

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>50,225</b></p>	2. Status Change Date: <p style="text-align: center; color: blue; font-size: 1.2em;"><b>4/29/2020</b></p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;"><b>01</b></p>	4. GMD: <p style="text-align: center; font-size: 1.2em;"><b>0</b></p>
5. Status: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return			
6. Enclosures: <input checked="" type="checkbox"/> Check Valve <input checked="" type="checkbox"/> N of C Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input checked="" type="checkbox"/> Meter			
<p>7a. Applicant(s)                      Person ID <b>66647</b> New to system <input type="checkbox"/>                      Add Seq# _____</p> <p style="margin-left: 20px;"><b>ALLEN WAYNE &amp; SAUNDRA LEE HILL TRUST</b> 20650 4TH ST APT 5 SARATOGA CA 95070-5893</p>	<p>7c. Landowner(s)                      Person ID _____ New to system <input type="checkbox"/>                      Add Seq# _____</p>		
<p>7b. Landowner(s)                      Person ID _____ New to system <input type="checkbox"/>                      Add Seq# _____</p> <p><b>7a</b></p>	<p>7d. Misc.                      Person ID _____ New to system <input type="checkbox"/>                      Add Seq# _____</p>		
<p>8. WUR Correspondent                      Person ID _____ New to system <input type="checkbox"/>                      Add Seq# _____ Overlap File (s) WUC                      Notarized WUC Form <input 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="margin-left: 40px;"><input type="checkbox"/> Groundwater                      <input checked="" type="checkbox"/> Surface Water</p> <p><input checked="" type="checkbox"/> IRR                      <input 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>		
10. Completion Date: <u>12/31/2021</u> 11. Perfection Date: <u>12/31/2025</u> 12. Exp Date: _____			
13. Conservation Plan Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date Required: _____ Date Approved: _____ Date to Comply: _____			
14. Water Level Measuring Device? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date to Comply: _____ Date WLMD Installed: _____			
<p>Date Prepared: <b>4/14/2020</b>    By: <b>DWS</b></p> <p>Date Entered: <span style="border: 1px solid blue; padding: 2px;">5/4/2020</span>    By: <b>LMoody</b></p>			

File No. <b>50,225</b>	15. Formation Code:	Drainage Basin: MILL CREEK	County: RP	Special Use:	Stream: CHERRY CREEK																																					
16. Points of Diversion			17. Rate and Quantity <b>MOD QTY</b>																																							
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%;">T</td> <td style="width:10%;">MOD</td> <td style="width:10%;">DEL</td> <td style="width:10%;">PDIV</td> <td style="width:10%;">Qualifier</td> <td style="width:5%;">S</td> <td style="width:5%;">T</td> <td style="width:5%;">R</td> <td style="width:5%;">ID</td> <td style="width:5%;">'N</td> <td style="width:5%;">'W</td> </tr> <tr> <td>ENT</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>			T	MOD	DEL	PDIV	Qualifier	S	T	R	ID	'N	'W	ENT											<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2">Authorized</td> <td colspan="3">Additional</td> </tr> <tr> <td>Rate gpm</td> <td>Quantity af</td> <td>Rate gpm</td> <td>Quantity af</td> <td>Overlap PD Files</td> </tr> <tr> <td><b>2000</b></td> <td><b>260</b></td> <td><b>2000</b></td> <td><b>260</b></td> <td><b>NONE</b></td> </tr> </table>			Authorized		Additional			Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files	<b>2000</b>	<b>260</b>	<b>2000</b>	<b>260</b>	<b>NONE</b>
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18. Storage: Rate <b>NF</b> _____ Quantity <b>260</b> ac/ft Additional Rate <b>NF</b> Additional Quantity <b>260</b> 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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by <b>12/31/2021</b> Date Acceptable Meter Installed _____																																										
21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? <b>NO</b>	Overlap Files																					
T		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																									
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√		<b>69342</b>	<b>15</b>	<b>1S</b>	<b>1W</b>	<b>2</b>	40	40	40	40													<b>160</b>	<b>7a.</b>	<b>No</b>	<b>NONE</b>																
√		<b>69343</b>	<b>22</b>	<b>1S</b>	<b>1W</b>	<b>1</b>	40	40	40	40									40	40	40	40	<b>320</b>	<b>7a.</b>	<b>No</b>	<b>NONE</b>																
Comments																																										
<b>potential special conditions</b>																																										

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**  
**M E M O R A N D U M**

**TO:** Files

**DATE:** April 14, 2020

**FROM:** Doug Schemm

**RE:** Application, File No. 50,225

Allen Wayne and Sandra Lee Hill Trust has filed the application referred to above for a permit to appropriate 260 acre-feet of surface water at the rate of natural flows to be stored in a proposed reservoir located in the Northeast Quarter of Section 22, in Township 1 South, Range 1 West, Republic County, Kansas. The dam is located on Cherry Creek, within the Mill Creek drainage basin. The point of diversion is located on property owned by the applicant, and the application has been signed by the applicant stating the trust has legal access to the point of diversion. The place of use is totally owned by the applicant and it comprises a total of 480 acres.

