

File No. **50511** 15. Formation Code: Drainage Basin: **MARAIS DES CYGNES RIVER** County: Osage Special Use: Stream: **Marais Des Cygnes River Trib 22**

16. Points of Diversion
 T
 MOD
 DEL PDIV
 ENT Qualifier S T R ID 'N 'W

17. Rate and Quantity
 Authorized Additional
 Rate Quantity Rate Quantity
 gpm af gpm mgy Overlap PD Files

ENT 88564 NE NE NE 31 18S 14E 1 5210 400 ~~NF(REDIV 1200) 160~~ ~~NF(REDIV 1200) 160~~ **160** **NA**

STRUCTURES PERMIT LOS-0050

1200 160 1200 160

4/19/2022
 KAB

18. Storage: Rate **NF** NF Quantity **160** ac/ft Additional Rate **NF** NF Additional Quantity **160** ac/ft

19. Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? Yes No To be installed by **12/31/2023** Date Acceptable Meter Installed _____

21. Place of Use T MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
						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				
ENT	70239	31	18S	14E	1	40	40	40	40											160	7a 7b?	N	N/A		

Comments: 1/19/2022
KJN

”

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: December 17, 2021

FROM: Brandon Milner

RE: Application, File No. 50,511

Dustin Edwards has filed the above-referenced new application to appropriate 160 acre-feet of surface water to store in a newly created reservoir to be filled by natural flows of Marais Des Cygnes tributary 22 (Marais Des Cygnes) and rediverted to irrigate 160 acres at a rate of 1,200 gallons per minute located in Section 31, Township 18 South, Range 14 East in Osage County. The point of diversion represents the point at which the center of the dam intersects the stream as the applicant has signed the agreement to have legal access to the point of diversion.

The application was filed was filed requesting 160 acre-feet of storage and rediversion. Runoff calculations determined that there is 17.32 inches of runoff per acre, and the drainage area of 256 acres will provide for 369.42 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 proposed direct use quantity of 160 acre-feet, is equivalent to 3.4 times the capacity (47.1 AF), which is well within the normal “rule of thumb” of direct use quantity being no more than 5 times the capacity of the reservoir at normal pool for reasonable storage quantity. The total quantity of water that will be rediverted (160 acre-feet), equal to the maximum allowable to irrigate the proposed 160 acres, based on the allowable quantity for irrigation in Osage County of 1 AF/acre.

The applicant identified three upstream and two downstream landowners within one-half (½) mile of the property lines, and nearby letters were sent out on November 30, 2021. No response of any kind was received. There is one surface water right within a two-mile radius according to the WRIS database. 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. LOS-0050, Therefore, 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. Since this is a proposed, new reservoir, a Special Condition on the Permit will be needed to provide an initial fill quantity of 62.7 acre-feet (capacity).

In an December 19, 2021 e-mail, Katie Tietsort, 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 and senior rights will not be impacted, it is recommended that the referenced new application be approved.

1/19/2022
KJN

Brandon Milner
Environmental Scientist
Manhattan Headquarters

From: Tietsort, Katie [KDA]
Sent: Fri 12/17/2021 2:16 PM
To: Milner, Brandon [KDA]
Subject: RE: 50511 Memo

Hello Brandon,

Yes, the TFO agrees with the recommendation for this dam for Dusty Edwards. Please proceed, it meets all the rules and regulations!

Katie Tietsort

Water Commissioner

Katie.Tietsort@ks.gov

Ph. 785-296-5733 Cell 785-213-9188

Kansas Department of Agriculture

Topeka Field Office

1131 SW Winding Rd, Suite 400

Topeka, KS 66615

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Sent: Friday, December 17, 2021 2:13 PM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Subject: 50511 Memo

Good afternoon Katie,

Attached is a memo for application no. 50,511. This is natural storage and rediversion project in Osage County. Could you please provide a recommendation on it? Thank you!

