

## Berry, Brett

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**From:** Berry, Brett  
**Sent:** Monday, August 24, 2009 1:37 PM  
**To:** Turney, Brent  
**Subject:** RE: City of Wichita ASR Phase II

Brent,

I looked over the changes and they look okay to me. So long as you didn't have a specific question, I think they're good.

Brett W. Berry  
Staff Attorney  
Kansas Department of Agriculture  
Legal Section - 4th Floor  
109 SW 9th Street  
Topeka, KS 66612  
(785) 296-4623  
[brett.berry@kda.state.ks.gov](mailto:brett.berry@kda.state.ks.gov)

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**From:** Turney, Brent  
**Sent:** Monday, August 24, 2009 8:50 AM  
**To:** Berry, Brett  
**Cc:** Krueger, Richelle  
**Subject:** FW: City of Wichita ASR Phase II

Brett,

Thanks for looking over the new applications associated with the Wichita ASR. Please let Richelle or Myself know when you have reviewed the changes that must be processed with the new applications. If you have any questions or concerns please let one of use know.

Thanks,  
Brent

**Brent A. Turney**  
Change Application Unit Supervisor  
Kansas Department Of Agriculture  
Division of Water Resources  
(785) 296-4617  
[Brent.Turney@kda.ks.gov](mailto:Brent.Turney@kda.ks.gov)  
[www.ksda.gov/dwr](http://www.ksda.gov/dwr)

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**From:** Schemm, Doug  
**Sent:** Monday, August 24, 2009 8:41 AM  
**To:** Turney, Brent  
**Subject:** FW: City of Wichita ASR Phase II

**Inter-Office Memorandum**

To: Legal Case File  
From: Brett Berry  
Date: August 20, 2009  
Re: Wichita ASR Phase II, review of order approving and permits to proceed

**Summary**

The order approving Phase II and an example of one of the permits to proceed was approved by me on the above date for form and content.

This Inter-Office Memorandum contains CONFIDENTIAL information which is (a) Attorney Client Privileged Communication, Work Product, Proprietary in Nature or otherwise protected by law, and (b) intended only for the use of the Addressee and/or Addressees named herein. If you are not an Addressee, or the person responsible for delivering this to the Addressee, you are hereby notified that reading, copying, or disturbing this message is prohibited. If you have received this message in error, please destroy the message. Thank you.

# LEGAL TRANSFER FORM

(When transferring a file to Legal Section)

DATE: 7/22/2009

PROGRAM TRANSFERRING FILE: Water Appropriation

PROGRAM CONTACT PERSON: Lane Letourneau and Doug Schemm

NATURE OF LEGAL ACTION REQUESTED: review permit conditions and  
findings and order  
(If penalties are requested, include amounts)

NAME OF REGULATED ENTITY: Wichita

NAME OF OWNER OR REPRESENTATIVE:

ADDRESS OF REGULATED ENTITY:

TELEPHONE NO. OF REGULATED ENTITY:

TYPE OF LICENSE, PERMIT, ETC.

(e.g., Certification No.; License No.;  
Water Right, File No.; Structure No.)

DESCRIBE CONTENTS OF BACKUP PAPERWORK TRANSFERRED:

COMMENTS: File No. 46,627 review condition 22 to ensure we retain authority and conditions approved in the CE's order issued on Aug 8, 2005. We need to retain part of Phase I as it relates to Phase II. This is a hard question to ask. Please meet with us to discuss.

DEADLINES: There are 24 gw and 1 sw app involved with this question.

Please deliver form with backup paperwork to Legal Section (Leslie Garner) to be date stamped and assigned.

**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. 46,627** of the applicant

**City of Wichita  
Water & Sewer Department  
455 North Main  
Wichita, Kansas 67202**

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 **November 13, 2006**.
2. That the water sought to be appropriated shall be used for both Artificial Recharge in the basin storage area previously identified in Phase I of the aquifer storage and recovery (ASR) project;

and for Municipal Use within the City of Wichita and immediate vicinity; within the City of Andover and immediate vicinity, within the City of Bel Aire and immediate vicinity, within the City of Benton and immediate vicinity, within the City of Derby and immediate vicinity; within the City of Kechi and immediate vicinity; within the City of Park City and immediate vicinity; within the City of Rose Hill and immediate vicinity; within the City of Valley Center and immediate vicinity; within the City of Bentley and immediate vicinity, within the boundaries of Rural Water District No. 1, Sedgwick County; within the boundaries of Rural Water District No. 2, Sedgwick County; within the boundaries of Rural Water District No. 3, Sedgwick County; and within the boundaries of Rural Water District No. 8, Butler County; within a tract of land in Sedgwick County, Kansas, beginning at the Southeast corner of Section 25, Township 28 South, Range 2 East, then West a distance of 22 miles to the Southwest corner of Section 28, Township 28 South, Range 2 West, then North a distance of 16 miles to the Northwest corner of Section 9, Township 26 South, Range 2 West, then East a distance of 22 miles to the Northeast corner of Section 12, Township 26 South, Range 2 East, then directly South a distance of 16 miles to the point of beginning.

*Water could go both ways.*

3. That the authorized source from which the appropriation shall be made is surface water from the Little Arkansas River, to be withdrawn by means of one (1) water intake structure located in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter (NE $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 9, more particularly described as being near a point 4,960 feet North and 4,020 feet West of the Southeast corner of said section, in Township 25 South, Range 1 West, Sedgwick 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 **41,667 gallons per minute (92.84 c.f.s.)** and to a quantity not to exceed **14,738.24 million gallons** (45,230 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, 2014**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$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, which is currently \$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, which is currently \$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 legally been 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 a satisfactory operating condition.
12. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this permit in accordance with the Kansas Administrative Regulation 5-22-4. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report, and such additional reports required in the Order to which this permit is attached (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 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.
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 diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.
18. 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 permit.
19. That the surface water intake structure authorized herein shall be operated only when flows in the Little Arkansas River at the U.S. Geological Survey stream gage No. 07144200 located west of Valley Center, Kansas exceed baseflow, and in order to ensure protection of senior water rights, shall not cause the streamflow at said Gage to fall below **30 cubic feet per second (c.f.s.)**.  
*S.M.D. 2*
20. That the surface water intake structure shall be constructed and maintained to allow only withdrawal of surface water.
21. That the injection of any surface water into the Equus Beds Aquifer is authorized by the Kansas Department of Health and Environment.
22. That this approval is subject to the terms, conditions, and limitations of the Chief Engineers' order approving the <sup>Phase I</sup> Aquifer Storage and Recovery project dated August 8, 2005, or any subsequent modifications, specifically in reference to previously identified basin storage area, index cells, index water levels, accounting, and reporting requirements.
23. That the Chief Engineer specifically retains jurisdiction in this matter with authority to make such reasonable reductions in the approved rate of diversion and quantity authorized to be perfected, and such changes in other terms, conditions, and limitations set forth in this approval and permit to proceed as may be deemed to be in the public interest.

That this approval is of application is subject to the terms, conditions, and limitations of the Order approving the Phase II ASR Project to which this permit is attached.

Review of this permit is subject to the provisions of the Petition for Review of Order, set forth in the Chief Engineer's accompanying Findings and Order.

Dated at Topeka, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
David W. Barfield, P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas            )  
                                  ) SS  
County of Shawnee        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by David W. Barfield, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

\_\_\_\_\_  
Notary Public

## Berry, Brett

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**From:** Turney, Brent  
**Sent:** Thursday, August 13, 2009 3:02 PM  
**To:** Berry, Brett  
**Subject:** FW: Wichita revisions  
**Attachments:** 29104pupdumwapprovwichita2009rev1date8-13-09.doc;  
29105pupdumwapprovwichita2009rev1date8-13-2009.doc;  
9141pupdumwapprovwichita2009rev1date8-13-09.doc

Brett,

Please find attached three applications for approval to change the point of diversion and use made of water. These changes were filed by Wichita to incorporate these water rights in Phase no. 2 of the ASR program. Since you have been reviewing the new applications drafted by Doug, and these changes must be processed at the same time, I thought you should review them at the same time.

Thanks,  
Brent

**Brent A. Turney**  
**Change Application Unit Supervisor**  
**Kansas Department Of Agriculture**  
**Division of Water Resources**  
**(785) 296-4617**  
**[Brent.Turney@kda.ks.gov](mailto:Brent.Turney@kda.ks.gov)**  
**[www.ksda.gov/dwr](http://www.ksda.gov/dwr)**

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**From:** Krueger, Richelle  
**Sent:** Thursday, August 13, 2009 2:34 PM  
**To:** Turney, Brent  
**Cc:** Schemm, Doug  
**Subject:** Wichita revisions



**APPROVAL OF APPLICATION  
FOR  
CHANGE IN PLACE OF USE  
POINT OF DIVERSION  
AND USE MADE OF WATER  
WATER RIGHT  
FILE NO. 9,141**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Debra H. Ary, on behalf of the City of Wichita, Kansas, 455 North Main, Wichita, Kansas, 67202, received in this office on October 29, 2008, for approval of changes in the location of the place of use, point of diversion and use made of water, under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, as modified and amended by the order of the Chief Engineer dated November 18, 1993, approving the application to change the place of use and use made of water, and by the order of the Chief Engineer dated June 9, 2005, correcting an error in the quantity limitation, finds that the changes are reasonable and will not impair existing rights, and that the application should be and is hereby approved.

The effective date of the changes shall be the date this order is executed by the Chief Engineer, after which the authorized use made of water shall be:

Municipal Use and Artificial Recharge.

The authorized place of use for municipal use shall be:

Within the City of Wichita and immediate vicinity; within the City of Andover and immediate vicinity, within the City of Bel Aire and immediate vicinity, within the City of Benton and immediate vicinity, within the City of Derby and immediate vicinity; within the City of Kechi and immediate vicinity; within the City of Park City and immediate vicinity; within the City of Rose Hill and immediate vicinity; within the City of Valley Center and immediate vicinity; within the City of Bentley and immediate vicinity, within the boundaries of Rural Water District No. 1, Sedgwick County; within the boundaries of Rural Water District No. 2, Sedgwick County; within the boundaries of Rural Water District No. 3, Sedgwick County; and within the boundaries of Rural Water District No. 8, Butler County; within a tract of land in Sedgwick County, Kansas, beginning at the Southeast corner of Section 25, Township 28 South, Range 2 East, then West a distance of 22 miles to the Southwest corner of Section 28, Township 28 South, Range 2 West, then North a distance of 16 miles to the Northwest corner

of Section 9, Township 26 South, Range 2 West, then East a distance of 22 miles to the Northeast corner of Section 12, Township 26 South, Range 2 East, then directly South a distance of 16 miles to the point of beginning.

The authorized place of use for artificial recharge shall be:

the basin storage area previously identified in Phase I of the aquifer storage and recovery (ASR) project approved by the Findings, Conclusion and Order of the Chief Engineer dated August 8, 2005, titled In the Matter of the City of Wichita's Applications To Operate an Aquifer Storage and Recovery Project in Harvey and Sedgwick Counties, Kansas Applications to Appropriate Water File Nos. 45,567; 45,568; 45,569; 45,570; 45,571; 45,572; 45,573; 45,574; 45,575; 45,576, and 46,081 ("Original Order"), and as modified and amended by the Findings and Order of the Chief Engineer dated August 1, 2006, titled In the Matter of Modifying the Conditions of the Order Approving the City of Wichita's Applications for Approval To Operate an Aquifer Storage and Recovery Project in Harvey and Sedgwick Counties, Kansas Applications to Appropriate Water File Nos. 45,567; 45,568; 45,569; 45,570; 45,571; 45,572; 45,573; 45,574; 45,575; 45,576, and 46,081 ("Modified Order"),

and the authorized location of the point of diversion shall be:

one (1) water intake structure located in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter (NE $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 9, more particularly described as being near a point 4,960 feet North and 4,020 feet West of the Southeast corner of said section, in Township 25 South, Range 1 West, Sedgwick County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the place of use, point of diversion and use made of water.

The water right remains limited to a diversion rate not in excess of 2,200 gallons per minute (4.90 c.f.s.) and remains limited to a maximum extent of 35,517,759 gallons (109 acre-feet) per calendar year, with a further limitation that the quantity may not exceed 145,003,695 gallons, (445 acre-feet) per five (5) year period; the first period being calendar years 2003 through 2007, the second period being calendar years 2008 through 2012, ad infinitum.

This approval is subject to the following additional conditions:

1. That passive recharge credits shall not be allowed.
2. That the basin storage area and index cells for the project are as set forth in Attachment 2 to the Original Order.
3. That the locations of the index wells and the index water levels for the basin storage area shall be as set forth in Attachments 3 and 4 to the Original Order.

4. That the Model and accounting methodology remains as previously submitted, until otherwise modified by formal written approval of the Chief Engineer.
5. That if the water right owner develops an improved model or methodology to account for water stored in the basin storage area that is approved by the Chief Engineer after consideration of the recommendation of Equus Beds Groundwater Management District No. 2 ("GMD # 2"), that the Chief Engineer may approve such improved methodology without the necessity of holding additional public hearings.
6. That the project shall be operated so that the measured water levels, and the water levels predicted by the Model, stay at or below the highest index water level any time water is being recharged into the basin storage area.
7. That water shall only be injected into the basin storage area by means of the injection wells when the water level at any required monitoring well located within 660 feet of an injection well is 10 feet or more below the land surface elevation at those observation wells. This condition must be maintained until such time that the applicant can demonstrate that allowing recharge water to exceed this level will not result in any damage to existing structures or adjacent property. If the applicant can document that an alternative (shallower) water level would be protective of the public interest, the applicant may petition the Chief Engineer to modify or remove this requirement. That recharge credits may be withdrawn from a cell only when recharge credits are available from the cell and the static water level at its index well is above the lowest index level; however, water may be recharged when the static water level is below the lowest index level in that well.
8. That the water right owner by June 1 each year shall report an accounting of water diverted from the surface water intake and recharged into the basin storage area in the Equus Beds Aquifer; that the Report shall be submitted to the Chief Engineer and GMD #2. The accounting shall use the Model and the accounting methodology described herein. In addition, the accounting reports shall meet the requirements of K.A.R. 5-12-2, including specifically addressing the following items for each cell in the basin storage area:
  - a. Natural and artificial recharge;
  - b. Groundwater inflow and outflow;
  - c. Evaporation and transpiration;
  - d. Groundwater water diversions from all non-domestic wells;
  - e. Infiltration from streams;
  - f. Groundwater discharge to streams; and
  - g. The calculated recharge credits
9. That the final determination of available recharge credits in each cell in the basin storage area shall be made by the Chief Engineer, upon consideration of the report required in Paragraph No. 8, above, and any recommendation by GMD #2. The Chief Engineer shall make the final determination in writing.
10. That each ASR well shall be equipped with water flow meters, meeting the requirements of K.A.R. 5-22-4, to separately and accurately record the total quantity of water injected into and diverted by each well.

