

File No. 49991	13. County: SA Basin: 17 - SMOKY HILL RIVER Stream: 17 - SMOKY HILL RIVER (SMOKY HILL RIVER)		
Structures File No:	Aquifer Code:	Special Use Area: SMOKY HILL ACCESS DISTRICT 038	

14. Points of Diversion, Rates & Quantities										Qty AF		Rate gpm		Storage Qty		Storage Rate	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)		Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps
DEL	86605	NW NE SE	7	15	2W	16	5156	702		130	130	1200	1200				#
ENT	90851	NW NW NW	17	15	2W		4994	4889		130	130	1200	1200				#

15. Limitations Type: Quantity: **AF** Rate: **gpm** combined with file no(s):
Type: **Other** Quantity: Rate: combined with file no(s):

16. Metering Metering Required Anti-Reverse Required Seal Required Compliance Date: 12/31/2024

17. Place of Use						NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
PDIV	S	T	R	ID		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
DEL	68752	7	15	2W	9			9.0						22.40			11.9	17.0	40.0	9.10	14.60	124	5a	<input type="checkbox"/>	*
ENT	71704	17	15	2W						20.0	34.0	39.0	32.0		5.0							130	5a	<input type="checkbox"/>	**
																								<input type="checkbox"/>	***
																								<input type="checkbox"/>	^
																								<input type="checkbox"/>	^^

18. Point of Diversion and Place of Use Overlaps + ++ # NONE ^	* NONE ** NONE *** ^^
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KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

MEMORANDUM

TO: Files

DATE: March 29, 2024

FROM: Leslie Ireland

RE: Appropriation of Water
File Nos. 44,856 & 49,991

Tod Roberg on behalf of TR Investments, Inc., owner of File No. 44,856, and Gary Harbin on behalf of the Harbin Farm Enterprises LLC, owner of File No. 49,991, have filed applications for approval to change the above referenced files' authorized points of diversion and places of use. The move is to afford the operation of the industrial use in an area with better sand and gravels and move the irrigation place of use to where the sand pit is currently authorized. This also requires the moving of the point of diversion authorized for the industrial use. The pumpsite for the irrigation use has been requested to be moved downstream closer to the irrigated acres. In addition to the change for the industrial use an application to operate File No. 44,856 as a Project Permit was submitted with the filing fee. The files are located in the Smoky Hill River Basin, Saline County, just to the Southeast of Salina. They are also indicated as being in the Smoky Hill Access District.

The referenced files do not appear abandoned pursuant to K.S.A. 82a-718. The ownership of the place of use is indicated by the ORKA database to have been updated and matches that as proposed on the applications. Notice per K.S.A. 82-1906 was completed on March 8, 2024 by letters to nearby well/property owners. No comments have been received.

File No. 44,856 is authorized 84.395 million gallons (259 acre-feet) at the rate of natural evaporative from the surface of a groundwater pit for industrial use as sand and gravel with a projected exposed surface area size of 148 surface acres as afforded by the quantity authorized per K.A.R. 5-6-3, *Potential net evaporation* ((259 AF x 12 inches) ÷ 21 inch area evaporation = 148 acres). The pit is located in the West Half (W $\frac{1}{2}$) of Section 17 with a geographical center authorized as near the center of the South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$) approximately 3,300 feet North and 3,960 feet West of the Southeast corner of Section 17, in Township 15 South, Range 2 West, Saline County, Kansas. It has no overlaps in point of diversion or place of use. The change in place of use will propose the industrial use operation to be in the South Half (W $\frac{1}{2}$) of Section 7. The proposed place of use will move the geographical center of the pit approximately 5,097 feet to the Northwest. It will be described as being near the center of the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) approximately 1,864 feet North and 1,991 feet West of the Southeast corner of Section 7, in Township 15 South, Range 2 West, Saline County, Kansas. A review of the area would indicate the change will not alter the local source of supply and allowances afforded by K.A.R. 5-13-7, *Offsets for evaporation of groundwater*. It would appear the proposed change complies with K.A.R. 5-13-5, *Approval of pit operation that are open or expanded after the effective date of this regulation*.

The owner has submitted and been approved to extend the time to complete/perfect the sand and gravel operation to December 31, 2043. Also the application to operate under a Project Permit as afforded by K.S.A. 82a-734. This permitting will continue to authorize net evaporation as the primary use, and hydraulic dredging and sand washing as secondary uses of water. It would require the secondary uses to be located within the same source of supply and associated with the operation. This will afford a dredge and aggerate washing to operate as secondary uses within the authorized place of use. Any secondary uses must use water in a manner in which there is no significant net consumptive use. It would appear the allowed extensions for completion and perfection may be the first of the two ten year extensions and are within the eighty year allowance. The Project Permit will be issued as a separate Order of the Chief Engineer.

There are two wells located with approximately 3,200 feet of the proposed geographic center. These wells are authorized for irrigation use. There is one groundwater pit now authorized as recreational use. It would appear the proposed new geographical center would meet part (b) of K.A.R. 5- 4-4, *Well spacing* and would not result in impairment as historically natural evaporation of groundwater pits does not result in any drawdown effect at nearby wells.

The change approval would appear to supply the information as required by K.A.R. 5-13-1, *Notice of Intent to open or expand a sand and gravel pit operation*.

