

Kansas Department of Agriculture
Division of Water Resources

CHANGE: UMW WORKSHEET PD BETTER DESCRIBED & OWNERSHIP & name update

1. File Number: 2986	2. Status Change Date: 10/10/2023	3. Change Num: C2	4. Field Office: 02	5. GMD: 02
6. Status: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return				7. Filing Date of Change: 5/4/2022
8a. Applicant(s) New to system <input type="checkbox"/> DONALD E & KATHY A PENNER FAMILY TRUST 115 FESCUE DR INMAN, KS 67546-8029		Person ID 23823 Add Seq# _____		8c. Landowner(s) New to system <input checked="" type="checkbox"/> JAMON & ROSEANNE PENNER 723 COMANCHE RD INMAN, KS 67546
8b. Landowner(s) New to system <input type="checkbox"/> ARDEN L & SHIRLEY PENNER TRUST 1034 CIMARRON RD INMAN, KS 67546		Person ID 13634 Add Seq# 1		8d. WUC New to system <input type="checkbox"/> 8b
9. Documents and Enclosure(s): <input checked="" type="checkbox"/> DWR Meter(s) Date to Comply: 12/31/2023 <input type="checkbox"/> Date to Comply: _____				
<input type="checkbox"/> Anti-Reverse Meter <input type="checkbox"/> Meter Seal <input checked="" type="checkbox"/> Check Valve <input type="checkbox"/> N & P Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input type="checkbox"/> H & E Letter <input type="checkbox"/> Conservation Plan Date Required: _____ Date Approved: _____ Date to Comply: _____				
10. Use Made of Water From: REC & IRR To: IRR				
Date Prepared: 9/21/2023 Date Reviewed: 9/25/2023 Date Entered:			By: LI By: KAK By: 10/17/2023 LMoody	

File No. **2986** 11. County: **MP** Basin: **LITTLE ARKANSAS RIVER** Stream: **NA** Formation Code: **190** Special Use: **NA**

12. Points of Diversion										Rate and Quantity				
CHK										Authorized		Additional		
MOD	PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Rate gpm	Quantity af	Rate gpm/cfs	Quantity af/mgy	Overlap PD Files
MOD	51725	NW NE NW	35	20	4W	2	5209	3295	GPS UPDATE	900 gpm	99.7 AF	900 gpm	99.7 AF	NONE

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

14. Limitation: _____ af/yr at **900** gpm (**2.0** cfs) when combined with file number(s) **REMOVED WITH REC USE ELEMINATION**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

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										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	PUSE	S	T	R	ID																											
DEL	50869	35	20	4W	12	POND (NE NE NW)																				8b	NO	NONE				
MOD	16649	35	20	4W	4																					12	8c	YES	29402 32392 36588			
CHK	29717	35	20	4W	1																				39	8a	NO	29402 32392 36588				
CHK	30395	27	20	4W	7																				1		16	17	8a	NO	29402 32392 36588	
CHK	39095	26	20	4W	3																				40	36	40	37	153	8b	NO	29402 32392 36588

Base Acres: _____ Year: _____ Minimum Reasonable Quantity: _____
 Comments: _____

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: September 22, 2023

FROM: Leslie Ireland

RE: Water Right, File No. 2,986

The owners of the referenced water right authorized for recreational, and irrigation uses filed an application on May 4, 2022, to change the use made of water from irrigation and recreational use to irrigation use only. The recreational use authorizes the filling and maintaining of a small pond in the middle of the irrigation field. The file is located in the drainage basin of the Little Arkansas Basin, McPherson County. The ownership of the Northwest Quarter will be updated by this change.

The referenced water right is considered in compliance with both K.S.A. 82a-718 and K.S.A. 82a-732. As required by K.S.A. 82a-1906, the nearby owner of an irrigation well was sent a letter to notify them of the requested change on October 27, 2022. The letter was returned due to address issues, and on further review it appears the well is more than one-half mile away, also there is no change in the actual point of diversion for the requested change.

