

Kansas Department of Agriculture
 Division of Water Resources
CHANGE: PU WORKSHEET

1. File Number: 50434	2. Status Change Date: 12/1/2022	3. Change Num: C2 1	4. Field Office: 2 1	5. GMD: 5
6. Status: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return				7. Filing Date of Change: 4/4/2022
8a. Applicant(s) New to system <input type="checkbox"/> SCOTT CUTHBERTSON 649 W 590TH AVE GIRARD, KS 66743		Person ID 67398 Add Seq# 1	8c. Landowner(s) New to system <input type="checkbox"/> 8/27/2021	
8b. Landowner(s) New to system <input type="checkbox"/> SCOTT & JULIE CUTHBERTSON 649 W 590TH AVE GIRARD, KS 66743 NAME CHANGE		Person ID 67398 Add Seq# 1	8d. WUC New to system <input type="checkbox"/> 8b	
9. Documents and Enclosure(s): <input type="checkbox"/> DWR Meter(s) Date to Comply: _____ <input type="checkbox"/> N & P Date to Comply: _____ <input type="checkbox"/> Anti-Reverse Meter <input type="checkbox"/> Meter Seal <input type="checkbox"/> Check Valve <input type="checkbox"/> N & P Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input type="checkbox"/> H & E Letter <input type="checkbox"/> Conservation Plan Date Required: _____ Date Approved: _____ Date to Comply: _____				
10. Use Made of Water From: _____ To: _____				
Date Prepared: 11/8/22 By: LI Date Entered: 12/2/2022 By: LMoody				

EKF 1/11/23

File **50434** 11. County: **NO** Basin: **NEOSHO RIVER** Stream: **BROGAN CREEK TRIB 2** Formation Code: **NA** Special Use: **NA**

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

NO CHANGE

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				
MOD 70093 28 29 21E 1	WILDLIFE MARSH (SW) 105 ACRES																	8b	NO	NONE
	& POND																			

Base Acres: Year: Minimum Reasonable Quantity:
 Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
M E M O R A N D U M

TO: Files

DATE: November 8, 2022

FROM: Leslie Ireland

RE: Appropriation of Water,
File No. 50,434

Scott and Julie Cuthbertson on behalf of the Cuthbertson Revocable Trust have filed an application to change the place of use authorized for recreational use in the Neosho River Basin, Neosho County. The application was received on August 27, 2021. The change is to add a pond that was partially authorized by the original permit issued in

The referenced file number does not appear to be abandoned as per K.S.A. 82a-718. It is still pending the notice of completion due December 2022. The application appears to be complete per K.A.R. 5-5-2a, and K.A.R. 5-6-1, *Application proposing storage, contents*. Notice per K.S.A.82a-1906 of nearby landowners was completed July 26, 2022.

File No. 50,434 is authorized to capture and store 279 acre-feet of surface water from natural flows of Brogan Creek Trib 2 within the Neosho River basin, for recreational use in a wildlife marsh comprised of multiple cells with five control structures and several berms. Structures File No. LNO-0163 permit has been issued for the structures. The surface water is collected via natural flows flood events in the drainage area. It is not permitted for surface water diversion from the Neosho or the East-West tributary stream along the Southside. The marsh is located in the Southwest Quarter of Section 28, Township 29 South, Range 21 East, in Neosho County, Kansas. The point of diversion represents the control structure located at the point where the North-South tributary stream leaves the applicant's property. The marsh is located East of the Neosho State Waterfowl Management Area. There are no overlaps in point of diversion or place of use.

The currently authorized surface area of the marsh and a portion of the pond covers 98 acres. Filled to a depth of 2.5 feet would equal 245 acre-feet (AF). One year of normal evaporation in this area is 4" per K.A.R. 5-6-3. *Potential net evaporation* and the 98 acres x 4" ÷ 12 = 34 AF, bringing the annual total water quantity to 279 AF, as authorized. The proposed expansion of the place of use is to authorize a pond with a surface area of 9.5 acres to authorize a total of 105 acres of surface water in a marsh and pond. The pond would have an annual evaporation of 9.5 A x 4" ÷ 12 = 3.17 AF, but as a portion was initially considered an increase of approximately 2.3 AF is the estimated increase in annual evaporation. As marsh habitat is filled and drained due to mosquito the total annual evaporation in a marsh is usually not reached, whereas pond evaporation should be equated as 3.17 AF. The application indicated the marsh cells would have an average depth of 1.4 AF equating to 137.2 AF with the pond evaporation, 3.17 and approximately 6 months of marsh evaporation, 17 AF indicated approximately 157.37 AF per year. The depth of the pond was not indicated so it will be afforded a maximum of 15 AF, bringing the total quantity to 172 AF approximately 107 AF less than the authorized quantity.

