



KANSAS DEPARTMENT OF AGRICULTURE
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES
David W. Barfield, Chief Engineer

**FINDINGS AND ORDER
IN THE MATTER OF THE
DISMISSAL OF APPLICATION
FILE NO. 49,566**

After due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

FINDINGS

1. That on February 29, 2016, the Chief Engineer received an application from Gordon Bergkamp for permit to appropriate water for beneficial use, assigned File No. 49,566, proposing the appropriation of 200.2 acre-feet of groundwater, per calendar year, for irrigation use, at a maximum requested diversion rate of 1,000 gallons per minute, from a point of diversion located in the Northwest Quarter of the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 18, more particularly described as being near a point 2,000 feet North and 4,700 feet West of the Southeast corner of said section, in Township 23 South, Range 2 West, Harvey County, Kansas, within the Little Arkansas river Basin. The proposed point of diversion is located within the Equus Beds Groundwater Management District No. 2 (GMD No. 2).
2. That on March 7, 2016, a copy of the application was submitted to GMD No. 2. GMD No. 2 recommended denial of the application in a letter dated on September 14, 2016. In the letter they stated that the application does not comply with the District's Safe Yield Regulation K.A.R. 5-22-7(a), as existing and proposed consumptive appropriations exceed the maximum allowable appropriation.
3. That on September 15, 2016, a letter was mailed to the applicant stating that the application did not comply with the safe yield requirements of K.A.R. 5-22-7(a), and that the application would be submitted to the Chief Engineer with a recommendation that the pending application be denied and dismissed, for failure to meet safe yield criteria. The applicant was provided 15 days, until September 30, 2016 to either submit additional information to our office or request additional time, prior to final action on the application. No additional information was received from the applicant.
4. That the applicant, has not submitted additional information for consideration, for Application, File No. 49,566, thus the application should be denied and dismissed and its priority forfeited for failure to comply with K.A.R. 5-22-7(a).

ORDER

NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that effective the date of this order, in accordance with the law, Application, File No. 49,566, is herewith dismissed and the priority assigned to it is considered to be forfeited.

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 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. 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. The applicant, if aggrieved by this Order, may petition for administrative review, pursuant to K.S.A. 82a-711(c) 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 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 for the Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502. If you have questions or would like clarification concerning this order, you may contact the Chief Engineer.

Ordered this 24th day of October, 2016, in Topeka, Shawnee County, Kansas.

Lane P. Letourneau

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

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 24th day of October, 2016, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Danielle Wilson

Notary Public