



File No. **49,454**      15. Formation Code: \_\_\_\_\_      Drainage Basin: **Republican**      County: **JEWELL**      Special Use: \_\_\_\_\_      Stream: **Republican River Trib 11**

16. Points of Diversion											
T	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W
✓				<b>84629</b>	<b>LOT 5</b>	<b>3</b>	<b>1S</b>	<b>7W</b>		<b>3,185</b>	<b>3,709</b>
<i>structures permit SJW-005</i>											

17. Rate and Quantity				
Authorized		Additional		
Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
<b>1,000</b>	<b>126</b>	<b>1,000</b>	<b>126</b>	

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 *12/31/2018*      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
T	MOD	DEL	ENT	PUSE	S	T	R	ID		NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼								
	<b>MOD</b>			<b>1323</b>	<b>3</b>	<b>1S</b>	<b>7W</b>							<b>18.2</b>	<b>24.5</b>	<b>22.2</b>	<b>29.6</b>							<b>97</b>	<b>7A</b>				
														<i>lot 2</i>	<i>lot 3</i>	<i>lot 4</i>	<i>lot 5</i>												

*special conditions: written permission*

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** February 24, 2017

**FROM:** Alex Whitesell

**RE:** Water Right, File No. 49,454

Robert F. and Alaina L. Brown have filed the above referenced application proposing to appropriate 126 acre-feet of surface water by direct diversion at 1,000 gallons per minute from one pump site located on Republican River Tributary 11, for irrigation use in Jewell County. This file replaces dismissed file 40,746.

Based on K.A.R. 5-3-24, the requested quantity of 126 acre-feet appears reasonable for irrigation of the proposed 97 acres (1.3 acre-feet per acre in Jewell County).

No notification letters were sent on this file. Landowners one-half (½) mile North are located in Nebraska and there are no other landowners one-half (½) mile South on the same tributary as the proposed application

The applicant has submitted a signed Minimum Desirable Streamflow (MDS) statement which has been properly notarized. By completing this statement, the applicant affirms his knowledge that there could be times when the diversion of water may not be allowed under this permit. Additionally, since the source of water is surface water from a tributary to the Republican River, the permit will be conditioned as follows: "That in order to implement the provisions of K.A.R. 5-3-11(d)(6), no water shall be diverted unless the written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, is obtained each time the applicant desires to divert water. The approval of this permit is not an indication that surface water will be available from this source of supply, or that written permission will be granted to divert water." The Lower Republican River Basin is currently open to new appropriations meeting the criteria required by K.A.R. 5-3-11(d)(6), and the approval of this application is consistent with similar applications requesting surface water in the Republican River basin.

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.

This new application also requires a structures permit. The structures application, SJW-005, is for permit to construct a crossing across a tributary to the Republican River. The crossing is used to access farm ground, and is also used to impound water in the stream channel to irrigate with. This permit has been worked by Leonard Bristow in the Stock Field Office and will be approved at the same time as the new application.

In an email message dated February 23, 2017, Kelly Stewart, Water Commissioner of the Stockton Field Office recommended approval of the application.

Based on the above discussion and the available information, it is recommended that the referenced application be approved.



Alex Whitesell  
Environmental Scientist  
Water Appropriation Program

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 8, 2017

**FILE COPY**

ROBERT F AND ALAINA L BROWN  
1936 BIRCH RD  
SUPERIOR NE 68978

RE: Appropriation of Water  
File No. 49,454

Dear Mr. and Mrs. Brown:

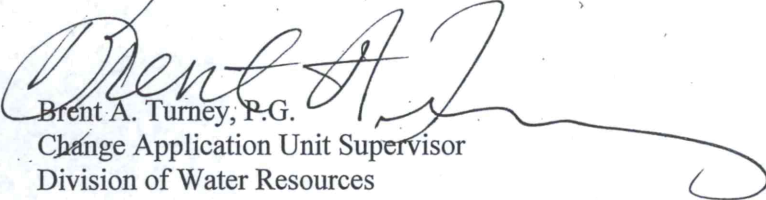
There is enclosed a permit to appropriate water authorizing you to proceed with construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a), to divert such unappropriated water as may be available from the source and at the location specified in the permit, and to use it for the purpose and at the location described in the permit.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in these approval documents. A water meter is required on the proposed diversion works and you must install it prior to water being put to beneficial use in order for you to maintain accurate records of water use. The meter should be used to provide the information required on the annual water use report.

Enclosed is a form which must be used to notify the Chief Engineer that the proposed diversion works have been completed. Failure to notify the Chief Engineer of the Division of Water Resources of the completion of the diversion works within the time allowed, or within any authorized extension of time thereof, will result in the dismissal of this permit. All requests for extensions of time to complete diversion works, or to perfect appropriations, must be submitted to the Chief Engineer before the expiration of time originally set forth in the enclosed permit. Any request for an extension of time shall be accompanied by the required statutory fee, which is currently \$100.00. There is also enclosed an information sheet setting forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your water right.

If you have any questions, please contact our office. If you wish to discuss this 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  
Division of Water Resources

BAT:ajw

Enclosures

pc: Stockton Field Office



KANSAS DEPARTMENT OF AGRICULTURE  
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES  
David W. Barfield, 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. 49,454** of the applicant

**ROBERT F AND ALAINA L BROWN  
1936 BIRCH RD  
SUPERIOR NE 68978**

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 **September 8, 2015**.
2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3 1S 7W					18.2 Lot 2	24.5 Lot 3	22.2 Lot 4	29.6 Lot 5		2.5							97

3. That the authorized source from which the appropriation shall be made is surface water from the Republican River Tributary Number 11, to be diverted by means of one (1) pump site located in Lot 5 of Section 3, more particularly described as being near a point 3,185 feet North and 3,709 feet West of the Southeast corner of said section, in Township 1 South, Range 7 West, Jewell 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 **1,000 gallons per minute (2.23 c.f.s.)** and to a quantity not to exceed **126 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, 2018** 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, 2022** 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 an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this permit in accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).

13. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.

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

15. That failure without cause to comply with provisions of the permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.

16. That the 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.



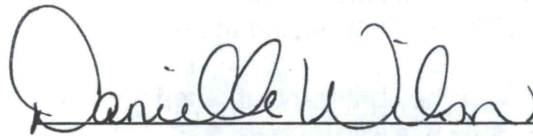
### CERTIFICATE OF SERVICE

On this 8<sup>th</sup> day of March, 2017, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 49,454, dated March 3<sup>rd</sup>, 2017 was mailed postage prepaid, first class, US mail to the following:

ROBERT F AND ALAINA L BROWN  
1936 BIRCH RD  
SUPERIOR NE 68978

With photocopies to:

Stockton Field Office



Division of Water Resources



THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE  
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES  
David W. Barfield, Chief Engineer

File Number 49454  
This item to be completed by the Division of Water Resources.

APPLICATION COMPLETE  
02/23/17  
Reviewer AJW

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.)

WATER RESOURCES  
RECEIVED  
SEP 08 2015  
12:44  
KS DEPT OF AGRICULTURE

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): Robert F. & Alaina L. Brown  
Address: 1936 Birch Rd.

City: Superior State NE Zip Code 68978  
Telephone Number: (785) 875-4001 or 402-879-5171 or 5160

2. The source of water is:  surface water in Republican River Trib. No. 11  
OR  groundwater in (Republican River Basin)  
(stream) (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 126 acre-feet OR \_\_\_\_\_ gallons per calendar year,  
to be diverted at a maximum rate of 1,000 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. 33GMD-0 - Meets K.A.R. 5-3-1 (YES / NO) Use IRR Source G(S) County JW By KAB Date 9/8/15  
Code REQ Fee \$ 300 TR # 16007852 Receipt Date 9/8/15 Check # 2788

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 \_\_\_\_ quarter of the \_\_\_\_ quarter of the LOT 5 (SE NW) quarter of Section 3, more particularly described as being near a point 3185 feet North and 3709 feet West of the Southeast corner of said section, in Township 1 South, Range 7 West, Jewell 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.

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):

Same as applicant  
 \_\_\_\_\_  
 (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 Sept. 2, 2015. Alaina Brown  
 \_\_\_\_\_  
 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 1 pumpsite  
 \_\_\_\_\_  
 (number of wells, pumps or dams, etc.)

and was completed (by) early 1990's  
 \_\_\_\_\_  
 (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 asap  
 \_\_\_\_\_  
 (Mo/Day/Year)

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MAY 16 2016 SCANNED

SEP 08 2015

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 stream obstruction permit will be  
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.

