



File No. <b>50,819</b>	15. Formation Code:	Drainage Basin: <b>Kansas River</b>	County: <b>LV</b>	Special Use:	Stream: Kent Creek Trib 1 (Kansas)																
16. Points of Diversion			17. Rate and Quantity																		
T MOD DEL PDIV ENT			Authorized Rate gpm Quantity af Overlap PD Files			Additional Rate gpm Quantity af															
Qualifier	S	T	R	ID	'N	'W															
<del>DEL</del>																					
<del>MOD</del> <b>89693</b>	<b>SW</b>	<b>NE</b>	<b>NW</b>	<del>13</del> <b>12S</b>	<b>20E</b>	<b>1</b>	<b>4,276</b>	<b>3,745</b>	<b>100</b>	<b>60</b>	<b>100</b>	<b>60</b>	<b>NONE</b>								
<b>ENT 90534</b>	<b>SW</b>	<b>NE</b>	<b>NW</b>	<b>13 12S</b>	<b>20E</b>		<b>4276</b>	<b>3745</b>													
18. Storage: Rate <b>NF</b>			Quantity <b>60</b> ac/ft			Additional Rate <b>NF</b>			Additional Quantity <b>60</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>12/31/2024</b> Date Acceptable Meter Installed _____																					
21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
T																					
MOD																					
DEL	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				
ENT																					
<b>MOD</b>	<b>70942</b>	<b>13</b>	<b>12S</b>	<b>20E</b>	<b>1</b>					<b>11</b>	<b>9</b>	<b>2</b>	<b>30</b>					<b>52</b>	<del>7a</del> <b>7b</b> <b>NO</b> <b>NONE</b>		
Comments																					

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

**TO:** Files

**DATE:** September 5, 2023

**FROM:** Lloyd Hemphill

**RE:** Application, File No. 50,819

Gina Montalbano and Bryan Zesiger have filed the application referenced above for a permit to store 60 acre-feet of surface water in a reservoir at the rate of natural flows and to re-divert 60 acre-feet at the rate of 100 gallons per minute for irrigation use. The proposed point of diversion is an existing reservoir located in the Southwest Quarter of the Northeast Quarter of the Northwest Quarter (SW $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 13, Township 12 South, Range 20 East, Leavenworth County, Kansas. The dam is located on Kent Creek Trib 1 (Kansas River). No other files overlap this point of diversion. The point of diversion is owned by Z&M Vineyard Destination KS LLC (applicants) and a supplemental sworn statement was signed by Gina Montalbano stating legal access. The place of use (52 acres) is owned by the same landowner as described on the irrigation use supplemental sheet. The water will be used to irrigate grapevines and fruit trees. The requested quantity is 1.15 acre-feet per acre which is more than the maximum reasonable quantity for irrigation of standard crops in Leavenworth County (1 AF/ac), per K.A.R. 5-3-24. However, grapevines and fruit trees are specialty crops which require additional water. According to the Irrigation Supplemental Sheet, grapevines require 25 to 30 inches of rain and this appropriation will be used to supplement precipitation as needed. Irrigation will primarily occur during the growing season in the summer months. The requested quantity appears reasonable for irrigation of the proposed specialty crops.

The point of diversion is an existing pond that was constructed more than 30 years ago. The reservoir surface area is about 3 acres. The estimated reservoir capacity is about 13 acre-feet. The net evaporation in this area is 5 inches per year resulting in a total evaporation of 1.25 acre-feet. The applicants did not request any storage quantity above the amount designated for direct use. Therefore, the requested storage quantity of 60 acre-feet is reasonable, although it is about 4.6 times the estimated reservoir volume. The requested rate of diversion of 100 gallons per minute appears reasonable as well.

The existing pond was reviewed by DWR Water Structures Program staff and determined to be non-jurisdictional to all Structures permitting (see 8/14/2023 email from Janelle Phillips and Ambrose Ketter).

