

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files **DATE:** June 29, 2021
FROM: Kris Neuhauser **RE:** New Application,
File No. 50,250

Justin Kelly has filed an application to appropriate groundwater for irrigation use, requesting a battery of four (4) wells, with a quantity of 104 acre-feet of water per calendar year, at a diversion rate of 800 gallons per minute. The proposed battery of wells has a geographical center located in the Northeast Quarter of the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 25, more particularly described as being near a point 2,370 feet North and 221 feet West of the Southeast corner of said section, in Township 30 South, Range 1 West, Sumner County, Kansas, within the Ninnescah River drainage basin.

There are no other water rights overlapping the proposed point of diversion or place of use. The place of use is owned entirely by the applicant and he has signed the application form stating that he has legal access to the point of diversion.

Per the requirements in K.A.R. 5-3-11, safe yield is determined by the extent of the unconfined aquifer within a two-mile radius of the point of diversion, which establishes the area of consideration. Evaluation of the area of consideration included the extent of the unconfined aquifer, which provided an area of consideration of 5,134 acres. With a potential annual recharge of 2.8 inches, and 75% of recharge available for appropriation, safe yield was determined to be 898.39 acre-feet. Existing water rights have appropriated 537.5 acre-feet, providing a difference of 360.89 acre-feet available for appropriation, and the application requesting 104 acre-feet complies with safe yield.

The test hole log that was submitted with the pending application, shows top--soil from 0-3 feet, clay from 2-39 feet, medium sand from 39-45 feet, and shale from 45-50 feet. No static water level was provided.

The place of use is 80 acres in the Northeast and Northwest Quarters of the Southeast Quarter (SE $\frac{1}{4}$) of Section 25, Township 30, Range 1 West, Sumner County, Kansas. The proposed quantity of 104 acre-feet per calendar year provides 1.3 acre-feet per acre, making it the maximum reasonable quantity for Sumner County (1.3 x 80 acres = 104 acre-feet).

Originally, the application requested a quantity of 112 acre-feet. The maximum reasonable quantity of 1.3 acre feet per acre for Sumner County was explained to Mr. Kelly via phone call on **August 8, 2021**, where he verbally agreed to lower the proposed quantity to 104 acre-feet.

Two domestic wells within one-half mile of the point of diversion were identified. Nearby letters were sent out on June 29, 2021, notifying of the diversion works proposed. No responses have been received to date.

The closest non-domestic well is nearly 5,000 feet away, a four well battery authorized by File No. 50,105-C, However, it has a different source of supply. The closest non-domestic well with the same source of supply is over 7,000 feet away. The closest domestic well is over 2,500 feet to the South. Therefore, according to K.A.R. 5-4-4, the required well spacing is met.

In an ^a ~~e-mail~~ conversation on July 26, 2021, Jeff Lanterman, Water Commissioner of the Stafford Field Office, and Cameron Conant, Assistant Water Commissioner of the Stafford Field Office, recommended approval of the application.

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.

Based on the above discussion, the area is open to new appropriations, the application complies with safe yield and well spacing criteria, and approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.

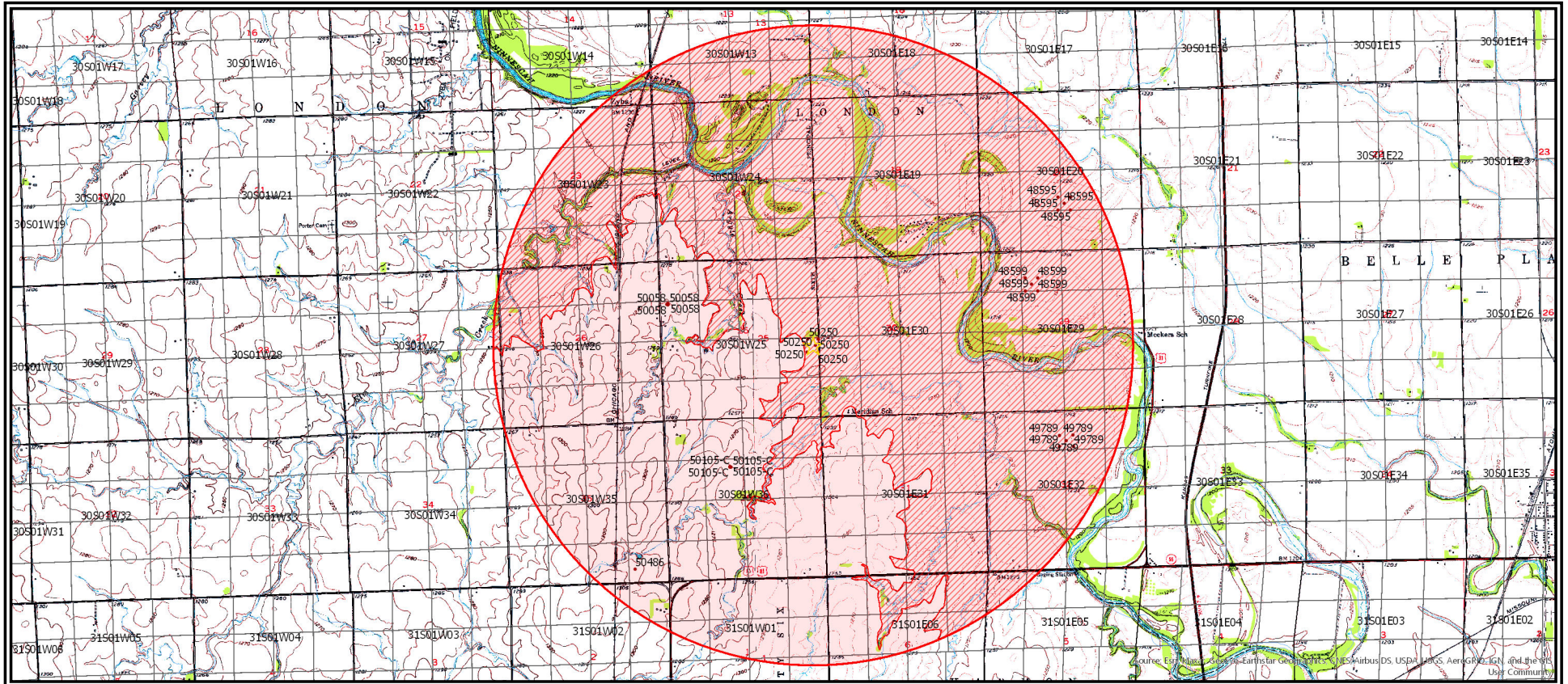
8/12/2021
KJN

**Jeff & Cameron can provide more details
on approval recommendation if need be***



Kris Neuhauser
New Applications Lead
Water Appropriation Program

Safe Yield Report Sheet
Water Right- Proposed Point of Diversion
Point of Diversion in 25-30S-01W
Footages from SE corner- 2,370 feet North 221 feet West



Analysis Results

The selected PD is in an area OPEN to new appropriations.

The safe yield based on the variables listed below is 898.39 AF.

Total prior appropriations in the circle is 641.50 AF. **- 104 AF = 537.5 AF**

Total quantity of water available for appropriation is ~~256.89 AF~~: **360.89 AF**

Safe Yield Variables

The area used for the analysis is set at 5,134 acres.

The potential annual recharge at the circle center is estimated to be 2.8 inches.

The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 29-JUN-2021 and are based on Appropriated and Vested ground water right and possible stream nodes for GMD #2. Domestic, Term and Temporary water rights have been excluded.

There are 4 water rights and 20 points of diversion within the circle.

File Number	Use	ST	SR	Q4	Q3	Q2	Q1	FeetN	FeetW	Sec	Twp	Rng	ID	Qind	Auth Quant	Add Quant	Tot Acres	Net Acres
A 48595 00	IRR	KK	G		SW	NW	SE	1512	2568	20	30	01E	2	WR	182.00	182.00	140.00	140.00
Same	IRR	KK	G		NE	SE	SW	1300	2780	20	30	01E	3	WR				
Same	IRR	KK	G		SE	NE	SW	1724	2780	20	30	01E	4	WR				
Same	IRR	KK	G		SW	NW	SE	1724	2356	20	30	01E	5	WR				
Same	IRR	KK	G		NW	SW	SE	1300	2356	20	30	01E	6	WR				
A 48599 00	IRR	KK	G		SW	NE	NW	4109	3713	29	30	01E	1	WR	146.00	146.00	112.00	112.00
Same	IRR	KK	G		SW	NE	NW	4321	3925	29	30	01E	2	WR				
Same	IRR	KK	G		SW	NE	NW	4321	3501	29	30	01E	3	WR				
Same	IRR	KK	G		NW	SE	NW	3897	3925	29	30	01E	4	WR				
Same	IRR	KK	G		NW	SE	NW	3897	3501	29	30	01E	5	WR				
A 49789 00	IRR	KE	G		SW	NW	NE	4000	2389	32	30	01E	2	WR	201.50	201.50	157.00	157.00
Same	IRR	KE	G		SE	NE	NW	4000	2839	32	30	01E	3	WR				
Same	IRR	KE	G		SE	NE	NW	4374	2839	32	30	01E	4	WR				
Same	IRR	KE	G		SW	NW	NE	4374	2389	32	30	01E	5	WR		104		
Same	IRR	KE	G		SW	NW	NE	4187	2614	32	30	01E	6	WR	104			
A 50250 00	IRR	AY	G		NE	NE	SE	2590	396	25	30	01W	3	WR	112.00	112.00	80.00	80.00
Same	IRR	AY	G		NE	NE	SE	2585	30	25	30	01W	4	WR				
Same	IRR	AY	G		NE	NE	SE	2144	35	25	30	01W	5	WR				
Same	IRR	AY	G		NE	NE	SE	2161	423	25	30	01W	6	WR				
Same	IRR	AY	G		NE	NE	SE	2370	146	25	30	01W	7	WR				

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 PERMIT TO PROCEED

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,250** of the applicant

JUSTIN KELLY
726 WESTCHESTER PLACE
ANDOVER, KS 67002

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 **May 6, 2019**.
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	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	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	
25	30S	1W													40	40			80

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of four (4) wells, with a geographical center located in the Northeast Quarter of the Northeast Quarter of the Southeast Quarter (NE¹/₄ NE¹/₄ SE¹/₄) of Section 25, more particularly described as being near a point 2,370 feet North and 221 feet West of the Southeast corner of said section, in Township 30 South, Range 1 West, Sumner 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 **800 gallons per minute (1.78 c.f.s.)** and to a quantity not to exceed **104 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 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 all wells with a diversion rate of 100 gallons per minute or more drilled under the authority of this permit shall have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer. This tube or device shall be suitable for making water level measurements and shall be maintained in a condition satisfactory to the Chief Engineer.

13. That acceptable water flow meters shall be installed and maintained on the diversion works authorized by this permit in accordance with Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. These water flow meters 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).

14. 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.

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

16. 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.

17. That the right to appropriate water under authority of this permit is subject to any minimum desirable streamflow requirements identified and established pursuant to K.S.A. 82a-703c for the source of supply to which this water right applies.

18. That this permit is further limited such that all wells shall be located within a three hundred (300) foot radius circle, in the same local source of supply, and shall supply water to a common distribution system.

Ordered this 13 day of September, 2021, 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 13 day of September, 2021, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, 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

September 14, 2021

JUSTIN KELLY
726 WESTCHESTER PLACE
ANDOVER, KS 67002

RE: Appropriation of Water, File No. 50,250

Dear Mr. Kelly:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/divisions-programs/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local 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 Applications and Changes Supervisor
Division of Water Resources

KAB: kjn: li
Enclosure(s)

pc: Stafford Field Office

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) request administrative review by the Secretary of Agriculture.

Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary. To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for hearing may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

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

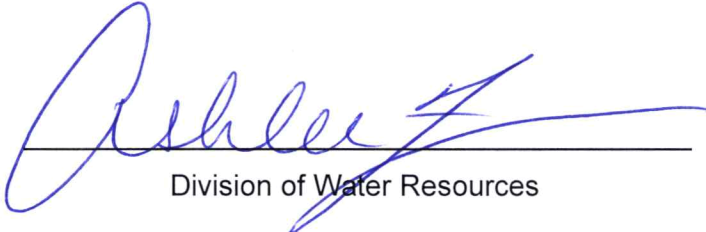
CERTIFICATE OF SERVICE

On this 14 day of September, 2021, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,250, dated 13 September, 2021, was mailed postage prepaid, first class, US mail to the following:

JUSTIN KELLY
726 WESTCHESTER PLACE
ANDOVER, KS 67002

With photocopies to:

Stafford Field Office



Division of Water Resources