

File No. **48,965** 15. Formation Code: Drainage Basin: County: Special Use: Stream:

16. Points of Diversion										
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W
			82732							

17. Rate and Quantity				
Authorized		Additional		
Rate	Quantity	Rate	Quantity	Overlap PD Files
gpm/cfs	af/mgy	gpm/cfs	af/mgy	
				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? Yes No To be installed by _____ Date Acceptable Meter Installed _____

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
MOD	DEL	ENT	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	NE ¼	NW ¼	SW ¼	SE ¼						
			65595																								7b		

Comments: **Application fails Safe Yield**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: June 4, 2021

FROM: Matt Meier

RE: Application, File No. 48,965

Larry Stucky filed the referenced application for a permit to appropriate water for beneficial use, proposing the appropriation of 187.2 acre-feet of groundwater for irrigation use. The proposed well was to be located in the Southeast Quarter of the Northeast Quarter of the Northeast Quarter (SE¼ NE¼ NE¼) of Section 10, more particularly described as being near a point 4085 feet North and 350 feet West of the Southeast corner of said section, in Township 21 South, Range 3 West, McPherson County, Kansas within the boundaries of Equus Beds Groundwater Management District No. 2.

On September 1, 2015, a copy of the application was submitted to Equus Beds Groundwater Management District No. 2 for review. On April 25, 2016, a reply letter was received from Equus Beds Groundwater Management District No. 2 recommending denial of the application for failure to comply with Safe Yield Rule K.A.R. 5-22-7(a). The applicant was given a 30-day deadline (May 19, 2016) to consult with GMD#2 on the recommendation. On May 18, 2016 the applicant submitted a petition for a Board review and that the point of diversion be modified to 4,260 feet N & 400 feet W. The application was reviewed by the Board of Directors but tabled for a later date. The application was repeatedly tabled during multiple following board meetings until October 18, 2017. This was after the Chief Engineer approved the District's boundary expansion on July 7, 2017. On October 20, 2017 a letter was received from GMD#2 stating that the Board of Directors recommended that an exception to that "Area of consideration" definition K.A.R. 5-22-1(e) be granted (contrary to the staff recommendation) and that the Chief Engineer evaluate the application using a full two-mile radius circle to determine if water is available for appropriation. After reviewing the letter, it was decided to not allow an exception to K.A.R. 5-22-1(e). This decision is based on the findings below:

The application was Filed on February 14, 2014, 3 years prior to the expansion of the District boundaries which occurred on July 7, 2017, and should be processed using the boundaries which were in place at the time the application was submitted, not after years of extension requests.

Another application (File No. 47,396) was filed approximately 1,310 feet south of Application 48,965 in 2009 and was denied for failure to meet safe yield. Allowing an exemption of the "Area of consideration" for Application 48,965 would not be consistent with how applications have previously been processed in the area.

The KGS Sustainability Assessment report and additional analysis completed by the GMD#2 Staff shows the average water use for the area exceeds the sustainable yield. Based on this information, additional appropriation of water would lead to further declines and put prior existing water rights at risk.

Annually Water level measurements further validate these studies as monitoring wells in the area have seen steadily declining water levels and further appropriations would only amplify the situation to the detriment of the aquifer and existing water users.

On February 9, 2018 a letter stating that an exemption was not granted and the that the application was being recommended for denial for failure to comply with Safe Yield Rule and Regulation K.A.R. 5-22-7(a) was sent to the applicant. On February 23, 2018 a letter was received from the applicant requesting that the DWR reconsider its decision. After reviewing the letter, it was decided that the information in the letter did not provide sufficient justification to change the original denial recommendation.

Therefore, based on the existing information, it is recommended that application File No. 48,965 be denied and dismissed for failure to meet safe yield criteria.

