

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

1. File No.: 50877	2. Status Change Date: 5/16/2024	4. Field Office: 02 - Stafford GMD: 05 - Big Bend Structures File No.: Priority Date: 10/04/2022
3. Package File No(s):		
5a. <input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change MATT BROWN 40257 NE 70TH AVE PRESTON, KS 69583	Person ID 1 Add Seq# 68626	5b. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#
5c. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change	Person ID Add Seq#	5d. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#
6. Change No.: --- <input type="checkbox"/> PD <input type="checkbox"/> PU <input type="checkbox"/> UMW Base Acres: --- Year: --- Min Reasonable Q: --- Previous UMW: Not changing MDS Gauge: --- Active Admin? <input type="checkbox"/> Completion Date: 12/31/2025 Perfection 12/31/2029		7. Use of Water <input checked="" type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water UMW: IRR-Irrigation UMW: UMW:
8. Action Trail ---		
9. Special Conditions ---		
10. 5YR Allocation Type: Start Year: --- 5YR Quantity: --- Base Acres: --- Comment: ---		
11. Sand & Gravel Proj ID: --- <input type="checkbox"/> Active <input type="checkbox"/> Dredge <input type="checkbox"/> IND Evap <input type="checkbox"/> Jr Evap <input type="checkbox"/> Other Diversion <input type="checkbox"/> Rpt on Sr		
12. Waiver Rule ID: --- <input type="checkbox"/> New Date Requested: --- Applies: --- Rule No.: --- Rule Type: --- Justification: --- Rule SubType: ---		
Comments	Processed 05/10/24 JNE	Entered 5/17/2024 KAnderson
	Reviewed KAK 5/13/2024	

File No. **50877** 13. County: **CA** Basin: **53 - N F NINNESCAH RIVER** Stream:
 Structures File No: Aquifer Code: **100 - QUATERNARY SYSTEM** Special Use Area: --- ---

14. Points of Diversion, Rates & Quantities										Qty AF		Rate gpm		Storage Qty		Storage Rate	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)		Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps
MOD	89830	NW NE SE	10	27	12W	2	2308	841		14.6	14.6	50	50				

15. Limitations Type: Quantity: Rate: combined with file no(s):
 Type: Quantity: Rate: combined with file no(s):

16. Metering x Metering Required Anti-Reverse Required Seal Required Compliance Date: **12/31/2025**

17. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
PUSE	S	T	R	ID	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE									
CHK	71038	10	27S	12W 3	POND (NE SE) 1.5 AC																	5a	<input type="checkbox"/>						
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18. Point of Diversion and Place of Use Overlaps

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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: May 1, 2024

FROM: Jessica Engelbrecht

RE: Application, File No. 50877

Matt Brown filed the above referenced new application to appropriate 14.6 acre-feet of groundwater at a maximum diversion rate of 50 gallons per minute for recreational use from one (1) well located in the Northwest Quarter of the Northeast Quarter of the Southeast Quarter of Section 10, more particularly described as being near a point 2308 feet North and 841 feet West of the Southeast corner of said section, in Township 27 South, Range 12 West, Pratt County, Kansas, located within the boundaries of the N.F. Ninnescah River Basin. The place of use will be a 1.5-acre surface area pond located in the Northeast Quarter of the Northeast Quarter of the Southeast Quarter of Section 10, Township 27 South, Range 12 West, Pratt County, Kansas. There are no other water rights overlapping the point of diversion or place of use. Mr. Willis has signed the application form stating he has legal access to the point of diversion. The proposed quantity is based on the 15 acre-feet exemption within Big Bend GMD No. 5 based on K.A.R. 5-25-4, but open to 15 acre-feet permits based on K.A.R. 5-25-15(a).

The water will be used to fill the pond and maintain the desired water level each year. The pond will be a maximum of 1.5 acres in size and have an average depth of 7.15 feet. The quantity of water requested was calculated as follows:

$$\begin{aligned}\text{Storage} &= 1.5 \text{ acres} \times 7.15 \text{ feet} = 10.725 \text{ acre-feet} \\ \text{Evaporation} &= 1.5 \text{ acres} \times 31 \text{ inches} = 3.875 \text{ acre-feet} \\ 10.725 \text{ acre-feet} &+ 3.875 \text{ acre-feet} = 14.6 \text{ acre-feet}\end{aligned}$$

The well spacing criteria is based on K.A.R. 5-25-2, which states that the required spacing to non-domestic wells is 1,320 feet, and 660 feet to domestic wells. The closest non-domestic well, authorized by File no. 42792, is located approximately 1,365 feet away from the proposed well. The nearest domestic well is approximately 600 feet away and owned by the applicant. The well meets spacing to all other domestic wells in the area.

