

File No. **50,484** 15. Formation Code: **190** Drainage Basin: **ARKANSAS RIVER** County: **SG** Special Use: Stream:

16. Points of Diversion

T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W
MOD	6569	NW NW SW	15	26S	2W	10	2147	4640

17. Rate and Quantity

Authorized		Additional		Overlap PD Files
Rate gpm/cfs	Quantity mg y	Rate gpm/cfs	Quantity mg y	
50	1.629	0	1.629	31650
				20200267

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

19. Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? Yes No To be installed by **12/31/2023** Date Acceptable Meter Installed _____

21. Place of Use

T MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
						NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼				
CHK	4174	15	26S	2W	1	ETHANOL PLANT LOCATED (N½ N½ SW¼)																7a 7b 7c	7980 and 31650		
																						20200267			

Comments: **6/23/2022**
KJN

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: May 12, 2022

FROM: Jessica Engelbrecht

RE: Application, File No. 50,484

The referenced application has been filed by ICM, Inc. to appropriate 1.630 mgd (5.0 acre-feet) of groundwater per calendar year for industrial use at a diversion rate not to exceed 50 gallons per minute. The proposed quantity is in addition to the authorized quantity under Water Right, File No. 31,650 which is an overlap in place of use. The requested point of diversion is a well that was formerly authorized under Water Right, File No. 31,650 until a change in point of diversion in 2019. The well is located in the Northeast Quarter of the Northwest Quarter of the Southwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of section 15, more particularly located near a point 2,147 feet North and 4,640 feet West of said section, in Township 26 South, Range 2 West, Sedgwick County, Kansas.

The proposed quantity will be used in pressure testing of water tanks at a facility located in the Southeast Quarter of Section 15, Township 26 South, Range 2 West, Sedgwick County, Kansas. The source of the water for the groundwater well is likely the Equus Beds aquifer.

The applicant has a prior water right under Water Right, File No. 31,650 for industrial use. The authorized quantity for this groundwater is 1.630 mgd per year (5.0 acre-feet) at a rate of 50 gallons per minute. The new application will be in addition to the current authorized quantity of the place of use overlap, Water Right, File No. 31,650.

A test log was not submitted with the application, but information provided on the application estimates the date the well was drilled as approximately 1980, the total depth of the well at 100 to 150 feet and depth to static water level at 20 to 25 feet.

Due to the densely populated area, a public notice was published in the local paper for three consecutive weeks, the issue dated May 10, 2021, and the last issue dated May 24, 2021. No contact of any kind was received.

Application, File No. 50,484 lays within the boundaries of Equus Beds Groundwater Management District No. 2 (GMD 2). A copy of the application was sent to GMD 2 with a request for recommendation in a correspondence dated June 21, 2021. The application was recommended for denial in a correspondence dated December 27, 2021. The applicant appealed the GMD 2 recommendation for denial in an email dated January 25, 2022. GMD 2 held an appeal hearing on February 17, 2022. A recommendation was received on February 25, 2022, with GMD 2 recommending approval with exceptions to the Well Spacing Rule and Regulation K.A.R. 5-22-2(a)(1), and the Safe Yield Regulation K.A.R. 5-22-7, and that the application be approved under the Safe Yield Rule and Regulation "small use" exemption provision K.A.R. 5-22-7(b)(1).

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. A water level measurement tube is required because this is a proposed new well exceeding 100 gpm.

Page 2

Application File No. 50,484

Jeff Lanterman, Water Commissioner, Stafford Field Office, recommended approval of the referenced application on May 18, 2022. Based on the above discussion, waivers of well spacing and safe yield criteria, 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.

6/23/2022
KJN

Engelbrecht, Jessica [KDA]

From: Lanterman, Jeff [KDA]
Sent: Wednesday, May 18, 2022 4:37 PM
To: Engelbrecht, Jessica [KDA]
Subject: RE: 50,484

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

No objections to approval of this water right.

Thanks

Jeff

From: Engelbrecht, Jessica [KDA] <Jessica.Engelbrecht@ks.gov>
Sent: Wednesday, May 18, 2022 2:25 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: RE: 50,484
Importance: High

From: Engelbrecht, Jessica [KDA]
Sent: Thursday, May 12, 2022 4:24 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: 50,484

Jeff,

Attached is an Application for 5 acre-feet, for industrial use in Sedgwick County and in GMD 2. Waivers will be required.

