

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

1. File Number: <p style="text-align: center; font-size: 1.2em;">50,916</p>	2. Status Change Date: <p style="text-align: center; font-size: 1.2em; color: blue;">4/23/2024</p>	3. Field Office: <p style="text-align: center; font-size: 1.2em;">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

<p>7a. Applicant(s) Person ID <u>64949</u> New to system <input type="checkbox"/> Add Seq# _____</p> <p style="margin-top: 20px;">BRETT HERRS 811 KING ROAD LINN, KS 66953-9290</p>	<p>7c. Landowner(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p>
<p>7b. Landowner(s) Person ID <u>69440</u> New to system <input type="checkbox"/> Add Seq# _____</p> <p style="margin-top: 20px; color: red;">BRETT, QUENTIN, & TYLER HERRS 811 KING ROAD LINN, KS 66953-9290</p>	<p>7d. Misc. Person ID _____ New to system <input type="checkbox"/> Add Seq# _____</p>

<p>8. WUR Correspondent Person ID _____ New to system <input type="checkbox"/> Add Seq# _____ Overlap File (s) WUC Notarized WUC Form <input type="checkbox"/> Agree <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="margin-top: 20px; font-size: 1.2em;">7a</p>	<p>9. Use of Water: Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p style="margin-left: 40px;"><input checked="" type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water</p> <p style="margin-left: 40px;"><input checked="" type="checkbox"/> IRR <input type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN</p> <p style="margin-left: 40px;"><input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON</p> <p style="margin-left: 40px;"><input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG</p> <p style="margin-left: 40px;"><input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____</p>
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10. Completion Date: **12/31/2025** 11. Perfection Date: **12/31/2029** 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: 4/19/2024	By: KJN
Date Reviewed: 4/19/2024	By: KAK
Date Entered: 4/24/2024	By:
KAnderson	

File No. 50,916	15. Formation Code: 330	Drainage Basin: REPUBLICAN RIVER	County: WS	Special Use:	Stream:																
16. Points of Diversion T MOD DEL PDIV ENT Qualifier S T R ID 'N 'W			17. Rate and Quantity Authorized Additional Rate gpm Quantity af Rate gpm Quantity af Overlap PD Files																		
			MOD 1141 SW NE SE 29 3S 2E 1 1614 1064	750 156	750 156	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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by 12/31/2024 ²⁰²⁵ Date Acceptable Meter Installed _____																					
21. Place of Use T 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 71138 29 3S 2E 2																		32.5 32.5 32.5 32.5 130.0	7a	no	none
Comments:																					

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: March 26, 2024

From: Kris Neuhauser, Environmental Scientist

Re: New Application File No. 50,916 – Quentin, Tyler, and Brett Herrs

Summary

Quentin, Tyler, and Brett Herrs have filed an application to appropriate groundwater to irrigate 130 acres in Washington County, Kansas, requesting one well, with a quantity of 156 acre-feet of water per calendar year, at a diversion rate of 750 gallons per minute. The well is existing, and was previously authorized by File No. 26,972, which has since been dismissed (1991). The current applicant is the new landowner and looking to use it for irrigation once again.

Reasonable Rate and Quantity

The proposed quantity of 156 acre-feet per calendar year provides 1.2 acre-feet per acre, making it the maximum reasonable quantity for Washington County (1.2×130 acres = 156 acre-feet).

Source of Supply and Safe Yield

Based on the well log and nearby logs and the 'Top Configuration of the Dakota Aquifer' geologic map (via KGS, circa 1995), the source of supply appears to be the unconfined Dakota Aquifer. Evaluation of the area of consideration included the extent of the confined aquifer, which provided an area of consideration of 8,042 acres. With a potential annual recharge of 2.8 inches, and 75% of recharge available for appropriation, safe yield was determined to be 1,407.43 acre-feet. Existing water rights have appropriated 296.55 acre-feet, providing a difference of 1,110.89 acre-feet available for appropriation, and the application requesting 156 acre-feet complies with safe yield.