The recreational use of groundwater is authorized to divert from a well located in the Southeast Quarter of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 35, with the location being updated for feet distances as being near a point 5,209 feet North and 3,595 feet West of the Southeast corner of said section, in Township 20 South, Range 4 West, McPherson County, Kansas. The diversion rate is not in excess of 900 gallons per minute (gpm) (2.0 c.f.s.) to divert 13.20 million gallons (4.3 acre-feet (AF)) of water per year to fill a pond in the Northwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 35. This portion is further limited to a diversion rate of 900 gpm with the irrigation portion as they share the same point of diversion. The irrigation use is authorized 95.4 AF with a place of use of is 221 acres in Sections 26, 27 and 35, and overlaps with File Nos. 29,402; 32,392 & 36,588.

The change will be processed by 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*. The filling and maintaining of the pond does not appear to have occurred for several years and no longer desired. It appears the pond will be removed from the property. As the recreational use was metered and the quantity was originally obtained from the irrigation use it appears the full quantity of 13.20 million gallons (4.3 acre-feet) can be changed back to the irrigation use without a substantial increase in consumptive use, thus meeting K.A.R. 5-5-3, *Change in consumptive use*.

The place of use will be reduced with the removal of the small pond, while the existing 221 irrigated acres will remain as authorized. The change will increase the quantity under File No. 2,986 from 95.4 to 99.7 acre-feet. The increase when added to the total quantity authorized as groundwater will result in 269.7 acre-feet of water authorized. The surface water appropriations, File Nos. 32,392 & 36,588, are both limited with the groundwater appropriations and appear to be in the process of being dismissed as they have voluntary dismissal and cease diversion indicators for these two files. The groundwater diversion will have an irrigation ratio of 1.22 AF of per acre which is less than the 1.3 AF of per acre considered reasonable for this area. The quantity complies with K.A.R. 5-3-24, *Reasonable quantity for irrigation use*, per acre in McPherson County.

On September 5, 2023, the Equus Groundwater Management District No. 2, was sent the application for change and requested to comment within 15 days. No comment was received within the afforded time and no request for additional time was received. The GMD submitted a recommendation to approve on 10/13/2023 li/DWR

Our Stafford Field Office, Water Commissioner, Jeff Lanterman, was contacted for comment on the proposed change. On September 22, 2023, he recommended the application be approved.

Based on the above discussion the application should be approved as requested.



Leslie Ireland
Environmental Scientist

Ireland, Leslie [KDA]

From: Lanterman, Jeff [KDA]
Sent: Friday, September 22, 2023 3:33 PM
To: Ireland, Leslie [KDA]
Cc: Conant, Cameron [KDA]
Subject: RE: Review and Recommendation, File No. 2986 Penner

Honestly Leslie,

I am OK with this being approved. No matter what the land to water ratio will get better. We are just removing the pond and reapplying that to the irr portion.

Hopefully when we go out and check it they wont be filling the pond.

Amazing that GMD 2 didn't bother with a rec.

Too busy suing us I guess.

Jeff

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Friday, September 22, 2023 2:56 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Cc: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: FW: Review and Recommendation, File No. 2986 Penner

Jeff,

The afternoon is better than the morning.. nice when things work...

So the ownership of these files has totally been a nightmare for me. Must be that highway...

I went back and looked at the acres and development of the surface files 32392 & 36588 and ownership. It does not appear the PU would need to be reduced or altered by the dismissal of the SW files... the 221 authorized could stay.

I've not done a dismissal of SW.. and wonder due to PU ownership if different people would have to sign for it to be voluntary. The dismissal paperwork is from 2016,, but no SW diverted for a long time.

The memo is correctly showing the PU acres with GW without the SW is 1.22 AF/A. Guess we should ask the current owners to sign dismissals of the SW files to process with the change?? or their intentions for those two files??

Leslie

From: Ireland, Leslie [KDA]
Sent: Friday, September 22, 2023 11:27 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: RE: Review and Recommendation, File No. 2986 Penner

36588 limited to 26 AF with 2986 then 29402 & 32392 bring 170 AF.. but if they are dismissed the PU would be totally reduced under all of the files wouldn't it??.

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Friday, September 22, 2023 11:10 AM
To: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: Review and Recommendation, File No. 2986 Penner

Leslie.

I cant get to our server. Does that af/a ratio of 1.22 hold true even if 32392 and 36588 are dismissed?

