

NOTICE

This scan only represents the application as filed. The information contained herein meets the requirements of K.A.R. 5-3-1 or K.A.R. 5-5-1, and has been found acceptable for filing in the office of the Chief Engineer. The application should not be considered to be a complete application as per K.A.R. 5-3-1b or K.A.R. 5-5-2a.

Submit To: CHIEF ENGINEER
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
http://agriculture.ks.gov/dwr

**APPLICATION FOR APPROVAL TO
CHANGE THE PLACE OF USE, THE
POINT OF DIVERSION OR THE USE
MADE OF THE WATER UNDER AN
EXISTING WATER RIGHT**



State of Kansas

Filing Fee Must Accompany the Application
(Please refer to Fee Schedule on signature page of application form.)

Paragraph Nos. 1, 2, 3, 4 & 8 must be completed. Complete all other applicable portions. A topographic map or detailed plat showing the authorized and proposed points(s) of diversion and /or place of use must accompany this application.

1. Application is hereby made for approval of the Chief Engineer to change the

- Place of Use
- (Check one or more) Point of Diversion
- Use Made of Water

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1:03

KS DEPT OF AGRICULTURE

File No. 41321

2. Name of applicant: SCHMIDTLEIN EXCAVATING INC

Address: 204 NE RICE RD

City, State and Zip: TOPEKA, KS 66616

Phone Number: (785)357-7354

E-mail address: daves@schmidtlexcavating.com

What is your relationship to the water right; owner tenant agent other? If other, please explain. _____

Name of water use correspondent: SAME AS ABOVE

Address: _____

City, State and Zip: _____

Phone Number: (____) _____

E-mail address: _____

3. The change(s) proposed herein are desired for the following reasons (please be specific): _____

The groundwater pit is no longer used for sand and gravel operations.

The change(s) (was) (will be) completed by 2017 or upon certification

(Date)

For Office Use Only:

F.O. 1 GMD Meets K.A.R. 5-5-1 (YES / NO) Use IND Source G/S County SN By ASW Date 2/13/17
Code CLW Fee \$ 300 TR # _____ Receipt Date 2/13/17 Check # 2032

2/15/2017 ULM

4. The presently authorized place of use is:

Owner of Land — NAME: SCHMIDTLEIN EXCAVATING INC

ADDRESS: 204 NE RICE RD, TOPEKA, KS 66616

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
23	11	16E	40 AC GROUNDWATER PIT LOCATED IN THE EAST HALF OF THE SOUTHWEST QUARTER (E½ SW¼)																N/A

List any other water rights that cover this place of use. N/A

Owner of Land — NAME: _____

ADDRESS: _____

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

List any other water rights that cover this place of use. _____

(If there are more than two landowners, attach additional sheets as necessary.)

5. It is proposed that the place of use be changed to:

Owner of Land — NAME: SCHMIDTLEIN EXCAVATING INC

ADDRESS: 504 NE RICE RD, TOPEKA, KS 66616

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
23	11	16E	GROUNDWATER PIT LOCATED IN THE EAST HALF OF THE SOUTHWEST QUARTER (E½ SW¼)																N/A

List any other water rights that cover this place of use. _____

Owner of Land — NAME: _____

ADDRESS: _____

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

List any other water rights that cover this place of use. _____

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

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- 6. The presently authorized point(s) of diversion (is) (are) GEOCENTER OF THE GROUNDWATER PIT
(Provide description and number of points)
- 7. The proposed point(s) of diversion (is) (are) GEOCENTER OF THE GROUNDWATER PIT
(Provide description and number of points)

List all presently authorized point(s) of diversion:

8. **Presently authorized point of diversion:**
 One in the SE Quarter of the NE Quarter of the SW Quarter of Section 23, Township 11 South, Range 16 EAST, in SHAWNEE County, Kansas, 1700 feet North 3000 feet West of Southeast corner of section.
 Authorized Rate NF Authorized Quantity 13 MGY
 (DWR use only: Computer ID No. 3 GPS -- feet North -- feet West)
 This point will not be changed This point will be changed as follows:
Proposed point of diversion: (Complete only if change is requested)
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section.
 Proposed Rate _____ Proposed Quantity _____
 This point is: Additional Well Geo Center List other water rights that will use this point _____

9. **Presently authorized point of diversion:**
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section.
 Authorized Rate _____ Authorized Quantity _____
 (DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)
 This point will not be changed This point will be changed as follows:
Proposed point of diversion: (Complete only if change is requested)
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section.
 Proposed Rate _____ Proposed Quantity _____
 This point is: Additional Well Geo Center List other water rights that will use this point _____

