





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

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

**TO:** Files

**DATE:** August 13, 2020

**FROM:** Doug Schemm

**RE:** Application, File No. 50,404

Ken Berry has filed the above referenced new application to appropriate 201.5 acre-feet of groundwater at a diversion rate of 1,400 gallons per minute for irrigation use, from one well. The place of use is wholly owned by the Berry Family Farms LLC. The applicant has signed the application form stating he has access to the point of diversion. The well is located in the Southeast Quarter of Section 19, Township 10 South, Range 4 West, in Ottawa County. The requested quantity of water of 201.5 acre-feet, is the maximum allowable to irrigate the proposed 155 acres (1.3 Acre-Feet per acre is the maximum allowed in Ottawa County).

A written letter was received from a nearby domestic well owner James Corman expressing concerns about the number of nearby center pivots and the impact of these irrigation wells on his domestic wells. Stockton Field Office staff went to Mr. Corman's property on August 3, 2020 to discuss this pending application, and provided additional information related to safe yield policy, domestic well priority, and other issues pertinent to this pending application. Due to the domestic well owner concerns, DWR Technical staff conducted additional analysis of this pending application, and determined that it will not impair any senior, domestic water right. This analysis showed a potential drawdown of less than 6% of the saturated thickness at the domestic well after 50 years of pumping cycles.

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 13 feet to 44 feet below ground surface (with some interbedded shale), and subsequent sandstone layers from 91 feet to 169 feet, where shale 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 3 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 and southern portion of the 2-mile circle are primarily sourcing the nearby Solomon River alluvial aquifer. Therefore, the 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 2,564 acres, with 2.6 inches of recharge and 75% available, safe yield was determined to be 416.6 acre-feet. The one existing appropriation has appropriated 159.9 acre-feet, leaving 256.7 acre-feet available, and this application requesting 201.5 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. A written letter of concern was received from domestic well owner James Corman (see discussion above). 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 1,700 feet away, and the nearest non-domestic well is over 4,600 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.

The applicant has submitted a signed a Minimum Desirable Streamflow form, which has been properly notarized. By completing this statement, the applicant affirms his/her knowledge that there could be times when the diversion of water may not be allowed under this permit.

In an August 7, 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]

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**From:** Stewart, Kelly [KDA]  
**Sent:** Friday, August 7, 2020 10:00 AM  
**To:** Schemm, Doug [KDA]; Engelhaupt, David [KDA]; Baum, Kristen [KDA]  
**Cc:** Billinger, Mark [KDA]; Hageman, Rebecca [KDA]  
**Subject:** RE: 50404 Ken Berry

Doug,

Based on David E.'s analysis, it does look like the projected drawdown is acceptable and reasonable. Even with Jim Corman's current saturated thickness of 41.6', the 50 year drawdown would still be less than 20%.

I would have no objection to the approval of this application.

Kelly

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**From:** Schemm, Doug [KDA] <Doug.Schemm@ks.gov>  
**Sent:** Thursday, August 6, 2020 5:27 PM  
**To:** Engelhaupt, David [KDA] <David.Engelhaupt@ks.gov>; Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>  
**Cc:** Billinger, Mark [KDA] <Mark.Billinger@ks.gov>; Hageman, Rebecca [KDA] <Rebecca.Hageman@ks.gov>  
**Subject:** RE: 50404 Ken Berry

Hey Dave E,  
Thanks for the great work on this! I think we should be ok with that drawdown.  
Thanks again, Doug

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**From:** Engelhaupt, David [KDA]  
**Sent:** Thursday, August 6, 2020 3:48 PM  
**To:** Stewart, Kelly [KDA] <[Kelly.Stewart@ks.gov](mailto:Kelly.Stewart@ks.gov)>; Schemm, Doug [KDA] <[Doug.Schemm@ks.gov](mailto:Doug.Schemm@ks.gov)>; Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>  
**Cc:** Billinger, Mark [KDA] <[Mark.Billinger@ks.gov](mailto:Mark.Billinger@ks.gov)>; Hageman, Rebecca [KDA] <[Rebecca.Hageman@ks.gov](mailto:Rebecca.Hageman@ks.gov)>  
**Subject:** RE: 50404 Ken Berry

Report for File 50,404 attached.

