



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
635 FEDERAL BUILDING
601 E 12TH STREET
KANSAS CITY MO 64106-2824

June 28, 2011

Regulatory Branch
(NWK-2010-01157)
Wyandotte County, Kansas, NWP 14 & 43

Mr. John M. Kahl, President
Terra Technologies, Inc.
1920 West 143rd Street, Suite 140
Leawood, Kansas 66224

Dear Mr. Kahl:

This is in response to an application received June 27, 2011, on behalf of the County Fair Foundation, for a Department of the Army (DA) permit. The proposed work concerns the proposed Wyandotte County Fairground project. The project will impact an unnamed tributary of Island Creek by placing angular rock and pipe fill at specified locations. The project is located in Section 7, Township 10 south, Range 23 east, in Wyandotte County, Kansas.

An Approved Jurisdictional Determination (AJD) was issued for the project site on August 16, 2010. Based upon a review of the information furnished, and other resources, we made a jurisdictional determination that the unnamed tributary to Island Creek possessed an ordinary high water mark at these locations, the adjacent wetlands meet the current Wetland Delineation Manual criteria, and are jurisdictional waters of the United States. Therefore, the placement of dredged or fill material below the ordinary high water elevation, as proposed by your project, requires permit authorization from this office. The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 403) and /or Section 10 of the Rivers and Harbors Act of 1899(33 USC 403). The implementing regulations for these Acts are found at 33 CFR 320-332.

We have reviewed the information furnished and have determined that your project is authorized by nationwide permit (NWP) 14, Linear Transportation Projects, and (NWP) 43, Stormwater Management Facilities, provided you ensure that the conditions listed in the enclosed copy of excerpts from the March 12, 2007 Federal Register, Issuance of Nationwide Permits, as corrected, are met. You must also comply with the Kansas City District Regional NWP Conditions posted at:
<http://www.nwk.usace.army.mil/regulatory/regulatory.htm>.

The Kansas Department of Health and Environment (KDHE) has certified that this NWP will not violate existing state water quality standards provided you comply with the conditions included in their attached letter. All conditions included in the water quality certification become conditions of the NWP authorization, please carefully review all conditions associated with this NWP. If you have any questions concerning state water quality standards or compliance issues with the associated certification conditions, please contact KDHE at 785-296-5573, Bureau of Water – NPS Section, 1000 SW Jackson Street, Suite 420, Topeka, Kansas 66612-1367.

General condition 26 requires you to sign and submit the enclosed "Compliance Certification" upon completion of the authorized work and any required mitigation.

This NWP verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have twelve (12) months from the date of the modifications or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

Although an individual DA permit is not required, other Federal, state and/or local permits may be required. You should verify this yourself.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. We have placed an automated version of our Customer Service Survey form on our website at: <http://www.nwk.usace.army.mil/regulatory/survey.pdf>. At your request, we will mail you a paper copy that you may complete and return to us by mail or fax.

Mr. Michael T. McFadden, Regulatory Specialist, reviewed the information furnished and made this determination. If you have any questions concerning this matter, please feel free to contact Mr. McFadden at 816-389-3432 (FAX 816-389-2032). Please reference Permit No. NWK 2010-01157 in all comments and/or inquiries relating to this project.

Enclosures

Copies Furnished (electronically w/o enclosures):

Environmental Protection Agency,
Watershed Planning and Implementation Branch
U.S. Fish and Wildlife Service,
Manhattan, Kansas
Kansas Department of Wildlife and Parks
Kansas Department of Health and Environment
Kansas Department of Agriculture

Nationwide Permit No. 14
Linear Transportation Projects.

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Nationwide Permit No. 43
Stormwater Management Facilities.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

COMPLIANCE CERTIFICATION

General condition 26 of this Nationwide Permit requires that you submit a signed certification regarding the completed work and any required mitigation. This certification page satisfies this condition if it is provided to the Kansas City District at the address shown at the bottom of this page upon completion of the project.

APPLICATION NUMBER: 2010-01157

APPLICANT: Mr. Gary Grable
County Fair Foundation
2330 North 131st Street
Kansas City, Kansas 66109

PROJECT LOCATION: Located in Section 7, Township 10 south, Range 23 east, Wyandotte County, Kansas.

- a. I certify that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions.
- b. I certify that any required mitigation was completed in accordance with the permit conditions.
- c. Your signature below, as permittee, indicates that you have completed the authorized project as certified in paragraphs a and b above.

(PERMITTEE)

(DATE)

Return this certification to:

U.S. Army Corps of Engineers
ATTN: CENWK-OD-R
601 E. 12th Street, Room 402
Kansas City, MO 64106-2896

Excerpts from March 12, 2007 Federal Register
Nationwide Permit General Conditions

(As corrected in 8 May 2007 Correction (79 F.R. 26082))

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP's 4 and 48.
6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on

the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP's. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP's.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

25. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested

information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects

occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

Kansas Water Quality Certification
Section 404 Nationwide Permits
Kansas Department of Health and Environment

May 11, 2007

I Authority

This certification is prepared pursuant to Clean Water Act Section 401 and Kansas Administrative Regulation 28-16-28f(c)(1) by the Kansas Department of Health and Environment (KDHE).

