

File No. 50659 15. Formation Code: 632 Drainage Basin: Stranger Creek County: LV Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity						
BATTERY #2352										Authorized		Additional				
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Rate gpm	Quantity mgy	Rate gpm	Quantity af	Overlap PD Files	
89080				SE NE SE	3	11S	21E	7	1540'	200'	GEOCTR	100	50	100	50	43487*
ENT 90353				SE NE SE	3	11S	21E		1840'	150'	Batt 1 of 2					
ENT 90354				NE SE SE	3	11S	21E		1240'	250'	Batt 1 of 2					

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

19. Limitation: _____ mgy at ~~100~~ **gpm** (cfs) when combined with file number(s) ~~43487~~ **5/22/2023**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) **KKopp**

20. Meter Required? Yes No To be installed by **12/31/2024** Date Acceptable Meter Installed _____

21. Place of Use	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				
CHK 30512 3 - 11S - 21E 1	WITHIN THE BOUNDARIES OF RURAL WATER DIST #9 LEAVENWORTH CO, KS																7a	N	See Comments	

Comments: Overlaps in Place of use with Water Right Nos. **19460, 43487, 43488, 43489 (50660 to be dismissed)**
***Change PD application for 43487 being processed with this application.**

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

May 9, 2023

DOUGLAS WOODHEAD
20441 STATE AVE
TONGANOXIE, KS 66086

Re: Pending Application, File No. 50,659

Dear Ms. Phillips:

The Division of Water Resources received your email dated March 9, 2023 and via phone call, in which you expressed objections to the proposed appropriation of groundwater under the above referenced application. The application is proposing to appropriate groundwater for municipal use. The Chief Engineer is required to approve applications for water appropriation unless the proposed appropriation will impair existing water rights or prejudicially and unreasonably affect the public interest.

While the Kansas Water Appropriation Act protects prior water rights, the law also recognizes that some reasonable fluctuations in groundwater levels are allowable, provided senior water right holders can continue their beneficial use of water. When processing an application, the law requires that we take into consideration the area, safe yield and recharge rate of the water supply, spacing to existing wells, and the priority and authorized quantity of existing water rights. Our evaluation includes a review of area well logs and relevant hydrographs. In some instances, we obtain additional hydrologic analysis in order to ensure that impairment is unlikely. If an application meets the rules and regulations, the Chief Engineer is obligated by law to approve it unless impairment is indicated.

In the event that an application is approved by the Chief Engineer and you believe the diversion of water is impairing a senior water right, you should notify your local Topeka Field Office at 785-296-5733. The Chief Engineer is required to investigate any complaint that a prior right to the use of water is being impaired. If such impairment is found, the Chief Engineer must secure water to satisfy prior water rights.

Kansas Department of Agriculture
Division of Water Resources - Topeka Field Office
1131 SW Winding Rd, Suite 400 (mailing address)
Topeka, KS 66615

Additional information may be found on our website at agriculture.ks.gov/divisions-programs/dwr. If you have any questions, please contact me at 785-564-6631 or Brandon.M.Milner@ks.gov. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

A handwritten signature in blue ink that reads "Brandon Milner". The signature is written in a cursive style.

Brandon Milner
Environmental Scientist
Water Appropriation Program

pc: Topeka Field Office

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: April 12, 2023

FROM: Brandon Milner

RE: Application, File No. 50,659

Leavenworth County RWD No. 9 has filed the referenced application to appropriate 50 million gallons of groundwater per calendar year at a diversion rate not to exceed 100 gallons per minute for municipal use from a proposed new well battery. The proposed place of use overlaps with Water Right Nos, 19,460, 43,487, 43488, 43,489. The application form was signed by the applicant saying they have access to the point of diversion.

Application no. 50,659 proposes to use an additional 50 million gallons along with the 55.767 million gallons appropriated by senior water rights. There is potential for an increase of 1,000 people by the year 2040. The Kansas Municipal Water Use report indicates an average of 86 g/p/c/d, for medium public water suppliers in Region 8M. An estimated quantity of water can be determined as follows: A future population of 3,675 persons x 86 gallons per day x 365 Days would equate to 115.36 million gallons. As noted above, the senior files authorize 55.767 million gallons, which is less than their projected needs, although the approval of an additional 50 million gallons with approval of this application would equal 105.36 million gallons needed by 2040. This is short of the projected 115.36 million gallons but the district does buy additional water from out outside source to make up the current difference.

