

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;"><b>50,346</b></p>	2. Status Change Date: <p style="text-align: center; font-size: 1.2em; color: purple;">10/29/2020</p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;"><b>03</b></p>	4. GMD: <p style="text-align: center; font-size: 1.2em;"><b>0</b></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 **66514**  
New to system                       Add Seq# **2**

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

7b. Landowner(s)                      Person ID **58531**  
New to system                       Add Seq# \_\_\_\_\_

~~7a.~~                      **MARK E & CINDY L SMITH**  
**1445 RD 26**  
**WALLACE, KS 67761**

7c. Landowner(s)                      Person ID \_\_\_\_\_

7d. Misc. \_\_\_\_\_

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: 12/31/2021                      11. Perfection Date: 12/31/2025                      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: **6/18/20**                      By: **DWS**  
Date Entered: 11/3/2020                      By: LMoody

File No. **50,346**      15. Formation Code:      Drainage Basin: **SMOKY HILL RIVER**      County: **WA**      Special Use:      Stream: **SMOKY HILL RIVER**

16. Points of Diversion										17. Rate and Quantity				
T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		Overlap PD Files	
									Rate gpm	Quantity af	Rate gpm	Quantity af		
MOD	87949	NE SE NE	11	13	41W	1	3800	600	--	--	--	--	NONE	
MOD	87950	NW SW NW	12	13	41W	2	3800	5000	0	0	0	0		

18. Storage: Rate \_\_\_\_\_ NF      Quantity **309.7** ac/ft      Additional Rate \_\_\_\_\_ NF      Additional Quantity **309.7** ac/ft

19. Limitation: \_\_\_\_\_ af/yr at \_\_\_\_\_ gpm ( \_\_\_\_\_ cfs) when combined with file number(s) \_\_\_\_\_  
 Limitation: \_\_\_\_\_ af/yr at \_\_\_\_\_ gpm ( \_\_\_\_\_ cfs) when combined with file number(s) \_\_\_\_\_

20. Meter Required?  Yes  No      To be installed by \_\_\_\_\_      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files	
T MOD DEL ENT	PUSE	S	T	R	ID	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼					
						√	69856	11	13	41W	1											
√	69857	12	13	41W	2																	

Comments:  
**This is a natural flow collector.**

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**  
**M E M O R A N D U M**

**TO:** Files

**DATE:** June 18, 2020

**FROM:** Doug Schemm

**RE:** Application, File No. 50,346

Ducks Unlimited has filed the above-referenced application to appropriate 309.7 acre-feet of surface water from natural flows of the Smoky Hill River, for recreational use in a wildlife marsh. As typical for these types of projects, the surface water will be collected via natural flows (especially during flood events). It is very probable that flood waters from the Smoky Hill River will spill into the wetland area, because it is located immediately adjacent to the river. The marshes are located in Sections 11 and 12, Township 13 South, Range 41 West, in Wallace County, Kansas. The points of diversion represent two embankment structures. The marshes and points of diversion are located on property owned by Mark Smith, and they have included an Access Agreement with Mr. Smith. The agreement covers 580 acres and is listed as DU Project Number KS-54-2. Mr. Justin Williams, the Project Manager for DU has signed the application form stating they have legal access.

The application notes that project involves the enhancement of an existing natural playa feature. The embankments will raise the outlet elevation to increase water storage capacity. The project as designed is non-jurisdictional for structures permitting. The requested quantity was based on the capacity of the two marshes 67.7 acre-feet, plus the evaporation from the impounded water surface of 66 acres (66 acres x 44" evap. / 12 = 242 acre-feet). **(242 AF + 67.7 AF = 309.7 AF)** **KJN 10/27/2020\***

As noted, this is an existing natural playa feature and upstream and downstream landowners are familiar with the project. The leased area of 580 acres covers all of the adjacent land. The application is to collect natural flows (flood events) of the river, no pumping will be conducted. Therefore, no notification letters are necessary. There are no other surface water rights within the 2-mile radius circle. No senior water rights would be impaired by approval of this permit.

For wetland projects such as this the water levels are typically maintained only between October 1 and April 1 of each year, and then natural vegetation will be allowed to grow in the dry pool during the remaining time. A flow meter is not practical and should not be required as a condition of the approval of this application. The applicant will be required to maintain records from which the amount of water actually diverted may be readily determined. This is consistent with permits granted for similar types of natural flow collector projects. The applicant has submitted a signed and notarized Minimum Desirable Streamflow form acknowledging that there may be times when diversion of water will not be allowed.