10. **Presently authorized point of diversion:**
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section.
 Authorized Rate _____ Authorized Quantity _____
 (DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)
 This point will not be changed This point will be changed as follows:
Proposed point of diversion: (Complete only if change is requested)
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section.
 Proposed Rate _____ Proposed Quantity _____
 This point is: Additional Well Geo Center List other water rights that will use this point _____

- 11. Describe the current condition of and future plans for any point(s) of diversion which will no longer be used. _____
 N/A

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

12. The presently authorized use of water is for INDUSTRIAL purposes.

It is proposed that the use be changed to RECREATION purposes.

13. If changing the place of use and/or use made of water, describe how the consumptive use will not be increased.

Pit size will not increase. There will no longer be any further removal of material.

(Please show any calculations here.)

14. It is requested that the maximum annual quantity of water be reduced to N/A (acre-feet or million gallons).

15. It is requested that the maximum rate of diversion of water be reduced to N/A gallons per minute (____ c.f.s.).

16. The application must include either a topographic map or detailed plat. A U.S. Geological Survey Topographic Map, scale 1:24,000, is available through the Kansas Geological Survey, 1930 Constant Avenue, University of Kansas, Lawrence, Kansas 66047-3726 (www.usgs.gov). The map should show the location of the presently authorized point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. The presently authorized place of use should also be shown. Identify the center of the section, the section lines and the section corners and show the appropriate section, township, and range numbers on the map. In addition the following information must also be shown on the map.

a. If a change in the location of the point(s) of diversion is proposed, show:

- 1) The location of the proposed point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. Please be certain that the information shown on the map agrees with the information shown in Paragraph Nos. 9, 10 and 11 of the application.
- 2) If the source of supply is groundwater, please show the location of existing water wells of any kind, including domestic wells, within 1/2 mile of the proposed well or wells. Identify each well as to its use and furnish name and mailing address of the property owner or owners. If there are no wells within 1/2 mile, please indicate so on the map.
- 3) If the source of supply is surface water, the names and mailing addresses of all landowner(s) 1/2 mile downstream and 1/2 mile upstream from your property lines must be shown.

b. If a change in the place of use is desired, show the proposed place of use by crosshatching on the map. Please be certain that the information shown on the map agrees with the information shown in Paragraph No. 5 of the application.

17. Attach documentation to show the change(s) proposed herein will not impair existing water rights and relates to the same local source of supply as to which the water right relates. This information may include statements, plats, geology reports, well logs, test hole logs, and other information as necessary information to show the above. Additional comments may be made below.

Since the pit will not be expanded, and once the file is certified, consumptive use will not increase.

18. If the proposed change(s) does not meet all applicable rules and regulations of the Kansas Water Appropriation Act, please identify the rules and regulations for which you request a waiver. State the reason why a waiver is needed and why the request should be granted. Attach documentation showing that granting the request will not impair existing water rights and will not prejudicially and unreasonably affect the public interest.

N/A

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

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Any use of water that is not as authorized by the water right or permit to authorize water **before** the chief engineer approves this application is a violation of the Kansas Water Appropriation Act for which criminal or civil penalties may be assessed. Such violation is a class C misdemeanor, punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. K.S.A. 82a-728(b). Civil penalties shall be not less than \$100 nor more than \$1,000 per violation. In the case of a continuing violation, each day such violation continues may be deemed a separate violation. In addition to these penalties the water right may be modified or suspended. K.S.A. 82a-737, as amended.

The application must be signed by all owners of the place of use authorized under the water right and his or her spouse, if married. Please indicate if there is no spouse. If land is being purchased under contract, the seller must sign as landowner until such time as the contract is completed.

In the event that all applicants cannot appear before one notary public, they may as necessary sign separate copies of the application before any notary public conveniently available to them. All copies signed in this manner shall be considered to be valid parts of the application.

If the request is signed on behalf of any Owner by someone with legal authority to do so (for example, an agent, one who has power of attorney, or an executor, executrix, conservator), it will be necessary to attach proper documents showing such authority.

I declare that I am an owner of the currently authorized place of use as identified herein, or that I represent all such owners and am authorized to make this application on their behalf, and declare further that the statements contained herein are true, correct, and complete. By filing this application I authorize the chief engineer to permanently reduce the quantity of water and/or rate of diversion as specified in sections 14 and 15 of this application.

