

File No. 50,334	15. Formation Code:	Drainage Basin: SMOKY HILL RIVER	County: EW	Special Use:	Stream:																																																																																																																																																																																																																																																																																																																																																																																						
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KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
M E M O R A N D U M

TO: Files

DATE: July 21, 2020

FROM: Kris Neuhauser

RE: New Application, File No. 50,334

The Kansas Department of Wildlife Park and Tourism (KDWPT) has filed the above-referenced new application to appropriate 1,407 acre-feet of surface water storage at a rate not to exceed natural flows out of the Smoky Hill River for recreational use in a marsh. The application is designed to cover storage and the indirect use of water from said marsh. Three embankments with water control structures represent the points of diversion, which are located in Sections 13, 14, and 23 in Township 16 South, Range 7 West, Ellsworth County, Kansas.

The project is located on federal land, and the applicant has done the appropriate work through the U.S. Army Corps of Engineers (USACE). This wetland project is not part of any NRCS easement program (via email discussion with Lynn Thurlow on July 10, 2020). The applicant has also signed the form stating they have access to this point of diversion.

In talks with Janelle Phillips, P.E., Water Structures Program, it was determined that no structures permit will be required for this project, since KDWPT has a long-term Fish & Wildlife Management license with USACE to manage the Stumps Wetland area through 2044 (via email with Scott Thomasson, Wildlife Area Biologist, Wilson Wildlife Area/Smoky Hill Wildlife Area, on July 20, 2020).

The total quantity of water was calculated as follows: The North structure stores 93.433 acre-feet, with 47.144 surface acres. The middle structure stores 273.219 acre-feet, with 181.321 surface acres. The East structure stores 227.381 acre-feet, with 132.779 surface acres. The total storage of the reservoir thus totals 594.033 acre-feet; and the total surface area is 361.244 acres.

$$594.033 \text{ AF (reservoir capacity)} + \text{one-year evap (indirect use)} (2.25 \text{ AF/acre}) = 1,407 \text{ AF}$$

As typical with these large wildlife refuges, the U.S. Army Corp of Engineers owns the property where the marsh will be located and the adjacent property both upstream and downstream over ½ mile. Therefore, no notification letters were required. No other surface water rights are within a two-mile radius of the proposed pump sites. The approval of this application will not impact any senior water users.

Per K.A.R 5-3-15, this application will be subject to specific conditions, which stipulate strict requirements for direct surface water diversion. These conditions include the stipulation that no diversion shall occur unless there is water available to satisfy all demands by senior water rights and permits, written or verbal permission from the Chief Engineer, or an authorized representative is required prior to diverting water, and streamflow cannot be stopped at the first riffle below the point of diversion while diversion is taking place. This application also complies with K.A.R 5-3-15 (c)(5) because the proposed use of water for recreational use is typically during the fall season, and there is no need for direct diversion of water from July 1 through September 30.

Kelly Stewart, Water Commissioner of the Stockton Field Office, recommended approval of the application in an email conversation on July 24, 2020.

Based upon the above discussion; no permit will be required through DWR Water Structures Program, the applicant has done the appropriate work through USACE, 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.



Kris Neuhauser
Environmental Scientist
Water Appropriation Program

Directly above Kanopolis Lake so runoff won't be a limiting factor.

9/2/2020
KAB

From: Stewart, Kelly [KDA]
Sent: Fri 7/24/2020 1:28 PM
To: Neuhauser, Kris [KDA];Billinger, Mark [KDA]
Subject: FW: New App 50334 recommendation request

Kris,

With Nate's comments below, I have no objection to the approval of this application.

Kelly

From: Westrup, Nathan <Nathan.Westrup@kwo.ks.gov>
Sent: Friday, July 24, 2020 1:19 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Cc: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: RE: New App 50334 recommendation request

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.

Hey Kelly,

Thanks for the opportunity to review. I don't have any concerns and I hope it performs like a sediment trap.

