

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

1. File Number: <p style="text-align: center;"><b>50170</b></p>	2. Status Change Date: <p style="text-align: center;"><b>5/27/2021</b></p>	3. Field Office: <p style="text-align: center;"><b>2</b></p>	4. GMD: <p style="text-align: center;"><b>5</b></p>
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5. Status:     Approved                       Denied by DWR/GMD                       Dismiss by Request/Failure to Return

6. Enclosures:     Check Valve             N of C Form             Water Tube             Driller Copy             Meter

7a. Applicant(s)                      Person ID new  
New to system                       Add Seq# 67825

**ROBB ROSS  
JOHN 414 LLC  
715 W 6TH  
COLBY KS 67701**

7b. Landowner(s)                      Person ID \_\_\_\_\_  
New to system                       Add Seq# \_\_\_\_\_

**7a**

7c. Landowner(s)                      Person ID \_\_\_\_\_  
New to system                       Add Seq# \_\_\_\_\_

7d. Misc                                      Person ID \_\_\_\_\_  
New to system                       Add Seq# \_\_\_\_\_

8. WUR Correspondent                      Person ID \_\_\_\_\_  
New to system                       Add Seq# \_\_\_\_\_  
Overlap File (s) WUC                      Notarized WUC Form   
Agree  Yes  No

**7a**

9. Use of Water:    Changing?     Yes     No

Groundwater                       Surface Water

IRR                       REC                       DEW                       MUN

STK                       SED                       DOM                       CON

HYD DRG     WTR PWR                       ART RECHRG

IND    SIC: \_\_\_\_\_                       OTHER: \_\_\_\_\_

10. Completion Date: 12/31/2022                      11. Perfection Date: 12/31/2026                      12. Exp Date: \_\_\_\_\_

13. Conservation Plan Required?  Yes  No    Date Required: \_\_\_\_\_    Date Approved: \_\_\_\_\_    Date to Comply: \_\_\_\_\_

14. Water Level Measuring Device?  Yes  No    Date to Comply: \_\_\_\_\_    Date WLMD Installed: \_\_\_\_\_

Date Prepared: **2/2/2021**                      By: **KJN**  
Date Entered: 6/1/2021                      By: LMoody

File No. **50170**      15. Formation Code:      Drainage Basin: **COW CREEK**      County: **RC**      Special Use:      Stream:

16. Points of Diversion										17. Rate and Quantity					
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		Overlap PD Files
											Rate gpm	Quantity af	Rate gpm	Quantity af	
<b>MOD</b>			<b>87184</b>	<b>SE NE NW</b>	<b>27</b>	<b>21S</b>	<b>8W</b>	<b>1</b>	<b>4102</b>	<b>2817</b>	<b>NE</b>	<b>74.25</b>	<b>NE</b>	<b>74.25</b>	<b>none</b>

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 12/31/2022      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use										NE¼								NW¼				SW¼				SE¼				Total	Owner	Chg? <b>NO</b>	Overlap Files
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	NE ¼	NW ¼	SW ¼	SE ¼						
<b>MOD</b>			<b>69206</b>	<b>27</b>	<b>21S</b>	<b>8W</b>	<b>1</b>	<b>33 AC GW PIT (N2)</b>																	<b>7a</b>	<del>no</del> <b>YES</b>	<b>none</b>						

Comments: **Waiver of 5-25-4 included**



**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** February 1, 2021

**FROM:** Kris Neuhauser

**RE:** Application, File No. 50,170

Robb Ross on behalf of John414 LLC has filed the above referenced application to appropriate 74.25 acre-feet of groundwater at a rate of natural flows for recreational use to cover evaporative losses from a <sup>existing\*</sup> groundwater pit. The point of diversion is the geo-center of said pit, located in the Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 27, more particularly described as being near a point 4,102 feet North and 2,817 feet West of the Southeast corner of said section, in Township 21 South, Range 8 West, Rice 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 has a surface area of 33 acres. The quantity requested on this application was determined as follows: 33 acres x 27 inches / 12 inches = 74.25 acre-feet.

The pit has existed for many years (since the 1950's according to Scott Ross, Water Rights Investigative Service LLC) with no impairment issues to nearby wells. The purpose of this application is to simply bring the pit into compliance with Big Bend Groundwater Management District No. 5 and the Division of Water Resources.

This application was originally filed by Kent and Leigh Rayl, accepted in this office on November 27, 2018. During our review, a lawsuit took place (Dana Bixby, et al. vs. -CV-James M. Rayl, et al., Case No. 29) regarding ownership of the groundwater pit. The application was returned to Mr. and Mrs. Rayl on June 30, 2020, along with a letter explaining their options moving forward. The application was returned with updated ownership/signatures (Robb Ross; John414 LLC) who wanted to continue with the approval process.

Twenty-one domestic wells were identified within one-half mile of the point of diversion. Nearby letters were sent on October 5, 2020. Nadean Edigar called in (owns property/two domestic wells for livestock and her household to the south and west of pit) and expressed her concerns regarding the approval of this application. The historic background of the groundwater pit was explained to Mrs. Edigar, as well as details regarding why the application is being filed (to cover evaporation, etc.). Mrs. Edigar seemed more at ease after our conversation, but said she still planned to submit a letter to our office. No~~t~~ letter has been received to date.

Orrin Feril, Manager of Big Bend Groundwater Management District No. 5 (GMD 5), recommended approval of the referenced application in a letter dated November 13 2020, pursuant on an included waiver of K.A.R. 5-25-4 (as the groundwater pit was established prior to District closure).

Jeff Lanterman, Water Commissioner for the Stafford Field Office, and Cameron Conant, Assistant Water Commissioner of the Stafford Field Office, recommended approval of the referenced application in an email conversation on February 1, 2021.

