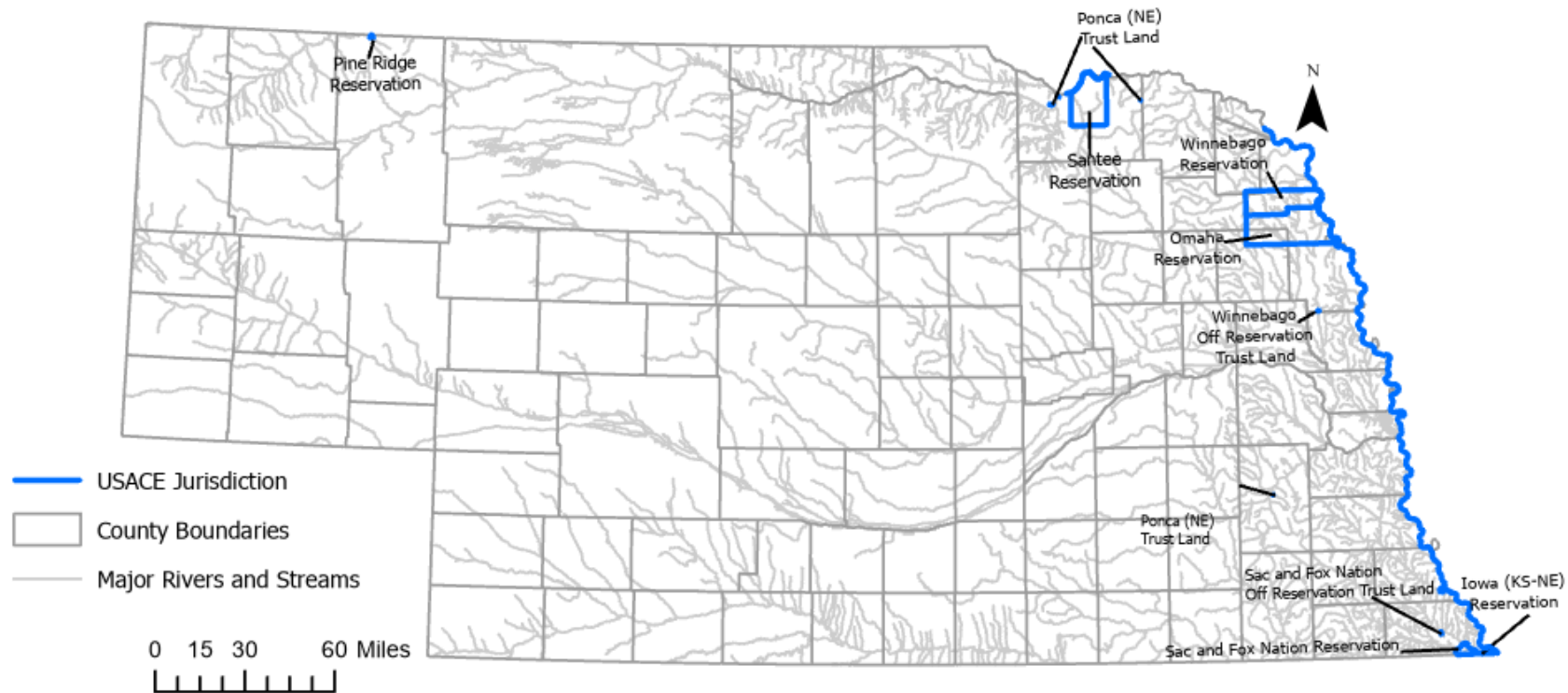
Reviewing draft regulations and permits

Developing permitting portal

Drafting a biological assessment

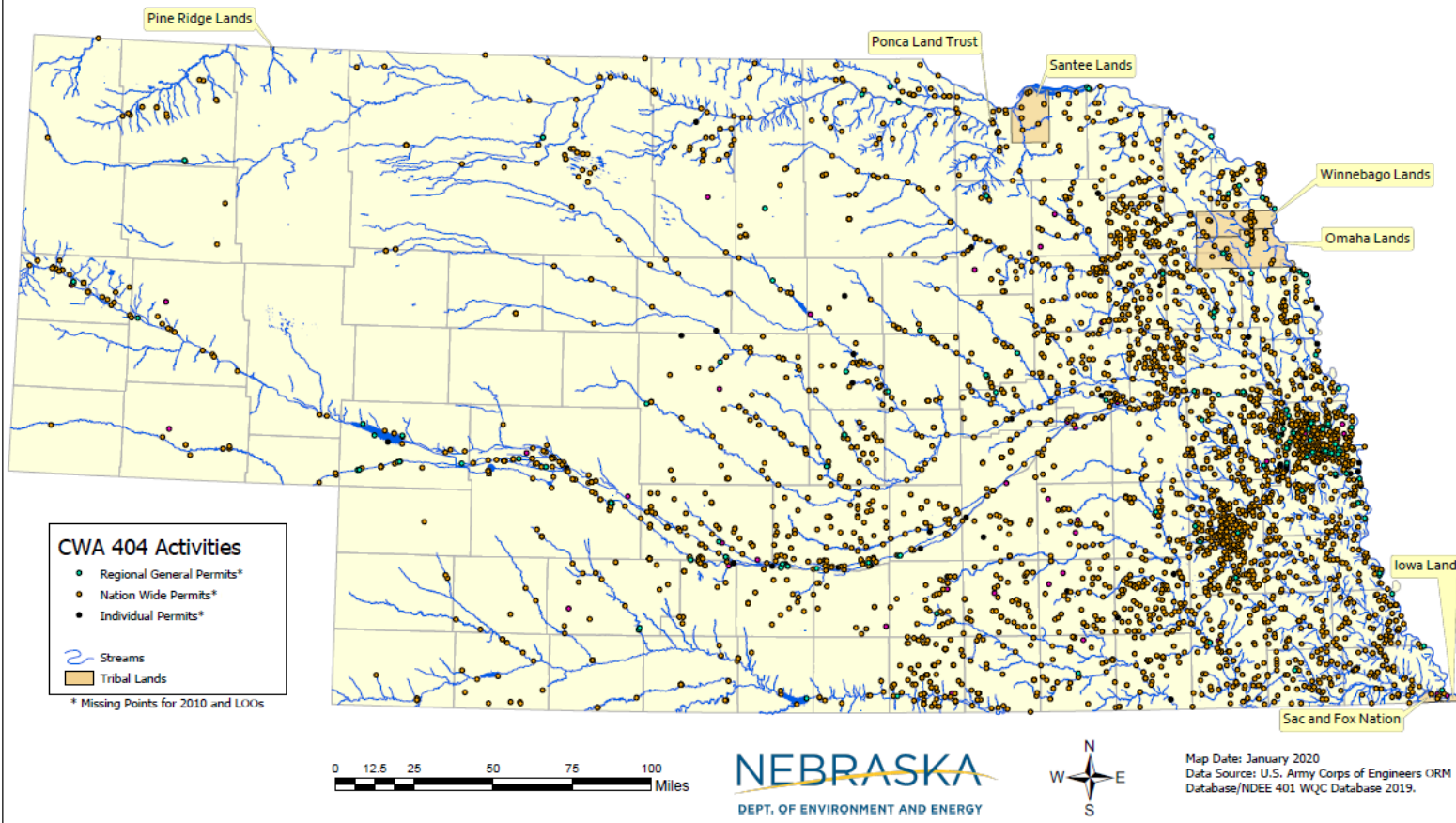
# Assumable vs Retained Waters

## 404 Permitting Authority Retained by the Army Corps of Engineers



# Workload Analysis

## CWA 404 Activities in Nebraska 2010-2019



# Annual Assumable Workload

Annual Assumable Workload	Total	IP	GP	JD
Full Assumption	871	8	448	415
Processing Time (Hours)		292	39	8
Total Annual Hours	23,128	2,336	17,472	3,320

\* 5 year average from ORM Database

Full Assumption Annual Workload Estimates

IP = Individual Permit

GP = Regional General Permit, Program General Permit, and Nationwide Permit

JD = Jurisdictional Determination

# Staffing Needs

Type of Employee	FTE	Total Hours	Notes
Section Supervisor	1	1300	Program Administration
Permit Writer	17.8	23128	Based on ORM data
Inspector	5.9	7709	Based on Department data
Engineer	3.0	3855	Based on Department data
Wetland Biologist	3.0	3855	Based on Department data
Total Staffing Needs	30.7	39847	

