

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: September 10, 2020

FROM: Doug Schemm

RE: Application, File No. 50,413

James Woolsoncroft has filed the application referred to above for a permit to appropriate 193.5 acre-feet of surface water at the rate of natural flows to be stored in an existing reservoir located in the Southeast Quarter of Section 33, in Township 4 South, Range 11 East, Nemaha County, Kansas. The dam is located on Black Vermillion River Trib 1A, within the Black Vermillion River basin. The point of diversion and place of use are located on property owned by the applicant's wife, Janet Woolsoncroft. The applicant has signed it stating he has legal access to the point of diversion. The place of use comprises a total of 168 acres. Appropriation of Water, File No. 50,276 (groundwater) overlaps in Place of Use.

Specific runoff computations determined that the 172-acre drainage area will generate 193.5 acre-feet of runoff quantity ($172 \text{ acres} \times 13.5"/\text{acre} / 12$), in 1 out of every five (5) years (a 20% chance). The runoff quantity is the limiting factor for storage. The requested quantity of water for direct use (re-diversion) of 184 acre-feet applied to 168 acres is equivalent to the maximum allowable per acre in Nemaha County, Kansas of 1.1 AF/acre, per K.A.R. 5-3-24. The direct use quantity of 184 acre-feet is equivalent to 4.3 times the capacity of the reservoir (42 AF), which is within the normal "rule of thumb" of direct use quantity being no more than 5 times capacity for reasonable storage quantity. Senior File No. 50,276 is authorized 184 acre-feet, therefore this junior application will be limited to 184 acre-feet when combined with the senior file on the place of use, providing no additional water.

The applicant identified five upstream and downstream landowners within one-half ($\frac{1}{2}$) mile of the property lines, and nearby landowner letters were sent out on August 14, 2020. One telephone call was received from downstream landowner Gerald McLaughlin. He owns the North Half of Section 34 and runs 10 cow/calf pairs on an 80-acre pasture (on the west end of his property), and he is concerned about how the application will affect his cattle watering from the stream. We discussed his senior domestic water right, and that we can require the applicant to bypass inflows into the reservoir. Mr. McLaughlin also has a small pond in the pasture but it has gone dry on occasion. Please note that the reservoir for this application is located near the top of the drainage for this tributary stream, and any downstream user would benefit from surface runoff entering the system below this reservoir. In addition, there are two other tributary streams that flow onto Mr. McLaughlin's property. Therefore, there is no indication that senior water rights will be impaired.

There are no other surface water rights within a two-mile radius circle according to the WRIS database. No senior file would be impaired with approval of this application.

The dam is jurisdictional for DWR Water Structures Permitting and has already been permitted under Structures File No. DNM-0063.

As allowed by K.S.A. 82a-706(c) an approved water flow meter shall be installed on the secondary diversion works (pump site) for this file. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed. Since this is an existing reservoir, no Special Condition on the Permit is needed to provide an initial fill quantity.

James Woolsoncroft
File No. 50,413
Page 2

In a September 9, 2020 discussion, Katie Tietsort, Water Commissioner, Topeka Field Office, stated that the referenced new application should be approved. Based on the above discussion, that this area is open to new appropriations, the proposed appropriation of water is reasonable and justified, the dam is already permitted by DWR Water Structures Permitting, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Doug Schemm
Environmental Scientist
Topeka Field Office

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. 50,413** of the applicant

**JAMES WOOLSONCROFT
PO BOX 205
FRANKFORT KS 66427**

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 **July 20, 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				
33	4	11E			40	40												40	40	4	4	168

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to Black Vermillion River, designated in the office of the Chief Engineer as Black Vermillion River Trib 1A, not needed to satisfy all vested rights and prior appropriation rights to be incrementally accumulated as reservoir storage space becomes available to a maximum extent of **193.5 acre-feet** per calendar year in one (1) reservoir created by a dam located in the Northeast Quarter of the Southwest Quarter of the Southeast Quarter (NE¼ SW¼ SE¼) of Section 33, more particularly described as being near a point 1,016 feet North and 1,490 feet West of the Southeast corner of said section, in Township 4 South, Range 11 East, Nemaha County, Kansas, to provide **184 acre-feet** of water as needed for direct irrigation use to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **2,000 gallons per minute** (4.46 c.f.s.). A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. 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, which is currently \$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, which is currently \$100.00.

5. 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, which is currently \$100.00.

6. 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.

7. 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.

8. 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.

9. 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.

10. That all re-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 re-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.

11. That an acceptable water flow meter shall be installed and maintained on the re-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).

12. 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.

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

14. 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.

15. 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.

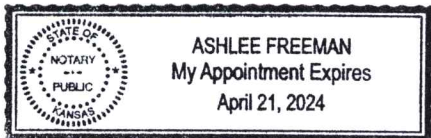
16. That the quantity of water approved under this permit is further limited to the quantity which combined with Appropriation of Water, File No. 50,276, will provide a **total not to exceed 184 acre-feet** of water per calendar year for irrigation use on the land described herein.

Ordered this 28 day of April, 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 28 day of April, 2021, by Lane P. Letourneau, P.G., 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

May 5, 2021

JAMES WOOLSONCROFT
PO BOX 205
FRANKFORT KS 66427

RE: Appropriation of Water, File No. 50,413

Dear Mr. Woolsoncroft:

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 re-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 Topeka Field Office at 785-296-5733. 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 style.

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

KAB:dws:li
Enclosure(s)

pc: Topeka Field Office
Janet Woolsoncroft

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

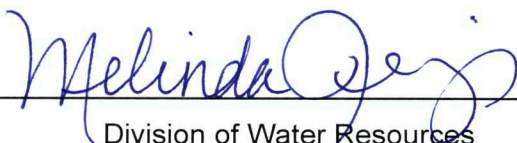
On this 5 day of May, 2021, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,413, dated 28 April, 2021, was mailed postage prepaid, first class, US mail to the following:

JAMES WOOLSONCROFT
PO BOX 205
FRANKFORT, KS 66427

With photocopies to:

JANET WOOLSONCROFT
PO BOX 205
FRANKFORT, KS 66427

Topeka Field Office



Division of Water Resources