

File No. **1779** 11. County: **SH** Basin: **N F SMOKY HILL RIVER** Stream: **NA** Formation Code: **211** Special Use: **NA**

12. Points of Diversion
 CHK
 MOD
 DEL PDIV
 ENT
 Qualifier S T R ID 'N 'W Comment (AKA Line) Rate gpm/cfs Quantity af/mgy Additional Rate gpm/cfs Quantity af/mgy Overlap PD Files

MOD 8259 SW SE NE REC USE NONE

MOD 11728 SE SW NE REC USE NONE

BLANKET Q & R 1200 gpm 173.46 MGY (532.34 AF) 1200 173.46 mgy

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

14. Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) **NONE NO CHANGE**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

15. 5YR Allocation: Allocation Type _____ Start Year _____ 5 YR Amount _____ Amount Unit _____ Base Acres _____ Comment _____

| 16. Place of Use CHK MOD DEL ENT | PUSE | S | T | R | ID | NE¼ | | | | NW¼ | | | | SW¼ | | | | SE¼ | | | | Total | Owner | Chg? | Overlap Files | | | | |
|--|--------------------|---|---|---|----|---|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|-------|-------|-----------|---------------|-------------|-----------|-----------|-------------------------|
| | | | | | | 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 | | | | | | | | |
| ENT 3025 | 14 10 40W 1 | | | | | SMOKY GARDENS LAKE and adjacent areas (NW) (WR RESERVED FROM PU) | | | | | | | | | | | | | | | | | | | | | 8c | NO | 16372 39279 |
| ENT 35169 | 16 10 40W 1 | | | | | SHERMAN COUNTY STATE LAKE | | | | | | | | | | | | | | | | | | | | | 8b | NO | 16372 9382 |
| DEL 26041 | 10 10 40W 1 | | | | | 38.0 | 38.0 | 38.0 | 38.0 | 15.0 | | | | 15.0 | 38.0 | 39.0 | | | 35.0 | 40.0 | | | 334.0 | 8b | NO | NONE | | | |
| ENT 715963 | 10 40W | | | | | (SW) WETLANDS | | | | | | | | | | | | | | | | | | | | | 8b | NO | 16372 |
| ENT 715929 | 10 40W | | | | | (NE) & (S/2) WETLANDS | | | | | | | | | | | | | | | | | | | | | 8b | NO | 16372 |
| ENT 71593 | 10 10 40W | | | | | ALL WETLANDS | | | | | | | | | | | | | | | | | | | | | 8b | NO | 16372 & 7781 |
| ENT 71594 | 15 10 40W | | | | | WETLANDS | | | | | | | | | | | | | | | | | | | | | 8b | NO | 16372 |
| ENT 71595 | 16 10 40W | | | | | WETLANDS | | | | | | | | | | | | | | | | | | | | | 8b | NO | 16372 |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Base Acres: Year: Minimum Reasonable Quantity:
 Comments: **LEMA 5 YEAR ALLOCATION 798.29 AF**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: November 1, 2023

FROM: Leslie Ireland

RE: Water Right, File Nos. 1779 & 16,372

Brain Serpan on behalf of Kansas Department of Wildlife & Parks, as owner of the referenced groundwater rights, filed applications on March 2, 2023, for approval to change the place of use and the use made of water the referenced files located in North Fork Smoky Hill River Basin, Sherman County. They are located in Groundwater Management District No. 4 (GMD 4) and Local Enhanced Management Area (LEMA) area since 2018.

The referenced water rights comply with K.S.A. 82a-718 and K.S.A. 82a-732. The nearby notification completed on October 24, 2023, resulted in no comments of any kind. It appears the requirements of K.S.A 82a-1906 have been met. The applications appear to comply with K.A.R. 5-5-2a, *Complete change application*.

The proposed changes are to provide supplemental reservoir water and for development of marsh wildlife habitat on public land.

File No. 1779 is authorized for irrigation use to divert a blanket assigned 607 acre-feet (AF) at 1,215 gallons per minute (gpm) from two(2) wells located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 10, Range 40 West, (10-10-40W) Sherman County. The place of use is 334 irrigated acres in the Northeast Quarter (NE $\frac{1}{4}$) and North Half of the South Half (N $\frac{1}{2}$ S $\frac{1}{2}$) of 10-10-40W. It has no overlap in the point of diversion or place of use and is applicant owned. The LEMA allocation is 16.1 inches per acre they have 119 verified acres with a 5 year allocation of 798.29 AF. It appears the file is in compliance with the LEMA allocation.

File No. 16,372 is authorized for irrigation use to divert 188 AF at 355 gpm from a well located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, Township 10, Range 40 West, (9-10-40W) Sherman County The place of use is 240 acres in the Northeast Quarter (NE $\frac{1}{4}$) and the North Half of the Southeast Quarter (NE $\frac{1}{4}$ (N $\frac{1}{2}$ S $\frac{1}{2}$) of 9-10-40W, Sherman County. It has no overlap in the point of diversion or place of use and applicant owned. The LEMA allocation is 16.1 inches per acre, they have 120 verified acres with a 5 year allocation of 805.0 AF. It appears the file is in compliance with the LEMA allocation.

