

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

1. File Number: <p style="text-align: center;"><b>50,679</b></p>	2. Status Change Date: <p style="text-align: center;"><b>10/11/2022</b></p>	3. Field Office: <p style="text-align: center;"><b>01</b></p>	4. GMD: <p style="text-align: center;"><b>0</b></p>
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5. Status:     Approved                       Denied by DWR/GMD                       Dismiss by Request/Failure to Return

6. Enclosures:     Check Valve                       N of C Form                       Water Tube                       Driller Copy                       Meter

7a. Applicant(s)                      Person ID **68099**  
New to system                       Add Seq# 1

**DERRICK PETERSON**  
**25512 S STATE ROUTE D**  
**CLEVELAND, MO 64734**

7b. Landowner(s)                      Person ID **68628**  
New to system                       Add Seq# \_\_\_\_\_

**DARLENE L COX FERGUSON**  
**HENRY V FERGUSON**  
**23457 ULLERY RD**  
**LA CYGNE, KS 66040**

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

7e. Miscellaneous                      Person ID \_\_\_\_\_

8. WUR Correspondent                      Person ID **68099**  
New to system                       Add Seq# 1  
Overlap File (s) WUC                      Notarized WUC Form   
Agree  Yes  No

**7a.**

9. Use of Water:    Changing?     Yes     No

Groundwater                       Surface Water

IRR                       REC                       DEW                       MUN

STK                       SED                       DOM                       CON

HYD DRG                       WTR PWR                       ART RECHRG

IND SIC: \_\_\_\_\_                       OTHER: \_\_\_\_\_

10. Completion Date: ~~12/31/2023~~                      11. Perfection Date: ~~12/31/2027~~                      12. Exp Date: \_\_\_\_\_

13. Conservation Plan Required?  Yes  No Date Required: \_\_\_\_\_ Date Approved: \_\_\_\_\_ Date to Comply: \_\_\_\_\_

14. Water Level Measuring Device?  Yes  No Date to Comply: \_\_\_\_\_ Date WLMD Installed: \_\_\_\_\_

10/7/2022  
JDK                      Date Prepared: **9/15/2022**                      By: **LHH**  
 Date Entered: 10/12/2022  
LMoody                      By: \_\_\_\_\_

File No. **50,679**      15. Formation Code:      Drainage Basin: **Marais des Cygnes River**      County: **LN**      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
√			<b>89150</b>	<b>NE NE SW</b>	<b>30</b>	<b>19S</b>	<b>24E</b>	<b>5</b>	<b>2193</b>	<b>2788</b>	<b>10,000</b>	<b>35</b>	<b>10,000</b>	<b>35</b>	<b>NONE</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?  Yes  No      To be installed by 12/31/2023 24      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	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						
<b>MOD</b>	<b>70644</b>	<b>30</b>	<b>19S</b>	<b>24E</b>	<b>2</b>	<b>MARSH (NE SW)</b>																	<b>7b</b>	<b>NO</b>	<b>NONE</b>				

Comments:

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

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

**TO:** Files

**DATE:** September 15, 2022

**FROM:** Lloyd Hemphill

**RE:** New Application, File No. 50,679

Derrick Peterson has filed the new application referred to above proposing to appropriate 35 acre-feet of surface water at a diversion rate of 10,000 gallons per minute from one pumpsite on the Marais des Cygnes River, for recreational use in a marsh. This application will allow water to be pumped directly from the stream (when flows are adequate, and permission is granted). The water will be used to fill and maintain water levels in the marsh (i.e. offset evaporative and seepage losses). The proposed pumpsite is located in the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 30, in Township 19 South, Range 24 East, Linn County, Kansas. The marsh place of use is located in the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 30, in Township 19 South, Range 24 East. An application for a temporary permit (File No. 20210246) was filed along with the regular new application to authorize diversion of up to 4 million gallons in the 2021/2022 season while File No. 50,679 was being processed. The temporary permit expired on May 16, 2022. This file does not overlap any other point of diversion or place of use. The applicant is leasing the property for hunting and the point of diversion and place of use is owned by Darlene and Henry Ferguson. The applicant signed the application stating he has access to the point of diversion.

