

File No. **50,853** 15. Formation Code: Drainage Basin: **N F Ninnescah River** County: **RN** Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity						
T	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		
												Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
CHK	89773	NW	NW	NE	34	25S	9W	1	4846	1252		99	15	99	15	none

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

19. Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? **x Yes** No To be installed by **12/31/2025** Date Acceptable Meter Installed _____

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
T	MOD	DEL	ENT	PUSE	S	T	R	ID		NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼				
CHK	70994	34	25S	9W	1					WILDLIFE MARSH (SE NE) 5 AC																	7a	no	none

Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: October 27, 2023

FROM: Kris Neuhauser

RE: Application, File No. 50,853

James L. Roberts IV has filed the above-referenced application requesting to appropriate 15 acre-feet of groundwater for recreational use at a maximum diversion rate of 100 gallons per minute, from one (1) well located in the Northeast Quarter of Section 34, Township 25 South, Range 9 West, Reno County, Kansas. The application has been signed by Mr. Roberts, stating he has access to the point of diversion. This application was filed to obtain water for a duck marsh. The place of use will be said marsh (5-acre surface area), located in the Southeast Quarter Half of the Northeast Quarter of Section 34, Township 25 South, Range 9 West, Reno County, Kansas. Mr. Roberts owns the entire place of use.

The requested quantity of water under this application (15 acre-feet) was determined by inundating the 5-acre marsh area with 2.0 feet of water; and the applicant planning to fill the marsh two times per year; an initial fill and as second filling to offset indirect loss of water. Typically, these types of marshes are filled in October prior to waterfowl migration.

$$\begin{aligned} 5 \text{ acres} \times 1.5 \text{ feet} &= 7.5 \text{ AF per fill} \\ 2 \text{ fills} &= 7.5 \text{ AF} + 7.5 \text{ AF} = \mathbf{15 \text{ AF per year}} \end{aligned}$$

Two well owners were identified within one-half mile of the proposed point of diversion. Nearby notification letters outlining the application were mailed on October 27, 2023. No responses of any kind have been received to date.

There are no non-domestic wells within a two-mile radius of the point of diversion. The closest domestic well is roughly 1,350 feet away. Therefore, according to K.A.R. 5-4-4, spacing criteria is met.

A Compatible Use Agreement (CUA) for water level management to the National Resources Conservation Service (NRCS) for pumping water onto a Wetlands Reserve Program easement area will not be required. In an email conversation with Brent Turney, NRCS Easement Specialist, on October 27, 2023, he confirmed that no easement was present at the marsh location.

Janelle Phillips, Stream Obstruction Team Lead, informed the applicant that a floodplain fill permit would be required for their project. Mr. Roberts submitted a fill application on December 22, 2023. In discussions with Kristen Baum, New and Change Application Unit Supervisor, the Water Appropriation Unit feels comfortable approving File No. 50,853, knowing the Water Structures Unit has the referenced floodplain fill application in hand.

In accordance with K.S.A. 82a-706c, the Chief Engineer retains full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R. 5-1-12. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

In a letter dated July 19, 2023, Orrin Feril, Manager of Big Bend Groundwater Management District No. 5, recommended approval of the referenced application. The application is exempt from the closure of the district per K.A.R. 5-25-4(b) and meets the requirements of K.A.R. 5-25-15(a).

In an email discussion on November 21, 2023, Jeff Lanterman, Water Commissioner of the Stafford Field Office, recommended approval of the referenced application.

Based on the above discussion, the area is open to new applications, meets spacing requirements, and there is no indication that the proposed beneficial use of water will impair existing water rights. Therefore, it is recommended that the referenced application be approved.

A handwritten signature in black ink, appearing to read "Kris Neuhauser". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Kris Neuhauser
New Applications Lead
Water Appropriation Program

Tom Taylor - At-Large (Pres.)
Fred Grunder - Pratt (V Pres.)
John Janssen - Kiowa (Treas.)
Marlyn Spare - Stafford (Sec.)
Darrell Wood - Edwards
Craig Zwick - Rice
Joe Schlessiger - Barton
Kerry Froetschner - Pawnee
Gary Hornbaker - Reno



Orrin Feril, Manager
125 South Main Street
Stafford, Kansas 67578
ph: (620) 234-5352
fx: (620) 234-5718
gmd5@gmd5.org
www.gmd5.org

July 19, 2023

Kris Neuhauser
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502

RE: Application File No. 50,853

Dear Mr. Neuhauser,

The Big Bend Groundwater Management District #5 has reviewed the above referenced application for appropriation. The District is closed to further new surface and groundwater appropriations except those that are exempt from the closure per K.A.R. 5-25-4 (b).

Based upon information received in the District office, the application meets the requirements of K.A.R. 5-25-15 (a) and is therefore recommended for approval.

The application to change is subject to the District's well equipment regulation K.A.R. 5-25-5 for a required flow meter.

Please feel free to give me a call if you have any questions.