Runoff computations were completed considering a normal precipitation of 39 inches, soil complex number of 77, and drainage area of approximately 63 acres. These calculations determined that the drainage basin will generate 97.55 acre-feet of runoff in 1 out of every five (5) years (a 20% chance), which is sufficient to cover the appropriation.

Notification letters were sent to upstream and downstream landowners on July 12, 2023. No response was received. According to the WRIS database, there is only one other surface water right within a two-mile radius. It is a pond on a different tributary flowing to a different stream. No senior water rights will be impaired with approval of this application.

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.

Brett Bunger, Water Commissioner, Topeka Field Office, recommended in a September 1, 2023 e-mail that the referenced new applications should be approved. Based on the above discussion, that this area is open to new appropriations, the proposed appropriation of water is reasonable, the dam is non-jurisdictional to Structures permitting, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Lloyd Hemphill  
Environmental Scientist  
Topeka Field Office

## Hemphill, Lloyd [KDA]

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**From:** Bunger, Brett [KDA]  
**Sent:** Friday, September 1, 2023 3:23 PM  
**To:** Hemphill, Lloyd [KDA]  
**Subject:** RE: Application, File No. 50819: For your recommendation

Lloyd, I don't see any issues. Please proceed with approval.

Thanks

Brett

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**From:** Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>  
**Sent:** Wednesday, August 30, 2023 2:04 PM  
**To:** Bunger, Brett [KDA] <Brett.Bunger@ks.gov>  
**Subject:** Application, File No. 50819: For your recommendation

Brett,

Will you provide your recommendation on Application, File No. 50,819. This is a storage and re-diversion project for irrigation of a vineyard in LV CO. The project involves an existing pond which is not jurisdictional to Structures permitting.

Thanks,  
Lloyd

Lloyd Hemphill, Environmental Scientist  
Kansas Department of Agriculture  
Division of Water Resources, Topeka Field Office  
1131 SW Winding Rd, Suite 400  
Topeka, KS 66615  
Office: (785) 296-5733

## Hemphill, Lloyd [KDA]

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**From:** Ketter, Ambrose [KDA]  
**Sent:** Monday, August 14, 2023 10:38 AM  
**To:** Phillips, Janelle [KDA]; Hemphill, Lloyd [KDA]  
**Subject:** RE: Application, File No. 50819: Structures Determination

I'm seeing no more than 13 feet tall and less than 3 surface acres. It does not qualify as a dam.

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**From:** Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>  
**Sent:** Monday, August 14, 2023 8:30 AM  
**To:** Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>  
**Cc:** Ketter, Ambrose [KDA] <Ambrose.Ketter@ks.gov>  
**Subject:** RE: Application, File No. 50819: Structures Determination

It does not need a structures permit. I don't believe it needs a dam permit but I would like Ambrose to verify that.

Janelle Phillips, P.E., CFM  
Stream Obstruction Team Lead  
Water Structures Program  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, KS 66502  
Office: 785-564-6656  
Cell: 785-307-8292  
[Janelle.phillips@ks.gov](mailto:Janelle.phillips@ks.gov)

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**From:** Hemphill, Lloyd [KDA] <[Lloyd.Hemphill@ks.gov](mailto:Lloyd.Hemphill@ks.gov)>  
**Sent:** Friday, August 11, 2023 3:16 PM  
**To:** Phillips, Janelle [KDA] <[Janelle.Phillips@ks.gov](mailto:Janelle.Phillips@ks.gov)>  
**Subject:** Application, File No. 50819: Structures Determination

Janelle,

I am processing Application, File No. 50,819 which involves a small pond in Leavenworth County that was constructed 30 + years ago. See the attached site map. The pond is located in the SW NE NW Sec 13-T12S-R20E. (39.012263, -95.144035)

Here is some basic information:

Surface area: 3 acres  
Maximum depth: around 10 to 12 feet (purely based on the USGS topo)  
Drainage area: about 63 acres

Can you make any determination of Structures permitting requirements from this basic information or do I need to get the applicant to provide more?