II Certification

All activities authorized by the U.S. Department of Army Corps of Engineers (USACE) Nationwide Permits (NWP) published March 12, 2007, in the Federal Register, effective March 19, 2007, are not expected to result in violations of Kansas Water Quality Standards found at Kansas Administrative Regulations 28-16-28b through 28g, provided the person conducting the Corps of Engineers authorized activity adheres to the conditions set out by this certification. A full description can be found at: www.nwk.usace.army.mil/regulatory/regulatory.htm. Additionally, Kansas Regional Conditions for NWPs have been drafted by the USACE with concurrence from state and federal agencies. Once issued these conditions provide general statewide framework for requirements for permitted activities considered by the USACE to have minimal impacts on the aquatic ecosystem. This water quality certification provides conditions and guidance to address local water quality needs.

III Limitations of this Certification: All Section 404 activities within the borders of Indian owned and operated lands are not covered by this certification. Individuals proposing projects which impact those waters are responsible for contacting the appropriate individual at the following numbers:

Prairie Band Pottawatomie Indians, Planning Department, 785/966-2946

Kickapoo Tribe in Kansas, Environmental Office, 785/486-2601

Iowa of Tribe of Kansas and Nebraska, 785/595-3258

Sac and Fox Tribe of Missouri, 785/742-4707

Environmental Protection Agency Region VII Indian Lands Contact,
913/551-7498

IV General Conditions

1. **Certification Retention:** The applicant shall retain this water quality certification on the project site through the duration of the project to accommodate inspection.
2. **Kansas Water Pollution Control General Permit for Stormwater Runoff from Construction Activities:** This certification does not relieve the applicant of the responsibility to determine if the project is subject to the requirements of **General NPDES Permit** and to secure such permit as necessary. Questions and inquiries may be directed to:

Kansas Department of Health and Environment
Bureau of Water Industrial Program Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
Phone 785/296-5549; FAX:785/296-5509
www.kdheks.gov/stormwater

3. **Project Water Quality Protection Plan:** Any person wishing to use a Section 404 Nationwide General Permit shall prepare and follow a written project water quality protection plan (PWQPP.) The PWQPP shall identify components of the permitted activity (i.e. solid waste handling, fuel storage and leaks, sediment from construction etc.) which may or will result in the discharge of pollutants to waters of the state. For each component which may discharge pollutants to waters of the state, the plan shall set out the physical, structural and management measures to be implemented to prevent or minimize the discharge of pollutants to waters of the state. (Activities requiring a construction stormwater permit, as described above, also require a stormwater pollution prevention plan which will serve as the PWQPP.)

The permittee is required to submit the PWQPP to KDHE only if the project impacts Outstanding National Resource, Exceptional State or Special Aquatic Life Use Waters per condition #4 below.

4. **Outstanding National Resource Waters, Exceptional State and Special Aquatic Life Support Use Waters:** In the event the permitted activity occurs in or within one half (½) mile of an Outstanding National Resource Water as defined pursuant to **K.A.R. 28-16-28b(pp)** and **K.A.R. 28-16-28c(a)B(3)**, an Exceptional State Water pursuant to **K.A.R. 28-16-28b(y)** and **K.A.R. 28-16-28c(a)B(2)**, or a Special Aquatic Life Support Use Water designated pursuant to **K.A.R. 28-16-28d(b)(2)(A)**, the person responsible for initiating the activity shall submit a copy of the PWQPP to:

Kansas Department of Health and Environment
Bureau of Water - Watershed Management Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
nps@kdhe.state.ks.us

A table and state map of **Outstanding National Resource Waters, Exceptional State and Special Aquatic Life Support Use Waters** can be found at: <http://www.kdheks.gov/nps/resources/specwaterinfo.pdf> or on the Attachments 1 and 2.

The permittee should also be aware of the following Kansas water quality protection regulations associated with special waters:

K.A.R. 28-16-28c(a)B(2)-“Wherever state surface waters constitute exceptional state waters, discharges shall be allowed only if existing uses and existing water quality are maintained and protected.”

K.A.R. 28-16-28c(a)B(3)-“Wherever state surface waters constitute an outstanding national resource water existing uses and existing water quality shall be maintained and protected. New or expanded discharges shall not be allowed into outstanding national resource waters.”

5. **Solid Waste Disposal:** All solid waste materials produced during the execution of the project shall be disposed in accordance with the provisions of Kansas Solid Waste Management Statutes and regulations and applicable local regulations. Direct inquiries to:

KDHE, Bureau of Waste Management
1000 SW Jackson Street, Suite 320
Topeka, Kansas 66612-1366
Phone: 785/296-1600; FAX: 785/296-1592
www.kdhe.state.ks.us/waste/index.html

6. **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. The person responsible for the permitted activity shall monitor and maintain cover materials until such time as the site is stabilized. Project closure procedures shall be documented in the Project Water Quality Protection Plan per condition No. IV. 3.

