

**Kansas Department of Agriculture**  
**Division of Water Resources**  
 APPROVAL OF NEW APPLICATION WORKSHEET

1. File No.: <b>50,820</b>	2. Status Change Date: <b>1/21/2025</b>	4. Field Office: <b>01 - Topkea</b> GMD: Structures File No.: <b>LNO-0171</b> Filing/Priority Date: <b>6/29/2022</b> Application Complete Date:
3. Package File No(s):		
5a. <input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change  <b>MICHAEL RESTIFO</b> <b>2036 HIGHLANDS DRIVE</b> <b>HOOVER, AL 35244</b>	Person ID <b>68474</b> Add Seq#	5b. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change  Person ID Add Seq#
<del>5c. <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change  <b>5a</b></del>	<del>Person ID Add Seq#</del>	5d. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change  Person ID Add Seq#
6. Change No.: <input type="checkbox"/> PD <input type="checkbox"/> PU <input type="checkbox"/> UMW Base Acres:      Year:      Min Reasonable Q: Previous UMW: MDS Gauge:      Active Admin? <input type="checkbox"/> Completion Date: <b>12/31/2026</b> Perfection Date: <b>12/31/2030</b>		7. Use of Water <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water UMW: <b>REC-Recreational</b> UMW: UMW:
8. Action Trail		
9. Special Conditions		
10. 5YR Allocation    Type:    Start Year:    5YR Quantity:    Base Acres: Comment:		
11. Sand & Gravel    Proj ID: <input type="checkbox"/> Active <input type="checkbox"/> Dredge <input type="checkbox"/> IND Evap <input type="checkbox"/> Jr Evap <input type="checkbox"/> Other Diversion <input type="checkbox"/> Rpt on Sr		
12. Waiver    Rule ID: <input type="checkbox"/> New    Date Requested: Applies:      Rule No.:      Justification: Rule Type: Rule SubType:		
Comments	Processed <b>1/21/2025</b>	Entered
	Reviewed <b>KAK</b> <b>1/21/2025</b>	<b>1/22/2025</b> <b>KAnderson</b>

File No. <b>50,820</b>	13. County: <b>NO- Neosho</b> Basin: <b>Neosho River</b> Stream: <b>Neosho River Trib 2 (Neosho River)</b>		
Structures File No: <b>LNO-0171</b>	Aquifer Code:	Special Use Area:	

14. Points of Diversion, Rates & Quantities										Oty	Rate	Storage Qty		Storage Rate	Overlaps	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Auth	Add	Auth	Add	Auth/Add			
<b>MOD</b>	<b>89680</b>	<b>NE SW SW</b>	<b>24</b>	<b>30S</b>	<b>20E</b>	<b>4</b>	<b>820</b>	<b>4100</b>					<b>30.83</b>	<b>30.83</b>	<b>NF</b>	<b>none</b>
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15. Limitations	Type:	Quantity:	Rate:	combined with file no(s):
	Type:	Quantity:	Rate:	combined with file no(s):

16. Metering     Metering Required     Anti-Reverse Required     Seal Required    Compliance Date: **12/31/2026**

17. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
PUSE ID	S	T	R	ID	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE									
<b>CHK</b>	<b>70931</b>	<b>24</b>	<b>30S</b>	<b>20E</b>	<b>4</b>	<b>WETLAND MARSH (S½ SW¼)</b>																	<b>5b</b>	<input type="checkbox"/>	<b>none</b>				
<input type="checkbox"/> +																													
<input type="checkbox"/> #																													
<input type="checkbox"/> ^																													
<input type="checkbox"/> **																													
<input type="checkbox"/> ++																													

18. Point of Diversion and Place of Use Overlaps *  +  #  ^	**  ++  ##  ^^
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# MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

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Date: December 20, 2024

From: Kris Neuhauser, Environmental Scientist

Re: New Application File No. 50,820 – Michael Restifo

## Summary

Michael Restifo has filed an application to appropriate surface water for recreational use in a marsh, requesting 30.83 acre-feet per calendar year to be diverted at a rate of all natural flows. The point of diversion will be the intersection of the centerline of the proposed dam and the centerline of a tributary to the Neosho River (Neosho River Trib 2).

## Reasonable Rate and Quantity

The 46.63 acre-feet originally requested has been reduced to 30.83 acre-feet. The smaller quantity was calculated based on a stage storage table created by NRCS licensed engineer, Shawn T. Sherraden. The quantity is associated with the auxiliary spillway rather than the top of the dam. An aerial view of the marsh and storage table are both included with the application.