Runoff computations determined that the 595-acre drainage area will yield 446 acre-feet of runoff quantity (9") in 1 out of every five (5) years (a 20% chance). The application was initially filed requesting this runoff quantity for storage and rediversion. However, after further review, it was determined that the reservoir capacity at normal pool was only 35 acre-feet. DWR has used a normal "rule of thumb" that the direct use quantity should be no more than 5 times the reservoir capacity for reasonable storage quantity. For a reservoir with a capacity of 35 acre-feet, this would be equivalent to a storage quantity of 175 acre-feet. However, we have allowed some deviation from this rule of thumb, and in this case the direct use quantity of 260 acre-feet, is equivalent to 7.4 times the capacity of the reservoir, which is slightly outside this norm. However, it is still reasonable, and springs will also provide water for storage in the reservoir.

The requested quantity of water for direct use (rediversion) of 260 acre-feet under the pending application applied to 480 acres is less than the maximum allowable per acre in Republic County, Kansas of 1.2 AF/acre, per K.A.R. 5-3-24. However, it is still reasonable for this area of the state and for the proposed irrigation project.

The applicant identified one upstream and one downstream landowner within one-half (½) mile of the property lines. Nearby landowner letters were sent out on September 20, 2019. A written response was received from the downstream landowner (Brokesh) who was very concerned about the impact the proposed dam would have on his streamflow and springs. Mr. Brokesh typically has nine or ten head of cattle in his pasture, which use this stream for watering.

Due to these domestic concerns, Division of Water Resources (DWR) Topeka Field Office staff conducted a site visit on December 5, 2019. Field staff walked the length of the stream on the applicant's property and determined that there are at least two primary springs located on Mr. Hill's property that contribute a substantial quantity of water to the stream, which flows onto the adjacent downstream property owned by Brokesh. The site visit also determined there is a spring fed pond on Mr. Brokesh's property, however it appears this pond may not be adequate for cattle watering during drought conditions. No other springs were evident on Mr. Brokesh's property. Because the proposed dam could collect and store spring water from the applicant's property, DWR is proposing specific permit conditions to ensure that there is adequate water in the stream for the domestic user's cattle. The permit conditions would be as follows:

- That the proposed dam shall be equipped with a controlled outlet with a minimum diameter of four inches. The controlled outlet shall be placed to allow water to pass through the dam at or near streambed elevation.
- That the applicant shall ensure that a discharge rate of not less than **10 gallons per minute or other rate as determined by the Division of Water Resources**, be bypassed through the controlled outlet on a continual basis for the entire year.

The applicant agreed to these conditions by initialing next to them in a response letter. The domestic user was also sent a response letter detailing these same conditions. DWR believes that this continual flow of water ensures that the water in the stream does not get stagnant and will adequately address the domestic users concerns.

The proposed dam was reviewed by DWR Water Structures Program under File No. DRP-0144, and was found to be non-jurisdictional for structures permitting. As allowed by K.S.A. 82a-706(c) an approved water flow meter shall be installed on the secondary diversion works (pump site) for this file. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed. Since this is a proposed reservoir, a Special Condition on the Permit will be needed to provide an initial fill quantity.

In an April 6, 2020 discussion, Katie Tietsort, Water Commissioner, Topeka Field Office, stated that the referenced new application should be approved. Based on the above discussion, that this area is open to new appropriations, the proposed appropriation of water is reasonable and justified, the permit has a specific condition requiring a bypass of water to the downstream owner, the dam is non-jurisdictional for DWR Water Structures Permitting, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Doug Schemm  
Environmental Scientist  
Topeka Field Office

**From:** Bristow, Leonard [KDA]  
**Sent:** Wednesday, March 6, 2019 8:51 AM  
**To:** tonyrstrnad@gmail.com  
**Cc:** Ketter, Ambrose [KDA]; Tietsort, Katie [KDA]; Schemm, Doug [KDA]; Stewart, Kelly [KDA]; Phillips, Janelle [KDA]  
**Subject:** Permit Determination, Republic County, Irrigation pond, WSNo. DRP-0144  
**Attachments:** 2019-03-05 DRP-0144 area cap.pdf

Dear Mr. Strnad:

This is in response to your email received on May 4, 2019, requesting a determination if a permit would be required for construction of a dam to impound water for irrigation purposes. The information submitted included a map of the proposed area, details for the size of the structure, as well as a permit determination for Section 404 of the Clean Water Act received from the Corps of Engineers.

The project is referenced by our office as WSNo. DRP-0144, and would be located in a tributary to Cherry Creek in SW ¼ of the SW ¼ of the NE ¼ of Section 22, Township 01 South, Range 01 West, Republic County, Kansas. The project was reviewed based on K.S.A. 82a-301 and K.S.A. 24-126.

