

File No. **50987** 13. County: **BU** Basin: **Walnut River** Stream: **Fourmile Creek trib 1**
 Structures File No: Aquifer Code: Special Use Area:

14. Points of Diversion, Rates & Quantities

PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Qty AF		Rate gpm		Storage Qty AF		Storage Rate	Overlaps
									Auth	Add	Auth	Add	Auth	Add	Auth/Add	
CHK	60954	SESWNE	32	27S	3E	2795	1910		15	15	500	500				
									12	12						

15. Limitations **NEW** Type: Quantity: **AF** Rate: **gpm** combined with file no(s):
NEW Type: Quantity: **AF** Rate: **gpm** combined with file no(s):

16. Metering Metering Required Anti-Reverse Required Seal Required Compliance Date: ~~12/31/2024~~ **2025**

17. Place of Use

PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
					NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
CHK	20022	32	27	3E	4			10													10	40210 5A	<input type="checkbox"/>	
																							<input type="checkbox"/>	
																							<input type="checkbox"/>	
																							<input type="checkbox"/>	
																							<input type="checkbox"/>	

18. Point of Diversion and Place of Use Overlaps

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MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: May 2, 2024

From: Daniel Bird, Environmental Scientist

Re: New Application File No. 50,987 – Michael Carney

Summary

Michael Carney has filed the above referenced application proposing to divert 12 acre-feet of surface water from Four Mile Creek (Walnut River) at a rate 500 GPM for the irrigation of 10 acres of Bermuda grass via an in-ground sprinkler system.

Reasonable Rate and Quantity

A reasonable quantity for irrigation in Butler County is 1.2 acre-feet per acre, based on the following calculation:

Quantity = 10 acres x 16.8 inches 12 inches

Quantity = 12 acre-feet

Source of Supply and Safe Yield

The application proposes the direct diversion of surface water. To mitigate the off-season pumping restrictions in K.A.R. 5-3-15, there is a half-acre lake that is 7' deep on average giving it volume 3.5 acre-feet. The amount of off stream storage needed is 3.2 acre-feet (based 40% of the 50% net irrigation requirement for corn), meaning that File No. 50,987 appears reasonable.

Nearby Water Rights

There are three water rights within two miles of the proposed point of diversion, including File Nos. 45,706, 44,057, and 41,811, all of which are surface water rights. File Nos. 45,706 and 44,057, are both upstream from File No. 50,987, and likely won't be impacted by this appropriation. File No. 41,811, appears to be far enough downstream that impairment would be unlikely.

Recommendations

Jeff Lanterman, Water Commissioner of the Stafford Field Office, recommends approving the permit, provided there is a provision requiring adequate off-stream storage.



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. 50,987** of the applicant

MICHAEL D CARNEY
400 N WOODLAWN ST STE 210
WICHITA, KS 67208

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 **March 6, 2023**.
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	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
32 - 27 - 3E			10														10

3. That the authorized source from which the appropriation shall be made is surface water from Fourmile Creek, designated in the office of the Chief Engineer as Fourmile Creek (Walnut), to be diverted by means of a pumpsite located in the Southeast Quarter of the Southwest Quarter of the Northeast Quarter (SE¼ SW¼ NE¼) of Section 32, more particularly described as being near a point 2,795 feet North and 1,910 feet West of the Southeast corner of said section, in Township 27 South, Range 3 East, Butler 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 **500 gallons per minute (1.11 c.f.s.)** and to a quantity not to exceed **12 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 stream flow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of this water right or permit.

16. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

17. 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.

18. That during the period from July 1 through September 30, of each calendar year, no direct diversions of surface water shall occur unless written permission is obtained from the Chief Engineer, or the Chief Engineer's authorized representative.

19. That during the period October 1 through June 30, the verbal or written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, shall be obtained in order to divert water each time the applicant desires to divert water.

20. That the direct diversion of streamflow may not be granted from July 1 through September 30, if adequate water storage is not completed, or if no alternate water source is developed.

21. 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 11 day of June, 2024, in Manhattan, Riley County, Kansas.

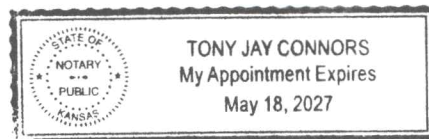
Lane P. Letourneau

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 11 day of June, 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

June 12, 2024

MICHAEL D CARNEY
400 N WOODLAWN ST STE 210
WICHITA KS 67208

RE: Appropriation of Water
File No. 50,987

Dear Mr. Carney:

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, of the permit, with specific reference to Paragraph Nos. 15 through 20. Permission to divert surface water must be obtained from the Stafford Field Office each time you wish to do so.

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 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:dkb
Enclosure(s)
pc: Stafford 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 12 day of June, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,987, dated June 11, 2024, was mailed postage prepaid, first class, US mail to the following:

MICHAEL D CARNEY
400 N WOODLAWN ST STE 210
WICHITA KS 67208

With photocopies to:

KDA-DWR Stafford Field Office



Division of Water Resources