

File No. **50,941**
 Structures File No: **DBR-0370**
LBR 0037

13. County: **BR- Brown** Basin: **2-South Fork Big Nemaha River** Stream: **3212 - Pony Creek Trib 12 (S F Big Nemaha)**
 Aquifer Code: _____ Special Use Area: _____

14. Points of Diversion, Rates & Quantities										Qty AF		Rate gpm		Storage Qty AF		Storage Rate	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)		Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps
CHK	89985	SW NE SW	8	1S	15E	3	1400	3875		320	320	1400	1400	435.6	435.6	NA	

15. Limitations Type: _____ Quantity: _____ Rate: _____ combined with file no(s): _____
 Type: _____ Quantity: _____ Rate: _____ combined with file no(s): _____

16. Metering Metering Required Anti-Reverse Required Seal Required Compliance Date: **12/31/2025**

17. Place of Use						NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
PDIV	S	T	R	ID		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
CHK	71173	5	1S	15E	4									40	40	40	40					160	5a	<input type="checkbox"/>	
CHK	71174	6	1S	15E	1													40			36.5	76.5	5a	<input type="checkbox"/>	
CHK	71175	7	1S	15E	1	40			40									40			40	160	5a	<input type="checkbox"/>	
MOD	71176	8	1S	15E	3					40	40	40	36	32	32	38					258	5a	<input type="checkbox"/>		
																								<input type="checkbox"/>	
																								<input type="checkbox"/>	

18. Point of Diversion and Place of Use Overlaps

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MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: June 18, 2024

From: Christa Anhold, Environmental Scientist

Re: New Application File No. 50,941 – Harlan Bailey

Summary

Harlan Bailey filed the above reference application proposing to store 435.6 AF of surface water per year from natural flow from Pony Creek Tributary 12 and to re-divert 320 AF from storage per year at a rate of 1,400 gallons per minute to irrigate 654.5 acres in Brown County. The applicant originally proposed to irrigate 668-acres and agreed to reduce acreage to 654.5-acres to exclude the storage pond from the place of use. Dam determination File No. DBR-0370 met the exemption of a class "A" low hazard dam per K.S.A. 82a-301(d)(1) and was approved on January 25, 2023. Floodplain fill File No. LBR-0037 was permitted on March 10, 2023. There are no overlapping water right files as the applicant owns both the place of use and proposed points of diversion.

Reasonable Rate and Quantity

The requested quantity of 435.6 acre-feet for storage is the maximum reasonable quantity of water to fill the 16-acre pond and will be limited by one year of direct use, one year of indirect use and the reservoir capacity which is calculated below per K.A.R. 5-6-5(2):

$$\begin{aligned} \text{Estimated reservoir capacity} &= 105 \text{ AF} \\ \text{Direct use (IRR)} &= 320 \text{ AF} \\ \text{Indirect use (EVAP)} &= 16 \text{ acres} \times 8 \text{ inches potential evap} / 12 \text{ inches} = 10.6 \text{ AF} \\ \text{Max reasonable quantity: } &320\text{AF} + 10.6\text{AF} + 105\text{AF} = 435.6\text{AF} \end{aligned}$$

For Brown County, the maximum reasonable quantity of water to irrigate 654.5 acres at 1.0 AF per acre is 654.5 AF. The requested 320 AF of water for irrigating 654.5 acres is less than the maximum reasonable quantity and can be considered reasonable. A diversion rate of 1,400 gallons per minute seems reasonable for the area.

Safe Yield

The applicant complies with safe yield rules and regulations per K.A.R. 5-3-15(c).

Nearby Water Rights

In a one-half mile radius around the point of diversion, there is one up stream and one downstream reservoir used for sediment control, both are owned by the Pony Creek Water District No. 78. The applicant provided names and addresses of up and downstream landowners within one half mile radius of the point of diversion. Additional landowners were observed during application review and included in nearby notifications. Nearby notifications were mailed on March 21, 2024. One nearby well owner made a comment by telephone on April 10, 2024, but provided no written statements.