7. **Riparian Areas:** Minimize removal or disturbance of riparian areas (areas adjacent to water bodies). KDHE encourages the use of vegetation consistent with adjoining vegetation materials to minimize impacts from improper handling of fertilizers and pesticides.
8. **Discharge of Floatable Materials:** Pursuant to K.A.R. 28-16-28b (uu)(1), (3) and (4), the person responsible for executing the permitted activity shall assure good house keeping is practiced at the site to minimize the discharge of floatable materials such as personal refuse including food containers, packing materials, and other litter. Appropriate measures shall be taken to capture and/or recover any floatable materials discharged to waters of the state originating with the permitted project.
9. **Fuel, Chemical and Materials Storage:** Fuel, chemical and other materials stored at the project site shall be stored in a manner that minimizes the discharge of product to waters of the state. Spill minimization and prevention measures and procedures shall be documented in the Water Quality Protection Plan.
10. **Spill Response and Reporting:**
 - 1.) **Spill response and cleanup:** In the event a spill of fuel, chemical or other water quality degrading materials stored or transported on the site occurs, the permittee shall or with the assistance of professional response personnel, expeditiously control or contain the spill and initiate clean up procedures. The applicant shall immediately contact 911. Spill response and cleanup actions shall be documented in the PWQPP. The applicant should also contact the appropriate Kansas Department of Health and Environment www.kdhegov/befs/#districts or look in your local phone directory) to confirm cleanup activities. Finally, KDHE strongly encourages the permittee to establish and post a sign that includes phone contact numbers for the appropriate local emergency response unit, KDHE district office, and the project manager/owner.
 - 2.) **Reporting:** The Kansas Department of Health and Environment shall be notified of all fuel spills or unauthorized discharge of pollutants immediately. Contact KDHE at 785/296-1679, anytime for spill reporting requirements. The Kansas Adjutant Generals Office should also be contacted (785/296-8013) as well as the National Spill Response Center (1-800-424-8802).
11. **Drinking Water Intakes:** The person responsible for the permitted activity shall avoid adverse impacts on public water supplies. Whenever permitted activities occur within one mile upstream of a public drinking water supply - surface water intake, the applicant shall contact the official in charge of the public drinking water supply to apprise the drinking water supply official of the permitted activity. The person responsible for the permitted activity shall consider the

suggestions and recommendations of the public water supply official when preparing the PWQPP.

12. **Treated Wastewater Effluent Mixing Zones:** As a general guideline any Section 404 activity within one-half (½) mile upstream or one-half (½) mile downstream of a permitted wastewater effluent discharge may impact the effluent mixing zone. The person responsible for the permitted activity shall determine if the project will adversely impact the wastewater effluent mixing zones and take appropriate measures to avoid altering or changing the mixing zone. This may include but is not limited to:

- 1) The construction or placement of a recreation oriented facility or structure (i.e. boat ramp, walkway) which may require modification of the beneficial use designation to accommodate contact or non-contact recreation, thereby increasing the effluent limitations for the permit.
- 2) Any activity which may alter or remove the stream channel geometry or natural oxygenation abilities of the stream such as bridge construction, channelization, stream channel substrate modification etc.

The person responsible for the permitted Section 404 activity shall advise and describe to the waste water discharge permittee and KDHE any potential mixing zone impacts and the measures the person responsible for the Section 404 activity will take to minimize adverse impacts on the mixing zone. Inquiries should be directed to:

Kansas Department of Health and Environment
Bureau of Water - Municipal Programs Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
Phone: 785/296-5527; FAX: 785/296-5509

13. **Total Maximum Daily Load:** Any Section 404 activity within a watershed with a Total Maximum Daily Load (the amount of pollution a water body can receive and maintain its designated uses: see <http://www.kdheks.gov/tmdl/index.htm>) is strongly encouraged to contact the assigned KDHE watershed field coordinator. A service area map for the three watershed field coordinators is attached (Attachment 3) once construction is started.

V. **Special Conditions for Specific Nationwide Permits**

1. **Nationwide Permit #7. Outfall Structures and Maintenance (construction):** Controls shall be in place to stabilize all areas of the bed and bank around the pipe or adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.

2. **Nationwide Permits #3-Maintenance; #12-Utility Line Activities; and #18-Minor Discharges (pipelines included):** Hydrostatic tests for pipeline activities shall be approved prior to discharge of water used for the test. Please contact:

Kansas Department of Health and Environment
Bureau of Water - Industrial Program Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
Phone 785/296-5553; FAX: 785/296-5509

3. **Nationwide Permits #27 (Aquatic Habitat, Restoration, Establishment and Enhancement Activities) #29 (Residential Developments), #30 (Moist Soil Management for Wildlife), #39 (Commercial and Institutional Developments), #42 (Recreational Facilities), #43 Stormwater Management Facilities):** Measures shall be implemented to assure impounded waters, created by activities within the framework of these permits, avoid becoming public health threats, nuisances, generate complaints, and potentially discharge degraded water. The applicant shall prepare and implement an Operations and Maintenance Plan for Facilities and Landscapes (O&M), which at the minimum incorporate the following:

- A. Identify individual and public property owners and their potential for being the source of nonpoint source pollution. This could include but is not limited to: commercial grounds, streets, right-of-ways, parking areas, conservation easement and **proposed** mitigation areas etc.
- B. For each property as described in item A. above, water quality protection measures for each category of artificial source of pollution identified. The identified water quality protection measure for each category of artificial source of pollution shall be designed to *reduce to the maximum extent practicable, the level of pollution resulting from identified pollutant sources*. Identified water quality protection quality protection measures shall be at least as effective as those set out by the Kansas Nonpoint Source Pollution Management Plan (<http://www.kdheks.gov/nps/resources/2000update.pdf>), prepared and maintained by the Kansas Department of Health and Environment.
- C. Strategies to assure implementation of the water quality protection measures identified under item IV. 3-10 which may include but are not limited to prohibition or restriction of activities, utilization of alternative technologies or products, information and education, financial assistance, technical assistance, enforcement and penalties. Additionally, an in-house reporting form used by staff to document degraded property conditions potentially impacting the property and needs to address them should be developed, if applicable.
- D. Organizations and individuals responsible for assuring implementation of the identified water quality protection measures.