11. That the source water used for artificial recharge shall not degrade the ambient groundwater quality use in the basin storage area; that the monitoring well network shown in Attachment 1 of this approval is hereby approved; that the monitoring wells shall be drilled and completed at depths correlating to the recharge and recovery zone of the aquifer for the ASR wells for water sample collection, water level measurements and testing purposes; that the water level monitoring at any ASR well site shall be automated with a frequency not to exceed six hours; that before installation of any ASR well, the water right owner shall submit a plan that includes water level monitoring as well as water quality monitoring, which is sufficient to prevent impairment of the water quality beyond a reasonable economic limit, to GMD #2 for review and comment and the Chief Engineer for approval; that the plan should also be consistent with any requirement which KDHE may impose for any UIC permits KDHE may issue pertaining to the ASR wells.
12. That surface water intake quantities, aquifer injection quantities and water level data shall be reported by the water right owner to the Chief Engineer and GMD #2 as follows:
  - a. Each month for the first year of operation;
  - b. Each calendar quarter for the second year of operation;
  - c. By March 1 each year thereafter; or
  - d. Other intervals as may be required by the Chief Engineer to properly evaluate the project.
13. That on or before June 1, of each calendar year, the water right owner shall submit to the Chief Engineer and GMD #2, an annual accounting report for water in the basin storage area, utilizing the Model; that shall meet the requirements of K.A.R. 5-12-2.
14. That the water right owner shall install an additional monitoring well network of six (6) wells to monitor the aquifer storage and recovery project, at the locations depicted on the attached map in Attachment 1. The monitoring wells must be drilled and completed at depths correlating to the recharge and recovery zone of the aquifer. The monitoring wells will be used for water sample collection, water level measurements, and testing purposes.
15. That the water right owner shall simultaneously submit to the Chief Engineer and GMD #2 a formal report containing a description and scaled map of the as-built aquifer storage and recovery project.
16. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this approval in accordance with the Kansas Administrative Regulation 5-22-4. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report, and such additional reports required in this approval (including the meter reading at the beginning and end of the report year).
17. The water right owner shall properly install an acceptable water meter on the diversion works authorized under this water right, prior to the use of water, in strict accordance with the Kansas Administrative Regulation 5-22-4 adopted by the Chief Engineer. The water right owner shall notify the Chief Engineer when installation of the water meter has been

completed. The water right owner shall maintain the water meter in an operating condition satisfactory to the Chief Engineer, at all times during diversion of water and shall maintain records from which the total quantity of water diverted may be determined. The water right owner shall also report the reading of said water meter and the total quantity of water diverted annually to 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, and such additional reports required in this approval (including the meter reading at the beginning and end of the report year).

18. That the water right owner shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the water right owner 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.
19. That the Chief Engineer also specifically retains jurisdiction in this matter with authority to make such reasonable reductions in the approved rate of diversion and quantity authorized to be perfected, and such changes in other terms, conditions, and limitations set forth in this approval as may be deemed necessary to protect the public interest.
20. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonable affect the public interest.
21. That this approval 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.
22. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.
23. 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. .
24. That the surface water intake structure shall be constructed and maintained to allow only withdrawal of surface water.
25. That the injection of any surface water into the Equus Beds Aquifer is authorized by the Kansas Department of Health and Environment.
26. That this approval is subject to the terms, conditions, and limitations of the Chief Engineers' order approving the Aquifer Storage and Recovery project dated August 8, 2005, or any subsequent modifications, specifically in reference to previously identified basin storage area, index cells, index water levels, accounting, and reporting requirements.
27. That this approval is subject to the terms, conditions, and limitations of the Order approving the Phase II ASR Project.

28. All diversion works 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.
29. That this approval does not constitute any necessary authorization from the Kansas Department of Health and Environment (KDHE) to operate a Class V UIC well; and the City shall furnish the Chief Engineer with copies of any Class V UIC well permits obtained from the KDHE within 30 days after they are obtained.
30. That operation of the aquifer storage and recovery well authorized herein, shall not impair existing water rights nor prejudicially and unreasonably affect the public interest.
31. That if the Chief Engineer determines that impairment of an existing prior water right is caused by operation of the aquifer storage and recovery well, the City of Wichita shall either regulate the aquifer storage and recovery well's diversion to secure water to satisfy all prior rights, or comply with any other requirement as specified by the Chief Engineer to prevent impairment or protect the public interest.
32. That the recharge system is constructed, operated, and monitored to prevent groundwater contamination, not impair existing water rights, nor prejudicially affect the public interest.
33. That this approval of application is subject to the terms, conditions, and limitations of the Memorandum of Understanding between Equus Beds Groundwater Management District No. 2 and the City of Wichita, Kansas, dated December 3, 2008.

Installation of the works for diversion of water shall be completed on or before December 31, 2014, or within any authorized extension of time. The water right owner shall notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, when construction of the works for diversion has been completed.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 9,141, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated August 27, 1985, as modified and amended by the aforementioned orders.

This Order shall become a final agency action, as defined by K.S.A. 77-607(b), without further notice to the parties, if a request for hearing or a petition for administrative review is not filed as set forth below.

**Request for Hearing.** According to K.A.R. 5-14-3(c), any party who desires a hearing must submit a request within 15 days after the date shown on the Certificate of Service attached to this Order. Filing a request for a hearing will give you the opportunity to submit additional facts for consideration, contest any findings made by the Chief Engineer or present any other information you believe should be considered in this matter. A timely-filed request for hearing will stay the deadline for requesting administrative review of this Order pending the outcome of the hearing.

Petition for Review. Any person aggrieved by this Order may petition for administrative review, pursuant to K.S.A. 82a-708b(a) and K.S.A. 82a-1901(a). The petition must be filed within 30 days after the date shown on the Certificate of Service attached to this Order and must set forth the basis for the review, unless stayed by the timely filing of a request for hearing.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 109 SW 9th Street, 4th Floor, Topeka, Kansas 66612, Fax: (785) 368-6668.

Dated at Topeka, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
David W. Barfield, P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas        )  
                              )  
County of Shawnee    )        SS

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, by David W. Barfield, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

\_\_\_\_\_  
Notary Public

## CERTIFICATE OF SERVICE

On this            day of            , 2009, I hereby certify that the foregoing Approval of Application for Change in Place of Use, Point of Diversion and Use Made of Water, File No. 9,141, dated            was mailed postage prepaid, first class, US mail to the following:

CITY OF WICHITA  
455 N MAIN  
WICHITA KS 67202

With photocopies to:

EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO 2  
313 SPRUCE  
HALSTEAD KS 67046-1925

JOE LANG  
WICHITA CITY ATTORNEY  
CITY OF WICHITA  
455 N MAIN  
WICHITA KS 66207-1677

TOM ADRIAN  
GMD#2 ATTORNEY  
301 N MAIN #400  
NEWTON KS 67114

Stafford Field Office

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Division of Water Resources



**APPROVAL OF APPLICATION  
FOR  
CHANGE IN PLACE OF USE  
POINT OF DIVERSION  
AND USE MADE OF WATER  
WATER RIGHT  
FILE NO. 29,104**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Debra H. Ary, on behalf of the City of Wichita, Kansas, 455 North Main, Wichita, Kansas, 67202, received in this office on October 29, 2008, for approval of changes in the location of the place of use, point of diversion and use made of water, under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, as modified and amended by the order of the Chief Engineer dated November 18, 1993, approving the application to change the place of use and use made of water, finds that the changes are reasonable and will not impair existing rights, and that the application should be and is hereby approved.

The effective date of the changes shall be the date this order is executed by the Chief Engineer, after which the authorized use made of water shall be:

Municipal Use and Artificial Recharge.

The authorized place of use for municipal use shall be:

Within the City of Wichita and immediate vicinity; within the City of Andover and immediate vicinity, within the City of Bel Aire and immediate vicinity, within the City of Benton and immediate vicinity, within the City of Derby and immediate vicinity; within the City of Kechi and immediate vicinity; within the City of Park City and immediate vicinity; within the City of Rose Hill and immediate vicinity; within the City of Valley Center and immediate vicinity; within the City of Bentley and immediate vicinity, within the boundaries of Rural Water District No. 1, Sedgwick County; within the boundaries of Rural Water District No. 2, Sedgwick County; within the boundaries of Rural Water District No. 3, Sedgwick County; and within the boundaries of Rural Water District No. 8, Butler County; within a tract of land in Sedgwick County, Kansas, beginning at the Southeast corner of Section 25, Township 28 South, Range 2 East, then West a distance of 22 miles to the Southwest corner of Section 28, Township 28 South, Range 2 West, then North a distance of 16 miles to the Northwest corner

of Section 9, Township 26 South, Range 2 West, then East a distance of 22 miles to the Northeast corner of Section 12, Township 26 South, Range 2 East, then directly South a distance of 16 miles to the point of beginning.

The authorized place of use for artificial recharge shall be:

the basin storage area previously identified in Phase I of the aquifer storage and recovery (ASR) project approved by the Findings, Conclusion and Order of the Chief Engineer dated August 8, 2005, titled In the Matter of the City of Wichita's Applications To Operate an Aquifer Storage and Recovery Project in Harvey and Sedgwick Counties, Kansas Applications to Appropriate Water File Nos. 45,567; 45,568; 45,569; 45,570; 45,571; 45,572; 45,573; 45,574; 45,575; 45,576, and 46,081 ("Original Order"), and as modified and amended by the Findings and Order of the Chief Engineer dated August 1, 2006, titled In the Matter of Modifying the Conditions of the Order Approving the City of Wichita's Applications for Approval To Operate an Aquifer Storage and Recovery Project in Harvey and Sedgwick Counties, Kansas Applications to Appropriate Water File Nos. 45,567; 45,568; 45,569; 45,570; 45,571; 45,572; 45,573; 45,574; 45,575; 45,576, and 46,081 ("Modified Order"),

and the authorized location of the point of diversion shall be:

one (1) water intake structure located in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter (NE $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 9, more particularly described as being near a point 4,960 feet North and 4,020 feet West of the Southeast corner of said section, in Township 25 South, Range 1 West, Sedgwick County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the place of use, point of diversion and use made of water.

The water right remains limited to a diversion rate not in excess of 2,585 gallons per minute (5.76 c.f.s.) and remains limited to a maximum extent of 92,220,000 gallons (283 acre-feet) per calendar year, with a further limitation that the quantity may not exceed 377,001,000 gallons, (1,557 acre-feet) per five (5) year period; the first period being calendar years 2003 through 2007, the second period being calendar years 2008 through 2012, ad infinitum.

This approval is subject to the following additional conditions:

1. That passive recharge credits shall not be allowed.
2. That the basin storage area and index cells for the project are as set forth in Attachment 2 to the Original Order.
3. That the locations of the index wells and the index water levels for the basin storage area shall be as set forth in Attachments 3 and 4 to the Original Order.

4. That the Model and accounting methodology remains as previously submitted, until otherwise modified by formal written approval of the Chief Engineer.
5. That if the water right owner develops an improved model or methodology to account for water stored in the basin storage area that is approved by the Chief Engineer after consideration of the recommendation of Equus Beds Groundwater Management District No. 2 ("GMD # 2"), that the Chief Engineer may approve such improved methodology without the necessity of holding additional public hearings.
6. That the project shall be operated so that the measured water levels, and the water levels predicted by the Model, stay at or below the highest index water level any time water is being recharged into the basin storage area.
7. That water shall only be injected into the basin storage area by means of the injection wells when the water level at any required monitoring well located within 660 feet of an injection well is 10 feet or more below the land surface elevation at those observation wells. This condition must be maintained until such time that the applicant can demonstrate that allowing recharge water to exceed this level will not result in any damage to existing structures or adjacent property. If the applicant can document that an alternative (shallower) water level would be protective of the public interest, the applicant may petition the Chief Engineer to modify or remove this requirement. That recharge credits may be withdrawn from a cell only when recharge credits are available from the cell and the static water level at its index well is above the lowest index level; however, water may be recharged when the static water level is below the lowest index level in that well.
8. That the water right owner by June 1 each year shall report an accounting of water diverted from the surface water intake and recharged into the basin storage area in the Equus Beds Aquifer; that the Report shall be submitted to the Chief Engineer and GMD #2. The accounting shall use the Model and the accounting methodology described herein. In addition, the accounting reports shall meet the requirements of K.A.R. 5-12-2, including specifically addressing the following items for each cell in the basin storage area:
  - a. Natural and artificial recharge;
  - b. Groundwater inflow and outflow;
  - c. Evaporation and transpiration;
  - d. Groundwater water diversions from all non-domestic wells;
  - e. Infiltration from streams;
  - f. Groundwater discharge to streams; and
  - g. The calculated recharge credits;
9. That the final determination of available recharge credits in each cell in the basin storage area shall be made by the Chief Engineer, upon consideration of the report required in Paragraph No. 8, above, and any recommendation by GMD #2. The Chief Engineer shall make the final determination in writing.
10. That each ASR well shall be equipped with water flow meters, meeting the requirements of K.A.R. 5-22-4, to separately and accurately record the total quantity of water injected into and diverted by each well.

11. That the source water used for artificial recharge shall not degrade the ambient groundwater quality use in the basin storage area; that the monitoring well network shown in Attachment 1 of this approval is hereby approved; that the monitoring wells shall be drilled and completed at depths correlating to the recharge and recovery zone of the aquifer for the ASR wells for water sample collection, water level measurements and testing purposes; that the water level monitoring at any ASR well site shall be automated with a frequency not to exceed six hours; that before installation of any ASR well, the water right owner shall submit a plan that includes water level monitoring as well as water quality monitoring, which is sufficient to prevent impairment of the water quality beyond a reasonable economic limit, to GMD #2 for review and comment and the Chief Engineer for approval; that the plan should also be consistent with any requirement which KDHE may impose for any UIC permits KDHE may issue pertaining to the ASR wells.
12. That surface water intake quantities, aquifer injection quantities and water level data shall be reported by the water right owner to the Chief Engineer and GMD #2 as follows:
  - a. Each month for the first year of operation;
  - b. Each calendar quarter for the second year of operation;
  - c. By March 1 each year thereafter; or
  - d. Other intervals as may be required by the Chief Engineer to properly evaluate the project.
13. That on or before June 1, of each calendar year, the water right owner shall submit to the Chief Engineer and GMD #2, an annual accounting report for water in the basin storage area, utilizing the Model; that shall meet the requirements of K.A.R. 5-12-2.
14. That the water right owner shall install an additional monitoring well network of six (6) wells to monitor the aquifer storage and recovery project, at the locations depicted on the attached map in Attachment 1. The monitoring wells must be drilled and completed at depths correlating to the recharge and recovery zone of the aquifer. The monitoring wells will be used for water sample collection, water level measurements, and testing purposes.
15. That the water right owner shall simultaneously submit to the Chief Engineer and GMD #2 a formal report containing a description and scaled map of the as-built aquifer storage and recovery project.
16. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this approval in accordance with the Kansas Administrative Regulation 5-22-4. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report, and such additional reports required in this approval (including the meter reading at the beginning and end of the report year).
17. The water right owner shall properly install an acceptable water meter on the diversion works authorized under this water right, prior to the use of water, in strict accordance with the Kansas Administrative Regulation 5-22-4 adopted by the Chief Engineer. The water right owner shall notify the Chief Engineer when installation of the water meter has been

completed. The water right owner shall maintain the water meter in an operating condition satisfactory to the Chief Engineer, at all times during diversion of water and shall maintain records from which the total quantity of water diverted may be determined. The water right owner shall also report the reading of said water meter and the total quantity of water diverted annually to 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, and such additional reports required in this approval (including the meter reading at the beginning and end of the report year).

18. That the water right owner shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the water right owner 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.
19. That the Chief Engineer also specifically retains jurisdiction in this matter with authority to make such reasonable reductions in the approved rate of diversion and quantity authorized to be perfected, and such changes in other terms, conditions, and limitations set forth in this approval as may be deemed necessary to protect the public interest.
20. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonable affect the public interest.
21. That this approval 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.
22. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.
23. 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.
24. That the surface water intake structure shall be constructed and maintained to allow only withdrawal of surface water.
25. That the injection of any surface water into the Equus Beds Aquifer is authorized by the Kansas Department of Health and Environment.
26. That this approval is subject to the terms, conditions, and limitations of the Chief Engineers' order approving the Aquifer Storage and Recovery project dated August 8, 2005, or any subsequent modifications, specifically in reference to previously identified basin storage area, index cells, index water levels, accounting, and reporting requirements.
27. That this approval is subject to the terms, conditions, and limitations of the Order approving the Phase II ASR Project.

