

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

1. File Number: <p style="text-align: center;">50,319</p>	2. Status Change Date: <p style="text-align: center;">10/22/2020</p>	3. Field Office: <p style="text-align: center;">3</p>	4. GMD:
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5. Status: Approved Denied by DWR/GMD Dismiss by Request/Failure to Return

6. Enclosures: Check Valve N of C Form Water Tube Driller Copy Meter

7a. Applicant(s) Person ID 67090
New to system Add Seq# _____

SHANE & DUANE SELL
601 SANBORN ST
ALMENA, KS 67622

7b. Landowner(s) Person ID _____
New to system Add Seq# _____

7a

7c. Landowner(s) Person ID _____

7d.

8. WUR Correspondent Person ID _____
New to system Add Seq# _____
Overlap File (s) WUC Notarized WUC Form
Agree Yes No

7a

9. Use of Water: Changing? Yes No

Groundwater Surface Water

IRR REC DEW MUN

STK SED DOM CON

HYD DRG WTR PWR ART RECHRG

IND SIC: _____ OTHER: _____

10. Completion Date: 12/31/2021 11. Perfection Date: 12/31/2025 12. Exp Date: _____

13. Conservation Plan Required? Yes No Date Required: _____ Date Approved: _____ Date to Comply: _____

14. Water Level Measuring Device? Yes No Date to Comply: _____ Date WLMD Installed: _____

Date Prepared: **9/24/2020** By: **KJN**
Date Entered: 10/27/2020 By: **LMoody**

File No. **50,319** 15. Formation Code: **210** Drainage Basin: **N F Solomon River** County: **PL** Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity					
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		Overlap PD Files
											Rate gpm	Quantity af	Rate gpm	Quantity af	
CHK	79379	NE NE SW	28	2S	20W	6	1161	2717	GC	330	45.12	330 0	45.12	48019	
CHK	81286	NE NE SW	28	2S	20W	7	884	2602	1 OF 4						
CHK	81287	SE NE SW	28	2S	20W	8	1434	2835	1 OF 4						
CHK	81288	NW SW SE	28	2S	20W	9	1023	2658	1 OF 4						
CHK	81289	NE SE SW	28	2S	20W	10	1303	2773	1 OF 4						

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

19. Limitation: _____ af/yr at **330** gpm (_____ cfs) when combined with file number(s) **48019**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? **x Yes** No To be installed by **12/31/2020** **2021** Date Acceptable Meter Installed _____

21. Place of Use					NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
MOD	DEL	ENT	PUSE	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	NE ¼	NW ¼	SW ¼	SE ¼				
CHK	62639	28	2S	20W	3												22	16	23	33	94	7a	no	48019

Comments:

Pending ownership change for 48019

10/13/2020
 KAB

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: September 23, 2020

FROM: Kris Neuhauser

RE: New Application, File No. 50,319

Shane Sell has filed the above referenced new application proposing to appropriate 45.12 acre-feet of groundwater per calendar year at a diversion rate not to exceed 330 gallons per minute for irrigation use from a battery of four (4) wells. The proposed point of diversion overlaps with existing Water Right, File No. 48,019. The geographic center of this battery is located in the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 28, more particularly described as being near a point 1,161 feet North and 2,717 feet West of the Southeast corner of said section, in Township 2 South, Range 20 West, Phillips County, Kansas. The proposed appropriation is located within the N.F. Solomon River Basin, and the source of supply is the Ogallala Formation. Both the point of diversion and place of use is owned by Duane and Shane Sell. Shane Sell has properly signed the application form affirming legal access to the point of diversion.

The proposed place of use overlaps with Water Right, File No. 48,019; and is a total of 94 acres, located in the Southeast Quarter of Section 28, Township 2 South, Range 20 West, Phillips County Kansas. The applicant owns the entire place of use.

Water Right, File No. 48,019 (during the application approval process) originally asked for 141 acre-feet. After the perfection period ended on December 31, 2018, the file ended up being certified for 89 acre-feet per calendar year, on August 26, 2019. On September 9, 2019, ex-owner Calvin Lowry requested a late extension of the perfection period, though it was denied. Kelly Stewart, Water Commissioner of the Stockton Field Office, explained to Mr. Lowry that DWR wasn't willing to void the Certificate of Appropriation and extend the perfection period, but recommended that a new application be filed to add additional quantity. Mr. Lowry explained he had sold the property to Shane and Duane Sell. Shane Sell, after learning this information himself, decided to submit this new application to obtain additional water.

