

File No. **50,508A** 15. Formation Code: Drainage Basin: SF Big Nemaha River County: ~~JA~~ **NM** Special Use: Stream: DEER CREEK TRIB 2A (SF BIG NEMAHA)

16. Points of Diversion											
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	
√				88566	SW SE NW	30	1	14E	4	3000	3950

17. Rate and Quantity				
Authorized		Additional		
Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
1200	250	1200	250	NONE

18. Storage: Rate **NF** _____ Quantity **250** ac/ft Additional Rate **NF** _____ Additional Quantity **250** 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 **12/31/2023** Date Acceptable Meter Installed _____

21. Place of Use										Total	Owner	Chg? yes	Overlap Files														
MOD	DEL	ENT	PUSE	S	T	R	ID	NE¼						NW¼				SW¼				SE¼					
								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			70241	30	1S	14E	1			40		40			32					40	40	40	40	272	7a.	No	NONE *
MOD			70242	30	1S	14E	2						40	38		1.2							79.2	7b.	No	NONE *	

* Does not overlap #50716

Comments

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

TO: Files

DATE: March 10, 2022

FROM: Lloyd Hemphill

RE: Application, File No. 50,508A

Kyle and Peggy Strahm have filed the application referred to above for a permit to appropriate 250 acre-feet of surface water at the rate of natural flows to be stored in a proposed reservoir located in the Northwest Quarter of Section 30, in Township 1 South, Range 14 East, Nemaha County, Kansas. The dam is located on Deer Creek Trib 2A, within the South Fork Big Nemaha River basin. The point of diversion is located on property owned by the applicants and Kyle Strahm has signed the application stating he has legal access to the point of diversion. The place of use includes 351.2 acres, 272 acres owned by the applicants and 79.2 acres owned by Wayne and Linda Edelman. The proposed place of use was amended from 400 acres to 351.2 acres to eliminate a partial overlap with pending application, File No. 50,716. There are no other files that share this Point of Diversion or Place of Use.

Runoff computations were completed assuming a normal annual precipitation of 35 inches; soil complex number of 80; and 474 acres in the drainage basin. These calculations show that in 1 out of every five (5) years (a 20% chance), 553 acre-feet of runoff will be generated, so potential runoff is not a limiting factor. The direct use quantity requested is less than the maximum quantity considered reasonable to irrigate 351.2 acres in Nemaha County, per K.A.R. 5-3-24 (351.2 ac. X 1.1/ AF/ac. = 386 AF) and is reasonable. The proposed re-diversion rate of 1,200 gpm appears reasonable for the project.

The proposed reservoir was reviewed by DWR-Structures under DNM-387, was determined to classify as a Class A exempt dam, and was properly registered. Structures determined that a floodplain fill permit was required for this structure. An after the fact floodplain fill application (LNM-36) was received by DWR on February 15, 2022. The floodplain fill application and this water appropriation application will be approved together.

Notification letters were sent to three upstream and downstream landowners on November 24, 2021. Richard Meyer (downstream) responded with concerns by e-mail on January 8, 2022 and later phone calls. Mr. Meyer indicated that his family has watered cattle from the creek for over 50 years. They pasture a maximum of 30 cow-calf pairs, usually from April to September. He described the creek as being spring-fed and continuously flowing except for a few drought years. Mr. Meyer was concerned that the irrigation pond may capture spring flow that would have previously maintained flow in the creek during dry periods. He was also concerned that, during storm events, the pond might prevent runoff from reaching the creek. Both of these scenarios might decrease flow and cause pools to stagnate in his creek.

The drainage area above the downstream boundary of the Meyer property includes about 1,885 acres; with the stream made up of eastern, northern, and western branches. The eastern branch of the drainage area (where the irrigation pond is located) contains approximately 685 acres. The potential runoff from the eastern branch of the creek is estimated to be 800 acre-feet. The proposed irrigation pond has a storage capacity of about 107 acre-feet (13% of east branch runoff) and the total proposed annual storage is 250 acre-feet (31% of east branch runoff).

A site visit was made to the irrigation pond and the Meyers' farm on February 11, 2022. During this visit, the streamflow entering the Meyer's property (at S Road) was similar to the streamflow above the irrigation pond. This was despite the fact that the irrigation pond was filling and no water was discharging from the outlet. Additional sources of water were observed flowing from the northern and western branches of the creek. Based on the available information, it appears that the total drainage area should provide more runoff than will be stored in the pond and it does not appear that the proposed appropriation of water will cause impairment of any water rights. Mr. Meyer was advised that he is entitled to the use of natural flows of the stream and that he should contact the Topeka Field Office should his right be impaired.

