

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;">50,809</p>	2. Status Change Date: <p style="text-align: center; font-size: 1.2em; color: purple;">8/24/2023</p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;">01</p>	4. GMD: <p style="text-align: center; font-size: 1.2em;">0</p>
---	--	--	--

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 40689 New to system <input type="checkbox"/> Add Seq# <u>1</u></p> <p style="margin-top: 20px;">ROY E CARTER 108 SAINT JOSEPH ST SAINT PAUL, KS 66771-4093</p>	<p>7c. Landowner(s) Person ID _____</p>
<p>7b. Landowner(s) Person ID 68426 New to system <input type="checkbox"/> Add Seq# <u>1</u></p> <p style="margin-top: 20px;">RD NEOSHO LLC Attn: ROY CARTER 108 SAINT JOSEPH ST SAINT PAUL, KS 66771</p>	<p>7e. Miscellaneous Person ID _____</p>

<p>8. WUR Correspondent Person ID 68426 New to system <input type="checkbox"/> Add Seq# <u>1</u> Overlap File (s) WUC Notarized WUC Form <input type="checkbox"/> Agree <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="margin-top: 20px;">7b.</p>	<p>9. Use of Water: Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p style="margin-left: 40px;"><input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water</p> <p><input type="checkbox"/> IRR <input checked="" 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: 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: _____

<p>Date Prepared: 8/24/2023 Date Reviewed: 8/24/2023 Date Entered: 8/28/2023 L Moody</p>	<p>By: LHH By: KAK By: _____</p>
---	--

File No. **50,809** 15. Formation Code: Drainage Basin: **NEOSHO RIVER** County: **LB** Special Use: Stream: **Neosho River**

16. Points of Diversion										17. Rate and Quantity				
T										Authorized		Additional		
MOD	PDIV	Qualifier	S	T	R	ID	'N	'W		Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
										10,000	155	10,000	155	NONE
MOD	89612	Lot 2	26	33S	21E	5	5220	3141						
MOD	89613	Lot 3	26	33S	21E	6	2974	3017						
DEL	89610	NW SE NW	26	33S	21E	3	3683	3612						
DEL	89611	SW SE NW	26	33S	21E	4	3161	2997						

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? Yes No To be installed by **12/31/2024** Date Acceptable Meter Installed _____

21. Place of Use																		Total	Owner	Chg? NO	Overlap Files								
T										NE¼				NW¼				SW¼				SE¼							
MOD	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	NE ¼	NW ¼	SW ¼	SE ¼								
MOD	70888	26	33S	21E	3	MARSH (L-2, L-3)																	7b	NO	NONE				

Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: August 24, 2023

FROM: Lloyd Hemphill

RE: New Application, File No. 50,809

Roy Carter has filed the new application referred to above proposing to appropriate 155 acre-feet of surface water at a diversion rate of 10,000 gallons per minute from two pumpsites on the Neosho River, for recreational use in a marsh. This application will allow water to be pumped directly from the river (when flows are adequate, and permission is granted). The water will be used to fill and maintain water levels in the marsh (i.e. offset evaporative and seepage losses). The proposed pumpsites are located in Lots 2 and 3 (NW¼) of Section 26, in Township 33 South, Range 21 East, Labette County, Kansas. The marsh is located in the same river lots. There are no other files overlapping these points of diversion or place of use. The points of diversion and place of use are owned by RD Neosho, LLC, and the application was signed stating legal access to the point of diversion.

The marsh structure was constructed in the Summer of 2021. The DWR Water Structures Program reviewed an after the fact application for a floodplain fill under WSN: LLB-114. As originally constructed, the structure was classified as a "dam" per K.S.A. 82a-301 (b)(1). DWR Structures approved a proposal to modify the dike by adding an auxiliary spillway, thus decreasing the storage capacity to less than 50 acre-feet (48.63 AF). The modified surface area at the spillway elevation is 25.11 acres. This results in an average depth of about 23 inches. A Floodplain Fill permit was issued on August 23, 2022.

The original requested quantity of water was based on the original storage capacity at top of dike elevation. This quantity was reduced to 155 acre-feet following the addition of a spillway. The potential evaporation is 4 inches per year resulting in a total evaporation of 8.37 acre-feet over the surface area of the marsh. The requested quantity allows for three fills of the marsh plus the annual net evaporation (48.63 AF X 3 + 8.37 AF = 155 AF). This is equivalent to an average of about six feet of water per surface area throughout the year.

The applicant's consulting engineer, Brian Severin of Sustainable Environmental Consultants, provided further description of the management practices typically followed for similar projects. Actual wetland cell operation varies by location, manager, and season. The wetland will not be managed the same every year. The water level in the wetland cells is managed to best attract wildlife and migratory waterfowl at various times of the year. Water level will be used to control vegetation and feed sources. Typically, wetland cells are filled prior to the waterfowl season. There may be releases and additional pumping throughout the hunting season to create a water profile for the specific species and hunting experience. The wetland cells are often drained following the hunting season for dike and storage area maintenance. Some undesirable vegetation is often best managed by flooding, therefore additional pumping may be used to manage vegetation. Pumping will help maintain soil saturation throughout the year as well. Minimal seepage is anticipated in the floodplain soils, especially since soil saturation will be maintained throughout the year. The wetland may be pumped full and water released more than once a year.

No specific quantity was requested for initial soils saturation or seepage. However, the requested quantity based on "three fills" appears reasonable to cover any of these losses. A reasonable quantity will be determined during the perfection period and established at certification.

Notification letters were sent to upstream and downstream landowners on June 23, 2023. One call was received from Clay Walker with general questions, but no specific concerns. The only other file within two miles is a similar recreational use project, Appropriation of Water, File No. 50,763. This file is located about 6,500 feet downstream of the lower of the proposed pumpsites. With the standard permit conditions, approval of this application will not impair senior water rights.

The engineering report submitted with the application indicates that a berm has been constructed present around the full perimeter of the project and no normal surface water runoff will enter the marsh. Based on this, a natural flow collecting permit is not required for the project.

The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) has confirmed that there are no NRCS easements on this property (See June 20, 2023 e-mail from Brent Turney). 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.

This approval 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.

The proposed point of diversion is located below the Minimum Desirable Streamflow (MDS) gage near Parsons so this permit will not be subject to MDS administration and streamflows at this gage. A Water Assurance District has been formed for the Neosho River and there is a least one District member downstream of the proposed point of diversion.

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.

