

File No. **50073** 15. Formation Code: **112** Drainage Basin: **S F NINNESCAH RIVER** County: **KM** Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity						
T	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		
												Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
CHK	86858	SW	SW	SW	21	28S	10W	6	122	4473	NE	2.8	NE	2.8	none	
COMMENT 29" EVAP AREA*																

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ 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 ~~12/31/2021~~ 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								
MOD	67631	21	28S	10W	3					1.14 AC GW PIT								1.16 ac GW pit (SW SW)					7a	no	none								

Comments *****5 acre foot exemption under KAR 5-3-16a*****

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: May 14, 2020

FROM: Kris Neuhauser

RE: Application, File No. 50,073

Steve Albers has filed the referenced application to appropriate 2.8 acre-feet of groundwater at a rate of natural flows for recreational use to cover evaporative losses from a groundwater pit. The point of diversion is the geo-center of said pit, located in the Southwest Quarter of Section 21, Township 28 South, Range 10 West, Kingman County, Kansas. The place of use is fully owned by the applicant, and he has signed the application form affirming legal access to the point of diversion.

The groundwater pit is located in Designated Unit Area SNI 25, which is currently fully appropriated and considered closed. The pit has a surface area of 1.14 acres (1.14 acres x 29 inches / 12 inches = 2.8 acre-feet). There is a second groundwater pit directly to the west, for which a separate application (File No. 50,074) has been filed. New Application, File No. 50,074 is asking for 2.83 acre-feet, with the surface area at 1.17 acres (1.17 acres x 29 inches / 12 inches = 2.83 acre-feet).

The combined total quantity between New Applications, File Nos. 50,073 and 50,074 comes out to be 5.63 acre-feet, just over the 5 acre-feet quantity that can be exempt in a two-mile-radius circle. Since both are existing, illegal groundwater pits that have been in place since 2013, with no known impact to nearby wells; the applicant was encouraged by DWR staff to get them permitted.

The source of supply for the pit is the South Fork Ninescah River alluvium, which has been determined by the chief engineer to be fully appropriated and shall be closed to further new regular groundwater appropriations. However, K.A.R. 5-3-16a(a) provides an exemption for up to 5 acre-feet of groundwater in this situation, provided that certain criteria are met.

1. *The sum of the annual quantity of water requested by the proposed appropriation and the total annual quantities of groundwater authorized by prior approvals of applications allowed because of an exemption pursuant to this regulation does not exceed five acre-feet in a two-mile-radius circle surrounding the proposed point of diversion.* There is one other application (File No. 50,074) for a small use exemption within 2 miles of the point of diversion. However, a waiver will be included with this permit, as well as with the permit for File No. 50,074.
2. *The annual quantity of water requested is reasonable for the proposed beneficial use of water.* The requested quantity of 2.8 acre-feet is a reasonable quantity according to potential net evaporation (1.14 acres x 29 inches / 12 inches = 2.8 acre-feet).
3. *All other criteria for processing a new application to appropriate water at that location, including spacing criteria, have been met.* Two domestic wells were identified to be within one-half mile of the point of diversion, the closest being around 700 feet away. The closest non-domestic well is over 5,500 feet away. Therefore, minimum well spacing requirements are met (via K.A.R. 5-4-4).
4. *The approval of the application does not authorize an additional quantity of water out of an existing well that would result in a total combined annual quantity of water authorized from that well in excess of five acre-feet per calendar year.* There are no other regular appropriations covering this point of diversion.
5. *The proposed beneficial use of water will significantly benefit the public interest and help maximize economic development.* The purpose of this appropriation is to permit an illegal groundwater pit constructed in 2013; as well as provide recreational use in the form of fishing and swimming. Thus, it is reasonable to presume the appropriation will benefit the public interest and may help maximize economic development.

Two domestic wells were identified within one-half mile of the point of diversion. Nearby letters were sent on May 12, 2020. No responses of any kind were received.

Jeff Lanterman, Water Commissioner for the Stafford Field Office, recommended approval of the referenced application in an email conversation on December 6, 2019.