The Recreational Use Supplemental sheet notes that the surface area of the existing marsh is approximately 3.5 acres. Based on lidar data, the maximum height of the berms around the marsh is about 5 feet. A generous estimate of the storage capacity is 17.5 acre-feet. An additional quantity of 17.5 acre-feet (1 additional storage volume) was requested to offset losses to evaporation and seepage, bringing the total quantity to 35 acre-feet. The evaporation component would be 0.73 acre-feet (5 in potential evaporation X 1ft/12 in X  $\frac{1}{2}$  year X 3.5 acres). The remaining quantity appears reasonable to cover seepage losses.

Notification letters were sent to several nearby landowners on August 26, 2022. Linda Elder (downstream) called with general questions about the application but indicated that she had no concerns with the project. According to the WRIS database, there are several other permitted water rights within two miles. The nearest upstream pumpsite is located 6,900 feet away and the nearest downstream pumpsite is located 6,700 feet away (as measured along the river course). With the standard permit conditions, approval of this application will not impair senior water rights.

This existing structure was reviewed by DWR Water Structures. Per Janelle Phillips, additional permitting is not required as no new work (including but not limited to maintenance, repairs, raising, etc.) is planned.

Brent Turney has confirmed that the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) does not hold any easements on this property. This is an important determination because any property that has an NRCS easement must complete a Compatible Use Agreement (CUA) application for water level management, and ultimately have it approved.

This approval 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.

Derrick Peterson - Memorandum  
File No. 50,679  
Page 2

The 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 typically is no need for direct diversion of water from July 1 through September 30.

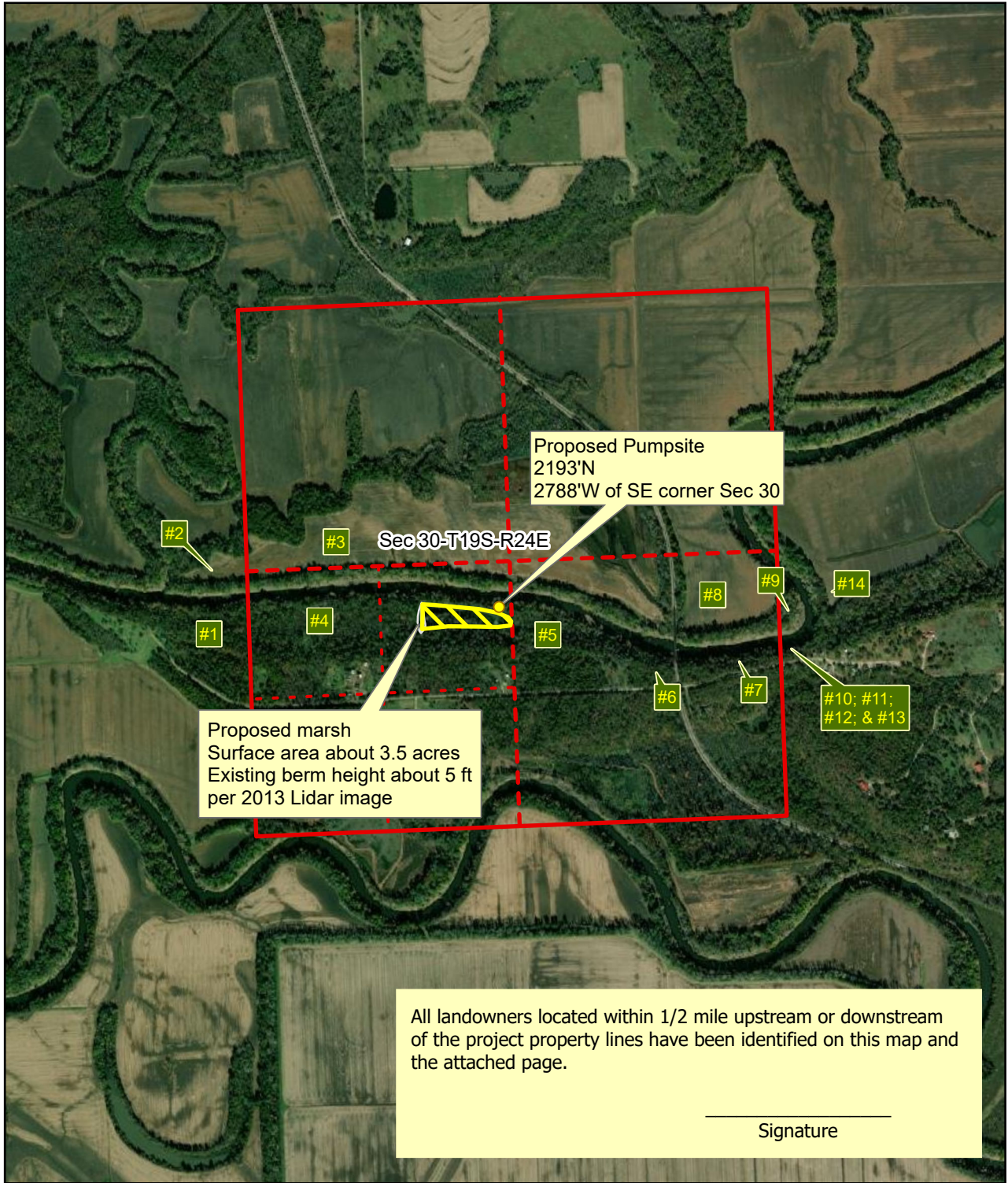
The applicant submitted a signed form acknowledging that they are aware that a MDS target has been established for the source of supply.