40,746 dismissed file  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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MAY 16 2016

SCANNED SEP 08 2015

## IRRIGATION USE SUPPLEMENTAL SHEET

File No. 49,454

Name of Applicant (Please Print): Robert F. Brown

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: Robert F. Brown  
 ADDRESS: 1936 Birch Rd., Superior, Ne. 68978

S	T	R	NE¼				NW¼				SW¼				SE¼				TOTAL		
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
3	1	7w					18.2	24.5	22.2	29.6										97	

**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			

**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			

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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
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total:	100 %		

b. Estimate the average land slope in the field(s): \_\_\_\_\_ %

Estimate the maximum land slope in the field(s): \_\_\_\_\_ %

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:

ii. For sprinkler systems:

(1) Estimate the operating pressure at the distribution system: \_\_\_\_\_ psi

(2) What is the sprinkler package design rate? \_\_\_\_\_ 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? \_\_\_\_\_ feet

(4) Please include a copy of the sprinkler package design information.

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

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).

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



(NW) 3-19-7W Jewell County, Ks.



Proposed Place of Use



Proposed Point of Diversion

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1:24,000

All landowners both 1/2 mile upstream and downstream from my property lines are shown:

ALL UPSTREAM LANDOWNERS ARE IN NEBRASKA. ALL DOWNSTREAM ARE ON THE REPUBLICAN (NOT THIS TRIB.)

*Alaina Luma*  
Signature

9-2-15  
Date

SCANNED

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	NA			
Total depth of well				
Depth to water bearing formation				
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

Owner  
(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):

Same as applicant  
(name, address and telephone number)

\_\_\_\_\_  
(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 Stoughton, Kansas, this 2nd day of September, 2015.  
(month) (year)

Alaina Brown  
(Applicant Signature)

By \_\_\_\_\_  
(Agent or Officer Signature)

\_\_\_\_\_  
(Agent or Officer - Please Print)

Assisted by Kelly C. Stewart STKFO/WC Date: 9/2/15  
(office/title)

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\_\_\_\_\_  
(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. 49,454

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.

Alaina Brown

Signature of Applicant

Alaina Brown  
(Print Applicant's Name)

State of Kansas )  
County of Rooks ) ss )

I hereby certify that the foregoing instrument was signed in my presence and sworn to before me this 2 day of Sept, 2015.



Kelly C. Stewart  
Notary Public

My Commission Expires: 8/30/17

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SEP 08 2015

KS DEPT OF AGRICULTURE

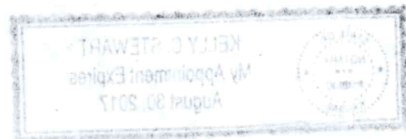


**MINIMUM DESIRABLE STREAMFLOW FORM TO BE USED WHEN  
APPLICABLE WHEN FILING AN APPLICATION FOR PERMIT  
TO APPROPRIATE WATER FOR BENEFICIAL USE**

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

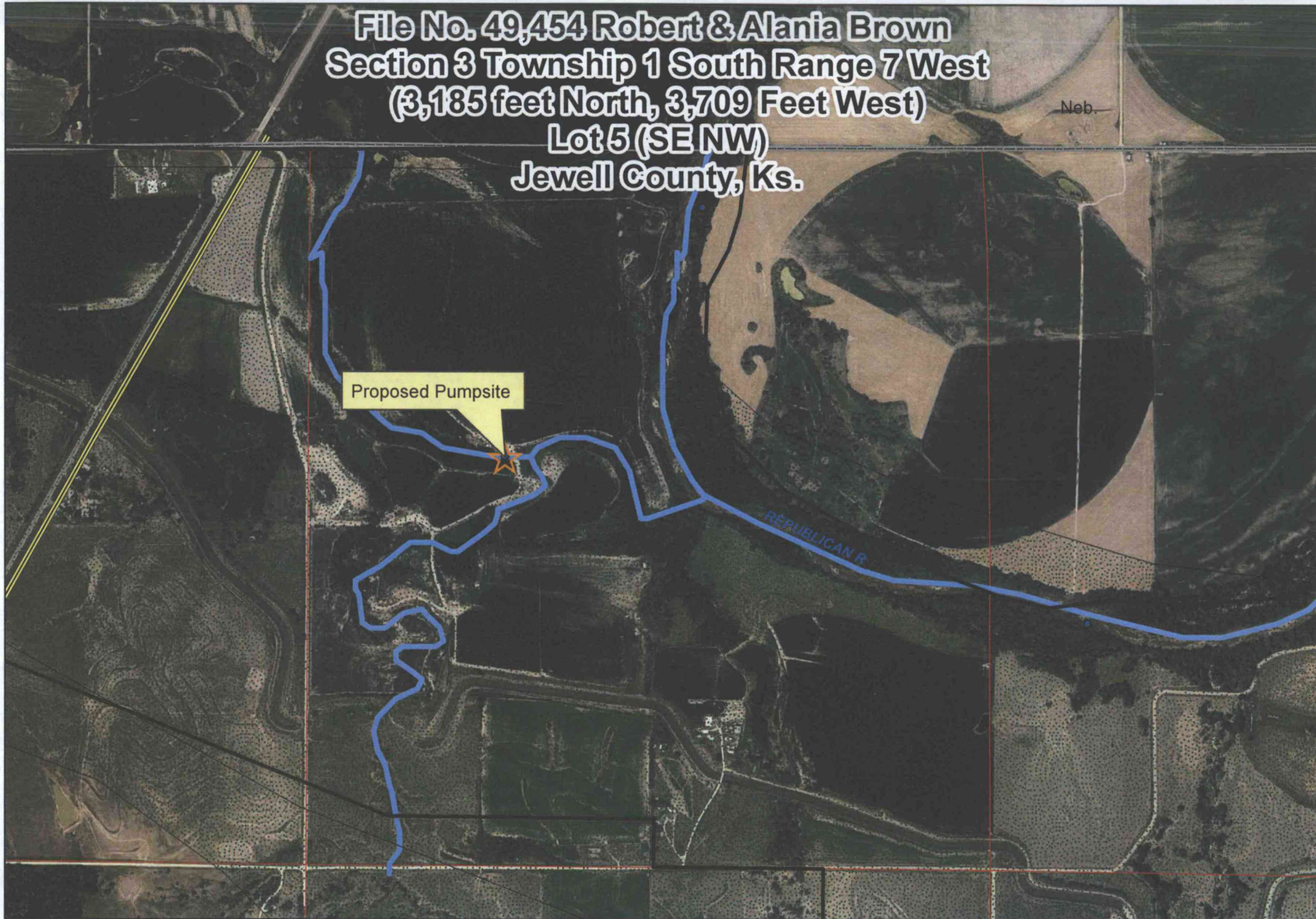


RECEIVED  
WATER RESOURCES

SEP 8 2017

DEPT OF AGRICULTURE

**File No. 49,454 Robert & Alania Brown  
Section 3 Township 1 South Range 7 West  
(3,185 feet North, 3,709 Feet West)  
Lot 5 (SE NW)  
Jewell County, Ks.**



1:12,000

**Diversion off Tributary to Republican River  
Within Boundaries of Bostwick Irrigation District**

3/3/2016 DWR

## Whitesell, Alex

---

**From:** Stewart, Kelly  
**Sent:** Thursday, February 23, 2017 3:43 PM  
**To:** Whitesell, Alex; Billinger, Mark  
**Cc:** Hageman, Rebecca  
**Subject:** RE: Approval of 49454

Alex,

I have no objection to the approval of this application.

Kelly

---

**From:** Whitesell, Alex  
**Sent:** Thursday, February 23, 2017 11:06 AM  
**To:** Stewart, Kelly <[Kelly.Stewart@ks.gov](mailto:Kelly.Stewart@ks.gov)>; Billinger, Mark <[Mark.Billinger@ks.gov](mailto:Mark.Billinger@ks.gov)>  
**Subject:** Approval of 49454

Kelly,

Leonard emailed saying that the structures permit for the Brown replacement file is ready to go and I believe my end is as well.

Here is the memo. Please let me know if I need to add anything.

Alex Whitesell  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, KS  
(785) 564 - 6631

**My email has changed** [alex.whitesell@ks.gov](mailto:alex.whitesell@ks.gov)



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 9, 2016

ROBERT F & ALAINA L BROWN  
1936 BIRCH RD  
SUPERIOR NE 68978

Re: Receipt of Application  
WSN: SJW-0005  
ECA: 2016180  
Project/Site: Stream Obstruction – Simic Crossing – After-the-Fact

Dear Mr. and Mrs. Brown:

We have received your application for a permit for the referenced project. Your project has been assigned the file number above and will be reviewed as quickly as possible.

In the next few days you will receive notification that your application has been forwarded to seven other state agencies for comment. Those agencies have up to 30 days to provide comments, and we will incorporate them into our review. You may be asked to address specific concerns prior to approval of the DWR permit.

In addition, if the proposed project disturbs more than one acre of soil, a construction stormwater permit will be required from the Kansas Department of Health and Environment (KDHE). Please visit [www.kdheks.gov/stormwater](http://www.kdheks.gov/stormwater), or contact KDHE directly for more information.

This letter does not provide any permission to begin construction of your project. If construction has started, construction is to be stopped until the permit is obtained. Construction may begin only after you receive written approval from the Chief Engineer. If you have any questions or comments please contact me at (785) 564-6654.