28. All diversion works 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.
29. That this approval does not constitute any necessary authorization from the Kansas Department of Health and Environment (KDHE) to operate a Class V UIC well; and the City shall furnish the Chief Engineer with copies of any Class V UIC well permits obtained from the KDHE within 30 days after they are obtained.
30. That operation of the aquifer storage and recovery well authorized herein, shall not impair existing water rights nor prejudicially and unreasonably affect the public interest.
31. That if the Chief Engineer determines that impairment of an existing prior water right is caused by operation of the aquifer storage and recovery well, the City of Wichita shall either regulate the aquifer storage and recovery well's diversion to secure water to satisfy all prior rights, or comply with any other requirement as specified by the Chief Engineer to prevent impairment or protect the public interest.
32. That the recharge system is constructed, operated, and monitored to prevent groundwater contamination, not impair existing water rights, nor prejudicially affect the public interest.
33. That this approval of application is subject to the terms, conditions, and limitations of the Memorandum of Understanding between Equus Beds Groundwater Management District No. 2 and the City of Wichita, Kansas, dated December 3, 2008.

Installation of the works for diversion of water shall be completed on or before December 31, 2014, or within any authorized extension of time. The water right owner shall notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, when construction of the works for diversion has been completed.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 29,104, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated April 8, 1986, as modified and amended by the aforementioned order.

This Order shall become a final agency action, as defined by K.S.A. 77-607(b), without further notice to the parties, if a request for hearing or a petition for administrative review is not filed as set forth below.

**Request for Hearing.** According to K.A.R. 5-14-3(c), any party who desires a hearing must submit a request within 15 days after the date shown on the Certificate of Service attached to this Order. Filing a request for a hearing will give you the opportunity to submit additional facts for consideration, contest any findings made by the Chief Engineer or present any other information you believe should be considered in this matter. A timely-filed request for hearing will stay the deadline for requesting administrative review of this Order pending the outcome of the hearing.

Petition for Review. Any person aggrieved by this Order may petition for administrative review, pursuant to K.S.A. 82a-708b(a) and K.S.A. 82a-1901(a). The petition must be filed within 30 days after the date shown on the Certificate of Service attached to this Order and must set forth the basis for the review, unless stayed by the timely filing of a request for hearing.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 109 SW 9th Street, 4th Floor, Topeka, Kansas 66612, Fax: (785) 368-6668.

Dated at Topeka, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
David W. Barfield, P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas      )  
                                  )      SS  
County of Shawnee    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by David W. Barfield, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

\_\_\_\_\_  
Notary Public

## CERTIFICATE OF SERVICE

On this            day of            , 2009, I hereby certify that the foregoing Approval of Application for Change in Place of Use, Point of Diversion and Use Made of Water, File No. 29,104 dated            was mailed postage prepaid, first class, US mail to the following:

CITY OF WICHITA  
455 N MAIN  
WICHITA KS 67202

With photocopies to:

EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO 2  
313 SPRUCE  
HALSTEAD KS 67046-1925

JOE LANG  
WICHITA CITY ATTORNEY  
CITY OF WICHITA  
455 N MAIN  
WICHITA KS 66207-1677

TOM ADRIAN  
GMD#2 ATTORNEY  
301 N MAIN #400  
NEWTON KS 67114

Stafford Field Office

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Division of Water Resources



**APPROVAL OF APPLICATION  
FOR  
CHANGE IN PLACE OF USE  
POINT OF DIVERSION  
AND USE MADE OF WATER  
WATER RIGHT  
FILE NO. 29,105**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Debra H. Ary, on behalf of the City of Wichita, Kansas, 455 North Main, Wichita, Kansas, 67202, received in this office on October 29, 2008, for approval of changes in the location of the place of use, point of diversion and use made of water, under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, as modified and amended by the order of the Chief Engineer dated November 18, 1993, approving the application to change the place of use and use made of water, finds that the changes are reasonable and will not impair existing rights, and that the application should be and is hereby approved.

The effective date of the changes shall be the date this order is executed by the Chief Engineer, after which the authorized use made of water shall be:

Municipal Use and Artificial Recharge.

The authorized place of use for municipal use shall be:

Within the City of Wichita and immediate vicinity; within the City of Andover and immediate vicinity, within the City of Bel Aire and immediate vicinity, within the City of Benton and immediate vicinity, within the City of Derby and immediate vicinity; within the City of Kechi and immediate vicinity; within the City of Park City and immediate vicinity; within the City of Rose Hill and immediate vicinity; within the City of Valley Center and immediate vicinity; within the City of Bentley and immediate vicinity, within the boundaries of Rural Water District No. 1, Sedgwick County; within the boundaries of Rural Water District No. 2, Sedgwick County; within the boundaries of Rural Water District No. 3, Sedgwick County; and within the boundaries of Rural Water District No. 8, Butler County; within a tract of land in Sedgwick County, Kansas, beginning at the Southeast corner of Section 25, Township 28 South, Range 2 East, then West a distance of 22 miles to the Southwest corner of Section 28, Township 28 South, Range 2 West, then North a distance of 16 miles to the Northwest corner

of Section 9, Township 26 South, Range 2 West, then East a distance of 22 miles to the Northeast corner of Section 12, Township 26 South, Range 2 East, then directly South a distance of 16 miles to the point of beginning.

The authorized place of use for artificial recharge shall be:

the basin storage area previously identified in Phase I of the aquifer storage and recovery (ASR) project approved by the Findings, Conclusion and Order of the Chief Engineer dated August 8, 2005, titled In the Matter of the City of Wichita's Applications To Operate an Aquifer Storage and Recovery Project in Harvey and Sedgwick Counties, Kansas Applications to Appropriate Water File Nos. 45,567; 45,568; 45,569; 45,570; 45,571; 45,572; 45,573; 45,574; 45,575; 45,576, and 46,081 ("Original Order"), and as modified and amended by the Findings and Order of the Chief Engineer dated August 1, 2006, titled In the Matter of Modifying the Conditions of the Order Approving the City of Wichita's Applications for Approval To Operate an Aquifer Storage and Recovery Project in Harvey and Sedgwick Counties, Kansas Applications to Appropriate Water File Nos. 45,567; 45,568; 45,569; 45,570; 45,571; 45,572; 45,573; 45,574; 45,575; 45,576, and 46,081 ("Modified Order"),

and the authorized location of the point of diversion shall be:

one (1) water intake structure located in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter (NE $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 9, more particularly described as being near a point 4,960 feet North and 4,020 feet West of the Southeast corner of said section, in Township 25 South, Range 1 West, Sedgwick County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the place of use, point of diversion and use made of water.

The water right remains limited to a diversion rate not in excess of 1,200 gallons per minute (2.67 c.f.s.), and to a diversion rate not in excess of 1,200 gallons per minute (2.67 c.f.s.) when combined with Water Right, File No. 9,141. The water right also remains limited to a maximum extent of 26,720,000 gallons (82 acre-feet) per calendar year, with a further limitation that the quantity may not exceed 108,830,000 gallons, (334 acre-feet) per five (5) year period; the first period being calendar years 2003 through 2007, the second period being calendar years 2008 through 2012, ad infinitum.

This approval is subject to the following additional conditions:

1. That passive recharge credits shall not be allowed.
2. That the basin storage area and index cells for the project are as set forth in Attachment 2 to the Original Order.
3. That the locations of the index wells and the index water levels for the basin storage area shall be as set forth in Attachments 3 and 4 to the Original Order.

4. That the Model and accounting methodology remains as previously submitted, until otherwise modified by formal written approval of the Chief Engineer.
5. That if the water right owner develops an improved model or methodology to account for water stored in the basin storage area that is approved by the Chief Engineer after consideration of the recommendation of Equus Beds Groundwater Management District No. 2 ("GMD # 2"), that the Chief Engineer may approve such improved methodology without the necessity of holding additional public hearings.
6. That the project shall be operated so that the measured water levels, and the water levels predicted by the Model, stay at or below the highest index water level any time water is being recharged into the basin storage area.
7. That water shall only be injected into the basin storage area by means of the injection wells when the water level at any required monitoring well located within 660 feet of an injection well is 10 feet or more below the land surface elevation at those observation wells. This condition must be maintained until such time that the applicant can demonstrate that allowing recharge water to exceed this level will not result in any damage to existing structures or adjacent property. If the applicant can document that an alternative (shallower) water level would be protective of the public interest, the applicant may petition the Chief Engineer to modify or remove this requirement. That recharge credits may be withdrawn from a cell only when recharge credits are available from the cell and the static water level at its index well is above the lowest index level; however, water may be recharged when the static water level is below the lowest index level in that well.
8. That the water right owner by June 1 each year shall report an accounting of water diverted from the surface water intake and recharged into the basin storage area in the Equus Beds Aquifer; that the Report shall be submitted to the Chief Engineer and GMD #2. The accounting shall use the Model and the accounting methodology described herein. In addition, the accounting reports shall meet the requirements of K.A.R. 5-12-2, including specifically addressing the following items for each cell in the basin storage area:
  - a. Natural and artificial recharge;
  - b. Groundwater inflow and outflow;
  - c. Evaporation and transpiration;
  - d. Groundwater water diversions from all non-domestic wells;
  - e. Infiltration from streams;
  - f. Groundwater discharge to streams; and
  - g. The calculated recharge credits;
9. That the final determination of available recharge credits in each cell in the basin storage area shall be made by the Chief Engineer, upon consideration of the report required in Paragraph No. 8, above, and any recommendation by GMD #2. The Chief Engineer shall make the final determination in writing.
10. That each ASR well shall be equipped with water flow meters, meeting the requirements of K.A.R. 5-22-4, to separately and accurately record the total quantity of water injected into and diverted by each well.

11. That the source water used for artificial recharge shall not degrade the ambient groundwater quality use in the basin storage area; that the monitoring well network shown in Attachment 1 of this approval is hereby approved; that the monitoring wells shall be drilled and completed at depths correlating to the recharge and recovery zone of the aquifer for the ASR wells for water sample collection, water level measurements and testing purposes; that the water level monitoring at any ASR well site shall be automated with a frequency not to exceed six hours; that before installation of any ASR well, the water right owner shall submit a plan that includes water level monitoring as well as water quality monitoring, which is sufficient to prevent impairment of the water quality beyond a reasonable economic limit, to GMD #2 for review and comment and the Chief Engineer for approval; that the plan should also be consistent with any requirement which KDHE may impose for any UIC permits KDHE may issue pertaining to the ASR wells.
12. That surface water intake quantities, aquifer injection quantities and water level data shall be reported by the water right owner to the Chief Engineer and GMD #2 as follows:
  - a. Each month for the first year of operation;
  - b. Each calendar quarter for the second year of operation;
  - c. By March 1 each year thereafter; or
  - d. Other intervals as may be required by the Chief Engineer to properly evaluate the project.
13. That on or before June 1, of each calendar year, the water right owner shall submit to the Chief Engineer and GMD #2, an annual accounting report for water in the basin storage area, utilizing the Model; that shall meet the requirements of K.A.R. 5-12-2.
14. That the water right owner shall install an additional monitoring well network of six (6) wells to monitor the aquifer storage and recovery project, at the locations depicted on the attached map in Attachment 1. The monitoring wells must be drilled and completed at depths correlating to the recharge and recovery zone of the aquifer. The monitoring wells will be used for water sample collection, water level measurements, and testing purposes.
15. That the water right owner shall simultaneously submit to the Chief Engineer and GMD #2 a formal report containing a description and scaled map of the as-built aquifer storage and recovery project.
16. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this approval in accordance with the Kansas Administrative Regulation 5-22-4. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report, and such additional reports required in this approval (including the meter reading at the beginning and end of the report year).
17. The water right owner shall properly install an acceptable water meter on the diversion works authorized under this water right, prior to the use of water, in strict accordance with the Kansas Administrative Regulation 5-22-4 adopted by the Chief Engineer. The water right owner shall notify the Chief Engineer when installation of the water meter has been

completed. The water right owner shall maintain the water meter in an operating condition satisfactory to the Chief Engineer, at all times during diversion of water and shall maintain records from which the total quantity of water diverted may be determined. The water right owner shall also report the reading of said water meter and the total quantity of water diverted annually to 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, and such additional reports required in this approval (including the meter reading at the beginning and end of the report year).

18. That the water right owner shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the water right owner 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.
19. That the Chief Engineer also specifically retains jurisdiction in this matter with authority to make such reasonable reductions in the approved rate of diversion and quantity authorized to be perfected, and such changes in other terms, conditions, and limitations set forth in this approval as may be deemed necessary to protect the public interest.
20. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonable affect the public interest.
21. That this approval 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.
22. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.
23. 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.
24. That the surface water intake structure shall be constructed and maintained to allow only withdrawal of surface water.
25. That the injection of any surface water into the Equus Beds Aquifer is authorized by the Kansas Department of Health and Environment.
26. That this approval is subject to the terms, conditions, and limitations of the Chief Engineers' order approving the Aquifer Storage and Recovery project dated August 8, 2005, or any subsequent modifications, specifically in reference to previously identified basin storage area, index cells, index water levels, accounting, and reporting requirements.
27. That this approval is subject to the terms, conditions, and limitations of the Order approving the Phase II ASR Project.

28. All diversion works 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.
29. That this approval does not constitute any necessary authorization from the Kansas Department of Health and Environment (KDHE) to operate a Class V UIC well; and the City shall furnish the Chief Engineer with copies of any Class V UIC well permits obtained from the KDHE within 30 days after they are obtained.
30. That operation of the aquifer storage and recovery well authorized herein, shall not impair existing water rights nor prejudicially and unreasonably affect the public interest.
31. That if the Chief Engineer determines that impairment of an existing prior water right is caused by operation of the aquifer storage and recovery well, the City of Wichita shall either regulate the aquifer storage and recovery well's diversion to secure water to satisfy all prior rights, or comply with any other requirement as specified by the Chief Engineer to prevent impairment or protect the public interest.
32. That the recharge system is constructed, operated, and monitored to prevent groundwater contamination, not impair existing water rights, nor prejudicially affect the public interest.
33. That this approval of application is subject to the terms, conditions, and limitations of the Memorandum of Understanding between Equus Beds Groundwater Management District No. 2 and the City of Wichita, Kansas, dated December 3, 2008.

Installation of the works for diversion of water shall be completed on or before December 31, 2014, or within any authorized extension of time. The water right owner shall notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, when construction of the works for diversion has been completed.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 29,105, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated April 8, 1986, as modified and amended by the aforementioned order.

This Order shall become a final agency action, as defined by K.S.A. 77-607(b), without further notice to the parties, if a request for hearing or a petition for administrative review is not filed as set forth below.

**Request for Hearing.** According to K.A.R. 5-14-3(c), any party who desires a hearing must submit a request within 15 days after the date shown on the Certificate of Service attached to this Order. Filing a request for a hearing will give you the opportunity to submit additional facts for consideration, contest any findings made by the Chief Engineer or present any other information you believe should be considered in this matter. A timely-filed request for hearing will stay the deadline for requesting administrative review of this Order pending the outcome of the hearing.

Petition for Review. Any person aggrieved by this Order may petition for administrative review, pursuant to K.S.A. 82a-708b(a) and K.S.A. 82a-1901(a). The petition must be filed within 30 days after the date shown on the Certificate of Service attached to this Order and must set forth the basis for the review, unless stayed by the timely filing of a request for hearing.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 109 SW 9th Street, 4th Floor, Topeka, Kansas 66612, Fax: (785) 368-6668.

