

NOTICE

This scan only represents the application as filed. The information contained herein meets the requirements of K.A.R. 5-3-1 or K.A.R. 5-5-1, and has been found acceptable for filing in the office of the Chief Engineer. The application should not be considered to be a complete application as per K.A.R. 5-3-1b or K.A.R. 5-5-2a.

Submit To: CHIEF ENGINEER
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
http://agriculture.ks.gov/dwr

**APPLICATION FOR APPROVAL TO
CHANGE THE PLACE OF USE, THE
POINT OF DIVERSION OR THE USE
MADE OF THE WATER UNDER AN
EXISTING WATER RIGHT**



State of Kansas

Filing Fee Must Accompany the Application
(Please refer to Fee Schedule on signature page of application form.)

Paragraph Nos. 1, 2, 3, 4 & 8 must be completed. Complete all other applicable portions. A topographic map or detailed plat showing the authorized and proposed points(s) of diversion and /or place of use must accompany this application.

3/2/2023, 11:10 AM

1. Application is hereby made for approval of the Chief Engineer to change the

- Place of Use
- (Check one or more) Point of Diversion
- Use Made of Water

Water Resources
Received

KS Dept Of Agriculture

File No. 16,372

2. Name of applicant: KANSAS DEPT OF WILDLIFE & PARKS

Address: 512 SE 25TH AVE

City, State and Zip: PRATT, KS 67124-8147

Phone Number: (785)628-8614 E-mail address: brian.serpan@ks.gov

What is your relationship to the water right; owner tenant agent other? If other, please explain. _____

Name of water use correspondent: KANSAS DEPT OF WILDLIFE & PARKS

Address: ATTN: EMMA GOEMANN 512 SE 25TH AVE

City, State and Zip: PRATT, KS 67124-8147

Phone Number: (620-672-0766) E-mail address: emma.goemann@ks.gov

3. The change(s) proposed herein are desired for the following reasons (please be specific): TO CONVERT IRRIGATION RIGHTS TO RECREATIONAL RIGHTS TO SUPPLY WATER TO STATE FISHING LAKE, WETLAND DEVELOPEMENTS AND TO THE SMOKY GARDENS LAKE. WETLAND DEVELOPMENT PLANS TO BE DETERMINED AS NEXT PHASE OF PROJECT.

The change(s) (will be) completed by UPON APPROVAL (Date)

For Office Use Only:															
F.O.	<u>3</u>	GMD	<u>4</u>	Meets K.A.R. 5-5-1	(YES/NO)	Use	<u>IRR</u>	Source	<u>G</u>	S County	<u>SH</u>	By	<u>ALB</u>	Date	<u>3/6/23</u>
Code	<u>C-2</u>	Fee \$	<u>500.00</u>	TR #	<u>AA0036083</u>	Receipt Date	<u>3/2/2023</u>	Check #							

3/9/2023
LMoody

4. The presently authorized place of use is:

Owner of Land — NAME: KANSAS DEPT OF WILDLIFE & PARKS

ADDRESS: 512 SE 25TH AVE PRATT, KS 67124-8174

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES			
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼				
9	10S	40W	40	40	40	40											40	40			240	

List any other water rights that cover this place of use. _____

Owner of Land — NAME: _____

ADDRESS: _____

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES			
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼				

List any other water rights that cover this place of use. _____

3/2/2023

(If there are more than two landowners, attach additional sheets as necessary.)

Water Resources
Received

5. It is proposed that the place of use be changed to:

Owner of Land — NAME: KANSAS DEPT OF WILDLIFE & PARKS

KS Dept Of Agriculture

ADDRESS: 512 SE 25TH AVE PRATT, KS 67124-8174

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES				
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼					
3	10S	40W																					
9	10S	40W	WETLANDS								WETLANDS												
10	10S	40W	WETLANDS																				
15	10S	40W	SFL & WETLANDS																				
16	10S	40W	SFL & WETLANDS																				

List any other water rights that cover this place of use. 9382, 1781 16372 & 1779 pending

Owner of Land — NAME: SHERMAN COUNTY

ADDRESS: 813 BROADWAY AVE #RM 102 GOODLAND, KS 67735-3096

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES			
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼				
14	10S	40W					SMOKY GARDENS															

List any other water rights that cover this place of use. 39279 16372 & 1779 pending

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

3/2/2023

File No. 16,372

6. The presently authorized point(s) of diversion is ONE WELL

(Provide description and number of points)

7. The proposed point(s) of diversion is ONE WELL

(Provide description and number of points)

Water Resources
Received

KS Dept Of Agriculture

List all presently authorized point(s) of diversion:

8. Presently authorized point of diversion:

One in the NW Quarter of the NW Quarter of the NE Quarter of Section 9, Township 10 South, Range 40 W, in SH County, Kansas, feet North feet West of Southeast corner of section.

