

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: August 4, 2020

FROM: Brandon Milner

RE: Application, File No. 50,193

battery of 2 Quivira Waterfowl LLC has filed the referenced new application to appropriate 15 acre-feet of groundwater from two existing wells at a rate of 275 gallons per minute for recreational use at three recreational ponds. The recreational ponds are located in Section 6, Township 22 South, Range 10 West, Reno County, within the Rattlesnake Creek Drainage Basin. The entire place of use is owned by the applicant and he has signed the application form stating he has access to the point of diversion. The quantity of water is deemed reasonable as the applicant is seeking only fill the ponds seasonally for the hunting season.

**4.49 acres total surface area @ 30" evap = 11.225AF evap
plus 3.775AF evap (equivalent to 0.03in/day) = 15AF total**

Groundwater Management District No. 5 is closed for new appropriations except those seen in K.A.R. 5-25-15. As such, for an exception to happen the following criteria must be met; the sum of the annual quantity of water requested by the new application and the total annual quantities authorized by prior approvals of applications because of an exemption pursuant to this regulation does not exceed 15 acre-feet in a one-mile-radius circle surrounding the proposed point of diversion, the well meets spacing as requirements as in K.A.R. 5-25-2, the application will not allow more quantity from an existing Water Right, this application will not impair any senior water rights in the area, shall comply with all requirements of K.S.A. 82a-709 and K.S.A. 82a-711, and amendments thereto, K.A.R. 5-3-1 and K.A.R. 5-3-1b for processing a new application to appropriate water have been met and shall not be located in an IGUCA. As this application is part of the Rattlesnake Creek Drainage Basin, it will also have be 15 Acre-Feet or Less, meet spacing from K.A.R. 5-25-2 and offset source of water must be present but the proposed point of diversion cannot be closer than the offset point of division to a stream if within three miles of a stream. The well log shows sand and gravel from 15 to 34 feet. The supply of water for this application is undifferentiated Kansas/Nebraskan deposits from the shallowness of the well (42').

The application was sent to Groundwater Management District No. 5 on April 28, 2020. After a GMD #5 Board meeting on May 14, 2020, the board recommended that that the application be approved as long as the proposed well location was moved north to meet spacing for K.A.R. 5-25-15 (a) (1), K.A.R. 5-25-15 (d)(4) be waived and that an offset source was presented as per K.A.R. 5-25-15 (d)(3). However, after further review by DWR, it was determined that the proposed point of diversion could not be moved north enough to meet K.A.R. 5-25-15 and remain on the applicant's property. In a revised recommendation from GMD #5 on June 12th, 2020 it was recommended that the application be approved for a 15 AF exception with a waiver of K.A.R. 5-25-15 (a) (1) and K.A.R. 5-25-15 (d)(4). GMD #5 also requested that the pumping rate be lowered from 580 gallons per minute to 275 gallons per minute. Additionally, the applicant agreed to reduce 30 Acre-Feet for from Water Right No. 30,431 D4 for application No. 50,193 to be approved for 15 Acre-Feet.

After the revised GMD # 5 recommendation, DWR has worked with the applicant to accomplish the following resolutions: the applicant has bought additional quantity of 59 Acre-Feet from Water Right No. 30431 D2. Water Right No. 30431 D2 will then be divided into Water Right Nos. 30,431 D3 and 30,431 D4. Water Right No. 30,431 D4 would then use 15 AF of this quantity for this application, 15 AF would be permanently retired and that would leave 29 AF for the applicant to use as they wish. Water Right No. 30,431 D4 would provide adequate offset to comply with K.A.R. 5-25-15 (d)(3).

The applicant identified one non-domestic well within one-half mile. A nearby letter was sent on May 6th, 2019 with no response to date. Therefore, this application meets K.A.R. 5-25-2 as the nearest non-domestic well is 2,600 feet away and the nearest domestic well is located 2,900 feet away.