K.S.A. 82a-301 requires a permit prior to construction of any dam; stream obstruction; or to change or diminish the course, current, or cross section of any designated stream within the state. As per K.S.A. 82a-301(b)(1), a dam is defined as any structure that has a height of 25 feet or more; or a height of 6 feet or greater with a capacity to impound 50 or more acre feet at the emergency spillway elevation. As per K.S.A. 82a-301(b)(2) and 82a-301(b)(2)(B), a designated stream in Republic County is defined as a natural or man-made channel that conveys drainage or runoff from a watershed having an area of two or more square miles. A stream obstruction is defined by K.A.R. 5-40-1(aaa) as any project or structure that is wholly or partially placed or constructed in a stream and that does not meet the definition of a dam. K.S.A. 24-126 requires a permit from the Chief Engineer for any levee or other such improvement which would repel flood flows of any stream in the state, or any floodplain location as shown on a FEMA defined floodplain map.

From the information received it was shown the dam would be less than 12 feet in height, and would impound approximately 22.5 acre-feet of water. Our calculations show the drainage area to the site is 595 acres. An area capacity table was also calculated using 2017 LIDAR elevations which showed the reservoir would impound 27.83 acre-feet of water at the proposed permanent pool area, and 34.8 acre-feet at the auxiliary spillway elevation. The area capacity table is attached for your information. In addition, no FEMA defined floodplain exists at the location of the proposed dam.

Consequently, no permit or approval is required under either K.S.A. 82a-301 or K.S.A. 24-126 for the structure as it is proposed.

However, the project may require approval under K.S.A. 82a-701 to 737, Water Appropriations Act. If the reservoir would have the ability to impound more than 15 acre-feet at the permanent pool elevation, a Water Appropriation permit would be required. I recommend you contact Katie Tietsort, Water Commissioner, Topeka Field Office, 785/296-1886, to discuss your options for approval.

Thank you for checking on approvals prior to construction. If you have any further questions feel free call me at (785) 425-6787.

Sincerely,

DRP-0144

TPA/SDI Query: WPT, EHO, WPT, TRANSACTIONS, WATER RIGHTS, LOCATION, WMAERS, ECA, TRRL, COMPLIANCE, IMAGES, WPT\_ACTIONS

APP ID: 0144	WMA: WMA11231	LAST: 144	APPLICATOR	RECIPIENT
REVIEWER	CLIENT STATUS	Project Activity	DAM	Pending Corsheds:
FILE	Permit	Site Name		App Mod
File Location	Completed	District	CHERRY CREEK TR	Pending Mod
Permit	CHL LINE	MOA Type		Active Fee
				Current Permits
APPLICANT				Level Ref
LAST STRNAM	FIRST TONY R			Corp
OWNER				App Proc Time
LAST STRNAM	FIRST TONY R			ENV
DESPER	FIRST			Time
LAST STRNAM	FIRST			Location
				Pub Defn
Coord Comp Date	DDA/595	Remarks		

CONTACT ALL ACT LOCATION ECA WMA/USHI OWNER REVIEWER DIV COMPLIANT IMAGE PROJECT

ACTIONS LOCATION ECA FEE TRRL LEGAL WMAVER VR MAKE DAM MODIFICATION STATED AFFID

Date	Action	Dis/Re Date	Remarks
03-08-2019	DISPERM PERMIT NOT REGD, NON-JURISDICTIONAL		
03-04-2019	DETERMINATION RECEIVED		REQUEST

Non-Jurisdictional for Structures Permitting

PHOTO 1 – North of Section 22 (upstream)



12.05.2019 13:16

PHOTO 2 – Pool on North Side of Section 22



12.05.2019 11:01



PHOTO 3 – Streamflow just below Photo 2



PHOTO 4 – Streamflow



PHOTO 5 - Streamflow



PHOTO 6 – Streamflow (same site as Photo 5)



PHOTO 7 - Seep area along east margin of stream valley



12.05.2019 11:32

PHOTO 8 – Seep area at end of draw draining from the east (looking east)



12.05.2019 11:34

PHOTO 9 – Streamflow in creek below seeps in Photos 8 & 9



PHOTO 10 – Streamflow between Photos 9 & 11





PHOTO 11 – Site of streamflow measurement using the “Float Method”



12.05.2019 11:46

PHOTO 12 – Streamflow near proposed dam site (same as Photo 11)



PHOTO 13 – Proposed dam site (looking west)



PHOTO 14 – Streamflow at section center below proposed dam (looking upstream, northeast)



PHOTO 15 – Rock outcrop at creek margin



PHOTO 16 – Rock outcrop (approx. 4 feet tall)



12.05.2019 12:13

PHOTO 17 - Streamflow



PHOTO 18 – Rock outcrop ( approx. 5 feet tall)





PHOTO 19 – Streamflow (near E-W centerline of SW ¼)



