

Kansas Department of Agriculture  
Division of Water Resources  
**PERMIT OF NEW APPLICATION WORKSHEET**

1. File Number: <b>49,723 A</b>	2. Status Change Date: <u>1/17/2017</u>	3. Field Office: <b>01</b>	4. GMD: <b>0</b>
5. Status: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return			
6. Enclosures: <input checked="" type="checkbox"/> Check Valve <input checked="" type="checkbox"/> N of C Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input checked="" type="checkbox"/> Meter			
7a. Applicant(s) New to system <input type="checkbox"/>		7c. Landowner(s)	
Person ID <b>40450</b> Add Seq# _____		Person ID _____	
<b>KANSAS DEPT OF WILDLIFE PARKS &amp; TOURISM ACTIVE DIVERSIONS (TOP) 1020 S KANSAS AVE FL 2 TOPEKA KS 66612-1389</b>		7d.	
7b. Landowner(s) New to system <input type="checkbox"/>			
Person ID <b>18299</b> Add Seq# _____			
<b>US ARMY CORPS OF ENGINEERS (KC) 700 FEDERAL BLDG 601 E 12TH ST KANSAS CITY MO 64106</b>			
8. WUR Correspondent New to system <input type="checkbox"/> Overlap File (s) WUC Agree <input type="checkbox"/> Yes <input type="checkbox"/> No		9. Use of Water:    Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Person ID _____ Add Seq# _____ Notarized WUC Form <input type="checkbox"/>		<input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water	
<b>7a.</b>		<input type="checkbox"/> IRR <input checked="" type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN	
		<input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON	
		<input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG	
		<input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____	
10. Completion Date: <u>12/31/2018</u>		11. Perfection Date: <u>12/31/2022</u>	
12. Exp Date: _____			
13. Conservation Plan Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date Required: _____ Date Approved: _____ Date to Comply: _____			
14. Water Level Measuring Device? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date to Comply: _____ Date WLMD Installed: _____			
Date Prepared: <b>12/21/16</b> By: <b>DWS</b> Date Entered: <u>1/18/2017</u> By: <u>UM</u>			

File No. **49,723 A**      15. Formation Code:      Drainage Basin: MARAIS DES CYGNES RIVER      County: OS      Special Use:      Stream: MARAIS DES CYGNES RIVER

16. Points of Diversion										17. Rate and Quantity								
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional					
											Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files			
√				66641	SW	NW	SE	35	17	13E	2	1822	2523	4000	100	4000	100	44,828

18. Storage: Rate \_\_\_\_\_ NF      Quantity \_\_\_\_\_ ac/ft      Additional Rate \_\_\_\_\_ NF      Additional Quantity \_\_\_\_\_ 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 12/31/2018      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use								NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files	
MOD	DEL	ENT	PUSE	S	T	R	ID	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼					
√				54514	35	17	13E	3	WILDLIFE MARSH (SE)																	7b.	NO	44,828
√				54515	36	17	13E	1	WILDLIFE MARSH (NW SW)																	7b.	NO	44,828

Comments: *special conditions - off season diversion (written or oral permission to pump)*

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** December 21, 2016

**FROM:** Doug Schemm

**RE:** Application, File No. 49,723 A

The Kansas Department of Wildlife Parks and Tourism has filed the above-referenced application requesting to appropriate 100 acre-feet of surface water by direct diversion at a diversion rate of 4,000 gallons per minute, from one pumpsite on the Marais des Cygnes River, located in the Southeast Quarter of Section 35, Township 17 South, Range 13 East, Osage County. The application has been signed by a representative of the applicant stating they have access to the point of diversion. This application was filed to obtain additional water to address over-pumping under their senior file, Water Right, File No. 44,828.

Water Right, File No. 44,828 overlaps in authorized place of use and point of diversion, with the place of use described as a 30 acre wildlife marsh (Melvern Marsh-North Side). Water Right, File No. 44,828 is authorized 67 acre-feet. The requested quantity of water under the new application (100 acre-feet) was determined by inundating the 30 acre marsh area with 3 feet of water for an initial fill (90 AF) and then subsequent re-filling to maintain water levels of 80 acre-feet. Therefore, the quantity of water under the pending application will be all additional. Typically these types of marshes are filled in October prior to waterfowl migration. This wildlife marsh has already been properly permitted by DWR Structures Program under File No. DOS-0175.

As typical with these large wildlife refuges, the U.S. Army Corp of Engineers owns the property where the marsh is located and the adjacent property both upstream and downstream for many miles. Therefore, no notification letters are required. As shown on the larger scale map, this marsh is located within the upper reaches (flood pool) of Melvern Reservoir, and is part of the Melvern Lake State Wildlife Management Area.

There are no other surface water rights within a two mile radius of the proposed pump site. With proper conditioning, approval of this application will not impact any senior water users.

