





**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** May 2, 2024

**FROM:** Leslie Ireland

**RE:** Water Right,  
 File Nos. 4005; 8203 & 26,865

N. Terry Nelson as owner and on behalf of Nelson Farms Incorporated filed applications for approval to change the points of diversion located in Republican River Compact Area in the Prairie Dog Creek Basin, Phillips County. The applications were received on March 30, 2023.

The files do not appear to be abandoned pursuant to K.S.A. 82a-718 and are in compliance with K.S.A. 82a-732. The proposed change will not require notifications per K.S.A. 82a-1906 as the applicant is the owner of all the wells within one-half mile.

The primary use of the referenced files is irrigation use but are currently authorized for dual use as irrigation and stockwater uses serving the same places of use. File Nos. 4005 and 8203 authorize one(1) well. File No. 8203 is limited to 31 acre-feet per year with File No. 6938-A, Amena Irrigation District's surface water diversion. File No. 8203 is further limited to a maximum rate of 720 gallons per minute when combined with File No. 4005. Together they authorize a historically developed 82.35 acre-feet, currently limited to 70.74 acre-feet while authorized for dual use. File No. 26,865 authorizes 295 gallons per minute for the diversion of 60 acre-feet (51.64 acre-feet as dual use) from one well located to the north of the well under File Nos. 4005 and 8203. A submitted MYFA application File No. 20237026 MF for File Nos. 4005 and 8203 is pending. The proposal is to authorize these wells as a battery of two(2) wells per the definition K.A.R. 5-1-1-(n), *Battery of wells*.

The proposed change will not physically move the wells, therefore the wells will remain in the same local source of supply.

Compliance Investigations completed by DWR staff found the wells within approximately 20 feet of authorized. As such requires the points of diversion and geocenter to be updated by the changes per K.A.R. 5-5-6, *Failure to construct diversion works at authorized location*, will be updated.

Well locations & authorized

File Numbers Wells 34-01-20W	CIN#	Actual		Quantity		Rate	
		Feet North	Feet West	Acre-feet authorized	Acre-feet additional	GPM authorized	GPM additional
4005, NC S2 NW	7	3201	3863	51.35	51.35	720	720
8203, NC S2 NW	7	3201	3863	31.00	31.00	720	0
Limited to 31.0 AF with File No. 6938-A Limited to 720 GPM with File No. 4005							
26865, NC NW	8	3729	3879	60.00	60.00	295	80*
Battery Geo Center 4005, 8203 26865 NW SE NW		3465	3871	142.35	142.35	800*	800*
File No. 8203 Limited to 31.0 AF with File No. 6938-A *File No. 26865 Limited to 800 GPM with File Nos. 4005 & 8203 the additional rate of 80 GPM							

The proposed point of diversion under the referenced files will be described as:

a battery of two (2) wells with a geographic center located in the Northwest Quarter of the Southeast Quarter of the Northwest Quarter (NW $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 34, more particularly described as being near a point 3,465 feet North and 3,871 feet West of the Southeast corner of said section, in Township 1 South, Range 19 West, Phillips County, Kansas.

The two existing wells are on a north-south line approximately 528 feet apart allowing a geographic center with the wells within a 300 foot radius. The meters installed for the dual use may have resulted in the wells operating thought a common manifold which may have resulted in the wells operating as a battery. There is no history of impairment.

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. They are also 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 with the justification of the operation of the existing wells meeting the definition of a battery.

There are eleven (11) wells, mostly small quantity stockwater use wells, located within one-half ( $\frac{1}{2}$ ) mile of the proposed point of diversion. The database indicates the applicant is the owner or a partial owner of each right.

The requested change in point of diversion appears to comply with K.A.R. 5-4-4, *Well spacing* as the physical spacing will not change. Review per K.A.R. 5-5-13, *Relocation of alluvial wells*, finds the proposed geographic center complies.

Kelly Stewart, Water Commissioner, Stafford Field Office, recommended approval of the changes and supported the waiver of K.A.R. 5-23-3, per his e-mail dated April 29, 2024.

Water flowmeters will be required for each use and check valves will also be required if chemigating. Water level measurement tubes and a WWC-5 are not applicable, as no new wells will be drilled. The owner will be required to complete a Notice of Completion by December 31, 2024.

