

Kansas Department of Agriculture
 Division of Water Resources
CHANGE: PD WORKSHEET

1. File Number: 25401	2. Status Change Date: 6/4/2020	3. Change Num: C1	4. Field Office: 04	5. GMD: 01
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6. Status: <input type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return	7. Filing Date of Change: 21-AUG-2013
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8a. Applicant(s) Person ID _____ Add Seq# _____ New to system <input type="checkbox"/> ERVIN NIGHTENGALE REVOCABLE TRUST ATTN ERVIN NIGHTENGALE 3941 WEST ROAD 270 SCOTT CITY KS 67871 NAME CHG ADDRESS CHG	8c. Landowner(s) Person ID 54516 Add Seq# _____ New to system <input type="checkbox"/> NIGHTENGALE GRAIN & LIVESTOCK JAMES NIGHTENGALE 9961 W RD 270 SCOTT CITY KS 67871
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8b. Landowner(s) Person ID _____ Add Seq# _____ New to system <input type="checkbox"/> ERVIN NIGHTENGALE REVOCABLE TRUST ATTN ERVIN NIGHTENGALE 3941 WEST ROAD 270 SCOTT CITY KS 67871	8d. WUC Person ID 12900 Add Seq# _____ New to system <input type="checkbox"/> JAMES NIGHTENGALE 9961 W ROAD 270 SCOTT CITY KS 67871-6055 NO CHANGE
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9. Documents and Enclosure(s): DWR Meter(s) Date to Comply: **12/31/20** N & P Date to Comply: **12/31/20**

Anti-Reverse Meter Meter Seal Check Valve N & P Form Water Tube Driller Copy H & E Letter

Conservation Plan Date Required: _____ Date Approved: _____ Date to Comply: _____

10. Use Made of Water From: _____ To: _____

Date Prepared: **05/14/20** By: **RAK**
 Date Entered: **6/15/2020** By: **LMoody**

File No. **25401** 11. County: **SC** Basin: **LADDER CREEK** Stream: Formation Code: **211** Special Use:

12. Points of Diversion										Rate and Quantity						
CHK	MOD	DEL	PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Rate gpm/cfs	Quantity af/mgy	Rate gpm/cfs	Quantity af/mgy	Overlap PD Files
DEL	6671			NW¼ NW¼ SW¼	21	16S	34W	7			2600 5200 PD COMMENT 5 YR ALLOCATION					
ENT	21838			SW¼ NW¼NW¼	21	16S	34W	1			4025 5245 PD COMMENT 5 YR ALLOCATION	400 gpm	212AF	400gpm	199 AF	NO

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

14. **KEEP** Limitation: _____ **2684AF/5YR PERIOD WHEN COM/W #6621, 11367 & 22310**
KEEP Limitation: _____ **745.2AF/YR COM/W #6621, 11367 & 22310**

15. 5YR Allocation: Allocation Type _____ Start Year _____ 5 YR Amount _____ Amount Unit _____ Base Acres _____ Comment _____

16. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files	
CHK	MOD	DEL	ENT	PUSE	S	T	R	ID		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					
MOD	11049				21	16	34W	1						20	20	40	40	40	40	40	40	40	40	40	40	40	280	8a	YES	11367; 22310; 25401
MOD	30636				28	16	34W	1	40	40				40	40	40	40									240	8A	YES	11367; 22310; 25401	
ENT	69999				28	16	34W					40	40													80	8C	YES	11367; 22310; 25401	
Modifications to PU ownership only																														

Base Acres: Year: Minimum Reasonable Quantity: :

SPECIAL CONDITIONS Yes See file for details
NEW METER ACTION TRAIL ENTRY
NEW METER ACTION TRAIL
 Req No. Action Code Compliance date
 AS Anti-Reverse meter required by DWR Approval
 AT Meter Seal Required by DWR Approval

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

File Number: 6,621 and 25,401

FO: 4

GMD: 1

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IRR	08/21/13	10	GMD 1	Well Spacing	Ogallala Formation
Rule Number	Date Granted	Date Denied	Justification:	GMD No. 1 recommends a waiver of K.A.R. 5-21-3(a) and approval of the applications.	
K.A.R. 5-21-3(a)					

WAIVER RULE:

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive

Date Prepared 05/7/20 By RAK

Date Entered _____ By _____

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

File Number: 6,621 and 25,401

FO: 4

GMD: 1

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IRR	08/21/13	14	GMD 1	Well Spacing	Change Exceeds Distance from Current Well
Rule Number	Date Granted	Date Denied	Justification:	GMD No. 1 recommends a waiver of K.A.R. 5-21-3(d) and approval of the applications.	
K.A.R. 5-21-3(d)					

