

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

1. File No.: <b>51,166</b>	2. Status Change Date: <b>1/24/2025</b>	4. Field Office: <b>01 - Topeka</b> GMD: Structures File No.: <b>DNM-0398</b> Filing/Priority Date: <b>01/02/24</b> Application Complete Date:				
3. Package File No(s):						
5a. <input checked="checked" type="checkbox"/> Applicant <input checked="checked" type="checkbox"/> Owner <input checked="checked" type="checkbox"/> WUC      Person ID <b>63398</b> <input type="checkbox"/> Address Change    Add Seq# <b>1</b>  <b>TODD P &amp; LUCY C HEINEN</b> <b>1441 96<sup>TH</sup> ROAD</b> <b>GOFF, KS 66428-8233</b>	5b. <input type="checkbox"/> Owner <input type="checkbox"/> WUC    Person ID <input type="checkbox"/> Address Change    Add Seq#					
5c. <input type="checkbox"/> Owner <input type="checkbox"/> WUC    Person ID <input type="checkbox"/> Address Change    Add Seq#	5d. <input type="checkbox"/> Owner <input type="checkbox"/> WUC    Person ID <input type="checkbox"/> Address Change    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: <b>12/31/2026</b> Perfection/Expiration Date: <b>12/31/2030</b>		7. Use of Water <input type="checkbox"/> Groundwater <input checked="checked" type="checkbox"/> Surface Water UMW: <b>IRR-Irrigation</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 <b>PD is in Nemaha County</b> <b>PU is in Nemaha and Marshall Counties</b>		<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 5px;">Processed <b>BGL</b> <b>1/23/2025</b></td> <td style="width:50%; padding: 5px;">Entered <b>1/24/2025</b> <b>KAnderson</b></td> </tr> <tr> <td style="padding: 5px;">Reviewed <b>KAK</b> <b>1/24/2025</b></td> <td></td> </tr> </table>	Processed <b>BGL</b> <b>1/23/2025</b>	Entered <b>1/24/2025</b> <b>KAnderson</b>	Reviewed <b>KAK</b> <b>1/24/2025</b>	
Processed <b>BGL</b> <b>1/23/2025</b>	Entered <b>1/24/2025</b> <b>KAnderson</b>					
Reviewed <b>KAK</b> <b>1/24/2025</b>						

File No. <b>51,166</b>	13. County: <b>NM-Nemaha</b> Basin: <b>VERMILLION CREEK</b> Stream: <b>Gilson Creek</b>																							
Structures File No:	Aquifer Code:										Special Use Area:													
14. Points of Diversion, Rates & Quantities																								
											Oty		Rate		Storage Qty		Storage Rate							
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)			Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps						
<b>MOD</b>	<b>90729</b>	<b>SE</b>	<b>SW</b>	<b>SW</b>	<b>7</b>	<b>5S</b>	<b>11E</b>	<b>1</b>	<b>75</b>	<b>4050</b>	<b>300</b>	<b>300</b>	<b>1500</b>	<b>1500</b>	<b>413</b>	<b>413</b>	<b>NF</b>	<b>+</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 <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																								
PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
ID					NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
<b>CHK</b>	<b>71637</b>	<b>7</b>	<b>5S</b>	<b>11E</b>	<b>1</b>				<b>40</b>	<b>46</b>	<b>46</b>	<b>40</b>	<b>36</b>	<b>43</b>	<b>37</b>	<b>31</b>					<b>319</b>	<b>5A</b>	<input type="checkbox"/>	<b>+</b>
<b>CHK</b>	<b>71638</b>	<b>12</b>	<b>5S</b>	<b>10E</b>	<b>1</b>	<b>40</b>	<b>40</b>	<b>40</b>	<b>40</b>												<b>160</b>	<b>5A</b>	<input type="checkbox"/>	<b>+</b>
																						<input type="checkbox"/>	<b>#</b>	
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																						<input type="checkbox"/>	<b>**</b>	
																						<input type="checkbox"/>	<b>++</b>	
18. Point of Diversion and Place of Use Overlaps																								
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**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**  
**M E M O R A N D U M**

