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

Kansas
Department of Agriculture

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

Mike Beam, Secretary

Laura Kelly, Governor

March 23, 2021

Phil Weiser,
Colorado Attorney General
c/o Scott Steinbrecher
Senior Assistant Attorney General
Federal & Interstate Water Unit
Colorado Department of Law
1300 Broadway, 7TH Floor
Denver, CO 80207

RE: Application for Term Permit, File No. 20209091

Dear Attorney General Weiser:

I am writing to you on behalf of Earl D. Lewis Jr., the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture. The Chief Engineer has received an *Application for Term Permit* from Southwest Kansas Groundwater Management District No. 3 (GMD No. 3), requesting 6,000 gallons of Kansas surface water from the Missouri River. The water will be trucked to two separate sites, one of which is located in Section 31, Township 3 North, Range 66 West, Weld County, Colorado, where the water will be released as artificial recharge to the aquifer (Site 2, Herman #1 Recharge Pond). The term application states that it is designed to establish proof of concept for future artificial recharge projects. See the enclosed application from the applicant, along with its relevant enclosures. (Note that the related documents pertaining to "Site 1" are not relevant for your consideration, because that site does not involve transferring Kansas water to Colorado. Only "Site 2" involves transferring Kansas water to Colorado.)

Kansas law provides that if someone desires to transfer water out of Kansas into another state for use in that other state, then before such use can be approved, the Chief Engineer must find, among other things, that "the statutes and common law of the state where such water will be used do not prohibit the use of water at the proposed place of use or for the proposed type of use, or both, if the water were diverted in that state." K.S.A. 82a-726(b)(2).

The applicable statute further provides that "In order to make the finding required by subsection (b)(2), the chief engineer shall rely on a determination by the attorney general of the other state of whether the proposed use would be prohibited in that state." K.S.A. 82a-726(c).

Accordingly, do the statutes or common law of Colorado prohibit GMD No. 3's use of water at the proposed place of use or for the proposed type of use, or both, if the water were diverted for use in Colorado? If not, then please send us a statement that you have determined that the statutes and common law of Colorado do not prohibit the use of water at the proposed place of use or for the proposed type of use, or both, if the water were diverted for use in Colorado. The Chief Engineer then will proceed with reviewing GMD No. 3's application.

In order to expedite our review of this pending application, we would appreciate a response to this letter within 60 days of receipt.

If you have any questions concerning this proposed use of Kansas water in Colorado, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,

Kenneth Titus
Chief Counsel
Kansas Department of Agriculture
(785) 564-6715
Kenneth.Titus@ks.gov

Enclosures
Cc (via e-mail only): Earl D. Lewis Jr., P.E., Chief Engineer, Kansas DWR
Connie Owen, Director, Kansas Water Office
Kevin Rein, State Engineer, Colorado Division of Water Resources
Mike Meyer, Water Commissioner, Garden City Field Office, Kansas DWR

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

APPLICATION FOR TERM PERMIT

☐ GROUNDWATER
☒ SURFACE WATER
(check one)