WAIVER RULE:

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive

Date Prepared 05/7/20 By RAK

Date Entered _____ By _____

Property Details for PID: 0860452100000002020

Shareable link to Property Information : <https://www.kansasgis.org/orka/permalinkprop.cfm?parcelid=0860452100000002020>

Shareable link to Map: <https://www.kansasgis.org/orka/permalink.cfm?parcelId=0860452100000002020>

QuickRef ID : R479

Owner Name : NIGHTENGALE, ERVIN REV TR

Location: 00000 N BEAVER RD, Scott City, KS 67871

Abbreviated Boundary Description: S21, T16, R34, ACRES 282.44, W2 OF SEC LESS N 650' NORTH & SOUTH & 2602.74' EAST & WEST & LESS A TR BEG 688' S OF NW COR NW4 TH E 311' TH S 87' TH W 311' TH N 87' TO POB & LESS RD R/W

Owner Information:

Owner NIGHTENGALE, ERVIN REV TR

Mailing Address 3941 W ROAD 270 SCOTT CITY, KS 67871

Property Information:

Type Agricultural Use

Status Active

Taxing Unit BEAVER TOWNSHIP

Neighborhood Code 200

No Secondary Address Details found

Market Land Details:

Actual Width: 0

Eff. Width 0

Eff. Depth 0

Acres 0

Square Feet 0

Permit Details

Property Details for PID: 086048280000004010

Shareable link to Property Information :	https://www.kansasgis.org/orka/permalinkprop.cfm?parcelid=086048280000004010
Shareable link to Map:	https://www.kansasgis.org/orka/permalink.cfm?parcelid=086048280000004010
QuickRef ID :	R533
Owner Name :	NIGHTENGALE GRAIN & LIVESTOCK
Location:	00000 N CHEROKEE RD, Scott City, KS 67871
Abbreviated Boundary Description:	S28, T16, R34, ACRES 39, N2 S2 NE4 LESS RD R/W

Owner Information:

Owner	NIGHTENGALE GRAIN & LIVESTOCK
Mailing Address	9961 W ROAD 270 SCOTT CITY, KS 67871

Property Information:

Type	Agricultural Use
Status	Active
Taxing Unit	BEAVER TOWNSHIP
Neighborhood Code	200

No Secondary Address Details found

Market Land Details:

Actual Width:	0
Eff. Width	0
Eff. Depth	0
Acres	0
Square Feet	0

No Permit Details found

No Orion Deed Book Page Details found

Property Details for PID: 086048280000004000

Shareable link to Property Information :	https://www.kansasgis.org/orka/permalinkprop.cfm?parcelid=086048280000004000
Shareable link to Map:	https://www.kansasgis.org/orka/permalink.cfm?parcelId=086048280000004000
QuickRef ID :	R532
Owner Name :	NIGHTENGALE GRAIN & LIVESTOCK
Location:	00000 N CHEROKEE RD, Scott City, KS 67871
Abbreviated Boundary Description:	S28, T16, R34, ACRES 39, S2 S2 NE4 LESS RD R/W

Owner Information:

Owner	NIGHTENGALE GRAIN & LIVESTOCK
Mailing Address	9961 W ROAD 270 SCOTT CITY, KS 67871

Property Information:

Type	Agricultural Use
Status	Active
Taxing Unit	BEAVER TOWNSHIP
Neighborhood Code	200

No Secondary Address Details found

Market Land Details:

Actual Width:	0
Eff. Width	0
Eff. Depth	0
Acres	0
Square Feet	0

No Permit Details found

No Orion Deed Book Page Details found

Property Details for PID: 0860482800000001000

Shareable link to Property Information :	https://www.kansasgis.org/orka/permalinkprop.cfm?parcelid=0860482800000001000
Shareable link to Map:	https://www.kansasgis.org/orka/permalink.cfm?parcelid=0860482800000001000
QuickRef ID :	R529
Owner Name :	NIGHTENGALE, ERVIN REV TR
Location:	00000 W ROAD 260, Scott City, KS 67871
Abbreviated Boundary Description:	S28, T16, R34, ACRES 237, N2 NE4 & NW4 LESS RD R/W

Owner Information:

Owner	NIGHTENGALE, ERVIN REV TR
Mailing Address	3941 W ROAD 270 SCOTT CITY, KS 67871

Property Information:

Type	Agricultural Use
Status	Active
Taxing Unit	BEAVER TOWNSHIP
Neighborhood Code	200

No Secondary Address Details found

Market Land Details:

Actual Width:	0
Eff. Width	0
Eff. Depth	0
Acres	0
Square Feet	0

Permit Details

Number	Date	Amount	Purpose
6621			

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
MEMORANDUM

TO: Files
FROM: Richelle A. Krueger

DATE: June 2, 2020
RE: Water Right
File Nos. 6,621 and 25,401

James Nightengale, POA for Ervin Nightengale, water right owner, filed applications for approval to change the points of diversion, both authorized for irrigation use in the Ladder Creek drainage basin. The reference change applications were filed August 21, 2013 and have been on hold since that time due to concerns about the limited aquifer. Mike Meyer, Water Commissioner of the Garden City Field Office, contacted the owner on April 16, 2020 to ask if he wanted the applications to be further processed. Mr. Nightengale indicated he thought the applications had already been approved and requested we proceed with processing of the applications.

