

Kansas Department of Agriculture
Division of Water Resources
 APPROVAL OF NEW APPLICATION WORKSHEET

1. File No.: 51213	2. Status Change Date: 2/11/2025	4. Field Office: 01 - Topeka GMD: Structures File No.: Filing/Priority Date: 03/22/2024
3. Associated File No(s): 49343		
5a. <input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change BRETT HERRS 811 KING ROAD LINN, KS 66953-9290 Person ID 64949 Add Seq#	5b. <input checked="" type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change TYLER HERRS 200 1ST STREET LINN, KS 66953 Person ID 65473 Add Seq#	
5c. <input checked="" type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change GENE HERRS 955 13TH RD WASHINGTON KS 66968-8415 Person ID 69615 Add Seq#	5d. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#	
6. Change No.: <input type="checkbox"/> PD <input type="checkbox"/> PU <input type="checkbox"/> UMW Base Acres: Year: Min Reasonable Q: Previous UMW: MDS Gauge: Active Admin? <input type="checkbox"/> Completion Date: 12/31/2026 Perfection Date: 12/31/2030		7. Use of Water <input checked="" type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water UMW: IRR-Irrigation UMW: UMW:
8. Action Trail		
9. Special Conditions		
10. 5YR Allocation Type: Start Year: 5YR Quantity: Base Acres: Comment:		
11. Sand & Gravel Proj ID: <input type="checkbox"/> Active <input type="checkbox"/> Dredge <input type="checkbox"/> IND Evap <input type="checkbox"/> Jr Evap <input type="checkbox"/> Other Diversion <input type="checkbox"/> Rpt on Sr		
12. Waiver Rule ID: <input type="checkbox"/> New Date Requested: Applies: Rule No.: Justification: Rule Type: Rule SubType:		
Comments Complete PU overlap with 49343	Processed CCB 2/5/2025 Reviewed KAK 2/11/2025	Entered 2/14/2025 KAnderson

File No. **51213** 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										Qty AF		Rate gpm		Storage Qty AF		Storage Rate	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)		Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps
MOD	84183	SW SE NE	21	3S	2E	2	3029	823		93.6	93.6	1300	0				*

15. Limitations **NEW** Type: **Combined Rate** Quantity: **AF** Rate: **1300 gpm** combined with file no(s): **49343**
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						NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps	
PUSE	S	T	R	ID		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		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	312.5
* PD & PU overlap with 51213	**
+ 49343	++
#	##
^	^^

