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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: July 29, 2024

FROM: Brandon Milner

RE: Application, File No. 50,668

Les Boeckner has filed the application referred to above for a permit to appropriate 156.5 acre-feet of surface water in a proposed reservoir at a rate not to exceed all natural flows of tributary of Morgan Creek. This will then be re-diverted 100 acre-feet of the stored water for irrigation use. The reservoir is located within the Delaware River drainage basin. The point of diversion is the centerline of a dam located in the Southwest Quarter of Section 8, Township 8 South, Range 16 East, in Jackson County. The applicant has signed the application form stating he has access to the point of diversion. There are no overlaps in place of use or point of diversion. The applicant owns the entire place of use, which comprises 103 acres.

Please note that the application was filed requesting 156.5 acre-feet of storage and rediversion. Runoff calculations determined that there is 15.732 inches of runoff per acre, and the drainage area of 83 acres will only provide for 109.1 acre-feet of runoff in 1 out of every five (5) years (a 20% chance). Therefore, per K.A.R. 5-6-5, the runoff quantity is the limiting factor and therefore the storage volume is limited by the drainage basin of 109.1-acre feet. The proposed direct use quantity of 100 acre-feet, is equivalent to 1.9 times the capacity (51.9 AF), which is well within the normal "rule of thumb" of direct use quantity being no more than 5 times the capacity of the reservoir at normal pool for reasonable storage quantity.

The total quantity of water that will be rediverted (100 acre-feet), is less than the maximum allowable to irrigate the proposed 103 acres, based on the allowable quantity for irrigation in Jackson County of 1.0 AF/acre but still is considered reasonable.

The applicant identified two upstream landowners and downstream owner within one-half (½) mile of the property lines, and nearby letters were sent out on June 6th, 2024. No response of any kind was received. There is one other surface water right within a two-mile radius according to the WRIS database. No senior water rights will be impaired with approval of this application.

The proposed structure was reviewed by DWR Water Structures Program staff, under File No. DJA-0367, and they determined that it qualifies for the hazard Class A permit exemption specified in K.S.A. 82a-301(d)(1). The dam has been properly registered with the structures program.

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.

In an July 29th, 2024 e-mail, Nathan Westrup, 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, the dam is non-jurisdictional for structures permitting, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Brandon Milner
Environmental Scientist
Manhattan Headquarters

From: Westrup, Nathan [KDA]
Sent: Mon 7/29/2024 2:03 PM
To: Milner, Brandon [KDA]
Cc: Johnson, Shaun [KDA]
Subject: RE: 50668 Memo for Recommendation

Hey Brandon,

Thanks for the write up. I do have a few comments.

1. It appears to be a tributary to Morgan Creek and not the South Fork Big Nemaha River.
2. With the 20% chance runoff calculation of 109.1 AF, it is the limiting factor – 100 AF direct use is still fine.
3. In paragraph 3 you state that the proposed direct use is equal to the allowable quantity, maybe say within or less than.

Thanks,

Nathan Westrup, Water Commissioner

Topeka Field Office

Division of Water Resources

Kansas Department of Agriculture

Phone: 785-296-7064

Mobile: 785-230-2991

Nathan.Westrup@ks.gov

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Sent: Monday, July 29, 2024 9:55 AM
To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>
Cc: Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>
Subject: 50668 Memo for Recommendation

Good afternoon guys,

I've attached a memo for recommendation on application 50,668 for Les Boeckner. This is a storage and rediversion application that looks good to go on my end. Thoughts?

Brandon Milner
Environmental Scientist
Water Appropriation Program

From: Darcy Nightingale
Sent: Wed 8/7/2024 5:55 PM
To: Milner, Brandon [KDA]
Subject: FW: Water Application No. 50,668

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.

Brandon,

See Les response to proceed below. It looks like he forgot to reply all.

