

File No. 34809	13. County: PL Basin: 28 - PRAIRIE DOG CREEK Stream: NA																							
Structures File No:	Aquifer Code: 115 TERRACE						Special Use Area: RRC PRAIRIE DOG C																	
14. Points of Diversion, Rates & Quantities																								
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Oty AF Auth	Add	Rate gpm Auth	Add	BATT ID Number	Overlaps										
MOD	47062 LOT 2	19	2	21W	1	1343	3974	DUAL USE IRR/STK	87.5	87.5	325	325		+										
MOD	81134 SW NE NW	30	2	21W	2	4477	3928	GEO CENTER	87.5	87.5	275	275	1616	++										
CHK	81468 NW NE NW	30	2	21W	3	4760	3946	BATT 1 OF 2 WELLS					1616	++										
CHK	81469 SW NE NW	30	2	21W	4	4194	3910	BATT 1 OF 2 WELLS					1616	++										
15. Limitations NO CHANGE: O-LAP ALM #5 520AF/YR COM/W #6938-A FOR IRR ON LAND IN CERT New Limitation Type: DUAL USE IRR STK ID 1 WELL 73.58AF (23.98 mgy) IRR/STK COMBINED DUAL USE Quantity: Rate: combined with file no(s):																								
16. Metering <input checked="" type="checkbox"/> Metering Required <input type="checkbox"/> Anti-Reverse Required <input type="checkbox"/> Seal Required Compliance Date: 12/31/2024																								
17. Place of Use																								
PUSE ID	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
					NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
CHK 6091	24	2	22W	2					29.0	27.0										56.0	5b	N	*	
CHK 14108	25	2	22W	3	28.75	28.75	28.75	28.75												115	5aa	N	*	
CHK 20118	13	2	22W	1			21.5	31.5						25.0	11.0	17.0	11.0			117	5b	N	*	
CHK 63353	30	2	21W	2					29.5	lot 2 29.5	lot 2 29.5	29.5								118	5bb	N	*	
ENT 64520	19	2	21W	3	SWINE FACILITY L-2 (NW SW) & LOT 2 (SW NW)															5a & 5d	<input type="checkbox"/>	^		
																					<input type="checkbox"/>	^		
18. Point of Diversion and Place of Use Overlaps																								
+ 35720 STK 237031 MF IRR IRR PU COMMENT O-LAP ALM #5 ++ 20237032 MF #									* 16009 19111 34808 36310 20237031MF 20237032 MF ^ 35702 20237030 MF STK															

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: May 20, 2024

FROM: Leslie Ireland

RE: Water Right,
File Nos. 34,809 & 35,720

N. Terry Nelson on behalf of CJMT LLC, NTN LP and Calvert Swine LLC, filed applications on April 5, 2023, to change the place of use authorize by the referenced files and is also requesting a change in the use made of water change for File No. 34,809 and point of diversion for File No. 35,720. The Horney Family Irrevocable TR #1 ETAL has an identified portion of the irrigated place of use, which has been historically leased to Nelson Farms with all water rights withheld and conveying to Nelson Farms the first option to purchase the land. The changes are due to Calvert Swine LLC expansion in the Republic River Compact, Prairie Dog Creek Basin, Norton County.

It would appear that the referenced files are in good standing as per K.S.A. 82a -718 and K.S.A. 82a -732. It would appear notice per K.S.A. 82a -1906, is not needed as the applicant or partners are all affiliated with the referenced files.

The proposed change in place of use is from the 2019 authorized:

a feedlot located in Lot 2 (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 19, Township 2 South, Range 21 West, Norton County, Kansas.

The proposed expansion will authorize the place of use south of Highway US 383:

a swine facility located in Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) and in Lot 2 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 19, Township 2 South, Range 21 West, Norton County, Kansas.

The new facility is on land owned by Calvert Swine LLC and Clarke S. Nelson.

File No. 34,809

This file is authorized a battery of two(2) wells and a single well with assigned quantity and rate. The single well overlaps with File No. 35,720. The irrigation use is limited and will remain limited to 520 acre-feet (AF) with File No. 6,938-A for Almena Irrigation District.