Dated at Topeka, Kansas, this            day of

\_\_\_\_\_  
David W. Barfield, P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas        )  
                              )  
County of Shawnee    )        SS

The foregoing instrument was acknowledged before me this            day of            , by David W. Barfield, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

\_\_\_\_\_  
Notary Public

## CERTIFICATE OF SERVICE

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, I hereby certify that the foregoing Approval of Application for Change in Place of Use, Point of Diversion and Use Made of Water, File No. 29,105 dated \_\_\_\_\_ was mailed postage prepaid, first class, US mail to the following:

CITY OF WICHITA  
455 N MAIN  
WICHITA KS 67202

With photocopies to:

EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO 2  
313 SPRUCE  
HALSTEAD KS 67046-1925

JOE LANG  
WICHITA CITY ATTORNEY  
CITY OF WICHITA  
455 N MAIN  
WICHITA KS 66207-1677

TOM ADRIAN  
GMD#2 ATTORNEY  
301 N MAIN #400  
NEWTON KS 67114

Stafford Field Office



First of 24

**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. 46,714** of the applicant

**City of Wichita  
Water & Sewer Department  
455 North Main  
Wichita, Kansas 67202**

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 **February 12, 2007**.
2. That the water sought to be appropriated shall be used for municipal use within the City of Wichita and immediate vicinity; within the City of Andover and immediate vicinity, within the City of Bel Aire and immediate vicinity, within the City of Benton and immediate vicinity, within the City of Derby and immediate vicinity; within the City of Kechi and immediate vicinity; within the City of Park City and immediate vicinity; within the City of Rose Hill and immediate vicinity; within the City of Valley Center and immediate vicinity; within the City of Bentley and immediate vicinity, within the boundaries of Rural Water District No. 1, Sedgwick County; within the boundaries of Rural Water District No. 2, Sedgwick County; within the boundaries of Rural Water District No. 3, Sedgwick County; and within the boundaries of Rural Water District No. 8, Butler County; within a tract of land in Sedgwick County, Kansas, beginning at the Southeast corner of Section 25, Township 28 South, Range 2 East, then West a distance of 22 miles to the Southwest corner of Section 28, Township 28 South, Range 2 West, then North a distance of 16 miles to the Northwest corner of Section 9, Township 26 South, Range 2 West, then East a distance of 22 miles to the Northeast corner of Section 12, Township 26 South, Range 2 East, then directly South a distance of 16 miles to the point of beginning.
3. That the authorized source from which the appropriation shall be made is groundwater recharge credits accumulated in the Equus Beds aquifer, that may be recovered pursuant to the operation of the aquifer storage and recovery project approved on August 8, 2005 or any subsequent modifications, to be withdrawn by means of one (1) aquifer storage and recovery well located in the Southeast Quarter of the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 29, more particularly described as being near a point 120 feet North and 2,890 feet West of the Southeast corner of said section, in Township 23 South, Range 2 West, Harvey County, Kansas, located substantially as shown on the topographic map accompanying the application.

ACCOUNTING  
IN FIRST PHASE

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **1,500 gallons per minute** (3.34 c.f.s.) and to a quantity not to exceed **162.93 million gallons** (500.0 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, 2014** 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 groundwater from the Equus Beds aquifer, except for recovery of water recharged pursuant to the aquifer storage and recovery project, approved August 25, 2005, or any subsequent modifications, 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. 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).
13. 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.

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 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.
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 the applicant shall submit to the Chief Engineer a copy of the well log required by the Kansas Department of Health and Environment under the authority of K.S.A. 82a-1212, currently form WWC-5, within 30 days following the drilling of the well at the location authorized herein.
19. That the proposed recovery of water artificially recharged by the City shall only occur when recharge credits are determined to be available in Cell No. 6, and the static water level is above elevation 1,387 mean sea level (msl).  
*different w/  
every permit*
20. That this permit does not constitute any necessary authorization from the Kansas Department of Health and Environment (KDHE) to operate a Class V UIC well; and the City shall furnish the Chief Engineer with copies of any Class V UIC well permits obtained from the KDHE within 30 days after they are obtained.
21. That operation of the aquifer storage and recovery well authorized herein, shall not impair existing water rights nor prejudicially and unreasonably affect the public interest.
22. That if the Chief Engineer determines that impairment of an existing prior water right is caused by operation of the aquifer storage and recovery well, the City of Wichita shall either regulate the aquifer storage and recovery well's diversion to secure water to satisfy all prior rights, or comply with any other requirement as specified by the Chief Engineer to prevent impairment or protect the public interest.
23. That the recharge system is constructed, operated, and monitored to prevent groundwater contamination, not impair existing water rights, nor prejudicially affect the public interest.
24. That the Chief Engineer specifically retains jurisdiction in this matter with authority to make such reasonable reductions in the approved rate of diversion and quantity authorized to be perfected, and such changes in other terms, conditions, and limitations set forth in this approval and permit to proceed as may be deemed to be in the public interest.
25. That this approval of application is subject to the terms, conditions, and limitations of the Memorandum of Understanding between Equus Beds Groundwater Management District No. 2 and the City of Wichita, Kansas, dated December 3, 2008.

That this approval of application is subject to the terms, conditions, and limitations of the Order approving the Phase II ASR Project to which this permit is attached.

Review of this permit is subject to the provisions of the Petition for Review of Order, set forth in the Chief Engineer's accompanying Findings and Order.

Dated at Topeka, Kansas, this       day of       , 2009.

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David W. Barfield, P.E.  
 Chief Engineer  
 Division of Water Resources  
 Kansas Department of Agriculture

State of Kansas        )  
                               ) SS  
 County of Shawnee    )

The foregoing instrument was acknowledged before me this       day of       , 2009, by David W. Barfield, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

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Notary Public

**In the Matter of  
Findings and Order  
For the City of Wichita's Aquifer Storage and Recovery Project- Phase II**

**Applications to Appropriate Water,  
File Nos. 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723;  
46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179;  
47,180; and 47,181**

**Findings**

1. That in a Findings, Conclusion and Order dated August 8, 2005, In the Matter of the City of Wichita's Applications To Operate an Aquifer Storage and Recovery Project in Harvey and Sedgwick Counties, Kansas ("Original Order"), the Chief Engineer approved Appropriation of Water, File Nos. 45,567, 45,568, 45,569, 45,570, 45,571, 45,572, 45,573, 45,574, 45,575, 45,576, and 46,081 proposing the appropriation of water for beneficial use.
2. That the Order had 24 Conditions including, but not limited to designation of the basin storage area and index cells for the project area, locations of the index wells, approved model and accounting methodology, and reporting requirements.
3. That in a Findings and Order dated August 1, 2006, ("Modified Order"), the Chief Engineer modified the Original Order approving Appropriation of Water, File Nos. 45,567, 45,568, 45,569, 45,570, 45,571, 45,572, 45,573, 45,574, 45,575, 45,576, and 46,081, specifically permit Condition Nos. 9, 12, 14, 17, 20, and 23, pertinent to bank storage wells.
4. That on February 12, 2007, the City of Wichita (City) filed Applications, File Nos. 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; and 46,733; and on October 8, 2008, Applications, File Nos. 47,178; 47,179; 47,180; and 47,181, proposing the appropriation of groundwater for beneficial use. File No. 46,627 was filed on November 13, 2006 proposing the appropriation of surface water from the Little Arkansas River.
5. That the new applications comprise a part of Phase II of the Aquifer Storage and Recovery (ASR) project, wherein surface water will be diverted from the Little Arkansas River by means of a surface water intake (to be authorized under Application, File No. 46,627), treated, and injected into the Equus Beds Aquifer, to be later withdrawn by means of the same aquifer storage and recovery wells for municipal purposes.
6. That aquifer storage and recovery means the artificial recharge, storage and recovery of water and consists of apparatus for diversion, treatment, recharge, storage, extraction and distribution of water.

7. That the City and Equus Beds Groundwater Management District No. 2 (GMD #2) entered into a Memorandum of Understanding (M.O.U.), dated December 3, 2008, documenting the agreements made between the City and GMD #2, as to the proposed permitting, construction, and operation of Phase II of the aquifer storage and recovery project, a copy of which was subsequently received in the office of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (DWR) on January 20, 2009.
8. That on March 30, 2009, the Chief Engineer served notice of a Public Hearing, to be held on April 29, 2009, in the matter of the applications identified in Paragraph No. 3, of these findings, by mail to the City, GMD #2, and water right owners of record in the office of the Chief Engineer who had expressed concern or interest in the applications. The Chief Engineer also gave notice by publication in area newspapers regarding the Public Hearing, in the above mentioned matter.
9. That on April 29, 2009, under the authority of K.A.R. 5-12-3, a Public Hearing was convened in accordance with notices issued by the Chief Engineer; that it was attended in person by several representatives of the Kansas Department of Agriculture Division of Water Resources; City of Wichita representatives; GMD 2 staff/board members, Daniel Dyck, land owner; Eugene Wendling, land owner; and other interested parties. A total of eighteen individuals attended the hearing and five of them provided testimony during the hearing.
10. That on May 1, 2009, the hearing officer provided a memorandum to the Chief Engineer, describing the comments expressed at the hearing. The hearing officer concluded that the comments demonstrate benefit to the public and are therefore favorable to the approval of the applications. Letters were sent to both Daniel Dyck and Eugene Wendling on May 20, 2009 responding to their concerns and comments expressed at the public hearing.
11. That as referenced by GMD #2 in their recommendation of approval, and to maintain consistency with the Phase I ASR project, the new applications shall be subject to the pertinent conditions established in the "Original Order", and as modified by the August 1, 2006 ("Modified Order"), more specifically identified as follows:
  - A. That passive recharge credits shall not be allowed.
  - B. That the basin storage area and index cells for the project are as set forth in Attachment 2 to the Original Order.
  - C. That the locations of the index wells and the index water levels for the basin storage area shall be as set forth in Attachments 3 and 4 to the Original Order.
  - D. That the Model and accounting methodology remains as previously submitted, until otherwise modified by formal written approval of the Chief Engineer.
  - E. That if the City develops an improved model or methodology to account for water stored in the basin storage area that is approved by the Chief Engineer after consideration of the recommendation of the GMD #2, that the Chief Engineer may approve such improved methodology without the necessity of holding additional public hearings.
  - F. That the project shall be operated so that the measured water levels, and the water levels predicted by the Model, stay at or below the highest index water level any time water is being recharged into the basin storage area.

- G. That water shall only be injected into the basin storage area by means of the injection wells when the water level at any required monitoring well located within 660 feet of an injection well is 10 feet or more below the land surface elevation at those observation wells; that recharge credits may be withdrawn from a cell only when recharge credits are available from the cell and the static water level at its index well is above the lowest index level; however, water may be recharged when the static water level is below the lowest index level in that well.
- H. That the City by June 1 each year shall report an accounting of water diverted from the surface water intake and recharged into the basin storage area in the Equus Beds Aquifer; that the Report shall be submitted to the Chief Engineer and GMD #2. The accounting shall use the Model and the accounting methodology described herein. In addition, the accounting reports shall meet the requirements of K.A.R. 5-12-2, including specifically addressing the following items for each cell in the basin storage area:
- Natural and artificial recharge;
  - Groundwater inflow and outflow;
  - Evaporation and transpiration;
  - Groundwater water diversions from all non-domestic wells;
  - Infiltration from streams;
  - Groundwater discharge to streams; and
  - The calculated recharge credits.

That the final determination of available recharge credits in each cell in the basin storage area shall be made by the Chief Engineer, upon consideration of the report required in Paragraph No. 9, above, and any recommendation by GMD #2. The Chief Engineer shall make the final determination in writing.

- I. That each ASR well shall be equipped with water flow meters, meeting the requirements of K.A.R. 5-22-4, to separately and accurately record the total quantity of water injected into and diverted by each well.
- J. That the source water used for artificial recharge shall not degrade the ambient groundwater quality use in the basin storage area; that the monitoring well network shown in Attachment 1 of this order is hereby approved; that the monitoring wells shall be drilled and completed at depths correlating to the recharge and recovery zone of the aquifer for the ASR wells for water sample collection, water level measurements and testing purposes; that the water level monitoring at any ASR well site shall be automated with a frequency not to exceed six hours; that before installation of any ASR well, the City shall submit a plan that includes water level monitoring as well as water quality monitoring, which is sufficient to prevent impairment of the water quality beyond a reasonable economic limit, to GMD #2 for review and comment and the Chief Engineer for approval; that the plan should also be consistent with any requirement which KDHE may impose for any UIC permits KDHE may issue pertaining to the ASR wells.

- K. That surface water intake quantities, aquifer injection quantities and water level data shall be reported by the City to the Chief Engineer and GMD #2 as follows:
- Each month for the first year of operation;
  - Each calendar quarter for the second year of operation;
  - By March 1 each year thereafter; or
  - Other intervals as may be required by the Chief Engineer to properly evaluate the project.
- L. That on or before June 1, of each calendar year, the City shall submit to the Chief Engineer and GMD #2, an annual accounting report for water in the basin storage area, utilizing the Model; that shall meet the requirements of K.A.R. 5-12-2.
- M. That the City of Wichita shall simultaneously submit to the Chief Engineer and GMD #2 a formal report containing a description and scaled map of the as-built aquifer storage and recovery project.
- N. That the Chief Engineer also specifically retains jurisdiction in this matter with authority to make such reasonable reductions in the approved rate of diversion and quantity authorized to be perfected, and such changes in other terms, conditions, and limitations set forth in this approval and permit to proceed as may be deemed necessary to protect the public interest.

12. That the GMD #2 Board of Directors have reviewed each of the new applications listed above and recommended them for approval, subject to specific conditions.

NEW → 13. That GMD #2 recommended that an additional monitoring well network of six (6) wells be installed as shown in Attachment 1 of this order.

14. That use of the proposed ASR wells be authorized by the Kansas Department of Health and Environment (KDHE) as Class V Underground Injection Control (UIC) wells and that minimum water quality standards for effluent be approved by KDHE for organic and inorganic compounds, pesticides and bacteria; that the water recharged into the aquifer through the ASR wells comply with the source water definition in K.A.R. 5-1-1.

15. That as agreed in the M.O.U., GMD #2 recommended that a waiver of the applicable well spacing requirements due to the unique nature of the recharge and recovery wells and related benefits.

16. That GMD #2 recommends in order to establish baseline ambient groundwater quality prior to recharge, water quality analyses shall be completed at the applicant's expense for sample collected from: a) domestic wells for which access can be obtained located within and immediately adjacent to each index cell in which recharge will occur, b) the proposed ASR wells, and c) all monitoring wells located in the index cells in which recharge will occur.



Order

NOW, THEREFORE, the following are the decisions of the Chief Engineer:

1. That the City's applications to appropriate water for beneficial use, under File Nos. 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179; 47,180; and 47,181, shall be and are hereby approved, as set out in Attachments 2 through 26, which are hereby made part of this Initial Order.
2. That passive recharge credits shall not be allowed.
3. That the basin storage area and index cells for the project are as set forth in Attachment 2 to the Original Order.
4. That the locations of the index wells and the index water levels for the basin storage area shall be as set forth in Attachments 3 and 4 to the Original Order.
5. That the Model and accounting methodology remains as previously submitted, until otherwise modified by formal written approval of the Chief Engineer.
6. That if the City develops an improved model or methodology to account for water stored in the basin storage area that is approved by the Chief Engineer after consideration of the recommendation of the GMD #2, that the Chief Engineer may approve such improved methodology without the necessity of holding additional public hearings.
7. That the project shall be operated so that the measured water levels, and the water levels predicted by the Model, stay at or below the highest index water level any time water is being recharged into the basin storage area.
8. That water shall only be injected into the basin storage area by means of the injection wells when the water level at any required monitoring well located within 660 feet of an injection well is 10 feet or more below the land surface elevation at those observation wells. This condition must be maintained until such time that the applicant can demonstrate that allowing recharge water to exceed this level will not result in any damage to existing structures or adjacent property. If the applicant can document that an alternative (shallower) water level would be protective of the public interest, the applicant may petition the Chief Engineer to modify or remove this requirement. That recharge credits may be withdrawn from a cell only when recharge credits are available from the cell and the static water level at its index well is above the lowest index level; however, water may be recharged when the static water level is below the lowest index level in that well.
9. That the City by June 1 each year shall report an accounting of water diverted from the surface water intake and recharged into the basin storage area in the Equus Beds Aquifer; that the Report shall be submitted to the Chief Engineer and GMD #2. The accounting shall use the Model and the accounting methodology described herein.