There are three other surface water rights within a two-mile radius circle according to the WRIS database. All of these files are located on different tributary streams, and no senior files would be impaired with approval of this application.

As allowed by K.S.A. 82a-706(c) an approved water flow meter shall be installed on the secondary diversion works (pump site) for this file. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

Katie Tietsort, Water Commissioner, Topeka Field Office, recommended in a March 10, 2022 e-mail that the referenced new application should be approved. Based on the above discussion, that this area is open to new appropriations, the proposed appropriation of water is reasonable and justified, DWR Water Structures permit requirements will be met, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Lloyd Hemphill
Environmental Scientist
Topeka Field Office

Hemphill, Lloyd [KDA]

From: Tietsort, Katie [KDA]
Sent: Thursday, March 10, 2022 11:19 AM
To: Hemphill, Lloyd [KDA]
Cc: Bunger, Brett [KDA]
Subject: RE: Application, File No. 50508A: For Your Recommendation

Lloyd,

I am not opposed to moving this forward, but I don't see your slides in Docuware?

Katie Tietsort

Water Commissioner

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

From: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Sent: Thursday, March 10, 2022 11:11 AM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Subject: Application, File No. 50508A: For Your Recommendation

Katie,

Will you provide your recommendation on Pending Application, File No. 50508A (Kyle & Peggy Strahm).

This is a storage and re-diversion irrigation pond in Nemaha County. A downstream landowner raised some concerns that the proposed appropriation would impact his domestic water right (livestock watering). Investigation of these concerns showed that the irrigation pond will only capture a portion of the potential runoff and that there is significant drainage downstream of the irrigation pond that is available to the domestic user. It does not appear that impairment of the domestic water right is likely.

Approval of this application will be coordinated with the approval of a Floodplain Fill application.