Sincerely,

Cindy M. McQuillen  
Water Structures Program

May 11. 16

We are currently working  
on the stream obstructions in the  
Leeward Section

Frank

Robt. Mc

WATER RESOURCES  
RECEIVED

MAY 16 2016

KS DEPT OF AGRICULTURE

Erin McGrogan  
~~130~~ 1320 Research Park Drive  
Manhattan Kansas 66502

DE ANTRA PER ASPERA  
**Kansas**  
Department of Agriculture  
Division of Water Resources

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

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

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

April 20, 2016

ROBERT F AND ALAINA L BROWN  
1936 BIRCH RD  
SUPERIOR NE 68978

Re: Pending Application, File No. 49,454  
and SJW-0005

**FILE COPY**

Dear Mr. and Mrs. Brown:

This is a fifteen day reminder letter to remind you of the May 4, 2016 deadline to return the requested information as stated in the DWR correspondence dated April 6, 2016.

We are advising you of these requirements in order to allow you an opportunity to supply the requested structures information, as required. In order for the application to retain its priority of filing, the original application and attachments must be returned, with the requested information, to this office on or before **May 4, 2016**, or within any authorized extension of time thereof. According to the law, default in the refiling of the original application and attachments as outlined above, within the time allowed, and shall constitute forfeiture of your priority date and dismissal of the application.

If you have any questions, you may contact me at (785) 564-6640. If you wish to discuss a specific file, please have the file number ready so that I may help you more efficiently.

Sincerely,

*Erin McGrogan*

Erin McGrogan  
Environmental Scientist  
Water Appropriation Program

Enclosures

Pc: Stockton Field Office

Water Structures Stockton Field Office Leonard Bristow, P.E.

NE ASTRA PER ASPERA  
**Kansas**  
Department of Agriculture  
Division of Water Resources

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

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

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

Sam Brownback, Governor

April 6, 2016

**FILE COPY**

ROBERT F AND ALAINA L BROWN  
1936 BIRCH RD  
SUPERIOR NE 68978

Re: Pending Application, File No. 49,454  
and SJW-0005

Dear Mr. and Mrs. Brown:

After further review, the above referenced original application for permit to appropriate water for beneficial use is incomplete based on K.A.R. 5-3-1b and is being returned to you for additional information. The proposed point of diversion is identified as a surface water diversion from a tributary to the Republican River located in Lot 5 of the Southeast Quarter of the Northwest Quarter of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas. The proposed quantity is 126 acre-feet at a rate of 1,000 gallons per minute for irrigation use on 97 acres in the Northwest and Southwest Quarter of Section 3, Township 1, South, Range 7 West, Jewell County, Kansas. The application requires a current stream obstruction permit for the existing location based on K.S.A. 82a-301 through K.S.A. 82a-305a. Please contact Leonard Bristow, P.E., DWR, Water Structures engineer, at the Stockton Field Office at (1-785-425-6787) in order to submit the enclosed application.

We are advising you of these requirements in order to allow you an opportunity to supply the requested structures information, as required. In order for the application to retain its priority of filing, the original application and attachments must be returned, with the requested information, to this office on or before May 4, 2016, or within any authorized extension of time thereof. According to the law, default in the refiling of the original application and attachments as outlined above, within the time allowed, and shall constitute forfeiture of your priority date and dismissal of the application.

If you have any questions, you may contact me at (785) 564-6640. If you wish to discuss a specific file, please have the file number ready so that I may help you more efficiently.

Sincerely,

*Erin McGrogan*

Erin McGrogan  
Environmental Scientist  
Water Appropriation Program

Enclosures

Pc: Stockton Field Office

Water Structures Stockton Field Office Leonard Bristow, P.E.

**Phillips, Janelle**

---

**From:** Stewart, Kelly  
**Sent:** Wednesday, June 17, 2015 3:04 PM  
**To:** Large, Robert  
**Cc:** Grady, Wendee; Phillips, Janelle; Bristow, Leonard  
**Subject:** RE: Violation of a Cease & Desist Order

Robert,

The letter looks good to Leonard and I. We'll get it printed out and sent with all the attachments (may have to ship by UPS). Thanks for your help.

Kelly

---

**From:** Large, Robert  
**Sent:** Wednesday, June 17, 2015 2:19 PM  
**To:** Stewart, Kelly  
**Cc:** Grady, Wendee; Phillips, Janelle; Bristow, Leonard  
**Subject:** RE: Violation of a Cease & Desist Order

Kelly,

Attached are edits to your letter. Please go through it and make sure I got everything right, re dates, etc. You probably want to enclose copies of the 2 orders. Looks like there'll be a lot of enclosures with this letter. ☺ Please let me know if you have any other questions.

Thanks,

**Robert Large**, Chief Legal Counsel  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
tel.: (785) 564-6716 (direct) | fax: (785) 564-6777  
[robert.large@kda.ks.gov](mailto:robert.large@kda.ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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**From:** Stewart, Kelly  
**Sent:** Wednesday, June 17, 2015 12:55 PM  
**To:** Large, Robert  
**Cc:** Grady, Wendee; Phillips, Janelle; Bristow, Leonard  
**Subject:** RE: Violation of a Cease & Desist Order

Robert,

Enclosed a hybrid 15 day draft letter. I asked Leonard to add language to my letter regarding the stream obstruction. I would appreciate your review of this letter, but I would REALLY appreciate you adding the appropriate legal language that states the consequences of violating the C&D orders. If there is any other tweaking of the letter you want to do, please have at it.



I did get ahold of Mr. Brown this morning. I told him the letter was coming and advised him of what will be required if he wants to have the stream obstruction and to irrigate. He appreciated the phone call and sounded like he was willing to do whatever was necessary to get approval. I got the impression that he is gone a lot with work and it may be hard for us to keep his attention.

Kelly

---

**From:** Large, Robert  
**Sent:** Tuesday, June 16, 2015 3:49 PM  
**To:** Stewart, Kelly  
**Cc:** Grady, Wendee; Phillips, Janelle  
**Subject:** RE: Violation of a Cease & Desist Order

Thanks. I think a 15-day-type letter is ok, but this is unique since we've already issued C&Ds. I think we need to be more specific as to where we are procedurally. They've already been told via issued orders that they have to cease and desist. So any further formal enforcement would be at the next level.

**Robert Large**, Chief Legal Counsel  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
tel.: (785) 564-6716 (direct) | fax: (785) 564-6777  
[robert.large@kda.ks.gov](mailto:robert.large@kda.ks.gov)  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

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---

**From:** Stewart, Kelly  
**Sent:** Tuesday, June 16, 2015 3:45 PM  
**To:** Large, Robert  
**Cc:** Grady, Wendee; Phillips, Janelle  
**Subject:** RE: Violation of a Cease & Desist Order

I can try calling the landowner to explain the situation. Leonard and I both remember this individual as someone not easy to work with. He might actually be able to get a permit to divert water at this location, but it would be restricted by MDS and he would need written permission to pump each time he wanted to. BUT, that is better than nothing.

I can draft a letter too. Like I said in an earlier e-mail, normally we would send what we call a 15 day letter. Advising the individual of the illegal activity and giving them 15 days to file the appropriate applications. It also warns of enforcement if they violate. I wasn't sure if this type of letter was still o.k. to use given we already have C&D's in place.

I doubt he has irrigated since I was last there. That area has been very wet this past month. It is on my list of things to keep an eye on.

Kelly

---

**From:** Large, Robert  
**Sent:** Tuesday, June 16, 2015 3:30 PM  
**To:** Stewart, Kelly  
**Cc:** Grady, Wendee; Phillips, Janelle  
**Subject:** RE: Violation of a Cease & Desist Order

Kelly,

My recommendation on this is to send a letter to the owner of the property letting them know that if the illegal stream obstruction is not removed and the illegal diversion does not cease, we will have to pursue civil enforcement of the cease and desist orders or refer the matter to the county attorney for potential prosecution. This could come from the field office or from David, rather than from Lane and Janelle separately. If you agree, do you want to take a crack at a letter?

I think we need to try to resolve it before proceeding with going to court if possible, especially since there has been no communication in several years. A phone call from you would help too, just so they know what the issue is and what to expect. They either need to get permitted or stop.

If we get no cooperation, we can either pursue civil enforcement or refer to the county attorney (probably not both, but we'll tell them that both are a possibility).

You also may want to revisit the property or try to catch them diverting or with the pivot hooked up. It looked like maybe it was dismantled partially? Would be interested to see if anything has changed since your last visit.

Thanks,

**Robert Large**, Chief Legal Counsel  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
tel.: (785) 564-6716 (direct) | fax: (785) 564-6777  
[robert.large@kda.ks.gov](mailto:robert.large@kda.ks.gov)  
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---

**From:** Stewart, Kelly  
**Sent:** Tuesday, June 16, 2015 1:41 PM  
**To:** Large, Robert  
**Cc:** Grady, Wendee; Phillips, Janelle  
**Subject:** RE: Violation of a Cease & Desist Order

Robert,

My apologies. I gave Rebecca poor scanning instructions. Here is the C&D regarding the obstruction.