Recommendations

The application was sent for consideration to Brett Bunger, Water Commissioner of the Topeka Field Office on April 30, 2024, and recommended for approval in an e-mail dated May 1, 2024.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum spacing requirements. It does not appear that approval of the application will impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Christa Anhold
Environmental Scientist
Manhattan Headquarters

From: Bunger, Brett [KDA]
Sent: Wed 5/1/2024 7:37 AM
To: Anhold, Christa [KDA]
Subject: RE: 50941 Recommendation Review

Christa, this appears reasonable and meets all our rules. Please proceed with approval.

Thanks

Brett

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Sent: Tuesday, April 30, 2024 3:38 PM
To: Bunger, Brett [KDA] <Brett.Bunger@ks.gov>
Subject: 50941 Recommendation Review

Brett,

Attached is a draft memo for 50,941, for your review and recommendation. Nearby notifications were mailed on April 11, 2024. One phone call was received with questions about the application, but nothing was submitted in writing.

Let me know if you need anything else.

Christa Anhold
Environmental Scientist
Department of Water Resources
(785)-564-6644
Christa.anhold@ks.gov

THE STATE  OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

**APPROVAL OF APPLICATION
and
PERMIT TO PROCEED**
(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,941** of the applicant

**HARLAN BAILEY
190 300TH STREET
SABETHA KS 66534**

for a permit to appropriate water for beneficial use, together with the maps, plans and other submitted data, and that the application is hereby approved and the applicant is hereby authorized, subject to vested rights and prior appropriations, to proceed with the construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a, as amended), and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect the proposed appropriation subject to the following terms, conditions and limitations:

1. That the priority date assigned to such application is **January 11, 2023**.
2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5 - 1S - 15E									40.0	40.0	40.0	40.0					160.0
6 - 1S - 15E													40.0			36.5	76.5
7 - 1S - 15E	40.0			40.0									40.0			40.0	160.0
8 - 1S - 15E					40.0	40.0	40.0	36.0	32.0	32.0	38.0						258.0

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Pony Creek, designated in the office of the Chief Engineer as Pony Creek Trib 12 (South Fork Big Nemaha), not needed to satisfy all vested rights and prior appropriation rights to be incrementally accumulated as reservoir storage space becomes available to a maximum extent of **435.6 acre-feet** of water per calendar year in a reservoir created by a dam located in the Southwest Quarter of the Northeast Quarter of the Southwest Quarter (SW¼ NE¼ SW¼) of Section 8, more particularly described as being near a point 1,400 feet North and 3,875 feet West of the Southeast corner of said section, in Township 1 South, Range 15 East, Brown County, Kansas, to provide **320 acre-feet** of water as needed for direct irrigation use, to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **1,400 gallons per minute (3.12 c.f.s.)**. A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. That installation of works for diversion of water shall be completed on or before **December 31, 2025**, 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.

5. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2029**, 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. That an acceptable water flow meter 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. The required water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).

12. 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.

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

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

15. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

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

17. That failure without cause to comply with the provisions of this permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.

Ordered this 2 day of July, 2024, in Manhattan, Riley County, Kansas.

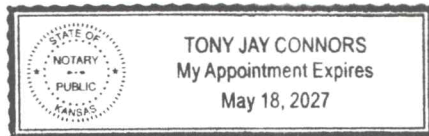
Lane P. Letourneau

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 2 day of July, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Tony Jay Connors
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

July 10, 2024

HARLAN BAILEY
190 300TH STREET
SABETHA KS 66534

RE: Appropriation of Water
File No. 50,941

Dear Mr. Harlan:

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.kswateruserreport.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.

Also included 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/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640, or your local Topeka Field Office at (785)-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB:kak:cla

Enclosure(s)

pc: Topeka Field Office
MWI, LLC - Keith Grimm

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may request an evidentiary hearing before the Chief Engineer or request administrative review by the Secretary of Agriculture. Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Division, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

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

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

CERTIFICATE OF SERVICE

On this 10 day of July, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,941, dated July 2, 2024, was mailed postage prepaid, first class, US mail to the following:

Original to:

HARLAN BAILEY
190 300TH STREET
SABETHA KS 66534

With photocopies to:

KEITH GRIMM
MWI LLC
1215 OREGON STREET
HIAWATHA KS 66434

KDA-DWR Topeka Field Office


Division of Water Resources