**David Engelhaupt, E.I.**  
Engineering Associate  
Kansas Department of Agriculture  
Division of Water Resources  
(785) 564-6680

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**From:** Stewart, Kelly [KDA] <[Kelly.Stewart@ks.gov](mailto:Kelly.Stewart@ks.gov)>  
**Sent:** Tuesday, August 4, 2020 7:49 AM  
**To:** Schemm, Doug [KDA] <[Doug.Schemm@ks.gov](mailto:Doug.Schemm@ks.gov)>; Baum, Kristen [KDA] <[Kristen.Baum@ks.gov](mailto:Kristen.Baum@ks.gov)>; Engelhaupt, David [KDA] <[David.Engelhaupt@ks.gov](mailto:David.Engelhaupt@ks.gov)>  
**Cc:** Billinger, Mark [KDA] <[Mark.Billinger@ks.gov](mailto:Mark.Billinger@ks.gov)>; Hageman, Rebecca [KDA] <[Rebecca.Hageman@ks.gov](mailto:Rebecca.Hageman@ks.gov)>  
**Subject:** RE: 50404 Ken Berry

Good morning Doug,

Yesterday Mark and I met with Jim Corman at his residence. Through the course of a very lengthy conversation, we were able to explain DWR's safe yield policy, his domestic well priority, and a number of other things. At the end of this conversation, he stated he felt much better about things and he was happy to hear that we took a conservative approach to allocating water.

Mark and I were able to measure his static water level in his domestic and Mark is going to work with him to establish his domestic priority. I am enclosing a copy of his well log and it has notes towards the bottom of it with our GPS reading and water level measurement.

Since Mr. Corman did express concern about this new appropriation, I think it would be appropriate to have Dave E. run this on it and let's consider the potential impact to his domestic well. If the impact looks reasonable, then I think we could move forward with approval of this application.

Kelly

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**From:** Schemm, Doug [KDA] <[Doug.Schemm@ks.gov](mailto:Doug.Schemm@ks.gov)>  
**Sent:** Monday, July 27, 2020 4:31 PM  
**To:** Stewart, Kelly [KDA] <[Kelly.Stewart@ks.gov](mailto:Kelly.Stewart@ks.gov)>  
**Cc:** Billinger, Mark [KDA] <[Mark.Billinger@ks.gov](mailto:Mark.Billinger@ks.gov)>; Hageman, Rebecca [KDA] <[Rebecca.Hageman@ks.gov](mailto:Rebecca.Hageman@ks.gov)>  
**Subject:** RE: 50404 Ken Berry

Sorry just got this objection letter in regarding Ken's file. This domestic well appears to be over 2,000 feet away. So the well logs look pretty similar (Ken's is in Docuware) with a shallow sandstone layer and then the deeper aquifer around 80 to 90 feet. The domestic well stops in sandstone, so it's hard to say, but it appears that he would have more aquifer below him to penetrate completely (unless there is a water quality concern). Any thoughts?

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**From:** Stewart, Kelly [KDA]  
**Sent:** Monday, July 27, 2020 3:28 PM  
**To:** Schemm, Doug [KDA] <[Doug.Schemm@ks.gov](mailto:Doug.Schemm@ks.gov)>  
**Cc:** Billinger, Mark [KDA] <[Mark.Billinger@ks.gov](mailto:Mark.Billinger@ks.gov)>; Hageman, Rebecca [KDA] <[Rebecca.Hageman@ks.gov](mailto:Rebecca.Hageman@ks.gov)>  
**Subject:** RE: 50404 Ken Berry

Doug,

I have no objection to the approval of the referenced application.