Kelly

---

**From:** Large, Robert  
**Sent:** Tuesday, June 16, 2015 1:30 PM  
**To:** Stewart, Kelly  
**Cc:** Grady, Wendee; Phillips, Janelle  
**Subject:** RE: Violation of a Cease & Desist Order

Kelly,

I'm looping in Janelle. Did you say there was also a C&D in the file for the stream obstruction? The C&D you sent only appears to cover the illegal diversion (the two files you sent were the same except for the letter re the obstruction from 1993).

Thanks,

**Robert Large**, Chief Legal Counsel

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
tel.: (785) 564-6716 (direct) | fax: (785) 564-6777  
[robert.large@kda.ks.gov](mailto:robert.large@kda.ks.gov)  
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---

**From:** Stewart, Kelly  
**Sent:** Tuesday, June 16, 2015 10:47 AM  
**To:** Large, Robert  
**Cc:** Grady, Wendee  
**Subject:** RE: Violation of a Cease & Desist Order

There has been no activity since 1996. This came to our attention this spring when a neighbor called Leonard Bristow (structures) and did some complaining.

---

**From:** Large, Robert  
**Sent:** Tuesday, June 16, 2015 10:20 AM  
**To:** Stewart, Kelly  
**Cc:** Grady, Wendee  
**Subject:** RE: Violation of a Cease & Desist Order

Sorry Kelly – of course there was an application, thus the file number. I see from the memo that it was dismissed. But would like to see any documents in the file regarding the dismissal. Thanks.

**Robert Large**, Chief Legal Counsel

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
tel.: (785) 564-6716 (direct) | fax: (785) 564-6777  
[robert.large@kda.ks.gov](mailto:robert.large@kda.ks.gov)  
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---

**From:** Large, Robert  
**Sent:** Tuesday, June 16, 2015 10:17 AM  
**To:** Stewart, Kelly; Grady, Wendee  
**Subject:** RE: Violation of a Cease & Desist Order

Kelly,

I'm thinking we will need to pursue civil enforcement of the C&Ds. I'm having trouble with the image file. Can you send me the applicable C&Ds from the file?

Did we do anything since 1996? Also, am I correct that they had an application for a permit for the stream obstruction, but that file was dismissed? I'd like to see anything from the file that addresses that as well. Did they ever have an application for a groundwater permit?

Thanks,

**Robert Large, Chief Legal Counsel**

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
tel.: (785) 564-6716 (direct) | fax: (785) 564-6777  
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---

**From:** Stewart, Kelly  
**Sent:** Monday, June 08, 2015 1:13 PM  
**To:** Large, Robert; Grady, Wendee  
**Subject:** FW: Violation of a Cease & Desist Order

Robert,

Sorry for bothering you, but I am just following up on this to see where we are at on it. I need to make sure this guy doesn't irrigate illegally this year.

---

**From:** Stewart, Kelly  
**Sent:** Thursday, May 14, 2015 3:43 PM  
**To:** Bristow, Leonard; Large, Robert; Letourneau, Lane; Grady, Wendee; Terhune, Andrew  
**Cc:** Phillips, Janelle; Rebecca Hageman  
**Subject:** RE: Violation of a Cease & Desist Order

Robert,

Please take a look at these attachments. I went up yesterday and investigated this site. Clearly they are in violation of the stream obstruction and most likely have or will violate the illegal diversion c&d. Please advise if you need anything else or if you have any thoughts on how to proceed.

Normally, when we find an illegal diversion, we send a 15-day letter advising them of the unauthorized diversion and include an application along with the letter. I wasn't for sure if that would be appropriate where they are already under a C&D.

Kelly

---

**From:** Bristow, Leonard  
**Sent:** Tuesday, May 05, 2015 1:40 PM  
**To:** Large, Robert; Stewart, Kelly; Letourneau, Lane; Grady, Wendee; Terhune, Andrew  
**Cc:** Phillips, Janelle  
**Subject:** RE: Violation of a Cease & Desist Order

Robert,

I am quite certain from review of the previous correspondence this will not meet the definition of a dam, but will be considered a stream obstruction instead. It is referenced as WSNo. SJW-0005 in our records. Therefore, Janelle will need to be informed instead of Kim.

Leonard

---

**From:** Large, Robert  
**Sent:** Tuesday, May 05, 2015 9:44 AM  
**To:** Stewart, Kelly; Letourneau, Lane; Grady, Wendee; Terhune, Andrew  
**Cc:** Bristow, Leonard  
**Subject:** RE: Violation of a Cease & Desist Order

I think we would just need to see your inspection report and some good photos of what's going on at the property. Is this on a pivot? This will also need to loop in Kim H. since it's an unpermitted structure, right?

**Robert Large**, Chief Legal Counsel

Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
tel.: (785) 564-6716 (direct) | fax: (785) 564-6777  
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---

**From:** Stewart, Kelly  
**Sent:** Tuesday, May 05, 2015 8:56 AM  
**To:** Letourneau, Lane; Large, Robert; Grady, Wendee; Terhune, Andrew  
**Cc:** Bristow, Leonard  
**Subject:** Violation of a Cease & Desist Order

Yesterday, we became aware of a guy in violation of two cease and desist orders. One is for an unpermitted stream obstruction and the other is for diverting water. Originally, this site was authorized by File No. 40,746, but was dismissed for failure to complete. On April 27, 1994, David Pope signed a cease and desist order for the structures department and ordered the owner to stop construction on the dam and gave him 30 days to remove what was there. On January 26, 1996, David Pope dismissed the file and ordered the owner to cease and desist any diversion of water.

The STKFO will go out very soon to investigate and document what we see. Robert/Wendee, what do you want from us so we can proceed down the legal trail?



Kelly C. Stewart, Water Commissioner  
Kansas Department of Agriculture  
Division of Water Resources  
Stockton Field Office  
(785)425-6787  
[kelly.stewart@kda.ks.gov](mailto:kelly.stewart@kda.ks.gov)  
<http://www.agriculture.ks.gov/>

Diversion equipment on left bank at pumpsite



Diversion equipment on left bank at pumpsite



Pipe leading to center pivot in Northwest Quarter



Diversion equipment on left bank at pumpsite



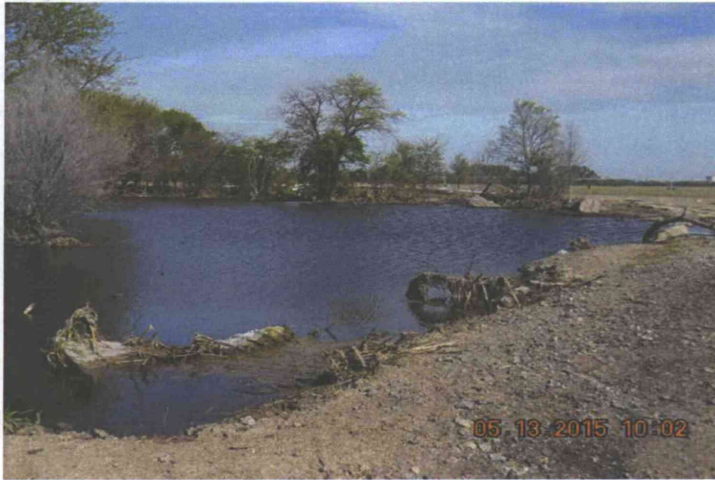
Propane tank on left bank downstream of pumpsite



Pipe leading South possibly to South center pivot



Right bank looking North at obstruction



Right bank looking North at Obstruction



Right bank looking North



Right bank looking Northwest at two 6" outlet pipes



Right bank looking West upstream



Right bank looking East downstream







Pumpsite

Stream Obstruction



# KANSAS DEPARTMENT OF AGRICULTURE

## Division of Water Resources

### Stockton Field Office

## MEMORANDUM

---

**TO:** Files

**DATE:** May 14, 2015

**FROM:** Kelly C. Stewart

**RE:** Dismissed Permit, File No. 40,746 and SJW-0005

On May 13, 2015, I investigated the possible unauthorized diversion of water from a pumpsite located on an unnamed tributary to the Republican River. This pumpsite was originally authorized by the above referenced file, but was dismissed on January 26, 1996 for failure to complete the diversion works within the time allowed. Another reason for my investigation was to check the status of an unpermitted stream obstruction used to back up water for this pumpsite. Both the diversion of water and the stream obstruction are under Cease and Desist Orders also issued on January 26, 1996.

Prior to visiting this site, Leonard Bristow and I looked at 2014 air photos and noticed that the stream obstruction appeared to still be in place and had obviously been there for a number of years. In addition, it was also observed that a center pivot had been installed. There was no evidence of the center pivot system on the 2012 air photo so it has been added sometime between 2012 and 2014. The 2014 photo reveals pivot tracks in the field providing evidence the pivot may have been used. The stream obstruction intersects the tributary at a location that is 3,185' North and 3,625' West of the Southeast corner of Section 3, Township 1 South, Range 7 West, Jewell County. The center pivot is located in the Northwest Quarter of this section (see enclosed air photo and topography map).