In a letter dated March 27, 2024, Big Bend Management District 5 Manager, Orrin Feril, recommended denial of the application due to failure to meet spacing. The proposed well meets spacing to the geo-center of the nearby battery authorized by File No. 42792, but not the south well of the battery. After discussing the denial recommendation with Jeff Lanterman, Water Commissioner, and Cameron Conant, Assistant Water Commissioner, it was decided to use spacing to the geo-center as per usual practice in the Big Bend Management District 5 Manager.X

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.

The proposed application is subject to minimum desirable streamflow requirements. The applicant signed, notarized, and returned the required form to our office.

In a _____ email, Jeff Lanterman, Water Commissioner, Stafford Field Office, recommended approval of the referenced application. Based on the above discussion, well spacing 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.

Engelbrecht, Jessica [KDA]

From: Lanterman, Jeff [KDA]
Sent: Wednesday, May 8, 2024 1:41 PM
To: Engelbrecht, Jessica [KDA]; Conant, Cameron [KDA]; Baum, Kristen [KDA]
Subject: RE: Application for Water Right, File No. 50877----GMD#5 denial recommendation

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

I am if everyone else concurs. GMD did not measure spacing correctly and that was the only issue in their denial letter. GMD 2 specifically spells that out in their regs. GMD 5 does not.

That being said I don't mind the way GMD 2 does it. Seems fair. But this GW pit isn't going to impair anyone. NEvap.

I'll bring this back to Jessica for final processing.

Jeff

From: Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>
Sent: Monday, April 1, 2024 10:02 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: RE: Application for Water Right, File No. 50877----GMD#5 denial recommendation

So, everyone good with me proceeding on with this one and not bothering the applicant with a 'recommendation for denial' letter?

Jessica

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Monday, April 1, 2024 9:45 AM
To: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: RE: Application for Water Right, File No. 50877----GMD#5 denial recommendation

Nope I think I am good recommending approval and moving on from this one. The battery in question has a letter from the GMD where they properly evaluated spacing.

Long gone are the days where we had someone at GMD #5 that understood water rights.

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Monday, April 1, 2024 9:20 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: RE: Application for Water Right, File No. 50877----GMD#5 denial recommendation

I agree with Jeff on the options and I'm good with moving on with this one and don't think anything needs waived here. From what I recall we have always used spacing to the geo-center in our FO area (except in GMD#2 where their regs are specific) and see no reason to do anything different in this case.

The battery of wells is in question here actually has a letter from GMD#5 back in 2000 or so that notes that the battery didn't meet the required 660' spacing from a nearby domestic well to the geo-center, so even back then they were measuring from the geo-center.

Are you good with approving and moving on Kristen or do you want something different?

Cameron

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>

Sent: Monday, April 1, 2024 8:52 AM

To: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>

Subject: RE: Application for Water Right, File No. 50877----GMD#5 denial recommendation

Although I kind of think that I like the GMD #2 method for spacing to batteries. Everywhere else we have used the Geographic Center. We have never used the individual wells in the battery in GMD #5.

Its 50 GPM, Impairment will not occur. We don't need to waive spacing to approve this. The GMD rec is wrong.

But here is my vote to expand spacing to individual wells of a battery outside of GMD 2 in instances where it makes a difference. Im thinking of things like a battery of 2 wells 800 GPM where potentially they could get 600 GPM out of the nearest well of the battery.

Options on the path forward: We could recommend he appeal Orrin's decision to the board and I could try to explain this to the board in a meeting, OR we could just move it on without that. I wouldn't mind if we just moved forward with it and took Orrin's rec under advisement.