In addition, the accounting reports shall meet the requirements of K.A.R. 5-12-2, including specifically addressing the following items for each cell in the basin storage area:

- a. Natural and artificial recharge;
  - b. Groundwater inflow and outflow;
  - c. Evaporation and transpiration;
  - d. Groundwater water diversions from all non-domestic wells;
  - e. Infiltration from streams;
  - f. Groundwater discharge to streams; and
  - g. The calculated recharge credits.
10. That the final determination of available recharge credits in each cell in the basin storage area shall be made by the Chief Engineer, upon consideration of the report required in Paragraph No. 9, above, and any recommendation by GMD #2. The Chief Engineer shall make the final determination in writing.
  11. That each ASR well shall be equipped with water flow meters, meeting the requirements of K.A.R. 5-22-4, to separately and accurately record the total quantity of water injected into and diverted by each well.
  12. That the source water used for artificial recharge shall not degrade the ambient groundwater quality use in the basin storage area; that the monitoring well network shown in Attachment 1 of this order is hereby approved; that the monitoring wells shall be drilled and completed at depths correlating to the recharge and recovery zone of the aquifer for the ASR wells for water sample collection, water level measurements and testing purposes; that the water level monitoring at any ASR well site shall be automated with a frequency not to exceed six hours; that before installation of any ASR well, the City shall submit a plan that includes water level monitoring as well as water quality monitoring, which is sufficient to prevent impairment of the water quality beyond a reasonable economic limit, to GMD #2 for review and comment and the Chief Engineer for approval; that the plan should also be consistent with any requirement which KDHE may impose for any UIC permits KDHE may issue pertaining to the ASR wells.
  13. That surface water intake quantities, aquifer injection quantities and water level data shall be reported by the City to the Chief Engineer and GMD #2 as follows:
    - a. Each month for the first year of operation;
    - b. Each calendar quarter for the second year of operation;
    - c. By March 1 each year thereafter; or
    - d. Other intervals as may be required by the Chief Engineer to properly evaluate the project.
  14. That on or before June 1, of each calendar year, the City shall submit to the Chief Engineer and GMD #2, an annual accounting report for water in the basin storage area, utilizing the Model; that shall meet the requirements of K.A.R. 5-12-2.
  15. That the applicant shall install an additional monitoring well network of six (6) wells to monitor the aquifer storage and recovery project, at the locations depicted on the attached map in Attachment 1. The monitoring wells must be drilled and completed at depths correlating to the recharge and recovery zone of the auifer. The monitoring wells will be used for water sample collection, water level measurements, and testing purposes.



## CERTIFICATE OF SERVICE

On this        day of        , 2009, I hereby certify that the foregoing Findings and Order, for Approval of Application and Permit to Proceed, File Nos. 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179; 47,180; and 47,181, dated        were mailed postage prepaid, first class, US mail to the following:

CITY OF WICHITA  
455 N MAIN  
WICHITA KS 67202

With photocopies to:

EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO 2  
313 SPRUCE  
HALSTEAD KS 67046-1925

JOE LANG  
WICHITA CITY ATTORNEY  
CITY OF WICHITA  
455 N MAIN  
WICHITA KS 66207-1677

TOM ADRIAN  
GMD#2 ATTORNEY  
301 N MAIN #400  
NEWTON KS 67114

Stafford Field Office

List of Attachments to Order

1. Map of Additional Monitor Well Network for Phase II ASR
2. Approval of Application and Permit to Proceed, File No. 46,627
3. Approval of Application and Permit to Proceed, File No. 46,714
4. Approval of Application and Permit to Proceed, File No. 46,715
5. Approval of Application and Permit to Proceed, File No. 46,716
6. Approval of Application and Permit to Proceed, File No. 46,717
7. Approval of Application and Permit to Proceed, File No. 46,718
8. Approval of Application and Permit to Proceed, File No. 46,719
9. Approval of Application and Permit to Proceed, File No. 46,720
10. Approval of Application and Permit to Proceed, File No. 46,721
11. Approval of Application and Permit to Proceed, File No. 46,722
12. Approval of Application and Permit to Proceed, File No. 46,723
13. Approval of Application and Permit to Proceed, File No. 46,724
14. Approval of Application and Permit to Proceed, File No. 46,725
15. Approval of Application and Permit to Proceed, File No. 46,726
16. Approval of Application and Permit to Proceed, File No. 46,727
17. Approval of Application and Permit to Proceed, File No. 46,728
18. Approval of Application and Permit to Proceed, File No. 46,729
19. Approval of Application and Permit to Proceed, File No. 46,730
20. Approval of Application and Permit to Proceed, File No. 46,731
21. Approval of Application and Permit to Proceed, File No. 46,732
22. Approval of Application and Permit to Proceed, File No. 46,733
23. Approval of Application and Permit to Proceed, File No. 47,178
24. Approval of Application and Permit to Proceed, File No. 47,179
25. Approval of Application and Permit to Proceed, File No. 47,180
26. Approval of Application and Permit to Proceed, File No. 47,181

**KANSAS DEPARTMENT OF AGRICULTURE  
DIVISION OF WATER RESOURCES  
NOTICE OF PUBLIC HEARING ON THE CITY OF WICHITA'S APPLICATIONS TO  
APPROPRIATE WATER TO OPERATE AN AQUIFER STORAGE AND RECOVERY  
PROJECT IN HARVEY COUNTY, KANSAS**

Pursuant to K.S.A. 2008 Supp. 82a-711 and K.A.R. 5-12-3, a public hearing will be held at 1:00 p.m. on Wednesday, April 29, 2009, at the Grand Prairie Hotel and Convention Center, 1400 N. Lorraine Street, Hutchinson, Kansas regarding the approval of applications for permits to appropriate water, file numbers 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179; 47,180 and 47,181. Each of these applications to appropriate water for beneficial use propose aquifer storage and recovery of water as part of the proposed second phase of the City of Wichita's Aquifer Storage and Recovery Project in Harvey County, Kansas. This hearing will provide the public an opportunity to provide both oral and written comments in regard to whether approval of the applications may impair use of water under an existing water right or may prejudicially and unreasonably affect the public interest. Public comments may be considered in determining whether the applications should be approved, modified or denied.

This notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed project. All interested parties may submit written comments prior to the hearing to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, Attention: Leslie Garner, 109 SW 9<sup>th</sup> Street, 4th Floor, Topeka, Kansas 66612 or by e-mail at [leslie.garner@kda.ks.gov](mailto:leslie.garner@kda.ks.gov). All interested parties will be given a reasonable opportunity to present their views orally on the proposed project during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation.

Any individual with a disability may request accommodation in order to participate in the public hearing. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Leslie Garner at (785) 296-4623 or fax (785) 368-6668.

Copies of the proposed applications may be obtained by contacting the Department of Agriculture or by accessing Division of Water Resource's home page at <http://www.ksda.gov/dwr/>.

**CERTIFICATE OF SERVICE**

On this 30<sup>th</sup> day of March, 2009, I hereby certify that a true and correct copy of the foregoing **Public Hearing Notice** was sent postage prepaid, U.S. First-Class Mail, to the following:

Joe Allen Lang  
First Assistant City Attorney  
City of Wichita, Kansas  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, KS 67202-1635

Tim Boese  
Equus Beds GMD No. 2  
313 Spruce Street  
Halstead, KS 67056

David Warren  
Director, Water and Sewer Department  
City of Wichita  
455 N. Main, 8<sup>th</sup> Floor  
Wichita, KS 67202

Lawrence J. Baalman  
403 Harvey St.  
Halstead, KS 67056

Peter H. Aversa & Sarah J. Pratt  
Timbucktoo Machine and Repair  
10003 S Hertzler Rd.  
Sedgwick, KS 67135

Mary L. Haines Trust Etal  
% Robert N. Haines POA  
226 Fordham Rd.  
Manhattan, KS 66503

Thomas G. & Florence A. Bergkamp  
8231 W 55<sup>TH</sup> ST  
Clearwater, KS 67026

Florence L. Bumm  
17630 SW 84<sup>TH</sup> ST  
Sedgwick, KS 67135

Mark Bergkamp  
6603 S Meridian ST  
Haysville, KS 67060

Randall J. & Cindy E Wells  
20015 W 125<sup>TH</sup> ST N  
Sedgwick, KS 67135

  
\_\_\_\_\_  
KDA Staff



4/29/09

Public Hearing re: Phase 2, Wichita ASR project

→ Will Gilliland read statement

Asked for questions - questions from local farmer about how much water may be withdrawn.

David Warren

Written + oral comments. Oral comments mirror

"

"

Tim Boese Manager, GMD#2

Recommends approval, with conditions as set forth in MOU between Wichita + GMD#2

GMD#2 recommends recharge no greater than above 10 feet below the land surface

References specific cells

enumerates benefits

Recommends approval

Will Gilliland

Summary of Processing (See written as read in) + written

Eugene Wentling

Not against Project

Concern that not getting enough info.

⇒ "Main concern how to you know when to start + stop taking water out"

⇒ Concerned about price of land that will be received



**Kansas Department of Agriculture  
Division of Water Resources**

**MEMORANDUM**

**TO:** David Barfield, Chief Engineer

**FROM:** Paul Graves, Assistant Chief Engineer *PG 5-1-09*

**DATE:** May 1, 2009

**SUBJECT:** Public hearing on Wichita ASR Project – Phase 2, April 29, 2009

---

This memorandum serves as the hearing officer's report to the Chief Engineer.

The public hearing on the City of Wichita's applications (25 separate file numbers listed in the notice of hearing) to appropriate water for beneficial use for Phase 2 of their aquifer storage and recovery project was held from approximately 1:00 p.m. to 1:50 p.m. on April 29, 2009, at the Grand Prairie Hotel and Convention Center in Hutchinson. K.A.R. 5-12-3 requires a hearing in the general vicinity of an ASR project before approval of the water appropriation applications. Hutchinson is the geographically closest municipality with reasonable accommodations for a hearing in proximity to the project location.

The purpose of the public hearing was to aid the Chief Engineer by eliciting public comments about the project's impact on the community – specifically, whether the project is in the public interest and whether the approval of the applications for appropriation of water for the ASR project may impair use of water under existing rights. These two criteria are statutory considerations for the Chief Engineer in granting approval of such applications (K.S.A. 82a-711(a)).

The following items are attached for the record:

- Sign-in sheets
- Hearing officer's script
- Written comments/testimony:
  - David Warren, City of Wichita
  - Tim Boese, Equus Beds GMD 2
  - Will Gilliland, KDA-DWR
- Notice of hearing

KDA Legal has the originals of the sign-in sheets and written testimony, plus a tape recording of the hearing.

Eighteen individuals attended the hearing, including:

Memo to David Barfield

May 1, 2009

Page 2

- Hearing officer (1)
- KDA Legal counsel (1)
- KDA-DWR staff (3)
- City of Wichita officials/consultants (7)\*
- GMD 2 staff/board members (2)\*\*
- Property owners (3)
- City of Hutchinson officials (1)

\* Jerry Blain, recently retired from the City of Wichita, is counted as being affiliated with the City in this tally.

\*\* David Warren of the City of Wichita is also a GMD 2 board member but was counted under City of Wichita for this purpose since that was his primary role at this hearing.

Prior to the hearing, Will Gilliland provided a brief verbal overview of the ASR project and answered some questions from individuals in attendance.

Five individuals provided testimony during the hearing:

1. David Warren, City of Wichita, provided spoken and written testimony in favor of the project. He requested the Chief Engineer not require the upper limits on recharge to be 10 feet below ground surface as recommended by GMD 2, as the City has an MOU with GMD 2 to operate that way unless the pending USGS chloride transport study indicates that 1940's water levels are needed to provide an effective hydraulic barrier against saltwater intrusion.
2. Tim Boese, GMD 2, provided spoken and written testimony in favor of the project. He requested the Chief Engineer's consideration of the USGS chloride transport study, when completed, to determine whether the upper limits on recharge should be 10 feet below ground surface as recommended by GMD 2 or 1940's water levels.
3. Will Gilliland, KDA-DWR, provided spoken and written testimony limited to factual information about the 25 applications, the ASR project, and the regulatory process.
4. Eugene Wendling, self-described land owner and farmer, provided spoken testimony. He wants more information about how much water can be withdrawn and under what circumstances, and he questioned whether he received adequate compensation for use of his land. Mr. Wendling indicated he was not opposed to the project.
5. Daniel Dyck (pronounced "Dick"), self-described land owner and irrigator, provided spoken testimony. He is negotiating with the City for an injection well on his property; wants information quickly available (online?) about the accounting methods (injection and withdrawal from the ASR project); wants each well metered; inquired whether his senior water right can curtail the City's junior water rights during the growing season; and would like a "claim formula" developed in terms of bushels lost as a result of the ASR project. Mr. Dyck indicated he was not opposed to the project.

KANSAS DEPARTMENT OF AGRICULTURE  
109 SW 9th St.  
Topeka, Kansas 66612

Date 5-1-09

To: Brett Berry

RECEIVED

MAY 04 2009

- For your information Please sign/return
- For your files LEGAL SECTION  
KS DEPT. OF AGRICULTURE  
Please reply direct
- For appropriate action Material you requested
- For your approval/RTN Please review

Comments: Legal's copy of hearing  
officer's report to Chief Engineer.  
Thanks for your help.

Paul Graves  
From

10-03

Division

Phone

Memo to David Barfield

May 1, 2009

Page 3

6. David Warren, City of Wichita, provided additional spoken testimony to address concerns expressed by Mr. Wendling and Mr. Dyck. Mr. Warren explained that the City has a transparent process; all wells are metered; they will answer any questions people have and provide further information to educate the public about this project; he offered to provide a tour of the ASR project for Mr. Wendling, Mr. Dyck, and any other individuals interested.

The hearing was recorded on cassette tape. The cassette tape is retained in the KDA Legal Section's file. Leslie Garner can transcribe the hearing if necessary.

Information gathered from both spoken and written comments provided at the public hearing does not indicate that approval of the applications filed by Wichita for Phase 2 of the ASR project will either impair beneficial use under existing water rights or adversely affect the public interest. To the contrary, the testimony extolled the benefits of the project, including the general raising of the water table back to historic levels for sustainable water supplies and preventing saltwater intrusion. As such, the hearing officer concludes that the comments demonstrate benefit to the public and are therefore favorable to the approval of the applications.

I recommend the following courses of action:

- a) Direct staff to follow-up with the City to confirm that they have or will be providing information to Mr. Wendling and Mr. Dyck to address their questions other than the water right administration question by Mr. Dyck.
- b) Direct staff to prepare written responses to Mr. Wendling and Mr. Dyck, referring to the City's responses to most of their questions and providing the agency's response to the question about water right administration as well as any information as appropriate to supplement the City's responses regarding the meter requirements and accounting methods. The letter should be copied to the City and GMD 2.
- c) Review the applications package prepared by Water Appropriation staff, considering comments from the hearing, GMD 2's recommendations, and other relevant information. If acceptable, approve the applications with terms and conditions as necessary and appropriate.

Thank you for this opportunity to serve as hearing officer in the public hearing on this set of water appropriation applications.

-- End of memo --



## SIGN IN SHEET

Comment hearing - Wichita ASR Project phase II

April 29, 2009 at 1:00 p.m.

