

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

MEMORANDUM

TO: Files

DATE: May 21, 2024

FROM: Leslie Ireland

RE: Water Right, File No. 11,768

John Stonestreet on behalf of Rodney K. Hay CPA, Representative, for the owner Joann Dowdy Franz of the referenced file applied on April 28, 2023, to change the point of diversion authorized for irrigation use. The application proposed to move to an existing well authorized by Water Right, File No. 27,290. Both wells have been determined to be in the Ogallala Formation and would be subject to Southwest Kansas Groundwater Management District No. 3's (GMD 3) regulation K.A.R. 5-23-3, *Minimum well spacing requirements: high plains aquifer*. The total combined quantity that would be authorized by the two (2) files is 640 acre-feet which requires 2,300 feet of well to well spacing.

The proposed existing well was determined to be approximately 2,176 feet from the well authorized by Water Right, File No. 18,370, and a waiver of spacing was requested by the owner.

In a letter dated April 19, 2024, Jason Norquest, Assistant Manager, GMD 3, wrote that the Board voted to recommend not to waive well spacing under K.A.R. 5-23-3.

The applicant and owner were informed a waiver was not recommended by GMD 3 and afforded to appeal to the District or modify the application. The applicant and owner discussed their options with Michael Meyer, Water Commissioner, Garden City Field Office, and were further informed that they may voluntarily request the application be dismissed and supplied the form to do so.

Both the owner and the applicant submitted signed requests to dismiss the application.

Based on the above discussion, it is recommended that the application to change the point of diversion on April 28, 2023, for File No. 11,768 be dismissed by a Findings and Order as requested by the owner and applicant.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

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 AN APPLICATION FOR APPROVAL TO CHANGE THE AUTHORIZED POINT OF DIVERSION UNDER WATER RIGHT, FILE NO. 11,768

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 August 3, 1989, the Chief Engineer, in accordance with K.S.A. 82a-714, issued a Certificate of Appropriation pursuant to Water Right, File No. 11,768, for permit to appropriate water for irrigation use.
2. That on April 28, 2023, an Application for Approval to Change the Point of Diversion, was received in the office of the Chief Engineer.
3. That the Kansas Water Appropriation Act, in K.S.A. 82a-711, requires the Chief Engineer to consider whether a proposed use will prejudicially and unreasonably affect the public interest, and shall take into consideration the area safe yield and recharge rate of the appropriate water supply, the priority of existing claims of all persons to use the water of the appropriate water supply, the amount of each claim to use water from the appropriate water supply, and all other matters pertaining to such question. With regard to whether a proposed use will impair a use under an existing water right, the Kansas Water Appropriation Act states that impairment shall include the unreasonable raising or lowering of the static water level or the unreasonable increase or decrease of the streamflow or the unreasonable deterioration of the water quality at the water user's point of diversion beyond a reasonable economic limit.
4. That the rules and regulations promulgated by the Chief Engineer, in K.A.R. 5-23-3, require that the spacing between wells shall be sufficient to prevent direct impairment between wells located in a common source of supply or hydraulically connected sources of supply, in order to prevent an unreasonable raising or lowering of the static water level and to protect the public interest.
5. That on March 13, 2024, the application was sent to the Southwest Kansas Groundwater Management District (GMD) No. 3, for review and to provide a recommendation.
6. That by letter dated April 19, 2024, Southwest Kansas GMD No. 3 recommended denial of the application for failure to meet minimum well spacing guidelines, as required by K.A.R. 5-23-3.

- 7. That by letter dated May 8, 2024, the applicant was notified of the recommendation received from GMD No. 3, and allowed a period of 15 days in which to either consult with the GMD regarding the recommendation, to submit additional information to the Chief Engineer for consideration, or to request additional time in which to do so, and that the application would be submitted to the Chief Engineer with a recommendation that the application be denied and dismissed for failure to meet minimum well spacing guidelines, as required by K.A.R. 5-23-3.
- 8. That by means of a written requests received in the office of the Chief Engineer on May 10, 2024, by Rodney K. Hay, on behalf of the owner, and May 21, 2024, by John Stonestreet, as applicant, both requesting the Application for Approval to Change the Point of Diversion, Water Right, File No. 11,768 received on April 28, 2023, described in Finding No. 2 above be dismissed.
- 9. That pursuant to K.S.A. 82a-708b, if the chief Engineer disapproves an application for change, the rights priorities and duties of the applicant shall remain unchanged.

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, the Application for Approval to Change the Point of Diversion Under an Existing Water Right, received in the Office of the Chief Engineer on April 28, 2023, under Water Right, File No. 11,768, shall be dismissed and its priority forfeited.

In all other respects, the Certificate of Appropriation for Beneficial Use of Water, issued pursuant to irrigation use under Water Right, File No. 11,768, dated August 3, 1989, remains as authorized.

Ordered this *23* day of *May*, 2024, at Manhattan, Riley County, Kansas.

Lane P. Letourneau

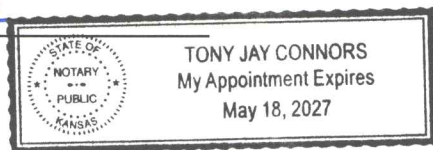
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this *23* day of *May*, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Tony Jay Connors

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

May 29, 2024

J & T STONESTREET FARMS
JOHN STONESTREET
23914 ROAD N
KISMET KS 67859-6055

RE: Findings and Order
Water Right
File Nos. 11,768

Dear Mr. Stonestreet:

Enclosed is a Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, which dismisses the pending Application for Approval to Change the Point of Diversion, for File No. 11,768, as requested by the dismissal forms received in our office on May 10, 2024, and May 20, 2024.

The order dismissing the application for change does not need to be recorded with the register of deeds as no modification of the referenced appropriation has been ordered by the Chief Engineer.

If you have any questions, please contact our office at 785-564-6640. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

Kristen A. Baum
New Application and Change Unit Supervisor
Water Appropriation Program

KAB:kak:li

Enclosures

pc: Garden City Field Office
Southwest Kansas GMD No. 3
Rodney K. Hay, Agent, Joann Dowdy Franz, rod@hayrice.com

**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 29 day of May, 2024, I hereby certify that the foregoing Findings and Order in the Matter of the Dismissal of an Application for Approval to Change an Existing Water Right, under Water Right, File No. 11,768, dated May 23, 2024, was mailed postage prepaid, first class, US mail to the following:

J & T STONESTREET FARMS
JOHN STONESTREET
23914 ROAD N
KISMET KS 67859-6055

With photocopies sent to:

Garden City Field Office

Southwest Kansas GMD No. 3

With copies sent electronically to:

Rodney K. Hay, Agent, Joann Dowdy Franz, rod@hayrice.com

Division of Water Resources

