

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

1. File No.: <b>51,221</b>		2. Status Change Date: <b>3/5/2025</b>		4. Field Office: <b>01 - Topeka</b> GMD: Structures File No.: Filing/Priority Date: <b>04/05/2024</b> Application Complete Date:	
3. Package File No(s): <b>50,567 &amp; 51,220</b>					
5a. <input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change		Person ID <b>61549</b> Add Seq# <b>1</b>		5b. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#	
<b>BRIAN MARTIN</b> <b>2144 BROUGHTON RD</b> <b>CLAY CENTER, KS 67432-7442</b>					
5c. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change		Person ID Add Seq#		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: <b>12/31/2026</b> Perfection/Expiration Date: <b>12/31/2030</b>				7. Use of Water <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water UMW: <b>IRR-Irrigation</b> UMW: UMW:	
8. Action Trail					
9. Special Conditions <b>permission to pump</b>					
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.: Rule Type:      Justification: Rule SubType:					
Comments				Processed <b>BGL</b>	Entered  <b>3/10/2025</b> <b>KAnderson</b>
				Reviewed <b>KAK</b> <b>3/5/2025</b>	

File No. <b>51,221</b>		13. County: <b>CL-CLAY</b> Basin: <b>REPUBLICAN RIVER</b> Stream: <b>MALL CREEK TRIB 3</b> <b>4076</b>																			
Structures File No: DCY-0197		Aquifer Code: Special Use Area:																			
14. Points of Diversion, Rates & Quantities																					
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Qty AF Auth	Add	Rate GPM Auth	Add	Storage Qty AF Auth	Add	Storage Rate Auth/Add	Overlaps					
CHK	90839	NW NE SE	33	8S	4E	7	2155	895	159	0	1000	1000	233.51	233.51	0 NF/0 NF						
#																					
^																					
**																					
++																					
15. Limitations Type: Quantity: <b>159AF</b> Rate: combined with file no(s): <b>50657 &amp; 51220</b>																					
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																		Total	Owner(s)	Chg?	Overlaps
PUSE ID	S	T	R	ID	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
MOD 70593	33	8S	4E	1				40	11			0.5	10	23.5	37	11	133	5A	<input type="checkbox"/> +		
																			<input type="checkbox"/>		
																			<input type="checkbox"/> #		
																			<input type="checkbox"/> ^		
																			<input type="checkbox"/> **		
																			<input type="checkbox"/> ++		
18. Point of Diversion and Place of Use Overlaps																					
*  + 50657 & 51220 # ^									**  ++ ## ^^												

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

**TO:** Files

**DATE:** March 04, 2025

**FROM:** Bobbi Luttjohann

**RE:** New Applications,  
File Nos. 51,220 & 51,221  
Change Application,  
File No. 50,657

Brian Martin has filed the application, File No. 51,220 for a permit to appropriate 159 acre-feet of surface water at the rate of 2,000 gallons per minute from Mall Creek in the Republican River basin, for irrigation use. This application will allow water to be pumped directly from the stream when flows are adequate, and permission is granted. The proposed point of diversion is a pumpsite located in the Northeast Quarter of the Northwest Quarter of the Southwest Quarter (NE $\frac{1}{4}$  NW $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 33, Township 8 South, Range 4 East, Clay County, Kansas. The point of diversion overlaps Appropriation of Water, File No. 50,657. The point of diversion is owned by the Brian Martin and the application was signed by the applicant stating legal access to the point of diversion.

Brian Martin has also filed the application, File No. 51,221 for a permit to store 233.51 acre-feet of surface water in a reservoir at the rate of natural flows and to re-divert 159 acre-feet at the rate of 1,000 gallons per minute for irrigation use. The proposed point of diversion is a reservoir located in the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of Section 33, Township 8 South, Range 4 East, Clay County, Kansas. The dam is located on Mall Creek Trib 3 (Republican River). No other files overlap this point of diversion. The point of diversion is owned by Brian Martin and the application was signed by the applicant, stating legal access.

Both new applications, File Nos. 51,220 and 51,221, are requesting the place of use of 133 acres, which is owned by Brian Martin as described on the irrigation use supplemental sheet. The new applications are accompanied by a place of use change application for File No. 50,657 which creates a complete overlap in the place of use with all three files. The change application will increase the place of use from 40 acres to 133 acres. The new applications will cover the additional quantity due to the expanded acreage. The place of use change application filed for File No. 50,657 appears to be complete per K.A.R. 5-5-2a. No change was proposed to the authorized point of diversion.

The quantity requested by application File No. 51,220 is 159 acre-feet applied to 133 acres. This allows for the application of 1.2 acre-feet per acre, which is approximately the maximum allowable for Clay County per K.A.R. 5-3-24 (1.2 AF/ac X 133 ac. = 159.6 AF). For the new permit, the quantity will be limited to 159 acre-feet when combined with File No. 50,657, which authorizes 48 acre-feet. The new file will authorize an additional direct use quantity of 111 acre-feet. The rate will be limited to 2,000 gallons per minute when combined with File No. 50,657, which authorizes 1,000 gallons per minute. The new file will authorize an additional rate of 1,000 gallons per minute.

The quantities requested by application File No. 51,221 are for direct use and storage, 159 acre-feet and 233.51 acre-feet, respectively. The storage quantity of 233.51 acre-feet was justified as the sum of the annual direct use, reservoir capacity (57.21 AF), and annual net evaporation (17.3 AF). As stated above, the maximum allowable quantity for irrigation of 133 acres in Clay County is approximately 159 acre-feet, per K.A.R. 5-3-24.