The application will include a waiver of K.A.R. 5-25-4, in accordance with GMD 5's recommendation. 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.

\* LI/DWR



Kris Neuhauser  
Environmental Scientist  
Water Appropriation Program

Kansas Department of Agriculture  
 Division of Water Resources  
**WAIVER REQUEST & WAIVER RULE WORKSHEET**

File Number: 50170

FO: 2

GMD: 5

**WAIVER REQUEST:**

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
REC	2/2/2021	45	GMD 5	SUSTAINABLE YIELD	CLOSURE OF DISTRICT
Rule Number	Date Granted	Date Denied	Justification:	Appropriation of ground water in an existing pit that was constructed prior to district closure. Approval will bring this existing groundwater pit into compliance with the Kansas Water Appropriation Act.	
K.A.R. 5-25-4	5/27/2021				

**WAIVER RULE (complete only if a new rule needs to be created):**

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
				K.A.R.		

**COMMENTS: Will not be a new rule**

Date Prepared 2/2/2021 By KJN

Date Entered \_\_\_\_\_ By \_\_\_\_\_

**From:** Lanterman, Jeff [KDA]  
**Sent:** Mon 2/1/2021 4:52 PM  
**To:** Conant, Cameron [KDA];Neuhauser, Kris [KDA]  
**Subject:** RE: 50170 recommendation request

Kris. Approve this puppy! I still cant believe we finally got here &#128522;

Seems like a **very solid precedent** we can use on other applications inside GMD #5 surface water closure for old ponds.

Had to try very hard not to copy Orrin on this recommendation lol.

Jeff

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**From:** Conant, Cameron [KDA] <Cameron.Conant@ks.gov>  
**Sent:** Monday, February 1, 2021 4:34 PM  
**To:** Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>  
**Subject:** FW: 50170 recommendation request

Jeff, this is the GW pit just SE of Sterling that has been in existence for a long, long time.

It was never properly permitted. It has remained the same size for a very long time now, this is one that came up due to ownership/legal issues and they decided to pursue a water right to cover evaporative losses.

The GMD recommended waiver of their district closure (rightfully so) to properly permit the existing pit.

DWR agrees with GMD and the recommendation and fully supports this precedent that has seemingly been set by GMD#5 to clean up old, existing groundwater pits when owners seek to permit them after the fact. The pit was going to remain there, evaporating, so it was the right thing to do to approve the permit and make the old pit legal. Also, this pit and the evaporative losses from it will now be properly accounted for in future safe-yield analysis, which is appropriate for the area.

I think we can recommend approval of this application, please pass on to Kris if you agree.

Cameron

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**From:** Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>  
**Sent:** Monday, February 1, 2021 3:39 PM  
**To:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** 50170 recommendation request

Afternoon guys,

Hope your Monday is going well. Attached is a draft memo of New Application 50170 for your review and recommendation. Let me know if you need anything further.

Thanks!

**Kris Neuhauser**  
Environmental Scientist  
Water Appropriations Program – Kansas Dept of Agriculture  
(785) 564-6643

Darrell Wood - Edwards (Pres.)  
Fred Grunder - Pratt (V Pres.)  
John Janssen - Kiowa (Treas.)  
Justin Gatz - Reno (Sec.)  
Craig Zwick - Rice  
Marlyn Spare - Stafford  
Phil Martin - Barton  
Kerry Froetschner - Pawnee  
Tom Taylor - At-Large



Orrin Feril, Manager  
125 South Main Street  
Stafford, Kansas 67578  
ph: (620) 234-5352  
fx: (620) 234-5718  
gmd5@gmd5.org  
www.gmd5.org

December 22, 2020

Kris Neuhauser  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, KS 66502

RE: Application File No. 50,170

Dear Mr. Neuhauser,

Big Bend Groundwater Management District #5 has reviewed the above referenced application which proposes to cover the evaporation of approximately 74.25 acre-feet from a 33-acre groundwater pit for recreational use in N½ of Section 27, Township 21S, Range 08W in Rice County, Kansas. The application was presented to the Board of Directors at the December regular board meeting for review.

Based upon information received in the District office and provided at the board meeting, the Board voted to recommend a waiver of K.A.R. 5-25-4 as the groundwater pit was established prior to District closure. Therefore, the application is recommended for approval as presented.

The application is for the evaporation of groundwater and is not subject to the District's well equipment regulation K.A.R. 5-25-5 for a required flow meter.

Please feel free to give me a call if you have any questions.

Sincerely,

Orrin Feril  
Manager

**From:** Letourneau, Lane [KDA]  
**Sent:** Thu 12/17/2020 3:20 PM  
**To:** Conant, Cameron [KDA];Lanterman, Jeff [KDA];Beightel, Chris [KDA];Lewis, Earl;Baum, Kristen [KDA]  
**Cc:** KDA StaffordFO;Neuhauser, Kris [KDA];Milner, Brandon [KDA]  
**Subject:** RE: GMD#5 regular board meeting notes

Cameron,

Thanks for the notes. I appreciate the board's position on the old groundwater pits. That is what have wanted all along. I think we deal with them as they come up. This gives us a path to move forward when they do come up.

We might be able to use this rational in GMD 2 as well.

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**From:** Conant, Cameron [KDA] <Cameron.Conant@ks.gov>  
**Sent:** Thursday, December 17, 2020 3:06 PM  
**To:** Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Letourneau, Lane [KDA] <Lane.Letourneau@ks.gov>; Beightel, Chris [KDA] <Chris.Beightel@ks.gov>; Lewis, Earl <Earl.Lewis@kwo.ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>  
**Cc:** KDA StaffordFO <KDA.STAFFORDFO@ks.gov>; Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>; Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>  
**Subject:** GMD#5 regular board meeting notes

I attended the GMD#5 board meeting this morning via zoom. They had a full board and quite a few people on the zoom meeting as well. They did this meeting at the county annex in an effort to have enough room to spread out per County guidance (which also limited capacity to no more than 15 people).