I also observed some pipe that appeared to lead up the hill to the South center pivot. The South center pivot is on land covered by the Kansas Bostwick Irrigation District so it is not known if this pivot has been operated by the unauthorized pumpsite.

Also enclosed with this memorandum are photos taken on the day of my investigation. Based on my observations, the owner is definitely in violation of the Cease and Desist Order for the stream obstruction and most likely has violated the one for the diversion of water for irrigation purposes.

JAH (LBB)

SIW-0005

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.

- 1.  Show to whom delivered, date, and addressee's address. (Extra charge)
- 2.  Restricted Delivery (Extra charge)

3. Article Addressed to: MR ROBERT F BROWN ROUTE 1 BOX 46 WEBBER KS 66970		4. Article Number P 241 276 596	
		Type of Service: <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Business Mail <input type="checkbox"/> Insured <input type="checkbox"/> COD <input type="checkbox"/> Return Receipt for Merchandise	
5. Signature - Addressee X <i>[Signature]</i>		6. Signature - Agent X	
7. Date of Delivery 5-3-94		8. Addressee's Address (ONLY if return receipt fee paid) MAY 04 1994	



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OFFICIAL BUSINESS

**SENDER INSTRUCTIONS**

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



RETURN  
TO 

JAH

Print Sender's name, address, and ZIP Code in the space below.

Kansas State Board Of Agriculture  
Division Of Water Resources  
901 S. Kansas Ave., Second Floor  
Topeka, Kansas 66612-1209

JAH(LBB)

SIW-0005

**SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.

1.  Show to whom delivered, date, and addressee's address. (Extra charge)  
 2.  Restricted Delivery (Extra charge)

3. Article Addressed to:  MR ROBERT F BROWN ROUTE 1 BOX 46 WEBBER KS 66970	4. Article Number P 241 276 596  Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise
5. Signature of Addressee X <i>[Handwritten Signature]</i>	8. Addressee's Address (ONLY if requested and fee paid) 199...
6. Signature - Agent X	
7. Date of Delivery 5-3-94	





**KANSAS STATE BOARD OF AGRICULTURE**  
Phillip A. Fishburn, Secretary

**DIVISION OF WATER RESOURCES**

David L. Pope, Chief Engineer-Director  
901 S. Kansas Avenue, Second Floor  
Topeka, Kansas 66612-1283  
(913) 296-3717 Fax (913) 296-1176

April 28, 1994

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

MR ROBERT F BROWN  
ROUTE 1 BOX 46  
WEBBER KS 66970

Re: Unlawful Stream Obstruction Crossing  
Tributary to the Republican River  
Jewell County  
WS No. SJW-0005

Dear Mr. Brown:

This letter is in regard to the crossing constructed on a tributary to the Republican River at a location in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, consisting of a culvert and dirt fill material placed in the channel for use as a road crossing. This obstruction has not been authorized by a permit issued by the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture.

For your information it is a violation of K.S.A. 82a-301 to 305a, the Kansas Obstructions in Streams Act, to construct water obstructions without a permit from the Chief Engineer.

Enclosed is an order requiring you to cease and desist from constructing obstructions at this location, remove the existing crossing from the channel, and restore the channel to its original cross section until or unless a permit or written consent is received from the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, authorizing such channel obstruction. This crossing must be removed within 30 days from date of this letter unless you submit a complete application and plans to obtain a permit for the structure.

If you desire further information concerning this matter, please feel free to contact Mr. Leonard B. Bristow at our Stockton Field Office, 425 Main Street, Box 192, Stockton, Kansas 67669, Telephone 913-425-6787.

Sincerely,

George A. Austin, P.E., L.S.  
Water Structures Section Head

GAA:LBB:jmd

Enclosures

pc: Mr. Leonard B. Bristow  
Mr. Darrell E. Miller, Jewell County Attorney w/encl.

**STATE OF KANSAS  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE  
TOPEKA, KANSAS**

**BEFORE DAVID L. POPE, CHIEF ENGINEER  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE**

**CEASE AND DESIST ORDER**

After due consideration, the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following Findings and Order:

**FINDINGS**

1. That on April 22, 1992, Mr. Tom Cyre of the Stockton Field Office, Division of Water Resources, Kansas State Board of Agriculture, upon reviewing an illegal surface water diversion, found a road crossing constructed across a tributary to the Republican River.
2. That on April 30, 1992, Mr. Leonard Bristow and Mr. Tom Cyre, members of the staff of the Division of Water Resources, met with Mr. Robert L. Brown and Mr. Robert F. Brown, father and son, respectively, to inspect the crossing located in a tributary to the Republican River at a location in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas.
3. That as part of the Brown's farming operations, a crossing across a tributary to the Republican River has been constructed at the location stated in Finding 1. This crossing consists of a single culvert and dirt fill placed in the bottom of the channel to be used as a road crossing across the stream channel.
4. That a search of the files in the office of the Chief Engineer failed to reveal any permit or consent to engage in the above described activities, nor any application to engage in the construction of the works described.
5. That K.S.A. 82a-301 provides in part, "Without the prior written consent or permit of ~~the Chief Engineer of the Division of Water Resources of the State Board of Agriculture,~~ it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: (a) construct any dam or other water

obstruction... (d) change or diminish the course, current, or cross section of any stream within this state\*.

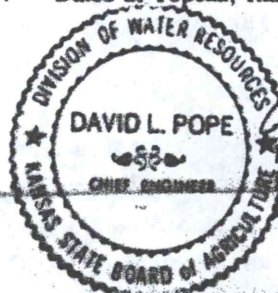
### CONCLUSION OF LAW

That the placement of a culvert and fill material in a tributary to the Republican River at a location in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, as described in Finding No. 3 above is unlawful.

### ORDER

Now, therefore, the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, under the power and authority granted to him in K.S.A. 82a-301 to 305a, as amended, hereby orders and directs Robert F. Brown, his officers, agents, servants, and his employees, or any person or entity owning a legal interest in the property described above to:

1. Within 30 days from the date of this order, remove the crossing and culvert described under Finding No. 3 from the location in a tributary to the Republican River and restore the channel to its original cross section in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, unless or until a permit or written consent is received from the Chief Engineer, Division of Water Resources, Kansas State Board Agriculture, authorizing such crossing.
2. Immediately, as of the date of this order, cease and desist from constructing any dam, or levee, or other water obstruction; or making, constructing, or permitting to be made or constructed any change in any stream channel in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, unless or until a permit or written consent is received from the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, authorizing such activities.
3. The Chief Engineer retains jurisdiction over this matter and reserves the right to amend or modify this order or issue additional orders as he deems necessary.
4. Dated at Topeka, Kansas, this <sup>th</sup> 27 day of April, 1994.



*David L. Pope*  
David L. Pope, Chief Engineer-Director  
Division of Water Resources  
Kansas State Board of Agriculture



DRAFT COPY

February 4, 1994

C E R T I F I E D

MR ROBERT F BROWN  
ROUTE 1 BOX 46  
WEBBER KS 66970

Re: Unlawful Stream Obstruction Crossing  
Tributary to the Republican River  
Jewell County  
WS No. SJW-0005

Dear Mr. Brown:

This letter is in regard to the crossing constructed on a tributary to the Republican River at a location in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, consisting of a culvert and dirt fill material being placed in the channel to be used as a road crossing. This obstruction has not been authorized by a permit issued by the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture.

For your information it is a violation of the Kansas Obstructions in Streams Act to construct water obstructions without a permit from the Chief Engineer.

Enclosed is an order requiring you to cease and desist from constructing obstructions in streams and to remove the existing crossing from the channel and restore the channel to it's original cross section, until or unless a permit or written consent is received from the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, authorizing such channel obstructions.

If you desire further information concerning this matter, please feel free to contact me.

Sincerely,

George A. Austin, P.E., L.S.  
Water Structures Section Head

GAA:LBB:jmd  
Enclosures

pc: Mr. Leonard B. Bristow  
Mr. William L. Navis, Republic County Attorney w/encl.



## KANSAS STATE BOARD OF AGRICULTURE

Phillip A. Fishburn, Acting Secretary  
DIVISION OF WATER RESOURCES  
David L. Pope, Chief Engineer-Director

### FIELD OFFICE

Scott E. Ross, Water Commissioner  
425 Main Street  
P O. Box 192  
Stockton, Kansas 67669-0192  
(913) 425-6787 FAX (913) 425-6842



November 4, 1993

MR ROBERT F BROWN  
ROUTE 1 BOX 46  
WEBBER KS 66970

Re: Unlawful Stream Obstruction  
WS No. SJW-0005

Dear Mr. Brown:

This letter is in regard to the above referenced unlawful stream obstruction constructed across a tributary to the Republican River at a location in the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas.

