

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

1. File Number: <p style="text-align: center; font-size: 1.2em;">50,757</p>	2. Status Change Date:	3. Field Office: <p style="text-align: center; font-size: 1.2em;">01</p>	4. GMD: <p style="text-align: center; font-size: 1.2em;">0</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

<p>7a. Applicant(s) Person ID <u>33317</u> New to system <input type="checkbox"/> Add Seq# <u>1</u></p> <p>US ARMY CORPS OF ENGINEERS(PERRY) Attn: PERRY PROJECT 10419 PERRY PARK DR PERRY, KS 66073</p>	<p>7c. Landowner(s) Person ID _____</p>
<p>7b. Landowner(s) Person ID <u>33317</u> New to system <input type="checkbox"/> Add Seq# <u>1</u></p> <p>US ARMY CORPS OF ENGINEERS(PERRY) Attn: PERRY PROJECT 10419 PERRY PARK DR PERRY, KS 66073</p>	<p>7e. Miscellaneous Person ID _____</p>

<p>8. WUR Correspondent Person ID <u>33317</u> New to system <input type="checkbox"/> Add Seq# <u>1</u> Overlap File (s) WUC Notarized WUC Form <input type="checkbox"/> Agree <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7a.</p>	<p>9. Use of Water: Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p style="padding-left: 40px;"><input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water</p> <p><input type="checkbox"/> IRR <input checked="" type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN</p> <p><input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON</p> <p><input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG</p> <p><input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____</p>
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10. Completion Date: **12/31/2024** 11. Perfection Date: **12/31/2028** 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: _____

Date Prepared: 5/24/2023 By: LHH
Date Reviewed: 5/24/2023 By: KAK
Date Entered: By:

File No. **50,757** 15. Formation Code: Drainage Basin: **Delaware River** County: **JF** Special Use: Stream: **Delaware 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
√			89408	SW NW SE	9	11S	18E	5	1646	2181	4,000	110.25	4,000	0	NONE

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

19. Limitation: 110.25 af/yr at _____ gpm (_____ cfs) when combined with file number(s) **47,348 on place of use**
 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										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										
√			60539	9	11S	18E	3	WETLAND MARSH (E½)																	7a	NO	47,348						

Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: May 24, 2023

FROM: Lloyd Hemphill

RE: New Application, File No. 50,757

The U.S. Army Corps. of Engineers (USACE) has filed the new application referred to above proposing to appropriate 110.25 acre-feet of surface water at a diversion rate of 4,000 gallons per minute from one pumpsite on the Delaware River, for recreational use in a marsh (called Delaware 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 Southwest Quarter of the Northwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 9, in Township 11 South, Range 18 East, Jefferson County, Kansas. The place of use is a marsh located in the East Half (E $\frac{1}{2}$) of Section 9, in Township 11 South, Range 18 East. The proposed point of diversion does not overlap any other file. The proposed place of use overlaps Water Right, File No. 47,348. The point of diversion and place of use is owned by the applicant. The applicant indicated legal access to the point of diversion with a signed statement on a supplemental page received on May 12, 2023.

This file will essentially replace File No. 47,347 which was dismissed for failure to perfect any legal water use. Water was only pumped in 2013, 2014, and 2015. In 2013 and 2014, water was pumped without obtaining permission and the use in 2015 occurred after the perfection period expired.

The Recreational Use Supplemental sheet notes that the surface area of the existing marsh is approximately 49 acres and the average depth is 2 feet, resulting in a storage capacity of 98 acre-feet. An additional quantity of 12.25 acre-feet was requested to offset losses to evaporation (49 ac. X 0.5 ft X 0.5 year). The total requested quantity is 110.25 acre-feet, which appears reasonable when compared to similar projects. This file will be further limited to 110.25 acre-feet when used in combination with File No. 47,348. Therefore, this application will provide no additional quantity of water to the place of use.

Notification letters were sent to four nearby landowners on May 5, 2023. No response was received. According to the WRIS database, there are two (2) prior surface water appropriations within a two (2)-mile radius of the proposed point of diversion (other than the overlapping file). One is a sediment control reservoir on a different tributary and the other is a pumpsite used for irrigation use. This pumpsite is located about 1.6 river miles downstream of the proposed point of diversion. This recreational project is designed to take advantage of high flow conditions on the Delaware River and will be used primarily during the fall season. Therefore, it is not anticipated that any existing water rights will be impacted by the proposed appropriation.