Thanks,  
Lloyd

<b>PDFs</b>
<a href="#">Mean Annual Precipitation</a>
<a href="#">Soil Cover Complex</a>

Mean Annual Precip, in	<b>39</b>
Soil Cover Complex No.	<b>77</b>
Drainage Area, acres	<b>63</b>
<b>Runoff at 20% Chance, AF</b>	<b>97.55</b>

**DO NOT EDIT BELOW THIS LINE**

% Chance Firm Coefficients			
	50%	80%	90%
a	0.5317	0.1216	0.0527
b	1.0815	1.2538	1.3547

%Chance Firm	Runoff, in	Comp. Runoff, in
50%	6.20	<b>6.20</b>
80%	2.10	<b>2.07</b>
90%	1.14	<b>1.17</b>
20%		<b>18.58</b>

Std. Dev. 90%	1.32
Std. Dev. 80%	1.29
Avg	1.30

Mean annual runoff for CN = 75, inches	9.14
Mean annual runoff for CN = 80, inches	10.53
Interp. Mean annual runoff for CN = 77, inches	9.69

**Landowners within ½ mile upstream and downstream of the project property.**

Upstream

The stream does not extend upstream of the project property.

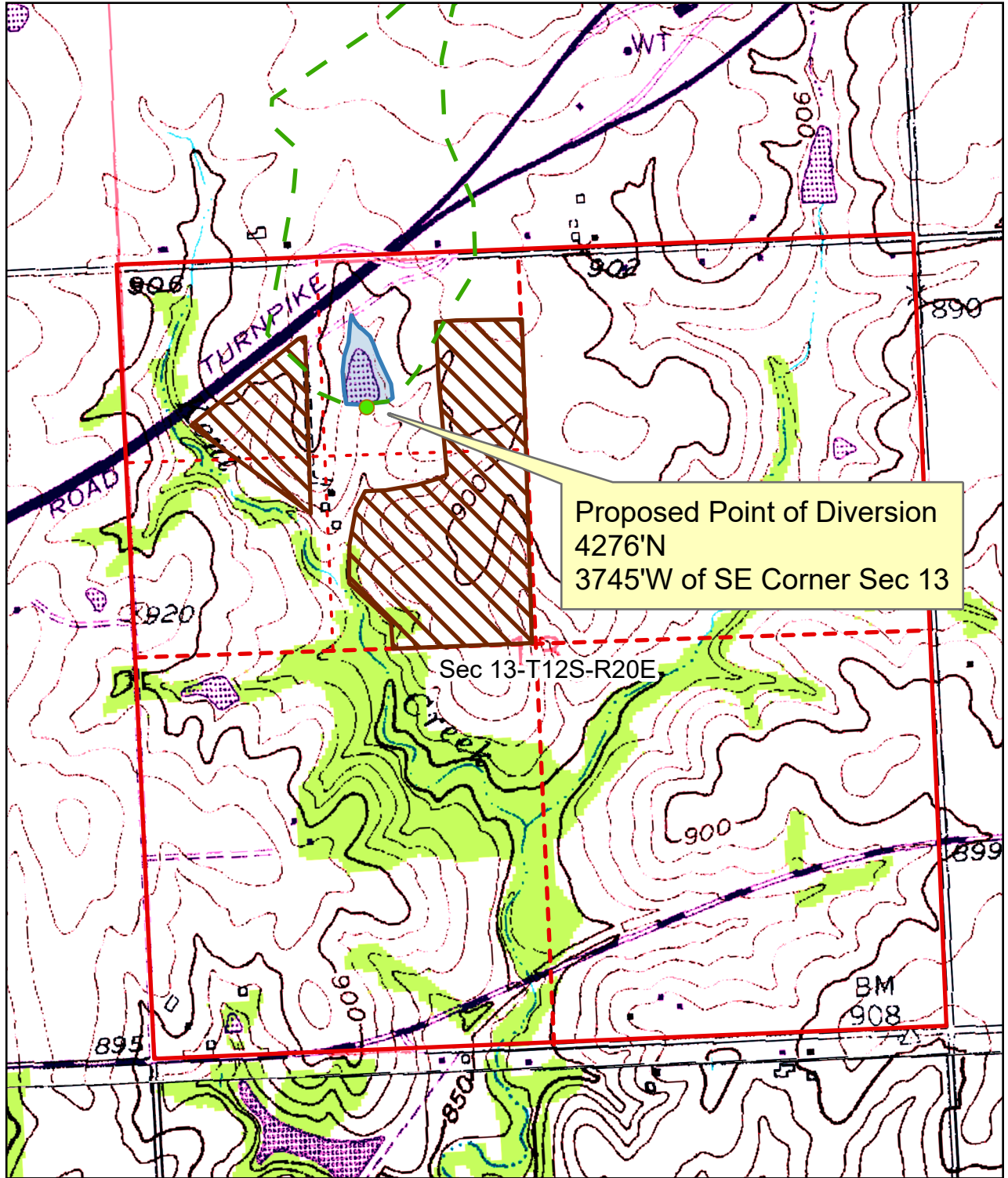
Downstream

ANDREW TOCHTROP  
12856 246TH ST  
LAWRENCE KS 66044

HELEN B & TERRY W COX  
12612 246TH ST  
LAWRENCE KS 66044



# APPLICATION FILE NO. 50,819

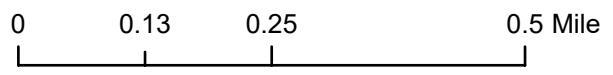


Proposed Point of Diversion  
4276'N  
3745'W of SE Corner Sec 13

 Proposed Place of Use

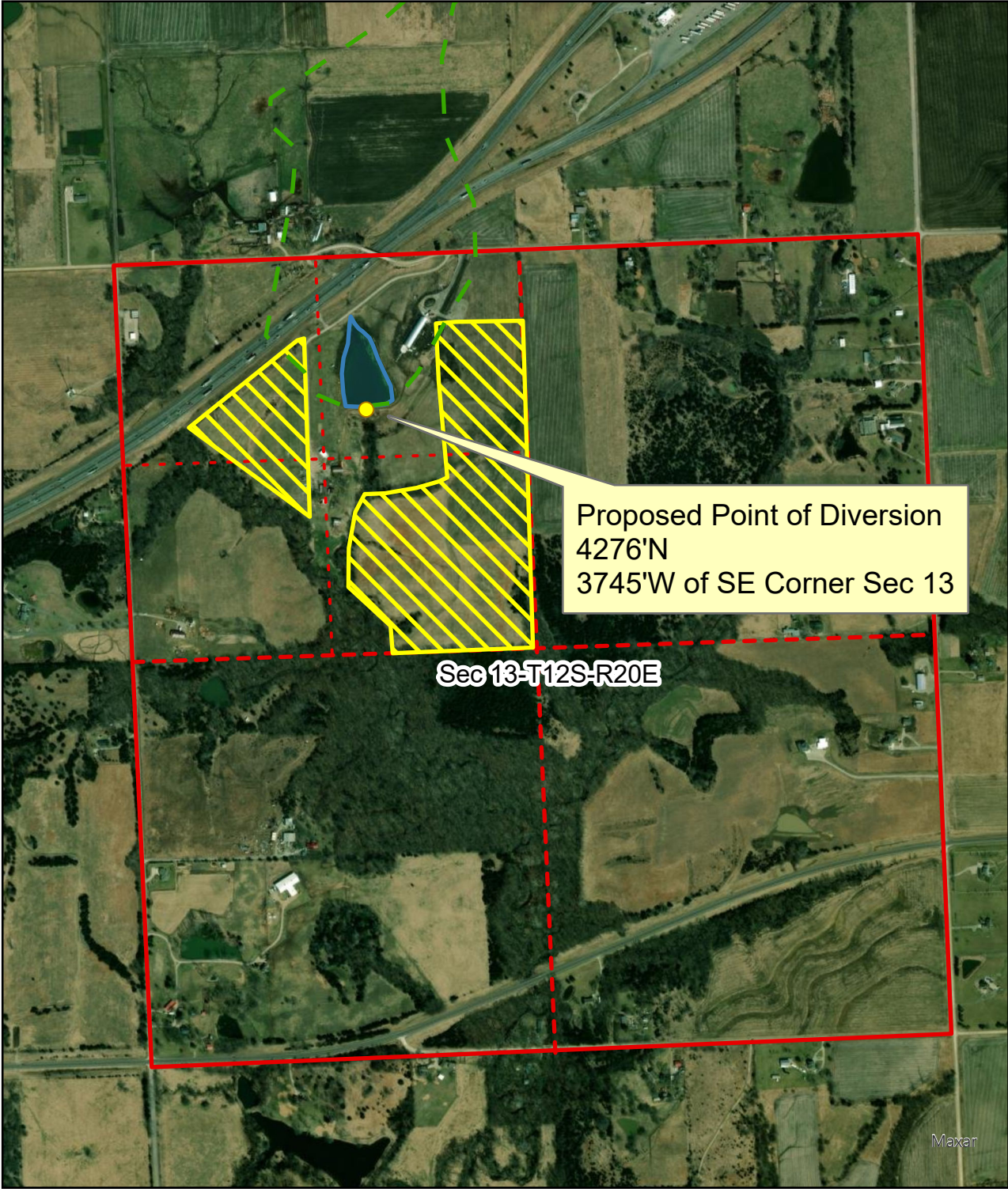


Scale: 1:12,000



Map prepared by: LHH/TFO 7.11.2023

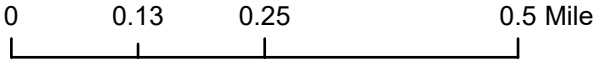
# APPLICATION FILE NO. 50,819



 Proposed Place of Use



Scale: 1:12,000



Map prepared by: LHH/TFO 7.11.2023



# 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 PERMIT TO PROCEED

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,819** of the applicant