Dated at Topeka, Kansas, this 9th day of FEBRUARY, 2017.

David J. Schmittlein U.P.
(Owner)

(Spouse)

DAVID J SCHMITTEIN
(Please Print)

(Please Print)

(Owner)

(Spouse)

(Please Print)


(Please Print)

(Owner)

(Spouse)

(Please Print)

(Please Print)

 Linda L. Rohr
Notary Public
State of Kansas

State of Kansas }
County of Shawnee } SS

I hereby certify that the foregoing application was signed in my presence and sworn to before me this 9th day of February, 2017.

Linda L. Rohr
Notary Public

My Commission Expires 5/6/2019.

FEE SCHEDULE

Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

- (1) Application to change a point of diversion 300 feet or less \$100
- (2) Application to change a point of diversion more than 300 feet \$200
- (3) Application to change the place of use \$200
- (4) Application to change the use made of the water \$300

Make check payable to **Kansas Department of Agriculture.**

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KS DEPT OF AGRICULTURE



KANSAS DEPARTMENT OF AGRICULTURE
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES
David W. Barfield, Chief Engineer

AGREEMENT TO LIMIT OPERATION

The signing of this agreement indicates that the owner will not expand the authorized pit beyond the size for which groundwater is available to compensate for the annual evaporative loss from the aquifer caused by the pit.

I, David J. Schmittlein, owner of a sand/gravel pit which is, or will be, located in the SE, NE, SW, of Section 23, Township 11 S, Range 16 East, Shawnee County, Kansas, hereby agree as a condition of the approval of the pending application to authorize the appropriation of groundwater from this pit, in accordance with K.A.R. 5-3-16 (b)(1): (1) I will permanently cease expansion of the surface area of the pit at _____ acres, which is the surface area at which the net average annual evaporation at the pit equals the total maximum annual quantity of water authorized within the terms and conditions of all permits or water rights, or (2) In accordance with the laws and regulations of the Division, I will acquire existing water rights sufficient to compensate for additional evaporation caused by expansion of the groundwater surface area exposed at the pit in excess of the quantity of water authorized for that purpose by all permits or water rights.

I further agree that this agreement is binding on me and all my agents, successors, heirs and assigns.



Linda L. Rohr
Notary Public
State of Kansas

[Signature]
(Signature of Owner)

DAVID J. SCHMITTLEIN
(Print Owner's Name)

State of Kansas)
County of Shawnee) SS

The foregoing instrument was acknowledged before me this 9th day of February 2017, by Linda Rohr.

Linda L. Rohr
Notary Public

My appointment expires: 5/6/2019

File No. 41321
(Assigned by DWR)

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1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700

900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

February 14, 2017

SCHMIDTLEIN EXCAVATING INC
204 NE RICE RD
TOPEKA, KS

RE: File No. 41321

FILE COPY

Dear Sir or Madam:

An application for approval of the Chief Engineer to change the following condition or conditions of the file number referred to above has been received:

- place of use UMW
- point of diversion
- use made of water

As a matter of record, the Division of Water Resources has on hand a large number of applications awaiting processing. Therefore, to be fair to all concerned, and so that we can process those applications on hand in the order they were received, we intend to concentrate on the backlog of applications until the issue is resolved. You will be contacted regarding this application as soon as it has been examined.

In accordance with the provisions of the Kansas Water Appropriation Act, a portion of which is included below, the use of water prior to approval of the application is unlawful. You should not proceed and divert water as indicated by your plans in your application for a change for this file until you receive approval for this change from the Chief Engineer. Once approved, compliance with the terms, conditions and limitations of the permit is necessary. Conservation of the water resources of Kansas is required.

Section 82a-728 of the Kansas Water Appropriation Act, provides (a) except for the appropriation of water for the purpose of domestic use, . . . it shall be unlawful for any person to appropriate or threaten to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the provisions of the Water Appropriation Act or for any person to violate any condition of a vested right, appropriation right or an approved application for a permit to appropriate water for beneficial use.

(b) (1) The violation of any provision of this section by any person is a class C misdemeanor...

A class C misdemeanor is punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. Each day that the violation occurs constitutes a separate offense.

If you have any questions, please contact me at (785) 564-6645. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

Brent A Turney, L.G.
Change Applications Unit Supervisor
Water Appropriation Program

BAT: dlw
pc: TOPEKA Field Office GMD 0