

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

1. File Number: <p style="text-align: center;">50,489</p>	2. Status Change Date: <p style="text-align: center;">2/7/2022</p>	3. Field Office: <p style="text-align: center;">1</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 67623
New to system Add Seq# _____

R J EICHMAN FAMILY LLC
PO BOX 668
MANHATTAN, KS 66505-0688

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: 12/31/2023 11. Perfection Date: 12/31/2027 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: **10/14/2021** By: **KJN**
Date Entered: 2/8/2022 By: LMoody

1/28/2022
Llreland

File No. **50,489** 15. Formation Code: Drainage Basin: **KANSAS RIVER** County: **WB** Special Use: Stream: **KS RIVER**

16. Points of Diversion										17. Rate and Quantity					
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		
											Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
CHK	88528	SE SW NW	17	11S	13E	8	2823	4550			2000	124.3	2000	124.3	none

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

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

20. Meter Required? **x Yes** No To be installed by **12/31/2023** Date Acceptable Meter Installed _____

21. Place of Use MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files				
						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	70213	17	11S	13E	5								7					28	0.5					35.5	7a	NO	NONE		
CHK	70214	18	11S	13E	5	0.5				29										39				9	77.5	7a	NO	NONE	

Comments:
REMOVE MILL CREEK 1 (KANSAS) IN WRIS – SOURCE WILL JUST BE KANSAS RIVER

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: October 13, 2021

FROM: Kris Neuhauser

RE: New Application, File No. 50,489

R.J. Eichman Family LLC has filed the above referenced new application proposing to appropriate 124.3 acre-feet of surface water per calendar year at a maximum diversion rate not to exceed 2,000 gallons per minute for irrigation use from one (1) pumpsite on the Kansas River. The proposed point of diversion and place of use do not overlap any existing water rights. The point of diversion will be located in the Southeast Quarter of the Southwest Quarter of the Northwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 17, more particularly described as being near a point 2,823 feet North and 4,550 feet West of the Southeast corner of said section, in Township 11 South, Range 13 East, Wabaunsee County, Kansas (Kansas River Basin). Although the pumpsite is physically located on Mill Creek, the source will be backwater from the Kansas River. The applicant owns the point of diversion and has signed the legal access statement on Part 6 of the application.

The proposed place of use is a total of 113 acres, located in the Northwest and Southwest Quarters of Section 17, and the Northeast and Southeast Quarters of Section 18, both in Township 11 South, Range 13 East, Wabaunsee County Kansas; owned entirely by the applicant.

The maximum quantity allowed for irrigation use in Wabaunsee County, Kansas is 1.1 acre-feet per acre. The requested quantity of 124.3 acre-feet is the maximum quantity allowed for the 113-acre place of use. (113 acres x 1.1 AF/acre = 124.3 AF). Therefore, the quantity appears to be reasonable.

The application identified three landowners $\frac{1}{2}$ mile upstream and downstream of the proposed point of diversion (confirmed by ORKA) Notification letters were mailed on September 29, 2021. No response of any kind has been received to date. The closest water rights are located just under a mile away both upstream and downstream (File Nos. 49,100 and 49,029-A).

No minimum desirable streamflow form is required to be signed for applications on the Kansas River.

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.

Katie Tietsort, Water Commissioner of the Topeka Field Office, gave a recommendation that the new application should be approved, in an e-mail conversation on October 14, 2021.

Based on the above discussion, the area is open to new appropriations 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
New Applications Lead
Water Appropriation Program

From: Tietsort, Katie [KDA]
Sent: Thu 10/14/2021 3:53 PM
To: Neuhauser, Kris [KDA]
Cc: Bunger, Brett [KDA]
Subject: RE: 50489 recommendation request

Hello Kris,

Once we add the explanation of the backwater memo and photos, this one is good to move forward. Thanks!

Katie Tietsort

Water Commissioner

Katie.Tietsort@ks.gov
Ph. 785-296-5733 Cell 785-213-9188
Kansas Department of Agriculture
Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Thursday, October 14, 2021 3:13 PM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Cc: Bunger, Brett [KDA] <Brett.Bunger@ks.gov>
Subject: 50489 recommendation request

Katie,

Attached is 50489 for your review and recommendation. Single pumpsite for irrigation use. Doug worked up the app. Short, straightforward memo – I tend to want to add more detail if it's only one page.. but maybe this one is okay.

Doug did note 'although the pumpsite is physically located on Mill Creek, the source of water will be the Kansas River (backwater)'. Just wanted to emphasize that - to confirm we're okay naming the source Kansas River as opposed to Mill Creek. Didn't know if you wanted to dig any further into it. Just let me know.

Thanks!

