

File No. **51156** 15. Formation Code: **113** Drainage Basin: **19** County: **EL** Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity				
T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W		Authorized Rate gpm	Quantity af	Additional Rate gpm/cfs	Quantity af/mgy	Overlap PD Files
CHK	90721	NC NW NE	8	13S	20W	17	4241	1972		95	1.5	95	1.5	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? Yes No To be installed by **12/31/2025** **2026** Date Acceptable Meter Installed _____

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
T MOD DEL ENT	PUSE	S	T	R	ID	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼								
CHK	57556	8	13S	20W	5		2.5	.5															3	7a	N	none			

Comments: ~~SMALL USE EXEMPTION 5-3-16A~~
SPECIAL CONDITION: 5 AF EXEMPTION

Kansas Department of Agriculture
 Division of Water Resources
WAIVER REQUEST & WAIVER RULE WORKSHEET

File Number: **51,156**

FO: **3**

GMD:

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IRR	12/15/23	3	Statewide	Well Spacing	Well to Well Spacing
Rule Number	Date Granted	Date Denied	Justification:	Proposed well does not meet spacing to nearby non-domestic wells EL-003; #8,651 & #49,093. Low rate (95 g.p.m.) and small annual quantity (1.5 AF), therefore reduced spacing should be sufficient to prevent impairment. Non-domestic well owners have signed statements agreeing to reduced spacing.	
K.A.R. 5-4-4(c)(1)(C)	10/18/2024				

WAIVER RULE (complete only if a new rule needs to be created):

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
				K.A.R.		

Date Prepared **10/8/24** By **jkb**

Date Entered **10/21/2024** By **KAnderson**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: October 16, 2024

FROM: Jodie K. Barker

RE: New Application File No, 51156

Summary

Ellis County Jr. Free Fair has filed the above referenced new application to appropriate 1.5 acre-feet (4.88 million gallons) per calendar year of groundwater for irrigation use at a diversion rate not to exceed 95 gallons per minute from one (1) well in the Big Creek basin of Ellis County, Kansas. The place of use and point of diversion are both owned by the applicant, and the applicant has signed indicating legal access to the point of diversion. The applicant was assisted by Stockton Field Office personnel.

Source of Supply and Safe Yield / Reasonable Rate and Quantity

No well log was provided, however the physical location of the proposed well and nearby well logs clearly show the source of supply is the alluvium of Big Creek, which per K.A.R. 5-3-11(d)(5) has been determined to be fully appropriated based on safe yield criteria and closed to new groundwater appropriations. However, K.A.R. 5-3-16a provides an exemption to safe yield in closed area for up to 5 acre-feet of water, if specific conditions are met.

- 1) *The sum of the quantity of groundwater appropriated because of an exemption to this regulation cannot exceed a total of 5 acre-feet within a 2-mile radius of the point of diversion.* Two previous exemptions have been issued in a 2-mile radius pursuant to this regulation totaling 3.5 acre-feet, therefore the entire 1.5 acre-feet requested is available.
- 2) *The quantity of water requested must be reasonable.* The proposed quantity of 1.5 acre-feet will amount to only .5 acre-feet/acre, which is less than the 1.4 acre-feet allowable for irrigation in Ellis County. However, in a phone conversation July 23, 2024, DJ Fischer, fairboard president, provided the following information: The place of use is two baseball diamonds watered mainly April through July for the high school baseball season and early spring youth baseball season, and then sparingly through the summer months. The fields are seeded with Bermuda grass, which is considered drought-tolerant, and buffalograss which is considered drought resistant per information from Kansas State Research and Extension. City water is available as a back-up supply but is not a desirable source due to prohibitive cost. Therefore, the requested quantity appears to be reasonable for the intended use, is not wasteful, and will not otherwise prejudicially and unreasonably affect the public interest.
- 3) *Well spacing must be sufficient to prevent impairment.* A **waiver of K.A.R. 5-4-4(c)(1)(C)** will be required to approve the application. The proposed location is ~935 feet from a well belonging to USD #388 and just over 1,100 feet from a City of Ellis well. No domestic wells appear to be located within 660 feet. The well belonging to USD #388 (File No. 49,093) is authorized under a small-use exemption for 1.4 AF/year at 24 gallons per minute for irrigation use on the school's football practice field. The proposed location is close to meeting spacing requirements to the City of Ellis well (EL003 and File No. 8,651). Alluvial aquifers with sands and gravels typically have significant transmissivity and the small diversion rate and quantity of water requested will not create any significant drawdown.
- 4) *The combined quantity of water authorized from the point of diversion cannot exceed 5 acre-feet.* This is the only appropriation from this point of diversion, and the quantity requested is less than 5 acre-feet.

- 5) *The appropriation must benefit the public interest and help maximize economic development.* The purpose of this appropriation is to maintain two ballfields used for high school and area youth league baseball. It is reasonable this appropriation will serve the public interest and aid in economic development by supporting these community recreational spaces.