The proposed change in use made of water to "dual use" is for the sole well irrigation well with the battery of two(2) wells remaining authorized for irrigation use. The separate well located in Lot 2 approximately 1,343 feet North and 3,974 feet West of the Southeast corner of Section 19, identified as (CIN ID 1) is authorized 87.5 acre-feet (AF) at 325 gallons per minute. The application calculated the consumptive use for the proposed dual use by utilizing a return flow factor. This method and utilizing the county consumptive use factor of 84.1 percent per K.A.R. 5-5-9(a)(1) resulted in both calculations affording 73.5 AF (23.98 million gallons) for the requested dual use as irrigation and stockwater uses. The quantity of 87.5 AF authorized by the battery in Section 30, for irrigation use will remain unchanged. As dual use can be changed back to the total authorized quantity the limitation will not be altered nor the 406 irrigated acres that are also authorized by File Nos. 16,009; 19,111; 34,808; 36,310 and proposed 2023031 MF (IRR) and 2023702 MF. The change in place of use will authorize the swine facility listed above. It appears the proposed change in use made of water complies with K.A.R. 5-5-9, *Approval of application for a change in the use made of water from irrigation to any other type of beneficial use of water.* The irrigated acres have a limited 484 AF if all of the quantity requested for dual use was diverted for stockwater use. This results in an irrigation ratio of 1.19 AF per acre which is slightly less than 1.20 allowance per the 80% chance in Norton County, per for or authorized by the overlapping files which complies with K.A.R. 5-5-12, *Net irrigation requirements*, and complies with K.A.R. 5-5-19, *Maximum reasonable annual quantity of water for irrigation use.* An irrigation water conservation plan will not be required for the change.

File No. 35,720

Authorized stockwater use for the diversion of a total 16.996 million gallons (52.16 AF) from two(2) primary wells (8.85 million gallons (27.16 acre-feet) at 250 gallons per minute GPM (0.56 c.f.s.) and 8.146 million gallons (25 acre-feet) at 100 GPM (0.22 c.f.s.) and a standby well. This file was limited to 520 acre-feet per year for irrigation use with File No. 6938-A for irrigation use. It appears this quantity limitation is no longer needed as the irrigation use was eliminated in 2019. The proposed change in place of use will authorize the swine facility listed above.

This facility will be authorized water use under File Nos. 34,809 & 35,720. The proposed quantity for stockwater use would provide a maximum 40.976 million gallons (125.66 AF) per year by these two files. The unverified 2023 water use report stated approximately 10,000 hogs were watered resulting in a total of 13.21 gallons per head per day if the facility was at this capacity for the full year. This equates to approximately 48.21 million gallons per year indicating K.A.R. 5-3-22, *Maximum reasonable quantity of water for livestock and poultry* has been justified. Term Permit, File No. 20237030 MF (STK) has been filed to help afford what appears to be initial startup fluctuations.

The change in point of diversion is to make the two(2) existing primary wells into a single battery comprised of two(2) wells with the standby well to remain as authorized. There is no physical change of the wells located in Section 19, Township 2 South, Range 21 West authorized as:

Standby

Lot 2 approximately 1,343 ft North and 3,974 ft West of the Southeast corner, with overlapping File Nos. 34,809 (IRR dual use IRR STK) & 20237031 MF and

Primary

Lot 2 approximately 2,151 ft North and 5,013 ft West of the Southeast corner, with overlapping File No. 20237030 MF (STK)

Primary

Lot 2 approximately 2,151 ft North and 5,033 ft West of the Southeast corner, with no overlapping files

The application requests a geographical center defined as being located approximately 2,151 feet North and 5,023 feet West of the Southeast corner in Lot 2 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 19, Township 2 South, Range 21 West, Norton County to be authorized at a maximum rate of 350 GPM to divert a combined quantity of 16.996 million gallons (52.16 acre-feet) as stockwater use.

It appears the proposed existing wells meet the definition of a battery as per K.A.R. 5-1-1-(n), *Battery of wells*, as they are within a 300 foot radius of the proposed geocenter. The applicant indicates the wells are operated in a manner consistent with the definition

The proposed change does not comply with K.A.R. 5-2-3; *Battery of wells*, specifically part (b)(1), which states that once the time to complete the diversion works has expired, a change in point of diversion to create a battery of wells must meet the criteria for a new application to appropriate water, such as safe yield, allowable appropriation or similar regulation for a new well at that location.

The wells are located in an area that is closed to new appropriations are located outside of a groundwater management district, so there is not a specific regulation that would allow the change to a battery. A **waiver of K.A.R. 5-2-3; *Battery of wells*** has been requested and prepared as there will not be an increase in the rate of diversion, the wells are existing and there is no history of impairment.

The proposed geographic center meets the definition of a battery as per K.A.R. 5-1-1-(n), *Battery of wells*. The wells are located within a 300 foot radius of the proposed geocenter and the wells will be required to distribute water through a common system serving the same place of use and will pump at less than 800 gallons per minute. It would appear the requested waiver is reasonable.

