

Kansas Department of Agriculture
Division of Water Resources
PERMIT OF NEW APPLICATION WORKSHEET

1. File Number: <p style="text-align: center; font-size: 1.2em;">50,320</p>	2. Status Change Date: <p style="text-align: center; font-size: 1.2em; color: purple;">6/12/2020</p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;">1</p>	4. GMD:
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5. Status: Approved Denied by DWR/GMD Dismiss by Request/Failure to Return

6. Enclosures: Check Valve N of C Form Water Tube Driller Copy Meter

7a. Applicant(s) Person ID **65807**
 New to system Add Seq# _____

CHRISTOPHER & SHAYLA BROWN PROPERTY LLC
6948 W 1700 S
WANATAH, IN 46390

7c. Landowner(s) Person ID **40492**
SEQ 9

USDA NATURAL RESOURCES CONS SER
760 S BROADWAY
SALINA, KS 67401-4604

7b. Landowner(s) Person ID _____
 New to system Add Seq# _____

7a

7d.

8. WUR Correspondent Person ID _____
 New to system Add Seq# _____
 Overlap File (s) WUC Notarized WUC Form
 Agree Yes No

7a

9. Use of Water: Changing? Yes No
 Groundwater Surface Water
 IRR REC DEW MUN
 STK SED DOM CON
 HYD DRG WTR PWR ART RECHRG
 IND SIC: _____ OTHER: _____

10. Completion Date: 12/31/2021 11. Perfection Date: 12/31/2025 12. Exp Date: _____

13. Conservation Plan Required? Yes No Date Required: _____ Date Approved: _____ Date to Comply: _____

14. Water Level Measuring Device? Yes No Date to Comply: _____ Date WLMD Installed: _____

Date Prepared: **4/16/2020** By: **KJN**
 Date Entered: 6/16/2020
LMoody By:

File No. **50,320** 15. Formation Code: Drainage Basin: **Neosho River** County: **LY** Special Use: Stream: **Neosho River Trib 20**

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
	MOD				87748 SE SE NW	31	19S	13E	5	2663	3144	5000	79.61	5000	79.61	none

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

19. Limitation: ~~79.61~~ af/yr at _____ gpm (_____ cfs) when combined with file number(s) ~~45852~~ 6/16/2020
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) KAB

20. Meter Required? **x Yes** No To be installed by **12/31/2021** Date Acceptable Meter Installed _____

21. Place of Use						NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
T	MOD	DEL	ENT	PUSE	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				56224 31 19S 13E 1	WETLANDS RESERVOIR (SW NW) & (SW)																	7a, 7b	no	45852

Comments:

Structures Permit LLY-0055*

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: April 14, 2020

FROM: Kris Neuhauser

RE: Application, File No. 50,320

Christopher and Shayla Brown Properties LLC has filed the above referenced application requesting to appropriate 79.61 acre-feet of surface water by direct diversion at a diversion rate of 5,000 gallons per minute for recreational purposes to fill and maintain a marsh. The pump-site is located in the Northwest Quarter of Section 31, Township 19 South, Range 13 East, Lyon County Kansas (Neosho River Tributary 20). This application will overlap in place of use with Water Right, File No. 45,582 which authorizes the collection of natural flows in this marsh. The application has been signed by the applicant stating they have access to the point of diversion (owns the property).

Water Right, File No. 48,326 also overlaps in authorized place of use, but will be dismissed due to failure to perfect. From advice of DWR, the applicant submitted a properly signed and notarized voluntary dismissal on February 12, 2020. The dismissal was worked up by Environmental Scientist, Ty Vaughan, and is currently awaiting signature.

