



File No. **35128.01** 13. County: PL Basin: 28 - PRAIRIE DOG CREEK Stream: **NA**  
 Structures File No: Aquifer Code: **115 TERRACE** Special Use Area:

14. Points of Diversion, Rates & Quantities										Oty	Rate gpm		BATT ID	Overlaps	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Auth	Add	Auth	Add	Number		
DEL	64515	CN NE NE	33	1S	20W	31	5205	630	GEO CTR	4.563 MGY	4.563 MGY	40	40		+
DEL	66208	CN NE NE	33	1S	20W	31	5205	680	BATT 1 OF 2 WELLS						+
DEL	66209	CN NE NE	33	1S	20W	31	5205	580	BATT 1 OF 2 WELLS						+
ENT	6170	NE SW NE	33	1S	20W	17	3643	1604		14.0 AF	14.0 AF	40	40		++

15. Limitations Type: Quantity: **AF** Rate: **gpm** combined with file no(s):  
 Type: **Other** Quantity: Rate: combined with file no(s):

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
PUSE ID	S	T	R	ID	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
ENT	10065	34	1S	20W	3						39.0	7.0	19.0	18.0	17.0	28.0		17.5	22.5		168	5d	<input type="checkbox"/>	*
ENT	13444	4	2S	20W	1				L-2 19.0	L-2 34.0	L-1 10.0	L-1 6.0									69	5c	<input type="checkbox"/>	*
ENT	23378	33	1S	20W	1	28.0	38.0	40.0	40.0	33.0	31.0	31.0	40.0				40.0	30.0	13.0	33.0	397	5d	<input type="checkbox"/>	*
ENT	50451	33	1S	20W	10								31.0	13.0	1.5	3.0					48.5	5d	<input type="checkbox"/>	*
ENT	59813	28	1S	20W	1														1.0	13.0	14	5d	<input type="checkbox"/>	*
ENT	59814	4	2S	20W	3						22.0	5.0									27	5b	<input type="checkbox"/>	*
ENT	59815	4	2S	20W	4									3.0							3	5d	<input type="checkbox"/>	*
DEL	53125	33	2S	20W	11	HOG FACILITY FOR 2500 HOGS LOCATED (NE NE NE)																5d	<input type="checkbox"/>	^
																							<input type="checkbox"/>	^^

18. Point of Diversion and Place of Use Overlaps  
 + NONE  
 ++ 31484  
 #  
 ^ NONE

\* 219, 1970, 3130, 3688, 4005, 4304, 8203, 26865, 27754, 30902, 31484, PL 016, PL 017-D2, 7947-D1, 7947-D2, 20229067, 20229068, 20237026MF, 20237120MF, 20237121MF, 20237123MF  
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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:** May 3, 2024

**FROM:** Leslie Ireland

**RE:** Water Right, File No. 35,128.01

N. Terry Nelson owner of the referenced water right authorized for stockwater use has filed an application to change the use made of water, place of use and point of diversion currently authorized for stockwater use. This file is located in the Republican River Compact, Prairie Dog Creek Basin, Phillips County. The application was received on March 30, 2023.

The referenced water right is considered in compliance with both K.S.A. 82a-718 and K.S.A. 82a-732. Notice per K.S.A. 82a-1906, was determined to not be needed as the applicant is the nearby owner of a domestic well was informed by letter dated March 17, 2022, no comment was received.

The file was certified for stockwater use of groundwater to be withdrawn by means of a battery of two(2) wells with a geographic center located near the center of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 33, more particularly described as being near a point 5,180 feet North and 680 feet West of the Southeast corner of said section, in Township 1 South, Range 20 West, Phillips County, Kansas, at a diversion rate not in excess of 40 gallons per minute (gpm) (0.09 c.f.s.) and a quantity not to exceed 4.56 million gallons (14 acre-feet) of water per calendar year for stockwater use at a hog facility located in the Northeast Quarter of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$  NE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 33. This file has no additional limits and has no overlaps in the point of diversion or place of use.

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 stockwater use is considered to be totally consumptive by the nature of the use, with the proposed irrigation use being less consumptive. It appears the full quantity of 4.56 million gallons (14 acre-feet (AF)) can be authorized for irrigation use without any increase in consumptive use, thus meeting K.A.R. 5-5-3, *Change in consumptive use*.