Sincerely,

Orrin Feril
Manager

From: Jay Roberts
Sent: Fri 1/5/2024 12:33 PM
To: Neuhauser, Kris [KDA]
Cc: ctoler@robertstate.com.
Subject: Re: Application, File No. 50853

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Kris that's fine thanks!

Thanks,

James L. Roberts, IV
Roberts | Tate LLC

PO Box 21828
2487 Demere Road, Suite 400
St. Simons Island, Georgia 31522
Phone: (912) 638-5200
Fax: (912) 638-5300
JRoberts@robertstate.com
www.RobertsTate.com

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On Jan 5, 2024, at 12:58 PM, Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov> wrote:

You don't often get email from kris.neuhauser@ks.gov. [Learn why this is important](#)

H
e

y James, just following up since I received your out of office reply earlier this week. A response email is more than enough to sign off on the rate change I mentioned below. Have all the approval documents drafted up. Can get them signed and mailed next week.

Kris Neuhauser
New Applications Lead
Kansas Department of Agriculture, Division of Water Resources
Phone: 785-564-6643

From: Neuhauser, Kris [KDA]
Sent: Tuesday, January 2, 2024 12:38 PM
To: jroberts@robertstate.com
Subject: RE: Application, File No. 50853

Afternoon James, hope you had a good New Year's.

Janelle Phillips let me know she has the structures application in hand now, so I'm going to send 50853 on our side to be signed/approved. The field office was checking it out last week and mentioned that maybe we should drop the proposed rate from 100 gpm to 99 gpm. A measurement tube is required for 100 gpm or more, and they thought that it would be an expense that isn't worth it for 1 gpm more.. Just wanted to confirm with you before I change it to 99 gpm.

Let me know, thanks!

Kris Neuhauser

New Applications Lead
Kansas Department of Agriculture, Division of Water Resources
Phone: 785-564-6643

From: Jay Roberts <jroberts@robertstate.com>
Sent: Wednesday, November 29, 2023 12:41 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: Re: Application, File No. 50853 status

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Surveyor is onsite today doing survey.

Thanks,

James L. Roberts, IV
Roberts | Tate LLC

PO Box 21828
2487 Demere Road, Suite 400
St. Simons Island, Georgia 31522
Phone: (912) 638-5200
Fax: (912) 638-5300
JRoberts@robertstate.com
www.RobertsTate.com

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On Nov 29, 2023, at 1:17 PM, Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov> wrote:

Hey James, thanks for all the info. I'm discussing everything with both Janelle and my supervisor. Think we have a plan going forward, but need to confirm a couple things. I'll call you and we can go over it all once I have everything ironed out!

Kris Neuhauser

New Applications Lead

Kansas Department of Agriculture, Division of Water Resources

Phone: 785-564-6643

From: Jay Roberts <jroberts@robertstate.com>
Sent: Tuesday, November 28, 2023 12:13 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: Re: Application, File No. 50853 status

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Hi Kris: we are submitting a fill permit but are waiting on a survey. Stewart Porter spoke with Jim Lanterman when we began this process and Jim did not believe that a fill permit would be required. In any event, Janelle Phillips believes we need to submit one so we will. I would like to discuss whether the water right permit can go ahead and be granted contingent upon the issuance of this permit, or whether my temporary permit application submitted again this year can be granted, while we wait on the survey for the fill permit. Please give me a call at your convenience at 912-222-9743.

Thanks,

James L. Roberts, IV
Roberts | Tate LLC

PO Box 21828
2487 Demere Road, Suite 400
St. Simons Island, Georgia 31522
Phone: (912) 638-5200
Fax: (912) 638-5300
JRoberts@robertstate.com
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On Nov 21, 2023, at 3:01 PM, Neuhauser, Kris [KDA]
<Kris.Neuhauser@ks.gov> wrote:

Hey James,

I have an approval recommendation from our field office on your application, file no. 50853. So getting close! Saw Jessica from Stafford Field Office got your other app (File No. 50799) approved recently. I know Jessica helped out on the front end of each app. She couldn't remember if she had checked with our Structures Dept. to see if any permitting would be needed from them on 50853 as well.

Do you recall chatting with anyone per chance? Or submitting any plans for the duck marsh for a Structures determination? Janelle Phillips would be the one to talk to if you have not. You can email her at Janelle.phillips@ks.gov or call her work line at 785-564-6656. If anything is needed from them, basically we just need their application in the door, then we can approve 50853 on our end.

Let me know if you have any questions! Appreciate it.

Kris Neuhauser

New Applications Lead

Kansas Department of Agriculture, Division of Water Resources

Phone: 785-564-6643

From: Lanterman, Jeff [KDA]
Sent: Tue 11/21/2023 12:48 PM
To: Neuhauser, Kris [KDA]; Conant, Cameron [KDA]
Subject: RE: 50853 rec request

Kris;

Probably need to have a conversation with Earl about approving these things in the North Fork Ninnescah soon regarding what we know about modeling there, but 15 af isn't going to do much here. No declines.

I have no objection to the approval of this small user exemption as it sits as long as structures is fine with it.