Per K.A.R 5-3-15, this application will be subject to specific conditions, which stipulate strict requirements for direct surface water diversion. These conditions include the stipulation that no diversion 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, or an authorized representative 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. This application also complies with K.A.R 5-3-15 (c)(5) because the proposed use of water for recreational use is typically during the fall season, and there is no need for direct diversion of water from July 1 through September 30.

The applicant has submitted a signed Marais des Cygnes River Assurance District form, which has been properly notarized. By completing this statement, the applicant affirms his/her knowledge that there could be times when the diversion of water may not be allowed under this permit.

In accordance with K.S.A. 82a-706c, the Chief Engineer retains full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R 5-1-12. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

Memorandum  
Application, File No. 49,723 A  
Page 2

In a December 21, 2016 discussion, Katie Tietsort, Water Commissioner, Topeka Field Office, recommended approval of the referenced application.

Based on the above discussion, the new application will address an over-pumping issue with the senior file, the area is open to new applications, this project is in the public interest, 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

1320 Research Park Drive  
Manhattan, Kansas 66502  
(785) 564-6700



900 SW Jackson, Room 456  
Topeka, Kansas 66612  
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

January 19, 2017

KANSAS DEPT OF WILDLIFE PARKS & TOURISM  
ACTIVE DIVERSIONS (TOP)  
1020 S KANSAS AVE FL 2  
TOPEKA KS 66612-1389

**FILE COPY**

RE: Appropriation of Water, File No. 49,723 A

Dear Sir or Madam:

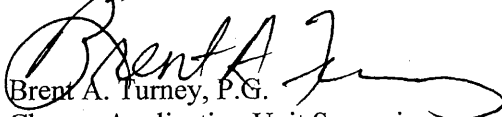
There is enclosed a permit to appropriate water authorizing you to proceed with construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a), to divert such unappropriated water as may be available from the source and at the location specified in the permit, and to use it for the purpose and at the location described in the permit.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in these approval documents. A water meter is required on the proposed diversion works and you must install it prior to water being put to beneficial use in order for you to maintain accurate records of water use. The meter should be used to provide the information required on the annual water use report.

Failure to notify the Chief Engineer of the Division of Water Resources of the completion of the diversion works within the time allowed, or within any authorized extension of time thereof, will result in the dismissal of this permit. Enclosed is a form which may be used to notify the Chief Engineer that the proposed diversion works have been completed.

All requests for extensions of time to complete diversion works, or to perfect appropriations, must be submitted to the Chief Engineer before the expiration of time originally set forth in the permit to complete diversion works or to perfect an appropriation. If for any reason, you require an extension of time, you must request it before the expiration of time set forth in this permit. Failure to comply with this regulation will result in the dismissal of your permit or your water right. Any request for an extension of time shall be accompanied by the required statutory fee, which is currently \$100.00. There is also enclosed an information sheet setting forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your water right. If you have any questions, please contact our office. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

  
Brent A. Turney, P.G.  
Change Application Unit Supervisor  
Water Appropriation Program

BAT:dws  
Enclosures

pc: Topeka Field Office  
U.S. Army Corps of Engineers (KC)



KANSAS DEPARTMENT OF AGRICULTURE  
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES  
David W. Barfield, 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. 49,723 A** of the applicant

**KANSAS DEPT OF WILDLIFE PARKS & TOURISM  
ACTIVE DIVERSIONS (TOP)  
1020 S KANSAS AVE FL 2  
TOPEKA KS 66612-1389**

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 **October 31, 2016**.
2. That the water sought to be appropriated shall be used for recreational use in a waterfowl marsh located in the Southeast Quarter (SE $\frac{1}{4}$ ) of Section 35, and the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 36, all in Township 17 South, Range 13 East, Osage County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from the Marais des Cygnes River, to be diverted at a point located in the Southwest Quarter of the Northwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$ ) of Section 35, more particularly described as being near a point 1,822 feet North and 2,523 feet West of the Southeast corner of said section, in Township 17 South, Range 13 East, Osage County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **4,000 gallons per minute (8.9 c.f.s.)** and to a quantity not to exceed **100 acre-feet** of water for any calendar year.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2018** 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, 2022** 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 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 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.
11. That all diversion works constructed under the authority of this permit into which any type of chemical or other foreign substance will be injected into the water pumped from the diversion works shall be equipped with an in-line, automatic quick-closing, check valve capable of preventing pollution of the source of the water supply. The type of valve installed shall meet specifications adopted by the Chief Engineer and shall be maintained in an operating condition satisfactory to the Chief Engineer.
12. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this permit in accordance Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).
13. 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.
14. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.
15. 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.
16. That the stream flow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of this water right or permit.
17. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.
18. 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.

19. That during the period October 1 through June 30, the verbal or written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, shall be obtained in order to divert water each time the applicant desires to divert water.

20. That during the period July 1 through September 30 each calendar year, no direct diversions of surface water shall be permitted unless written permission is obtained from the Chief Engineer, or the Chief Engineer's authorized representative.