Authorized Rate 355 GPM Authorized Quantity 188 AF

(DWR use only: Computer ID No. 1 GPS 5235 feet North 2642 feet West)

[X] This point will not be changed [] This point will be changed as follows:

Proposed point of diversion: (Complete only if change is requested)

One in the Quarter of the Quarter of the Quarter of Section Township South, Range (E/W), in County, Kansas, feet North feet West of Southeast corner of section.

Proposed Rate Proposed Quantity

This point is: [] Additional Well [] Geo Center List other water rights that will use this point

9. Presently authorized point of diversion:

One in the Quarter of the Quarter of the Quarter of Section Township South, Range (E/W), in County, Kansas, feet North feet West of Southeast corner of section.

Authorized Rate Authorized Quantity

(DWR use only: Computer ID No. GPS feet North feet West)

[] This point will not be changed [] This point will be changed as follows:

Proposed point of diversion: (Complete only if change is requested)

One in the Quarter of the Quarter of the Quarter of Section Township South, Range (E/W), in County, Kansas, feet North feet West of Southeast corner of section.

Proposed Rate Proposed Quantity

This point is: [] Additional Well [] Geo Center List other water rights that will use this point

10. Presently authorized point of diversion:

One in the Quarter of the Quarter of the Quarter of Section Township South, Range (E/W), in County, Kansas, feet North feet West of Southeast corner of section.

Authorized Rate Authorized Quantity

(DWR use only: Computer ID No. GPS feet North feet West)

[] This point will not be changed [] This point will be changed as follows:

Proposed point of diversion: (Complete only if change is requested)

One in the Quarter of the Quarter of the Quarter of Section Township South, Range (E/W), in County, Kansas, feet North feet West of Southeast corner of section.

Proposed Rate Proposed Quantity

This point is: [] Additional Well [] Geo Center List other water rights that will use this point

11. Describe the current condition of and future plans for any point(s) of diversion which will no longer be used.

Water Resources
Received

KS Dept Of Agriculture

12. The presently authorized use of water is for IRRIGATION purposes.

It is proposed that the use be changed to RECREATION purposes.

13. If changing the place of use and/or use made of water, describe how the consumptive use will not be increased.

AS PER K.A.R. 5-5-9(a)(1), a reduction of quantity will be applied to reduce quantity based on area-weighted average irrigation return flow for Sherman County (87.7%).

188 AF authorized for irrigation X 87.7% = 164.876 AF proposed for REC use.

(Please show any calculations here.)

14. It is requested that the maximum annual quantity of water be reduced to 164.88 AF (acre-feet or million gallons).

15. It is requested that the maximum rate of diversion of water be reduced to n/a gallons per minute (____ c.f.s.).

16. The application must include either a topographic map or detailed plat. A U.S. Geological Survey Topographic Map, scale 1:24,000, is available through the Kansas Geological Survey, 1930 Constant Avenue, University of Kansas, Lawrence, Kansas 66047-3726 (www.usgs.gov). The map should show the location of the presently authorized point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. The presently authorized place of use should also be shown. Identify the center of the section, the section lines and the section corners and show the appropriate section, township, and range numbers on the map. In addition the following information must also be shown on the map.

a. If a change in the location of the point(s) of diversion is proposed, show:

- 1) The location of the proposed point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. Please be certain that the information shown on the map agrees with the information shown in Paragraph Nos. 9, 10 and 11 of the application.
- 2) If the source of supply is groundwater, please show the location of existing water wells of any kind, including domestic wells, within 1/2 mile of the proposed well or wells. Identify each well as to its use and furnish name and mailing address of the property owner or owners. If there are no wells within 1/2 mile, please indicate so on the map.
- 3) If the source of supply is surface water, the names and mailing addresses of all landowner(s) 1/2 mile downstream and 1/2 mile upstream from your property lines must be shown.

b. If a change in the place of use is desired, show the proposed place of use by crosshatching on the map. Please be certain that the information shown on the map agrees with the information shown in Paragraph No. 5 of the application.

