



File No. **50,307**      15. Formation Code:      Drainage Basin: **Republican River**      County: **CLAY**      Special Use:      Stream: **Dry Creek 2 (Republican)**

16. Points of Diversion									
T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	
	<b>87720</b>	<b>NW SW SE</b>	<b>3</b>	<b>7S</b>	<b>2E</b>	<b>12</b>	<b>946</b>	<b>2033</b>	

17. Rate and Quantity				
Authorized		Additional		
Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
<b>1400</b>	<b>100</b>	<b>1400</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 **12/31/2021**      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use							NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files		
T MOD DEL ENT	PUSE	S	T	R	ID		NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼						
√	<b>40342</b>	<b>3</b>	<b>7</b>	<b>2E</b>	<b>3</b>								<b>40</b>	<b>37</b>	<b>22</b>	<b>14</b>	<b>22</b>	<b>35</b>	<b>15</b>	<b>15</b>	<b>30</b>	<b>39</b>	<b>269</b>	<b>7a.</b>	<b>No</b>	<b>16,611 &amp; 17,097*</b>		
√	<b>69648</b>	<b>34</b>	<b>6</b>	<b>2E</b>	<b>1</b>												<b>40</b>	<b>40</b>					<b>80</b>	<b>7a.</b>	<b>No</b>	<b>16,611 &amp; 17,097*</b>		

Comments: **\*PU CHANGES ON SENIOR FILES WILL CREATE A COMPLETE OVERLAP IN PLACE OF USE.**

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** January 16, 2020

**FROM:** Doug Schemm

**RE:** Application, File No. 50,307

Robert J. & Deborah A. Wietharn Trusts have filed the referenced new application to appropriate 100 acre-feet of surface water from Dry Creek 2, a tributary to the Republican River, at the rate of 1,400 gallons per minute for irrigation use in Clay County. The entire place of use is owned by the applicant. The proposed place of use partially overlaps Water Right, File Nos. 16,611 and 17,097, however pending change applications in place of use will ensure a complete overlap, and the files will be processed together. Water Right, File Nos. 16,611 and 17,097 are both groundwater appropriations. The place of use currently authorized under the senior files will be expanding from 269 acres to 349 acres.

Water Right, File No. 16,611 is authorized 131 acre-feet at 1000 gallons per minute; and Water Right, File No. 17,097 is authorized 140 acre-feet at 930 gallons per minute, for a total of 271 acre-feet when combined. The new application is requesting 100 acre-feet, for a combined total of 371 acre-feet (271 AF+ 100 AF). This total combined quantity is less than the maximum allowable to irrigate the proposed 349 acres (1.2 Acre-Foot per acre is the maximum allowed in Clay County), which would be equivalent to 418.8 acre-feet. Therefore, the quantity of water under File No. 50,307 will be all additional.

Nearby landowners, within one-half mile upstream and downstream of the proposed point of diversion, were notified on December 23, 2019 regarding the pending application. A telephone call was received from one nearby landowner (Jayhawk LLC) who asked general questions about the application, but did not express any concerns. There are several other surface water rights within a two (2) mile radius of the proposed point of diversion, however they are located directly on the Republican River and would not be impacted in any way by this application.

The applicant has submitted a signed Minimum Desirable Streamflow (MDS) statement, which has been notarized. By completing this statement, the applicant affirms his knowledge that there could be times when the diversion of water may not be allowed under this permit. Additionally, since the source of supply is surface water from a tributary to the Republican River, the permit will be conditioned as follows: "That in order to implement the provisions of K.A.R. 5-3-11(d)(6), no water shall be diverted unless the written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, is obtained each time the applicant desires to divert water. The approval of this permit is not an indication that surface water will be available from this source of supply, or that written permission will be granted to divert water." The Lower Republican River Basin is currently open to new appropriations meeting the criteria required by K.A.R. 5-3-11(d)(6), and the approval of this application is consistent with similar applications requesting surface water directly from the Republican River or its tributaries.

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. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

Katie Tietsort, Water Commissioner of the Topeka Field Office, recommended approval of the referenced application in a January 9, 2020 e-mail.