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.

Based on the above discussion, the area remains open to new appropriations, the approval is subject to specific conditions relative to direct surface water diversions, diversion is typically limited to fall "off-season" pumping, the project does not require permitting through the Structures Program, and there is no indication that existing water rights will be impaired, it is recommended that the referenced application be approved.

Lloyd Hemphill  
Environmental Scientist  
Topeka Field Office

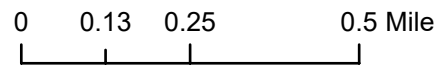
# NEW APPLICATION RECREATIONAL USE



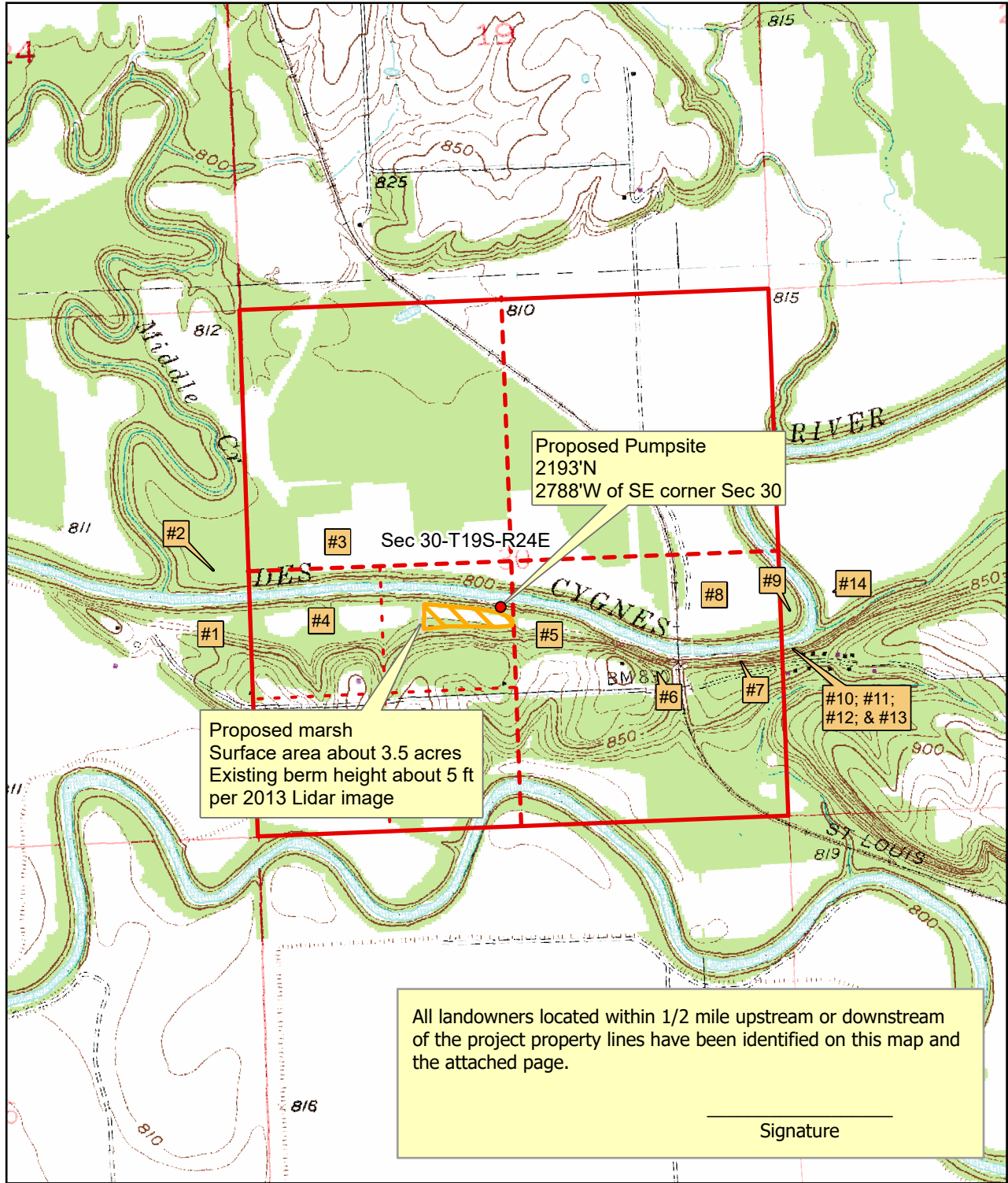
Map prepared by: LHH/TFO 11-2-21



Scale: 1:18,000



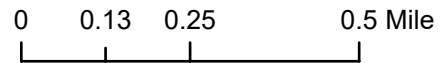
# NEW APPLICATION RECREATIONAL USE



Map prepared by: LHH/TFO 11-2-21



Scale: 1:18,000



**Landowners located within 1/2 mile upstream and downstream of the  
project property lines**

- #1 MICHAEL HUDSON & WAYNE SHARE TRUST  
UMB BANK TRUSTEE Attn: TRUST REAL ESTATE  
1010 GRAND BLVD  
KANSAS CITY, MO 64106
  
- #2 & #3 RMMK-LLC  
PO BOX 200  
GRANDVIEW, MO 64030
  
- #4 MICHAEL A HAASE  
11321 W 154TH  
OVERLAND PARK, KS 66221
  
- #5 DARLENE L FERGUSON COX **(PROJECT PROPERTY)**  
HENRY V FERGUSON  
23457 ULLERY RD  
LA CYGNE, KS 66040
  
- #6 & #7 LARRY A & BEVERLY M LEE  
4750 FALMOUTH  
ROELAND PARK, KS 66205
  
- #8 & #9 PONY CORNER FARMS LLC  
39883 VICTORY RD  
FONTANA, KS 66026
  