Kelly

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**From:** Schemm, Doug [KDA] <[Doug.Schemm@ks.gov](mailto:Doug.Schemm@ks.gov)>  
**Sent:** Monday, July 27, 2020 1:47 PM  
**To:** Stewart, Kelly [KDA] <[Kelly.Stewart@ks.gov](mailto:Kelly.Stewart@ks.gov)>  
**Cc:** Billinger, Mark [KDA] <[Mark.Billinger@ks.gov](mailto:Mark.Billinger@ks.gov)>  
**Subject:** 50404 Ken Berry

Hello Stockton,  
Ken's second file in same area. Unconfined Dakota. Meets all the regs.  
Please review,

Doug







## Analysis Results

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

The safe yield based on the variables listed below is 416.60 AF.

Total prior appropriations in the circle is 361.40 AF. - 201.5 AF = 159.9 AF

Total quantity of water available for appropriation is ~~55.20~~ AF.  
256.7 AF

Application File No. 50,404 - Requesting 201.5 AF  
Meets Safe Yield  
dws/dwr 7/9/20

## Safe Yield Variables

The area used for the analysis is set at 2,564 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 2 water rights and 2 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 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	<del>-201.50</del>	<del>201.50</del>	155.00	155.00

## Limitations

File Number	Seq Num	Limitations
A 47991 00	2	195 AF/YR @ 730 GPM COM/W #45912 (Not in area of consideration)

Report Date: Monday, July 27 2020

AMOUNT STATISTICS REPORT FOR POINTS OF DIVERSION UNDER A 50404 00

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AMOUNT STATISTICS REPORT FOR POINTS OF DIVERSION UNDER A 50404 00 IRR

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

79 Feet North and 776 Feet West of the Southeast Corner of Section 19 Twp 10S Rng 4W

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__ 45912 00 IRR NK G      9913 -- -- NC SW 1309 3897 16 10 4W 1      169.00 169.00
  AF
A__ 47991 00 IRR NK G      9913 -- -- NC SW 1309 3897 16 10 4W 1      26.00 26.00
  AF
A__ 48317 00 IRR LO G      9805 -- SE NW NE 4233 1598 28 10 4W 4 B4      208.00 208.00
  AF
Same              9984 -- SE NW NE 4433 1398 28 10 4W 2 B4
Same              10005 -- SE NW NE 4233 1398 28 10 4W 1 G4
Same              10031 -- SE NW NE 4033 1398 28 10 4W 3 B4
Same              10203 -- SW NE NE 4233 1198 28 10 4W 5 B4
A__ 48935 00 IRR LO G      4659 -- NE SW SE 1240 1541 20 10 4W 1 B2      139.00 139.00
  AF
Same              4787 -- NE SW SE 1293 1422 20 10 4W 3 G2
Same              4916 -- -- NC SE 1346 1303 20 10 4W 2 B2
A__ 49561 00 IRR LO G      5521 -- SW SW SW 200 4900 17 10 4W 4 B4      205.00 205.00
  AF
Same              5549 -- SW SW SW 200 4775 17 10 4W 3 B4
Same              5579 -- SW SW SW 200 4650 17 10 4W 1 G4
Same              5612 -- SE SW SW 200 4525 17 10 4W 5 B4
Same              5648 -- SE SW SW 200 4400 17 10 4W 6 B4
A__ 50402 00 IRR AY G      5829 -- NE SE NE 3750 60 24 10 5W 1      159.90 159.90
  AF
A__ 50404 00 IRR AY G          0 -- 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) =          .00      .00
Total Inspected Amount (AF) =      552.00      .00
Total Pro_Cert Amount (AF) =          .00      .00
Total Certified Amount (AF) =      195.00      .00
Total Vested Amount (AF) =          .00      .00
TOTAL AMOUNT (AF) =      1108.40      .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:

79 Feet North and 776 Feet West of the Southeast Corner of Section 19 Twp 10S Rng 4W

GROUNDWATER ONLY

WATER USE CORRESPONDENTS:

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=====
File Number      Use ST SR
> DOUGLAS W & REBECCA J HEIMER
>
> 1420 E HEDBERG RD
> ASSARIA KS 67416
>-----
> DOUGLAS W & REBECCA J HEIMER
>
> 1420 E HEDBERG RD
> ASSARIA KS 67416
=====

