

File No. **49,562** 15. Formation Code: Drainage Basin: County: Special Use: Stream:

16. Points of Diversion

T	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W
		DEL		85053							

17. Rate and Quantity

Authorized		Additional		Overlap PD Files
Rate gpm	Quantity af	Rate gpm	Quantity af	
				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 _____ Date Acceptable Meter Installed _____

21. Place of Use

T	MOD	DEL	ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? no	Overlap Files
									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				
		DEL		67589																			7c.	No	NONE			
		DEL		67590																			7b.	No	NONE			

Comments:

1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700



900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

August 25, 2016

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

FILE COPY

RE: Application, File No. 49,562

Dear Mr. Berry:

Enclosed is the Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing Application, File No. 49,562 for failure to meet the safe yield criteria in K.A.R. 5-3-11.

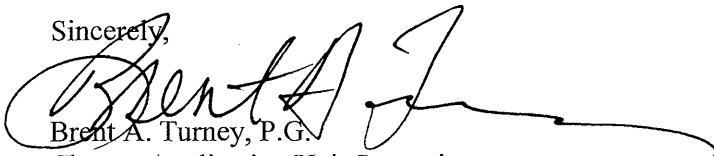
This Order shall become a final agency action, as defined by K.S.A. 77-607(b), without further notice to the parties, if a request for hearing or a petition for administrative review is not filed as set forth below.

Request for Hearing. According to K.A.R. 5-14-3(c), any party who desires a hearing must submit a request within 15 days after the date shown on the Certificate of Service attached to this Order. Filing a request for a hearing will give you the opportunity to submit additional facts for consideration, contest any findings made by the Chief Engineer, or present any other information you believe should be considered in this matter. A timely-filed request for hearing will stay the deadline for requesting administrative review of this Order pending the outcome of the hearing.

Petition for Review. The applicant, if aggrieved by this Order, may petition for administrative review, pursuant to K.S.A. 82a-71 1(c) and K.S.A. 82a-1 90 1(a). The petition must be filed within 30 days after the date shown on the Certificate of Service attached to this Order and must set forth the basis for the review, unless stayed by the timely filing of a request for hearing. Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Fax: (785) 564-6777

If you have any questions, please contact our office. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,



Brent A. Turney, P.G.
Change Application Unit Supervisor
Water Appropriation Program

BAT:dws

Enclosures

pc: Stockton Field Office
Carleen Berry
Emery Berry

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: August 8, 2016

FROM: Doug Schemm

RE: Application, File No. 49,562

Ken Berry filed the referenced application for a permit to appropriate water for beneficial use, proposing the appropriation of 156 acre-feet of groundwater for irrigation use. The proposed point of diversion would be located in the Northwest Quarter of the Northwest Quarter of the Northeast Quarter (NW¼ NW¼ NE¼) of Section 17, more particularly described as being near a point 4,853 feet North and 2,408 feet West of the Southeast corner of said section, in Township 10 South, Range 4 West, Ottawa County, Kansas.

The source of water for this pending application appears to be Solomon River alluvium based on the test hole log that was submitted with the application. Per K.A.R. 5-3-11(d)(1), the safe yield area of consideration represents the portion of the two-mile circle located within the limit of the unconfined aquifer expressed in acres (5,088 acres for this file). Calculated recharge is 2.5 inches, and for hydrologic units within the Solomon River Basin, 75 percent of the calculated recharge can be considered to be available for appropriation. The safe yield determination is summarized below.

Safe Yield = Area of Consideration x potential annual recharge x percent of recharge available

5,088 acres x 2.5 inches x 75% = 12,720 acre-inches / 12 =	795 acre-feet
Prior Appropriations within the area of consideration =	<u>1,365.2</u> acre-feet
Total quantity of water available =	<u>0 acre-feet</u>

The applicant was sent a letter on July 20, 2016 explaining the safe yield evaluation, and stating that it would be recommended to the Chief Engineer that pending application, File No. 49,562 be denied and dismissed due to the failure to meet safe yield criteria per K.A.R. 5-3-11. The applicant was provided 15 days until August 4, 2016 to respond. The applicant called to discuss the letter, but provided no addition response related to this file.

Therefore, based on the existing information, it is recommended that application File No. 49,562 be denied and dismissed for failure to meet safe yield.

Douglas W. Schemm
Environmental Scientist
Topeka Field Office



KANSAS DEPARTMENT OF AGRICULTURE
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES
David W. Barfield, Chief Engineer

**FINDINGS AND ORDER
IN THE MATTER OF THE
DISMISSAL OF APPLICATION
FILE NO. 49,562**

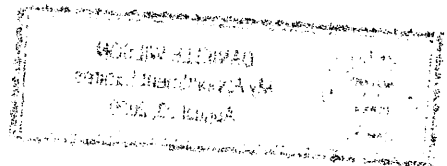
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After due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

FINDINGS

1. That on February 16, 2016, the Chief Engineer received an application from Ken Berry for a permit to appropriate water for beneficial use, assigned File No. 49,562, requesting the appropriation of 156 acre-feet of groundwater for irrigation use. The application subsequently proposed a battery of wells with a geographic center located in the Northwest Quarter of the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 17, more particularly described as being near a point 4,853 feet North and 2,408 feet West of the Southeast corner of said section, in Township 10 South, Range 4 West, Ottawa County, Kansas.
2. That the source of water for the pending application was determined to be the Solomon River alluvium, based on a review of the test hole log and other area well logs. The specific method for calculating safe yield for unconfined groundwater aquifers is described in K.A.R. 5-3-11.
3. That based on the area of consideration (extent of the unconfined aquifer), the calculated recharge, and the percent of the calculated recharge that can be considered to be available for appropriation, safe yield was determined to be 795 acre-feet. Prior water rights within this same area of consideration have appropriated 1,365.2 acre-feet, leaving no additional water available for appropriation.
4. That on July 20, 2016, a letter was mailed to the applicant stating that the application did not comply with the safe yield requirements of K.A.R. 5-3-11, and that the application would be submitted to the Chief Engineer with a recommendation that the pending application be denied and dismissed, for failure to meet safe yield criteria. The applicant was provided 15 days, until August 4, 2016 to either submit additional information to our office or request additional time, prior to final action on the application.
5. That the applicant provided no additional information, nor requested additional time to respond for File No. 49,562. Therefore, the application should be denied and dismissed and its priority forfeited for failure to comply with K.A.R. 5-3-11.

