

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;">50626</p>	2. Status Change Date: <p style="text-align: center; color: purple; font-size: 1.2em;">10/1/2021</p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;">02</p>	4. GMD: <p style="text-align: center; font-size: 1.2em;">05</p>
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5. Status: Approved Denied by DWR/GMD Dismiss by Request/Failure to Return

6. Enclosures: Check Valve N of C Form Water Tube Driller Copy Meter

7a. Applicant(s) Person ID **56807**
New to system Add Seq# _____

WETLANDS AMERICA TRUST INC
39677 CANYON RIM RD
VALENTINE, NE 69201

7b. Landowner(s) Person ID 56807 _____
New to system Add Seq# _____

7a

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

7d. Misc Person ID _____
New to system Add Seq# _____

8. WUR Correspondent Person ID _____
New to system Add Seq# _____
Overlap File (s) WUC Notarized WUC Form
Agree Yes No

7a

9. Use of Water: Changing? Yes No

Groundwater Surface Water

IRR REC DEW MUN

STK SED DOM CON

HYD DRG WTR PWR ART RECHRG

IND SIC: _____ OTHER: _____

10. Completion Date: 12/31/2022 11. Perfection Date: 12/31/2026 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: **8/25/21** By: **BMM**
Date Entered: 10/4/2021 By: **LMoody**

File No. 50,626	15. Formation Code:	Drainage Basin: Cow Creek	County: BT	Special Use:	Stream:																																					
16. Points of Diversion			17. Rate and Quantity																																							
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>MOD</th> <th>DEL</th> <th>ENT</th> <th>PDIV</th> <th>Qualifier</th> <th>S</th> <th>T</th> <th>R</th> <th>ID</th> <th>'N</th> <th>'W</th> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>			MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W												<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="2">Authorized</th> <th colspan="3">Additional</th> </tr> <tr> <th>Rate gpm</th> <th>Quantity af</th> <th>Rate gpm</th> <th>Quantity af</th> <th>Overlap PD Files</th> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>			Authorized		Additional			Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files					
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Authorized		Additional																																								
Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files																																						
CHK 88995 SE SE NE 27 18S 13W 2 2680 529			NF 157.65 NF 157.65 NA																																							
CHK 88996 SE NE SE 27 18S 13W 3 1910 650			NF 157.65 NF 157.65 NA																																							
			0 0 0 0																																							
18. Storage: Rate NF NF Quantity 157.65 ac/ft Additional Rate NF NF Additional Quantity 157.65 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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by 12/31/22 Date Acceptable Meter Installed _____																																										
21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files																					
MOD	DEL	ENT	PUSE	S	T	R	ID	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼																							
CHK	70511	27	18	13W	2			Wetlands in E/2 of 27-18S-13W																51.26 surface acres	7A	N	NA															
																					7A	N	NA																			

Blood Creek Trib 2a (Cow)

WAIVER INCLUDED

9/29/2021
KAB

Comments:

Kansas Department of Agriculture
 Division of Water Resources
WAIVER REQUEST & WAIVER RULE WORKSHEET

File Number: 50626

FO: 2 GMD: 5

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
REC	9/29/21	45	GMD5	Sustainable Yield	Closure of District
Rule Number	Date Granted	Date Denied	Justification:	Requested quantity of water is being offset by a reduction in quantity from nearby WR 42777. GMD5 recommends the waiver contingent upon the offset.	
K.A.R. 5-25-4	10/1/2021				

WAIVER RULE (complete only if a new rule needs to be created):

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
				K.A.R.		

10/4/2021
LMoody

9/29/2021
KAB

Date Prepared _____ By _____

Date Entered _____ By _____

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files
FROM: Kristen Baum

DATE: August 19, 2021
RE: Application File Nos. 50,626 and 50,388
and Water Right File No. 42,777

The Wetlands America Trust Inc. has filed an application to appropriate 157.65 acre-feet of surface water at the rate of natural flows to be stored for recreational use in a restored wetland (Ochs project). The proposed points of diversion are the two water control structures located along the two wetland embankments in the East Half of Section 27, Township 18 South, Range 13 West, Barton County, Kansas. The proposed appropriation is located on Blood Creek Trib 2A (Cow Creek), directly upstream of Cheyenne Bottoms Wildlife Area. The place of use and points of diversion are both owned by the applicant. The proposed embankments have been determined to be non-jurisdictional by the DWR Water Structures Program provided that NRCS provides evidence of a permanent easement once finalized, see email from Janelle Phillips dated March 17, 2020.

The requested quantity of 157.65 acre-feet is intended to cover one year of evaporation plus one storage volume fill. This quantity of water complies with the requirements of K.A.R. 5-6-5 for storage of surface water.

$$(51.26 \text{ acres} \times 32''/12'' = 136.7 \text{ acre-feet}) + (20.9 \text{ acre-feet}) = 157.6 \text{ acre-feet}$$

It should be noted that during the review of the first application originally submitted for this project (File No. 50,388), DWR determined that the quantity being requested was insufficient to cover the intended use. After considerable discussion between Ducks Unlimited, NRCS and DWR, the applicants decided to file a second application (File No. 50,626) requesting a more reasonable quantity and have also requested that the first application be voluntarily dismissed.

The location of this proposed project is within the boundaries of Big Bend GMD No. 5 which is closed to new surface water and groundwater appropriations, and the application doesn't meet any of the exemptions described in K.A.R. 5-25-4. A waiver of the district closure is being requested on the basis that the quantity of water being requested is proposed to be offset by an equal reduction in quantity from a nearby Water Right (File No. 42,777) which is also located directly upstream of Cheyenne Bottoms. A Request to Reduce has been filed for Water Right File No. 42,777, requesting that the quantity be reduced from 692 to 534.35 acre-feet and the place of use be reduced from 133.75 to 103.3 acres. Water Right File No. 42,777 was certified for one year of evaporation and one storage volume fill. The storage volume was based on an assumed 2.5-foot depth. Based on this information, a reduction of the place use by 30.5 acres provides the appropriation reduction in quantity.

$$\begin{array}{rcll} (30.5 \text{ acres} \times 2.5', \text{ storage}) & + & (30.5 \text{ acres} \times 32''/12'', \text{ evaporation}) & \\ 76.3 \text{ acre-feet} & + & 81.3 \text{ acre-feet} & = 157.6 \text{ acre-feet} \end{array}$$

Two landowners were identified within one-half (½) mile upstream and downstream and both entities (KDWP and The Nature Conservancy) submitted letters of support for the proposed project so no notification letters were sent.

A copy of the package was provided to Big Bend GMD No. 5 for their review and recommendation. The package was presented to the Board of Directors at their August meeting, and they voted to recommend a waiver of K.A.R. 5-25-4(a). A recommendation to approve the new application with a waiver of K.A.R. 5-25-4(a) was received on August 19, 2021.

Jeff Lanterman, Water Commissioner for the Stafford Field Office, recommended approval of the referenced application in a conference call on August 26, 2021. Based on the above discussion, it is recommended that application File No. 50,626 be approved, application File No. 50,388 be dismissed, and Water Right File No. 42,777 be reduced as requested.

Kristen A. Baum
New Applications and Changes Supervisor

From: Matthew Hough
Sent: Wed 7/14/2021 7:58 AM
To: Baum, Kristen [KDA];Abram Lollar;Craig Roy;Conant, Cameron [KDA];Lewis, Earl [KDA]
Cc: Angelina Wright;Lanterman, Jeff [KDA];Letourneau, Lane [KDA]
Subject: RE: TNC/Ochs Water Right Transfer
Importance: High

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Kristen, Lane, and Earl,

I just received word from NRCS of our “drop dead” timeline for this project. Here’s specifically what they need per David Driscoll (the new Lynn Thurlow) overseeing WRE for NRCS in Salina...

