

File No. **49343** 13. County: **WASHINGTON** Basin: **REPUBLICAN** Stream:
 Structures File No: Aquifer Code: **330 Dakota aquifer system (unconfined)** Special Use Area:

14. Points of Diversion, Rates & Quantities

PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Qty AF		Rate gpm		Storage Qty AF		Storage Rate	Overlaps
									Auth	Add	Auth	Add	Auth	Add	Auth/Add	
NC	84183 SW SE NE	21	3S	2E	2	3029	823		281.4	281.4	1300	1300				*

15. Limitations **NEW** Type: Quantity: **AF** Rate: **gpm** combined with file no(s):
NEW Type: Quantity: **AF** Rate: **gpm** combined with file no(s):

16. Metering Metering Required Anti-Reverse Required Seal Required Compliance Date: **12/31/2026**

17. Place of Use

PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
					NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
MOD 66793	21	3S	2E	2	38.5	38	20	19.5												116.00	5a	<input type="checkbox"/>	*	
ENT 71695	21	3S	2E				20	19.5									39	40		118.50	5b	<input type="checkbox"/>	*	
71694	21	3S	2E															39	39	78.00	5c	<input type="checkbox"/>	*	
																				0.00		<input type="checkbox"/>		
																						<input type="checkbox"/>		
																						<input type="checkbox"/>		

18. Point of Diversion and Place of Use Overlaps
 * **PD & PU overlap with 51213** **
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MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: February 11, 2025

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 51,213 – Brett Herrs

& Change Application File No. 49,343

Summary

Brett Herrs filed the above referenced application to appropriate 93.6 acre-feet of groundwater, at a rate of 1,300 gallons per minute for irrigation use. The proposed point of diversion would be a an existing single (1) well located in Washington County, Kansas. The applicant has signed the application form affirming legal access to the point of diversion. The proposed place of use is 320 acres. This application will overlap in point of diversion and place of use with File No. 49,343. The applicant wants to expand the place of use by adding an additional 78 acres. A change application has been submitted for senior file 49,343 to create a complete place of use overlap.

Reasonable Rate and Quantity

Quantity of water requested is an additional 93.6 acre-feet at a rate of 1,300 gallons per minute for an additional 78 acres place of use. Quantity requested appears to be reasonable as it is the maximum quantity of water allowed at 1.2 acre-feet per acre in Washington County, Kansas as per K.A.R. 5-3-24. The senior file (49,343) is still under its perfection period and is authorized for 281.4 acre-feet at 1300 gallons per minute for a 234.5-acre place of use. This new application will only be adding additional quantity to cover the additional acres. Therefore, no limitation is required.

Source of Supply and Safe Yield

No stratigraphic log was supplied with the application however, there is sufficient information to determine the groundwater source formation from which the proposed well will be withdrawing water without requiring a well log with the application. Based on nearby well logs and the Kansas Geological Surveys geologic map 'Top Configuration of the Dakota Aquifer' (KGS, 1995). The source of supply for the proposed point of diversion appears to be the unconfined Dakota aquifer. As per the requirements in K.A.R. 5-3-11, safe yield is determined by the extent of the unconfined aquifer within a two-mile circle radius of the point of diversion, which establishes the area of consideration. Evaluation of the area of consideration included the extent of the unconfined aquifer, which provided an area of consideration of 8,042 acres. With a potential annual recharge of 2.9 inches, and 75% of recharge (Republican River Basin) available for appropriation, safe yield was determined to be 1,457.61 acre-feet. Existing water rights have appropriated 629.4 acre-feet, providing a difference of 828.21 acre-feet available for appropriation, and the application requesting 93.60 acre-feet complies with safe yield.

Nearby Water Rights

No appropriated wells and two (2) possible domestic wells were found to be within a half mile of the proposed point of diversion. The nearest prior appropriated well (File No. 50,916) was found to be ~1.64 miles away. The nearest domestic well was found to be roughly ~1,384 feet away. The above referenced application complies with K.A.R. 5-4-4. Two nearby notification letters were sent out and no comments of any kind were received during the 15-day period open to comments and concerns.

Recommendations

The application was sent to Nathan Westrup, Water Commissioner of the Topeka Field Office, and was recommended for approval in an email dated February 5, 2025.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum well spacing requirements. The proposed applications are subject to minimum desirable streamflow requirements. Approval of the applications will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.

