

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: September 21, 2020

FROM: Leslie Ireland

RE: Vested Right, File No. DC 013
Water Right, File No. 1,469

Jerry L. & Marcia K. Lohofener on behalf of Box-4 Inc., as owners of the referenced water rights authorized for irrigation and recreational use have filed an application to change the use made of water under File No. 1,469, and the place of use for both files. The applications were received on March 20, 2020. File No. 1,469 currently authorizes two separate uses, irrigation and recreational use. It originally authorized only irrigation use prior to the March 15, 2006, change approvals to authorize both irrigation and recreational use.

The referenced water rights are considered in compliance with both K.S.A. 82a-718 and K.S.A. 82a-732. As required by K.S.A. 82a-1906, and that new acres are being added and existing removed, the nearby landowners were informed by letter dated September 10, 2020.

The portion of the referenced files authorized for **irrigation use** is comprised of two(2) wells located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, Township 2 South, Range 28 West, Decatur County, with a blanket quantity of 280 acre-feet (AF) and limited rate. Vested Right, File No. DC 013 developed 210 AF at 1,750 gallons per minute (gpm). Water Right, File No. 1,469 is authorized a limited 280 AF and 1,435 gpm, both for the irrigation of 140 acres in the North half of said section. The **recreational use** is indicated by the WRIS database to be a one (1) acre pond located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ with an annual quantity of 1 acre-foot at a limited 1,435 gallons per minute for filling and maintaining the pond. Water Right, File No. 1,469 is shown to be limited to the irrigation use of 280 acre-feet on 140 acres at a maximum rate of 1,435 gpm when combined with Vested Right, File No. DC 013 and either use. The referenced files have a combined limited total of 281 acre-feet authorized for both uses, with File No. 1,469 providing an additional 71 acre-feet, at the maximum rate of 1,435 gpm. The appropriations are located in the Republican River Sappa Creek area, North of Oberlin.

The owners indicate the pond will be eliminated and filled in resulting in no surface acres for evaporation. The one (1) AF needed for the filling and maintaining to be returned to irrigation use. It appears the application complies with K.A.R. 5-6-7, *Determination of average annual potential net evaporation loss*. The quantity authorized for irrigation use will be restored to 281 AF per year under File No. 1,469, providing an additional 71 acre-feet and the limitation modified to not exceed 281 acre-feet when combined with File No. DC 013.

The rates of diversion will remain unchanged except the reference to the recreational use limitation being removed.

As the total combined 281 AF and the rate will remain limited, so it appears the changes comply with K.A.R. 5-5-8, *Standards for approval of an application for a change in the place of use and he change in the use made of water*.

The 140 acres that comprise the place of use have been requested to be changed to authorize 150 acres. The requested change in place of use for the referenced files complies with, Part (b) of K.A.R. 5-5-11, *Applications for change in place of use for irrigation purposes*, as the proposal will not exceed the developed 141 base acres by more than ten(10) acres.

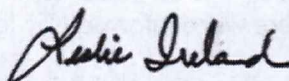
As these overlapping rights will remain as complete overlaps and not exceed the parameters of K.A.R 5-5-11, the changes comply with K.A.R. 5-5-3, *Change in consumptive use*.

The limited 281 AF will provide 1.83 AF of water per acre. This quantity appears to be reasonable per K.A.R. 5-5-12, *Net irrigation requirements*, 80% net irrigation requirement of 1.23' for Decatur County and K.A.R. 5-3-19, *Maximum reasonable annual quantity of water for irrigation use. Requirements*, of two(2) acre-feet per acre.

In an e-mail dated September 11, 2020, Kelly Stewart, Water Commissioner of the Stockton Field Office recommend approval of the applications.

Water flow meters will be required per as the changes do not meet part 1 of K.A.R. 5-5-11(e). If the rights will chemigate they will be required to install and maintain check valves. Water level measurement tubes are not applicable to these changes, as no new wells have been authorized.