VI Enforcement and Penalties

This certification does not relieve the applicant of the responsibility for any discharge to waters of the state or allow for any inappropriate discharge to occur. As provided for by K.S.A. 65-171(f), failure to comply with the conditions of this certification may subject the responsible party to fines of \$10,000 per violation with each day the violation occurs constituting a separate violation.

VII Variance

If the applicant believes the conditions of this certification will result in impairment of important widespread social and economic development, the applicant is advised of the variance provisions of KAR 28-16-28b(III) and KAR 28-16-28f(e).

VIII Additional Information

The KDHE website contains the following information to assist the applicant in preparing a project water quality protection plan:

*Construction practices: <http://www.dnr.mo.gov/env/wpp/wpcp-guide.htm>

*Project Water Quality Protection Plan Form and Instructions:
<http://www.kdheks.gov/nps/resources/nwpwqppfrm.doc> or
<http://www.kdheks.gov/nps/resources/nwpwqppfrm.pdf>

*Kansas Surface Water Register:
http://www.kdheks.gov/befs/download/Current_Kansas_Water_Register.pdf

*Kansas Surface Water Maps:
http://www.kdheks.gov/befs/download/2006_Surface_Water_Register_Maps.pdf

Surface Water Quality Standards- http://www.kdheks.gov/water/28_16_28b_g.pdf

*KDHE District Offices- <http://www.kdheks.gov/directions/index.html>

The Kansas Department of Health and Environment, Bureau of Water-Watershed Management Section at: 785/296-4195 or FAX 785/296-5509. This information can also be obtained by written communication directed to:

Kansas Department of Health and Environment
Bureau of Water - Watershed Management Section
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367 or email: nps@kdhe.state.ks.us

ATTACHMENT 2. MAP OF EXCEPTIONAL STATE WATERS (ESW), SPECIAL AQUATIC LIFE USE WATERS (SALU) AND OUTSTANDING NATIONAL RESOURCE WATERS (ONRW) provided by Kansas Department of Health and Environment. (5/2000) (revised 3/2001, 2nd 4/2004, 3rd 2/21/07, 4th 5/10/07).

County	*Exceptional State Waters	* Special Aquatic Life Use Waters
Allen		Little Osage River, Middle Fk., Bloody Run, Onion Cr. Neosho R., Little Osage R., Marmaton R. WETLANDS(16): within boundaries of a point from NE corner of S34 T24 R18E, West to NW corner S35 T24 R17E, South to SW corner of S35 T24 R17E, East to SE corner of S34 T25 R18E, back north to origin ; Other: all oxbow lakes and wetlands within NE 1/4 of S32 T26S R18E, N 1/2 and SE 1/4 of S33 T26 R18E
Anderson		Pottawatomie Cr., South Fk., Pottawatomie Cr., Little Indian Cr., Little Osage River Middle Fork, Middle Cr. WETLANDS (15): within boundaries of a point from the NE corner of S24 T21 R19E, West to the NW corner S22 T21 R18E, South to SW corner of S22 T25 R18E, back north to origin.
Atchison		Missouri R. WETLANDS (17): All wetlands within S15 T6 R7E and S16 T6 R7E
Barber		Amber Cr., Bear Cr., Elm Cr., East Branch South Elm Cr., South Branch Elm Cr., North Branch Elm Cr., Medicine Lodge River, Mulberry Cr., Mule Cr., Sand Cr., Turkey Cr., Two unnamed tributaries to Medicine Lodge River, Unnamed tributary to Turkey Cr.
Barton	Blood Cr., Little Cheyenne Cr.	Arkansas River, Blood Cr., Little Cheyenne Cr. WETLANDS (5): Cheyenne Bottoms Preserve; Designation applies to all surface waters within the Nature Conservancy wildlife preserve in Sections 2, 11, 12, 16, 13, 22, 24, 25, 36 and parts of Sections 3, 10, 15, 14, 23,26, 34, and 35 in T18S R13W and from the NE corner of S07, west to NW 1/4 of S02 south to W 1/2 of S35 East to S31 of T18S R12W
Bourbon		Marmaton River, Little Osage River
Butler	Walnut River, Grouse Cr., Cottonwood River South Fork	Walnut River, Grouse Cr., Cottonwood River South Fork
Chase	Cottonwood River South Fork, Cedar Cr.	Bloody Cr., Cedar Cr., Collett Cr., Cottonwood River, Cottonwood River South Fork, Jacob Cr., Little Cedar Cr., Middle Cr.
Chautauqua	Caney River, Otter Cr.	Caney River, Otter Cr.
Cheyenne	Neosho River, Shoal Cr., Spring Cr., Unnamed tributary to Shoal Cr.	Brush Cr., Cow Cr., Labette Cr., Neosho River, Shoal Cr. Spring Cr., Taylor Branch, Turkey Cr., Unnamed Tributary to Shoal Cr. Wetlands(11): Wetlands extend from Kansas/Missouri border at NE 1/4 of S24 T31S R25E, West to NW corner of S20 T31S R25E, South to NW corner of S14 T33 R21E then East to Kansas/Missouri border (S13 T35S R25E), then South
Cherokee		Arikaree River, Republican River South Fork
Clark	Cimmaron River (21) St. Jacob's Well: NW1/4 of SW1/4 of S19 T32S R24W	Bluff Cr., Cimmaron River, Kiowa Cr. West, Rattlesnake Cr. (21) Clark County State Fishing Lake
Clay		Republican River
Cloud	(6) All surface waters within Jamestown Waterfowl Management Area	Republican River
CoFFEY		Frog Cr., Little Indian Cr., Long Cr., Neosho River, Wolf Cr.
Commanche	Cimmaron River	Bluff Cr., Calvary Cr., Cimmaron Cr., Kiowa Cr., Kiowa Cr. Middle, Kiowa Cr. West, Mule Cr., Nescatunga Cr., Wiggins