Brett Bunger, Water Commissioner, Topeka Field Office, recommended in a August 23, 2023 e-mail that the referenced new application should be approved. Based on the above discussion, the area remains open to new appropriations, the approval is subject to specific conditions relative to direct surface water diversions, diversion is typically limited to fall "off-season" pumping, the required Structures Program permit has been approved, 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

Hemphill, Lloyd [KDA]

From: Bunger, Brett [KDA]
Sent: Wednesday, August 23, 2023 12:36 PM
To: Hemphill, Lloyd [KDA]
Subject: RE: Application, File No. 50809: For your recommendation

Good work Lloyd. Please proceed with approval.

Thanks

Brett

From: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Sent: Monday, August 21, 2023 9:54 AM
To: Bunger, Brett [KDA] <Brett.Bunger@ks.gov>
Subject: Application, File No. 50809: For your recommendation

Brett,

Will you provide your recommendation on Application, File No. 50809 (Roy Carter)?

This is a REC use marsh project proposing to pump from the Neosho River. Berms have been constructed around the full perimeter of the marsh and it will not collect runoff. Therefore, no natural flow permit is necessary. Structures reviewed an after the fact application for the project. The structure was modified by constructing an auxiliary spillway to decrease the storage capacity to less than 50 AF to avoid Dam Safety permitting. Structures has issued a Floodplain Fill Permit.

Other than this, fairly typical.

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

Hemphill, Lloyd [KDA]

From: Turney, Brent - FPAC-NRCS, KS <Brent.Turney@usda.gov>
Sent: Tuesday, June 20, 2023 7:14 AM
To: Hemphill, Lloyd [KDA]
Subject: RE: Application File No. 50809: LB CO wetland

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.

Hi Lloyd!

Hope all is well at DWR? Been running and running here!

It looks like there are no easements on that property. So you should be good to go. Thanks for the chance to comment.

Brent

Brent A. Turney
Easement Specialist

 **Natural Resources Conservation Service**
U.S. DEPARTMENT OF AGRICULTURE
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.nrcs.usda.gov

Stay Connected with USDA:



 **Helping People Help the Land**

USDA is an equal opportunity provider, employer, and lender

From: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Sent: Monday, June 19, 2023 4:07 PM
To: Turney, Brent - FPAC-NRCS, KS <Brent.Turney@usda.gov>
Subject: Application File No. 50809: LB CO wetland

Hello Brent,

Roy Carter for RD Neosho, LLC has filed Application, File No. 50809 for a permit to pump water from the Neosho River to maintain a wetland in the NW ¼ of Sec 26, T33S,R21E in LB CO. See the attached plans for a map.

This structure was constructed in the Summer of 2021 but is to be modified by addition of an auxiliary spillway to bring the storage capacity below 50 acre-feet.

Will you verify whether there are any NRCS easements on this property?

Let me know if you have any questions.

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

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

RD Neosho, LLC

Wetland Development (As-Constructed)

Prepared by: Brian Severin, P.E., Director of Agricultural Engineering | May 26, 2022
785-207-0201 | bseverin@sustainableenviro.com



SUSTAINABLE

Environmental Consultants

Powered by **ECO**PRACTICES



Sustainability Risk Management | Agricultural Compliance & Engineering | Erosion Control

PO Box 791, Des Moines, Iowa 50303
888.287.7080 | sustainableenviro.com

Design Report

Project Information

- Name: RD Neosho, LLC
- Legal: NW 1/4 Sec 26, T-33S; R-21E
- Location: Labette County, Kansas

Project Description

The project is located within the Neosho River floodplain. The wetland development includes one wetland cell with two water control structures. The project was constructed as shown on the Plan Sheets in the summer of 2021. The dike was constructed to provide additional water storage and create diverse topography within the degraded wetland area. The dike will increase water storage capacity and maintain hydrology at times throughout the year. The post construction design and permit documentation were completed by Brian Severin, P.E., Sustainable Environmental Consultants.

Survey

The project area was surveyed by Matt Miller, Engineering Technician, Sustainable Environmental Consultants using survey grade GPS equipment. The survey data was OPUS corrected and transformed to Kansas State Plane, Zone South (1502) US Survey Feet, NAVD88 Vertical Datum, 2018 Geoid. The project is tied to permanent benchmarks labeled and described on the Plan Sheets.

Design

Since the project is post construction, minimal design documentation was completed. No surface water runoff enters the wetland cell. The cell captures the precipitation that falls upon the wetland storage area (26.37 acres). Average annual precipitation is expected to maintain seasonal ponding. However (permit pending), the cell will be supplemented with pumped surface water from the adjacent Neosho River.

Vegetation

The dike embankments were planted to permanent grass vegetation. Hydrophytic vegetation exists onsite and adjacent to the site. Natural succession is expected to develop a wetland plant community in the pool and fringe areas.

Permits & Permissions

The following permits will be required for this project:

- Kansas Department of Agriculture, Division of Water Resources: DWR 1-100 Water Appropriation for Beneficial Use
- Kansas Department of Agriculture, Division of Water Resources: DWR 2-200 Floodplain Fill

Appendix

The attached Appendix includes Plan Sheets, KDA-DWR Report, and Permit Documentation.





Project: RD Neosho, LLC

Practice: Wetland Development (As-Constructed)

