

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;">50664</p>	2. Status Change Date: <p style="text-align: center; font-size: 1.2em; color: blue;">4/18/2023</p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;">01</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

<p>7a. Applicant(s) Person ID 62609 New to system <input type="checkbox"/> Add Seq# _____</p> <p>STEVEN W PORUBSKY 5523 NW 25TH ST TOPEKA, KS 66618</p>	<p>7c. Landowner(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p>
<p>7b. Landowner(s) Person ID 68028 New to system <input type="checkbox"/> Add Seq# _____</p> <p>MARY A & ROBERT W PORUBSKY 4046 NW 39TH ST TOPEKA, KS 66618-3400</p>	<p>7d. Misc Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p>

<p>8. WUR Correspondent Person ID _____ New to system <input type="checkbox"/> Add Seq# _____ Overlap File (s) WUC Notarized WUC Form <input type="checkbox"/> Agree <input type="checkbox"/> Yes <input type="checkbox"/> No 7a</p>	<p>9. Use of Water: Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water <input checked="" type="checkbox"/> IRR <input type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN <input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON <input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG <input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____</p>
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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: _____

Date Prepared: 3/28/23 Date Reviewed: 4/13/2023 Date Entered: 4/24/2023 LMoody	By: BMM By: KAK By: _____
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File No. 50664	15. Formation Code:	Drainage Basin: Kansas River	County: SN	Special Use:	Stream: SOLDIER CREEK																																																																																										
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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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by 12/31/2024 Date Acceptable Meter Installed _____																																																																																															
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KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: March 28, 2023

FROM: Brandon Milner

RE: Application, File No. 50,664

Steve Porubsky has filed the referenced application to appropriate 140 acre-feet of surface water from the Soldier Creek (Kansas River) at the rate of 1,200 gallons per minute to irrigate a total of 140 acres in Shawnee County. The entire place of use is owned by the applicant. The applicant has signed the application form stating he has access to the point of diversion.

The applicant is proposing to pump surface water from one pump site located in Section 5, Township 11 South, Range 15 East. A list of nearby landowners within one-half mile upstream and downstream of the proposed point of diversion was provided by the applicant, and they were notified by letter dated February 28, 2023 with no responses to date. There are no other pump sites within a two (2) mile radius of the proposed point of diversion. With proper conditioning, there is no indication that approval of this permit will impair any senior water rights in the area.

The requested volume of 140 acre-feet to irrigate 140 acres is equal the maximum reasonable amount for Shawnee County which is 1 acre/foot/acre.

Per K.A.R. 5-3-15, Availability of water for appropriation - 'safe yield; surface water. (a) Each application filed to directly divert the natural flow of the Kansas river, the Missouri river, the Big Blue river the Spring river, or **their tributaries**, shall:

- (1) be processed in accordance with K.A.R. 5-3-9; and
- (2) meet all other requirements for the approval of a new application.

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.

The application was sent to Brett Bunger of the Topeka Field office for recommendation on March 28, 2023 and was recommended for approval on the same day.

Based on the above discussion, that surface water within the Kansas River Basin remains open to new appropriations with appropriate and consistent permit conditions, and approval of the application will not impair senior water rights, it is recommended that the new referenced application be approved.

Brandon
Environmental Scientist
New Applications Unit

From: Bungler, Brett [KDA]
Sent: Tue 3/28/2023 3:40 PM
To: Milner, Brandon [KDA]
Subject: RE: 50664 Recommendation

Brandon, at this point there should be water available for this request. There is a couple gages on Soldier Creek so flows can be monitored. Even last year when it was pretty dry there was a good amount of water available throughout the irrigation season. I would certainly recommend approval of the application.

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Sent: Tuesday, March 28, 2023 2:47 PM
To: Bungler, Brett [KDA] <Brett.Bunger@ks.gov>
Subject: 50664 Recommendation

Brett,

Attached is a memo for application no. 50,664. I understand that due to this application pulling water from a tributary of the Kansas River system, that K.A.R. 5-3-9 must be satisfied to where I am unsure what needs to be done from my end. Could you provide a recommendation on this application? 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. 50,664** of the applicant

STEVEN W PORUBSKY
6710 NW 54TH ST
TOPEKA KS 66618

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 **October 11, 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		
5 - 11S - 15E										40	40	20	40					140

3. That the authorized source from which the appropriation shall be made is surface water from Soldier Creek, to be diverted at one (1) pump site located in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter (SW¼ SW¼ SW¼) of Section 5, more particularly described as being near a point 320 feet North and 4,825 feet West of the Southeast corner of said section, in Township 11 South, Range 15 East, Shawnee 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 **140 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, 2024**, 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, 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 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 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.

16. 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.

17. 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 18 day of April, 2023, 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 18 day of April, 2023, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Katie 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

April 25, 2023

STEVEN W PORUBSKY
6710 NW 54TH ST
TOPEKA KS 66618

RE: Appropriation of Water
File No. 50,664

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/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 and Change Applications Unit Supervisor
Division of Water Resources

KAB:bmm
Enclosure(s)

pc: Topeka Field Office
Mary & Robert Porubsky

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 *25* day of *April*, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50664, dated *April 18*, 2023, was mailed postage prepaid, first class, US mail to the following:

STEVEN W PORUBSKY
6710 NW 54TH ST
TOPEKA KS 66618

With photocopies to:

MARY A & ROBERT W PORUBSKY
4046 NW 39TH ST
TOPEKA KS 66618-3400



Division of Water Resources