Kris Neuhauser
New Applications Lead
Kansas Department of Agriculture, Division of Water Resources
Phone: 785-564-6643
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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: April 29, 2014

FROM: Brett L. Bunger *BLB*

RE: Mill Creek site review
Kansas River backwater

On March 20, 2014, I met with Richard Feyh at the Brethour Farm. Mr. Feyh had recently inquired about obtaining additional water rights from Mill Creek and I told him that the only way he could do that was show that the Kansas River backwater influenced water availability at his pumpsites. Otherwise, a new application would not be approved that contemplated the use of natural flows directly from Mill Creek.

Mr. Feyh provided some of his historical knowledge of the creek based on the fact that he has farmed this ground since around 1997. He indicated that the Brethour Water Rights, File Nos. 24143; 36596 & 36597 authorize two pumpsites on Mill Creek. He indicated that the South pumpsite can be influenced by the backwaters of the Kansas River, however, it would not be a constant. He was very sure that the North Pumpsite is constantly under the influence of the Kansas River backwater because there are no riffles downstream of the North Pumpsite that would impede the backwater from reaching that far upstream. He said that a few years back he drove over the Maple Hill Bridge and noticed that Mill Creek was completely dry. He said that the backwater situation became very evident at this time because he had plenty of water at his South pumpsite. He attributed the higher Kansas River flows to navigation releases that were a big topic during that time period.

To begin the investigation, Mr. Feyh took me to the only riffles that he knew of. On the attached aerial photo these sites are identified as Site #1 and Site #2. At Site #1 we observed a flowing riffle. At this location it was obvious that on this day the river backwater was not influencing this location so the South pumpsite would only be taking the natural flows of Mill Creek which was running about 17 cfs at the Paxico Gage. At Site #2 we observed another small riffle which was mostly a man-made base laid on the bottom of Mill Creek. At this location Richard pointed out obvious marks on the stream-bank where the normal water level would be. The normal level appeared to be about 1 to 1.5 feet above the water level that we observed. Raising the water level that amount would certainly allow water to move upstream past the riffle at Site #1.

We continued on downstream taking pictures at various sites. We stopped at the North pumpsite which is identified as Site #4. Mr. Feyh made the observation that he could not remember seeing the water levels this low.

After Site #5 I left Mr. Feyh and continued on downstream taking pictures at various locations. No riffles were detected. At Site #8, which is a pumpsite proposed under Application, File No. 49,029A, I took additional pictures. At this site there was an obvious difference on the opposite bank of where normal water level is and where the water level was on March 20th. At Site #9 I observed the confluence of the Kansas River and Mill Creek. It was quite obvious that the Kansas River level was very low.

On March 20th, the elevation of the Kansas river at the Belvue Gaging station was 5.40. For comparison I looked at what the Median Gage Height for the Belvue Gage was during the time period of June 1 through September 30th which would correspond with the irrigation season. The median gage height during this time period was for the most part at 7.0 and above. The difference between elevation 5.4 and 7.0 is about 1.5 feet which corresponds well with the normal water level marks observed along Mill Creek on March 20th.