The proposed changes in use made of water is to all recreational use, per K.A.R. 5-5-9, *Criteria for the approval of an application for change in use made of water from irrigation to any other type of beneficial use of water*, the 87.7% consumptive use factor for Sherman County.

File No. 1779 : 607 AF x 87.7 % CU Sherman Co = 532.34 acre-feet or 173.46 mgy

File No. 16,372 : 188 AF x 87.7 % CU Sherman Co = 164.88 acre-feet or 53.73 mgy

The total quantities would afford a combined total of 697.2 AF (227.19 million gallons per year (mgy)) for the proposed recreational use from the three (3) wells authorized.

K.A.R. 5-6-3 *Potential net evaporation*, as indirect use for this area located in 10-40W, Sherman County is 41 inches per year or approximately 3.4 inches per month. The evaporative portion of the proposed place of use would be marsh habitat and two(2) existing reservoirs.

The filling and maintaining of marsh habitats as wetlands currently authorized by File No. 9382, below the dam and a partial overlap with the place of use under File No. 1781, that is a surface water diversion for irrigation, along with two(2) existing reservoirs. The most eastern reservoir being the Smoky Gardens Lake, located in the Northwest Quarter (NW¹/₄) of 14-10-40W under File No. 39,279 (77 AF, NF) is owned by the Sherman County Commission. A quit claim by the Commission was submitted with the application. The second reservoir being the Sherman State Fishing Lake is located in the Northeast Quarter (NE¹/₄) of 16-10-40W under File No. 9,382, it is authorized 1,500 AF at 1,800 GPM limited to 1,800 GPM for 1,500 AF/YR direct use with a maximum of 2,251AF of storage, and is owned by the applicant.

The approximate surface acres of the reservoirs is 5 acres at the main pond of Smoky Gardens and 155 acres behind the dam at the Sherman Fishing Lake. The area for proposed marsh habitat would be within the approximate 1,800 acre property. As determined by K.A.R. 5-6-7, *Determination of average annual potential net evaporative loss per year to be:*

$$\begin{aligned} (5 \text{ surface acres} \times 41 \text{ inches}) / 12 \text{ inches per foot} &= 205 \text{ AF evaporation} \\ (155 \text{ surface acres} \times 41 \text{ inches}) / 12 \text{ inches per foot} &= 529.6 \text{ AF evaporation} \end{aligned}$$

A total of approximately 734.6 AF of evaporation losses per year would be afford from the reservoir surfaces. Seepage as allowed by K.A.R. 5-6-8, *Determination of average annual seepage loss from a reservoir*, was not requested. The design and development of the marsh habitat has not been detailed at this time but is requested to be located within the State owned property. The transmittal letter will inform the owner to contact our Structures Division should they plan to construct any levees or modify any existing beds or banks of the streams in the area. It appears there is justification for the proposed quantity to be authorized for recreation use. As the quantity will be metered and the proposed new use is reasonable and justified it should not significantly increase the consumptive use per K.A.R. 5-3-5, *Change in consumptive use*.

The place of use will be described as shown on the map to authorize:

wildlife marsh wetlands located in the Southwest Quarter (SW¹/₄) of Section 3, the Northeast Quarter (NE¹/₄) and South Half (S¹/₂) of Section 9, Section 10, portions of Section 15 and portions of Section 16, the Sherman State Fishing Lake and the Smoky Gardens Lake, all in Township 10 South, Range 40 West, Sherman County, Kansas.

Shannon Kenyon, Manager of Northwest Groundwater Management District No. 4, in a letter dated October 30, 2023, indicated the District recommended approval of the applications, provided K.A.R. 5-5-9 is followed with no significant increase in consumptive use.

Mark Billinger, Assistant Water Commissioner, Stockton Field Office recommended approval of the referenced applications in his e-mail dated October 31, 2023.

Water flowmeters will be required and check valve if any chemical modification is made to the diverted water under each of the referenced files. The order will include the requirement to comply with the LEMA.

Based on the above discussion, that the changes are reasonable, impairment to existing water rights is unlikely, that no change in the local source of supply will occur, and that consumptive use will not be increased by this change, it is recommended that the referenced applications be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

To: Billinger, Mark [KDA]
Cc: Stewart, Kelly [KDA]
Subject: RE: Review and Recommendation Changes in UMW & PU File Nos. 1779 & 16,372

From: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Sent: Tuesday, October 31, 2023 2:48 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Subject: RE: Review and Recommendation Changes in UMW & PU File Nos. 1779 & 16,372

Leslie,

Just a couple minor proposed edits.

Since the LEMA is subject to change every 5 years, maybe keep the reference in but change it to the 2023 through 2027 LEMA. The LEMA is more restrictive so I like that you put it in the memo. Only thing I noticed was you referenced the 5 year lema then a 4 year period in the next sentence, so maybe change the 4 year to 5 year in that language.

Other than that I think you covered everything quite well. The place of use is broad based for future proposed wetland developments but you did include language to direct them to contact structure's for permitting if they decide to develop any. With that said, there is ample place of use between the Smoky Gardens and the State Fishing Lake to justify the full conversion.

