



File No. **50,517**      15. Formation Code:      Drainage Basin: **Caney River**      County: **CL**      Special Use:      Stream: **Otter Creek 1**

16. Points of Diversion										17. Rate and Quantity						
T	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		
												Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
	<b>CHK</b>				<b>88604 SW NE NW</b>	<b>16</b>	<b>33S</b>	<b>8E</b>	<b>3</b>	<b>4461</b>	<b>3516</b>	<b>5000</b>	<b>20</b>	<b>5000</b>	<b>20</b>	<b>none</b>
	<b>MOD</b>				<b>88605 SW NW NE</b>	<b>16</b>	<b>33S</b>	<b>8E</b>	<b>4</b>	<b>4194</b>	<b>2270</b>					

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? **x Yes**    No      To be installed by **12/31/2021 - 2022**      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use						NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? <b>NO</b>	Overlap Files
T	MOD	DEL	ENT	PUSE	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				
	<b>MOD</b>				<b>70262 16 33S 8E 3</b>																		<b>7a</b>	<b>NO</b>	<b>NONE</b>

Comments: **PERMISSION TO PUMP MARSH COMPLEX** 9/16/2021  
KJN

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

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

**TO:** Files

**DATE:** August 10, 2021

**FROM:** Kris Neuhauser

**RE:** Application, File No. 50,517

Western Holdings LLC has filed the above referenced application requesting to appropriate 20 acre-feet of surface water by direct diversion (two pump-sites on Otter Creek) at a maximum diversion rate of 5,000 gallons per minute for recreational purposes to fill and maintain a wildlife marsh. The two pump-sites are located in the Northwest Quarter and Northeast Quarter of Section 16, Township 33 South, Range 8 East, Cowley County Kansas (Caney River Basin). The application has been signed by Dirk Dieterich (on behalf of Western Holdings LLC) stating they have legal access to the point of diversion.

The place of use is a wildlife marsh, broken down into three sites/ponds, which are located in the North Half of Section 16, Township 33 South, Range 8 East, Cowley County, Kansas. Former Environmental Scientist from the Topeka Field Office, Doug Schemm, assisted Mr. Dieterich with the application, supplemental sheet, and corresponding map. The requested quantity was determined by the following calculation:

Total acres of ponds/marsh = 5 acres. Initial filling at 2.0 feet depth = 10 acre-feet  
Additional water to offset indirect losses = 10 acre-feet  
Total = 20 acre-feet

Janelle Phillips, Stream Obstruction Team Lead, spoke with the applicant over the phone on June 17, 2021, and determined that no DWR Structures permitting will be required (see email correspondence in Docuware).

In an email conversation with Brent Turney, it was confirmed that this location is not a part of any National Resources Conservation Service (NRCS) easement, therefore no Compatible Use Agreement between the applicant and NRCS will be required.

Two landowners within one half mile upstream and downstream of the proposed point of diversion were identified by the applicant. Nearby notification letters were mailed on August 9, 2021. No responses of any kind were received to date. The closest surface water right is authorized by 46,860, which is located roughly 1.5 miles away.

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 Minimum Desirable Streamflow 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.

In an email conversation on August 18, Katie Tietsort, Water Commissioner of the Topeka Field Office, recommended approval of the referenced application.

Based on the above discussion, there is no indication that the proposed beneficial use of water will impair existing water rights, no CUA is required from NCRS, and no permit is required from the Water Structures Program. Therefore, it is recommended that the referenced application be approved.

9/16/2021  
KJN



Kris Neuhauser  
New Applications Lead  
Water Appropriation Program

**From:** Tietsort, Katie [KDA]  
**Sent:** Wed 8/18/2021 8:45 AM  
**To:** Neuhauser, Kris [KDA]  
**Cc:** Bunger, Brett [KDA]  
**Subject:** RE: 50517 recommendation request

Good Morning Kris,

I agree with your recommendation for approval with the 5-3-15 permit conditions.

Thanks for your work!

Katie

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**From:** Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>  
**Sent:** Monday, August 16, 2021 4:32 PM  
**To:** Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>  
**Cc:** Bunger, Brett [KDA] <Brett.Bunger@ks.gov>  
**Subject:** 50517 recommendation request

Hi Katie,

Two nearby letters went out on 8/9. Getting this to you a little head of the 15-day period, since I'm heading out Friday on vacation – and out all next week. Will follow up if any responses come in.

Been talking with the applicant Dirk Dieterich a bit, he checked in a couple months ago. Attached my email from Janelle – no structures permitting needed. Also checked with Brent, not a part of any NRCS easement, so no CUA needed. Doug assisted Dirk with this back in early 2021. There's some email correspondence on 1/24/21 in Docuware. I can easily check with Dirk if we need to follow up on anything regarding the map/supplemental sheet.

Let me know if you need anything further, thanks!

***Kris Neuhauser***  
New Applications Lead  
Kansas Department of Agriculture, Division of Water Resources  
Phone: 785-564-6643

**From:** Turney, Brent - NRCS, Emporia, KS  
**Sent:** Fri 7/30/2021 10:25 AM  
**To:** Neuhauser, Kris [KDA]  
**Subject:** RE: New App 50,517 - Western Holdings LLC

**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.

Hey Kris,

All is well here, you have no idea how a 3 minute commute compares to an hour and a half commute! So life is good.