Runoff computations were completed considering a normal precipitation of 31 inches, soil complex number of 77, and drainage area of approximately 323 acres. These calculations determined that the drainage basin will generate 261.63 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 12.19 acres and the reservoir capacity is 57.21 acre-feet, making it the limiting factor. Using the one year net evaporation of 17.3 acre-feet ( $12.19 \text{ acres} \times 17''/12'' = 17.3\text{AF}$ ) the requested storage is calculated as  $159\text{AF} + 57.21\text{AF} + 17.3\text{AF} = 233.51\text{AF}$ , which is reasonable. For the new permit, the direct use will be limited to 159 acre-feet when combined with File Nos. 50,657 and 51,220. The new file will authorize an additional direct use quantity of 0 acre-feet.

The proposed structure for File No. 51,221 was reviewed by DWR Water Structures Program staff, under WSN: DCY-0197. 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 for both applications on February 7, 2025. In response, one phone call was received from Thomas Belue. Mr. Belue expressed concerns about the impact the project proposed in the application for File No. 51,221 might have on his domestic well. He was assured that the project would be reviewed to make sure that all applicable laws are met and if he felt his well had been impacted then the impairment would be investigated. No further comments were provided by Mr. Belue.

According to the WRIS database, there are five other prior surface water rights within a two-mile radius (other than the overlapping file) of File Nos. 51,220 and 51,221. Three water rights are owned by the applicant and the remaining two water rights are surface water rights located upstream on Mall Creek. The direct diversion of water is limited to times when there is sufficient stream flow in the Republican River system. Therefore, with proper conditioning, approval of this application will not impact any senior water rights.

In signing the applications, the applicant affirms their knowledge that there could be times when the diversion of water may not be allowed under these permits. Additionally, since the source of supply is surface water from a tributary to the Republican River, the permit for File No. 51,220 will be conditioned as follows: "That in order to implement the provisions of K.A.R. 5-3-11(d)(6), no water shall be diverted unless the written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, is obtained each time the applicant desires to divert water. The approval of this permit is not an indication that surface water will be available from this source of supply, or that written permission will be granted to divert water."

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 any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R 5-1-12. If chemical or foreign substance is injected into the water pumped under these permits, a check valve will need to be installed.

Nathan Westrup, Water Commissioner, Topeka Field Office, recommended in a March 4, 2025 e-mail that the referenced new applications and the change application should be approved. Based on the above discussion, that this area is open to new appropriations, the proposed appropriations of water are reasonable, and senior rights will not be impacted, it is recommended that the referenced new applications be approved in conjunction with the accompanying application to change the place of use.

Bobbi Luttjohann  
Environmental Scientist  
Topeka Field Office

# 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. 51,221** of the applicant

**BRIAN MARTIN**  
**2144 BROUGHTON RD**  
**CLAY CENTER, KS 67432-7442**

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 **April 5, 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	
33 - 8S - 4E								40.0	11.0			0.5	10.0	23.5	37.0	11.0	133.0

3. That the appropriation sought shall be limited to all natural flows of a tributary to Mall Creek, designated in the office of the Chief Engineer as Mall Creek Trib 3 (Republican River), 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 **233.51 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 Southeast Quarter (NW¼ NE¼ SE¼) of Section 33, more particularly described as being near a point 2,155 feet North and 895 feet West of the Southeast corner of said section, in Township 8 South, Range 4 East, Clay County, Kansas, located substantially as shown on the topographic map accompanying the application, to provide **159 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 **1,000 gallons per minute (2.23 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. 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).

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 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.

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 quantity of water approved under this permit is further limited to the quantity which combined with Appropriation of Water, File Nos. 50,657 and 51,220, will provide a total not to exceed **159 acre-feet** of water per calendar year for irrigation use on the land described herein.

17. 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 March, 2025, 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 March, 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

March 11, 2025

BRIAN MARTIN  
2144 BROUGHTON RD  
CLAY CENTER KS 67432-7442

RE: Appropriation of Water  
File Nos. 50,657, 51,220 & 51,221

Dear Mr. Martin:

Enclosed are new permits authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use. Also enclosed is an order approving the Application for Approval to Change the Place of Use, under File No. 50,657. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in these permits and the change order, with specific reference to Paragraph No. 18 of the permit for File Nos. 51,220 and 51,221. **As a condition to the approval of your applications, you must obtain permission each time you intend to pump by contacting the Topeka Field Office at 785-296-5733.** The approval of these permits is not an indication that surface water will be available from this source of supply.

Notice must be filed on the enclosed forms 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(s). 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, per file number.

Acceptable water flowmeters must be installed on the diversion and re-diversion works authorized by these permits and the change order 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).

The approval of your applications constitutes permits to appropriate water. They do not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. They do 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.

BRIAN MARTIN

File Nos. 50,657, 51,220 & 51,221

Page 2 of 2

Also included with your approval documents is an informational sheet that sets forth the procedure to obtain Certificates of Appropriation, which will establish the extent of your perfected water rights. 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,

A handwritten signature in blue ink that reads "Kristen A. Baum". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

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 11<sup>th</sup> day of March, 2025, I hereby certify that the foregoing Approval of Application for Change in Place of Use under Appropriation of Water, File No. 50,657, and Approval of Application and Permit to Proceed, File Nos. 51,220 and 51,221, dated March 5, 2025, were mailed postage prepaid, first class, US mail to the following:

BRIAN MARTIN  
2144 BROUGHTON RD  
CLAY CENTER KS 67432-7442

With photocopies to:

KDA-DWR Topeka Field Office

  
\_\_\_\_\_  
Division of Water Resources