Robert J. & Deborah A. Wietharn Trusts  
File No. 50,307  
Page 2

Based on the above discussion, that surface water within the Lower Republican River Basin remains open to new appropriations with appropriate and consistent permit conditions, approval of the new application will not impair senior water rights, nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced new application be approved in conjunction with the changes in place of use under the senior water rights File Nos. 16,611 and 17,097.



Douglas W. Schemm  
Environmental Scientist  
Topeka Field Office

## Schemm, Doug [KDA]

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**From:** Tietsort, Katie [KDA]  
**Sent:** Thursday, January 9, 2020 4:44 PM  
**To:** Schemm, Doug [KDA]  
**Subject:** RE: 50307 Wietharn

YES

Katie Tietsort  
Water Commissioner

[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)  
785-296-5733

Kansas Department of Agriculture  
Division of Water Resources  
Topeka Field Office  
6531 S.E. Forbes Ave, Suite B  
Topeka, KS 66619

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**From:** Schemm, Doug [KDA] <Doug.Schemm@ks.gov>  
**Sent:** Thursday, January 9, 2020 6:55 AM  
**To:** Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>  
**Subject:** 50307 Wietharn

No issues. Pump site on Dry Creek. Replaces previous file for Bob that was not completed.

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

ROBERT J & DEBORAH A WIETHARN TRUSTS  
Attn: ROBERT WIETHARN TRUSTEE  
1925 KIOWA RD  
CLAY CENTER KS 67432

February 18, 2020

**FILE COPY**

RE: Appropriation of Water, File No. 50,307

Dear Mr. Wietharn:

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 diversion 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.kswateruserreport.org](http://www.kswateruserreport.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,

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**  
David W. Barfield, 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. 50,307 of the applicant

**ROBERT J. & DEBORAH A. WIETHARN TRUSTS**  
**ROBERT J. WIETHARN TRUSTEE**  
**1925 KIOWA ROAD**  
**CLAY CENTER, KS 67432**

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 **October 29, 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	
34	6S	2E											40	40					80
3	7S	2E							40	37	22	14	22	35	15	15	30	39	269

3. That the authorized source from which the appropriation shall be made is surface water from Dry Creek 2 (Republican), to be withdrawn by means of one (1) pump site located in the Northwest Quarter of the Southwest Quarter of the Southeast Quarter (NW¼ SW¼ SE¼) of Section 3, more particularly described as being near a point 946 feet North and 2,033 feet West of the Southeast corner of said section, in Township 7 South, Range 2 East, Clay County, Kansas, located substantially as shown on the topographic map accompanying the application.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **1,400 gallons per minute (3.12 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, 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 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 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 ending 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.

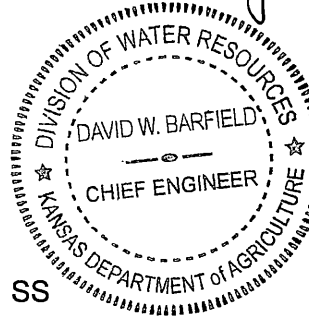
16. That the stream flow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of this water right or permit.

17. 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.



18. That in order to implement the provisions of K.A.R. 5-3-11(d)(6), no water shall be diverted unless the written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, is obtained each time the applicant desires to divert water. The approval of this permit is not an indication that surface water will be available from this source of supply, or that written permission will be granted to divert water.

Ordered this 13<sup>th</sup> day of February, 2020, in Manhattan, Riley County, Kansas.



David W. Barfield  
David W. Barfield, P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas )  
County of Riley ) SS

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of February, 2020, by David W. Barfield, P.E., Chief Engineer, 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 18<sup>th</sup> day of February, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,307, dated February 13, 2020 was mailed postage prepaid, first class, US mail to the following:

ROBERT J. & DEBORAH A. WIETHARN TRUSTS  
 ROBERT J. WIETHARN TRUSTEE  
 1925 KIOWA RD  
 CLAY CENTER, KS 67432

With photocopies to:

Topeka Field Office



Division of Water Resources