

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: April 14, 2023

FROM: Kristen Baum

RE: Application, File No. 49,075

Pat Haffner filed the above referenced application to appropriate 180 acre-feet of groundwater at a diversion rate of 700 gallons per minute for a new irrigation project in Sheridan County. The place of use will be 120 acres, and Mr. Haffner has requested the maximum reasonable quantity for irrigation, which is 1.5 acre-feet per acre for Sheridan County.

The project is located within the boundaries of GMD 4, but the application was filed on May 8, 2014, prior to District closure. The application was originally dismissed because of the potential for impairment of a neighboring domestic well. Mr. Haffner requested an Administrative Hearing, and an informal settlement conference was held. As a result of the settlement conference, a Consent Agreement and Final Order (CAFO) was issued wherein DWR agreed to withdraw the Order of Dismissal and approve the application subject to the installation and monitoring of an observation well with a trigger level established at which pumping is to cease.

A single nearby well owner was notified of the application. This individual owns two domestic wells located approximately 1,400 feet to the northeast the proposed wells. He contacted DWR and submitted written concerns about the potential for impairment of his wells in a letter received on March 16, 2017.

The source of supply is the Ogallala Aquifer, and saturated thickness in the area appears to be approximately 30 feet. GMD 4 originally recommended that the application be denied for failure to meet safe yield, but the point of diversion was modified. The District then recommended approval of the application in a letter dated March 30, 2017, but strongly recommended that DWR evaluate the potential for impairment of the neighboring domestic well.

DWR staff further evaluated the application and Mr. Haffner proposed multiple modifications to the application. Eventually, Mr. Haffner hired a consultant to conduct a pump test. DWR reviewed the report received on March 7, 2018 and found that while the consultant's analysis was questionable, the pump test data was good. With a reduced pumping rate of 200 gallons per minute, the maximum quantity DWR was willing to approve was 26.6 acre-feet, which was calculated to result in a 20% decline in the saturated thickness over 50 years.

As previously mentioned, the application was dismissed on December 21, 2021, and the applicant requested an Administrative Hearing. A settlement conference was held, and a CAFO was issued. The applicant agreed to install an observation well and equip it with telemetry. DWR established a trigger level at the observation well of 76 feet, below which pumping at the irrigation well should cease. This trigger level should result in 14 feet of water remaining in the domestic well, leaving approximately 10 feet of water over the top of the pump for proper operation.

Based on the above discussion, it is recommended that the referenced application be approved as agreed upon in the CAFO dated July 18, 2022. Permit conditions 18 through 29 address the required observation well and trigger level and were taken verbatim from the CAFO. The point of diversion being authorized is the modified location that met GMD 4 safe yield. The rate of diversion is the 700 gpm originally requested, with the understanding that actual rate will be determined during the perfection period and the observation well trigger level will protect the domestics.

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. 49,075** of the applicant

PAT J HAFFNER
7380 E ROAD 10 S
HOXIE KS 67740-4116

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 8, 2014**.
2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼													
4 - 10S - 26W					30	30	30	30									120

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of up to four (4) wells with a geographical center located in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter (NE¼ NW¼ NW¼) of Section 4, more particularly described as being near a point 4,994 feet North and 4,017 feet West of the Southeast corner of said section, in Township 10 South, Range 26 West, Sheridan County, Kansas 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 **700 gallons per minute (1.56 c.f.s.)** and to a quantity not to exceed **180 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 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 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.

17. 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 be limited to a total maximum diversion rate not in excess of seven hundred (700) gallons per minute.

18. That the applicant shall install and maintain an observation well, drilled to a depth of 90 feet and screened from a depth of 90 feet to a depth of 50 feet, located in the Northeast Quarter of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 4, more particularly described as being near a point 5,170 feet North and 2,982 feet West of the Southeast corner of said section in Township 10 South, Range 26 West, Sheridan County, Kansas, and shall keep a record of water levels at this location. If adequate water is not found at the particular location described in this paragraph, or if drilling the observation well in that particular location is otherwise not feasible, the required observation well may be installed and maintained at another location approved by the Chief Engineer, but such location shall be within the Northeast Quarter of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 4, Township 10 South, Range 26 West in Sheridan County, Kansas.

19. That alternatively, upon approval by the Chief Engineer prior to drilling, the required observation well may be located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 33, Township 9 South, Range 26 West in Sheridan County, Kansas. If the Chief Engineer does not approve the drilling of the required observation well in the Southwest Quarter (SW $\frac{1}{4}$) of Section 33, Township 9 South, Range 26 West in Sheridan County, Kansas, then the required observation well shall be drilled in the Northeast Quarter of the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 4, Township 10 South, Range 26 West in Sheridan County, Kansas as set forth in this paragraph.

20. That prior to the installation of the required observation well, a test hole shall be drilled and a well driller's test hole log with a water level, a lithology description, and a proposed screen well placement shall be provided to the Chief Engineer.

21. That in addition to the required observation well, a second observation well may be drilled at another specific location approved by the Chief Engineer, and data obtained from the additional observation well may be used during any impairment investigation related to applicant's water use pursuant to the approval of this application. Prior to the installation of any additional observation well, the applicant shall provide to the Chief Engineer a test hole log for the proposed additional observation well, which shall be accompanied by a lithology description and a proposed screen placement.

22. That the observation well shall have a minimum inside diameter of two inches and shall be constructed in accordance with the Kansas Department of Health and Environment's standard monitoring well design specifications, as set forth in K.A.R. 28-30-6, to allow for groundwater monitoring. The observation well shall be protected by a steel well protector that is at least four inches by four inches or has a diameter of at least four inches, is at least five feet in length, and is equipped with a lockable lid. The observation well and any well protector shall be seated in a standard concrete well pad.

23. That the observation well shall be developed by the well driller to ensure that it is hydraulically connected to the same aquifer as the well(s) authorized herein.

24. That the applicant shall maintain the observation well in a condition that is satisfactory to the Chief Engineer.

25. That the applicant shall allow the Chief Engineer and any representatives of the Chief Engineer to have access to the observation well during normal business hours, as may be necessary to observe and document aquifer and water level conditions at the observation well.

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

April 20, 2023

PAT J HAFFNER
7380 E ROAD 10 S
HOXIE KS 67740-4116

RE: Appropriation of Water
File No. 49,075

Dismissal of Application
File Nos. 49,555

Dear Mr. Haffner:

Enclosed is a permit (File No. 49,075) 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.

Also enclosed is the Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing Application, File No. 49,555 for failure to meet safe yield. This order shall become final agency action without further notice to the parties, if a request for hearing or a petition for administrative review is not filed in a manner set forth in the enclosed order.

For the approved permit, a 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.

Pat Haffner
File Nos. 49,075 and 49,555
Page 2 of 2

An informational sheet has been included, which sets forth the procedure to obtain a Certificate of Appropriation that 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. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Garden City Field Office at 620-276-2901. 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:kab

Enclosure(s)

pc: Stockton Field Office
Northwest Kansas GMD No. 4

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, KS 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, KS 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.

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 Drive, Manhattan, Kansas 66502, Fax: (785) 564 – 6777.

CERTIFICATE OF SERVICE

On this 20 day of April, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 49,075, dated April 18, 2023, was mailed postage prepaid, first class, U.S. mail to the following:

PAT J HAFFNER
7380 E ROAD 10 S
HOXIE KS 67740-4116

With photocopies to:

KDA-DWR Stockton City Field Office

Northwest Kansas GMD No. 4



Division of Water Resources