

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

1. File Number: <p style="text-align: center;">50,640</p>	2. Status Change Date: <p style="text-align: center;">5/12/2023</p>	3. Field Office: <p style="text-align: center;">02</p>	4. GMD:
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5. Status: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return
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6. Enclosures: <input checked="" type="checkbox"/> Check Valve <input checked="" type="checkbox"/> N of C Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input checked="" type="checkbox"/> Meter
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<p>7a. Applicant(s) Person ID 67930 New to system <input type="checkbox"/> Add Seq# _____</p> <p>MIMG CXCII RIDGEPORT SUB LLC ATTN: MIKE BREINER 2195 N STATE HWY 83 SUITE 14-B FRANKTOWN, CO 80116</p>	<p>7c. Landowner(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p>
<p>7b. Landowner(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p> <p>7a</p>	<p>7d. Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p>

<p>8. WUR Correspondent Person ID 68045 New to system <input type="checkbox"/> Add Seq# _____ Overlap File (s) WUC Notarized WUC Form <input type="checkbox"/> Agree <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7a MONARCH INVESTMENT & MGMT GRP LLC</p> <p>THIS CHG IS MADE SO OVERLAPPING P/D'S WILL BE ON SAME WU CARD</p>	<p>9. Use of Water: Changing? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water</p> <p><input checked="" type="checkbox"/> IRR <input type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN</p> <p><input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON</p> <p><input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG</p> <p><input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____</p>
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10. Completion Date: 12/31/2024	11. Perfection Date: 12/31/2024 2028	12. Exp Date: _____
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13. Conservation Plan Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date Required: _____ Date Approved: _____ Date to Comply: _____
14. Water Level Measuring Device? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Date to Comply: _____ Date WLMD Installed: _____

Date Prepared: 5/4/23 By: JNE
Date Entered: 5/15/2023 LMoody By: _____

File No. **50,640** 15. Formation Code: Drainage Basin: **ARKANSAS RIVER** County: **SG** Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity				
T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W		Authorized Rate gpm	Quantity af	Additional Rate gpm	Quantity af	Overlap PD Files
CHK	70368	SE SW NW	34	26S	1W	378	3,025	4,297		50	6.5	50	15	45,925
												0	6.5	

18. Storage: Rate --- NF Quantity --- ac/ft Additional Rate --- NF Additional Quantity --- ac/ft

19. Limitation: ~~15~~ af/yr at **110** gpm (_____ cfs) when combined with file number(s) **45,925**
 Limitation: --- af/yr at --- gpm (_____ cfs) when combined with file number(s) ---

20. Meter Required? Yes No To be installed by _____ Date Acceptable Meter Installed _____

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
T MOD DEL ENT	PUSE	S	T	R	ID	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼								
CHK	56378	34	26	1W	18							5.82											6.52	7a	NO	45,925			

Comments: **RATE, QTY AND LIMITATION UPDATED AFTER DISCUSSION WITH K KOPP**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: March 16, 2023

FROM: Jessica Engelbrecht

RE: Application, File No. 50,640

Mike Breiner on behalf of MIMG CXCII Ridgeport Sub, LLC, has filed the referenced application to appropriate groundwater for irrigation use, requesting one (1) well, a quantity of 6.5 acre-feet, and a diversion rate of 50 gallons per minute. The well is an existing well located in the Southeast Quarter of the Southwest Quarter of the Northwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 34, more particularly being near a point 3,025 feet North and 4,297 feet West of the Southeast corner of said section, in Township 26 South, Range 1 West, Sedgwick County, Kansas, within the Arkansas River drainage basin. The proposed place of use is owned by the applicant and the applicant has signed the application form stating that they have legal access to the point of diversion. The application forms a complete point of diversion and place of use overlap with File No. 45,925. Modifications were made to the requested quantity during the processing of the application. All the changes were verified with the applicant via email. This application was filed to address over pumping issues with File No. 45,925. The application will be limited to 110 gallons per minute when combined with File No. 45,925 on the authorized place of use. The application is being filed under the small user exemption due to the over appropriation in the area which is why the application is being limited to 15-acre feet and the rate reduced to 50 gallons per minute.

