

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: August 28, 2024

From: Christa Anhold, Environmental Scientist

Re: New Application File Nos. 51,150 & 51,151 – Joseph Smith

Summary

Joseph Smith filed the above two (2) referenced applications proposing to appropriate surface water to fill one (1) wetland duck marsh for recreational use in Cherokee County. File No. 51,150 proposes to appropriate 52 AF of surface water per calendar year from one (1) pumpsite at a diversion rate of 5,000 GPM from Lightning Creek. File No. 51,151 proposes to appropriate 52 AF per calendar year from natural flows. The two (2) above applications overlap the place of use and neither will have limitations. No files overlap the points of diversion. The applicant owns the place of use and point of diversion. The proposed marsh consists of two (2) wetlands cells that are bermed with water control structures, permitted through KDA Water Structures No. LCK-0141 on March 11, 2024.

Reasonable Rate and Quantity and Safe Yield

File 51,150 requests 52 AF of surface water to fill one (1) marsh with a storage capacity of 17.24 AF. The applicant has requested three times the storage capacity. Since marshes are managed differently from year to year based on the desired hunting conditions, waterfowl as well as maintenance the requested quantity can be considered reasonable and is calculated as follows:

$$\text{Reasonable Quantity} = \text{storage capacity} \times 3\text{-years} = 17.24 \text{ AF} \times 3 = \sim 52\text{AF}$$

File No. 51,150 will be subject to specific conditions, which stipulate strict requirements for direct surface water diversion per K.A.R. 5-3-15. These conditions include the stipulation that no water 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 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.

File No. 51,151 proposes to appropriate 52 AF of water per year from natural flow to fill the same marsh permitted under File No. 51,150. Using a drainage area of 787.2-acres, a soil complex number of 79 and 41 inches-per acre of precipitation there is a 20% chance of 1,463.19 AF of water per year, which is sufficient to support the requested 52AF. Per K.A.R. 5-6-5(a) the drainage basin can support the requested 52 AF of water.

Nearby Water Rights

From File No. 51,150 the closest upstream water right (File No. 17,202) is 5.8 miles away. File No. 51,151 does not have any upstream water rights. From both File No. 51,150 and 51,151, the closest downstream water right (File No. 50,869) is over 15 miles away. The applicant provided names and addresses of five (5) adjacent landowners. Nearby notifications were mailed on July 22, 2024. No responses have been received to date.

Recommendations

The application was sent for consideration to Nathan Westrup, Water Commissioner of the Topeka Field Office, and Shaun Johnson, Assistant Water Commission of the Topeka Field Office, on August 28, 2024, and recommended for approval by email on August 28, 2024.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum spacing requirements. It does not appear that approval of the application will 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
Manhattan Headquarters

From: Westrup, Nathan [KDA]
Sent: Wed 8/28/2024 3:49 PM
To: Anhold, Christa [KDA]
Cc: Johnson, Shaun [KDA]
Subject: RE: 51150 and 51151 recommendation request

Hi Christa,

I think it would be good for you to mention that 51,150 is subject to 5-3-15 in the memo.

I have no objection to approval.

Thanks,

Nathan Westrup, Water Commissioner

Topeka Field Office

Division of Water Resources

Kansas Department of Agriculture

Phone: 785-296-7064

Mobile: 785-230-2991

Nathan.Westrup@ks.gov

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Sent: Wednesday, August 28, 2024 1:01 PM
To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>
Cc: Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>
Subject: 51150 and 51151 recommendation request

Good afternoon Nathan,

I have attached a draft memo for new applications 51,150 and 51,151 for your review and recommendation. Nearby notifications were mailed on July 22, 2024. No responses have been received to date.

Let me know if you need anything else.

Christa Anhold
Environmental Scientist
Department of Water Resources
(785)-564-6644
Christa.anhold@ks.gov

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. 51,151** of the applicant

**JOSEPH SMITH
13070 NW COALFIELD RD
OSWEGO, KS 67356**

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 **December 6, 2023**.
2. That the water sought to be appropriated shall be used for recreational use to be stored in wetlands located in the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 7, and the North Half of the Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 18, all in Township 32 South, Range 22 East, Cherokee County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Lightning Creek, designated in the office of the Chief Engineer as Lightning Creek Trib 9 (Neosho), not needed to satisfy all vested rights and prior appropriation rights to be accumulated to a maximum extent of **52 acre-feet** per calendar year in wetlands created by a water control structure located in the Northeast Quarter of the Northwest Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 18, more particularly described as being near a point 5,168 feet North and 1,845 feet West of the Southeast corner of said section, in Township 32 South, Range 22 East, Cherokee County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. 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.
5. 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.

6. 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.

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

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.

14. That failure without cause to comply with provisions of the permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.

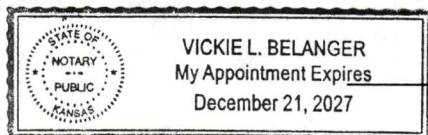
Ordered this 29 day of August, 2024, in Manhattan, Riley County, Kansas.

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 29 day of August, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Vickie L. Belanger
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 6, 2024

JOSEPH SMITH
13070 NW COALFIELD RD
OSWEGO KS 67356

RE: Appropriation of Water
File No. 51,150 and 51,151

Dear Mr. Smith:

Enclosed are permits authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in each permit, with specific reference to Paragraph Nos. 14, 17 and 18, included on the permit for File No. 51,150.

Notices must be filed on the enclosed forms 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 the permit(s). 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, per file number.

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

The approval of your applications constitutes permit to appropriate water. They do not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. They do 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 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 Applications and Changes Supervisor
Division of Water Resources

KAB:kak:cla
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 6th day of September, 2024, I hereby certify that the foregoing Approval of Applications and Permits to Proceed, File Nos. 51,150 and 51,151, dated August 29, 2024, were mailed postage prepaid, first class, US mail to the following:

Original to:

JOSEPH SMITH
13070 NW COALFIELD RD
OSWEGO KS 67356

With photocopies to:

KDA-DWR Topeka Field Office



Division of Water Resources