**File 50170-** This is a very old, existing groundwater pit located just southeast of Sterling. The application is to cover evaporative losses from the exposed groundwater which totals 74.25 AF. There was a lot of discussion amongst the board and they directed the following questions to DWR (Cameron). Why is it not grandfathered in and why are we even messing with these, if approved will it be counted in any other 2 mile SY evaluations, can they change the type of use down the road to irrigation? Orrin said if the board decided to deny it, basically the only option was to fill it in to be in compliance. The board voted to approve this application with a waiver of the district closure. This is a little exciting. Seems like the first domino has fallen and the precedent (for what its worth &#128522;) has been set to waive the district closure for old GW pits that should be permitted but are not. At least, in GMD#5 we seem to have an avenue to move forward if we want on these...I don't know if we want to send out a press release, or if we just want to hit them as they come up...

**File 50380-** (Alan Crane) This new application is dealing with regulation (5-25-22), movement of water right affecting streamflow at Rattlesnake Creek. Alan Crane wants to move file no 12313 file number away from Rattlesnake Creek to an area with better water and less impact to the stream and get a new file no. 50380. This application has been tabled for a couple months now, it didn't meet a couple parts of the regulation. David E was on the call and able to explain the Theis analysis he did, showing only a 2.52' impact at the nearest domestic well after 50 years of use at the proposed location. Dave Romero (Balleau GW) was also online and agreed with David's Theis analysis and said Theis was good for the purpose of ensuring neighboring wells wouldn't be adversely impacted by the move, but not adequate for showing the lessened impact on Rattlesnake Creek. Only the numerical model could project that accurately. If they wanted to account for how this benefited RSC, they would need to utilize the numerical model. \$6000 will get the run showing impact at old location and impact at new location. Alan offered to pay half of the model run cost. The board motioned to go with the \$6000 model run and report with Balleau. They will review the results to determine if they want to waive the applicable portions of 5-25-22 or not once the review is complete. Orrin noted they are setting themselves up to do this or offer this to anyone who is trying to utilize the model run to satisfy (a)(7) if needed.



**82a-743-** There was very little discussion about this. Orrin noted it would be good for Stock and probably Muni, not very applicable to agriculture and he went so far as to say he didn't think DWR would approve one for agriculture. There was really no board discussion about it other than they wished DWR would respond to the GMD managers letter. They opted to not provide additional comments at this time, other than to support the GMD managers letter and wait to hear from DWR.

Mike Oldham provided an update from USFWS and said January 7<sup>th</sup> there was an upcoming, normally scheduled meeting between USFWS and GMD about the agreement.

That is literally as much as was said about the Quivira agreement and nothing from GMD about it.

Please let me know if you have any additional questions.

**Cameron R. Conant**

Assistant Water Commissioner  
Kansas Department of Agriculture-DWR  
Stafford Field Office  
(620) 234-5311

**From:** Baum, Kristen [KDA]  
**Sent:** Tue 6/30/2020 10:02 AM  
**To:** Freeman, Ashlee [KDA];Neuhauser, Kris [KDA]  
**Subject:** Outgoing mail FW: Sterling Groundwater pit (Application #50170)  
**Attachments:** 1-500-6 Voluntary Withdrawal of Application.doc, DWR ltr to Rayls--7.17.19 (signed).pdf, DWR ltr to Rayls--Legal draft 5.26.20.kab.docx

Hi Ashlee,

I have some outgoing mail. We need to send the attached letter along with some enclosures. We need to send the two other attachments to this email as well as the original application. I've looked through the files I have at home and I don't think I have this one. It could possibly be on my desk or maybe Kris's. If we can't locate it, we can create a true and correct copy from docuware. Feel free to give me a call/slack at any point, for clarification. Please review the below email string and make sure what I'm telling you sounds correct, based on Aaron's instructions.

We need to send an email version of the letter and two enclosures to Vernon Jarboe, [VJarboe@sloanlawfirm.com](mailto:VJarboe@sloanlawfirm.com). I don't think he needs a copy of the application, but we should probably convert the letter to pdf.

We need to send the letter, attached enclosures and original application to Kent and Leigh Rayl.

We need to send a copy of just the letter to John 414 LLC, at two different addresses.

John414, LLC  
PO Box 664  
Hays KS 67601

And 1741 YOCEMENTO AVE, HAYS, KS 67601

Thanks,  
Kristen

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**From:** Oleen, Aaron [KDA] <Aaron.Oleen@ks.gov>  
**Sent:** Monday, June 29, 2020 5:28 PM  
**To:** Baum, Kristen [KDA] <Kristen.Baum@ks.gov>  
**Cc:** Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Murray, Stephanie [KDA] <Stephanie.Murray@ks.gov>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

Thanks for the update, Kristen.

If the Rayls timely respond with an updated new-permit application, then confer with Stephanie if you have any questions about the propriety/completeness of that application.

If the Rayls submit the voluntary dismissal form regarding their pending application, then confer with Stephanie if you need any assistance in getting the new owner to properly apply for a new water permit.

I'll give Stephanie the Legal file and she'll just hold onto it until she learns of any further developments from you.

**Aaron B. Oleen**, Staff Attorney

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502

Phone (direct): (785) 564-6738 | Fax: (785) 564-6777

**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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**From:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Sent:** Monday, June 29, 2020 4:55 PM  
**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Cc:** Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Murray, Stephanie [KDA] <[Stephanie.Murray@ks.gov](mailto:Stephanie.Murray@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

No, we have not sent that letter out. I'm glad you followed up with me. It will go out tomorrow. I reworded one of the paragraphs to actually return the original application so that if no action is taken by the Rayls, I can still put together an easy failure to return dismissal. See attached.