With that said, I recommend that the applications be approved.

Thanks!

Mark Billinger
Assistant Water Commissioner
Division of Water Resources
Stockton Field Office
820 S Walnut
785-425-6787

From: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Sent: Tuesday, October 31, 2023 11:52 AM
To: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: RE: Review and Recommendation Changes in UMW & PU File Nos. 1779 & 16,372

Mark,

Would you review these and make the appropriate recommendations please? Thanks.

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>

Sent: Tuesday, October 31, 2023 11:29 AM

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

Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>

Subject: Review and Recommendation Changes in UMW & PU File Nos. 1779 & 16,372

Kelly,

Please let me know if you find the PU description adequate and if you would recommend the proposed changes for approval.

As always comments and concerns are welcome

Leslie Ireland
Environmental Scientist
Change Application Unit
Division of Water Resources



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
FOR
CHANGE IN USE MADE OF WATER, PLACE OF USE
AND
ORDER IN THE MATTER OF THE AUTHORIZED QUANTITY
WATER RIGHT, FILE NO. 1779**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Brian Serpan, on behalf of the Kansas Department of Wildlife and Parks, 512 SE 25th Avenue, Pratt, Kansas 67124, received in this office on March 2, 2023, for approval of a change in the location of the use made of water and place of use under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, as modified and amended by the by the Findings and Order of the Chief Engineer dated August 24, 1979, in the matter of the location of the authorized points of diversion, finds that the change is reasonable and will not impair existing rights, and that the application should be and is hereby approved.

This order effectively reduces the authorized quantity to 173.46 million gallons (532.34 acre-feet) of water per calendar year in accordance with the Application for Approval to Change the Use Made of Water and Place of Use received in this office on March 2, 2023.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the authorized use shall be:

Recreational Use,

the authorized place of use shall be:

wetlands located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 3, the Northeast Quarter (NE $\frac{1}{4}$) and South Half (S $\frac{1}{2}$) of Section 9, all of Section 10, Smoky Gardens Lake and adjacent areas in the Northwest (NW $\frac{1}{4}$) of Section 14, Sherman State Fishing Lake and other portions of Section 15 and Section 16,

all in Township 10 South, Range 40 West, Sherman County, Kansas,

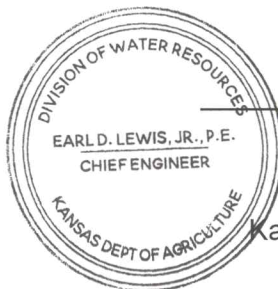
located substantially as shown on the topographic map accompanying the application to change the use made of water and place of use.

All diversion works 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.

The water right owner shall properly install an acceptable water meter on the diversion works authorized under this water right for each approved use of water, prior to the use of water, in strict accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The water right owner shall notify the Chief Engineer when installation of the water meter has been completed. The water right owner shall maintain the water meter in an operating condition satisfactory to the Chief Engineer, at all times during diversion of water and shall maintain records from which the total quantity of water diverted may be determined. The water right owner shall also report the reading of said water meter and the total quantity of water diverted annually to the Chief Engineer. Such records shall be furnished to the Chief Engineer by March 1 following the end of each calendar year.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 1779, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated June 3, 1959, as modified and amended by the aforementioned order.

Ordered this 21st day of November, 2023, 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 21st day of November, 2023, 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

November 29, 2023

BRIAN SERPAN
KANSAS DEPT OF WILDLIFE & PARKS
512 SE 25TH AVE
PRATT KS 67124

RE: Water Right
File Nos. 1,779 and 16,372

Dear Mr. Serpan:

Enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the referenced file numbers. Since these orders modify the original certificates of appropriation for the above referenced file numbers, they should be recorded with the Register of Deeds as other instruments affecting real estate.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approval for changes. A condition of each approval is that an acceptable water flowmeter must be installed on the diversion works. Please be reminded that the referenced files are located within a Local Enhancement Management Area (LEMA) and the quantity authorized may be subject to an additional allocation limitation.

The approvals do not give the authority to construct any levee, dam or other stream obstruction regulated by K.S.A 24-126 and 82a-301 through 305a. Please review the online information at agriculture.ks.gov/dwr, or contact our Water Structures Program at 785-564-6654.

If you have any questions, please contact our office at 785-564-6640, or our staff at the Stockton Field Office, 785-425-6787. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

A handwritten signature in blue ink that reads "Kristen A. Baum". The signature is fluid and cursive.

Kristen A. Baum
New Application and Change Unit Supervisor
Water Appropriation Program

KAB:kak:li
Enclosures

pc: Stockton Field Office
Northwest Kansas GMD No. 4

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 29 day of November, 2023, I hereby certify that the foregoing Approval of Applications for Change under Water Right, File Nos. 1779 & 16,372, dated November 21, 2023, were mailed postage prepaid, first class, US mail to the following:

BRIAN SERPAN
KANSAS DEPT OF WILDLIFE & PARKS
512 SE 25TH AVE
PRATT KS 67124

With photocopies to:

KDA-DWR Stockton Field Office

Northwest Kansas GMD No. 4



Division of Water Resources