PHOTO 20 – Small tributary below dug out pond joining creek from the west



12.05.2019 12:42

PHOTO 21 – Dug out pond



PHOTO 22 – Streamflow exiting Section 22



12.05.2019 13:32

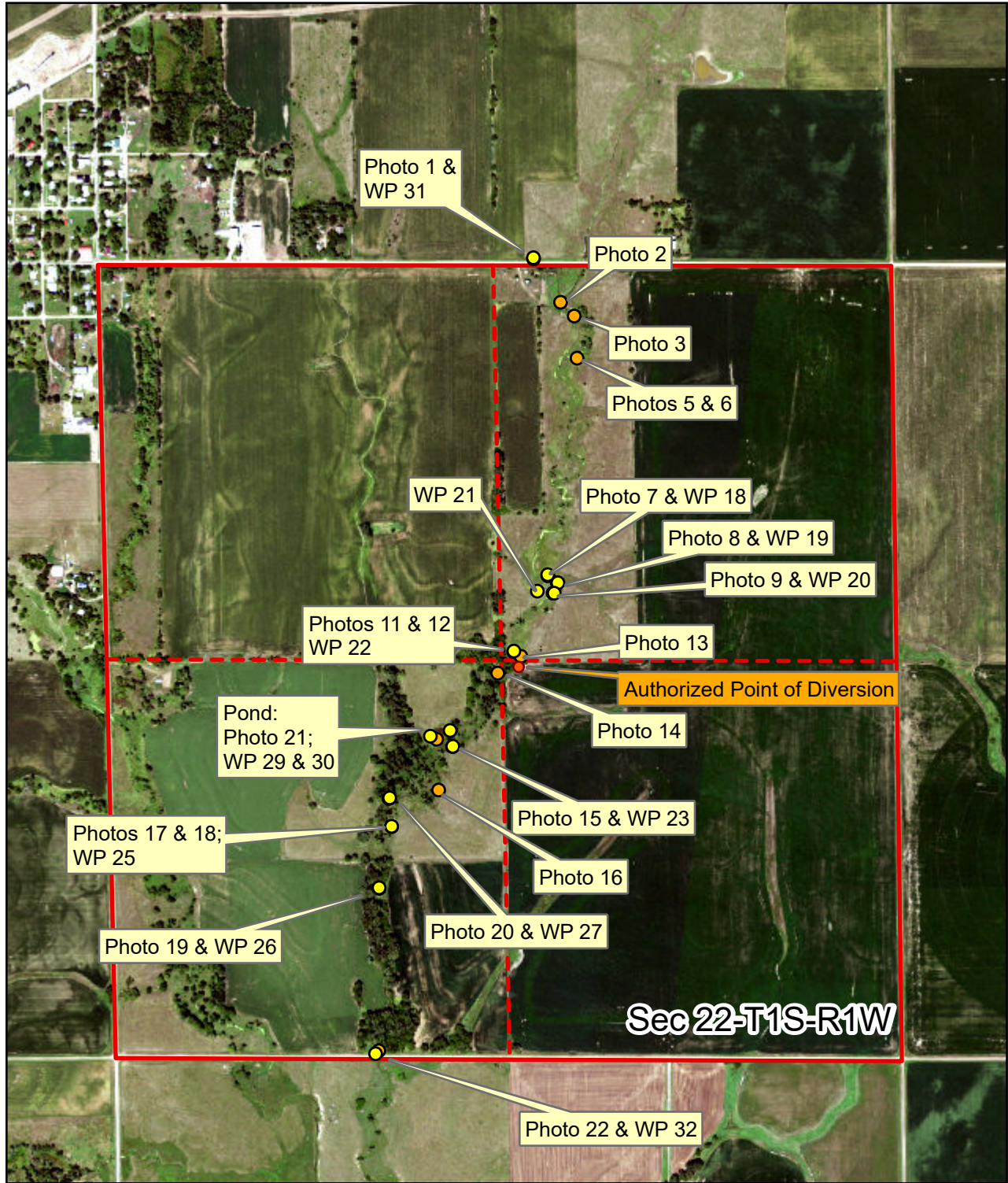
### STREAM SURVEY NOTES

- 11:01 – Photo 2: Pool on North side of Section 22
- 11:04 – Photo 3: Streamflow just below pool in Photo 2; approx. 5 gpm, per visual estimate
- 11:07 – Photo 4: Streamflow
- 11:13 – Photo 5 &  
Photo 6: Streamflow
- 11:32 – Photo 7: Seep area along east margin of stream valley
- 11:33 – WP18: Seep area along east margin of stream valley
- 11:34 – Photo 8: Seep area at end of draw draining from the east (looking east)
- 11:35 – WP19: Seep area at end of draw draining from the east. Currently no surface flow into main creek from this draw.
- 11:38 – Photo 9: Streamflow in creek below seeps in Photos 8 & 9
- 11:39 – WP20: Creek below seeps, approx. 15 gpm, per visual estimate.
- 11:43 – WP21: Broad bowl at the end of a draw draining from the west. Currently dry at this location.
- 11:44 – Photo 10: Streamflow between Photos 9 & 11
- 11:46 – Photo 11 &  
Photo 12: Site of streamflow measurement using the “Float Method”
- 11:50 – WP22: Site of streamflow measurement using the “Float Method”  
Stream width: 29”  
Water depth at 10” from each edge: 1”  
Water depth at deepest point: 2.5”  
Approximated cross-sectional area: 25.75 square inches (0.179 square ft)
- Float 1:  
10’ in 15 seconds  
(velocity = 0.667 ft/sec X 0.75 roughness factor = 0.5 ft/sec)
- Float 2:  
10’ in 21 seconds  
(velocity = 0.476 ft/sec X 0.75 roughness factor = 0.357 ft/sec)
- Average: 0.429 ft/sec  
Estimated flow: 34 gpm
- 11:53 – Photo 13: Proposed dam site (looking west)
- 11:56 – Photo 14: Streamflow at section center below proposed dam (looking upstream, northeast)
- 12:07 – Photo 15: Rock outcrop at water’s edge
- 12:10 – WP23 &  
WP24: White chalk or weathered limestone outcrop at water’s edge (east bank)
- 12:13 – Photo 16: Rock outcrop (approx. 4 feet tall); weathered chalky limestone & shale
- 12:22 – Photo 17: Streamflow
- 12:24 – Photo 18: Rock outcrop (approx. 5 feet tall); weathered chalky limestone & shale
- 12:24 – WP25: Rock outcrop
- 12:33 – WP26: Soft grey-white shale or weathered chalk in creek bottom
- 12:34 – Photo 19: Streamflow (near E-W centerline of SW ¼)
- 12:42 – Photo 20: Small tributary below tank pond joining creek from the west. Standing water in the lower portion of stream, but not contributing flow to the main creek.

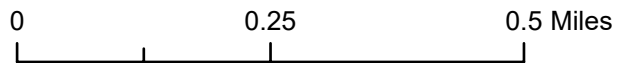
12:42 – WP27 &  
WP28: West tributary  
12:48 – Photo 21: Dug out pond; enclosed basin, no outlet.  
12:53 – WP29: Edge of water southwest side of pond  
12:55 – WP30: Edge of water northeast side of pond  
13:16 – Photo 1: Windmill north of Section 22 (upstream)  
13:18 – WP31: Windmill north of Section 22 (upstream)  
13:32 – Photo 22: Streamflow exiting Section 22  
13:33 – WP32: Streamflow exiting Section 22