The original application requested 52 acre-feet per calendar year. After determining only 45.12 acre-feet was available for appropriation, a phone call was made to Mr. Sell on September 24, 2020. The situation was explained, and Mr. Sell agreed to the lower quantity of 45.12 acre-feet. This change is reflected on page 1 of the application in Docuware.

The maximum quantity allowed for irrigation use in Phillips County, Kansas is 1.5 acre-feet per acre. The combined quantity between Water Right, File No. 48,019 and New Application, File No. 50,319 is 134.12 acre-feet, (89 AF + 45.12 AF = 134.12 AF) which is less than the maximum quantity allowed for a 94-acre place of use (94 acres x 1.5 AF/acre = 141 AF). Therefore, the quantity appears to be reasonable.

The rate will be limited to 330 gpm when combined with existing Water Right, File No. 48,019.

The proposed point of diversion must comply with K.A.R. 5-3-11 safe yield evaluation based on the area of consideration (extent of unconfined aquifer), calculated recharge quantity, and the extent of recharge available in that basin. The entire two-mile circle was used, resulting in an area of consideration (the extent of the Ogallala) of 8,042 acres. With a potential annual recharge of 1.1 inches, and 75% available appropriation, safe yield is 552.92 acre-feet. Prior appropriations in this area of consideration have appropriated 507.8 acre-feet, leaving 45.12 acre-feet available for appropriation. The original application requested 52 acre-feet, so the application was adjusted to this lower quantity of 45.12 acre-feet per calendar year.

The applicant identified three permitted water rights (other than his own) within one-half mile of the proposed point of diversion; Water Right, File Nos. 44,264 (two owners); 5,521; and PL-6. Three nearby notification letters were sent on September 10, 2020.

A call was received on September 21, 2020 from John McClymont (lawyer) and Eric Titus, during which Eric expressed some concern on how it would affect his nearby Water Right, File No. 44,264 (landowner: Diane C Titus and Josh McClain). It was explained that Mr. Sell is applying for additional water at the same point of diversion authorized by existing Water Right, File No. 48,019, since the amount of water perfected ended up being less than what is needed for his irrigated acres (89 acre-feet).

The proposed geo-center of the well battery meets minimum well spacing requirements, being over 800 feet to the applicant's nearest domestic well, and over 1,600 feet to the nearest non-domestic well.

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.

Kelly Stewart, Water Commissioner of the Stockton Field Office, gave a recommendation that the new application should be approved, in an e-mail conversation on September 24, 2020.

Based on the above discussion, the area is open to new appropriations, the application meets safe yield and well spacing criteria, and the approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Kris Neuhauser
Environmental Scientist
Water Appropriation Program

From: Stewart, Kelly [KDA]
Sent: Thu 9/24/2020 9:44 AM
To: Neuhauser, Kris [KDA]
Cc: Billinger, Mark [KDA]
Subject: RE: 50319 Recommendation Request

Kris,

I have no objection to the approval of this application. If I remember correctly, Mr. Sell wanted to apply for the maximum allowable quantity in hopes that somebody running safe-yield might come up with a slightly different number in his favor. If safe-yield is still 45.12, then I'm certain he'll want that. I do think you should call him and make sure prior to officially reducing his application to that number.

Kelly

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Thursday, September 24, 2020 9:29 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: 50319 Recommendation Request

Morning Kelly,

Went back and read some background on this one; sounds like you had talked to the ex-owner Calvin Lowry, and now current owner, Shane Sell, about this new app route to obtain additional water. Safe yield ended up having 45.12 left that we can approve, as you had mentioned in an email string to Charlotte last year. Let me know if everything looks kosher to you number wise.

