

Tom Taylor - At-Large (Pres.)
Fred Grunder - Pratt (V Pres.)
John Janssen - Kiowa (Treas.)
Marlyn Spare - Stafford (Sec.)
Darrell Wood - Edwards
Craig Zwick - Rice
Joe Schlessiger - Barton
Kerry Froetschner - Pawnee
Gary Hornbaker - Reno



Orrin Feril, Manager
125 South Main Street
Stafford, Kansas 67578
ph: (620) 234-5352
fx: (620) 234-5718
gmd5@gmd5.org
www.gmd5.org

April 22, 2024

Christa Anhold
Division of Water Resources
Kansas Department of Agriculture
300 S. Main Street
Stafford, Kansas 67578-1342

RE: Application File No. 50,953

Dear Ms. Anhold,

The Big Bend Groundwater Management District #5 has reviewed the above referenced application for appropriation. The District is closed to further new surface and groundwater appropriations except those that are exempt from the closure per K.A.R. 5-25-4 (b).

Based upon information received in the District office, the application meets the requirements of K.A.R. 5-25-4 (b)(9) and is therefore recommended for approval provided that the total size of the ponds do not exceed 3.5 acres collectively.

Please feel free to give me a call if you have any questions.

Sincerely,

Orrin Feril
Manager

From: Engelhaupt, David [KDA]
Sent: Thu 6/6/2024 12:41 PM
To: Baum, Kristen [KDA]
Cc: Anhold, Christa [KDA]; Kopp, Kenneth [KDA]
Subject: RE: 50953 Recommendation Request

Jeff is correct about the response, 32.1%. The file is not within the MDS region.

The allocation would calculate to 5.568 acre-feet. It is worth noting though that our allocations are calculated based on a finite amount of available water. That 5.568 acre-feet would be reduced from the water available to be allocated to every other water right. Spread over ~1400 water rights it becomes almost a rounding error, but it is taking allocation away from existing senior water right holders.

David Engelhaupt, P.E.
Technical Services Supervisor
Kansas Department of Agriculture
Division of Water Resources
(785) 564-6680

From: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Sent: Thursday, June 6, 2024 11:56 AM
To: Engelhaupt, David [KDA] <David.Engelhaupt@ks.gov>
Cc: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>; Kopp, Kenneth [KDA] <Kenneth.Kopp@ks.gov>
Subject: FW: 50953 Recommendation Request

Hi David,

We have a small use exemption application in the Rattlesnake Zone A. Can you provide us the impact, the allocation, and whether or not it would be subject to MDS?

Thank you,

Kristen Baum, Environmental Scientist
DWR – Water Appropriations

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Thursday, June 6, 2024 11:19 AM
To: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Cc: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: FW: 50953 Recommendation Request

Denial would be my recommendation on this one.

This is in Zone A of the Rattlesnake Creek Impairment zone. That section is in a 32.13% response zone but is bordering 33-38% response zones.

Without an offset this seems like a slam dunk denial. We cant approve anything that would cause impairment.

Jeff

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Thursday, June 6, 2024 10:32 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Cc: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
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Jeff, there was a dismissed recreation file No. 9364 that used to cover these ponds, it was dismissed in 2010 or so I think. John at GMD#5 put the applicants in touch with us and recommended they try for a 15 AF exemption to cover some rec ponds. This new application is for 3.5 acres of ponds using an existing well. Based on the proposed rec use and justification, 15 AF at 150 GPM is reasonable to cover filling, evap, and some seepage each year. GMD#5 recommended approval. Spacing is met to everything and this meets the current 15 AF exemption criteria in GMD#5. We appear to have dropped ~20' since pre-development in this area but more recent water levels are generally stable. There is fluctuation during drought, 2011 was rough and it hasn't bounced back like it did in 1999, but we are within ~4' of 1992 levels right now so I'd call the last 30 years relatively stable. I would just call the source 180 Undiff Kan/Neb, Christa noted possible meade/grand island but I'm ok going with the more broad 180 source call.