ATTACHMENT 1. LIST OF EXCEPTIONAL STATE WATERS (ESW), SPECIAL AQUATIC LIFE USE WATERS (SALU) AND OUTSTANDING NATIONAL RESOURCE WATERS (ONRW). (Information provided by Kansas Department of Health and Environment is found on attached map Attachment 2 (5/2000) (revised 3/2001, 2nd 4/2004, 3rd 2/13/07, 4th 5/10/07).

Cowley	Beaver Cr., Grouse Cr., Otter Cr., Walnut River	Arkansas River, Grouse Cr., Little Beaver Cr., Spring Cr., Walnut River
Crawford		Brush Cr., Cow Cr., Cow Cr East, First Cow Cr., Taylor Cr.
Dickinson	Lyon Cr.	Carry Cr., Lime Cr., Lyon Cr., Lyon Cr West Branch, unnamed tributary to West Branch Lyon Cr. (22) Herington Reservoir
Doniphan		Missouri R.
Douglas		Appanoose Cr., Buck Cr., Kansas River, West Fork Tauy Cr. (23) Clinton Reservoir, Wetlands(18) All within S18 T13S R20E
Edwards		Rattlesnake Cr.
Elk	Caney River, Fall River, Grouse Cr.	Caney River, Fall River, Grouse Cr.
Ellis	Saline River	
Ellsworth	Smoky Hill River	Smoky Hill River
Finney		Arkansas River
Ford		Bluff Cr., Kiowas Cr West, Rattlesnake Cr.
Franklin		Appanoose Cr., Marais Des Cygnes River, Ottawa Cr., Pottawatomie Cr., Tauy Cr., West Fork Tauy Creek
Geary	Lyon Cr.	Carry Cr., Kansas River, Lyon Cr., Republic River (12) Konza Prairie Natural Area; designation applies to all surface waters within natural area
Grant	Cimmaron River	Cimmaron River
Greeley		Ladder Cr.
Greenwood	Fall River, Fall River East Branch, Fall River West Branch	Fall River, Fall River East Branch, Fall River West Branch, Otter Cr. South Branch, Verdigris River (19) Flint Hills Tallgrass Prairie Preserve, all surface waters within the Nature Conservancy Reserve: Section 22 & 23 T23S R8E
Hamilton		Arkansas River
Harper	Chikaskia River	Chikaskia River, Sand Cr.
Jefferson		Buck Cr., Kansas River (24) Perry Reservoir
Jewell		Republican River
Johnson		Kansas River (25) Hillsdale Reservoir
Kearny		Arkansas River
Kingman	Chikaskia River	Allen Cr., Chikaskia River, Chikaskia River North Fork, Duck Cr., Nester Cr., Ninnescah River South Fork, Painter Cr., Pat Cr., Sand Cr., Silver Cr., Smoots Cr., Unnamed tributary to Smoots Cr., nine separate tributaries to South Ninnescah River
Kiowa	Thompson	Calvary Cr., Kiowa Cr., Kiowa Cr Middle, Kiowa Cr West, Medicine Lodge River, Mule Cr., Rattlesnake Cr., Soldier Cr., Thompson Cr., Wiggins Cr., Unnamed tributary to Thompson Cr.
Labette	Neosho River	Labette Cr., Neosho River Wetlands(11) North S14 T33S R21E South to S14 T35S R21E