WATER RESOURCES RECEIVED
DEC 14 2020
1:58
KS DEPT OF AGRICULTURE

State of Kansas

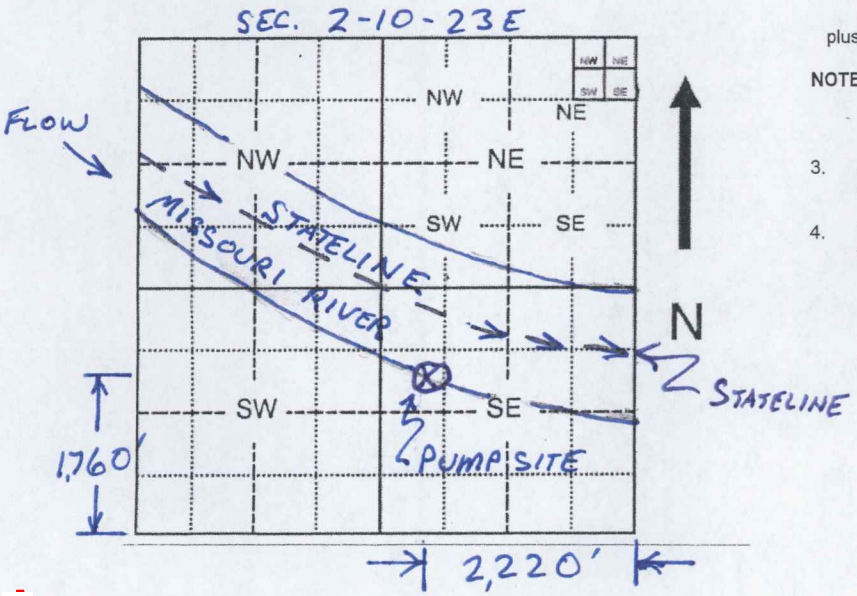
20209091

STATUTORY FILING FEE MUST ACCOMPANY THIS APPLICATION
(Make check payable to the Kansas Department of Agriculture)

1. Applicant: (Please print or type)
   Name SW KS GMD3
   Street 2009 E. SPRUCE ST.
   City and State GARDEN CITY, KANSAS
   Zip Code 67846 Telephone No. (620) 275-7147
   E-Mail Address MRUDE@GMD3.ORG
   Social Security I.D. No. _____
   and/or Taxpayer I.D. No. _____

2. Location of Point of Diversion:
   Sec. 2, Twp. 10, Rng. 23, (E/W),
   LEAVENWORTH County, Kansas.
   Distance from Southeast Corner of Section:
   1,760 feet North from Southeast Corner
   2,220 feet West from Southeast Corner
   NOTE: If point of diversion is not site specific (i.e. groundwater pit) show the approximate geographic center.

3. Water Use Data:
   Proposed Max. Pumping Rate (gpm) 400
   Amount Requested ~~(acre-feet)~~ 6000 GAL. per calendar year
   Depth of Well (feet) N/A
   Date (completed) (will be completed) 12/31/2021
   Drainage Basin MISSOURI RIVER
   Name of Stream " "



4. Water is to be used for (briefly describe proposed use and explain the rate and quantity requested):
   AQUIFER RECHARGE DELIVERED BY TRUCK

5. Location of place of use:
   SITE 1 - SW/4 18-35-34W, KANSAS
   SITE 2 - RECHARGE POND - 31-3N-66W, COLORADO

6. Period of use:
   Commencing date: 1/1/21
   Ending Date: 12/31/21 **Also enter on Item 12**

If off-stream pit, check here ☐.
Will pit floor intersect water table? Yes ☐ No ☐

7. Location of the proposed point of diversion and those of other water users within ½ mile shall be indicated on the diagram to the lower-left, scale 1 inch = 2,000 feet. If surface water, indicate on the diagram the course of the stream, and its name. List other D.W.R. permit numbers that cover the requested point(s) of diversion or place of use here:
   NO OVERLAPS
   PRIOR PERMIT -

FEE SCHEDULE

1. The filing fee for an application is based on the maximum amount of water use proposed within a year. Except for storage, the fee is:

Acre-feet	Fee
0-100	$200.00
101-320	$300.00
More than 320	$300.00

plus $20 for each additional 100 acre-feet or any part thereof.

2. The fee for an application in which storage is requested, is:

Acre-feet	Fee
0-250	$200.00
More than 250	$200.00

plus $20.00 for each additional 250 acre-feet of storage or any part thereof.

NOTE: If an application requests both direct use and storage, the fee charged shall be as determined under No. 1 or No. 2 above, whichever is greater, but not both fees.

3. A request for an extension of time to extend the term of a term permit shall be accompanied by a fee of $100.00.

4. There is a separate application form for domestic use. Do not use this form for domestic use.

CONVERSION FACTORS

1 acre-foot equals 325,851 gallons
1 million gallons equal 3.07 acre-feet

12/17/2020
LMoody

Assisted by _____

For Office Use Only:
F.O. 1 *GMD* 3 *Meets K.A.R. 5-3-1* (YES / NO) *Use* AR *Source* G / S *County* LV *By* KJN *Date* 12/14/20
Code TRP *Fee $* 200 *TR #* _____ *Receipt Date* 12-14-2020 *Check #* 29420

DWR 1-100.7 (Revised 07/10/2018)

WATER RESOURCES RECEIVED
DEC 14 2020
KS DEPT OF AGRICULTURE

8. For groundwater use, list below all wells within ½ mile of the proposed well, and plot locations upon the diagram on reverse side. If additional space is needed, attach a map.