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For this file right now, I think we can recommend approval of it knowing it will be administered accordingly if and when administration takes place. That said, this is probably part of a more broad conversation. I copied Kristen so please include her when you pass the actual recommendation on to Christa.

We shouldn't approve an application that will impair and based on our model work, this 15 AF permit at @150 GPM would increase stream depletions to the Rattlesnake as it is located in the 32% response zone. I'm back and forth because the rate and quantity is low and it meets all the current rules and regs that are in play. Part of me says if we are going to start saying no to exemptions that meet the rules just b/c we are in the Rattlesnake impact zone, we should stop all new apps in the potential administration zone including temps, terms, savings account withdrawals, 15 AF exemptions, ect unless they have adequate offsets. If we do that we should do it across the board, not on a case-by-case basis. I'm not ready to deny this one and set the precedent of denying apps just b/c they are in the response zone. If approved and if administration takes place this water right will no longer be "impairing" correct?

That is all part of a wider discussion though I think. That discussion involves GMD#5 also and it may take a rewording of their 15 AF exemption. I would think if we want wholesale changes we need offsets not just in the Pawnee Buckner, Ark, and Rattlensake, but also in the Rattlesnake potential administration 10% response zone even outside the RSC basin boundary.

Cameron

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Sent: Thursday, June 6, 2024 8:44 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 50953 Recommendation Request

Good morning,

It has been about six weeks since my original email. I am checking up to see if you have made any progress on the above application.

Christa Anhold
(785)564-6644

From: Anhold, Christa [KDA]
Sent: Monday, April 22, 2024 2:45 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: 50953 Recommendation Request

Good afternoon,

Attached is the draft memo for 50,953 for your review and recommendation. Nearby notifications were mailed on March 21, 2024. No responses have been received to date. Big Bend GMD 5 recommended approval of this application today, April 22, 2024.

Here are the links to hydrographs within a 2-mile radius as well as the distances from the proposed point of diversion.

The applicants well

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374819098515601

1.81 miles

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374653098523101

1.84 miles

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374648098522901

Please let me know if you need anything else.

Christa Anhold
Environmental Scientist
Department of Water Resources
(785)-564-6644
Christa.anhold@ks.gov

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. 50,953** of the applicant

**CHARLES R AND KAYLA KINYON
100486 NW 70TH AVE
BYERS KS 67021**

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 **January 30, 2023**.
2. That the water sought to be appropriated shall be used for recreational use in three (3) ponds with a maximum combined surface area of 3.5 acres located in the Northwest Quarter of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 9, Township 26 South, Range 14 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 (1) well located in the Northwest Quarter of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 9, more particularly described as being near a point 4,900 feet North and 5,000 feet West of the Southeast corner of said section, in Township 26 South, Range 14 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 **150 gallons per minute (0.33 c.f.s.)** and to a quantity not to exceed **15 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.

16. 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.

17. 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 *13th* day of *June*, 2024, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.

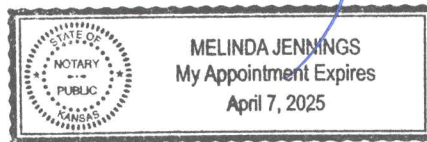
Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this *13* day of *June*, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda

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

January 25, 2024

RE: Proposed Plan to Address Impairment at
Quivira National Wildlife Refuge
Water Right File No(s):

Dear Sir or Madam:

This letter is a follow up to my letters dated April 10, 2023, August 21, 2023, and October 18, 2023, regarding the U.S. Fish and Wildlife Service's (USFWS) request to secure water pertaining to its Water Right, File No. 7571 (Water Right), for Quivira National Wildlife Refuge (Refuge), located in northeastern Stafford County. As we make progress with a workgroup to develop alternatives to direct administration, I believe it is important for owners and operators of the affected water rights to know what to expect and have the opportunity to plan accordingly.

