

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

1. File No.: 51101	2. Status Change Date: 4/10/2025	4. Field Office: 01 - Topkea GMD: Structures File No.: DJF-0595 Filing/Priority Date: 8/30/23 Application Complete Date: 4/8/25	
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 Person ID 69160 Add Seq# THOMAS M & TRACEY L FUNK 17305 MARION RD NORTONVILLE KS 66066		5b. <input checked="" type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID 69161 Add Seq# SUSAN M AKERLEY 176 MIDDLESEX RD TOPSHAM ME 04086	
5c. <input checked="" type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID 69162 Add Seq# GIGSTAD FAMILY TRUST 8413 NW 124TH CIR OKLAHOMA CITY OK 73142		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/Start Date: 12/30/2026 Perfection/Expiration Date: 12/31/2030		7. Use of Water <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water UMW: IRR-Irrigation 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 BMM 4/8/25	Entered
		Reviewed KAK 4/8/2025	4/10/2025 KAnderson

File No. 51101		13. County: JF-Jefferson Basin: Delaware River Stream: Brush Creek 2 Trib 2 (Delaware)																						
Structures File No: DJF-0595		Aquifer Code: Special Use Area:																						
14. Points of Diversion, Rates & Quantities																								
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Oty Auth	Add	Rate Auth	Add	Storage Qty Auth	Add	Storage Rate Auth/Add	Overlaps								
CHK	90524	NW	NE	NW	14	8S	18E	1	4625	3920	290	290	1200	1200	377.5	377.5	NF	+						
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15. Limitations																								
Type:		Quantity:		mgpy		Rate:		gpm		combined with file no(s):														
Type:		Quantity:				Rate:				combined with file no(s):														
16. Metering																								
<input checked="" type="checkbox"/> Metering Required <input type="checkbox"/> Anti-Reverse Required <input type="checkbox"/> Seal Required Compliance Date: 12/31/2026																								
17. Place of Use																								
PDIV	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
					NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
CHK	71515	11	8S	18E	1								40			40		40	40		160	5A	<input type="checkbox"/>	+
MOD-CHK	71516	14	8S	18E	1	29	21	20	20	9											99	5A	<input type="checkbox"/>	+
ENT-CHK	72204	14	8S	18E								20									20	5B	<input type="checkbox"/>	#
ENT-CHK	72205	14	8S	18E				20	20												20 40	5C	<input type="checkbox"/>	^
																			<input type="checkbox"/>	**				
																			<input type="checkbox"/>	++				
18. Point of Diversion and Place of Use Overlaps																								
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4/10/2025

KKopp

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

M E M O R A N D U M

TO: Files

DATE: February 28, 2025

FROM: Brandon Milner

RE: Application, File 51,101

Thomas Funk has filed the application referred to above for a permit to store 377.5 acre-feet of surface water in a proposed reservoir at a rate not to exceed all natural flows of Brush Creek 2 Tributary 2. This will then be re-diverted 290 acre-feet of the stored water for irrigation use. The reservoir is located within the Delaware River drainage basin. The point of diversion is the centerline of a dam located in the Northwest Quarter of Section 14, Township 8 South, Range 18 East, in Jefferson County. The applicant has signed the application form stating he has access to the point of diversion. There are no overlaps in place of use or point of diversion. The applicant owns part of the place of use along with two other landowners which comprises of 319 acres.

Runoff calculations determined that there is 16.89 inches of runoff per acre, and the drainage area of 323 acres will provide for 454.6 acre-feet of runoff in 1 out of every five (5) years (a 20% chance). Therefore, per K.A.R. 5-6-5, the runoff quantity is NOT the limiting factor.

The total quantity of water that will be rediverted (290 acre-feet), is less than the maximum allowable to irrigate the proposed 319 acres, based on the allowable quantity for irrigation in Jefferson County of 1.0 AF/acre. However, additional water supplied for row crops in Eastern Kansas can be seen as a complementary source of moisture since the area usually receives adequate rainfall.

The applicant identified two upstream landowners and two downstream landowners within one-half (½) mile of the property lines, as nearby landowner letters were sent out on January 15, 2025 with no responses to date. No senior water rights will be impaired with approval of this application.