In a June 17, 2020 e-mail, Kelly Stewart, Water Commissioner, Stockton Field Office, recommended that the referenced application be approved.

Based upon the above discussion, the area is open to new applications, the application meets all rules and regulations, it is non-jurisdictional for structures permitting, and there is no indication that the proposed beneficial use of water will impair existing water rights, it is recommended that the referenced application be approved.

Doug Schemm  
Environmental Scientist  
Topeka Field Office

## Schemm, Doug [KDA]

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**From:** Stewart, Kelly [KDA]  
**Sent:** Wednesday, June 17, 2020 1:47 PM  
**To:** Schemm, Doug [KDA]  
**Cc:** Billinger, Mark [KDA]; Hageman, Rebecca [KDA]  
**Subject:** RE: 50346 - Ducks Unlimited

No, I don't need the language. I was just thinking out loud. Thanks .

I have no objection to the approval.

Kelly

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**From:** Schemm, Doug [KDA] <Doug.Schemm@ks.gov>  
**Sent:** Wednesday, June 17, 2020 1:45 PM  
**To:** Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>  
**Subject:** RE: 50346 - Ducks Unlimited

No, because it's a natural flow. They are subject to MDS of course, but no permission language. We can add something in if you wish, but it's hard to control when they can collect run-off events.

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**From:** Stewart, Kelly [KDA]  
**Sent:** Wednesday, June 17, 2020 1:17 PM  
**To:** Schemm, Doug [KDA] <[Doug.Schemm@ks.gov](mailto:Doug.Schemm@ks.gov)>; Billinger, Mark [KDA] <[Mark.Billinger@ks.gov](mailto:Mark.Billinger@ks.gov)>  
**Subject:** RE: 50346 - Ducks Unlimited

Doug,

Would a permit like this have any written permission language on the approval?

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**From:** Schemm, Doug [KDA] <[Doug.Schemm@ks.gov](mailto:Doug.Schemm@ks.gov)>  
**Sent:** Wednesday, June 17, 2020 11:33 AM  
**To:** Stewart, Kelly [KDA] <[Kelly.Stewart@ks.gov](mailto:Kelly.Stewart@ks.gov)>; Billinger, Mark [KDA] <[Mark.Billinger@ks.gov](mailto:Mark.Billinger@ks.gov)>  
**Subject:** 50346 - Ducks Unlimited

Hello Stockton,  
No issues with this one. Collecting natural flows in existing playa feature.  
Non-jurisdictional for structures permitting.  
Please review,  
Doug

## Schemm, Doug [KDA]

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**From:** Phillips, Janelle [KDA]  
**Sent:** Wednesday, June 17, 2020 9:07 AM  
**To:** Justin Williams; Schemm, Doug [KDA]  
**Subject:** RE: Wallace County KS wetlands project - File No. 50,346

All –

As long as the embankments are less than 6 feet in height and all excavation is a minimum of 50 feet from the stream bank of the Smoky Hill River, then no DWR structures permit will be required.

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

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**From:** Justin Williams [mailto:juwilliams@ducks.org]  
**Sent:** Tuesday, June 16, 2020 5:15 PM  
**To:** Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>; Schemm, Doug [KDA] <Doug.Schemm@ks.gov>  
**Subject:** RE: Wallace County KS wetlands project - File No. 50,346

**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.

Greetings Janelle,

We have not completed the final design, but here is a basic description of the project and maps (attached).

1. Build low berm embankment (Embankment 1)- A low berm embankment would be installed near the current overflow point of the basin floor. The outlet elevation would be raised by approximately 1 foot. This would increase water storage capacity and wetland habitat quantity within the basin.
2. Build a second embankment (Embankment 2)- An embankment would be built at the downstream (eastern) end of basin, which is currently in cropland. The outlet elevation would be raised by approximately 2 feet. This embankment would retain/slow runoff from the watershed immediately to the north, including the current location of the farm road.