17. Attach documentation to show the change(s) proposed herein will not impair existing water rights and relates to the same local source of supply as to which the water right relates. This information may include statements, plats, geology reports, well logs, test hole logs, and other information as necessary information to show the above. Additional comments may be made below.

Wells will not be relocated. Consumptive use reduction applied as per K.A.R. 5-5-9. Place of use identified on attached map.

18. If the proposed change(s) does not meet all applicable rules and regulations of the Kansas Water Appropriation Act, please identify the rules and regulations for which you request a waiver. State the reason why a waiver is needed and why the request should be granted. Attach documentation showing that granting the request will not impair existing water rights and will not prejudicially and unreasonably affect the public interest.

No waivers requested

Any use of water that is not as authorized by the water right or permit to authorize water **before** the chief engineer approves this application is a violation of the Kansas Water Appropriation Act for which criminal or civil penalties may be assessed. Such violation is a class C misdemeanor, punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. K.S.A. 82a-728(b). Civil penalties shall be not less than \$100 nor more than \$1,000 per violation. In the case of a continuing violation, each day such violation continues may be deemed a separate violation. In addition to these penalties the water right may be modified or suspended. K.S.A. 82a-737, as amended.

The application must be signed by all owners of the place of use authorized under the water right and his or her spouse, if married. Please indicate if there is no spouse. If land is being purchased under contract, the seller must sign as landowner until such time as the contract is completed.

In the event that all applicants cannot appear before one notary public, they may as necessary sign separate copies of the application before any notary public conveniently available to them. All copies signed in this manner shall be considered to be valid parts of the application.

If the request is signed on behalf of any Owner by someone with legal authority to do so (for example, an agent, one who has power of attorney, or an executor, executrix, conservator), it will be necessary to attach proper documents showing such authority.

I declare that I am an owner of the currently authorized place of use as identified herein, or that I represent all such owners and am authorized to make this application on their behalf, and declare further that the statements contained herein are true, correct, and complete. By filing this application I authorize the chief engineer to permanently reduce the quantity of water and/or rate of diversion as specified in sections 14 and 15 of this application.

Dated at Hays, Kansas, this 23rd day of February, 2023.

Brian Serpan
(Owner)

(Spouse)

Brian Serpan
(Please Print)

(Please Print)

(Owner)

(Spouse)

(Please Print)

(Please Print)

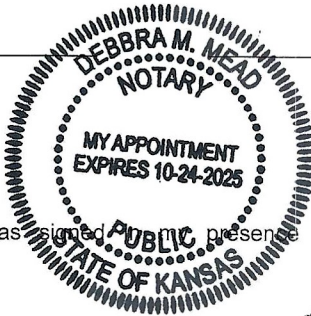
(Owner)

(Spouse)

(Please Print)

(Please Print)

State of Kansas }
County of Ellis } SS



I hereby certify that the foregoing application was signed, presented and sworn to before me this 23 day of Feb, 2023.

Debra M Mead
Notary Public

My Commission Expires 10/24/25

FEE SCHEDULE

Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

- (1) Application to change a point of diversion 300 feet or less \$100
- (2) Application to change a point of diversion more than 300 feet \$200
- (3) Application to change the place of use \$200
- (4) Application to change the use made of the water \$300

Make check payable to **Kansas Department of Agriculture.**

3/2/2023

**Water Resources
Received**

KS Dept Of Agriculture

3/2/2023

Water Resources
Received

KS Dept Of Agriculture

MEMORANDUM OF UNDERSTANDING
between
KANSAS DEPARTMENT OF WILDLIFE AND PARKS
State of Kansas
and
SHERMAN COUNTY, KANSAS
for
THE MAINTENANCE OF A FISHERY, WILDLIFE WATER SOURCE
AND RECREATION POOL
IN
SMOKY GARDENS LAKE, located in SHERMAN COUNTY, KANSAS

This Memorandum of Understanding (MOU) is entered into this 31st day of January, 2023, between the following *Parties*: Sherman County, Kansas, *hereinafter referred to as County*, and the Kansas Department of Wildlife and Parks, an agency of the State of Kansas and located at 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612, *hereinafter referred to as Department*. The provisions contained in this MOU shall expire December 31, 2026.