The pond located at the North end of the marsh is existing was determined by Lloyd Hemphill, ES, Topeka Field Office to have a drainage area of 26 acres. This small drainage area with a soil complex of 79 and when rainfall is 42 inches per year the yield per K.A.R. 5-6-4. *Determination of potential annual runoff* would provide approximately 50 AF per year and appears reasonable to fill and be rediverted. The marsh cells permitted by the referenced file are the immediate downstream water use and the drainage area contains a small pond and outbuildings.

The permit issued in January 2021 appears to have sufficient quantity for the modification to the place of use.

The pond will allow water collection and storage for future released into the marsh cells providing makeup water for evaporation and seepage. The proposal further indicates the marsh is designed for redivision within cell water collected and pumped back to the pond. The proposed rediversion is considered to be non-consumptive and complies with K.A.R. 5-5-3, *Change in consumptive use*. The point of diversion for the whole marsh is at the southside just North of 80th Road. It will remain as

a wildlife marsh created by one (1) water control structure located in the Southeast Quarter of the Southwest Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 28, more particularly described as being near a point 47 feet North and 4,372 feet West of the Southeast corner of said section, in Township 29 South, Range 21 East, Neosho County, Kansas.

The notification of nearby owners resulted in a telephone call from Mr. Westhoff who asked general questions about the application. He was more concerned about the mosquito and loss of local interest in fishing, one might be related to the other. He also expressed concern about erosion so was asked to contact Andy Lyon, DOC (email 8/1/2022). He had no specific concerns about this project regarding impairment.

The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) confirmed the original permit there are no NRCS easements on this property. It would appear to be the same with the requested changes.

A flow meter will not be required as a condition of the approval. The applicant will be required to maintain records from which the amount of water actually diverted by marsh levels for static flow.

The Topeka Field Office was not contacted for a recommendation on the application for change.

Based on the above discussion, that the change is reasonable, that impairment to existing water rights is unlikely, that no change in the local source of supply will occur and that the normal precipitation will afford the marsh cells and pond some fill, it is recommended that the referenced application be approved.



Leslie Ireland
Environmental Scientist

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 PLACE OF USE
APPROPRIATION OF WATER
FILE NO. 50,434

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Scott and Julie Cuthbertson, 649 W 590th Avenue, Girard, Kansas 66743, received in this office on August 27, 2021, for approval of a change in the location of the place of use, under the Approval of Application, File No. 50,434, for permit to appropriate water for beneficial use, finds that the change is reasonable and will not impair existing rights, and that the application should be and is hereby approved.

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

wildlife marsh and pond up to 105 acres in surface area, located in the Southwest Quarter (SW 1/4) of Section 28, Township 29 South, Range 21 East, Neosho County, Kansas.

located substantially as shown on the map accompanying the application to change the place of use.

In all other respects, the Approval of Application, File No. 50,434, for permit to appropriate water for beneficial use, is as stated and set forth in the approval dated January 15, 2021.

Ordered this 15th day of December, 2022, in Manhattan, Riley County, Kansas.

[Handwritten signature of Lane P. Letourneau]

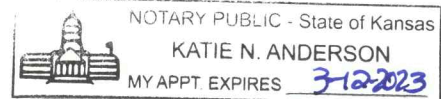
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
)
County of Riley) SS

The foregoing instrument was acknowledged before me this 15th day of December, 2022, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.

[Handwritten signature of Katie N. Anderson]

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

December 5, 2022

SCOTT CUTHBERTSON
649 W 590TH AVE
GIRARD, KS 66743

RE: Appropriation of Water, File No. 50,434

Dear Mr. Cuthbertson:

Enclosed is the order executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the application for change under the referenced file.

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.

If you have any questions, please contact our office at 785-564-6640. If you wish to discuss this specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

A handwritten signature in cursive script that reads "Kristen A. Baum".

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB:LI:li

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, KS 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, KS 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.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Fax: (785) 564 - 6777.

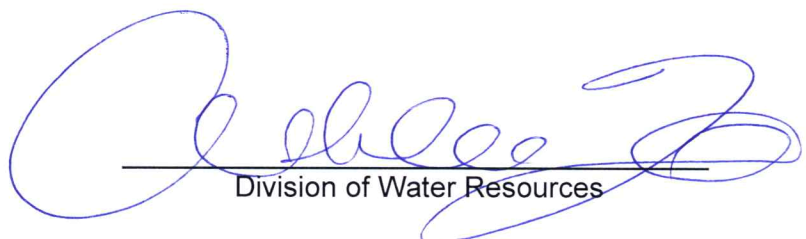
CERTIFICATE OF SERVICE

On this 5 day of December, 2022, I hereby certify that the foregoing Approval of Application for Change in Place of Use, File No. 50,434, dated 1 December 2022 was mailed postage prepaid, first class, US mail to the following:

SCOTT CUTHBERTSON
649 W 590TH AVE
GIRARD, KS 66743

With photocopies to:

Topeka Field Office


Division of Water Resources