

File No. 50,279	15. Formation Code:		Drainage Basin: Kansas River				County: DG		Special Use:		Stream: Kansas River											
16. Points of Diversion							17. Rate and Quantity MOD QTY and RATE															
T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized Rate cfs	Quantity af	Additional Rate cfs	Quantity af	Overlap PD Files									
√	76439	SW NE SW	30	12	20E	25	1700	3330	1,300	941,092.9	1,300	941,092.9	47,275									
18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft																						
19. Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____ Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____																						
20. Meter Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No To be installed by _____ Date Acceptable Meter Installed _____																						
21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files	
T MOD DEL ENT	PUSE	S	T	R	ID	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼					
√	61412	30	12	20E	5	NORTH LAWRENCE GENERATION LLC HYDROELECTRIC POWER PLANT (N END OF DAM)														7a.	No	47,275
Comments:																						

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: October 23, 2019

FROM: Doug Schemm

RE: Application, File No. 50,279

The Bowersock Mills & Power Company has filed the above referenced new application proposing to appropriate a total of 941,092.9 acre-feet of surface water at a rate of diversion not to exceed 1,300 cubic feet per second (583,440 gallons per minute) from the Kansas River for Water Power Use. The existing hydroelectric power plant is located at the north end of the Bowersock Dam. The applicant currently operates a hydroelectric generating facility on the south end of this same dam authorized under Vested Water Right, DG-011 and Appropriation of Water, File No. 45,444. The existing surface water intake structure is located in the Southwest Quarter of Section 30, Township 12 South, Range 20 East, in Douglas County, and is currently authorized under Appropriation of Water, File No. 47,275. A representative of the applicant has signed the application form stating they have access to the point of diversion.

File No. 47,275 is authorized 2,457,719 acre-feet at a flow rate of 3,400 c.f.s. The applicant has recently determined that at peak diversion, they are diverting in excess of the authorized quantity of water and rate of diversion under this existing file. This new application has been filed to address this issue. Note that the application was filed requesting 1,416,281 acre-feet, but was reduced to 941,092.9 acre-feet based maximum quantity per diversion rate, as follows:

$$1,300 \text{ cfs} \times 7.48 \text{ gals/cf} \times 60 \text{ sec/min} = 583,440 \text{ gpm}$$
$$583,440 \text{ gpm} \times 60 \text{ mins/hr} \times 24 \text{ hrs/day} \times 365 \text{ days} = 941,092.9 \text{ acre-feet.}$$

As noted above, this is an existing hydroelectric facility. The applicant held a public meeting during processing of the senior file to provide an overview of the proposed project and respond to concerns or questions from the audience. The meeting was well attended by both the public and regulatory agencies including staff from the Division of Water Resources. The public is well aware of this ongoing project.

The applicant provided a list of the upstream and downstream landowners indicating that the City of Lawrence and the Douglas County Kaw Drainage District own all of the property within one-half mile of the proposed point of diversion. Representatives from both of these entities were present at the public meeting discussed above; therefore no further direct notification is required regarding this project. Copies of the application were sent to the Kansas Water Office (KWO) and the Kansas River Water Assurance District No. 1 (KRWAD) on September 11, 2019. No responses of any kind were received. The permit is conditioned to provide DWR the opportunity to coordinate with the applicant whenever refilling of Mill Pond is necessary.

On August 19, 2010, Bowersock/North Lawrence Generation LLC was issued a Federal Energy Regulatory Commission (FERC) license for operation of this hydroelectric generating station. The FERC license includes many stringent conditions that requires Bowersock to develop and implement a plan to monitor project operations and water surface elevations in Mill Pond; operate the project to maintain the level of the Mill Pond at elevation 813.5 NGVD with deviations of no greater than plus or minus 6 inches, minimizing Mill Pond surface elevation fluctuations. Article 8 identifies that Bowersock shall install and maintain gages and streamgaging stations for the purpose of determining the state and flow of the stream, the water held and withdrawn from storage, effective head on the turbines, the reading of such, etc. Article 19 states that "In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution." The applicant must also prepare an Erosion and Sediment Control Plan. These criteria will assist DWR in ensuring that the proposed use of water will not impact senior water rights.

Other than the Bowersock Mills files discussed above, there is only one other surface water point of diversion located within two miles, which is owned by the City of Lawrence. Their surface water intake for municipal use is located approximately one-half mile upstream of the proposed point of diversion, so they would not be impacted in any way.

The applicant has submitted a signed Kansas River Assurance District form, which has been properly notarized. By completing this statement, the applicant affirms his/her knowledge that there could be times when the diversion of water may not be allowed under this permit.

