

File No. **50,748** 15. Formation Code: Drainage Basin: **NEOSHO RIVER** County: **WO** Special Use: Stream: **CHERRY CREEK**

16. Points of Diversion										17. Rate and Quantity				
T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W		Authorized		Additional		
										Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
CHK	89375	NE SW NW	13	25S	16E	1	3580	4051		1500	216	1500	216	none

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ 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? **x Yes** No To be installed by **12/31/2024** Date Acceptable Meter Installed _____

21. Place of Use T MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	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				
CHK	70767	13	25S	16E	1	WETLAND (NW)																	7a	NO	50749

Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: March 14, 2023

FROM: Kris Neuhauser

RE: Application, File Nos. 50,748 & 50,749

Anthony Hartness on behalf of Cherry Creek Crossing LLC has filed the above-referenced applications requesting to appropriate 216 acre-feet of surface water for recreational use by direct diversion (maximum rate of 1,500 gpm) and by collection of natural flows. The proposed pumpsite (50,748) and two water control structures (50,749) are located on Cherry Creek (Neosho River Basin) in the Northwest Quarter of Section 13, Township 25 South, Range 16 East, Woodson County, Kansas. The application has been signed by the applicant, stating he has access to the point of diversion.

The place of use will be a wetland for waterfowl habitat/hunting, covering a total of 27.6 acres located in the Northwest Quarter of Section 13, Township 25 South, Range 16 East, Woodson County, Kansas. The applicant owns the entire place of use.

The requested quantity of water under these applications (216 total acre-feet) was determined by inundating the 27.6-acre marsh area with 1.0 feet of water; and the applicant planning to fill the marsh two times per year; an initial fill and a second filling to offset indirect loss of water. Typically, these types of marshes are filled in October prior to waterfowl migration.

Pool 1 + Pool 2 capacity = 43 AF + 28 AF = 71 AF
Pool 1 + Pool 2 surface area = 16.6 acres + 10.9 acres = 27.6 acres
Potential evap: 6 inches/year x ½ year x 1 ft/12 inches x 27.6 acres = 6.9 AF
Potential Seepage (½ year): 120 inches/year x ½ year x 27.6 acres = 138 AF
Requested quantity: Capacity (1 fill) + evap + seepage = 71 AF + 7 AF + 138 AF = 216 AF

File No. 50,749 will be approved at 78 acre-feet; but limited to 216 acre-feet when combined with File No. 50,748.

The closest surface water right is located on Cherry Creek Trib 2 approximately 0.5 miles away. The approval of this application should not impact any senior water users. Four landowners were identified as being within ½ mile upstream and downstream of the applicant's land. Nearby notification letters outlining the proposed applications were mailed on February 17, 2023. No responses of any kind have been received to date.

Janelle Phillips, Stream Obstruction Team Lead, Water Structures Program, indicated that this project will require a structures permit. The structures permit, assigned File No. LWO-0039, was issued on April 3, 2023.

The project is not located within a Natural Resources Conservation Service (NRCS) easement, therefore, no Compatible Use Agreement (CUA) for water level management is required (via email correspondence with Brent Turney, NCRS Easement Specialist, on March 16, 2023).

Per K.A.R 5-3-15, this application 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. This 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.

The applicant has submitted a signed Minimum Desirable Streamflow form, which has been properly notarized. By completing this statement, the applicant affirms his/her knowledge that there could be times when the diversion of water may not be allowed under this permit.

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.

Based on the above discussion, the area is open to new applications and there is no indication that the proposed beneficial use of water will impair existing water rights. Therefore, it is recommended that the referenced application be approved.



Kris Neuhauser
New Applications Lead
Water Appropriation Program

From: Turney, Brent - FPAC-NRCS, KS
Sent: Thu 3/16/2023 3:53 PM
To: Neuhauser, Kris [KDA]
Subject: RE: 50748 & 50749: easement?

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Thanks Kris,
This is not an easement. I appreciate you asking though.
Brent

Brent A. Turney
Easement Specialist



3020 West 18th Avenue, Suite B, Emporia, Kansas, 66801
p: (620) 487-3413 | c: (620) 682-3538
e: brent.turney@usda.gov | w: www.ks.nrsc.usda.gov

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From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Tuesday, March 14, 2023 11:42 AM
To: Turney, Brent - FPAC-NRCS, KS <Brent.Turney@usda.gov>
Subject: 50748 & 50749: easement?

Hey Brent,

Have a couple wetland apps here, one for direct diversion and one for collection of natural flows. Wetland is located in the NW ¼ OF 13-25S-16E. Any easements present? I've attached one of the two apps above.

Thanks!

Kris Neuhauser

New Applications Lead
Kansas Department of Agriculture, Division of Water Resources
Phone: 785-564-6643

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From: Hemphill, Lloyd [KDA]
Sent: Thu 2/16/2023 3:59 PM
To: Neuhauser, Kris [KDA]
Subject: RE: File Nos. 50748 & 50749

Both permits cover the same quantity for the marsh capacity and evaporation so I suppose the quantity should be limited to 216 AF combined. The full quantity of 216 AF wasn't requested on 50749 because it is unlikely that the drainage area would provide that much runoff during the recreational season.

Lloyd

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Thursday, February 16, 2023 9:33 AM
To: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Subject: RE: File Nos. 50748 & 50749

I'm actually super close to getting started on these. I'll let him know.