This Order shall become a final agency action, as defined by K.S.A. 77-607(b), without further notice to the parties, if a request for hearing or a petition for administrative review is not filed as set forth below.

Request for Hearing. According to K.A.R. 5-14-3(c), any party who desires a hearing must submit a request within 15 days after the date shown on the Certificate of Service attached to this Order. Filing a request for a hearing will give you the opportunity to submit additional facts for consideration, contest any findings made by the Chief Engineer, or present any other information you believe should be considered in this matter. A timely-filed request for hearing will stay the deadline for requesting administrative review of this Order pending the outcome of the hearing.

Petition for Review. The applicant, if aggrieved by this Order, may petition for administrative review, pursuant to K.S.A. 82a-711(c) and K.S.A. 82a-1901(a). The petition must be filed within 30 days after the date shown on the Certificate of Service attached to this Order and must set forth the basis for the review, unless stayed by the timely filing of a request for hearing.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Fax: (785) 564-6777.

Ordered this 17<sup>th</sup> day of January, 2017, in Topeka, Shawnee 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 17<sup>th</sup> day of January, 2017, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.



*Danielle Wilson*

Notary Public



### CERTIFICATE OF SERVICE

On this 17<sup>th</sup> day of January, 2017, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 49,723 A, dated January 18, 2017 was mailed postage prepaid, first class, US mail to the following:

KANSAS DEPT OF WILDLIFE PARKS & TOURISM  
ACTIVE DIVERSIONS (TOP)  
1020 S KANSAS AVE FL 2  
TOPEKA KS 66612-1389

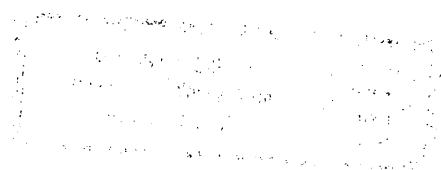
With photocopies to:

US ARMY CORPS OF ENGINEERS (KC)  
700 FEDERAL BLDG  
601 E 12TH ST  
KANSAS CITY MO 64106

Topeka Field Office



Division of Water Resources



10 31 2016  
DWS

THE STATE OF KANSAS



RECEIVED

NOV 29 2016

10:30 am

Topographical Office

DIVISION OF WATER RESOURCES

KANSAS DEPARTMENT OF AGRICULTURE  
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES  
David W. Barfield, Chief Engineer

WATER RESOURCES RECEIVED

File Number 49,723 A

This item to be completed by the Division of Water Resources.

WATER RESOURCES RECEIVED

OCT 31 2016  
3:00

KS DEPT OF AGRICULTURE

**APPLICATION FOR PERMIT TO APPROPRIATE WATER FOR BENEFICIAL USE**

OCT 11 2016  
UNACCEPTABLE FOR PRIORITY

Filing Fee Must Accompany the Application  
(Please refer to Fee Schedule attached to this application form.)

To the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture,  
1320 Research Park Drive, Manhattan, KS 66502:

1. Name of Applicant (Please Print): KANSAS DEPARTMENT OF WILDLIFE PARKS & TOURISM  
Address: ACTIVE DIVERSIONS (TOP) 1020 S KANSAS AVE FL 2  
City: TOPEKA State: KS Zip Code 66612-1389  
Telephone Number: (620) 699-3372 e-mail: cody.miller@ksoutdoors.com

2. The source of water is:  surface water in Marais des Cygnes River (stream)  
OR  groundwater in Marais des Cygnes River (drainage basin)

Certain streams in Kansas have minimum target flows established by law or may be subject to administration when water is released from storage for use by water assurance district members. If your application is subject to these regulations on the date we receive your application, you will be sent the appropriate form to complete and return to the Division of Water Resources.

3. The maximum quantity of water desired is 100 acre-feet OR \_\_\_\_\_ gallons per calendar year, to be diverted at a maximum rate of 4,000 gallons per minute OR \_\_\_\_\_ cubic feet per second.

Once your application has been assigned a priority, the requested maximum rate of diversion and maximum requested quantity of water under that priority number can **NOT** be increased. Please be certain your requested maximum rate of diversion and maximum quantity of water are appropriate and reasonable for your proposed project and are in agreement with the Division of Water Resources' requirements.

4. The water is intended to be appropriated for (Check use intended):  
(a)  Artificial Recharge (b)  Irrigation (c)  Recreational (d)  Water Power  
(e)  Industrial (f)  Municipal (g)  Stockwatering (h)  Sediment Control  
(i)  Domestic (j)  Dewatering (k)  Hydraulic Dredging (l)  Fire Protection  
(m)  Thermal Exchange (n)  Contamination Remediation

YOU **MUST** COMPLETE AND ATTACH ADDITIONAL DIVISION OF WATER RESOURCES FORM(S) PROVIDING INFORMATION TO SUBSTANTIATE YOUR REQUEST FOR THE AMOUNT OF WATER FOR THE INTENDED USE REFERENCED ABOVE.

