

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: August 4, 2021

FROM: Kris Neuhauser

RE: Application, File No. 50,048

The referenced application has been filed by Harold E. Swanson Family Trust to appropriate groundwater for industrial use. File No. 50,048 is requesting 117.2 acre-feet of water to cover natural evaporative loss from the surface of a groundwater pit with a projected exposed surface area size of 56.25 acres. The pit is located in the Southeast Quarter of Section 21, Township 23 South, Range 5 West, Reno County, Kansas. The geographic center of the pit is represented by a point 1,155 feet north and 1,290 feet west of the Southeast corner of said section. The proposed point of diversion is located within the boundaries of Equus Beds Groundwater Management District No. 2 (GMD 2), who assisted with the application. The pit is located within the Arkansas River basin. The applicant (Guy Swanson) has signed the application form stating he has legal access to the point of diversion.

The applicant does not currently know if hydraulic dredging will be conducted at this site. He may transfer the property to a sand and gravel operator for the actual mining activities. A term permit will be required if hydraulic dredging is performed in the future, or the file can be converted into a Project Permit allowing for both hydraulic dredging and sand washing to be conducted at the site.

Note that the initial application had requested 166.67 acre-feet, based on a groundwater pit size of 80 acres. However, there is no water available at this location per safe yield analysis. Therefore, the applicant was required to obtain water to offset the quantity of water requested for evaporation under this new application. The applicant is dividing Appropriation of Water, File No. 49,601 into 49,601-D1 and 49,601-D2. File No. 49,601-D2 will be used for the offset water, and it has an authorized quantity of 147 acre-feet. K.A.R. 5-13-7(d) allows evaporation from a groundwater pit to be offset by acquiring a water right meeting specific criteria, and restricting the future use of this water right to ensure it will no longer be exercised. It has been determined that 117.2 acre-feet of the 147 acre-feet can be utilized for offset water based on consumptive use calculation (147 AF X 0.797). Appropriation of Water, File No. 49,601 is located approximately 6,400 feet from the proposed sand pit, in the same source of water (Arkansas River alluvium). The applicant has provided a "Consent Agreement for Offset Status" form, which ensures that Appropriation of Water, File No. 49,601-D2 will no longer be exercised after the approval of new Application, File No. 50,048.

The applicant identified one domestic well and one nondomestic well (groundwater pit) located within one-half mile of the center of the proposed groundwater pit. Notification letters were sent out on May 29, 2019. A telephone call was received from the domestic well owner Ellen Beachy, who asked general questions about the application, but did not express any specific impairment concerns.

Based on the rules and regulations in K.A.R. 5-22-2, the proposed point of diversion (i.e. geographic center of the groundwater pit) must meet the minimum spacing distance of 660 feet from all domestic wells, and the minimum spacing interval of 330 feet from the edge of the proposed groundwater pit to all domestic wells. The nearest domestic well is over 1,000 feet from the edge of the pit and the proposed pit complies with minimum well spacing criteria to all other wells.

On July 8, 2021, Tim Boese, Manager of Equus Beds Groundwater Management District No. 2, recommended the referenced application for approval, provided that the consent agreement for offset status submitted by the applicant is approved; a permit condition be added requiring the area around the pit to be bermed or graded, and maintained, to prohibit any surface drainage or storm water runoff from entering the aquifer through the excavated pit; and a sign is permanently posted at the excavation, identifying the excavation as a groundwater pit and stating that dumping or discharges into

the pit are prohibited to prevent contamination of the Equus Beds aquifer – the sign must be a minimum of three feet in length by two feet in width, easily visible, and of durable construction.

In an e-mail conversation on August 26, 2021, Jeff Lanterman, Water Commissioner of the Stafford Field Office, and Cameron Conant, Assistant Water Commissioner of the Stafford Field Office, recommended approval of the referenced application.

Based on the above discussion, the area is open to new appropriations, the application complies with minimum well spacing criteria, the applicant has obtained off-set water to account for evaporative loss, GMD No. 2 recommended approval, and there is no indication that senior water rights will be impaired, it is recommended that the referenced application be approved.

A handwritten signature in black ink, appearing to read "Kris Neuhauser". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kris Neuhauser
New Applications Lead
Water Appropriation Program

From: Lanterman, Jeff [KDA]
Sent: Thu 8/26/2021 3:07 PM
To: Conant, Cameron [KDA];Neuhauser, Kris [KDA]
Cc: Baum, Kristen [KDA]
Subject: RE: 50048 rec request

Kris;

I think we go ahead and approve this one. Its an offset lol. I don't know why this thing would have taken so long at GMD #2.