The purpose of this application is to provide an additional source of water for times when natural runoff may not be available. The requested quantity is based on the storage capacity of the marsh area. ~~The quantity requested will be limited to 79.61 acre-feet when combined with Water Right, File No. 45,582.~~ **We can consider the Q all additional. This would give them 2 fills which is typical for these marshes and considered reasonable.**

6/16/2020
KAB

The place of use is a marsh (to be used for hunting waterfowl) located in the Southwest Quarter and Northwester Quarter of Section 31, Township 19 South, Range 13 East, Lyon County, Kansas. The 79.61 acre-feet quantity was determined from the existing recreational use supplemental sheet submitted for Water Right, File No. 45,582. This shows the capacity at normal pool of the marsh, broken down into two "sites". Site 1 holds 40.40 acre-feet and Site 2 holds 39.21 acre-feet, giving a total of 79.61 acre-feet for the entire marsh area.

Typically, these types of marshes are filled in October prior to waterfowl migration. A DWR Structures permit has already been obtained for the levees that create this project: LLY-0055.

In talks with Lynn Thurlow, it was confirmed that the applicant submitted an application for a Compatible Use Agreement for water level management to the National Resources Conservation Service (NRCS) for pumping water onto a Wetlands Reserve Program easement area, which was approved on January 6, 2020.

Three landowners within one half mile upstream and downstream of the proposed point of diversion were notified via letter; mailed on March 12, 2020. No responses of any kind were received.

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.

The applicant has submitted a signed Minimum Desirable Streamflow form, 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.

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 phone conversation on April 15, 2020, Katie Tietsort, Water Commissioner of the Topeka Field Office, recommended approval of the referenced application.

Based on the above discussion, 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

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

CHRISTOPHER & SHAYLA BROWN PROPERTY LLC
6948 W 1700 S
WANATAH, IN 46390

RE: Appropriation of Water, File No. 50,320

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 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 Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

New Application Unit Supervisor
Water Appropriation Program

KAB: kjn
Enclosures

pc: Topeka Field Office
USDA Natural Resources Cons Ser

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. 50,320** of the applicant

CHRISTOPHER & SHAYLA BROWN PROPERTY LLC
6948 W 1700 S
WANATAH, IN 46390

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 **December 4, 2019**.
2. That the water sought to be appropriated shall be used for recreational use in a waterfowl marsh located in the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) and Southwest (SW $\frac{1}{4}$) Quarter of Section 31, in Township 19 South, Range 13 East, Lyon County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from an unnamed tributary to the Neosho River, designated in the office of the Chief Engineer as Neosho River Trib 20 (Neosho) to be diverted at one (1) pumpsite located in the Southeast Quarter of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 31, more particularly described as being near a point 2,663 feet North and 3,144 feet West of the Southeast corner of said section, in Township 19 South, Range 13 East, Lyon County, Kansas.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **5,000 gallons per minute (13.38 c.f.s.)** and to a quantity not to exceed **79.61 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.
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 12 day of June, 2020, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

Lane P. Letourneau, P.G.
Program Manager
Water Appropriation Program
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 12 day of June, 2020, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman
Notary Public

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

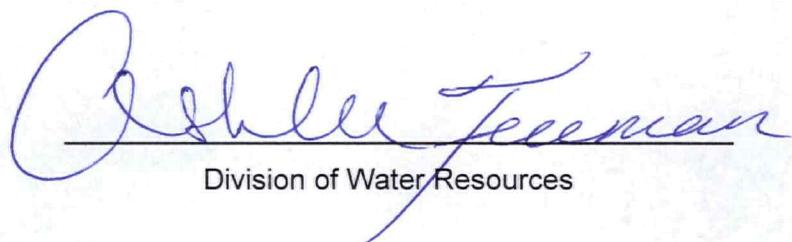
On this 12 day of June, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,320, dated 12 June 2020 was mailed postage prepaid, first class, US mail to the following:

CHRISTOPHER & SHAYLA BROWN PROPERTY LLC
6948 W 1700 S
WANATAH, IN 46390

With photocopies to:

USDA NATURAL RESOURCES CONS SER
760 S BROADWAY
SALINA, KS 67401-4604

Topeka Field Office


Division of Water Resources