Location: NW 1/4 Sec 26, T-33S; R-21E

Labette County, Kansas

Index to Drawings

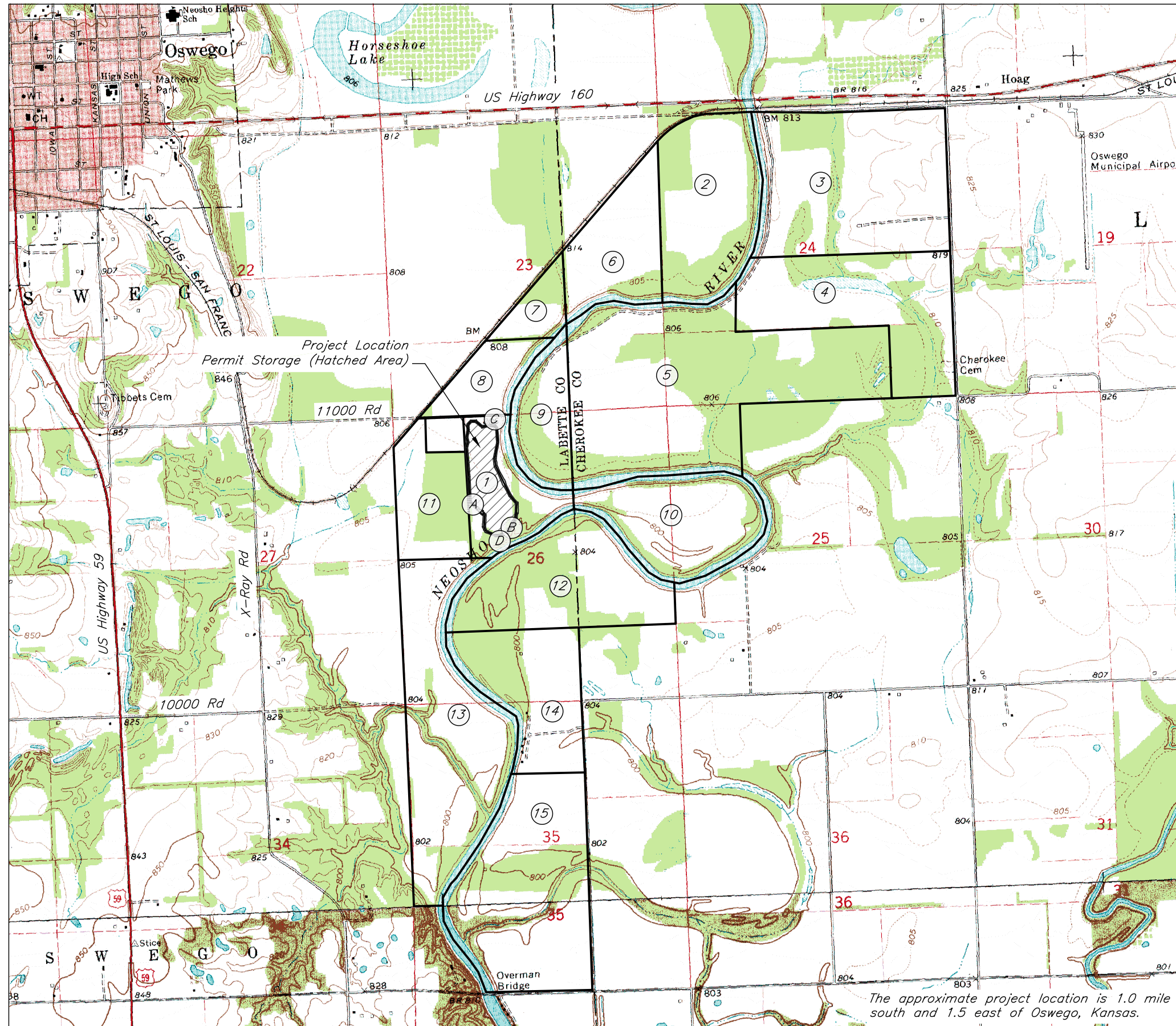
Sheet No.	Description
1	Cover Sheet
2	Location Map
3	Orthographic Plan Map
4	Dike 1 Detail
5	Dike 1 Profile
6	Dike 2 Profile
7	Base Flood Analysis

Before any investigation or construction activity, the excavator is responsible for calling Kansas One-Call at 800-344-7233 (800-DIG-SAFE) or 811

Brian Severin, P.E. May 2022
 Designed by Date



Approved by _____ Date



The approximate project location is 1.0 mile south and 1.5 east of Oswego, Kansas.

Upstream and Downstream Landowners

- 1) (Project Location)
RD Neosho, LLC
108 Saint Joseph St
St Paul, Kansas 66771
- 2) Dethrow, Dewey & Janet Trust
302 Desert Sky Dr
McGregor, Texas 76657
- 3) Getman, Joseph Trust
9089 SW Snowbird Ln
Columbus, Kansas 66725
- 4) Gallagher, William & Linda
1566 SW 120th St
Columbus, Kansas 66725
- 5) Walker, Clay William King, Lori J
2523 7000 Rd
Oswego, Kansas 67356
- 6) Bagg, Jo Ann Liv Trust; Skundberg, Billie Sue
6758 S Windermere St
Littleton, Colorado 80120
- 7) Pettigrew, Donita; Walker, Evelyn
28034 282nd Rd
Dexter, Kansas 67038
- 8) Lewellen, Roland A
1777 12000 Rd
Oswego, Kansas 67356
- 9) Walker, Clay William; Whittley, Lorna
2515 7000 Rd
Oswego, Kansas 67356
- 10) McLean, Thomas A McLean, Teresa M
23021 York Rd
McCune, Kansas 66753
- 11) Becker, Fred; Rose
10061 X-Ray Rd
Oswego, Kansas 67356
- 12) Zwahlen Family Rev Living Trust
23560 S 624 Rd
Wyandotte, Oklahoma 74370
- 13) Martin Living Trust, Judy L
16623 Pine Grove Ln
Ft Smith, Arkansas 72916
- 14) Camper, Cynthia A; Robison, Sarah A
1107 Sunset Dr
Oswego, Kansas 67356
- 15) Williams Rev Trust, Carrie F
7943 N Sheridan Rd
Owasso, Oklahoma 74055

