





**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** July 27, 2022

**FROM:** Jessica Engelbrecht

**RE:** Application, File No. 50,580

Gregg Wilhite has filed the above referenced application proposing to appropriate 11.67 acre-feet of groundwater per year to cover evaporative loss from a seven (7) acre groundwater pit for recreational use. The proposed point of diversion is the geographic center of the pit located in the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>) of Section 20, more accurately described as being near a point 3,208 feet North and 3,736 feet West of the Southeast corner of said section in Township 26 South, Range 1 West, Sedgwick, County Kansas, in the drainage basin of the Arkansas River.

The proposed place of use is a seven (7) acre recreational pond in the Northwest Quarter (NW <sup>1</sup>/<sub>4</sub>) of Section 20, Township 26 South, Range 1 West, Sedgwick County, KS. The applicant has signed the application stating that he owns the entire place of use. The requested quantity of 11.67 acre-feet per year was calculated by the applicant with the given equation:

$$7 \text{ acres} \times 20" \text{ natural evaporation loss} / 12 = 11.67 \text{ AF per year}$$

Due to the amount of potential nearby well owners within the area, the applicant was required to publish a public notice in the local paper for three consecutive weeks. The applicant published a public notice in The Clarion for three consecutive weeks starting on December 9, 2021, with the final publication being December 23, 2021. The applicant provided proof of the publication in an affidavit from the paper received in DWR on January 3, 2022.

On January 4, 2022, a request for recommendation was sent to the Equus Beds Groundwater Management District No.2 (GMD 2) for a review of the proposed application. GMD 2 submitted a recommendation to deny the application based on the application's failure to meet spacing, Regulation K.A.R. 5-22-2(C), as the proposed groundwater pit edge is less than 1,320 feet to the groundwater pit authorized by Water Right File No. 45615 and a groundwater pit authorized by Water Right, File No. 47565, and less than 330 feet away from multiple domestic wells. The applicant submitted an appeal to GMD 2 on May 2, 2022. A recommendation to approve was received from GMD 2 on June 20, 2022.

The proposed application is subject to minimum desirable streamflow requirements. The applicant returned a notarized minimum desirable streamflow form with the application.

Jeff Lanterman, Water Commissioner, Stafford Field Office, recommended approval of the referenced application on November 1, 2022. Based on the above discussion, safe yield criteria met, a waiver of spacing regulation K.A.R. 5-22-2(c), 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.

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

File Number: 50,580

FO: 2

GMD: 2

**WAIVER REQUEST:**

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
REC	12/29/22	22	GMD 2	Well Spacing	Pit Spacing
Rule Number	Date Granted	Date Denied	Justification:	Proposed groundwater pit does not meet spacing to domestic wells and to 2 other existing nearby groundwater pits. Direct impairment resulting from passive evaporative loss from the proposed groundwater pit will be unlikely.	
K.A.R. 5-22-2(c)	1/9/2023				

**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.		

Date Prepared 12/29/22 By JNE

Date Entered 1/10/2023 Moody By \_\_\_\_\_

# THE STATE OF KANSAS



**KANSAS DEPARTMENT OF AGRICULTURE**  
Mike Beam, Secretary of Agriculture

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

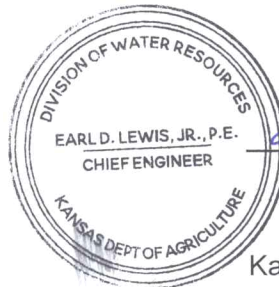
## WAIVER OF REGULATION K.A.R. 5-22-2 (c) Well Spacing