The applicant did identify 8 wells within one half mile as nearby letters were sent out on February 14, 2023. Multiple responses were received as phone calls or emails but only one letter of concern was received on March 9th. The nearby neighbor has a domestic well (there are many in the area) and was concerned about lower water pressures from the same source of water being used for RWD No. 9 and nearby domestic homes. Per the requirements in K.A.R. 5-4-4 for all other aquifers, the minimum well spacing should be 1,320 feet to non-domestic wells and 660 feet to domestic wells, and spacing is met.

No well log was submitted with the application, however based on nearby well logs, the source of water is the Tonganoxie Sandstone. As per K.A.R. 5-3-11, the area of consideration was based on the extent of just the aquifer, which was determined to be 8,042 acres. Thus 8,042 acres x 5.9 inches of recharge x 100% recharge available provides a safe yield of 3,954.22 acre-feet. Existing water rights have appropriated 494.08 acre-feet, leaving 3,460.14 acre-feet available, and this application requesting 50 million gallons complies with safe yield (0 additional quantity).

Applications 50,659 and 50,660 were filed together in September 2021 as a replacement for a well authorized under Water Right 43,487 as production has declined with this well over the past few years. After much consideration, the plan to drill additional wells with application no. 50,660 was deemed unnecessary. Therefore, application no. 50,659 was changed from one well to a battery of two wells and application no. 50,660 will be dismissed as a voluntary dismissal was received on October 31, 2022.

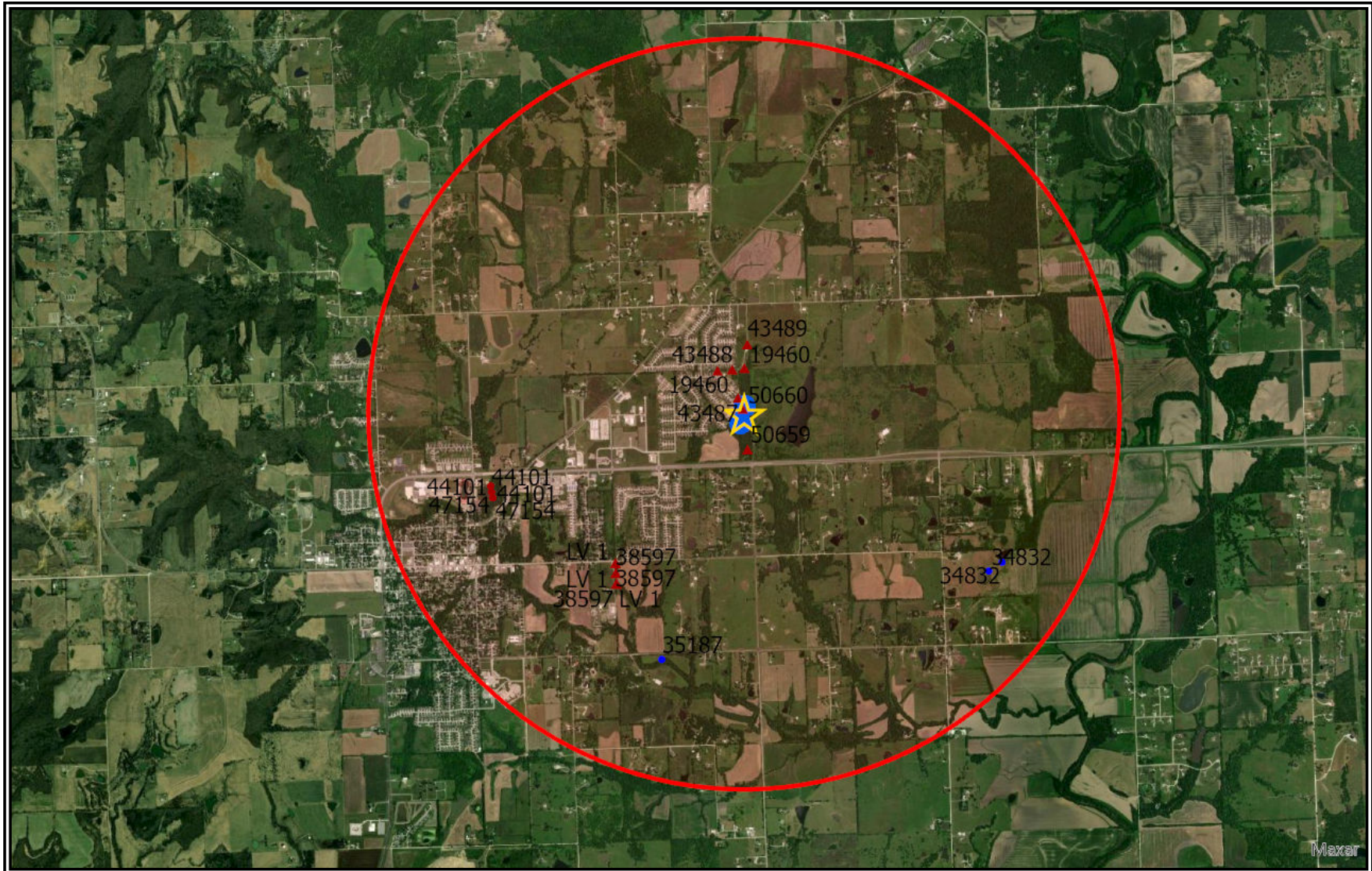
A change application for Water Right no. 43,487 has been filed in conjunction with this new application as the well authorized by that Water Right as declined in productivity. The Change application will request to move the authorized point of diversion to overlap with the point of diversion with this application.