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>-----  
> JAMES A CROSSON  
>  
> 915 RIFLE RD  
> MINNEAPOLIS KS 67467  
>-----  
> GOTTI FARMS  
> GRANT GOTTI  
> 10 N 100TH RD  
> CULVER KS 67484  
>-----  
> KEN BERRY  
>  
> 1624 N 70TH RD  
> MINNEAPOLIS KS 67467  
>-----  
> 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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#####
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D. Engelhaupt  
8/6/2020

**This analysis of new application File No. 50,404**

A This analysis was used to evaluate the potential impacts of a new application located in Section 21, Township 11 South, Range 3 West. The permit would authorize up to 201.5 acre-feet per year at 1400 gallons per minute. The drawdown was evaluated at the location of a domestic well located approximately 2,466 feet west. The assumed transmissivity (1,060 ft<sup>2</sup>/d) is based on lithological logs (Figure 1). Saturated thickness of 122 feet is based on a recent depth to water measurement at the domestic well. Specific storage was assumed to be 10<sup>-3</sup>, which results in a storativity of 0.12. The drawdown at the domestic well after 50-years of pumping cycles under these assumptions is 6.87 feet, or 5.63% of the projected future saturated thickness (Table 1).

**Table 1:** Drawdown evaluated at domestic well. T = 1,060 ft<sup>2</sup>/d; S = 0.12; ST = 122 ft

<b>Pumping Well</b>	<b>Distance (FT)</b>	<b>Volume (Acre-Feet)</b>	<b>Rate (GPM)</b>	<b>Drawdown (FT)</b>	<b>Drawdown (%ST)</b>
50,404	2,466	201.5	1,400	6.87	5.63 %

