

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: October 14, 2021

FROM: Matt Meier

RE: New Application, File No. 49,724

Philip A. Harden filed the above referenced application to appropriate groundwater for industrial use. The requested quantity of 5 acre-feet is to cover natural evaporative loss from a groundwater pit with a projected exposed surface area size of 1.46 acres. The pit is to be operated in a 3-acre tract located in the Northwest Quarter (NW1/4) of Section 36, Township 31 South, Range 22 West, Clark County, Kansas. The max size of the pit is to be 1.46 acres. The pit will be back filled in during operation as the excavation moves throughout the 3-acre tract. The proposed point of diversion is located in Bluff Creek (Cimarron) drainage basin within the boundaries of the South-Central KS Designated Unit Area BLC38, which is currently closed to new appropriations. The geographic center of the 3-acre tract is represented by a point 4,027 feet north and 3,785 feet west of the southeast corner of Section 36. **The application will not be processed per KSA 82a-734 as a primary use sand and gravel industrial use as only a \$200 fee was submitted. li/dwr**

Prior to approval the application, the applicant started construction of the pit (which DWR was notified of by a nearby well owner). This caused the processing of the new application to be suspended. The issue has now been sufficiently resolved to allow the processing the new application to continue. *See emails and memo in the file for more information.

Nearby well owner notifications were sent on March 20, 2018. Phone calls and a letter were received from nearby domestic well owner Dan Rich and his lawyer for more information about the application and express his many concerns. According to the WRIS database, there are no permitted non-domestic wells within ½ mile of the proposed geo-center of the 3-acre tract. The nearest domestic well (which is owned by the applicant) appears to be approximately 760 feet away from the geo-center of the 3-acre tract. The nearest domestic well not owned by the applicant appears to be approximately 1,700 feet away from the geo-center of the 3-acre tract. The proposed point of diversion meets minimum well spacing to all existing wells. Per the requirements in K.A.R. 5-4-4 for all other aquifers, the minimum well spacing should be 1,320 feet to all other non-domestic wells and 660 feet to domestic wells.

As noted, the point of diversion is located within the South-Central KS Designated unit area – BLC38 boundary which is currently closed to new appropriations. Per K.A.R. 5-3-16a, an exemption for up to five acre-feet of groundwater in areas closed to new appropriation of groundwater can be granted provided the application meets all the criteria (a through e). A review of the application determined that it meets all the criteria outlined in K.A.R. 5-3-16a and qualifies for the exemption.

The requested quantity of water, 5 acre-feet, was based on a pit surface area not to exceed 1.46 acres in size and a potential net evaporation rate, per K.A.R. 5-6-3, of 26 inches per year; therefore, the natural evaporation can be estimated as follows: 1.46 acres x 41 inches of evaporation / 12"/foot = 5 acre-feet. The requested quantity for the evaporation loss is reasonable.

The proposed application is subject to minimum desirable streamflow requirements. The applicant signed, notarized, and returned the required form to our office.

Jeff Lanterman, Water Commissioner of the Stafford Field Office, recommend approval of the referenced application on October 8, 2021. Based on the above discussion, well spacing and safe yield criteria are met (with the K.A.R. 5-3-16a exemption), 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 application be approved.

Matt Meier
Environmental Scientist
Stafford Field Office

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., 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. 49,724** of the applicant

**PHILIP A HARDEN
602 W 5TH PO BOX 746
ASHLAND, KS 67831**

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 1, 2016**.
2. That the water sought to be appropriated shall be used for industrial use for evaporative loss from a sand and gravel pit with a projected surface area not to exceed 1.46 acres located within a 3-acre track in the Northwest Quarter (NW $\frac{1}{4}$) of Section 36, Township 31 South, Range 22 West, Clark County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a sand and gravel pit with a projected geographic center located in the Southwest Quarter of the Northeast Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 36, more particularly described as being near a point 4,027 feet North and 3,785 feet West of the Southeast corner of said section, in Township 31 South, Range 22 West, Clark County, located substantially as shown on the map accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **natural evaporation** and to a quantity not to exceed **5 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, 2023** 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, 2044** 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.

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



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

Mike Beam, Secretary

Laura Kelly, Governor

February 8, 2022

PHILIP A HARDEN
602 W 5TH PO BOX 746
ASHLAND, KS 67831

RE: Application, File No. 49,724

Dear Water User:

There is enclosed a permit to appropriate water authorizing you to proceed with construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a), to divert such unappropriated water as may be available from the source and at the location specified in the permit, and to use it for the purpose and at the location described in the permit. Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in this permit.

Failure to notify the Chief Engineer of the Division of Water Resources of the completion of the diversion works within the time allowed, or within any authorized extension of time thereof, will result in the dismissal of this permit. Enclosed is a form which may be used to notify the Chief Engineer that the proposed diversion works have been completed.

All requests for extensions of time to complete diversion works, or to perfect appropriations, must be submitted to the Chief Engineer before the expiration of time originally set forth in the permit to complete diversion works or to perfect an appropriation. If for any reason, you require an extension of time, you must request it before the expiration of time set forth in this permit. Failure to comply with this regulation will result in the dismissal of your permit or your water right. Any request for an extension of time shall be accompanied by the required statutory fee, which is currently \$100.00.

There is also enclosed an information sheet setting forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your water right. If you have any questions, please contact our office. If you wish to discuss this specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications and Changes Supervisor
Water Appropriation Program

Enclosures

pc: Stafford Field Office

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.

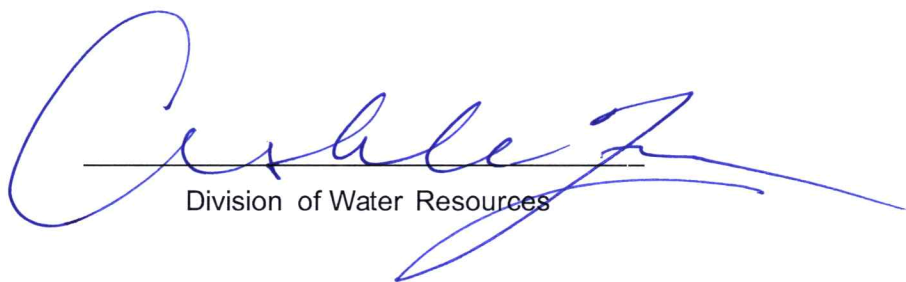
CERTIFICATE OF SERVICE

On this 8 day of February, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 49,724, dated 7 February, 2022, was mailed postage prepaid, first class, US mail to the following:

PHILIP A HARDEN
602 W 5TH PO BOX 746
ASHLAND, KS 67831

With photocopies to:

Stafford Field Office



Division of Water Resources