As mentioned in my previous letter, although the USFWS paused its request for administrative action in 2024 on the impairment of its water right, USFWS also submitted a contingent request to secure water beginning January 1, 2025, if alternatives are not developed and achieved in a timely manner. The purpose of this letter is to provide advanced notice of our proposed plan to administer water rights beginning January 1, 2025, pursuant to K.S.A. 82a-706b, unless adequate progress on alternative actions to resolve the impairment is made. **THIS IS NOT AN ORDER AND NO ACTION IS REQUIRED AT THIS TIME.** This notice is part of our attempt to make sure everyone in the area of administration fully understands the proposed water right administration and how it would impact them individually if implemented.

Attached to this letter is a detailed description of the administrative plan, with a map of the Rattlesnake Streamflow Response Regions and the Quivira Impairment Administration Tiers. Also included is a table of preliminary allocations that have been determined for the water right(s) you own or control with a reference guide to explain the information in the allocation tables more fully. The enclosed allocation summaries are subject to change.

Please check our web site often for additional information. Updates will continue to be posted at agriculture.ks.gov/quivira.

Sincerely,

Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources

Enclosures: KDA-DWR Proposed Plan to Address the Impairment of Water Right File No. 7,571
Quivira Impairment Administration Tier Map
Summary of Water Right Allocations
Guide to the Summary of Water Right Allocations

cc: Big Bend GMD No. 5
Mike Beam, Secretary of Agriculture
Jeff Lanterman, KDA-DWR Stafford Field Office Water Commissioner

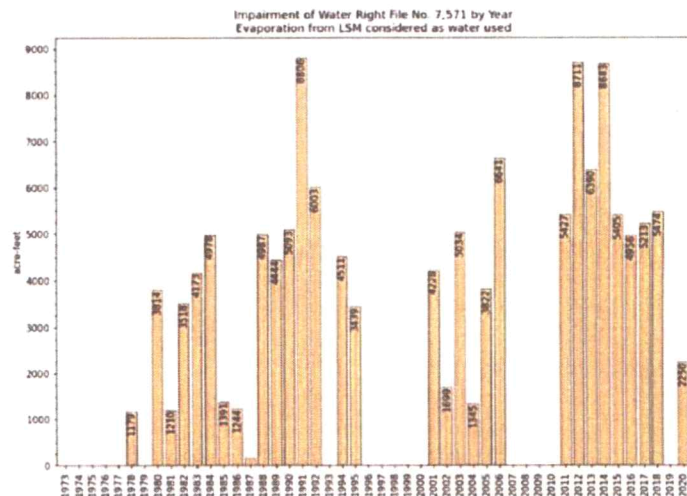
KDA-DWR Proposed Plan to Address Impairment at Quivira National Wildlife Refuge

In a 2016 Final Impairment Report, the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources found that the US Fish and Wildlife Service's (Service) water right at Quivira National Wildlife Refuge, Water Right File No, 7,571, which depends on surface water flows in Rattlesnake Creek, was routinely impaired by upstream junior groundwater pumping that was depleting streamflow in Rattlesnake Creek.

In response to a request to secure water by the US Fish and Wildlife Service, filed during 2023, for its Water Right, File No. 7,571, a supplement to the report made minor modifications to the evaluations that had served as the basis for the report and extended the timeframe for which data was included in the report to 2020. The 2023 supplement to the 2016 Final Impairment Report uses results of hydrologic computer modeling and gaged streamflow records and indicates that the impairment confirmed in 2016 is continuing and that groundwater pumping by water rights junior to and upstream from the Quivira National Wildlife Refuge continues to deplete flows in Rattlesnake Creek by 400-600 acre-feet per year, as measured at the USGS Zenith gage.

