

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: April 5, 2023

FROM: Brandon Milner

RE: New Application,
File No. 50,724

Robert F. and Alaina L. Brown have filed the above referenced application proposing to appropriate 126 acre-feet of surface water by direct diversion at 1,000 gallons per minute from one pump site located on Republican River Tributary 11, for irrigation use in Jewell County.

This file replaces dismissed file 49,454. Based on K.A.R. 5-3-24, the requested quantity of 126 acre-feet appears reasonable for irrigation of the proposed 97 acres (1.3 acre-feet per acre in Jewell County).

No notification letters were sent on this file. Landowners one-half (1/2) mile North are located in Nebraska and there are no other landowners one-half (1/2) mile South on the same tributary as the proposed application.

The applicant has submitted a signed Minimum Desirable Streamflow (MDS) statement which has been properly notarized. By completing this statement, the applicant affirms his knowledge that there could be times when the diversion of water may not be allowed under this permit. Additionally, since the source of water is surface water from a tributary to the Republican River, the permit will be conditioned as follows: "That order to implement the provisions of K.A.R. 5-3-11(d)(6), no water shall be diverted unless the written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, is obtained each time applicant desires to divert water. The approval of this permit is not an indication that surface water will be available from this source of supply, or that written permission will be granted to divert water." The Lower Republican River Basin is currently open to new appropriations meeting the criteria required by K.A.R. 5-3- d)(6), and the approval of this application is consistent with similar applications requesting surface water in Republican River basin.

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 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.

This new application also requires a structures permit. The structures application, SJW-005, is for permit to construct a crossing across a tributary to the Republican River. The crossing is used to access farm ground and is also used to impound water in the stream channel to irrigate with. This permit has been worked by Leonard Bristow in the Stockton Field Office and will be approved at the same time as the new application.

In an email on April 6, 2023, Kelly Stewart, Water Commissioner of the Stockton Field Office recommended approval of the application. Based on the above discussion and the available information, it is recommended that the referenced application be approved.

Brandon Milner
Environmental Scientist

From: Stewart, Kelly [KDA]
Sent: Thu 4/6/2023 3:33 PM
To: Milner, Brandon [KDA]
Cc: Billinger, Mark [KDA];Hageman, Nancy [KDA]
Subject: RE: 50724 Memo

Brandon,

I recommend approval of this application.

Mark, this is Robert Francis Brown that we check for illegal diversion in JW county.

Kelly

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Sent: Thursday, April 6, 2023 11:09 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>; Hageman, Nancy [KDA] <Nancy.Hageman@ks.gov>
Subject: 50724 Memo

Good morning everyone,

I've attached a memo for 50,724 which has been refiled from failure to complete on 49,454. I've looked over the application and I don't see anything has really changed since 49,454 was filed in 2015 but I may be missing something. Could you please provide a recommendation with this file? Thanks

Brandon Milner
Environmental Scientist
Water Appropriation Program

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. 50,724** of the applicant

ROBERT FRANCIS BROWN
1936 BIRCH RD
SUPERIOR NE 68978

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 **February 22, 2022**.

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	
3 - 1S - 7W					Lot 2 18.2	Lot 3 24.5	Lot 4 22.2	Lot 5 29.6		2.5							97.0

3. That the authorized source from which the appropriation shall be made is surface water from an unnamed tributary to the Republican River, designated in the office of the Chief Engineer as Republican River Trib. 11, to be diverted at a pumpsite located in Lot 5 of Section 3, more particularly described as being near a point 3,185 feet North and 3,709 feet West of the Southeast corner of said section, in Township 1 South, Range 7 West, Jewell 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 **1,000 gallons per minute (2.23 c.f.s.)** and to a quantity not to exceed **126 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, 2024**, 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, 2028**, 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 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 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).

13. 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.

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

15. 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.

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

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.

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

May 24, 2023

ROBERT FRANCIS BROWN
1936 BIRCH RD
SUPERIOR NE 68978

RE: Appropriation of Water
File No. 50,724

Dear Mr. Brown:

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 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.

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/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 and Change Applications Unit Supervisor
Division of Water Resources

KAB:bmm
Enclosure(s)
pc: Stockton 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 24 day of May, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,724, dated May 23, 2023, was mailed postage prepaid, first class, US mail to the following:

ROBERT FRANCIS BROWN
1936 BIRCH RD
SUPERIOR NE 68978

With photocopies to:

KDA-DWR Stockton Field Office



Division of Water Resources