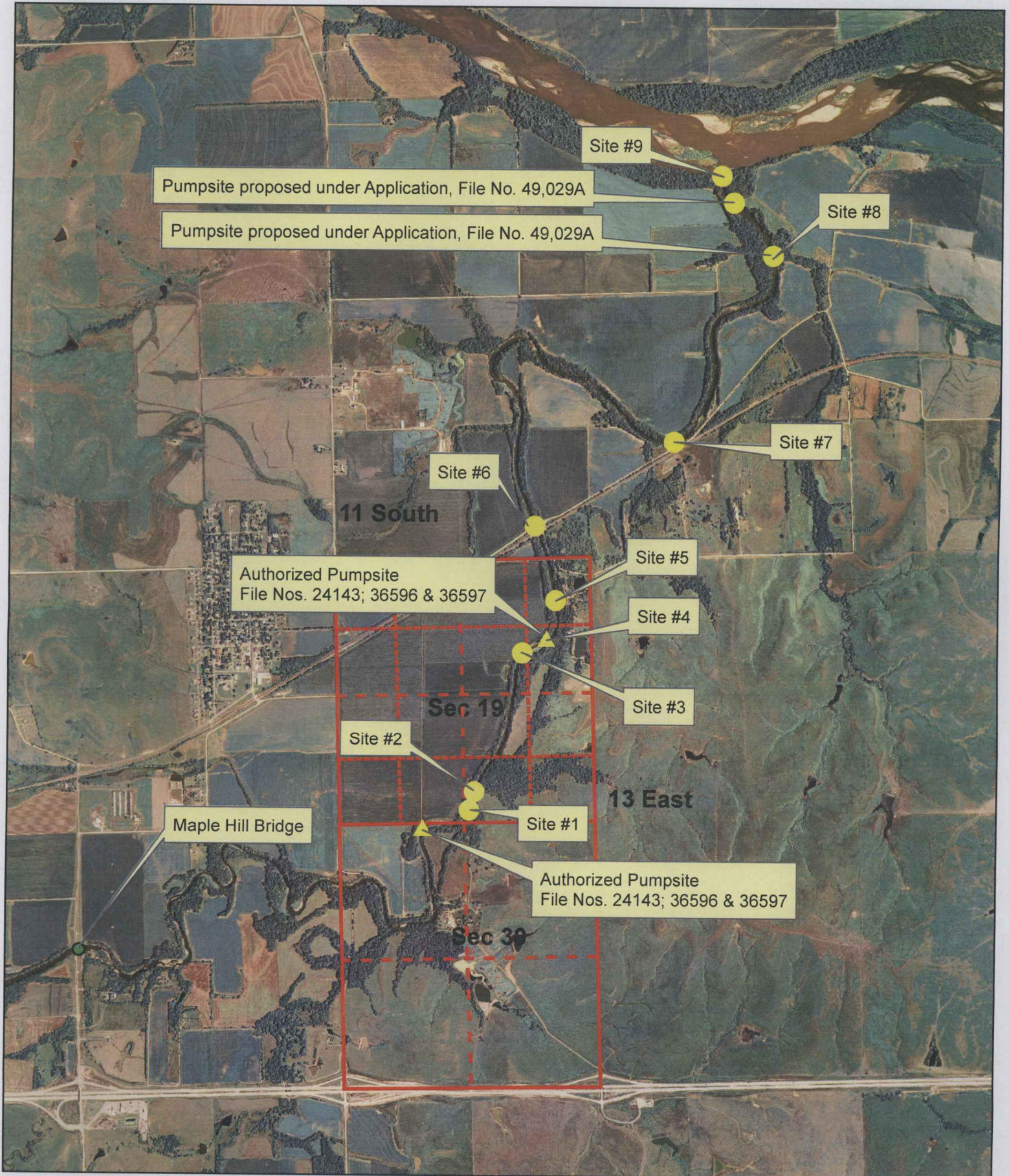
I used Google Map as another tool to run the full stretch of Mill Creek. I verified the date of the map to be September 1, 2012, which was during the drought. I began at the Maple Hill bridge which showed

MEMORANDUM
RE: MILL CREEK SITE REVIEW
KANSAS RIVER BACKWATER
APRIL 29, 2014
PAGE 2

very little water in the creek and moved downstream from there. The Gage at Paxico indicated that Mill Creek was flowing at 5 cfs. From the Maple Hill bridge to Site #2 it was somewhat difficult to get a full view of the stream because it was somewhat narrow with a lot of overhanging trees. However, I could see the riffle at Site #1. A short distance downstream of Site #2 the creek starts getting wider and a full view of the creek can be seen. From this point all the way to the confluence with the Kansas River I did not observe any riffles. On September 1, 2012, the Belvue Gage Height was a little over 6.0. This provides further verification that at elevation 6.0 there is backwater all the way to at least Site #3, therefore, when considering the fact that the median elevation of the river during the irrigation season is typically another foot higher, it can be verified that backwater conditions exist at the North pumpsite. It also becomes obvious that the pumpsites proposed under Application, File No. 49,029A are under the influence of the Kansas River backwaters.