This project is located on federal property and no Structures permits are required. Also, 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. This application 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.

A MDS target has been established for the Delaware River basin. However, this file is located well downstream of the nearest MDS gage near Muscotah, KS and near the confluence with the Kansas River so this file will not be subject to MDS administration. This file is subject to protection of Kansas River Water Assurance District or Water Marketing releases from Perry Reservoir. A signed form was received on May 22, 2023 acknowledging that the applicant is aware that an Assurance District has been established for the Kansas River.

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

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

SWORN STATEMENT
PURSUANT TO K.S.A. 82a-709

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 May 8th, 2023.


Applicant's Signature

The applicant must provide the required information or signature irrespective of whether they are the landowner. Failure to complete this portion of the application will cause it to be unacceptable for filing and the application will be returned to the applicant.

RECEIVED
MAY 12 2023
Topeka Field Office
DIVISION OF WATER RESOURCES



Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

Phone: 785-296-5733
www.agriculture.gov

Mike Beam, Secretary

Laura Kelly, Governor

May 12, 2023

US ARMY CORPS OF ENGINEERS (PERRY)
KYLE BROOCKERD
10419 PERRY PARK DR
PERRY KS 66073

RE: Request for Additional Information
Pending Application, File No. 50,757

Dear Mr. Broockherd:

The Division of Water Resources is reviewing Application, File No, 50,757 proposing recreational use of water below Perry Reservoir. We received your letter containing the previously requested forms but additional information is needed to finish processing this application.

A Water Assurance District has been formed associated with the source of water proposed by this application (Kansas River). Please sign and **notarize** the attached form acknowledging the establishment of this district.

You may either return a good quality color scan (not a photo) of the completed form to the email address below or mail it to the Topeka Field Office at:

Kansas Department of Agriculture
Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

Please provide the requested information as soon as possible, so we may finish processing this application.

If you have any questions, please contact me at 785-296-8682 or lloyd.hemphill@ks.gov. If you call, please reference the file number so I can help you more efficiently.

Sincerely,

A handwritten signature in blue ink that reads "Lloyd Hemphill".

Lloyd Hemphill
Environmental Scientist
Topeka Field Office

LHH
Enc.



Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

Phone: 785-296-5733
www.agriculture.gov

Mike Beam, Secretary

Laura Kelly, Governor

May 5, 2023

US ARMY CORPS OF ENGINEERS (PERRY)
KYLE BROOCKERD
10419 PERRY PARK DR
PERRY KS 66073

RE: Request for Additional Information
Pending Application, File No. 50,757

Dear Mr. Broockherd:

The Division of Water Resources is reviewing Application, File No, 50,757 proposing recreational use of water below Perry Reservoir. Additional information is needed to finish processing this application.

Evidence of legal access to, or control, of the point of diversion described in this application (the pumpsite) must be provided. In lieu of providing a copy of a recorded deed, lease, easement, or other documentation, you may sign the enclosed form.

Additionally, a Water Assurance District has been formed associated with the source of water proposed by this application (Kansas River). Please sign and notarize the attached forms acknowledging the establishment of this district.

You may either return a good quality color scan (not a photo) of the completed forms to the email address below or mail them to the Topeka Field Office at:

Kansas Department of Agriculture
Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

Please provide the requested information by **June 5, 2023**, or any approved extension, so we may finish processing this application.

If you have any questions, please contact me at 785-296-8682 or lloyd.hemphill@ks.gov. If you call, please reference the file number so I can help you more efficiently.

Sincerely,

A handwritten signature in blue ink that reads "Lloyd Hemphill".

Lloyd Hemphill
Environmental Scientist
Topeka Field Office

LHH
Enc.

5/18/23

(Date)

Kansas Department of Agriculture
Division of Water Resources
Earl D. Lewis, Jr., Chief Engineer
1320 Research Park Drive
Manhattan, Kansas 66502

Re: Application
File No. 50757

Kansas River Assurance District

I understand that an Assurance District has been formed and established for the source of supply to which the above referenced application applies, namely the Kansas River.

I understand that diversion of water pursuant to this application will be subject to regulation any time Assurance District or Water Marketing releases are being made from storage in Federal Reservoirs.

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.