Permit Points of Diversion

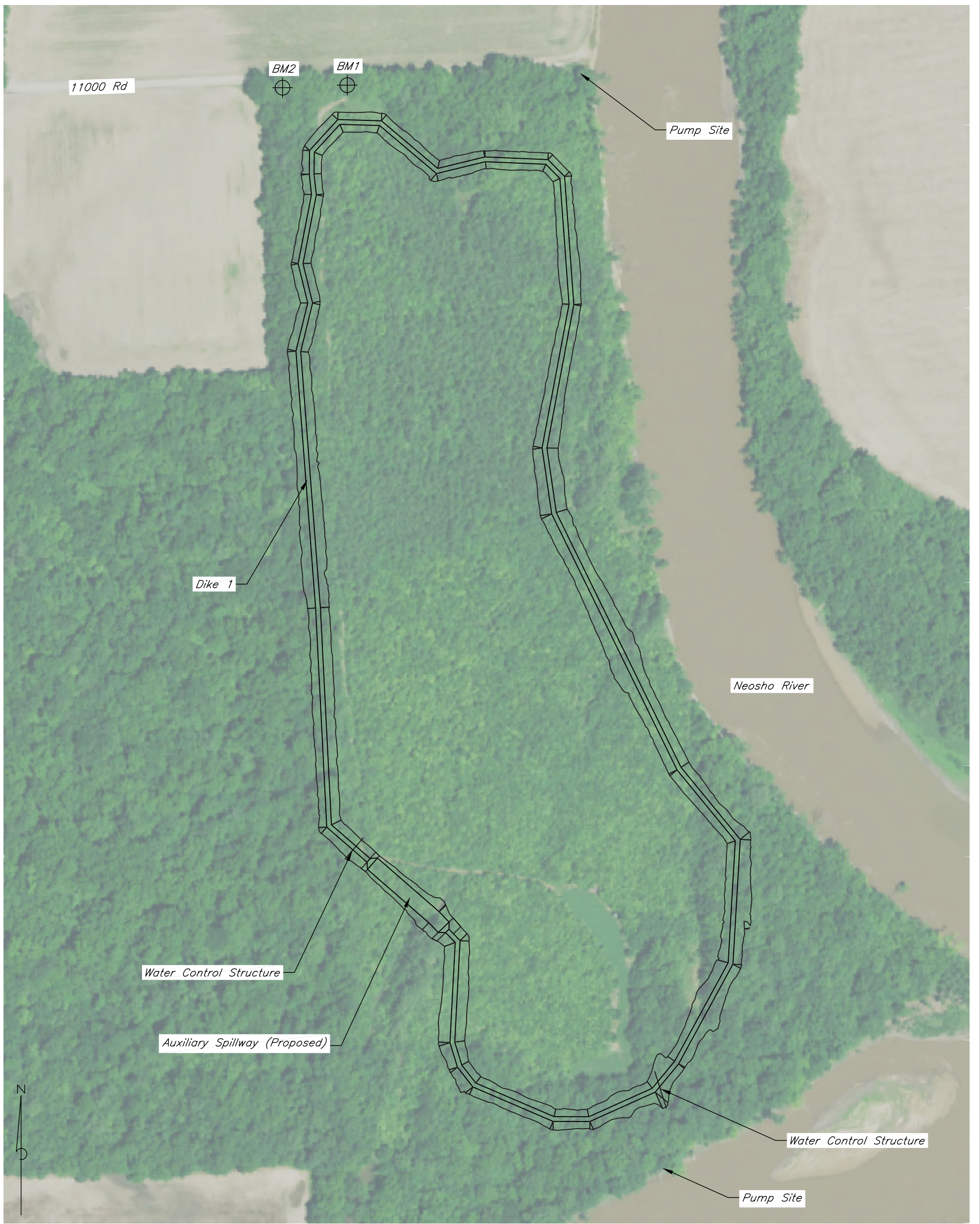
- A) Water Control Structure (Storage)
- B) Water Control Structure (Storage)
- C) Pump Site (Direct Diversion)
- D) Pump Site (Direct Diversion)

Date	05/22
Designed	B Severin
Drawn	B Severin
Checked	M Miller
Approved	B Severin

RD Neosho, LLC
Wetland Development (As-Constructed)
NW 1/4 Sec 26, T-33S; R-21E
Labette County, Kansas