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.

Brett Bunger, Water Commissioner of the Topeka Field Office, recommended approval of the referenced application in an e-mail dated April 18, 2023. Based on the above discussion, the application complies with rules and regulations, and approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced application be approved.

Brandon Milner
Environmental Scientist
Manhattan Headquarters

Safe Yield Report Sheet
Water Right- Proposed Point of Diversion
Point of Diversion in 03-11S-21E
Footages from SE corner- 1,400 feet North 165 feet West



Analysis Results

The selected PD is in an area OPEN to new appropriations.

The safe yield based on the variables listed below is 3,954.22 AF

Total prior appropriations in the circle is 800.96 AF. 153.44-153.44=494.08 AF

Total quantity of water available for appropriation is 3,153.26 AF **3,460.14 AF**

Safe Yield Variables

The area used for the analysis is set at 8,042 acres.

The potential annual recharge at the circle center is estimated to be 5.9 inches.

The percent of recharge available for appropriation is 100%.

Authorized Quantity values are as of 11-APR-2023 and are based on Appropriated and Vested ground water right and possible stream nodes for GMD #2. Domestic, Term and Temporary water rights have been excluded.

There are 10 water rights and 13 points of diversion within the circle.

File Number	Use	ST	SR	Q4	Q3	Q2	Q1	FeetN	FeetW	Sec	Twp	Rng	ID	Qind	Auth Quant	Add Quant	Tot Acres	Net Acres
A 19460 00	MUN	NK	G		SE	SE	NE	2740	150	03	11	21E	3	WR	110.48	110.48		
Same	MUN	NK	G		SE	SE	NE	2680	460	03	11	21E	4	WR				
A 38597 00	MUN	NK	G		NW	NE	SW	2305	3945	10	11	21E	1	WR	166.63	166.63		
Same	MUN	NK	G		NW	NE	SW	2600	3945	10	11	21E	3	WR				
Same	MUN	NK	G		NW	NE	SW	2005	3945	10	11	21E	2	WR				
V LV 1 00	MUN	AA	G		NW	NE	SW	2305	3945	10	11	21E	1	WR	154.00	154.00		
Same	MUN	AA	G		NW	NE	SW	2600	3945	10	11	21E	3	WR				
Same	MUN	AA	G		NW	NE	SW	2005	3945	10	11	21E	2	WR				
A 43487 00	MUN	NK	G		SE	NE	SE	1856	319	03	11	21E	5	WR	61.75	20.71		
A 43488 00	MUN	NK	G		SW	SE	NE	2652	873	03	11	21E	2	WR	31.77	25.37		
A 43489 00	MUN	NK	G		NE	SE	NE	3359	2	03	11	21E	6	WR	28.36	14.58		
A 44101 00	IRR	NK	G		NW	NW	NE	4708	2093	09	11	21E	1	WR	2.00	2.00	5.50	5.50
Same	IRR	NK	G		SW	NW	NE	4544	2070	09	11	21E	2	WR				
Same	IRR	NK	G		NW	NW	NE	4872	2115	09	11	21E	3	WR				
A 47154 00	IRR	NK	G		NW	NW	NE	4708	2093	09	11	21E	1	WR	2.30	0.30	5.50	0.00
Same	IRR	NK	G		SW	NW	NE	4544	2070	09	11	21E	2	WR				
Same	IRR	NK	G		NW	NW	NE	4872	2115	09	11	21E	3	WR				
A 50659 00	MUN	AY	G		SE	SE	SE	380	100	03	11	21E	7	WR	153.44	153.44		
A 50660 00	MUN	AY	G		SE	NE	SE	1540	200	03	11	21E	8	WR	153.44	153.44		

