

Kansas Department of Agriculture
Division of Water Resources
 APPROVAL OF CHANGE APPLICATION WORKSHEET

1. File No.: 728	2. Status Change Date: 4/9/2024	4. Field Office: 04 - Garden City GMD: 03 - Southwest Structures File No.: Filing/Priority Date: 03/24/2023 Application Complete Date:
3. Package File No(s): 728 11383		
5a. <input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID 67098 Add Seq# 1	5b. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#	
SEABOARD ENERGY KANSAS LLC 9000 W 67TH STREET SUITE 200 SHAWNEE MISSION, KS 66202		
5c. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#	5d. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change Person ID Add Seq#	
6. Change No.: C3 <input type="checkbox"/> PD <input checked="" type="checkbox"/> PU <input checked="" type="checkbox"/> UMW Base Acres: Year: Min Reasonable Q: Previous UMW: IND-Industrial MDS Gauge: Active Admin? <input type="checkbox"/> Completion/Start Date: Perfection/Expiration Date:	7. Use of Water <input checked="" type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water UMW: IRR-Irrigation UMW: IND-Industrial SIC: 2869 UMW:	
8. Action Trail Limitation GY C2 - CHANGE APP PLACE OF USE APPROVED - Compliance: 12/31/2024 GZ C2 - CHANGE APP USE OF WATER APPROVED - Compliance: 12/31/2024 (BS) KAR 5-5-10 Dual Use ORDER IN MATTER OF POINT OF DIVERSION		
9. Special Conditions DUAL USE IND IRR		
10. 5YR Allocation Type: Start Year: 5YR Quantity: Base Acres: Comment:		
11. Sand & Gravel Proj ID: <input type="checkbox"/> Active <input type="checkbox"/> Dredge <input type="checkbox"/> IND Evap <input type="checkbox"/> Jr Evap <input type="checkbox"/> Other Diversion <input type="checkbox"/> Rpt on Sr		
12. Waiver Rule ID: <input type="checkbox"/> New Date Requested: Applies: Rule No.: Justification: Rule Type: Rule SubType:		
Comments THIS DUAL USE WILL ADD BACK THE IRRIGATED PU THAT HAD BEEN AUTHORIZED AND ADD IRR USE	Processed LI 4/3/2024 Reviewed KAK 4/5/2024	Entered 4/10/2024 KAnderson

File No. 728	13. County: SV Basin: CIMARRON RIVER Stream:		
Structures File No:	Aquifer Code: 200	Special Use Area: NA	

14. Points of Diversion, Rates & Quantities										Qty mgy		Rate gpm		Storage Qty		Storage Rate			
PDIV	Qualifier			S	T	R	ID	'N	'W	Comment (AKA Line)	Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps	
MOD	6626	SW SW SW			17	33	37W	1	140	5247	177.95	177.95	900	900					++
								149											#

15. Limitations Type: Quantity: **mgy** Rate: **gpm** combined with file no(s):
 Type: **DUAL** Quantity: **177.95 mgy (546 AF)** Rate: combined with file no(s): **when IND & IRR Authorized**

16. Metering Metering Required Anti-Reverse Required Seal Required Compliance Date: **12/31/2024**

17. Place of Use						NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps	
PDIV	S	T	R	ID		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
																										<input type="checkbox"/> *
ENT	31408	17	33	37W	1					40.0	40.0	39.0	36.0	40.0	37.0	38.5	38.5	27.0	40.0	38.5	19.5	434	5a		<input type="checkbox"/> **	
																									<input type="checkbox"/> ***	
																									<input type="checkbox"/>	
CHK	63978	18	33	37W	5	ETHANOL PLANT (N2) & (SW) LYING NORTH OF RR TRACKS																	5a		<input type="checkbox"/> ^	
																									<input type="checkbox"/> ^^	

18. Point of Diversion and Place of Use Overlaps + ++ 11383 # ^ 11383; 10,520; 10,889 & 24,931	* ** 11383 20239026 *** ^^
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KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files **DATE:** April 5, 2024
FROM: Leslie Ireland **RE:** Water Right, File Nos. 728 & 11,383

Gary Louis, President & CEO of Seaboard Energy Kansas LLC, filed applications for approval to change the place of use and use made of water for operation as dual use from industrial (biomass energy production) to industrial and irrigation uses under the files referenced above. The applications were received on March 24, 2023. The files are in the Cimarron River Basin, Stevens County, and Groundwater Management District No. 3

The water rights do not appear to be abandoned as per K.S.A. 82a-718, *Abandonment of water rights* and the rights are in compliance with K.A.R. 82-732, *Annual water use report required; penalty for violations*.