WHEREAS: County owns Soldiers Memorial Park and Smoky Gardens Lake, a historically popular outdoor recreation spot that has depleted water levels;

WHEREAS: Department holds water rights in Sections 9 and 10, Township 10 South, Range 40 West in Sherman County, which is contiguous to Smoky Gardens Lake;

WHEREAS: Department operates and maintains Kansas Veterans Wildlife Management Area (KVWA) on lands adjacent to Soldiers Memorial Park;

WHEREAS: The mission of the Department is to manage the fish and wildlife resources of the state of Kansas and provide outdoor recreation opportunities for the public; and

WHEREAS: The Department and County entered into a previous MOU the provisions of which caused Department to apply for and receive a Term Permit for water rights to pump and transport water to supply Smoky Garden Lake with sufficient water to create a wildlife water source (terrestrial and waterfowl), fishery, and recreation pool.

NOW THEREFORE, in consideration of the premises and of the mutual covenants set forth below, the Parties agree as follows:

DEPARTMENT AGREES TO THE FOLLOWING:

1. Department shall maintain a Term Permit with the Chief Engineer, Division of Water Resources (DWR) until it expires or is successfully converted, at Department's expense, the designation of the water rights associated with the Division of Water Resources file numbers 16,372-00 and 1,779-00 from agricultural to recreational use.
2. Provide, with input from County but at Department's sole discretion and in compliance with DWR, water from Department's water rights at KVWA up to, but not to exceed, a quantity of 150-acre feet

of ground water annually to Smoky Gardens Lake for the purpose of augmenting storage, evaporation, and seepage at said lake so that a water level suitable for wildlife water source, fishery, and recreational uses may be maintained.

3. Allow County to maintain, repair, and replace, if needed, the existing under-ground water delivery system, including all necessary pipeline, equipment, and associated appurtenances (pipes, motors, pumps, meters, etc.) from the KVWA point of water supply, located on Department property, to the Smoky Gardens Lake point of delivery.
4. Permit County to control and monitor the pumping of water to Smoky Gardens Lake, i.e. turning pumping equipment on and off and fueling the pump, but Department will maintain, at its sole discretion, the ability to withdraw such permission when deemed necessary.
5. Communicate with the County on any water level management fluctuations for Smoky Gardens for fisheries habitat management.
6. Manage and monitor fish populations and fishing opportunities in Smoky Gardens Lake.
7. Withhold water to Smoky Gardens Lake if, in Department's sole discretion, the integrity of the lake is not sufficient, at any time during the Term of this MOU, to adequately contain a water level sufficient to maintain a wildlife water source or fishery or be used for recreational use.
8. Grant County a license to access to maintain, repair, and replace all equipment, lines, and appurtenances (meters, pumps, pipes, motors, etc.) associated with the water delivery system located on Department property. This provision allows for temporary access for the Term of this MOU, after which it may be revoked, and in no way gives, transfers, or conveys to County any rights or interests in Department's property, real or otherwise.

COUNTY AGREES TO THE FOLLOWING:

9. Keep the basin of Smoky Gardens Lake adequately sealed so as to prevent excessive water loss. Sealing procedures must follow engineering recommendations and be approved by Department.
10. Provide, at County expense, all materials, equipment, and associated appurtenances (motors, pipes, pumps, meters, etc.) needed to maintain, repair, and replace the water delivery system from the point of supply at KVWA to the point of delivery at Smoky Gardens Lake.
11. County shall maintain, repair, and replace, if needed, the entirety of the water delivery system, including the pipeline, equipment, and associated appurtenances (meters, pumps, motors, pipes, etc.) from the point of supply at KVWA, located on Department property, to the point of delivery at Smoky Gardens Lake, located on County property.
12. Have a properly permitted and constructed weir that delimits the upstream extent of the basin and prevents erosion at the point of water supply.

3/2/2023

Water Resources
Received

KS Dept Of Agriculture

13. Pay all utilities in place now or added in the future, including, but not limited to, natural gas and electric, for water well and pumping operations to supply water to Smoky Garden Lake.
14. County has disclaimed, and shall continue to disclaim, all interests in Department's water rights at the KVWA and shall not make application for the appropriation of water at the KVWA.
15. County shall assist Department in converting the water rights associated with the Division of Water Resources file numbers 16,372-00 and 1,779-00 by executing any and all applications, codicils, conveyances, or other document(s) deemed necessary by Department, including, but not limited to, executing a quitclaim deed in a substantially similar manner as provided in Attachment 1. Nothing contained within this provision shall be construed as a waiver of County's water rights or interests contained within or associated with Division of Water Resources file number 39,279.