ORDER



NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that effective the date of this order, in accordance with the law, Application, File No. 49,562, is herewith dismissed and the priority assigned to it is considered to be forfeited.

This Order shall become a final agency action, as defined by K.S.A. 77-607(b), without further notice to the parties, if a request for hearing or a petition for administrative review is not filed as set forth below.

Request for Hearing. According to K.A.R. 5-14-3(c), any party who desires a hearing must submit a request within 15 days after the date shown on the Certificate of Service attached to this Order. Filing a request for a hearing will give you the opportunity to submit additional facts for consideration, contest any findings made by the Chief Engineer, or present any other information you believe should be considered in this matter. A timely-filed request for hearing will stay the deadline for requesting administrative review of this Order pending the outcome of the hearing.

Petition for Review. The applicant, if aggrieved by this Order, may petition for administrative review, pursuant to K.S.A. 82a-711(c) and K.S.A. 82a-1901(a). The petition must be filed within 30 days after the date shown on the Certificate of Service attached to this Order and must set forth the basis for the review, unless stayed by the timely filing of a request for hearing.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Fax: (785) 564-6777.

Ordered this 25th day of August, 2016, in Topeka, Shawnee County, Kansas.

Lane P. Letourneau

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

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 25th day of August, 2016, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Danielle Wilson

Notary Public

CERTIFICATE OF SERVICE

On this *25th* day of *August*, 2016, I hereby certify that the foregoing Dismissal of Application, File No. 49,562, dated *August 25, 2016* was mailed postage prepaid, first class, US mail to the following:

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

With photocopies to:

EMERY BERRY
746 PRAIRIE RD
MINNEAPOLIS KS 67467

CARLEEN BERRY
746 PRAIRIE RD
MINNEAPOLIS KS 67467

Stockton Field Office



Division of Water Resources

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JUN 28 2016

THE STATE OF KANSAS



Topeka Field Office
KANSAS DEPARTMENT OF AGRICULTURE
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES
David W. Barfield, Chief Engineer

File Number 49,562
This item to be completed by the Division of Water Resources.

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12:46

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JUN 20 2016

1:12

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APPLICATION FOR PERMIT TO APPROPRIATE WATER FOR BENEFICIAL USE

Filing Fee Must Accompany the Application
(Please refer to Fee Schedule attached to this application form.)

To the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture,
1320 Research Park Drive, Manhattan, Kansas 66502:

1. Name of Applicant (Please Print): Ken Berry
Address: 1624 W 70th RD
City: Minneapolis State KS Zip Code 67467
Telephone Number: (785) 392 7379

2. The source of water is: surface water in _____ (stream)
OR groundwater in Salt Creek (drainage basin)

Certain streams in Kansas have minimum target flows established by law or may be subject to administration when water is released from storage for use by water assurance district members. If your application is subject to these regulations on the date we receive your application, you will be sent the appropriate form to complete and return to the Division of Water Resources.

3. The maximum quantity of water desired is 156 acre-feet OR _____ gallons per calendar year, to be diverted at a maximum rate of 800 gallons per minute OR _____ cubic feet per second.

Once your application has been assigned a priority, the requested maximum rate of diversion and maximum requested quantity of water under that priority number can **NOT** be increased. Please be certain your requested maximum rate of diversion and maximum quantity of water are appropriate and reasonable for your proposed project and are in agreement with the Division of Water Resources' requirements.

4. The water is intended to be appropriated for (Check use intended):
- (a) Artificial Recharge
 - (b) Irrigation
 - (c) Recreational
 - (d) Water Power
 - (e) Industrial
 - (f) Municipal
 - (g) Stockwatering
 - (h) Sediment Control
 - (i) Domestic
 - (j) Dewatering
 - (k) Hydraulic Dredging
 - (l) Fire Protection
 - (m) Thermal Exchange
 - (n) Contamination Remediation

YOU **MUST** COMPLETE AND ATTACH ADDITIONAL DIVISION OF WATER RESOURCES FORM(S) PROVIDING INFORMATION TO SUBSTANTIATE YOUR REQUEST FOR THE AMOUNT OF WATER FOR THE INTENDED USE REFERENCED ABOVE.

For Office Use Only:							
F.O. <u>3</u>	GMD <u>0</u>	Meets K.A.R. 5-3-1 <u>(YES / NO)</u>	Use <u>IR12</u>	Source <u>(G) S</u>	County <u>OT</u>	By <u>ASW</u>	Date <u>2/16/16</u>
Code <u>2E2</u>	Fee \$ <u>300</u>	TR # <u>16528526</u>	Receipt Date <u>2/16/16</u>	Check # <u>4501</u>			

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2/23/2016 CCM

5. The location of the proposed wells, pump sites or other works for diversion of water is:

Note: For the application to be accepted, the point of diversion location must be described to at least a 10 acre tract, unless you specifically request a 60 day period of time in which to locate the site within a specifically described, minimal legal quarter section of land.

- (A) One in the NW quarter of the NW quarter of the NE quarter of Section 17, more particularly described as being near a point 4893 feet North and 2408 feet West of the Southeast corner of said section, in Township 10 South, Range 4 East/West (circle one), Ottawa County, Kansas.
- (B) One in the _____ quarter of the _____ quarter of the _____ quarter of Section _____, more particularly described as being near a point _____ feet North and _____ feet West of the Southeast corner of said section, in Township _____ South, Range _____ East/West (circle one), _____ County, Kansas.
- (C) One in the _____ quarter of the _____ quarter of the _____ quarter of Section _____, more particularly described as being near a point _____ feet North and _____ feet West of the Southeast corner of said section, in Township _____ South, Range _____ East/West (circle one), _____ County, Kansas.
- (D) One in the _____ quarter of the _____ quarter of the _____ quarter of Section _____, more particularly described as being near a point _____ feet North and _____ feet West of the Southeast corner of said section, in Township _____ South, Range _____ East/West (circle one), _____ County, Kansas.

Request Preliminary Request 60 days
Safe yield center to locate suitable
1/4 section well location
of the NE 1/4

If the source of supply is groundwater, a separate application shall be filed for each proposed well or battery of wells, except that a single application may include up to four wells within a circle with a quarter (1/4) mile radius in the same local source of supply which do not exceed a maximum diversion rate of 20 gallons per minute per well.