It appears that the water rights are not abandoned as per K.S.A. 82a-718.

The referenced file numbers have no overlaps in their authorized points of diversion. File Nos. 6,621 and 25,401 are subject to a five-year allocation for the same place of use along with Water Right, File Nos. 11,367 and 22,310. File No. 6,621 is authorized 94.2 acre-feet at a diversion rate of 332 gallons per minute from one well located 4,025 feet North and 5,245 feet West of the Southeast corner of Section 21, Township 16 South, Range 34 West, Scott County, Kansas, and File No. 25,401 is authorized a limited quantity of 212 acre-feet at a diversion rate of 400 gallons per minute from a well located 2,600 feet North and 5,200 West of the southeast corner of the aforementioned section. The water right owner proposes to "flip-flop" the authorized diversion rate and quantity between the well now authorized by File No. 6,621 and the well now authorized by File No. 25,401, a distance of approximately 1,426 feet, to put more quantity on the better well. No new wells will be drilled.

There appears to be one domestic well under common ownership and two non-domestic wells right at one-half (1/2) mile of the proposed well for File No. 6,621. There appears to be two non-domestic irrigation wells (Water Right, File Nos. 24,039 and 10,896/10,921) and five domestic wells (two under common ownership) within or located right at one-half mile of the well proposed for File No. 25,401. The proposed changes for File Nos. 6,621 and 25,401 do not meet the 2,640 feet well spacing requirements of K.A.R. 5-21-3(a) to each other and the proposal for File No. 25,401 does not meet 2,640 feet to the well authorized by Water Right, File No. 24,039 since the wells are approximately 1,919 feet apart. In addition, the proposed well moves involve a distance of over 1,320 feet so waivers of K.A.R. 5-21-3(d) are also required.

Nearby well owners were notified of the proposed changes via letters dated November 12, 2013; no responses were received.

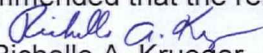
The same local source of supply will not change, which has been previously determined as Ogallala Formation (211).

In a letter dated November 20, 2013, received November 25, 2013, Jan King, former District Manager of the Western Kansas Groundwater Management District No. 1 indicated that Board of Directors recommended approval of the referenced change applications and waivers of K.A.R. 5-21-3 provided the nearby well owners do not submit adverse comments during the 15 day period.

Mike Meyer, Water Commissioner of the Garden City Field Office, indicated that he would reserve his recommendations back in 2014, so these applications have been on hold. Mike recently indicated that he further reviewed the hydrology of the area. In addition, he consulted Kyle Spencer, Manager of GMD No. 1 to determine if their recommendation had changed from their earlier recommendation. Based on that information, Mike indicated no objection to approval of the applications in an e-mail dated May 8, 2020.

Anti-reversing water flow meters and sealing the meter to pipe will be required for both file numbers. Check valves are required if any chemical or foreign substance is injected into the water through the diversion works according to K.A.R. 5-3-5(c).

Based on the above discussion, that the changes are reasonable, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, and if the Chief Engineer grants waivers of K.A.R. 5-21-3(a) and (d) it has been recommended that the referenced applications be approved.


Richelle A. Krueger
Environmental Scientist

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

ERVIN NIGHTENGALE REVOCABLE TRUST
ATTN ERVIN NIGHTENGALE
3941 WEST ROAD 270
SCOTT CITY KS 67871

RE: Water Right, File Nos. 6,621 and 25,401

Dear Sir or Madam:

Enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the above referenced file numbers.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in these approvals for change. A condition of these approvals is that acceptable water flow meters must be installed on the diversion works authorized under the referenced file numbers. Prior to the diversion of water for irrigation purposes, you must install anti-reverse totalizing water flowmeters which meet or exceed specifications adopted by the Chief Engineer. In addition, seals shall be placed on the water flowmeters by the Division of Water Resources in such a manner as to render the meters non-removable from the measuring chamber without breaking the seals. Please contact Mike Meyer, Water Commissioner of the Garden City Field Office at (620) 276-2901 if you have questions regarding the installation of the metering and seals.