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Friday, September 22, 2023 10:32 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: Review and Recommendation, File No. 2986 Penner

Jeff,

Please let me know if you recommend this change. They are wanting to eliminate the recreational use changing it back to the irrigation use.

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 THE USE MADE OF WATER
AND
ORDER TO BETTER DESCRIBE THE AUTHORIZED POINT OF DIVERSION
WATER RIGHT, FILE NO. 2,986

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Shirley A. Penner, on behalf of the Arden L. and Shirley A. Penner Trust, 1034 Cimarron Road, Inman, Kansas 67546, Donald and Kathy Penner, on behalf of the Donald and Kathy Penner Family Trust, 115 Fescue Drive, Inman, Kansas 67546, along with Jamon and Roseanne Penner, 723 Comanche Road, Inman, Kansas 67546, received in this office on May 4, 2022, for approval of a change in 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 Findings and Order of the Chief Engineer dated July 20, 1979, to better describe the point of diversion; the Order of the Chief Engineer dated June 23, 1997, approving the application to change the authorized place of use and use made of water, and by the Order of the Chief Engineer dated February 20, 2013, approving the application to change the place of use, 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 authorized use made of water shall be:

Irrigation Use

from an existing point of diversion that shall now be better described as:

one (1) well located in the Northwest Quarter of the Northeast Quarter of the Northwest Quarter (NW¹/₄ NE¹/₄ NW¹/₄) of Section 35, more particularly described as being near a point 5,209 feet North and 3,295 feet West of the Southeast corner of said section, at a diversion rate not in excess of 900 gallons per minute (2.01 c.f.s.) and in a quantity not to exceed 99.7 acre-feet, in Township 20 South, Range 4 West, McPherson County, Kansas,

at the authorized place of use of:

Sec.	Twp.	Range	NE ¹ / ₄				NW ¹ / ₄				SW ¹ / ₄				SE ¹ / ₄				TOTAL ACRES
			NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	
26	20S	4W									40	36	40	37					153
27	20S	4W													1			16	17
35	20S	4W					39	12											51

a total of 221 acres in Township 20 South, Range 4 West, McPherson County, Kansas, all located substantially as shown on the map accompanying the application to change the use made of water.

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.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 2,986, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated June 12, 1961, as modified and amended by the aforementioned orders.

Ordered this 10 day of October, 2023, in Manhattan, Riley County, Kansas.

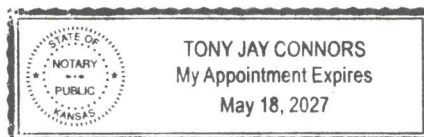
Lane P. Letourneau

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 10 day of October, 2023, 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

October 19, 2023

DONALD E & KATHY A PENNER FAMILY TRUST
115 FESCUE DR
INMAN, KS 67546-8029

RE: Water Right
File No. 2,986

Dear Mr. & Mrs. Penner:

Enclosed is the order executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the application for change under the referenced file.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approval for change. All diversions of water require a water flowmeter meeting 5-1-4 through 5-1-12 be installed on the diversion works.

Since this order modifies the original water right document referred to above, it should be recorded with the Register of Deeds as other instruments affecting real estate.

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.

If you have any questions, regarding the enclosed approval document please contact us at 785-564-6640. Should you have questions regarding the meter requirement or additional requirements please contact our staff at the Stafford Field Office at 620-234-5311. 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: Stafford Field Office
Equus Beds GMD No. 2

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 Division, 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 review 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 19 day of October, 2023, I hereby certify that the foregoing Approval of Applications for Change under File No. 2,986, dated October 10, 2023, was mailed postage prepaid, first class, US mail to the following:

DONALD E & KATHY A PENNER FAMILY TRUST
115 FESCUE DR
INMAN KS 67546-8029

With true and correct copies to:

ARDEN L & SHIRLEY PENNER TRUST
1034 CIMARRON RD
INMAN KS 67546

JAMON & ROSEANNE PENNER
723 COMANCHE RD
INMAN KS 67546

With photocopies to:

KDA-DWR Stafford Field Office
Equus Beds GMD No. 2



Division of Water Resources