The proposed structure was reviewed by DWR Water Structures Program staff, under File No. DJF-0595, and they determined that it qualifies for the hazard Class A permit exemption specified in K.S.A. 82a-301(d)(1). The dam has been properly registered with the structures program.

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.

In an March 3rd, 2025 e-mail, Nathan Westrop Water Commissioner, Topeka Field Office, stated that the referenced new application 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 for structures permitting, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Brandon Milner
Environmental Scientist
Manhattan Headquarters

From: "Westrup, Nathan [KDA]"
Sent: Mon 3/3/2025 11:09 AM
To: "Milner, Brandon [KDA]" <Brandon.M.Milner@ks.gov>
CC: "Johnson, Shaun [KDA]" <Shaun.Johnson@ks.gov>
Subject: RE: Memo for Application No. 51101

Hey Brandon,

I have no objection or concerns about approval of this application.

Thank you,

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

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>

Sent: Friday, February 28, 2025 12:11 PM

To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>

Cc: Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>

Subject: Memo for Application No. 51101

Nathan,

Please see attached memo for 51101. Could you please provide a recommendation? Thanks

Brandon Milner

Environmental Scientist

Water Appropriation Program

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

August 30, 2023

Tom Funk
17305 Marion Road
Nortonville, KS 66060

RE: Dam Determination
WSN: DJF-0595

Location: NW 1/4 of the NE 1/4 of the NW 1/4 of Section 14, Township 8 South, Range 18 East,
Jefferson County.

Dear Mr. Funk:

This will acknowledge receipt of your request for a permit determination for construction of the above dam.

From the information provided, we have concluded that this project meets the exemption as per K.S.A. 82a-301(d)(1). The structure is considered a class "A" low hazard dam, has a storage volume less than 125 acre-feet at the auxiliary spillway elevation, and it is less than 30 feet in height.

This finding does not in any way relieve the owner from complying with any other local, state, or federal requirements which may be applicable.

Should you have any questions, please feel free to contact me at (785) 207-2117 or e-mail me at ambrose.ketter@ks.gov.

Sincerely,

Ambrose J. Ketter, P.E.
Dam Safety Team Leader
Division of Water Resources
Kansas Department of Agriculture

P.C.: Keith Grimm
Andrew Terhune

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. 51,101** of the applicant

THOMAS M FUNK
17305 MARION RD
NORTONVILLE KS 66066

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 **August 30, 2023**.
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	
11 - 8S - 18E									40			40		40	40		160
14 - 8S - 18E	29	21	40	40	9			20									159

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of the Brush Creek, designated in the office of the Chief Engineer as Brush Creek 2 Trib 2 (Delaware), 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 **377.5 acre-feet** of water per calendar year in a reservoir created by a dam located in the Northwest Quarter of the Northeast Quarter of the Northwest Quarter (NW¼ NE¼ NW¼) of Section 14, more particularly described as being near a point 4,625 feet North and 3,920 feet West of the Southeast corner of said section, in Township 8 South, Range 18 East, Jefferson County, Kansas, to provide **290 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 **1,200 gallons per minute (2.67 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, 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.

5. 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.

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.

11. 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. The required 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).

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 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 10th day of April, 2025, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

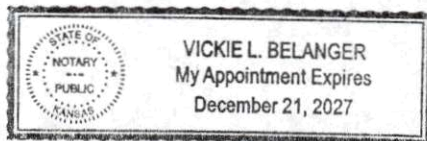
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 10th day of April, 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

April 14, 2025

THOMAS M FUNK
17305 MARION RD
NORTONVILLE KS 66066

RE: Appropriation of Water
File No. 51,101

Dear Mr. Funk:

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 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 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.

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 Applications and Changes Supervisor
Division of Water Resources

KAB:kak:bmm

Enclosure(s)

pc: Topeka Field Office
Susan M. Akerley
Gigstad Family Trust

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 14th day of Apr. 1, 2025, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,101, dated Apr. 1 10, 2025, was mailed postage prepaid, first class, US mail to the following:

THOMAS M & TRACEY L FUNK
17305 MARION RD
NORTONVILLE KS 66066

With photocopies to:

SUSAN M AKERLEY
176 MIDDLESEX RD
TOPSHAM ME 04086

GIGSTAD FAMILY TRUST
8413 NW 124TH CIR
OKLAHOMA CITY OK 73142

KDA-DWR Topeka Field Office

Division of Water Resources