

File No. 50,097	15. Formation Code: 200	Drainage Basin: HACKBERRY CREEK	County: GO	Special Use:	Stream:																																																																																																																	
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="10" style="width:55%;">16. Points of Diversion</td> <td colspan="5" style="width:45%;">17. Rate and Quantity</td> </tr> <tr> <td style="font-size: small;">T MOD DEL ENT</td> <td style="font-size: small;">PDIV</td> <td style="font-size: small;">Qualifier</td> <td style="font-size: small;">S</td> <td style="font-size: small;">T</td> <td style="font-size: small;">R</td> <td style="font-size: small;">ID</td> <td style="font-size: small;">'N</td> <td style="font-size: small;">'W</td> <td style="font-size: small;">Rate gpm</td> <td style="font-size: small;">Quantity af</td> <td style="font-size: small;">Rate gpm</td> <td style="font-size: small;">Quantity af</td> <td style="font-size: small;">Overlap PD Files</td> </tr> <tr> <td>MOD</td> <td>86997</td> <td>NW NW SW</td> <td>5</td> <td>13</td> <td>31W</td> <td>3</td> <td>2403</td> <td>5178</td> <td>800</td> <td>158</td> <td>800</td> <td>158</td> <td>NONE</td> </tr> <tr> <td>ENT</td> <td>88168</td> <td>NW NW SW</td> <td>5</td> <td>13</td> <td>31W</td> <td></td> <td>2603</td> <td>5178</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>ENT</td> <td>88169</td> <td>NW NW SW</td> <td>5</td> <td>13</td> <td>31W</td> <td></td> <td>2503</td> <td>5178</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>ENT</td> <td>88170</td> <td>NW NW SW</td> <td>5</td> <td>13</td> <td>31W</td> <td></td> <td>2303</td> <td>5178</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>ENT</td> <td>88171</td> <td>NW NW SW</td> <td>5</td> <td>13</td> <td>31W</td> <td></td> <td>2203</td> <td>5178</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="14" style="text-align: center;">BATTERY ID #2175</td> </tr> </table>						16. Points of Diversion										17. Rate and Quantity					T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files	MOD	86997	NW NW SW	5	13	31W	3	2403	5178	800	158	800	158	NONE	ENT	88168	NW NW SW	5	13	31W		2603	5178						ENT	88169	NW NW SW	5	13	31W		2503	5178						ENT	88170	NW NW SW	5	13	31W		2303	5178						ENT	88171	NW NW SW	5	13	31W		2203	5178						BATTERY ID #2175													
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20. Meter Required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by 12/31/2021 Date Acceptable Meter Installed _____																																																																																																																						
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KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
M E M O R A N D U M

TO: Files

DATE: January 8, 2020

FROM: Doug Schemm

RE: Application, File No. 50,097

Brian Ottley has filed the above referenced new application to appropriate 158 acre-feet of groundwater at a diversion rate of 800 gallons per minute for irrigation use from a proposed well battery. The new application will overlap in place of use with File No. 7,842. The entire place of use (193 acres) is owned by Ottley Farms, and the applicant has signed the application form stating he has access to the point of diversion. The applicant was assisted by Stockton Field Office staff.

Water Right, File No. 7,842 is authorized 93 acre-feet at 270 gallons per minute. The quantity requested under this new application when combined with this senior file (93 AF + 158 AF) would be equal to 251 acre-feet. A total quantity of 251 acre-feet on 193 acres is equivalent to 1.3 acre-feet per acre, which is less than the maximum allowable for Gove County, of 1.5 acre-feet per acre. However, this is still a reasonable quantity, and the requested quantity will be all additional water.

Based on a well log submitted with the application, it appears that the source of water is fringe Ogallala Formation. The test hole log shows near surface loess, underlain by clay with caliche lenses extending from 20 feet to 61 feet below ground surface, followed by medium sand and gravel from 61 feet to 76 feet below ground, where shale bedrock was encountered. No static water level was given on the well log, however nearby wells have static water levels of approximately 40 feet.

K.A.R. 5-3-11 applies to safe yield evaluations for all unconfined aquifers. Based on other area wells, the aquifer extends across the entire 2-mile circle. This provides an area of consideration of 8,042 acres, with 0.5 inches of recharge and 75% available, safe yield was determined to be 251.33 acre-feet. The only existing appropriation (File No. 7,842) has appropriated 93 acre-feet, leaving 158.33 acre-feet available, and this application requesting 158 acre-feet would meet safe yield.

The applicant did not identify any wells of any kind within one-half mile of the proposed point of diversion. A review of aerial photographs also does not indicate any nearby homes or buildings that would possibly indicate a domestic well within this distance. The WRIS database shows that the applicant's senior, permitted well is over 1,320 feet away. Therefore, the point of diversion complies with well spacing criteria for all other aquifers of greater than 1,320 feet to non-domestic wells and greater than 660 feet to domestic wells.

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. The applicant has submitted a signed Minimum Desirable Streamflow form, which has been properly notarized. By completing this statement, the applicant affirms his/her knowledge that there could be times when the diversion of water may not be allowed under this permit.

