

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

1. File Number: <p style="text-align: center;">50,674</p>	2. Status Change Date: <p style="text-align: center;">2/8/2023</p>	3. Field Office: <p style="text-align: center;">01</p>	4. GMD: <p style="text-align: center;">0</p>
5. Status: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return			
6. Enclosures: <input checked="" type="checkbox"/> Check Valve <input checked="" type="checkbox"/> N of C Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input checked="" type="checkbox"/> Meter			
<p>7a. Applicant(s) Person ID 63668 New to system <input type="checkbox"/> Add Seq# <u>1</u></p> <p>D & G PROPERTIES 4815 W 191ST ST. STILWELL, KS 66085-8892</p>	<p>7c. Landowner(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p>		
<p>7b. Landowner(s) Person ID 63668 New to system <input type="checkbox"/> Add Seq# <u>1</u></p> <p style="text-align: center;">7a.</p>	<p>7d. Landowner(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p>		
<p>8. WUR Correspondent Person ID 63668 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</p> <p style="text-align: center;">7a.</p>	<p>9. Use of Water: Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p style="padding-left: 40px;"><input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water</p> <p><input checked="" type="checkbox"/> IRR <input type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN</p> <p><input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON</p> <p><input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG</p> <p><input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____</p>		
10. Completion Date: <u>12/31/2024</u> 11. Perfection Date: <u>12/31/2028</u> 12. Exp Date: _____			
13. Conservation Plan Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date Required: _____ Date Approved: _____ Date to Comply: _____			
14. Water Level Measuring Device? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date to Comply: _____ Date WLMD Installed: _____			
<p>Date Prepared: 2/3/2023 By: LHH</p> <p>Date Entered: 2/9/2023 By: _____</p>			

File No. 50,674	15. Formation Code:	Drainage Basin: Pottawatomie Creek	County: AN	Special Use:	Stream: SEE BELOW*																			
16. Points of Diversion T MOD DEL ENT			17. Rate and Quantity																					
PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized Rate gpm	Quantity af	Additional Rate gpm	Quantity af	Overlap PD Files												
MOD	89132 NE NW SE	25	19	20E	2	2536	1969	1300	121	1300	81	NONE												
CHK	89133 SE SW NW	30	19	21E	4	2875	4460																	
* PDIV 89132: Stream = Pottawatomie Creek Trib 13 ¹⁴ (Pottawatomie Creek)																								
* PDIV 89133: Stream = South Fork Pottawatomie Creek Trib 5 (Pottawatomie Creek)																								
2/7/2023 KJN																								
18. Storage: Rate NF _____ Quantity 121 _____ ac/ft Additional Rate NF _____ Additional Quantity 121 _____ ac/ft																								
19. Limitation: 431 _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) 48973 (DIRECT USE) 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 _____																								
21. Place of Use T MOD DEL ENT		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files			
PUSE	S	T	R	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								
CHK	65612	24	19S	20E	1												6	6	7a.	No	48973			
CHK	65613	25	19S	20E	1	37	21	40	40	0.5			15.5				40	40	40	31	305	7a.	No	48973
CHK	65614	30	19S	21E	4					6	18	33	25.5	12.5	25						120	7a.	No	48973
Comments: Special condition: Multi-Pond Project																								

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: February 3, 2023

FROM: Lloyd Hemphill

RE: New Application, File No. 50,674

D & G Properties, LLC has filed Application, File No. 50,674 for a Multiple Reservoir Project (aka: hydra-pondster) to appropriate 121 acre-feet of surface water at the rate of natural flows to be stored in two (2) existing reservoirs located in the Southeast Quarter of Section 25, in Township 19 South, Range 20 East and the Northwest Quarter of Section 30, Township 19 South, Range 21 East, both in Anderson County, Kansas. The dams are located on tributaries to Pottawatomie Creek and South Fork Pottawatomie Creek. The points of diversion are located on property owned by the applicant, and the application was signed stating the applicant has legal access to the points of diversion. The points of diversion do not overlap any other files, although they may be used as storage devices for Appropriation of Water, File No. 48,973. The entire place of use is owned by the applicant, and it comprises a total of 431 acres. This is an identical overlap of File No. 48,973. This overlapping file authorizes one pumpsite on Pottawatomie Creek and the ponds proposed by this new application are used as off-season storage devices. Through the year 2021, no water has been used under the senior file, but the perfection period was extended to the end of 2027. The quantity authorized for direct irrigation use will be limited to 431 acre-feet when the two files are used in combination.