Thanks,

Jessica Engelbrecht, Environmental Scientist

KDA Division of Water Resources

Stafford Field Office

(620) 234-5311 Office

(620) 234-6900 Fax

Jessica.engelbrecht@ks.gov

www.agriculture.ks.gov



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

File Number: 50,484

FO: 2

GMD: 2

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IND	6/24/22	28 150	GMD 2	Safe Yield	SMALL QUANTITY TERM PERMITS
Rule Number	Date Granted	Date Denied	Justification:	Local safe yield is not met because prior appropriations exceed the allowable amount. When the well operated under a temporary permit in 2021, there were no known detrimental impacts to nearby wells. This well will not impair any other existing water rights.	
K.A.R. 5-22-7 (b)(1)	10/23/2022				

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

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
150 new	GMD2	safe yield	small use exemption	K.A.R. 5-22-7(b)(1)		

8/30/2022
KJN

9/28/2022
KAB

Date Prepared 6/24/22 By JNE

Date Entered 10/10/2022 By LMoody

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

File Number: 50,484

FO: 2

GMD: 2

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IND	06/24/22	80	GMD 2	Well Spacing	NON-DOMESTIC WELLS, GW PITS, AND BASEFLOW NODES
Rule Number	Date Granted	Date Denied	Justification: The proposed well under New Application, File No. 50,484 will be located less than the required spacing of 1,320 from a non-domestic well authorized by File No. 31,650. The proposed well is the original point of diversion for File No. 31,650 before a point of diversion change which moved the water right's well 250 feet Southeast. The low rate and quantity requested is unlikely to impair any existing wells.		
K.A.R. 5-22-2(a)(1)	10/3/2022				

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

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
				K.A.R.		

8/30/2022
KJN

WILL NOT BE A NEW RULE*

Date Prepared 10/10/2022 By JNE
 Date Entered LMoody By _____

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

WAIVER OF REGULATION K.A.R. 5-22-2(a)(1) Well Spacing Requirements

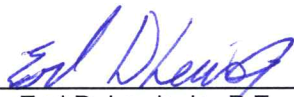
Date: October 3, 2022

RE: Application, File No. 50,484

1. That K.A.R. 5-22-2(a)(1) states that "the minimum spacing of all nondomestic and nontemporary wells described in an application for permit to appropriate water for beneficial use, an application for a term permit, or application to change the point of diversion shall be the following: 1,320 feet from all nondomestic wells, groundwater pits, and baseflow nodes."
2. That the proposed point of diversion is an existing well that was originally drilled under the authority of Water Right, File No. 31,650 until a change in point of diversion was approved and a new well was drilled approximately 250 feet to the southeast, thus, the proposed point of diversion does not meet spacing to the well currently authorized by File No. 31,650.
3. That the industrial well (File No. 31,650) remains under common ownership with the proposed point of diversion.
4. That the low rate (50 gallons per minute) and quantity (5 acre-feet) proposed by this application is unlikely to impair any existing wells.
5. That Equus Beds Groundwater Management District No. 2 calculations estimate drawdown at the nearby well authorized by File No. 31,650 would be minimal at approximately 0.11 feet.
6. That Equus Beds Groundwater Management District No. 2 has recommended approval of the application with a waiver of K.A.R. 5-22-2(a)(1).
7. That a waiver of K.A.R. 5-22-2(a)(1) will not prejudicially or unreasonably affect public interest and will not impair any existing water rights.

