

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: July 1, 2024

From: Christa Anhold, Environmental Scientist

Re: New Application File No. 51,099 – Cody R. Barilla

Summary

Cody R. Barilla filed the above referenced new application proposing to appropriate 15 AF of groundwater per calendar year at a diversion rate of 910 gallons per minute from one (1) well for recreational use in lowland marshes in Stafford County. This appropriation falls under an exemption for the use of 15 acre-feet of groundwater per K.A.R. 5-25-15(a). The applicant owns the place of use and point of diversion and there are no overlapping water rights. However, the point of diversion and place of use were previously authorized for irrigation use under Water Right File No. 42,699. A change application for Water Right File No. 42,699 was approved on October 2, 2023, to change the place of use and point of diversion.

Reasonable Rate and Quantity

The proposed water will be used to fill and maintain water levels in lowland marsh areas totaling 8-acres during the normal waterfowl season. A rate of 910 GPM was perfected under Water Right File No. 42,699 and appears reasonable for the area. The applicant is requesting 15 acre-feet to fill and offset evaporation loss, which can be considered reasonable per K.A.R. 5-25-15 and the below calculation. The application will be limited by 1 year of evaporation and 1 year of storage as calculated below:

$$\text{Evaporation: } 8 \text{ acres} \times (32''/\text{acre}) \times (1'/12'') / 3 \text{ months} = 7 \text{ AF}$$

$$\text{Storage: } 8 \text{ acres} \times \sim 1\text{ft deep} = 8\text{AF}$$

$$\text{Evaporation} + \text{Storage} = 7\text{AF} + 8\text{AF} = 15\text{AF}$$

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.

This well was previously used for irrigation under Water Right File No. 42,699 and the source of supply was determined to be Meade/Grand Island formation.

Nearby Water Rights

From the proposed point of diversion, the nearest non-domestic well is the applicants Water Right File No. 42,699 which is 2,080 feet away. The nearest domestic well is 1.2 miles away. The applicant did not provide nearby domestic water users and non were identified during the review process. No nearby notifications were mailed.

Recommendations

In a letter date July 8, 2024, Big Bend GMD No. 5 Manager, Orrin Feril, recommended approval of the application.

The application was sent for consideration to Jeff Lanterman, Water Commissioner, and Cameron Conant, Assistant Water Commissioner, of the Stafford Field Office on July 9, 2024, and was recommended for approval in an email dated July 17, 2024.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum spacing requirements. It does not appear that approval of the application will impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Christa Anhold
Environmental Scientist

Water Appropriation Program

From: Lanterman, Jeff [KDA]
Sent: Wed 7/17/2024 4:56 PM
To: Anhold, Christa [KDA]
Cc: Conant, Cameron [KDA]
Subject: FW: 51099 Recommendation Request
Attachments: 51099 Memo.docx

Christa;

I don't have any objection to approval of this application as is.

Thanks

Jeff

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Wednesday, July 17, 2024 2:27 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: FW: 51099 Recommendation Request

Jeff, Cody Barilla did a p/d and p/u change on File No. 42699 in October of 2023 to move to a new, better quarter for farming across the road but within ½ mile of the original well so we did it with a p/d change. At the same time, he filed this 15 AF application to use the old well previously authorized by 42699 to fill several low marsh areas within the field. I went through a lot with Orrin regarding water quality and the GMD requirements for test holes, observation wells, and sampling while processing the change application. There is a lengthy email string about that in the file for 42699. To sum it up we ended with Cody being required to continue monitoring and sampling at the NEW location with a NEW observation well. Orrin said if they used the old well they should continue monitoring the quality, I noted in the emails that GMD could request additional (or continued) monitoring from the old test hole and OBS well if they wanted with the new application. Orrin added no additional conditions to this new application and he has recommended approval. I thought he might try to add in water quality monitoring based on our last round of emails for the old irrigation file but he did not. I'm fine with that, the last samples Orrin provided were showing anywhere from 14-45 mg/l of chlorides in recent years so there isn't much of a call to continue to monitor the quality at this location unless the applicant wants to do so. Those levels shouldn't be impacted by annual pumping of 15 AF.

