

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: May 29, 2020

FROM: Kris Neuhauser

RE: Application, File No. 50,285 and
Water Right, File No. 37,555

Leon Dunn has filed the above referenced new application proposing to appropriate 1.103 mgd (3.39 acre-feet) of groundwater per calendar year, at a diversion rate not to exceed 40 gallons per minute, for stockwatering use from a battery of two (2) wells. The application overlaps in points of diversion and place of use with Water Right, File No. 41,215. If approved, the quantity will be limited to 15 acre-feet when combined with Water Right File No. 41,215 (3.785 mgd (11.6 AF) + 1.103 mgd (3.39 AF) = 4.888 mgd (15 AF)).

The battery of wells is located in the Northeast Quarter of Section 5, Township 23 South, Range 13 West, Stafford County, Kansas. The proposed place of use is a hog feedlot in the Northeast Quarter of the same section.

5-25-15

The area is fully developed for safe yield, but the application has been filed for a 15 acre-foot exemption under K.A.R. ~~5-3-16~~. A reduction request has been sent in for Water Right, File No. 37,555 which will serve as an offset for this new application. The applicant has signed the application form stating he has legal access to the point of diversion.

The 1.103 mgd (3.39 AF) proposed will be in addition to the 3.785 mgd (11.6 AF) already authorized under Water Right, File No. 41,215.

This application is to address past over-pumping issues with Water Right, File No. 41,215 by increasing authorized quantity from the battery. Three domestic wells were identified within ½ mile of the point of diversion. Nearby letters were sent to each; no responses of any kind were received.

The quantity will be limited to 4.888 million gallons (15 AF) per calendar year and the rate further limited to 40 gallons per minute, when combined with Water Right, File No. 41,215.

The closest non-domestic well is over 1,500 feet away, while the closest domestic well is roughly 860 feet away. This domestic well was initially thought to be under the required 660 feet allowed. The owner, Ivan Milton, submitted a domestic well spacing consent form, which was received in this office on September 5, 2019. After further investigation, it was determined that the domestic well met the required spacing. Therefore, according to K.A.R. 5-4-4, the application does meet well spacing.

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.

Big Bend Groundwater Management District No. 5's manager Orrin Feril recommended the approval of this application in a letter dated February 18, 2020, on the condition that the reduction request for existing Water Right, File No. 37,555 is approved (reducing quantity from 214 acre-feet to 209.06 acre-feet per calendar year).

In an email conversation on June 11, 2020, Jeff Lanterman, Water Commissioner of the Stafford Field Office, gave a recommendation that the new application be approved.

Based on the above discussion, the approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved, in conjunction with the reduction of Water Right, File No. 37,555.

A handwritten signature in black ink, appearing to read "Kris Neuhauser". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kris Neuhauser
Environmental Scientist
Water Appropriation Program

Darrell Wood - Edwards (Pres.)
Fred Grunder - Pratt (V Pres.)
John Janssen - Kiowa (Treas.)
Jerry Cullop - Rice (Sec.)
Justin Gatz - Reno
Marlyn Spare - Stafford
Phil Martin - Barton
Kerry Froetschner - Pawnee
Tom Taylor - At-Large



Orrin Feril, Manager
125 South Main Street
Stafford, Kansas 67578
ph: (620) 234-5352
fx: (620) 234-5718
gmd5@gmd5.org
www.gmd5.org

February 18, 2020

Kris Neuhauser
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502

RE: Application File No. 50,285
Water Right File No. 37,555

Dear Mr. Neuhauser,

Big Bend Groundwater Management District #5 has reviewed the above referenced application which proposes to divert up to 15 acre-feet for stockwater use in NE¼ of Section 05, Township 23S, Range 13W in Stafford County, Kansas when combined with Water Right File No. 41215.

Applications that propose to use water in a manner so that there is no significant consumptive use of the local source of supply are exempt from meeting the requirements of K.A.R. 5-25-4 (a). In conjunction with the reduction request for Water Right File No. 37555, the application would not increase the consumptive use of the local source of supply.