Comments:





Earl D. Lewis Jr., P.E.
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
Earl D. Lewis Jr., Chief Engineer

WAIVER OF REGULATION **K.A.R. 5-22-7(b)(1) Safe Yield**

Date: October 3, 2022

Re: Application, File No. 50,484

1. That K.A.R. 5-22-7(b)(1) describes the conditions under which a small use exemption can be approved in an area of Equus Beds Groundwater Management District No. 2 where safe yield cannot otherwise be met.
2. That the application does not meet safe yield criteria as set forth in K.A.R. 5-22-7(a). Existing groundwater appropriations exceed the maximum allowable by 5,572.16 acre-feet based on an analysis by Equus Beds Groundwater Management District No. 2.
3. That a condition of the small use exemption (K.A.R. 5-22-7(b)(1)(F)) is that the application must meet the well spacing criteria in K.A.R. 5-22-2.
4. That the proposed point of diversion is an existing well that was originally drilled under the authority of Water Right, File No. 31,650 until a change in point of diversion was approved and a new well was drilled approximately 250 feet to the southeast, thus, the proposed point of diversion does not meet spacing to the well currently authorized by File No. 31,650.
5. That justification has been provided and a waiver of the well spacing criteria in K.A.R. 5-22-2(a)(1) is being recommended for the proposed application.
6. That the proposed application meets all other criteria for a small use exemption.
7. That Equus Beds Groundwater Management District No. 2 has recommended approval of the application with a waiver of K.A.R. 5-22-7.
8. That a waiver of K.A.R. 5-22-7(b)(1) will not prejudicially or unreasonably affect the public interest, and no senior rights will be impaired by the proposed use.

Comments:



A handwritten signature in blue ink, reading "Earl D. Lewis Jr.", written over a horizontal line.

Earl D. Lewis Jr., P.E.
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
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. 50,484** of the applicant

ICM INC
Attn: LEGAL DEPARTMENT
310 N FIRST ST
COLWICH, KS 67030

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 **December 14, 2020**.
2. That the water sought to be appropriated shall be used for industrial use at a manufacturing facility located in the North Half of the North Half of the Southwest Quarter (N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 15, Township 26 South, Range 2 West, Sedgwick County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well, 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 15, more particularly described as being near a point 2,147 feet North and 4,640 feet West of the Southeast corner of said section, in Township 26 South, Range 2 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 **50 gallons per minute (0.11 c.f.s)** and to a quantity not to exceed **1.629 million gallons (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, 2027** 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 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. The 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 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.

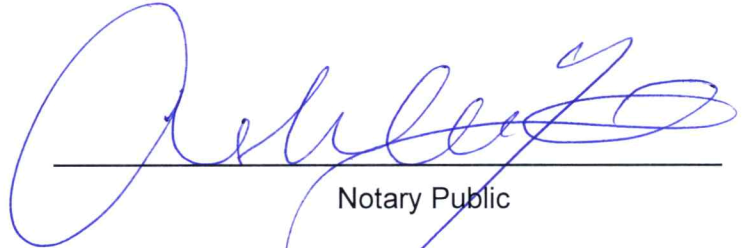
Ordered this *3rd* day of *October*, 2022, in Manhattan, Riley County, Kansas.



Earl D. Lewis, Jr., P.E.
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 *October*, 2022, by Earl D. Lewis, Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



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

ICM INC
ATTN: LEGAL DEPARTMENT
310 N FIRST ST
COLWICH, KS 67030

October 11, 2022

RE: Application, File No. 50,484

Dear Water User:

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 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 620-234-5311. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB: jne
Enclosures

pc: Element LLC
Stafford Field Office
Equus Beds GMD No. 2

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 request an evidentiary hearing before the Chief Engineer, or 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 Division, 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 review 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 11 day of October, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,484, dated 3 October 2022 was mailed postage prepaid, first class, US mail to the following:

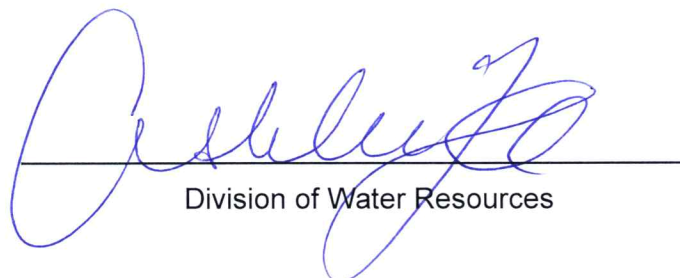
ICM INC
Attn: LEGAL DEPARTMENT
310 N FIRST ST
COLWICH, KS 67030

With photocopies to:

ELEMENT LLC
1 ELEMENT DR
COLWICH, KS 67030

Stafford Field Office

Equus Beds GMD No. 2



Division of Water Resources