

Division of Environment
Curtis State Office Building
1000 SW Jackson St., Suite 400
Topeka, KS 66612-1367



Phone: 785-296-1535
Fax: 785-559-4264
www.kdheks.gov

Lee A. Norman, M.D., Secretary

Laura Kelly, Governor

May 28, 2021

Mr. Jerry Hennerberg
2576 Thunder Road
Hollenberg, KS 66946

DRAFT Clean Water Act Section 401 Water Quality Certification

RE: PN NWK2021-00184: Streambank stabilization and buffer plantings on your property along the Little Blue River.

Mr. Hennerberg:

On April 16, 2021 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 River Inc. The KDHE has received the appropriate information to prepare the Section 401 water quality certification.

Description from the U.S. Army Corps of Engineers, Kansas City District Public Notice dated March 23, 2021: “The U.S. Army Corps of Engineers, Kansas City District (Corps) has received an application for a Department of Army permit/license which has been assigned Project No. NWK-2021-00184. The Corps is reviewing the application for a USACE individual permit. The project proponent provided the Corps a copy of their request to KDHE for water quality certification **May 17, 2021.**”

The Corps has determined that water quality certification for the proposed activity is necessary under the provisions of Section 401 of the Clean Water Act and that you are the certifying authority for this action. In accordance with 40 CFR Part 121.6, we have determined the reasonable period of time for processing the request to **be 75 days and ends on May 2021.** This draft will be available for review on the KDHE website after May 27 for 30 days. The certification will be considered waived if you fail or refuse to act on the request by the specified date. The Corps established reasonable period of time may be extended if you provide a written request before the specified date and explain why additional time is necessary for review. If the Corps determines an extension is appropriate, we will inform you of the new suspense date. The reasonable period of time may not exceed one year from the date of receipt.”

Project Description Continued: “Proposed The purpose of the project is to provide streambank stabilization and to reduce sedimentation of Tuttle Creek Reservoir. The project will involve installing 850 linear feet of root wads, and 11 bend way weirs along 2,100 linear feet of the right descending bank of the river. Following installation of the rock structures, 1,850 linear feet of the bank will be regraded to form a floodplain bench over the root wads. The floodplain bench and disturbed area will be planted with a mixture of native grass, trees, and shrubs.

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PROJECT LOCATION: The project is located on Little Blue River in Section 8, Township 1 South, Range 4 East, Washington County, Kansas. USGS Quad- Washington NE Latitude: 39.977209--- Longitude: -96.99938

WETLANDS/AQUATIC HABITAT: The project consists of 2,100 linear feet of perennial stream. There are no known wetlands in the proposed project area.

APPLICANT'S STATEMENT OF AVOIDANCE, MINIMIZATION, AND COMPENSATORY MITIGATION FOR UNAVOIDABLE IMPACTS TO AQUATIC RESOURCES: No mitigation is proposed by the applicant as the project is designed to reduce erosion and improve downstream water quality.

The KDHE also reviewed the project application material and determined the project has the following water pollutant discharge sources:

1. Construction activities including grading and filling, equipment storage, fueling and maintenance
2. Significant riparian disturbance.

Discharges from these sources if not minimized or otherwise controlled may cause violations of the provisions of the Kansas Surface Water Quality Standards (KSWQS) found at KAR 28-16-28 et seq. As referenced on page 1 the project will impact the Little Blue River **described** in the Kansas Surface Water Register (KSWR). The Little Blue River identified as a general purpose, classified stream with the following designated uses: Expected aquatic life support, secondary contact recreation stream segment is by law or written permission of the landowner not and accessible by the public, food procurement, irrigation, industrial and domestic supply, groundwater recharge, and livestock watering.

Please note the Kansas Surface Water Quality Standard citations and location are subject to change without notice. For the most recent version, please see: <https://www.kdheks.gov/tmdl/kswqs.htm>.

The KDHE has determined the project will avoid KS WQS violations and thus conditionally certifies it as the applicant adheres to the following:

- 1) **This certification shall be posted on site through the duration of the project.**
- 2) **KDHE Notification:** Permit recipients shall email KDHE at KDHE.NPS@ks.gov when construction starts.
- 3) Pursuant to Kansas Statute Annotated (K.S.A.) 65: 164 and 165, Mr. Hennerberg shall prepare a written project water quality protection plan (PWQPP) describing the actions that will be taken to comply with certification conditions 4-10 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 Little Blue River.

