

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;"><b>50,763</b></p>	2. Status Change Date: <p style="text-align: center; font-size: 1.2em; color: purple;"><b>5/18/2023</b></p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;"><b>01</b></p>	4. GMD:
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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 <b>68316</b> New to system <input type="checkbox"/>                      Add Seq# <u>1</u></p> <p><b>STEVEN CULLEN</b> <b>4503 W BLOSSOM WAY DR</b> <b>ROGERS, AR 72758</b></p>	<p>7c. Landowner(s)                      Person ID _____</p>
<p>7b. Landowner(s)                      Person ID _____ New to system <input checked="" type="checkbox"/>                      Add Seq# _____</p> <p><b>JUDY L MARTIN LIV TR</b> <b>16623 PINE GROVE LN</b> <b>FT SMITH, AR 72916</b></p>	<p>7e. Miscellaneous                      Person ID _____</p>

<p>8. WUR Correspondent                      Person ID <b>68316</b> New to system <input type="checkbox"/>                      Add Seq# _____ Overlap File (s) WUC                      Notarized WUC Form <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>7a.</b></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: **5/10/2023**    By: **LHH**  
Date Entered: \_\_\_\_\_                      By: \_\_\_\_\_  
Date Reviewed: 5/12/23                      By: JDK

5/22/2023  
LMoody

File No. **50,763**      15. Formation Code:      Drainage Basin: **NEOSHO RIVER**      County: **LB**      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
√			<b>89435</b>	<b>Lot 2</b>	<b>35</b>	<b>33S</b>	<b>21E</b>	<b>2</b>	<b>3337</b>	<b>3551</b>	<b>3,000</b>	<b>100</b>	<b>3,000</b>	<b>100</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 **12/31/2024**      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use										NE 1/4								NW 1/4				SW 1/4				SE 1/4				Total	Owner	Chg? <b>NO</b>	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	NE 1/4	NW 1/4	SW 1/4	SE 1/4						
<b>CHK</b>	<b>70794</b>			<b>35</b>	<b>33S</b>	<b>21E</b>	<b>2</b>	<b>WILDLIFE MARSH (L-1 &amp; L-2)</b>																<b>72</b>	<b>7b</b>	<b>YES</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:** May 10, 2023

**FROM:** Lloyd Hemphill

**RE:** New Application, File No. 50,763

Steven Cullen has filed the new application referred to above proposing to appropriate 100 acre-feet of surface water at a diversion rate of 3,000 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 2 of Section 35, in Township 33 South, Range 21 East, Labette County, Kansas. The marsh is located in Lots 1 & 2 of the same section. This file does not overlap any other point of diversion or place of use. The point of diversion and place of use are owned by the Judy L Martin Living Trust, and the application was signed stating legal access to the point of diversion. A signed and notarized form was submitted by the owner on May 9, 2023 designating the applicant as the Water Use Correspondent.

The Recreational Use Supplemental Sheet justifies the requested quantity as that needed to fill a marsh with a surface area of 72 acres to an average depth of 1.4 feet. This results in a quantity of 100 acre-feet. No specific quantity was requested to offset evaporation. The potential evaporation in this area is 4 inches per year. As a seasonal marsh (6 months) the potential evaporation from this marsh may be 24 acre-feet. The requested quantity appears reasonable to provide water to maintain the marsh throughout the recreational season.

The application indicates that the current plan for this project is to flood natural low areas so DWR Structures permitting will not be required. If berms or levees are built at a later date, further permitting (i.e. a Floodplain Fill Permit) may be required. The applicant was reminded of this requirement in an April 28, 2023 letter. No further plans were provided.

Notification letters were sent to upstream and downstream landowners on March 17, 2023. One landowner, John Johnson, called with general objections to this application and a senior application, File No. 50,762. Mr. Johnson mentioned a nearby domestic well that had gone dry last fall but did not indicate any other prior use of water from the river. The domestic well is about 1.5 miles from the main channel of the river and will not be affected by this surface water diversion. A response letter was sent to Mr. Johnson on April 7, 2023. There are two other files within two miles of this application. One is a pumpsite located about 1.3 miles downstream (owned by the applicant) and the other is a pending application for a pumpsite about 1.2 miles upstream. Both are similar recreational marsh projects. Approval of this application will not impair senior water rights with the appropriate permit conditioning.

Review of a topographic map shows that the proposed marsh will not collect runoff from a significant area outside of the project boundary. Based on this, a natural flow collecting permit is not required for the project.