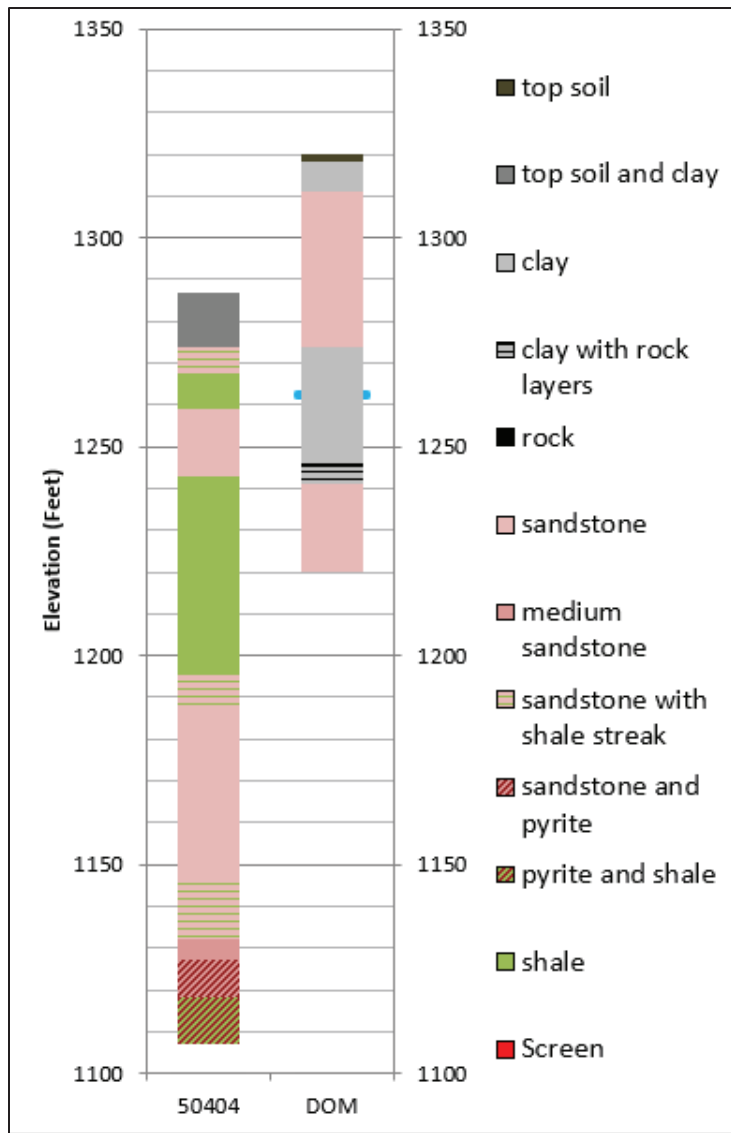


Figure 1: Lithology logs

1 LOCATION OF WATER WELL  
 County: **OTTAWA** Fraction **NW 1/4 NE 1/4 NW 1/4** Section Number **39** Township Number **T 10 S** Range Number **R 4 E**  
 Distance and direction from nearest town or city? **2 N - 4 1/2 W** Street address of well if located within city?  
**MINNEAPOLIS**

2 WATER WELL OWNER: **JIM CORMAN**  
 RR#, St. Address, Box #: **MINNEAPOLIS, KANSAS 67467** Board of Agriculture, Division of Water Resources  
 City, State, ZIP Code: **MINNEAPOLIS, KANSAS 67467** Application Number:

3 DEPTH OF COMPLETED WELL: **100** ft. Bore Hole Diameter: **8** in. to **100** ft., and \_\_\_\_\_ in. to \_\_\_\_\_ ft.  
 Well Water to be used as:  
 Domestic  Feedlot  Oil field water supply  Air conditioning  Injection well  
 Irrigation  Industrial  Lawn and garden only  Dewatering  Other (Specify below)  
 Well's static water level: **60** ft. below land surface measured on \_\_\_\_\_ **12** month \_\_\_\_\_ **10** day \_\_\_\_\_ **1980** year  
 Pump Test Data: Well water was \_\_\_\_\_ ft. after \_\_\_\_\_ hours pumping \_\_\_\_\_ gpm  
 Est. Yield: **20** gpm: Well water was \_\_\_\_\_ ft. after \_\_\_\_\_ hours pumping \_\_\_\_\_ gpm

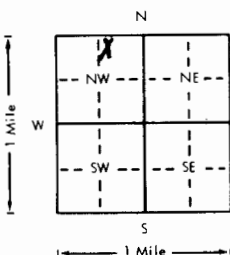
4 TYPE OF BLANK CASING USED:  
 Steel  RMP (SR)  Asbestos-Cement  Concrete tile  Other (specify below)  
 PVC  ABS  Fiberglass  Casing Joints: Glued  Clamped \_\_\_\_\_  
 Blank casing dia: **5** in. to **80** ft., Dia \_\_\_\_\_ in. to \_\_\_\_\_ ft., Dia \_\_\_\_\_ in. to \_\_\_\_\_ ft.  
 Casing height above land surface: **12** in., weight \_\_\_\_\_ lbs./ft. Wall thickness or gauge No. **258**

TYPE OF SCREEN OR PERFORATION MATERIAL:  
 Steel  Stainless steel  Fiberglass  RMP (SR)  Other (specify) \_\_\_\_\_  
 Brass  Galvanized steel  Concrete tile  ABS  None used (open hole)  
 Screen or Perforation Openings Are:  
 Continuous slot  Mill slot  Gauzed wrapped  Saw cut  None (open hole)  
 Louvered shutter  Key punched  Wire wrapped  Drilled holes  
 Torch cut  Other (specify) \_\_\_\_\_  
 Screen-Perforation Dia: **5** in. to **100** ft., Dia \_\_\_\_\_ in. to \_\_\_\_\_ ft., Dia \_\_\_\_\_ in. to \_\_\_\_\_ ft.  
 Screen-Perforated Intervals: From **80** ft. to **100** ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft.  
 Gravel Pack Intervals: From **10** ft. to **100** ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft.