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- 4) Pursuant to K.S.A. 65: 164 and 165, Mr. Hennerberg 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 Little Blue 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 Little Blue 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) This project is subject to the provisions of Kansas Statute Annotated (K.S.A.) 65: 164 and 165 for water pollution control: 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, lhook@kdheks.gov; Bureau of Water - Industrial Programs (BOW IP) with any questions or visit KDHE's website: www.kdheks.gov/stormwater. A Stormwater Pollution Prevention Plan (SWP2) is required for the issuance of the above described permit and a copy shall be posted on site for inspection and be available for submittal as requested by KDHE BOW IP.
- 6) Pursuant to K.S.A. 65: 164 and 165, Mr. Hennerberg 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**:
 - 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 have a visible oil and grease film or sheen on the water surface or on submerged substrate or adjoining shore lines, nor have a sludge or emulsion deposit below the water surface of adjoining shorelines [KAR 28-16-28e(b)(5)].
 - 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)].

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- d. The concentration of dissolved oxygen in the Little Blue 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.kdheks.gov/tmdl/kswqs.htm>.
- e. The pH in the Little Blue 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.kdheks.gov/tmdl/kswqs.htm>.
- i. **Concrete wash water shall be disposed of in a manner that does not allow a discharge to the waters of the state.**
- f. Concentrations of toxic substances listed in Tables 1a, 1b, and 1c [KAR 28-16-28e(d)] in the Little Blue River to exceed the criteria set out in these tables [KAR 28-16-28e(d)(2)(D) & KAR 28-16-28e(d)(4)(A)].
- g. In the Little Blue River harmful concentrations of any substance alone or in combination with other substances causing toxic, carcinogenic, teratogenic, or mutagenic effects in humans [KAR 28-16-28e(d)(3)(C)].
- h. Concentrations of substances that bio-accumulate in the tissues of edible organisms to exceed a cancer risk level of (10^{-6}) in persons consuming organisms taken from the Little Blue River [KAR 28-16-28e(d)(4)(B)].
- i. **Spills: Should a spill of fuel or discharge of pollutants occur the local emergency staff should be contacted first by dialing 911. The Kansas Department of Health and Environment shall then be notified immediately: (785) 291-3333 (24 hours a day.) These incidences should also be reported to the National Spill Response Center (1-800-424-8802). Hazardous materials spills and air releases that meet federal reportable quantities must also be reported to Kansas Division of Emergency Management (800-275-0297). A Spill Prevention and Response Plan should be prepared including having containment or absorbent materials on-site. This should include reportable quantity limits (see www.kansas.gov/kdem). Pursuant to K.A.R. 28-16-28e(b)(1), (5), and (7).**
- 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. Hennerberg 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 Little Blue River [KAR 28-16-28e(d)((7)(A))].
 - e. The concentration of dissolved oxygen in the Little Blue River to be lower than 5.0 mg/L, Kansas Surface Water Quality Standards [KAR 28-16-28e(d)] in table1g, found in a separate document found at: <https://www.kdheks.gov/tmdl/kswqs.htm>.
 - f. The pH in the Little Blue 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 table1g, a separate document found at: <https://www.kdheks.gov/tmdl/kswqs.htm>.
 - i. Equipment Staging Areas and Project Closure: Upon completion of the project, disturbed areas shall be expeditiously stabilized with temporary and permanent vegetation, bio-artificial ground cover or other appropriate non-polluting material. Fertilizer application to establish and maintain vegetation shall be done in a manner that will not contribute to the current nutrient load to any of the surface waters impacted by the project per Condition 9 above.**

ii. The use of permanent native vegetation would avoid fertilizer application where applicable.

- 8) Mr. Hennerberg shall avoid or control the discharge of *Escherichia-coli* bacteria from the project sites, especially human sanitation or housekeeping activities, so that the project does not cause the *Escherichia-coli* bacteria concentration (colony forming units or CFUs) per 100 ml in the Little Blue River to exceed a geometric mean of 3,843 CFUs January 1st – December 31st [KAR 28-16-28e(d)] Table i. <https://www.kdheks.gov/tmdl/kswqs.htm>.

Other Considerations (Not 401 Conditions) for Maintaining and Restoring Water Quality in KS.

1. This certification does not relieve Mr. Hennerberg of its responsibility for any discharge into waters of the state. The Kansas Department of Health and Environment retains the option of revoking or revising this certification any time an inappropriate discharge may occur. As provided by K.S.A. 65-171(f), failure to comply with the conditions of this certification may subject the responsible party to fines up to \$10,000 per violation with each day the violation occurs constituting a separate violation.
2. If Mr. Hennerberg 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

EC: KDHE- Hook, NCDO, Janssen
Wolf-Kanopolis-USACE
Balch- Wildhorse Riverworks Inc.