Memorandum

50,193

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In accordance with K.S.A. 82a-706c, the Chief Engineer retains full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R. 5-1-12. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

In an August 4th, 2020 e-mail, Jeff Lanterman, Water Commissioner, Stafford Field Office, recommended approval of the referenced new application.

Based on the above discussion, well spacing and safe yield criteria are met, and approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced ne application be approved, ~~and the senior files be dismissed as voluntarily requested by the owner.~~

**along with the processing of the
associated division and reduction to
WR 30431-D2**

8/19/2020
KAB

Brandon Milner
Environmental Scientist
Water Appropriation Program.

Kansas Department of Agriculture
 Division of Water Resources
WAIVER REQUEST & WAIVER RULE WORKSHEET

File Number: 50,193

FO: 2

GMD: 2

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
REC	8/6/20	142	GMD 5	15 Acre-Feet	Quantity allowance 15 AF
Rule Number	Date Granted	Date Denied	Justification:	Applicant will buy 59 Acre-feet of water from Water Right 30431-D2. Water Right No. 30431-D2 will be split into new Water Right Nos. 30431-D3 & 30431-D4. Water Right No. 30431-D4 will retire 15 Acre-feet and use 15 Acre-Feet as an offset for application 50,193.	
K.A.R. 5-25-15 (a)(1)	9/3/2020				

WAIVER RULE (complete only if a new rule needs to be created):

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
142	GMD 5	15 Acre-feet	Quantity allowance 15 AF	K.A.R. 5-25-15 (a)(1)	8/6/20	

Date Prepared 8/6/20 By BMM

Date Entered 9/14/2020 By LMoody

Kansas Department of Agriculture
 Division of Water Resources
WAIVER REQUEST & WAIVER RULE WORKSHEET

File Number: **50,193**

FO: **2**

GMD: **2**

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
REC	8/6/20	143	GMD 5	15 Acre-Feet	Exceptions and Info
Rule Number	Date Granted	Date Denied	Justification:	Applicant will buy 59 Acre-feet of water from Water Right 30431-D2. Water Right No. 30431-D2 will be split into new Water Right Nos. 30431-D3 & 30431-D4. Water Right No. 30431-D4 will retire 15 Acre-feet and use 15 Acre-Feet as an offset for application 50,193. Application will be downstream and have little or no impact to Quivira NWR. Furthermore, applicant has agreed to lower pumping rate to 275 gpm.	
K.A.R. 5-25-15 (d)(4)	9/3/2020				

WAIVER RULE (complete only if a new rule needs to be created):

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
143	GMD 5	15 Acre-feet	Exceptions and Info	K.A.R. 5-25-15 (d)(4)	8/6/20	

Date Prepared **8/6/20** By **BMM**

Date Entered **9/14/2020** By **LMoody**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: August 6, 2020

FROM: Brandon Milner

RE: Appropriation of Water Application
No. 50,193

On January 8, 2019 DWR received a new application from Quivira Waterfowl LLC requesting 15 Acre-feet of water for recreation use. However, after further review from the Groundwater Management District No. 5 on May 14, 2020 during a board meeting, it was determined that the application did not meet K.A.R. 5-25-15 (a)(1) and K.A.R. 5-25 (d)(4) however the board meeting voted to approve the application given recommending a waiver for K.A.R. 5-25-15 (a)(1) and K.A.R. 5-25 (d)(4). After the revised GMD # 5 recommendation, DWR has worked with the applicant to accomplish the following resolutions: the applicant has bought additional quantity of 59 Acre-Feet from Water Right No. 30431 D2. Water Right No. 30431 D2 will then be divided into Water Right Nos. 30,431 D3 and 30,431 D4. Water Right No. 30,431 D4 would then use 15 AF of this quantity for this application, 15 AF would be permanently retired and that would leave 29 AF for the applicant to use as they wish. Water Right No. 30,431 D4 would provide adequate offset to comply with K.A.R. 5-25-15 (d)(3). Furthermore, application will be downstream and have little or no impact to Quivira NWR and applicant has agreed to lower pumping rate to 275 gpm. Therefore a waiver for K.A.R. 5-25-15 (a) (1) and K.A.R. 5-25-15 (d)(4) has been prepared.