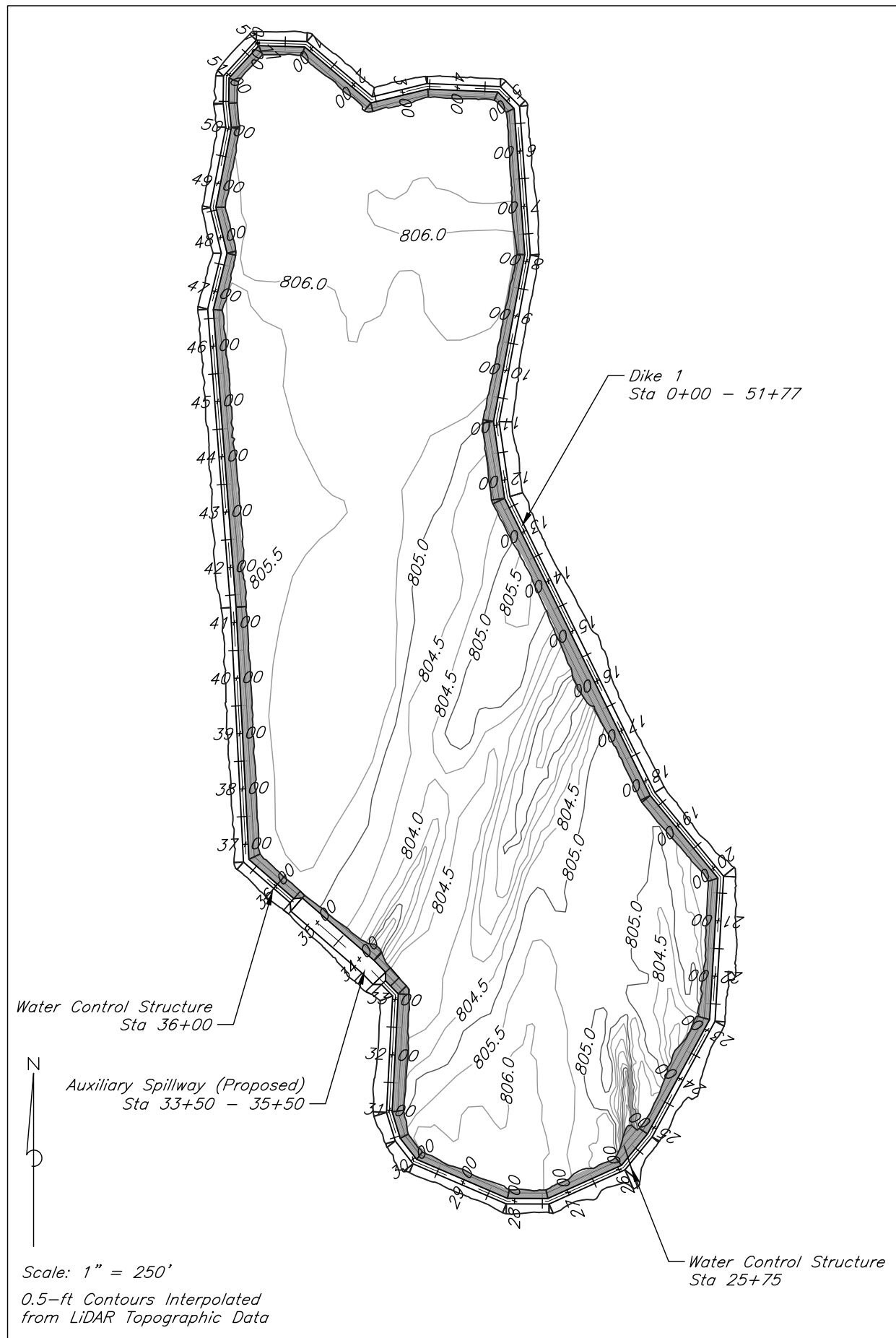
Location Map



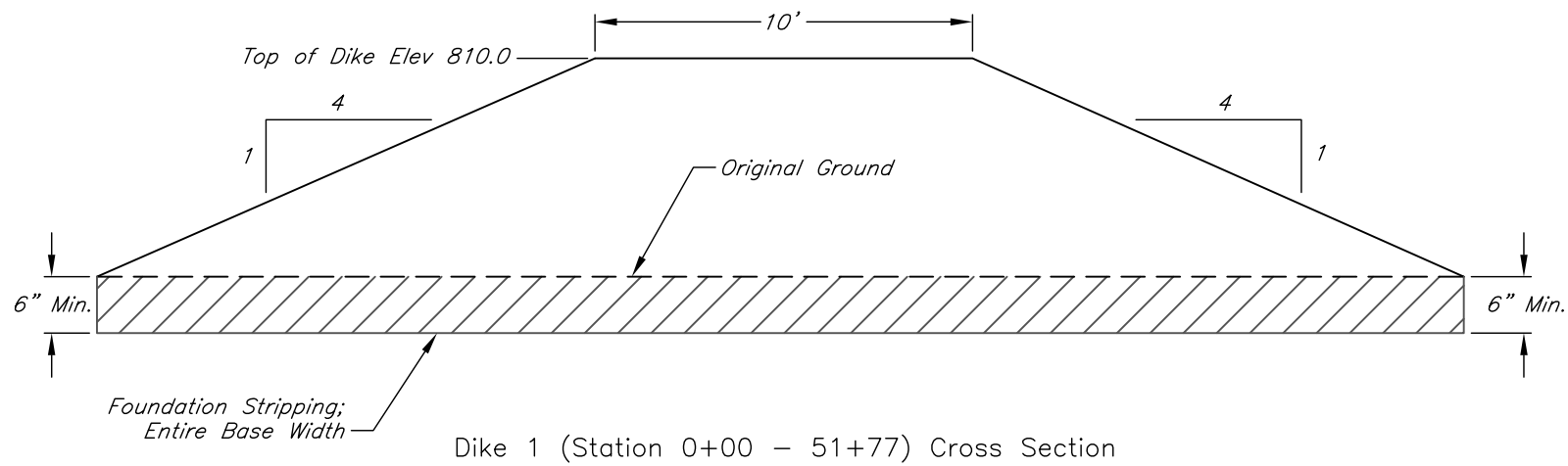
Benchmark Table				
Benchmark	Northing	Easting	Survey Elevation	Description
BM1	1506452.04	2308764.64	807.03	Top of rebar, NW corner at north gate
BM2	1506446.62	2308629.30	806.49	Top of rebar, NW corner of property

Survey Area: Kansas State Plane (South)

Orthographic Plan Map



Elevation (ft)	Area (ac)	Total Storage (ac-ft)	Total Storage + Net Evaporation (ac-ft)
801.5	0.01	0.00	0.00
802.0	0.10	0.03	0.06
802.5	0.33	0.13	0.24
803.0	0.66	0.38	0.60
803.5	1.11	0.83	1.20
804.0	1.81	1.55	2.16
804.5	3.81	2.96	4.23
805.0	7.03	5.67	8.01
805.5	12.76	10.62	14.87
806.0	19.77	18.75	25.34
807.0	24.97	41.12	49.44
ASW 807.3	25.11	48.63	57.00
808.0	25.43	66.32	74.80
809.0	25.90	91.99	100.62
TOD 810.0	26.37	118.12	126.92

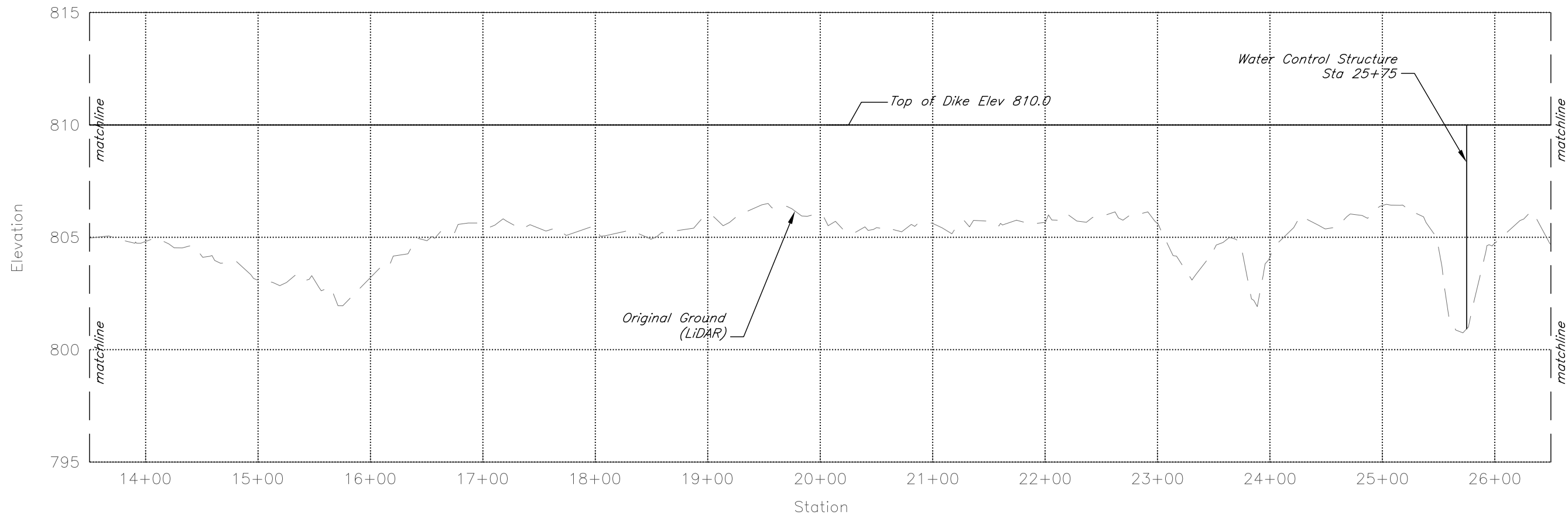
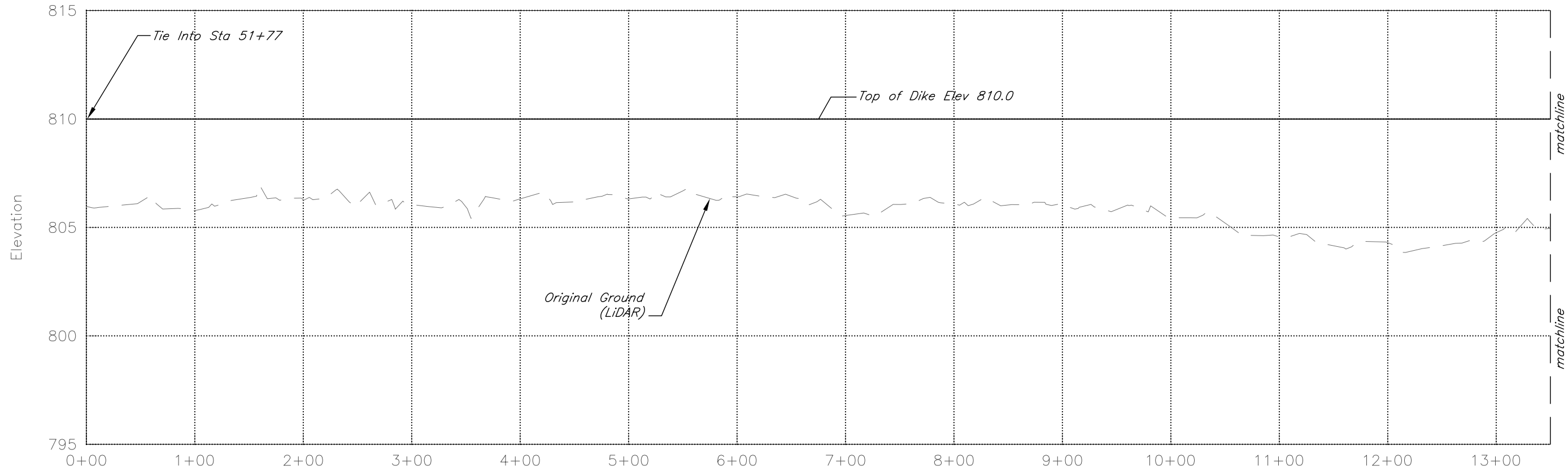