For Office Use Only:  
S.O. 1 GMD  Meets K.A.R. 5-3-1 (YES/NO) Use REC Source G County OS By AW Date 11/3/16  
Code REG Fee \$ 200 TR # \_\_\_\_\_ Receipt Date 10/11/16 Check # 711111111

11/7/2016 LLM

5. The location of the proposed wells, pump sites or other works for diversion of water is:

**Note:** For the application to be accepted, the point of diversion location must be described to at least a 10 acre tract, unless you specifically request a 60 day period of time in which to locate the site within a specifically described, minimal legal quarter section of land.

- (A) One in the SW quarter of the NW quarter of the SE quarter of Section 35, more particularly described as being near a point 1822 feet North and 2523 feet West of the Southeast corner of said section, in Township 17 South, Range 13 East, OSAGE County, Kansas.
- (B) One in the \_\_\_\_\_ quarter of the \_\_\_\_\_ quarter of the \_\_\_\_\_ quarter of Section \_\_\_\_\_, more particularly described as being near a point \_\_\_\_\_ feet North and \_\_\_\_\_ feet West of the Southeast corner of said section, in Township \_\_\_\_\_ South, Range \_\_\_\_\_ East/West (circle one), \_\_\_\_\_ County, Kansas.
- (C) One in the \_\_\_\_\_ quarter of the \_\_\_\_\_ quarter of the \_\_\_\_\_ quarter of Section \_\_\_\_\_, more particularly described as being near a point \_\_\_\_\_ feet North and \_\_\_\_\_ feet West of the Southeast corner of said section, in Township \_\_\_\_\_ South, Range \_\_\_\_\_ East/West (circle one), \_\_\_\_\_ County, Kansas.
- (D) One in the \_\_\_\_\_ quarter of the \_\_\_\_\_ quarter of the \_\_\_\_\_ quarter of Section \_\_\_\_\_, more particularly described as being near a point \_\_\_\_\_ feet North and \_\_\_\_\_ feet West of the Southeast corner of said section, in Township \_\_\_\_\_ South, Range \_\_\_\_\_ East/West (circle one), \_\_\_\_\_ County, Kansas.

If the source of supply is groundwater, a separate application shall be filed for each proposed well or battery of wells, except that a single application may include up to four wells within a circle with a quarter (1/4) mile radius in the same local source of supply which do not exceed a maximum diversion rate of 20 gallons per minute per well.

A battery of wells is defined as two or more wells connected to a common pump by a manifold; or not more than four wells in the same local source of supply within a 300 foot radius circle which are being operated by pumps not to exceed a total maximum diversion rate of 800 gallons per minute and which supply water to a common distribution system.

6. The owner of the point of diversion, if other than the applicant is (please print):

U.S. CORP OF ENGINEERS, 700 FEDERAL BLDG, 601 E 12<sup>TH</sup> ST, KANSAS CITY, MO 64106  
(name, address and telephone number)

\_\_\_\_\_  
(name, address and telephone number)

You must provide evidence of legal access to, or control of, the point of diversion from the landowner or the landowner's authorized representative. Provide a copy of a recorded deed, lease, easement or other document with this application. In lieu thereof, you may sign the following sworn statement:

I have legal access to, or control of, the point of diversion described in this application from the landowner or the landowner's authorized representative. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 3rd, 2016. *Bud [Signature]*  
Applicant's Signature

7. The proposed project for diversion of water will consist of ONE PUMP SITE  
(number of wells, pumps or dams, etc.)  
and (was)(will be) completed (by) Existing \_\_\_\_\_  
(Month/Day/Year - each was or will be completed)

8. The first actual application of water for the proposed beneficial use was or is estimated to be FALL 2016  
(Mo/Day/Year)

WATER RESOURCES  
RECEIVED

WATER RESOURCES  
RECEIVED

OCT 31 2016

OCT 11 2016  
UNACCEPTABLE FOR PRIORITY

9. Will pesticide, fertilizer, or other foreign substance be injected into the water pumped from the diversion works?

Yes  No If "yes", a check valve shall be required.

All chemigation safety requirements must be met including a chemigation permit and reporting requirements.

10. If you are planning to impound water, please contact the Division of Water Resources for assistance, prior to submitting the application. Please attach a reservoir area capacity table and inform us of the total acres of surface drainage area above the reservoir.

Have you also made an application for a permit for construction of this dam and reservoir with the Division of Water Resources?  Yes  No

• If yes, show the Water Structures permit number here DOS-0175

• If no, explain here why a Water Structures permit is not required \_\_\_\_\_

Structures Permit issued with senior appropriation file (Melvern Marsh (North Side))

11. The application must be supplemented by a U.S.G.S. topographic map, aerial photograph or a detailed plat showing the following information. On the topographic map, aerial photograph, or plat, identify the center of the section, the section lines or the section corners and show the appropriate section, township and range numbers. Also, please show the following information:

(a) The location of the proposed point(s) of diversion (wells, stream-bank installations, dams, or other diversion works) should be plotted as described in Paragraph No. 5 of the application, showing the North-South distance and the East-West distance from a section line or southeast corner of section.