A battery of wells is defined as two or more wells connected to a common pump by a manifold; or not more than four wells in the same local source of supply within a 300 foot radius circle which are being operated by pumps not to exceed a total maximum diversion rate of 800 gallons per minute and which supply water to a common distribution system.

6. The owner of the point of diversion, if other than the applicant is (please print):

Carleen Berry 746 Prairie Rd Minneapolis KS 67467 785 392 2592
(name, address and telephone number)

(name, address and telephone number)

You must provide evidence of legal access to, or control of, the point of diversion from the landowner or the landowner's authorized representative. Provide a copy of a recorded deed, lease, easement or other document with this application. In lieu thereof, you may sign the following sworn statement:

I have legal access to, or control of, the point of diversion described in this application from the landowner or the landowner's authorized representative. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2/8, 2016. [Signature]
Applicant's Signature

The applicant must provide the required information or signature irrespective of whether they are the landowner. Failure to complete this portion of the application will cause it to be unacceptable for filing and the application will be returned to the applicant.

7. The proposed project for diversion of water will consist of Battery of 4 wells
(number of wells, pumps or dams, etc.)

and (was) (will be) completed (by) 12-31-17
(Month/Day/Year - each was or will be completed)

8. The first actual application of water for the proposed beneficial use was or is estimated to be 5-1-17
(Mo/Day/Year)

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- 9. Will pesticide, fertilizer, or other foreign substance be injected into the water pumped from the diversion works?
 Yes No If "yes", a check valve shall be required.

All chemigation safety requirements must be met including a chemigation permit and reporting requirements.

- 10. If you are planning to impound water, please contact the Division of Water Resources for assistance, prior to submitting the application. Please attach a reservoir area capacity table and inform us of the total acres of surface drainage area above the reservoir.

Have you also made an application for a permit for construction of this dam and reservoir with the Division of Water Resources? Yes No

- If yes, show the Water Structures permit number here _____
- If no, explain here why a Water Structures permit is not required _____

- 11. The application must be supplemented by a U.S.G.S. topographic map, aerial photograph or a detailed plat showing the following information. On the topographic map, aerial photograph, or plat, identify the center of the section, the section lines or the section corners and show the appropriate section, township and range numbers. Also, please show the following information:

- (a) The location of the proposed point(s) of diversion (wells, stream-bank installations, dams, or other diversion works) should be plotted as described in Paragraph No. 5 of the application, showing the North-South distance and the East-West distance from a section line or southeast corner of section.
- (b) If the application is for groundwater, please show the location of any existing water wells of any kind within 1/2 mile of the proposed well or wells. Identify each existing well as to its use and furnish the name and mailing address of the property owner or owners. If there are no wells within 1/2 mile, please advise us.
- (c) If the application is for surface water, the names and addresses of the landowner(s) 1/2 mile downstream and 1/2 mile upstream from your property lines must be shown.
- (d) The location of the proposed place of use should be shown by crosshatching on the topographic map, aerial photograph or plat.
- (e) Show the location of the pipelines, canals, reservoirs or other facilities for conveying water from the point of diversion to the place of use.

A 7.5 minute U.S.G.S. topographic map may be obtained by providing the section, township and range numbers to: Kansas Geological Survey, 1930 Constant, Campus West, University of Kansas, Lawrence, Kansas 66047.

- 12. List any application, appropriation of water, water right, or vested right file number that covers the same diversion points or any of the same place of use described in this application. Also list any other recent modifications made to existing permits or water rights in conjunction with the filing of this application.

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13. Furnish the following well information if the proposed appropriation is for the use of groundwater. If the well has not been completed, give information obtained from test holes, if available.

Information below is from: Test holes Well as completed Drillers log attached

Well location as shown in paragraph No.	(A)	(B)	(C)	(D)
Date Drilled	<u>6-8-2016</u>	_____	_____	_____
Total depth of well	<u>100'</u>	_____	_____	_____
Depth to water bearing formation	<u>31'</u>	_____	_____	_____
Depth to static water level	_____	_____	_____	_____
Depth to bottom of pump intake pipe	_____	_____	_____	_____

14. The relationship of the applicant to the proposed place where the water will be used is that of

tenant
(owner, tenant, agent or otherwise)

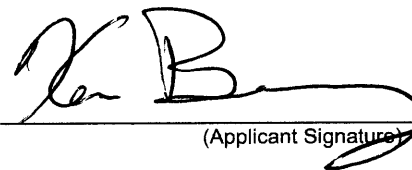
15. The owner(s) of the property where the water is used, if other than the applicant, is (please print):

Carleen Berry 746 Prairie RD Minneapolis KS 67467 785-392-2522
(name, address and telephone number)

Emery Berry 746 Prairie RD Minneapolis KS 67467 785 392 2522
(name, address and telephone number)

16. The undersigned states that the information set forth above is true to the best of his/her knowledge and that this application is submitted in good faith.

Dated at Minneapolis, Kansas, this 8 day of February, 2016.
(month) (year)


(Applicant Signature)

By _____
(Agent or Officer Signature)

(Agent or Officer - Please Print)

Assisted by _____ Date: _____
(office/title)