Limitations

File Number	Seq Num	Limitations
A 38597 00	1	550GPM COM/W #LV 001
A 43487 00	1	42.749 MGY COM/W #19460

File Number	Seq Num	Limitations
A 43488 00	1	51.016 MGY COM/W #19460 & #43487
A 43489 00	1	55.767 MGY COM/W #19460, #43487 & #43488
A 47154 00	1	2.3 AF/YR @ 11 GPM COM/W #44101

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. 50,659** of the applicant

**LEAVENWORTH RWD 9
PO BOX 295
TONGANOXIE KS 66086**

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 municipal use within the boundaries of Rural Water District No. 9, Leavenworth County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of (2) wells, with a geographical center located in the Southeast Quarter of the Northeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 3, more particularly described as being near a point 1,540 feet North and 200 feet West of the Southeast corner of said section, in Township 11 South, Range 21 East, Leavenworth 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 **100 gallons per minute (0.22 c.f.s.)** and to a quantity not to exceed **50 million gallons** of water for any calendar year.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2024**, 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, 2044**, 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.

17. That this permit is further limited such that both wells shall be located within a three hundred (300) foot radius circle, in the same local source of supply, and shall supply water to a common distribution system.

18. That the permit holder shall submit a progress report to the office of the Chief Engineer by March 1, following the tenth full calendar year after the permit was issued. The progress report must be submitted on a form prescribed by the Chief Engineer, and shall compare annual water use projected in the original application with the actual annual water use for the prior 10 years. The progress report must document compliance with the approved conservation plan, contain sufficient details to determine the extent of perfection of the water right during the previous ten years, and demonstrate how the water right, in association with other water rights, meets the municipal use need.

19. 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.

Ordered this 23 day of May, 2023, 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 23 day of May, 2023, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Tony Jay Connors
Notary Public



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 all wells with a diversion rate of 100 gallons per minute or more drilled under the authority of this permit shall have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer. This tube or device shall be suitable for making water level measurements and shall be maintained in a condition satisfactory to the Chief Engineer.

13. 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 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).

14. 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.

15. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

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.

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

May 24, 2023

CRAIG LOHMAN
LEAVENWORTH RWD 9
PO BOX 295
TONGANOXIE KS 66086

RE: Appropriation of Water
File No. 50,659

Dismissal of Application
File No. 50,660

Water Right Change Approval
File No. 43,487

Dear Mr. Lohman:

Enclosed is a permit authorizing Leavenworth RWD 9 to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. The new application has been processed in conjunction with your application to change the authorized point of diversion, under Water Right File No. 43,487, the approval of which is also enclosed. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in the approved permit and the change approval order. Also enclosed are the Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing Application, File No. 50,660, as requested in the District's form letter dated October 31, 2022.

For the approved permit and change approval, a 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 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.

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.

LEAVENWORTH RWD 9
File Nos. 50,659 50,660 and 43,487
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. 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 and Change Applications Unit Supervisor
Division of Water Resources

KAB:bmm

Enclosure(s)

pc: Topeka Field Office
Bartlett & West (Louis P. Funk, P.E.)

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 24 day of May, 2023, I hereby certify that the foregoing Approval of Application for Change in Place of Use, Water Right, File No. 43,487, dated May 18, 2023, was mailed postage prepaid, first class, US mail to the following:

LEAVENWORTH RWD 9
BOX 295
TONGANOXIE KS 66086

With a photocopy to:

BARTLETT & WEST
1200 SW EXECUTIVE DR
TOPEKA KS 66615

KDA-DWR Topeka Field Office



Division of Water Resources Staff