

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

1. File No.: <b>49954</b>		2. Status Change Date: <b>2/27/2025</b>		4. Field Office: <b>02 - Stafford</b> GMD: Structures File No.: Filing/Priority Date: <b>12/18/2017</b>	
3. Associated File No(s): <b>None</b>					
5a. <input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change  <b>CHAD NIGHTINGALE</b> <b>1989 FRONTIER RD</b> <b>GALVA, KS 67443</b>		Person ID <b>65899</b> Add Seq# <b>1</b>		5b. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change  Person ID Add Seq#	
5c. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change		Person ID Add Seq#		5d. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change  Person ID Add Seq#	
6. Change No.: <input type="checkbox"/> PD <input type="checkbox"/> PU <input type="checkbox"/> UMW Base Acres:      Year:      Min Reasonable Q: Previous UMW: MDS Gauge:      Active Admin? <input type="checkbox"/> Completion/Start Date:      Perfection/Expiration Date:				7. Use of Water <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water UMW: <b>IRR-Irrigation</b> UMW: UMW:	
8. Action Trail					
9. Special Conditions					
10. 5YR Allocation      Type:      Start Year:      5YR Quantity:      Base Acres: Comment:					
11. Sand & Gravel      Proj ID: <input type="checkbox"/> Active <input type="checkbox"/> Dredge <input type="checkbox"/> IND Evap <input type="checkbox"/> Jr Evap <input type="checkbox"/> Other Diversion <input type="checkbox"/> Rpt on Sr					
12. Waiver      Rule ID: <input type="checkbox"/> New      Date Requested: Applies:      Rule No.:      Justification: Rule Type: Rule SubType:					
Comments <b>Please correct Range Direction on the Point of Diversion. It should be 2E</b>				Processed <b>EKF</b> <b>2/26/2025</b>  Reviewed <b>KAK</b> <b>2/27/2025</b>	
				Entered <b>3/5/2025</b> <b>KAnderson</b>	

File No. <b>49954</b>		13. County: <b>MP</b> Basin: --- Stream: <b>TURKEY CREEK TRIB 1 (LITTLE ARK)</b>																			
Structures File No:		Aquifer Code: <b>N/A</b>										Special Use Area:									
14. Points of Diversion, Rates & Quantities																					
PDIV		Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Qty <b>AF</b>		Rate <b>gpm</b>		Storage Qty <b>AF</b>		Storage Rate					
										Auth	Add	Auth	Add	Auth	Add	Auth/Add					
<b>DEL</b>		<b>86488</b>	<b>NW SW NE</b>	<b>6</b>	<b>20</b>	<b>2E</b>	<b>1</b>	<b>3980</b>	<b>2452</b>	<b>158</b>	<b>158</b>	<b>20,000</b>	<b>20,000</b>			<b>None</b>					
15. Limitations <b>NEW</b> Type: Quantity: <b>AF</b> Rate: <b>gpm</b> combined with file no(s):																					
<b>NEW</b> Type: Quantity: <b>AF</b> Rate: <b>gpm</b> combined with file no(s):																					
16. Metering <input type="checkbox"/> Metering Required <input type="checkbox"/> Anti-Reverse Required <input type="checkbox"/> Seal Required Compliance Date:																					
17. Place of Use																		Total	Owner(s)	Chg?	Overlaps
PUSE S T R ID		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
<b>DEL 68663 6 20 2W 1</b>		38	40	40	40													158.00	<b>5A</b>	<input type="checkbox"/>	<b>None</b>
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
																				<input type="checkbox"/>	
																				<input type="checkbox"/>	
18. Point of Diversion and Place of Use Overlaps																					
*  +  #  ^										**  ##  ^^							++				

# MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

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**Date:** February 26, 2025

**From:** Elizabeth K Fitch, Environmental Scientist

**Re:** New Application Dismissal—File No. 49,954 – Chad D & Tara L Nightingale Joint Rev Tr (example 51087/51016)

## Summary

Chad Nightingale file the above referenced application to appropriate 158 acre-feet of surface water, as a diversion rate of 20,000 gallons per minute from an unnamed stream identified by this office as Turkey Creek Trib 1 (Little Arkansas River) for irrigation purposes. The proposed point of diversion would be a surface diversion located in the Northeast Quarter of 6-20S-2W, McPherson County, Kansas.

Per K.A.R. 5-3-15, the applicant must demonstrate that surface water does not need to be diverted from July 1 through September 30, that they have adequate water storage or an alternative water supply. The applicant indicated that compliance with this regulation would be via a 9.5 acre “storage basin” in the northwest corner of the property.

The applicant was informed twice that due to being in a floodplain, the proposed storage basin would need a water structures permit. It was also determined that an after the fact channel change permit would also be needed. The applicant was notified of the necessity of both permits in a letter dated March 13, 2018, from Janelle Phillips, P.E., of the Water Structures Program. An application for the after the fact channel change permit was subsequently filed for and issued, but no application was filed for the storage basin.