Jeff

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Sent: Monday, April 1, 2024 8:34 AM

To: Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>

Subject: RE: Application for Water Right, File No. 50877----GMD#5 denial recommendation

Please re-read the previous email. After I sent that email I went ahead and asked Orrin to be sure what didn't meet spacing. He confirmed that he is measuring to the south well of the battery which does not meet spacing. When Jessica and I looked at this we measured spacing to the geo-center of the battery since that is how we determine spacing. GMD#2 has specific battery spacing regs, GMD#5 doesn't.

How do you guys want to proceed? I agree this doesn't meet spacing to the south battery well, but it does meet spacing to the geo-center. This is a 15 AF exemption for 50 GPM and 14.6 AF.

Cameron

From: Conant, Cameron [KDA]

Sent: Wednesday, March 27, 2024 3:16 PM

To: Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>

Subject: RE: Application for Water Right, File No. 50877----GMD#5 denial recommendation

Kristen and Jeff, from what we can tell this proposed new application meets spacing to the geo-center of wells authorized by 42792 (1360' or so from geo-center to proposed well). We actually did some work during processing with the applicant to ensure the proposed location met spacing to the geo-center so we were fairly confident it meets 1320' to the geo-center. We

have GPS from the applicant for the proposed recreational well and we have nice WRIS footage GPS for the nearby battery of wells and it looks ok.

Orrin recommended denial for not meeting his spacing reg 5-25-2 I assume just going from 1320' from well to well, not well to geo-center. I think we should all be measuring from the geo-center though. Unless like in GMD#2 where they have something different written in reg (960' and 1620' from geo-center). Since GMD#5 has nothing like that seemed best to use our normal spacing of 1320 from geo-center to make sure spacing is met which is 5-4-4 (f) to measure spacing from the geo-center of wells.

I feel like I didn't explain this well, but you should get the idea. Are you guys on board with the idea that in GMD#5, since we don't have more specific rules 1320' should be measured from the geo-center? If so, I'll see if Orrin is willing to re-review and modify his recommendation if that was indeed the only issue.

Cameron

From: Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>
Sent: Wednesday, March 27, 2024 2:34 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: FW: Application for Water Right, File No. 50877
Importance: High

From: Orrin Feril <oferil@gmd5.org>
Sent: Wednesday, March 27, 2024 11:31 AM
To: Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>
Subject: Application for Water Right, File No. 50877
Importance: High

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.

Jessica,
I'm attaching the recommendation requested by your office in a letter dated March 15, 2024. Please let me know if you have any questions.

Thank you for your consideration in this matter,

Orrin

--

Orrin Feril

Manager
Big Bend GMD#5
Email: oferil@gmd5.org
Phone: (620) 234-5352
Mobile: (620) 388-0172
Fax: (620) 234-5718
www.gmd5.org
Facebook/Twitter: @BigBendGMD5

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. 50,877** of the applicant

**MATT BROWN
40257 NE 70TH AVE
PRESTON, KS 69583**

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 4, 2022**.
2. That the water sought to be appropriated shall be used for recreational use to maintain the water level in a pond located in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 10, Township 27 South, Range 12 West, Pratt County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one well located in the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 10, more particularly described as being near a point 2,308 feet North and 841 feet West of the Southeast corner of said section, in Township 27 South, Range 12 West, Pratt 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 **50 gallons per minute** and to a quantity not to exceed **14.6 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 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. 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).
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 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 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.

ORDERED this *16* day of *May*, 2024, in Manhattan, Riley County, Kansas.

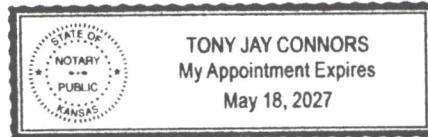
Lane P. Letourneau

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 *16* day of *May*, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Tony Jay Connors
 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

May 22, 2024

MATT BROWN
40257 NE 70TH AVE
PRESTON KS 69583

RE: Appropriation of Water
File No. 50,877

Dear Mr. Brown:

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.

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.

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.

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 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:kak:jne
Enclosure(s)

pc: Stafford Field Office
Big Bend GMD No. 5

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 22 day of May, 2024, I hereby certify that the attached Approval of Application and Permit to Proceed, File No. 50,877, dated May 16, 2024, was mailed postage prepaid, first class, U.S. Mail to the following:

Original to:

MATT BROWN
40257 NE 70TH AVE
PRESTON KS 69583

Photocopy to:

KDA-DWR Stafford Field Office

Big Bend GMD No. 5


DWR Staff