Brandon Milner
Environmental Scientist
Water Appropriation Program

PDFs
Mean Annual Precipitation
Soil Cover Complex

Mean Annual Precip, in	38
Soil Cover Complex No.	77
Drainage Area, acres	256
Runoff at 20% Chance, AF	369.42

DO NOT EDIT BELOW

% Chance Firm Coefficients			
	50%	80%	90%
a	0.5317	0.1216	0.0527
b	1.0815	1.2538	1.3547

%Chance Firm	Runoff, in	Comp. Runoff, in
50%	5.70	5.70
80%	1.90	1.88
90%	1.03	1.05
20%		17.32

OW THIS LINE

Std. Dev. 90%	1.34
Std. Dev. 80%	1.30
Avg	1.32

Mean annual runoff for CN = 75, inches	8.48
Mean annual runoff for CN = 80, inches	9.70
Interp. Mean annual runoff for CN = 77, inches	8.97

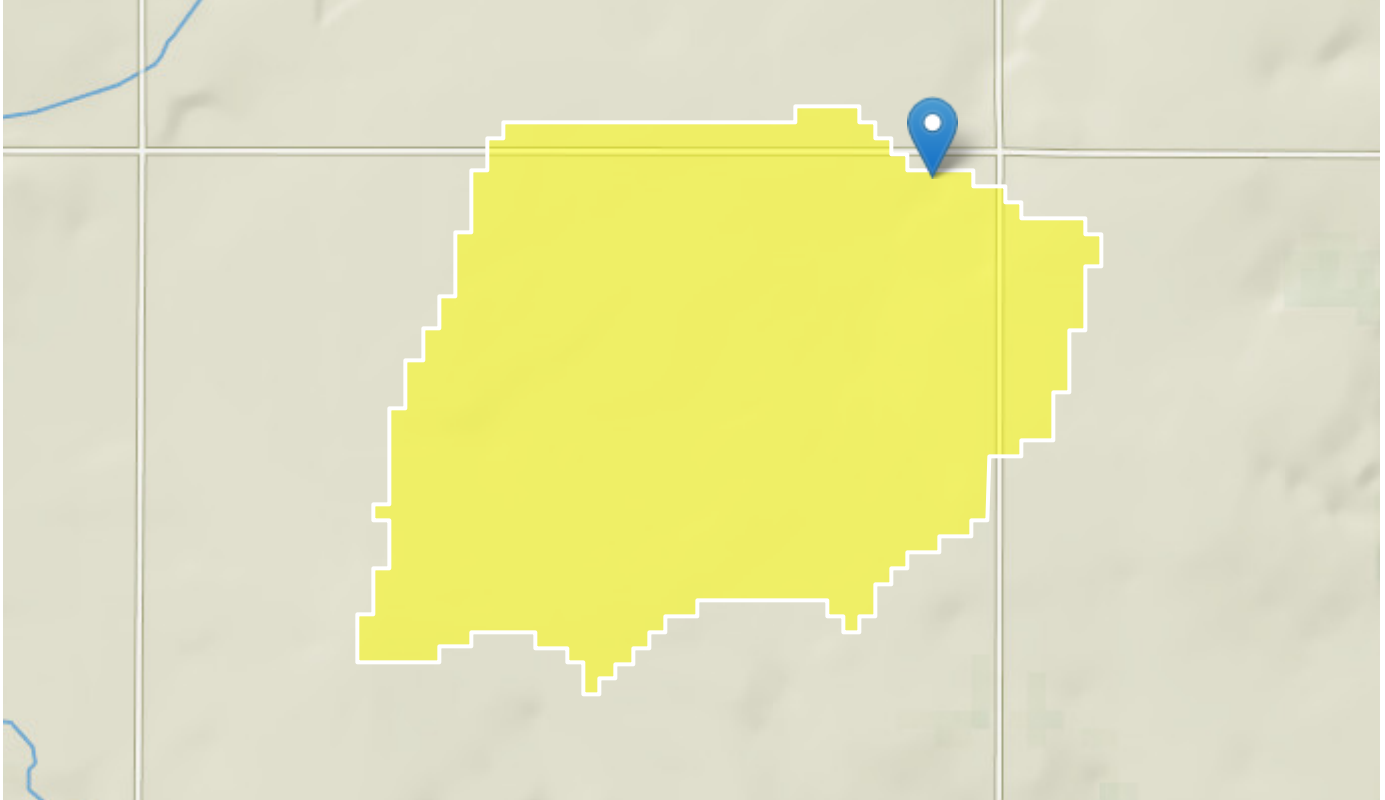
StreamStats Report

Region ID: KS

Workspace ID: KS20210615135656392000

Clicked Point (Latitude, Longitude): 38.44817, -95.89625

Time: 2021-06-15 08:57:12 -0500



Basin Characteristics

Parameter Code	Parameter Description	Value	Unit
DRNAREA	Area that drains to a point on a stream	0.4	square miles