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#49,562

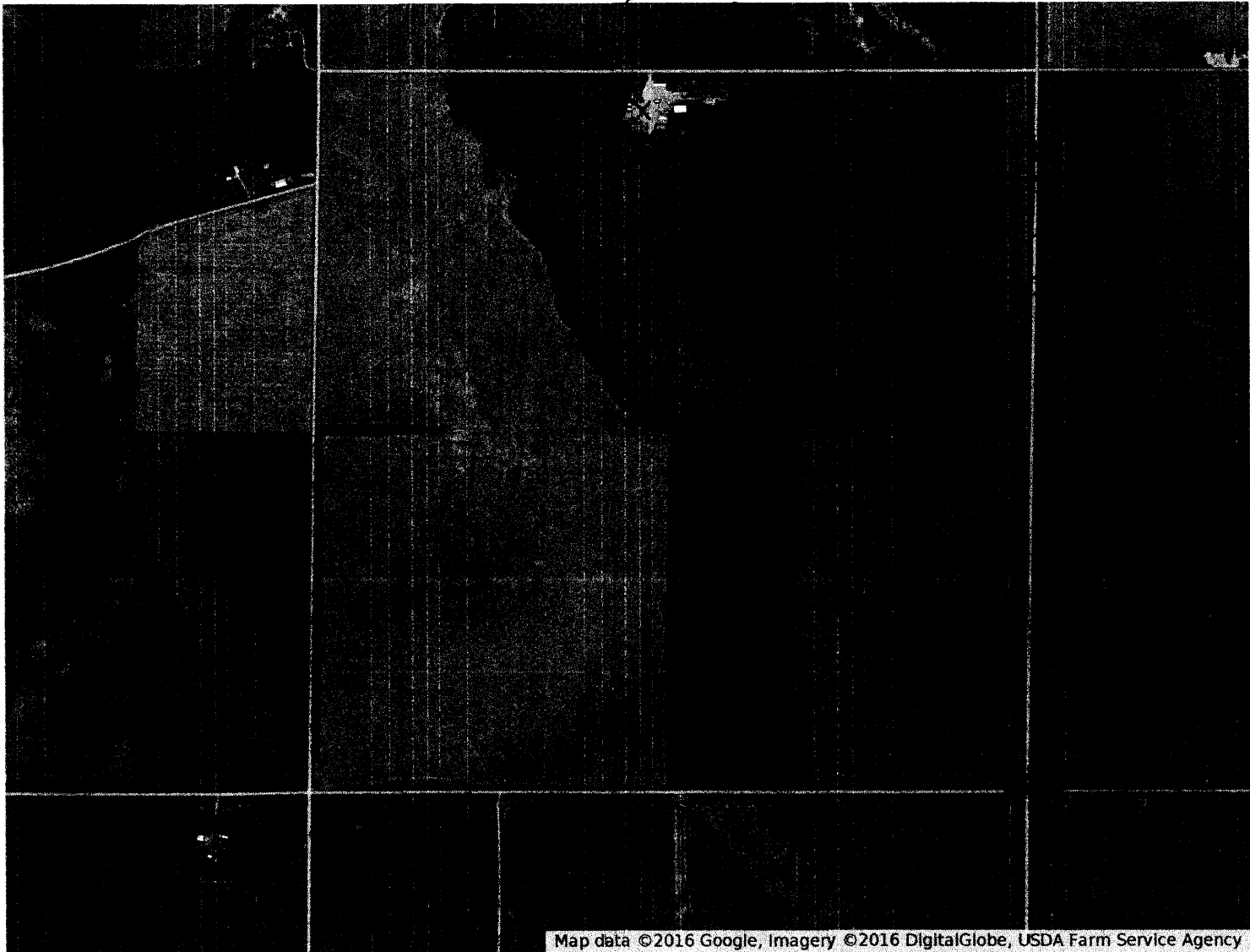
Proposed Irrigation Site

Domestic Well

17-10-4 Map

All wells of any kind within 1/2 mile of the requested point of diversion have been plotted

Signed: 
Date: 2/8/16



Map data ©2016 Google, Imagery ©2016 DigitalGlobe, USDA Farm Service Agency

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49,562

IRRIGATION USE SUPPLEMENTAL SHEET

File No. 49,562

Name of Applicant (Please Print): Ken Berry

1. Please supply the name and address of each landowner, the legal description of the lands to be irrigated, and designate the actual number of acres to be irrigated in each forty acre tract or fractional portion thereof:

Landowner of Record NAME: Carleen Berry
ADDRESS: 746 Prairie RD Minneapolis KS 67467

S	T	R	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
17	10	4	10	35			28			18								81	

Landowner of Record NAME: Emery Berry
ADDRESS: 746 Prairie RD Minneapolis KS 67467

S	T	R	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
17	10	4			40													40	

Landowner of Record NAME: _____
ADDRESS: _____

S	T	R	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

2. Please complete the following information for the description of the operation for the irrigation project. Attach supplemental sheets as needed.

a. Indicate the soils in the field(s) and their intake rates:

Soil Name	Percent of field (%)	Intake Rate (in/hr)	Irrigation Design Group
Detroit Silty Clay loam	54	.15	
Hord silt loam	38	.3	
Sutphen silty clay	8	.05	
Total:	100 %		

b. Estimate the average land slope in the field(s): 1 %
 Estimate the maximum land slope in the field(s): 1 %

c. Type of irrigation system you propose to use (check one):

- Center pivot ___ Center pivot - LEPA ___ "Big gun" sprinkler
 ___ Gravity system (furrows) ___ Gravity system (borders) ___ Sideroll sprinkler

Other, please describe: _____

d. System design features:

i. Describe how you will control tailwater:

N/A

ii. For sprinkler systems:

- (1) Estimate the operating pressure at the distribution system: 300 psi
 (2) What is the sprinkler package design rate? 800 gpm
 (3) What is the wetted diameter (twice the distance the sprinkler throws water) of a sprinkler on the outer 100 feet of the system? 100 feet
 (4) Please include a copy of the sprinkler package design information. To be completed upon permit approval

e. Crop(s) you intend to irrigate. Please note any planned crop rotations:

Corn -> Soybeans -> Wheat

f. Please describe how you will determine when to irrigate and how much water to apply (particularly important if you do not plan a full irrigation).

Based upon stress levels of plants + point ingrowth cycle.

You may attach any additional information you believe will assist in informing the Division of the need for your request.

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SCANNED

4/29/16

(Date)

Kansas Department of Agriculture
Division of Water Resources
David W. Barfield, Chief Engineer
1320 Research Park Drive
Manhattan, Kansas 66502

Re: Application File No. 49,562

Minimum Desirable Streamflow

Dear Sir:

I understand that a Minimum Desirable Streamflow requirement has been established by the legislature for the source of supply to which the above referenced application applies.

I understand that diversion of water pursuant to this application will be subject to regulation any time Minimum Desirable Streamflow requirements are not being met.

I also understand that if this application is approved, there could be times, as determined by the Division of Water Resources, when I would not be allowed to divert water. I realize that this could affect the economics of my decision to appropriate water.

I am aware of the above factors, and with the knowledge thereof, request that the Division of Water Resources proceed with processing and approval, if possible, of the above referenced application.

Kenneth Berry

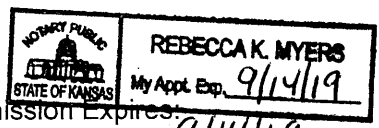
Signature of Applicant

Kenneth Berry
(Print Applicant's Name)

State of Kansas)
County of Ottawa) ss

I hereby certify that the foregoing instrument was signed in my presence and sworn to before me this 29 day of April, 20 16.