# STREAM SURVEY

## Sec 22 T1S R1W Republic County

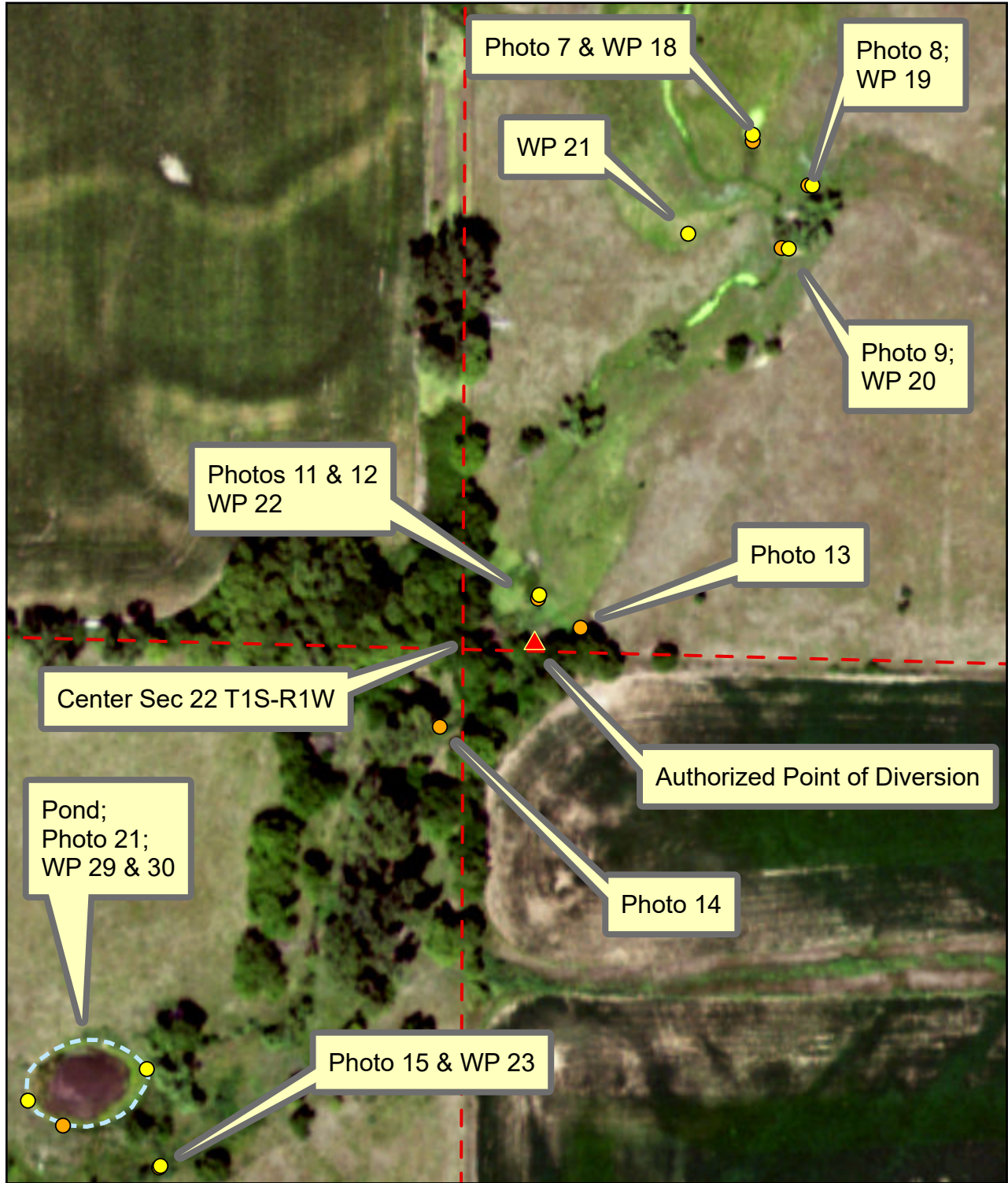


Scale: 1:12,000



Map prepared by: LHH/TFO 12/10/19

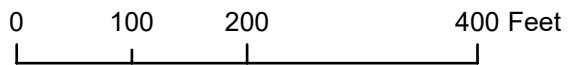