Kansas law provides, in K.S.A. 82a-706b, "It shall be unlawful for any person to prevent, by diversion or otherwise, any waters of this state from moving to a person having a prior right to use the same . . . Upon making a determination of an unlawful diversion, the chief engineer or the chief engineer's authorized agents, shall, as may be necessary to secure water to the person having the prior right to its use . . . Direct that the headgates, valves or other controlling works of any ditch, canal, conduit, pipe, well or structure be opened, closed, adjusted or regulated..."

Accordingly, the Chief Engineer is required by law to curtail water use by the junior water rights that are impairing the Service's right. This document is intended to provide information as to planned water rights administration. **It is not an order of the Chief Engineer.**



Administration of water rights found to be impairing Water Right File No. 7,571 would be undertaken pursuant to the Kansas Water Appropriation Act, K.S.A. 82a-701 *et seq.* and would be implemented by orders of the Chief Engineer. Each affected junior water right holder would receive an individual order setting out the quantity of water they would be allowed to divert under their water right(s) as part of this administration plan.

As can be seen from the graphic above, which illustrates the magnitude of the impairment in acre-feet between the years 1973 and 2020, the impairment is an issue that has existed for a number of years. Full resolution of the impairment would likewise take multiple years.

The administration plan would be implemented in stages, with the goal of fully resolving the impairment by 2035. The administration plan would be in effect for an initial five-year period of 2025 – 2029 and within that time period would implement water quantity allocations that would halt additional stream depletions and would constitute a first step

toward fully satisfying Water Right File No. 7,571. This time period would also allow for additional non-administrative, voluntary actions to be taken to limit additional reductions in the subsequent five-year period.

Authorized quantities of the water rights to be administered would be reduced based upon an administered water right's priority date and its impact to Water Right File No. 7,571. These factors would be weighed equally to determine reduced allocations for each water right. **Allocations would be based on authorized quantities of water rights, regardless of past usage.**

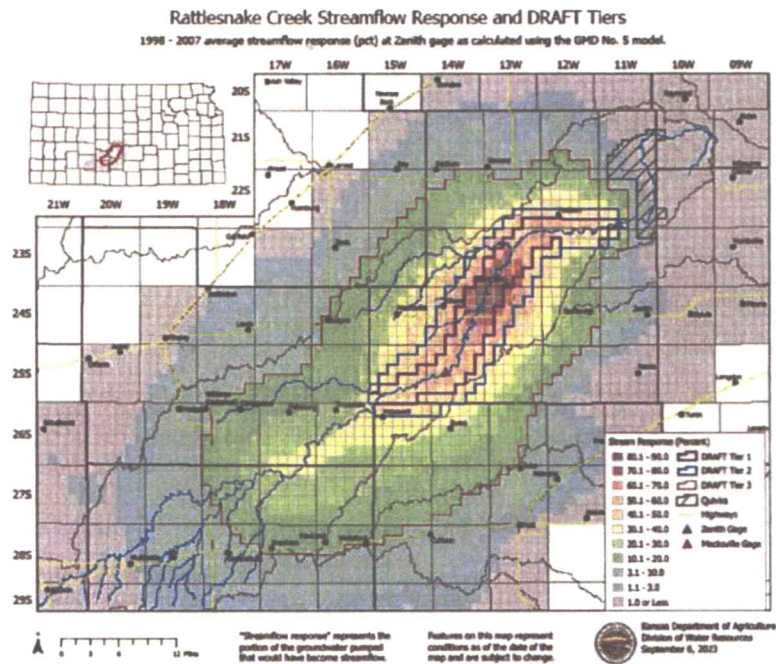
The impact of each water right on Water Right File No. 7,571 would be determined based on each water right's geographic location within the Rattlesnake Creek Streamflow Response Region and three tiers developed using the Big Bend Groundwater Management District No. 5 hydrologic groundwater model. Administration of water rights based on the three-tier system is outlined below:

Tier 1: Area outlined in purple on the map, where total groundwater pumping is modeled to have 30% or greater impact to streamflow in Rattlesnake Creek within one calendar year of pumping.

