

File No. **50,747** 15. Formation Code: Drainage Basin: **NEOSHO RIVER** County: **NO** Special Use: Stream: **NEOSHO 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
MOD			89374	Lot 11	8	29S	20E	1	3274	157	2,000	50	2,000	50	NONE

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 **12/31/2024** Date Acceptable Meter Installed _____

21. Place of Use										NE 1/4								NW 1/4				SW 1/4				SE 1/4				Total	Owner	Chg? NO	Overlap Files
MOD	DEL	ENT	PUSE	S	T	R	ID																										
								NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4										
MOD			70765	8	29S	20E	1	MARSH (NE SE SE; NE SE; & Lot 11)																	7b	NO	NONE						

Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: April 6, 2023

FROM: Lloyd Hemphill

RE: New Application, File No. 50,747

Matt Fritter has filed the new application referred to above proposing to appropriate 50 acre-feet of surface water at a diversion rate of 2,000 gallons per minute from one pumpsite on the Neosho River, for recreational use in a marsh. This application will allow water to be pumped directly from the river (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 Lot 11 of Section 8, in Township 29 South, Range 20 East, Neosho County, Kansas. The marsh is located in Lot 11; and the Northeast Quarter of the Southeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$) and the Northeast Quarter of the Southeast (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 8. There is no overlap in point of diversion or place of use. The point of diversion and place of use are owned by HHP Properties LLC (Brad Harris), and the application was signed stating legal access to the point of diversion.

The proposed place of use consists of two marsh pools (north and south). Each pool will contain a water control structure at the lowest point to allow the pools to be drained. The south pool will contain an internal berm that will divide the marsh into two sub-pools. A water control structure installed in this internal berm will allow communication of water between the sub-pools. The south pool will be constructed with berms on only three sides but, because of the local topography, very little area outside of the marsh footprint (a few acres) will contribute runoff to the marsh. The maximum height of the south pool berm will be 3.8 ft. The north pool will be constructed with a three-foot berm around the full perimeter. The actual water depth of most of the marsh is expected to be significantly less than the height of the berms to support the types of vegetation that will attract waterfowl. No permit(s) appear necessary for collection of natural runoff within this marsh.

The recreational use supplemental sheet indicates that the marsh will be filled to a *maximum* depth of 3 feet (see discussion above). Based on GIS tools, the surface area of the north marsh is approximately 6 acres and the south is 14 acres, for a total of 20 acres. The requested quantity of 50 acre-feet will allow the marsh to be filled to an average depth of 15 inches (25 acre-feet / 20 acres) and allow for an additional 25 acre-feet to offset losses due to initial soil saturation, evaporation, and seepage.

Notification letters were sent to upstream and downstream landowners on March 17, 2023. One landowner called with general questions, but no specific concerns were raised. The only permitted water rights within two miles are associated with the City of Erie intake about 2.9 miles upriver. Approval of this application will not impair senior water rights.

According to the WSI database, DWR Structures reviewed this project under WSN: LNO-167 and issued a permit on March 15, 2022.

The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) has confirmed that there are no NRCS easements on this property (See March 20, 2023 e-mail from Brent Turney). This is a critical 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. 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 is no need for direct diversion of water from July 1 through September 30.

The proposed point of diversion is located above the Minimum Desirable Streamflow (MDS) gage near Parsons so this permit will be subject to MDS administration and streamflows at this gage. A signed and notarized MDS form was received with the application.

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 is properly permitted by 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