“NRCS does not need a complete water rights application. We need the DWR chief engineer signed copy of that water right by Mid November 2021.”

Let me know if you have any concerns about this given the GMD5 board meeting in August and what you would have left to do on your end. Also, let me know if you need anything further in general.

Thanks!

Matt
308-850-2717

From: Matthew Hough
Sent: Tuesday, July 13, 2021 4:19 PM
To: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>; Abram Lollar <alollar@ducks.org>; Craig Roy <croy@ducks.org>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Cc: Angelina Wright <awright@ducks.org>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Letourneau, Lane [KDA] <Lane.Letourneau@ks.gov>
Subject: RE: TNC/Ochs Water Right Transfer

Kristen

Yep I think this works on our end. Please proceed with this strategy. If you need me to call Orrin, please let me know.

Thanks!

Matt
308-850-2717

From: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Sent: Tuesday, July 13, 2021 3:38 PM
To: Matthew Hough <mhough@ducks.org>; Abram Lollar <alollar@ducks.org>; Craig Roy <croy@ducks.org>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Cc: Angelina Wright <awright@ducks.org>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Letourneau, Lane [KDA] <Lane.Letourneau@ks.gov>
Subject: RE: TNC/Ochs Water Right Transfer

I’ve added Jeff and Lane back onto our email, and we’ve discussed it more.

With respect to the map and the place of use – If we are reducing off quantity from a water right, we’ve got to reduce the corresponding place of use that goes with that quantity. In this case, the place of use is ultimately the surface acres of marsh. I think part of the confusion for all of us is that even though we certified 42777 as a 133 acre marsh that was 2.5’ deep for a total of 692 AF, nothing close to that was ever truly perfected so we are talking theoretically when it comes to this offset.

That said, we did ultimately reach the conclusion that we can agree with your 157.56 AF quantity being reduced for a 1:1 *quantity* offset. The corresponding place of use acres that would need to be trimmed off (to remain consistent with how we certified this right) would be 30.5 acres, as follows:

30.5 acres x 2.5’ depth =	76.3 AF of storage
30.5 acres at 32” evap =	<u>81.3 AF</u> of evaporation
	157.6 AF total

That would leave 42777 with a 103.3 acre place of use after the reduction. Does this sound like something everyone would be in agreement with?

We can certainly ask Orrin if there is anything we can do to expedite his recommendation process since they were agreeable with it the first time around, but since it needs a waiver I’m guessing it would need to go back in front of the board. Yes, I think we’re talking about the same proposed project area, just an updated quantity calculation that provides for a full year of evaporation.

From: Matthew Hough <mhough@ducks.org>

Sent: Tuesday, July 13, 2021 11:23 AM

To: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>; Abram Lollar <alollar@ducks.org>; Craig Roy <croy@ducks.org>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Cc: Angelina Wright <awright@ducks.org>

Subject: RE: TNC/Ochs Water Right Transfer

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Kristen

When we talked on the call the other day, the plan was to use volume based reduction vs acre-based to be consistent with the original water right and compare apples to apples with the new property. Here’s a breakdown.

TNC currently has 692.0 AC-FT on this property.

157.65 AC-FT is needed to be transferred from the original volume.

TNC’s property would then have a remaining 534.35 AC-FT, eligible to be used across the original polygon.

If you need to draw a map around an area for this process, I think your map is fine but we don’t understand why that is necessary given the volume-based approach. Essentially we are just requested to reduce the total volume eligible to be used on that original polygon. Essentially the pool is not any smaller in acreage, just shallower (less volume).

The original water right requested for 90 AC-FT was based on NRCS’s calculations of volume that didn’t include evaporation. We didn’t know we needed that at the time. I guess based on your recommendation, we will need to refile for the 157.67. We just want to be clear that this is the same proposed project area, just with an updated calculation for evaporation AND is an offset vs a new water right. Given GMD5 approved this as a new water right the first time and not as an offset (meaning this is way less of an ask than originally) is there any way we could expedite that approval process? I mostly ask because NRCS is breathing down our neck to get this done as soon as possible. If not, please let us know when the meeting is and we can join in case any questions arise.

Thanks for your help on this!

Matt
308-850-2717

From: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Sent: Tuesday, July 13, 2021 10:48 AM
To: Abram Lollar <alollar@ducks.org>; Matthew Hough <mhough@ducks.org>; Craig Roy <croy@ducks.org>;
Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Cc: Angelina Wright <awright@ducks.org>
Subject: RE: TNC/Ochs Water Right Transfer

Good morning everyone,

Cameron and I have been working on your project and we need a bit more information from you. Attached is a map Cameron started that shows the authorized place of use for 42777 and our best guess for the acres you'd want to remove for the offset. Please review this map and see if this looks right. Feel free to propose something different if you'd prefer. This reduction in the place of use is a 1:1 surface acre reduction that allows you to pick up 51.26 acres of marsh with the new application.

The corresponding quantity we calculated that needs to come off of 42777 is 264.9 AF. I'll explain how we arrived at this figure since it sounds large. File no. 42777 was certified for 133.75 acres in 2006. The quantity that was certified was based on one year of evaporation plus one year of storage. The storage estimate was based on a 2.5 ft. depth. Using these same assumptions, we calculated the equivalent quantity for the 51.26 acres being removed.

51.26 acres x 2.5' depth =	128.2 AF of storage
51.26 acres at 32" evap =	<u>136.7 AF of evaporation</u>
	264.9 AF total

Abe – You mentioned 157.65 AF in a previous email for the new application. I believe this quantity is based on a full year of evaporation. The new application we currently have pending is requesting 90 AF. We don't have a way to increase the quantity on the existing application, but you do have the option of re-filing. We can help you with the new application, voluntary dismissal (of 50388) and reduction (of 42777) package and we'll fast track the applications since a majority of the review has already taken place under 50388. If we go this route, we would need to send it back to GMD5 for another recommendation. They will likely have a board meeting scheduled for Aug 10th. If we get the paperwork turned around quickly, we should have no problem getting the package to them for this meeting. Since you have enough offset to cover the full quantity, this is the option we would recommend, but the choice is yours to make.

Please let me know what you think about the attached map, and let me know if you'd like to proceed with the existing 90AF application or refile for 157.65AF. We can then send you the appropriate paperwork (mostly filled out) that you can review and submit. Let me know if you have any questions.

Thanks,

Kristen A. Baum
Division of Water Resources – Water Appropriations
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan KS 66502
(785) 564-6627

From: Abram Lollar <alollar@ducks.org>
Sent: Monday, July 12, 2021 5:27 PM
To: Matthew Hough <mhough@ducks.org>; Craig Roy <croy@ducks.org>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Cc: Angelina Wright <awright@ducks.org>
Subject: Re: TNC/Ochs Water Right Transfer

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Hey there Cameron,

Hope all is well.

Anyways, I was wondering if we could possible tackle this application this week? We are closing on deadlines for our WRE and NRCS is reached out to us about this(CC on email soon to come).

I'm available tomorrow afternoon after 4 pm and all day Wednesday and Thursday and Friday afternoon.

Let me know what time works for you.

