

Kansas Department of Agriculture
 Division of Water Resources
CHANGE WORKSHEET: PU

1. File Number: 47297	2. Status Change Date: 3/2/2023	3. Change Num: C2	4. Field Office: 03	5. GMD: 04
6. Status: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return				7. Filing Date of Change: 6/27/2022
8a. Applicant(s) New to system <input type="checkbox"/> CLAYTON T MCCARTY PO BOX 968 COLBY, KS 67701-0968		Person ID 54403 Add Seq# _____		8c. Landowner(s) New to system <input type="checkbox"/> Person ID _____ Add Seq# _____
8b. Landowner(s) New to system <input type="checkbox"/> MCCARTY DAIRY LLC PO BOX 968 COLBY, KS 67701-0968		Person ID 54404 Add Seq# _____		8d. WUC New to system <input type="checkbox"/> CLAYTON T MCCARTY PO BOX 968 COLBY, KS 67701
9. Documents and Enclosure(s): <input checked="" type="checkbox"/> DWR Meter(s) Date to Comply: 12/31/23 <input type="checkbox"/> N & P Date to Comply: _____				
<input type="checkbox"/> Anti-Reverse Meter <input type="checkbox"/> Meter Seal <input type="checkbox"/> Check Valve <input type="checkbox"/> N & P Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input type="checkbox"/> H & E Letter <input type="checkbox"/> Conservation Plan Date Required: _____ Date Approved: _____ Date to Comply: _____				
10. Use Made of Water From: _____ To: _____				
Date Prepared: 2/14/2021 By: li Date Entered: 3/2/2023 By: LMoody				

File No. **47297** 11. County: **TH** Basin: **N F SOLOMON RIVER** Stream: **NA** Formation Code: **NA** Special Use: **NA**

12. Points of Diversion										Rate and Quantity								
CHK	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Rate gpm	Quantity MG	Rate gpm	Quantity MG	Overlap PD Files	
CHK					64553	LT 3 NW SW	18	7	31W	3	1315	4743	PRIMARY STK	235	81.463	10	22.813	19489 STK PRIMARY
CHK					79958	LT 3 NW SW	18	7	31W	4	1396	4770	STANDBY STK					19489 STK STANDBY

13. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

14. Limitation: ____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) **81.463 MGY @ 235 GPM COM/W #19489 (STK)**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

15. 5YR Allocation: Allocation Type _____ Start Year _____ 5 YR Amount _____ Amount Unit _____ Base Acres _____ Comment _____

16. Place of Use										NE¼								NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files								
CHK	MOD	DEL	ENT	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																
MOD					53159	18	7	31W	3	DAIRY NE, (E2NW), (E2SW), L-1 (NWNW), L-2 (SWNW), L-3 (NWSW) & L-4 (SWSW)																												8b	NO	***	

Year: _____ Minimum Reasonable Quantity: _____ Comments: _____

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: February 17, 2023

FROM: Leslie Ireland

RE: Water Right, File Nos. 19,489; 19,546 & 47,297

Ken McCarty on behalf of McCarty Family Farms LLC , has filed applications for approval to change the place of use under all of the referenced file and the use made of water and place of use under File No. 19,546 to authorize dual use as irrigation and stockwatering.

The water rights do not appear to be abandoned as per K.S.A. 82a-718, and in compliance per K.S.A. 82a-732. It appears there are no wells within one-half mile of File No. 19,546. No notice per KSA 82a-1906 will be needed. The updated applications appear to comply with K.A.R. 5-5-2a, *Complete change application*.

The rights are located in Thomas County and the North Fork of the Solomon River Basin and the LEMA designated area of Northwest Kansas Groundwater Management District No. 4 (GMD4). The authorized and proposed places of use are contiguous.

The changes are due to the expansion of the dairy into the Northeast of the Section 18, Township 7 South, Range 31 West, Thomas County, Kansas.

The place of use for stockwater use is currently authorized under File Nos. 19,489 & 47,297, is defined as:

a dairy located in the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$); the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$); Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$); Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$); Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) and Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) all in Section 18, Township 7 South, Range 31 West, Thomas County, Kansas.

It appears this place of use as listed on historical orders did not match the compliance investigation or certification maps but will be updated to accurately match that listed and will be expanded to include the Northeast Quarter (NE $\frac{1}{4}$) of Section 18.

The irrigated acres will remain as authorized under File Nos. 19,489 & 19,546. with each file authorizing its own independent acres.

The use made of water change under File No. 19,546, will be processed per K.A.R. 5-5-9, *Criteria for the approval of an application for a change in the use made of water from irrigation to any other type of beneficial use of water*. Each file authorizes one well that is proposed to be operated as dual use. The consumptive use factor for Thomas County is 87.5% and will be applied to the quantity authorized for irrigation use. The proposed dual use is only for File No. 19,546. It currently authorizes 320 acre-feet (AF) to irrigate 154 acres from one well. The proposed change in use made of water will afford 280 AF (91.24 mgy) as dual irrigation and stockwater use.

$$320 \text{ AF} \times 87.5\% \text{ CU} = 280 \text{ AF} (91.24 \text{ mgy})$$

If only operated for irrigation use the reduced quantity will provide an irrigation ratio of 1.81AF per acre will remain which is greater than the 80% chance of 1.28 AF per K.A.R. 5-5-12, *Net irrigation requirements, NIR* on the 154 authorized irrigated acres.