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**From:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Sent:** Friday, June 26, 2020 4:02 PM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Murray, Stephanie [KDA] <[Stephanie.Murray@ks.gov](mailto:Stephanie.Murray@ks.gov)>  
**Subject:** FW: Sterling Groundwater pit (Application #50170)

Kristen,

Just following up on this matter—have you had the chance to finalize and mail the attached letter that I had drafted for you? I don't see it in DocuWare.

Regardless, I'll just brief Stephanie about this matter as it stands, whatever its current status.

Thanks,

**Aaron B. Oleen**, Staff Attorney  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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**From:** Oleen, Aaron [KDA]  
**Sent:** Tuesday, May 26, 2020 1:33 PM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Murray, Stephanie [KDA] <[Stephanie.Murray@ks.gov](mailto:Stephanie.Murray@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

Kristen,

Attached for your convenience is a draft letter for your signature (and its proposed enclosures) that I've written as discussed in the string below. Please make any changes you wish and then proceed with attempting to get the pending application dismissed/amended or to get the current sole owner of the pit/lake (apparently/hopefully John414 LLC) to submit a new application.

If the Rayls have sold their land and moved then perhaps the address DWR has on file for them is no longer any good. So in your e-mail to Vernon Jarboe CC'ing him a copy of the attached letter (his e-mail address is [VJarboe@sloanlawfirm.com](mailto:VJarboe@sloanlawfirm.com)), I'd ask Mr. Jarboe to forward a copy of the letter to his former clients if he has a newer address for them.

If the Rayls ignore your letter and DWR can't find a better address, then I presume DWR would issue a standard application-dismissal warning-letter and then an application-dismissal order.

When you CC John 414 LLC, I recommend sending copies both to the PO box and to the address for the registered office (1741 YOCEMENTO AVE, HAYS, KS 67601).

This matter is being reassigned to Stephanie within KDA Legal. I'll brief her about the background before I leave. But hopefully DWR will now be able to proceed as usual and to get this pit/lake finally permitted.

Thanks,

**Aaron B. Oleen, Staff Attorney**

Kansas Department of Agriculture

1320 Research Park Drive

Manhattan, Kansas 66502

Phone (direct): (785) 564-6738 | Fax: (785) 564-6777

**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)

[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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**From:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>

**Sent:** Monday, May 4, 2020 8:47 AM

**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>

**Cc:** Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>

**Subject:** RE: Sterling Groundwater pit (Application #50170)

We do have a form they can use – see attached – but we have taken a statement in email before. We prefer the form if we can get it. Since it is just an application, we don't require a notary.

The pending application is file no. 50170 submitted by Kent and Leigh Rayl and accepted for filing by DWR on November 27, 2018.

The address on the application is as follows:

Kent and Leigh Rayl

1050 East Santa Fe

Sterling KS 67579

The address the county has for the new owner of the pit:

John414, LLC

PO Box 664

Hays KS 67601

Now that we know about the pit and have a lengthy file on it, we need to try to get it permitted. GMD5 may not go for it. Ultimately, we just need a mechanism to grandfather these pits in so we get them on the books.

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**From:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>

**Sent:** Thursday, April 30, 2020 10:08 AM

**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>

**Cc:** Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

UPDATE:

Attorney Jarboe says he's no longer representing Leigh & Kent Rayl, after the settlement of their lawsuit. He said something about the settlement involving the developer's sons (which includes James Rayl?) making peace with the other lakeside cabin owners by selling them the pit/lake, which Mr. Jarboe believes such owners purchased via the John414, LLC entity. Mr. Jarboe also thinks that Leigh & Kent Rayl have since sold their lakeside cabin.

If Leigh & Kent Rayl have sold their cabin, then they perhaps are no longer an appropriate new-permit applicant. And if the pit/lake is now owned by one LLC entity, then I think that would make for a better/cleaner new-permit application and approval.

So I will send a letter directly to Leigh & Kent Rayl, confirming that they instruct DWR to withdraw and dismiss their pending new-permit application. Kristen, if there's no Program form about that, then please give me the identifying information to reference in my correspondence.

And if Program would still prefer that some evaporation permit be applied for regarding this pit/lake, I could CC the John414, LLC in the hopes that it would contact Program about submitting a new new-permit application itself.

### **Aaron B. Oleen**, Staff Attorney

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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---

**From:** Oleen, Aaron [KDA]  
**Sent:** Thursday, April 30, 2020 8:37 AM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>  
**Cc:** Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

I'll be speaking with the attorney for Kent and Leigh Rayl this morning.

Given the apparent ownership change, if we did proceed with any application it might be better to get a new/updated one. But--Jeff, I don't recall: do we really want to issue a permit for this, or is it an administrative headache that's better to let die and not push forward?

### **Aaron B. Oleen**, Staff Attorney

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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---

**From:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Sent:** Thursday, April 30, 2020 8:23 AM  
**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

Is it the attorney for James Rayl that you plan to speak with or is it Kent and Leigh Rayl?

The application was actually filed by Kent and Leigh Rayl, and I think they and some other homeowners are the ones who would've purchased the property from James Rayl, the person who was challenging whether they had legal access. If they are now part owners, then they would now have legal access and we could process the application. I can reach out to them via email to get clarification.

---

**From:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Sent:** Thursday, April 30, 2020 8:03 AM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

The Rayls' attorney has suggested in an e-mail to me that the Rayls settled the matter; I'm speaking with him this morning on a different matter and will confirm that his clients no longer want DWR to process their pending application.

