

File No. **50,657** 15. Formation Code: Drainage Basin: **Republican River** County: **CY** Special Use: Stream: **Mall Creek (Republican)**

16. Points of Diversion
 T
 MOD
 DEL
 ENT PDIV Qualifier S T R ID 'N 'W

17. Rate and Quantity
 Authorized Additional
 Rate Quantity Rate Quantity
 gpm af gpm af Overlap PD Files

MOD 89076 NE NW SW 33 8S 4E 1 2185 4470

1000 48 1000 48 NONE

18. Storage: Rate _____ Quantity _____ ac/ft Additional Rate _____ 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 **12/31/2023** Date Acceptable Meter Installed _____

21. Place of Use T MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
						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				
√	70593	33	8S	4E	1																	40	7a.	No	NONE

Comments

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: September 8, 2022

FROM: Lloyd Hemphill

RE: Application, File No. 50,657

Brian Martin has filed the referenced application to appropriate 48 acre-feet of surface water from Mall Creek, a tributary to the Republican River, at the rate of 1,000 gallons per minute to irrigate 40 acres in Clay County. The requested quantity of water of 48 acre-feet applied to 40 acres is 1.2 acre-feet per acre, which is the maximum allowable for Clay County. The entire place of use is owned by the applicant, and he has signed the form stating he has access to the point of diversion. There are no overlapping files in point of diversion or place of use.

The applicant provided a list of nearby landowners within one-half mile upstream and downstream of the property line, and they were both notified on May 6, 2022. No responses of any kind were received. According to the WRIS database there are five prior surface water rights within a two (2) mile radius of the proposed point of diversion. The nearest downstream rights are over 4,500 feet away and the nearest upstream water right is over one mile away. The direct diversion of water is limited to times when there is sufficient stream flow in the Republican River system. Therefore, with proper conditioning, approval of this application will not impact any senior water rights.

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). In addition, the permit was specifically worded (see Paragraph No. 19), to ensure that the applicant is aware that he will not be granted permission to divert water if minimum desirable stream flow (MDS) criteria at the gage at Clay Center is not met and MDS administration is occurring at that gage, or if the Chief Engineer is enforcing the terms of the Milford Water Reservation Right.

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.

Based on the above discussion, that surface water within the Lower Republican River remains open to new appropriations with appropriate and consistent permit conditions, and approval of the application will not impair senior water rights, it is recommended that the referenced application be approved with the specific permit conditions described in Paragraph No. 19 of the approval.

Lloyd Hemphill
Environmental Scientist
Topeka Field Office

8-26-22

(Date)

Kansas Department of Agriculture
Division of Water Resources
Earl D. Lewis, Jr., Chief Engineer
1320 Research Park Drive
Manhattan, Kansas 66502

Re: Application
File No. 50657

Minimum Desirable Streamflow
Water Reservation Rights

I understand that a Minimum Desirable Streamflow requirement has been established or a Water Reservation Right is held by the Kansas Water Office for the source of supply to which the above referenced application applies, namely the Mall Creek (Republican River Basin).

I understand that diversion of water pursuant to this application will be subject to regulation any time Minimum Desirable Streamflow requirements are not being met or when a Reservation Right upstream of a Federal Reservoir is being administered.

I also understand that if this application is approved, there could be times, as determined by the Division of Water Resources, when I would not be allowed to divert water. I realize that this could affect the economics of my decision to appropriate water.

I am aware of the above factors, and with the knowledge thereof, request that the Division of Water Resources proceed with processing and approval, if possible, of the above referenced application.

Brian E. Martin
Signature of Applicant

Brian E. Martin
Print Applicant Name

State of Kansas)
County of Clay) SS

I hereby certify that the foregoing instrument was signed in my presence and sworn to before me this 26th day of August, 2022.

Karla Sweet
Notary Public

My Commission Expires: 3-15-26



**FORM TO BE USED WHEN APPLICABLE
WHEN FILING AN APPLICATION FOR PERMIT
TO APPROPRIATE WATER FOR BENEFICIAL USE**

The Kansas Legislature has established minimum desirable streamflows for the streams listed below. If your proposed diversion of water is going to be from one of these watercourses or adjacent alluvial aquifers, please complete the back side of this page and submit it along with your application for permit to appropriate water.

Arkansas River
Big Blue River
Chapman Creek
Chikaskia River
Cottonwood River
Delaware River
Little Arkansas River
Little Blue River
Marais des Cygnes River
Medicine Lodge River
Mill Creek (Wabaunsee Co. area)
Neosho River

Ninnescah River
North Fork Ninnescah River
Rattlesnake Creek
Republican River
Saline River
Smoky Hill River
Solomon River
South Fork Ninnescah
Spring River
Walnut River
Whitewater River

Assurance Districts have been formed on the following rivers:

Kansas River Marias des Cygnes River Neosho River

The Kansas Water Office has Water Reservation Rights for the following reservoirs:

Big Hill	Marion
Clinton	Melvern
Council Grove	Milford
Elk City	Perry
Hillsdale	Pomona
John Redmond	Tuttle Creek

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. 50,657** of the applicants

BRIAN MARTIN
2144 BROUGHTON RD
CLAY CENTER, KS 67432-7442

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 **September 30, 2021**.
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	W¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
33	8S	4E																	40

3. That the authorized source from which the appropriation shall be made is surface water from Mall Creek (Republican), to be withdrawn by means of one (1) pump site located in the Northeast Quarter of the Northwest Quarter of the Southwest Quarter (NE¼ NW¼ SW¼) of Section 33, more particularly described as being near a point 2,185 feet North and 4,470 feet West of the Southeast corner of said section, in Township 8 South, Range 4 East, Clay County, Kansas, located substantially as shown on the map accompanying the application.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **1,000 gallons per minute (2.23 c.f.s.)** and to a quantity not to exceed **48 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, 2023** 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, 2027** 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 and maintained on the diversion works authorized by this permit in accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).
13. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.
14. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.
15. That failure without cause to comply with provisions of the permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.
16. That the 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.

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

BRIAN MARTIN
2144 BROUGHTON RD
CLAY CENTER, KS 67432-7442

October 11, 2022

RE: Appropriation of Water, File No. 50,657

Dear Mr. Martin:

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.

Your attention is directed to enclosures and to the terms, conditions, and limitations specified in these approval documents. Please note, that this approval is NOT conditioned the same as your current water rights located on Mall Creek (Specifically File Nos. 47,674 and 48,888). Under Appropriations of Water, File No. 50,657, you will NOT be granted permission to divert water if Minimum Desirable Stream Flow (MDS) criteria at the gage at Clay Center is NOT met and MDS administrations is occurring at the gage, OR if the Chief Engineer is enforcing the terms of the Milford Water Reservations Right.

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.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. 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:lh
Enclosure(s)

pc: Topeka Field Office


CERTIFICATE OF SERVICE

On this 11 day of October, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,657, dated 4 October 2022, was mailed postage prepaid, first class, US mail to the following:

BRIAN MARTIN
2144 BROUGHTON RD
CLAY CENTER, KS 67432-7442

With photocopies to:

Topeka Field Office



Division of Water Resources