Thanks again,

-Abe

From: Abram Lollar <alollar@ducks.org>
Sent: Tuesday, July 6, 2021 3:02 PM
To: Matthew Hough <mhough@ducks.org>; Craig Roy <croy@ducks.org>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Cc: Angelina Wright <awright@ducks.org>
Subject: Re: TNC/Ochs Water Right Transfer

Sounds good Cameron.

Thanks again,

-Ave

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Tuesday, July 6, 2021 2:55:56 PM
To: Abram Lollar <alollar@ducks.org>; Matthew Hough <mhough@ducks.org>; Craig Roy <croy@ducks.org>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Cc: Angelina Wright <awright@ducks.org>
Subject: RE: TNC/Ochs Water Right Transfer

Hello Abe, I will fill out as much of the reduction application as I can and I'll send it to you when I'm done. Then, we can run over portions you might still need to complete. I'll hopefully be in touch with you tomorrow.

Cameron

From: Abram Lollar <alollar@ducks.org>
Sent: Tuesday, July 6, 2021 11:13 AM
To: Matthew Hough <mhough@ducks.org>; Craig Roy <croy@ducks.org>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>

Cc: Angelina Wright <awright@ducks.org>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: Re: TNC/Ochs Water Right Transfer

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Thanks Matt, I will start trying to fill this out the best I can.

Cameron or Kristen,

Do I need to add WETLANDS AMERICA TRUST INC(Ducks Unlimited) to the "names and addresses of the owners of the authorized place of use" section or just NATURE CONSERVANCY KANSAS CHAPTER?

Also since we are doing a transfer what section (A, D non irrigation use, or other?) should I be trying to fill out?

If this would be easier to do over a zoom please let me know. I can set something up this week.

Thanks again,

-Abe

Abe Lollar
Ducks Unlimited Biologist
Garden City KS 67846
620.214.2693
alollar@ducks.org

From: Matthew Hough <mhough@ducks.org>
Sent: Friday, July 2, 2021 7:54 AM
To: Abram Lollar <alollar@ducks.org>; Craig Roy <croy@ducks.org>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Cc: Angelina Wright <awright@ducks.org>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: TNC/Ochs Water Right Transfer

Here it is Abe.

Thanks,

Matt
308-850-2717

From: Abram Lollar <alollar@ducks.org>
Sent: Thursday, July 1, 2021 6:12 PM
To: Matthew Hough <mhough@ducks.org>; Craig Roy <croy@ducks.org>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Cc: Angelina Wright <awright@ducks.org>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: Re: TNC/Ochs Water Right Transfer

Sounds good Kristen, would it be beneficial for me to set up a teams call to go through the application maybe next Wednesday or Thursday?

(ps could you please send me the application so I can start getting additional information ready if needed?)

Thanks again,

-Abe

Sent from my Verizon, Samsung Galaxy smartphone
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From: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Sent: Thursday, July 1, 2021 4:50:56 PM
To: Matthew Hough <mhough@ducks.org>; Craig Roy <croy@ducks.org>
Cc: Angelina Wright <awright@ducks.org>; Abram Lollar <alollar@ducks.org>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: TNC/Ochs Water Right Transfer

Thanks for the information everyone. Cameron is out of the office but I'll bring him up to speed on Tuesday and we'll get something started.

From: Matthew Hough <mhough@ducks.org>
Sent: Thursday, July 1, 2021 2:19 PM
To: Craig Roy <croy@ducks.org>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Cc: Angelina Wright <awright@ducks.org>; Abram Lollar <alollar@ducks.org>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: TNC/Ochs Water Right Transfer

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Cameron and Kristen,

Abe volunteered to assist with this application as well if you need help from us. I'll be out next week on vacation.

Thanks,

Matt
308-850-2717

From: Craig Roy <croy@ducks.org>
Sent: Wednesday, June 30, 2021 3:02 PM
To: Kristen.Baum@ks.gov
Cc: Matthew Hough <mhough@ducks.org>; Angelina Wright <awright@ducks.org>
Subject: TNC/Ochs Water Right Transfer

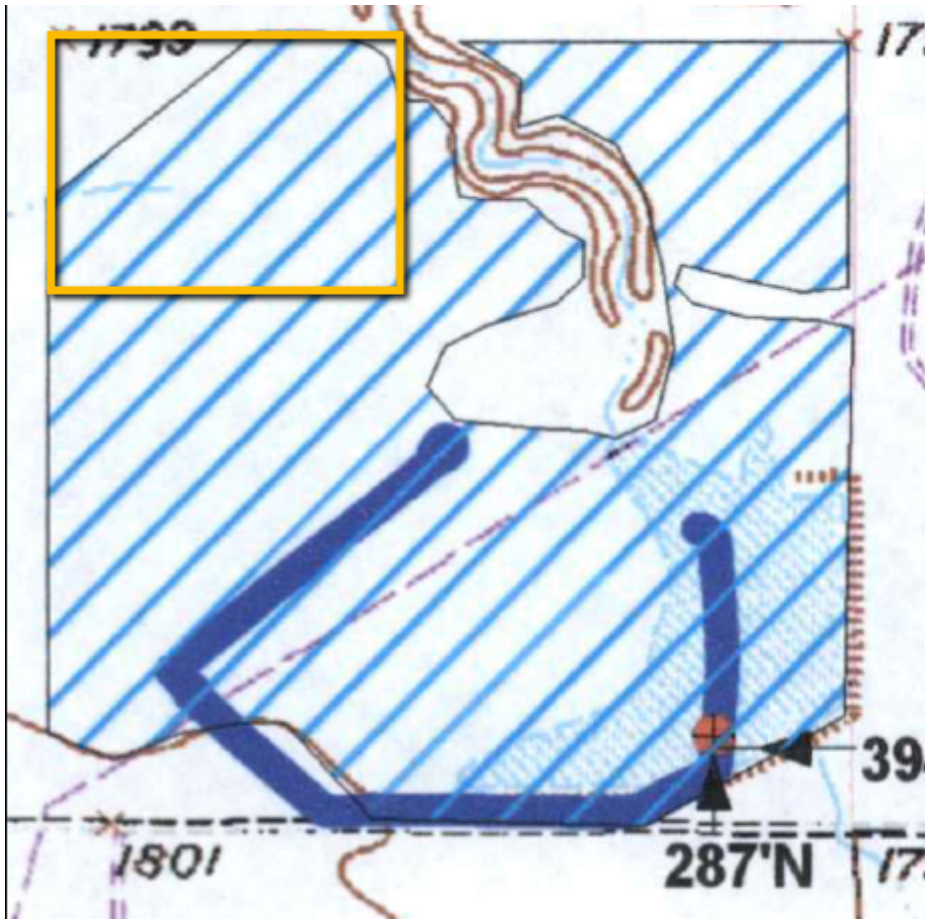
You may have already received these documents but thought it would be useful to put them all in one email.

The water use analysis for the TNC property as well as the Ochs project is attached. The estimated storage plus net evaporation for the TNC Property and the Ochs project is 123.61 and 157.65 acre-feet, respectively. The TNC property has a water right of 692 acre-feet (Reference Water Right File No. 42,777). Transferring 160 acre-feet of water use from the TNC property to the Ochs project will still provide the TNC property with a water right of 532 acre-feet meeting the TNC property's needs estimated at about 124 acre-feet.

We understand an area must be identified on the TNC property to use as an offset area. The first image below shows the estimated full service level on the TNC property. The second image below is the identified Authorized Place of Use from the Water Right (File #42,777). In that second image, a box is shown in the NW corner that could be used for the offset area.

Let us know if you have any questions.





