

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

1. File Number: <p style="text-align: center;">50,332</p>	2. Status Change Date: <p style="text-align: center;">1/29/2021</p>	3. Field Office: <p style="text-align: center;">3</p>	4. GMD: <p style="text-align: center;">0</p>
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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 **67139**
New to system Add Seq# _____

DEAN ELVIN
320 WELLS FARGO RD
MARQUETTE, KS 67464

7b. Landowner(s) Person ID **25050**
New to system Add Seq# _____

JOHNSON 4K FARMS LLC
207 N MAIN ST SUITE 101
MCPHERSON KS 67460-4328

(Address Change Worksheet attached) KJN*

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

7d. Misc. Person ID _____
New to system Add Seq# _____

KANSAS WATER OFFICE
900 SW JACKSON ST STE 404
TOPEKA KS 66612

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

~~7a.~~ **7b**

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~~ **22** 11. Perfection Date: ~~12/31/2025~~ **26** 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: **7/29/2020** By: **DWS**
Date Entered: **2/1/2021** By: **LMoody**

File No. **50,332** 15. Formation Code: Drainage Basin: SMOKY HILL RIVER County: **MP** Special Use: Stream: SMOKY HILL RIVER

16. Points of Diversion									
MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	
√	163	SW SE SE	6	17	5W	2	80	1160	
√	16629	SE SE SE	6	17	5W	5	125	160	
√	32099	SW SW SE	6	17	5W	1	210	2430	
Pd Comment: LOWER SMOKY HILL RIVER									

17. Rate and Quantity				
Authorized		Additional		
Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
1000	95	390	0	2,960-D1

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

19. Limitation: **95** af/yr at **1000** gpm (_____ cfs) when combined with file number(s) **2,960-D1**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? Yes No To be installed by **12/31/2021** ~~2022~~ Date Acceptable Meter Installed _____

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? YES	Overlap Files
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	NE ¼	NW ¼	SW ¼	SE ¼								
√	36811	7	17	5W	1	40	40	40	40														160	7b.	*YES	2,960-D1			

Comments: **LOWER SMOKY HILL RIVER IRRIGATION ACCESS DISTRICT OVERLAP.**
 *NOTE: RICHARD JOHNSON IS DECEASED, NEW ADDRESS ONLY.
 PERMISSION TO DIVERT

1/13/2021
KJN

1/13/2021
KAB

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: July 29, 2020

FROM: Doug Schemm

RE: Application, File No. 50,332

Dean Elvin has filed the above referenced application to appropriate surface water directly from the Smoky Hill River for irrigation use. Please note that this is a **RATE ONLY** application, which overlaps in point of diversion and place of use with Water Right, File No. 2,960-D1. Water Right, File No. 2,960-D1 is authorized 95 acre-feet at 610 gallons per minute. This new application is requesting 95 acre-feet of surface water at a diversion rate of 1,000 gallons per minute, limited to 95 acre-feet and 1,000 gallons per minute with the senior file, providing no additional quantity of water, but 390 gallons per minute of additional rate. The points of diversion are three (3) existing pump sites.

The place of use is owned by Johnson 4K Farms LLC, and the applicant has been signed by a representative of the owner stating they have access to the point of diversion. Note that DWR was informed that Richard Johnson has passed away, and his sister has requested that correspondence be addressed to her. As noted above, Water Right, File No. 2,960-D1 overlaps in both point of diversion and place of use and is authorized 95 acre-feet of water. The applicant was not required to purchase any additional water from the Lower Smoky Hill Access District, because this is a rate only application. The authorized 95 acre-feet, is less than the maximum allowable to irrigate the proposed 160 acres with 1.3 acre-feet per acre in McPherson County, Kansas, however it provides 0.6 acre-feet per acre, which is still reasonable. This reflects the historical development of the water right.