Brandon Milner
Environmental Scientist
Water Appropriation Program

From: Lanterman, Jeff [KDA]
Sent: Tue 8/4/2020 2:08 PM
To: Milner, Brandon [KDA]
Cc: Conant, Cameron [KDA]
Subject: RE: 50193 Memo

That looks fine Brandon! Thanks for the good work. Approve it.

Probably need to coordinate with Ty on the reduction and division so its all signed at once as a package.

Jeff

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Sent: Tuesday, August 4, 2020 2:03 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Cc: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 50193 Memo

How's it look guys? I've made changes that you have suggested.

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Tuesday, August 4, 2020 1:28 PM
To: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Cc: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: 50193 Memo

Just a few additional comments.

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting Chief Engineer

WAIVER OF REGULATION
K.A.R. 5-25-15(d)(4)
Exemptions for up to 15 acre-feet of groundwater

Date: 3 September 2020

RE: Application, File No. 50,193

1. That K.A.R. 5-25-15(d)(4) states in part that the point of diversion proposed through an offset shall not be closer to a stream than the point of diversion being reduced if the authorized well is within three miles of a stream.
2. That the proposed point of diversion is located approximately 1 mile from Rattlesnake Creek while the offsetting water right is located approximately 3 miles from Rattlesnake Creek.
3. That the applicant has acquired offsetting water from an existing water right and has agreed to retire 30 acre-feet of water, which is twice the quantity being requested by the above referenced pending application.
4. That the applicant has agreed to reduce the requested rate of diversion from 580 gallons per minute to 275 gallons per minute.
5. That the Big Bend Groundwater Management District No. 5 reviewed the application and has recommended that the application be approved with a waiver of K.A.R. 5-25-15(d)(4) provided that the conditions outlined in paragraphs 3 and 4 have been met, and in light of the fact that the proposed point of diversion is located downstream of and would have minimal impact on Quivira National Wildlife Refuge.
6. That a waiver of K.A.R. 5-25-15(d)(4) will not prejudicially or unreasonably affect public interest and will not impair any existing water rights.

Comments:



A handwritten signature in blue ink that reads "Christopher W. Beightel".

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

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting Chief Engineer

WAIVER OF REGULATION
K.A.R. 5-25-15(a)(1)
Exemptions for up to 15 acre-feet of groundwater

Date: 3 September 2020

RE: Application, File No. 50,193

1. That K.A.R. 5-25-15(a)(1) states that the sum of the annual quantity of water requested by the new application and the total annual quantities authorized by prior approvals of applications because of an exemption pursuant to this regulation does not exceed 15 acre-feet in a one-mile-radius circle surrounding the proposed point of diversion.
2. That two other water rights within a one-mile radius circle of the proposed point of diversion each authorized 15 acre-feet have already been approved pursuant to this exemption.
3. That the applicant has acquired offsetting water from an existing water right and has agreed to retire 30 acre-feet of water, which is twice the quantity being requested by the above referenced pending application.
4. That the applicant has agreed to reduce the requested rate of diversion from 580 gallons per minute to 275 gallons per minute.
5. That the Big Bend Groundwater Management District No. 5 reviewed the application and has recommended that the application be approved with a waiver of K.A.R. 5-25-15(a)(1) provided that the conditions outlined in paragraphs 3 and 4 have been met, and in light of the fact that the proposed point of diversion is located downstream of and would have minimal impact on Quivira National Wildlife Refuge.
6. That a waiver of K.A.R. 5-25-15(a)(1) will not prejudicially or unreasonably affect public interest and will not impair any existing water rights.

Comments:



Handwritten signature of Christopher W. Beightel in blue ink.

