

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

1. File Number: <p style="text-align: center;">50,698</p>	2. Status Change Date: <p style="text-align: center;">12/21/2022</p>	3. Field Office: <p style="text-align: center;">01</p>	4. GMD: <p style="text-align: center;">0</p>
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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 **68136**
New to system Add Seq# _____

MATT SCHULTE
PO BOX 122
STILWELL, KS 66085

***Note address change**

7b. Landowner(s) Person ID **68796**
New to system Add Seq# **1**

COURTNEY SCHULTE IRA EQUITY TRUST
PO BOX 122
STILWELL, KS 66085

7c. Landowner(s) Person ID **68795**
New to system Add Seq# _____

69 DUCK LEASE
PO BOX 122
STILWELL, KS 66085

7e. Miscellaneous Person ID _____

8. WUR Correspondent Person ID **68136**
New to system Add Seq# **1**
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: **12/31/2024** 11. Perfection Date: **12/31/2028** 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: _____

12/15/2022
KKopp Date Prepared: **12/13/2022** By: **LHH**
Date Entered: 12/28/2022 By: **LMoody**

File No. **50,698** 15. Formation Code: Drainage Basin: **MARAIS des CYGNES RIVER** County: **LN** Special Use: Stream: **NORTH SUGAR CREEK TRIB 5 (MARAIS DES CYGNES)**

16. Points of Diversion									
MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	
√	89204	NW NW SW	17	20S	25E	2	2448	4636	
√	89205	NW SW SW	17	20S	25E	3	857	4712	
LLN-131									

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

18. Storage: Rate **ALL NF** NF Quantity **100** ac/ft Additional Rate **ALL NF** NF Additional Quantity **100** 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 ~~12/31/2024~~ Date Acceptable Meter Installed _____

21. Place of Use																		Total	Owner	Chg? NO	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	70675	17	20S	25E	1	POND & MARSH (S2 NW & W2 SW)																	7b & 7c	NO	50687

Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: December 13, 2022

FROM: Lloyd Hemphill

RE: New Application, File Nos. 50,687
and 50,698

Matt Schulte has filed the new applications referred to above proposing to appropriate surface water for recreational use. The water will be used to fill and maintain a shallow pond and seasonal marsh located in the West Half of Section 17, in Township 20 South, Range 25 East, Linn County, Kansas. Natural runoff will be collected in the pond and, to a lesser extent, in the marsh under File No. 50,698. During the recreational waterfowl season, water stored in the pond may be released or pumped from the pond as needed to fill and maintain water levels in the marsh (i.e. offset evaporative and seepage losses). Natural flows collected or diverted to the marsh will be supplemented by direct diversion from a pumpsite on North Sugar Creek under File No. 50,687. This project is in the Marais des Cygnes River drainage basin. The place of use is owned by the Courtney Schulte IRA Equity Trust and 69 Duck Lease LLC (represented by the applicant) and the applicant has signed the application indicating legal access to the points of diversion. These two files do not overlap any other permits or water rights.

According to aerial imagery, the pond was constructed prior to June of 2008. The surface area appears to vary significantly from year to year but is approximately 19 acres when full. The estimated average depth is 3 feet, resulting in a storage capacity of 57 acre-feet. According to engineering plans, the marsh surface area is 16.4 acres. The storage capacity is 14.3 acre-feet, resulting in an average depth of 10.5 inches.

File No. 50,687 – Direct Diversion

This application is proposing to appropriate 28 acre-feet of surface water at a diversion rate of 1,000 gallons per minute from one pumpsite on North Sugar Creek (Marais des Cygnes River). This application will allow water to be pumped directly from the creek (when flows are adequate, and permission is granted) and will supplement natural flows collected under the overlapping file. The proposed pumpsite is located in the Southwest Quarter of the Northeast Quarter of the Southwest Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 17, in Township 20 South, Range 25 East. The requested quantity will allow one fill of the marsh (storage capacity = 14 acres) and an additional quantity of 14 acre-feet to offset evaporative and seepage losses. Six months of evaporation from the marsh is expected to be 2.67 AF (16 ac. surface area X 4in/yr X 1ft/12in X $\frac{1}{2}$ yr = 2.67 AF) and the remaining quantity is reasonable for seepage.

File No. 50,698 – Natural Flows

This application is proposing to appropriate 100 acre-feet of surface water at the rate of natural flows from North Sugar Creek Trib 5 (Marais des Cygnes River). The requested quantity is sufficient to cover the storage capacity of the pond (57 AF), one year of indirect use from the pond (15 AF), and the quantity needed to fill and maintain water level in the marsh (28 AF). The quantity attributed to the marsh may include both runoff collected directly in the marsh and water from the pond. These quantities are explained in further detail on the recreational use supplemental sheet with the application. The proposed points of diversion were defined as a spill point on the pond located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17; and a water control structure for the marsh in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, both in Township 20 South, Range 25 East.