On April 30, 1992, Mr. Tom Cyre and I met with you and your father to discuss the irrigation practices located on your land and also the unlawful stream obstructions located along the tributary to the Republican River. At this time I explained the Stream Obstruction Act, K.S.A. 82a-301 to 305a. I indicated to you that I would send the necessary forms needed to apply for a permit for the stream obstructions.

By letter of May 12, 1992, we requested that you indicate to us within 15 days if you would like to apply for an after-the-fact permit or to remove the obstructions which were placed in the channel. Application forms and the rules and regulations associated with K.S.A. 82a-301 to 305a were enclosed with this letter.

By phone conversation of June 11, 1992, you indicated that you would like to submit plans and an application for the unlawful stream obstructions. By our letter of June 12, you were reminded that the applications and detailed plans should be submitted by July 13, 1992.

By letter of December 11, 1992, you were reminded to furnish the requested information of the letter of June 12, 1992, to our office by January 11, 1993.

The Division of Water Resources administers laws relating to water supply conservation, management and utilization of the water resources of Kansas, dam safety, flood control and drainage of the water.

Mr. Robert Brown  
WS No. SJW-0005  
Page 2

By telephone conversation of January 19, 1993, you indicated that the rainfall during the 1992 summer had washed out the stream obstructions. A field inspection conducted on May 26, 1993, by Mr. Tom Cyre indicated that the structure known as WS No. SJW-0006 has been breached. However, the stream crossing known as WS No. SJW-0005 was still in place at that time. On this date Mr. Cyre indicated to you that the crossing still needed to be permitted.

On May 28, 1993, I sent a follow-up letter to Mr. Cyre's field inspection indicating that an application and detailed plans must be received in our office by June 28, 1993.

To date no application or detailed plans have been received in our office for the stream crossing.

Failure to comply with the provisions of the act will continue the unlawful status of the structure and may subject you to the penalties as provided by K.S.A. 82a-305a (copy enclosed).

Very Truly Yours,



Leonard B. Bristow  
Engineer

LBB:jmd  
Encl.: Obstruction in Streams Act  
pc: Mr. George A. Austin, P.E.  
Mr. John A. Henderson, P.E.  
Ms. DeAnn Hupe-Seib ✓



# KANSAS STATE BOARD OF AGRICULTURE

SAM BROWNBACK, Secretary

FIELD OFFICE, DIVISION OF WATER RESOURCES  
Scott E. Ross, Water Commissioner  
485 Main Street  
P.O. Box 192, STOCKTON, KANSAS 67669-0192  
Telephone (913) 425-6787

DAVID L. POPE, Chief Engineer-Director  
DIVISION OF WATER RESOURCES  
TOPEKA • KANSAS

FAX: (913) 425-6842

May 28, 1993

Mr. Robert F. Brown  
Route 1, Box 46  
Webber, Ks. 66970

Re: Field Inspection  
Unlawful Stream Obstructions  
WS Nos. SJW-0005 & SJW-0006

Dear Mr. Brown:

On Wednesday, May 26, 1993, Mr. Tom Cyre of our office met with you to discuss the above referenced unlawful stream obstructions.

Mr. Cyre's inspection revealed that the crossing known as WS No. SJW-0005 constructed across a tributary to the Republican River at a location in the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, is still in place.

The applicable state statutes, K.S.A. 82a-301 to 305a, require a permit from the Chief Engineer for any activities which would change the course, current, or cross section of any stream in this state. During the inspection Mr. Cyre distributed the forms used to make application for the necessary permit. One completed application form should be submitted to the Chief Engineer of this agency along with the application supplement and adequate plans to support the application. Requirements for the plans for a stream obstruction are shown on the rules and regulations (see 5-42-1). This information must be received in our office by June 28, 1993, or any later time approved by the Chief Engineer of this agency.

The obstruction known as WS No. SJW-0006, which consisted of dirt fill placed in the channel to impound water at a location in the E $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, had washed out and had not been replaced. Should you desire to reconstruct the obstruction, prior approval of this office is required.

Thank for your cooperation in this matter. Should you have any questions, please feel free to contact me at 913/425-6787.

Very Truly Yours,

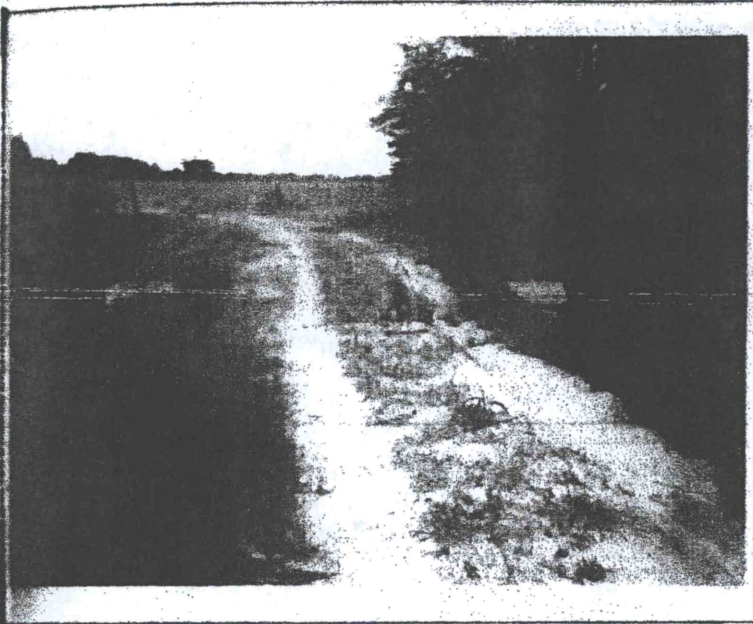
Leonard B. Bristow  
Engineer

LBB:jmd

Kansas State Board of Agriculture  
Division of Water Resources

Water Structure #: STW-0005 Legal descrip.: SW SE NW 3-T15-R7W, Jewell Co.

Site name: Crossing on unnamed tributary to Republican River Taken by: Tom Cyre



Picture No. 1

Date: 6-21-93

Direction faced: North

Comments: Facing north

along axis of crossing.



Picture No. 2

Date: 6-21-93

Direction faced: South

Comments: Photo taken

along axis of

crossing.

KANSAS STATE BOARD OF AGRICULTURE  
Division of Water Resources  
Stockton Field Office

MEMORANDUM

TO: Leonard B. Bristow

DATE: May 27, 1993

FROM: Thomas D. Cyre

RE: Unlawful Stream  
Obstructions  
SJW-0005 & SJW-0006

On May 26, 1993, I visited the site of Robert F. Brown's above referenced unlawful stream obstructions. As the accompanying photographs illustrate, the stream crossing (No. SJW-0005) is still in place while the impoundment structure (No. SJW-0006) has been breached.

Mr. Brown indicated that he has no plans to rebuild the impoundment structure and that he does need to maintain the stream crossing. I explained that the crossing still needed to be permitted and left him the necessary forms to apply for a permit. He stated that he would be able to get assistance from the local FFA instructor who teaches surveying in preparing a set of plans for the crossing.

I left him my business card and said the you could be reached at the same telephone number, should he have any other questions about the application form for the structure permit.

TDC:nld

KANSAS STATE BOARD OF AGRICULTURE  
Division of Water Resources  
Stockton Field Office

M E M O R A N D U M

**TO:** File

**DATE:** January 19, 1993

**FROM:** Leonard B. Bristow<sup>LBB</sup>

**RE:** Telephone Conversation  
Unlawful Stream Obstrs.  
WS No. SJW-0005 &  
WS No. SJW-0006

On Tuesday, January 19, 1993, I contacted Mr. Robert F. Brown in regard to the above referenced unlawful stream obstructions. In a letter dated December 11, 1992, Mr. Brown was requested to furnish an application, questionnaire form and detailed plans for consideration and approval of the above referenced stream obstruction projects. To date, no application or plans have been received.

During the telephone conversation Mr. Brown stated that the rainfall during the 1992 summer had washed out the stream obstructions. I am not sure if it has washed out both WS No. SJW-0005 and SJW-0006. A field inspection will be needed to go investigate this matter. This field investigation will take place in early spring.

LBB:jmd



## KANSAS STATE BOARD OF AGRICULTURE

FIELD OFFICE, DIVISION OF WATER RESOURCES  
Scott E. Ross, Water Commissioner  
435 Main Street  
P.O. Box 192, STOCKTON, KANSAS 67665-0192  
Telephone (913) 425-6787

SAM BROWNBACK, Secretary

DAVID L. POPE, Chief Engineer-Director  
DIVISION OF WATER RESOURCES  
TOPEKA • KANSAS

FAX: (913) 425-6842

December 11, 1992

Mr. Robert F. Brown  
Route 1, Box 9  
Hardy, NE 68943

Re: Unlawful Stream Obstructions  
Tributary to Republican River  
WS No. SJW-0005  
WS No. SJW-0006

Dear Mr. Brown:

In a letter dated June 12, 1992, this office requested you to furnish an application, questionnaire form and detailed set of plans for consideration and approval to construct and maintain the above referenced stream obstruction projects. Water Structure Number SJW-0005 consists of a road crossing across a tributary to the Republican River at a location in the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas. Water Structure Number SJW-0006 consists of dirt fill placed in a tributary to the Republican River in the E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas. Our letter of June 12, 1992, indicated that the application, questionnaire form and detailed plans should be submitted by July 13, 1992.

