

File No. **49,183** 15. Formation Code: Drainage Basin: SMOKY HILL RIVER County: **MP** Special Use: **038** Stream: SMOKY HILL RIVER

16. Points of Diversion										
T										
MOD										
DEL	PDIV									
ENT	Qualifier	S	T	R	ID	'N	'W			
√	83546	NW SE SE	25	17	5W	4	1100	1200		
Pd Comment: LOWER SMOKY HILL RIVER										

17. Rate and Quantity				
MOD QTY				
Authorized		Additional		
Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
1000	110	1000	110	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? Yes No To be installed by **12/31/2021** Date Acceptable Meter Installed _____

21. Place of Use										Owner		Chg? NO		Overlap Files							
T																					
MOD																					
DEL																					
ENT	PUSE	S	T	R	ID	NE ¼		NW ¼		SW ¼		SE ¼		Total							
√	66333	25	17	5W	2	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼				
								20	20					34	40	6	4	124	7a.	No	NONE

Comments: **LOWER SMOKY HILL RIVER IRRIGATION ACCESS DISTRICT OVERLAP.**
SPECIAL CONDITION: WRITTEN PERMISSION TO PUMP

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: May 5, 2020

FROM: Doug Schemm

RE: Application, File No. 49,183

Thomas & Kathryn Toll have filed the above referenced application to appropriate surface water directly from the Smoky Hill River for irrigation use. The applicant is proposing a single pump site, and requesting 110 acre-feet of surface water at a diversion rate of 1,000 gallons per minute to irrigate 124 acres in McPherson County. The place of use is wholly owned by the applicant, and the applicant (Mr. Toll) has signed the application form stating he has access to the point of diversion. There are no overlapping files in point of diversion or place of use.

The initial application had requested 161 acre-feet, which is the maximum allowable to irrigate the proposed 124 acres with 1.3 acre-feet per acre in McPherson County, Kansas. However, the applicant has only purchased 110 acre-feet from the Lower Smoky Hill Access District, therefore the application quantity was reduced to this same 110 acre-feet (1 for 1). The applicant has provided a site map to indicate that only 110 acres will likely be irrigated out of the 124-acre total, providing 1 acre-foot per acre, a reasonable quantity.

The applicant provided a list of landowners, and notification letters were sent to upstream and downstream landowners on December 23, 2016. No comments of any kind were received. There are multiple surface water rights located both upstream and downstream of the pump site within a two-mile radius. The nearest downstream pump site is located over 3,200 feet away. Therefore, with proper conditioning, approval of this application will not impair any senior water rights.

Since the source of supply will be the direct diversion of surface water from the Smoky Hill River, this application is subject to the restrictions of K.A.R. 5-3-15, which, in part, require the applicant to demonstrate that the direct diversion of surface water is not necessary during the period from July 1 through September 30 of each calendar year. In order to comply with K.A.R 5-3-15 (c)(5) the applicant is proposing to use stored water from Kanopolis Reservoir, under the newly formed Lower Smoky Hill River Irrigation District. This stored water is now available to irrigators since the special use district has been implemented. Per K.A.R 5-3-15, the 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.

A copy of the application was sent to the Kansas Water Office for their review and comment. In a letter dated May 6, 2020, the KWO stated that the results of the OASIS model run indicate that there is sufficient assurance reservoir storage to support the requested additional water. DWR Technical Services staff also recommended approval of the new application in conjunction with the determination by the KWO.

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.

The applicant has submitted a signed Minimum Desirable Streamflow form for the pending new application, which has been properly notarized. By completing this statement, the applicant affirms his/her knowledge that there could be times when the diversion of water may not be allowed under this permit.

Kelly Stewart, Water Commissioner, Stockton Field Office, recommended that the referenced new application be approved in an e-mail received on May 5, 2020.

Based on the above discussion, the application is supported by the Lower Smoky Hill River Access District, Smoky Hill River is open to new appropriations meeting specific criteria, the application complies with all regulations, the Kansas Water Office supports approval, and approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced application be approved.

Doug Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Westrup, Nathan <Nathan.Westrup@kwo.ks.gov>
Sent: Tuesday, May 5, 2020 8:39 AM
To: Stewart, Kelly [KDA]; Schemm, Doug [KDA]
Cc: Shultz, Chris
Subject: RE: Thomas Toll File No. 49,183

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.

I think that would be fine.

Nathan Westrup

Chief of Hydrology & Evaluation

Kansas Water Office

p: (785) 296-0689

From: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Sent: Tuesday, May 5, 2020 8:35 AM
To: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>; Westrup, Nathan <Nathan.Westrup@kwo.ks.gov>
Cc: Shultz, Chris <Chris.Shultz@kwo.ks.gov>
Subject: RE: Thomas Toll File No. 49,183

Nate,

Because Tom Toll is anxiously awaiting his approval so he can start pumping, can Doug move forward with this knowing the letter from KWO is forthcoming?

Kelly

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Tuesday, May 5, 2020 8:34 AM
To: Westrup, Nathan <Nathan.Westrup@kwo.ks.gov>
Cc: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Shultz, Chris <Chris.Shultz@kwo.ks.gov>
Subject: RE: Thomas Toll File No. 49,183

Ok, thanks for the response. I will wait for your letter regarding sufficient storage.
Doug

From: Westrup, Nathan [<mailto:Nathan.Westrup@kwo.ks.gov>]
Sent: Tuesday, May 5, 2020 8:30 AM
To: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Cc: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Shultz, Chris <Chris.Shultz@kwo.ks.gov>
Subject: RE: Thomas Toll File No. 49,183

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.

Hi Doug,

Yes, we should get a copy of the approval documents.

We should also provide a letter to your files, documenting that our model shows there is sufficient storage for this application.