1:30,000

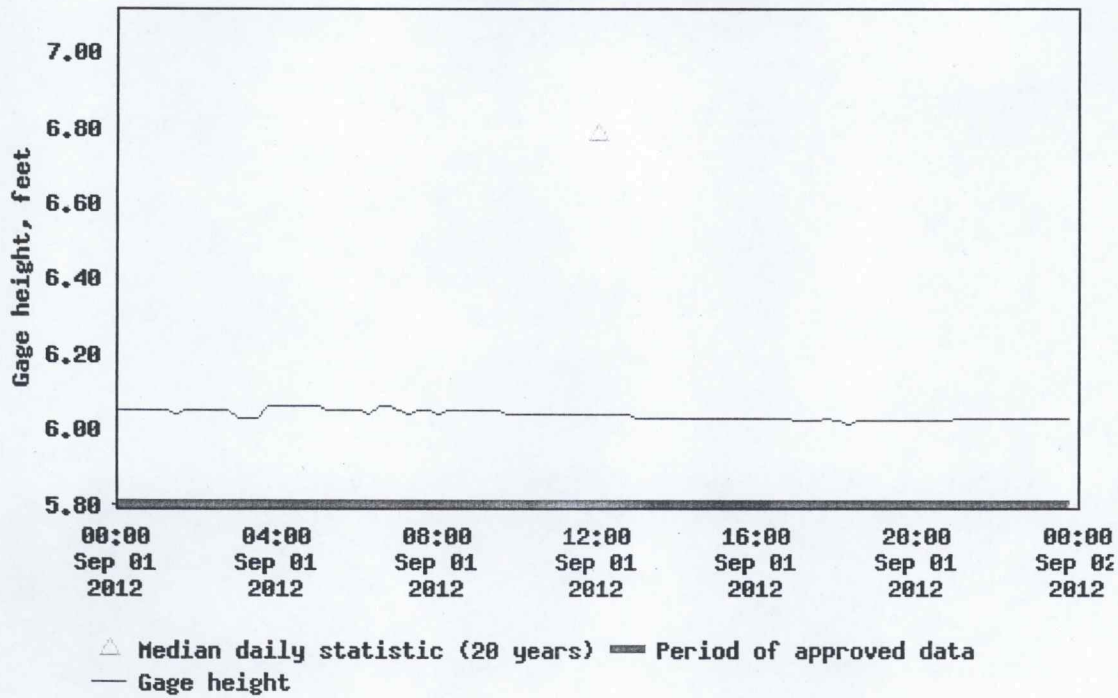
Mill Creek Review



Gage height, feet

Most recent instantaneous value: 5.42 04-21-2014 09:30 CDT

USGS 06888350 KANSAS R NR BELVUE, KS

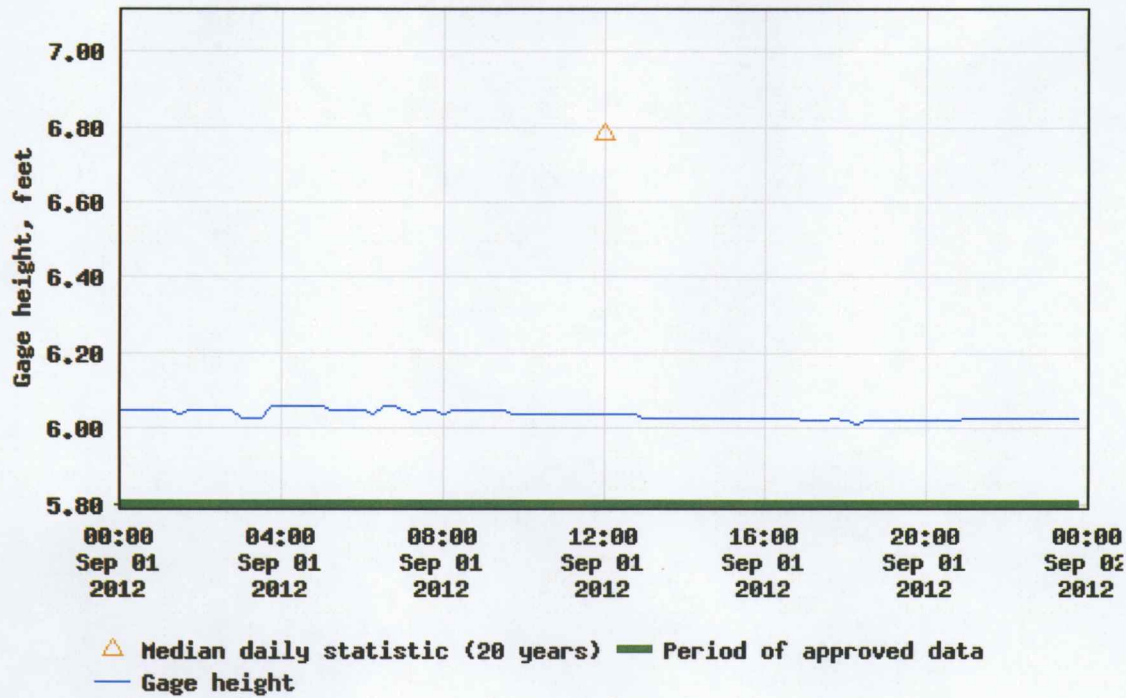


Belvue Gage heisht 9-1-12

Gage height, feet