Craig Roy, P.E.
Regional Civil Engineer
Licensed in: KS, MO, IA, TX
Great Plains Region
Louisburg, KS
913-991-2223
croy@ducks.org

Phillips, Janelle [KDA]

From: Phillips, Janelle [KDA]
Sent: Tuesday, March 17, 2020 8:48 AM
To: Lanterman, Jeff [KDA]; Letourneau, Lane [KDA]; Stewart, Kelly [KDA]
Cc: Fitch, Elizabeth [KDA]
Subject: RE: DU and Cheyenne Bottoms
Attachments: 2013_0501_NRCSnotice.pdf

Ducks.....

Typically a structures permit would be required to relocated the channel and to build the proposed berms. However if this is in a WRP a structures permit is not required if the land is put in a permanent easement. (see attached letter from 2013) NRCS would just need to provide information on the proposed project and evidence of a WRP permanent easement. Let me know if you have any questions.

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
785-564-6656
Janelle.phillips@ks.gov

From: Lanterman, Jeff [KDA]
Sent: Monday, March 16, 2020 5:07 PM
To: Letourneau, Lane [KDA] <Lane.Letourneau@ks.gov>; Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>; Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Fitch, Elizabeth [KDA] <Elizabeth.Fitch@ks.gov>
Subject: DU and Cheyenne Bottoms

Ducks. Its all about the ducks. Janelle; this will probably take some permitting through you all correct.

Anyway I need to fully understand what he wants to do here but it sounds like there will be 90 af of storage and they are going to set the channel back to its natural state through the property with some berms to hold the water.

This is adjoining TNC land and KDWPT Cheyenne Bottoms land. It would catch and hold some Cheyenne Bottoms water I could show you on Google Earth. The road to the south on the South side of that is the Walnut Creek diversion channel and this water would flow on the north side of the road to the Bottoms.

I don't think there is any way to get around the permitting on this as far as appropriations. I don't know about structures though.

GMD #5 so it is closed area.

They have a lot of money tied up here and they want to fight it through the system if they can. In DU's mind they are just restoring it to natural and it will hold less water than it originally did back in the day. Its all in the Cheyenne bottoms Wetland footprint before the channel was moved.

Copied Kelly I know he has been doing some of this up north. Im OK with this but GMD is going to be a pain...

Phillips, Janelle [KDA]

From: Lanterman, Jeff [KDA]
Sent: Tuesday, March 17, 2020 8:35 AM
To: Letourneau, Lane [KDA]; Phillips, Janelle [KDA]; Stewart, Kelly [KDA]
Cc: Fitch, Elizabeth [KDA]
Subject: FW: Ochs Tract Storage Tables- Cheyenne Bottoms and Ducks Unlimited
Attachments: South Embankment ShallowWaterDevandMgt.pdf; North Embankment ShallowWaterDevandMgt.pdf

Here is additional information from the email yesterday.

From: Matthew Hough <mhough@ducks.org>
Sent: Tuesday, March 17, 2020 8:23 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: Ochs Tract Storage Tables

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.

Jeff

Sorry. This got hung up in my outbox last night.

Here are the storage tables from NRCS. Also, the historic flood stage pool of Cheyenne Bottoms is 1808.8 and our property and our elevation is 1799 on average. This equate to a historic storage of 3,135 acre-feet (AF) and we are only looking at about 90 AF in the request (slightly more than what is shown as we are hoping to address a small embankment in the SE corner as well). We are hoping to reduce the flowage rate by slowing water across the historic wetland which will restore the wet meadows, reduce erosion, reduce sediment going into the KDWPT Wildlife Area, and restore the natural stream channel vs all of the water going down the ditch. Much of the water will route across the property but not be impounded so we can restore natural sheet flow and slow flood velocities.

I'll have to defer to permitting questions to the engineer from NRCS who handle these for WRE applications from what I understand so please just let me know what you need from us there for structures permits.

Again, I can get letters of support from KDWPT who's water right it impacts since the water flows onto their property, TNC who's water flows onto the tract, as well as other groups like USFWS Partners Program, Pheasants Forever, etc. This has been a project the group has been working on a long time with a considerable amount of investment on the line so definitely worth the effort of pursuing our options. Again, we are open to suggestions or discussion on this and I would be happy to get on a call or anything to help further explain the project.

Thanks so much for your time!

Matt Hough
Manager, Conservation Programs – KS
Ducks Unlimited, Inc.
308-850-2717
mhough@ducks.org

United States Department of Agriculture



Natural Resources Conservation Service
760 South Broadway
Salina, Kansas 67401-4604

Phone: 785-823-4500
FAX: 785-823-4540
www.ks.nrcs.usda.gov

May 1, 2013

Mr. David Barfield
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture
109 Southwest 9th Street, 2nd Floor
Topeka, Kansas 66612-1283

Dear Mr. Barfield:

This letter is to inform you that the Natural Resources Conservation Service (NRCS) has recently reviewed our requirements for applying for state permits issued by the Division of Water Resources (DWR) on Wetlands Reserve Program (WRP) restoration work. From this review, we have decided to no longer apply for DWR permits when doing WRP restoration work on permanent easements. We will continue to pursue permits for non-permanent easements. Our reasons for this decision are described below.

The U.S. Department of Agriculture, Office of the General Counsel provided a legal opinion as to whether WRP was subject to state and local regulations. The legal opinion indicates that federal government programs are not subject to state or local regulation. This concept is based on the Supremacy Clause of the United States Constitution. Under the Supremacy Clause, federal agencies are immune from state and local regulation in the performance of their duties unless Congress expressly and unequivocally has waived the sovereign immunity of the federal government. The WRP is not among the programs for which there is an expressed waiver of sovereign immunity. A copy of the legal opinion is attached.

NRCS is required by WRP policy to start restoration work within 12 months of closing on the easement and have all work completed within 3 years. With our current workload for WRP restoration designs, timing becomes critical in order to meet these requirements. In some cases, the time required to obtain permits has delayed the start of some of the restoration projects to less than ideal times.

The NRCS budget is becoming extremely tight and any area where expenses can be reduced are being reviewed. A typical easement restoration project with a floodplain fill and water appropriations permit costs approximately \$1,000.

Because of the reasons stated above, NRCS has made the decision to no longer apply for DWR permits in association with permanent WRP easements. As a courtesy, NRCS would be willing to notify DWR of WRP permanent easement restoration projects.

Helping People Help the Land

An Equal Opportunity Provider and Employer

Under Executive Order 11988, entitled "Floodplain Management," federal agencies are to minimize the adverse effect of federal actions on floodplains. To comply with this Executive Order, NRCS will continue to design WRP restorations to meet the state of Kansas regulations.

As stated above, this decision only effects WRP restorations for which NRCS holds a permanent easement. Permits will be obtained for WRP restorations on 30-year easements and restoration cost-share agreements. These permits will be applied for by the landowner and not directly by NRCS. This new process will be used so that the permit(s) will be in the landowner's name after the expiration of the WRP enrollment.

NRCS is appreciative of the working relationship with DWR and plans to continue that even with this decision to change our procedure for obtaining permits on WRP restoration projects.