ALL PARTIES AGREE TO THE FOLLOWING:

16. No assignment of this MOU shall be permitted to any other entity, nor the respective rights or duties thereof.
17. Either party shall provide 30-days' written notice to the other of requested modifications and amendments to this MOU. Any modification or amendment must have prior written consent of both parties.
18. County agrees to indemnify, defend, and hold Department, its successors, and its assigns harmless from any and all damages, claims, penalties, fines, costs, attorney's fees, or claims of any type occasioned by, or arising in any way out of, or resulting from the County's negligence, tortious act, breach of contract, or other actionable conduct. Department shall be liable as provided for under the Kansas Tort Claims Act.
19. All metering used to effectuate a water delivery system, in accordance with this MOU, must be approved by the Division of Water Resources.
20. Any notice given pursuant to this MOU shall be as follows:

To the Department:

Regional Public Lands Supervisor
Kansas Department of Wildlife and Parks
Box 338
Hays, KS 67601

Secretary
Kansas Department of Wildlife and Parks
1020 S. Kansas Ave, Suite 200
Topeka, KS 66612

To the County:

Sherman County Commission
c/o Sherman County Clerk
813 Broadway
Goodland, KS 67735

3/2/2023

Water Resources
Received

KS Dept Of Agriculture

21. The provisions contained in this MOU shall be made available, upon request, to any member of the public, unless otherwise excluded under the Kansas Open Records Act.
22. In the event any of the provisions of this MOU are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of the MOU. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth as permitted by law.
23. Department's failure at any time to require strict performance by the County of any MOU provisions shall not waive or diminish Department's right thereafter to demand strict compliance therewith or with any provision.
24. The provisions found in Contractual Provisions Attachment (form DA-146a), identified as Attachment 2, are hereby incorporated into this MOU.
25. The terms and provisions of this MOU shall be binding upon and inure to the benefit of, the successors, executors, and assignees of County and Department.
26. This MOU constitutes the entire agreement between the parties hereto as to the subject matter herein set forth. This MOU shall supersede and control over all prior written or oral agreements and representations pertaining thereto between the parties to this MOU, or their predecessor in title concerning the subject matter hereof.
27. Nothing in this MOU shall be considered a sale, transfer, or abandonment of any water rights by Department, and County acknowledges that it has no claim to, or interest in, Department's water rights.
28. Each party shall act in their individual capacity and not as agents, employees, partners, in joint venture, or as associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
29. All parties signing this MOU hereby attest to authorization as a signatory for the respective entities involved.
30. Contingencies. In the event of the following unplanned events occur, the Parties agree to the following:
 - A.) Should a breach of the Smoky Gardens Lake weir occur, or any other similar catastrophic failure of the lake resulting in the significant loss of water, the Parties will cooperate fully to develop a plan of action to remedy the failure. Such a plan of action, if mutually agreed upon, may include, but not be limited to, the re-construction of the lake and the re-establishing or diversion of a Department water source.
 - B.) Should Department's application to DWR requesting the conversion of its water rights, currently controlled by its Term Permit, expire prior to the Chief Engineering approving such 3/2/2023

Water Resources
Received

application, should the Department's application for conversion being denied by DWR, or should the Department's water rights at KVWA be limited to a quantity that prohibits it from supplying 150-acre feet of ground water annually, Department shall comply with DWR restrictions at all times, suspend the providing of water to Smoky Gardens Lake, and the Parties will cooperate fully to develop a plan of action to remedy the loss of water. Such plan of action, if mutually agreed upon, may include, but not be limited to, making further requests or applications to DWR, appealing any DWR decision, or establishing a water supply from another Department water right at KVWA.

IN WITNESS WHEREOF, this MOU is effective upon the last signing by a duly authorized representative of the aforementioned parties.

Sherman County, Kansas

By:




Steve Evert, Chairman
Board of County Commissioners
Sherman County, KS

Date 1/31/23

Kansas Department of Wildlife and Parks

By:



Stuart Schrag
Assistant Secretary of Operations

Date 02-16-2023

3/2/2023

Water Resources
Received

KS Dept Of Agriculture

ENTERED IN TRANSFER RECORD
IN MY OFFICE THIS

2nd DAY OF February A.D. 2023

Ashley D. Morris

COUNTY CLERK

STATE OF KANSAS, COUNTY OF SHERMAN, SS
This instrument was filed this 2nd
day of February 2023 at 1:05 P.M.
and recorded in Microfilm Book 216
at Page 788 FEE \$ 0

Billie R. Hoyt
Register of Deeds
Billie R. Hoyt

**QUITCLAIM
WATER RIGHTS DEED**



MICROFILM INDEXED
/// X

THIS QUIT CLAIM WATER RIGHTS DEED is made and entered into on this 31st day of January, 2023, by and between Sherman County, Kansas, hereinafter referred to as Grantor, and the Kansas Department of Wildlife and Parks, an agency of the state of Kansas, hereinafter referred to as Grantee.