I appreciate the chance to comment on the application, however, we don't have an easement on this wetland. So you not need anything from NRCS on this application.

Thanks!

Brent

## Brent Turney

Easement Specialist

3020 W. 18<sup>th</sup> Ave Suite B

Emporia, KS 66801

Office 620-487-3413

Cell 620-682-3538

[brent.turney@usda.gov](mailto:brent.turney@usda.gov)

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**From:** Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>  
**Sent:** Friday, July 30, 2021 10:00 AM  
**To:** Turney, Brent - NRCS, Emporia, KS <Brent.Turney@usda.gov>  
**Subject:** New App 50,517 - Western Holdings LLC

Morning Brent,

Hope all is well! Have another app I'm getting ready to roll on. Another wildlife marsh down in Cowley County: 16-33S-8E . Wanted to check in and see if anything will be required on your end of things, CUA-wise/etc.

Let me know if you need any more information on it, I've attached a scan of the app above.

Happy Friday,

## Kris Neuhauser

Environmental Scientist

Kansas Department of Agriculture, Division of Water Resources

Address: 1320 Research Park Drive, Manhattan, KS 66502

Phone: (785)564-6643

Website: <http://agriculture.ks.gov/divisions-programs/dwr>

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**From:** Phillips, Janelle [KDA]  
**Sent:** Thu 6/17/2021 11:19 AM  
**To:** Neuhauser, Kris [KDA]  
**Subject:** RE: New App 50517

Kris –

The proposed wetlands are not jurisdictional to water structures. I spoke to the applicant and he not proposing to do any work within Otter Creek to make his pumps work. He says there are existing pool with the creek that will work for his pumps.

Janelle N. Phillips, P.E. C.F.M  
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 – office  
785-307-8292 – cell  
Janelle.phillips@ks.gov

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**From:** Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>  
**Sent:** Thursday, June 17, 2021 10:44 AM  
**To:** Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>  
**Subject:** New App 50517

Hey Janelle,

Here is that app I mentioned yesterday. Talked to the applicant, real nice guy – Karl Dieterich. Doug assisted from the beginning on it, Karl heard he retired so was checking in. It recently got reassigned to me, not quite there in priority order yet to work, but figured it wouldn't hurt to get it to you guys ahead of time to review.

Let me know if you need anything else for it. His phone # is 719-440-7700 in case you need it.

Thanks!

Kris



THE STATE OF KANSAS



**KANSAS DEPARTMENT OF AGRICULTURE**  
Mike Beam, Secretary of Agriculture

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

**APPROVAL OF APPLICATION  
and  
PERMIT TO PROCEED**

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,517** of the applicant

**WESTERN HOLDINGS LLC  
24735 TRAVIS LAKESIDE COVE  
SPICEWOOD, TX 78669**

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 5, 2021**.
2. That the water sought to be appropriated shall be used for recreational use in a waterfowl marsh (three separate ponds) located in the North Half (N $\frac{1}{2}$ ) of Section 16, in Township 33 South, Range 8 East, Cowley County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from Otter Creek 1 (Caney River), to be diverted by means of two (2) pumpsites; located as follows:  
  
in the Southwest Quarter of the Northeast Quarter of the Northwest Quarter (SW $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 16, more particularly described as being near a point 4,461 feet North and 3,516 feet West of the Southeast corner of said section,  
  
and  
  
in the Southwest Quarter of the Northwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 16, more particularly described as being near a point 4,194 feet North and 2,270 feet West of the Southeast corner of said section,  
  
both in Township 33 South, Range 8 East, Cowley County, Kansas.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **5,000 gallons per minute (11.14 c.f.s.)** and to a quantity not to exceed **20 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, 2022** 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, 2026** 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 with the 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 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.

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

18. 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.

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.

Ordered this 28 day of September, 2021, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

Lane P. Letourneau, P.G.  
Water Appropriation Program Manager  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas            )  
  ) SS  
County of Riley            )

The foregoing instrument was acknowledged before me this 28 day of September, 2021, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings  
Notary Public







1320 Research Park Drive  
Manhattan, KS 66502  
785-564-6700  
www. agriculture.ks.gov



900 SW Jackson, Room 456  
Topeka, KS 66612  
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

September 30, 2021

WESTERN HOLDINGS LLC  
24735 TRAVIS LAKESIDE COVE  
SPICEWOOD, TX 78669

RE: Appropriation of Water, File No. 50,517

Dear Mr. Dieterich:

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 acceptable water flowmeter must be installed on the diversion works authorized by this permit prior to using water. 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 Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum  
New Applications and Changes Supervisor  
Water Appropriation Program

KAB: kjn  
Enclosures

pc: Topeka Field Office

## RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may request an evidentiary hearing before the Chief Engineer, or request administrative review by the Secretary of Agriculture. Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Division, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for review may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

## CERTIFICATE OF SERVICE

On this 30 day of September, 2021, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,517, dated 28 September 2021 was mailed postage prepaid, first class, US mail to the following:

WESTERN HOLDINGS LLC  
24735 TRAVIS LAKESIDE COVE  
SPICEWOOD, TX 78669

With photocopies to:

Topeka Field Office

  
\_\_\_\_\_  
Division of Water Resources