- #10 DAVID JANET A ROWLANDS  
MARK P ROWLANDS  
11900 W 82ND TER  
LENEXA, KS 66215
  
- #11 LINDA A ELDER  
402 E PARK AVE  
LA CYGNE, KS 66040
  
- #12 DALE JAMES SYLVA &  
LINDA L SYLVA  
PO BOX 85  
LA CYGNE, KS 66040
  
- #13 STEVEN L SMITH & RAE ANNE SMITH  
25293 DEHOFF DR  
TONGANOXIE, KS 66086
  
- #14 JBB FARMS LLC  
6300 SPRINT PKWY STE 200  
OVERLAND PARK, KS 66211

**RECREATIONAL USE  
SUPPLEMENTAL SHEET**

File No. \_\_\_\_\_

Name of Applicant (Please Print): Derrick Peterson

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

2. Please summarize how the water will be used and justify the quantity of water requested: \_\_\_\_\_  
3.5 SA marsh X 5 feet = 17.5 AF X 2 fills = 35 AF

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	35 AF
Year 2	35 AF
Year 3	35 AF
Year 4	35 AF
Year 5	35 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.

A WATERFOWL MARSH LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER (NE 1/4 SW 1/4) OF SECTION 30-T19S-R24E.

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



## Hemphill, Lloyd [KDA]

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**From:** Phillips, Janelle [KDA]  
**Sent:** Tuesday, August 30, 2022 9:01 AM  
**To:** Hemphill, Lloyd [KDA]  
**Subject:** RE: Application, File No. 50769

Lloyd –

I have not spoken to Mr. Peterson about his wetland. If Mr. Peterson does not make any modifications to the existing wetland then a structures permit will not be required.