Tier 2: Area outlined in blue on the map, where total groundwater pumping is modeled to have 30% or greater impact to streamflow in Rattlesnake Creek within one to five calendar years of pumping.

Tier 3: Area outlined in red on the map, where total groundwater pumping is modeled to have less than 30% impact to streamflow in Rattlesnake Creek within the next one to five years of pumping, but greater than 10% impact over the longer term.

It is the Chief Engineer's intention to allow multi-year quantity allocations in Tiers 2 and 3. **All existing multi-year flex accounts for water rights to be administered would be vacated, under this proposed plan.**



The Chief Engineer also intends to allow allocations to be transferred within tiers and from a higher-impact tier to a lower-impact tier. Flexibilities that would be available depending on tier location are set forth in the table below:

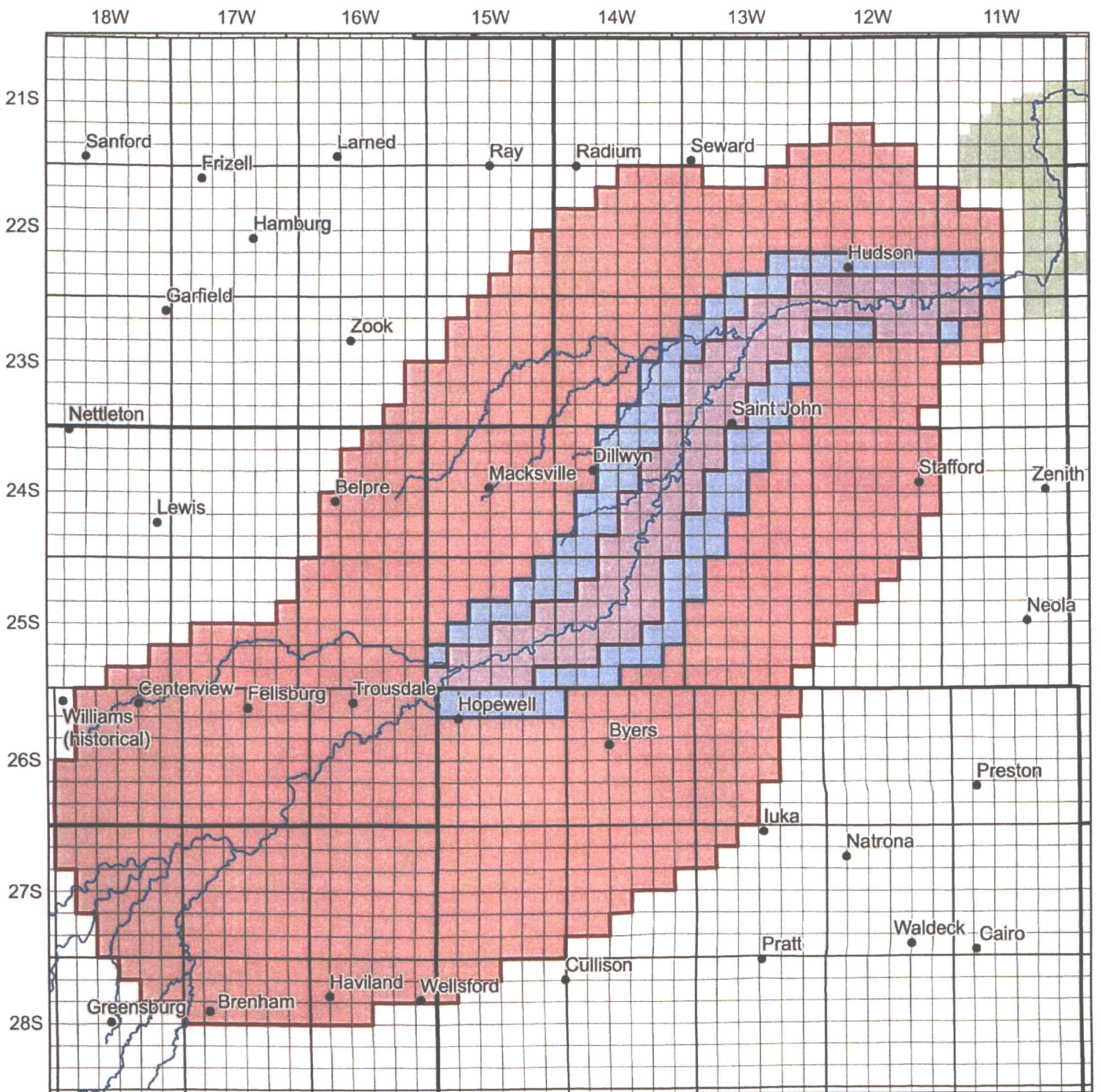
	Tier 1	Tier 2	Tier 3
Allocation	1 Year	5 Year	5 Year
MYFA eligible	No	No	Yes
Safe Deposit Withdrawals	No	No	Yes
Annual Quantity Potential	Allocation	Water Right Quantity	Water Right Quantity + MYFA or SDA (Within 5-year allocation)
Same User Transfer	Within Tiers 1, 2, or 3; from Tier 1 to Tier 2; and from Tier 2 to Tier 3	Within Tiers 2 or 3 and from Tier 2 to Tier 3	Within Tier 3
Transfer between Users through CKWB	Within Tiers 1, 2, or 3; from Tier 1 to Tier 2; and from Tier 2 to Tier 3	Within Tiers 2 or 3 and from Tier 2 to Tier 3	Within Tier 3