NOW THEREFORE, Grantor does hereby, for good and valuable consideration that is acknowledged and received, quitclaim, transfer, convey, and otherwise disclaim unto, and for the benefit of, Grantee, and its successors and assigns, all interest, rights, and privileges whatsoever in Kansas Water Right File Numbers 16,372-00 and 1,779-00, located within:

Sections 9 and 10, Township 10 South, Range 40 West, Sherman County, KS.

However, Grantor shall continue to be entitled to water delivery under the aforementioned water rights as agreed to by Grantor and Grantee in the document titled "Memorandum of Understanding between Kansas Department of Wildlife and Parks, State of Kansas and Sherman County, Kansas for the Maintenance of a Fishery and Recreation Pool in Smoky Gardens Lake, located in Sherman County, Kansas," dated January 10, 2023, and any amendments, addendums, or attachments thereto ("the MOU"). Grantor does not quitclaim, transfer, or otherwise disclaim their right to receive water delivery as set forth in the MOU.

IN WITNESS WHEREOF, Grantor has signed this instrument on the date first set forth above.

Steven J. Evert
Steven Evert, Chairman
Board of County Commissioners
Sherman County, Kansas

3/2/2023

Water Resources
Received

SVA not required due to exemption #12.

KS Dept Of Agriculture

ACKNOWLEDGMENT

SWORN AND SUBSCRIBED to before me, a Notary Public in and for the State and County aforesaid, by Steven Evert, Chairman of the Board of County Commissioners for Sherman County, Kansas, on the 31 day of January, 2023.

April Baker
Notary Public

My commission expires: 2-12-24



3/2/2023

Water Resources
Received

Attachment 2

State of Kansas
Department of Administration
DA-146a (Rev. 04-11)

KS Dept Of Agriculture

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 31st day of January, 2023.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such

person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information**: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying**: Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