In 2004 the United States Geological Survey (USGS) completed a hydrologic model of a portion of the Arkansas River and associated drainage basins (Ninnescah River), generally bounded by Ranges 2 West to 3 East and Townships 26 South to 34 South (near state line). The USGS model indicated that the aquifer in this area receives more recharge from precipitation than DWR has historically used in safe yield calculations. The data and analyses are detailed in the USGS Scientific Investigations Report 2004-5204 entitled "Characterization and Simulation of Flow in the Lower Arkansas River Alluvial Aquifer, South-Central Kansas". In order to evaluate the potential impact of this study on our safe yield calculations, DWR suspended processing applications for new appropriations of water in the model area.

DWR recently completed an evaluation of the USGS model and has determined that the precipitation recharge value of 5.4 inches per year that is used in the USGS model is reasonable and appropriate. In order to reserve water in the alluvial aquifers that can contribute to base flow to area streams and for domestic use, it was determined that 75 percent of the 5.4 inches of precipitation recharge shall be available for appropriation. This is consistent with safe yield appropriation in many other basins across the state, and is the current percent available in for all applications in the Ninnescah River drainage basin. Therefore, for all pending applications within the model area, safe yield will be evaluated using the standard methodology in K.A.R. 5-3-11, which is based on the extent of the unconfined aquifer (area of consideration), a Potential Annual Recharge value of 5.4 inches, and a percent of recharge available for appropriation of 75%. Current annual recharge across the model area is approximately 3 inches.

The safe yield area of consideration is the full area of the two-mile circle, 8,042 acres using 5.4 inches of potential annual recharge and 75% recharge available for appropriation that is based off the Lower Arkansas Enhanced Recharge area. Total prior appropriations minus pending applications result in 1,197.74 acre-feet exceeded with no water available for appropriation. Therefore, the quantity of 6.5 acre-feet will not meet safe yield in this area. However, the well has been in operation since the 1980s without impairment of nearby wells and therefore a waiver of K.A.R. 5-3-11 and approval of the application, will have no additional impact to the groundwater supply.

Due to the large number of wells in the area, the applicant requested that a public notice be run instead of a half-mile notification mailing. A public notice was published in the local paper for three consecutive weeks starting on January 24, 2022, with the last publication on February 7, 2022. No response of any kind was received. According to the WRIS database, the nearest non-domestic point of diversion (File No. 45,248) is located 1,931 feet away. The nearest domestic well is approximately 306 feet away. Per the requirements in K.A.R. 5-4-4 for all other aquifers, the minimum well spacing should be 1,320 feet to all other non-domestic wells and 660 feet to domestic wells. The existing well does not meet minimum spacing criteria required for a small use exemption. Therefore, the application will need a waiver of 5-3-16.

A driller's log for the completed well (covered by File No. 45,925) was provided with the application. The log shows topsoil from 0 to 4 feet, sandy clay from 4 to 10 feet and sand from 10 to 41 feet. The static water level was at 11 feet and the Aquifer was previously identified as Equus beds based on WRIS for File No. 45,925.

The applicant is proposing to irrigate 6.52 acres of turf grass. The limitation of 15 acre-feet for the 6.52 acres of turf grass would be 2.3 acre-feet per acre which exceeds the maximum allowable for Sedgwick County, Kansas, per K.A.R. 5-3-24 of 1.3 acre-feet per acre. However, turf grass is considered to be a "specialty crop" by definition in K.A.R. 5-1-1. Specialty crops require significantly more water than a normal field crop.

The proposed application is subject to minimum desirable streamflow requirements. The applicant signed, notarized, and returned the required form to our office on August 30, 2021.