If DWR requires some withdrawal form in this situation, then provide me a copy and I will have it completed. If not, then give me identifying information about the pending application, that I can reference in written correspondence to the attorney to confirm his client's withdrawal of their application. E.g., "Mr. Jarboe, please confirm that your clients instruct DWR to withdraw and dismiss the [describe application—what file no., what date, etc]."

Thanks,

**Aaron B. Oleen**, Staff Attorney  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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---

**From:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Sent:** Thursday, April 30, 2020 7:46 AM  
**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

Yes, it is still pending. We haven't heard from anyone.

I checked ownership with the county appraisers records and it now shows John414, LLC as the primary owner of the pit, so maybe this is the entity formed by the surrounding homeowners who purchased the property.

---

**From:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Sent:** Wednesday, April 29, 2020 8:02 PM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

Kristen, is the Rayls' application referenced below still pending with DWR, or was it ever officially withdrawn?

**Aaron B. Oleen**, Staff Attorney  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
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[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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---

**From:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Sent:** Tuesday, December 17, 2019 10:31 AM  
**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

I don't mind leaving it open for awhile.

---

**From:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Sent:** Tuesday, December 17, 2019 9:33 AM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

There's not an easy (i.e., online) way for us to learn the status of the lawsuit. But I don't think it's our obligation to do so—per your 7/17/19 letter stating DWR's position that we're postponing further consideration of the Rayls' application until resolution of the lawsuit, and per our phone conference with the Rayls' attorneys on 8/21/19, the ball is in their court.

I suggest we leave the Rayls' application in limbo for a couple months longer at least, unless that causes problems for Program. And I'll continue to leave our Legal file open.

**Aaron B. Oleen**, Staff Attorney  
Kansas Department of Agriculture  
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Manhattan, Kansas 66502  
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---

**From:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Sent:** Tuesday, December 17, 2019 9:24 AM  
**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>

**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

As far as I know, this is our last communication. Is there a way to find out if the Rice Co court case has been dropped, or should I just give James Rayl a call?

---

**From:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Sent:** Monday, December 16, 2019 7:29 PM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

Any updates regarding this matter since the last e-mail I received below?

I'm wanting to know whether Legal can close our file for this matter or whether we should leave it open because additional Legal issues seem likely to arise in the foreseeable future.

Thanks,

**Aaron B. Oleen**, Staff Attorney  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
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---

**From:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Sent:** Wednesday, September 25, 2019 9:29 AM  
**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Letourneau, Lane [KDA] <[Lane.Letourneau@ks.gov](mailto:Lane.Letourneau@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

I just spoke to James Rayl. He said they are now in the process of selling the pit to some or all of the surrounding homeowners. They are still a couple weeks out from actually closing but assuming they do, the Rice Co court case will be dropped. He was not certain on the phone as to who all would be purchasing the pit. I guess we will need to clear that up once the deal is final.

---

**From:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Sent:** Monday, September 23, 2019 5:08 PM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Letourneau, Lane [KDA] <[Lane.Letourneau@ks.gov](mailto:Lane.Letourneau@ks.gov)>  
**Subject:** RE: Sterling Groundwater pit (Application #50170)

Kristen, please reach out to James Rayl and answer what administrative questions you can, but have his attorney contact me regarding any legal questions—which would include questions about when certain water laws were enacted and whether something could be “grandfathered-in” under applicable law.

Thanks,



**Aaron B. Oleen, Staff Attorney**

Kansas Department of Agriculture

1320 Research Park Drive

Manhattan, Kansas 66502

Phone (direct): (785) 564-6738 | Fax: (785) 564-6777

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---

**From:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>

**Sent:** Wednesday, September 18, 2019 10:32 AM

**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>

**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>;

Letourneau, Lane [KDA] <[Lane.Letourneau@ks.gov](mailto:Lane.Letourneau@ks.gov)>

**Subject:** FW: Sterling Groundwater pit (Application #50170)

Aaron,

Matt received a call from James Rayl, the primary owner of the REC use groundwater pit near Sterling that you've been involved with. See his email below – it sounds like his attorney may have some questions. Would you like me to reach out to him and see if I can answer some of his questions, or would you like to speak to him or his lawyer directly?

Thanks,  
Kristen

---

**From:** Meier, Matt [KDA] <[Matt.Meier@ks.gov](mailto:Matt.Meier@ks.gov)>

**Sent:** Wednesday, September 18, 2019 9:57 AM

**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>

**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>

**Subject:** Sterling Groundwater pit (Application #50170)

I received a phone call from James Rayl today about the groundwater pit south of Sterling in Rice Co, (which is the one with the Application #50170 debacle). He is one of the primary owners of it. It took a while to get this information from him as most of the first part of the call was going over the history of the pit. He had a few questions on water laws and what he needed to do (if anything). I told him as it stands now, it is considered a unpermitted but I wasn't sure on anything else do to the status of application 50170 being up in the air. His primary questions were:

What he needs to do?

He was also asking about when the specific rules regarding sand and gravel pits, and water laws in general, were implemented. His lawyer has been reading on them and felt that since the pit (which was supposedly built in the 1940s-1950s) was in place prior to any rules on sand and gravel pits they could possibly just be "grandfathered in". He wanted to discuss some other stuff as well but told him since I wasn't working the file, uncertain status of the application, and fact they were lawyers involved it might be best to discuss this questions with headquarters.

His phone number is 913-908-8332.