(b) If the application is for groundwater, please show the location of any existing water wells of any kind within 1/2 mile of the proposed well or wells. Identify each existing well as to its use and furnish the name and mailing address of the property owner or owners. If there are no wells within 1/2 mile, please advise us.

(c) If the application is for surface water, the names and addresses of the landowner(s) 1/2 mile downstream and 1/2 mile upstream from your property lines must be shown.

(d) The location of the proposed place of use should be shown by crosshatching on the topographic map, aerial photograph or plat.

(e) Show the location of the pipelines, canals, reservoirs or other facilities for conveying water from the point of diversion to the place of use.

A 7.5 minute U.S.G.S. topographic map may be obtained by providing the section, township and range numbers to: Kansas Geological Survey, 1930 Constant, Campus West, University of Kansas, Lawrence, Kansas 66047.

12. List any application, appropriation of water, water right, or vested right file number that covers the same diversion points or any of the same place of use described in this application. Also list any other recent modifications made to existing permits or water rights in conjunction with the filing of this application.

File No. 44,828 is complete overlap in point of diversion and place of use.

This new application is for additional water.

WATER RESOURCES  
RECEIVED

OCT 31 2016

KS DEPT OF AGRICULTURE

WATER RESOURCES  
RECEIVED

UNACCEPTABLE FOR PRIORITY

KS DEPT OF AGRICULTURE

13. Furnish the following well information if the proposed appropriation is for the use of groundwater. If the well has not been completed, give information obtained from test holes, if available.

Information below is from:  Test holes  Well as completed  Drillers log attached

Well location as shown in paragraph No.	(A)	(B)	(C)	(D)
Date Drilled	_____	_____	_____	_____
Total depth of well	_____	_____	_____	_____
Depth to water bearing formation	_____	_____	_____	_____
Depth to static water level	_____	_____	_____	_____
Depth to bottom of pump intake pipe	_____	_____	_____	_____

14. The relationship of the applicant to the proposed place where the water will be used is that of AGENT  
(owner, tenant, agent or otherwise)

15. The owner(s) of the property where the water is used, if other than the applicant, is (please print):  
U.S. CORP OF ENGINEERS, 700 FEDERAL BLDG, 601 E 12<sup>TH</sup> ST, KANSAS CITY, MO 64106  
(name, address and telephone number)  
\_\_\_\_\_  
(name, address and telephone number)

16. The undersigned states that the information set forth above is true to the best of his/her knowledge and that this application is submitted in good faith.

Dated at Melvern, Kansas, this 3<sup>rd</sup> day of October, 2016.  
(month) (year)

Bud [Signature]  
(Applicant Signature)

483-17-5953  
APPLICANT(S) SOCIAL SECURITY IDENTIFICATION NUMBER(S)

By \_\_\_\_\_  
(Agent or Officer Signature)

and/or  
APPLICANT(S) TAXPAYER I.D. NO.(S)

\_\_\_\_\_  
(Agent or Officer - Please Print)

Assisted by DWS TOPEKA FO Date: 9/27/2016  
(office/title)

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**RECREATIONAL USE  
SUPPLEMENTAL SHEET**

File No. 49,723 A

Name of Applicant (Please Print): KDWP&T \_\_\_\_\_

1. Please indicate type of recreational use (boating, fishing, swimming, etc.): \_\_\_\_\_

Wildlife Habitat

2. Please summarize how the water will be used and justify the quantity of water requested: \_\_\_\_\_

Surface Area of Marsh = 30 acres. Filled to a maximum depth of 3.0 feet  
30 acres x 3.0 feet = 90 acre-feet, plus a second fill quantity of approximately 80 acre-feet.  
Total requested approximately 170 acre-feet.

Note that senior file is authorized 67 acre-feet, so this new application is requesting 100 AF to cover the additional water needs.

3. Please complete the following table showing estimated future water requirements:

<b>ESTIMATED FUTURE WATER DIVERTED/STORED</b>	
<b>NEXT 5 YEARS</b>	<b>WATER TO BE DIVERTED (ACRE-FEET OR GALLONS)</b>
Year 1	170 AF
Year 2	170 AF
Year 3	170 AF
Year 4	170 AF
Year 5	170 AF

Please attach any additional information, tables, or curves showing past, present and estimated future water requirements to substantiate the amount of water requested.

4. Please designate the legal description of the location where the water is to be used by providing the fractional part of the Section, Township and Range.

Wildlife Marsh Located in the Southeast Quarter of Section 35, and the Northwest Quarter of the Southwest Quarter of Section 36, all in Township 17 South, Range 13 East, Osage County, Kansas.

You may attach any additional information you believe will assist in informing the Division of the need for your request.