The purpose of this letter is to remind you that failure to return the information requested by January 11, 1993, will result in the Chief Engineer issuing an order to require restoration of the channel in the project area. If you need additional time to submit the requested information, a request for additional time should be directed to the Chief Engineer along with adequate reason for delay of the project.

If you have any further questions, please feel free to contact me at 913/425-6787.

Very Truly Yours,

Leonard B. Bristow  
Engineer

LBB:jad

Enclosure: Letter of June 12, 1992





## KANSAS STATE BOARD OF AGRICULTURE

SAM BROWNBACK, Secretary

FIELD OFFICE, DIVISION OF WATER RESOURCES

Scott E. Ross, Water Commissioner  
425 Main Street

P.O. Box 102, STOCKTON, KANSAS 67669-0102  
Telephone (913) 425-6787

DAVID L. POPE, Chief Engineer-Director

DIVISION OF WATER RESOURCES  
TOPEKA • KANSAS

FAX: (913) 425-6842

June 12, 1992

Mr. Robert F. Brown  
Route 1, Box 9  
Hardy, NE 68843

Re: Telephone Conversation  
Unlawful Stream Obstructions  
WS No. SJW-0005  
WS No. SJW-0006

Dear Mr. Brown:

This is a follow-up letter to our telephone conversation on Thursday, June 11, 1992, regarding the unlawful crossing constructed in a tributary to the Republican River in the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, and the unlawful stream obstruction placed in a tributary to the Republican River at a location in the E $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas.

During our phone conversation you indicated that you would like to apply for after-the-fact permits for these two projects. A completed application, questionnaire form and detailed set of plans should be submitted for each project. Requirements for the plans for a stream obstruction are shown on the Rules and Regulations (see 5-42-1).

Please provide the requested information by July 13, 1992. Failure to provide this information by that date, or any later time approved by the Chief Engineer, may result in the dismissal of your requests for approval of these projects. If you have any questions, feel free to contact me at 913/425-6787.

Very Truly Yours,

Leonard B. Bristow  
Engineer

LBB:jed

Enclosures

pc: Stockton Field Office

KANSAS STATE BOARD OF AGRICULTURE  
Division of Water Resources  
Stockton Field Office

M E M O R A N D U M

TO: File

DATE: June 12, 1992

FROM: Leonard B. Bristow <sup>LBB</sup>

RE: Telephone Conversation  
Unlawful Stream Obstr.  
WS No. SJW-0005

On Thursday, June 11, 1992, I had a phone conversation with Mr. Robert Brown in response to the above referenced unlawful stream obstruction constructed in a tributary to the Republican River in the SW<sup>1</sup>/<sub>4</sub> of the SE<sup>1</sup>/<sub>4</sub> of the NW<sup>1</sup>/<sub>4</sub> of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas. Mr. Brown indicated that he would like to submit plans and an application for this unlawful project. I will send Mr. Brown a follow-up letter confirming our conversation.

LBB:isd



## KANSAS STATE BOARD OF AGRICULTURE

FIELD OFFICE, DIVISION OF WATER RESOURCES  
Scott E. Sams, Water Commissioner  
428 Main Street  
P.O. Box 188, STOCKTON, KANSAS 67689-0188  
Telephone (813) 485-4787

SAM BROWNBACK, Secretary

DAVID L. POPE, Chief Engineer-Director  
DIVISION OF WATER RESOURCES  
TOPEKA • KANSAS

FAX: (913) 425-6842

### CERTIFIED

May 12, 1992

Robert F. Brown  
Route 1 Box 9  
Hardy, NE 68943

Re: Unlawful Surface  
Water Diversion  
Unlawful Stream Obstrs.  
WS No. SJW-0005  
WS No. SJW-0006

Dear Mr. Brown:

Information in this office indicates that you may be diverting surface water from a tributary to the Republican River in the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 3, Township 1 South, Range 7 West in Jewell County, Kansas.

K.S.A. 82a-728 (copy enclosed) makes it unlawful for any person to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the Kansas Water Appropriation Act and provides for criminal penalties for violations.

Enclosed are forms on which to make an application to appropriate water for beneficial use. The completed application, accompanied by the appropriate filing fee as set forth on the application form, must be received in the office of the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, on or before May 27, 1992, or appropriate action will be taken by the Chief Engineer.

As we discussed during our conversation on April 30, 1992, the Kansas Water Office has requested administration of the Minimum Desirable Streamflows of the Republican River which have a priority date of April 12, 1984. Therefore, any appropriation of water with a priority date later than April 12, 1984, or an Appropriation of Water file number greater than 37,163 is subject to administration. Therefore, enclosed is a legal notice directing you to cease all operations until further notice.

The water rights contact person in Nebraska is Russell Oaklund, Division Engineer, State of Nebraska, Department of Water Resources, P.O. Box 426, Cambridge, NE 69022. His telephone number is (308)697-3730.

In addition, this office has information indicating that you have made a stream obstruction consisting of placing fill dirt approximately 8' in height to an elevation equal with the top of the banks to impound water for irrigation purposes (WS No. SJW-0006) in a tributary to the Republican River in the East Half of the Southeast Quarter of the Northwest Quarter (E $\frac{1}{2}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, and a crossing

Mr. Brown  
May 5, 1992  
Page 2

consisting of placing culverts and fill dirt (WS No. SJW-0005) in a tributary to the Republican River in the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas. A search of our records indicates you have not received a permit to construct the above mentioned projects. This is in violation of the Obstructions in Streams Act, K.S.A. 82a-301 to 305a, which requires the approval of the Chief Engineer of this agency prior to construction of any project such as the projects which you have already constructed.

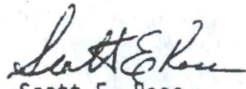
In order to comply with the requirements of the statute, you must do one of the following: (1) You must apply for permit by submitting after-the-fact plans indicating the project meets the rules and regulations of this office. If the structure does not meet these rules and regulations, then modifications must occur to the project in order to receive favorable consideration by the Chief Engineer. (2) If you do not choose (1), then you must remove any obstructions you have placed in the natural stream channel and return the stream to its original location and configuration. This includes returning the disturbed area to its former state.

Enclosed for your information are copies of the statutes with which you must comply and the rules and regulations associated with said statutes. K.A.R. 5-42-1 of the Rules and Regulations are specifically applicable to stream obstruction projects. It appears that the obstruction which impounds water for irrigation purposes is not approvable as constructed. An approvable structure would need to have a tube placed at the elevation of the streambed or other means to by-pass flows to satisfy downstream water rights.

Please respond to this letter within 15 days indicating what action you intend to take. Upon receipt of your response or the expiration of the 15 days, this office will proceed with this matter as provided by law.

If you have any questions, please feel free to contact this office.

Sincerely,

  
Scott E. Ross  
Water Commissioner

SER:TDC:nld  
Enclosures

pc: Mr. George Austin, P.E.  
Mr. John A. Henderson, P.E.

THE STATE



OF KANSAS

STATE BOARD OF AGRICULTURE  
Sam Brownback, Secretary

DIVISION OF WATER RESOURCES  
David L. Pope, Chief Engineer

LEGAL NOTICE

To the persons involved:

Robert F. Brown  
Route 1 Box 9  
Hardy, NE 68943

(V. R. Code or App. No. if applicable)

It has been determined that the withdrawal of water from an unnamed tributary to the  
Republican River located in the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 3, Township 1  
South, Range 7 West, Jewell County, Kansas

at this time constitutes an unlawful diversion.

DIRECTIVE

It is hereby directed that the diversion of water from the above source of supply shall be \_\_\_\_\_  
ceased  
as of May 4, 1992 and until further notice by the Chief Engineer-Director or his authorized  
representative.

Failure to comply with this directive will result in action according to law which provides that, "Upon  
request of the Chief Engineer, the attorney general shall bring suit in the name of the State of Kansas in courts  
of competent jurisdiction to enjoin the unlawful appropriation, diversion, use of the waters of the state, and  
waste or loss thereof."

Dated this 4th day of May, 1992.

