

**Kansas Department of Agriculture
Division of Water Resources**

FINDINGS AND ORDER WORKSHEET

1a. File No.: <p align="center">48,891</p>	1b. Document Date: <p align="center">07/02/2024</p>	1c. Field Office: <p align="center">1</p>	1d. GMD:
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2a. Name & Address Person ID 63596 EAST KANSAS AGRI-ENERGY 1304 S MAIN GARNETT KS 66032	2b. Name & Address Person ID 5890 CITY OF GARNETT 131 W 5TH ST PO BOX H GARNETT KS 66032
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2c. Name & Address Person ID _____ _____ _____ _____	2d. Person ID _____ _____ _____ _____
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2e. WUR Correspondent Person ID 63596 EAST KANSAS AGRI-ENERGY 1304 S MAIN GARNETT KS 66032	3. Use of Water <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water <input type="checkbox"/> IRR <input type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN <input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON <input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG <input checked="" type="checkbox"/> IND SIC: 2869 <input type="checkbox"/> OTHER: _____
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4a. PD <input type="checkbox"/> Correct _____ <input type="checkbox"/> Delete _____ <input type="checkbox"/> Add _____ <input type="checkbox"/> Reduce _____	4b. PU <input type="checkbox"/> Correct _____ <input type="checkbox"/> Delete _____ <input type="checkbox"/> Add _____ <input type="checkbox"/> Reduce _____	4c. LIMITATIONS <input type="checkbox"/> Correct _____ <input type="checkbox"/> Delete _____ <input type="checkbox"/> Add _____ <input type="checkbox"/> Reduce _____	4d. RATE <input type="checkbox"/> Correct _____ <input type="checkbox"/> Delete _____ <input type="checkbox"/> Add _____ <input type="checkbox"/> Reduce _____	4e. QUANTITY <input type="checkbox"/> Correct _____ <input type="checkbox"/> Delete _____ <input type="checkbox"/> Add _____ <input type="checkbox"/> Reduce _____
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5. Old Information to be Changed (New Information to be written in 7, 8 & 11)
DISMISSAL OF APPROPRIATION OF WATER RIGHT

6. Previous Modifications and Amendments

Document Type

7. Point of Diversion

Groundwater to be withdrawn by means of (_____ well(s)) (_____ pit(s))

Surface water in the _____ to be diverted (at a point)

(at _____ points) (_____ pit(s)) (_____ dam(s))

Date Prepared 6/12/24	By CLA
Date Reviewed: 6/27/2024	By: KAK
Date Entered 7/9/2024	By
KAnderson	

File No. **48,891** Priority Date: **12/16/13** County: **AN** Basin: **Pottawatomie** Stream: **Pottawatomie Creek Trib 1** Formation Code:

8. Points of Diversion										Rate and Quantity				
T	<input type="checkbox"/> G <input checked="" type="checkbox"/> S									Authorized		Additional		
MOD	PDIV	Qualifier	S	T	R	ID	'N	'W	Comment	Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
DEL	24894	NW SE SW	18	20S	20E	1	950	3658		2,000	80	2,000	80	AN-1; AN-6; 36,493 & 48890
DEL	82511	NW SE SW	18	20S	20E	4	903	3701						

9. Storage: Rate _____ NF Quantity **796.5** ac/ft Additional Rate _____ NF Additional Quantity **796.5** ac/ft

10. Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

11. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
T																													
MOD	PUSE	S	T	R	ID	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								
DEL	66135	31	20S	20E	2	ETHANOL PLANT (NE)																	2a	NO	NO				

12. Comments:

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: June 10, 2024

From: Christa Anhold, Environmental Scientist

Re: New Application 50,993 & Voluntary Dismissal of File No. 48,891 – East Kansas Agri-Energy

Summary

East Kansas Agri-Energy filed the above new application proposing to appropriate 796.5 acre-feet of surface water for storage in Lake Garnett and to re-divert 245.5 acre-feet (80 million gallons) per calendar year at a re-diversion rate of 2,000 gallons per minute (4.46 cfs) for industrial use at an existing ethanol plant in Anderson County. Lake Garnett reservoir is permitted by the DWR Water Structures Program, under File No. DAN-056. The applicant signed the application stating they have legal access to the point of diversion and own the place of use. The proposed point of diversion would overlap Vested Water Right File Nos. AN-001 and AN-006 and Appropriated Water Right File Nos. 36,493 and 48,890.

On March 20, 2023, the applicant file for a voluntary dismissal of Water Appropriation File No. 48,891 upon approval of application File No. 50,993. Water Right File No. 48,891 is the original application for an ethanol plant. During the perfection period the applicant utilizing grey water from the City of Garnett, and they perfected less than what was reasonable for ethanol production. The applicant has since started to utilize File No. 48,891 and have exceeded what was perfect in 2019. File No 50,993 will replace File No. 48,891.