Nearby Water Rights

Notarized non-domestic well-spacing consent forms were received from both the City of Ellis (EL003 and File No. 8,651) and USD #388 (File No. 49,093) on August 21, 2024. Due to the proposed location's proximity to the City of Ellis and the possibility of multiple nearby domestic wells within one-half mile, a public notice was published in the *Ellis Review*, a local newspaper, once a week for three consecutive weeks beginning on August 8, 2024. Fifteen days following the final publication day were allowed for public comment. A copy of the affidavit of publication was provided by the applicant and was properly signed and notarized. No comments, calls or other correspondence pertaining to the published public notices was received during or in the fifteen days following the publication period.

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.

Recommendations

In an email dated October 16, 2024, Stockton Field Office Water Commissioner, Kelly Stewart, recommended approval of the application.

Based on the above discussion, the application meets the criteria for exemption in a closed area under K.A.R. 5-3-16a, 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.

Jodie K. Barker
Environmental Scientist
Division of Water Resources

From: "Stewart, Kelly [KDA]"
Sent: Thu 10/17/2024 9:47 AM
To: "Barker, Jodie [KDA]" <Jodie.Barker@ks.gov>
CC: "Hageman, Nancy [KDA]" <Nancy.Hageman@ks.gov>
Subject: RE: New application recommendation - #51156

Jodie,

I recommend approval of this application. Good write-up on this one!

Kelly

From: Barker, Jodie [KDA] <Jodie.Barker@ks.gov>
Sent: Thursday, October 17, 2024 9:06 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Subject: New application recommendation - #51156

Kelly,

A memo for #51,156 is attached for review/comment/recommendation. This is Ellis Jr Free Fair's application for 1.5 AF to irrigate their ball diamonds, which requires a 5-AF small-use exemption.

Thank you,
Jodie

Jodie Barker, Environmental Scientist
Kansas Department of Agriculture
Division of Water Resources
Stockton Field Office
Phone: (785) 425-6787
Jodie.Barker@ks.gov
<http://agriculture.ks.gov/dwr>

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. 51,156** of the applicant

ELLIS COUNTY JUNIOR FREE FAIR ASSOCIATION INC
253 EMMERAN RD
ELLIS, KS 67637

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 **December 15, 2023**.

2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
8 - 13S - 20W		2.5	0.5														3.0

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well located near the center of the Northwest Quarter of the Northeast Quarter (NW¼ NE¼) of Section 8, more particularly described as being near a point 4,241 feet North and 1,972 feet West of the Southeast corner of said section, in Township 13 South, Range 20 West, Ellis 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 **95 gallons per minute (0.21 c.f.s.)** and to a quantity not to exceed **1.5 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, 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 an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this permit in accordance with Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The required 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 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.

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.

Ordered this 18th day of October, 2024, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.
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 18th day of October, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Shawna Novak
Notary Public



THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

WAIVER OF REGULATION
K.A.R. 5-4-4(c)(1)(C) Well Spacing

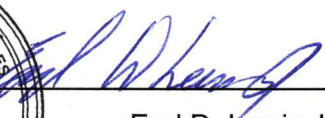
Date: October 18, 2024.

Re: Application, File No. 51,556

1. That K.A.R. 5-4-4(c)(1)(C) requires a minimum well spacing of 1,320 feet between non-domestic wells whose common source of supply is an alluvial aquifer system.
2. That the well under the above referenced application does not meet minimum well spacing criteria as required by K.A.R. 5-4-4(c)(1)(C) because it is located approximately 920 feet from another non-domestic well (Authorized by File No. 49,093) and approximately 1,130 feet from another non-domestic well (Authorized by EL 003 and File No. 8,651.)
3. That the applicant has provided written statements from the owner of the irrigation water right (Ellis U.S.D #388 – File No. 49,093) and from the owner of the municipal water right (EL 003 and File No. 8,651), stating that they give permission for the reduced spacing interval to their existing well.
4. That the well is close to meeting spacing to File Nos. EL 003 and 8,651 (190 feet short).
5. That due to the transmissivity of the alluvial aquifer and the low rate (95 g.p.m.) and quantity (1.5 acre-feet) proposed by this new application, it is unlikely to impair any existing wells.
6. That the proposed reduced spacing appears sufficient to prevent direct impairment.
7. That a waiver of K.A.R. 5-4-4(c)(1)(C) will not prejudicially or unreasonably affect the public interest, and no senior rights will be impaired by the proposed use.

Comments:




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

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

October 22, 2024

D J FISCHER
ELLIS COUNTY JUNIOR FREE FAIR ASSOCIATION INC
253 EMMERAN RD
ELLIS, KS 67637

RE: Appropriation of Water
File No. 51,156

Dear Mr. Fischer:

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 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:jkb
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 22 day of October, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,156, dated October 18, 2024, was mailed postage prepaid, first class, US mail to the following:

ELLIS COUNTY JUNIOR FREE FAIR ASSOCIATION INC
253 EMMERAN RD
ELLIS KS 67637

With photocopies to:

KDA-DWR Stockton Field Office



Division of Water Resources