





**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** October 12, 2021

**FROM:** Brandon Milner

**RE:** Application, File No. 50,545

AJ Simonetta has filed the above-referenced application requesting to appropriate 26 acre-feet of surface water by direct diversion at a diversion rate of 1,200 gallons per minute, from three pumpsites on Lyon Creek (Smoky Hill River Basin), located in the Northeast Quarter of Section 31, Township 16 South, Range 4 East, Dickinson County. The application has been signed by the applicant stating they have access to the point of diversion.

The requested quantity of 26 acre-feet appears to be reasonable for indirect use, based on the following information. The marsh area surface area at normal pool storage elevation is 8 acres at a depth of 1.5 feet to get a storage volume is 12 acre-feet. The additional 10 acre-feet will be from evaporation and seepage from the marsh area during the nine month period of non-use. Potential net evaporation in inches, based on K.A.R. 5-6-3, is 19 inches; therefore the natural evaporation can be estimated as follows.

**8 surface acres**

~~12 acre-feet~~ X 19 Inches/12 X 0.75=9.5 acre-feet annual evaporation. However, this marsh will only be used for 75% of a year, therefore evaporation should only be considered during the time of use.

In total 12 Acre-feet (initial fill) +9.5 acre-feet (evaporation) +4.5 acre-feet (seepage)=26 acre feet

The berms for this marsh does not require a structural permit Letters were sent out to nearby landowners on September 27<sup>th</sup>, 2021 with no responses to date.

There are no surface water rights within two miles of the points of diversion for this application.

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.

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 October 14, 2021 email, Katie Tietsort, Water Commissioner, Topeka Field Office, recommended approval of the referenced application.

Based on the above discussion with this new application there is no indication that the proposed beneficial use of water will impair existing water rights, it is recommended that the referenced application be approved.

11/22/2021  
KJN

Memorandum  
Application, File No. 50,545  
Page 2

Brandon Milner  
Environmental Scientist  
Manhattan Headquarters

**From:** Tietsort, Katie [KDA]  
**Sent:** Thu 10/14/2021 12:58 PM  
**To:** Milner, Brandon [KDA]  
**Subject:** RE: 50545 Memo

&#128522;

It is good to move forward for approval. Thanks!

## Katie Tietsort

Water Commissioner

[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)  
Ph. 785-296-5733 Cell 785-213-9188  
Kansas Department of Agriculture  
Topeka Field Office  
1131 SW Winding Rd, Suite 400  
Topeka, KS 66615

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**From:** Milner, Brandon [KDA] <[Brandon.M.Milner@ks.gov](mailto:Brandon.M.Milner@ks.gov)>  
**Sent:** Thursday, October 14, 2021 11:48 AM  
**To:** Tietsort, Katie [KDA] <[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)>  
**Subject:** RE: 50545 Memo

Yes I think that is roughly what I'm saying. I did not have a good estimate on seepage for this application. Thank you!

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**From:** Tietsort, Katie [KDA] <[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)>  
**Sent:** Thursday, October 14, 2021 10:39 AM  
**To:** Milner, Brandon [KDA] <[Brandon.M.Milner@ks.gov](mailto:Brandon.M.Milner@ks.gov)>  
**Subject:** RE: 50545 Memo

Hello,

So the application was modified to 8 S.A. X 1.5' (one fill) = 12 AF  
8 SA X 19" PNET / 12 / .75 = 9.5 AF + 4.5 AF seepage for a total of 26 AF.

Is this what you are saying?  
If so, I am good with it.  
Katie

## Katie Tietsort

Water Commissioner

[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)  
Ph. 785-296-5733 Cell 785-213-9188  
Kansas Department of Agriculture  
Topeka Field Office  
1131 SW Winding Rd, Suite 400  
Topeka, KS 66615

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**From:** Milner, Brandon [KDA] <[Brandon.M.Milner@ks.gov](mailto:Brandon.M.Milner@ks.gov)>  
**Sent:** Wednesday, October 13, 2021 9:43 AM

**To:** Tietsort, Katie [KDA] <[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)>

**Subject:** 50545 Memo

Good morning Katie,

Attached is the memo for application no. 50,545 for AJ Simonetta for a duck marsh in Dickinson County. He is requesting 26 acre-feet per year broken down as follows:

8 Acres Surface area X 1.5' depth for 12 Acre Feet.

Evaporation is 12 acre-feet X 19 Inches/12 = 19 acre-feet per year. This would leave 14 acre-feet of evaporation for the marsh per year. I believe this is sufficient for a year since the marsh will most likely only be used up to half of the year at most.