Please note that the Division of Water Resources has developed a Multiple Reservoir (aka: Hydra-Pondster) program, which is applicable to multiple reservoirs located on different tributary streams, with the potential that water is transferred between them. Therefore, these two reservoirs can be listed under one application. NOTE: The Multiple Reservoir program is designed to simplify the management of multiple reservoirs which are used for the same irrigation project. The reservoirs can collect natural flows, and can have water pumped into them from other sources (e.g. groundwater wells or stream pump sites). In addition, water can be moved between individual reservoirs.

Typically, for similar Multiple Reservoir Projects, the applicant is required to sign a form wherein he understands and agrees that the owner shall bypass natural flow and/or release water from storage when directed by the Chief Engineer or his authorized representative, to satisfy reasonable requests by senior water rights and permits, and to comply with any applicable minimum desirable streamflow requirements. That for purposes of administration, all water contained within the primary pools of the reservoirs shall be considered stored natural flows. However, the ponds related to this project were constructed about 19 years ago as lagoons for a since abandoned feedlot facility. As such, they were designed to capture (very local) runoff from the vicinity of the feedlot and prevent this runoff from reaching nearby streams. Additionally, no MDS targets have been established for this basin and there are no other prior permitted surface water rights within two-mile (other than the applicant's). Therefore, it is extremely unlikely that any water administration would occur that would affect this water right. No Multiple Reservoir Project "agreement" was received with this application, but it appears that such an agreement would serve little purpose and should not be required.

The western pond has a surface area of 3.7 acres and an estimated capacity of 18 acre-feet. The potential evaporation from this pond is 2.5 acre-feet (8" evap X 3.7 ac.). The eastern pond has a surface area of 6.3 acres and an estimated capacity of 36 acre-feet. The potential evaporation from this pond is 3.7 acre-feet (7" evap X 6.3 ac.). The maximum reasonable quantity to irrigate 431 acres in Anderson County is 431 acre-feet (431 ac. X 1 AF/ac.).

Both reservoirs have very limited drainage areas and limited runoff potential. Runoff computations (total drainage area = 82 acres; soil complex number = 78; normal precipitation = 38") determined that the combined drainage area for the reservoirs, will generate 121 acre-feet of runoff (17.7") in one of every five years (a 20% chance). Therefore, per K.A.R. 5-6-5, this quantity is the limiting factor. The applicant originally requested a storage quantity of 150 acre-feet but this was reduced to 121 acre-feet to match the basin yield. The application was processed with a storage quantity of 121 acre-feet and a direct use quantity of 121 acre-feet. The maximum reasonable quantity for irrigation of 431 acres in Anderson County is 431 acre-feet (431 X 1 AF/ac.), per K.A.R. 5-3-24. The requested quantity is less than the maximum allowable quantity.

The applicant owns all upstream property, and one downstream landowner within one-half mile of the property was identified on the application. However, this landowner is located on the opposite side of the main stem of Pottawatomie Creek. Also, as discussed above, the proposed points of diversion were designed and constructed many years ago as feedlot lagoons whose purpose was to isolate the local runoff and to prevent it from reaching nearby waterways. Much of the general runoff that occurs adjacent to and below the ponds is actually drainage that is diverted around, rather than through, the ponds. Because of this unique circumstance it does not appear that notification of the downstream landowner is necessary. There are no other surface water rights (other than the applicant's) within a two-mile radius according to the WRIS database.

