

File No. 50,949	15. Formation Code: 330	Drainage Basin: REPUBLICAN RIVER	County: WS	Special Use:	Stream:																				
16. Points of Diversion			17. Rate and Quantity																						
T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files												
MOD	90031	NW SE SE	23	4S	2E	4	1219	1007	1600	364	1600	74.7	none												
18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft																									
19. Limitation: <u>364</u> af/yr at _____ gpm (_____ cfs) when combined with file number(s) 49901																									
Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____																									
20. Meter Required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by 12/31/2024 12/31/2025 Date Acceptable Meter Installed _____																									
21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files				
T MOD DEL ENT	PUSE	S	T	R	ID	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼				
CHK	67927	23	-	4S	-	2E	2	33	33	33	33							33	33	33	33	264	7a	no	49901
CHK	69660	24	-	4S	-	2E	3						40								40	7a	no	49901	
Comments:																									

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: May 28, 2024

From: Kris Neuhauser, Environmental Scientist

Re: New Application File No. 50,949 – Kent Herrs

Summary

Kent Herrs have filed an application to appropriate groundwater to irrigate 304 acres in Washington County, Kansas, requesting one well, with a quantity of 364 acre-feet of water per calendar year, at a diversion rate of 1,600 gallons per minute. The applicant also owns Water Right, File No. 49,901, which completely overlaps in place of use. File No. 50,949 is for an additional 74.7 acre-feet to irrigate with $(364 - 289.3 = 74.7)$.

Reasonable Rate and Quantity

The proposed quantity of 364 acre-feet per calendar year provides 1.2 acre-feet per acre, making it the maximum reasonable quantity for Washington County ($1.2 \times 304 \text{ acres} = 364 \text{ acre-feet}$). File No. 50,949 will be limited to 364 acre-feet per calendar year when combined with File No. 49,901.

Source of Supply and Safe Yield

Based on the well log and nearby logs and the 'Top Configuration of the Dakota Aquifer' geologic map (via KGS, circa 1995), the source of supply appears to be the unconfined Dakota Aquifer. Evaluation of the area of consideration included the extent of the unconfined aquifer, which provided an area of consideration of 8,042 acres. With a potential annual recharge of 2.8 inches, and 75% of recharge available for appropriation, safe yield was determined to be 1,407.43 acre-feet. Existing water rights have appropriated 918.3 acre-feet, providing a difference of 489.13 acre-feet available for appropriation, and the application requesting 364 acre-feet complies with safe yield.

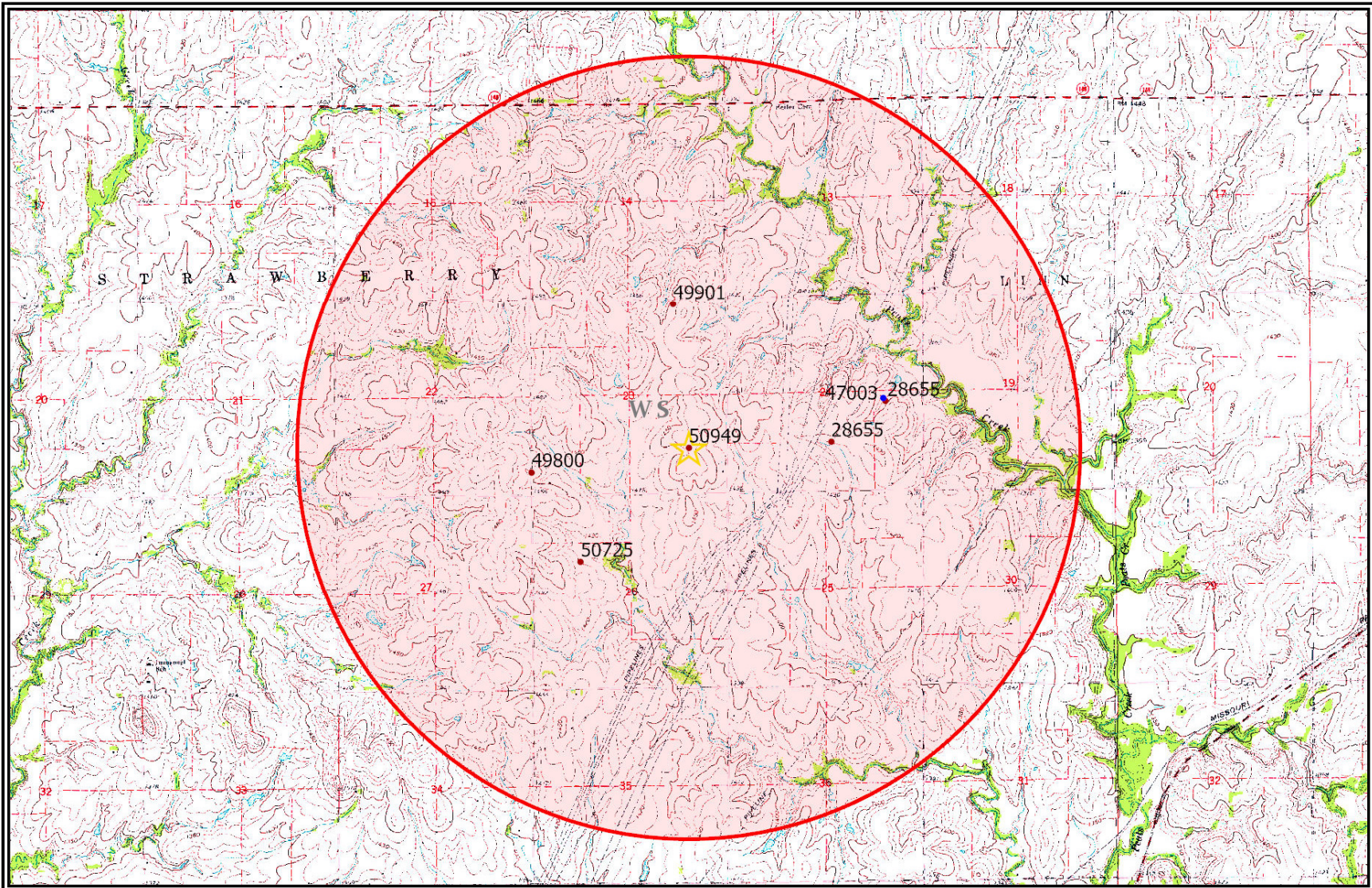
Nearby Water Rights

The closest non-domestic well is over 3,800 feet away, authorized by Water Right, File No. 28,655. The closest domestic well is about 900 feet away. Based on K.A.R. 5-4-4(2)(B), well spacing criteria to domestics for wells sourcing unconfined Dakota is not met. However, Brett Herrs (son of Kent Herrs) has signed a domestic well spacing consent form. In an email on May 28, 2024, Brett confirmed that he owns both a domestic well and geothermal well. The only other domestic well within $\frac{1}{2}$ mile is owned by the applicant. Since Brett has been made aware of the application and submitted a consent form, no nearby notification letters are required.

Recommendations

There is currently no water commissioner at the Topeka field office, so no recommendation is required. Based on the above discussion, the area is open to new appropriations, the application complies with safe yield, Brett Herrs has submitted a domestic well spacing consent form, and approval of the application should not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.

Safe Yield Report Sheet
Water Right- Proposed Point of Diversion
Point of Diversion in 23-04S-02E
Footages from SE corner- 1,219 feet North 1,007 feet West



Analysis Results

50949 PASSES SY*

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

The safe yield based on the variables listed below is 1,407.43 AF.

Total prior appropriations in the circle is 1,282.30 AF. **- 364 AF = 918.3 AF**

Total quantity of water available for appropriation is ~~125.13 AF~~.

1407.43 - 918.3 = 489.13 AF AVAILABLE*

Safe Yield Variables

The area used for the analysis is set at 8,042 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 24-MAY-2024 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 5 water rights and 6 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 28655 00	IRR	NK	G		NW	NE	SE	2395	968	24	04	02E	2	PD	81.00	81.00	240.00	240.00
Same	IRR	NK	G		SW	NW	SE	1347	2451	24	04	02E	4	PD	27.00	27.00		
A 49800 00	IRR	KK	G		SW	SW	SW	652	5270	23	04	02E	3	WR	384.00	384.00	320.00	320.00
A 49901 00	IRR	KK	G		NE	NW	NE	5120	1380	23	04	02E	2	WR	289.30	289.30 74.7	304.00	304.00
A 50725 00	IRR	KE	G		NE	SE	NW	3447	3946	26	04	02E	1	WR	137.00	137.00	114.11	114.11
A 50949 00	IRR	AY	G		NW	SE	SE	1216	1002	23	04	02E	4	WR	364.00	364.00	304.00	0.00

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. 50,949** of the applicant

**KENT HERRS
1321 10 TH RD
LINN, KS 66953**

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 30, 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	
23 - 4S - 2E	33	33	33	33									33	33	33	33	264
24 - 4S - 2E										40							40

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well located in the Northwest Quarter of the Southeast Quarter of the Southeast Quarter (NW¼ SE¼ SE¼) of Section 23, more particularly described as being near a point 1,219 feet North and 1,007 feet West of the Southeast corner of said section, in Township 4 South, Range 2 East, Washington 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 **1,600 gallons per minute (3.56 c.f.s.)** and to a quantity not to exceed **364 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, 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.

6. 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.

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 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).

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.

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 12, 2024

KENT HERRS
1321 10 TH RD
LINN KS 66953

RE: Appropriation of Water
File No. 50,949

Dear Mr. Herrs:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use. 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.

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:kjn
Enclosure(s)
pc: Topeka Field Office

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

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

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

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

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

CERTIFICATE OF SERVICE

On this 12 day of June, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,949, dated June 4, 2024, was mailed postage prepaid, first class, US mail to the following:

KENT HERRS
1321 10 TH RD
LINN KS 66953

With photocopies to:

KDA-DWR Topeka Field Office



Division of Water Resources