Thanks
Jeff

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Friday, November 17, 2023 12:37 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: 50853 rec request

Jeff and Cameron,

Here is 50853 for your review and recommendation. Jessica thought she had checked with structures already, but it was quite a while ago, so wasn't sure. I may shoot Janelle and email to double check no permitting is needed from them. Otherwise, I think everything should be good to go.

Let me know if you have any questions. Thanks!

Kris

From: Turney, Brent - FPAC-NRCS, KS
Sent: Fri 10/27/2023 2:58 PM
To: Neuhauser, Kris [KDA]
Subject: RE: 50853 - easement?

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Kris,
You have the all clear! No easements on that one. Thanks!
Brent

Brent A. Turney
Easement Specialist



3020 West 18th Avenue, Suite B, Emporia, Kansas, 66801
p: (620) 487-3413 | c: (620) 682-3538
e: brent.turney@usda.gov | w: www.ks.nracs.usda.gov

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From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Friday, October 27, 2023 12:44 PM
To: Turney, Brent - FPAC-NRCS, KS <Brent.Turney@usda.gov>
Subject: 50853 - easement?

Hi Brent,

Have a wetland app here; located in the NE ¼ of 34-25S-9W, Reno County. Any NRCS easements present? I've attached the app above. There's a topo and aerial map within.

Thanks!

Kris Neuhauser

New Applications Lead
Kansas Department of Agriculture, Division of Water Resources
Phone: 785-564-6643

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THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

APPROVAL OF APPLICATION and PERMIT TO PROCEED

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,853** of the applicant

**JAMES L ROBERTS IV
185 STILLWATER DRIVE
SAINT SIMONS ISLAND GA 31522**

for a permit to appropriate water for beneficial use, together with the maps, plans and other submitted data, and that the application is hereby approved and the applicant is hereby authorized, subject to vested rights and prior appropriations, to proceed with the construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a, as amended), and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect the proposed appropriation subject to the following terms, conditions and limitations:

1. That the priority date assigned to such application is **September 6, 2022**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh located in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 34, in Township 25 South, Range 9 West, Reno County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well located in the Northwest Quarter of the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 34, more particularly described as being near a point 4,846 feet North and 1,252 feet West of the Southeast corner of said section, in Township 25 South, Range 9 West, Reno County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **99 gallons per minute (0.22 c.f.s.)** and to a quantity not to exceed **15 acre-feet** of water for any calendar year.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2025**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$400.00 when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before December 31, 2029, or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

7. That the applicant shall not be deemed to have acquired a water appropriation for a quantity in excess of the amount approved herein nor in excess of the amount found by the Chief Engineer to have been actually used for the approved purpose during one calendar year subsequent to approval of the application and within the time specified for perfection or any authorized extension thereof.

8. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.

9. That the right of the appropriator shall relate to a specific quantity of water and such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion.

10. That this permit does not constitute authority under K.S.A. 82a-301 through 305a to construct any dam or other obstruction; nor does it grant any right-of-way, or authorize entry upon or injury to, public or private property.

11. That all diversion works constructed under the authority of this permit into which any type of chemical or other foreign substance will be injected into the water pumped from the diversion works shall be equipped with an in-line, automatic quick-closing, check valve capable of preventing pollution of the source of the water supply. The type of valve installed shall meet specifications adopted by the Chief Engineer and shall be maintained in an operating condition satisfactory to the Chief Engineer.

12. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this permit in accordance with Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).

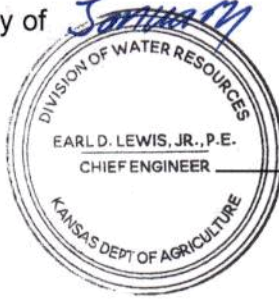
13. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1, following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.

14. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

15. That the right to appropriate water under authority of this permit is subject to any minimum desirable streamflow requirements identified and established pursuant to K.S.A. 82a-703c for the source of supply to which this water right applies.

16. That failure without cause to comply with provisions of the permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.

Ordered this 8th day of January, 2024, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.
Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 8th day of January, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings
Notary Public



1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

January 17, 2024

JAMES L ROBERTS IV
185 STILLWATER DRIVE
SAINT SIMONS ISLAND GA 31522

RE: Appropriation of Water
File No. 50,853

Dear Mr. Roberts:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Completion is an acceptable water flow meter installed on the diversion works authorized by this permit prior to using water. Failure to complete the diversion works and inform the Chief Engineer of the required installation of the meter(s) for this permit within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Stafford Field Office at 620-234-5311. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB:kak:kjn
Enclosure(s)
pc: Stafford Field Office

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may request an evidentiary hearing before the Chief Engineer, or request administrative review by the Secretary of Agriculture. Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Division, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for review may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

CERTIFICATE OF SERVICE

On this 17 day of January, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,853, dated January 8, 2024, was mailed postage prepaid, first class, US mail to the following:

JAMES L ROBERTS IV
185 STILLWATER DRIVE
SAINT SIMONS ISLAND GA 31522

With photocopies to:

KDA-DWR Stafford Field Office

Big Bend GMD No. 5



Division of Water Resources