A follow-up letter was sent on January 16, 2025, providing the applicant/landowner with a final opportunity to file the appropriate application with Water Structures or provide additional information that they wish to continue with the processing of Application, File No. 49,954. No application or correspondence was received by the Division of Water Resources by the provided deadline of February 17, 2025. Therefore, Application File No. 49,954 is recommended to be dismissed as incomplete.

Elizabeth K Fitch  
Environmental Scientist

Fitch, Elizabeth [KDA]

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**From:** Phillips, Janelle [KDA]  
**Sent:** Monday, February 24, 2025 8:03 AM  
**To:** Fitch, Elizabeth [KDA]  
**Subject:** RE: Status of LMP-0150 (Water Application, File No. 49954)  
**Attachments:** 2019-02-08 CMP-0133-L & LMP-0150-C Permit.pdf; 2019-02-08  
CMP-0133-L & LMP-0150-C Approved Plan.pdf

I apologize for the delay. I was out due to illness. The only permit is was issued in 2019 no additional permits have been issued.

Janelle Phillips, P.E.  
Water Structures Team Lead  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan KS 66502  
785-564-6656 - office  
785-307-8292 – cell  
Janelle.phillips@ks.gov

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**From:** Fitch, Elizabeth [KDA] <Elizabeth.Fitch@ks.gov>  
**Sent:** Wednesday, February 19, 2025 11:22 AM  
**To:** Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>  
**Subject:** RE: Status of LMP-0150 (Water Application, File No. 49954)

Morning, Janelle. I'm just wanting to verify that no permit has been filed in 2025 for the off-channel pond for this property (NE 6-20-2E, MP Co.)

Elizabeth K Fitch  
Division of Water Resources

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**From:** Phillips, Janelle [KDA] <[Janelle.Phillips@ks.gov](mailto:Janelle.Phillips@ks.gov)>  
**Sent:** Monday, November 4, 2024 11:28 AM  
**To:** Fitch, Elizabeth <[Elizabeth.Fitch@ks.gov](mailto:Elizabeth.Fitch@ks.gov)>  
**Subject:** RE: Status of LMP-0150 (Water Application, File No. 49954)

He decided not to build the off channel pond

Janelle Phillips, P.E.  
Water Structures Team Lead  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan KS 66502  
785-564-6656 - office  
785-307-8292 – cell  
[Janelle.phillips@ks.gov](mailto:Janelle.phillips@ks.gov)

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**From:** Fitch, Elizabeth <[Elizabeth.Fitch@ks.gov](mailto:Elizabeth.Fitch@ks.gov)>  
**Sent:** Monday, November 4, 2024 11:27 AM  
**To:** Phillips, Janelle [KDA] <[Janelle.Phillips@ks.gov](mailto:Janelle.Phillips@ks.gov)>  
**Subject:** RE: Status of LMP-0150 (Water Application, File No. 49954)

Thank you.

Elizabeth K Fitch  
Division of Water Resources

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**From:** Phillips, Janelle [KDA] <[Janelle.Phillips@ks.gov](mailto:Janelle.Phillips@ks.gov)>  
**Sent:** Monday, November 4, 2024 11:26 AM  
**To:** Fitch, Elizabeth <[Elizabeth.Fitch@ks.gov](mailto:Elizabeth.Fitch@ks.gov)>  
**Subject:** RE: Status of LMP-0150 (Water Application, File No. 49954)

Yes all approved on our end

Janelle Phillips, P.E.  
Water Structures Team Lead  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan KS 66502  
785-564-6656 - office  
785-307-8292 – cell  
[Janelle.phillips@ks.gov](mailto:Janelle.phillips@ks.gov)

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**From:** Fitch, Elizabeth <[Elizabeth.Fitch@ks.gov](mailto:Elizabeth.Fitch@ks.gov)>  
**Sent:** Monday, November 4, 2024 11:22 AM  
**To:** Phillips, Janelle [KDA] <[Janelle.Phillips@ks.gov](mailto:Janelle.Phillips@ks.gov)>  
**Subject:** Status of LMP-0150 (Water Application, File No. 49954)

Janelle,

I am going through old pending applications and found the last correspondence on file was from you in 2018 regarding the referenced structures permit. Did the applicant provide you with the required information?

Elizabeth K Fitch, Environmental Scientist  
Kansas Department of Agriculture  
Division of Water Resources  
Stafford Field Office  
(620) 234-5311 Main Office Line  
(620) 268-6033 Direct Line  
[elizabeth.fitch@ks.gov](mailto:elizabeth.fitch@ks.gov)  
[agriculture.ks.gov](http://agriculture.ks.gov)