Sincerely,



DANIEL H. MEYERHOFF
Acting State Conservationist

Attachment

ec:

Arvil G. Bass, State Conservation Engineer, NRCS, Salina, Kansas
Roger J. Masenthin, Acting Assistant State Conservationist, NRCS, Salina, Kansas
Loren L. Graff, State Administrative Officer, NRCS, Salina, Kansas

Memorandum for Roger L. Bensey
Director
Watersheds and Wetlands Division

From: James B. Snow
Deputy Assistant General Counsel
Natural Resources Division

Subject: Wetlands Reserve Program - Immunity from Local Regulation

Issue

This responds to your request for a legal opinion on whether Wetlands Reserve Program (WRP) projects are subject to regulation by local floodplain zoning authorities.¹ You specifically asked us to consider whether the National Flood Insurance Program included any waiver of sovereign immunity which would subordinate the WRP to state regulation or control. You also specifically identified Executive Order 11988 for our consideration.

Summary conclusion:

The WRP is not subject to state or local regulation by floodplain zoning authorities because Congress has not made the WRP subject to such regulation.

Discussion

¹ Memorandum from Roger L. Bensey, Director, Watersheds and Wetlands Division, to James Snow, Deputy Assistant General Counsel, Office of General Counsel (Sept. 6, 2002).

Generally, the Federal Government programs are not subject to state or local regulation. This concept is based on the Supremacy Clause of the United States Constitution. Under the Supremacy Clause, federal agencies are immune from state or local regulation in the performance of their duties unless Congress expressly and unequivocally has waived the sovereign immunity of the federal government. The Supremacy Clause provides that the Constitution, treaties, and the laws of the United States are "the supreme Law of the Land."² The Supremacy Clause invalidates state laws that interfere with, or are contrary to, federal law,³ or which would have the effect of regulating federal activities.⁴ The notion that "the activities of the Federal Government are free from regulation by any state,"⁵ derives from the "seminal principle" of McCulloch v. Maryland, that "[i]t is of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their influence."⁶

There are exceptions to the general rule of sovereign immunity and that is when the Federal Government waives immunity and voluntarily subjects Federal programs to state laws. Only the United States, as sovereign, may waive the immunity of the federal government. See United States v. Mitchell, 445 U.S. 535, 539, 100 S.Ct. 1349, 63 L.Ed.2d 607 (1980). The Supreme Court has held that waivers of federal immunity must be unequivocal, *id.* at 538, 100 S.Ct. 1349, and are to be strictly construed in favor of the United States. United States v. Nordic Village, Inc., 503 U.S. 30, 34, 112 S.Ct. 1011, 117 L.Ed.2d 181 (1992). State

² U.S. Const., Art. VI, cl. 2.

³ Hillsborough County v. Automated Medical Labs., 471 U.S. 707, 712 (1985); See generally L. Tribe, Constitutional Law, § 6-30, pp. 511-514 (2d ed. 1988).

⁴ See e.g., Hancock v. Train, 426 U.S. 167, 178-80 (1976) (state may not require federally owned or operated installation to obtain state air pollution permit); Mayo v. United States, 319 U.S. 441, 447-48 (1943) (prohibiting Florida from imposing inspection and fee requirements on federal government's distribution of fertilizer, pursuant to federal law, within Florida); Johnson v. Maryland, 254 U.S. 51, 57 (1920) (prohibiting state from requiring federal official to undergo examination by state officer prior to performing federal duties).

⁵ Hancock, 426 U.S. at 178 (citing Mayo, 319 U.S. at 445).

⁶ Hancock, 426 U.S. at 178 (citing McCulloch, 4 Wheat. 316, 327 (1819)).

authority to regulate federal agencies or instrumentalities cannot be implied or inferred. In the words of the Supreme Court, there must be a "clear congressional mandate." Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110, 122, 74 S.Ct. 403, 98 L.Ed. 546 (1954). Waiver "cannot be implied but must be unequivocally expressed." United States v. King, 395 U.S. 1, 4, 89 S.Ct. 1501, 1503, 23 L.Ed.2d 52 (1969). Soriano v. United States, 352 U.S. 270, 77 S.Ct. 269, 1 L.Ed.2d 306 (1957).

There are several occasions when Congress has waived sovereign immunity in the environmental area such as under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act and the like. All these waivers are specific and expressed in statute. As noted below, the WRP is not among the programs for where there is an expressed waiver of sovereign immunity.

The Food Security Act of 1985 (Act), as amended, delegated authority to the Secretary of Agriculture to establish the Wetlands Reserve Program (WRP) to assist owners of eligible lands in restoring and protecting wetlands. The statutory scheme for achieving this goal is through: (1) enrollment of eligible private lands into the program; (2) restoration of the enrolled lands through a cost-share agreement; and (3) protection of the restored lands through enforcement of the terms and conditions of an easement or restoration cost-share agreement.⁷ The Act is silent as to state authority to regulate WRP activities. In the absence of an express and unambiguous waiver by Congress, the Act does not waive the sovereign immunity of the United States with respect to the WRP.⁸

⁷ 16 U.S.C. 3837a.

⁸ If Congress intended to make the WRP subject to state regulation it would have said so plainly, as it has done when it did so intend. See for example, 33 U.S.C. § 1323, which provides in pertinent part:

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and

any other requirement, whatsoever), to the exercise of any Federal, State, or local administrative authority, and to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law.

You specifically asked whether the National Flood Insurance Program (NFIP) included any waiver of sovereign immunity which would subordinate the WRP to state regulation or control. We find that Federal agencies are not subject to the NFIP. The Flood Disaster Protection Act of 1973 authorized the NFIP.⁹ The NFIP is federally-subsidized flood insurance for private property owners, administered and implemented by the Federal Emergency Management Agency (FEMA). The NFIP allows FEMA to make federal flood insurance available only in those areas where the appropriate public body of the community¹⁰ has adopted adequate land use regulations for its flood-prone areas.¹¹ Participating communities that fail to diligently implement or enforce these local land use restrictions are subject to probation or suspension from the NFIP.¹² The NFIP promotes land use regulation of private landowners by state and local governments. The NFIP does not waive the Federal sovereign immunity by explicitly subordinating federal agencies or instrumentalities to State or local land use restrictions, and, as previously noted, such waiver cannot be implied or inferred by Congressional silence.

You also specifically identified Executive Order 11988 for our consideration. Executive Order 11988, entitled "Floodplain Management," promulgated May 24, 1977, directs federal agencies to minimize the adverse effect of federal actions on floodplains.¹³ The Executive Order requires federal agencies taking action "in or affecting a floodplain" to think twice.¹⁴ The agency must consider the project's effects on the floodplains and possible alternatives, and may proceed only if it finds that the "only practicable alternative" requires "sitting in" the floodplain.¹⁵ Executive Order 11988 does not expressly provide for the waiver of federal sovereign immunity, and therefore does not serve to subordinate the WRP to state or local regulation.

⁹ Codified at 42 U.S.C. §§ 4001, *et seq.*

¹⁰ A "community," for purposes of the NFIP, is defined as "any state, area, or political subdivision ... which has the authority to adopt and enforce floodplain management ordinances for the area under its jurisdiction." 44 C.F.R. § 59.1.

¹¹ 42 U.S.C. § 4002(b)(3) (1982).

¹² 44 C.F.R. § 59.24.

¹³ City of Carmel-By-The-Sea v. U.S. Dept. of Transp., 123 F.3d 1142, 1165-1166 (9th Cir. 1997).

¹⁴ 42 Fed.Reg. 26951 (1977).

¹⁵ E.O. 11988, § 2(a)(2).

