

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

APPROVAL OF APPLICATION
and
PERMIT TO PROCEED

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,993** of the applicant

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

for a permit to appropriate water for beneficial use, together with the maps, plans and other submitted data, and that the application is hereby approved and the applicant is hereby authorized, subject to vested rights and prior appropriations, to proceed with the construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a, as amended), and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect the proposed appropriation subject to the following terms, conditions and limitations:

1. That the priority date assigned to such application is **March 20, 2023**.
2. That the water sought to be appropriated shall be used for industrial use in the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 31, Township 20 South, Range 20 East, Anderson County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to Pottawatomie Creek, designated in the office of the Chief Engineer as Pottawatomie Creek Trib 1, not needed to satisfy all vested rights and prior appropriation rights to be incrementally accumulated as reservoir storage space becomes available to a maximum extent of **796.5 acre-feet** of water per calendar year in a reservoir created by a dam located in the Northwest Quarter of the Southeast Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$) 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, in Township 20 South, Range 20 East, Anderson County, Kansas, to provide **80 million gallons of water (245.5 acre-feet)**, as needed for direct industrial use, to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **2,000 gallons per minute (4.46 c.f.s.)**. A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.
4. That installation of works for diversion of water shall be completed on or before **December 31, 2025**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$400.00 when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

16. That failure without cause to comply with the provisions of this permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.

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

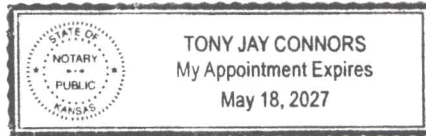
Lane P. Letourneau

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

Tony Jay Connors
Notary Public



5. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before December 31, 2029, or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee of \$100.00.

6. That the applicant shall not be deemed to have acquired a water appropriation for a quantity in excess of the amount approved herein nor in excess of the amount found by the Chief Engineer to have been actually used for the approved purpose during one calendar year subsequent to approval of the application and within the time specified for perfection or any authorized extension thereof.

7. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.

8. That the right of the appropriator shall relate to a specific quantity of water and such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion.

9. That this permit does not constitute authority under K.S.A. 82a-301 through 305a to construct any dam or other obstruction; nor does it grant any right-of-way, or authorize entry upon or injury to, public or private property.

10. That all re-diversion works constructed under the authority of this permit 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.

11. That an acceptable water flow meter shall be installed and maintained on the re-diversion works authorized by this permit in accordance with Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This water flow meter shall be used to provide an accurate quantity of water re-diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).

12. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.

13. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

14. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

15. That the right to appropriate water under authority of this permit is subject to any minimum desirable streamflow requirements identified and established pursuant to K.S.A. 82a-703c for the source of supply to which this water right applies.

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