Grand Prairie Hotel and Convention Center, 1400 N. Lorraine St., Hutchinson, KS

| No. | Name              | Representing              | Comment (Written or Oral)          |
|-----|-------------------|---------------------------|------------------------------------|
| 1.  | DAVID WARREN      | City of Wichita           | Both                               |
| 2.  | JAMES BAGLEY      | KDA-DWR                   | Neither                            |
| 3.  | Paul Graves       | KDA-DWR (hearing officer) | —                                  |
| 4.  | Joe Allen Lang    | City of Wichita           | (with Warren)                      |
| 5.  | Debra Argy        | City of Wichita           | —                                  |
| 6.  | Andrea Cole       | R.W. Beck                 | —                                  |
| 7.  | Tim Boese         | Equus Beds GMD 2          | BOTH                               |
| 8.  | Fred Seiler       | GMD 2                     | Neither                            |
| 9.  | William Gilliland | KDA-DWR                   | written/oral                       |
| 10. | Jerry Blain       | -                         | none                               |
| 11. | Luana Wendling    | Land Owner                | oral                               |
| 12. | Jeff Lenterman    | KDA DWR                   | none                               |
| 13. | Brett Berry       | " "                       | "                                  |
| 14. | DANIEL DYCK       | DDYCK & MILLER            | # IRRIGATOR/<br>HAUSDORF LANDOWNER |
| 15. | BRIAN MEIER       | BURNS + McDONNELL         | -                                  |
| 16. | Rich Robinson     | City of Wichita           |                                    |
| 17. | Jan Ayer          | Land Owner                | None                               |
| 18. |                   |                           |                                    |
| 19. |                   |                           |                                    |
| 20. |                   |                           |                                    |

SIGN IN SHEET

Comment hearing – Wichita ASR Project phase II

April 29, 2009 at 1:00 p.m.

Grand Prairie Hotel and Convention Center, 1400 N. Lorraine St., Hutchinson, KS

|     |                 |                           |             |
|-----|-----------------|---------------------------|-------------|
| 21. | <i>Don Koci</i> | <i>City of Hutchinson</i> | <i>None</i> |
| 22. |                 |                           |             |
| 23. |                 |                           |             |
| 24. |                 |                           |             |
| 25. |                 |                           |             |
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| 39. |                 |                           |             |
| 40. |                 |                           |             |
| 41. |                 |                           |             |

Published in The Wichita Eagle  
April 21, 2009 (2943617)  
**KANSAS DEPARTMENT  
OF AGRICULTURE  
DIVISION OF WATER RESOURCES  
NOTICE OF PUBLIC HEARING ON THE  
CITY OF WICHITA'S APPLICATIONS TO  
APPROPRIATE WATER TO OPERATE  
AN AQUIFER STORAGE AND  
RECOVERY PROJECT IN  
HARVEY COUNTY, KANSAS**

Pursuant to K.S.A. 2008 Supp. 82a-711 and K.A.R. 5-12-3, a public hearing will be held at 1:00 p.m. on Wednesday, April 29, 2009, at the Grand Prairie Hotel and Convention Center, 1400 N. Lorraine Street, Hutchinson, Kansas regarding the approval of applications for permits to appropriate water, file numbers 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179; 47,180 and 47,181. Each of these applications to appropriate water for beneficial use propose aquifer storage and recovery of water as part of the proposed second phase of the City of Wichita's Aquifer Storage and Recovery Project in Harvey County, Kansas. This hearing will provide the public an opportunity to provide both oral and written comments in regard to whether approval of the applications may impair use of water under an existing water right or may prejudicially and unreasonably affect the public interest. Public comments may be considered in determining whether the applications should be approved, modified or denied.

This notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed project. All interested parties may submit written comments prior to the hearing to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, Attention: Leslie Garner, 109 SW 9th Street, 4th Floor, Topeka, Kansas 66612 or by e-mail at [leslie.garner@kda.ks.gov](mailto:leslie.garner@kda.ks.gov). All interested parties will be given a reasonable opportunity to present their views orally on the proposed project during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation. Any individual with a disability may request accommodation in order to participate in the public hearing. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Leslie Garner at (785) 296-4623 or fax (785) 368-6668.

Copies of the proposed applications may be obtained by contacting the Department of Agriculture or by accessing Division of Water Resource's home page at <http://www.kda.gov/dwr/>.

**WICHITA EAGLE FAX PROOF**



**AFFIDAVIT**

STATE OF KANSAS \
- SS.
County of Sedgwick /

Mark Fletchall, of lawful age, being first duly sworn, deposeth and saith: That he is Record Clerk of The Wichita Eagle, a daily newspaper published in the City of Wichita, County of Sedgwick, State of Kansas, and having a general paid circulation on a daily basis in said County, which said newspaper has been continuously and uninterruptedly published in said County for more than one year prior to the first publication of the notice hereinafter mentioned, and which said newspaper has been entered as second class mail matter at the United States Post Office in Wichita, Kansas, and which said newspaper is not a trade, religious or fraternal publication and that a notice of a true copy is hereto attached was published in the regular and entire Morning issue of said The Wichita Eagle for 1 issues - ~~weeks~~, that the first publication of said notice was

made as aforesaid on the 15th of

April A.D. 2009, with

subsequent publications being made on the following dates:

And affiant further says that he has personal knowledge of the statements above set forth and that they are true.

*Mark Fletchall*

Subscribed and sworn to before me this

15th day of April, 2009

JANICE L. TRAMMELL
Notary Public - State of Kansas
My Appt. Expires 4-29-2013

*Janice L. Trammell*
Notary Public Sedgwick County, Kansas

Printer's Fee : \$96.00

LEGAL PUBLICATION
Published in The Wichita Eagle
April 15, 2009 (2938315)
KANSAS DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES
NOTICE OF PUBLIC HEARING ON
THE CITY OF WICHITA'S
APPLICATIONS TO APPROPRIATE
WATER TO OPERATE AN AQUIFER
STORAGE AND
RECOVERY PROJECT IN
HARVEY COUNTY, KANSAS
Pursuant to K.S.A. 2008 Supp. 82a-711 and K.A.R. 5-12-3, a public hearing will be held at 1:00 p.m. on Wednesday, April 29, 2009, at the Grand Prairie Hotel and Convention Center, 1400 N. Lorraine Street, Hutchinson, Kansas regarding the approval of applications for permits to appropriate water, file numbers 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179; 47,180 and 47,181. Each of these applications to appropriate water for beneficial use propose aquifer storage and recovery of water as part of the proposed second phase of the City of Wichita's Aquifer Storage and Recovery Project in Harvey County, Kansas. This hearing will provide the public an opportunity to provide both oral and written comments in regard to whether approval of the applications may impair use of water under an existing water right or may prejudicially and unreasonably affect the public interest. Public comments may be considered in determining whether the applications should be approved, modified or denied.
This notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed project. All interested parties may submit written comments prior to the hearing to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, Attention: Leslie Garner, 109 SW 9th Street, 4th Floor, Topeka, Kansas 66612 or by e-mail at leslie.garner/www.ksda.gov/dwr/.

Reprinted on
4/21/09



**AFFIDAVIT**

STATE OF KANSAS \
- SS.
County of Sedgwick /

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made as aforesaid on the  15th  of

April  A.D.  2009 , with

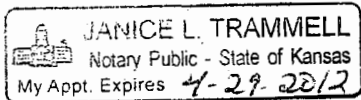
subsequent publications being made on the following dates:

And affiant further says that he has personal knowledge of the statements above set forth and that they are true.

*Mark Fletchall*

Subscribed and sworn to before me this

15th day of April, 2009



*Janice L. Trammell*  
Notary Public Sedgwick County, Kansas

Printer's Fee :  \$96.00

**LEGAL PUBLICATION**

Published in The Wichita Eagle  
April 15, 2009 (2938315)  
KANSAS DEPARTMENT  
OF AGRICULTURE  
DIVISION OF WATER RESOURCES  
NOTICE OF PUBLIC HEARING ON  
THE CITY OF WICHITA'S  
APPLICATIONS TO APPROPRIATE  
WATER TO OPERATE AN AQUIFER  
STORAGE AND  
RECOVERY PROJECT IN  
HARVEY COUNTY, KANSAS  
Pursuant to K.S.A. 2008 Supp. 82a-711  
and K.A.R. 5-12-3, a public hearing will  
be held at 1:00 p.m. on Wednesday, April  
29, 2009, at the Grand Prairie Hotel and  
Convention Center, 1400 N. Lorraine  
Street, Hutchinson, Kansas regarding the  
approval of applications for permits to  
appropriate water, file numbers 46,627; 46,714;  
46,715; 46,716; 46,717; 46,718; 46,719; 46,720;  
46,721; 46,722; 46,723; 46,724; 46,725; 46,726;  
46,727; 46,728; 46,729; 46,730; 46,731; 46,732;  
46,733; 47,178; 47,179; 47,180 and 47,181. Each  
of these applications to appropriate water for  
beneficial use propose aquifer storage and  
recovery of water as part of the proposed  
second phase of the City of Wichita's Aquifer  
Storage and Recovery Project in Harvey  
County, Kansas. This hearing will provide the  
public an opportunity to provide both oral and  
written comments in regard to whether  
approval of the applications may impair use of  
water under an existing water right or may  
prejudicially and unreasonably affect the  
public interest. Public comments may be  
considered in determining whether the  
applications should be approved, modified or  
denied.  
This notice of the public hearing shall  
constitute a public comment period for the  
purpose of receiving written public  
comments on the proposed project. All  
interested parties may submit written  
comments prior to the hearing to the Chief  
Engineer, Division of Water Resources,  
Kansas Department of Agriculture,  
Attention: Leslie Garner, 109 SW 9th Street,  
4th Floor, Topeka, Kansas 66612 or by e-  
mail at [leslie.garner@www.ksda.gov/dwr/](mailto:leslie.garner@www.ksda.gov/dwr/)

AGENCY PURCHASE ORDER

|                        |                             |               |                |  |
|------------------------|-----------------------------|---------------|----------------|--|
| APO Number<br>WA9-5820 | Document Date<br>2009-03-30 | Agency<br>046 | Division<br>WA | Contact:<br>LESLIE GARNER 785-296-4623 |
|------------------------|-----------------------------|---------------|----------------|--|

|  |  |
|--|--|
| Vendor Information   | Purchasing Agency Name & Address   |
| No/Sfx:<br><br>THE WICHITA EAGLE<br>825 E. DOUGLAS<br>PO BOX 820<br>WICHITA, KS 67201-0820 | Shipping Address:<br><br>KANSAS DEPARTMENT OF AGRICULTURE<br>LEGAL<br><br>109 SW 9TH<br>TOPEKA, KS 66612 |

|             |       |                    |               |                            |
|-------------|-------|--------------------|---------------|----------------------------|
| Contract No | Terms | FOB<br>DESTINATION | Delivery Date | Document Total<br>\$ 96.00 |
|-------------|-------|--------------------|---------------|----------------------------|

| Quantity | Unit | Description of Material or Service   | Unit Price | Amount |
|----------|------|--|------------|--------|
| 1        | EACH | publication of notice of public hearing in paper on April 15, 2009 for the Wichita ASR phase II hearing. funding source 1000-09-2240-67110 | 96.00      | 96.00  |

AGENCY PURCHASING CERTIFICATION: This document represents a purchase order of the State of Kansas. Please deliver the items or perform the service according to the terms described above. I certify that sufficient funds are available to cover this order.

Authorized Signature: Leslie Garner Date: 3/30/09 | !LG!

# AFFIDAVIT OF PUBLICATION

STATE OF KANSAS, COUNTY OF HARVEY, ss  
Shelly Drake  
Being first duly sworn, deposes and says: That She is  
Business Director of

**KANSAS DEPARTMENT OF  
AGRICULTURE  
DIVISION OF WATER  
RESOURCES  
NOTICE OF PUBLIC HEARING  
ON THE CITY OF WICHITA'S  
APPLICATIONS TO APPROPRI-  
ATE WATER TO OPERATE AN  
AQUIFER STORAGE AND  
RECOVERY PROJECT IN HAR-  
VEY COUNTY, KANSAS**

Pursuant to K.S.A. 2008 Supp. 82a-711 and K.A.R. 5-12-3, a public hearing will be held at 1:00 p.m. on Wednesday, April 29, 2009, at the Grand Prairie Hotel and Convention Center, 1400 N. Lorraine Street, Hutchinson, Kansas regarding the approval of applications for permits to appropriate water, file numbers 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179; 47,180 and 47,181. Each of these applications to appropriate water for beneficial use propose aquifer storage and recovery of water as part of the proposed second phase of the City of Wichita's Aquifer Storage and Recovery Project in Harvey County, Kansas. This hearing will provide the public an opportunity to provide both oral and written comments in regard to whether approval of the applications may impair use of water under an existing water right or may prejudicially and unreasonably affect the public

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Any individual with a disability may request accommodation in order to participate in the public hearing. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Leslie Garner at (785) 296-4623 or fax (785) 368-6668.

Copies of the proposed applications may be obtained by contacting the Department of Agriculture or by accessing - Division of Water Resource's home page at <http://www.ksda.gov/dwr/>.

(First published in THE NEWTON KANSAN, April 15, 2009.)

## The Newton Kansan

a daily newspaper printed in the State of Kansas, and published in and of general circulation in Harvey County, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

Said newspaper is a daily published at least weekly 50 times a year; has been so published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office of Newton, Kansas in said County as second class matter.

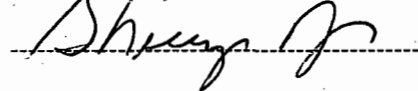
That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper for:

One insertions, the first publication thereof being

The 15<sup>th</sup> day of April 2009.

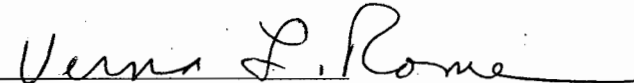
subsequent publications being made on the following date

Shelly Drake



Subscribed and sworn to before me 17<sup>th</sup> day of  
April 2009

Verna L Rowe

  
Notary Public

My commission expires October 18, 2012

Publication Fee: \$123.21

Wichita Aquifer Storage Hvy Co.

Fed ID  
26 1387914

VERNA L. ROWE  
Notary Public  
State of Kansas

My Appt. Exp. 10-18-2012

# AFFIDAVIT OF PUBLICATION

STATE OF KANSAS, COUNTY OF HARVEY, ss  
Shelly Drake  
Being first duly sworn, deposes and says: That She is  
Business Director of

## The Newton Kansan

a daily newspaper printed in the State of Kansas, and published in  
and of general circulation in Harvey County, Kansas, and that said  
newspaper is not a trade, religious or fraternal publication.

Said newspaper is a daily published at least weekly 50 times a year;  
has been so published continuously and uninterruptedly in said  
county and state for a period of more than five years prior to the  
first publication of said notice; and has been admitted at the post  
office of Newton, Kansas in said County as second class matter.

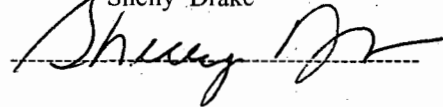
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One insertions, the first publication thereof being

The 15<sup>th</sup> day of April 2009.