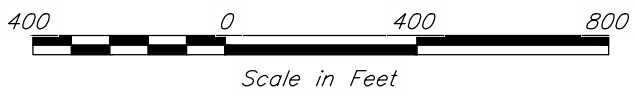
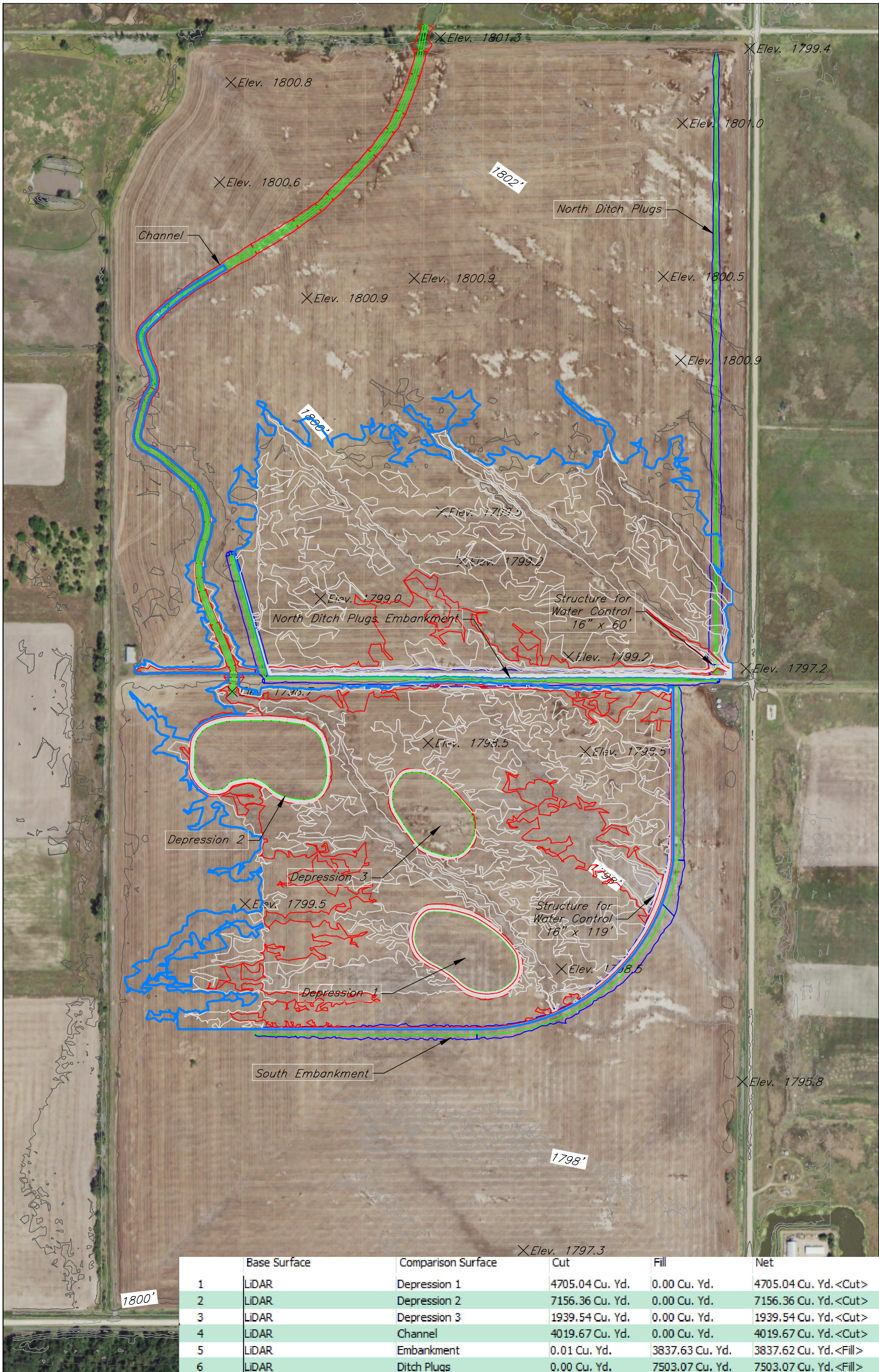
Finally, we are aware of no other federal law which would subordinate the WRP to state or local regulation.

Conclusion

You asked whether Wetlands Reserve Program projects are subject to regulation by local floodplain zoning authorities. You specifically asked us to consider whether the National Flood Insurance Program (NFIP) included any waiver of sovereign immunity which would subordinate the WRP to state regulation or control. We found that absent express and unambiguous waiver of sovereign immunity by Congress, the WRP is entitled to immunity from state or local regulation pursuant to the Supremacy Clause of the United States Constitution. We found that neither the authorizing legislation for the WRP nor for the NFIP waived federal sovereign immunity. Additionally, we are aware of no other federal statute which expressly subordinates the WRP to state or local regulation.

Absent such express waiver, we conclude that WRP projects are not subject to state or local regulation.

We would be pleased to answer any questions concerning this opinion. In that regard, this memorandum was prepared by Christopher Neilson who can be reached at (202) 720-3462.