Since the orders modify the original documents referred to above, they should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions, please contact this office. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

A handwritten signature in blue ink that reads "Richelle A. Krueger". The signature is written in a cursive, flowing style.

Richelle A. Krueger
Environmental Scientist
Water Appropriation Program

rak

pc: Garden City Field Office
Groundwater Management District No. 1
Nightengale Grain and Livestock, Attn James Nightengale

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting Chief Engineer

**APPROVAL OF APPLICATION
FOR
CHANGE IN
POINT OF DIVERSION
WATER RIGHT
FILE NO. 25,401**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of James Nightengale, P.O.A., on behalf of Ervin Nightengale Revocable Trust, 3941 West Road 270, Scott City, Kansas, 67871, and on behalf of Nightengale Grain and Livestock, 9961 West Road 270, Scott City, Kansas, 67871, received in this office on August 21, 2013, for approval of a change in the location of the point of diversion under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, as modified and amended by the Findings and Order of the Chief Engineer dated April 8, 2008, modifying the limitation on the authorized quantity and adding the additional limitations of a five year allocation, and by the Findings and Order of the Chief Engineer dated June 17, 2013, modifying the limitation on the authorized quantity, finds that the change is reasonable and will not impair existing rights, and that the application should be and is hereby approved.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the authorized location of the point of diversion shall be:

one(1) well located in the Southwest Quarter of the Northwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 21, more particularly described as being near a point 4,025 feet North and 5,245 feet West of the Southeast corner of said section, in Township 16 South, Range 34 West, Scott County, Kansas,

located substantially as shown on the map accompanying the application to change the point of diversion.

Installation of the works for diversion of water shall be completed on or before December 31, 2020, or within any authorized extension of time. The water right owner shall notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, when construction of the works for diversion has been completed.

All diversion works 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.

The water right owner shall properly install an acceptable water meter on the diversion works authorized under this water right, prior to the use of water, in strict accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The water right owner shall notify the Chief Engineer when installation of the water meter has been completed. The water right owner shall maintain the water meter in an operating condition satisfactory to the Chief Engineer, at all times during diversion of water and shall maintain records from which the total quantity of water diverted may be determined. The water right owner shall also report the reading of said water meter and the total quantity of water diverted annually to the Chief Engineer. Such records shall be furnished to the Chief Engineer by March 1 following the end of each calendar year.

The owner of the Water Right(s) identified in this order shall install an anti-reverse totalizing water flowmeter which meets or exceed specifications adopted by the Chief Engineer.

A seal shall be placed on the water flowmeter by the Division of Water Resources in such a manner as to render the meter non-removable from the measuring chamber without breaking the seal. If the seal is broken without the written permission of the chief engineer, this shall create a rebuttable presumption that the point of diversion had been unlawfully operated in violation of the order of the chief engineer and that the water right holder had been acting in violation of the conditions of his or her water right. If any such violation occurs, a written order shall be issued by the chief engineer stating the nature of the violation and the civil penalty, suspension of water right or modification to the water right, or any combination of these to be imposed.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 25,401, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated April 18, 2001, as modified and amended by the aforementioned orders.

Ordered this 4 day of June, 2020, in Manhattan, Riley County, Kansas.

Chris Beightel

Christopher W. Beightel, P.E.
Acting 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 4th day of June, 2020, by Christopher W. Beightel, P.E., Acting Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman
Notary Public

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 16 day of June, 2020, I hereby certify that the foregoing Approval of Application for Change in Point of Diversion, File No. 25,401, dated 4 June 2020 was mailed postage prepaid, first class, US mail to the following:

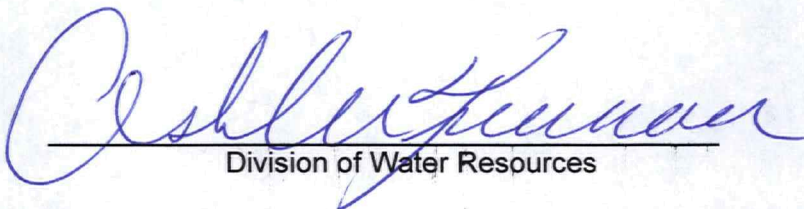
ERVIN NIGHTENGALE REVOCABLE TRUST
ATTN ERVIN NIGHTENGALE
3941 WEST ROAD 270
SCOTT CITY KS 67871

With a true and correct copy to:

NIGHTENGALE GRAIN AND LIVESTOCK
ATTN JAMES NIGHTENGALE
9961 WEST ROAD 270
SCOTT CITY KS 67871

With photocopies to:

Garden City Field Office
Groundwater Management District No. 1


Division of Water Resources