A handwritten signature in black ink that reads "Colin Barclay". The signature is written in a cursive, flowing style.

Colin Barclay
Environmental Scientist
Water Appropriation Program

RE: 51,213 and 49,343 review and recommendation request

From Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>

Date Wed 2/5/2025 9:02 AM

To Barclay, Colin [KDA] <Colin.Barclay@ks.gov>; Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>

Hey Colin,

I have no objection to approval.

Thanks,

Nathan Westrup, Water Commissioner

Topeka Field Office

Division of Water Resources

Kansas Department of Agriculture

Phone: 785-296-7064

Mobile: 785-230-2991

Nathan.Westrup@ks.gov

From: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>

Sent: Wednesday, February 5, 2025 8:15 AM

To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>; Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>

Subject: 51,213 and 49,343 review and recommendation request

Good morning Nathan and Shaun,

I have attached my draft memo and safe yield report for new application 51,213 and change application 49,343 for your review and recommendation. I sent out nearby letters on January 21, 2025 and have not heard back from anyone.

The change application for 49,343 is for creating a complete place of use overlap.

Please let me know if you have any questions.

Thanks,

Colin Barclay

Environmental Scientist

Division of Water Resources

Kansas Department of Agriculture

Phone: (785) 564-6628

Colin.Barclay@ks.gov

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 FOR CHANGE IN PLACE OF USE APPROPRIATION OF WATER FILE NO. 49,343

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Brett Herrs, 811 King Road, Linn, Kansas 66953-9290, and Tyler Herrs, 1116 8TH Road, Linn, Kansas 66953-9268, received in this office on March 22, 2024, for approval of a change in the location of the place of use under the permit to appropriate water for beneficial use, finds that the change is reasonable and will not impair existing rights, that the change relates to the same local source of supply and that the application should be and is hereby approved.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the authorized location of the place of use shall be:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL				
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼					
21 - 3S - 2E	38.5	38.0	40.0	39.0													39.0	40.0	39.0	39.0	312.5

all in Section 21, Township 3 South, Range 2 East, Washington County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the place of use.

All diversion works 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.

The water right owner shall properly install an acceptable water meter on each of the diversion works authorized under this water right, prior to the use of water, in strict accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The water right owner shall notify the Chief Engineer when installation of the water meter has been completed. The water right owner shall maintain the water meter in an operating condition satisfactory to the Chief Engineer, at all times during diversion of water and shall maintain records from which the total quantity of water diverted may be determined. The water right owner shall also report the reading of said water meter and the total quantity of water diverted annually to the Chief Engineer. Such records shall be furnished to the Chief Engineer by March 1 following the end of each calendar year.

In all other respects, the Approval of Application, File No. 49,343, for permit to appropriate water for beneficial use, is as stated and set forth in the Approval of Application, dated December 4, 2015.

It is so ordered this 11 day of February, 2025, in Manhattan, Riley County, Kansas.

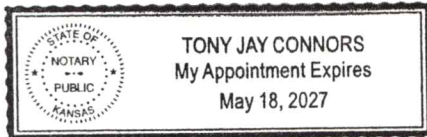
Lane P. Letourneau

Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 11 day of February, 2025, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Tony Jay Connors
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

February 17, 2025

BRETT HERRS
811 KING RD
LINN KS 66953-9290

RE: Appropriation of Water
File Nos. 49,343 and 51,213

Dear Mr. Herrs:

Enclosed is the new permit, under File No. 51,213, 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. Also enclosed is an order approving your application for change in place of use, under File No. 49,343, which also specify terms, conditions, and limitations.

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 kswateruserreport.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 the approved 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) 425-6842. 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:ccb

Enclosure(s)

pc: Topeka Field Office
Tyler Herrs
Gene Herrs

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 17 day of February, 2025, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,213, and Approval of Application for Change in Place of Use under Appropriation of Water, File No. 49,343, dated February 11, 2025, were mailed postage prepaid, first class, US mail to the following:


BRETT HERRS
811 KING RD
LINN KS 66953-9290

With photocopies to:

KDA-DWR Topeka Field Office

TYLER HERRS
1116 8TH RD
LINN KS 66953-9268

GENE HERRS
955 13TH RD
WASHINGTON KS 66968-8415


Division of Water Resources