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Leavenworth		Kansas River, Missouri River, Salt Cr.
Linn	Big Sugar Cr., Marais Des Cygnes River, Middle Cr., Muddy Cr., Sugar Cr North (13) all surface waters within Marais des Cygnes Waterfowl Area, all wetlands, oxbow lakes and classified streams within Linn County extending from the Kansas/Missouri border at NE corner of S26 T19S R25E west to NW corner of S26 T19S R23E, south to SW corner of S12 T22S R23E, east to Kansas/Missouri border at SE corner of S12 T22S R25E	Big Sugar Cr., Marais Des Cygnes River, Middle Cr., Muddy Cr., Sugar Cr. North (13) all surface waters within Marais des Cygnes Waterfowl Area, all wetlands, oxbow lakes and classified streams within Linn County extending from the Kansas/Missouri border at NE corner of S26 T19S R25E west to NW corner of S26 T19S R23E, south to SW corner of S12 T22S R23E, east to Kansas/Missouri border at SE corner of S12 T22S R25E
Logan		Chalk Cr., Depperschmidt Draw, Ladder Cr., Smoky Hill River, Twin Butte Cr.
Lyon		Cottonwood River, Elm Cr., Jacob Cr., Neosho River
Marion	Lyon Cr.	Catlin Cr., Lyon Cr., Middle Cr., Mud Cr., Spring Cr.
Marshall	Mill Cr West Branch	Lime Cr., Middle Cr., Neosho River, Six Mile Cr.
McPherson		(10) McPherson Valley Wetlands: Classification applies to all surface waters within state owned portions of wetlands
Meade		Cimarron River, Crooked Cr., Spring Cr., Stumpie Arroyo, unnamed tributary to Stumpy Arroyo
Miami	Marais Des Cygnes River, Middle Cr.	Marais Des Cygnes River, Middle Cr., Pottawatomie Cr., Unnamed tributary to North Wea Cr. (25) Hillsdale Reservoir
Montgomery		Onion Cr., Verdigris River
Morris		Lime Cr., Six mile Cr., Neosho River, Middle Cr.
Morton	Cimarron River, Cimarron River North Fork, Unnamed tributary to Cimarron River North Fork	Cimarron River, Cimarron River North Fork, Unnamed tributary to Cimarron River North Fork
Nemaha		Big Nemaha River South Fork, Manley Cr.
Neosho		Flat Rock Cr., Neosho River (20) Neosho State Waterfowl Management Area; designation applies to all surface waters within waterfowl management area
Osage		Appanoose Cr., Frog Cr., Long Cr.

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Phillips		(4) Kirwin Lake; Kirwin National Wildlife Refuge; designation applies to all surface waters within wildlife refuge.
Pottawatomie	Deep Cr.	Black Vermillion River Clear Fork, Bluff Cr., Bucksnot Cr., Deep Cr., Kansas River, Spring Cr., Wildcat Cr.
Pratt	(14) All surface waters within Texas Lake Wildlife Area	Amber Cr., Chikaskia River North Fork, Elm Cr North, Elm Cr South East Branch, Mulberry Cr., Natrona Cr., Ninescah River South Fork, Ninescah River West Branch of South Fork, Painter Cr., Rattlesnake Cr., Sand Cr., Silver Cr., Turkey Cr.
Reno		Arkansas River, Ninescah River North Fork, Peace Cr., Red Rock Cr., Silver Cr., Smoots Cr., Unnamed Tributary to North Fork Ninescah River, Unnamed Tributary to Silver Cr. (3) Quivera Salt Marsh; All surface waters within Quivera National Wildlife Refuge
Republic	(6) All surface waters within Jamestown Waterfowl Management Area	Republican River
Rice		Arkansas River, Peace Cr., Rattlesnake Cr. (3) Quivera Big Salt Marsh
Riley		Bluff Cr., Deep Cr., Kansas River, Spring Cr., Wildcat Cr.
Rush	Blood Cr.	Blood Cr.
Russell	Saline River, Smoky Hill River	Smoky Hill River
Scott		Ladder Cr., Lake Scott State Park, Scott Wildlife Area and feeder Springs
Sedgwick		Arkansas River, Clearwater Cr., Nester Cr., Ninescah River, Ninescah River South Fork, Sand Cr., Unnamed Tributary to North Fork Ninescah River
Seward		Cimmaron River
Shawnee		Kansas River
Stafford		Ninescah River North Fork, Peace Cr., Rattlesnake Cr. (3) Quivera Big Salt Marsh
Stevens	Cimmaron River	Cimmaron River
Sumner	Chikaskia River	Arkansas River, Chikaskia River, Ninescah River, Spring Cr. (8) Slate Creek Wetlands: classification applies to all surface waters within state owned portions of wetlands.
Wabaunsee	Deep Cr., Illinois Cr., Mill Cr., Mill Cr East Branch, Unnamed Tributary of Mill Cr. East Branch	Deep Cr., Elm Cr., Illinois Cr., Kansas River, Locust Cr., Mill Cr., Mill Cr. East Branch, Mill Cr. South Branch, Unnamed Tributary of Mill Cr. East Branch
Wallace		Eagletail Cr., Rose Cr., Coon Cr., Pond Cr., Capper Draw, Smoky Hill River, Willow Cr., Twin Butte Cr., Chalk Cr., Ladder Cr., Depperschmidt Draw
Wichita		Chalk Cr., Ladder Cr.,
Wilson	Fall River	Fall River, Verdigris River
Woodson		Bloody Run, Neosho River, Owl Cr. South, Verdigris River
Wyandotte		Kansas River, Little Turkey Cr., Missouri River

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LIST OF OUTSTANDING NATIONAL RESOURCE WATERS (ONRW)