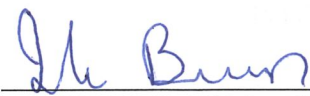
Signature of Applicant

Kyle Brooker

Print Applicant Name

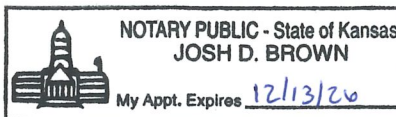
State of Kansas)
County of Jefferson) SS

I hereby certify that the foregoing instrument was signed in my presence and sworn to before me this 18th day of May, 2023



Notary Public

My Commission Expires: 12/13/26



RECEIVED
MAY 22 2023
Topeka Field Office
DIVISION OF WATER RESOURCES

**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:

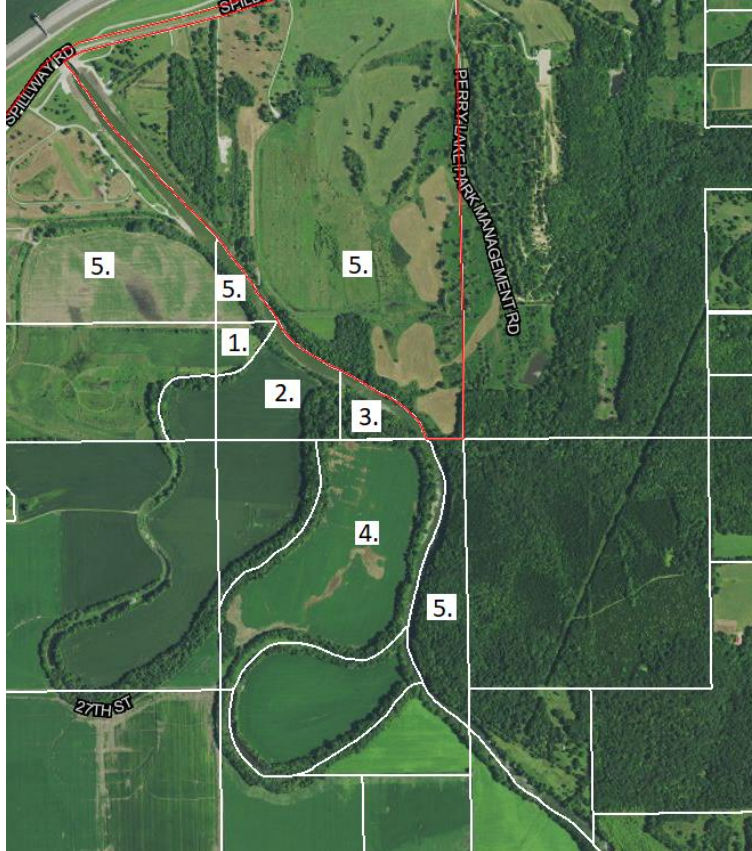
Kansas River Marias des Cygnes River Neosho River

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

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

**NEARBY LANDOWNERS WITHIN ONE-HALF MILE UPSTREAM AND DOWNSTREAM OF
PROJECT PROPERTY**

1. JAMES S BROWNING TRUST
4901 SW DAVIS RD
TOPEKA KS 66610
2. MARILYN STARK TRUST
371 NW 10TH AVE
PRATT KS 67124
3. DENNIS D HUPE
PO BOX 235
PERRY KS 66073
4. CARL D & MARGERY S MCELWEE REVOCABLE TRUST
1564 E 1850 RD
LAWRENCE KS 66046
5. USA COE KANSAS CITY DISTRICT
700 FEDERAL BLDG 601 E 12TH ST
KANSAS CITY MO 64106



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. 50,757** of the applicant

**US ARMY CORPS OF ENGINEERS
10419 PERRY PARK DR
PERRY KS 66073**

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 31, 2022**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh complex located in the East Half (E½) of Section 9, in Township 11 South, Range 18 East, Jefferson County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from the Delaware River, to be withdrawn by means of one (1) pump site located in the Southwest Quarter of the Northwest Quarter of the Southeast Quarter (SW¼ NW¼ SE¼) of Section 9, more particularly described as being near a point 1,646 feet North and 2,181 feet West of the Southeast corner of said section, all in Township 11 South, Range 18 East, Jefferson 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 **4,000 gallons per minute (8.9 c.f.s.)** and to a quantity not to exceed **110.25 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 the quantity of water approved under this permit is further limited to the quantity which combined with Appropriation of Water, File No. 47,348, will provide a total not to exceed **110.25 acre-feet** of water per calendar year for recreational use at the place of use described herein.

21. 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 *25* day of *May*, 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 *25* day of *May*, 2023, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Tony Jay Connors

Notary Public