Based on the above discussion it is recommended that the referenced applications be approved.



Leslie Ireland
Environmental Scientist

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting Chief Engineer

**APPROVAL OF APPLICATION
FOR
CHANGE IN USE MADE OF WATER
PLACE OF USE
AND
ORDER MODIFYING THE ADDITIONAL LIMITATION ON THE AUTHORIZED
QUANTITY AND DIVERSION RATE
WATER RIGHT, FILE NO. 1,469**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Jerry L. and Marcia K. Lohofener on behalf of Box-4, Inc., 110 East Oak Street, Oberlin, Kansas 67749-1920, received in this office on March 20, 2020, for approval of a change in the location of the place of use and the use made of water, 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 November 22, 1967 and May 18, 1979, approving the applications to change the points of diversion, the Order of the Chief Engineer dated March 15, 2006, approving the application to change the use made of water and place of use, and by the Correctional Order of the Chief Engineer dated August 7, 2006, to correct the description of the authorized place of use, finds that the change is reasonable and will not impair existing rights, 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 use made of water shall be irrigation use which shall be authorized a maximum quantity not to exceed 281.0 acre-feet (91.56 million gallons) of groundwater per calendar year at a rate of diversion not in excess of 1,435 gallons per minute (3.20 c.f.s.), for irrigation use on the following described property:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL		
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼			
31 2 S 28 W	15.0	38.0	37.0	7.0	8.0	Lot 1 10.0		29.0								6.0			150

a total of 150 acres in Section 31, Township 2 South, Range 28 West, Decatur County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the use made of water and place of use.

This order effectively modifies the additional limitation on the authorized quantity and diversion rate as set forth by the Approval of Application for Change in Use Made of Water and Place of Use dated March 15, 2006 as follows:

That the quantity of water and rate of diversion which combined with Vested Right, File No. DC 013 will provide a total not to exceed 281 acre-feet of water per calendar year at a maximum diversion rate not in excess of 1,435 gallons per minute (3.20 c.f.s.) from the authorized points of diversion.

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. 1,469, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated September 26, 1958, as modified and amended by the aforementioned orders.

Dated at Manhattan, Kansas, this 29 day of September, 2020.



Christopher W. Beightel
Christopher W. Beightel, P.E.
Acting 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 29 day of September, 2020, by Christopher W. Beightel, P.E., Acting Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman
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

BOX-4 INC
JERRY LOHOEFENER
110 E OAK ST
OBERLIN, KS 67749-1920

October 5, 2020

RE: Vested Right, File No. DC 013
Water Right, File No. 1,469

Dear Mr. Lohefener:

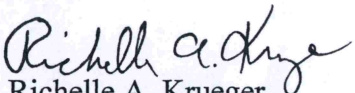
Enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the above referenced file numbers.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in these approvals for change. A condition of these approvals is that an acceptable water flow meter must be installed on the diversion works authorized under the referenced file numbers.

Since these orders modify the original documents referred to above, they should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions, please contact this office. If you call, please reference the file number so we can help you more efficiently.

Sincerely,


Richelle A. Krueger
Environmental Scientist
Water Appropriation Program

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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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 Section, 1320 Research Park Drive, Manhattan, KS 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 hearing 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, KS 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.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Fax: (785) 564 - 6777.

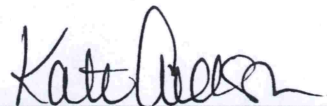
CERTIFICATE OF SERVICE

On this 5th day of October, 2020, I hereby certify that the foregoing Approval of Application for Change in Use Made of Water Place of Use and Order Modifying the Additional Limitation on the Authorized Quantity and Diversion Rate under Water Right, File No. 1,469, dated September 29, 2020 was mailed postage prepaid, first class, US mail to the following:

BOX-4, INC.
JERRY LOHOEFENER
110 E. OAK ST
OBERLIN, KS 67749-1920

With photocopies to:

Stockton Field Office



Division of Water Resources