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Janet Stanek, Secretary

Laura Kelly, Governor

February 28, 2023

RSN Farms, LLC
C/O Mr. Roger Warren
26441 W 110th
Olathe, Kansas 66061

&

Tollefson Family Land Co. LLC
Allen G. Tollefson
Terrace 1517 Foxfire Dr
Lawrence, Kansas 66047

DRAFT Clean Water Act Section 401 Water Quality Certification

RE: PN NWK-2022-00932: Streambank rehabilitation and plantings on property along the Kanas River,
Jefferson County, KS.

Mr. Warren and Mr. Tollefson:

Pursuant to CFR 121. Et., seq., on January 3, 2023 the Kansas Department of Health and Environment (KDHE) received a pre-filing certification meeting request via an email from the project designer, Mr. Phil Balch, Wildhorse Riverworks, Inc. The KDHE has received the appropriate information to prepare the Section 401 water quality certification, requested by the project designer on February 8, 2023 therefore no meeting is needed.

Description from the U.S. Army Corps of Engineers, Kansas City District Public Notice dated January 10, 2023: “Construct 4070 lineal feet of longitudinal peaked stone toe protection (LPSTP) and 19 bendway weirs along 4,400 feet of the left descending bank on the Kansas River. The fill materials will consist of either limestone rock or clean concrete rubble and the total quantity of these materials to be placed in the river is estimated at approximately 8,700 cubic yards /12,605 tons. The total area of waters filled within the Kansas River by the rock materials is estimated at approximately 2 acres. The LPSTP will be keyed into the riverbank at the upstream and downstream extents of the project limits. The LPSTP heights and widths will vary and have an approximate 1.5 foot horizontal to 1 foot vertical, cross-section shape. Rock-lined chutes will be constructed at 4 locations along the bank of the river to convey surface drainage from adjacent agricultural lands across the constructed LPSTP. The bendway weirs will vary in length from 40 to 75 feet in length and vary in height between 3 to 7 feet. The width of the flat crest of the weir surface will be 10 feet and the width of each slope will be dependent upon the depth of water at the given location of the weir and the weir height.

WETLANDS/AQUATIC HABITAT: There are no wetlands identified within the proposed project area

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- 3) Pursuant to Kansas Statute Annotated (K.S.A.) 65: 164 and 165, Mr. Warren and Mr. Tollefson shall prepare a written project water quality protection plan (PWQPP) describing the actions that will be taken to comply with certification conditions 4-8 below. This condition may be waived depending on the content of the “stormwater pollution prevention plan” prepared pursuant to Condition No. 5 below. Additionally, KDHE strongly suggests that the stormwater pollution prevention plan’s description of BMPs, include measures in the “bold, small roman numerals”, after each “alphabet item” under pollutant cause to further protect the Kansas River.
- 4) Pursuant to K.S.A. 65: 164 and 165, Mr. Warren and Mr. Tollefson shall avoid or control the discharge of suspended solids from the proposed activities so that the **project does not cause**:
 - a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [KAR 28-16-28e(b)(1)].
 - b. Any surface waters of the state within and below the project area to contain discarded solid material, including trash, garbage rubbish, offal, grass clippings, discarded building or construction materials, car bodies, tires, wire and other unwanted or discarded materials [KAR 28-16-28e(b)(3)].
 - c. Addition of suspended solids to the Kansas River in amounts and concentrations that will interfere with the behavior, reproduction, physical habitat, or other factors related to the survival and propagation of aquatic or semiaquatic life or terrestrial wildlife [KAR 28-16-28e(d)(2)(B)].
 - d. The Kansas River bank, opposite the project site, to be impacted resulting in additional sediment and associated nutrients to the river [KAR 28-16-28e(d)(2)(B)].
- 5) Construction activities disturbing one acre or more, not under Section 404 jurisdiction, are subject to National Pollutant Discharge Elimination System (N.P.D.E.S.) stormwater permit requirements. The City of Manhattan shall obtain an Authorization to Discharge Under Construction Stormwater Runoff Kansas Water Pollution Control General Permit. For more information they shall contact Mr. Larry Hook, P.E., at 785/296-5549, larry.hook@ks.gov; Bureau of Water Permit and Compliance Section with any questions or visit KDHE’s website: <https://www.kdhe.ks.gov/757/Construction-Stormwater-Program>. A Stormwater Pollution Prevention Plan (SWP2) is required by the above-described permit and a copy shall be maintained and available at the site for inspection while also being available for submittal as requested by KDHE BWPC Pursuant to Kansas Statute Annotated (K.S.A.) 65: 164 and 165.
- 6) Pursuant to K.S.A. 65: 164 and 165, Mr. Warren and Mr. Tollefson shall avoid or control the discharge of floatable materials, toxic substances, oil and grease and other fluids from improper storage of chemicals, heavy equipment staging and use leaks or spills so **that the project does not cause**:

- ii. Discharge of floatable materials by assuring good house-keeping is practiced at the site to minimize the discharge of personal refuse including food containers, packing, and other materials. Appropriate measures shall be taken to capture and/or recover any floatable materials with potential to discharge or that have discharged to waters of the state originating with the permitted project. This includes residue from cleaning of concrete and other structures KAR 28-16-28e(b)(1) and other applicable water quality standards above.**
 - iii. Fuels, Chemicals and Maintenance Areas: All fuels and chemicals necessary to complete the project shall be stored in such a manner that accidental spillage is minimized or can be temporarily contained before reaching the water body. Equipment maintenance areas shall also be located in this manner. Pursuant to K.A.R. 28-16-28e(b)(1), (5), and (7).**
- 7) Pursuant to K.S.A. 65: 164 and 165, Mr. Warren and Mr. Tollefson shall avoid or control the discharge of plant nutrients from fertilizer application or restorative vegetative treatment **so that the project does not cause:**
- a. Any surface waters of the state within and below the project area to have a public health hazard, nuisance condition or impairments of designed uses [KAR 28-16-28e(b)(1)].
 - b. Surface waters of the state within and below the project area to have toxic substances, radioactive isotopes, and infectious microorganisms in concentrations or in combinations that jeopardize the public health or the survival or well-being of livestock, domestic animals, terrestrial wildlife or aquatic or semi-aquatic life [KAR 28-16-28e(b)(2)].
 - c. Any surface waters of the state within and below the project to contain taste and odor producing substances at concentrations which interfere with the production of potable water by conventional water treatment processes, impart an unpalatable flavor to edible aquatic or semi-aquatic life or terrestrial wildlife or that result in noticeable odors in the vicinity [KAR 28-16-28e(b)(7)].
 - d. The introduction of plant nutrients into surface waters designated for primary or secondary contact recreational use shall be controlled to prevent the development of objectionable concentrations of algae or algal by-products or nuisance growths of submersed, floating, or emergent aquatic vegetation in the Kansas River [KAR 28-16-28e(d)((7)(A))].
 - e. The concentration of dissolved oxygen in the Kansas River to be lower than 5.0 mg/L, Kansas Surface Water Quality Standards [KAR 28-16-28e(d)] in table 1g, found in a separate document found at: <https://www.kdhe.ks.gov/1381/Kansas-Surface-Water-Quality-Standards>.
 - f. The pH in the Kansas River to be below 6.5 or above 8.5 including effects by concentrations of toxic substances. Refer to Surface Water Quality Standards [KAR 28-16-28e(d)] in table 1g, a separate document found at: <https://www.kdhe.ks.gov/1381/Kansas-Surface-Water-Quality-Standards>.

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3. If Mr. Warren and Mr. Tollefson believes complying with the conditions of this water quality certification will be economically unfeasible, they can seek a variance. Entities or persons seeking a variance from any of the requirements indicated above shall submit to the secretary, in writing, a request for the variance and shall provide information and data relevant to the variance request for KDHE's review and consideration for approval while adhering to WQS (KAR 28-16-28b to 28-16-28h).

Finally, questions concerning this certification may be directed to Mr. Scott Satterthwaite, 785-296-5573 or by email to: Scott.Satterthwaite@ks.gov.

Sincerely,



Scott L. Satterthwaite, M.S.
Environmental Specialist, B.E.F.S

ECc: KDHE- Hook, NEDO, Basiotis
Donahue KCD- USACE
Balch- Wildhorse River Works Inc.