

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. 9,105

Chase L. Larson on behalf of Bestifor Farms LP filed an application on November 14, 2023, for approval to change the point of diversion authorized for irrigation use. This file is located in the Effective Alluvial of the Republican River Basin, Cloud County.

The referenced file number does not appear abandoned pursuant to K.S.A. 82a-718, and in compliance with K.S.A. 82a-732. It appears the proposed change complies with K.A.R. 5-5-2a, *Complete application*. The proposed move of approximately 220 feet will not physically move any of the wells but will change their functionality to operate as a battery of wells. The proposed change will not require notifications per K.S.A. 82a-1906.

File No. 9,105, authorizes two(2) wells approximately 430 feet apart with an assigned quantity and rate with a priority date of 1963 and a completion of the diversion works submitted in 1970. The two wells are defined as:

Trailer House West has been determined to be located in the North Half of the Southwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$), approximately 1,188 feet North and 2,059 feet West with a maximum rate of 175 gallons per minute (GPM) to divert 44 acre-feet (AF).

South Well, has been determined to be located in the Northwest Quarter of the Southeast Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) approximately 761 feet North and 2,070 feet West with a maximum rate of 350 GPM to divert 84 AF.

Both wells are in Section 36, Township 5 South, Range 3 West, Cloud County. The 201.5 authorized irrigated acres are also authorized by File Nos. 27,768 & 40,409. The referenced file has no additional limitations.

The WRIS database lists the source of supply is the Main Stem Alluvium (Code 113) for the Trailer House West and the Terrace (Code 115) & Dakota Aquifer System, Unconfined (Code 330). This is due in part to the age of the referenced files. Review of the source of supply by Kelly Stewart, P.G. determined the source of supply for both wells is the Quaternary Terrace Deposits. The database will list the source of supply to be this source (Code 115). The listing as *Effective Alluvial* will be removed in conjunction with the source of supply update.

The proposed change is to make the two(2) existing wells into a single battery comprised of two (2) wells. The application requests a geographical center defined as being located approximately 975 feet North and 2,065 feet West of the Southeast corner in the (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 36, Township 5 South, Range 3 West, Cloud County to be authorized at a maximum rate of 525 GPM to divert a combined quantity of 128 acre-feet.

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.

Because the wells are located in an area that is closed to new appropriations, a new application to appropriate water cannot be approved. The wells 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.

There is one(1) irrigation well, File No. 40,409, and the KGS database indicates one(1) domestic well located within one-half($\frac{1}{2}$) mile of the proposed point of diversion. The applicant is an owner of the irrigation well that serves the same place of use. It appears the domestic well is owned by an industrial user at a facility located in a right-of-way. No nearby well owners were notified of the proposed change as the move is less than 300 feet.

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. Additionally, the proposed geographic center complies with K.A.R. 5-5-13, *Relocation of alluvial wells*, as the wells the existing well closest to the stream is approximately 2,900 feet to the closest point to the North.

The additional well conditions per K.A.R. 5-5-16, *Additional well*, remain a condition of the file and will be assigned to the geographic center.

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

Water flowmeters will be required and check valves will also be required if chemigating. Water level measurement tubes and a WWC-5 are not applicable to this change, as no new wells will be drilled. A notice of completion by December 31, 2024 will be required.

Based on the above discussion, that a waiver of K.A.R. 5-2-3, *Battery of wells* is approved, the change 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]

From: Stewart, Kelly [KDA]
Sent: Monday, April 29, 2024 1:19 PM
To: Ireland, Leslie [KDA]
Cc: Hageman, Nancy [KDA]
Subject: RE: Review & Recommendation for Change in PD File No. 9105

Leslie,

I recommend approval of this application. I also recommend approval of the waiver.

Regarding the source of supply. I have reviewed area geology maps. Please change the wording in your memo to state the source of supply for both p/d's is Quaternary terrace deposits and also please make sure WRIS is changed too.