The drainage area contributing runoff to the pond and marsh is approximately 71 acres. Runoff computations were completed assuming a normal annual precipitation of 41 inches and soil complex number of 78. These calculations show that in 1 out of every five (5) years (a 20% chance), 128 acre-feet of runoff will be generated. Therefore, it appears reasonable to expect that the local drainage area may provide the requested quantity of 100 AF.

Notification letters were sent to upstream and downstream landowners on September 23, 2022. Two calls were received with general questions about the application but no concerns relevant to impairment of senior water rights. There are numerous permitted water rights within two miles. Many of these are downstream pumpsites on North Sugar Creek or adjacent marshes. The nearest downstream pumpsite is approximately 4,000 feet downstream. There are no water rights upstream of the proposed projects within two miles. With proper conditioning, approval of these applications will not impair senior water rights.

DWR Structures reviewed the marsh portion of the project and issued a floodplain fill permit under WSN: LLN-131 on April 7, 2021. Per Janelle Phillips, the adjacent pond is primarily sub-grade excavation and is not jurisdictional for Water Structures permitting.

Brent Turney, with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) confirmed that there are no NRCS easements on this property. This is a critical determination because any property that has an NRCS easement must complete a Compatible Use Agreement (CUA) application for water level management, and ultimately have it approved.

The approval for File No. 50,687 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. The 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. File No. 50,687 will require a meter.

Based on the above discussion, the area remains open to new appropriations, the approval (50,687) is subject to specific conditions relative to direct surface water diversions, diversion is primarily limited to fall "off-season" pumping, the project is properly permitted by the Structures Program, and there is no indication that existing water rights will be impaired, it is recommended that the referenced application be approved.

Lloyd Hemphill
Environmental Scientist
Topeka Field Office

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. 50,698**, of the applicant

MATT SCHULTE
PO BOX 122
STILWELL, KS 66085

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 30, 2021**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh located in the West Half of the Southwest Quarter ($W\frac{1}{2} SW\frac{1}{4}$) and a pond in the South Half of the Northwest Quarter ($S\frac{1}{2} NW\frac{1}{4}$) of Section 17, in Township 20 South, Range 25 East, Linn County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to North Sugar Creek, designated in the office of the Chief Engineer as North Sugar Creek Trib 5 (Marais des Cygnes), not needed to satisfy all vested rights and prior appropriation rights, to be stored to a maximum extent of **100 acre-feet** per calendar year in a reservoir with a spill point located in the Northwest Quarter of the Northwest Quarter of the Southwest Quarter ($NW\frac{1}{4} NW\frac{1}{4} SW\frac{1}{4}$) of Section 17, more particularly described as being near a point 2,448 feet North and 4,636 feet West of the Southeast corner of said section; and a marsh created by one (1) water control structure located in the Northwest Quarter of the Southwest Quarter of the Southwest Quarter ($NW\frac{1}{4} SW\frac{1}{4} SW\frac{1}{4}$) of Section 17, more particularly described as being near a point 857 feet North and 4,712 feet West of the Southeast corner of said section; both in Township 20 South, Range 25 East, Linn County, Kansas, located substantially as shown on the map accompanying the application.
4. That the structure creating the marsh referenced above has been assigned Division of Water Resources Structures Permit No. LLN-131.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2024**, 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.

6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before December 31, 2028, 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 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.

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

13. 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.

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.

Ordered this 21 day of December, 2022, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

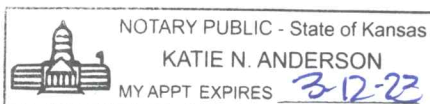
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 21 day of December, 2022, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

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

January 3, 2023

MATT SCHULTE
PO BOX 122
STILWELL KS 66085

RE: Appropriation of Water
File Nos. 50,687 and 50,698

Dear Mr. Schulte:

Enclosed are permits authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in your applications. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in these permits, with specific reference to Paragraph Nos. 16 through 20, included on File No. 50,687. Additionally, an acceptable water flowmeter must be installed on the diversion works authorized by File No. 50,687, prior to using water.

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 the permit(s). 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 per file number.

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 kswaterusereport.org.

The approvals of your applications constitute permits to appropriate water. They do not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. They do 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 rights. Additional information is available on our website at agriculture.ks.gov/dwr. If you have any questions or need assistance, 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 numbers so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB:llh

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 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

CERTIFICATE OF SERVICE

On this 3 day of January, 2023, I hereby certify that the foregoing Approval of Application, File No. 50,698, dated , was mailed postage prepaid, first class, US mail to the following:

MATT SCHULTE
PO BOX 122
STILWELL, KS 66085

With photocopies to:

Topeka Field Office



Division of Water Resources