Thanks,

Nathan Westrup

Chief of Hydrology & Evaluation

[Kansas Water Office](#)

p: (785) 296-0689

From: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Sent: Thursday, July 23, 2020 3:48 PM
To: Westrup, Nathan <Nathan.Westrup@kwo.ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Cc: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: FW: New App 50334 recommendation request

Nate,

Manhattan is processing the enclosed application to divert surface water in the upper end of Kanopolis Reservoir. Please take a look at this information and provide any comments you might have or let us know if you have any questions.

Kelly

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Thursday, July 23, 2020 9:24 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: New App 50334 recommendation request

Kelly and Mark,

Attached is a memo for New Application, File No. 50,334; reservoir in Ellsworth County from KDWPT. Mark and I have talked briefly about this one. Sounds like they have covered their bases pretty well.

Let me know if you need anything else.

Thanks!

Kris Neuhauser

Environmental Scientist

Water Appropriations Program – Kansas Dept of Agriculture

(785) 564-6643

From: Billinger, Mark [KDA]
Sent: Thu 7/23/2020 3:23 PM
To: Stewart, Kelly [KDA]; Neuhauser, Kris [KDA]
Cc: Hageman, Rebecca [KDA]
Subject: RE: New App 50334 recommendation request

I am mistaken, this does not involve any river pumping at this time. I think we talked about that for future potential to keep it full but it is not in this phase of the project. I kind of got ahead of myself there.

From: Stewart, Kelly [KDA]
Sent: Thursday, July 23, 2020 3:20 PM
To: Billinger, Mark [KDA]; Neuhauser, Kris [KDA]
Cc: Hageman, Rebecca [KDA]
Subject: RE: New App 50334 recommendation request

Kris,

Please hold up on this a bit. Mark and I are discussing it further.

From: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Sent: Thursday, July 23, 2020 3:07 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Cc: Hageman, Rebecca [KDA] <Rebecca.Hageman@ks.gov>
Subject: RE: New App 50334 recommendation request

I did run this one past the KWO since it is in the flood pool of Kanopolis. They did not have any verbal objections to it. It will pump backwater from the lake in the river (inflow or storage) to fill this. At the time I believe KWO thought it was in the gray area and considered live flow. Asked them where the river stopped and lake began and never really got an answer from them, so think we are good to go unless you guys want to run past KWO again.

From: Stewart, Kelly [KDA]
Sent: Thursday, July 23, 2020 3:03 PM
To: Neuhauser, Kris [KDA]; Billinger, Mark [KDA]
Cc: Hageman, Rebecca [KDA]
Subject: RE: New App 50334 recommendation request

Kris,

I have no objection to the approval of this application.

Kelly

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Thursday, July 23, 2020 9:24 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: New App 50334 recommendation request

Kelly and Mark,

Attached is a memo for New Application, File No. 50,334; reservoir in Ellsworth County from KDWP. Mark and I have talked briefly about this one. Sounds like they have covered their bases pretty well.

Let me know if you need anything else.

Thanks!

Kris Neuhauser

Environmental Scientist

Water Appropriations Program – Kansas Dept of Agriculture

(785) 564-6643

From: Phillips, Janelle [KDA]
Sent: Tue 7/21/2020 9:03 AM
To: Neuhauser, Kris [KDA]
Subject: RE: Stumps Wetland development - license agreement

This qualifies I will add it to our file.

From: Neuhauser, Kris [KDA]
Sent: Tuesday, July 21, 2020 9:01 AM
To: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Subject: FW: Stumps Wetland development - license agreement

Heard back from the applicant on New App 50334, the marsh one in Ellsworth County I hit you up about a week or two ago (associated with LEW-0010/ if KDWPT has a long term lease (99 years etc) agreement with USCOE then a structures permit will not be required)

What do you think from his email? Haven't called Scott back yet.

Kris

From: Thomasson, Scott [KDWP] <Scott.Thomasson@KS.GOV>
Sent: Monday, July 20, 2020 10:20 AM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: Stumps Wetland development - license agreement

Hi Kris,

I got your message, but I must have copied your phone number down wrong. I just get a "phone not in service" message.

To answer your question, KDWP has a long term Fish & Wildlife Management license with USACE to manage the Stumps Wetland area through 2044. This project also requires the Corps of Engineers approval as well which we are currently finalizing.