In examination of the documents provided by the applicant, the District believes the application meets the requirements of K.A.R. 5-25-15(d). Based upon this information, the application appears to be consistent with K.A.R. 5-25-20(b) and is therefore recommended for approval on the condition that the reduction request for Water Right File No. 37555 is approved.

The application is subject to the District's well equipment regulation K.A.R. 5-25-5 for a required flow meter.

Please feel free to give me a call if you have any questions.

Sincerely,

Orrin Feril
Manager

From: Neuhauser, Kris [KDA]
Sent: Thu 6/18/2020 2:54 PM
To: Conant, Cameron [KDA];Lanterman, Jeff [KDA]
Subject: RE: New App 50285 recommendation request

The WWC5 map could definitely be off. Just wanted to double check!

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Thursday, June 18, 2020 2:48 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: RE: New App 50285 recommendation request

Jeff, I thought you worked with Dunn and all agreed that it was within 660'?

However, Kris, if you are sure it's not within 660' there is no reason to waive anything...

Cam

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Thursday, June 18, 2020 2:29 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: New App 50285 recommendation request

Drafting up approvals for this one today guys. Just wanted to be sure, we do want to go ahead and include a waiver for 5-4-4(2)(B) for Mr. Milton's domestic stock well?

I actually measured the distance from 50285 to that well, since it's shown on the KGS WWC5 map. It's over 660 away from the looks off it, closer to 900 feet. Don't know why they would have obtained the consent form from Mr. Milton though, maybe the maps I'm looking at aren't accurate.

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Thursday, June 11, 2020 10:55 AM
To: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: RE: New App 50285 recommendation request

Probably so. He signed a waiver so it should be good to go.

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Thursday, June 11, 2020 9:36 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: RE: New App 50285 recommendation request

Do you agree that it needs an actual waiver of spacing to Mr. Milton's domestic stock well?

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Thursday, June 11, 2020 9:15 AM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Cc: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: FW: New App 50285 recommendation request

Kris. Im pretty aware of this entire package, I recommend approval.

This one was pretty interesting because they do some kind of special hog genetics that is pretty unique to the whole state. High value per gallon of water. Kind of interesting to talk to Mr. Dunn. Hopefully this will get them covered for the future.

Thanks
Jeff

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Thursday, June 11, 2020 9:08 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: FW: New App 50285 recommendation request

Jeff, you were involved with this the whole way I think.

The Dunn's have an offset from 37555 where they have requested to reduce 4.94 AF so they can add 3.39 AF to the existing battery of wells authorized by 41215 to increase the total at the hog facility to 15 AF. I don't know if this fully covers their hog operation or not, but it was a step in the right direction.

Three nearby well owners were notified and no one submitted comments of concern. This application does not meet spacing to a domestic stock well owned by Ivan Milton. Ivan has submitted a domestic well consent form. This small additional quantity at only 40 gpm should not negatively impact any neighbors. GMD recommended approval.

I think this new application looks good for approval and agree that 37555 should be reduced to 209.06 AF. I think a spacing waiver should be done for the domestic well to Ivan Milton even though this is an existing well and we have a consent form.

Please pass on to Kris if you agree and let me know if you have any questions.

Cameron

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Friday, May 29, 2020 12:38 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: New App 50285 recommendation request

Hi guys,

Attached is my rec request for New App, File No. 50285 (37555 reduction for offset). Let me know if need anything further.

Thanks!

Kris Neuhauser
Environmental Scientist
Water Appropriations Program – Kansas Dept of Agriculture
(785) 564-6643



Kris Neuhauser 10:04 AM

Morning Jeff, not sure if you saw that email string from Friday yet. For 50285, should I go ahead and include a waiver for spacing to that domestic stock well? Looked like it was over 660 feet away when I was checking out the map, but feel like that might be off. I know you assisted Dunn with everything, so wanted to double check!