Janelle Phillips, P.E., CFM  
Stream Obstruction Team Lead  
Water Structures Program  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, KS 66502  
Office: 785-564-6656  
Cell: 785-307-8292  
[Janelle.phillips@ks.gov](mailto:Janelle.phillips@ks.gov)

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**From:** Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>  
**Sent:** Monday, August 29, 2022 4:44 PM  
**To:** Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>  
**Subject:** Application, File No. 50769

Janelle,

Derrick Peterson filed Application, File No. 50679 involving a small wetland/pond located in the NE ¼ of the SW ¼ of Sec 30-T19S-R24E in Linn Co. This is immediately adjacent to the Marais des Cygnes River.

The structure has been around for several years. The surface area is about 3.5 acres. From lidar data it looks like the berm might be as much as 5 ft in height. My rough estimate for the storage capacity would be 6 to 10 acre-feet.

Has Mr. Peterson talked to you or provided you any information about this project? Have I given you enough info to make any determination on whether any Structures permitting is required?

Thanks,  
Lloyd

Lloyd Hemphill, Environmental Scientist  
Kansas Department of Agriculture  
Division of Water Resources, Topeka Field Office  
1131 SW Winding Rd, Suite 400  
Topeka, KS 66615  
Office: (785) 296-5733

**NOTE NEW ADDRESS**

## Hemphill, Lloyd [KDA]

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**From:** Turney, Brent - NRCS, Emporia, KS <Brent.Turney@usda.gov>  
**Sent:** Tuesday, August 30, 2022 7:45 AM  
**To:** Hemphill, Lloyd [KDA]  
**Subject:** RE: Wetland-Sec 30-T19S-R24E

**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.

Good morning Lloyd,  
You are good to go, there are no easements on or near this property.  
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:** Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>  
**Sent:** Monday, August 29, 2022 3:58 PM  
**To:** Turney, Brent - NRCS, Emporia, KS <Brent.Turney@usda.gov>  
**Subject:** Wetland-Sec 30-T19S-R24E

Hello Brent,

I have another small wetland project in Linn County near the Marais des Cygnes River. It is located in Sec 30-T19S-R24E. This is Application, File No. 50679, filed by Derrick Peterson but land owned by Henry Ferguson.

I don't have any reason think that there is any involvement with NRCS but it is a wetland that has been around for a while. Will you verify whether there are any NRCS easements? Do WRP easements ever involve projects of this scale?

Thanks,  
Lloyd

Lloyd Hemphill, Environmental Scientist  
Kansas Department of Agriculture  
Division of Water Resources, Topeka Field Office  
1131 SW Winding Rd, Suite 400  
Topeka, KS 66615  
Office: (785) 296-5733

**NOTE NEW ADDRESS**

# 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. 50,679** of the applicant

**DERRICK PETERSON  
25512 S STATE ROUTE D  
CLEVELAND, MO 64734**

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 **November 12, 2021**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh located in the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 30 in Township 19 South, Range 24 East, Linn 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 withdrawn by means of one (1) pump site located in the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 30, more particularly described as being near a point 2,193 feet North and 2,788 feet West of the Southeast corner of said section, all in Township 19 South, Range 24 East, Linn County, Kansas, located substantially as shown on the map accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **10,000 gallons per minute (22.3 c.f.s.)** and to a quantity not to exceed **35 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, 2024** 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, 2028** 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 each calendar year, 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 11 day of October, 2022, in Manhattan, Riley County, Kansas.

*Lane P. Letourneau*

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

State of Kansas )  
  ) SS  
County of Riley )

The foregoing instrument was acknowledged before me this 11 day of October, 2022, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.

*Ashlee Freeman*  
\_\_\_\_\_  
Notary Public



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



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

Mike Beam, Secretary

Laura Kelly, Governor

October 14, 2022

DERRICK PETERSON  
25512 S STATE ROUTE D  
CLEVELAND, MO 64734

RE: Appropriation of Water, File No. 50,679

Dear Mr. Peterson:

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 is available 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, please contact our office at 785-564-6640 or the 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 Application Unit Supervisor  
Division of Water Resources

KAB:lh

Enclosure(s)

pc: Topeka Field Office  
Darlene L Cox Ferguson & Henry V Ferguson

# 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. 50,679** of the applicant

**DERRICK PETERSON  
25512 S STATE ROUTE D  
CLEVELAND, MO 64734**

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 **November 12, 2021**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh located in the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 30 in Township 19 South, Range 24 East, Linn 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 withdrawn by means of one (1) pump site located in the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 30, more particularly described as being near a point 2,193 feet North and 2,788 feet West of the Southeast corner of said section, all in Township 19 South, Range 24 East, Linn County, Kansas, located substantially as shown on the map accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **10,000 gallons per minute (22.3 c.f.s.)** and to a quantity not to exceed **35 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, 2024** 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, 2028** 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 each calendar year, 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 11 day of October, 2022, in Manhattan, Riley County, Kansas.