Plan View - DRAFT

Drawing Name
 MDA WRE Plan View
 11/22/19 3:43 PM
 Sheet 1 of 1

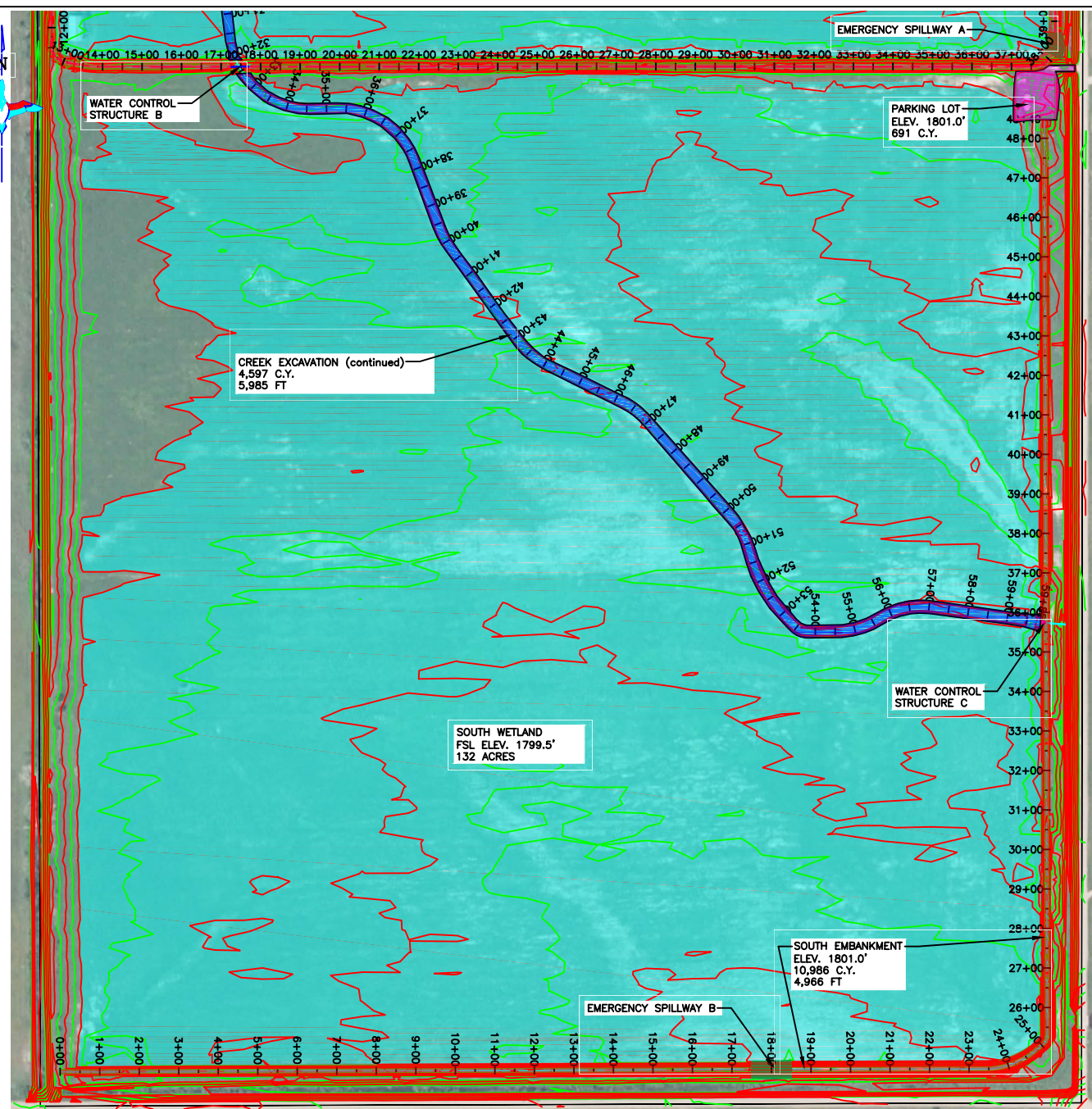


Wetlands of America
 Wetland Reserve Easement (WRE)
 E 1/2 Seciton 27 T18S R13W
 Barton County, Kansas

		Date
Designed	<u>BUY</u>	<u>5/19</u>
Drawn	<u>BUY</u>	<u>5/19</u>
Checked	_____	_____
Approved	_____	_____

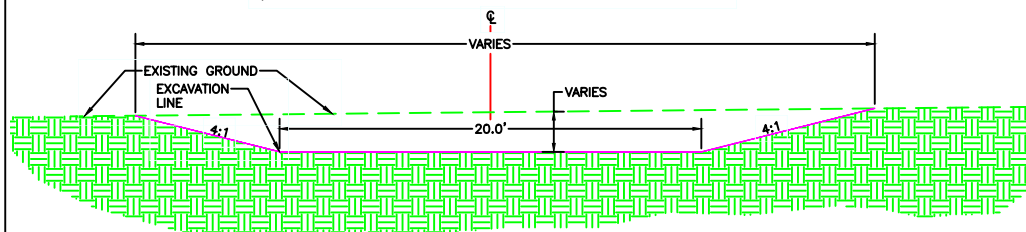


NORTH TOPOGRAPHY PLAN VIEW
SCALE 1"=175'

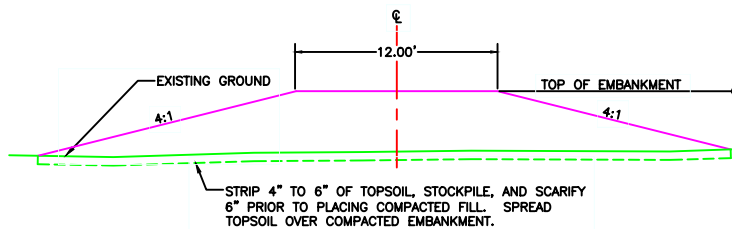


SOUTH TOPOGRAPHY PLAN VIEW
SCALE 1"=175'

CONSTRUCTION NOTES:
1) USE MATERIAL FROM CREEK EXCAVATION FOR FILL IN EMBANKMENTS



CREEK EXCAVATION CROSS SECTION
SCALE: 1"=4'



TYPICAL EMBANKMENT CROSS SECTION
SCALE 1"=5'

STRIP 4" TO 6" OF TOPSOIL, STOCKPILE, AND SCARIFY 6" PRIOR TO PLACING COMPACTED FILL. SPREAD TOPSOIL OVER COMPACTED EMBANKMENT.

ELEVATION	SURFACE AREA (AC)	AVERAGE AREA (AC)	COUNTOUR INTERVAL (FT)	VOLUME (AC-FT)	CUMULATIVE VOLUME (AC-FT)
1799.0	4.442	11.906	0.5	5.953	5.953
1799.5	19.370	30.752	0.5	15.376	21.329
1800.0	42.134	64.430	0.5	32.215	53.544
1800.5	86.725	103.171	0.5	51.586	105.129
1801.0	119.617				

ELEVATION	SURFACE AREA (AC)	AVERAGE AREA (AC)	COUNTOUR INTERVAL (FT)	VOLUME (AC-FT)	CUMULATIVE VOLUME (AC-FT)
1797.5	2.708	9.733	0.5	4.866	4.866
1798.0	16.757	32.013	0.5	16.006	20.873
1798.5	47.268	76.197	0.5	38.099	58.971
1799.0	105.127	118.752	0.5	59.376	118.347
1799.5	132.377				

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HORIZONTAL AND VERTICAL CONTROL OPUS SOLUTION— COORDINATES ARE UTM ZONE 14 GRID COORDINATES IN US FEET [NAD83]. THEY WERE ESTABLISHED FROM THE WGS84 ELLIPSOID WITH INFORMATION FROM A TRIMBLE R10 SURVEY GRADE GPS RECEIVER ON AUGUST 16, 2017 AT DUCKS UNLIMITED CONTROL POINT DU-416-1 AND CALIBRATED TO AN OPUS POSITION OCCUPIED FOR 9 HOURS AND 16 MINUTES AND SENT TO NGS FOR SOLUTION. THE VERTICAL CONTROL CAME FROM THE SAME SOLUTION USING GEOID 12A CONUS IN THE NAVD88. THE FULL OPUS SOLUTION REPORT IS ON FILE AT THE DUCKS UNLIMITED ENGINEERING DEPARTMENT IN GRAND ISLAND, NEBRASKA.

PRELIMINARY NOT FOR CONSTRUCTION

DUCKS UNLIMITED INC.
GREAT PLAINS REGIONAL OFFICE
DATE: 11/16/2017
SHEET NO. 1 OF 1

PROJECT NO. KS-1-5
OCHS ACQUISITION CONCEPT #1
DESIGNED BY: NJ
DRAWN BY: NJ
SURVEYED BY: NJ
CHECKED BY:
APPROVED BY:
APPROVED BY:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files
FROM: Kristen Baum

DATE: August 19, 2021
RE: Application File Nos. 50,626 and 50,388
and Water Right File No. 42,777

The Wetlands America Trust Inc. has filed an application to appropriate 157.65 acre-feet of surface water at the rate of natural flows to be stored for recreational use in a restored wetland (Ochs project). The proposed points of diversion are the two water control structures located along the two wetland embankments in the East Half of Section 27, Township 18 South, Range 13 West, Barton County, Kansas. The proposed appropriation is located on Blood Creek Trib 2A (Cow Creek), directly upstream of Cheyenne Bottoms Wildlife Area. The place of use and points of diversion are both owned by the applicant. The proposed embankments have been determined to be non-jurisdictional by the DWR Water Structures Program provided that NRCS provides evidence of a permanent easement once finalized, see email from Janelle Phillips dated March 17, 2020.

The requested quantity of 157.65 acre-feet is intended to cover one year of evaporation plus one storage volume fill. This quantity of water complies with the requirements of K.A.R. 5-6-5 for storage of surface water.

$$(51.26 \text{ acres} \times 32''/12'' = 136.7 \text{ acre-feet}) + (20.9 \text{ acre-feet}) = 157.6 \text{ acre-feet}$$

It should be noted that during the review of the first application originally submitted for this project (File No. 50,388), DWR determined that the quantity being requested was insufficient to cover the intended use. After considerable discussion between Ducks Unlimited, NRCS and DWR, the applicants decided to file a second application (File No. 50,626) requesting a more reasonable quantity and have also requested that the first application be voluntarily dismissed.