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

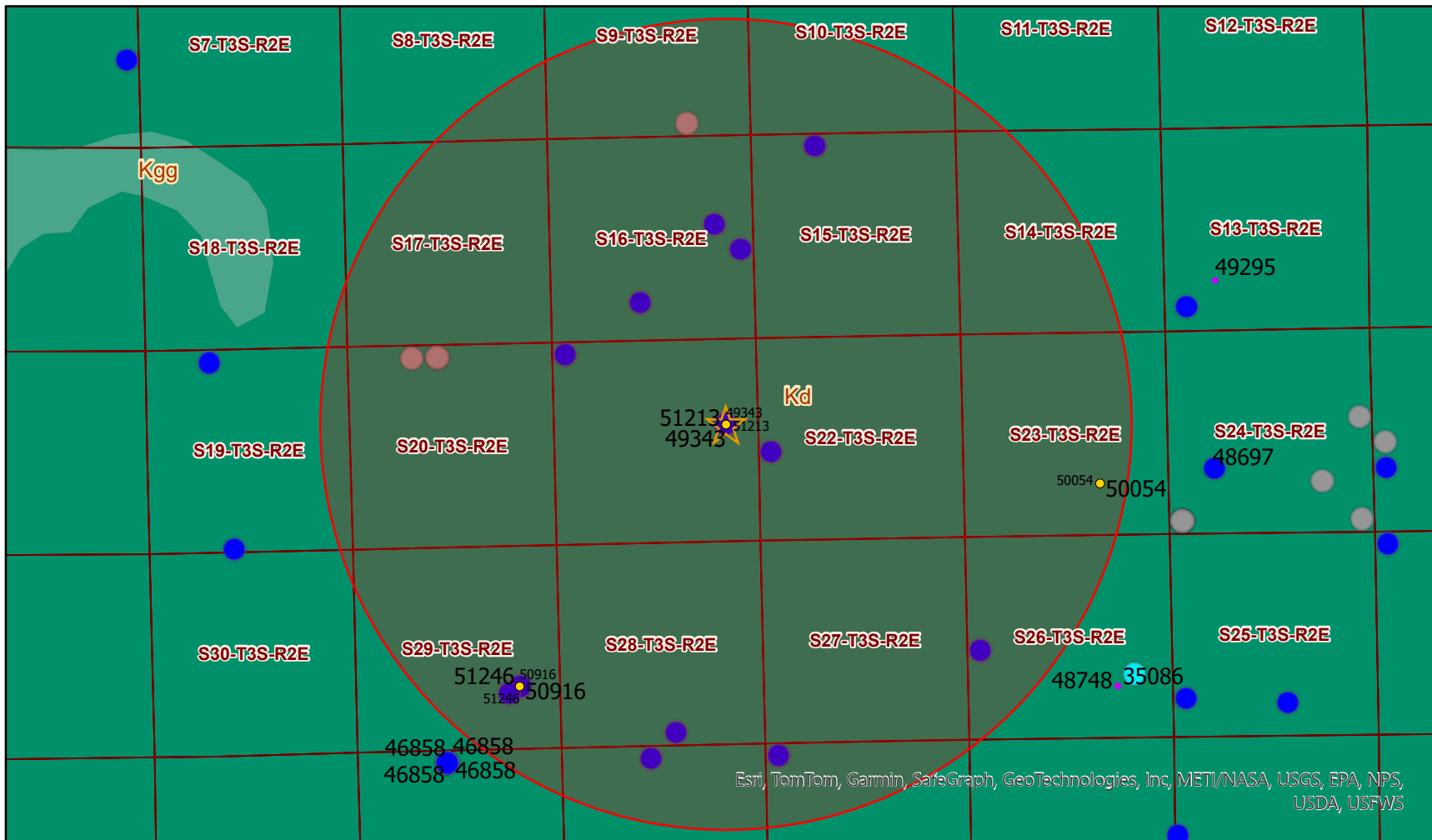
Colin.Barclay@ks.gov

Safe Yield Report Sheet

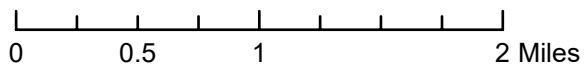
File No. 51213

Point of Diversion in 21-03S-02E

Footages from SE corner: 3029 feet North 823 feet West



Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS



ANALYSIS RESULTS

The selected PD is in an area OPEN to New appropriations
 The safe yield based on the variables listed below is 1457.61 AF.
 Total prior appropriations in the circle is ~~879.0~~ AF. **629.4 AF**
 Total quantity of water available for appropriation is ~~578.61~~ AF. **828.21 AF**

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 2.9 inches.
 The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 2025-01-16 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 5 water rights and 3 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	49343	IRR	KK	G	4	SW	SE	NE	3029	823	21	03	02E	2	330	WR	281.40	281.40
A	50054	IRR	GY	G	9862	SW	NE	SE	1346	1788	23	03	02E	1	330	WR	192.00	192.00
A	50916	IRR	GY	G	8683	SW	NE	SE	1614	1064	29	03	02E	1	330	WR	156.00	156.00
A	51213	IRR	AY	G	4	SW	SE	NE	3029	823	21	03	02E	2	330	WR	93.60	93.60 -93.60
A	51246	IRR	AY	G	8683	SW	NE	SE	1614	1064	29	03	02E	1	330	WR	156.00	156.00 -156.00

File Number	Seq	Limitations

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. 51,213** of the applicant

**BRETT HERRS
811 KING ROAD
LINN KS 66953-9290**

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 **March 22, 2024**.
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	NE ¹ / ₄				NW ¹ / ₄				SW ¹ / ₄				SE ¹ / ₄				TOTAL		
	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄			
21 - 3S - 2E	38.5	38.0	40.0	39.0											39.0	40.0	39.0	39.0	312.5

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well located in the Southwest Quarter of the Southeast Quarter of the Northeast Quarter (SW¹/₄ SE¹/₄ NE¹/₄) of Section 21, more particularly described as being near a point 3,029 feet North and 823 feet West of the Southeast corner of said section, in Township 3 South, Range 2 East, Washington 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 **1,300 gallons per minute (2.9 c.f.s.)** and to a quantity not to exceed **93.6 acre-feet** of water for any calendar year.
5. That the rate of diversion of water approved under this permit is further limited to the rate which combined with Appropriation of Water, File No. 49,343, will provide a total **not to exceed 1,300 gallons per minute (2.9 c.f.s.)** from the well authorized herein.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 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).

15. 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.

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

18. That failure without cause to comply with the provisions of this 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 11 day of February, 2025, in Manhattan, Riley County, Kansas.

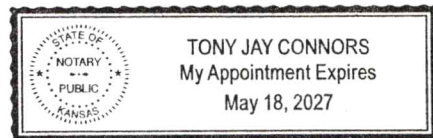
Lane P. Letourneau

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