I would be OK if you put in our normal GW pit permit conditions instead of #2 on Tim's manifesto.

Groundwater levels are steady and high 8' BLS at the site.

Recommend approval.

Thanks
Jeff

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Thursday, August 26, 2021 2:41 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: FW: 50048 rec request

Kristin noted this one, the applicants have been patiently waiting on this for a couple years while it was hung up at GMD#2. Any chance you can make time to move this one on today?

Cam

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Thursday, August 5, 2021 4:19 PM
To: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 50048 rec request

Made some tweaks, see attached!

Kris

From: Neuhauser, Kris [KDA]
Sent: Monday, August 2, 2021 1:16 PM
To: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 50048

Yes, have the 56.25 acres. Looks like Doug adjusted the industrial supp sheet in Docuware to read that. Sounds good though, I'll plan to send a rec request to you guys!

Kris

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Monday, August 2, 2021 1:07 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Subject: RE: 50048

No, sadly there was no such thing that I find on the old emails from 11/27/19. Probably be best to send the actual recommendation request. You have the 56.25 acre max in there?

Cameron

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>

Sent: Friday, July 30, 2021 3:14 PM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Subject: 50048

Hi guys,

Had a question over an older app that Doug was in the process of working – 50048. We just got back a GMD 2 rec. of approval at the beginning of July. Doug already had a memo pretty well drafted up, and referenced that you gave the word of approval in an email on 11/27/2019? Wondered if that was true or not..

I can send more info on the file if need be. Let me know.

Thanks!

Kris

Schemm, Doug [KDA]

From: Guy S. Swanson <SwansonGS@unityonline.org>
Sent: Friday, February 26, 2021 9:50 AM
To: Tim Boese; Schemm, Doug [KDA]
Subject: Ground Pit Spacing Consent Form - Application #50048
Attachments: Well spacing consent - signed-c.pdf

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.

Hello Tim and Doug,

I'm pleased to report that we've finally come to an agreement to sell our burrow pit to APAC/Shears, and they've signed the attached Ground Pit Spacing Consent Form – they took the original form that you had partially filled out Tim, signed it, and then they typed one up too and signed it as well – so there's two forms that are essentially the same. APAC/Shears has predicated the closing on the sale subject to obtaining the water rights. So Tim I would respectfully request that GMD2 approve our application 50048.

And I want to thank you Tim for your assistance throughout this process, several years ago, you were the one that told Matt Brack (my nephew) and myself, that we could potentially have an issue given we had open water at the burrow pit without any water rights. We're grateful for your guidance, in that you recommended we locate an existing water right within range of the burrow pit, transfer that water right over to the burrow pit, go through the agricultural/irrigation to industrial use reduction calculation, and ultimately receive an industrial use/ground pit water right. And while it has taken us several years and one pandemic later – we're nearing the finish line!

Please see the attached consent – and please let us know if there is any additional information that you need. Thanks in advance for your review and again, thank you for all your assistance throughout this process.

Sincerely,

Guy Swanson
President/COO
Unity World Headquarters at Unity Village

Kansas Department of Agriculture
Division of Water Resources

ADDRESS CHANGE

1. File No(s) 28261, 48034, 48505, 50048	2. Field Office 2
---	---------------------------------

3. Informed by DOUG SCHEMM VIA GUY SWANSON

4a. Other ADDRESS CHANGE Person ID 61233 Add Seq# _____ HAROLD E SWANSON FAMILY TRUST % GUY SWANSON – TRUSTEE 3003 W 83RD TERRACE LEAWOOD KS 66206	4b. Other ADDRESS CHANGE Person ID _____ Add Seq# _____
4c. Other ADDRESS CHANGE Person ID _____ Add Seq# _____	4d. Other ADDRESS CHANGE Person ID _____ Add Seq# _____

5. Comments	Date Prepared 9/2/2021 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. 50,048** of the applicant

**HAROLD E SWANSON FAMILY TRUST
% GUY SWANSON - TRUSTEE
3003 W 83rd TERRACE
LEAWOOD KS 66206**

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 **April 27, 2018**.
2. That the water sought to be appropriated shall be used for industrial use to cover evaporative losses from a sand and gravel pit with a projected surface area not to exceed 56.25 acres located in the Southeast Quarter (SE $\frac{1}{4}$) of Section 21, in Township 23 South, Range 5 West, Reno County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a groundwater pit with a projected geographic center located in the Northwest Quarter of the Southeast Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 21, more particularly described as being near a point 1,155 feet North and 1,290 feet West of the Southeast corner of said section, in Township 23 South, Range 5 West, Reno 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 **natural evaporation** and to a quantity not to exceed **117.2 acre-feet** of water for any calendar year, from a groundwater surface area exposure not to exceed 56.25 acres.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2026** or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$200.00 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, 2041** 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.