# Administrative Costs

Department FTE Model	Direct Cost	Benefits	Indirect rate	Direct+Indirect	Total FTE Cost	Administration Cost
	Provided	33% of Direct	37% of Direct	D+I	D+B+I Costs	$((D+I) * 4) / 3$
		0.33	0.37			
Average FTE w/ Management	\$ 56,160.00	\$ 18,532.80	\$ 20,779.20	\$ 76,939.20	\$ 95,472.00	\$ 102,585.60
Average FTE w/o Management	\$ 45,760.00	\$ 15,100.80	\$ 16,931.20	\$ 62,691.20	\$ 77,792.00	\$ 83,588.27
Program Calculations	# Managers	# Staff		Direct+Indirect	Total TFE Cost	Administration Cost
Assumed 404 Program	1	29.7		\$ 1,938,867.84	\$ 2,405,894.40	\$ 2,585,157.12



- LB 809A
- 
- Section 1. There is hereby appropriated (1) \$720,527 from the General Fund for FY2022-23 and (2) \$953,468 from the General Fund for FY2023-24 to the Department of Environment and Energy, for Program 513, to aid in carrying out the provisions of Legislative Bill 809, One Hundred Seventh Legislature, Second Session, 2022. Total expenditures for permanent and temporary salaries and per diems from funds appropriated in this section shall not exceed \$284,960 for FY2022-23 or \$513,760 for FY2023-24.