Rebecca K. Myers
Notary Public



My Commission Expires: 9/14/19

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**MINIMUM DESIRABLE STREAMFLOW FORM TO BE USED WHEN
APPLICABLE WHEN FILING AN APPLICATION FOR PERMIT
TO APPROPRIATE WATER FOR BENEFICIAL USE**

The Kansas Legislature has established minimum desirable streamflows for the streams listed below. If your proposed diversion of water is going to be from one of these watercourses or adjacent alluvial aquifers, please complete the back side of this page and submit it along with your application for permit to appropriate water.

Arkansas River
Big Blue River
Chapman Creek
Chikaskia River
Cottonwood River
Delaware River
Little Arkansas River
Little Blue River
Marais des Cygnes River
Medicine Lodge River
Mill Creek (Wabaunsee Co. area)
Neosho River

Ninnescah River
North Fork Ninnescah River
Rattlesnake Creek
Republican River
Saline River
Smoky Hill River
Solomon River
South Fork Ninnescah
Spring River
Walnut River
Whitewater River

49,562

Sargent Drilling
INDUSTRIAL ENGINEERING
COMPLETE MUNICIPAL AND INDUSTRIAL
WELL AND PUMP SERVICE

PO Box 367
Geneva, NE 68361-0367

846 South 13th St.

Phone: (402) 759-3902
1-888-496-3902

TEST HOLE LOG

CUSTOMER: Ken Berry	
WELL ID: TH 2016-1	
LOCATION: NW ¼ NE ¼, 17-T10S-R4W, Ottawa Co., KS	
LATITUDE: 39° 11' 20.9"	
LONGITUDE: 097° 47' 19.8"	
ELEVATION: 1,265'	
FOOTAGES: 427' feet from the North section line and 2,408' feet from the East section line	
DATE: 6/8/2016	DRILLED BY: Scott

SWL:
PWL

<u>from feet</u>	<u>- to feet</u>	
0	20	Top soil and brown clay
20	31	Brown and tan clay with blue clay layer
31	40	Fine, medium, coarse sand and fine gravel with clay strip
40	47	Fine, medium, coarse sand and fine gravel
47	60	Gray and red shale
60	80	Red, white, gray shale
80	100	Gray shale

WATER RESOURCES
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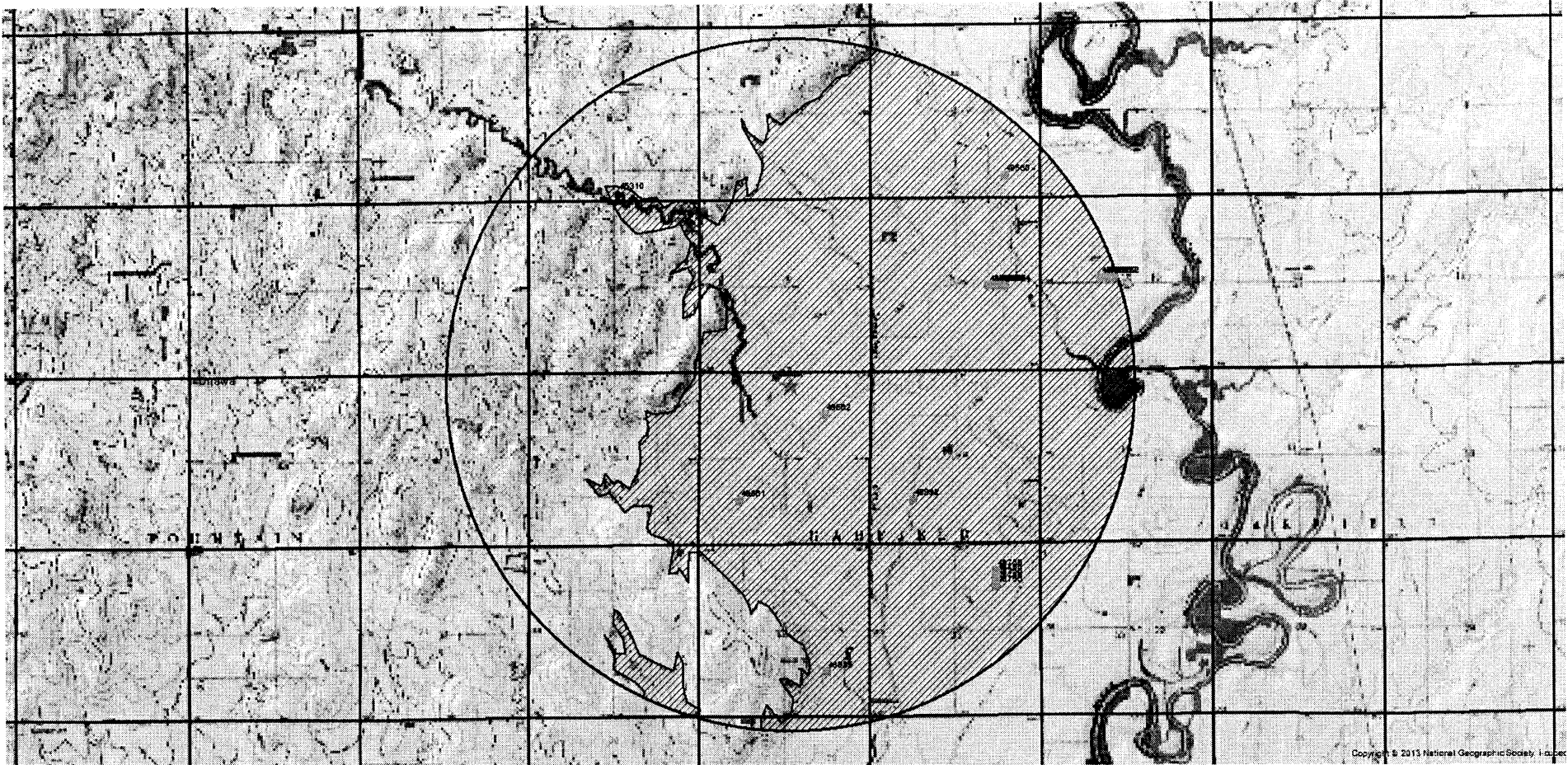
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JUN 20 2016

KS DEPT OF AGRICULTURE

#49,562

Safe Yield Report Sheet
Proposed Water Right Application
Point of Diversion in SWNWNWNE 17-10S-04W
FILE NO. 49,562 (4,853'N & 2,408'W)



#49,562
 Falls safe
 yield

Analysis Results

The selected PD is in an area to new appropriations.
 The safe yield, based on the variables listed below is 795.00 AF.
 Total prior appropriation in the circle is 1,521.20 AF. $-156 = 1365.2$
 Total quantity of water available for appropriation is 0.00 AF.