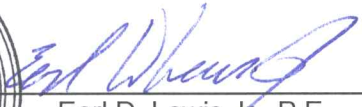
Date: January 9, 2023

RE: Application, File No. 50,580

1. That K.A.R. 5-22-2 (c) states that "The minimum spacing interval from the edge of a groundwater pit to each nondomestic well, the edge of any other groundwater pit, and baseflow node shall be 1,320 feet and 330 feet to a domestic well".
2. That the proposed point of diversion is located less than the required spacing distance of 330 feet from an existing domestic well, at approximately 230 feet away.
3. That the proposed point of diversion is located less than the required spacing distance of 1,320 feet from two existing groundwater pits, at approximately 930 feet and 1,130 feet away.
4. That Equus Beds Groundwater Management District No. 2 has estimated the saturated thickness in the area of the application is approximately 140 to 155 feet.
5. That the groundwater level in the area has been stable or slightly decreasing.
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(c).
7. That direct impairment of water rights resulting from the passive evaporative loss from the proposed groundwater pit will be unlikely.
8. That a waiver of K.A.R. 5-22-2(c) 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

## **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. 50,580** of the applicant

**GREGG WILHITE  
9411 E WOODSPRING CT  
WICHITA KS 67226**

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:

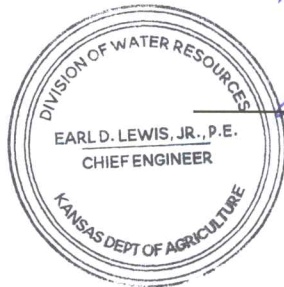
1. That the priority date assigned to such application is **May 13, 2021**.
2. That the water sought to be appropriated shall be used for recreational use to cover evaporative losses from a groundwater pit with a total surface area not to exceed 7 acres, located in the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 20, Township 26 South, Range 1 West, Sedgwick County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a groundwater pit with a geographic center located in the Southwest Quarter of the Southeast Quarter of the Northwest Quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 20, more particularly described as being near a point 3,208 feet North and 3,736 feet West of the Southeast corner of said section, in Township 26 South, Range 1 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 **natural evaporation** and to a quantity not to exceed **11.67 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, 2024**, 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, 2028**, 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 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.
12. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.
13. 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.
14. That the groundwater pit shall be constructed to allow greater than 330 feet distance from the groundwater pit edge to any senior domestic well where spacing consent was not granted by the domestic well owner.
15. That the groundwater pit shall be constructed, maintained, and operated in a manner that will prevent degradation to the water quality source of supply, which would cause impairment to existing water rights.
16. That a sign be permanently posted at the pit, identifying the excavation as a groundwater pit, and stating that dumping or discharges into the pit are prohibited in order to prevent contamination of the Equus Beds Aquifer. The sign must be three (3) feet in length by two (2) feet in width, must be easily visible, and of durable construction.

- 17. 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.

ORDERED this 9<sup>th</sup> day of January, 2023, in Manhattan, Riley County, Kansas.



*Earl D. Lewis Jr.*

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 9<sup>th</sup> day of January, 2023, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

*Melinda Jennings*  
 \_\_\_\_\_  
 Notary Public





Stafford Field Office  
300 S. Main Street  
Stafford, KS 67578-1521



Phone: 620-234-5311  
Fax: 620-234-6900  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

Mike Beam, Secretary

Laura Kelly, Governor

January 11, 2023

GREGG WILHITE  
9411 E WOODSPRING CT  
WICHITA KS 67226

RE: Appropriation of Water  
File No. 50,580

Dear Mr. Wilhite:

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, with specific reference to Paragraph Nos. 14, 15 and 16.

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.

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](http://www.kswaterusereport.org).

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/dwr](http://agriculture.ks.gov/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,

A handwritten signature in cursive script that reads "Kristen A. Baum".

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

KAB:jne  
Enclosures

pc: Stafford Field Office  
Equus Beds GMD No. 2  
Burns & McDonnell (Daniel Clement)

## 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 11 day of January, 2023, I hereby certify that the attached Approval of Application and Permit to Proceed, File No. 50,580, dated January 9, 2023, was mailed postage prepaid, first class, U.S. Mail to the following:

Original to:

GREGG WILHITE  
9411 E WOODSPRING CT  
WICHITA KS 67226

Photocopy to:

BURNS & MCDONNELL  
ATTN: DANIEL CLEMENT  
800 E 1<sup>st</sup> ST STE 400  
WICHITA KS 67202

Stafford Field Office

Equus Beds GMD No. 2

  
\_\_\_\_\_  
DWR Staff