Kelly

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 No. 9105

Kelly,

Having a little trouble with the source of supply for the battery... but recall a WR should have only one source,, but never surprised by WR... Could you please advise.

Attached is the summary memo. I pressed on due to the age of the file and it meeting the proposal. The waiver would be due to the age of the WR and meeting the definition.

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. 9,105**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Chase L. Larson, on behalf of Bestifor Farms, Post Office Box 220, Belleville, Kansas 66935, received in the office of the Chief Engineer on November 14, 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 May 10, 2007, March 11, 2013, and July 7, 2014, approving the applications to change the place of use, by the Order of the Chief Engineer, dated January 3, 2020, approving the application to change the point of diversion, finds that the change is reasonable and will not impair existing rights, that the change relates to the same local source of supply and that the application should be and is hereby approved.

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 geographical center located in the Northwest Quarter of the Southwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 36, more particularly described as being near a point 975 feet North and 2,065 feet West of the Southeast corner of said section, in Township 5 South, Range 3 West, Cloud County, Kansas, at a diversion rate not in excess of 525 gallons per minute (1.17 c.f.s.) and a quantity not to exceed 128 acre-feet per calendar year,

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.

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. 9,105, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation, dated March 19, 1979, as modified and amended by the aforementioned orders.

Ordered this 7th 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 7 day of May 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda

Notary Public



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 7, 2024

RE: Water Right, File No. 9105

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 additional well at that location or a specific regulation applicable to batteries of wells.
2. The intent of K.A.R. 5-2-3 is to limit the conversion of water rights from a single authorized well to batteries of two (2) or more wells to prevent the addition of new wells, and allows such conversions only under certain circumstances.
3. The proposed change application under the above referenced file number requests to convert two (2) currently authorized and existing wells into a battery of two (2) wells that would meet the physical definition of a battery, and to combine the authorized rates and quantities.
4. The wells authorized by the above referenced file numbers could have met the definition of a battery of wells, had there been one, at the time the application was filed in 1963.
5. The local source of supply will remain unchanged.
6. There will be no increase in the quantity of water diverted, and the change to a battery of two (2) wells will not add more wells, will not impair existing water rights, nor adversely affect the public interest.

Comments:



EARL D. LEWIS, JR., P.E.
CHIEF ENGINEER

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

THE STATE  OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

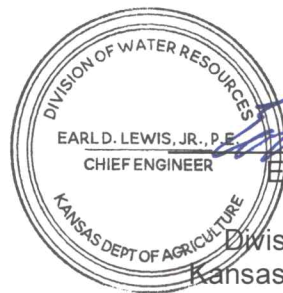
WAIVER OF REGULATION
K.A.R. 5-2-3 Battery of Wells

Date: May 7, 2024

RE: Water Right, File No. 9105

1. That 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. That the change to 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 file be authorized to divert a combined total of 128 acre-feet at 525 gallons per minute.
3. That the proposed battery of wells represents the actual wells. The original permit and certification of this appropriation predate the regulation.
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

CHASE L LARSON
BESTIFOR FARMS
PO BOX 220
BELLEVILLE KS 66935

RE: Water Right
File No. 9,105

Dear Mr. Larson:

Enclosed is the approval of the application to change the points of diversion executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture for the referenced file.

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 current specifications of the Chief Engineer must be installed on the diversion works authorized. Please return the required form, entitled "*Notification of Completion of the Diversion Works and Report of Flowmeter Installation*," as soon as these actions are 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.

Since this order modifies the Certificate of Appropriation for the above referenced water right, 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,

A handwritten signature in blue ink that reads "Kristen A. Baum". The signature is written in a cursive, flowing style.

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 Application for Change in Point of Diversion under Water Right, File No. 9,105, dated May 7, 2024, was mailed postage prepaid, first class, US mail to the following:

CHASE L LARSON
BESTIFOR FARMS
PO BOX 220
BELLEVILLE KS 66935

With photocopies sent to:

KDA-DWR Stockton Field Office



Division of Water Resources