Nearby Water Rights

The closest non-domestic well is roughly 2,450 feet away, authorized by Water Right, File No. 46,858, which also sources the Dakota aquifer. The closest domestic well is over 4,000 feet away. Based on K.A.R. 5-4-4, well spacing criteria for wells sourcing unconfined Dakota is met. No domestic wells fall within one half mile of the point of diversion, therefore, no nearby notification letters were required.

Recommendations

Brett Bunker, Water Commissioner of the Topeka field office recommended approval of the application on April 17, 2024. Based on the above discussion, the area is open to new appropriations, the application complies with safe yield and well spacing criteria, and approval of the application should not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.

Analysis Results

The selected PD is in an area OPEN to new appropriations.
 The safe yield based on the variables listed below is 1,407.43 AF.
 Total prior appropriations in the circle is 296.55 AF.
 Total quantity of water available for appropriation is 1,110.89 AF.

50916 PASSES SY*

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 2.8 inches.
 The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 26-MAR-2024 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 3 water rights and 6 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 46858 00	STK	NK	G		NE	NE	NW	5056	2889	32	03	02E	1	WR	15.15	15.15		
Same	STK	NK	G		NE	NE	NW	4943	2915	32	03	02E	2	WR				
Same	STK	NK	G		NE	NE	NW	5078	2875	32	03	02E	3	WR				
Same	STK	NK	G		NE	NE	NW	5147	2878	32	03	02E	4	WR				
A 49343 00	IRR	KK	G		SW	SE	NE	3029	823	21	03	02E	2	WR	281.40	281.40	234.50	234.50
A 50916 00	IRR	AY	G		NC	SE		1320	1320	29	03	02E	1		0.00	0.00	130.00	130.00
															156	156		

From: Bunger, Brett [KDA]
Sent: Wed 4/17/2024 1:01 PM
To: Neuhauser, Kris [KDA]
Subject: RE: 50916 recommendation request

Kris, this one kind of looks like a no-brainer. Not much in this area. I do appreciate your way of thinking when it comes to these Dakota apps. It was my opinion that in the past we had gotten off in the weeds on these things. I can't say it for a fact but just because it looks confined does not necessarily mean that it acts confined. With that said, please proceed with approval.

Brett

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Wednesday, April 17, 2024 11:16 AM
To: Bunger, Brett [KDA] <Brett.Bunger@ks.gov>
Subject: 50916 recommendation request

Brett,

Attached is my SY report and draft memo of 50916 for your review and recommendation. Based on how we've been processing Dakota apps lately, I'm using the full 2-mile circle and calling it unconfined. Part of me always wants to delve further into logs and other ways of thinking on them, but we're trying to simplify how we work Dakota apps. Happy to discuss if you'd like.

Thanks!

Kris

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. 50,916** of the applicant

**BRETT HERRS
122 N PENNSYLVANIA ST
PALMER KS 66962**

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 **November 28, 2022**.
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					
29 - 3S - 2E																	32.5	32.5	32.5	32.5	130.0

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well located in the Southwest Quarter of the Northeast Quarter of the Southeast Quarter (SW¼ NE¼ SE¼) of Section 29, more particularly described as being near a point 1,614 feet North and 1,064 feet West of the Southeast corner of said section, in Township 3 South, Range 2 East, Washington 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 **750 gallons per minute (1.67 c.f.s.)** and to a quantity not to exceed **156 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, 2025**, 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, 2029, 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 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 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.

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

April 25, 2024

BRETT HERRS
122 N PENNSYLVANIA ST
PALMER KS 66962

RE: Appropriation of Water
File No. 50,916

Dear Mr. Herrs:

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/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:kak:kjn

Enclosure(s)

pc: Topeka Field Office
Tyler Herrs
Quentin Herrs

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 25 day of April, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,916, dated April 23, 2024, was mailed postage prepaid, first class, US mail to the following:

BRETT HERRS
122 N PENNSYLVANIA ST
PALMER KS 66962

With photocopies to:

TYLER HERRS
1116 8TH RD
LINN KS 66953

QUENTIN HERRS
1321 10TH RD
LINN KS 66953

KDA-DWR Topeka Field Office



Division of Water Resources