There are two (2) irrigation wells located within one-half ($\frac{1}{2}$) of the proposed geographic center of the proposed battery of wells. The irrigation wells are both about 2,000 feet away and owned by the applicant and his partner. The information would indicate that the nearby wells meet the requirement of part (d)(1) of K.A.R. 5-4-4, *Well spacing*.

The proposed changes comply with K.A.R. 5-5-3; *Change in consumptive use*, and the historical consumptive use should not increase. Additionally, it would appear that the Republican River Compact would not preclude the approval of the proposed changes.

Kelly Stewart, Water Commissioner of the Stockton Field Office, was contacted for a recommendation on the proposed change in use made of water, changes in place of use and point of diversion with the requested waiver. In an email dated May 20, 2024, he recommended their approval.

Water flowmeters are required in this area of the state and per K.S.A. 82a-706c. Check valves will be 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). A water level measurement tube and WWC-5 will not be required. A 2024 notice of completion will be required for the point of diversion change under File No. 35,720.

Based on the above discussion, that the waiver is granted, it appears the changes are reasonable, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, it is recommended that the changes to the referenced applications be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

From: Stewart, Kelly [KDA]
Sent: Monday, May 20, 2024 2:24 PM
To: Ireland, Leslie [KDA]
Cc: Hageman, Nancy [KDA]
Subject: RE: Review and Recommendation for Changes File Nos. 34,809 & 35,720 Nelson

Leslie,

I recommend approval of these change applications and approval of the waiver as well.

I would recommend you delete this paragraph from your memo:

In 2019, File No. 35,720 was required to install anti-reverse gears on the meter at the west well of the proposed battery further identified as ID 2, or to otherwise demonstrate that the meter will not register reverse flow should water be diverted to cattle on pasture in the future. Water flowmeters are required in this area of the state and per K.S.A. 82a-706c. Check valves will 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). A water level measurement tube and WWC-5 will be required for the new wells that have been authorized under File Nos. 34,809 and 35,720. A 2024 notice of completion will be required for the point of diversion change under File No. 25,720 and the order will state..... install anti-reverse gears on the meter at the west well of the proposed battery further identified as ID 2,

I would recommend you simply use standard meter language and don't worry about the past requirement. That has been dealt with. Water level tubes won't be required because he isn't drilling any new wells.

Kelly

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Monday, May 20, 2024 12:13 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Subject: Review and Recommendation for Changes File Nos. 34,809 & 35,720 Nelson

Kelly,

Please let me know if you'd support the waiver and recommend approval.

On File No. 35,720 I'm not sure about how to word the requirement(s) for the meter to have the anti-reverse wording in the order for ID 2. Guess I call out that point of diversion and list it to have the anti-reverse? or do I list this requirement for the geocenter? Or? Cuz then there is the standby well that has to be metered too..

So maybe the standard meter install wording then call out ID 2 to have the anti-reverse meter installed at that well description?

Standard meter wording in order then...

The owners of the authorized place of use shall properly install an anti-reverse totalizing water flowmeter____well location_____ which meets or exceeds specifications adopted by the Chief Engineer and said meter shall be installed 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.

Please advise.

Thank you,
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
AND
PLACE OF USE
WATER RIGHT, FILE NO. 34,809**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of N. Terry Nelson, on behalf of NTN LLP, and CJMT LLC, both at 1304 West Fox Road, Long Island, Kansas 67647, received in the office of the Chief Engineer on April 5, 2023, for approval of a change in the use made of water and location of the authorized place of use, under the certificate of appropriation issued pursuant to the permit to appropriate water for beneficial use, as modified and amended the order of the Chief Engineer, dated April 26, 2012, approving the application to change the place of use and to better describe the location of the authorized point of diversion, the Order of the Chief Engineer, dated April 26, 2013, approving the application to change the place of use and point of diversion, the Orders of the Chief Engineer, dated September 6, 2013, and September 20, 2020, approving the applications to change the point of diversion, the Orders of the Chief Engineer, dated February 11, 2016, and March 27, 2023, approving the applications 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 authorized annual quantity of water under this right will remain 175 acre-feet (57.02 million gallons). This order effectively limits the authorized quantity of water to (161 acre-feet) 52.46 million gallons per calendar year for both irrigation and stockwater uses combined. The limitation on the quantity of water shall exist until such a time that the quantity of water for either the irrigation or stockwater 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 authorized for both irrigation and stockwatering uses shall be authorized from the following dual use point of diversion:

one (1) well located in Lot 2 of Section 19, more particularly described as being near a point 1,343 feet North and 3,974 feet West of the Southeast corner of said section, in a quantity not to exceed to 87.5 acre-feet (28.51 million gallons) per calendar year at a rate of diversion not in excess of 325 gallons per minute (0.72 c.f.s), limited to a quantity not to exceed 73.5 acre-feet (23.98 million gallons) per calendar year for both stockwatering and irrigation uses combined,

in Township 2 South, Range 21 West, Norton County, Kansas, and

the point of diversion to remain authorized solely for irrigation use shall be:

a battery of two (2) wells with a geographical center located in the Southwest Quarter of the Northeast Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 30, more particularly described as being near a point 4,477 feet North and 3,928 feet West of the Southeast corner of said section, in a quantity not to exceed to 87.5 acre-feet (28.51 million gallons of water) per calendar year at a rate of diversion not in excess of 275 gallons per minute (0.61 c.f.s), in Township 2 South, Range 21 West, Norton County, Kansas.

The place of use authorized for irrigation use shall be:

Sec. Twp. Range	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTAL
	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	ACRES
30 - 2S - 21W					29.50	Lot 2 29.50	Lot 2 29.50	29.50									118.00
13 - 2S - 22W			21.50	31.50							25.00	11.00	17.00	11.00			117.00
24 - 2S - 22W					29.00	27.00											56.00
25 - 2S - 22W	28.75	28.75	28.75	28.75													115.00

a total of 118 acres in Township 2 South, Range 21 West, and 288 acres in Township 2 South, Range 22 West, all in Norton County, Kansas, and

the place of use authorized for stockwatering use shall be:

a swine facility located in Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$), and in Lot 2 (NW $\frac{1}{4}$ SW $\frac{1}{4}$), of Section 19, Township 2 South, Range 21 West, Norton County, Kansas,

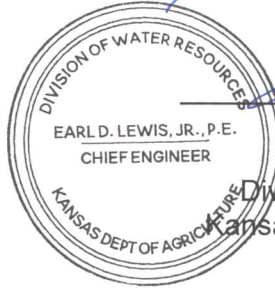
all located substantially as shown on the map accompanying the application to change the use made of water and place of use.

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 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 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. 34,809, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated August 10, 1993, as modified and amended by the aforementioned orders.

Ordered this 30th day of May, 2024, in Manhattan, Riley County, Kansas.

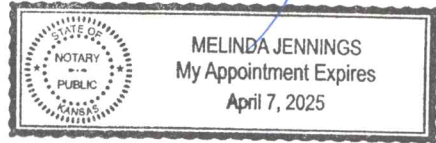


Earl D. Lewis Jr.
Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 30 day of May, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings
Notary Public



1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
[www. agriculture.ks.gov](http://www.agriculture.ks.gov)



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

June 3, 2024

N TERRY NELSON
NELSON FARMS INC
PO BOX 38
LONG ISLAND KS 67647

RE: Water Right
File Nos. 34,809 and 35,720

Dear Mr. Nelson:

Enclosed are the approvals of the applications for change executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture for the referenced files.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in these approvals for change and the approval under File No. 34,809, authorizing the operation under dual use. A condition of this approval is the requirement that the well authorized for dual use, shall have **acceptable water flow meters installed so both irrigation and stockwatering uses can be metered independent of each other**. A condition of both approvals is that water flowmeters meeting the specifications of the Chief Engineer must be installed on the diversion works authorized. Please return the required, *Notification of Completion of the Diversion Works and Report of Flowmeter Installation* of the required metering as soon as this action is complete. A listing of water flowmeters and the required completion form may be found at www.agriculture.ks.gov. The completion form requires no fee and may be submitted electronically. As requested, the water use correspondent will be updated to Nelson Farms Inc., for the referenced files.

Since these orders modify the 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 please contact our staff at your local area office in Stockton at 785-425-6787. 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: Stockton Field Office
Clarke S. Nelson

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 the Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, Kansas 66502, or by 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 the Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, or by 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 3 day of June, 2024, I hereby certify that the attached Approval of Applications for Change under Water Right, File Nos. 34,809 & 35,720 dated May 30, 2024, were mailed postage prepaid, first class, US mail to the following:

NELSON FARMS INCORPORATED
PO BOX 38
LONG ISLAND KS 67647

With a True and Correct copy sent to:

CLARKE S NELSON
1271 W FOX RD
LONG ISLAND KS 67647-9637

With photocopies sent to:

KDA-DWR Stockton Field Office



Division of Water Resources