The application will include a waiver as it does not meet K.A.R. 5-3-16a(a). The application does meet the remaining criteria for exemption to a closed area under K.A.R. 5-3-16a. 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.

A handwritten signature in black ink, appearing to read "Kris Neuhauser", with a long horizontal flourish extending to the right.

Kris Neuhauser
Environmental Scientist
Water Appropriation Program

From: Lanterman, Jeff [KDA]
Sent: Fri 12/6/2019 2:08 PM
To: Neuhauser, Kris [KDA];Lanterman, Jeff [KDA]
Cc: Conant, Cameron [KDA]
Subject: RE: 50073 & 50074 5 AF exemptions?

Go ahead and process them Kris.

They're because of us.

Jeff

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Neuhauser, Kris [KDA]" <Kris.Neuhauser@ks.gov>
Date: 12/6/19 12:40 PM (GMT-06:00)
To: "Lanterman, Jeff [KDA]" <Jeff.Lanterman@ks.gov>
Cc: "Conant, Cameron [KDA]" <Cameron.Conant@ks.gov>
Subject: RE: 50073 & 50074 5 AF exemptions?

Jeff,

Just following up on these two GW pit apps when you get a chance, had tucked them off to the side for the time being.

Decided to pull them out and get a start on the memos at least. Wanted to get your thoughts before I went too far along though.

Thanks!

Kris

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Tuesday, October 1, 2019 3:19 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: RE: 50073 & 50074 5 AF exemptions?

Jeff, this is Steve Albers, located near Gene Albers complaint site.

We assisted on these applications. We became aware of these in 2016 or so when Steve Albers started filing terms/temps on them for dust control for the windfarm construction. We decided around that time we probably needed to pursue permits on them.

These are right next to painter creek but they are both GW pits.

Cam

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Tuesday, October 1, 2019 2:57 PM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: 50073 & 50074 5 AF exemptions?

Hey Jeff and Cameron,

Working on new apps 50,073 and 50,074 (DUA: SNI 25). Applying for small use exemptions for illegal groundwater pits right next to each other.

2.8 AF for 50,073 and 2.83 AF for 50,074.

Combined it comes out to be over 5 AF per year. I measured the area of each pit in ARC, came out pretty close to what they had submitted. Regardless, it still comes out to be over 5 AF per year between the two. It's my understanding there can only be up to 5 AF exempted within the two mile circle in a closed area (K.A.R. 5-3-16a)?

Kristen briefly looked at these. She thought I should get your thoughts on them as well.