Jeff Lanterman, Water Commissioner for the Stafford Field Office, recommended approval of the referenced application in an email conversation on . Approval of the application should not impair senior water rights, nor prejudicially or unreasonably affect the public interest. Based on the above discussion, it is recommended that the referenced application be approved.

Engelbrecht, Jessica [KDA]

From: Lanterman, Jeff [KDA]
Sent: Friday, April 28, 2023 3:31 PM
To: Engelbrecht, Jessica [KDA]
Subject: 50640

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Jessica;

You might explain in your memo that this one is being done under the small user exemption because it is over appropriated. Essentially just filling up to a full 15 af. 50640 and 45925 under 5-3-16 and that is why it is limited to 15 af when combined with the prior right (And reduced to 50 GPM)

Anyway I think we get this one approved and go.

Thanks

Jeff Lanterman PG, Water Commissioner
Kansas Department of Agriculture
Division of Water Resources
(620)234-5311
jeff.lanterman@ks.gov
<https://agriculture.ks.gov/divisions-programs/dwr>

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. 50,640** of the applicant

**MIMG CXCII RIDGEPORT SUB LLC
2195 N STATE HWY 83 SUITE 14-B
FRANKTOWN CO 80116**

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, 2021**.
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	
34 - 26S - 1W							5.82				0.70						6.52

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well located in the Southeast Quarter of the Southwest Quarter of the Northwest Quarter (SE¼ SW¼ NW¼) of Section 34, more particularly described as being near a point 3,025 feet North and 4,297 feet West of the Southeast corner of said section, in Township 26 South, Range 1 West, Sedgwick County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **50 gallons per minute (0.11 c.f.s.)** and to a quantity not to exceed **6.5 acre-feet** of water for any calendar year.
5. That the rate of diversion of water approved under this permit is further limited to the rate which combined with Water Right, File No. 45,925, will provide a maximum diversion rate not to exceed **110 gallons per minute** from the well authorized herein.

6. That installation of works for diversion of water shall be completed on or before **December 31, 2024**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$400.00 when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.
7. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2028**, or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. That all wells with a diversion rate of 100 gallons per minute or more drilled under the authority of this permit shall have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer. This tube or device shall be suitable for making water level measurements and shall be maintained in a condition satisfactory to the Chief Engineer.
14. That an acceptable water flow meter shall be installed and maintained on the 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).

- 15. 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.
- 16. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.
- 17. 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.
- 18. 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 *12th* day of *May*, 2023, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.

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

State of Kansas)
) SS
 County of Riley)

The foregoing instrument was acknowledged before me this *12th* day of *May*, 2023, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings
 Notary Public



Stafford Field Office
300 S. Main Street
Stafford, KS 67578-1521



Phone: 620-234-5311
Fax: 620-234-6900
www.agriculture.ks.gov

Mike Beam, Secretary

Laura Kelly, Governor

May 18, 2023

MIKE BREINER
MIMG CXCII RIDGEPORT SUB LLC
2195 N STATE HWY 83 SUITE 14-B
FRANKTOWN CO 80116

RE: Appropriation of Water
File No. 50,640

Dear Mr. Breiner:

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 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.

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 www.kswaterusereport.org.

Enclosed 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 Stafford Field Office at 620-234-5311. 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".

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB:jne
Enclosure(s)

pc: Stafford 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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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 Section, 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 hearing may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (i.e., **within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX 785-564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

CERTIFICATE OF SERVICE

On this 18 day of May, 2023, I hereby certify that the attached Approval of Application and Permit to Proceed, File No. 50,640, dated May 12, 2023, was mailed postage prepaid, first class, U.S. Mail to the following:

Original to:

MIMG CXCII RIDGEPORT SUB LLC
ATTN: MIKE BREINER
2195 N STATE HWY 83 SUITE 14-B
FRANKTOWN, CO 80116

Photocopy to:

KDA-DWR Stafford Field Office



DWR Staff