# Sustainable Funding Options

Preferred  
Option →

Funding Option (1)	Base	Annual Total	Unit	Fee per unit (100% Program Cost)
Pay Per Service (IP)	\$ -	8	Individual Permit	\$ 32,638.61
Pay Per Service (GP)	\$ -	448	General Permit	\$ 4,327.83
Pay Per Service (JD)	\$ -	415	Jurisdictional Determination	\$ 934.39

Funding Option (2)	Base	Annual Total	Unit	Fee per unit (100% Program Cost)
Chargeable Impact	\$ -	8710	acre/linear feet	\$ 296.80

Funding Option (3)	Base	Annual Total	Unit	Fee per unit (100% Program Cost)
Hourly Rate	\$ -	38547	hours	\$ 67.07
Hybrid Base + Hourly Rate	\$ 800.00	38547	hours	\$ 48.99

Funding Option (4)	Base	Annual Total	Unit	Fee per unit (100% Program Cost)
Hybrid Base + Project Cost	\$ 800.00	Program Cost - Base	1% project cost	\$ 2,168.03

# Next Steps

MOA w/ Fish and Wildlife Service and Game and Parks

MOA w/ State Historical Preservation Office (SHPO)

MOA w/ EPA

Drafting new state title to reflect new duties

Adopting the 40 CFR by reference

Permitting Portal



# Permitting Portal

## Office of the Chief Information Officer

### State IT Section



ArcGIS Survey123



ArcGIS Hub

# Permitting Portal

Introduction ✓

Application Purpose ✓

General Information ✓

Notification Type ✓

Notification Details Page 1 ✓

State 404 Program ✓

Important Notice ✓

Manage Project Site ✓

Location Selection **?**

Manage Contacts **?**

Project Information **?**

Project Description **?**

Wetlands and Surface Waters **?**

Construction Methods **?**

Additional Information **?**

Section K - General Information **?**

Section K Upload **?**

Attachment Checklist **?**

Document Upload **?**

Signature **?**

Payment of Fees **?**

Home

Process

Help

About

Location Selection

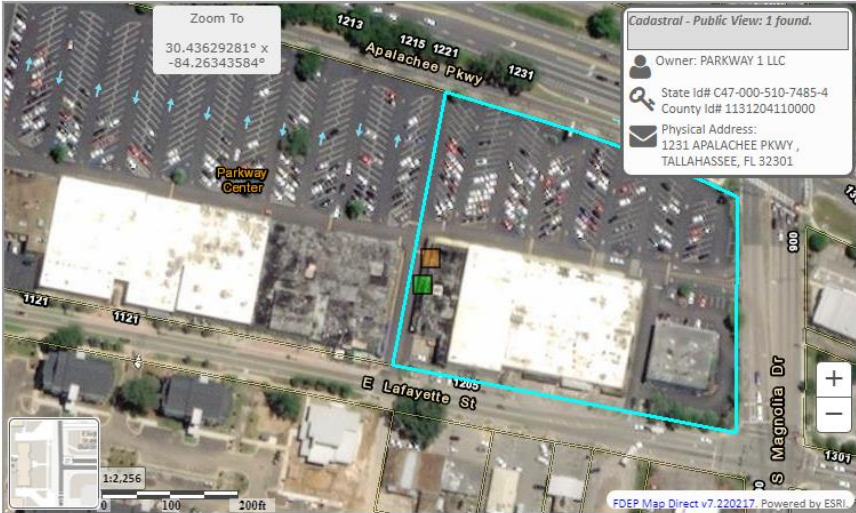
Zoom To  
30.43629281° x  
-84.26343584°

Cadastral - Public View: 1 found.

Owner: PARKWAY 1 LLC

State Id# C47-000-510-7485-4  
County Id# 1131204110000

Physical Address:  
1231 APALACHEE PKWY,  
TALLAHASSEE, FL 32301



If Map Direct fails to load on your computer, or you encounter other problems, please refer to our troubleshooting guide.

Use the mapping tools to find your project location. Click on the map to select the approximate center of your project. At a minimum, the marker should be located on the correct project parcel or property. Failure to provide an accurate location may delay the processing of your application.

You will have the option to confirm or move the location on the next screen.

Go Back to Previous Step

Continue

NEBRASKA  
DEPT. OF ENVIRONMENT AND ENERGY

# Public Outreach

- Will be holding several stakeholder meetings
- Fall 2023
- What we are looking for?
  - The Good and the bad
  - The Wishlist
  - Aspects of the current system that work
  - **Fee Structure**
  - **Regulation Review**

# 404 Team



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Regulation Writer



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Biologist



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# Questions

