





# MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

---

Date: August 5, 2024

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 50976,

Change Application File Nos. 30096, & 34083 – Tietjen & Son

## Summary

Tietjen & Son has filed the above referenced application to appropriate 334 acre-feet of surface water through natural flows of a tributary of Otter Creek for storage and re-diversion in a 21.98-acre reservoir. The rate of diversion is at a rate of natural flows and a re-diversion rate of 1000 gallons per minute to irrigate an additional 156 acres of ground in Republic County, Kansas. The applicant has signed the application form affirming legal access to the point of diversion. The applicant has also agreed to meet minimum desirable streamflow. Structures has determined the dam for this reservoir meets the exemption for a class A dam.

There appears to be a partial place of use overlap with File Nos. 30,096 and 34,083. Change applications have been filed on the senior files 30,096 and 34,083 to create a complete place of use overlap. 312 acre-feet of water is currently authorized under the senior Water Rights to irrigate 218 acres. As 261.6 acre-feet is considered reasonable to irrigate 218 acres in Republic County under current regulations, this creates an excess of 50.4 acre-feet. The above referenced new application is proposing to add 156 acres of ground. 136.8 acre-feet will have to come from the new surface water application to be used to irrigate the additional 156 acres. When considering the entire place of use, the new application will be limited to 448.8 acre-feet to irrigate 374 acres when combined with the two senior files. This is the maximum reasonable quantity allowed at 1.2 acre-feet per acre in Republic County. This will leave up to 197.2 acre-feet that could be left over from the new surface water application. This will allow some flexibility for the applicant as they will be able to use up to the full amount of 334 acre-feet from the above surface water application to irrigate the existing place of use thereby reducing pumping by up to 197.2 acre-feet from the existing senior groundwater files.

## Reasonable Storage Quantity and Safe Yield

Maximum reasonable quantity for storage was determined to be 333.92 acre-feet. As per K.A.R. 5-6-5 maximum reasonable annual quantity for storage of water for beneficial use in a reservoir. The maximum reasonable annual quantity in a reservoir shall be limited to the lesser of the following.

As per K.A.R. 5-6-4, a runoff calculation was prepared and found that 333.92 acre-feet of runoff could be expected on a 20% chance of occurrence from the following variables.

- 565-acre drainage area.
- Mean annual precipitation of 28 inches per year.
- Soil covers complex number of 77.

As per K.A.R. 5-6-5(b)(1)(A) and (B) Three years of direct and indirect use was calculated to be 1456.29 acre-feet of water.

- 374 acres of ground x 1.2 acre-feet per acre per year in Republic County = 448.8 acre-feet of direct use.
- 36.63 acre-feet of indirect use = 20 inches of net evaporation /12 inches per foot = 1.67 feet of net evaporation x 21.98 surface acres = 36.63 acre-feet of net evaporation.

- 448.8 acre-feet of direct use + 36.63 acre-feet of indirect use = 485.43 acre-feet per year.
- 485.43 acre-feet per year x 3 years = 1456.29 acre-feet.

As per K.A.R. 5-6-5(2)(A) 1 year of direct, indirect, and reservoir capacity was calculated to be 602.43 acre-feet of water.

- 374 acres of ground x 1.2 acre-feet per acre per year in Republic County = 448.8 acre-feet of direct use.
- 36.63 acre-feet of indirect use = 20 inches of net evaporation /12 inches per foot = 1.67 feet of net evaporation x 21.98 surface acres = 36.63 acre-feet of net evaporation.
- Reservoir capacity is 117 acre-feet.
- 448.8 acre-feet of direct use + 36.63 acre-feet of indirect use + 117 acre-feet of reservoir capacity =602.43.

The requested quantity of 334 acre is just slightly above the maximum of the drainage basin which allows 333.92 but should be considered reasonable. As mentioned previously the above referenced application would cover the additional 156 acres added to the place of use. Currently 312 acre-feet is authorized through the senior files. The above referenced application (50,976) would need to be limited to the senior applications (30,096 & 34,083) to 448.8 acre-feet, which is the maximum reasonable quantity of 1.2 acre-feet per acre to irrigate 374 acres in Republic County.

## Nearby Water Rights

The nearest upstream appropriated water right is File No. 20,869 which is roughly 2 miles upstream. The nearest downstream appropriated water right is File No. 23,570 which is roughly 2.25 miles downstream. With the location of the reservoir in relation to the distances to the upstream and downstream water rights, impairment seems unlikely. Nearby notification letters were sent out on March 21 and April 8, 2024. No responses of any kind were received during the 15-day period open to comments and concerns.