The proposed place of use is the existing 726.5 irrigated acres located in seven(7) parcels in Sections 28, 33, 34, Township 1, Range 20 West, and Section 4, Township 2, Range 20 W and shown to be owned by Nelson Farms Inc., N. Terry Nelson, and NTN LP. This place of use is currently irrigated with a total of 1,076.85 acre-feet of surface and groundwater under File Nos. PL 016; PL 017-D2; 219; 1970; 3130; 3688; 4005; 4304; 7947-D1; 7947-D2; 8203, 26,865; 27,754; 30,902 & 31,484. There are pending applications for Term Permit, File Nos. 20229067; 20229068; 20237026-MF, 20237120- MF 20237121-MF, 20237123-MF . The change will increase the total quantity authorized for irrigation use to 1,090.85 AF. Several of the irrigation files are authorized for dual use resulting in a reduction of the irrigation quantity, but without the dual use. The adding of the new quantity will result in the 726.5 acres to have an irrigation ratio of 1.50 AF of per acre if the total quantity authorized as only irrigation use was diverted. This ratio appears to be allowed by K.A.R. 5-3-24, *Reasonable quantity for irrigation use* which designates 1.5 AF per acre for Phillips County. It appears the proposed change will not require the quantity changing to irrigation use to be limited.

The hog facility located in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 33, Township 1, Range 20 West, will no longer be authorized as a place of use under the referenced file, or any files.

The change in point of diversion proposes to eliminate the battery of wells and move the geographic center to the existing well located approximately 1,794 feet to the South. The proposed well is described as being in the Northeast Quarter of the Southwest Quarter of the Northeast Quarter (NE $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ ) approximately 3,643 feet North and 1,604 feet West of the Southeast corner of Section 33, in Township 1 South, Range 20 West, Phillips County, Kansas (CIN 17). One of the two wells authorized by File No. 31,484, with the assigned rate of 160 GPM (0.35 c.f.s.) and a quantity not to exceed 18.5 AF of water per calendar year for irrigation use. The change will afford the diversion of the 32.5 AF under File Nos. 31,484 & 35,128.01 from this point of diversion (CIN 17) at a maximum rate of 200 GPM.

The source of supply for the referenced file has been listed in the WRIS database as Terrace Deposit (Code 115). The proposed well is listed in the WRIS database as having Main Stem Alluvium (Code 113) as the source of supply. The difference was reviewed by Kelly Stewart, P.G. who reviewed the Geologic Map of Norton & Northwestern Phillips County (KGS Bulletin 81) where it lists the area between Prairie Dog Creek and the stream to the North, identified as Elk Creek is all Terrace Deposit as the source of supply. He indicated both well locations could be considered Terrace Deposit and the same source of supply. A worksheet will be prepared to update File No. 31,484 source of supply to Terrace Deposit (Code 115).

This source of supply is not subject to K.A.R. 5- 5-13, *Relocation of alluvium wells*.

It would appear that the proposed existing well doesn't meet the standard spacing requirement of 1,320 feet for alluvial wells as stated in part (c)(1)(C) of K.A.R. 5-4-4; Well spacing. The owner has requested a waiver of well spacing. The proposed existing point of diversion is approximately 560 and 770 feet from two of the three wells authorized irrigation use by File No. 30,902. The owner indicates the well has operated at the proposed quantity without resulting in issues for his wells. As all the wells are owned by applicant and serve the same place of use and operated at extremely low rates for the irrigation use, it would appear the wells could be operated without direct impairment meeting part (a) of K.A.R. 5-4-4, and a waiver would not be necessary.

Kelly Stewart, Water Commissioner of the Stockton City Field Office indicated by E-mail on May 3, 2024, that he has no objection to the approval of the proposed change.

Water flowmeters will be required for the approval. A check valve is required if chemigating. A water level measurement tube and WWC-5 are not applicable, as the proposed existing well. A *Notice of Completion* by December 31, 2024, will be a condition of the approval.

Based on the above discussion, that the change is reasonable, consumptive use should not increase, 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 referenced application be approved.



Leslie Ireland  
Environmental Scientist

## Ireland, Leslie [KDA]

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**From:** Stewart, Kelly [KDA]  
**Sent:** Friday, May 3, 2024 11:28 AM  
**To:** Ireland, Leslie [KDA]  
**Cc:** Hageman, Nancy [KDA]  
**Subject:** RE: Review and Recommendation for Change, File No. 35,128.01 Nelson

Leslie,

I recommend approval of this change application.