Christa has links to a nest of GMD measured wells. The wells are located 1.82 miles to the east of this application. January of 1983 when the record started, the water level was 36'. In January of 2020 water level was 34'. January 2024 was 40.5'. It has been really dry so there has been more draft on the area than normal so it's not a great surprise water levels are lowering. It seems with good rain we will again recover, as evidenced by the 2020 water level of 34' that was 2 feet higher than 1983 when the record started. The nest of GMD wells is significantly higher in elevation and further from the Ninnescah river than what the proposed recreational well is. The rec well (used to be IRR well), is 98' deep with a SWL of ~20' showing good sand and gravel. There should be no issues with impairment and I'm not concerned about water level aside from it dropping a fair amount from the abnormally dry conditions right now.

The application requests 15 AF at 910 GPM to fill 3 marshes totaling about 8 acres in size. Based on the shallow depth of the marshes and seasonal use, 15 AF seems adequate to fill the marshes for yearly duck hunting. I have no issue with this application as it presently sits and I think we can recommend approval of it. Please pass on to Christa if you agree. Also, take a good look at the next paragraph, I think we proceed for now with approval but wanted you up to date on what might come.

I just spoke to Cody. He now has additional plans to use this location for irrigation via the CKWB. This current location is outside the Administration zones, so I think it is just good ol fashioned water banking as I think the 3 he is talking about are all just outside the proposed administration zone and within a mile of this site. He plans to deposit three water rights into the bank and file a Term permit at this location to use the old well and system for 42699 to be able to water 4 pivots instead of 3. He'd grow cotton on 3 and corn on one and alternate his cropping between the circles. Seems like a good plan for him to gain a circle of

cotton. He plans to have a water bank term parked on this well for the foreseeable future but nothing has been filed at this time. I'm not sure the water bank and the 15 AF exemption work ok together in this instance? He'd have to meter the irrigation and recreational separately no matter what. I think regardless of the CKWB and how that might come in to play, we could go ahead with approval of the application as it sits for REC use. Cody wants the ability to water 4 pivots via the CKWB, so if the REC permit ends up being an issue for that to happen I fully expect him to get rid of the REC permit. But since nothing is filed yet with the bank, I propose we move forward with approval of this and we can address the CKWB issue overlapping the REC water right if and when it comes up.

Cameron

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>

Sent: Tuesday, July 9, 2024 7:49 AM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Subject: 51099 Recommendation Request

Good morning Jeff and Cameron,

Attached is the draft memo for 51,099, for your review and recommendation. There were no nearby neighbors to notify.

Here are links to WIZARD water wells within a 2-mile radius of the proposed PD.

1.82 mi

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374950098355703

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374950098355702

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374950098355701

2.07mi

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=374932098401501

Let me know if you have any questions or 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. 51,099** of the applicant

**CODY R BARILLA
781 SE 50TH STREET
STAFFORD, KS 67578**

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 **August 28, 2023**.
2. That the water sought to be appropriated shall be used for recreational use in a wildlife marsh with a maximum combined surface area of 8 acres located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 34, Township 25 South, Range 12 West, Stafford 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 Northeast Quarter of the Southwest Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 34, more particularly described as being near a point 1,293 feet North and 4,162 feet West of the Southeast corner of said section, in Township 25 South, Range 12 West, Stafford 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 **910 gallons per minute (2.03 c.f.s.)** and to a quantity not to exceed **15 acre-feet (4.89 million gallons)** 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 *8th* day of *August*, 2024, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

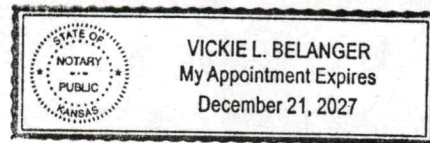
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

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 21, 2024

CODY R BARILLA
781 SE 50TH STREET
STAFFORD KS 67578

RE: Appropriation of Water
File No. 51,099

Dear Mr. Barilla:

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 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:cla
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 *21st* day of *August*, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,099, dated *August 8*, 2024, was mailed postage prepaid, first class, US mail to the following:

Original to:

CODY R & HANNAH L BARILLA
781 SE 50TH STREET
STAFFORD, KS 67578

With photocopies to:

KDA-DWR Stafford Field Office



Division of Water Resources