The applicant provided a list of nearby landowners, which complies with K.A.R. 5-3-4. These are existing pump sites that have been in place for many years. The application is not requesting any additional quantity of water. Therefore, no notification letters are required for this new application since the upstream and downstream landowners are certainly aware of this irrigation project. There are multiple surface water rights located both upstream and downstream of the pump site within a two-mile radius. The nearest downstream pump site under File No. 2,960-D2 is located several hundred feet downstream. However, with proper conditioning, approval of this application will not impair any senior water rights.

Normally, since the source of supply is the direct diversion of surface water from the Smoky Hill River, this application would be subject to the restrictions of K.A.R. 5-3-15, which, in part, require the applicant to demonstrate that the direct diversion of surface water is not necessary during the period from July 1 through September 30 of each calendar year. However, because this is a rate only application, it is exempt from safe yield requirements. Per K.A.R 5-3-15, the application will be subject to specific conditions, which stipulate strict requirements for direct surface water diversion. These conditions include the stipulation that no diversion shall occur unless there is water available to satisfy all demands by senior water rights and permits, written or verbal permission from the Chief Engineer, or an authorized representative is required prior to diverting water, and streamflow cannot be stopped at the first riffle below the point of diversion while diversion is taking place. Obviously, the senior water right is senior to any minimum desirable streamflow regulations.

Rate only applications do not impact the OASIS model, however, a copy of this application was sent to the Kansas Water Office for their files. They will note it in their database.

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.

Dean Elvin
Memorandum – File No. 50,332
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The applicant has submitted a signed Minimum Desirable Streamflow form for the pending new application, 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.

Kelly Stewart, Water Commissioner, Stockton Field Office, recommended that the referenced new application be approved in an e-mail received on July 23, 2020.

Based on the above discussion, the application is not subject to safe yield because it is a rate only application, the Smoky Hill River is open to new appropriations meeting specific criteria, the application complies with all regulations, and approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced application be approved.

Doug Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Stewart, Kelly [KDA]
Sent: Thursday, July 23, 2020 4:25 PM
To: Schemm, Doug [KDA]
Cc: Billinger, Mark [KDA]; Hageman, Rebecca [KDA]
Subject: RE: 50332 Dean Elvin

Doug,

I have no objection to the approval of this application.

Kelly

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Thursday, July 23, 2020 4:16 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: 50332 Dean Elvin

This is just up the river from Matt Toll's application, and it is a senior application. It is for RATE ONLY, and sits on top of Water Right, File No. 2960-D1.

Please review,

Thanks, Doug

Schemm, Doug [KDA]

From: Westrup, Nathan <Nathan.Westrup@kwo.ks.gov>
Sent: Friday, July 24, 2020 9:03 AM
To: Schemm, Doug [KDA]; Rockel, Richard
Subject: RE: 50,332 Dean Elvin

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Thanks Doug, we will make note of it.

Nathan Westrup

Chief of Hydrology & Evaluation

Kansas Water Office

p: (785) 296-0689

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Thursday, July 23, 2020 4:23 PM
To: Westrup, Nathan <Nathan.Westrup@kwo.ks.gov>; Rockel, Richard <Richard.Rockel@kwo.ks.gov>
Subject: 50,332 Dean Elvin

Hello,

This is another Smoky Hill surface water application, however it is for additional **RATE ONLY**.

Because it's rate only, they didn't purchase any more water from the Access District. It sits on top of Water Right, File No. 2960-D1.

Thanks, Doug

From: Ireland, Leslie [KDA]
Sent: Thu 3/5/2020 8:52 AM
To: Baum, Kristen [KDA]
Subject: File No. 50332

Got a call from Cathy, sister to Richard Johnson. He has passed away.

When you guys get to this file, please contact her at 620 242 6582 for the new contact for Johnson 4K Farms LLC.

I've sent her a WUC update form for File Nos. 2960-D1; 4203 & 4392, and there is also an ownerships under other file No. 4218, but he was not the WUC on this file.

She contacted me because of the work I did on the division.