The owners are requesting the change in use made of water per K.A.R. 5-5-8, *Standards for approval of an application for change in the place of use and a change in the use made of water* applied to the consumptive use consideration and to authorize a limited "dual use" of industrial and irrigation use. The change in place of use is to add the irrigated acres that historically were authorized by the files. The proposed irrigated place of use has been authorized under term permits for some time the most recent being Term Permit File No. 20239026. The irrigated place of use is not authorized by any water rights. The industrial facility will remain as an authorized place of use. The industrial portion also authorized by File Nos. 10,520; 10,889 & 24,931 will remain as authorized. These three files have a combined total of 435.26 million gallons (1,336 acre-feet) per year.

File No. 728 authorizes 177.95 million gallons (mgy) 546 acre-feet (AF) per year to be diverted at 900 gallons per minute, from one well located in the (SW¹/₄ SW¹/₄ SW¹/₄) of Section 17, approximately 100 feet North and 5,180 feet West of the Southeast corner of Section 17, Township 33, Range 37 West for at for industrial use (SIC Code 2869) at a cellulosic ethanol plant located in the North Half (S¹/₂) and Southwest Quarter (SW ¹/₄) and located North of the railroad tracks in Section 18. The point of diversion overlaps with File No. 11,383. The actual location has been determined to be located approximately 140 feet North and 5,247 feet West of the Southeast corner placing it 83 feet from the authorized point. The location will be updated by approval as it appears to comply with K.A.R. 5-5-6c, *Authorized point of diversion or place of use*.

File No. 11,383 authorizes industrial use as described above to divert a limited 100.36 million gallons (mgy) 308 acre-feet (AF) per year at 3,195 gallons per minute, from the well shared with File No. 728. This junior file is required not to exceed 177.95 mgy and 3,195 gpm when combined with File No. 728. This file essentially provides a higher diversion rate to a portion of the authorized quantity.

The proposed use made of water change will not require the standard consumptive use factor of 89.1 percent for Stevens County to be applied to the authorized quantity as it is considered that irrigation use is less consumptive that the industrial use to manufacture ethanol. File No. 728 will allow the full 177.95 mgy (546.12 AF) for both industrial and irrigation uses combined. File No. 11,383 will allow a limited 177.95 mgy with File No. 728. Together the two referenced files combined limited quantity of 177.95 mgy (546 AF) would be allowed for the proposed dual use of industrial and irrigation uses.

It would appear the diversion of the authorized quantity as industrial and irrigation uses as dual use, may not result in an increase consumptive use and the changes comply with K.A.R. 5-5-3, *Change in consumptive use*.

The proposed irrigation use change in place of use is to irrigate the acres that appear to have been authorized prior to the change to industrial use. The proposed 434 acres are comprised of three pivots located in the West Half (W $\frac{1}{2}$) and the Southeast Quarter (SE $\frac{1}{4}$) of Section 17, Township 33, Range 37 West. The total combined quantity 546 AF will result in 1.25 AF per acre under File Nos. 728 & 11,383. The Net Irrigation Requirement for Stevens County at a 50% chance is 1.23 AF. It appears the change complies with K.A.R. 5-3-23, *Maximum reasonable annual quantity approvable for irrigation use for an application for change in place of use and a request to reduce a water right*.

The industrial use at the existing facility will remain as authorized. The applicant has appeared to own the plant since 2019. The total authorized industrial quantity of 613.21 mgd (1,882 AF) less the quantity proposed for irrigation use would afford 435.26 mgd (1,336 AF) to remain for the industrial use if the full quantity was diverted for irrigation use. A quick review of reported water use would indicate the plant has operated with a maximum of 1,100 AF. It would appear to not be unreasonable to authorize a portion of the authorized quantity as dual use for industrial and irrigation use. Further, the operation under a term permits appear to have provided a trial for the proposed change.

The review of the change application identified only the applicant's wells within one-half ($\frac{1}{2}$) mile of the well proposing to change. No nearby notification letters were sent. It appears the processing of the application follows K.S.A. 82a-1906.

In a letter dated March 15, 2024, a copy of the applications were sent to Jason Norquest, Assistant Manager of Southwest Kansas Groundwater Management District No. 3 (GMD 3) along with a request to make a recommendation. In a letter dated March 26, 2024, Jason Norquest, Assistant Manager of GMD 3, indicated the proposals are not in conflict with their management plan and recommended approval of the applications.

Mike Meyer, Water Commissioner of the Garden City Field Office, indicated that he recommended approval of the applications and temporary reduction, by email April 4, 2024.

A condition of the approvals will be the requirement of a flow meter for each use authorized, pursuant to K.S.A. 82a-706c. A check valve will be required if chemigation occurs. The water use correspondent will remain as designated.

Based on the above discussion, that the changes are reasonable, consumptive use will not increase, impairment of existing water rights is unlikely, and that no change in the local source of supply will occur, it is recommended that the referenced applications for change be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

From: Meyer, Mike [KDA]
Sent: Thursday, April 4, 2024 9:19 AM
To: Ireland, Leslie [KDA]
Subject: RE: Review & Recommendation for PU & UMW File Nos. 728 & 11383 Seaboard Energy

Approve please

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Thursday, April 4, 2024 8:51 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: Review & Recommendation for PU & UMW File Nos. 728 & 11383 Seaboard Energy

Mike,

Please let me know if you'd recommend.