Date 05/22
 Designed B Severin
 Drawn B Severin
 Checked M Miller
 Approved B Severin

RD Neosho, LLC
 Wetland Development (As-Constructed)
 NW 1/4 Sec 26, T-33S; R-21E
 Labette County, Kansas



Dike 1 Detail



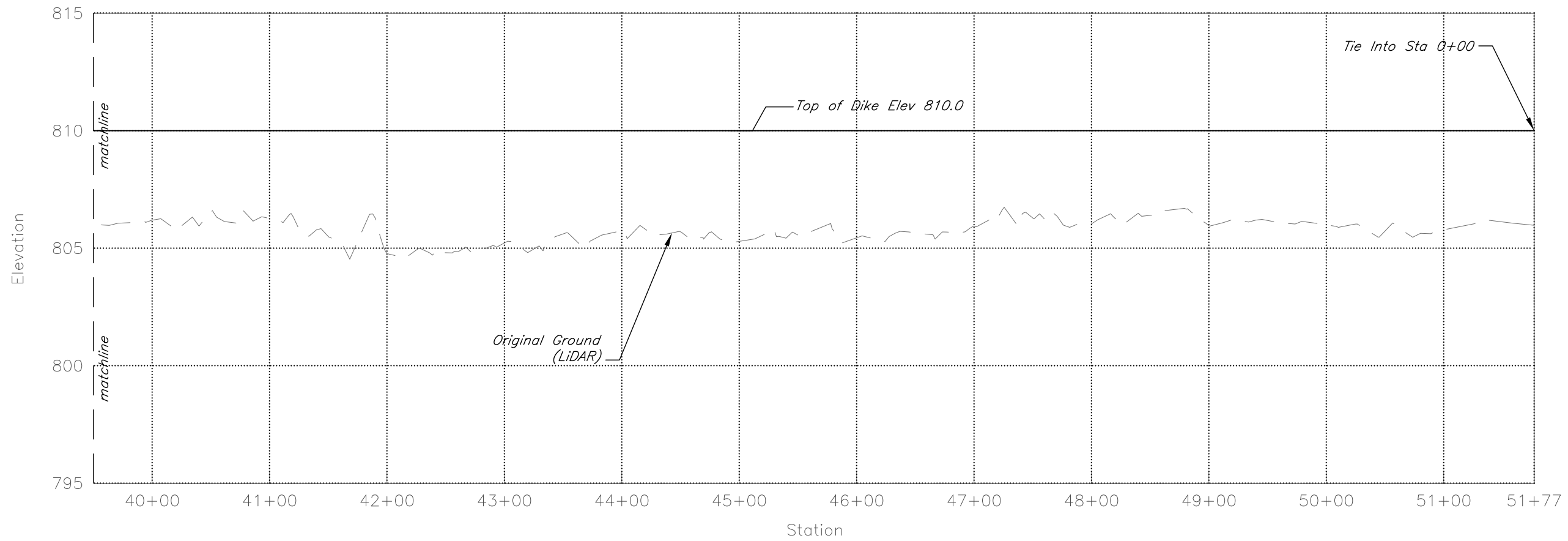
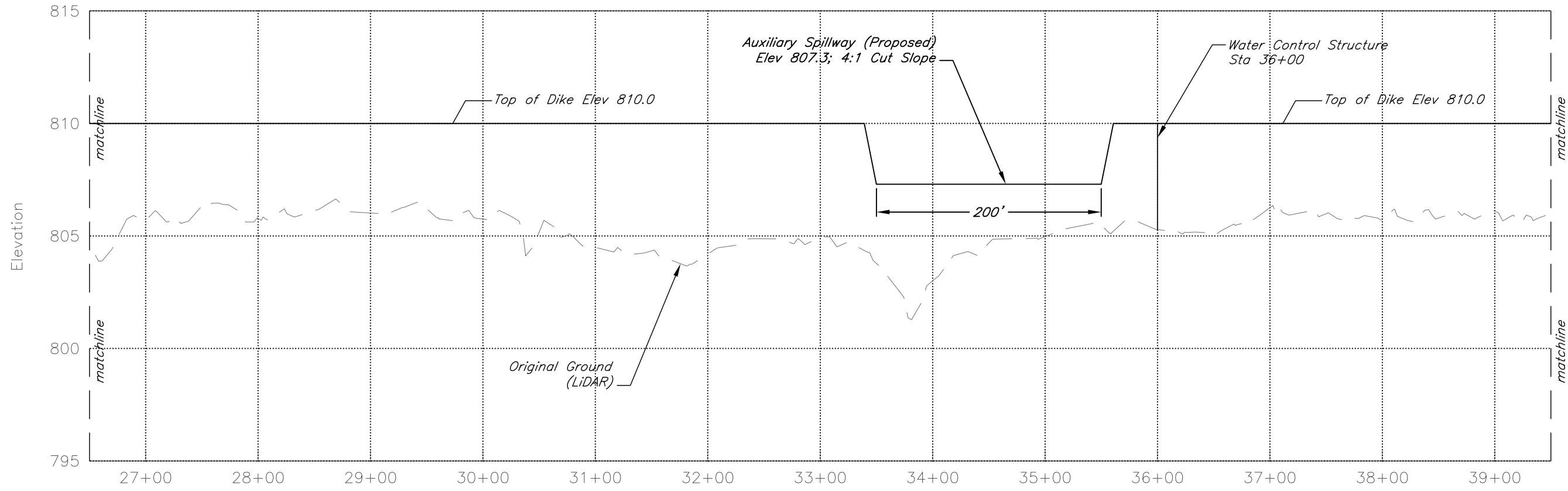
Profile View of Dike 1