# Stream Survey Application, File No. 50,225



Map prepared by: LHH/TFO 12/31/19



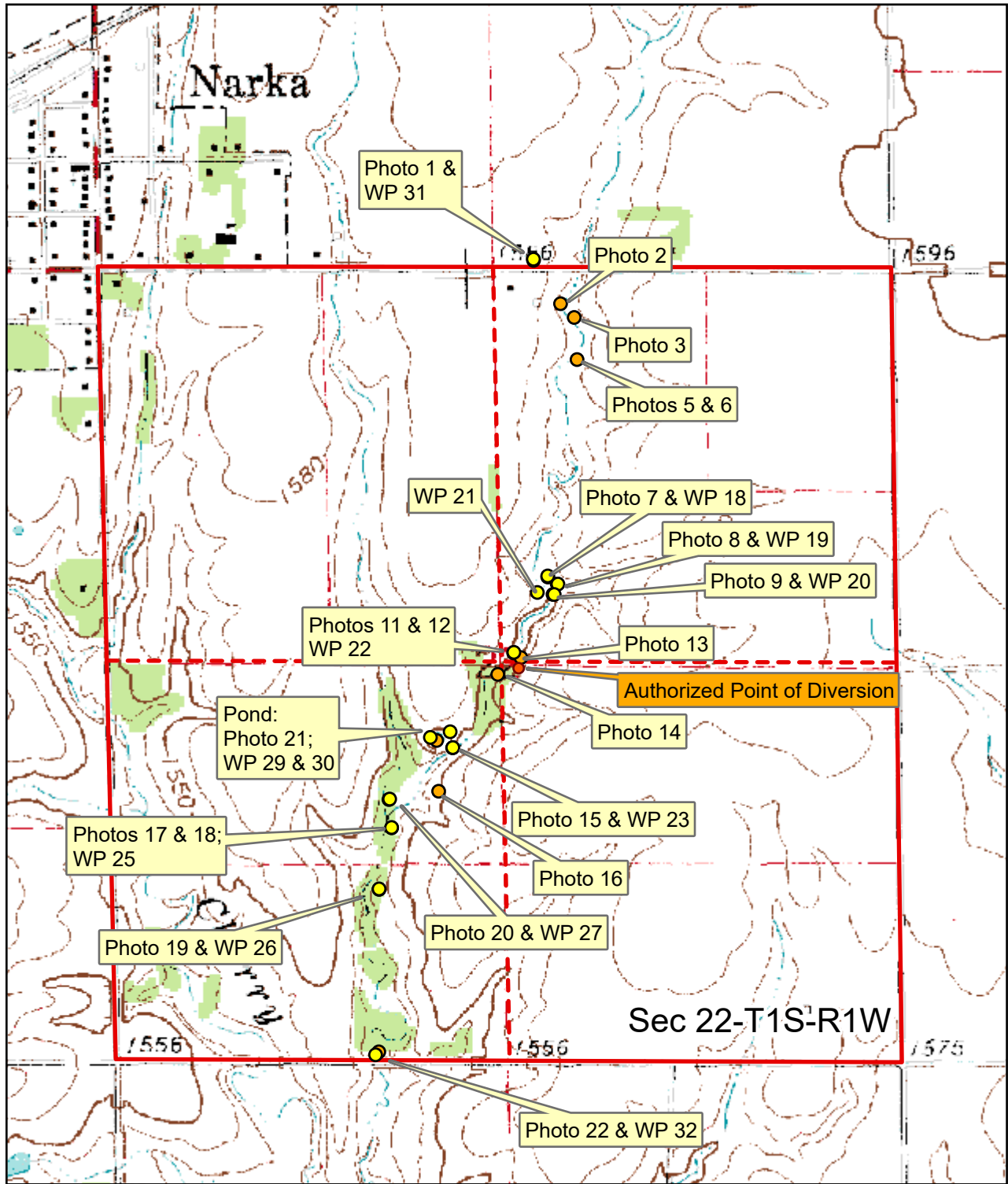
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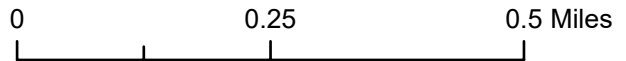


