

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: August 30, 2024

From: Christa Anhold, Environmental Scientist

Re: New Application File No. 50,966 – Kelsey Investments, Inc

Summary

Paul Kelsey on behalf of Kelsey Investments, Incorporated filed the above referenced application proposing to appropriate 66.9 AF of surface water from natural flows to fill one (1) surface water pond for recreational use in Sedgwick County. The applicant requests 83.4 AF for the initial fill and 66.9 AF every year after that to account for natural evaporation. The applicant has a floodplain fill permit through the DWR-Structures team File No. LSG-0921, which was approved on March 21, 2023. There are no overlapping water right files and the applicant owns the place of use and point of diversion.

Reasonable Rate and Quantity

The applicant originally proposed two ponds that covered 13.4 acres, and an initial fill of 104.3 AF and 22.3 AF every year after to supplement loss from evaporation. The applicants project engineer informed us in an emailed, dated July 2, 2024, the place of use would be one (1) pond that covers 14.1 acres. The applicant requested to decrease their initial fill from 104.3AF to 83.4AF since the pond wouldn't be as deep as they originally proposed. The applicant was informed they could increase their annual quantity to cover three (3) years of evaporation, but they ultimately decided against it. In a discussion with Cameron Conant, Stafford Field Office Assistant Water Commissioner, and Kristen Baum, Manhattan Headquarters new applications and change supervisor, it was decided the practical thing to do would be to permit them three (3) years of evaporation (66.9 AF) to ensure their permit would be adequate for future use. Since this application proposes water from natural flows it will be of no consequence to the applicant.

This application will be limited by K.A.R. 5-6-5(b)(1)(B), three (3) years of indirect use. For a 14.1 acre pond with an evaporation rate of 19 inches per acre this amounts to 22.3 AF of evaporation loss per year. Over three (3) years that is equivalent to 66.9 AF.

The applicant proposes 83.4 AF for an initial fill which can be considered reasonable per K.A.R. 5-6-6. The application will be permitted with a condition that states the applicant may fill the new pond with the request 83.4AF, this fill will not count towards the perfection of the water right and subsequent refilling, if necessary, will require authorization under a term permit. Every year after the initial fill, the applicant will be permitted 66.9 AF to offset loss from evaporation.

Nearby Water Rights

There are no upstream water rights, the nearest downstream water right (File No. 47,445-A) is 880 feet. The ponds are being built next to an established housing development. With such a large population within the notification area a public notice was run. The public notice was run for three (3) consecutive weeks from July 25 to August 15, 2024, in The Clarion. No written responses have been received to date.

Recommendations

The application was sent for consideration to Cameron Conant, Assistant Water Commissioner, and Jeff Lanterman, Water Commissioner, of the Stafford Field Office on August 30, 2024, and recommended for approval in an e-mail dated September 11, 2024.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum spacing requirements. Approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.

Christa Anhold
Environmental Scientist
Water Appropriation Program

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

**APPROVAL OF APPLICATION
and
PERMIT TO PROCEED**

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,966** of the applicant

**KELSEY INVESTMENTS INC
716 N 119TH ST W STE 120
WICHITA, KS 67234**

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 **February 13, 2023**.
2. That the water sought to be appropriated shall be used for recreational use at a reservoir, located in the Northwest Quarter (NW¼) of Section 31, Township 26 South, Range 1 West, Sedgwick County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Cowskin Creek, designated in the office of the Chief Engineer as Cowskin Creek Trib 3B (Arkansas), not needed to satisfy all vested rights and prior appropriation rights to be accumulated to a maximum extent of **66.9 acre-feet** per calendar year in a reservoir created by a water control structure located in the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (SW¼ SE¼ NW¼) of Section 31, more particularly described as being near a point 2,700 feet North and 3,460 feet West of the Southeast corner of said section, in Township 26 South, Range 1 West, Sedgwick County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That in accordance with K.A.R. 5-6-6, a maximum quantity not to exceed **83.4 acre-feet** of water may also be diverted to complete the initial filling of the reservoir only, and shall not count toward perfection of a water right under the authority of this permit. Subsequent refilling of the reservoir shall require authorization under a term permit.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2025**, 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, 2029**, 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 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.

8. 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.

9. 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.

10. 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.

11. 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.

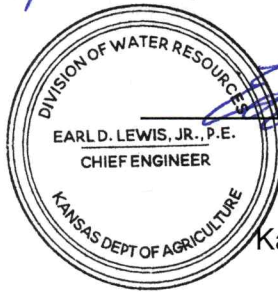
12. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

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

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 failure without cause to comply with the provisions of this 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 16th day of September, 2024, 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 16 day of September, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Shawna Novak

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

September 19, 2024

PAUL KELSEY
KELSEY INVESTMENTS INC
716 N 119TH ST W STE 120
WICHITA KS 67234

RE: Appropriation of Water
File No. 50,966

Dear Mr. Kelsey:

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, with specific reference to Paragraph 4. A review of our records indicates that the dismissal order dated July 18, 2024, was issued in error. The enclosed permit supersedes that earlier action.

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 annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Also included is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640, or your local 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:cla

Enclosure(s)

pc: Stafford Field Office
Equus Beds GMD No. 2

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 19 day of September, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,966, dated September 16, 2024, was mailed postage prepaid, first class, US mail to the following:

Original to:

KELSEY INVESTMENTS INC
716 N 119TH ST W STE 120
WICHITA, KS 67234

With photocopies to:

KDA-DWR Stafford Field Office

Equus Beds GMD No. 2



Division of Water Resources