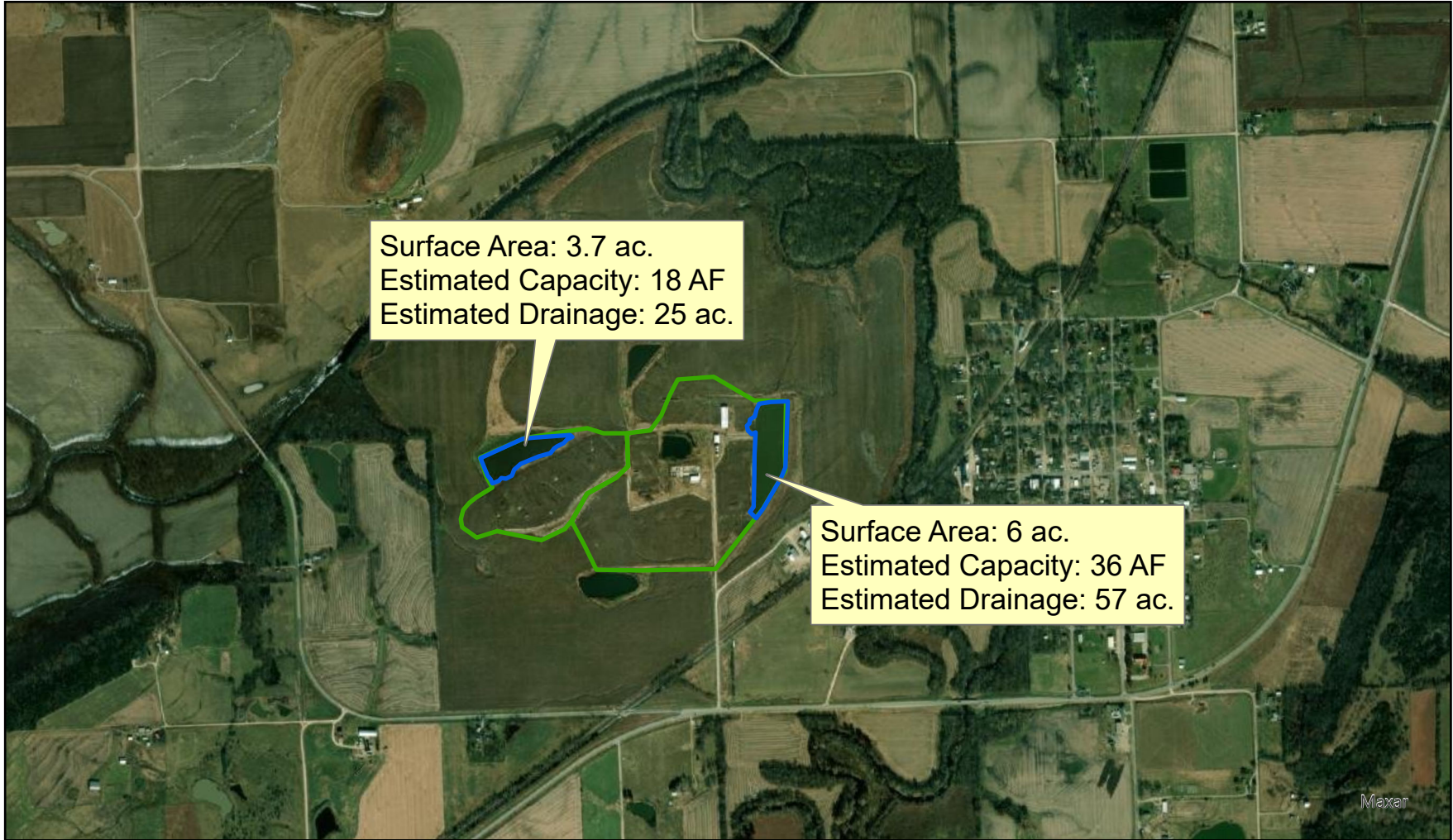
The existing structures were reviewed by Janelle Phillips, DWR Water Structures Program, and was determined to be non-jurisdictional for structures permitting. As noted above, these are all small dams with limited run-off potential and limited capacity.

As allowed by K.S.A. 82a-706(c) approved water flow meters shall be installed on the re- diversion works, which directly serve the places of use. If water diverted under the overlapping direct diversion file (File No. 48,973) is both pumped directly to the place of use and also to these reservoirs for storage and later use, then acceptable water flow meters must be installed on all places of use, providing the total quantity of water applied. This total quantity of water will allow the Division of Water Resources to determine the natural flow quantity that has been diverted, in conjunction with the water flow meters installed on all non- reservoir sources (i.e. pump sites and/or wells). If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

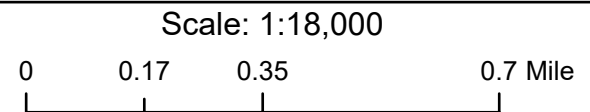
Based on the above discussion, that this area is open to new appropriations, the proposed appropriation of water is reasonable, proper metering will be installed, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Lloyd Hemphill
Environmental Scientist
Topeka Field Office