A review of the currently authorized stockwater quantity under File Nos. 19,489 & 47,297 found a total of 81.463 million gallons, (250 AF). The quantity provided by File No. 19,546 if all used for stock use would total 172.701 million gallons (530 AF) per year. The February 2023 submitted supplemental stockwatering summary indicated their present head count would more than double to a projected 10,800 head under the proposed expansion. It appears they would be considered a confined facility and as detailed in KAR 5-3-22, *Maximum reasonable quantity of water for livestock and poultry*, the dairy would be afforded a maximum reasonable quantity of 532.17 million gallons (1,633 AF) per year at 135 gallons per head per day. The stockwater quantity authorized as dual use will not have an additional limitation based on the projected expansion.

In an email dated February 14, 2023, Shannon Kenyon, Manager, of the Northwest Kansas Groundwater Management District No. 4, recommended approval. Her formal letter of recommendation to approve was received on February 17, 2023.

In an e-mail dated February 16, 2023, Kelly Stewart, Water Commissioner, Stockton Field Office, indicated that he recommended approval of the applications.

Water flowmeters will be required by the change approvals with the well authorized for dual use to have a designated meter for stockwater and irrigation use. As effluent might be utilized, check valves will be a condition of the approvals.

Based on the above discussion, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, complies with K.A.R. 5-5-9, the changes should not increase the historical consumptive use per KAR 5-5-3, *Change in consumptive use*. The referenced applications have been recommended to be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

From: Stewart, Kelly [KDA]
Sent: Thursday, February 16, 2023 3:07 PM
To: Ireland, Leslie [KDA]
Cc: Billinger, Mark [KDA]; Hageman, Nancy [KDA]
Subject: RE: Review and Recommendation Change PU UMW File No.19546 & PU chgs 19489 & 47297 McCarty

Leslie,

I recommend approval of these applications.

Kelly

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Thursday, February 16, 2023 2:08 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: Review and Recommendation Change PU UMW File No.19546 & PU chgs 19489 & 47297 McCarty

Kelly,

Please let me know if you'd recommend this change UMW and then the PU chgs... I sent it to the GMD see attached email from Shannon...guess it is good enough??

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 PLACE OF USE WATER RIGHT FILE NO. 47,297

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Ken McCarty on behalf of McCarty Dairy LLC, PO Box 968, Colby, Kansas 67701-0968, received in this office on June 27, 2022, for approval of a change in the location of the place of use under the certificate of application, issued pursuant to the permit to appropriate water for beneficial 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 location of the place of use shall be:

a dairy located in the Northeast Quarter (NE $\frac{1}{4}$); the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$); the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$); Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$); Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$); Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) and Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) all in Section 18, Township 7 South, Range 31 West, Thomas County, Kansas,

located substantially as shown on the map accompanying the application to change the place of use.

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.

The water right owner shall properly install an acceptable water meter on each of 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.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 47,297, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated August 20, 2018.

Ordered this 2 day of March, 2023, 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)
)
County of Riley) SS

The foregoing instrument was acknowledged before me this 2 day of March, 2023, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Katie N. Anderson
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 3, 2023

MCCARTY DAIRY LLC
PO BOX 968
COLBY, KS 67701-0968

RE: Water Right, File Nos. 19,489; 19,546 & 47,297

Dear Sirs:

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

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in these approvals for change. A condition of the approval under File No. 19,546 that will authorized the well to operate under dual use, is that acceptable water flowmeters must be installed on the diversion works authorized **so both irrigation and stockwatering uses can be metered independent of each other, prior to the diversion of water per said uses.** Please return the required notification of installation of the required meters as soon as these actions are completed. The form *Notification of Completion of the Diversion Works and/or Installation of the Required Flowmeter*, may be found online at www.agriculture.ks.gov, Water Appropriation Forms.

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.

Please contact the Stockton Field Office at (785) 425-6787, with any questions regarding the meter installations. If you have any questions, please contact this office at (785) 564-6640. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Application and Change Unit Supervisor
Water Appropriation Program

KAB:LI:

pc: Stockton Field Office
Groundwater Management District No. 4

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 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, 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 3 day of March, 2023, I hereby certify that the foregoing Approval of Application for Change, under File Nos. 19,489; 19,546 & 47,297 dated, March 2, 2023, were mailed postage prepaid, first class, US mail to the following:

MCCARTY DAIRY LLC
PO BOX 968
COLBY, KS 67701-0968

With photocopies to:

Stockton Field Office



Staff