Reasonable Rate and Source of Supply

The application proposes to re-divert 245.5 acre-feet (80 million gallons) of water from Lake Garnett to an existing ethanol plant. Published data by Argonne National Laboratory (2018) estimates 3-4 gallons of water are used to produce 1 gallon of ethanol. East Kansas Agri-Energy produces 42 million gallons of ethanol per year. Based on this, 126 to 168 million gallons of water would be required. The requested 80 MGY is less than the total quantity needed and appears to be reasonable.

The applicant requests to appropriate 796.5 acre-feet of water for storage. The maximum reasonable quantity for surface water storage in a 40-acre pond is 796.5 AF, this was determined using K.A.R. 5-6-5(b)(1) as follows:

$$\begin{aligned} \text{Potential net evaporation} &= (6) \times (1/12) \times (40\text{-acres}) = 20 \text{ AF} \\ \text{Reasonable quantity} &= (3 \times 20 \text{ AF}) + (3 \times 245.5 \text{ AF}) = 796.5 \text{ AF} \end{aligned}$$

Nearby Water Rights

The only other water rights in a 2-mile radius are File No. 46,475 a sediment control reservoir and File No. 25,982 an irrigation well. Following K.S.A. 82a-1906 public notifications are required regardless of the preexistence of the place of use or point of diversion. Due to the large number of potential well owners in the area a public notice was run in the Anderson County Review for three (3) consecutive weeks from April 30 to May 14, 2024. No responses have been received to date.

Recommendations

Topeka Field Office does not have a Water Commissioner at the moment, so a recommendation was not received regarding these applications. The applications was sent directly to Manhattan Headquarters for approval.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum spacing requirements. Approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Christa Anhold
Environmental Scientist
Manhattan Headquarters

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

IN THE MATTER OF THE
DISMISSAL OF WATER RIGHT
FILE NO. 48,891

This is to certify that on March 20, 2023, a voluntary request to dismiss Water Right, File No. 48,891, was filed with the office of the Chief Engineer by the following appropriation right owner(s):

EAST KANSAS AGRI-ENERGY
1304 S MAIN
GARNETT, KS 66032

Per this request, those above have agreed to waive any and all rights that they might have to a hearing pursuant to K.S.A. 82a-718 or any other applicable statute.

ORDER

The Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, acknowledges this request, and so orders the dismissal of Water Right, File No. 48,891, and forfeiture of its priority. The dismissed file pertains to the point(s) of diversion and place(s) of use described as follows:

one (1) reservoir created by a dam located in the Northwest Quarter of the Southeast Quarter of the Southwest Quarter (NW1/4 SE1/4 SW1/4) of Section 18, more particularly described as being near a point 950 feet North and 3,658 feet West of the Southeast corner of said section, for industrial use at an ethanol plant located in the Northeast Quarter (NE) of Section 31,

all in Township 20 South, Range 20 East, Anderson County, Kansas.

Any further diversion of water pursuant to the conditions and terms of the dismissed file shall be unlawful and subject to the penalties of K.S.A. 82a-728 and K.S.A. 82a-737.

Ordered this 2 day of July, 2024, in Manhattan, Riley County, Kansas.

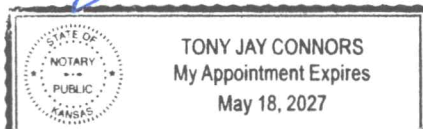
[Handwritten signature of Lane P. Letourneau]

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 2 day of July, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

[Handwritten signature of Notary Public]
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

July 10, 2024

EAST KANSAS AGRI-ENERGY
1304 S MAIN
GARNETT KS 66032

RE: Appropriation of Water
File No. 50,993

Dismissal of Water Right
File No. 48,891

Dear Sir or Madam:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit. Also enclosed is an Order by the Chief Engineer, dismissing Appropriation of Water, File No. 48,891, as requested in the voluntary dismissal form received on March 20, 2023.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

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.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Also included is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640, or your local Topeka Field Office at (785)-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications Unit Supervisor
Division of Water Resources

KAB:kak:cla
Enclosure(s)

pc: Topeka Field Office
City of Garnett

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 10 day of July, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,993, dated July 2, 2024, was mailed postage prepaid, first class, US mail to the following:

Original to:

EAST KANSAS AGRI-ENERGY
1304 S MAIN
GARNETT KS 66032

With photocopies to:

CITY OF GARNETT
131 W 5TH ST PO BOX H
GARNETT KS 66032

KDA-DWR Topeka Field Office



Division of Water Resources