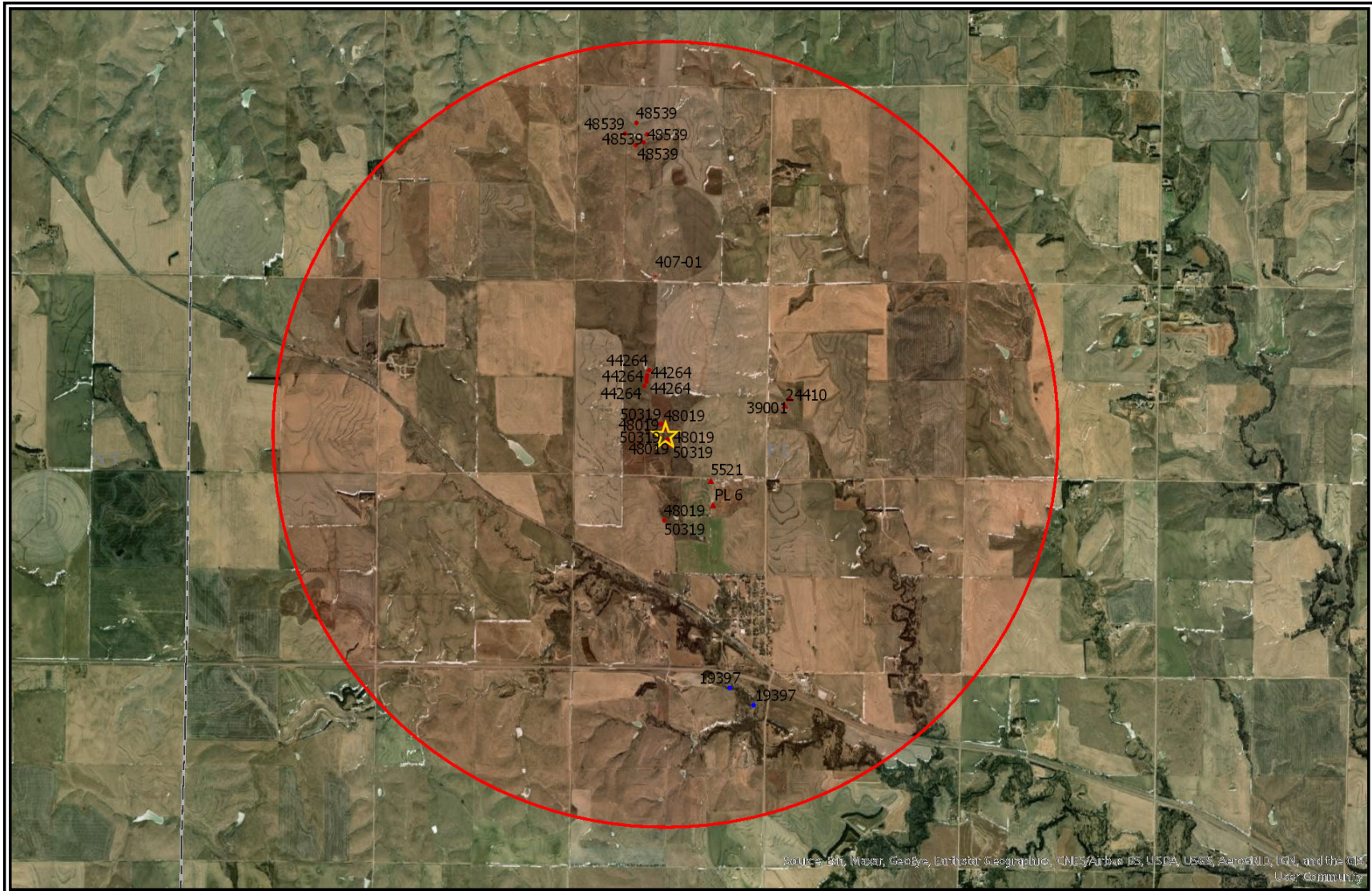
Assuming everything looks good, they had asked for 52 AF: do we need to get a hold of Shane to have him sign off on this lower quantity? I can give him a call unless you would rather do it yourself. Just let me know!

Thanks,

Kris Neuhauser

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

Safe Yield Report Sheet
Water Right- Proposed Point of Diversion
Point of Diversion in 28-02S-20W
Footages from SE corner- 1,161 feet North 2,717 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 552.92 AF.

Total prior appropriations in the circle is 559.80 AF. **- 52 AF = 507.8 AF**

Total quantity of water available for appropriation is 0.00 AF. **552.92 AF - 507.8 AF = 45.12 AF available**

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 1.1 inches.