In all tiers, water rights permanently retired by individual water right owners can be treated as allocation transfers, and the allocations originally assigned to those water rights would be credited to the water right owner who permanently retired the right. Water right owners would be eligible to apply credited allocations to other water rights they own with a point of diversion in an area of lower impact. Allocations originally assigned to water rights that are permanently retired water rights by public entities, such as Big Bend GMD No. 5, would be credited toward the entire Rattlesnake Creek Streamflow Response Region through adjustments to allocations, which may occur annually.

The following table sets out the number of water rights to be administered within each tier, divided into categories based on the beneficial use of those water rights:

Water Rights	FPR	IND	IRR	MUN	REC	STK	THX	Total
Tier 1	-	2	99	2	5	2	-	110
Tier 2	-	3	111	-	2	4	2	122
Tier 3	1	5	1,119	8	13	15	-	1,161
Total	1	10	1,329	10	20	21	2	1,393

Quivira National Wildlife Refuge Impairment Administration Tiers



-  Tier 1
-  Tier 2
-  Tier 3
-  Quivira National Wildlife Refuge
-  Rattlesnake Creek and Tributaries

Section Number Key

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36



Kansas Department of Agriculture
Division of Water Resources
September 13, 2023

Guide to Summary of Preliminary Allocations

Column	Description
Column [A]	Water Right File Number.
Column [B]	Identifying the person or business listed at the top as the owner, water use correspondent, or both (O, W, O/W).
Column [C]	Authorized quantity of water right.
Column [D]	The portion of pumping that comes from intercepted streamflow.
Column [E]	Order in priority among administered junior water rights.
Column [F]	The total administered allocation divided by the authorized quantity.
Column [G]	Administration tier that water right is within.
Column [H]	Duration of administration allocation. This is one year within tier one, and five years within tiers two and three.
Column [I]	The amount of water allocated for the administration period, in acre-feet.
Column [J]	The amount of water allocated for the administration period, in millions of gallons.
Column [K]	The amount of water allocated expressed as inches of irrigation on authorized acres.