**GINA MONTALBANO AND BRYAN ZESIGER**  
**24305 LORING RD**  
**LAWRENCE KS 66044**

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 **June 27, 2022**.

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	
13 - 12S - 20E					11	9	2	30									52

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Kent Creek, designated in the office of the Chief Engineer as Kent Creek Trib 1 (Kansas), 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 **60 acre-feet** of water per calendar year in one (1) reservoir created by a dam located in the Southwest Quarter of the Northeast Quarter of the Northwest Quarter (SW¼ NE¼ NW¼) of Section 13, more particularly described as being near a point 4,276 feet North and 3,745 feet West of the Southeast corner of said section, in Township 12 South, Range 20 East, Leavenworth County, Kansas, to provide **60 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 **100 gallons per minute (0.22 c.f.s.)**. A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. 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.

5. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2028**, 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 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 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 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.

16. 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 5<sup>th</sup> day of September, 2023, in Manhattan, Riley County, Kansas.



*Earl D. Lewis Jr.*

Earl D. Lewis Jr., P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas )  
                          ) SS  
County of Riley )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of September, 2023, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

*Melinda Jennings*  
\_\_\_\_\_  
Notary Public





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

September 18, 2023

GINA MONTALBANO AND BRYAN ZESIGER  
24305 LORING RD  
LAWRENCE KS 66044

RE: Appropriation of Water  
File No. 50,819

Dear Sir and Madam:

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 re-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 may be submitted online for no charge at [www.kswaterusereport.org](http://www.kswaterusereport.org). Reports submitted in paper form will be assessed a \$20 per file number paper filing fee.

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.

Also included is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at [agriculture.ks.gov/dwr](http://agriculture.ks.gov/dwr). If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local 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:kak:lh  
Enclosure(s)  
pc: Topeka Field Office

## 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 18 day of September, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,819, dated September 5, 2023, was mailed postage prepaid, first class, US mail to the following:

GINA MONTALBANO AND BRYAN ZESIGER  
24305 LORING RD  
LAWRENCE KS 66044

With photocopies to:

KDA-DWR Topeka Field Office

  
Division of Water Resources