**TO:** Files

**DATE:** January 21, 2025

**FROM:** Bobbi Lutjohann

**RE:** Application, File No. 51,166

Todd Heinen has filed the application referenced above for a permit to store 413 acre-feet of surface water in a reservoir at the rate of natural flows and to re-divert 300 acre-feet at the rate of 1,500 gallons per minute for irrigation use. The proposed point of diversion is a reservoir located in the Southeast Quarter of the Southwest Quarter of the Southwest Quarter (SE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 7, Township 5 South, Range 11 East, Nemaha County, Kansas. The dam is located on Gilson Creek (Vermillion Creek). No other files overlap this point of diversion. The point of diversion is owned by Todd Heinen and the application was signed by the applicant's agent, stating legal access. The place of use (479 acres) is owned by Todd Heinen as described on the irrigation use supplemental sheet. No other files overlap this place of use.

Runoff computations were completed considering a normal precipitation of 35 inches, soil complex number of 76, and drainage area of approximately 522 acres. These calculations determined that the drainage basin will generate 582.37 acre-feet of runoff in one (1) out of every five (5) years (a 20% chance). At normal pool elevation, the reservoir surface area is 15.1 acres and the reservoir capacity is 99.2 acre-feet, making it the limiting factor. Using the one year net evaporation of 13.8 acre-feet (15.1 acres x 11"/12" = 13.8AF) the requested storage is calculated as 300AF + 99.2AF + 13.8AF = 413AF, which is reasonable.

The maximum reasonable quantity for irrigating the proposed acreage in Nemaha and Marshall Counties, per K.A.R. 5-3-24, is 526.9 acre-feet (1.1 AF/ac X 479 ac. = 526.9 AF). The requested quantity of 300 acre-feet is less than the maximum reasonable quantity, however this application it is approximately 7.5 inches (0.63 feet) per acre, which is comparable to the 50% Chance Rainfall NIR for Nemaha County of 7.8 inches (0.65 feet) and 8.7 inches (0.73 feet) for Marshall County, per K.A.R. 5-5-12. Therefore, 300 acre-feet is reasonable to irrigate the proposed 479 acres (160 acres in Marshall County and 319 acres in Nemaha County), especially in a supplemental fashion as often is done in this area.

The proposed structure was reviewed by DWR Water Structures Program staff, under WSN: DNM-0398. The project was determined to be a class "a" exempt dam, was properly registered, and is non-jurisdictional to Dam Safety permitting. Per Janelle Phillips, this structure is also non-jurisdictional to permitting as a floodplain fill or stream obstruction.

Notification letters were sent to upstream and downstream landowners on December 20, 2024. In response, one phone call was received from Myron Koch. Mr. Koch expressed concerns about the impact to the drainage on his property due to the proposed reservoir construction disturbing the terrace drainage tiles. He also noted that a landowner to the south of his property had not been notified of the proposed project under File No. 51,166. Discussion of water related issues due to drainage disruption was conducted, as was the need to notify the additional property owner. He was assured that the project would be reviewed to make sure that all applicable laws are met. No further comments were provided by Mr. Koch.

A follow up email was sent to Keith Grimm, agent, to assess Mr. Koch's concerns. Mr. Grimm verified that all necessary landowners were listed and notified, and that the proposed project would not disrupt Mr. Koch's drainage. Mr. Grimm confirmed that the planned construction area for the reservoir is below any pertinent property lines which will allow the drainage tiles to run free and clear.

According to the WRIS database, there are several other surface water rights within a two-mile radius. However, these files are located on other streams. 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.