Thank you,

Darcy Nightingale
Irrigation Sales
Darcy@mwivalley.com
Service: 785-740-1694
Cell: 785-285-8065



From: les@advantagecrete.com <les@advantagecrete.com>
Sent: Tuesday, July 30, 2024 6:14 PM
To: Darcy Nightingale <darcy@mwivalley.com>
Subject: Re: Water Application No. 50,668

Hey Brandon, yes I think that will be fine! Thank you..

Les: Advantage Concrete

On Jul 30, 2024, at 4:57 PM, Darcy Nightingale <darcy@mwivalley.com> wrote:

Brandon,

Can you please send me the application on this? I am wanting to review the application. This is an app that Brett helped us with I am pretty sure so just wanted to review it.

Thank you,

Darcy Nightingale
Irrigation Sales
Darcy@mwivalley.com
Service: 785-740-1694
Cell: 785-285-8065
<image001.png>

From: les@advantagecrete.com <les@advantagecrete.com>
Sent: Tuesday, July 30, 2024 4:05 PM
To: Darcy Nightingale <darcy@mwivalley.com>
Subject: Fwd: Water Application No. 50,668

Did he mean atchison county farm? I sure hope so! I thought we had permit go thru at Denison...

Les: Advantage Concrete

Begin forwarded message:

From: "Milner, Brandon [KDA]" <Brandon.M.Milner@ks.gov>
Date: July 30, 2024 at 3:56:25 PM CDT
To: Les@advantagecrete.com
Subject: **Water Application No. 50,668**

Good afternoon Les,

I am currently processing your application to appropriate water in Jackson county where it has been proposed to store water in a pond and then redivert it to irrigate. However, when reviewing this application it has been noted that the requested storage volume of 156.5 acre feet cannot be sustained by the small drainage basin in the area. The maximum storage volume for this pond has been lower to 109.1 acre feet. You will still be able to redivert 100 acre feet to irrigate your 103 acres.

Would this be satisfactory to proceed with the application with the lowered storage capacity? Thanks

Brandon Milner
Environmental Scientist
Water Appropriation Program

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. 50,668** of the applicant

LES BOECKNER
2298 KERSTREL RD
HIAWATHA, KS 66434-8924

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 **October 18, 2021**.

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	
8 - 8S - 16E	26	40		37													103

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Morgan Creek, designated in the office of the Chief Engineer as Morgan Creek Trib 1 (Delaware), not needed to satisfy all vested rights and prior appropriation rights to be accumulated to a maximum extent of **109.1 acre-feet** of water per calendar year in a reservoir created by a dam located in the Northeast Quarter of the Northeast Quarter (NE¹/₄ NE¹/₄ NE¹/₄) of Section 8, more particularly described as being near a point 5,250 feet North and 355 feet West of the Southeast corner of said section, in Township 8 South, Range 16 East, Jackson County, Kansas, to provide **100 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 **1,000 gallons per minute (2.23 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, 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.

5. 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.

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 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 Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The required 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 diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

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 failure without cause to comply with the provisions of this 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.

Ordered this *8th* day of *August*, 2024, 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 *8th* day of *August*, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Vickie L. Belanger

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

August 15, 2024

LES BOECKNER
2298 KERSTREL RD
HIAWATHA KS 66434-8924

RE: Appropriation of Water
File No. 50,668

Dear Mr. Boeckner:

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.

Also included 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 785-368-8251. 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:bmm
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.

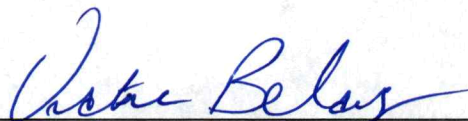
If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

CERTIFICATE OF SERVICE

On this *15th* day of *August*, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,668, dated *August 8*, 2024, was mailed postage prepaid, first class, US mail to the following:

LES BOECKNER
2298 KERSTREL RD
HIAWATHA KS 66434-8924

KDA-DWR Topeka Field Office



Division of Water Resources