# STREAM SURVEY

## Sec 22 T1S R1W Republic County

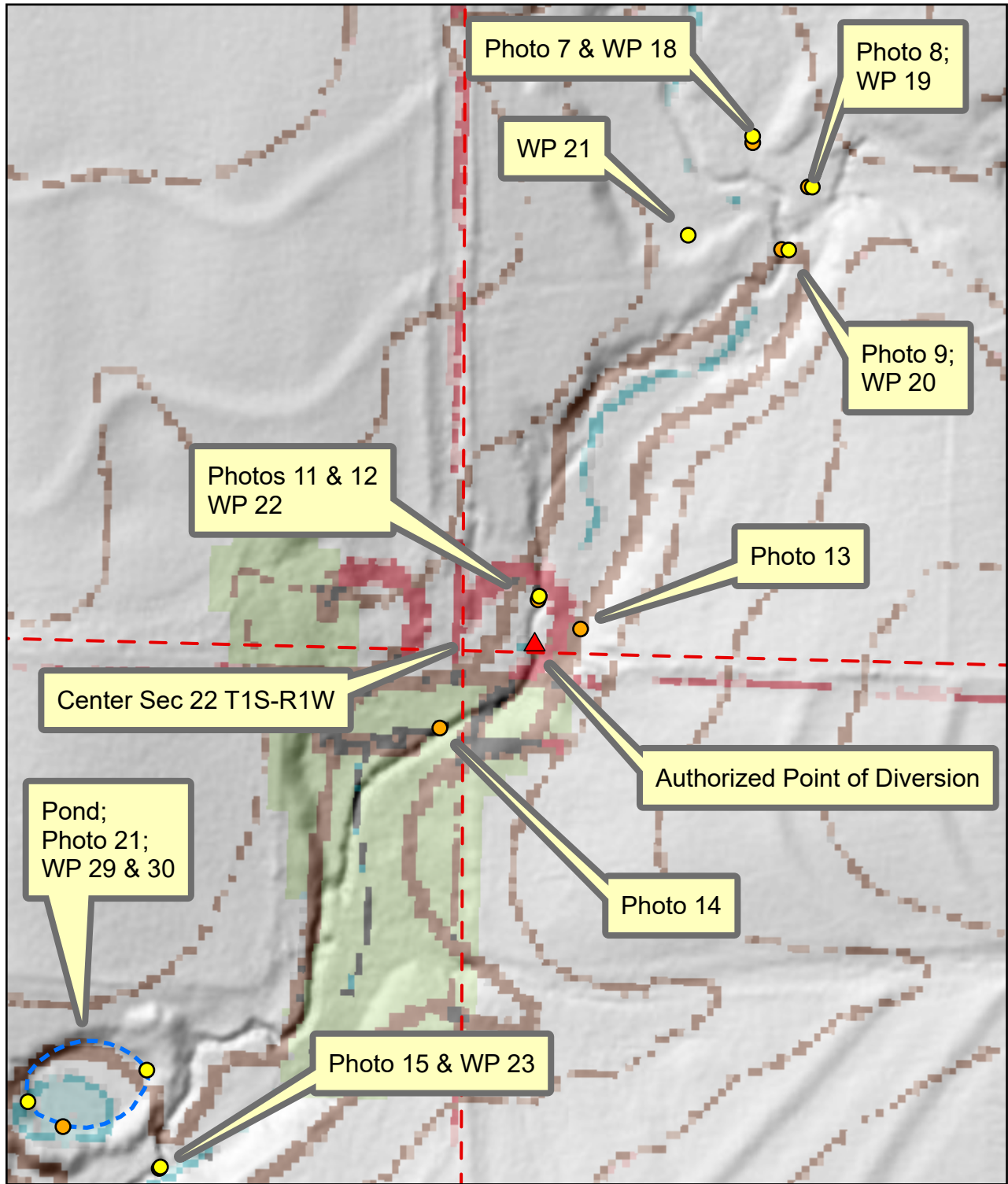


Scale: 1:12,000



Map prepared by: LHH/TFO 12/10/19

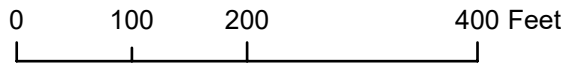
# Stream Survey Application, File No. 50,225