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Sent: Thu 6/6/2024 12:41 PM
To: Baum, Kristen [KDA]
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David Engelhaupt, P.E.
Technical Services Supervisor
Kansas Department of Agriculture
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Kristen Baum, Environmental Scientist
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For this file right now, I think we can recommend approval of it knowing it will be administered accordingly if and when administration takes place. That said, this is probably part of a more broad conversation. I copied Kristen so please include her when you pass the actual recommendation on to Christa.

We shouldn't approve an application that will impair and based on our model work, this 15 AF permit at @150 GPM would increase stream depletions to the Rattlesnake as it is located in the 32% response zone. I'm back and forth because the rate and quantity is low and it meets all the current rules and regs that are in play. Part of me says if we are going to start saying no to exemptions that meet the rules just b/c we are in the Rattlesnake impact zone, we should stop all new apps in the potential administration zone including temps, terms, savings account withdrawals, 15 AF exemptions, ect unless they have adequate offsets. If we do that we should do it across the board, not on a case-by-case basis. I'm not ready to deny this one and set the precedent of denying apps just b/c they are in the response zone. If approved and if administration takes place this water right will no longer be "impairing" correct?

That is all part of a wider discussion though I think. That discussion involves GMD#5 also and it may take a rewording of their 15 AF exemption. I would think if we want wholesale changes we need offsets not just in the Pawnee Buckner, Ark, and Rattlensake, but also in the Rattlesnake potential administration 10% response zone even outside the RSC basin boundary.

Cameron

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Sent: Thursday, June 6, 2024 8:44 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 50953 Recommendation Request

Good morning,

It has been about six weeks since my original email. I am checking up to see if you have made any progress on the above application.

Christa Anhold
(785)564-6644

From: Anhold, Christa [KDA]
Sent: Monday, April 22, 2024 2:45 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: 50953 Recommendation Request

Good afternoon,

Attached is the draft memo for 50,953 for your review and recommendation. Nearby notifications were mailed on March 21, 2024. No responses have been received to date. Big Bend GMD 5 recommended approval of this application today, April 22, 2024.

Here are the links to hydrographs within a 2-mile radius as well as the distances from the proposed point of diversion.

The applicants well

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374819098515601

1.81 miles

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374653098523101

1.84 miles

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374648098522901

Please let me know if you need anything else.

Christa Anhold
Environmental Scientist
Department of Water Resources
(785)-564-6644
Christa.anhold@ks.gov

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: June 10, 2024

From: Christa Anhold, Environmental Scientist

Re: New Application File No. 50,953 – Charles R. and Kayla Kinyon

Summary

Charles R. and Kayla Kinyon filled the above referenced application to appropriate 15 acre-feet of groundwater per year at a diversion rate of 150 gallons per minute to fill three (3) ponds from one (1) well for recreational use in Pratt County. **The point of diversion is in the North Fork Ninnescah drainage basin of GMD 5, within the vicinity of the Quivira impairment region (Tier 3).** This appropriation falls under an exemption for the use of 15 acre-feet of groundwater per K.A.R. 5-25-15(a). There are no other water rights overlapping the point of diversion or place of use, but the point of diversion was previously authorized for irrigation use under Water Right File No. 9,364, which was voluntarily dismissed in 2010.

Reasonable Rate and Quantity

The water will be used to fill and maintain water levels in three (3) ponds totaling 3.5 acres in surface area for five to six months out of the year. The applicant is requesting 15 acre-feet to fill and offset evaporation loss, which appears to be reasonable.

Evaporation: 3.5 acres x 34 inches x (1 foot/12inches) x (1 year/ 12 months) x 6 months of use = 4.95 AF

Storage: 3.5 acres x 2' (depth of ponds) = 7 AF

Estimated Seepage: 3.05 AF

7AF + 4.95AF + 3.05AF = 15AF

Source of Supply and Safe Yield

In order to be exempt from closure, this application must comply with GMD 5 regulations for small use exemptions (K.A.R. 5-25-15). There are no other small use exemptions within a one-mile radius, and no other non-domestic use is currently authorized by the proposed point of diversion. Provided that we believe the applicant won't impair existing water rights, it meets all requirements for a small use exemption in GMD 5.