Safe Yield Variables

The area used for the analysis is set at 5088 acres.
 Potential annual recharge of the area is estimated to be 2.5 inches.
 The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 12-JUL-2016 and are based on Appropriated and Vested ground water right and possible stream nodes for GMD #2. Domestic, Term and Temporary water rights have been excluded.

There are 9 water right(s) and 20 point(s) of diversion within the circle.

File Number	Use	ST	SR	Q4	Q3	Q2	Q1	FeetN	FeetW	Sec	Twp	Rng	ID	Qind	Auth_Quant	Add_Quant	Tacres	Nacres	
A 45912 00	IRR	LR	G			NC	SW	1309	3897	16	10	04W	1	WR	169.00	169.00	150.00	150.00	
A 47991 00	IRR	LO	G			NC	SW	1309	3897	16	10	04W	1	WR	26.00	26.00	150.00	0.00	
A 48752 00	IRR	HK	G			SE	SE	NW	2815	3252	10	10	04W	1	WR	248.20	248.20	414.00	414.00
Same	IRR	HK	G			SE	SE	NW	2815	3152	10	10	04W	2	WR				
Same	IRR	HK	G			SE	SE	NW	2815	3052	10	10	04W	3	WR				
Same	IRR	HK	G			SW	SE	NW	2815	3352	10	10	04W	4	WR				
Same	IRR	HK	G			SW	SE	NW	2815	3452	10	10	04W	5	WR				
A 48754 00	IRR	HK	G			NW	NE	SE	2597	1303	09	10	04W	1	WR	169.00	169.00	130.00	130.00
Same	IRR	HK	G			NE	NW	SE	2597	1428	09	10	04W	2	WR				
Same	IRR	HK	G			NE	NW	SE	2597	1553	09	10	04W	3	WR				
Same	IRR	HK	G			NW	NE	SE	2597	1178	09	10	04W	4	WR				
Same	IRR	HK	G			NW	NE	SE	2597	1053	09	10	04W	5	WR				
A 48755 00	IRR	HK	G			SE	NW	NE	4165	1341	21	10	04W	1	WR	208.00	208.00	160.00	160.00
Same	IRR	HK	G			SE	NW	NE	4290	1341	21	10	04W	2	WR				
Same	IRR	HK	G			SE	NW	NE	4415	1341	21	10	04W	3	WR				
Same	IRR	HK	G			SE	NW	NE	4040	1341	21	10	04W	4	WR				
Same	IRR	HK	G			NE	SW	NE	3915	1341	21	10	04W	5	WR				
A 48935 00	IRR	KE	G			NE	SW	SE	1250	1570	20	10	04W	1	WR	139.00	139.00	107.00	107.00
A 49560 00	IRR	AY	G			SW	SE		660	1080	04	10	04W	2	WR	201.00	201.00	155.00	155.00
A 49561 00	IRR	AY	G			SW			1320	3960	17	10	04W	1	WR	205.00	205.00	160.00	160.00
A 49562 00	IRR	AY	G			NE			3960	1320	17	10	04W	2	WR	156.00	156.00	121.00	121.00

FEE SCHEDULE

1. The fee for an application for a permit to appropriate water for beneficial use, except for domestic use, shall be (see paragraph No. 2 below if requesting storage):

ACRE-FEET	FEE
0-100	\$200.00
101-320	\$300.00
More than 320	\$300.00 plus \$20.00 for each additional 100 acre-feet or any part thereof.

2. The fee for an application in which storage is requested, except for domestic use, shall be:

ACRE-FEET	FEE
0-250	\$200.00
More than 250	\$200.00 plus \$20.00 for each additional 250 acre-feet of storage or any part thereof.

Note: If an application requests both direct use *and* storage, the fee charged shall be as determined under No. 1 or No. 2 above, whichever is greater, but not both fees.

3. The fee for an application for a permit to appropriate water for water power or dewatering purposes shall be \$100.00 plus \$200.00 for each 100 cubic feet per second, or part thereof, of the diversion rate requested.

Note: The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$400.00 when construction of the works for diversion has been completed, except that for applications filed on or after July 1, 2009, for works constructed for sediment control use and for evaporation from a groundwater pit for industrial use shall be accompanied by a field inspection fee of \$200.00.

MAKE CHECKS PAYABLE TO THE KANSAS DEPARTMENT OF AGRICULTURE

ATTENTION

A Water Conservation Plan may be required per K.S.A. 82a-733. A statement that your application for permit to appropriate water may be subject to the minimum desirable streamflow requirements per K.S.A. 82a-703a, b, and c may also be required from you. After the Division of Water Resources has had the opportunity to review your application, you will be notified whether or not you will need to submit a Water Conservation Plan. You also may be required to install a water flow meter or water stage measuring device on your diversion works prior to diverting water. There may be other special conditions or Groundwater Management District regulations that you will need to comply with if this application is approved.

CONVERSION FACTORS

1 acre-foot equals 325,851 gallons

1 million gallons equal 3.07 acre-feet

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WATER RESOURCES
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FEB 16 2016

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KS DEPT OF AGRICULTURE



Topeka Field Office
6531 SE Forbes Ave., Suite B
Topeka, Kansas 66619

Phone: (785) 296-5733
Fax: (785) 862-2460
www.agriculture.ks.gov

Jackie McClaskey, Secretary
David W. Barfield, Chief Engineer
Katherine A. Tietsort, Water Commissioner

Sam Brownback, Governor

July 20, 2016

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

RE: Pending Applications, File Nos. 49,562 and 49,563

Dear Mr. Berry:

We have reviewed your applications referenced above, which propose to appropriate groundwater for irrigation use. Application, File No. 49,562 is proposing a point of diversion located in the Northwest Quarter of the Northwest Quarter of the Northeast Quarter (NW¼ NW¼ NE¼) of Section 17, more particularly described as being near a point 4,853 feet North and 2,408 feet West of the Southeast corner of said section, in Township 10 South, Range 4 West, Ottawa County, Kansas. This application is requesting to appropriate 156 acre-feet of groundwater for irrigation use.