Matt Meier
Environmental Scientist
Permits Unit

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

FINDINGS AND ORDER IN THE MATTER OF THE DISMISSAL OF APPLICATION FILE NO. 48,965

After due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

FINDINGS

1. That on February 14, 2014, the Chief Engineer received an application from Larry Stucky for a permit to appropriate water for beneficial use, assigned File No. 48,965, proposing the appropriation of 187.2 acre-feet of groundwater for irrigation use. The proposed well was to be located in the Southeast Quarter of the Northeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 10, more particularly described as being near a point 4085 feet North and 350 feet West of the Southeast corner of said section, in Township 21 South, Range 3 West, McPherson County.
2. That on September 1, 2015, a copy of the application was submitted to Equus Beds Groundwater Management District No. 2, recommended denial of the application in a letter dated April 19, 2016. They recommended denying the application because their review determined that the application did not comply with the District's Safe Yield regulation K.A.R. 5-22-7(a), as existing and proposed consumptive appropriations exceeded the maximum allowable. A letter was sent to the applicant stating the decision of Equus Beds Groundwater Management District No. 2 and that the applicant had 30 days (until May 19, 2016) to appeal the decision.
3. On May 18, 2016, the applicant sent a letter to Equus Beds Groundwater Management District No. 2 requesting a Board review of the application. The Board reviewed the File on July 12, 2016 but tabled it. The Board continued to table the application until October 18, 2017. On October 20, 2017 a letter was received from Equus Beds Groundwater Management District No. 2 stating that the Board of Directors recommended that an exception to that "Area of consideration" definition K.A.R. 5-22-1(e) be granted and that the Chief Engineer evaluate the application using a full two-mile radius circle to determine if water is available for appropriation.
4. After reviewing the recommendation, it was decided to not grant an exception, see memo for justification why, and the applicant was sent a letter on February 9, 2018 stating this decision and that the application would be recommended for denial for failure to comply with Safe Yield Rule and Regulation K.A.R. 5-22-7(a).
5. On February 23, 2018, a letter was received from the applicant requesting that the DWR reconsider its decision. After reviewing the letter, it was decided that the information in the letter did not provide sufficient justification to change the original denial recommendation.
6. That the applicant, has not submitted sufficient evidence demonstrating why the original denial recommendation, for Application, File No. 48,965, should be changed, thus the application should be denied and dismissed and its priority forfeited for failure to comply with Safe Yield regulation K.A.R. 5-22-7(a).

ORDER

NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that effective the date of this order, in accordance with the law, Application, File No. 48,965, is herewith dismissed and the priority assigned to it is considered to be forfeited.

Ordered this 7 day of June, 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 June, 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

June 14, 2022

LARRY STUCKY
1528 CIMARRON RD
MCPHERSON KS 67460-7037

RE: Application, File No. 48,965

Dear Mr. Stucky:

Enclosed is the Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing Application, File No. 48,965, for failure to comply with the safe yield requirements of K.A.R. 5-22-7(a). On February 23, 2018 we received your request to overturn the denial of the application. After further review, it was determined the included information did not provide sufficient justification to overturn the denial recommendation. Therefore, the denial recommendation stands and the application is being dismissed.

This Order shall become a final agency action, as defined by K.S.A. 77-607(b), without further notice to the parties, if a request for hearing or a petition for administrative review is not filed as set forth in the attached Order.

If you have any questions, please contact our office. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

Kristen A. Baum
New Application and Change Unit Supervisor
Water Appropriation Program

KAB:JE:li

Enclosure

pc: Stafford Field Office
Groundwater Management District 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 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.

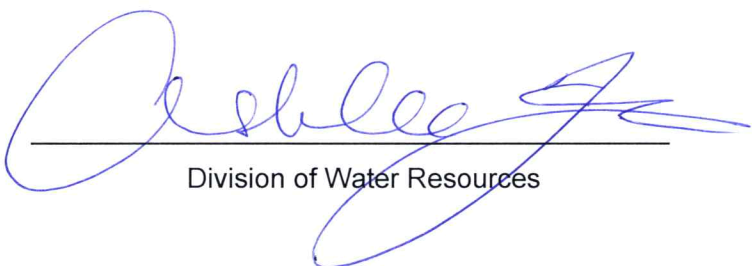
CERTIFICATE OF SERVICE

On this 14 day of June, 2022, I hereby certify that the foregoing Dismissal of Application, File No. 48,965, dated 7 June, 2022, was mailed postage prepaid, first class, US mail to the following:

LARRY L & CINDY LOU STUCKY
1528 CIMARRON RD
MCPHERSON KS 67460-7037

With photocopies to:

Stafford Field Office
Equus Beds Groundwater Management District No. 2



Division of Water Resources