

File No. **50,723** 15. Formation Code: Drainage Basin: **Republican River** County: **WS** Special Use: Stream: **Parsons Creek (Republican)**

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 af Overlap PD Files

MOD 47804 NW SE SW 25 5S 1E 1 1081 3398

1500 247 1500 247 19362

MOD 50602 SE SE NW 25 5S 1E 2 2660 3015

18. Storage: Rate _____ Quantity _____ ac/ft Additional Rate _____ Additional Quantity _____ ac/ft

19. Limitation: **247 AF** af/yr at **1500 gpm** (_____ cfs) when combined with file number(s) **19362**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? Yes No To be installed by **12/31/2024** Date Acceptable Meter Installed _____

21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files			
T	MOD	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE							
DEL	ENT	PUSE	S	T	R	ID	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼							
	CHK	33045	25	5S	1E	1	5.5	38.5	40	6.5	25.5		22.5	16		21.5		23	7.5		206.5	7a.	No	19362

Comments **SPECIAL CONDITION: PERMISSION TO DIVERT**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: March 9, 2023

FROM: Lloyd Hemphill

RE: Application, File No. 50,723
Change Application, File No. 19,362

J Douglas Toll has filed the referenced application to appropriate 247 acre-feet of surface water from Parsons Creek, a tributary to the Republican River, at the rate of 1,500 gallons per minute to irrigate 206.5 acres in Washington County. The requested quantity of water (247 acre-feet) is 1.2 acre-feet per acre applied to 206.5 acres, which is the maximum allowable for Washington County. The place of use is owned by J Douglas & M Maureen Toll, as described on the application. The applicant has signed the form stating he has access to the point of diversion. The new application overlaps the points of diversion and place of use of Appropriation of Water, File No. 19,362. A place of use change application was filed to expand the authorized place of use from 177 to 247 acres. File No. 19,362 is not abandoned pursuant to K.S.A. 82a-718. The new application will cover the additional consumptive use by the expanded acreage. This pair of applications was filed to accommodate the actual acreage being irrigated. In conjunction with the place of use change, the description of the authorized points of diversion will be updated. Prior to these approvals, neither pumpsite location was described with feet distances. The updated description for one pumpsite will be based on GPS data and the other based on GIS tools. No actual move is occurring to the point of diversion locations as a result of this pair of applications. The quantity and rate under File No. 50,723 will be further limited to 247 acre-feet and 1,500 gallons per minute in combination with the senior file.

The applicant provided a list of nearby landowners within one-half mile upstream and downstream of the property lines, and they were notified on December 9, 2022. One phone call was received with general questions about the application, but no concerns were raised. According to the WRIS database there are no other permitted surface water rights within a two (2) mile radius of the proposed point of diversion. Therefore, approval of this application will not impact any senior water rights.

The applicant has submitted a signed Minimum Desirable Streamflow (MDS) statement, which has been notarized. By completing this statement, the applicant affirms his knowledge that there could be times when the diversion of water may not be allowed under this permit. Additionally, since the source of supply is surface water from a tributary to the Republican River, the permit 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." The Lower Republican River Basin is currently open to new appropriations meeting the criteria required by K.A.R. 5-3-11(d)(6).

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

File Nos. 19,362 & 50,723
Page 2 of 2

Based on the above discussion, that surface water within the Lower Republican River remains open to new appropriations with appropriate and consistent permit conditions, and approval of the application will not impair senior water rights, it is recommended that the referenced applications be approved.

Lloyd Hemphill
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. 50,723** of the applicant

**J DOUGLAS TOLL
PO BOX 186
CLIFTON KS 66937**

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 **February 18, 2022**.
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	NE ¹ / ₄				NW ¹ / ₄				SW ¹ / ₄				SE ¹ / ₄				TOTAL
	NE ¹ / ₄	NW ¹ / ₄	W ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	
25 - 5S - 1E	5.5	38.5	40.0	6.5	25.5			22.5	16.0			21.5		23.0	7.5		206.5

3. That the authorized source from which the appropriation shall be made is surface water from Parsons Creek (Republican), to be withdrawn at two (2) points:

one (1) pumpsite located in the Northwest Quarter of the Southeast Quarter of the Southwest Quarter (NW¹/₄ SE¹/₄ SW¹/₄) of Section 25, more particularly described as being near a point 1,081 feet North and 3,398 feet West of the Southeast corner of said section, and

one (1) pumpsite located in the Southeast Quarter of the Southeast Quarter of the Northwest Quarter (SE¹/₄ SE¹/₄ NW¹/₄) of Section 25, more particularly described as being near a point 2,660 feet North and 3,015 feet West of the Southeast corner of said section,

both in Township 5 South, Range 1 East, Washington County, Kansas, located substantially as shown on the map accompanying the application.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **1,500 gallons per minute (3.34 c.f.s.)** and to a quantity not to exceed **247 acre-feet** of water for any calendar year.

5. 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, 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, 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, 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 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 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 the stream flow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of this water right or permit.

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 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.

18. That the quantity of water and the rate of diversion approved under this permit is further limited to the quantity and rate which combined with Water Right, File No. 19,362, will provide a total not to exceed **247 acre-feet** of water per calendar year to be diverted at a maximum diversion rate not in excess of **1,500 gallons per minute** (3.34 c.f.s.) for irrigation use on the land described herein.

19. 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 20 day of March, 2023, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

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

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 20 day of March, 2023, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Katie N. Anderson

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 22, 2023

J DOUGLAS & M MAUREEN TOLL
PO BOX 186
CLIFTON KS 66937

RE: Appropriation of Water
File No. 50,723

Water Right
File No. 19,362

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. Also included is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation for File No. 50,723 which will establish the extent of your perfected water right.

Also enclosed is the order executed by the Chief Engineer, approving the application for change under Water Right, File No. 19,362. Since this order modifies the original Certificate of Appropriation, it should be recorded with the Register of Deeds as other instruments affecting real estate.

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 the 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 the 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.

J DOUGLAS & M MAUREEN TOLL
File Nos. 19,362 and 50,723
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Additional information and applicable forms may be found on our website at agriculture.ks.gov/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,



Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB:lhk
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 20th day of March, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,723, dated March 20, 2023, was mailed postage prepaid, first class, US mail to the following:

J DOUGLAS & M MAUREEN TOLL
PO BOX 186
CLIFTON KS 66937

With photocopies to:

KDA-DWR Topeka Field Office



Division of Water Resources