The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 03-SEP-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 8 water rights and 19 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 5521 00	MUN	NK	G		NE	NW	NE	5136	1553	33	02	20W	6	WR	6.91	6.91		
A 24410 00	MUN	NK	G		SW	NW	SW	1914	4880	27	02	20W	1	WR	24.55	14.27		
A 39001 00	MUN	NK	G		NW	NW	SW	2110	4750	27	02	20W	2	WR	12.12	0.00		
V PL 6 00	MUN	AA	G		SE	NW	NE	4488	1485	33	02	20W	1	WR	13.81	13.81		
A 44264 00	IRR	NK	G		SE	SE	NW	2673	3243	28	02	20W	1	WR	240.00	240.00	277.00	277.00
Same	IRR	NK	G		NE	NE	SW	2575	3251	28	02	20W	2	WR				
Same	IRR	NK	G		SE	SW	NW	2750	3228	28	02	20W	3	WR				
Same	IRR	NK	G		NW	NE	SW	2473	3310	28	02	20W	4	WR				
Same	IRR	NK	G		SW	SE	NW	2892	3183	28	02	20W	5	WR				
A 48019 00	IRR	NK	G		NE	NE	SW	1161	2717	28	02	20W	6	WR	89.00	89.00	94.00	94.00
Same	IRR	NK	G		NE	NE	SW	884	2602	28	02	20W	7	WR				
Same	IRR	NK	G		SE	NE	SW	1434	2835	28	02	20W	8	WR				
Same	IRR	NK	G		NW	SW	SE	1023	2658	28	02	20W	9	WR				
Same	IRR	NK	G		NE	SE	SW	1303	2773	28	02	20W	10	WR				
A 48539 00	IRR	LO	G		SW	NE	NW	3979	3635	21	02	20W	2	WR	143.81	143.81	277.00	0.00
Same	IRR	LO	G		SW	NE	NW	4279	3635	21	02	20W	3	WR				
Same	IRR	LO	G		SW	NE	NW	3979	3935	21	02	20W	4	WR				
Same	IRR	LO	G		NW	SE	NW	3679	3635	21	02	20W	5	WR				
Same	IRR	LO	G		SW	NE	NW	3979	3335	21	02	20W	6	WR				
A 50319 00	IRR	AY	G		NE	NE	SW	1161	2717	28	02	20W	6	WR	52.00	52.00	94.00	0.00
Same	IRR	AY	G		NE	NE	SW	884	2602	28	02	20W	7	WR				
Same	IRR	AY	G		SE	NE	SW	1434	2835	28	02	20W	8	WR				
Same	IRR	AY	G		NW	SW	SE	1023	2658	28	02	20W	9	WR				
Same	IRR	AY	G		NE	SE	SW	1303	2773	28	02	20W	10	WR				

34.99 AF

Limitations

File Number	Seq Num	Limitations
A 24410 00	1	11.4MGY COM/W #PL-6 & #5521
A 39001 00	1	11.4MG(34.9AF/YR)W/COM #PL006,5521,24410

34.99 AF

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. 50,319** of the applicant

SHANE & DUANE SELL
601 SANBORN ST
ALMENA, KS 67622

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 **December 2, 2019**.
2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec.	Twp.	Range	NE ¹ / ₄				NW ¹ / ₄				SW ¹ / ₄				SE ¹ / ₄				TOTAL
			NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	
28	2S	20W													22	16	23	33	94

3. That the authorized source from which the appropriation shall be made is groundwater to be withdrawn by means of four (4) wells with a geographical center located in the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (NE¹/₄ NE¹/₄ SW¹/₄) of Section 28, more particularly described as being near a point 1,161 feet North and 2,717 feet West of the Southeast corner of said section, in Township 2 South, Range 20 West, Phillips County, Kansas, located substantially as shown on the aerial map accompanying the application.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **330 gallons per minute (0.74 c.f.s.)** and to a quantity not to exceed **45.12 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, which is currently \$400.00, when construction of the diversion 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 accompanied by the required statutory fee, which is currently \$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, which is currently \$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 to 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 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).

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.

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

October 29, 2020

SHANE & DUANE SELL
601 SANBORN ST
ALMENA, KS 67622

RE: Appropriation of Water, File No. 50,319

Dear Sir or Madam:

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,

A handwritten signature in black ink that reads "Kristen A. Baum". The signature is written in a cursive, flowing style.

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

KAB: kjn
Enclosure(s)
pc: Stockton Field Office

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may request an evidentiary hearing before the Chief Engineer, or request administrative review by the Secretary of Agriculture. Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Division, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

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

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


CERTIFICATE OF SERVICE

On this 29 day of October, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,319, dated 22 October was mailed postage prepaid, first class, US mail to the following:

SHANE & DUANE SELL
601 SANBORN ST
ALMENA, KS 67622

With photocopies to:

Stockton Field Office


Division of Water Resources