Most recent instantaneous value: 5.42 04-21-2014 09:30 CDT

USGS 06888350 KANSAS R NR BELVUE, KS

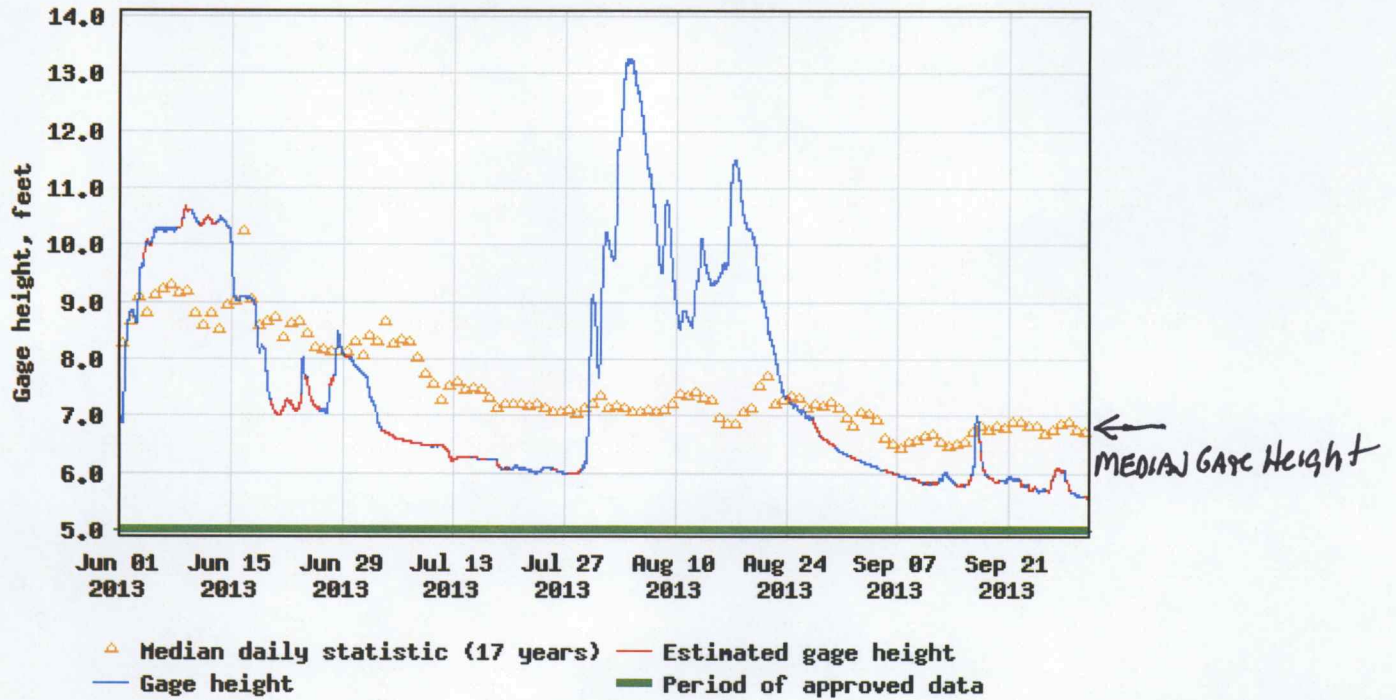


Belvue Gage height 9-1-12

Gage height, feet

Most recent instantaneous value: 5.59 04-17-2014 10:30 CDT

USGS 06888350 KANSAS R NR BELVUE, KS