3/2/2023

Water Resources
Received

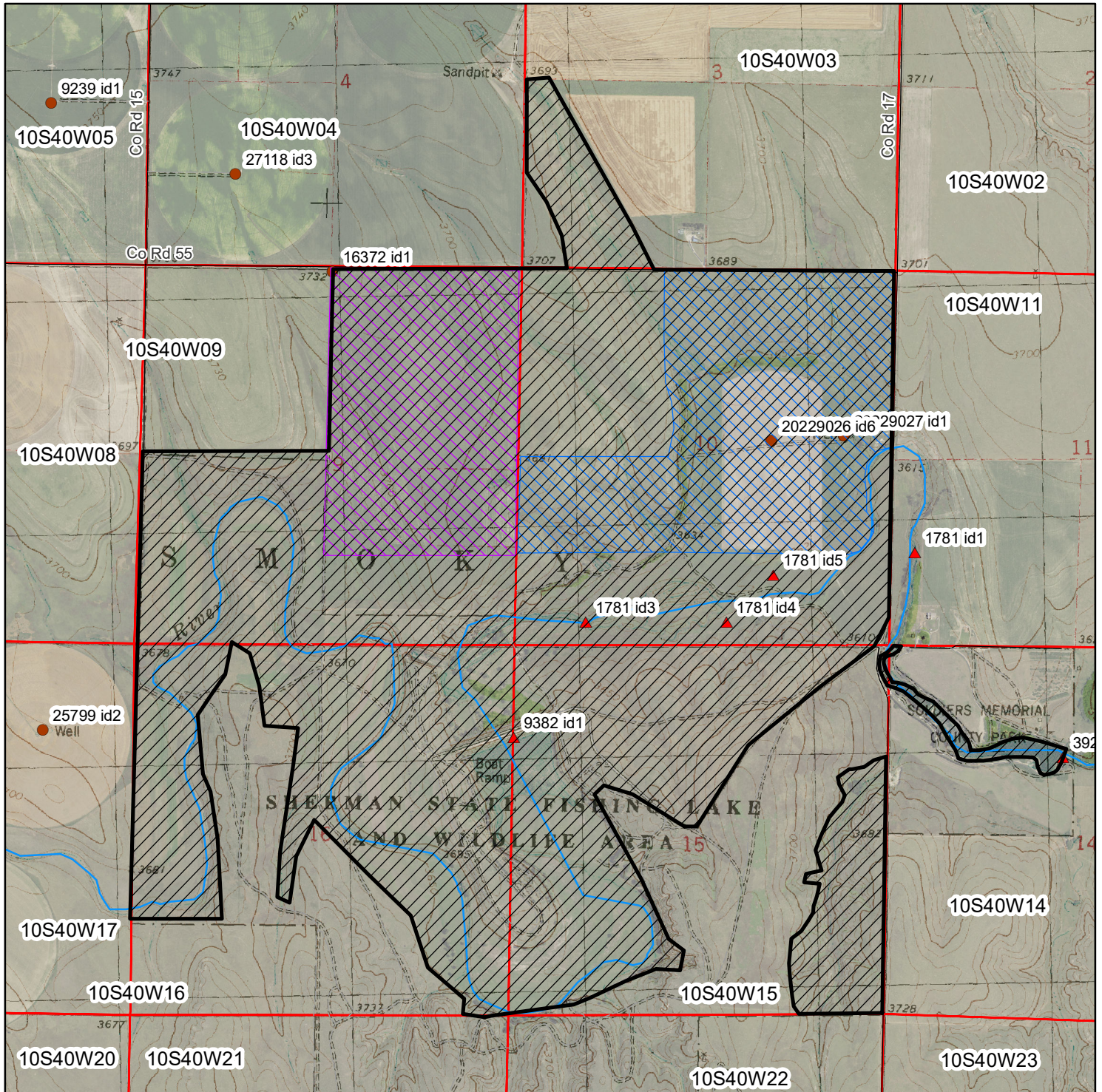
KS Dept Of Agriculture

3/2/2023

Water Resources
Received

KS Dept Of Agriculture

Application to Change the Place of Use & Use Made of Water For Water Right File # 1779 & 16372



Authorized Place of Use 16,372



Authorized Place of Use 1,779



Proposed Place of Use



Surface Water Point of Diversion



Groundwater Point of Diversion

1:24,000



From: Gilmore, Lori [KDA]
Sent: Thu 3/2/2023 7:58 AM
To: Mathos, Sheila [KDA];Anderson, Katie [KDA];Buss, Ashlee [KDA];Jennings, Melinda [KDA];Romine, Deidre [KDA]
Subject: Interfund Payment Received

Interfund payment was received on 3/1/2023 for the following for 1000.00 from KDWPT.

Teresa Dill Teresa.dill@ks.gov
KS Dept of Ag - Division of Water Resources
Approval Application to Change the Water Right from Irrigation Rights to Recreational Water
File No: 1779 & File No.: 16372
Smoky Gardens & SFL Area - Brian Serpan - Public Lands Region Supervisor

Once Water Resources has it on their spreadsheet please let Sheila know so that she can process the interfund payment

Thank you

3/2/2023

Lori Gilmore
Assistant CFO
Kansas Department of Agriculture
785-564-6731

Water Resources
Received
KS Dept Of Agriculture

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

March 23, 2023

KANSAS DEPT OF WILDLIFE & PARKS
512 SE 25TH AVE
PRATT KS 67124

RE: File No(s). **16372**

Dear Sir or Madam:

The Division of Water Resources (Division) has received your application(s) to change the place of use, point of diversion or use made of water for the file number(s) referenced above. Please be aware that the Division may have a large number of pending applications on hand at times and makes every attempt to process them in the order in which they are received. You will be contacted if additional information is required.

Please note, this letter only acknowledges receipt of your application(s) and does not guarantee approval. In accordance with the provisions of the Kansas Water Appropriation(s) Act, the use of water as proposed prior to approval of the application(s) is unlawful.