In a January 7, 2020 e-mail, Mark Billinger, Assistant Water Commissioner, Stockton Field Office, recommended approval of the referenced application. Based on the above discussion, well spacing and safe yield criteria are met, and approval of the new application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced application be approved.



Douglas W. Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Billinger, Mark [KDA]
Sent: Tuesday, January 7, 2020 2:49 PM
To: Schemm, Doug [KDA]; Stewart, Kelly [KDA]
Subject: RE: 50097 Brian Ottley

Hey that one looks familiar. Yep nothing holding that one back. I have no objections to that application.

Mark Billinger
Assistant Water Commissioner
Stockton Field Office
Division of Water Resources
Kansas Department of Agriculture
mark.billinger@ks.gov
785-425-6787

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Tuesday, January 7, 2020 2:43 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: 50097 Brian Ottley

Hello Stockton,
This one meets all the rules. Nobody else around, looks like fringe Ogallala is the source.
Please review.
Thanks, Doug

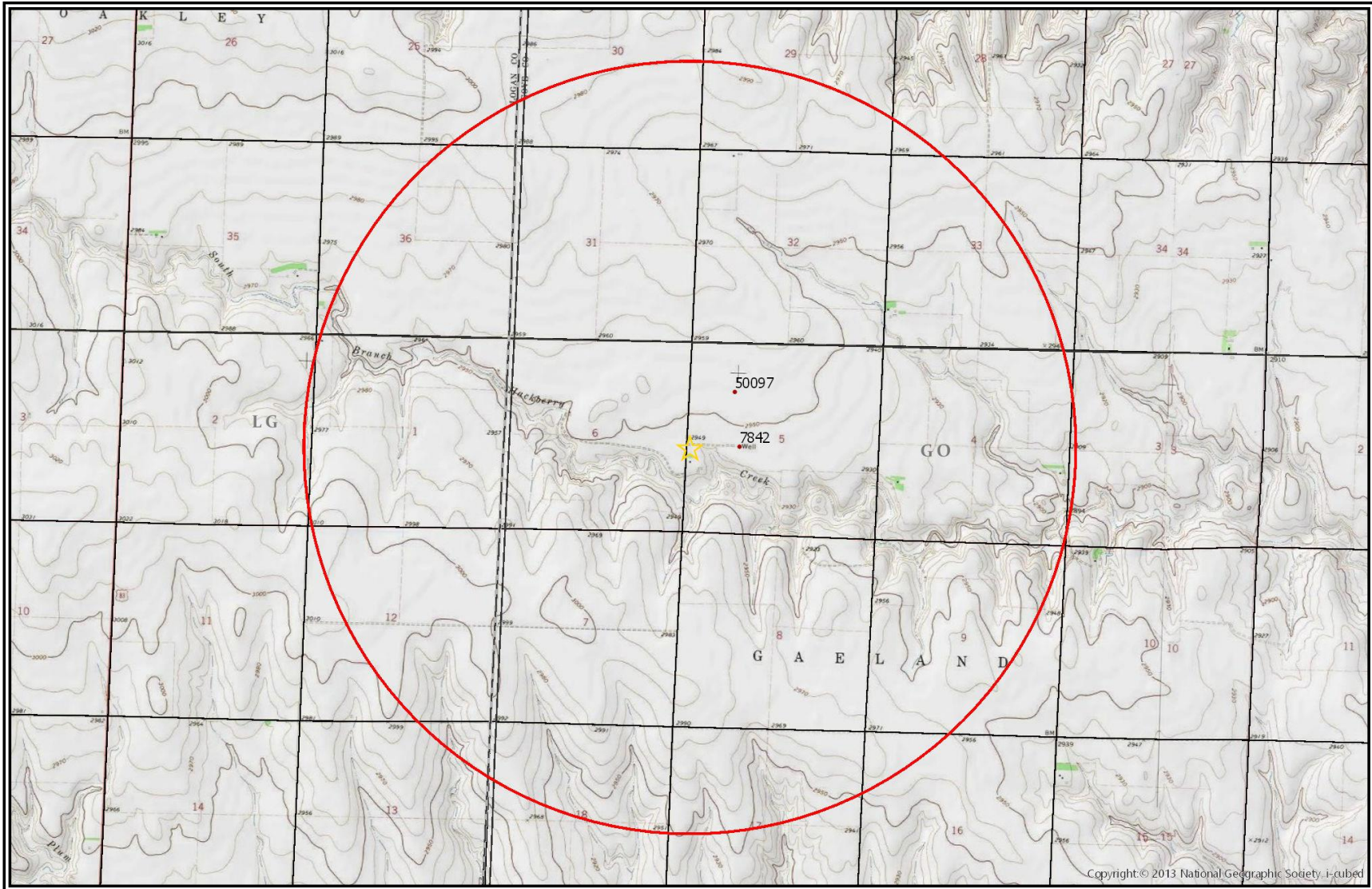
Safe Yield Report Sheet

FILE NO. 50,097

Water Right- Proposed Point of Diversion

Point of Diversion in 05-13S-31W

Footages from SE corner- 2,403 feet North 5,178 feet West



Analysis Results

The selected PD is in an area OPEN to new appropriations.