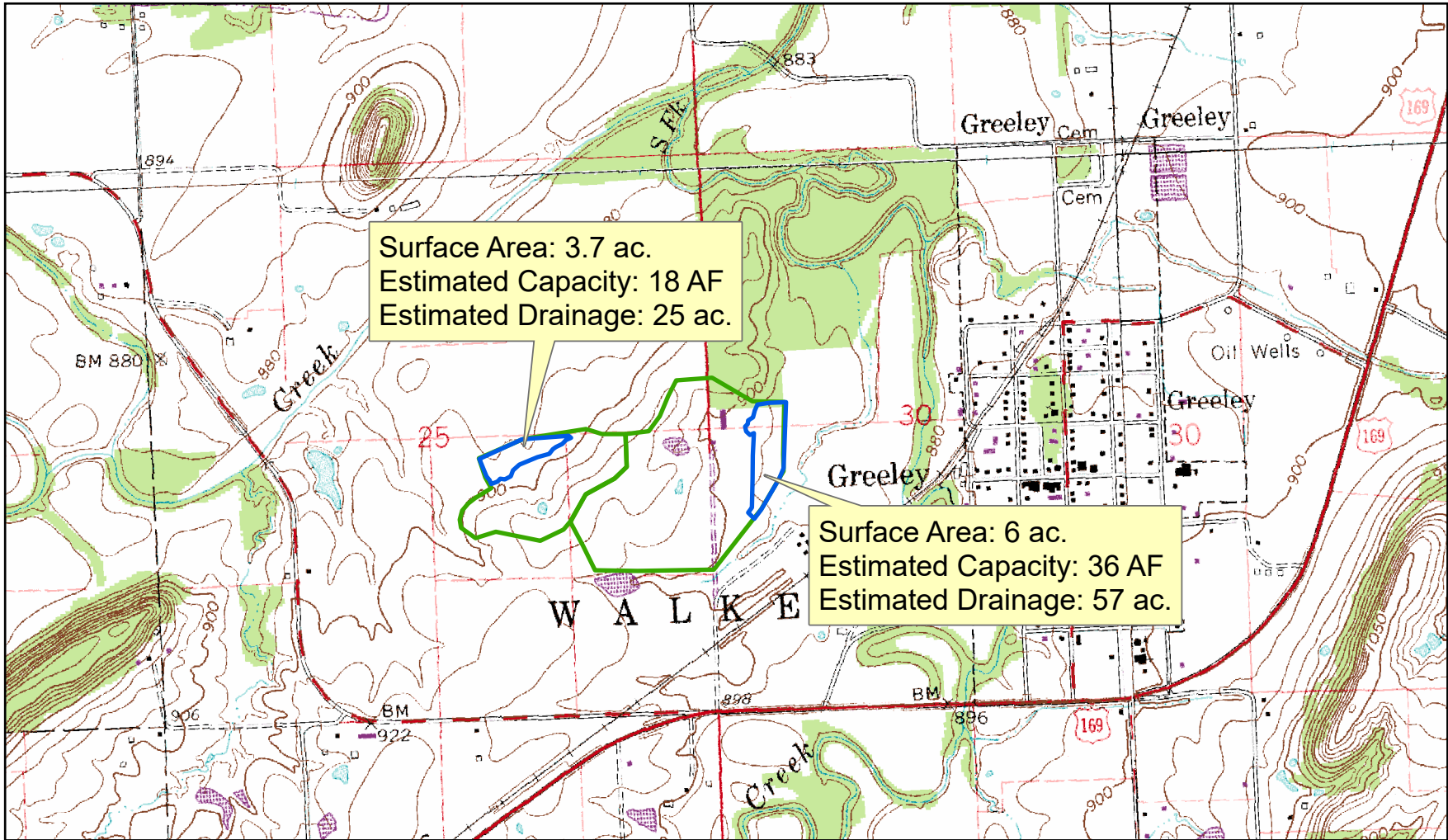
APPLICATION FILE NO. 50674
SEC 25-T19S-R20E & SEC 30-T19S-R21E - ANDERSON CO



Map prepared by: LHH/TFO 1-31-23



APPLICATION FILE NO. 50674
SEC 25-T19S-R20E & SEC 30-T19S-R21E - ANDERSON CO



Map prepared by: LHH/TFO 1-31-23



Scale: 1:18,000



Hemphill, Lloyd [KDA]

From: Phillips, Janelle [KDA]
Sent: Tuesday, January 31, 2023 12:12 PM
To: Hemphill, Lloyd [KDA]
Subject: RE: Application, File No. 50674

Lloyd –

Neither pond appears to be in our jurisdiction as a stream obstruction, dam or floodplain fill . As long as no modifications are proposed for ponds then no structures permitting is required.