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

THE STATE  OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting Chief Engineer

**APPROVAL OF APPLICATION
and
PERMIT TO PROCEED**

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,193** of the applicant

**QUIVIRA WATERFOWL LLC
30800 W 37TH ST N
MOUNT HOPE, KS 67108**

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 **January 8, 2019**.
2. That the water sought to be appropriated shall be used for recreational use in a waterfowl complex consisting of three ponds located in the Northeast Quarter (NE $\frac{1}{4}$) of Section 6, in Township 22 South, Range 10 West, Reno County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of two (2) wells with a geographical center located in the Northwest Quarter of the Southeast Quarter of the Northeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 6, more particularly described as being near a point 3,638 feet North and 1,247 feet West of the Southeast corner of said section, in Township 22 South, Range 10 West, Reno County, Kansas.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **275 gallons per minute (0.613 c.f.s)** and to a quantity not to exceed **15 acre-feet** of water for any calendar year.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2021** or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$400.00 when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2025** or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.
7. That the applicant shall not be deemed to have acquired a water appropriation for a quantity in excess of the amount approved herein nor in excess of the amount found by the Chief Engineer to have been actually used for the approved purpose during one calendar year subsequent to approval of the application and within the time specified for perfection or any authorized extension thereof.
8. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.
9. That the right of the appropriator shall relate to a specific quantity of water and such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion.
10. That this permit does not constitute authority under K.S.A. 82a-301 through 305a to construct any dam or other obstruction; nor does it grant any right-of-way, or authorize entry upon or injury to, public or private property.
11. That all diversion works constructed under the authority of this permit into which any type of chemical or other foreign substance will be injected into the water pumped from the diversion works shall be equipped with an in-line, automatic quick-closing, check valve capable of preventing pollution of the source of the water supply. The type of valve installed shall meet specifications adopted by the Chief Engineer and shall be maintained in an operating condition satisfactory to the Chief Engineer.
12. That all wells with a diversion rate of 100 gallons per minute or more drilled under the authority of this permit shall have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer. This tube or device shall be suitable for making water level measurements and shall be maintained in a condition satisfactory to the Chief Engineer.
13. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this permit in accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).
14. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.
15. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.
16. That 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 this permit is further limited such that all wells shall be located within a three hundred (300) foot radius circle in the same local source of supply and shall supply water to a common distribution system.

Ordered this 3 day of September, 2020, in Manhattan, Riley County, Kansas.



Christopher W. Beightel

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

State of Kansas)

) SS

County of Riley)

The foregoing instrument was acknowledged before me this 3 day of September, 2020, by Christopher W. Beightel, P.E, Acting Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman
Notary Public

1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Acting Secretary

Laura Kelly, Governor

September 15, 2020

QUIVIRA WATERFOWL LLC
30800 W 37TH ST N
MOUNT HOPE, KS 67108

RE: Appropriation of Water, File No. 50,193

Dear Sir or Madam:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An acceptable water flowmeter must be installed on the diversion works authorized by this permit prior to using water. An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/divisions-programs/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Stafford Field Office at 620-234-531. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

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

KAB:bmm
Enclosure(s)

pc: StaffordField Office
Big Bend GMD No. 5

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) request administrative review by the Secretary of Agriculture.

Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (i.e., **within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for hearing may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (i.e., **within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

CERTIFICATE OF SERVICE

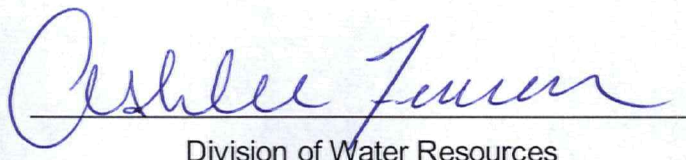
On this 15 day of September, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,193, dated 3 September 2020 was mailed postage prepaid, first class, US mail to the following:

QUIVIRA WATERFOWL LLC
30800 W 37TH ST N
MOUNT HOPE, KS 67108

With photocopies to:

Stafford Field Office

Big Bend GMD No. 5



Division of Water Resources