Kelly

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**From:** Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>  
**Sent:** Friday, May 3, 2024 10:40 AM  
**To:** Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>  
**Subject:** Review and Recommendation for Change, File No. 35,128.01 Nelson

Kelly,

Please let me know if you'd recommend this change.

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 AND POINT OF DIVERSION  
UNDER  
WATER RIGHT, FILE NO. 35,128.01**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of N. Terry Nelson as owner and on behalf of Nelson Farms Incorporated, Post Office Box 38, Long Island, Kansas 67647, and NTN LP, Post Office Box 560, Norton, Kansas, 67654, received in this office on March 30, 2023, for approval of a change in the location of the use made of water, place of use and 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 Order of the Chief Engineer dated June 18, 2001, approving the application to change the use made of water, finds that the change is reasonable.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the authorized use made of water shall be:

Irrigation Use

on the following described property:

Sec. Twp. Range	NE <sup>1</sup> / <sub>4</sub>				NW <sup>1</sup> / <sub>4</sub>				SW <sup>1</sup> / <sub>4</sub>				SE <sup>1</sup> / <sub>4</sub>				TOTAL ACRES
	NE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	NE <sup>1</sup> / <sub>4</sub>	NW <sup>1</sup> / <sub>4</sub>	SW <sup>1</sup> / <sub>4</sub>	SE <sup>1</sup> / <sub>4</sub>	
28 - 1S - 20W															1.0	13.0	14.0
33 - 1S - 20W	28.0	38.0	40.0	40.0	33.0	31.0	31.0	40.0	31.0	13.0	1.5	3.0	40.0	30.0	13.0	33.0	445.5
34 - 1S - 20W							39.0	7.0	19.0	18.0	17.0	28.0		17.5	22.5		168.0
4 - 2S - 20W					Lot 2 19.0	Lot 2 34.0	Lot 1 32.0	Lot 1 11.0		3.0							99.0

a total of 726.50 acres in Phillips County, Kansas,

and the point of diversion shall be:

one (1) well located in the Northeast Quarter of the Southwest Quarter of the Northeast Quarter (NE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>) of Section 33, more particularly described as being near a point 3,643 feet North and 1,604 feet West of the Southeast corner of said section, at a diversion rate not in excess of 40 gallons per minute (0.09 c.f.s.) at quantity not to exceed 14 acre-feet of water per calendar year, in Township 1 South, Range 20 West, Phillips County, Kansas,

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



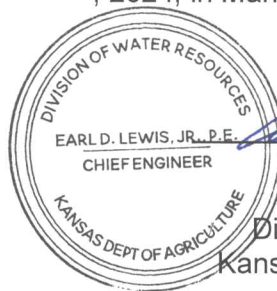
Installation of the works for diversion of water shall be completed on or before December 31, 2024, or within any authorized extension of time. The applicant shall notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, when construction of the works for diversion has been completed.

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.

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. 35,128.01, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated February 19, 2001, as modified and amended by the aforementioned orders.

Ordered this *13<sup>th</sup>* day of *May*, 2024, in Manhattan, Riley County, Kansas.

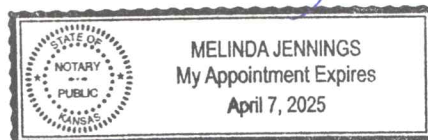


*Earl D. Lewis Jr.*  
\_\_\_\_\_  
Earl D. Lewis Jr., P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas        )  
                                  ) SS  
County of Riley        )

The foregoing instrument was acknowledged before me this *13<sup>th</sup>* 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



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

Mike Beam, Secretary

Laura Kelly, Governor

May 16, 2024

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

RE: Water Right  
File Nos. 35,128.01

Dear Mr. Nelson:

Enclosed is the approval of the application to change the point of diversion, use made of water and place of use, executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approval for change. A condition of the approval is that a water flowmeter 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](http://www.agriculture.ks.gov). The completion form requires no fee and may be submitted electronically.

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

If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640, or your local Stockton Field Office at 785-425-6787. If you call, please reference the file number so we can 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



## 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 16 day of May, 2024, I hereby certify that the attached Approval of Applications for Change in Point of Diversion under Water Right, File Nos. 4,005; 5,203 & 26,865, dated May 13, 2024, were mailed postage prepaid, first class, US mail to the following:

NELSON FARMS INCORPORATED  
PO BOX 38  
LONG ISLAND KS 67647

With photocopies sent to:

KDA-DWR Stockton Field Office

  
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Division of Water Resources