Sorry for all the rambling on this one but could you please provide a recommendation? Thanks!

Brandon Milner  
Environmental Scientist  
Water Appropriation Program

# 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. 50,545** of the applicant

**A J SIMONETTA  
637 S POKEBERRY PL  
SAINT JOHNS, FL 32259**

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 **March 19, 2021**.

2. That the water sought to be appropriated shall be used for recreational use at a marsh located in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 31, in Township 16 South, Range 4 East, Dickinson County, Kansas.

3. That the authorized source from which the appropriation shall be made is surface water from Lyon Creek (Smoky Hill River), to be withdrawn by means of three (3) pump sites located as follows:

one pumpsite located in the Northwest Quarter of the Southeast Quarter of the Northeast Quarter (NW $\frac{1}{4}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 31, more particularly described as being near a point 3,813 feet North and 742 feet West of the Southeast corner of said section, in Township 16 South, Range 4 East, Dickinson County, Kansas,

one pumpsite located in the Northeast Quarter of the Southeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 31, more particularly described as being near a point 3,399 feet North and 552 feet West of the Southeast corner of said section, in Township 16 South, Range 4 East, Dickinson County, Kansas,

one pumpsite located in the Southwest Quarter of the Southeast Quarter of the Northeast Quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 31, more particularly described as being near a point 3,080 feet North and 813 feet West of the Southeast corner of said section, in Township 16 South, Range 4 East, Dickinson County, Kansas, located substantially as shown on the map accompanying the application.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **1,200 gallons per minute (2.67 c.f.s.)** and to a quantity not to exceed **26 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, 2023**, 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.

6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2027**, 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, which is currently \$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.



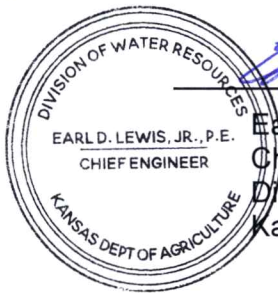
17. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

18. 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.

19. That during the period October 1 through June 30, the verbal or written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, shall be obtained in order to divert water each time the applicant desires to divert water.

20. That during the period July 1 through September 30 each calendar year, no direct diversions of surface water shall be permitted unless written permission is obtained from the Chief Engineer, or the Chief Engineer's authorized representative.

Ordered this *23<sup>rd</sup>* day of *November*, 2021, in Manhattan, Riley County, Kansas.



*Earl D. Lewis Jr.*  
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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 *23* day of *November*, 2021, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

*Ashlee Freeman*  
\_\_\_\_\_  
Notary Public



1320 Research Park Drive  
Manhattan, KS 66502  
785-564-6700  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)



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

Mike Beam, Secretary

Laura Kelly, Governor

A J SIMONETTA  
637 S POKEBERRY PL  
SAINT JOHNS, FL 32259

December 20, 2021

RE: Appropriation of Water, File No. 50,545

Dear Mr. Simonetta:

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.kswateruserreport.org](http://www.kswateruserreport.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](http://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 Topeka Field Office at 785-296-5733. 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: bmm  
Enclosure(s)  
pc: Topeka 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:

- 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.

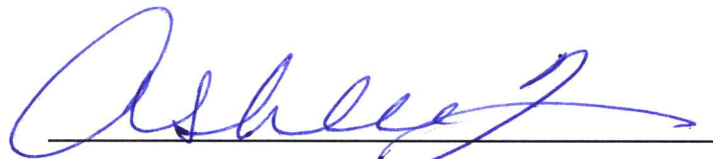
## CERTIFICATE OF SERVICE

On this 20 day of December, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,545, dated 23 November, 2021, was mailed postage prepaid, first class, US mail to the following:

A J SIMONETTA  
637 S POKEBERRY PL  
SAINT JOHNS, FL 32259

With photocopies to:

Topeka Field Office



Division of Water Resources