## Source of Supply and Safe Yield

The source of supply is Neosho River Tributary 2 (Neosho River Basin). Safe yield requirements do not apply to surface water.

## Nearby Water Rights

The nearest upstream water right is File No. 45,127, which is over 1.3 miles away if you follow the tributary. The nearest downstream water right, which is located on the Neosho River itself, is authorized by File Nos. 44,076 and 47,312. Following the tributary into the Neosho River, the water rights are just under 1 mile away. Three nearby notification letters were mailed to adjacent landowners on November 15, 2024. Kim Lamb called in on November 22, 2024, with some concern. Her family has cattle who use Neosho River Trib 2 as a drinking source. The land owned by the Lamb's is located West of the proposed point of diversion and place of use, which is upstream on Neosho River Trib 2. New Application, File No. 50,820 should not negatively impact the Lambs.

## Recommendations

Nathan Westrup, Water Commissioner of the Topeka Field Office, recommended approval of the application in an email dated January 17, 2025. Based on the above discussion, the area is open to new appropriations and approval of the application should not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Kris Neuhauser  
New Applications Lead  
Water Appropriation Program

**From:** "Westrup, Nathan [KDA]"  
**Sent:** Fri 1/17/2025 4:46 PM  
**To:** "Neuhauser, Kris [KDA]" <Kris.Neuhauser@ks.gov>  
**CC:** "Johnson, Shaun [KDA]" <Shaun.Johnson@ks.gov>  
**Subject:** RE: 50820 recommendation request

Hey Kris,

I have no objection to approval.

Thanks,

**Nathan Westrup, Water Commissioner**

Topeka Field Office  
Division of Water Resources  
Kansas Department of Agriculture  
Phone: 785-296-7064  
Mobile: 785-230-2991  
[Nathan.Westrup@ks.gov](mailto:Nathan.Westrup@ks.gov)

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**From:** Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>  
**Sent:** Friday, January 17, 2025 12:14 PM  
**To:** Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>  
**Cc:** Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>  
**Subject:** RE: 50820 recommendation request

Hi Nate,

Attached is an updated memo for 50820. There was one phone call from a Kim Lamb after I send nearby letters. They own cattle who drink from the tributary. Their land is to the west however, which is upstream of 50820. Shouldn't be an issue.

Let me know if you have any questions or need anything further. Thanks!

***Kris Neuhauser***

New Applications Lead  
Kansas Department of Agriculture, Division of Water Resources  
Cell: 785-370-1451  
Office: 785-564-6643

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**From:** Westrup, Nathan [KDA] <[Nathan.Westrup@ks.gov](mailto:Nathan.Westrup@ks.gov)>  
**Sent:** Friday, November 15, 2024 11:00 AM  
**To:** Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>  
**Cc:** Johnson, Shaun [KDA] <[Shaun.Johnson@ks.gov](mailto:Shaun.Johnson@ks.gov)>  
**Subject:** RE: 50820 recommendation request

Perfect, thanks

**Nathan Westrup, Water Commissioner**

Topeka Field Office  
Division of Water Resources  
Kansas Department of Agriculture  
Phone: 785-296-7064

Mobile: 785-230-2991  
[Nathan.Westrup@ks.gov](mailto:Nathan.Westrup@ks.gov)

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**From:** Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>  
**Sent:** Friday, November 15, 2024 10:57 AM  
**To:** Westrup, Nathan [KDA] <[Nathan.Westrup@ks.gov](mailto:Nathan.Westrup@ks.gov)>  
**Cc:** Johnson, Shaun [KDA] <[Shaun.Johnson@ks.gov](mailto:Shaun.Johnson@ks.gov)>  
**Subject:** RE: 50820 recommendation request

Sounds good, thanks Nate. I'll wait for the 15-day deadline and then send you an updated memo.

Thanks!

***Kris Neuhauser***

New Applications Lead  
Kansas Department of Agriculture, Division of Water Resources  
Cell: 785-370-1451  
Office: 785-564-6643

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**From:** Westrup, Nathan [KDA] <[Nathan.Westrup@ks.gov](mailto:Nathan.Westrup@ks.gov)>  
**Sent:** Friday, November 15, 2024 10:55 AM  
**To:** Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>  
**Cc:** Johnson, Shaun [KDA] <[Shaun.Johnson@ks.gov](mailto:Shaun.Johnson@ks.gov)>  
**Subject:** RE: 50820 recommendation request

Hey Kris,

I agree with your assessment, ASW at elevation 852.