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10-03-2016

(Date)

Kansas Department of Agriculture  
Division of Water Resources  
David W. Barfield, Chief Engineer  
1320 Research Park Drive  
Manhattan, Kansas 66502

Re: Application  
File No. 49,723 A

Minimum Desirable Streamflow  
Marais des Cygnes River Assurance District  
Water Reservation Rights

Dear Sir:

I understand that a Minimum Desirable Streamflow requirement has been established, an Assurance District has been formed and established or a Water Reservation Right is held by the Kansas Water Office (**circle the appropriate item**) for the source of supply to which the above referenced application applies, namely the Marais des Cygnes River.

I understand that diversion of water pursuant to this application will be subject to regulation any time Minimum Desirable Streamflow requirements are not being met, Assurance District or Water Marketing releases are being made from storage in Federal Reservoirs or when a Reservation Right upstream of a Federal Reservoir is being administered.

I also understand that if this application is approved, there could be times, as determined by the Division of Water Resources, when I would not be allowed to divert water. I realize that this could affect the economics of my decision to appropriate water.

I am aware of the above factors, and with the knowledge thereof, request that the Division of Water Resources proceed with processing and approval, if possible, of the above referenced application.

Brad Niemann  
Signature of Applicant

Brad Niemann  
Print Applicant Name

State of Kansas )  
County of Dolan ) SS

I hereby certify that the foregoing instrument was signed in my presence and sworn to before me this 3<sup>rd</sup> day of October, 2016.

Evelyn R. Pierce  
Notary Public

My Commission Expires:  
11-15-16

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EVELYN R. PIERCE  
Notary Public - State of Kansas  
My Appt. Expires 11-15-16

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DWR 1-100.172 (Revised 06/05/2008)

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## FEE SCHEDULE

1. The fee for an application for a permit to appropriate water for beneficial use, except for domestic use, shall be (see paragraph No. 2 below if requesting storage):

ACRE-FEET	FEE
0-100	\$200.00
101-320	\$300.00
More than 320	\$300.00 plus \$20.00 for each additional 100 acre-feet or any part thereof.

2. The fee for an application in which storage is requested, except for domestic use, shall be:

ACRE-FEET	FEE
0-250	\$200.00
More than 250	\$200.00 plus \$20.00 for each additional 250 acre-feet of storage or any part thereof.

Note: If an application requests both direct use *and* storage, the fee charged shall be as determined under No. 1 or No. 2 above, whichever is greater, but not both fees.

3. The fee for an application for a permit to appropriate water for water power or dewatering purposes shall be \$100.00 plus \$200.00 for each 100 cubic feet per second, or part thereof, of the diversion rate requested.

Note: The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$400.00 when construction of the works for diversion has been completed, except that for applications filed on or after July 1, 2009, for works constructed for sediment control use and for evaporation from a groundwater pit for industrial use shall be accompanied by a field inspection fee of \$200.00.

### MAKE CHECKS PAYABLE TO THE KANSAS DEPARTMENT OF AGRICULTURE

#### ATTENTION

A Water Conservation Plan may be required per K.S.A. 82a-733. A statement that your application for permit to appropriate water may be subject to the minimum desirable streamflow requirements per K.S.A. 82a-703a, b, and c may also be required from you. After the Division of Water Resources has had the opportunity to review your application, you will be notified whether or not you will need to submit a Water Conservation Plan. You also may be required to install a water flow meter or water stage measuring device on your diversion works prior to diverting water. There may be other special conditions or Groundwater Management District regulations that you will need to comply with if this application is approved.

#### CONVERSION FACTORS

1 acre-foot equals 325,851 gallons

1 million gallons equal 3.07 acre-feet

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**FORM TO BE USED WHEN APPLICABLE  
WHEN FILING AN APPLICATION FOR PERMIT  
TO APPROPRIATE WATER FOR BENEFICIAL USE**

The Kansas Legislature has established minimum desirable streamflows for the streams listed below. If your proposed diversion of water is going to be from one of these watercourses or adjacent alluvial aquifers, please complete the back side of this page and submit it along with your application for permit to appropriate water.

Arkansas River  
Big Blue River  
Chapman Creek  
Chikaskia River  
Cottonwood River  
Delaware River  
Little Arkansas River  
Little Blue River  
Marais des Cygnes River  
Medicine Lodge River  
Mill Creek (Wabaunsee Co. area)  
Neosho River

Ninnescah River  
North Fork Ninnescah River  
Rattlesnake Creek  
Republican River  
Saline River  
Smoky Hill River  
Solomon River  
South Fork Ninnescah  
Spring River  
Walnut River  
Whitewater River

Assurance Districts have been formed on the following rivers:

Kansas River                      Marias des Cygnes River                      Neosho River

The Kansas Water Office has Water Reservation Rights for the following reservoirs:

Big Hill	Marion
Clinton	Melvorn
Council Grove	Milford
Elk City	Perry
Hillsdale	Pomona
John Redmond	Tuttle Creek

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## Schemm, Doug

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**From:** Tietsort, Katie  
**Sent:** Tuesday, December 20, 2016 3:17 PM  
**To:** Schemm, Doug  
**Subject:** RE: KDWP & T 49,723 A

Thanks Doug. Proceed.