Jeff Lanterman 10:05 AM

Kris. I dont think we

will know for sure if its off without gpsing them both. And we are not going to do that. So if you can scale from the map and it looks over 660 then I am OK with that.



Just document that in the memo as far as our reasoning for not needing a waiver.



Kris Neuhauser 10:07 AM

Looked close to 900. Sounds like a plan though, will reference it in the memo as you said.

Thanks!

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

LEON L & JANICE K DUNN
863 NW 10TH AVE
SAINT JOHN, KS 67576

July 22, 2020

RE: Appropriation of Water, File No. 50,285 and
Water Right, File No. 37,555

Dear Sir or Madam:

Enclosed is a permit (File No. 50,285) 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 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.

Also enclosed is a Finding and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, which reduces the quantity of water authorized under Water Right, File No. 37,555, as requested. The Water Appropriation Act requires that the Certificate of Appropriation shall be recorded with the Register of Deeds in the county or counties wherein the place of use and point of diversion are located as other instruments affecting real estate. Since the enclosed Findings and Order by the Chief Engineer modifies said Certificate of Appropriation, it should also be recorded with the Register of Deeds. A duplicate copy of the Order has been placed on file in this office.

Additional information and applicable forms may be found on our website at agriculture.ks.gov/divisions-programs/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 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: kjn

Enclosure(s)

pc: Stafford Field Office
Big Bend GMD No. 5

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting Chief Engineer

APPROVAL ~~OF~~ APPLICATION PERMIT TO PROCEED

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,285** of the applicant

LEON L & JANICE K DUNN
863 NW 10TH AVE
SAINT JOHN, KS 67576

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 12, 2019**.
2. That the water sought to be appropriated shall be used for stockwatering at a swine facility located in the Southwest Quarter of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 5, in Township 23 South, Range 13 West, Stafford County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of two (2) wells, with a geographical center located in the Southwest Quarter of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 5, more particularly described as being near a point 2,872 feet North and 2,355 feet West of the Southeast corner of said section, in Township 23 South, Range 13 West, Stafford 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 **40 gallons per minute (0.11 c.f.s.)** and to a quantity not to exceed **4.888 million gallons** (15 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, 2021** 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, 2025** 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 acceptable water flow meters 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. These water flow meters 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 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 the quantity of water and rate of diversion approved under this permit is further limited to the quantity and rate which combined with Water Right, File No. 41,215 will provide a total not to exceed **4.888 million gallons** (15 acre-feet) of water per calendar year to be diverted at a maximum diversion rate not in excess of **40 gallons per minute** (0.11 c.f.s.) for stockwatering use on the land described herein.

Ordered this *22nd* day of *July*, 2020, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

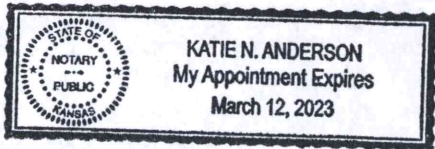
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this *22nd* day of *July*, 2020, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Katie Anderson

Notary Public



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 day of , 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,285, dated , 2020, was mailed postage prepaid, first class, US mail to the following:

LEON L & JANICE K DUNN
863 NW 10TH AVE
SAINT JOHN, KS 67576

With photocopies to:

Stafford Field Office

GMD 5

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

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CERTIFICATE OF SERVICE

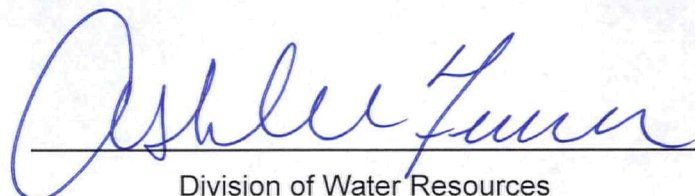
On this 29 day of JULY, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,285, dated 22 July, 2020, was mailed postage prepaid, first class, US mail to the following:

LEON L & JANICE K DUNN
863 NW 10TH AVE
SAINT JOHN, KS 67576

With photocopies to:

Stafford Field Office

GMD 5


Division of Water Resources