APPLICATION, FILE NO. 50,747



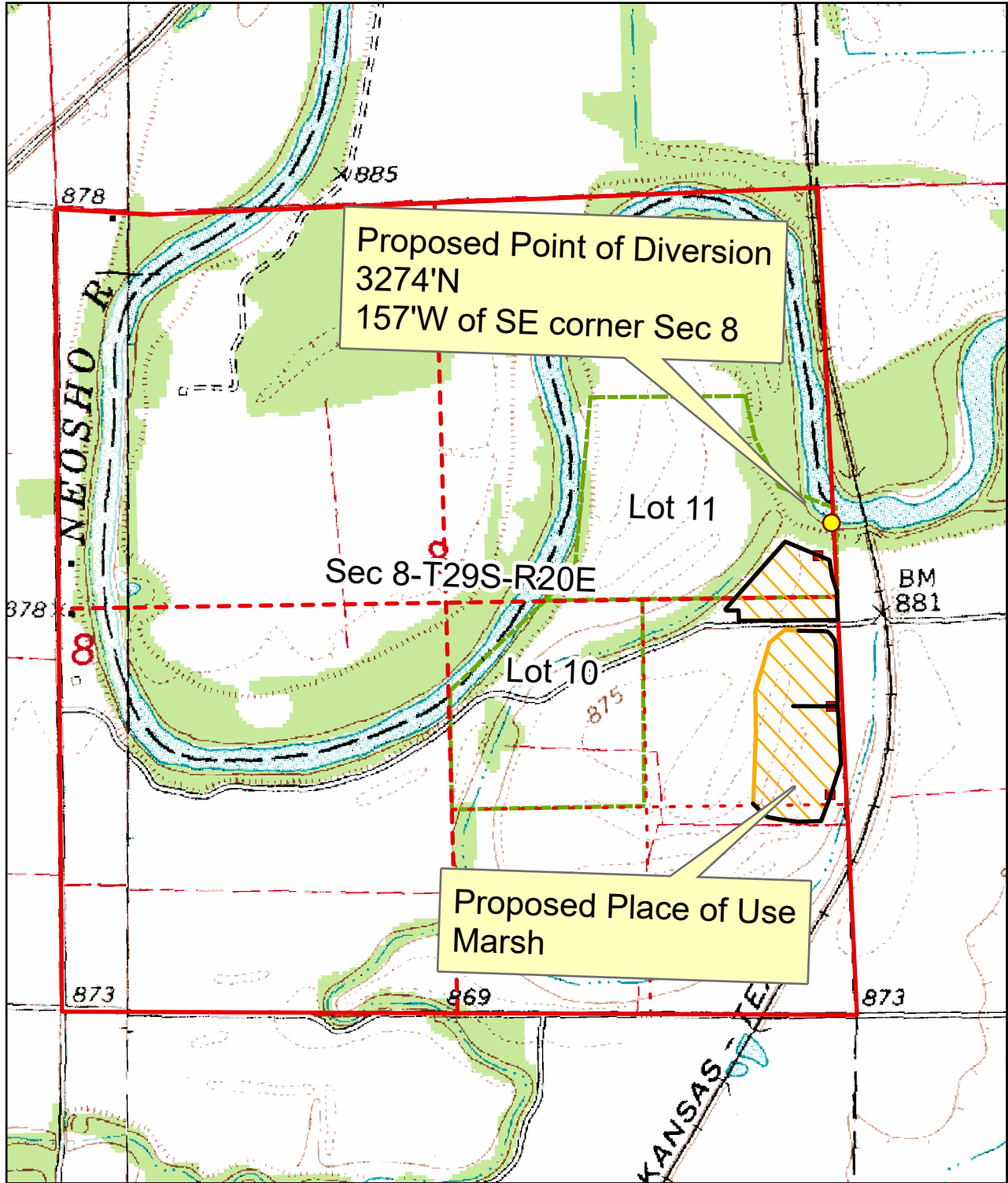
Map prepared by: LHH/TFO 3.16.23



Scale: 1:12,000

0 0.13 0.25 0.5 Mile

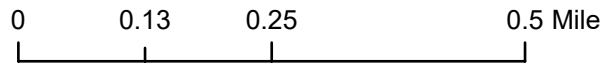
APPLICATION, FILE NO. 50,747



Map prepared by: LHH/TFO 3.16.23



Scale: 1:12,000



Hemphill, Lloyd [KDA]

From: Turney, Brent - FPAC-NRCS, KS <Brent.Turney@usda.gov>
Sent: Monday, March 20, 2023 8:53 AM
To: Hemphill, Lloyd [KDA]
Subject: RE: Application File No. 50747

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.

Lloyd,
That proposed place of use is not an easement! We have a couple to the Northwest of that location, but you are good to go there.
Thanks for the chance to comment.
Take care,
Brent

Brent A. Turney
Easement Specialist

 **Natural Resources Conservation Service**
U.S. DEPARTMENT OF AGRICULTURE
3020 West 18th Avenue, Suite B, Emporia, Kansas, 66801
p: (620) 487-3413 | c: (620) 682-3538
e: brent.turney@usda.gov | w: www.ks.nrns.usda.gov

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From: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Sent: Friday, March 17, 2023 11:02 AM
To: Turney, Brent - FPAC-NRCS, KS <Brent.Turney@usda.gov>
Subject: Application File No. 50747

Hello Brent,

Application File No. 50,747 was filed proposing to pump water from the Neosho River to fill two wetlands south of Erie, KS. See the attached map for the specific location. The applicant was Matt Fritter and the landowner is Brad Harris (HHP Properties LLC).

Will you verify that there are no NRCS easements on this property?

Thanks,

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. 50,747** of the applicant

MATT FRITTER
2404 LEWIS GROVE LN
RALEIGH NC 27608

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 **March 16, 2022**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh located in the Northeast Quarter of the Southeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$); the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$); and Lot 11 of Section 8 in Township 29 South, Range 20 East, Neosho County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from the Neosho River, to be withdrawn by means of one (1) pumpsite located in Lot 11 of Section 8, more particularly described as being near a point 3,274 feet North and 157 feet West of the Southeast corner of said section, in Township 29 South, Range 20 East, Neosho 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 **2,000 gallons per minute (4.46 c.f.s.)** and to a quantity not to exceed **50 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 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.

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

17. 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.

18. 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.

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

20. 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.

Ordered this 7 day of April, 2023, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

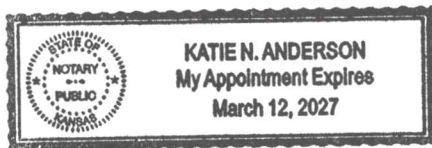
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 7 day of April, 2023, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Katie Anderson

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

April 12, 2023

HHP PROPERTIES LLC
BRAD HARRIS
11605 UDALL RD
ST PAUL KS 66771

RE: Appropriation of Water
File No. 50,747

Dear Mr. Harris:

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.

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/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: Matt Fritter
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 12 day of April, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,747, dated April 7, was mailed postage prepaid, first class, US mail to the following:

HHP PROPERTIES LLC
ATTN BRAD HARRIS
11605 UDALL RD
ST PAUL KS 66771

With photocopies to:

MATT FRITTER
2404 LEWIS GROVE LN
RALEIGH NC 27608

Topeka Field Office



Division of Water Resources