A well log for the proposed point of diversion was found on WWC5 and states static groundwater is measured at 31 feet below ground surface. It indicates topsoil from surface to 2 feet, tan and brown clay from 2 feet to 27 feet and sand and gravel from 27 feet to 70 feet. Using nearby well logs and "Geology and Ground-Water Resources of Pratt County, South-Central Kansas" Bulletin 205 the source of supply is likely undifferentiated Kansan/Nebraskan Stage.

Nearby Water Rights

The nearest domestic well is 770 feet from the proposed point of diversion. The nearest non-domestic well is 2,300 feet from the proposed point of diversion. Two groundwater users were identified using WWC5. Nearby notification letters were mailed on March 21, 2024. No responses have been received to date.

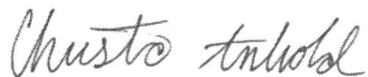
Recommendations

In a letter dated April 22, 2024, GMD 5 Manager, Orrin Feril, recommended approval of the application, noting that the application meets the requirements of K.A.R. 5-25-4(b)(9), which exempts an application from closure if water is used in a manner so that there is no significant consumptive use.

In an email dated June 6, 2024, Jeff Lanterman, Stafford Field Office Water Commissioner, recommended denial of the application on the basis that we can't approve anything that would cause impairment, noting its location within Zone A and a 32.1% response zone to RSC.

In an email dated June 6, 2024, KDA-DWR technical services confirmed that the RSC response would be 32.1%. The proposed location would not be within the MDS region, and it would receive a preliminary allocation of 5.568 acre-feet under the proposed impairment administration. Technical services noted "...that our allocations are calculated based on a finite amount of water. That 5.568 acre-feet would be reduced from the water available to be allocated to every other water right. Spread over ~1,400 water rights it becomes almost a rounding error, but it is taking allocations away from existing senior water right holders".

Approval of small use exemptions located in the Rattlesnake Creek Basin typically require an offset according to the GMD 5 regulations. This application is located within the NF Ninnescah Basin, so an offset isn't required. We recommend that the referenced application be approved as proposed, and that a letter be sent outlining the proposed plan to address impairment which details the allocation this applicant would receive under administration.

A handwritten signature in cursive script that reads "Christa Anhold".

Christa Anhold
Environmental Scientist
Water Appropriation Program

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

CHARLES R & KAYLA KINYON
100486 NW 70TH AVE
BYERS KS 67021

RE: Appropriation of Water
File No. 50,953

Dear Sir or Madam:

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.

On February 10, 2023, the Chief Engineer received a request to secure water from the U.S. Fish and Wildlife Service related to their senior water right for Quivira National Wildlife Refuge, located in eastern Stafford County. It was determined in 2016 that upstream junior groundwater pumping in the Rattlesnake Creek basin and North Fork Ninnescah River basin regularly and significantly impairs the Service's ability to use its water right. Based on the location of your well, your appropriation may be curtailed to protect that senior water right. Please review the included letter, dated January 25, 2023, which details the allocation method that would be used should administration be required to satisfy the water right at the refuge. Additional information regarding this matter may be found on our website at <http://agriculture.ks.gov/quivira>.

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.

CHARLES R & KAYLA KINYON

File No. 50,953

Page 2 of 2

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 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 Unit Supervisor
Division of Water Resources

KAB:cla

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 24 day of June, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,953, dated June 13, 2024, was mailed postage prepaid, first class, US mail to the following:

Original to:

CHARLES R & KAYLA KINYON
100486 NW 70TH AVE
BYERS KS 67021

With photocopies to:

KDA-DWR Stafford Field Office

Big Bend GMD No. 5



Division of Water Resources