COUNTY	OUTSTANDING NATIONAL RESOURCE WATERS
Barton	Cheyenne Bottoms
Coffey	Flint Hills National Wildlife Refuge
Lyon	Flint Hills National Wildlife Refuge
Morton	Cimarron National Grasslands
Phillips	Kirwin Lake, Kirwin National Wildlife Refuge
Reno	Quivera Little Salt Marsh
Rice	Quivera Big Salt Marsh
Stafford	Quivera Big Salt Marsh, Quivera Little Salt Marsh
Stevens	Cimarron National Grasslands

The Following counties currently do not contain waters classified as ESW, SALU or ONW: Brown, Decatur, Gove, Graham, Gray, Harvey, Haskell, Hodgeman, Jackson, Lane, Lincoln, Mitchell, Ness, Norton, Osborne, Ottawa, Pawnee, Rawlins, Rooks, Saline, Sheridan, Sherman, Smith, Stanton, Thomas, Irego, Washington

***Kansas Regulations for Special Waters in Kansas**

Outstanding National Resource water, K.A.R. 28-16-28b (pp), “means any of the surface waters or surface water segments of extraordinary recreational or ecological significance identified in the surface water register, as defined K.A.R. 28-16-28b (zz), and afforded the highest level of water quality protection under the anti-degradation provisions of K.A.R. 28-16-28c(a) and the mixing zone provisions of K.A.R. 28-16-28c(b).”

Exceptional state waters, K.A.R. 28-16-28b(y), “means any of the surface waters or surface water segments that are of remarkable quality or of significant recreational or ecological value, are listed in the surface water register as defined in K.A.R. 28-16-28b(zz), and afforded the highest level of water quality protection under the anti-degradation provisions of K.A.R. 28-16-28c(a) and the mixing zone provisions of K.A.R. 28-16-28c(b).”

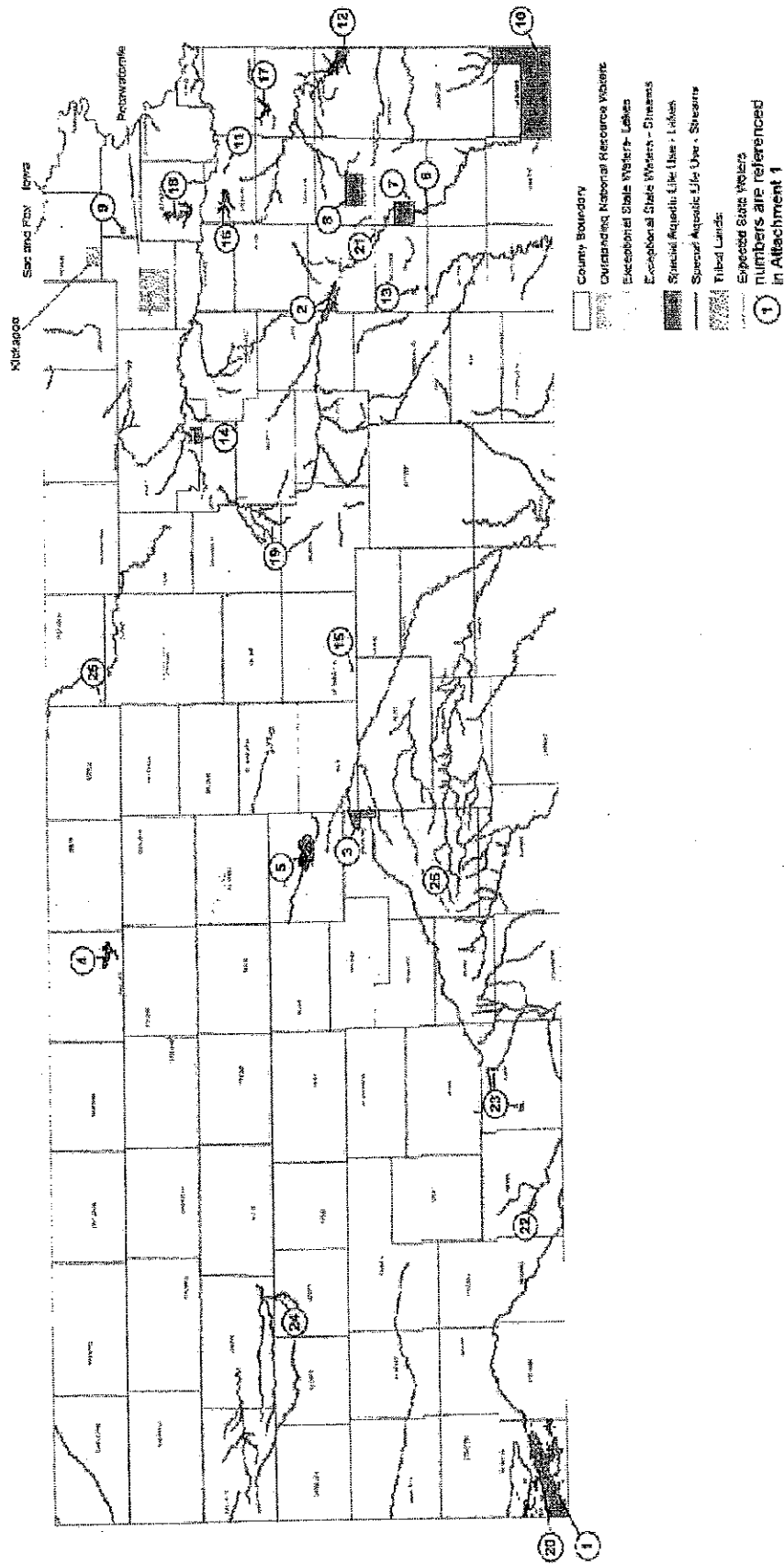
Special Aquatic Life Use, K.A.R. 28-16-28d (b)(2)(A), “means surface waters that contain combinations of habitat types and indigenous biota not found commonly in the state, or surface waters that contain representative populations of threatened or endangered species.”