Kris

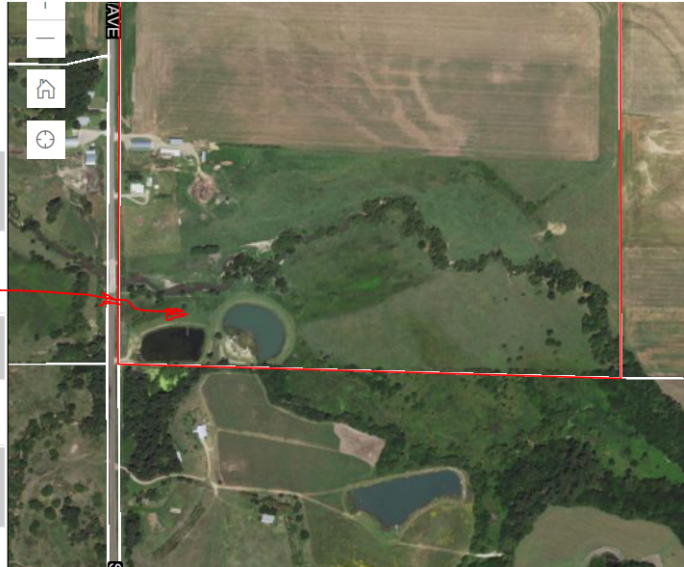
50073 & 50074 ownership

List

Parcels matching undefined

Results

0480752100000005000 00000 NW 160 AVE, Cunningham, KS 67035	ALBERS, EDWARD A
0480752100000006000 3846 SW 170 AVE, Cunningham, KS 67035	ALBERS, STEVEN L & MARY J REV TR(S)
0480752100000001000 00000 SW 30 ST, Cunningham, KS 67035	MCCALL, RON & LINDA FAMILY TR
0480752100000002000 00000 SW 30 ST, Cunningham, KS 67035	RENNER, ROBERT R & DONNA J
0480752100000002010 00000 NW 170 AVE, Cunningham, KS 67035	RENNER, THOMAS G
0480752100000003000 00000 NW 160 AVE, Cunningham, KS 67035	STUEFFEL, RAMON & JANETTE



Nearby landowner with possible domestic well

Open Records for Kansas Appraisers - Kingman County

Parcel ID :	0480782800000002000
Owner Name :	STERNEKER, THOMAS L & SHAWNA L
Location :	00000 SW 170 AVE, Cunningham, KS 67035.
Boundary Desc :	S28, T28, R10W, ACRES 196.9, SW4 NE4, W2 SE4, S2 SW4 LESS R/W.

Owner Information

[Zoom to](#) [Full Report](#)

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. 50,073** of the applicant

**STEVEN L & MARY J ALBERS
15140 SW 70TH STREET
CUNNINGHAM, KS 67035**

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 **June 28, 2018**.
2. That the water sought to be appropriated shall be used for recreational use to cover evaporative losses from an existing groundwater pit with a surface area of 1.16 acres located in the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 21, in Township 28 South, Range 10 West, Kingman County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a groundwater pit with a geographical center located in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 21, more particularly described as being near a point 122 feet North and 4,473 feet West of the Southeast corner of said section, in Township 28 South, Range 10 West, Kingman 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 **natural evaporation** and to a quantity not to exceed **2.8 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, 2022** 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.
6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2026** 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

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 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.

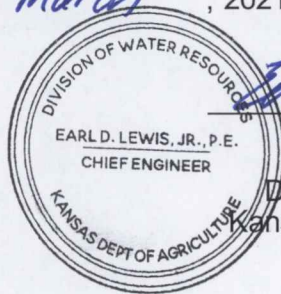
12. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

13. 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.

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 the groundwater pit shall be constructed, maintained, and operated in a manner that will prevent degradation to the water quality of the source of supply, which would cause impairment to existing water rights.

Ordered this 31st day of March, 2021, 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)
County of Riley) SS

The foregoing instrument was acknowledged before me this 31st day of March 2021, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture



Ashlee Freeman
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

STEVEN L & MARY J ALBERS
15140 SW 70TH STREET
CUNNINGHAM, KS 67035

April 1, 2021

RE: Appropriations of Water, File No. 50,073 and 50,074

Dear Sir or Madam:

Enclosed are permits authorizing you to appropriate water for beneficial use as set forth in the permits. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in these permits.

The approval of your applications constitutes permits 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 in order to acknowledge completion of the diversion works. Failure to complete the diversion works and submit the appropriate field inspection fee within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permits. If you need an extension of time, you must request it before the deadline for completion set forth in the permits. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00 per file.

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/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 Stafford Field Office at 620-234-5311. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

New Applications and Changes Supervisor
Water Appropriation Program

KAB: kjn:li
Enclosures

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.

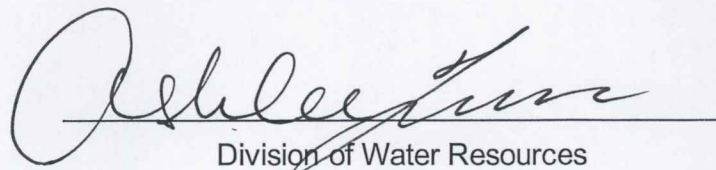
CERTIFICATE OF SERVICE

On this 1 day of April, 2021, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,073, dated 31 March 2021 was mailed postage prepaid, first class, US mail to the following:

STEVEN L & MARY J ALBERS
15140 SW 70TH STREET
CUNNINGHAM, KS 67035

With photocopies to:

Stafford Field Office


Division of Water Resources