## Recommendations

The application complies with all regulations and the application is subject to minimum desirable streamflow requirements. Approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Colin Barclay  
Environmental Scientist  
Water Appropriation Program

## RE: 30,096, 34083, and 50976 review and recommendation

Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>

Mon 8/5/2024 3:52 PM

To: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>

Cc: Hageman, Nancy [KDA] <Nancy.Hageman@ks.gov>

Colin,

I recommend approval of this application.

Kelly

---

**From:** Barclay, Colin [KDA] <Colin.Barclay@ks.gov>

**Sent:** Monday, August 5, 2024 3:36 PM

**To:** Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>

**Subject:** 30,096, 34083, and 50976 review and recommendation

Kelly and Mark,

Please disregard my previous recommendation request for these files. I have reworked the memo to hopefully be more informative. Attached to this email is the combined draft memo for new application 50,976 and change applications 30096 and 34083.

The new application is proposing to construct a reservoir in Republic County and add an additional 156 acres to the place of use. The two change apps are for groundwater wells that will cover the same place of use. I sent out nearby letters on March 21 and April 8, and have not received any written comments or concerns.

Please let me know if you need anything else.

Thank you!

Colin Barclay

Environmental Scientist

Division of Water Resources

Kansas Department of Agriculture

Phone: (785) 564-6628

[Colin.Barclay@ks.gov](mailto:Colin.Barclay@ks.gov)





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. 50,976** of the applicant

TIETJEN & SONS  
PO BOX 116  
BYRON, NE 68325

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 **February 24, 2023**.
2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
28 - 1S - 4W									29	29	30	30					118
29 - 1S - 4W			18	37				21	20			15	40	37	38	30	256

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Otter Creek, designated in the office of the Chief Engineer as Otter Creek 2 Trib 3 (Republican), not needed to satisfy all vested rights and prior appropriation rights to be accumulated to a maximum extent of **334 acre-feet** of water per calendar year in a reservoir created by a dam located in the Northeast Quarter of the Southwest Quarter of the Northeast Quarter (NE¼ SW¼ NE¼) of Section 29, more particularly described as being near a point 3,791 feet North and 1,910 feet West of the Southeast corner of said section, in Township 1 South, Range 4 West, Republic County, Kansas, to provide **334 acre-feet** of water as needed for direct irrigation use, to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **1,000 gallons per minute (2.23 c.f.s.)**. A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. That the quantity of water approved under this permit is further limited to the quantity which combined with Water Right, File Nos. 30,096 and 34,083, will provide a total not to exceed **448.8 acre-feet** of water per calendar year for irrigation use on the land described herein.

5. That installation of works for diversion of water shall be completed on or before **December 31, 2025**, 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, 2029**, 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 Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The required 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.





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

August 15, 2024

TIETJEN & SONS  
PO BOX 116  
BYRON NE 68325-0116

RE: Appropriation of Water  
File Nos. 50,976

Water Right  
File Nos. 30,096 and 34,083

Dear Mr. Tietjen:

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, with specific reference to Paragraph Nos. 4, 15, 16 and 17.

Also enclosed are orders approving your applications for change in place of use for the above referenced water rights, which also specify terms, conditions, and limitations. Since these orders modify their certificates of appropriation, they should be recorded with the Register of Deeds as other instruments affecting real estate.

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 annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at [www.kswaterusereport.org](http://www.kswaterusereport.org).

The approval of your new 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.

TIETJEN & SONS

File Nos. 30,096, 34,083 and 50,976

Page 2 of 2

Also included 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 and applicable forms may be found on our website at [agriculture.ks.gov/dwr](http://agriculture.ks.gov/dwr). If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640, or your local Stockton Field Office at (785) 425-6842. If you call, please reference the file number so we can help you more efficiently.

Sincerely,



Kristen A. Baum  
New Applications and Changes Supervisor  
Division of Water Resources

KAB:kak:ccb

Enclosure(s)

pc: Stockton Field Office  
Sarah J. Derienzo Trust  
Laura L. Tietjen Trust No. 1



## 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 *15<sup>th</sup>* day of *August*, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. *50,976*, and Approval of Applications for Change in Place of Use, under Water Right, File Nos. 30,096 and 34,083, dated *August 8*, 2024, was mailed postage prepaid, first class, US mail to the following:

SARAH J DERIENZO LIVING TRUST  
LAURA L TIETJEN TRUST NO 1  
PO BOX 6493  
LINCOLN NE 68506

With photocopies to:

TIETJEN & SONS  
PO BOX 116  
BYRON NE 68325-0116

KDA-DWR Stockton Field Office

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