The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) has confirmed that there are no NRCS easements on this property (See May 1, 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 below the Minimum Desirable Streamflow (MDS) gage near Parsons so this permit will not be subject to MDS administration and streamflows at this gage. A Water Assurance District has been formed for the Neosho River and there is a least one District member downstream of the proposed point of diversion. A signed and notarized WAD form was received on May 2, 2023.

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, no structures are planned requiring permitting 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

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



Phone: 785-296-5733  
[www.agriculture.gov](http://www.agriculture.gov)

Mike Beam, Secretary

Laura Kelly, Governor

April 28, 2023

STEVEN CULLEN  
4503 W BLOSSOM WAY DR  
ROGERS, AR 72758

Re: Request for Additional Information  
Pending New Applications, File Nos. 50,762 and 50,763

Dear Mr. Cullen:

Reference is made to your Applications for Permit to Appropriate Water for Beneficial Use, File Nos. 50,762 and 50,763 received on April 12, 2022. Additional information is needed to finish processing these applications.

A Water Assurance District has been formed for the source of water proposed by these applications (Neosho 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

Also, the applications indicate that the current plan for this project is to flood natural low areas to create the marshes. Additional permitting may be required through the Division of Water Resources Water Structures Program if any berms, levees, or any other structures with a height greater than one foot will be constructed to contain the water. Please advise us if this will be the case.

Additionally, the ownership of the property associated with Application, File No. 50,763 is listed as the Judy L Martin Living Trust. A Water Use Correspondent (the person who receives the annual water use reporting information) will also be defined. This may be the landowner or anyone designated by the landowner. If someone other than the landowner will be the Water Use Correspondent, the owner must complete and submit the enclosed form.

If you have any questions, you may also contact me by phone at (785) 296-8682 or by email at [lloyd.hemphill@ks.gov](mailto: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

Enc

**WATER USE CORRESPONDENT CHANGE FORM**

ATTENTION LANDOWNER(S): COMPLETE ONLY IF A NON-OWNER IS TO REPORT WATER USE

To: Kansas Department of Agriculture  
Division of Water Resources  
1320 Research Park Drive  
Manhattan, Kansas 66502  
<http://agriculture.ks.gov/dwr>

Re: Water Use Correspondent for  
File No(s) 50,763

I am aware that Kansas law (K.S.A. 82a-732) requires the owner of a water right or permit to appropriate water for beneficial use, except for domestic use, to file an annual water use report with the Division of Water Resources, Kansas Department of Agriculture on or before March 1 following the end of the previous calendar year. I understand that the law provides that failure to file the report or submission of an incomplete or inaccurate report could subject me, as owner (or part owner) of the above file number(s) to a civil penalty not to exceed \$1,000 and that any person falsifying the report could be charged with a class C misdemeanor.

I further understand that as water use correspondent my designee will be the only person who will receive an annual water use report from the Division of Water Resources concerning my water use reporting requirement.

Information of the new water use correspondent:

Name: Steven Cullen

Address: 4503 W Blossom Way Dr

City, State, Zip: Rogers AR 72758

E-mail: mwasc@yahooc.com

Telephone: 479-651-8316

I designate the above as the water use correspondent for the above file number(s) until I rescind this authority in writing.

Judy L Martin  
Owner's Signature

Judy L Martin  
Print Name

#3 W Newhaven Lane  
Address

479 4619987  
Telephone

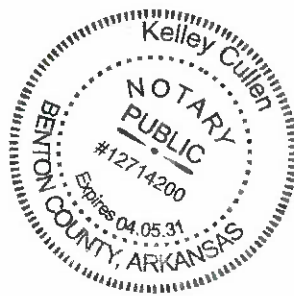
Rogers AR 72758  
City, State, Zip

State of Arkansas )  
County of Benton )

I hereby certify that the foregoing instrument was signed in my presence and sworn to before me this 9<sup>th</sup> day of May, 2023.

My Commission Expires: 04/05/31

[Signature]  
Notary Public



\_\_\_\_\_  
DWR Initials

5-2-23

(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. 50,763

Cottonwood & Neosho 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 Neosho 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

Steven Cullen  
\_\_\_\_\_  
Print Applicant Name

State of Arkansas )  
Kansas )  
County of Washington ) SS

I hereby certify that the foregoing instrument was signed in my presence and sworn to before me this 2nd day of May, 2023.