Map prepared by: LHH/TFO 12/31/19



Scale: 1:2,000



<b>Generalized Area Capacity Table of a Shallow Circular Dug Pond</b>					
<b>Pond Depth (ft)</b>	<b>Pond Surface Area</b>		<b>Pond Volume</b>		
	<b>square ft</b>	<b>acres</b>	<b>cubic ft</b>	<b>gallons</b>	<b>acre-ft</b>
<b>5</b>	8659	0.20	21,713	162,424	0.5
<b>4</b>	6940	0.16	17,352	129,798	0.4
<b>3</b>	5214	0.12	13,003	97,267	0.3
<b>2</b>	3482	0.08	8,663	64,805	0.2
<b>1</b>	1744	0.04	4,330	32,391	0.1

**Assumptions:**  
Circular pond with diameter of 105 ft (0.2 ac surface area) and depth of 5 feet.  
Estimated using the volume of a sphere with radius of 278 ft, partially filled to depth of 5 feet.  
  
The actual surface area of the pond was measured during a dry period at 0.11 acres using a July 26, 2012 aerial image and during a wet period at 0.21 acres using the 2017 NAIP image.

Topeka Field Office  
6531 SE Forbes Ave., Suite B  
Topeka, KS 66619



Phone: 785-296-5733  
Fax: 785-296-8298  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

Mike Beam, Secretary

Laura Kelly, Governor

ALLEN WAYNE & SAUNDRA LEE HILL TRUST  
20650 4TH ST APT 5  
SARATOGA CA 95070-5893

RE: Appropriation of Water, File No. 50,225

Dear Mr. and Mrs. Hill:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

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

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at [agriculture.ks.gov/divisions-programs/dwr](http://agriculture.ks.gov/divisions-programs/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 Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

A handwritten signature in cursive script that reads "Kristen A. Baum".

Kristen A. Baum  
New Application Unit Supervisor  
Division of Water Resources

KAB:dws  
Enclosure(s)

pc: Topeka Field Office

# THE STATE OF KANSAS



**KANSAS DEPARTMENT OF AGRICULTURE**  
Mike Beam, Secretary of Agriculture

**DIVISION OF WATER RESOURCES**  
Christopher W. Beightel, Acting 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. 50,225** of the applicant

**ALLEN WAYNE & SAUNDRA LEE HILL TRUST**  
**20650 4TH ST APT 5**  
**SARATOGA CA 95070-5893**

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 22, 2019**.
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	
15	1S	1W	40	40	40	40													160
22	1S	1W	40	40	40	40								40	40	40	40		320

3. That the appropriation sought shall be limited to all natural flows of Cherry Creek (Mill Creek), not needed to satisfy all vested rights and prior appropriation rights to be incrementally accumulated as reservoir storage space becomes available to a maximum extent of **260 acre-feet** per calendar year in one (1) reservoir created by a dam located in the Southwest Quarter of the Southwest Quarter of the Northeast Quarter (SW¼ SW¼ NE¼) of Section 22, more particularly described as being near a point 2,650 feet North and 2,550 feet West of the Southeast corner of said section, in Township 1 South, Range 1 West, Republic County, Kansas, to provide **260 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 **2,000 gallons per minute (4.46 c.f.s.)**. A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. That in accordance with K.A.R. 5-6-6, a maximum quantity not to exceed **35 acre-feet** of water may also be diverted to complete the initial filling of the reservoir only, and shall not count toward perfection of a water right under the authority of this permit. Subsequent refilling of the reservoir shall require authorization under a term permit.

5. That installation of works for diversion of water shall be completed on or before **December 31, 2021** or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$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, which is currently \$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, 2025** 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, which is currently \$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 re-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 re-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 re-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 the proposed dam shall be equipped with a controlled outlet with a minimum diameter of four inches. The controlled outlet shall be placed to allow water to pass through the dam at or near streambed elevation.

18. That the applicant shall ensure that a discharge rate of not less than **10 gallons per minute or other rate as determined by the Division of Water Resources**, be bypassed through the controlled outlet on a continual basis for the entire year.

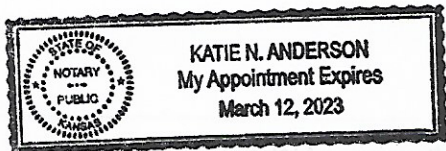
Ordered this 29th day of April, 2020, in Manhattan, Riley County, Kansas.

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 29th day of April, 2020, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Katie N. Anderson  
Notary Public

**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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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 Section, 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 hearing 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.

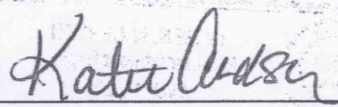
**CERTIFICATE OF SERVICE**

On this 6<sup>th</sup> day of May, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,225, dated April 29 was mailed postage prepaid, first class, US mail to the following:

ALLEN WAYNE & SAUNDRA LEE HILL TRUST  
20650 4TH ST APT 5  
SARATOGA CA 95070-5893

With photocopies to:

Topeka Field Office

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