The location of this proposed project is within the boundaries of Big Bend GMD No. 5 which is closed to new surface water and groundwater appropriations, and the application doesn't meet any of the exemptions described in K.A.R. 5-25-4. A waiver of the district closure is being requested on the basis that the quantity of water being requested is proposed to be offset by an equal reduction in quantity from a nearby Water Right (File No. 42,777) which is also located directly upstream of Cheyenne Bottoms. A Request to Reduce has been filed for Water Right File No. 42,777, requesting that the quantity be reduced from 692 to 534.35 acre-feet and the place of use be reduced from 133.75 to 103.3 acres. Water Right File No. 42,777 was certified for one year of evaporation and one storage volume fill. The storage volume was based on an assumed 2.5-foot depth. Based on this information, a reduction of the place use by 30.5 acres provides the appropriation reduction in quantity.

$$\begin{array}{rcl} (30.5 \text{ acres} \times 2.5', \text{ storage}) & + & (30.5 \text{ acres} \times 32''/12'', \text{ evaporation}) \\ 76.3 \text{ acre-feet} & + & 81.3 \text{ acre-feet} \\ & & = 157.6 \text{ acre-feet} \end{array}$$

Two landowners were identified within one-half (1/2) mile upstream and downstream and both entities (KDWP and The Nature Conservancy) submitted letters of support for the proposed project so no notification letters were sent.

A copy of the package was provided to Big Bend GMD No. 5 for their review and recommendation. The package was presented to the Board of Directors at their August meeting, and they voted to recommend a waiver of K.A.R. 5-25-4(a). A recommendation to approve the new application with a waiver of K.A.R. 5-25-4(a) was received on August 19, 2021.

Jeff Lanterman, Water Commissioner for the Stafford Field Office, recommended approval of the referenced application in a conference call on August 26, 2021. Based on the above discussion, it is recommended that application File No. 50,626 be approved, application File No. 50,388 be dismissed, and Water Right File No. 42,777 be reduced as requested.

Kristen A. Baum
New Applications and Changes Supervisor

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

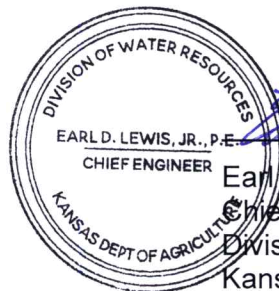
WAIVER OF REGULATION K.A.R. 5-25-4

Date: October 1, 2021

RE: Appropriation of Water, File No. 50,626

1. That K.A.R. 5-25-4(a) states that the entire district shall be closed to further new surface water and groundwater appropriations.
2. That the above referenced application is proposing the collection of natural flows to an unnamed tributary in the Cow Creek basin, to a maximum extent of 157.65 acre-feet of water per calendar year, directly upstream of Cheyenne Bottoms Wildlife Area.
3. That applicant identified existing Water Right, File No. 42,777 which is also in the Cow Creek basin upstream of Cheyenne Bottoms Wildlife Area, and authorizes the storage of natural surface water flows.
4. That the applicant was able to obtain a properly signed Request to Reduce for Water Right, File No. 42,777 which proposes a reduction in the place of use and quantity of water that is equivalent to the quantity of water proposed by Application, File No. 50,626 and serves as an adequate offset for the new application.
5. That the Board recommended a waiver of K.A.R. 5-25-4(a) and approval of Application File No. 50,626 contingent upon a reduction of Water Right File No. 42,777.
6. That Application, File No. 50,626 should be approved with a waiver of K.A.R. 5-25-4.
7. That a waiver of 5-25-4 will not prejudicially nor unreasonably affect the public interest, and it will not impair an existing water right.

Comments:



EARL D. LEWIS, JR., P.E.
CHIEF ENGINEER

Earl D. Lewis Jr.
Earl D. Lewis Jr., P.E.

Chief Engineer

Division of Water Resources

Kansas Department of Agriculture

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. 50,626** of the applicant

**WETLANDS AMERICA TRUST INC
2525 RIVER ROAD
BISMARCK, ND 58503**

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 **August 4, 2021**.
2. That the water sought to be appropriated shall be used for recreational use in wetland marshes not to exceed 51.26 acres in surface area located in the East Half (E½) of Section 27, in Township 18 South, Range 13 West, Barton County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to Blood Creek, designated in the office of the Chief Engineer as Blood Creek Tributary 2a (Cow Creek), not needed to satisfy all vested rights and prior appropriation rights to be stored to a maximum extent of **157.65 acre-feet** per calendar year, in wetland marshes created by two water control structures described as follows: one control structure located in the Southeast Quarter of the Southeast Quarter of the Northeast Quarter (SE¼ SE¼ NE¼) of Section 27, more particularly described as being near a point 2,680 feet North and 529 feet West of the Southeast corner of said section, and one control structure in the Southeast Quarter of the Northeast Quarter of the Southeast Quarter (SE¼ NE¼ SE¼) of Section 27, more particularly described as being near a point 1,910 feet North and 650 feet West of the Southeast corner of said section, both in Township 18 South, Range 13 West, Barton County, Kansas
4. That installation of works for diversion of water shall be completed on or before **December 31, 2022**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$400.00, when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be accompanied by the required statutory fee, which is currently \$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, 2026**, or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee, which is currently \$100.00.

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.

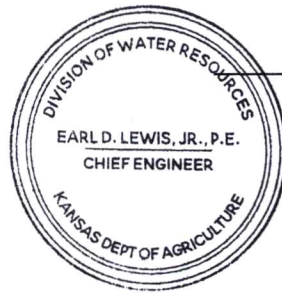
10. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.

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

12. 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.

13. That the right to appropriate water under authority of this permit is subject to any minimum desirable streamflow requirements identified and established pursuant to K.S.A. 82a-703c for the source of supply to which this water right applies.

Ordered this 1st day of October, 2021, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.
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 1 day of October, 2021, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Ashlee Freeman
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, Acting Secretary

Laura Kelly, Governor

October 5, 2021

WETLANDS AMERICA TRUST INC
2525 RIVER ROAD
BISMARCK, ND 58503

RE: Appropriation of Water, File No. 50,626

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.kswateruserreport.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 Stafford Field Office at 620-234-5311. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

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

KAB:bmm

Enclosure(s)

pc: Stafford Field Office
GMD #5
Ducks Unlimited

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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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 Section, 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 hearing 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

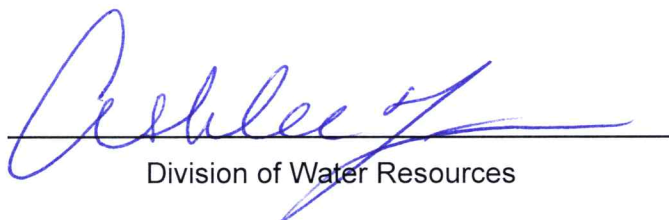
On this 5 day of October, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,626, dated 1 October 2021 was mailed postage prepaid, first class, US mail to the following:

WETLANDS AMERICA TRUST INC
2525 RIVER ROAD
BISMARCK, ND 58503

With photocopies to:

Stafford Field Office
GMD # 5

DUCKS UNLIMITED
Attn: JUSTIN WILLIAMS
2525 RIVER RD
BISMARCK, ND 58503


Division of Water Resources