Thanks,

Matt Meier  
Environmental Scientist  
Stafford Field Office

[Matt.meier@ks.gov](mailto:Matt.meier@ks.gov)

620-234-5311

**From:** Oleen, Aaron [KDA]  
**Sent:** Wed 6/26/2019 4:34 PM  
**To:** Baum, Kristen [KDA];Lanterman, Jeff [KDA];Neuhauser, Kris [KDA];Meier, Matt [KDA];Conant, Cameron [KDA];Titus, Kenneth [KDA]  
**Cc:** Smith, Desiree [KDA]  
**Subject:** RE: DWR legal access question FW: File # 50170

**In summary, my recommendation is that DWR inform applicants Kent & Leigh Rayl (“Applicants”) that DWR’s determination of their pending new-permit application, File No. 50,170, will be postponed pending the outcome of pending lawsuit *Dana Bixby, et al. vs. James M. Rayl, et al.*, Rice County District Court case no. 17-CV-29. I propose that DWR give Applicants the option to withdraw their application and have the filing fee returned (they could re-file a new application in the future). I would draft a letter explaining all of this to Applicants. This matter is not worth DWR trying to make a decision at this time and getting in the middle of a nasty intra-family lawsuit.**

My recommendation is based on the following:

- Applicants submitted pending new-permit application, File No. 50,170, to DWR in 2018.
  - The application is for a natural-evaporation/recreational-use permit for an existing unpermitted groundwater pit (the “Lake”).
  - The application is unclear whether it is being submitted only on behalf of Applicants or on behalf of a purported HOA of which Applicants and others are members.
  - In para. 6 of the application, Applicants averred that they are two of several owners of the prospective point of diversion for the prospective permitted Lake. They also signed the sworn statement that they “have legal access to, or control of, the point of diversion described in this application from the landowner or the landowner’s authorized representative.”
- In response to DWR’s notifying nearby well owners of Applicants’ application, a James Rayl claimed to DWR that Applicants have no legal access to use the Lake because when they purchased their adjoining property to the Lake (Parcel P10), it was not included in certain covenants and restrictions that previously had been recorded and that govern access to and use of the Lake. James Rayl directed me to the aforementioned lawsuit.
- I conferred with James Rayl’s attorney about the aforementioned lawsuit and obtained a copy of the pending petition filed by Applicants and other plaintiffs, and a copy of the pending summary-judgment motion filed by James Rayl’s attorney. In sum, and notwithstanding James Rayl’s claims, it appears that both sides agree that the former owner/developer of Applicants’ land intended to make such land subject to the recorded covenants and restrictions, but the land (and other property) mistakenly was excluded. It appears that both sides agree that Applicants’ land should be adjudicated to be subject to such covenants and restrictions, based on the former owner/developer’s intent and the parties’ subsequent beliefs and actions over the years. So it appears that both sides agree that Applicants have some sort of access to the Lake, although the extent of that access is unclear/in dispute, and the court has not yet ruled.

So given the uncertainty regarding Applicants’ access to the Lake (which calls into question their answers to para. 6 of the application), and the fact that there is a pending lawsuit in which this access issue likely will be clearly determined/adjudicated, I believe it prudent for DWR to defer making a determination on Applicants’ application at this time.

I propose that my aforementioned recommended letter be CC’d to attorneys on both sides, so they know to have the court properly address/resolve the access issue, for purposes of our processing Applicants’ application or any similar one they may file in the future.

Please advise, including whether we need an internal conference call to discuss further.

Thanks,

**Aaron B. Oleen**, Staff Attorney

Kansas Department of Agriculture

1320 Research Park Drive

Manhattan, Kansas 66502

Phone (direct): (785) 564-6738 | Fax: (785) 564-6777

**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)

[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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---

**From:** Baum, Kristen [KDA]

**Sent:** Tuesday, June 25, 2019 1:23 PM

**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>; Smith, Desiree [KDA] <[Desiree.Smith@ks.gov](mailto:Desiree.Smith@ks.gov)>

**Subject:** RE: DWR legal access question FW: File # 50170

Aaron and Desiree,

I have a voicemail from the applicant, Leah Rayl, asking about the status of the application. I'd be happy to give her a call back and let her know that we are reviewing the information James Rayl submitted. I thought I should check with you first, though, to see if there is any additional information I can relay to her.

Thanks,  
Kristen

---

**From:** Lanterman, Jeff [KDA]

**Sent:** Thursday, June 13, 2019 1:32 PM

**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>; Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>

**Cc:** Smith, Desiree [KDA] <[Desiree.Smith@ks.gov](mailto:Desiree.Smith@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Meier, Matt [KDA] <[Matt.Meier@ks.gov](mailto:Matt.Meier@ks.gov)>; Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>

**Subject:** RE: DWR legal access question FW: File # 50170

And we just didn't know about it to follow up on a permit. Of course the GMD has been closed since the mid 90's so it pretty much always would be an uphill battle to get it covered.

GMD might want to try to force an offset.

---

**From:** Baum, Kristen [KDA]

**Sent:** Thursday, June 13, 2019 1:28 PM

**To:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>

**Cc:** Smith, Desiree [KDA] <[Desiree.Smith@ks.gov](mailto:Desiree.Smith@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Meier, Matt [KDA] <[Matt.Meier@ks.gov](mailto:Matt.Meier@ks.gov)>; Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>

**Subject:** RE: DWR legal access question FW: File # 50170

I'd consider Kent and Leigh the applicants since they are listed on the first page and they signed the application. That said, we would typically let them change that if it should be the HOA instead. I'm not sure how official the HOA is, though.

---

**From:** Lanterman, Jeff [KDA]

**Sent:** Thursday, June 13, 2019 11:57 AM

**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>; Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>

**Cc:** Smith, Desiree [KDA] <[Desiree.Smith@ks.gov](mailto:Desiree.Smith@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Meier, Matt [KDA] <[Matt.Meier@ks.gov](mailto:Matt.Meier@ks.gov)>; Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>

**Subject:** RE: DWR legal access question FW: File # 50170

Yes. It is an older pit been there for a long time not sure when it was actually put in. It shows up in TOPO maps so probably at least 70's or even earlier. The lake is big enough to require a water right, its about 30-33 acres.

Im going to let Kristen answer #2. Because the people that signed the application are not the ones who own it I don't think.

Would be nice to get this covered but GMD #5 will have to waive their district closure to do it. We have waived rules to get old existing pits covered in the past just so that they are "on the books" for future safe yield and other management decisions. Plus it protects them in the future against impairment from juniors although I am not sure how much of a consideration any of that would be at this location.

GMD has said in the past that they would like to open Rice county but have not followed up past their approved board motion with information to show it should be opened. So that issue is just out there.

Jeff

---

**From:** Oleen, Aaron [KDA]  
**Sent:** Thursday, June 13, 2019 11:13 AM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Smith, Desiree [KDA] <[Desiree.Smith@ks.gov](mailto:Desiree.Smith@ks.gov)>; Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Meier, Matt [KDA] <[Matt.Meier@ks.gov](mailto:Matt.Meier@ks.gov)>; Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>  
**Subject:** RE: DWR legal access question FW: File # 50170

Thanks. It appears that not all e-mails are saved there yet—at least I didn't see the 5/16/19 James Rayl e-mail that's at the beginning of this e-mail string. Regardless, we're reviewing the information now.

A couple initial questions:

1. Has DWR determined that a groundwater-evaporation permit actually is needed for this pit? I.e., has this pit been in violation for some time now and DWR just never knew about/enforced it?
2. What's up with this purported Rock Hill Lake Homeowners Association? At one point at the end of the application, Kent & Leigh Rayl say that they are applying for the permit on behalf of such HOA. But that's not how they completed the first page of the application. Who, actually, does DWR deem to be the applicant?

Thanks,

**Aaron B. Oleen**, Staff Attorney  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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**From:** Baum, Kristen [KDA]  
**Sent:** Tuesday, June 11, 2019 1:14 PM  
**To:** Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Cc:** Smith, Desiree [KDA] <[Desiree.Smith@ks.gov](mailto:Desiree.Smith@ks.gov)>  
**Subject:** RE: DWR legal access question FW: File # 50170

The application is saved in docuware. I'm having our staff make sure all emails are saved there as well. They are in the process of doing so right now. Yes, KAR 5-3-3a would be the primary regulation pertinent to the situation. KSA 82a-709 mentions the requirement of a sworn statement or evidence of legal access to the point of diversion, but it doesn't mention the place of use.

---

**From:** Oleen, Aaron [KDA]  
**Sent:** Tuesday, June 11, 2019 11:47 AM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Smith, Desiree [KDA] <[Desiree.Smith@ks.gov](mailto:Desiree.Smith@ks.gov)>  
**Subject:** FW: DWR legal access question FW: File # 50170

Kristen,

Would you please send me or direct me to:

- The pending application at issue
- Any material external communications that DWR has had about this matter thus far
- The applicable laws/regulation(s) regarding the access issue (I assume primarily just KAR 5-3-3a?)

Thanks,

**Aaron B. Oleen**, Staff Attorney

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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---

**From:** Oleen, Aaron [KDA]  
**Sent:** Tuesday, June 11, 2019 11:31 AM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>; Meier, Matt [KDA] <[Matt.Meier@ks.gov](mailto:Matt.Meier@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>; Titus, Kenneth [KDA] <[Kenneth.Titus@ks.gov](mailto:Kenneth.Titus@ks.gov)>  
**Subject:** RE: DWR legal access question FW: File # 50170

Kristen, sorry for the delayed response. Kenny and I are still tied up with other matters, but this afternoon I'm meeting with one of our legal interns to discuss this matter. I'll have her look at this issue with a goal of getting back with you before the end of the month. Let me know if this is a more urgent matter.

**Aaron B. Oleen**, Staff Attorney

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone (direct): (785) 564-6738 | Fax: (785) 564-6777  
**My e-mail address has changed:** [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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---

**From:** Baum, Kristen [KDA]  
**Sent:** Wednesday, May 29, 2019 9:26 AM  
**To:** Titus, Kenneth [KDA] <[Kenneth.Titus@ks.gov](mailto:Kenneth.Titus@ks.gov)>; Oleen, Aaron [KDA] <[Aaron.Oleen@ks.gov](mailto:Aaron.Oleen@ks.gov)>  
**Cc:** Lanterman, Jeff [KDA] <[Jeff.Lanterman@ks.gov](mailto:Jeff.Lanterman@ks.gov)>; Neuhauser, Kris [KDA] <[Kris.Neuhauser@ks.gov](mailto:Kris.Neuhauser@ks.gov)>; Meier, Matt [KDA] <[Matt.Meier@ks.gov](mailto:Matt.Meier@ks.gov)>; Conant, Cameron [KDA] <[Cameron.Conant@ks.gov](mailto:Cameron.Conant@ks.gov)>  
**Subject:** DWR legal access question FW: File # 50170

Gentlemen,

We have a pending application for an existing unpermitted groundwater pit in Rice Co (GMD 5). The applicants, Kent and Leigh Rayl, have filed for REC use on behalf of the owners of parcels surrounding the pit. After we notified nearby, I received a call from James Rayl, whom I understand is a trustee for the Willard Rayl Trust. His father, Willard, sold parcels of land around the pit and put restrictive covenants in place granting access to the pit. As I understand it, a few of these parcels extended 10-15 feet into the pit in order to allow for construction of docks. The Willard Rayl Trust is the primary owner of the pit (they weren't listed on the application) and there is an ongoing dispute about access.

I received the following email from James Rayl, along with the attached covenants and deeds. Do these covenants grant legal access to Kent and Leigh Rayl for the purpose of applying for a DWR appropriation? If not, I presume we need to return the application and recommend denial for lack of evidence of legal access. At that point, I'm guessing we will receive copies of the same covenants with the argument that they do provide proper access. Then again, if the applicants realize that a DWR permit isn't going to grant them the access to the pit that they are looking for, they may let the application go.

I attached a map of the parcels according to orka, in case it is helpful. Can you advise as to how we should proceed?

Thanks,  
Kristen

---

**From:** James Rayl <[jraylwpb@gmail.com](mailto:jraylwpb@gmail.com)>  
**Sent:** Thursday, May 16, 2019 1:59 PM  
**To:** Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Subject:** File # 50170

**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.

Kristen,

Thank you for visiting with me yesterday concerning an application for permit to appropriate water file # 50170. My brother, Dr. Jeffrey Rayl, and myself own a 55.9 ac parcel of land in Rice County near Sterling. Contained within that land area is a former sandpit with approximately 33 ac of water. This property was originally purchased from the Rock Hill Stone and Gravel Co., Inc. in 1976. I've attached the recorded deeds showing ownership since the original purchase.

Over the years the sandpit has been used for recreational purposes. Our father, Willard C. Rayl, established a set of restrictive covenants recorded in Rice County to control the use of the land and lake. I've attached a copy of these covenants for your inspection. Over the years our father sold parcels of land around the lake. He never established a homeowners association. He kept control.

The permit applicants, Kent and Leigh Rayl, live on property at the lake but have NO LEGAL ACCESS to use the lake. Their property was not included in the covenants legal description. There is currently a lengthy ongoing court case in Rice County concerning various aspects of the lake, its use and who has access. This case was filed Kent and Leigh Rayl and others in 2017.

The applicants answer in questions 14 & 15 that they and others own the property where the water will be used. This is simply not true as evidenced by the attached deeds.

We have never been aware of any KS laws affecting our sandpit or we would have applied for a recreational permit ourselves.

We feel this application is an attempt to gain control and access of our privately owned lake in the event the parcel owners lose in court.

We were never sent a notice from the state even though there is a well on our property. We can only presume the applicants did not want us to know what they were attempting to do through this application.

We would propose that you decline this application because of the false and misleading information provided by the applicants, Kent and Leigh Rayl.

Please feel free to contact me with any questions you might have.

Thanks,  
James Rayl  
913-908-8332  
[jraylwpb@gmail.com](mailto:jraylwpb@gmail.com)



# THE STATE OF KANSAS



**KANSAS DEPARTMENT OF AGRICULTURE**  
Mike Beam, Secretary of Agriculture

**DIVISION OF WATER RESOURCES**  
Earl D. Lewis Jr., Chief Engineer

## WAIVER OF REGULATION K.A.R. 5-25-4 Sustainable Yield

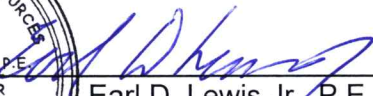
Date: May 27, 2021

RE: Appropriation of Water, File No. 50,170

1. That the application is within Big Bend Groundwater Management District No. 5, which per K.A.R. 5-25-4 is closed to further new surface and groundwater appropriations filed on or after December 17, 1998.
2. That the application proposed a quantity of 74.25 acre-feet of groundwater for evaporative loss from an existing 33-acre groundwater pit built in the 1950's for recreational use.
3. That Big Bend Groundwater Management District No. 5 reviewed the application and recommended approval with a waiver of K.A.R. 5-25-4.
4. That the waiver of safe yield is consistent with bringing the existing groundwater pit into compliance with the Kansas Water Appropriation Act.
5. That a waiver of safe yield will not prejudicially or unreasonably affect the public interest and should not impair any existing water rights.

Comments:



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

# 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. 50,170** of the applicant

**ROBB ROSS  
JOHN 414 LLC  
715 W 6TH  
COLBY KS 67701**

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 **November 27, 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 33 acres located in the North Half (N ½) of Section 27, in Township 21 South, Range 8 West, Rice 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 Southeast Quarter of the Northeast Quarter of the Northwest Quarter (SE¼ NE¼ NW¼) of Section 27, more particularly described as being near a point 4,102 feet North and 2,817 feet West of the Southeast corner of said section, in Township 21 South, Range 8 West, Rice 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 **74.25 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 27<sup>th</sup> day of May, 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 )  
                          ) SS  
County of Riley )

The foregoing instrument was acknowledged before me this 27 day of May, 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

June 2, 2021

ROBB ROSS  
JOHN 414 LLC  
715 W 6<sup>TH</sup>  
COLBY KS 67701

RE: Appropriation of Water, File No. 50,170

Dear Mr. Ross:

Enclosed is a permit 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 for the acknowledgement of the permit and completed groundwater pit.

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](http://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](http://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,

Kristen A. Baum  
New Application Unit Supervisor  
Water Appropriation Program

KAB: kjn:li  
Enclosures

pc: Stafford Field Office  
GMD 5

**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**

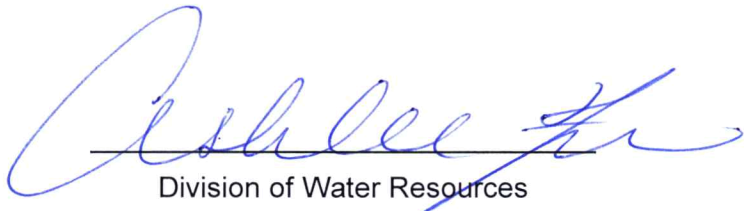
On this 2 day of June, 2021, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,170, dated 27 May, 2021, was mailed postage prepaid, first class, US mail to the following:

ROBB ROSS  
JOHN 414 LLC  
715 W 6TH  
COLBY KS 67701

With photocopies to:

Stafford Field Office

GMD 5



Division of Water Resources