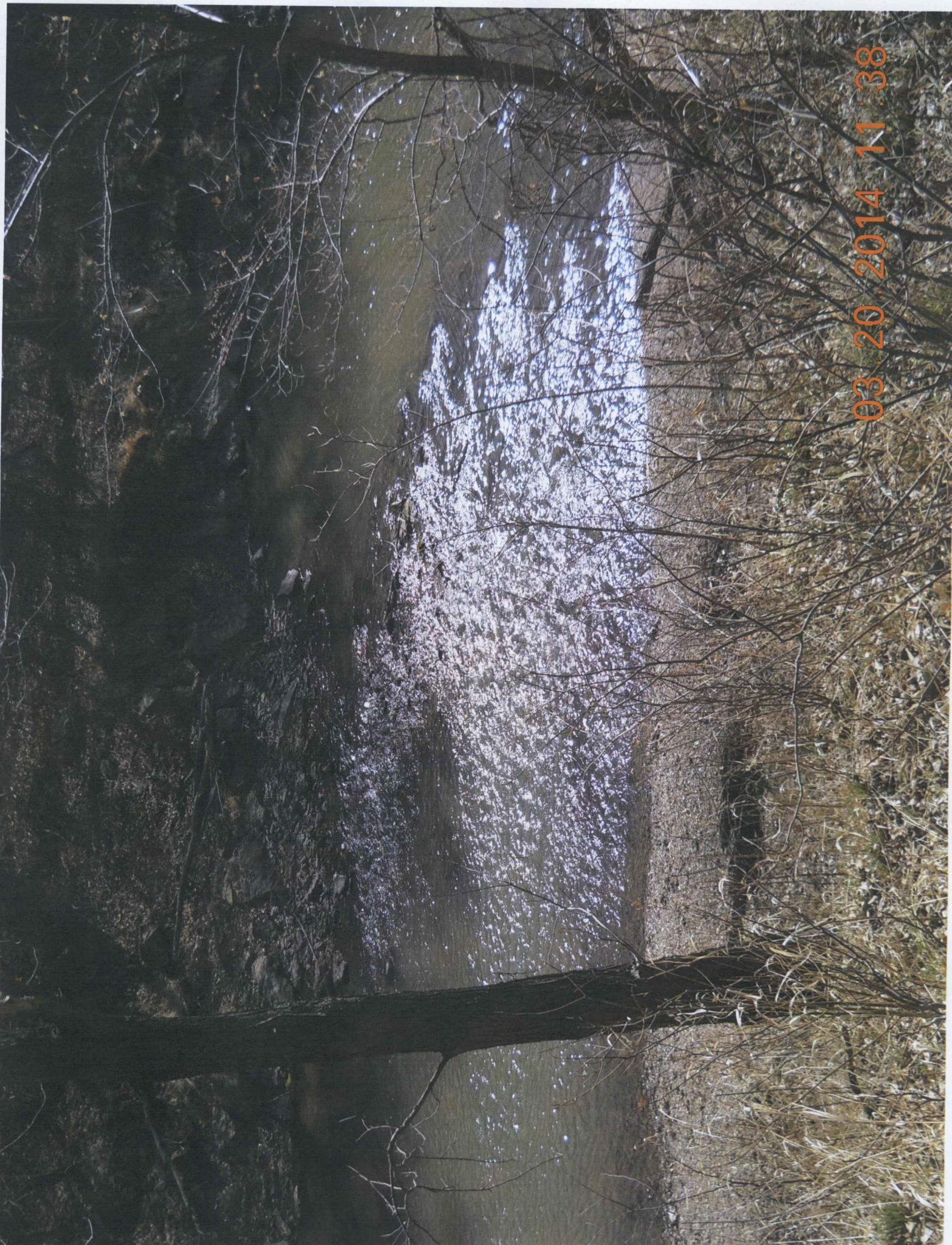


Belvue GAGE

SHOWS MEDIAN DAILY HEIGHT FOR JUNE 1 - Sep. 30

RIFPLE AT SITE #1

03.20.2014 11:38



SITE #2



SITE #2 upstream from riffle



SITE #3 DOWNSTREAM VIEW



SITE #3 UPSTREAM VIEW





SITE #4
LOOKING DOWNSTREAM



SITE #4 (PUMPSIDE)