Katie Tietsort  
Water Commissioner, Topeka Field Office  
Kansas Department of Agriculture, Division of Water Resources  
6531 SE Forbes Ave, Ste B  
Topeka, KS 66619  
(785) 296-5733  
[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)

---

**From:** Schemm, Doug  
**Sent:** Tuesday, December 13, 2016 2:38 PM  
**To:** Tietsort, Katie <[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)>  
**Subject:** KDWP & T 49,723 A

More water at the marsh they overpumped.

I'm doing this one separate from the second one they filed (49,713 B) because it has a pd/PU change under 45,040, somewhere at HQ, and I've got a request into structures to look at the expanded marsh area from their side.

AMOUNT STATISTICS REPORT FOR POINTS OF DIVERSION UNDER A 49723 A

#####

AMOUNT STATISTICS REPORT FOR POINTS OF DIVERSION UNDER A 49723 A REC

Water Right and Points of Diversion Within 2.00 miles of point defined as:

*No other water rights in area*

1822 Feet North and 2523 Feet West of the Southeast Corner of Section 35 T 17S R 13E  
SURFACE WATER ONLY

File Number	Use	ST	SR	Dist (ft)	Q4	Q3	Q2	Q1	FeetN	FeetW	Sec	Twp	Rng	ID	Batt	Auth_Quan	Add_Quan	Unit	
A__ 44828	00	REC	NK	S	0	--	SW	NW	SE	1822	2523	35	17	13E	2		67.00	67.00	AF
A__ 49723	A	REC	AY	S	0	--	SW	NW	SE	1822	2523	35	17	13E	2		100.00	100.00	AF

Total Net Quantities Authorized:		Direct	Storage
Total Requested Amount (AF) =		100.00	.00
Total Permitted Amount (AF) =		.00	.00
Total Inspected Amount (AF) =		.00	.00
Total Pro_Cert Amount (AF) =		.00	.00
Total Certified Amount (AF) =		67.00	.00
Total Vested Amount (AF) =		.00	.00
TOTAL AMOUNT (AF) =		167.00	.00

An \* after the source of supply indicates a pending application for change under the file number.  
 An \* after the ID indicates a 15 AF exemption was granted under the file number.  
 A "G" in the Batt column indicates the GEO CTR of a battery. A "B" indicates a well in the battery.  
 The number in the Batt column is the number of wells in the battery.

Water Rights and Points of Diversion Within 2.00 miles of point defined as:  
 1822 Feet North and 2523 Feet West of the Southeast Corner of Section 35 T 17S R 13E  
 SURFACE WATER ONLY

WATER USE CORRESPONDENTS:

- =====  
 File Number Use ST SR  
 A\_\_ 44828 00 REC NK S  
 > KANSAS DEPT OF WILDLIFE PARKS & TOURISM  
 > ACTIVE DIVERSIONS (TOP)  
 > 1020 S KANSAS AVE FL 2  
 > TOPEKA KS 66612  
 >-----  
 A\_\_ 49723 A REC AY S  
 > KANSAS DEPT OF WILDLIFE PARKS & TOURISM  
 > ACTIVE DIVERSIONS (TOP)  
 > 1020 S KANSAS AVE FL 2  
 > TOPEKA KS 66612  
 >-----  
 =====

#####



1320 Research Park Drive  
Manhattan, Kansas 66502  
Jackie McClaskey, Secretary

Phone: (785) 564-6700  
Fax: (785) 564-6777  
Email: ksag@kda.ks.gov  
www.agriculture.ks.gov  
Sam Brownback, Governor

November 4, 2016

KANSAS DEPT OF WILDLIFE PARKS & TOURISM  
1020 S KANSAS AVE FL 2  
TOPKEA KS 66612

**FILE COPY**

RE: Application  
File No. 49723 A

Dear Sir or Madam:

Your application for permit to appropriate water in 35-17E-13E in Osage County, was received and has been assigned the file number noted above.

As a matter of record, the Division of Water Resources has on hand a large number of applications awaiting processing. Therefore to be fair to all concerned, and so that we can process those applications on hand in the order they were received, we intend to concentrate on the backlog of applications until the issue is resolved. Once review of your application has begun, we will contact you, if additional information is required.

In accordance with the provisions of the Kansas Water Appropriation Act, a portion of which is included below, the use of water as proposed prior to approval of the application is unlawful. Once approved, compliance with the terms, conditions and limitations of the permit is necessary. Conservation of the water resources of Kansas is required.