The safe yield based on the variables listed below is 251.33 AF.

Total prior appropriations in the circle is 251.00 AF. - 158 = 93 AF

Total quantity of water available for appropriation is ~~0.33~~ AF.

158.33 AF

Application File No. 50,097 - Requesting 158 AF
 Meets Safe Yield
 dws/dwr 1/7/20

Safe Yield Variables

The area used for the analysis is set at 8,042 acres.

The potential annual recharge at the circle center is estimated to be 0.5 inches.

The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 07-JAN-2020 and are based on Appropriated and Vested ground water right and possible stream nodes for GMD #2. Domestic, Term and Temporary water rights have been excluded.

There are 2 water rights and 2 points of diversion within the circle.

File Number	Use	ST	SR	Q4	Q3	Q2	Q1	FeetN	FeetW	Sec	Twp	Rng	ID	Qind	Auth Quant	Add Quant	Tot Acres	Net Acres
A 7842 00	IRR	NK	G		NW	NE	SW	2475	3803	05	13	31W	2	WR	93.00	93.00	193.00	193.00
A 50097 00	IRR	AY	G				NW	3960	3960	05	13	31W	3	WR	-158.00	-158.00	193.00	0.00

1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

OTTLEY FARMS
Attn: BRIAN OTTLEY
1840 COUNTY ROAD 12
OAKLEY KS 67748-6083

RE: Appropriation of Water, File No. 50,097

Dear Mr. Ottley:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An acceptable water flowmeter must be installed on the diversion works authorized by this permit prior to using water. An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/divisions-programs/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Stockton Field Office at 785-425-6787. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB:dws
Enclosure(s)

pc: Stockton Field Office

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

**APPROVAL OF APPLICATION
and
PERMIT TO PROCEED**
(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,097** of the applicant

**OTTLEY FARMS
Attn: BRIAN OTTLEY
1840 COUNTY ROAD 12
OAKLEY KS 67748-6083**

for a permit to appropriate water for beneficial use, together with the maps, plans and other submitted data, and that the application is hereby approved and the applicant is hereby authorized, subject to vested rights and prior appropriations, to proceed with the construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a, as amended), and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect the proposed appropriation subject to the following terms, conditions and limitations:

1. That the priority date assigned to such application is **August 6, 2018**.
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	
5 13S 31W					40	40	40	40	23	10							193

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of four (4) wells with a geographic center located in the Northwest Quarter of the Northwest Quarter of the Southwest Quarter (NW¼ NW¼ SW¼) of Section 5, more particularly described as being near a point 2,403 feet North and 5,178 feet West of the Southeast corner of said section, in Township 13 South, Range 31 West, Gove 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 **800 gallons per minute (1.78 c.f.s.)** and to a quantity not to exceed **158 acre-feet** of water for any calendar year.

5. That installation of works for diversion of water shall be completed on or before **December 31, 2021** or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$400.00 when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2025** or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

7. That the applicant shall not be deemed to have acquired a water appropriation for a quantity in excess of the amount approved herein nor in excess of the amount found by the Chief Engineer to have been actually used for the approved purpose during one calendar year subsequent to approval of the application and within the time specified for perfection or any authorized extension thereof.

8. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.

9. That the right of the appropriator shall relate to a specific quantity of water and such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion.

10. That this permit does not constitute authority under K.S.A. 82a-301 through 305a to construct any dam or other obstruction; nor does it grant any right-of-way, or authorize entry upon or injury to, public or private property.

11. That all diversion works constructed under the authority of this permit into which any type of chemical or other foreign substance will be injected into the water pumped from the diversion works shall be equipped with an in-line, automatic quick-closing, check valve capable of preventing pollution of the source of the water supply. The type of valve installed shall meet specifications adopted by the Chief Engineer and shall be maintained in an operating condition satisfactory to the Chief Engineer.

12. That all wells with a diversion rate of 100 gallons per minute or more drilled under the authority of this permit shall have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer. This tube or device shall be suitable for making water level measurements and shall be maintained in a condition satisfactory to the Chief Engineer.

13. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this permit in accordance 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).

14. 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.

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

16. 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.

17. That the right to appropriate water under authority of this permit is subject to any minimum desirable streamflow requirements identified and established pursuant to K.S.A. 82a-703c for the source of supply to which this water right applies.

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

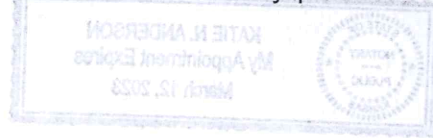
If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) request administrative review by the Secretary of Agriculture.

Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary. To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (i.e., **within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for hearing may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (i.e., **within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.



CERTIFICATE OF SERVICE

On this 11th day of May, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,097, dated May 6, 2020 was mailed postage prepaid, first class, US mail to the following:

OTTLEY FARMS
Attn: BRIAN OTTLEY
1840 COUNTY ROAD 12
OAKLEY KS 67748-6083

With photocopies to:

Stockton Field Office

Kate Anderson

Division of Water Resources