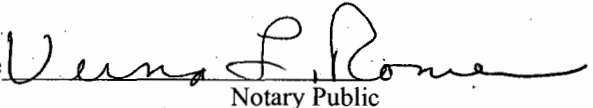
subsequent publications being made on the following date

Shelly Drake



Subscribed and sworn to before me 17<sup>th</sup> day of  
April 2009

Verna L Rowe

  
Notary Public

My commission expires **October 18, 2012**

Publication Fee: \$123.21

Wichita Aquifer Storage Hvy Co

**VERNA L. ROWE**

Notary Public

State of Kansas

My Appt. Exp. 10-18-2012

Fed ID

26 1387914

**KANSAS DEPARTMENT OF  
AGRICULTURE  
DIVISION OF WATER  
RESOURCES  
NOTICE OF PUBLIC HEARING  
ON THE CITY OF WICHITA'S  
APPLICATIONS TO APPROPRI-  
ATE WATER TO OPERATE AN  
AQUIFER STORAGE AND  
RECOVERY PROJECT IN HAR-  
VEY COUNTY, KANSAS**

Pursuant to K.S.A. 2008 Supp.  
82a-711 and K.A.R. 5-12-3, a public  
hearing will be held at 1:00 p.m.  
on Wednesday, April 29, 2009, at  
the Grand Prairie Hotel and  
Convention Center, 1400 N. Lor-  
raine Street, Hutchinson,  
Kansas regarding the approval of  
applications for permits to appropri-  
ate water, file numbers 46,627;  
46,714; 46,715; 46,716; 46,717;  
46,718; 46,719; 46,720; 46,721;  
46,722; 46,723; 46,724; 46,725;  
46,726; 46,727; 46,728; 46,729;  
46,730; 46,731; 46,732; 46,733;  
47,178; 47,179; 47,180 and 47,181.  
Each of these applications to appro-  
priate water for beneficial use pro-  
pose aquifer storage and recovery of  
water as part of the proposed second  
phase of the City of Wichita's Aquifer  
Storage and Recovery Project in Har-  
vey County, Kansas. This hearing  
will provide the public an opportuni-  
ty to provide both oral and written  
comments in regard to whether  
approval of the applications may  
impair use of water under an exist-  
ing water right or may prejudicially  
and unreasonably affect the public

interest. Public comments may be  
considered in determining whether  
the applications should be approved,  
modified or denied.

This notice of the public hearing  
shall constitute a public comment  
period for the purpose of receiving  
written public comments on the pro-  
posed project. All interested parties  
may submit written comments prior  
to the hearing to the Chief Engineer,  
Division of Water Resources, Kansas  
Department of Agriculture, Atten-  
tion: Leslie Garner, 109 SW 9th  
Street, 4th Floor, Topeka, Kansas  
66612 or by e-mail at [leslie.garner@kda.ks.gov](mailto:leslie.garner@kda.ks.gov). All interested parties will be given a reasonable opportunity to present their views orally on the proposed project during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation.

Any individual with a disability  
may request accommodation in order  
to participate in the public hearing.  
Requests for accommodation should  
be made at least five working days in  
advance of the hearing by contacting  
Leslie Garner at (785) 296-4623 or  
fax (785) 368-6668.

Copies of the proposed applica-  
tions may be obtained by contacting  
the Department of Agriculture or by  
accessing Division of Water  
Resource's home page at  
<http://www.ksda.gov/dwr/>.

(First published in THE NEWTON  
KANSAN, April 15, 2009.)

# The Newton Kansan

P.O. Box 268 121 West 6th Street Newton, KS 67114 (316)283-1500

Ks Dept Agriculture  
Leslie Garner  
Legal Div, 4<sup>th</sup> Floor  
109 SW 9<sup>th</sup>  
Topeka, KS 66612

acct# 115473 ref# 13485

Fed ID # 26 1387914

## Legal Publication Invoice:

|                     |  |          |
|---------------------|--|----------|
| April 15, 2009      | Notice of Public Hearing<br>On the City of Wichita's Applications to<br>Appropriate Water to Operate an aquifer storage<br>And recovery project in Harvey County, Ks | \$123.21 |
| Total Due/Thank You |  | \$123.21 |



AGENCY PURCHASE ORDER

|                        |                             |               |                |  |
|------------------------|-----------------------------|---------------|----------------|--|
| APO Number<br>WA9-5828 | Document Date<br>2009-03-30 | Agency<br>046 | Division<br>WA | Contact:<br>LESLIE GARNER 785-296-4623 |
|------------------------|-----------------------------|---------------|----------------|--|

|  |  |
|--|--|
| Vendor Information   | Purchasing Agency Name & Address   |
| No/Sfx:<br><br>THE NEWTON KANSAN<br>121 W. 6TH ST.<br><br>NEWTON, KS 67114 | Shipping Address:<br><br>KANSAS DEPARTMENT OF AGRICULTURE<br>LEGAL<br><br>109 SW 9TH<br>TOPEKA, KS 66612 |

|             |       |                    |               |                             |
|-------------|-------|--------------------|---------------|-----------------------------|
| Contract No | Terms | FOB<br>DESTINATION | Delivery Date | Document Total<br>\$ 123.21 |
|-------------|-------|--------------------|---------------|-----------------------------|

| Quantity | Unit | Description of Material or Service   | Unit Price | Amount |
|----------|------|--|------------|--------|
| 1        | EACH | publication of notice of public hearing in paper on April 15, 2009 for the Wichita ASR phase II hearing. Funding source 1000-09-2240-67110 | 123.21     | 123.21 |

AGENCY PURCHASING CERTIFICATION: This document represents a purchase order of the State of Kansas. Please deliver the items or perform the service according to the terms described above. I certify that sufficient funds are available to cover this order.

Authorized Signature: Leslie R Garner Date: 3/30/09 | !LG!

**AFFIDAVIT**

STATE OF KANSAS \
- SS.
County of Sedgwick /

Mark Fletchall, of lawful age, being first duly sworn, deposes and saith: That he is Record Clerk of The Wichita Eagle, a daily newspaper published in the City of Wichita, County of Sedgwick, State of Kansas, and having a general paid circulation on a daily basis in said County, which said newspaper has been continuously and uninterruptedly published in said County for more than one year prior to the first publication of the notice hereinafter mentioned, and which said newspaper has been entered as second class mail matter at the United States Post Office in Wichita, Kansas, and which said newspaper is not a trade, religious or fraternal publication and that a notice of a true copy is hereto attached was published in the regular and entire Morning issue of said The Wichita Eagle for  1  issues - weeks, that the first publication of said notice was

made as aforesaid on the  21st  of

April  A.D.  2009 , with

subsequent publications being made on the following dates:

And affiant further says that he has personal knowledge of the statements above set forth and that they are true.

*Mark Fletchall*

Subscribed and sworn to before me this

21st day of April, 2009

LINDA D. TOON
Notary Public - State of Kansas
My Appt. Expires 3-13-2013

*Linda Toon*

Notary Public Sedgwick County, Kansas

Printer's Fee : \$00.00

**LEGAL PUBLICATION**

Published in The Wichita Eagle
April 21, 2009 (2943617)
KANSAS DEPARTMENT
OF AGRICULTURE
DIVISION OF WATER RESOURCES
NOTICE OF PUBLIC HEARING ON THE
CITY OF WICHITA'S APPLICATIONS TO
APPROPRIATE WATER TO OPERATE
AN AQUIFER STORAGE AND
RECOVERY PROJECT IN
HARVEY COUNTY, KANSAS
Pursuant to K.S.A. 2008 Supp. 82a-711 and
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at 1:00 p.m. on Wednesday, April 29, 2009, at
the Grand Prairie Hotel and Convention
Center, 1400 N. Lorraine Street, Hutchinson,
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applications for permits to appropriate
water file numbers 46,627; 46,714; 46,715;
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47,178; 47,179; 47,180 and 47,181. Each of
these applications to appropriate water for
beneficial use propose aquifer storage and
recovery of water as part of the proposed
second phase of the City of Wichita's
Aquifer Storage and Recovery Project in
Harvey County, Kansas. This hearing will
provide the public an opportunity to provide
both oral and written comments in regard to
whether approval of the applications may
impair use of water under an existing water
right or may prejudicially and unreasonably
affect the public interest. Public comments
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the applications should be approved,
modified or denied.
This notice of the public hearing shall
constitute a public comment period for the
purpose of receiving written public
comments on the proposed project. All
interested parties may submit written
comments prior to the hearing to the Chief
Engineer, Division of Water Resources,
Kansas Department of Agriculture,
Attention: Leslie Garner, 109 SW 9th Street,
4th Floor, Topeka, Kansas 66612 or by e-
mail at leslie.garner@kda.ks.gov.
All interested parties will be given a
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contacting Leslie Garner at (785) 296-4623 or
fax: (785) 368-6668.
Copies of the proposed applications may be
obtained by contacting the Department of
Agriculture or by accessing Division of
Water Resource's home page at <http://www.ksda.gov/dwr/>.



STATE OF KANSAS  
DEPARTMENT OF AGRICULTURE  
LEGAL SECTION  
1000 EAST 10TH AVENUE  
TOPEKA, KANSAS 66612-1000  
TEL: 785-295-1234  
WWW.KSAGRI.COM

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APR 22 2009

LEGAL SECTION  
KS DEPT. OF AGRICULTURE

**AFFIDAVIT**

STATE OF KANSAS \
- SS.
County of Sedgwick /

Mark Fletchall, of lawful age, being first duly sworn, depose and saith: That he is Record Clerk of The Wichita Eagle, a daily newspaper published in the City of Wichita, County of Sedgwick, State of Kansas, and having a general paid circulation on a daily basis in said County, which said newspaper has been continuously and uninterruptedly published in said County for more than one year prior to the first publication of the notice hereinafter mentioned, and which said newspaper has been entered as second class mail matter at the United States Post Office in Wichita, Kansas, and which said newspaper is not a trade, religious or fraternal publication and that a notice of a true copy is hereto attached was published in the regular and entire Morning issue of said The Wichita Eagle for  1  issues - weeks, that the first publication of said notice was

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*Mark Fletchall*

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Notary Public - State of Kansas
My Appt. Expires 3-13-2013

*Linda Toon*

Notary Public Sedgwick County, Kansas

Printer's Fee : \$00.00

LEGAL PUBLICATION
Published in The Wichita Eagle
April 21, 2009 (2943617)
KANSAS DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES
NOTICE OF PUBLIC HEARING ON THE CITY OF WICHITA'S APPLICATIONS TO APPROPRIATE WATER TO OPERATE AN AQUIFER STORAGE AND RECOVERY PROJECT IN HARVEY COUNTY, KANSAS
Pursuant to K.S.A. 2008 Supp. 82a-711 and K.A.R. 5-12-3, a public hearing will be held at 1:00 p.m. on Wednesday, April 29, 2009, at the Grand Prairie Hotel and Convention Center, 1400 N. Lorraine Street, Hutchinson, Kansas regarding the approval of applications for permits to appropriate water, file numbers 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179; 47,180 and 47,181. Each of these applications to appropriate water for beneficial use propose aquifer storage and recovery of water as part of the proposed second phase of the City of Wichita's Aquifer Storage and Recovery Project in Harvey County, Kansas. This hearing will provide the public an opportunity to provide both oral and written comments in regard to whether approval of the applications may impair use of water under an existing water right or may prejudicially and unreasonably affect the public interest. Public comments may be considered in determining whether the applications should be approved, modified or denied.
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Copies of the proposed applications may be obtained by contacting the Department of Agriculture or by accessing Division of Water Resources home page at http://www.kksda.gov/dwr/.

RECEIVED

APR 22 2009

LEGAL SECTION  
KS DEPT. OF AGRICULTURE

STATE OF KANSAS  
DEPARTMENT OF AGRICULTURE  
LEGAL SECTION

STATE OF KANSAS  
DEPARTMENT OF AGRICULTURE  
LEGAL SECTION

STATE OF KANSAS  
DEPARTMENT OF AGRICULTURE  
LEGAL SECTION

24

(d) Unless otherwise required by statute, if members of the public will be given an opportunity to submit oral and written comments, notice of the hearing shall be caused by the chief engineer to be distributed in the place or places where the action or proposed action will be effective.

(1) Notice of hearing shall be given as required by statute, but no later than 15 days before the hearing.

(2) The notice of hearing may be published in a newspaper of general circulation where the action or proposed action will be effective as required by statute, but shall be published at least 15 days before the hearing. The notice of hearing shall not be required to be in the form of a legal notice. The notice may be also be given by any other means reasonably calculated to reach the residents of the area.

(e) Only the parties named in the notice of hearing or otherwise designated by the chief engineer may participate in the hearing.

(1) Any party may participate in person or, if the party is a corporation or other artificial person, by an authorized representative.

(2) Any party may be represented, at the party's own expense, by legal counsel or, if permitted by law, some other representative.

(3) The presiding officer may refuse to allow representation that would constitute the unauthorized practice of law.

(4) The presiding officer may give nonparties the opportunity to present oral or written statements to be included in the record of the proceedings.

(5) The presiding officer may consider only oral statements that are given under oath or affirmation and signed written statements.

(6) The presiding officer shall allow all parties a reasonable opportunity to challenge or rebut all oral and written statements received.

(f) The presiding officer may allow any party to participate in prehearing conferences, the hearing, or any other stage of the proceedings by telephone or videoconference.

(1) Unless otherwise authorized by the presiding officer, the party wishing to participate by telephone shall notify the presiding officer at least 48 hours in advance of the prehearing conference. The party wishing to participate by telephone may be granted a continuance if the presiding office is not able to grant the request.

(2) The presiding officer may require the party wishing to participate by telephone to initiate the call.

(3) The presiding officer may refuse to allow any party to participate by telephone if the party has not notified the presiding officer in advance and made arrangements for that participation or if any party objects.

(g) The presiding officer may hold one or more prehearing conferences as necessary to address preliminary matters or to facilitate the hearing.

(1) Notice of all prehearing conferences shall be given by the presiding officer to all parties and to all persons who have requested that notice. Notice may also be given to other interested persons at least 15 days before the prehearing conference.

(2) The notice of prehearing conference shall include the following:

**Testimony Before the Kansas Department of Agriculture  
Concerning  
The City of Wichita's Applications to Appropriate Water to Operate  
An Aquifer Storage and Recovery Project in Harvey County, Kansas  
by  
David Warren, Director of Utilities**

The City is pleased that it has achieved a Memorandum of Understanding with the GMD No.2 Board on Phase II of the City's ASR project. There remains one outstanding issue between the City and the District regarding the depth of water below ground surface and recharge practices. The District proposes to impose a 10' below land surface cap for recharge activities rather than follow the initial determination made by the Chief Engineer for ASR operations which set the upper limits of the recharge area to the 1940s levels and the lower limits to the 1993 levels. The GMD No. 2 proposed restriction may, in addition to acknowledging that dewatering of the aquifer is acceptable, reduce the ability to form a hydraulic barrier to migrating chloride plumes. However, the City recognizes that where that 1940s levels are less than 10 feet below land surface, there is some concern that restoring water levels to the 1940 levels may result in unintended consequences.

Wichita Water Utilities has contracted with the U.S. Geological Survey to perform a chloride transport study to more fully evaluate the movement of the chloride plumes and the impact of raising water levels on that movement. That study, which will begin in 2009 and be completed in 2015, will provide extensive new information on the movement of the chloride plumes from both the Burrton area and the Big Arkansas River. To address these concerns, the City has offered to include in the ASR Operations Plan a provision to limit recharge levels to no more than 10 feet below land surface in Index Cells 14, 19 and 26 until the USGS Chloride Transport Study data is available to determine the optimum water level required to provide an effective hydraulic barrier. If it is determined by that study that water levels do not need to be raised to the 1940s levels to successfully manage the movement of the plumes, the City will follow the 10' guideline even though it means an additional loss of storage capacity in those cells. However, we request that the 10' level be addressed solely in the Operations Plan until the results of the USGS Chloride Study are completed and not included as stipulations of the Findings and Orders. The City is committed to the future health of the aquifer and the continued water supply that it will provide for all who use it. The City therefore requests the flexibility within the boundaries as initially set by the Chief Engineer for the ASR Project applications.

The City believes that the MOU addresses the concerns expressed by the District and protects the public interest regarding the subject applications. The City of Wichita respectfully asks that the Chief Engineer give favorable consideration to the subject applications.