SITE #5 LOOKING UPSTREAM



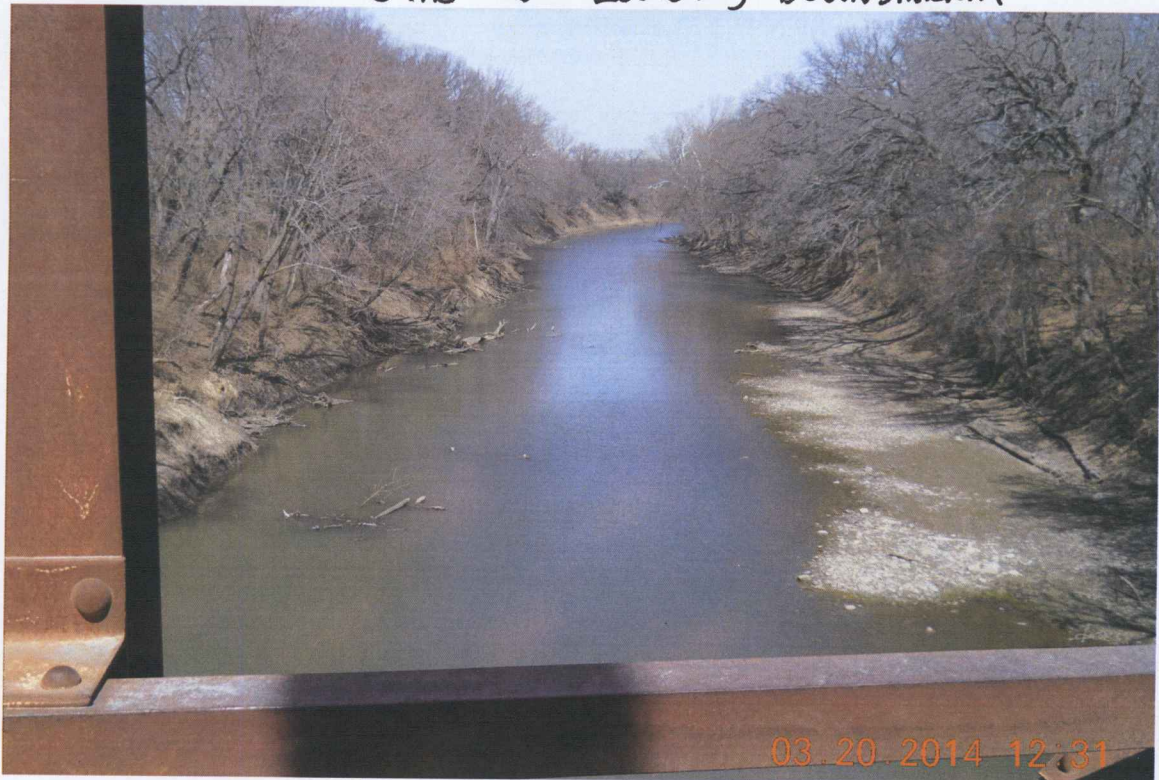
SITE #5 LOOKING DOWNSTREAM



SITE #6 LOOKING UPSTREAM



SITE #6 LOOKING DOWNSTREAM



SITE #7 Looking Downstream

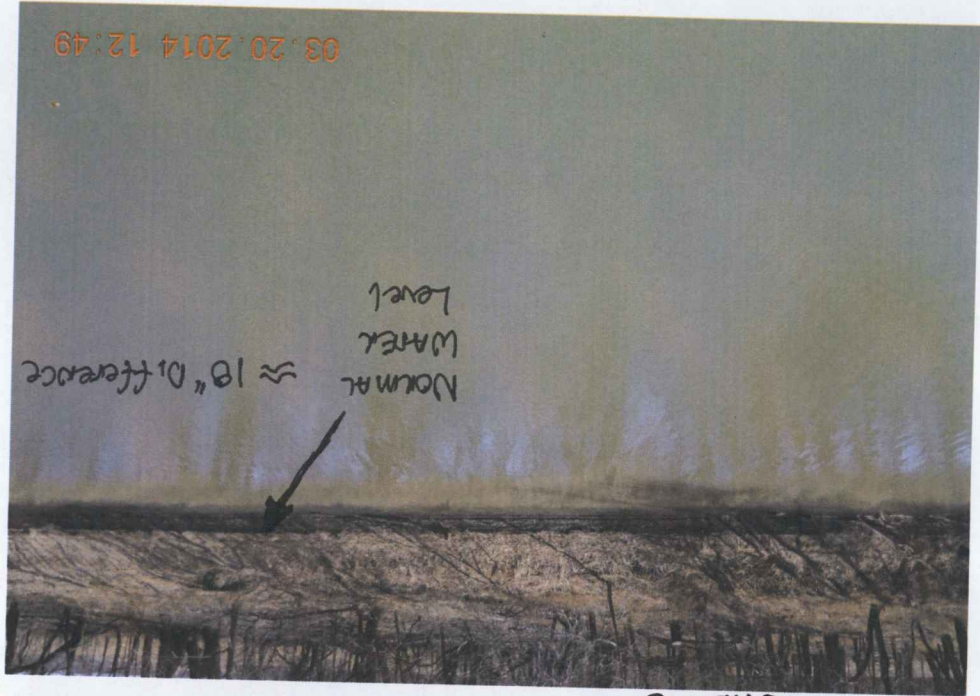


SITE #7 Looking Upstream





Site #8 Looking Downstream



Site #8

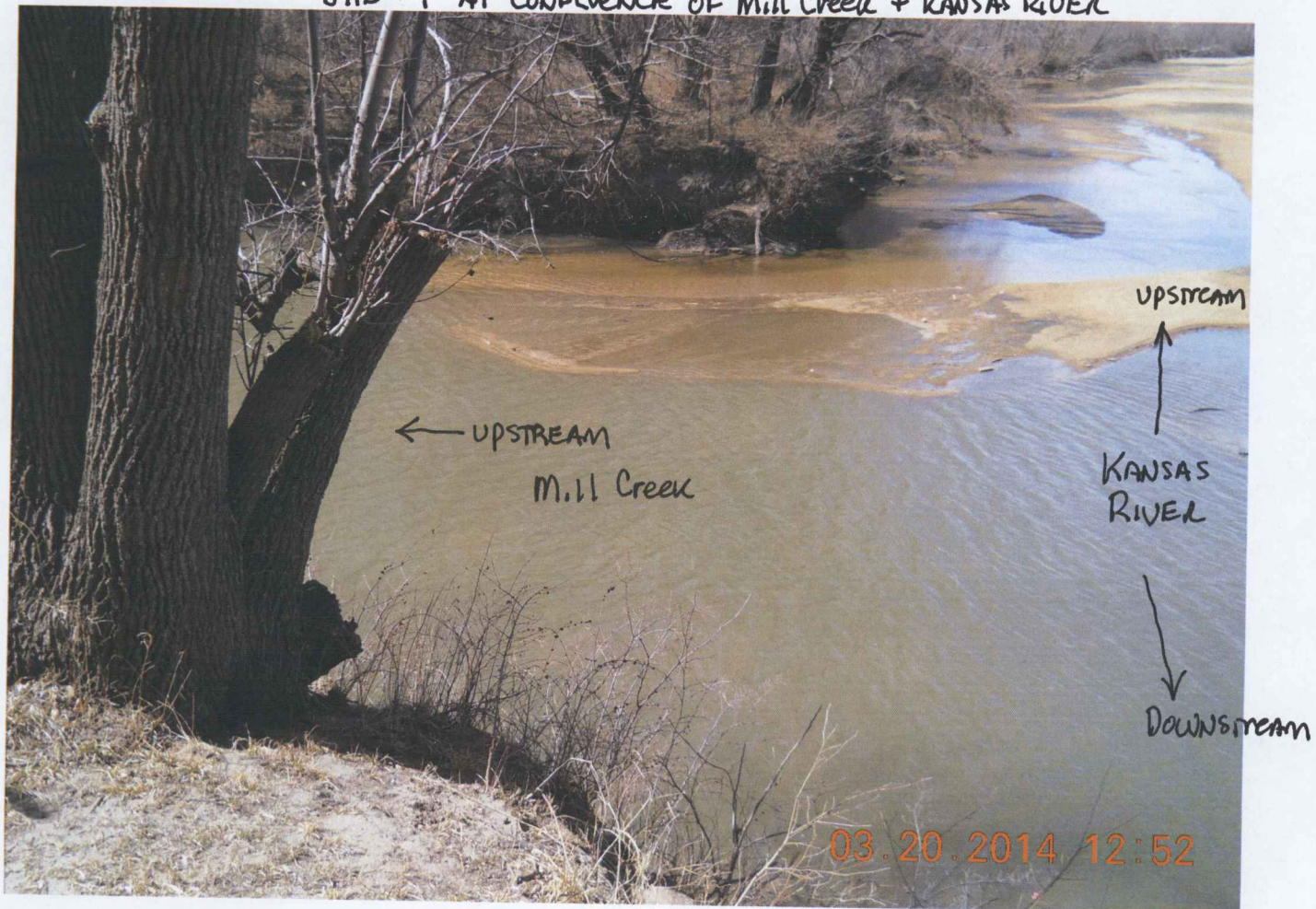


Site #8 Looking Upstream

Site #9 Looking upstream



Site #9 AT CONFLUENCE OF Mill Creek + KANSAS RIVER



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. 50,489** of the applicant

**R J EICHMAN FAMILY LLC
PO BOX 668
MANHATTAN, KS 66505-0688**

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 21, 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	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	
17	11S	13E						7			28	0.5							35.5
18	11S	13E	0.5			29								39				9	77.5

3. That the authorized source from which the appropriation shall be made is surface water from the Kansas River to be diverted at a one (1) pumpsite located in the Southeast Quarter of the Southwest Quarter of the Northwest Quarter (SE¹/₄ SW¹/₄ NW¹/₄) of Section 17, more particularly described as being near a point 2,823 feet North and 4,550 feet West of the Southeast corner of said section, in Township 11 South, Range 13 East, Wabaunsee County, Kansas.