**Section 82a-728 of the Kansas Water Appropriation Act, provides (a) except for the appropriation of water for the purpose of domestic use, . . . it shall be unlawful for any person to appropriate or threaten to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the provisions of the Water Appropriation Act or for any person to violate any condition of a vested right, appropriation right or an approved application for a permit to appropriate water for beneficial use.**

**(b) (1) The violation of any provision of this section by any person is a class C misdemeanor . . .**

**A class C misdemeanor is punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. Each day that the violation occurs constitutes a separate offense.**

If you have any questions, please contact me at (785) 564-6645. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

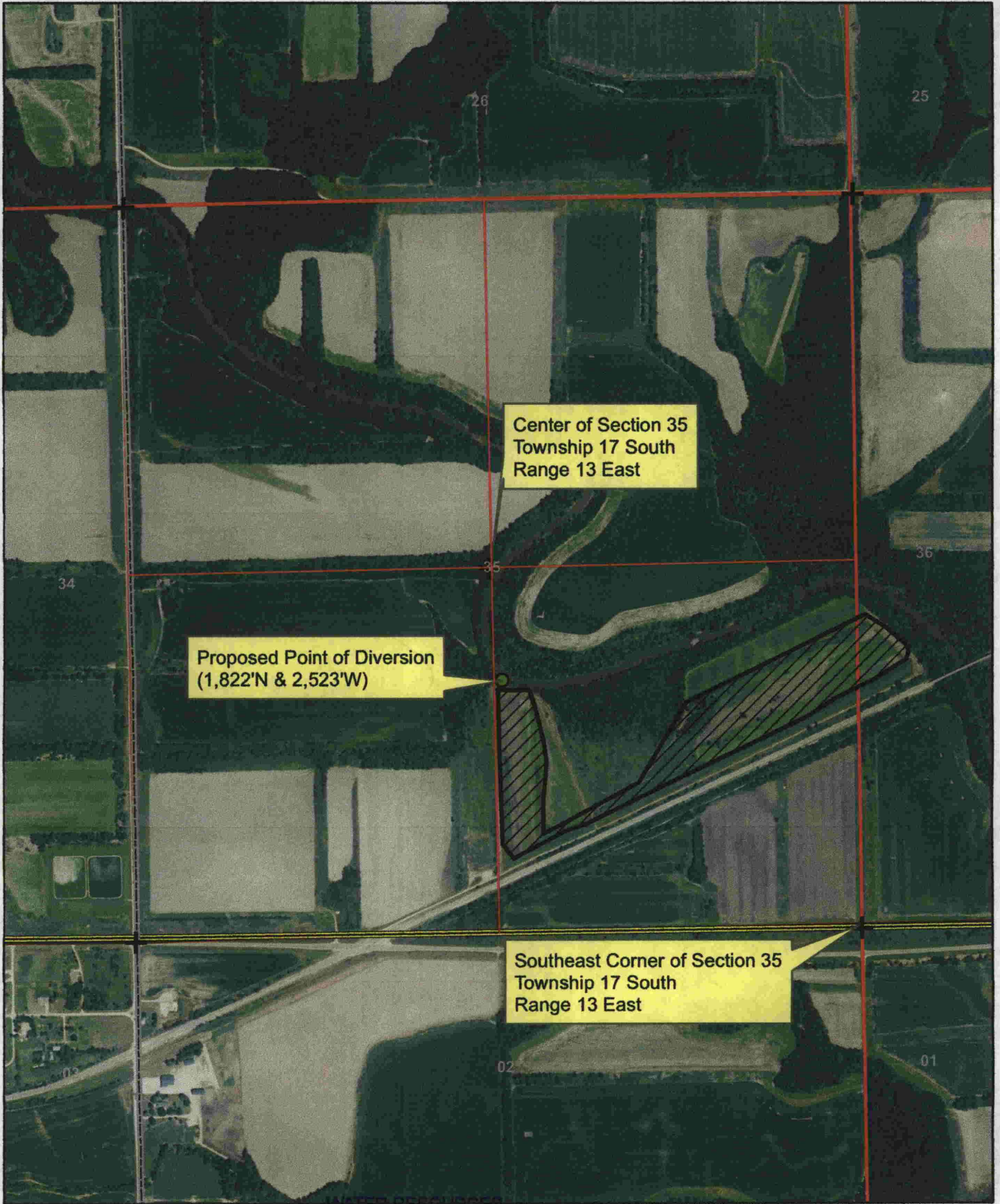
Sincerely,

Brent A Turney, P.G.  
Change Application Unit Supervisor  
Water Appropriation Program

BAT: dlw  
pc: TOPEKA Field Office  
GMD

Kansas Dept of Wildlife Parks & Tourism  
Section 35, Township 17 South, Range 13 East  
Osage County

49,723 A



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Proposed Place of Use

U.S. Army COE owns all land adjacent to the stream within one-half mile upstream and downstream of the property lines.

1:12,000

10/13/16



Proposed Point of Diversion

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*Burd Vander*