Dike 1 Profile

Designed	B Severin	Date	05/22
Drawn	B Severin		
Checked	M Miller		
Approved	B Severin		

RD Neosho, LLC
 Wetland Development (As-Constructed)
 NW 1/4 Sec 26, T-33S; R-21E
 Labette County, Kansas





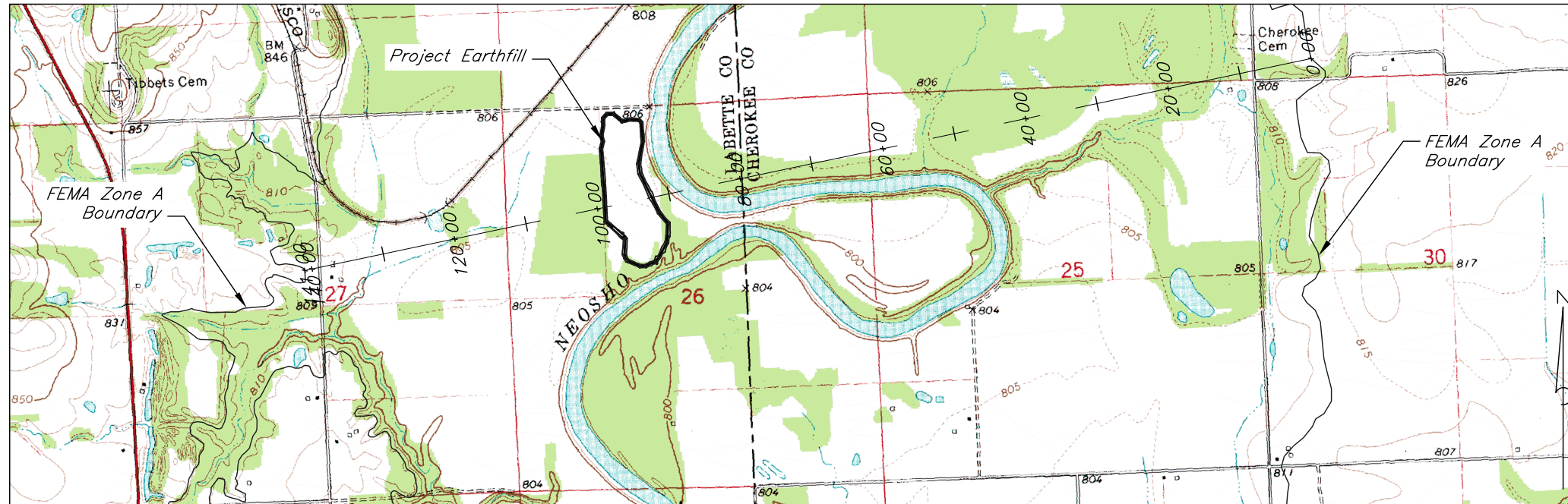
Profile View of Dike 1

Dike 1 Profile

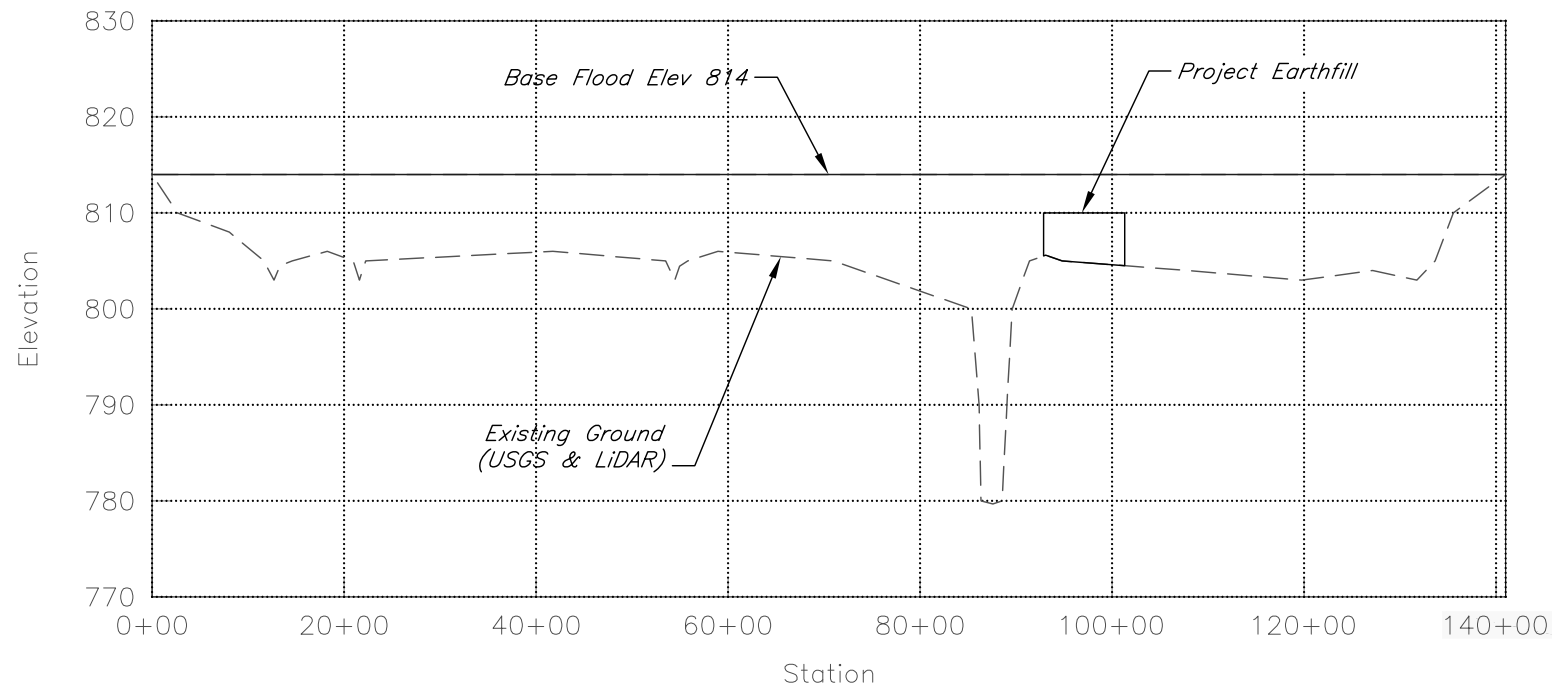
Designed	B Severin	Date	05/22
Drawn	B Severin		
Checked	M Miller		
Approved	B Severin		