As always comments and concerns are welcome.

Leslie Ireland
Environmental Scientist
Change Application Unit
Division of Water Resources



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 FOR CHANGE IN USE MADE OF WATER, PLACE OF USE, ORDER IN THE MATTER OF THE AUTHORIZED QUANTITY OF WATER AND BETTER DESCRIBING THE AUTHORIZED POINT OF DIVERSION WATER RIGHT, FILE NO. 728

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Gary Louis, President and Chief Executive Officer of Seaboard Energy Kansas LLC, 9000 W 67th Street Suite 200, Shawnee Mission, Kansas 66202, as owner of the referenced water right, received in this office on March 24, 2023, for approval of a change in the location of the place of use and the use made of water, under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, as modified and amended by the Order of the Chief Engineer, dated November 21, 1969, approving the application to change the point of diversion and place of use, by the Findings and Order of the Chief Engineer, dated March 30, 1979, better describing the location of the authorized point of diversion, and by the Order of the Chief Engineer, dated October 5, 2007, approving the application to change the place of use, and by the Order of the Chief Engineer dated November 29, 2012, approving the application to change the use made of water and place of use, finds that the change is reasonable and will not impair existing rights, and that the application should be and are hereby approved.

The authorized quantity of water under this right will remain 177.95 million gallons (546.12 acre-feet). This order effectively limits the authorized quantity of water to 177.95 million gallons (546.12 acre-feet) per calendar year for both industrial and irrigation uses combined. That the limitation on the quantity of water shall exist until such a time that the quantity of water for either the industrial use or irrigation use authorized by this approval is no longer required.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the portion retained for industrial use shall be authorized a maximum quantity not to exceed 177.95 million gallons (546.12 acre-feet) of groundwater per calendar year, for industrial use on the following described property:

the North Half (N½) and the Southwest Quarter (SW¼) lying North of
the railroad tracks all in Section 18, Township 33 South, Range 37 West,
Stevens County, Kansas.

The portion changed to irrigation use shall be authorized a quantity not to exceed 177.95 million gallons (546.12 acre-feet) of groundwater per calendar year, for irrigation use on the following described property:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
17 - 33S - 37W					40.0	40.0	39.0	36.0	40.0	37.0	38.5	38.5	27.0	40.0	38.5	19.5	434.0

a total of 434 acres in Section 17, in Township 33 South, Range 37 West,
Stevens County, Kansas,

all located substantially as shown on the topographic map accompanying the application to change the use made of water and place of use.

That information in the office of the Chief Engineer finds that the point of diversion authorized would more accurately be defined as:

one (1) well located in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter (SW¼ SW¼ SW¼) of Section 17, more particularly described as being near a point 149 feet North and 5,247 feet West of the Southeast corner of said section, in Township 33 South, Range 37 West, Stevens County, Kansas.

The water right owner shall properly install a separate acceptable water meter for each use made of water for 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 for irrigation and industrial use 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.

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.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 728, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated July 28, 1951, as modified and amended by the aforementioned orders.

Ordered this 9 day of April, 2024, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

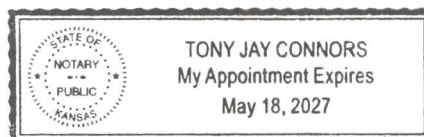
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 9 day of April, 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

April 11, 2024

JENNIFER NELSON
SEABOARD ENERGY KANSAS LLC
9000 W 67TH STREET SUITE 200
SHAWNEE MISSION KS 66202

RE: Water Right
File Nos. 728 and 11,383

Dear Ms. Nelson:

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

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approvals for change. A condition of the approval of your applications is the requirement that acceptable water flowmeters be installed so both industrial and irrigation uses can be metered independent of each other, from the diversion works prior to the diversion of water. Meters should be installed prior to the diversion of water. Please complete and return the form, Notice of Completion of Diversion Works for the installation of the meters as soon as this action is completed. The form and other information may be found at our web site <http://agriculture.ks.gov>. There is no fee for the notice of completion.

Since these orders modify the original Certificates of Appropriation for the above referenced water rights, they should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions regarding the enclosed document, please contact our office at 785-564-6640. Inquiries about the metering requirements should be directed to our staff at the Garden City Field Office, at 620-276-2901. If you contact us to discuss a specific file, please have a 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

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 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, 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 April, 2024, I hereby certify that the attached Approvals of Application for Change in Use Made of Water, Place of Use and Order in the Matter of the Authorized Quantity of Water and Better Describing the Authorized Point of Diversion under File Nos. 728 & 11,383 dated April 9, 2024, were mailed postage prepaid, first class, US mail to the following:

Seaboard Energy Kansas LLC
9000 W 67th Street Suite 200
Shawnee Mission, KS 66202

With a Photocopies to:

Garden City Field Office

Southwest Kansas GMD No. 3



Division of Water Resources