

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: August 29, 2022

FROM: Jessica Engelbrecht

RE: Application, File No. 50,360

Arlen Becker filed the referenced application for a permit to appropriate water for beneficial use, proposing the appropriation of 256.1 acre-feet of groundwater for irrigation use. The application proposed the geographic center of a one (1) well battery located in the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 28, more particularly described as being near a point 2,310 feet North and 2,970 feet West of the Southeast corner of said section, in Township 19 South, Range 1 West, McPherson County, Kansas.

The proposed point of diversion lays within the boundaries of Groundwater Management District No. 2 (GMD 2). A request for recommendation was sent to GMD 2 on September 28, 2020. A recommendation for denial was received from GMD 2 on August 26, 2022. The District recommended denial of the application because their review determined that the application did 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. Additionally, the application did not comply with K.A.R. 5-22-2(b), as the proposed well is located less than the required minimum distance of 1,620 feet to the well authorized by Water Right, No. 49,485.

A letter was sent to the applicant from DWR on July 27, 2022, notifying the applicant of the recommendation for denial. The applicant was advised that DWR would delay any further action until August 29, 2022, to provide the applicant an opportunity to contact the District to request an appeal and to submit any additional information to the Chief Engineer for consideration. No request for extension or notification of contact with GMD 2 was received from the applicant.

Therefore, based on the existing information, it is recommended that application, File No. 50,360 be denied and dismissed for failure to meet safe yield criteria.

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

FINDINGS AND ORDER

IN THE MATTER OF THE DISMISSAL OF APPLICATION FILE NO. 50,360

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 March 13, 2020, the Chief Engineer received an application from Arlen R & Nona G Becker for a permit to appropriate water for beneficial use, assigned File No. 50,360, proposing the appropriation of 256.1 acre-feet of groundwater for irrigation use. The proposed well was to be located in the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 28, more particularly described as being near a point 2,310 feet North and 2,970 feet West of the Southeast corner of said section, in Township 19 South, Range 1 West, McPherson County, Kansas.
2. That on September 28, 2020, a copy of the application was submitted to Equus Beds Groundwater Management District No. 2 for recommendation. A recommendation for denial was received from the Groundwater Management District No. 2 on July 26, 2022. They recommended denial of the application because their review determined that the application did 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. Additionally, the application did not comply with K.A.R. 5-22-2(a), as the proposed well is located less than the required minimum distance of 1,620 feet to the well authorized by Water Right, No. 49,485.
3. A letter was sent to the applicant from DWR on July 27, 2022, notifying the applicant of the Equus Beds Groundwater Management District No. 2 recommendation for denial. The applicant was advised that DWR would delay any further action until August 29, 2022, to provide the applicant an opportunity to contact the District to request an appeal and to submit any additional information to the Chief Engineer for consideration.
4. The applicant did not contact the District or DWR in regard to the recommendation for denial. The application should be denied and dismissed, and its priority forfeited for failure to comply with Safe Yield Regulation 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. 50,360, is hereby dismissed and the priority assigned to it is considered to be forfeited.

ORDERED this 27 day of September, 2022, Manhattan, Riley 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 27 day of September, 2022, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, 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, Secretary

Laura Kelly, Governor

Arlen R & Nona G Becker
1293 26th Ave
Canton KS 67128

October 5, 2022

Re: Application, File No. 50,360

Dear Sir and/or Madam:

Enclosed is the Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing Application, File No. 50,360 for failure to meet safe yield criteria.

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. The applicant, if aggrieved by this Order, may petition for administrative review, pursuant to K.S.A. 82a-71 1(c) and K.S.A. 82a-1 90 1(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, 1320 Research Park Dr, Manhattan, KS 66506.

If you have any questions, please contact us at (785)564-6640. Please reference a file number when calling so that we may help you more efficiently.

Sincerely,

Kristen A. Baum

New Application and Change Unit Supervisor
Water Appropriation Program

KAB:jne

Enclosure

pc: Stafford Field Office
GMD No. 2

**RIGHT TO PETITION FOR REVIEW
UNDER THE KANSAS JUDICIAL REVIEW ACT**

This is a final agency action as defined in K.S.A. 77-607(b). You may pursue judicial review of this Order as provided in the Kansas Judicial Review Act, K.S.A. 77-601 et seq. A petition for judicial review must be filed in a Kansas court of competent jurisdiction within 30 days after service of this Order as provided in K.S.A. 77-613. The agency officer designated to receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture is the Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Dr. Manhattan, KS 66502.

CERTIFICATE OF SERVICE

On this 5 day of October, 2022, I hereby certify that the attached Dismissal of Application, File No. 50,360, dated 21 September, 2022, was mailed postage prepaid, first class, U.S. Mail to the following:

Original to:
ARLEN R & NON G BECKER
1293 26TH AVE
CANTON KS 67428

Photocopy to:
Stafford Field Office

GROUNDWATER MANAGEMENT DISTRICT NO. 2



DWR Staff