The applicant has provided information explaining how the requested quantity of water and rate of diversion were determined based on river flows and operating criteria. The applicant has indicated that the existing plant can operate in excess of the currently authorized flow rate of 3,400 c.f.s. Therefore, the requested flow rate is for all additional rate of diversion of 1,300 c.f.s. The quantity of water and rate of diversion appear reasonable for the proposed use.

Per K.A.R. 5-3-15, Availability of water for appropriation - safe yield; surface water. (a) Each application filed to directly divert the natural flow of the Kansas River, the Missouri River, the Big Blue River, the Spring River, or their tributaries, shall:

- (1) be processed in accordance with K.A.R. 5-3-9; and
- (2) meet all other requirements for the approval of a new application.

(b) The water right owner shall be required by the chief engineer to meet minimum desirable streamflows (MDS), assurance district target flows (assurance target flows) and division of water resources (DWR) target flows where applicable.

The application meets these safe yield criteria. As noted above, the applicant has submitted a signed and notarized Kansas River Assurance District form.

Because of the uniqueness of this run-of-river operation, a flow meter is not feasible for the diversion works. However, the applicant has developed a very detailed and complex accounting system that evaluates total feet of head, Mill Pond elevation, discharge (in c.f.s.), and quantity of power generated to calculate water usage. This information is readily available to DWR, and the applicant will maintain a table that includes a daily summation of the quantity of water diverted since the beginning of the calendar year for each day. This information will be submitted monthly to the Division of Water Resources, Topeka Field Office, by the 15th day of each month. The applicant has operated the existing plant for well over 100 years, so they are very knowledgeable about river conditions and reporting requirements.

In an October 18, 2019 e-mail, Katie Tietsort, Water Commissioner, Topeka Field Office, recommended approval of the referenced application.

Based on the above discussion, the proposed appropriation is a "run-of-river" process, (considered to be non-consumptive), approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, the Kansas River is open to new appropriations of water, the application complies with safe yield criteria, and approval is in the public interest, it is recommended that the referenced application be approved.

Douglas W. Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Tietsort, Katie [KDA]
Sent: Friday, October 18, 2019 3:37 PM
To: Schemm, Doug [KDA]
Subject: RE: 50279 Bowersock

Good Afternoon Doug,

This file appears to meet all applicable rules and regulations of the KWAA. The KSRWAD No. 1 has been notified and if we have waited the required time period for their response, I agree it is ready to move forward with the condition requiring the reporting.

Thanks, Katie

Katie Tietsort
Water Commissioner

Katie.Tietsort@ks.gov
785-296-5733

Kansas Department of Agriculture
Division of Water Resources
Topeka Field Office
6531 S.E. Forbes Ave, Suite B
Topeka, KS 66619

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Wednesday, October 16, 2019 12:17 PM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Subject: 50279 Bowersock

I have not heard anything from KWO or the WAD. So I guess we are good to go.
Are we holding them to the same conditioning regarding reporting requirements as they had in the past?

Schemm, Doug [KDA]

From: Schemm, Doug [KDA]
Sent: Wednesday, September 11, 2019 8:02 AM
To: Galen Biery
Cc: 'Cara.Hendricks@kwo.ks.gov'; Tietsort, Katie [KDA]
Subject: Bowersock Application 50,279
Attachments: Scan - Inbox _025 (1).pdf; 50279 Notification of KS River WAD and KWO.DOCX

Good Morning Galen,

This application is for additional rate of diversion and quantity of water at their existing water power plant.

Let me know if you have any questions,

Doug Schemm

785-296-3495

Topeka Field Office
6531 SE Forbes Ave., Suite B
Topeka, KS 66619



Phone: 785-296-5733
Fax: 785-296-8298
www.agriculture.ks.gov

Mike Beam, Secretary

Laura Kelly, Governor

September 11, 2019

KANSAS RIVER WATER ASSURANCE DISTRICT NO 1
% GALEN BIERY
212 SW 7TH STREET
TOPEKA KS 66603-3717

Re: Application - File No. 50,279

Dear Mr. Biery:

This is to advise you that the above referenced application has been filed by the Bowersock Mills & Power Co. for a permit to appropriate 941,092.9 acre-feet of surface water from the Kansas River for water power use, to be diverted at a maximum rate of 1,300 cubic feet per second. A copy of the pending application is enclosed. Please note that the point of diversion represents the existing intake structure for the hydroelectric power plant located on the north end of the Bowersock Dam, which is currently authorized under Appropriation of Water, File No. 47,275.