Thanks,

Nathan Westrup

Chief of Hydrology & Evaluation

Kansas Water Office

p: (785) 296-0689

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>

Sent: Monday, May 4, 2020 8:41 AM

To: Westrup, Nathan <Nathan.Westrup@kwo.ks.gov>

Cc: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>

Subject: Thomas Toll File No. 49,183

Good Morning Nathan,

Just to let you know, we are moving this application on for approval because the applicant has acquired the necessary water from the IRR District.

Do you want to receive a copy of the approval documents also?

Have a great day,

Doug

LOWER SMOKY VALLEY IRRIGATION DISTRICT

ATTN: Kelly Stewart
March 20, 2020

These are the applications for additional water rights. The district has been authorized by the Kansas State Water Office to purchase an additional 510 acre feet. Four of the applications will be for additional water to supplement existing rights. Two of them will be for new water rights totally backed by purchased water.

ADDITIONAL WATER FOR EXISTING RIGHTS:

Dean Evans Jr. - owner	
Mike Becker – operator	100 Acre feet
Craig Myers – owner	
Matt Toll – operator	40 Acre feet
Eric Peterson - owner / operator	50 Acre feet
Chad Ellwood – owner	
Tim Larson – operator	80 Acre feet

NEW WATER RIGHTS:

Gary Harbin – owner	
Chris Short – operator	130 Acre feet
Tom Toll – owner / operator	110 Acre feet

The place of use and amounts allocated will be up to the owners to negotiate with the Division of Water Resources.

Tom Toll
President of Lower Smoky Valley Irrigation District

RECEIVED

MAR 23 2020

Stockton Field Office
Division of Water Resources

900 SW Jackson Street, Suite 404
Topeka, KS 66612



Phone: (785)-296-3185
Fax: (785)-296-0878
www.kwo.org

Earl Lewis, Director

Laura Kelly, Governor

May 6th, 2020

Doug Schemm
Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

Basin scale modeling has been conducted by the Kansas Water Office (KWO) within the Smoky Hill River basin to determine required water supply storage for drought periods given historical drought conditions. To do so, the Smoky Hill River basin was simulated for the period of 1950-2014 using historical conditions, except with reservoir inflows being depleted early in the simulation based on the trends through time.

The Smoky Hill River basin model is made up of Kanopolis Lake and downstream users to the confluence with the Republican River near Junction City, Kansas. Kanopolis Lake holds water for the Smoky Hill Access District, containing accounts for municipal and irrigation water users. For the irrigation portion of the Smoky Hill Access District, 1952-1957 represents the multi-year drought of record whereas 2012 represents the single-year drought of record.

KWO modeling of member demands indicates that the 24.23% of Kanopolis conservation storage (approximately 11,259 acre-feet in 2020) currently owned by the Smoky Hill Access District would be sufficient to supply water use authorized by Application, File No. 49,183 along with current appropriations during the historic droughts, given both current capacity of Kanopolis and the capacity in 20 years.

Chris Shultz

Kansas Water Office

From: Stewart, Kelly [KDA]
Sent: Tue 5/5/2020 12:58 PM
To: Schemm, Doug [KDA]; Baum, Kristen [KDA]
Cc: Hageman, Rebecca [KDA]
Subject: RE: 49183 Toll

As you already know, I have no objection to the approval of this application.

Kelly

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Tuesday, May 5, 2020 11:32 AM
To: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Cc: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Subject: 49183 Toll

Hello Kristen,

I've reduced quantity to 110 AF. Kept PU the same. We will be getting a letter from the KWO with their approval, and I've sent information to Ginger for her review.

So we good to go,

Have a great day,

Doug

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

THOMAS & KATHRYN TOLL
2453 10TH AVE
LINDSBORG KS 67456

RE: Appropriation of Water, File No. 49,183

Dear Mr. and Mrs. Toll:

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 acceptable water flowmeter must be installed on the diversion works authorized by this permit prior to using water. 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,

A handwritten signature in black ink that reads "Kristen A. Baum". The signature is written in a cursive style.

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

KAB:dws
Enclosure(s)

pc: Stockton Field Office
Kansas Water Office

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. 49,183** of the applicant

**THOMAS & KATHRYN TOLL
2453 10TH AVE
LINDSBORG KS 67456**

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 19, 2014**.

2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL		
			NE¼	NW¼	SW¼	SE¼															
25	17S	5W			20	20											34	40	6	4	124

3. That the authorized source from which the appropriation shall be made is surface water from the Smoky Hill River, to be diverted at one (1) pump site located in the Northwest Quarter of the Southeast Quarter of the Southeast Quarter (NW¼ SE¼ SE¼) of Section 25, more particularly described as being near a point 1,100 feet North and 1,200 feet West of the Southeast corner of said section, in Township 17 South, Range 5 West, McPherson 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 **1,000 gallons per minute (2.23 c.f.s.)** and to a quantity not to exceed **110 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, 2021** 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, 2025** 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 Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This 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 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.

16. That the stream flow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of this water right or permit.

17. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

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.

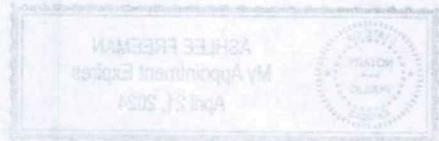
If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for hearing may be 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 19 day of May, 2020, I hereby certify that the foregoing Approval of Application, File No. 49,183, dated May 19, 2020 was mailed postage prepaid, first class, US mail to the following:

THOMAS & KATHRYN TOLL
2453 10TH AVE
LINDSBORG KS 67456



With photocopies to:

KANSAS WATER OFFICE
900 SW JACKSON ST STE 404
TOPEKA KS 66612

Stockton Field Office

Division of Water Resources