3. Excavation of highly-sedimented wetlands- Cropped areas in northern “thumb” and eastern edge of basin would be excavated using heavy equipment to remove sediment and increase water storage capacity.
4. Road Removal- The north/south farm road located north of the basin would be decommissioned, regraded, seeded, and appropriate erosion control measures would be installed.
5. Establish sizeable buffer areas- Approximately 150 acres of cropland would be planted with an appropriate mix of native plant species (grass/forbs) seed, including restored wetland areas in crop areas.
6. All disturbed soil would be seeded with grass/forbs.

Thanks,  
Justin

Justin Williams  
Manager, Ecosystem Services  
Ducks Unlimited  
Great Plains Region  
701-202-7132

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**From:** Phillips, Janelle [KDA] <[Janelle.Phillips@ks.gov](mailto:Janelle.Phillips@ks.gov)>  
**Sent:** Thursday, June 11, 2020 11:59 AM  
**To:** Schemm, Doug [KDA] <[Doug.Schemm@ks.gov](mailto:Doug.Schemm@ks.gov)>; Justin Williams <[juwilliams@ducks.org](mailto:juwilliams@ducks.org)>  
**Subject:** RE: Wallace County KS wetlands project - File No. 50,346

Please send me a little information on the project so I can do a determination. Thank you

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](mailto:Janelle.phillips@ks.gov)

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**From:** Schemm, Doug [KDA]  
**Sent:** Thursday, June 11, 2020 9:02 AM

**To:** [juwilliams@ducks.org](mailto:juwilliams@ducks.org)

**Cc:** Phillips, Janelle [KDA] <[Janelle.Phillips@ks.gov](mailto:Janelle.Phillips@ks.gov)>

**Subject:** Wallace County KS wetlands project - File No. 50,346

Hello Justin,

As we discussed, I'm just beginning my review of your application. If you can provide me the name of the downstream landowner that would be great.

Also, I have copied Janelle on this e-mail, so you can check with her regarding any structures permitting that might be required.

I'm attaching a site map so she will know where it's located.

Thanks, Doug



THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE  
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES  
Christopher W. Beightel, Acting 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. 50,346** of the applicant

**DUCKS UNLIMITED  
Attn: JUSTIN WILLIAMS  
2525 RIVER RD  
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 **February 14, 2020**.
2. That the water sought to be appropriated shall be used for recreational purposes in wildlife marshes located in Sections 11 and 12, Township 13 South, Range 41 West, Wallace County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of the Smoky Hill River, not needed to satisfy all vested rights and prior appropriation rights, to be stored to a maximum extent of **309.7 acre-feet** per calendar year in wildlife marshes created by two (2) embankment structures located as follows: one structure in the Northeast Quarter of the Southeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$  SE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 11, more particularly described as being near a point 3,800 feet North and 600 feet West of the Southeast corner of said section; and one structure in the Northwest Quarter of the Southwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 12, more particularly described as being near a point 3,800 feet North and 5,000 feet West of the Southeast corner of said section, both in Township 13 South, Range 41 West, Wallace 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, 2021** 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 submitted prior to the expiration of the deadline and 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, 2025** 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 29 day of October, 2020, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

Lane P. Letourneau, P.G.  
Program Manager  
Water Appropriation Program  
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 October, 2020, by Lane P. Letourneau, P.G., Program Manager, 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, Secretary

Laura Kelly, Governor

November 9, 2020

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

RE: Appropriation of Water, File No. 50,346

Dear Mr. Williams:

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 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](http://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.

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](http://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 Stockton Field Office at 785-425-6787. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum  
New Application Unit Supervisor  
Division of Water Resources

KAB:dws  
Enclosure(s)

pc: Stockton Field Office  
Mark Smith

**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**

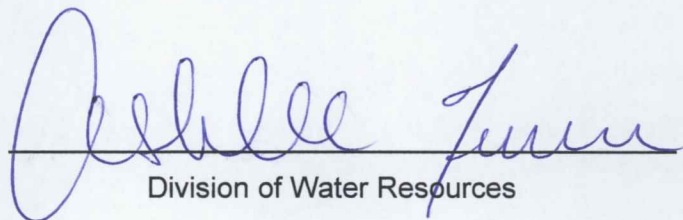
On this 9 day of November, 2020, I hereby certify that the foregoing Approval of Application, File No. 50,346, dated 29 October was mailed postage prepaid, first class, US mail to the following:

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

With photocopies to:

MARK E & CINDY L SMITH  
1445 RD 26  
WALLACE, KS 67761

Stockton Field Office

  
Division of Water Resources