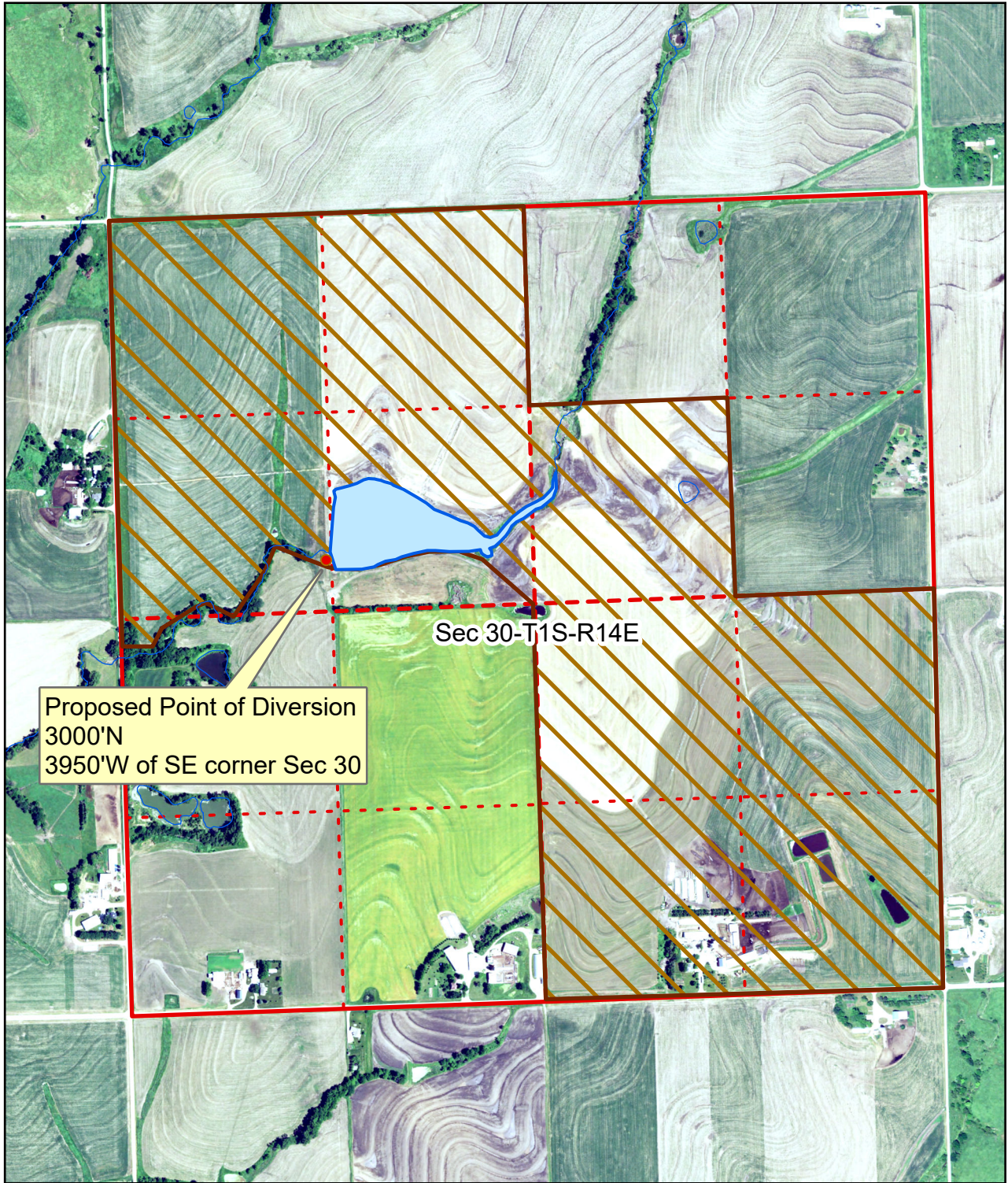
Thanks,

Lloyd

Lloyd Hemphill, Environmental Scientist
Kansas Department of Agriculture
Division of Water Resources, Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615
(785) 296-5733

NOTE NEW ADDRESS

NEW APPLICATION, FILE NO. 50508A PROPOSED PLACE OF USE - AMENDED



 Proposed Place of Use

Map prepared by: LHH-TFO 3.10.22



Scale: 1:12,000

0 0.13 0.25 0.5 Mile

APPLICATION, FILE NO. 50508A OWNERSHIP INFORMATION

#1 DOWNSTREAM OWNER

RICHARD J & JOAN L MEYER
2613 S RD
SABETHA, KS 66534

#2 PLACE OF USE OWNER

WAYNE A & LINDA M EDELMAN REV TST
1751 200TH RD
BERN, KS 66408

#3 PLACE OF USE OWNER

PEGGY L STRAHM TST
1969 200TH RD
SABETHA, KS 66534

#4 UPSTREAM OWNER

STEVEANN LLC
2017 216TH RD
SABETHA, KS 66534

#5 & #7 PLACE OF USE OWNER

KYLE L STRAHM TST
1969 200TH RD
SABETHA, KS 66534

#6 UPSTREAM OWNER

CHARSTA STRAHM TST
217 S 12TH ST
SABETHA, KS 66534

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

KYLE & PEGGY STRAHM
1969 200TH RD
SABETHA, KS 66534

April 13, 2022

RE: Appropriation of Water, File No. 50,508A

Dear Mr. & Mrs. Strahm:

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 re-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,

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

KAB:lh
Enclosure(s)

pc: Topeka Field Office
Wayne & Linda Edelman
Keith Grimm - MWI

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. **50,508A** of the applicant

KYLE & PEGGY STRAHM
1969 200TH RD
SABETHA, KS 66534

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 **January 21, 2021**.
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	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
30	1S	14E			40		40	40	38	32		1.2			40	40	40	40	351.2

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to Deer Creek, designated in the office of the Chief Engineer as Deer Creek Trib 2A (SF Big Nemaha River), not needed to satisfy all vested rights and prior appropriation rights to be incrementally accumulated as reservoir storage space becomes available to a maximum extent of **250 acre-feet** per calendar year in one (1) reservoir created by a dam located in the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (SW¼ SE¼ NW¼) of Section 30, more particularly described as being near a point 3,000 feet North and 3,950 feet West of the Southeast corner of said section, in Township 1 South, Range 14 East, Nemaha County, Kansas, to provide **250 acre-feet** of water as needed for direct irrigation use to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **1,200 gallons per minute** (2.67 c.f.s.). A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. 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 submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee, which is currently \$100.00.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. That all re-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 re-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.

11. That an acceptable water flow meter shall be installed and maintained on the re-diversion works authorized by this permit in accordance with the 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).

12. 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.

13. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

14. 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.

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 13th day of April, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,508A, dated 4-13-22 was mailed postage prepaid, first class, US mail to the following:

KYLE & PEGGY STRAHM
1969 200TH RD
SABETHA, KS 66534

With photocopies to:

WAYNE & LINDA EDELMAN
1751 200TH RD
BERN, KS 66408

MIDWEST IRRIGATION
1215 OREGON ST
HIAWATHA KS 66434

Topeka Field Office



Division of Water Resources