

File No. 50,838	15. Formation Code: 330	Drainage Basin: SALT CREEK	County: OT	Special Use:	Stream:																
16. Points of Diversion T MOD DEL PDIV ENT Qualifier S T R ID 'N 'W			17. Rate and Quantity Authorized Additional Rate gpm Quantity af Rate gpm Quantity af Overlap PD Files																		
MOD 89729	Lot 1 (NE NW)	30 - 10S - 5W	1	4479 2647 (Geo Center)	800 522.6 800 522.6 none																
ENT 91438	Lot 1 (NE NW)	30 - 10S - 5W		4379 2747 (Batt 1 of 4)																	
ENT 91440	(SW NW NE)	30 - 10S - 5W		4379 2547 (Batt 1 of 4)																	
ENT 91441	(SW NW NE)	30 - 10S - 5W		4479 2547 (Batt 1 of 4)																	
ENT 91439	Lot 1 (NE NW)	30 - 10S - 5W		4479 2747 (Batt 1 of 4)																	
BATT ID#2427																					
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 _____ Date Acceptable Meter Installed 12/31/2026																					
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	NE ¼	NW ¼	SW ¼	SE ¼				
CHK 70968	19 10S 5W	1											18			40	40	98	7b	no	none
CHK 70969	20 10S 5W	1										38	8					46	7b	no	none
MOD 70970	30 10S 5W	1	40	40			Lot 1	Lot 2									158	7b	no	none	
CHK 70971	29 10S 5W	1		20			40	40									100	7b	no	none	
Comments:																					

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: June 7, 2024

From: Kris Neuhauser, Environmental Scientist

Re: New Application File No. 50,838 – Berry Brothers Farms LLC

Summary

Berry Brothers Farms LLC filed an application to appropriate groundwater to irrigate 402 acres in Ottawa County, Kansas, requesting a battery of four (4) wells, with a quantity of 522.6 acre-feet of water per calendar year, at a diversion rate of 800 gallons per minute.

Reasonable Rate and Quantity

The proposed quantity of 522.6 acre-feet per calendar year provides 1.3 acre-feet per acre, making it the maximum reasonable quantity for Ottawa County ($1.3 \times 402 \text{ acres} = 522.6 \text{ acre-feet}$).

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 confined aquifer, which provided an area of consideration of 8,042 acres. With a potential annual recharge of 2.5 inches, and 75% of recharge available for appropriation, safe yield was determined to be 1,256.56 acre-feet. Existing water rights have appropriated 140 acre-feet, providing a difference of 1,116.56 acre-feet available for appropriation, and the application requesting 522.6 acre-feet complies with safe yield.