Additional information about the process may be found on our website at agriculture.ks.gov/divisions-programs/dwr. If you have any other questions, 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,

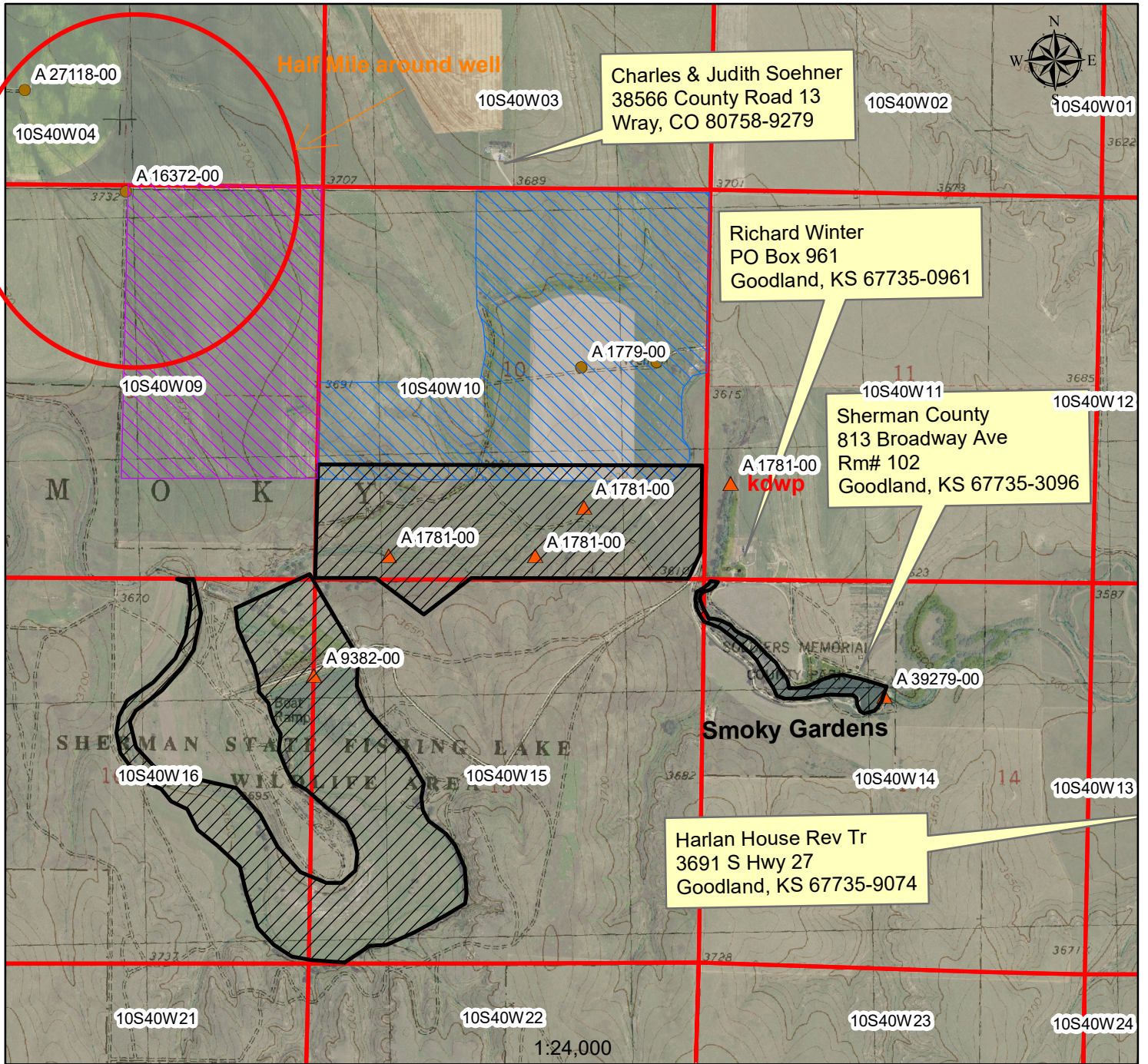
A handwritten signature in black ink that reads "Kristen Baum". The signature is written in a cursive style.

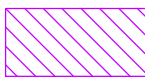
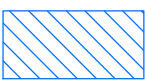

Kristen Baum
New Applications and Changes Supervisor
Water Appropriation Program



Application to Change the Place of Use & Use Made of Water For Water Right File # 1779 & 16372

Water Resources Received

KS Dept Of Agriculture



-  Authorized Place of Use 16,372
-  Authorized Place of Use 1,779
-  Proposed Place of Use

-  Surface Water Point of Diversion
-  Groundwater Point of Diversion

Signature Required

Brian Serpan

By signing this I am stating that to the best of my knowledge that all wells within 1/2 mile of proposed well location are identified on this map.