If you have any other questions feel free to call my cell at 785-472-7210.

Thanks, Scott

Scott Thomasson

Wildlife Area Biologist

Wilson Wildlife Area/Smoky Hill Wildlife Area

From: Phillips, Janelle [KDA]
Sent: Tue 7/14/2020 8:06 AM
To: Neuhauser, Kris [KDA]
Cc: Bristow, Leonard [KDA]
Subject: RE: New App 50334
Attachments: 50334.pdf

Kris –

This Water right is associated with LEW-0010. If KDWPT has a long term lease (99 years etc) agreement with USCOE then a structures permit will not be required.

Janelle Phillips, P.E., CFM
Stream Obstruction Team Lead
Water Structures Program
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
785-564-6656
Janelle.phillips@ks.gov

From: Neuhauser, Kris [KDA]
Sent: Monday, July 13, 2020 11:26 AM
To: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Subject: New App 50334

Kris Neuhauser
Environmental Scientist
Water Appropriations Program – Kansas Dept of Agriculture
(785) 564-6643

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting 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. 50,334** of the applicant

**KANSAS DEPT OF WILDLIFE PARKS & TOURISM
Attn: PROJECT ENGINEER
1020 S KANSAS AVE 2ND FL
TOPEKA, KS 66612-1327**

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 **January 15, 2020**.
2. That the water sought to be appropriated shall be used for recreational use in a series of marshes with a maximum combined surface area of 361.244 acres located in portions of Sections 13, 14, 15, 23, and 24; all in Township 16 South, Range 7 West, Ellsworth County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of the Smoky Hill River, not needed to satisfy all vested rights and prior appropriation rights, to be stored to a maximum extent of **1,407 acre-feet** per calendar year, in a marsh created by three water control structures. The north structure is located in the Northwest Quarter of the Southwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 14, more particularly described as being near a point 1,295 feet North and 5,165 feet West of the Southeast corner of said section, the middle structure is located in the Northeast Quarter of the Southeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 23, more particularly described as being near a point 3,776 feet North and 2,710 feet West of the Southeast corner of said section, and the east structure is located in the Northeast Quarter of the Southeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 13, more particularly described as being near a point 913 feet North and 2,645 feet West of the Southeast corner of said section, all in Township 16 South, Range 7 West, Ellsworth County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That installation of works for diversion of water shall be completed on or before **December 31, 2021**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$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 accompanied by the required statutory fee, which is currently \$100.00.

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

September 15, 2020

KANSAS DEPT OF WILDLIFE PARKS & TOURISM
Attn: PROJECT ENGINEER
1020 S KANSAS AVE 2ND FL
TOPEKA, KS 66612-1327

RE: Appropriation of Water, File No. 50,334

Dear Sir or Madam:

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. Failure to complete the diversion works 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/divisions-programs/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 Stockton Field Office at 785-425-6787. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB: kjn
Enclosure(s)

pc: Stockton Field Office
KDWPT – James Schneider
US Army Corps of Engineers

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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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 Section, 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 hearing 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 15 day of September, 2020, I hereby certify that the foregoing Approval of Application, File No. 50,334, dated 3 September 2020 was mailed postage prepaid, first class, US mail to the following:

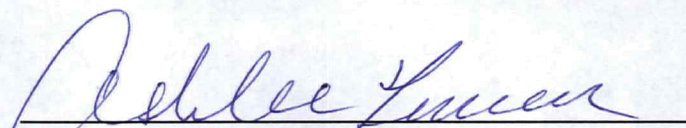
KANSAS DEPT OF WILDLIFE PARKS & TOURISM
Attn: PROJECT ENGINEER
1020 S KANSAS AVE 2ND FL
TOPEKA, KS 66612-1327

With photocopies to:

KANSAS DEPT OF WILDLIFE PARKS & TOURISM
Attn: JAMES SCHNEIDER (STKFO)
512 SE 25TH AVE
PRATT, KS 67124-8174

US ARMY CORPS OF ENGINEERS
KANOPOLIS PROJECT
RT 1 BOX 30
MARQUETTE KS 67446

Stockton Field Office


Division of Water Resources