5 GROUT MATERIAL:  Neat cement  Cement grout  Bentonite  Other \_\_\_\_\_  
 Grouted Intervals: From **0** ft. to **10** ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft.  
 What is the nearest source of possible contamination:  
 Septic tank  Cess pool  Sewage lagoon  Fuel storage  Abandoned water well  
 Sewer lines  Seepage pit  Feed yard  Fertilizer storage  Oil well/Gas well  
 Lateral lines  Pit privy  Livestock pens  Insecticide storage  Other (specify below)  
 Direction from well: **WEST** How many feet **100** ? Water Well Disinfected? Yes  No \_\_\_\_\_  
 Was a chemical/bacteriological sample submitted to Department? Yes \_\_\_\_\_ No  If yes, date sample was submitted \_\_\_\_\_ month \_\_\_\_\_ day \_\_\_\_\_ year: Pump Installed? Yes \_\_\_\_\_ No   
 If Yes: Pump Manufacturer's name \_\_\_\_\_ Model No. \_\_\_\_\_ HP \_\_\_\_\_ Volts \_\_\_\_\_  
 Depth of Pump Intake \_\_\_\_\_ ft. Pumps Capacity rated at \_\_\_\_\_ gal./min.  
 Type of pump:  Submersible  Turbine  Jet  Centrifugal  Reciprocating  Other \_\_\_\_\_

6 CONTRACTOR'S OR LANDOWNER'S CERTIFICATION: This water well was  constructed, (2) reconstructed, or (3) plugged under my jurisdiction and was completed on \_\_\_\_\_ **12** month \_\_\_\_\_ **10** day \_\_\_\_\_ **1980** year  
 and this record is true to the best of my knowledge and belief. Kansas Water Well Contractor's License No. **359**  
 This Water Well Record was completed on \_\_\_\_\_ **12** month \_\_\_\_\_ **11** day \_\_\_\_\_ **80** year under the business name of **DARYL COX + SONS INC** by (signature) **Daryl Cox**

7 LOCATE WELL'S LOCATION WITH AN "X" IN SECTION BOX:



FROM	TO	LITHOLOGIC LOG	FROM	TO	LITHOLOGIC LOG
0	2	TOPSOIL			
2	9	RED CLAY			
9	46	SANDROCK			
46	51	RED CLAY			
51	74	BLUE CLAY			
74	75	HARD ROCK			
75	79	BLUE CLAY W/ ROCK LAYERS			
79	100	SANDROCK			
100		STOP			

ELEVATION:

Depth(s) Groundwater Encountered 1. \_\_\_\_\_ ft. 2. \_\_\_\_\_ ft. 3. \_\_\_\_\_ ft. 4. \_\_\_\_\_ ft. (Use a second sheet if needed)  
 INSTRUCTIONS: Use typewriter or ball point pen, please press firmly and PRINT clearly. Please fill in blanks, underline or circle the correct answers. Send top three copies to Kansas Department of Health and Environment, Division of Environment, Water Well Contractors, Topeka, KS 66620. Send one to WATER WELL OWNER and retain one for your records.

OFFICE USE ONLY  
T 10  
R 4  
SEC 29  
NW 1/4  
NE 1/4  
SW 1/4  
SE 1/4



# 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. 50,404** 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 24, 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				
19	10S	4W																40	40	35	40	155

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 Southwest Quarter of the Southeast Quarter of the Southeast Quarter (SW¼ SE¼ SE¼) of Section 19, more particularly described as being near a point 79 feet North and 776 feet West of the Southeast corner of said section, in Township 10 South, Range 4 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 **201.5 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.





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. 50,404

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.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 Stockton Field Office at 785-425-6787. 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:dws  
Enclosure(s)

pc: Stockton Field Office  
Berry Family Farms LLC



**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**

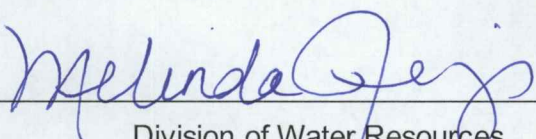
On this 21 day of January, 2021, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,404, dated 15 January was mailed postage prepaid, first class, US mail to the following:

KEN BERRY  
1624 N 70<sup>TH</sup> RD  
MINNEAPOLIS KS 67467

With photocopies to:

BERRY FAMILY FARMS LLC  
746 PRAIRIE RD  
MINNEAPOLIS KS 67467

Stockton Field Office

  
\_\_\_\_\_  
Division of Water Resources