

File No. **50766** 15. Formation Code: Drainage Basin: **Kansas River** County: **LV** Special Use: Stream: **Kansas River**

16. Points of Diversion										17. Rate and Quantity						
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files	
MOD				76263	SW NW SE	13	12S	21E	7	1892	2335	1200	143.5	755	80.5	46,917-D1

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

19. Limitation: **143.5** af/yr at **1,200** gpm (_____ cfs) when combined with file number(s) **46,917-D1**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? Yes No To be installed by **12/31/2024** Date Acceptable Meter Installed _____

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files		
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				59194	18	12S	22E	1										L-3	L-8									31.0	7b.	NO	46,917-D1
CHK				59192	13	12S	21E	2												25.5	29.5	12.0	L-3	L-1	17.0	8.5	92.50	7b.	NO	46,917-D1	
CHK				59193	24	12S	21E	2			L-8																20.0	7b.	NO	46,917-D1	

Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: May 12, 2023

FROM: Lloyd Hemphill

RE: Application, File No. 50,766
Change Application, File No. 46,917-D1

James C Kreider II has filed the referenced new application to appropriate 143.5 acre-feet of surface water, at the rate of 1,200 gallons per minute to irrigate 143.5 acres. The point of diversion (pumpsite) is located in the SW¼ of the NW¼ of the SE¼ of Section 13, Township 12 South, Range 21 East, Leavenworth County. The pumpsite is geographically located on Stranger Creek. However, it has previously been determined that the source of water is backwater from the Kansas River. This application overlaps the point of diversion and place of use authorized by Water Right, File No. 46,917-D1. The senior file currently authorizes the irrigation of 68 acres and a change application was filed to increase the place of use and make a complete overlap. The new permit will cover the additional consumptive use under the senior file.

Water Right, File No. 46,917-D1 currently authorizes the diversion of 63 acre-feet at a rate of 445 gallons per minute. The maximum allowable quantity of water to irrigate the proposed 143.5 acres in Leavenworth County is 143.5 acre-feet (1 AF/ac. X 143.5 ac.). Therefore, the junior appropriation (File No. 50,766) will be limited to 143.5 acre-feet on the place of use with the senior file (File No. 46,917-D1). The new permit will provide an additional 80.5 acre-feet of water. The rate of diversion will be limited to 1,200 gallons per minute when the files are used in combination.

The place of use and point of diversion are owned by Moo Mesa LLC. The application has been signed by the applicant stating legal access to the point of diversion.

Nearby notification letters were mailed to upstream and downstream landowners on April 14, 2023. Telephone calls were received from two nearby landowners with general questions about the application, but they did not express any specific concerns. There are only two other surface water rights within two miles of the proposed point of diversion. One is located on a separate tributary stream. The other (File No. 46,917-D2) is a pumpsite located 1,950 feet upstream (on Stranger Creek), also diverting backwater from the Kansas River. Both pumpsites are under the same ownership. With standard permit conditions, no senior water rights will be impaired with approval of this surface water application.

Per **K.A.R. 5-3-15 (Availability of water for appropriation - safe yield; surface water)**, each application filed to directly divert the natural flow of the Kansas River or a tributary shall be processed in accordance with K.A.R. 5-3-9 (Public Interest) and meet all other requirements for the approval of a new application. The water right owner shall be required to meet minimum desirable streamflows (MDS), assurance district target flows (assurance target flows) and division of water resources (DWR) target flows where applicable.

This application meets these safe yield criteria. The permit will also contain the condition that streamflow cannot be stopped at the first riffle below the point of diversion while diversion is taking place.

The applicant has submitted a signed and notarized Kansas River Assurance District form. 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.

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 these permits, check valves will also need to be installed.

Based on the above discussion, the Kansas River is open to new appropriations, the application complies with all regulations, 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 new application be approved along with the change application for the existing file.

Lloyd Hemphill
Environmental Scientist
Topeka Field Office

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. 50,766 of the applicant

**JAMES C KREIDER II
13900 KREIDER RD
BONNER SPRINGS, KS 66012**

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 **April 14, 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	W¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼		
18 12S 22E											L-3 28.5	L-8 2.5					31.0	
13 12S 21E													25.5	29.5	12.0	L-3 17.0	L-1 8.5	92.5
24 12S 21E		L-8 13.0			L-8 7.0													20.0

3. That the authorized source from which the appropriation shall be made is surface water from the Kansas River, to be withdrawn by means of one (1) pump site located in the Southwest Quarter of the Northwest Quarter of the Southeast Quarter (SW¼ NW¼ SE¼) of Section 13, more particularly described as being near a point 1,892 feet North and 2,335 feet West of the Southeast corner of said section, in Township 12 South, Range 21 East, Leavenworth County, Kansas, located substantially as shown on the map accompanying the application.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **1,200 gallons per minute (2.67 c.f.s.)** and to a quantity not to exceed **143.5 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, 2024** or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$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, which is currently \$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, which is currently \$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 the 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).
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 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.
16. 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.
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

JAMES C KREIDER II
13900 KREIDER RD
BONNER SPRINGS, KS 66012

May 24, 2023

RE: Appropriation of Water, File No. 50,766
Change Application, Water Right, File No. 46,917-D1

Dear Mr. Kreider:

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/divisions-programs/dwr.

Also enclosed is the order executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the application for change under Water Right, File No. 46,917-D1. Since this order modifies the original Certificate of Appropriation, it should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB:llh
Enclosure(s)

pc: Topeka 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 for Change in Place of Use under Water Right, File No. 46,917-D1, and Approval of Application and Permit to Proceed, File No. 50,766, dated May 18, 2023 was mailed postage prepaid, first class, US mail to the following:

JAMES C KREIDER II
13900 KREIDER RD
BONNER SPRINGS, KS 66012

With photocopies to:

Topeka Field Office



Division of Water Resources