Leslie Ireland, Environmental Scientist
Kansas Department of Agriculture
Division of Water Resources - Change Unit
(785) 564-6633
Leslie.Ireland@ks.gov
www.agriculture.ks.gov

**Kansas Department of Agriculture
Division of Water Resources**

ADDRESS CHANGE

1. File No(s) 4203, 4218, 4392, 2960-D1, 50332	2. Field Office 3
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3. Informed by _____

<p>4a. Other <u>ADDRESS CHANGE</u> Person ID <u>25050</u> Add Seq# _____</p> <p>JOHNSON 4K FARMS LLC 207 N MAIN ST SUITE 101 MCPHERSON KS 67460-4328</p>	<p>4b. Other <u>ADDRESS CHANGE</u> Person ID _____ Add Seq# _____</p>
<p>4c. Other <u>ADDRESS CHANGE</u> Person ID _____ Add Seq# _____</p>	<p>4d. Other <u>ADDRESS CHANGE</u> Person ID _____ Add Seq# _____</p>

5. Comments _____

Date Prepared **1/13/2021** by **KJN**
Date Entered _____ by _____

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., 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. 50,332** of the applicant

**DEAN ELVIN
320 WELLS FARGO RD
MARQUETTE KS 67464**

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 **January 6, 2020**.
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	
7	17S	5W	40	40	40	40													160

3. That the authorized source from which the appropriation shall be made is surface water from the Smoky Hill River, to be diverted at three (3) pump sites located as follows: one in the Southwest Quarter of the Southeast Quarter of the Southeast Quarter (SW¼ SE¼ SE¼) of Section 6, more particularly described as being near a point 80 feet North and 1,160 feet West of the Southeast corner of said section; one in the Southeast Quarter of the Southeast Quarter of the Southeast Quarter (SE¼ SE¼ SE¼) of Section 6, more particularly described as being near a point 125 feet North and 160 feet West of the Southeast corner of said section; and one in the Southwest Quarter of the Southwest Quarter of the Southeast Quarter (SW¼ SW¼ SE¼) of Section 6, more particularly described as being near a point 210 feet North and 2,430 feet West of the Southeast corner of said section, all in Township 17 South, Range 5 West, McPherson 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 **95 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, 2022 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, 2026 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 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 stream flow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of this water right or permit.

17. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

18. 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.

19. That during the period October 1 through June 30, the verbal or written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, shall be obtained in order to divert water each time the applicant desires to divert water.

20. That during the period July 1 through September 30 each calendar year, no direct diversions of surface water shall be permitted unless written permission is obtained from the Chief Engineer, or the Chief Engineer's authorized representative.

21. That the quantity of water and rate of diversion approved under this permit is further limited to the quantity and rate which combined with Water Right, File No. 2,960-D1, will provide a **total not to exceed 95 acre-feet** of water per calendar year to be diverted at a maximum diversion rate not in excess of **1,000 gallons per minute (2.23 c.f.s.)** for irrigation use from the points of diversion described herein.

Ordered this 29 day of January, 2021, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

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

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 29 day of January, 2021, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman
Notary Public

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

February 2, 2021

DEAN ELVIN
320 WELLS FARGO RD
MARQUETTE KS 67464

RE: Appropriation of Water, File No. 50,332

Dear Mr. Elvin:

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 Applications and Changes Supervisor
Division of Water Resources

KAB: dws
Enclosure(s)

pc: Stockton Field Office
Kansas Water Office
Johnson 4K Farms LLC

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 2 day of February, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,332, dated 2 February 2021 was mailed postage prepaid, first class, US mail to the following:

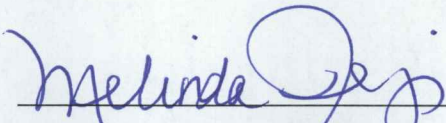
DEAN ELVIN
320 WELLS FARGO RD
MARQUETTE, KS 67464

With photocopies to:

JOHNSON 4K FARMS LLC
207 N MAIN ST SUITE 101
MCPHERSON KS 67460-4328

KANSAS WATER OFFICE
900 SW JACKSON ST STE 404
TOPEKA KS 66612

Stockton Field Office



Division of Water Resources