**Testimony Before the Kansas Department of Agriculture  
Concerning  
The City of Wichita's Applications to Appropriate Water to Operate  
an Aquifer Storage and Recovery Project in Harvey County, Kansas  
by**

**Tim Boese, Manager**

**April 29, 2009**

On behalf of the Board of Directors of the Equus Beds Groundwater Management District No. 2, the District submits the following information concerning the City of Wichita's (City) applications to appropriate water to operate an Aquifer Storage and Recovery (ASR) Project in Harvey County, Kansas. The appropriation applications were filed by the City of Wichita in conjunction with the ASR Project, Phase II.

**BACKGROUND INFORMATION:**

The Equus Beds aquifer is the sole-source of fresh and usable groundwater for industrial, municipal, and irrigation uses throughout south-central Kansas. Over 2,000 permitted water wells and points of diversion withdraw an average of over 57 billion gallons from the aquifer annually.

Over 500,000 people, or approximately 20 percent of the entire State's population, in Harvey, Sedgwick, McPherson and Reno counties rely on the aquifer for drinking water and other daily needs. Additionally, over 100,000 acres are irrigated using groundwater from the Equus Beds aquifer. The aquifer also supplies water for the area's livestock production, businesses, industries, and recreational activities. The continued source of fresh and useable water from the aquifer is vital to the area's economy, livelihood, and way of life.

To manage and protect this valuable water resource from depletion and contamination, the Equus Beds Groundwater Management District was formed in 1975 by local people representing municipal, agricultural, industrial and domestic water users. An aquifer management program was developed and adopted by the District's Board of Directors. The District limits new groundwater withdrawals or diversions to annual recharge and seeks to maintain the natural water quality of the aquifer through protection and remediation. Additionally, the District encourages recharge enhancement projects.

The Equus Beds Groundwater Management District staff and Board of Directors have spent many hours thoroughly reviewing the City's ASR Phase II water appropriation applications. Additionally, a significant amount of time and effort was put forth in the development of a mutually approved Memorandum of Understanding (MOU) between the District and the City to address certain concerns. The District has recommended to the Chief-Engineer, Division of Water Resources, that the ASR Phase II water appropriation applications be approved, subject to numerous conditions and limitations and the stipulations specified in the approved MOU.

The District and the City have agreed, with only one exception, that the District's approval recommendation conditions and the components of the approved MOU are necessary to:

- Monitor and protect the aquifer's quantity and quality;
- Protect the public interest; and
- Ensure that the ASR Project does not impair existing groundwater users in the area.

## **EQUUS BEDS GROUNDWATER MAANGEMENT DISTRICT NO. 2**

Kansas Department of Agriculture Public Hearing – City of Wichita ASR Water Applications

April 29, 2009

Page 2

The only point that the District and the City could not agree upon was the maximum allowed water-level elevation due to recharge activities in the Basin Storage Area. Whereas the City believed that the water-level “cap” should be the 1940 water-levels, the District believed that the “cap” should be 1940 water-levels, with a further stipulation that water could only be injected into the aquifer when the water-level at the ASR well, or any monitoring well within 660 feet of the ASR well, was 10 feet or more below land surface. The District’s intent and reasoning for this further limitation is to protect land improvements and structures that were made based on groundwater levels at the time of improvement. Of the 38 Index Cells in the Basin Storage Area, the 1940 water levels in four of the Cells (Nos. 14, 16, 19, and 26) are above 10 feet below land surface.

The District and the City had numerous discussions concerning the proper maximum water level elevation. The City recently submitted to the District the City’s plan and intention to include in the ASR Operation Plan a provision to limit recharge levels to a maximum of 10 feet below land surface in three of the four Index Cells identified above until the Chloride Transport Study being conducted by the USGS is complete. The USGS study will help determine if water levels above 10 feet below land surface in the Cells is necessary to assist in forming a hydraulic barrier to the saltwater contamination plumes in the aquifer upgradient of the Basin Storage Area. The District supports the City’s plan to include that stipulation in the ASR Operation Plan and further maintains that water levels should not be artificially raised above 10 feet below land surface in the Basin Storage Area until it is clearly and definitively shown that the benefits of doing so outweigh the potential harms. Upon completion of the USGS study, all relevant data and findings should be closely evaluated by the District and the Division of Water Resources to determine the proper maximum water-level elevation.

### **DISTRICT RECOMMENDATION**

The District believes that the ASR Project has mutual benefits to the City of Wichita, the Equus Beds Aquifer, and the District groundwater users in the recharge area. These benefits include: Providing a water source for the City’s future needs, restoring groundwater levels in an over-appropriated and depleted area of the aquifer, and retarding saltwater contamination plumes in the aquifer located upgradient of the recharge area.

The District recommends that the ASR Phase II water appropriation applications are approved, subject to the District’s previously submitted recommendation conditions and the approved MOU between the District and the City.

Thank you for the opportunity to provide information concerning the ASR Project and the City’s water appropriation applications.

Phase II of the Equus Beds Aquifer Storage and Recovery Project (ASR Phase II)

City of Wichita – File Nos. 46,627; 46,714; 46,715; 46,716; 46,717; 46,718; 46,719; 46,720; 46,721; 46,722; 46,723; 46,724; 46,725; 46,726; 46,727; 46,728; 46,729; 46,730; 46,731; 46,732; 46,733; 47,178; 47,179; 47,180; and 47,181

This project is designed to divert surface water from the Little Arkansas River (Application, File No. 46,627), treat the water according to Kansas Department of Health and Environment (KDHE) standards, and either use the water directly for municipal use or recharge the aquifer (ASR). The goal for Phase II is to be capable of recharging 30 million gallons of water per day into the Equus Beds aquifer. Application, File No. 46,627 is requesting 45,230 acre-feet (14,738 million gallons) to be diverted at a rate of 41,667 gallons per minute (92.8 c.f.s.). The required streamflow on the Little Arkansas River has not yet been determined, but obviously must be sufficient to meet the requested rate, maintain MDS flow values, and protect senior surface water rights,

In addition, DWR currently has 24 pending new applications requesting groundwater for municipal use (recharge and recovery wells), and 15 changes for points of diversion for existing water rights related to this project. Each new application for groundwater is requesting 500 acre-feet of water to be diverted at 1,500 gallons per minute for municipal use. In each instance, the pending new applications will overlap in point of diversion with one of three senior water rights: Vested Water Right, File No. HV-06, or Water Right, File Nos. 388 and 1,006.

A Class V permit is required from (KDHE) prior to injecting water into the recharge wells. In addition, there are strict standards concerning water quality testing, monitoring wells, and allowable recharge levels. A second benefit of the project will be to create a hydraulic barrier to minimize further intrusion of salt water into the Equus Beds aquifer.

There are multiple existing irrigation and domestic wells located in the vicinity of the proposed applications, and over 100 nearby well owner notification letters were sent out on April 8, 2008 regarding the pending applications. Several telephone calls and five (5) written responses were received from the well owners. Reply letters were sent to the five nearby well owners who had submitted written comments on October 21, 2008. In addition, these same nearby well owners were copied on subsequent correspondence from GMD 2 to both DWR and the City of Wichita.

The City of Wichita and GMD 2 have completed a memorandum of understanding dated December 3, 2008, which documents specific agreements concerning the project, including that if a domestic well within 660 feet is adversely impacted by drawdown the City will take appropriate action to restore the well. Copies of each written response letter from nearby well owners, along with copies of the pending applications, were provided to Equus Beds Groundwater Management District No. 2 (GMD 2) for their review on May 29, 2008. All of the applications were subsequently recommended for approval by GMD 2, with a specified list of permit conditions.

The new applications will only be authorized to withdraw water when recharge credits are available within a specific index cell. Phase I of the ASR project has already established the horizontal and vertical boundaries of this ASR project, as well as the accounting method for tracking recharge credits.

Based on current information, and the recommendation of approval from GMD 2, it appears that approval of the applications will not impair any use under existing water rights nor prejudicially and unreasonably affect the public interest. However, K.A.R. 5-12-3 states that a hearing shall be held by the chief engineer in the general vicinity of where an applicant proposes aquifer storage and recovery before approval of any such application for aquifer storage and recovery. Pending an evaluation of information provided during the public hearing, the applications will undergo further review and ultimately submitted to the Chief Engineer for final decision.



The Wichita Aquifer Storage and Recovery project (ASR)

The ASR project was developed as a means to ensure the long term stability of the municipal water supply for the City of Wichita. Pumping of groundwater from the Equus Beds had exceeded recharge and resulted in a lowering of the water level in portions of the aquifer. It also changed the flow gradient and increased the movement of poor quality groundwater toward the well field.

The ASR project uses available surface water flows from the Little Arkansas River to refill the storage space within the Equus Beds aquifer and to change the pattern of groundwater flow to reduce or prevent the contamination of the well field by the poor quality water. Research projects were conducted and the data was used define the storage area and model the movement of water within the aquifer. Phase 1 was implemented to better define how the surface water was to be taken from the stream, how the recharge water was to be treated to meet required standards, ensure that other water uses from the Equus Beds aquifer were protected, and to began the development of a groundwater mound to protect water quality within the storage area.

Phase 2 in an expansion of the active recharge to the aquifer and construction or reconstruction of wells that can be used to withdraw stored water in times of need. The quantity of water that can be withdrawn, under the ASR project, from any individual well is determined by an accounting system developed from the groundwater model.

Further development of the ASR project is to be done in stages determined by the water requirements of the municipal system and the construction of the physical system required.

*Statement read by Will Gilliland prior to hearing commencement.*

5-12-1  
5-12-3

LEGAL TRANSFER FORM  
(When transferring a file to Legal Section)

- 1) DATE 1-26-2009
- 2) PROGRAM TRANSFERRING FILE Water Appropriation
- 3) PROGRAM CONTACT PERSON William Gilliland
- 4) NATURE OF LEGAL ACTION REQUESTED Determination if a hearing is needed for phase 2 of Wichita ASR project.
- 5) NAME OF COMPLAINANT \_\_\_\_\_
- 6) ADDRESS OF COMPLAINANT \_\_\_\_\_
- 7) TELEPHONE NUMBER OF COMPLAINANT \_\_\_\_\_
- 8) NAME OF REGULATED ENTITY \_\_\_\_\_
- 9) ADDRESS OF REGULATED ENTITY \_\_\_\_\_
- 10) TELEPHONE NO. OF REGULATED ENTITY \_\_\_\_\_
- 11) NAME OF OWNER OR REPRESENTATIVE City of Wichita
- 12) TYPE OF LICENSE, PERMIT, ETC. (e.g., Pesticide License, Stop Sale, Training Certification, Contract) 25 new applications and several change applications on about 17 points of diversion
- 13) DESCRIBE CONTENTS OF FILE TRANSFERRED e-mails on need to holding a hearing on phase 2 or not.
- 14) ATTACHED IS LICENSING HISTORY AND NOTIFIED RECORD CENTER OF REFERRAL \_\_\_\_\_
- 15) COMMENTS Most of processing is complete on submitted applications determination needed if a public hearing is needed for phase 2 ASR
- 16) DEADLINES \_\_\_\_\_

Please deliver form to Legal Section (Leslie Garner) to be date stamped and assigned.

Persons to be involved in discussing applications  
 William Gilliland      Ken Kopp was involved in processing applications and in the hearing for phase 1.  
 Brent Turner  
 Doug Schamm  
 Michelle Krueger

## Gilliland, Will

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**From:** Barfield, David  
**Sent:** Monday, January 26, 2009 9:40 AM  
**To:** Gilliland, Will  
**Cc:** Letourneau, Lane; Lanterman, Jeff; Schemm, Doug; Krueger, Richelle  
**Subject:** RE: Phase II ASR project for City of Wichita

Will,

Please send the item up to Legal for their review on the question of whether we need to do another hearing.

David

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**From:** Gilliland, Will  
**Sent:** Monday, January 26, 2009 9:19 AM  
**To:** Barfield, David  
**Cc:** Letourneau, Lane; Lanterman, Jeff; Schemm, Doug; Krueger, Richelle  
**Subject:** Phase II ASR project for City of Wichita

Doug is near having all the information and recommendations for processing of the new applications for Phase II. He has also been working with Richelle on coordination with the changes that were filed. There are about 25 new applications involved and due to many points of diversion under singles water rights some 17 or so changes of PD &/or use.

The question about holding a hearing on Phase II still has not been resolved since the e-mails of December 9, 2008. If we do have to hold a hearing, it would be better to look at a date after the Legislative session. However, We should be starting on setting a date, making arrangements for the location and getting word out to all interested parties.

If it is determined that the hearing held for the first phase takes care of the requirements under K.A.R. 5-12-3, then Doug and Richelle can proceed with bringing the applications into final form to be submitted to David.

Sorry to keep bringing the question up, but before long it will be Wichita that is pushing for an answer.

Will



## Gilliland, Will

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**From:** Gilliland, Will  
**Sent:** Tuesday, December 09, 2008 10:01 AM  
**To:** Barfield, David  
**Cc:** Letourneau, Lane; Schemm, Doug  
**Subject:** FW: Phase II ASR Project City of Wichita

David, Lane has just headed out for Garden City and I didn't get an opportunity to discuss this question with him. We might be able to talk about this at Great Bend.

Do you want me to ask Legal if we have to hold a hearing someplace in GMD#2 over Phase 2 of the Wichita ASR project per 5-12-3? The other option is to wait until you return and discuss the possibility that the public meeting that have already been held fulfill the intent of the regulation and that a hearing will not be necessary.

Doug was just pointing out that we did hold a hearing for the Phase 1 portion and that the overall long term project was discussed at that time. If we did not hold a hearing would it need to be done under a waiver or would the public meetings be considered in place of the hearing?

My main concern would be that the public meetings were not given formal status prior to being held.

Will

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**From:** Schemm, Doug  
**Sent:** Tuesday, December 09, 2008 9:11 AM  
**To:** Letourneau, Lane; Gilliland, Will  
**Subject:** Phase II ASR Project City of Wichita

Ok, we have received GMD 2 response to File Nos. 46,627 and 46,714 thru 46,733 regarding the Phase II ASR project. The City and GMD 2 have agreed to a Memorandum of Understanding, and we can continue to process these files for approval, however there is one significant issue that needs clarification rather quickly.

Per K.A.R. 5-12-3. Hearings. (a) A hearing shall be held by the chief engineer in the general vicinity where an applicant proposes aquifer storage and recovery before approval of any such application for aquifer storage and recovery.

(b) If any part of a proposed basin storage area is within the boundaries of a groundwater management district, the hearing required by subsection (a) of this regulation shall be held within the groundwater management district.

We need a ruling from the Chief Engineer and/or Legal, if this hearing is required since it will take some time to arrange it. Please note that the City has held public meetings, the project has received a lot of public exposure, and all the people who have expressed concerns have been invited to the GMD 2 meetings when the apps were discussed.

## Garner, Leslie

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**From:** Gilliland, Will  
**Sent:** Monday, January 26, 2009 2:27 PM  
**To:** Garner, Leslie  
**Subject:** FW: Phase II ASR project for City of Wichita

FYI

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**From:** Letourneau, Lane  
**Sent:** Monday, January 26, 2009 2:15 PM  
**To:** Starkey, H. David  
**Cc:** Gilliland, Will; Schemm, Doug  
**Subject:** FW: Phase II ASR project for City of Wichita

David,

When this come up for review, you need to know that we held a public hearing when the Phase I apps were processed and approved.

This question is regarding the Phase II apps and whether a public hearing is required because it is the same recharge project as the first set of apps.

Holler if you have any questions.

Thanks

Lane

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**Sent:** Monday, January 26, 2009 9:40 AM  
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**Cc:** Letourneau, Lane; Lanterman, Jeff; Schemm, Doug; Krueger, Richelle  
**Subject:** RE: Phase II ASR project for City of Wichita

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