Other wells –

Well A Owner(s): N/A
Address:

Well B Owner(s):
Address:

9. For surface water use, list below the names and addresses of all landowners from a point ½ mile upstream to a point ½ mile downstream of the tract of land upon which the point of diversion is located. If additional space is needed, attach sheet.

Tract A Owner(s): ADM WOLCOTT ELEVATOR TERMINAL
Address: 10520 WOLCOTT DR., KANSAS CITY, KS 66109

Tract B Owner(s):
Address:

10. The owner of the point of diversion, if other than the applicant is (please print):

ERGON ASPHALT & EMULSIONS, 10520 WOLCOTT DR., KANSAS CITY, KS 66109
(name, address and telephone number) CRAIG.GOBIN@ERGON.COM

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 DEC. 11, 2020. Mark E. Rude
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.

11. The applicant states that the information set hereon is true and accurate to the best of his/her knowledge.

12. The applicant agrees to waive any right to a hearing on the matter of abandonment of this appropriation right and further agrees that this appropriation right may be dismissed and terminated upon completion of the proposed project, said dismissal date to be on 12/31/2021 or within any extension of time authorized by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

13. The applicant agrees to provide water to nearby water users, at no charge to said users, should their rights to use water become impaired by the project proposed by this application.

14. Water use contact person (in event emergency contact is needed):

Name: MARK RUDE Telephone No. (620) 275-7147

Signature of Applicant or Mark E. Rude Authorized Representative 12/11/2020 Date

Applicant's Name Printed EXECUTIVE DIRECTOR Title

DO NOT WRITE BELOW THIS LINE

CONDITIONS OF APPROVAL:

The applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined. Accurate and complete records shall be furnished to 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.

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.

The Chief Engineer specifically retains jurisdiction in this matter with authority to make such reasonable reductions in the approved rate of diversion and quantity authorized, and such changes in other terms, conditions, and limitation set forth in this approval and permit to proceed as may be deemed to be in the public interest.

Missouri High Flow Interstate Transfer POC - KS and CO

WATER RESOURCES
RECEIVED
DEC 1 4 2020
KS DEPT OF AGRICULTURE

Action is needed to secure the unsecured surface water supplies that Western Kansas and Colorado partners will need. A proof-of-concept (POC) project is a small realization of an idea in order to demonstrate some elements in principle with the aim of verifying one or more concepts have practical potential. Big water project ideas like moving floodwater across Kansas and to Colorado requires a series of small foundational POC's to illustrate and verify key elements that may otherwise become confusing or impair stakeholder capacity to development preferred projects. GMD3 seeks support for a POC project to verify key concepts of interstate water transport cooperation and bridge the gap between theory and reality.

POC project - The project proponents will execute a 6000-gallon interstate transfer of Missouri River high flow (above target navigation) water and conserve it to dry release locations to inflow into the western Kansas Ogallala/High Plains Aquifer and also to groundwater storage in northeastern Colorado. Future transfers could occur to other locations and from other source waters under separate permitting. The potential for new beneficial water supply will be demonstrated in the results.

Key Water Transfer concepts:

1) Conserves Water for beneficial use
2) Restores/supports basin supply distribution
3) Improves native poor-quality water
4) Adds local water storage in Kansas and Colorado
5) Demonstrates cooperative interstate water permitting

1/4/2021
KJN

See updated attachment dated 12/31/2020*

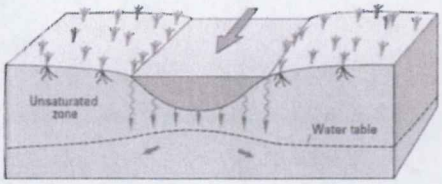
Authority – Southwest Kansas GMD3 and Western Kansas GMD1 have the authority to "*construct, operate and maintain such works as may be determined necessary for drainage, recharge, storage, distribution or importation of water, and all other appropriate facilities of concern to the district.*" (K.S.A.82a-1028(g)) In the case of a transfer to Colorado, the project develops potential partnerships for developing future preferred projects with multiple shared benefits.