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

My Commission Expires:  
6/20/27

**PAM RIDLEY**  
Notary Public Arkansas  
Washington County  
Commission #12361064  
Commission Exp June 20, 2027

## Hemphill, Lloyd [KDA]

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**From:** Turney, Brent - FPAC-NRCS, KS <Brent.Turney@usda.gov>  
**Sent:** Monday, May 1, 2023 11:33 AM  
**To:** Hemphill, Lloyd [KDA]  
**Subject:** RE: Application, File Nos. 50762 & 50763: New wetland projects

**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,  
Sorry so late in getting back to you, but I have been in the field the past week. It looks like those two locations are not located in our easements.  
Thank you for the chance to commit.  
Take care,  
Brent

Brent A. Turney  
*Easement Specialist*

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

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**From:** Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>  
**Sent:** Wednesday, April 26, 2023 8:58 AM  
**To:** Turney, Brent - FPAC-NRCS, KS <Brent.Turney@usda.gov>  
**Subject:** Application, File Nos. 50762 & 50763: New wetland projects

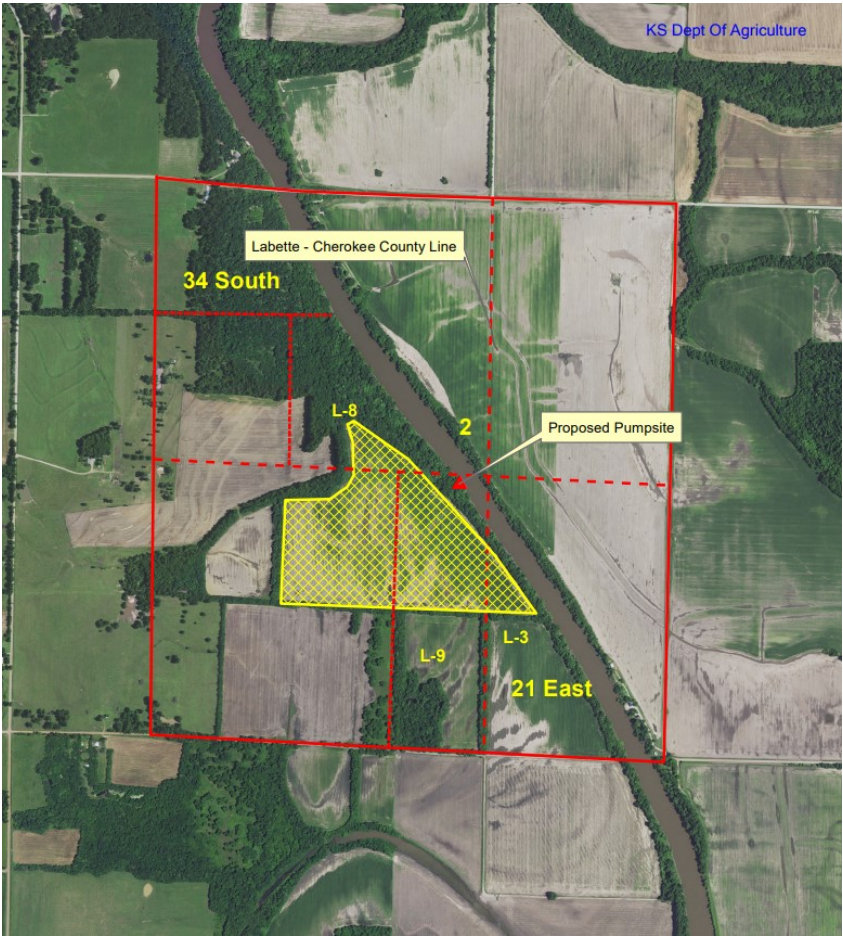
Hello Brent,

Steven Cullen has filed two applications (File Nos. 50762 & 50763) for permit to pump water from the Neosho River to fill two marshes on the Cherokee-Labette County line. Will you verify whether there are any NRCS easements associated with these properties?

The projects are located as shown below.