The source of water for this pending application appears to be Solomon River alluvium based on the test hole log that was submitted with the application. The specific method for calculating safe yield for unconfined groundwater aquifers is described in K.A.R. 5-3-11. Per K.A.R. 5-3-11(d)(1), the safe yield area of consideration represents the portion of the two-mile circle located within the limit of the unconfined aquifer expressed in acres (5,088 acres for this file). Calculated recharge is 2.5 inches, and for hydrologic units within the Solomon River Basin, 75 percent of the calculated recharge can be considered to be available for appropriation. The safe yield determination is summarized below.

Safe Yield = Area of Consideration x potential annual recharge x percent of recharge available

5,088 acres x 2.5 inches x 75% = 12,720 acre-inches / 12 =	795 acre-feet
Prior Appropriations within the area of consideration =	<u>1,365.2</u> acre-feet
Total quantity of water available =	<u>0</u> acre-feet

It will be recommended to the Chief Engineer that pending application, File No. 49,562 be denied and dismissed due to the failure to meet safe yield criteria, as required by K.A.R. 5-3-11.

Application, File No. 49,563 is proposing a point of diversion located in the Southeast Quarter of the Northwest Quarter of the Northeast Quarter (SE¼ NW¼ NE¼) of Section 1, more particularly described as being near a point 4,355 feet North and 1,725 feet West of the Southeast corner of said section, in Township 11 South, Range 5 West, Ottawa County, Kansas. The source of water for this pending application is the **unconfined Dakota aquifer system**. Per K.A.R. 5-4-4, based on your source of supply, the minimum spacing distance from your well to all other non-domestic wells in this same aquifer is one-half mile. The proposed point of diversion described in your pending application is located less than this required spacing distance from your irrigation well authorized under Water Right, File Nos. 39,902 and 45,431, which is likely also sourcing the unconfined Dakota aquifer system.

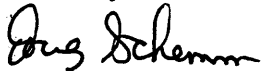
Ken Berry
File Nos. 49,562 and 49,563
Page 2

Based on the above information, it will be recommended to the Chief Engineer that pending application File No. 49,563 be denied and dismissed due to the failure to meet minimum well spacing criteria, as required by K.A.R. 5-4-4.

We are advising you of these recommendations in order to allow you an opportunity to submit additional information to show why our evaluations should be reconsidered. You have a period of 15 days (until August 4, 2016) to either (1) submit additional information to our office or (2) request additional time beyond the 15 days to submit additional information. If you wish to request additional time, you must do so in writing, before the 15 day period expires. Such a request should state what steps are being taken to obtain the information and the amount of time you will need to supply the information to our office. For File No. 49,563 the required information must include an engineering report or similar type of hydrologic analysis to show that the spacing can be decreased without impairing existing water rights or prejudicially and unreasonably affecting the public interest.

If you do not request more time within the 15 day period, or if your request is not granted, the above-referenced applications will be submitted to the Chief Engineer for final decision based on the recommendations stated above. Any relevant credible information submitted within the time allowed will be given due consideration, prior to final action on the applications. If you have any other questions, please contact me at (785) 296-3495.

Sincerely,



Douglas W. Schemm
Environmental Scientist
Topeka Field Office

Enclosure

1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700



900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

June 17, 2016

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

Re: Pending Applications,
File Nos. 49,560, 49,561, 49,562 and 49,563

Dear Mr. Berry:

In response to your written request by electronic mail received in this office on June 16, 2016, the Chief Engineer is allowing an extension of time for thirty (30) days, in which to supply further information concerning the above referenced files. The original applications were returned to you on February 25, 2016, and with this extension of time, the revised deadline will be **July 20, 2016**.

Extension requests are evaluated on a case by case basis. Since it appears that no pending application would be adversely affected by granting this extension, you are being allowed an additional 60 days. If you determine that additional time will be needed, you may submit another request for an extension prior to the deadline given above. Please note that since there are instances when the Chief Engineer may deny your request for an extension of time, there is no guarantee that future requests for more time will be granted.

In order to retain their priority of filing, the original applications and attachments must be returned to this office with the requested information on or before **July 20, 2016**, or within any authorized extension of time thereof. According to law, default in refileing of the completed applications and attachments within the time allowed shall constitute forfeiture of priority date and dismissal of the applications.

If you have any questions, please contact me at (785) 564-6631 or by email at alex.whitesell@kda.ks.gov. If you wish to discuss a specific file, please have the file number ready so that I may help you more efficiently.

Sincerely,

Alex Whitesell
Environmental Scientist
Water Appropriation Program

pc: Stockton Field Office

Whitesell, Alex

From: Ken Berry <berryseeds@nckcn.com>
Sent: Thursday, June 16, 2016 2:45 PM
To: Whitesell, Alex
Subject: Extension of time for file #'s 49,560, 49561, 49,562, & 49563

June 16, 2016

Dear Mr. Whitesell,

I am writing you to ask for an extension of time to complete the applications 49560, 49561, 49562, and 49563. The current deadline is June 20th. I have had the test hole drilling completed and am waiting on the paperwork from the drilling company so that I can include it in my applications and return them to your office. I expect to receive it very soon. However, time has run out to get it forwarded on to you by the 20th of this month. I would like to request a short extension in filing time to allow the applications to make it to you by a new deadline. Thank you for your attention to this matter.

Sincerely
Ken Berry
785-392-7379

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Using Opera's revolutionary email client: <http://www.opera.com/mail/>

WATER RESOURCES
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JUN 16 2016

SCANNED

KS DEPT OF AGRICULTURE

1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700



900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

April 18, 2016

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

Re: Pending Applications,
File Nos. 49,560, 49,561, 49,562 and 49,563

Dear Mr. Berry:

In response to your written request by electronic mail received in this office on April 14, 2016, the Chief Engineer is allowing an extension of time for sixty (60) days, in which to supply further information concerning the above referenced files. The original applications were returned to you on February 25, 2016, and with this extension of time, the revised deadline will be **June 20, 2016**.