By the way, is the 78 AF on 50749 all additional quantity? Or is that part of the 216 AF applied for on 50748?

From: Neuhauser, Kris [KDA]
Sent: Tuesday, February 14, 2023 3:10 PM
To: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Subject: RE: File Nos. 50748 & 50749

Thanks for the heads up Lloyd.

From: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Sent: Tuesday, February 14, 2023 1:57 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: FW: File Nos. 50748 & 50749

Just for the record, his number is 316-644-0301.

From: Hemphill, Lloyd [KDA]
Sent: Tuesday, February 14, 2023 1:54 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: File Nos. 50748 & 50749

Kris,

Anthony Hartness may call you to get a general idea of the schedule for these two apps.

He has always been a good person to work with.

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

From: Warren, Chris [KDA]
Sent: Tue 3/28/2023 2:24 PM
To: Neuhauser, Kris [KDA]
Subject: RE: LWO-0039

It is nice when websites are working properly! 😊 A site I use was down for the past week. At least the part that I needed. A little weird. Anyway, I am finishing up my paperwork and will have this in Janelle's hands shortly. I will have the permit in Earl's name. Thanks!

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Tuesday, March 28, 2023 12:14 PM
To: Warren, Chris [KDA] <Chris.Warren@ks.gov>
Subject: RE: LWO-0039

Right on, no rush. I think I'll move my approval documents into our final review folder. Can get them looked over and ready for signature. Will hold off until you're ready, just let me know.

Kris

From: Warren, Chris [KDA] <Chris.Warren@ks.gov>
Sent: Tuesday, March 28, 2023 12:01 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: RE: LWO-0039

Hi Kris,

I'm trying to wrap it up today. I have a detail I need to work out and I'm hoping to be able to justify it (it's a bit iffy). If I need more info, I'll let you know. That's my plan. Thanks.

- Chris

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Tuesday, March 28, 2023 11:57 AM
To: Warren, Chris [KDA] <Chris.Warren@ks.gov>
Subject: LWO-0039

Hey Chris,

Checked with Janelle on LWO-0039 just now. Mentioned to coordinate with you. Our permits associated with the wetland are basically ready to roll (50748 & 50749). How is the timeline looking like for your side of things?

Thanks!

Kris Neuhauser

New Applications Lead

Kansas Department of Agriculture, Division of Water Resources

Phone: 785-564-6643

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. 50,748** of the applicant

**CHERRY CREEK CROSSING LLC
Attn: ANTHONY HARTNESS
3502 CROSSGATE CIRCLE SOUTH
COLLEYVILLE, TX 76034**

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 **March 21, 2022**.
2. That the water sought to be appropriated shall be used for recreational use in a wetland located in the Northwest Quarter (NW $\frac{1}{4}$) of Section 13, in Township 25 South, Range 16 East, Woodson County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from Cherry Creek (Neosho River) to be diverted at one (1) pumpsite located in the Northeast Quarter of the Southwest Quarter of the Northwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 13, more particularly described as being near a point 3,580 feet North and 4,051 feet West of the Southeast corner of said section, in Township 25 South, Range 16 East, Woodson County, Kansas.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **1,500 gallons per minute (3.34 c.f.s.)** and to a quantity not to exceed **216 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 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.

16. 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.

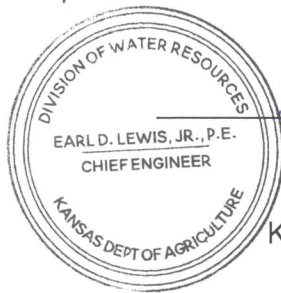
17. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.


18. 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.

19. That during the period October 1 through June 30, the verbal or written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, shall be obtained in order to divert water each time the applicant desires to divert water.

20. That during the period July 1 through September 30 each calendar year, no direct diversions of surface water shall be permitted unless written permission is obtained from the Chief Engineer, or the Chief Engineer's authorized representative.

Ordered this 7th day of April, 2023, in Manhattan, Riley County, Kansas.

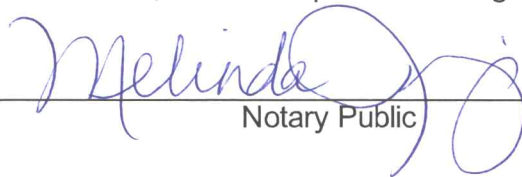




Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 7 day of April, 2023, by Earl D. Lewis, Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



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 12, 2023

CHERRY CREEK CROSSING LLC
Attn: ANTHONY HARTNESS
3502 CROSSGATE CIRCLE SOUTH
COLLEYVILLE, TX 76034

RE: Appropriation of Water, File Nos. 50,748 & 50,749

Dear Mr. Hartness:

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 the permits. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in these permits.

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 these permits. If you need extensions of time, you must request them before the deadline for completion set forth in the permits. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

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 applications constitutes permits 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 numbers so we can help you more efficiently.

Sincerely,

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

KAB: kjn
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 12 day of April, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File Nos. 50,748 & 50,749, dated April 7, 2023, was mailed postage prepaid, first class, US mail to the following:

CHERRY CREEK CROSSING LLC
Attn: ANTHONY HARTNESS
3502 CROSSGATE CIRCLE SOUTH
COLLEYVILLE, TX 76034

With photocopies to:

Topeka Field Office



Division of Water Resources