Management Program - The Kansas GMD3 management program seeks capacity to move unappropriated high flow water west across the High Plains of Kansas to close the local gaps between water demands, use and water replenishment while benefiting supply to potential partners in the western US. Access to the full draft GMD3 management program document is provided at http://www.gmd3.org/what-we-do/management-program/

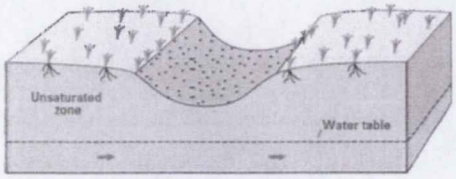
The Central Colorado Water Conservancy District has similar needs and interests in building capacity for new water imports to their area.

Cost estimate. Estimated cost of this POC project involves permitting fees, $3000 budget for a water truck transport, testing and reports. The cash budget needed is not expected to exceed $6000.

Funding. Options for funding in whole or in partnership may include GMD3 general fund, the non-profit Kansas Aqueduct Coalition Fund at the Kansas Rural Communities Foundation, and CCWCD.



Imported water release flow direction into groundwater storage



Dry channel groundwater storage condition before and after import release

Missouri High Flow Interstate Transfer POC - KS and CO

Permitting. Government partners assure public interest benefits while addressing concerns. A brief summary of the review and permitting necessary from Kansas state water related agencies:

KDA/DWR water appropriation permitting.

- Temporary Permit for groundwater recharge beneficial use appropriated from the Missouri River high flow surface water and transferred to site one and two where land access has been authorized by the landowner for a release. Site one is into Rocky Draw, and overlying the Ogallala/High Plains Aquifer, a dry tributary to the dry Whitewoman Creek of Wichita County, Kansas, and also site two is the Gary Herman alluvial groundwater Recharge Pond #1 in Weld County, Colorado where there the CCWCD operates a siltation forebay pond which gravity flows to the larger Herman No. 1 infiltration basin/recharge pond. The South Platte River is to the west and local water supply is delivered by two canals, the Platte Valley canal immediately to the east and the smaller Platteville Milling & Irrigation Canal further to the east another 300'. There is good access to the pond for the transportation release.

Kansas Department of Health & Environment water quality requirements:

- No permit required due to EPA Water Transfer Rule.

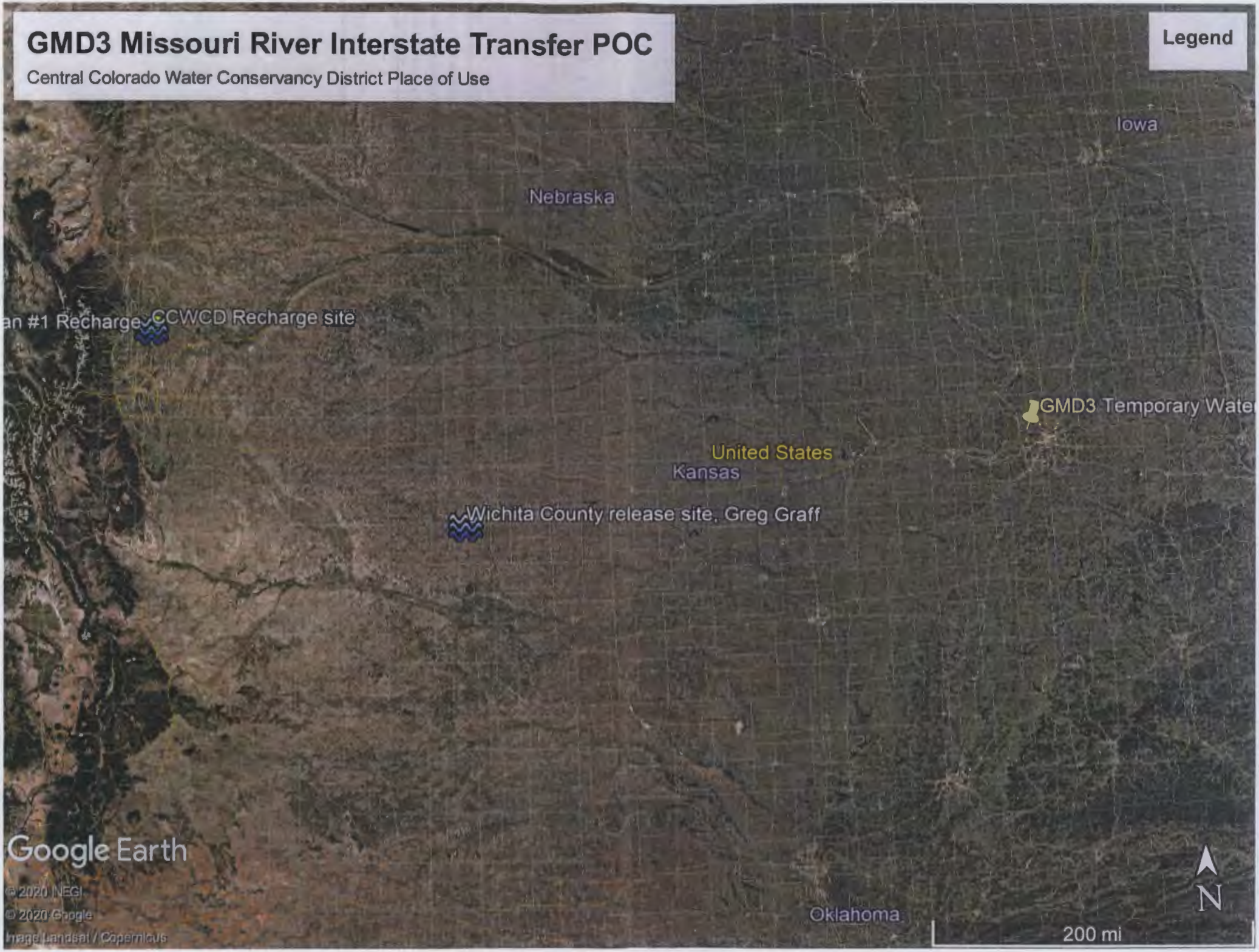
Kansas Department of Wildlife Parks &Tourism environmental reviews:

- Aquatic nuisance species (ANS) possession permit required. Will use the "Edwards Protocol" with contained and dry release sites for complete deep percolation into groundwater storage.
- Kansas Action Permit required for review of any risk to threatened or endangered species (TES) inhabiting the source water or destination environment. Appropriate fish screen and low intake operating strategy will be used to avoid impinging and impaling protected species.

Possible Colorado cooperating state and local permitting agencies...

GMD3 Missouri River Interstate Transfer POC

Central Colorado Water Conservancy District Place of Use



GMD3 Missouri River Interstate Water West POC Recharge sites

Site 1, Greg Graff High Plains Recharge. SW/4 Sec. 18, T 35 s, R 34 w, Wichita County, Kansas.

Site 2, Herman #1 Recharge Pond, Sec. 31, T 3 N, R 66 w, near Platteville in Weld County, Colorado.

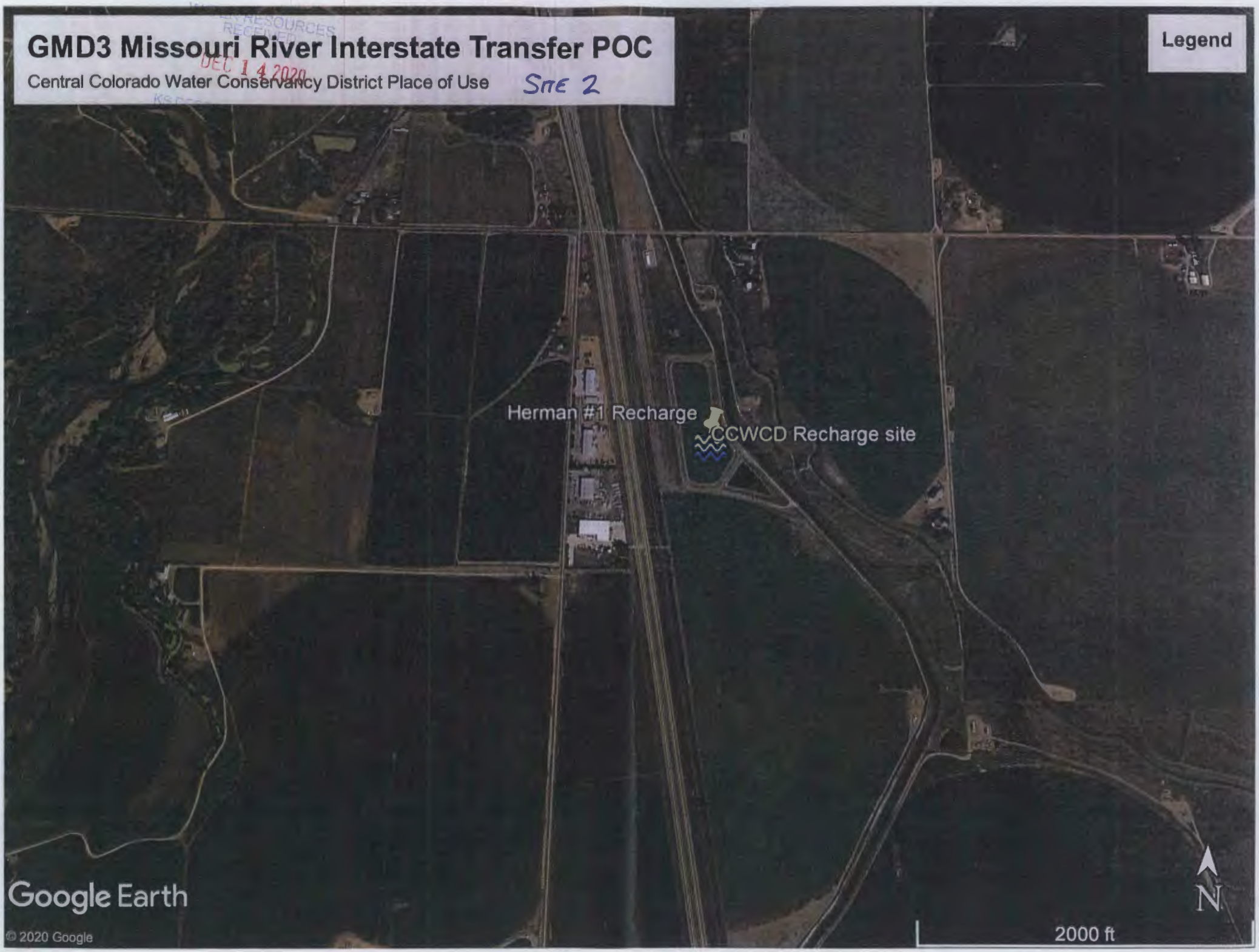
WATER RESOURCES
RECEIVED
DEC 1 4 2020
S DEPT OF AGR CULTURE

GMD3 Missouri River Interstate Transfer POC

Central Colorado Water Conservancy District Place of Use

Site 2

WATER RESOURCES
RECEIVED
DEC 14 2020
KS DEC



WATER RESOURCES
RECEIVED
DEC 1 4 2020

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

Kansas
Department of Agriculture

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

Mike Beam, Secretary

Laura Kelly, Governor

December 15, 2020

SW KS GMD 3
20090E. SPRUCE ST
GARDEN CITY KS 67846

RE: Application, File No(s). **20209091**

Dear Sir or Madam:

The Division of Water Resources (Division) has received your application(s) for a permit to appropriate water for beneficial use. Your application(s) has been assigned the file number(s) referenced above. Please be aware that the Division may have a large number of pending applications on hand at times and makes every attempt to process them in the order in which they are received. You will be contacted if additional information is required.

Please note, this letter only acknowledges receipt of your application(s) and does not guarantee approval. In accordance with the provisions of the Kansas Water Appropriation Act, the use of water as proposed prior to approval of the application(s) is unlawful.