Extension requests are evaluated on a case by case basis. Since it appears that no pending application would be adversely affected by granting this extension, you are being allowed an additional 60 days. If you determine that additional time will be needed, you may submit another request for an extension prior to the deadline given above. Please note that since there are instances when the Chief Engineer may deny your request for an extension of time, there is no guarantee that future requests for more time will be granted.

In order to retain their priority of filing, the original applications and attachments must be returned to this office with the requested information on or before **June 20, 2016**, or within any authorized extension of time thereof. According to law, default in refiling of the completed applications and attachments within the time allowed shall constitute forfeiture of priority date and dismissal of the applications.

If you have any questions, please contact me at (785) 564-6631 or by email at alex.whitesell@kda.ks.gov. If you wish to discuss a specific file, please have the file number ready so that I may help you more efficiently.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Whitesell".

Alex Whitesell
Environmental Scientist
Water Appropriation Program

pc: Stockton Field Office

1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700



900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

March 16, 2016

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

Re: Pending Applications,
File Nos. 49,560, 49,561, 49,562 and 49,563

Dear Mr. Berry:

The Division of Water Resources returned the above referenced applications to you for additional information on February 25, 2016, and the current deadline for your response is April 18, 2016. The purpose of this letter is to provide a reminder that in order for you to retain your priority of filing, the original applications and requested information needs to be returned to this office on or before **April 18, 2016**, or within any authorized extension of time thereof. According to law, default in refiling of the completed applications and attachments within the time allowed shall constitute forfeiture of priority date and dismissal of the applications.

If an extension of time is necessary to supply the requested information, please request the extension of time in writing before **April 18, 2016**. Provide information as to why the additional time is needed and how much additional time is requested. Please note that since there are instances when the Chief Engineer may deny your request for an extension of time, there is no guarantee that future requests for more time will be granted.

If you have any questions, please contact me at (785) 564-6631 or by email at alexander.whitesell@kda.ks.gov. If you wish to discuss a specific file, please have the file number ready so that I may help you more efficiently.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Whitesell".

Alex Whitesell
Environmental Scientist
Water Appropriation Program

pc: Stockton Field Office



1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700

900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

February 25, 2016

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

Re: Pending Applications,
File Nos. 49,560, 49,561, 49,562 and 49,563

Dear Mr. Berry:

After a preliminary review of your above referenced applications for permits to appropriate water received in this office on February 16, 2016, they are being returned to you for additional information. In your original applications, you requested a 60-day period of time in which to determine the precise locations for your points of diversion within specified quarter section tracts of land in Ottawa County, Kansas.

Once you've determined the precise locations for your points of diversion, complete the rest of Paragraph No. 5 for each of your applications by providing the description for the 10-acre tract location of the point of diversion as well as the feet distances North and West of the Southeast corner of the Section. The locations of the points of diversion must also be plotted on the topographical map(s) included. In the case of a battery of wells, please provide the description of the location of the proposed geographic center of the well battery, as well as **the location for each of the individual wells comprising the battery of wells**.

It was noted that there are several households in the vicinity of your proposed points of diversion. The locations of all other water wells of every kind within one-half mile (½) of the points of diversion must be plotted on the topographical map(s) as well. Each well should be identified as to its use (e.g. domestic, irrigation, industrial, etc.) and must **include the name and mailing address of the well owner**. A signed statement should be included on the map(s) declaring that all wells within one-half mile (½) of the points of diversion have been plotted, or it should declare that none exist. This information was included with your application but there appear to be households that are not listed on your maps.

Paragraph No. 13 of the application requests well information so the source of supply of the proposed wells may be determined. Pursuant to K.A.R. 5-3-4d, this office requires a stratigraphic log of wells or test holes within 300 feet of the proposed points of diversion. Please supply the indicated information and test hole logs or driller's logs with the returned applications. Also, the enclosed "Minimum Desirable Streamflow" form must be signed and notarized.

In order to retain their priority of filing, the original applications and attachments must be returned to this office with the requested information on or before **April 18, 2016**, or within any authorized extension of time thereof. According to law, default in re-filing of the completed applications and attachments within the time allowed shall constitute forfeiture of priority date and dismissal of the applications.

(over)

Ken Berry
February 25, 2016
Page 2 of 2

If you have any questions, please contact me at (785) 564-6631 or by email at alexander.whitesell@kda.ks.gov. If you wish to discuss a specific file, please have the file number ready so that I may help you more efficiently.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Whitesell". The signature is stylized and cursive.

Alex Whitesell
Environmental Scientist
Water Appropriation Program

enclosures
pc: Stockton Field Office



1320 Research Park Drive
Manhattan, Kansas 66502
Jackie McClaskey, Secretary

Phone: (785) 564-6700
Fax: (785) 564-6777
Email: ksag@kda.ks.gov
www.agriculture.ks.gov
Sam Brownback, Governor

February 17, 2016

KEN BERRY
1624 N 70TH RD
MINNEAPOLIS KS 67467

RE: Application
File No. 49562

Dear Sir or Madam:

Your application for permit to appropriate water in 17-10S-4W in Ottawa County, was received and has been assigned the file number noted above.

As a matter of record, the Division of Water Resources has on hand a large number of applications awaiting processing. Therefore to be fair to all concerned, and so that we can process those applications on hand in the order they were received, we intend to concentrate on the backlog of applications until the issue is resolved. Once review of your application has begun, we will contact you, if additional information is required.

In accordance with the provisions of the Kansas Water Appropriation Act, a portion of which is included below, the use of water as proposed prior to approval of the application is unlawful. Once approved, compliance with the terms, conditions and limitations of the permit is necessary. Conservation of the water resources of Kansas is required.

Section 82a-728 of the Kansas Water Appropriation Act, provides (a) except for the appropriation of water for the purpose of domestic use, . . . it shall be unlawful for any person to appropriate or threaten to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the provisions of the Water Appropriation Act or for any person to violate any condition of a vested right, appropriation right or an approved application for a permit to appropriate water for beneficial use.

(b) (1) The violation of any provision of this section by any person is a class C misdemeanor . . .

A class C misdemeanor is punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. Each day that the violation occurs constitutes a separate offense.

If you have any questions, please contact me at (785) 564-6634. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

Kenneth A. Kopp, P.G.
New Application Unit Supervisor
Water Appropriation Program

KAK: DLW
pc: STOCKTONField Office
GMD

SCANNED