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 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.

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

13. 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.

14. 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.

15. That the area around the groundwater pit shall be bermed or graded and maintained to prohibit any surface drainage or storm water runoff from entering the aquifer through the excavated pit.

16. That a sign must be permanently posted at the excavation site, identifying the excavation as a groundwater pit and stating that dumping or discharges into the pit are prohibited to prevent contamination of the Equus Beds aquifer. The sign must be a minimum of three (3) feet in length by two (2) feet in height, easily visible and of durable construction.

Ordered this 13 day of September, 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 13 day of September, 2021, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Ashlee Freeman
Notary Public



WATER RESOURCES
RECEIVED
MAY 20 2019
KS DEPT OF AGRICULTURE

CONSENT AGREEMENT FOR OFFSET STATUS

PER APPROVAL OF APPROPRIATION OF WATER, FILE NO. 50048

Water Right, File No. 49601-D2 (Offset Source)

I, Guy S. Swanson, owner or authorized agent for Water Right, File No. 49601-D2, hereby confer the water right to the Division of Water Resources, State of Kansas, for an offset per the approval of Appropriation of Water, File No. 50048, effective upon the date of approval of said appropriation.

I hereby certify that this water right:

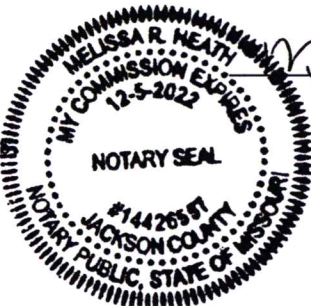
- 1) ~~is vested or certified,~~
- 2) has an authorized point of diversion located in the SW of Section 27, Township 23 South, Range 5 West, Reno County, Kansas,
- 3) has an authorized maximum rate of diversion of 5 gallons per minute,
- 4) has an authorized maximum annual quantity of 147 AF (47,900,100 million gallons),
- 5) is authorized to be used for Irrigation use,
- 6) is in good standing and not abandoned, and
- 7) will no longer be exercised after approval of File No. 50048, _____.
- 8) that the existing point of diversion will ~~be properly plugged and abandoned by the current owner~~ continue to be used under File No. 47585 and 49601-D1.

[Signature]
(Signature of Water Right Owner and Date)

State of Missouri)
~~Kansas~~)
County of Jackson) SS

The foregoing instrument was acknowledged before me this 8th day of May, 2019, by Guy Swanson (Water Right Owner).

My Appointment Expires
12-5-22



Melissa R. Heath
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

HAROLD E SWANSON FAMILY TRUST
% GUY SWANSON - TRUSTEE
3003 W 83rd TERRACE
LEAWOOD KS 66206

September 14, 2021

RE: Appropriation of Water, File No. 50,048

Dear Mr. Swanson:

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 Stafford Field Office at 620-234-5311. 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: Stafford Field Office
Equus Beds GMD No. 2

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

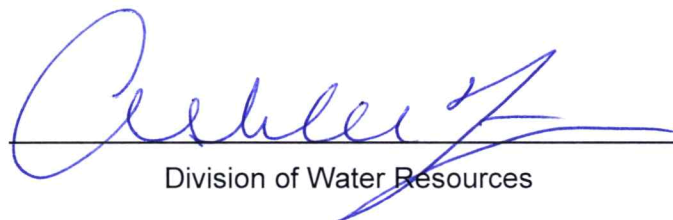
On this 14 day of September, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,048, dated 13 September 2021 was mailed postage prepaid, first class, US mail to the following:

HAROLD E SWANSON FAMILY TRUST
% GUY SWANSON - TRUSTEE
3003 W 83rd TERRACE
LEAWOOD KS 66206

With photocopies to:

Stafford Field Office

Equus Beds GMD No. 2



Division of Water Resources