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 11 day of October, 2022, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.



\_\_\_\_\_  
Notary Public



## 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

## CERTIFICATE OF SERVICE

On this 14 day of October, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,679, dated 11 October 2022 was mailed postage prepaid, first class, US mail to the following:

DERRICK PETERSON  
25512 S STATE ROUTE D  
CLEVELAND, MO 64734

With photocopies to:

Darlene L Cox Ferguson & Henry V Ferguson  
Topeka Field Office

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

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

October 7, 2022

DERRICK PETERSON  
25512 S STATE ROUTE D  
CLEVELAND, MO 64734

RE: Enclosed Order for 50,679

Dear Water Right Owner:

Enclosed is an order which prohibits the diversion of stored water released from Hillsdale, Melvern and Pomona Reservoirs. The stored water is intended for water supply use by the members of the Marais des Cygnes River Basin Water Assurance District and for water quality purposes. The Order further states that natural flows are not subject to the restrictions contained in the Agreement with the Water Assurance District, the Kansas Department of Agriculture Division of Water Resources, and Kansas Water Office, however, with the dry conditions within the basin, there are currently minimal natural flows available.

If you wish to divert natural flows under your right(s), you must contact the Topeka Field Office at 785-296-5733 and obtain permission from the Chief Engineer or his authorized representative prior to doing so. If sufficient natural flows become available for this appropriation right, written notice to allow a diversion may be provided by the Chief Engineer, or his authorized representative.

For this office to manage the available natural flows we must know who wishes to pump and to what extent their water right has been exercised this year. If you wish to exercise your water right, please inform the Topeka field office when you would like to pump, your rate of diversion, and to what extent you have used your right prior to this administrative event, including the beginning of the year water flowmeter readings and the current water flowmeter readings. Additionally, please provide an electronic mail address and a telephone number where you can be reached. DWR will consider all information provided and allocate available natural flows to those who wish to pump based on priority of their water right.

Any diversion of water under your water right subject to the enclosed order after eleven o'clock p.m. on October 11, 2022, without prior written permission, shall constitute an unlawful diversion of water and may subject the owner(s) of the water right to further administrative or other appropriate legal action under the Kansas Water Appropriation Act.

If you have any questions, you may contact this office at 785-296-5733.

Sincerely,

Lane P. Letourneau, P.G.  
Program Manager  
Water Appropriation Program

LPL/tbs

Enclosure

pc: Topeka Field Office  
Darlene L Cox Ferguson & Henry V Ferguson

# THE STATE OF KANSAS



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

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

## **BEFORE THE KANSAS DEPARTMENT OF AGRICULTURE DIVISION OF WATER RESOURCES**

October 7, 2022

IN THE MATTER OF

DERRICK PETERSON  
25512 S STATE ROUTE D  
CLEVELAND, MO 64734

File No(s). 50,679

### **ORDER REGARDING PROTECTION OF RELEASES OF WATER STORED IN HILLSDALE, MELVERN and POMONA RESERVOIRS**

The Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture ("DWR"), under authority of the Kansas Water Appropriation Act, K.S.A. 82a-701 *et seq.*, finds the following and orders:

#### **Findings**

1. The April 6, 2009, Second Amendment to the Marais des Cygnes River Water Assurance Program Operations Agreement (the "Agreement"), between the Marais des Cygnes River Water Assurance District No. 2, the Kansas Water Office, and the Kansas Department of Agriculture Division of Water Resources ("DWR") established reservoir storage allocations, operation policies and responsibilities, and target flows and operational triggers on the Marais des Cygnes River. The Agreement also addresses the coordination, operation, management, and protection of releases from storage in federal reservoirs in the Marais des Cygnes River basin.
2. Per the Agreement, the operations of the Marais des Cygnes River Water Assurance District No. 2 are triggered when streamflow on the Marais des Cygnes River drops below 85 cfs at the LaCygne gaging station. Per the Agreement, when that streamflow trigger is met, water to meet the demands of the Marais des Cygnes River Water Assurance District No. 2 shall be diverted from Melvern and Pomona Reservoirs under the water rights held by each member of the Assurance District, and water quality releases will be designated to meet minimum desirable streamflow at the Ottawa and LaCygne gaging stations as described in K.S.A. 82a-703.
3. On September 30, 2022, the Kansas Water Office provided the accounting of requested releases of stored water from the Hillsdale, Melvern, and Pomona Reservoirs for use by the Marais des Cygnes River Water Assurance District No. 2 and for water quality purposes. Those releases are being made by the U.S. Army Corps of Engineers.
4. DWR is obligated to protect storage releases from unauthorized diversions. K.S.A. 82a-706b provides that, "[i]t shall be unlawful for any person to prevent, by diversion or otherwise, any waters of this state from moving to a person having a prior right to use the same, or for any person without an agreement with the state of Kansas to divert or take any water that has been released from storage under authority of the state of Kansas or that has been released from storage pursuant to an agreement between the state and federal government."
5. The Chief Engineer has determined that diversion of water from the Marais des Cygnes River basin below

Hillsdale, Melvern, and Pomona Reservoirs under the above referenced File No. is unlawful and is prohibited until further notice from the Chief Engineer or his authorized representative because such diversion will prevent water released from storage under authority of the state of Kansas from reaching members of the Marais des Cygnes River Basin Water Assurance District No. 2 and water released for water quality purposes from remaining in the stream for water quality purposes.

6. The Chief Engineer further finds that natural flows are not subject to the restrictions contained in the Agreement, however, data obtained from gage sites from the USGS, indicates that minimal natural flows exist in the Marais des Cygnes River basin below Hillsdale, Melvern, and Pomona Reservoirs. Accordingly, at this time, minimal natural flows are available for surface water appropriators below Hillsdale, Melvern, and Pomona Reservoirs and all surface water diversions under the above-referenced file number are therefore prohibited until further notice without the express written prior permission of the Chief Engineer or his authorized representative. If you wish to divert natural flows under the above referenced File(s) you must contact the Topeka Field Office at 785-296-5733 prior to doing so. If sufficient natural flows are available for this appropriation right, written notice to allow a diversion will be provided by the Chief Engineer or his authorized representative.

#### Order

7. The diversion of any water from the Marais des Cygnes River basin below Hillsdale, Melvern, and Pomona Reservoirs is prohibited until further notice from the Chief Engineer or his authorized representative, subject to the conditions of this order.
8. Any diversion of water under the above-referenced water right(s) subject to this Order, **after eleven o'clock p.m. on October 11, 2022**, except as allowed as set forth in this Order, shall constitute an unlawful diversion of water and may subject the owner(s) of the above-referenced water right(s) to such further administrative or other appropriate legal action as is authorized by the Kansas Water Appropriation Act.
9. Authorized diversion of water from natural flow in the Marais des Cygnes River basin below Hillsdale, Melvern, and Pomona Reservoirs may resume only upon written notice of the Chief Engineer or his authorized representative.

Entered this 7th day of October, 2022 in Manhattan, Riley County, Kansas.

Earl D. Lewis Jr., P.E.  
Chief Engineer  
Date: October 7, 2022

BY:



Lane P. Letourneau, P.G.  
Program Manager  
Water Appropriation Program

## RIGHT TO PETITION FOR REVIEW UNDER THE KANSAS JUDICIAL REVIEW ACT

This is a final agency action as defined in K.S.A. 77-607(b). You may pursue judicial review of this Order as provided in the Kansas Judicial Review Act, K.S.A. 77-601 et seq. A petition for judicial review must be filed in a Kansas court of competent jurisdiction within 30 days after service of this Order as provided in K.S.A. 77-613. The agency officer designated to receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture is the Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Dr. Manhattan, KS 66502.

### Certificate of Service

A copy of the foregoing Order was sent first class mail on this 7th day of October, 2022, to the following:

DARLENE L COX FERGUSON  
HENERY V FERGUSON  
23457 ULLERY RD  
LA CYGNE, KS 66040

  
Staff