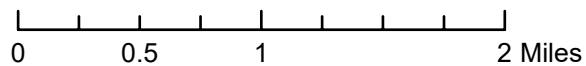
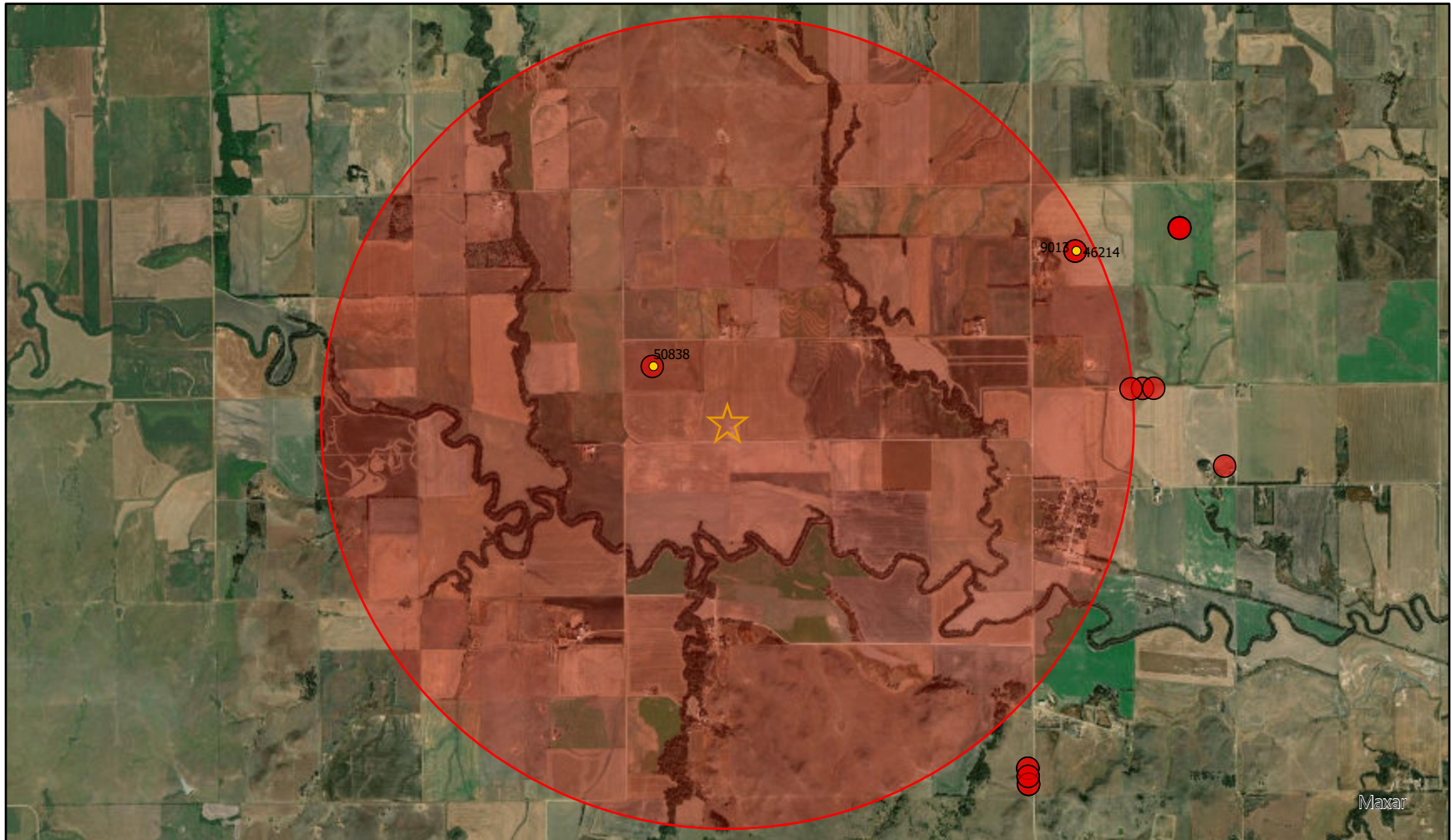
Nearby Water Rights

The closest non-domestic well is just under two miles away, authorized by Water Right, File Nos. 9,013 and 46,214, which also sources the Dakota aquifer. The closest domestic well is over $\frac{1}{2}$ mile away. Based on K.A.R. 5-4-4, well spacing criteria for wells sourcing unconfined Dakota is met. Though the domestic well is outside the $\frac{1}{2}$ mile radius required for nearby notifications, a letter was mailed on April 15, 2024 to ensure the well owner was aware of the proposed application. No responses of any kind have been received to date.

Recommendations

Kelly Stewart, Water Commissioner of the Stockton Field Office recommended approval of the application on November 19, 2024. Based on the above discussion, the area is open to new appropriations, the application complies with safe yield and well spacing criteria, 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
Proposed Point of Diversion
Point of Diversion in 30-10S-05W
Footages from SE corner: 4479 feet North 2647 feet West



50838 PASSES SY*

ANALYSIS RESULTS

The selected PD is in an area OPEN to New appropriations
The safe yield based on the variables listed below is 1256.56 AF.
Total prior appropriations in the circle is ~~662.6 AF~~. **662.6 AF - 522.6 AF = 140 AF**
Total quantity of water available for appropriation is 593.96 AF.