**File No. 50,762** – Sec 2 T34S R21E (near 37.11304903,-95.07507645)





**File No. 50,763** – Sec 35 T33S R21E (near 37.12965341,-95.08033693)

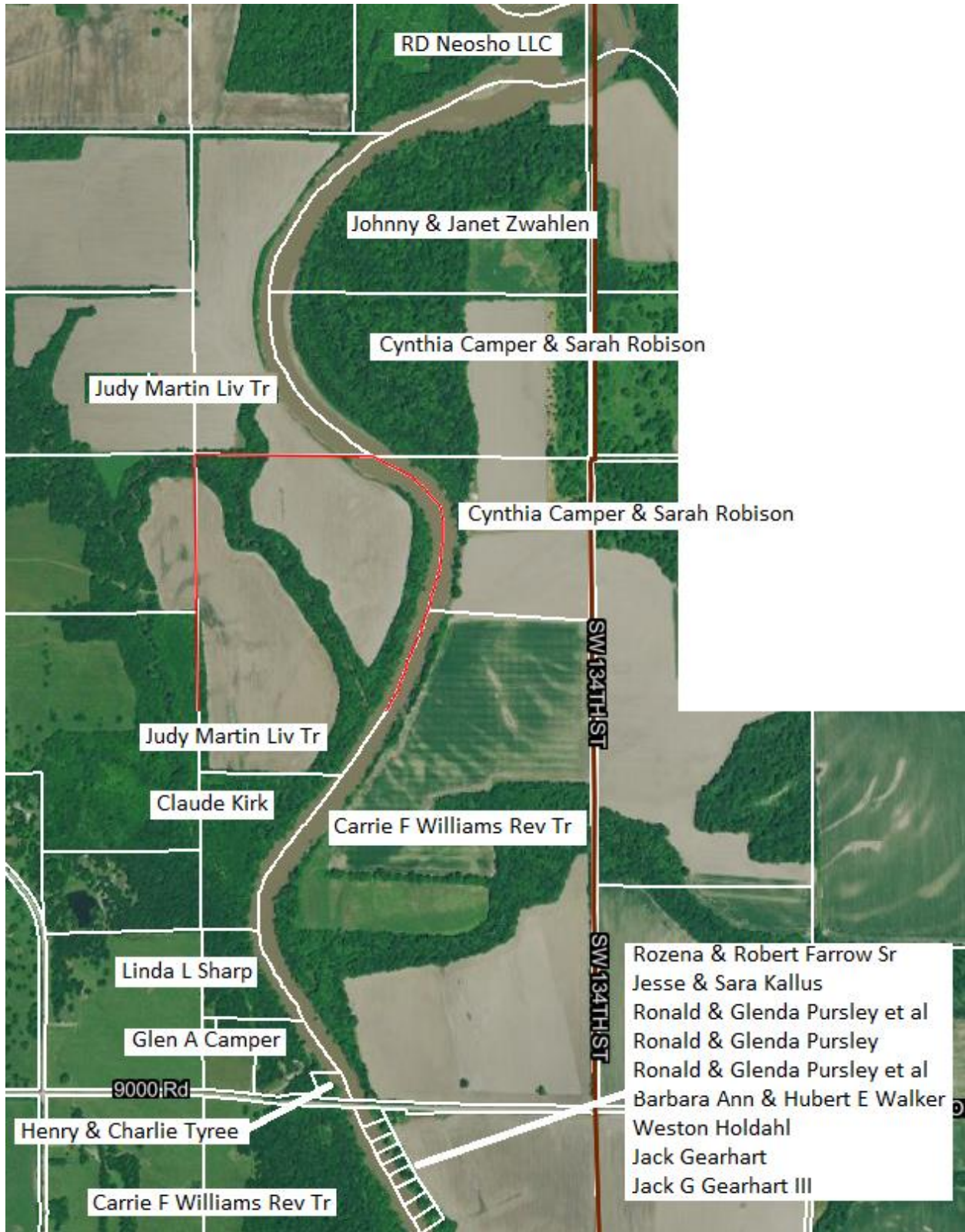


Let me know if you need anything else.

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**

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**Missing:**

Upstream

JOHNNY & JANET ZWAHLEN  
12759 SW CLEM RD  
CHETOPA, KS 67336

Downstream

None

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. 50,763** of the applicant

**STEVEN CULLEN  
4503 W BLOSSOM WAY DR  
ROGERS, AR 72758**

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 **April 12, 2022**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh located in Lot 1 and Lot 2 of Section 35, in Township 33 South, Range 21 East, Labette 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) pump site located in Lot 2 of Section 35, more particularly described as being near a point 3,337 feet North and 3,551 feet West of the Southeast corner of said section, in Township 33 South, Range 21 East, Labette 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 **3,000 gallons per minute (6.68 c.f.s.)** and to a quantity not to exceed **100 acre-feet** of water for any calendar year.
5. That installation of works for diversion of water shall be completed on or before **December 31, 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, 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 18 day of May, 2023, 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 18 day of May, 2023, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.

*Tony Jay Connors*

Notary Public