Additional information about the process may be found on our website at *agriculture.ks.gov/divisions-programs/dwr*. If you have any other questions, please contact our office at 785-564-6640 or your local Topeka Field Office at 785-296-5733.*Topeka Field Office at 785-296-5733.* If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kris Neuhauser
New Applications Lead
Water Appropriation Program

DATA ENTRY SYSTEM ID NUMBER SHEET

FILE NUMBER 20209091

APPLICANT PERSON ID & SEQ #		PDIV ID		BATTERY ID
16886		83875		

LANDOWNER PERSON ID & SEQ #		PUSE ID	
16886		70043	
		70044	

WATER USE CORRESPONDENT PERSON ID & SEQ #	
16886	

12/31/2020

Water Resources
Received
KS Dept Of Agriculture

Missouri High Flow Interstate Transfer POC - KS and CO

Action is needed to secure the unsecured surface water supplies that Kansas and western partners need. A proof-of-concept (POC) project is a small realization of an idea in order to demonstrate some elements in principle with the aim of verifying one or more concepts have practical potential. Big water project ideas like moving floodwater across Kansas and Colorado require a series of small foundational POC's to illustrate and verify key elements that may otherwise become confusing, impairing stakeholder capacity to development preferred projects. The Southwest Kansas Groundwater Management District No. 3 (GMD3) seeks support through a POC project to verify key concepts of interstate water transfer and bridge the gap between theory and reality.

POC project - The project proponents will execute a 6000-gallon interstate intra-basin transfer of Missouri River high flow (above target navigation) water and conserve it to dry release locations as inflow into the western Kansas Ogallala/High Plains Aquifer and to groundwater storage in northeastern Colorado. Future transfers could occur to other locations and from other source waters under separate permitting. The potential for water conservation and new supply will be demonstrated.

Key Water Transfer concepts:

1) Conserves Water for beneficial use
2) Restores/supports basin supply distribution
3) Improves native poor-quality water
4) Adds local water storage in Kansas and Colorado
5) Demonstrates cooperative interstate water permitting

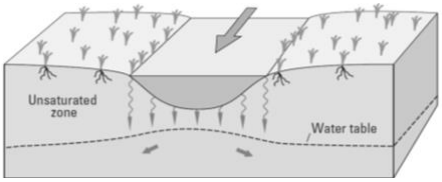
Authority – Southwest Kansas GMD3 and Western Kansas GMD1 have the authority to **"***construct, operate and maintain such works as may be determined necessary for drainage, recharge, storage, distribution or importation of water, and all other appropriate facilities of concern to the district."* (K.S.A.82a-1028(g)) In the case of a transfer to Colorado, the project develops potential partnerships for developing future preferred projects with multiple shared benefits.

Management Program - The Kansas GMD3 management program seeks capacity to move unappropriated high flow water west across the High Plains of Kansas to close the local gaps between water demands, use and water replenishment while benefiting supply to potential partners in the western US. Access to the full draft GMD3 management program document is provided at http://www.gmd3.org/what-we-do/management-program/

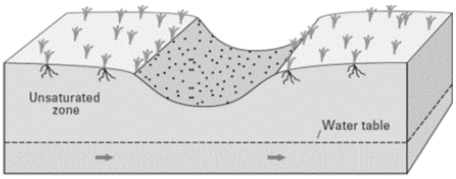
The Central Colorado Water Conservancy District has similar needs and interests in building capacity for new water imports to their area.

Cost estimate. Estimated cost of this POC project involves permitting fees, $3000 budget for a water truck transport, testing and reports. The cash budget needed is not expected to exceed $6000.

Funding. Options for funding in whole or in partnership may include GMD3 general fund, the non-profit Kansas Aqueduct Coalition Fund at the Kansas Rural Communities Foundation, and CCWCD.



Imported water release flow direction into groundwater storage



Dry channel groundwater storage condition before and after import release

Figures from USGS Circular 1308: Water Budgets

Missouri High Flow Interstate Transfer POC - KS and CO

Permitting and interstate coordination. Government partners assure public interest benefits while addressing concerns. A brief summary follows of the review and permitting necessary.

Kansas Department of Agriculture, DWR - water appropriation.

- **Water Appropriation**: Term Permit for groundwater recharge beneficial use appropriated from the Missouri River high flow surface water and transferred to sites one and two where land access has been authorized by the landowner for a release. Site one is into Rocky Draw, and overlying the Ogallala/High Plains Aquifer, a dry tributary to the dry Whitewoman Creek of Wichita County, Kansas, and also site two is the Gary Herman alluvial groundwater Recharge Pond #1 in Weld County, Colorado where there the CCWCD operates a siltation forebay pond which gravity flows to the larger Herman No. 1 infiltration basin/recharge pond. The South Platte River is to the west and local water supply is delivered by two canals, the Platte Valley canal immediately to the east and the smaller Platteville Milling & Irrigation Canal further to the east another 300'. There is good access to the pond for the transportation release.