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **2,000 gallons per minute (4.46 c.f.s.)** and to a quantity not to exceed **124.3 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, 2023** 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, 2027** 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.

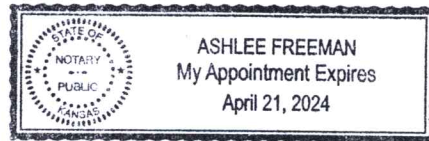
Ordered this 7 day of February, 2022, in Manhattan, Riley County, Kansas.

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 7 day of February, 2022, 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

February 8, 2022

R J EICHMAN FAMILY LLC
PO BOX 668
MANHATTAN, KS 66505-0688

RE: Appropriation of Water, File No. 50,489

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 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,

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB: kjn
Enclosure(s)

pc: Topeka 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.

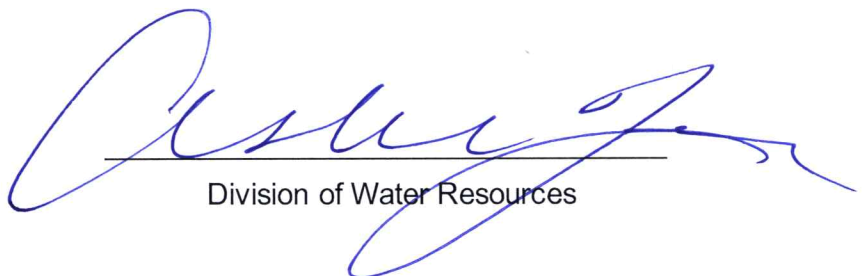
CERTIFICATE OF SERVICE

On this 8 day of February, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,489, dated 7 February 2022 was mailed postage prepaid, first class, US mail to the following:

R J EICHMAN FAMILY LLC
PO BOX 668
MANHATTAN, KS 66505-0688

With photocopies to:

Topeka Field Office



Division of Water Resources