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Application Version: 4.5.3

StreamStats Services Version: 1.2.22

NSS Services Version: 2.1.2

From: Keith Grimm
Sent: Tue 4/12/2022 6:09 PM
To: Milner, Brandon [KDA]
Subject: RE: Application 50,511 Update

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

That is correct I believe Dustin is purchasing on contract so deed hasn't moved hands yet

MWI, LLC
Keith Grimm, owner
1215 Oregon St
Hiawatha, KS 66434
Office 785-288-1783
Cell 785-547-7556



From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Sent: Monday, April 11, 2022 1:19 PM
To: Keith Grimm <Keith@mwivalley.com>
Subject: RE: Application 50,511 Update

Keith,

Who actually owns the Northeast Quarter to be irrigated for this application? The application has Dustin as the applicant but our records show that Gourley Family trust owns the property. Is that correct?

Brandon

From: Keith Grimm <Keith@mwivalley.com>
Sent: Thursday, September 30, 2021 4:59 PM
To: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Subject: RE: Application 50,511 Update

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

We will get this addressed. Thanks

MWI, LLC
Keith Grimm, owner
1215 Oregon St
Hiawatha, KS 66434
Office 785-288-1783

Cell 785-547-7556



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

Sent: Thursday, September 30, 2021 3:32 PM

To: Keith Grimm <Keith@mwivalley.com>

Subject: Application 50,511 Update

Mr. Grimm,

Application no. 50,511 for Mr. Edwards is needing some additional permitting from our structural department before work can start with the appropriation side. Our structures department sent Mr. Edwards and yourself a letter on January 29, 2021 explaining that an application for a floodplain fill permit would need to be filed with the structures department. I have attached the letter to this email for reference. This application for a floodplain fill permit will need to be addressed before the Division of Water Resources can take a look at the irrigation application. If you have any questions on how to fill the floodplain permit out please reach out Janelle Phillips or Chris Warren at the following

Janelle.Phillips@ks.gov

Chris.Warren@ks.gov

On a last note, if a floodplain fill permit is not received by our structures department, the appropriations application will be eventually be dismissed.

Brandon Milner
Environmental Scientist
Water Appropriation Program

From: Tietsort, Katie [KDA]
Sent: Mon 4/11/2022 10:45 AM
To: Milner, Brandon [KDA]
Subject: RE: WR 50511

I talk to Dusty frequently so I talked to Dusty this am. THE PIVOT WILL NOT GO OUT OF THE NE QUARTER. I don't have a problem letting the acreage go over the pond, which we shave off at perfection. I always err on more acres than less. That way we don't end up with an acre that isn't covered making a hassle later. Will this allow you to get this moved forward? He needs this this season.

Katie Tietsort

Water Commissioner

Katie.Tietsort@ks.gov
Ph. 785-296-5733 Cell 785-213-9188
Kansas Department of Agriculture
Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Sent: Monday, April 11, 2022 7:51 AM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Subject: FW: WR 50511

Good morning Katie,

It looks to me that the Southeast Quarter is owned by someone other than the applicant (in this case the tenant). I would say on my end that the place of use could be limited to the 160 acre quarter but I am unsure about leaving the pond in the place of use or not. What are your thoughts on this? I will be remaking a map either way as the one attached to the application appears to show the who quarter section with the pivot lines going into the Southeast Quarter.

Brandon

From: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Sent: Friday, April 8, 2022 4:31 PM
To: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Cc: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Subject: FW: WR 50511

This is another one that is going to need a better map. The place of use isn't completely clear. It looks like some of the pivot might creep into the SE quarter some. Not sure if that's intentional or who owns the SE quarter. You may need to revisit this with Katie to see if she's okay with the entire quarter or if the pond needs carved out. I'm okay with it either way because sometimes it isn't clear exactly where the pivot arm is going to stop until the project is on the ground. I'll defer to the WCs in these cases.

Kristen A Baum
New Applications and Changes Supervisor
DWR Appropriations

From: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Sent: Thursday, March 17, 2022 3:42 PM

To: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>; Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Cc: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Subject: RE: WR 50511

Just let me know when you are ready

From: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Sent: Thursday, March 17, 2022 3:40 PM
To: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>; Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Cc: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Subject: RE: WR 50511

This one is in my court – I bet we can have it ready for signature next week.