Thanks!

**Nathan Westrup, Water Commissioner**

Topeka Field Office  
Division of Water Resources  
Kansas Department of Agriculture  
Phone: 785-296-7064  
Mobile: 785-230-2991  
[Nathan.Westrup@ks.gov](mailto:Nathan.Westrup@ks.gov)

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**From:** Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>  
**Sent:** Friday, November 15, 2024 10:37 AM  
**To:** Westrup, Nathan [KDA] <[Nathan.Westrup@ks.gov](mailto:Nathan.Westrup@ks.gov)>  
**Cc:** Johnson, Shaun [KDA] <[Shaun.Johnson@ks.gov](mailto:Shaun.Johnson@ks.gov)>  
**Subject:** 50820 recommendation request

Hi Nate,

Attached is a draft memo for New App 50820, for your review and recommendation. Took a quick look at the marsh plans they had attached with Kristen. We're thinking we need to knock back their quantity to the quantity associated with the auxiliary spillway (30.83 AF) as opposed to the top of dam quantity proposed (43.63 AF). The storage table NRCS generated is on page 9 of the app in Docuware.

What are your thoughts? I'm sending three nearby notification letters today, so no rush on a recommendation. Just wanted to get it to you since we had the question regarding quantity. I'll update my memo accordingly post 15 days.

Thanks!

***Kris Neuhauser***

New Applications Lead

Kansas Department of Agriculture, Division of Water Resources

Cell: 785-370-1451

Office: 785-564-6643

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. 50,820** of the applicant

**MICHAEL RESTIFO  
2036 HIGHLANDS DRIVE  
HOOVER, AL 35244**

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 29, 2022**.
2. That the water sought to be appropriated shall be used for recreational use in a wetland marsh, located in the South Half of the Southwest Quarter (S $\frac{1}{2}$  SW $\frac{1}{4}$ ) of Section 24, in Township 30 South, Range 20 East, Neosho County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of the Neosho River, designated in the office of the Chief Engineer as Neosho River Trib 2, not needed to satisfy all vested rights and prior appropriation rights to be accumulated to a maximum extent of **30.83 acre-feet** per calendar year, in a wetland marsh created by a water control structure located in the Northeast Quarter of the Southwest Quarter of the Southwest Quarter (NE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 24, more particularly described as being near a point 820 feet North and 4,100 feet West of the Southeast corner of said section, in Township 30 South, Range 20 East, Neosho County, Kansas, located substantially as shown on the topographic map accompanying the application.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2026**, 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, 2030**, 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.

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 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.

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

14. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

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 the provisions of this 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 21<sup>st</sup> day of January, 2025, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

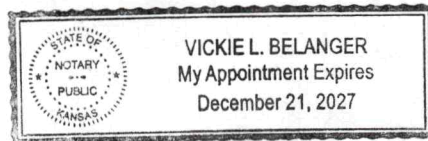
Lane P. Letourneau, P.G.  
Water Appropriation Program Manager  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas     )  
                                  ) SS  
County of Riley     )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of January, 2025, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Vickie L. Belanger

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

January 24, 2025

MICHAEL RESTIFO  
2036 HIGHLANDS DRIVE  
HOOVER AL 35244

RE: Appropriation of Water  
File No. 50,820

Dear Mr. Restifo:

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 this 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 the 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 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. You may submit your report online for no fee at [kswaterusereport.org](http://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 with your permit 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 is available on our website at [agriculture.ks.gov/dwr](http://agriculture.ks.gov/dwr). If you have any questions or need assistance, 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 blue ink that reads "Kristen A. Baum". The signature is written in a cursive style.

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

KAB:kak:kjn  
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.

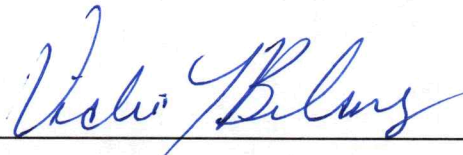
## CERTIFICATE OF SERVICE

On this 24 day of January, 2025, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,820, dated January 21, 2025, was mailed postage prepaid, first class, US mail to the following:

MICHAEL RESTIFO  
2036 HIGHLANDS DRIVE  
HOOVER AL 35244

With photocopies to:

KDA-DWR Topeka Field Office



Division of Water Resources