Janelle Phillips, P.E., CFM
Stream Obstruction Team Lead
Water Structures Program
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
Office:785-564-6656
Cell: 785-307-8292
Janelle.phillips@ks.gov

From: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Sent: Tuesday, January 31, 2023 11:39 AM
To: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Subject: Application, File No. 50674

Hello Janelle,

I am processing Application File No. 50674 which involves two ponds. These ponds were originally designed and constructed about 20 years ago as lagoons for a now abandoned feedlot. They are located on the divide between Pottawatomie Creek and SF Pottawatomie Creek in Anderson County. The drainage is primarily limited to the footprint of the former feedlot. The attached map contains the only numbers we have for the size of these structures.

Is this enough information to determine whether any Structures permit is required? As a side question, would Structures have looked at this if/when they got permitting for the feedlot through KDHE?
If it helps, one of the ponds is located at: 38.36870821,-95.13685176 .

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
Office: (785) 296-5733

NOTE NEW ADDRESS



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. 50,674** of the applicant

D & G PROPERTIES
4815 W 191ST ST
STILWELL, KS 66085-8892

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 29, 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	
24	19S	20E																6	6
25	19S	20E	37	21	40	40	0.5			15.5				40	40	40	31	305	
30	19S	21E					6	18	33	25.5	12.5	25						120	

Total = 431 acres

3. That the appropriation sought shall be limited to all natural flows of unnamed tributaries of Pottawatomie Creek and the South Fork Pottawatomie Creek, designated in the office of the Chief Engineer as Pottawatomie Creek Trib 14 and South Fork Pottawatomie Creek Trib 5, 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 **121 acre-feet (39.4 million gallons)** of water per calendar year in two (2) reservoirs created by dams located as follows: one dam in the Northeast Quarter of the Northwest Quarter of the Southeast Quarter (NE¼ NW¼ SE¼) of Section 25, more particularly described as being near a point 2,536 feet North and 1,969 feet West of the Southeast corner of said section, in Township 19 South, Range 20 East, Anderson County, Kansas; and one dam in the Southeast Quarter of the Southwest Quarter of the Northwest Quarter (SE¼ SW¼ NW¼) of Section 30, more particularly described as being near a point 2,875 feet North and 4,460 feet West of the Southeast corner of said section, in Township 19 South, Range 21 East, Anderson County, Kansas, to provide **121 acre-feet (39.4 million gallons)** 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 **1,300 gallons per minute (2.9 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, 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.

5. 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.

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 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 acceptable water flow meter(s) shall be installed and maintained on the re-diversion works authorized by this permit in accordance with Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. These water flow meter(s) 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.

15. 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.

16. That the owner shall bypass natural flow and/or release water from storage when directed by the Chief Engineer or his authorized representative, in order to satisfy reasonable requests by senior water rights and permits, and to comply with any applicable minimum desirable streamflow requirements. That for purposes of water right administration, all water collected and stored in these reservoirs shall be considered to be natural flows.

17. That the quantity of water approved under this permit for direct irrigation use is further limited to the quantity which combined with Appropriation of Water, File Nos. 48,973, will provide a total not to exceed 431 acre-feet of water per calendar year for irrigation use on the land described herein.

Ordered this 8 day of February, 2023, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

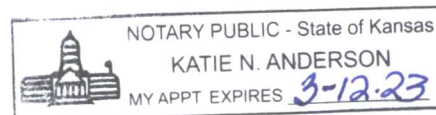
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 8 day of February, 2023, 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

February 10, 2023

D & G PROPERTIES
4815 W 191ST ST
STILWELL, KS 66085-8892

RE: Appropriation of Water, File Nos. 50,674

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.

One or more acceptable water flowmeter(s) 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 Application Unit Supervisor
Division of Water Resources

KAB:lh
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 Act.

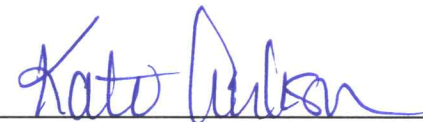
CERTIFICATE OF SERVICE

On this 10 day of February, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,674, dated February 8, 2023, was mailed postage prepaid, first class, US mail to the following:

D & G PROPERTIES
4815 W 191ST ST.
STILWELL, KS 66085-8892

With photocopies to:

Topeka Field Office



Division of Water Resources