1256.56 AF - 140 AF = 1116.56 AF AVAILABLE

SAFE YIELD VARIABLES

The area used for the analysis is calculated as 8042 acres. The radius is set at 2.0 miles.
The potential annual recharge at the circle center is estimated to be 2.5 inches.
The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 2024-11-15 and are based on Appropriated and Vested ground water rights.
Domestic, Term and Temporary water rights, and GMD #2 Stream Nodes have been excluded.
There are 3 water rights and 2 points of diversion within the circle.

File Number	Use	ST	SR	DIST	Q4	Q3	Q2	Q1	FtN	FtW	S	TP	RN	ID	Aquifers	QBy	Auth_Qnt	Add_Qnt
A	9013	IRR	NK	G	10107	NE	SW	NW	3560	4147	21	10	05W	1	331	WR	140.00	140.00
A	46214	IRR	NK	G	10107	NE	SW	NW	3560	4147	21	10	05W	1	331	WR	62.00	0.00
A	50838	IRR	AY	G	2425		NC	S2	660	4620	19	10	05W	1		WR	522.60	522.60

File Number	Seq	Limitations
A	46214	1 140AF/YR @ 700GPM COM/W #9013 ✓

From: "Stewart, Kelly [KDA]"
Sent: Tue 11/19/2024 1:01 PM
To: "Neuhauser, Kris [KDA]" <Kris.Neuhauser@ks.gov>
CC: "Billinger, Mark [KDA]" <Mark.Billinger@ks.gov>; "Hageman, Nancy [KDA]" <Nancy.Hageman@ks.gov>
Subject: RE: 50838 rec request

Kris,

I recommend approval of this application.

Kelly

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Tuesday, November 19, 2024 11:38 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: 50838 rec request

Kelly,

Attached is a draft memo and SY report for 50838, for your review and recommendation. Treating this as unconfined Dakota. Let me know if you have questions. Looks to have plenty of water available.

Thanks!

Kris Neuhauser

New Applications Lead

Kansas Department of Agriculture, Division of Water Resources

Cell: 785-370-1451

Office: 785-564-6643

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. 50,838** of the applicant

**BERRY BROTHERS FARMS LLC
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 **August 1, 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	
19 - 10S - 5W												18			40	40	98
20 - 10S - 5W											38	8					46
29 - 10S - 5W		20			40	40											100
30 - 10S - 5W	40	40			Lot 1 40	Lot 2 38											158

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of four (4) wells with a geographical center located in the Southeast Quarter of Lot 1 (NE¼ NW¼) of Section 30, more particularly described as being near a point 4,479 feet North and 2,647 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 **800 gallons per minute (1.78 c.f.s.)** and to a quantity not to exceed **522.6 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, 2026**, 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, 2030**, 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 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 this permit is further limited such that all wells shall be located within a three hundred (300) foot radius circle, in the same local source of supply, shall be limited to a total maximum combined diversion rate not in excess of **800 gallons per minute (1.78 c.f.s.)** and shall supply water to a common distribution system.

18. 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.

Ordered this 16th day of December, 2024, in Manhattan, Riley County, Kansas.



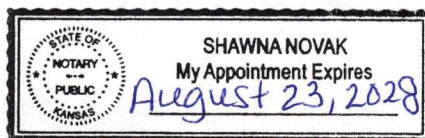
[Signature]
Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 16th day of December, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

[Signature]

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

December 26, 2024

COLBY BERRY
BERRY BROTHERS FARMS LLC
1624 N 70TH RD
MINNEAPOLIS KS 67467

RE: Appropriation of Water
File No. 50,838

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.

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 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 with your permit 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 Applications and Changes Supervisor
Division of Water Resources

KAB:kak:kjn
Enclosure(s)

pc: Galen & Sharon K. Holthaus Trusts
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 26 day of December, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,838, dated December 16, 2024, was mailed postage prepaid, first class, US mail to the following:

COLBY BERRY
BERRY BROTHERS FARMS LLC
1624 N 70TH RD
MINNEAPOLIS KS 67467

With photocopies to:

GALEN & SHARON K HOLTHAUS TRUSTS
1375 PONY EXPRESS HWY
MARYSVILLE KS 66508

DWR Stockton Field Office



Division of Water Resources