RD Neosho, LLC
 Wetland Development (As-Constructed)
 NW 1/4 Sec 26, T-33S; R-21E
 Labette County, Kansas





Scale: 1" = 2000'



Profile View of FEMA Zone A

References:
 Existing ground and channels: U.S. Geological Survey (USGS) 7.5 minute quadrangle map and LiDAR topographic data
 FEMA Zone A Base Flood: National Flood Insurance Program, Flood Insurance Rate Map (FIRM) Map Number FM20099C0365D, Unincorporated areas of Labette County, Kansas (1/2/2009) and Map Number FM20021C0150C, Unincorporated areas of Cherokee County, Kansas (11/19/2008)

Base flood elevation = 814
 Base flood section area = 132,600 sq. ft.
 Top width of base flood section = 14,100 ft.
 Maximum earthfill area below base flood elevation = 4,350 sq. ft.

Earthfill will increase base flood area by 3%
 Earthfill will increase base flood elevation by 0.3 ft.

Base Flood Analysis Completed By: Brian W Severin Date: 5/19/2022

Designed	B Severin	Date	05/22
Drawn	B Severin		
Checked	M Miller		
Approved	B Severin		

RD Neosho, LLC
 Wetland Development (As-Constructed)
 NW 1/4 Sec 26, T-33S; R-21E
 Labette County, Kansas

KDA – Division of Water Resources (DWR) Project Report

Surface Water Storage

The Potential Net Evaporation (Annual Average Evaporation minus Annual Normal Precipitation) for the project location is 4 inches. The net storage for this project was analyzed from the proposed auxiliary spillway. Water control structures will be used to manage the water level within the wetland cell. The Total Storage + Net Evaporation for the wetland cell is greater than 15 ac-ft. Therefore, a DWR Water Appropriations permit is required.

Dike 1 Stage Storage Table			
Elevation (ft)	Area (ac)	Total Storage (ac-ft)	Total Storage + Net Evaporation (ac-ft)
801.5	0.01	0.00	0.00
802.0	0.10	0.03	0.06
802.5	0.33	0.13	0.24
803.0	0.66	0.38	0.60
803.5	1.11	0.83	1.20
804.0	1.81	1.55	2.16
804.5	3.81	2.96	4.23
805.0	7.03	5.67	8.01
805.5	12.76	10.62	14.87
806.0	19.77	18.75	25.34
807.0	24.97	41.12	25.34
807.3 (Auxiliary Spillway)	25.11	48.63	57.00
808.0	25.43	66.32	74.80
809.0	25.90	91.99	100.62
810.0 (Top of Dike)	26.37	118.12	126.92

Direct Diversion

A pumping site is proposed to control and maintain the wetland hydrology. The pumping site will be located as shown on Plan Sheet 2 of 7, with the water source being the Neosho River. Therefore, a Water Appropriation for Beneficial Use permit will be required.

Base Flood Analysis

The project is located within the FEMA Zone A flood boundary the Neosho River. Therefore, a floodplain fill permit will be required. A base flood analysis was completed to determine the increase in base flood area and flood elevation. The elevation of the existing ground and channels was approximated from U.S. Geological Survey (USGS) 7.5-minute quadrangle map and LiDAR topographic data. The base flood (FEMA Zone A, 100-yr floodplain) was approximated from the FEMA FIRM data (Map Number FM20099C0365D, Unincorporated areas of Labette County, Kansas and Map Number FM20021C0150C, Unincorporated areas of Cherokee County, Kansas). The earthfill will increase the base flood area by 3% and the base flood elevation by 0.3 feet. See Base Flood Analysis (Plan Sheet 7 of 7) for further detail.



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. 50,809** of the applicant

**ROY E CARTER
108 SAINT JOSEPH ST
SAINT PAUL KS 66771-4093**

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 **June 9, 2022**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh located in Lots 2 and 3 of Section 26, in Township 33 South, Range 21 East, Labette County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from the Neosho River, to be withdrawn by means of two (2) pump sites located as follows:

one (1) in Lot 2 of Section 26, more particularly described as being near a point 5,220 feet North and 3,141 feet West of the Southeast corner of said section; and

one in (1) Lot 3 of Section 26, more particularly described as being near a point 2,974 feet North and 3,017 feet West of the Southeast corner of said section,

both in Township 33 South, Range 21 East, Labette County, Kansas, located substantially as shown on the aerial photograph accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **10,000 gallons per minute (22.28 c.f.s.)** and to a quantity not to exceed **155 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 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).

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

17. 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.

18. 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.

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

20. 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 24 day of August, 2023, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

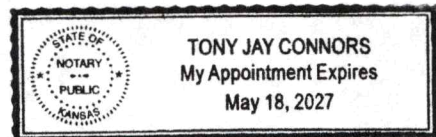
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 24 day of August, 2023, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Tony Jay Connors

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

August 30, 2023

ROY E CARTER
108 SAINT JOSEPH ST
SAINT PAUL KS 66771-4093

RE: Appropriation of Water
File No. 50,809

Dear Mr. Carter:

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 may be submitted online for no fee at www.kswaterusereport.org. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee.

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 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 the 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:kak: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 Act.

CERTIFICATE OF SERVICE

On this 30 day of August, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,809, dated August 24, 2023, was mailed postage prepaid, first class, US mail to the following:

ROY E CARTER
108 SAINT JOSEPH ST
SAINT PAUL KS 66771-4093

With photocopies to:

KDA-DWR Topeka Field Office



Division of Water Resources