Kansas Department of Health & Environment – Bureau of Water – water quality.

- No water quality permit required (based on existing data & EPA Water Transfer Rule).

Kansas Department of Wildlife Parks &Tourism – Ecological Services.

- **Aquatic nuisance species** (ANS) possession permit required. Will use the "Edwards Protocol" with contained and dry release sites for complete deep percolation into groundwater storage.
- **Kansas Action Permit** required for review of any risk to threatened or endangered species (TES) inhabiting the source water or destination environment. Appropriate floating fish screen with low intake operating strategy will be used to avoid impinging and impaling protected species.

Possible Colorado cooperating state and local permitting:

- None identified at this time.

State to State coordination:

- **Kansas coordination with Colorado Attorney General** is required under K.S.A. 82a-726 when Kansas water is appropriated for use in another state to ensure the Colorado portion of the project is lawful in the partner state.

1/4/2021
12/31/2020

Water Resources
Received

KS Dept Of Agriculture

From: Mark Rude
Sent: Thu 12/31/2020 12:02 PM
To: Neuhauser, Kris [KDA]
Cc: Jason Norquest;Michelle Probasco [KDHE];cara.hendricks;Berens, Chris [KDWPT];Steffen, Chris [KDWPT];Randy Ray;Greg Graff
Subject: Term Permit Application to Appropriate, file no. 20209091
Attachments: Permit.pdf, Missouri Floodwater Transfer to Colorado POC brief12212020.pdf

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.

Kris,
Happy new year to you.
Thank you for the attached letter of December 15, 2020 letting GMD3 know our Interstate water transfer POC water appropriation application was received.
Please include the attached POC project description dated December 21, 2020 as an update to the original that was submitted with the application. The update includes the reference to K.S.A. 82a-726 requiring interstate coordination.
Thanks for your help in the review of the application and please let us know if you have any questions.
Mark
Mark E. Rude, Executive Director
Southwest Kansas Groundwater Management District No. 3
2009 E. Spruce Street
Garden City, KS 67846
O (620) 275-7147
C (620) 272-3001

Kansas
Department of Wildlife, Parks and Tourism

Kansas ANS Possession Permit

K.A.R. 115-18-10
Authorization Statues:
K.S.A. 32-807
K.S.A. 32-956

Kaquatic **N**uisance **S**pecies **A**

Permit Number: ZM-19
Effective: December 15, 2020
Expires: September 30, 2021
Non-renewable

PERMITTEE:
Mark Rude, GMD3
2009 E Spruce St.
Garden City, KS 67846
Tel.: (620) 275-7147

PERMIT TYPE:
Possession of live zebra mussels, silver carp, bighead carp, diploid grass carp, and white perch

CONDITIONS AND AUTHORIZATIONS:

A. Authority is hereby granted for permittee to possess live prohibited species that are known to occur at location where tank will be filled for one-time transfer, including zebra mussels *Dreissena polymorpha*, Silver Carp *Hypophthalmichthys molitrix*, Bighead Carp *Hypophthalmichthys nobilis*, diploid Grass Carp *Ctenopharyngodon idella*, and White Perch *Morone Americana*.

B. Inlet of pipe must be screened to 3/8" to prevent larger aquatic nuisance species from entering tank.

C. After truck is filled, the "Edwards Protocol" (Edwards, et al. 2000) must be completed prior to transport to reduce the risk of zebra mussels becoming established in the wild.

   a. The "Edwards Protocol" is a 1-h pretreatment of 750 mg/L KCl followed by a 2-hr treatment of 25 mg/L formalin. Details can be found in *Edwards WJ, Babcock-Jackson L, Culver DA (2000). Prevention of the spread of zebra mussels during fish hatchery and aquaculture activities. North American Journal of Aquaculture 62: 229–236.*

D. If unable to complete the described process, remaining live prohibited species and infested water should be remitted to Kansas Department of Wildlife, Parks and Tourism, 512 SE 25th Ave, Pratt, KS 67124 for disposal.

E. Permit may be revoked at any time.

F. Permit only valid within the State of Kansas.

Mike Miller — 1-8-2021

ISSUED BY: DATE: