

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

1. File Number: <p style="text-align: center;">50,402</p>	2. Status Change Date: <p style="text-align: center;">1/15/2021</p>	3. Field Office: <p style="text-align: center;">3</p>	4. GMD: <p style="text-align: center;">0</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 **33475**
 New to system Add Seq# _____

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

7b. Landowner(s) Person ID **65030**
 New to system Add Seq# _____

KENNETH D BERRY TRUST #1
1624 N 70TH RD
MINNEAPOLIS KS 67467

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: ~~12/31/2021~~ ²⁰²² 11. Perfection Date: ~~12/31/2025~~ 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: _____

12/3/2020 KJN	Date Prepared: 7/27/2020 By: DWS Date Entered: 1/20/2021 By: LMoody
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File No. 50,402	15. Formation Code: 330	Drainage Basin: SALT CREEK	County: OT	Special Use:	Stream:								
16. Points of Diversion T MOD DEL ENT PDIV Qualifier S T R ID 'N 'W					17. Rate and Quantity Authorized Additional Rate Quantity Rate Quantity gpm af gpm af Overlap PD Files								
√ 88250 NE SE NE 24 10 5W 1 3750 60					1400 159.9 1400 159.9 NONE								
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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by <u>12/31/2021</u> ²⁰²² Date Acceptable Meter Installed _____													
21. Place of Use T MOD DEL ENT PUSE S T R ID		NE¼		NW¼		SW¼		SE¼		Total	Owner	Chg? NO	Overlap Files
		NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼
√ 70009 24 10 5W 1		19.5	23.5	40	40								
Comments:													
<div style="border: 1px solid red; padding: 5px; display: inline-block;"> 12/3/2020 KJN </div>													

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: July 27, 2020

FROM: Doug Schemm

RE: Application, File No. 50,402

Ken Berry has filed the above referenced new application to appropriate 159.9 acre-feet of groundwater at a diversion rate of 1,400 gallons per minute for irrigation use. The point of diversion is one well located in the Northeast Quarter of Section 24, Township 10 South, Range 5 West, in Ottawa County. The place of use is wholly owned by the Kenneth D Berry Trust #1. The applicant has signed the application form stating he has access to the point of diversion. The requested quantity of water of 159.9 acre-feet, is the maximum allowable to irrigate the proposed 123 acres (1.3 Acre-Feet per acre is the maximum allowed in Ottawa County).

Based on the test hole log submitted with the application, and other area well logs, it appears that the source of water is the unconfined Dakota aquifer system. Per K.A.R. 5-1-1(iiii) "Unconfined Dakota aquifer system" means that portion of the Dakota aquifer system not overlain by a confining layer in which the aquifer is in equilibrium with atmospheric pressure. The test hole log shows a shallow sandstone layer extending from 8 feet to 35 feet below ground surface, and subsequent sandstone layers from 85 feet to 223 feet, where limestone bedrock was encountered. Static water level was not provided on the well log. However, the applicant has a senior file (File No. 47,476) located approximately 2 miles away, with similar sandstone layers, and it has a static water level of 26 feet below ground. This would indicate that the shallow sandstone layers are providing some water, although the deeper sandstone would be the primary aquifer. With a static water level within the shallow sandstone layers, the aquifer would be unconfined (i.e. in equilibrium with atmospheric pressure).

K.A.R. 5-3-11 applies to safe yield evaluations for all unconfined aquifers. Based on a review of nearby wells, wells in the eastern portion of the 2-mile circle are primarily sourcing the nearby Solomon River alluvial aquifer. Therefore, this alluvial aquifer extent was truncated out of the area of consideration within the 2-mile circle. This provides an area of consideration for the unconfined Dakota aquifer system of 4,915 acres, with 2.6 inches of recharge and 75% available, safe yield was determined to be 798.67 acre-feet. The one existing appropriation has appropriated 182 acre-feet, leaving 616.67 acre-feet available, and this application requesting 159.9 acre-feet clearly meets safe yield.

The applicant identified two domestic wells within one-half mile of the proposed point of diversion, and he signed the map showing their locations. Nearby notification letters were sent out on July 10, 2020. No responses of any kind were received. The point of diversion complies with well spacing criteria for the unconfined Dakota aquifer system of one-quarter mile to domestic wells and one-half mile to non-domestic wells. The nearest domestic well is over 1,400 feet away, and the nearest non-domestic well is over 5,900 feet away.

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.

Ken Berry – Memorandum
File No. 50,402
Page 2

In a July 23, 2020 e-mail, Kelly Stewart, Water Commissioner, Stockton Field Office, recommended approval of the referenced application. Based on the above discussion, well spacing and safe yield criteria are met, and approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced application be approved.

Douglas W. Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Stewart, Kelly [KDA]
Sent: Thursday, July 23, 2020 4:03 PM
To: Schemm, Doug [KDA]
Cc: Billinger, Mark [KDA]; Hageman, Rebecca [KDA]
Subject: RE: 50402 Ken Berry

Doug,

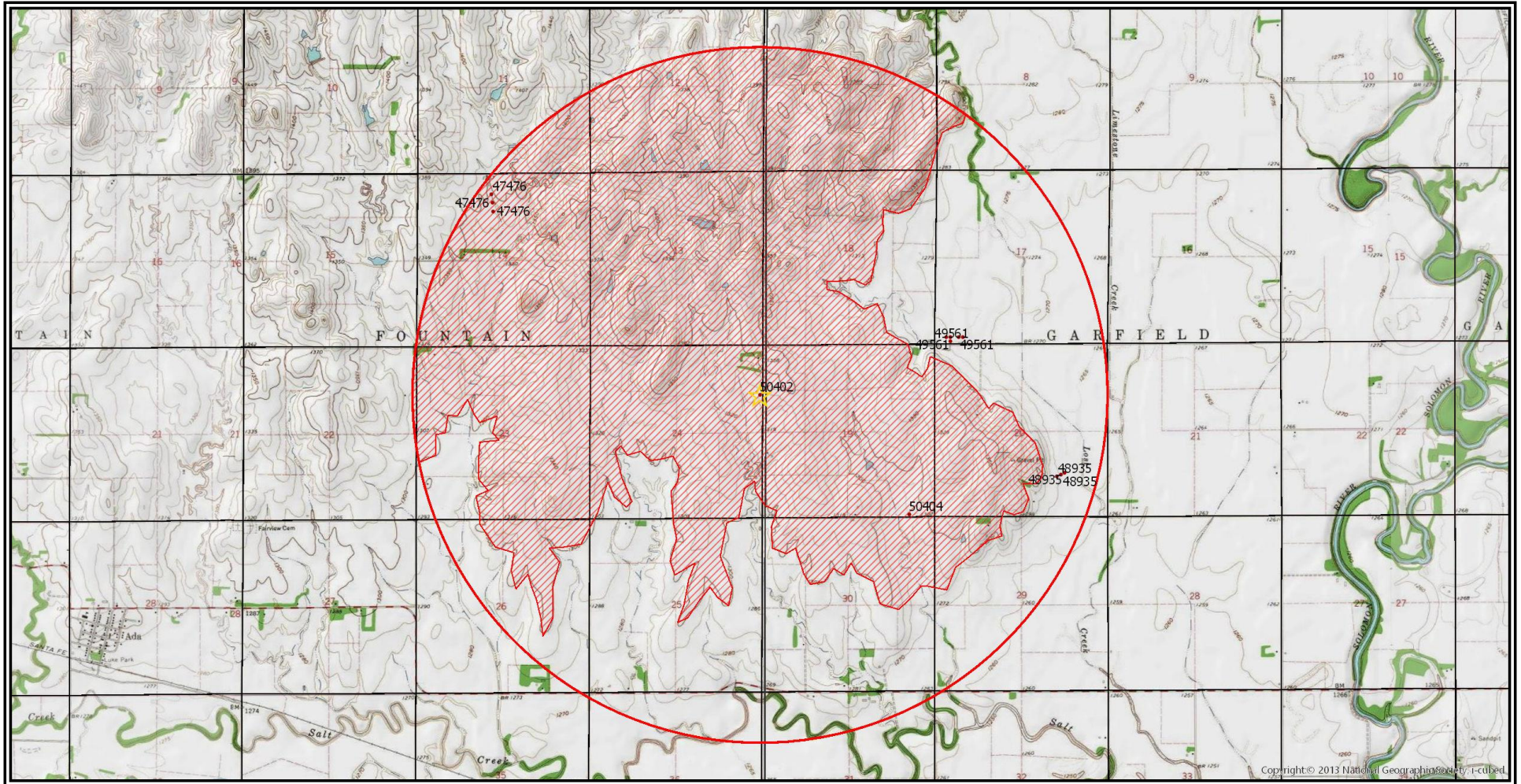
I have no objection to the approval of this application.

Kelly

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Thursday, July 23, 2020 8:20 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: 50402 Ken Berry

Hello Stockton,
This is the first of Ken's 2 files. Meets all the regs. for the unconfined Dakota. No comments from nearbys.
Please review,
Thanks, Doug

Safe Yield Report Sheet
Water Right- A5040200
Point of Diversion in 24-10S-05W
Footages from SE corner- 3,750 feet North 60 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 798.67 AF.

Total prior appropriations in the circle is 543.40 AF. - 159.9 AF - 201.5 AF = 182 AF

Total quantity of water available for appropriation is ~~255.27~~ AF.

616.67 AF

Application File No. 50,402 - Requesting 159.9 AF
Meets Safe Yield
dws/dwr 7/9/20

Safe Yield Variables

The area used for the analysis is set at 4,915 acres.

The potential annual recharge at the circle center is estimated to be 2.6 inches.

The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 09-JUL-2020 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 3 water rights and 5 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 47476 00	IRR	KE	G		SE	NE	NW	4376	2969	14	10	05W	2	WR	182.00	182.00	180.00	180.00
Same	IRR	KE	G		NE	NE	NW	4638	2997	14	10	05W	3	WR				
Same	IRR	KE	G		SE	NE	NW	4113	2941	14	10	05W	4	WR				
A 50402 00	IRR	AY	G		NE	SE	NE	3750	60	24	10	05W	1	WR	159.90	-159.90	123.00	123.00
A 50404 00	IRR	AY	G		SW	SE	SE	79	776	19	10	04W	1	WR	201.50	201.50	155.00	155.00

Report Date: Thursday, July 9 2020

AMOUNT STATISTICS REPORT FOR POINTS OF DIVERSION UNDER A 50402 00

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AMOUNT STATISTICS REPORT FOR POINTS OF DIVERSION UNDER A 50402 00 IRR

Water Right and Points of Diversion Within 2.00 of a point defined as:

3750 Feet North and 60 Feet West of the Southeast Corner of Section 24 Twp 10S Rng 5W

GROUNDWATER ONLY

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File Number      Use ST SR Dist (ft) Q4 Q3 Q2 Q1 FeetN FeetW Sec Twp Rng ID Batt Auth_Quan Add_Quan
Unit
A__ 47476 00 IRR KE G      9878 -- SE NE NW 4113 2941 14 10 5W 4 B2      182.00 182.00
  AF
Same              10053 -- SE NE NW 4376 2969 14 10 5W 2 G2
Same              10231 -- NE NE NW 4638 2997 14 10 5W 3 B2
A__ 48935 00 IRR LO G      9398 -- NE SW SE 1240 1541 20 10 4W 1 B2      139.00 139.00
  AF
Same              9499 -- NE SW SE 1293 1422 20 10 4W 3 G2
Same              9601 -- -- NC SE 1346 1303 20 10 4W 2 B2
A__ 49561 00 IRR LO G      5960 -- SW SW SW 200 4900 17 10 4W 4 B4      205.00 205.00
  AF
Same              6082 -- SW SW SW 200 4775 17 10 4W 3 B4
Same              6199 -- SW SW SW 200 4650 17 10 4W 1 G4
Same              6319 -- SE SW SW 200 4525 17 10 4W 5 B4
Same              6442 -- SE SW SW 200 4400 17 10 4W 6 B4
A__ 50402 00 IRR AY G         0 -- NE SE NE 3750 60 24 10 5W 1      159.90 159.90
  AF
A__ 50404 00 IRR AY G      5829 -- SW SE SE 79 776 19 10 4W 1      201.50 201.50
  AF
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Total Net Quantities Authorized:   Direct      Storage
Total Requested Amount (AF) =      361.40      .00
Total Permitted Amount (AF) =      182.00      .00
Total Inspected Amount (AF) =      344.00      .00
Total Pro_Cert Amount (AF) =         .00      .00
Total Certified Amount (AF) =         .00      .00
Total Vested Amount (AF) =          .00      .00
TOTAL AMOUNT (AF) =      887.40      .00
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An * after the source of supply indicates a pending application for change under the file number.
 An * after the ID indicates a 15 AF exemption was granted under the file number.
 A "G" in the Batt column indicates the GEO CTR of a battery. A "B" indicates a well in the battery.
 The number in the Batt column is the number of wells in the battery.

Water Right and Points of Diversion Within 2.00 of a point defined as:

3750 Feet North and 60 Feet West of the Southeast Corner of Section 24 Twp 10S Rng 5W

GROUNDWATER ONLY

WATER USE CORRESPONDENTS:

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=====
File Number      Use ST SR
> LOST CREEK LLC
> KEN BERRY
> 1624 N 70TH RD
> MINNEAPLOIS KS 67467
>-----
> GOTTI FARMS
> GRANT GOTTI
> 10 N 100TH RD
> CULVER KS 67484
>-----
> KEN BERRY
>
> 1624 N 70TH RD
> MINNEAPOLIS KS 67467
>-----

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> KENNETH D BERRY TRUST #1  
>  
> 1624 N 70TH RD  
> MINNEAPOLIS KS 67647  
>-----  
> BERRY FAMILY FARMS LLC  
>  
> 746 PRAIRIE RD  
> MINNEAPOLIS KS 67467  
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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. 50,402** of the applicant

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

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

1. That the priority date assigned to such application is **June 18, 2020**.
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	
24	10S	5W	19.5	23.5	40	40													123

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 Northeast Quarter of the Southeast Quarter of the Northeast Quarter (NE¼ SE¼ NE¼) of Section 24, more particularly described as being near a point 3,750 feet North and 60 feet West of the Southeast corner of said section, in Township 10 South, Range 5 West, Ottawa 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 **1,400 gallons per minute (3.12 c.f.s.)** and to a quantity not to exceed **159.9 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 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. This 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.

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 the applicant shall submit to the Chief Engineer a copy of the well log required by the Kansas Department of Health and Environment under the authority of K.S.A. 82a-1212, currently form WWC-5, within 30 days following the drilling of the wells at the location authorized herein.

Ordered this 15 day of January, 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 15 day of January, 2021, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman

Notary Public

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

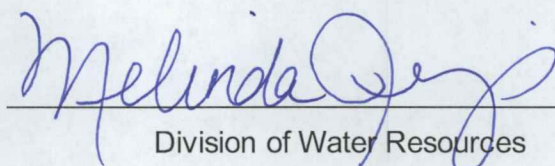
On this 21 day of January, 2021, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,402, dated 15 January was mailed postage prepaid, first class, US mail to the following:

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

With photocopies to:

KENNETH D BERRY TRUST #1
1624 N 70TH RD
MINNEAPOLIS KS 67467

Stockton Field Office


Division of Water Resources

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

January 21, 2021

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

RE: Appropriation of Water, File No. 50,402

Dear Mr. Berry:

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. Please note that both your existing well and all wells drilled under the authority of this permit must have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer.

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 acceptable water flowmeter must be installed on the diversion works authorized by this permit prior to using water. 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. 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 Stockton Field Office at 785-425-6787. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

A handwritten signature in black ink that reads "Kristen A. Baum". The signature is written in a cursive style.

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

KAB:dws
Enclosure(s)

pc: Stockton Field Office
Kenneth D Berry Trust #1