K.A.R. 28-16-28c(a)B(2)- “Wherever state surface waters constitute exceptional state waters, discharges shall be allowed only if existing uses and existing water quality are maintained and protected.”

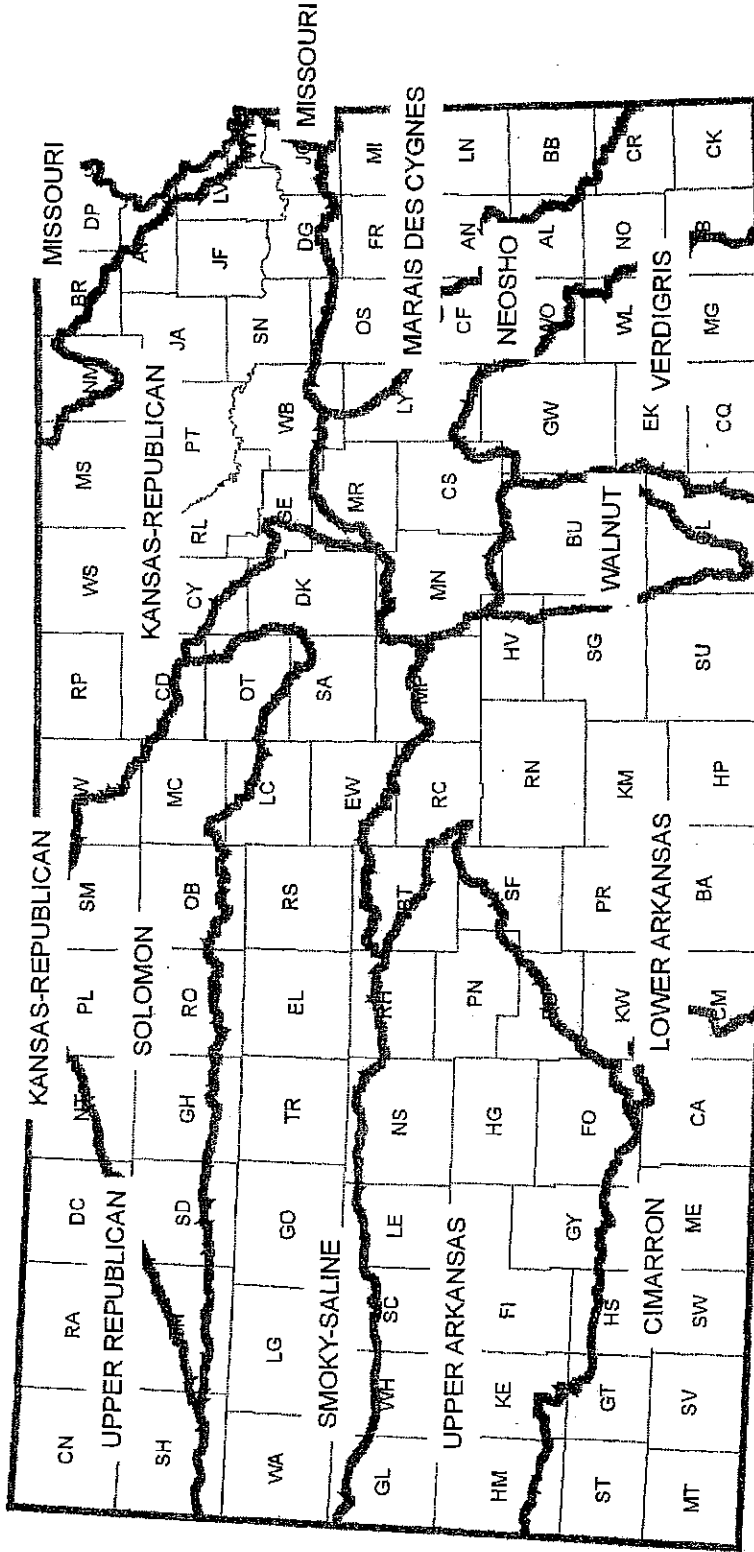
K.A.R. 28-16-28c(a)B(3)- “Wherever state surface waters constitute outstanding national resource waters existing water quality shall be maintained and protected. New or expanded discharges shall not be allowed into outstanding national resource waters.”

ATTACHMENT 2. MAP OF EXCEPTIONAL STATE WATERS (ESW), SPECIAL AQUATIC LIFE USE WATERS (SALU) AND OUTSTANDING NATIONAL RESOURCE WATERS (ONRW) provided by Kansas Department of Health and Environment. (5/2000) (revised 3/2001, 2nd 4/2004, 3rd 2/21/07, 4th 5/10/07).

**OUTSTANDING NATIONAL RESOURCE WATERS,
EXCEPTIONAL STATE WATERS,
AND SPECIAL AQUATIC LIFE USE WATERS**



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