You are being notified of receipt of this application in order to inform you of the proposed location of the applicant's point of diversion and proposed use of water, so that you may provide this office such comments or other information which you desire to submit. Please provide such comments or information to this office **within 15 days** from the date of this letter.

You may also contact me at (785) 296-3495 with any questions or comments.

Sincerely,

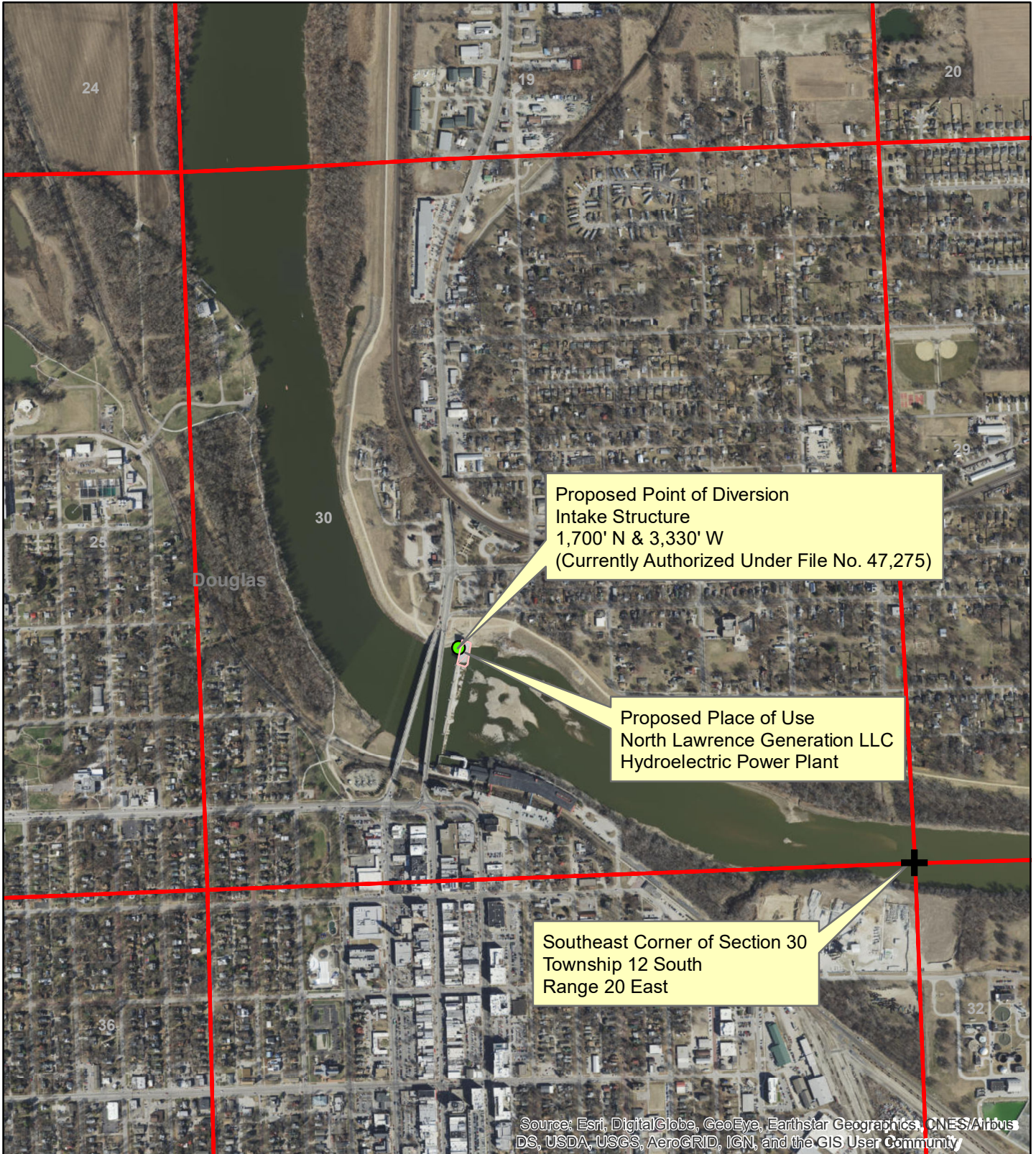
A handwritten signature in blue ink that reads "Douglas W. Schemm".