Based on the above discussion, that a waiver of K.A.R. 5-2-3, *Battery of wells* is approved, the proposed battery appears to be reasonable, impairment to nearby 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  
Water Appropriation Program

## Ireland, Leslie [KDA]

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**From:** Stewart, Kelly [KDA]  
**Sent:** Monday, April 29, 2024 11:21 AM  
**To:** Ireland, Leslie [KDA]  
**Cc:** Hageman, Nancy [KDA]  
**Subject:** RE: Review & Recommendation for Change in PD File Nos. 4005 8203 26865 Nelson

Leslie,

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

Kelly

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**From:** Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>  
**Sent:** Monday, April 29, 2024 9:32 AM  
**To:** Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>  
**Subject:** Review & Recommendation for Change in PD File Nos. 4005 8203 26865 Nelson

Kelly,

Attached is the summary memo.

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 POINT OF DIVERSION  
UNDER  
WATER RIGHT, FILE NO. 4,005**

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 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 Orders of the Chief Engineer, dated July 1, 1964, September 2, 1982, April 1, 1987 and May 16, 1996, approving the applications to change the place of use, the Order of the Chief Engineer, dated April 9, 1976, approving the application to change the point of diversion, the Order of the Chief Engineer, dated December 10, 1984, approving the application to change the place of use and point of diversion, the Findings and Order of the Chief Engineer, dated May 9, 2000, reducing the authorized place of use, the Order of the Chief Engineer, dated July 21, 2008, approving the application to change the place of use and better describing the location of the authorized point of diversion, the Findings and Order of the Chief Engineer, dated April 7, 2014, reducing the authorized place of use and annual quantity of water, by the Order of the Chief Engineer, dated November 22, 2016, approving the application to change the place of use, the Order of the Chief Engineer, dated April 30, 2018, approving the application to change the place of use and use made of water, and by the Order of the Chief Engineer, dated April 3, 2019, approving the application to change the place of use, 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 point of diversion shall be:

a battery of two (2) wells with a geographic center located in the Northwest Quarter of the Southeast Quarter of the Northwest Quarter (NW $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ ) of Section 34, more particularly described as being near a point 3,465 feet North and 3,871 feet West of the Southeast corner of said section, in Township 1 South, Range 20 West, Phillips County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the point of diversion.

This order is further limited such that all wells shall be located within a three hundred (300) foot radius circle, in the same local source of supply, and shall supply water to a common distribution system.





# THE STATE OF KANSAS



**KANSAS DEPARTMENT OF AGRICULTURE**  
Mike Beam, Secretary of Agriculture

**DIVISION OF WATER RESOURCES**  
Earl D. Lewis Jr., Chief Engineer

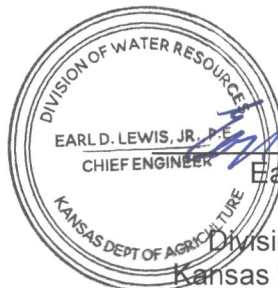
## WAIVER OF REGULATION K.A.R. 5-2-3 Battery of Wells

Date: May 13, 2024

RE: Water Right, File Nos. 4,005, 8,203 and 26,865

1. K.A.R. 5-2-3 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 or a specific regulation applicable to batteries of wells.
2. The changes in the points of diversion have been requested to authorize a battery of the two (2) existing wells that meet the physical definition of a battery. It is proposed the referenced files be authorized to divert a combined total of 142.35 acre-feet (46.38 million gallons) at a limited 800 gallons per minute. The wells under the referenced files are currently 122.28 acre-feet (39.84 million gallons) as dual irrigation and stockwatering uses.
3. The proposed battery of wells represents the current wells, no new wells will be drilled, and will afford the owner flexibility to balance the use of the wells more effectively and economically. The rate will be limited under the junior file to comply with the maximum 800 gallons per minute allowed.
4. The local source of supply will remain unchanged.
5. There will be no increase in the quantity of water diverted, and the change to a battery of two(2) wells will not impair existing water rights nor adversely affect the public interest.

Comments:



Earl D. Lewis Jr.  
Earl D. Lewis Jr., P.E.  
Chief Engineer

Division of Water Resources  
Kansas Department of Agriculture



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. 4,005, 8,203 and 26,865

Dear Mr. Nelson:

Enclosed are the approvals of the applications to change the points of diversion 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 these approvals for change and the approvals authorizing the operation under dual use. A condition of these 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](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, 8,203 and 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

  
Division of Water Resources