Kristen A Baum
New Applications and Changes Supervisor
DWR Appropriations

From: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Sent: Thursday, March 17, 2022 3:32 PM
To: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Cc: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: RE: WR 50511

This is a file being processed by Brandon Milner. You can ask him for an update.

Thanks,
Lloyd

From: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Sent: Thursday, March 17, 2022 3:27 PM
To: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Subject: WR 50511

Lloyd – our application is ready for signature. Any indication when the water right will be complete.

Janelle N. Phillips, P.E. C.F.M
Stream obstruction team lead
Water Structures Program
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
785-564-6656 – office
785-307-8292 – cell
Janelle.phillips@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. 50,511** of the applicant

**DUSTIN EDWARDS
520 W 5TH
LEBO, KS 66856**

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 22, 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	
31	18S	14E	40	40	40	40													160

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to the Marais De Cygnes River, designated in the office of the Chief Engineer as Marais Des Cygnes Trib 22, not needed to satisfy all vested rights and prior appropriation rights, to a maximum extent of **160 acre-feet** per calendar year in one (1) reservoir created by a dam located in the Northeast Quarter of the Northeast Quarter (NE¼ NE¼ NE¼) of Section 31, more particularly described as being near a point 5,210 feet North and 400 feet West of the Southeast corner of said section, in Township 18 South, Range 14 East, Osage County, Kansas, to provide **160 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 the structure creating the above referenced reservoir has been assigned Division of Water Resources Structures Permit No. LOS-0050.

5. That installation of works for diversion of water shall be completed on or before **December 31, 2023** or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$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, which is currently \$100.00.

6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2027** 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, which is currently \$100.00.

7. That the applicant shall not be deemed to have acquired a water appropriation for a quantity in excess of the amount approved herein nor in excess of the amount found by the Chief Engineer to have been actually used for the approved purpose during one calendar year subsequent to approval of the application and within the time specified for perfection or any authorized extension thereof.

8. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.

9. That the right of the appropriator shall relate to a specific quantity of water and such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion.

10. That this permit does not constitute authority under K.S.A. 82a-301 through 305a to construct any dam or other obstruction; nor does it grant any right-of-way, or authorize entry upon or injury to, public or private property.

11. That all 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 re-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 the 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).

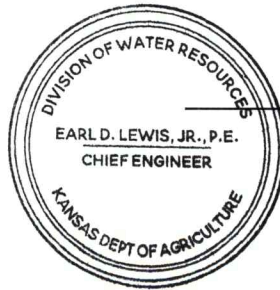
13. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure 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 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.

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.

Ordered this 21st day of April, 2022, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.

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

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 21st day of April, 2022, by Earl D. Lewis Jr., P.E. Chief Engineer, Water Appropriation Program, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings

Notary Public



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 day of
Application, File No. 50,511, dated
mail to the following:

, 2022, I hereby certify that the foregoing Approval of
was mailed postage prepaid, first class, US

DUSTIN EDWARDS
520 W 5TH
LEBO, KS 66856

With photocopies to:

Gourley Family Rev Trust
700 W 4th
Lebo, KS 66856

Topeka Field Office

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

DUSTIN EDWARDS
520 W 5TH
LEBO, KS 66856

May 4, 2022

RE: Appropriation of Water, File No. 50,511

Dear Sir or Madam:

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 acceptable water flowmeter must be installed on the 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 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.

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.

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/divisions-programs/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:bmm
Enclosure(s)
pc:

Gourley Family Rev Trust
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:

- 1) request an evidentiary hearing before the Chief Engineer, or
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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

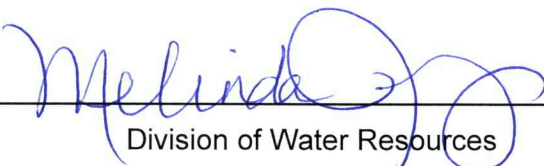
On this 4 day of May, 2022, I hereby certify that the foregoing Approval of Application, File No. 50,511, dated 21 April, 2022 was mailed postage prepaid, first class, US mail to the following:

DUSTIN EDWARDS
520 W 5TH
LEBO, KS 66856

With photocopies to:

Gourley Family Rev Trust
700 W 4th
Lebo, KS 66856

Topeka Field Office



Division of Water Resources