

File No. 50,692	15. Formation Code:	Drainage Basin: Ninnescah River	County: SG	Special Use:	Stream:																	
16. Points of Diversion T MOD DEL ENT			17. Rate and Quantity																			
PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized	Additional													
								Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files										
MOD	89184	NE SE SE	14	11S	20W	5	780	495	600	98	600	71	none									
18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft																						
19. Limitation: _____ MG/yr at _____ gpm (_____ cfs) when combined with file number(s) _____ Limitation: 98 af/yr at _____ gpm (_____ cfs) when combined with file number(s) 37126																						
20. Meter Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No To be installed by _____ Date Acceptable Meter Installed _____																						
21. Place of Use T MOD DEL ENT		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files	
	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					
DEL	9949	23	11S	20W	1	10													10	7a	no	37126
MOD	37949	14	11S	20W	1	25	13	10	22										70	7a	yes	37126
Comments:																						

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
M E M O R A N D U M

TO: Files

DATE: April 18, 2023

FROM: Rebecca Pollett

RE: Application, File No. 50,692 & Change
Application, File No. 37,126

Dustin and Anne Bemis have filed the above referenced new application to appropriate 98 acre-feet for irrigation use at a maximum diversion rate of 600 gpm total from one pumpsite located in the Southeast Quarter (SE $\frac{1}{4}$) of Section 14, Township 11 South, Range 20 West, Ellis County, Kansas.

The closest surface water right is authorized by File No. 50,042 and is located $\frac{3}{4}$ mile downstream. The approval of this application should not impact any senior water users. A nearby notification letter outlining the proposed new and change application was mailed on December 13, 2022. No response has been received to date.

The place of use is currently authorized in part by Appropriation of Water, File No. 37,126. A change in place of use has been filed for File No. 37,126, which will create a complete overlap. The place of use will cover a total of 70 acres in Section 14, both in Township 11 South, Range 20 West, Ellis County, Kansas. The change application for File No. 37,126 will be worked as a package with File No. 50,692. File No. 50,692 will be limited to 98 acre-feet when combined with File No. 37,126

The requested quantity of 98 acre-feet on 70 acres is equivalent to 1.4 acre-feet per acre, which is the maximum allowable quantity for irrigation use in Ellis County, Kansas. File No. 50,692 will be authorized to 98 acre-feet. File No. 37,126 is authorized 27 acre-feet. Since both will overlap in place of use (70 acres), 50,692 is asking for 71 acre-fee-feet additional quantity.

The new application originally requested 138.88 acre-feet to irrigate 99.2 acres. However, it is subject to K.A.R. 5-3-15(b)(5). File No. 37,126 is currently authorized 27 acre-feet, which is not sufficient quantity to demonstrate that the junior surface water file (50,692) will not be needed in July, August, and September. In multiple discussions with New Applications and Change Applicants Unit Supervisor, Kristen Baum, and Stockton Field Office Water Commissioner, Kelly Stewart, it was determined that 66 acres would be a reasonable acreage (based on 40% of the 50% NIR in Ellis County). Mr. Bemis spoke with Kelly and suggested the idea of a 70-acre pivot. Kelly and Kristen both agreed that 70 acres is close enough to suffice.

In an email conversation on April 18, 2023, Kelly Stewart, Water Commissioner for Stockton Field Office, recommended approval of the referenced application.

Based on the above discussion, approval of the applications will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced applications be approved.



Rebecca Pollett
Environmental Scientist
Division of Water Resources

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. 50,692** of the applicant

**DUSTIN & ANNE BEMIS
1581 170TH AVE
HAYS KS 67601**

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 15, 2021**.
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	
14 - 11S - 20W	25	13	10	22													70

3. That the authorized source from which the appropriation shall be made is surface water from the Saline River to be diverted at a pumpsite located in the Northeast Quarter of the Southeast Quarter of the Southeast Quarter (NE¼ SE¼ SE¼) of Section 14, more particularly described as being near a point 780 feet North and 495 feet West of the Southeast corner of said section, in Township 11 South, Range 20 West, Ellis County, Kansas, located substantially as shown on the aerial photograph accompanying the application.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **600 gallons per minute (1.34 c.f.s.)** and to a quantity not to exceed **98 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, 2024**, 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, 2028**, 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 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.

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

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.

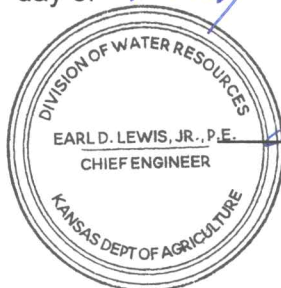
18. That during the period October 1 through June 30, the verbal or written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, shall be obtained in order to divert water each time the applicant desires to divert water.

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

20. That the quantity of water approved under this permit is further limited to the quantity which combined with water Right, File No. 37,126, will provide a total not to exceed **98 acre-feet** of water per calendar year for irrigation use on the land described herein.

21. 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.

Ordered this *30th* day of *May*, 2023, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.

Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this *30* day of *May*, 2023, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings

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

May 31, 2023

DUSTIN & ANNE BEMIS
1581 170TH AVE
HAYS, KS 67601

RE: Appropriation of Water
File No. 50,692

Water Right
File No. 37,126

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. Also enclosed is an order executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the application for change under the above referenced water right file number. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in both orders.

For the approved permit, a 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 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.

Since the change order for the referenced water right file number modifies the original document, it should be recorded with the Register of Deeds as other instruments affecting real estate.

DUSTIN & ANNE BEMIS
File Nos. 37,126 and 50,692
Page 2 of 2

Also included 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/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:rrp
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 *31* day of *May*, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,692, dated *May 30*, 2023, was mailed postage prepaid, first class, US mail to the following:

DUSTIN & ANNE BEMIS
1581 170TH AVE
HAYS KS 67601

With photocopies to:

KDA-DWR Stockton Field Office



Division of Water Resources