# THE STATE OF KANSAS



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

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

## **FINDINGS AND ORDER IN THE MATTER OF THE DISMISSAL OF APPLICATION FILE NO. 49,954**

After due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

### **FINDINGS**

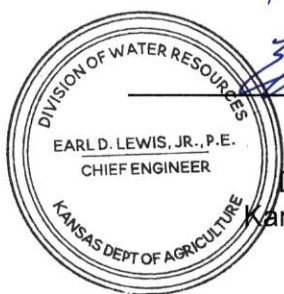
1. That on December 18, 2017, the Chief Engineer received an application from Chad Nightingale, for a permit to appropriate groundwater for beneficial use, assigned File No. 49,954, proposing the appropriation of 158 acre-feet of water, at a maximum requested diversion rate of 20,000 gallons per minute, for irrigation use, from a pumpsite located in the Northwest Quarter of the Southwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 6, Township 20 South, Range 2 East, McPherson County, Kansas.
2. That the Kansas Water Appropriation Act, in K.S.A. 82a-711, requires the Chief Engineer to consider whether a proposed use will prejudicially and unreasonably affect the public interest, and shall take into consideration established minimum desirable streamflow requirements, the area, safe yield, and recharge rate of the appropriate water supply, the priority of existing claims of all persons to use the water of the appropriate water supply, the amount of each claim to use water from the appropriate water supply, and all other matters pertaining to such question.
3. That the Kansas Water Appropriation Act, in K.S.A. 82a-710, states that if an application is found to be defective, inadequate or insufficient to determine the nature and amount of the proposed appropriation, the applicant must correct or complete the application by submitting additional information within thirty days, or such further time as may be approved by the Chief Engineer.
4. That K.A.R. 5-3-9 states that it shall be considered to be in the public interest that only the safe yield of any source of water supply, including hydraulically connected sources of water supply, shall be appropriated, and K.A.R. 5-3-15 sets forth the methodology for determining safe yield, requiring that the applicant must demonstrate that the direct diversion of streamflow from the proposed source would not be necessary during the period from July 1 through September 30, of each calendar year, because of lack of need, the availability of adequate water storage, alternative water supplies or other similar reasons.
5. That K.A.R. 5-1-1(vvv) defines "safe yield" as the long-term sustainable yield of the source of supply, including hydraulically connected surface water or groundwater.
6. That upon receipt and examination, the application was determined to be defective, inadequate or insufficient to determine the nature and amount of the proposed appropriation, since the application did not include complete documentation of the proposed water storage reservoir, as required by K.A.R. 5-3-15.

7. That on March 13, 2018, a letter was mailed to the applicant, requesting additional information regarding the proposed water storage reservoir, with a deadline of May 18, 2018, in which to do so.
8. That on January 16, 2025, a letter was mailed to the applicant, reiterating the additional information that must be submitted in order to complete the application, including a complete water structures application, giving the applicant until February 17, 2025, in which to provide the requested information, and that the application would be dismissed if it was not returned by the deadline, or within any authorized extension of time.
9. That the required information has not been submitted to the office of the Chief Engineer, with the deadlines provided, and no request of an extension of time was received on or before the latest deadline.
10. That where regulatory standards have not been met for an application, the burden shall be on the applicant to demonstrate to the satisfaction of the Chief Engineer, through submission an engineering or similar type of hydrologic analysis, that the application can be approved without impairing existing rights or prejudicially and unreasonably affecting the public interest.
11. That the application should be dismissed, and its priority forfeited, as provided by K.S.A. 82a-710, K.S.A. 82a-711 and K.A.R. 5-3-15.

### ORDER

NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that effective the date of this order, in accordance with the law, Application, File No. 49,954, is herewith dismissed and the priority assigned to it is considered to be forfeited.

It is so ordered this 27<sup>th</sup> day of February, 2025, 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 27<sup>th</sup> day of February, 2025, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



[Signature]  
 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

March 6, 2025

CHAD NIGHTINGALE  
1989 FRONTIER RD  
GALVA, KS 67443

Re: Dismissal of Application  
File No. 49,954

Dear Mr. Nightingale:

A letter was mailed to you on January 16, 2025, requesting additional information to complete the above referenced Application to Appropriate Water for Beneficial Use. Without the required information, the application fails to meet the safe yield requirements, contained in K.A.R. 5-3-15. Enclosed is a Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing Application, File No. 49,954, for failure to complete your application by providing the required information, prior to the deadline of February 17, 2025.

You may refile a new Application to Appropriate Water for Beneficial Use, with the required information, should you wish to proceed with the project proposed by the dismissed application.

If you have any questions, please contact our office. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

Kristen Baum  
New Application Unit Supervisor  
Water Appropriation Program

KAB:kak:ekf  
Enclosures  
pc: Stafford Field Office

**RIGHT TO PETITION FOR REVIEW  
UNDER THE KANSAS JUDICIAL REVIEW ACT**

This is a final agency action as defined in K.S.A. 77-607(b). You may pursue judicial review of this Order as provided in the Kansas Judicial Review Act, K.S.A. 77-601 et seq. A petition for judicial review must be filed in a Kansas court of competent jurisdiction within 30 days after service of this Order as provided in K.S.A. 77-613. The agency officer designated to receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture is the Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Dr. Manhattan, KS 66502.

**CERTIFICATE OF SERVICE**

On this 6<sup>th</sup> day of March, 2025, I hereby certify that the foregoing Dismissal of Application, File No. 49,954, dated February 27, 2025, was mailed postage prepaid, first class, US mail to the following:

CHAD NIGHTINGALE  
1989 FRONTIER RD  
GALVA KS 67443

With photocopies to:

KDA-DWR Stafford Field Office

  
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Division of Water Resources