Nathan Westrup, Water Commissioner, Topeka Field Office, recommended in a January 17, 2025 e-mail 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 to Structures permitting, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Bobbi Luttjohann  
Environmental Scientist  
Topeka Field Office

**From:** "Westrup, Nathan [KDA]"  
**Sent:** Fri 1/17/2025 4:55 PM  
**To:** "Luttjohann, Bobbi [KDA]" <Bobbi.Luttjohann@ks.gov>  
**Subject:** RE: Application File No. 51166 - Heinen

Hey Bobbi,

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:** Luttjohann, Bobbi [KDA] <Bobbi.Luttjohann@ks.gov>  
**Sent:** Friday, January 17, 2025 3:18 PM  
**To:** Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>  
**Subject:** Application File No. 51166 - Heinen

Mr. Westrup-

Attached are the draft memo, permit, and transmittal letter for application, File No. 51166 for your review. The application is proposing the storage of 413AF in a pond to be built on Gilson Creek (Vermillion). The applicant proposes to pump 300AF from the pond at a rate of 1500gpm to irrigate 479 acres (319 acres in NM County and 160 acres in MS County), which is less than the allowable 1.1 AF/acre in these counties. The ponds capacity is 99.2AF and the drainage area is approximately 522 acres, making the pond the limiting factor.

Please let me know of any questions or concerns you may have.

Thank you -Bobbi

Bobbi Luttjohann  
Environmental Scientist  
Division of Water Resources  
Kansas Department of Agriculture  
Topeka Field Office  
1131 SW Winding Rd, Suite 400  
Topeka, KS 66615  
Phone: 785-296-1886  
Mobile: 785-296-9984  
[Bobbi.luttjohann@ks.gov](mailto:Bobbi.luttjohann@ks.gov)

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. 51,166** of the applicant

**TODD HEINEN  
1441 96TH ROAD  
GOFF, KS 66428-8233**

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 **January 2, 2024**.

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	
12 - 5S - 10E	40	40	40	40													160
7 - 5S - 11E					40	46	46	40	36	43	37	31					319

3. That the appropriation sought shall be limited to all natural flows of Gilson Creek, designated in the office of the Chief Engineer as Gilson Creek (Vermillion Creek), 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 **413 acre-feet** of water per calendar year in a reservoir created by a dam located in the Southeast Quarter of the Southwest Quarter of the Southwest Quarter (SE¼ SW¼ SW¼) of Section 7, more particularly described as being near a point 75 feet North and 4,050 feet West of the Southeast corner of said section, in Township 5 South, Range 11 East, Nemaha County, Kansas, located substantially as shown on the topographic map accompanying the application, to provide **300 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 **1,500 gallons per minute (3.34 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.

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.

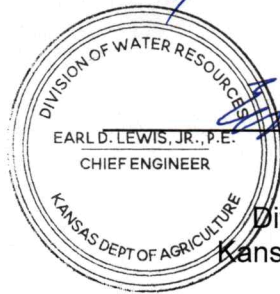
14. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

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

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.

17. 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 24<sup>th</sup> day of January, 2025, in Manhattan, Riley County, Kansas.



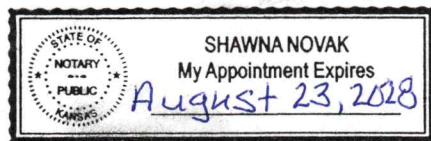
*[Signature]*  
\_\_\_\_\_  
Earl D. Lewis Jr., P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas )  
                          ) SS  
County of Riley )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of January, 2025, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

*[Signature]*  
\_\_\_\_\_

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 28, 2025

TODD HEINEN  
1441 96TH ROAD  
GOFF KS 66428-8233

RE: Appropriation of Water  
File No. 51,166

Dear Mr. Heinen:

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. The approval of this permit is not an indication that surface water will be available from this source of supply.

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 [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 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:bgl  
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 28 day of January, 2025, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51166, dated January 24, 2025, was mailed postage prepaid, first class, US mail to the following:

TODD P & LUCY C HEINEN  
1441 96<sup>TH</sup> ROAD  
GOFF KS 66428-8233



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Division of Water Resources