David L. Pope, Chief Engineer-Director  
Division of Water Resources  
Kansas State Board of Agriculture

BY: Scott E. Rose  
Stockton Field Office  
425 Main Street  
Stockton, Kansas 67669

Field Investigation

May 1, 1992

RE: Possible Illegal Surface Water Diversion  
Robert F. Brown

Unlawful Stream Obstructions  
WS No. SJW-0005, WS No. SJW-0006

On April 30, 1992, Leonard Bristow and I investigated a stream obstruction and pumping sites in the Northwest Quarter (NW 1/4) of Section 3, Township 1 South, Range 7 West, Jewell County. We met owners, Robert L. Brown and Robert F. Brown, on the site, and Robert F. Brown took us around the farm and showed us the obstruction he has constructed on an unnamed tributary to the Republican River. This obstruction (WS No. SJW-0006) is located approximately 3300 feet North and 3300 feet West of the Southeast corner of Section 3, Township 1 South, Range 7 West. The obstruction appears to be constructed by placing fill dirt in the channel approximately 8' in height to an elevation equal with the top of the banks of the channel. A corrugated metal pipe exists near the left bank to allow water to continue downstream. This pipe was approximately 18" in diameter. However the inlet of this pipe is at the top of the obstruction, to allow water to be impounded. The streambed has a bottom width of approximately 10' and it was approximately 30' across the channel at the top of the banks. This obstruction backs water up about 0.7 of a mile into the Southwest Quarter (SW 1/4) of Section 34, Township 1 North, Range 7 West, Nuckolls County, Nebraska.

The obstruction was constructed during 1991, and the impounded water was used to irrigate approximately 50 acres of corn by means of a portable centrifugal pump and gated pipe. This field is again planted to corn.

An unlawful crossing (WS No. SJW-0005) was also observed. This crossing consisted of placing tubes in the channel and adding fill dirt over them. This crossing is used for access to other fields and is located in the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (SW 1/4 SE 1/4 NW 1/4) of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, approximately 500' upstream from the structure known as WS No. SJW-0006 described above.

I (Leonard Bristow) explained the Stream Obstruction Act to Mr. Brown and informed him that he would need to apply for a permit for these two unlawful projects. I also explained that he would probably have to modify the obstruction which impounds water for irrigation, since it did not have a way of bypassing flows to satisfy downstream water rights. I told Mr. Brown that I would send the necessary forms needed to apply for a permit for these projects.

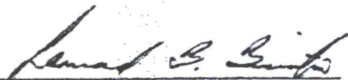
Mr. Brown also gets water from the Kansas-Bostwick Irrigation District for use on another field south of the tributary. During years that this field is planted to wheat, he diverts the District water down to the tributary and then pumps it onto the corn field.

Near the center of the North Side of the Northwest Quarter of the Northwest Quarter of the section there is a pit which is approximately 200 feet in diameter and is connected to the unnamed tributary by means of an 18" corrugated metal pipe. It appears that this pit is filled by both groundwater and surface water. The north edge of the pit appears to be on or very near the state line. A

Possible Illegal Surface Water Diversion  
Unlawful Stream Obstructions  
Robert Brown  
Page 2

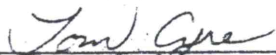
centrifugal pump is set up on the north side of the pit which pumps water to a center pivot that is on the Nebraska side, but does irrigate several acres in Kansas on 17 acres in the Northwest Quarter (NW 1/4) which was sold to the owners of the Southwest Quarter (SW 1/4) in Section 34, Township 1 North, Range 7 West.

I called Russ Oaklund of the Nebraska Department of Water Resources and filled him in on the details and told him we would get back to him to discuss what can be done about the situation on the state line.



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Leonard B. Bristow  
Engineer



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Thomas D. Cyre  
Hydrologist



**KANSAS STATE BOARD OF AGRICULTURE**  
Phillip A. Fishburn, Secretary

**DIVISION OF WATER RESOURCES**

David L. Pope, Chief Engineer-Director  
901 S. Kansas Avenue, Second Floor  
Topeka, Kansas 66612-1283  
(913) 296-3717 Fax (913) 296-1176

April 28, 1994

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

MR ROBERT F BROWN  
ROUTE 1 BOX 46  
WEBBER KS 66970

Re: Unlawful Stream Obstruction Crossing  
Tributary to the Republican River  
Jewell County  
WS No. SJW-0005

Dear Mr. Brown:

This letter is in regard to the crossing constructed on a tributary to the Republican River at a location in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, consisting of a culvert and dirt fill material placed in the channel for use as a road crossing. This obstruction has not been authorized by a permit issued by the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture.

For your information it is a violation of K.S.A. 82a-301 to 305a, the Kansas Obstructions in Streams Act, to construct water obstructions without a permit from the Chief Engineer.

Enclosed is an order requiring you to cease and desist from constructing obstructions at this location, remove the existing crossing from the channel, and restore the channel to its original cross section until or unless a permit or written consent is received from the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, authorizing such channel obstruction. This crossing must be removed within 30 days from date of this letter unless you submit a complete application and plans to obtain a permit for the structure.

If you desire further information concerning this matter, please feel free to contact Mr. Leonard B. Bristow at our Stockton Field Office, 425 Main Street, Box 192, Stockton, Kansas 67669, Telephone 913-425-6787.

Sincerely,

George A. Austin, P.E., L.S.  
Water Structures Section Head

**RECEIVED**

GAA:LBB:jmd  
Enclosures

pc: Mr. Leonard B. Bristow  
Mr. Darrell E. Miller, Jewell County Attorney w/encl.

**APR 29 1994**

Field Office  
Division of Water Resources  
Stockton



STATE OF KANSAS  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE  
TOPEKA, KANSAS

RECEIVED

APR 29 1994

BEFORE DAVID L. POPE, CHIEF ENGINEER  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE

Field Office  
Division of Water Resources  
Stockton

CEASE AND DESIST ORDER

After due consideration, the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following Findings and Order:

FINDINGS

1. That on April 22, 1992, Mr. Tom Cyre of the Stockton Field Office, Division of Water Resources, Kansas State Board of Agriculture, upon reviewing an illegal surface water diversion, found a road crossing constructed across a tributary to the Republican River.
2. That on April 30, 1992, Mr. Leonard Bristow and Mr. Tom Cyre, members of the staff of the Division of Water Resources, met with Mr. Robert L. Brown and Mr. Robert F. Brown, father and son, respectively, to inspect the crossing located in a tributary to the Republican River at a location in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas.
3. That as part of the Brown's farming operations, a crossing across a tributary to the Republican River has been constructed at the location stated in Finding 1. This crossing consists of a single culvert and dirt fill placed in the bottom of the channel to be used as a road crossing across the stream channel.
4. That a search of the files in the office of the Chief Engineer failed to reveal any permit or consent to engage in the above described activities, nor any application to engage in the construction of the works described.
5. That K.S.A. 82a-301 provides in part, "Without the prior written consent or permit of the Chief Engineer of the Division of Water Resources of the State Board of Agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: (a) construct any dam or other water

obstruction... (d) change or diminish the course, current, or cross section of any stream within this state".

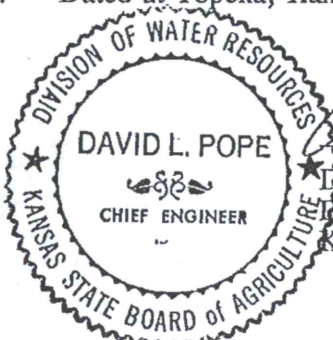
### CONCLUSION OF LAW

That the placement of a culvert and fill material in a tributary to the Republican River at a location in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, as described in Finding No. 3 above is unlawful.

### ORDER

Now, therefore, the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, under the power and authority granted to him in K.S.A. 82a-301 to 305a, as amended, hereby orders and directs Robert F. Brown, his officers, agents, servants, and his employees, or any person or entity owning a legal interest in the property described above to:

1. Within 30 days from the date of this order, remove the crossing and culvert described under Finding No. 3 from the location in a tributary to the Republican River and restore the channel to its original cross section in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, Range 7 West, Jewell County, Kansas, unless or until a permit or written consent is received from the Chief Engineer, Division of Water Resources, Kansas State Board Agriculture, authorizing such crossing.
2. Immediately, as of the date of this order, cease and desist from constructing any dam, or levee, or other water obstruction; or making, constructing, or permitting to be made or constructed any change in any stream channel in the SW 1/4 of the SE 1/4 of the NW 1/4 of Section 3, Township 1 South, unless or until a permit or written consent is received from the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, authorizing such activities.
3. The Chief Engineer retains jurisdiction over this matter and reserves the right to amend or modify this order or issue additional orders as he deems necessary.
4. Dated at Topeka, Kansas, this 27<sup>th</sup> day of April, 1994.



*David L. Pope*  
David L. Pope, Chief Engineer-Director  
Division of Water Resources  
Kansas State Board of Agriculture

RECEIVED

APR 29 1994

Field Office  
Division of Water Resources  
Stockton

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

September 3, 2015

ROBERT F & ALAINA L BROWN  
1936 BIRCH RD  
SUPERIOR NE 68978

RE: Application  
File No. 49454

Dear Sir or Madam:

Your application for permit to appropriate water in 3-1S-7W in Jewell 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) 564-6643. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

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

BAT: dlw  
pc: STOCKTON Field Office  
GMD 0