Doug Schemm
Environmental Scientist
Topeka Field Office

Enclosure

pc: Kansas Water Office

APPLICATION, FILE NO. 50,279
NORTH LAWRENCE GENERATION LLC
SITE MAP



1:12,000

● Proposed Point of Diversion



Proposed Place of Use



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

THE BOWERSOCK MILLS & POWER COMPANY
PO BOX 66
LAWRENCE KS 66044

March 10, 2020

FILE COPY

RE: Appropriation of Water, File No. 50,279

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, with specific reference to Paragraph Nos. 15 through 19. You must coordinate with the Division of Water Resources prior to commencing any refilling of Mill Pond.

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.

Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/divisions-programs/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 Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB:dws
Enclosure(s)

pc: Topeka Field Office
Kansas River Water Assurance District No. 1

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting 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. 50,279** the applicant

**THE BOWERSOCK MILLS & POWER COMPANY
PO BOX 66
LAWRENCE KS 66044**

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 8, 2019**.
2. That the water sought to be appropriated shall be used for waterpower use at an existing hydroelectric plant located in the Northeast Quarter of the Southwest Quarter of Section 30, in Township 12 South, Range 20 East, Douglas County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from the Kansas River, to be diverted at a point located in the Southwest Quarter of the Northeast Quarter of the Southwest Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$), of Section 30, more particularly described as being near a point 1,700 feet North and 3,330 feet West of the Southeast corner of said section, in Township 12 South, Range 20 East, Douglas 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 **1,300 cubic feet per second (c.f.s.)** and to a quantity not to exceed **941,092.9 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, 2021** 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, 2025** 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 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.

12. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

13. 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.

14. 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.

15. That the applicant shall maintain daily records in a table format that provides two (2) measured values for five (5) days each week obtained at least six (6) hours apart for the following: a) Total feet of head b) Mill Pond elevation c) Discharge (in c.f.s.). Additionally, the table should include a daily summation of the quantity of water diverted under this appropriation since the beginning of the calendar year for each day. These records shall be submitted monthly to the Division of Water Resources, Topeka Field Office, by the 15th day of each month or upon request of the Topeka Field Office. If necessary, the Chief Engineer or his designated agent can require more frequent measurements.

16. That the storage and use of water under this permit shall not interfere with target flows established for the Kansas River Water Assurance Program.

17. That when notified that releases from assurance storage are being made pursuant to the Kansas River Water Assurance District No. 1 Operations Agreement and the releases are subject to protection by the Division of Water Resources, the applicant shall ensure that a quantity of water equal to or greater than the released quantity will be diverted, bypassed, released or otherwise shall pass by, through, or over the Mill Pond Dam.

18. That the applicant shall maintain an on-site record of hourly Mill Pond surface elevation readings, which can be readily reviewed at the request of Division of Water Resources personnel.

19. That per the requirements contained in Article 401 of the Federal Energy Regulatory Commission license for this project, the applicant shall operate the Expanded Kansas River Hydroelectric Project in run-of-river (ROR) mode, maintaining the level of Mill Pond at elevation 813.5 feet National Geodetic Vertical Datum, (NGVD), with deviations no greater than plus or minus 6 inches due to operational constraints. Further, in the event that the level of Mill Pond is temporarily modified per the provisions of Article 401, prior to commencing any refilling of Mill Pond the applicant shall contact the Chief Engineer, or an authorized representative of the Chief Engineer, for coordination purposes, and communicate its operational plan for refilling to the Kansas Water Office and The Kansas River Water Assurance District No. 1.

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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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 Section, 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 hearing 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.

Ordered this 9th day of March, 2020 in Manhattan, Riley County, Kansas.

Christopher W. Beightel

Christopher W. Beightel, P.E.
Acting Chief Engineer
Division of Water Resources
Kansas Department of Agriculture



State of Kansas)
County of Riley) SS

The foregoing instrument was acknowledged before me this 9th day of March, 2020, by Christopher W. Beightel, P.E., Acting Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



Katie N. Anderson
Notary Public

CERTIFICATE OF SERVICE

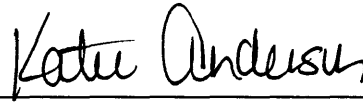
On this 10th day of March, 2020, I hereby certify that the foregoing Approval of Application, File No. 50,279, dated March 9, 2020 was mailed postage prepaid, first class, US mail to the following:

THE BOWERSOCK MILLS & POWER COMPANY
PO BOX 66
LAWRENCE KS 66044

With photocopies to:

KANSAS RIVER WATER ASSURANCE DISTRICT NO 1
% GALEN BIERY
212 SW 7TH STREET
TOPEKA KS 66603-3717

Topeka Field Office



Division of Water Resources