File No. 49,991 authorizes the irrigation of 124 acres with 130 acre-feet (AF) at a maximum rate of 1,200 gallons per minute from a pumpsite on the Smokey Hill River. The change in place of use proposes to move the irrigated acres from Section 7 to the acres that have been authorized by File No. 44,856, located to the Southeast. The proposal will increase the total acres to 130 acres located mainly in the Northwest Quarter (NW $\frac{1}{4}$) with five acres in the Northwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 17, Township 15 South, Range 2 West, Saline County. The base acres would be the authorized 124 acres and the proposed increase by 6 acres will comply with part (b) of K.A.R. 5-5-11 *Applications for change in place of use for irrigation purposes*.

Since this irrigation file is still in the perfection period, it does not appear that consumptive use will increase pursuant to K.A.R. 5-5-3 *Change in consumptive use*.

The proposed change in point of diversion will also move from Section 7 South to Section 17. The pumpsite will move from the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$), approximately 2,156 feet North and 4,620 feet West of the Southeast Corner of Section 7 to the Northwest Quarter of the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 17, approximately 4,994 feet North and 4,889 feet West of the Southeast corner of Section 17, Township 15 South, Range 2 West, Saline County, Kansas. The move is approximately 2,675 feet downstream. There appear to be no contributing streams or inlets between the authorized and proposed points. The pumpsite will remain on the same side of the Smoky Hill River and about the same distance from a neighboring sand plant authorized by File No. 47,574. It appears both pumpsites would be considered to be in the same local source of supply.

The notification was completed to nearby well owners for the proposed geographic center of the groundwater pit and owners located upstream and downstream for the pumpsite change. Letters detailing the changes were sent on March 11, 2024. No comments of any kind have been received. It appears the requirement of K.S.A. 82a-1906 notification has been completed.

Kelly Stewart, Water Commissioner of the Stockton City Field Office was contacted for a recommendation on the proposed changes. In his email dated March 29, 2024, he recommended approval.

A water flowmeter will be required on the pumpsite point of diversion and a check valve will also be required if chemigating under File No. 49,991. It will have a standard notice of completion of December 31, 2024. The transmittal letter will remind this irrigation file that the Completion FIS fee currently \$400.00 is still required. There will not be a meter requirement for the sand pit under File No. 44,856. The Project Permit will afford the pit to operate as detailed in K.S.A. 82a-734 and the transmittal letter will remind the owner to be mindful of the Smoky Hill River and if any encroachment into the river would require a permit from DWR Structures Division.

Based on the above discussion, that the changes are reasonable, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, it is recommended that the referenced applications for change be approved. The proposed Project Permit would allow the sand and gravel operation to proceed as detailed in the permit.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

From: Stewart, Kelly [KDA]
Sent: Friday, March 29, 2024 8:49 AM
To: Ireland, Leslie [KDA]; Billinger, Mark [KDA]
Cc: Hageman, Nancy [KDA]
Subject: RE: Review and Recommendation Change PD PU File Nos. 44856 & 49991 TR_ Harbin

Leslie,

I recommend approval of both change applications.

Kelly

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Wednesday, March 27, 2024 4:07 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: Review and Recommendation Change PD PU File Nos. 44856 & 49991 TR_ Harbin

Kelly,

I've summarize the projects,, but don't feel 100 % about the FIS \$400 fee requirement for each file... it appears it is needed for both of them, but if you could please confirm as such it would appreciated as the common practice is to add that to the change transmittal letters if needed.

I've attached the amt stats reports as I am unable to get them clipped in Dware due to VPN issues.. so the work around is to have our folks do that .. but not sure when it will happen so sending for you.

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
AND
POINT OF DIVERSION
APPROPRIATION OF WATER, FILE NO. 49,991**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Gary Harbin on behalf of Harbin Farm Enterprises LLC, 523 South Santa Fe Avenue, Salina, Kansas 67401-4145, received in the office of the Chief Engineer on July 14, 2023, for approval of a change in the location of the place of use and point of diversion under Approval of Application and Permit to Proceed issued pursuant to the Appropriation of Water, File No. 49,991, 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:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
17 - 15S - 2W					20	34	39	32		5							130

a total of 130 acres in Section 17, in Township 15 South, Range 2 West, Saline County, Kansas,

that the authorized point of diversion shall be:

one (1) pumpsite located in the Northwest Quarter of the Northwest Quarter of the Northwest Quarter (NW¼ NW¼ NW¼) of Section 17, more particularly described as being near a point 4,994 feet North and 4,889 feet West of the Southeast corner of said section, in Township 15 South, Range 2 West, Saline County, Kansas,

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

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 water right owner 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.

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 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 Approval of Appropriation, File No. 49,991, for permit to appropriate water for beneficial use, is as stated and set forth in the approval dated October 29, 2020.

Ordered this 9 day of April, 2024, at Manhattan, Riley County, Kansas.

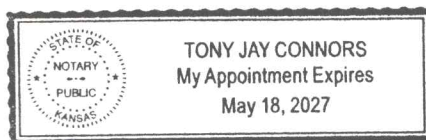
Lane P. Letourneau

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

Tony Jay Connors
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

April 25, 2024

GARY HARBIN
HARBIN FARM ENTERPRISES LLC
523 S SANTA FE AVE
SALINA KS 67401-4145

RE: Appropriation of Water
File No. 49,991

Dear Mr. Harbin:

Enclosed is the order executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the application for change under 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 an acceptable water flowmeter must be installed on the diversion works authorized. Please return the required Notification of the Completion of the Diversion Works, and the \$400.00 Field Inspection Fee upon completion of the proposed change.

If for any reason, you require an extension of time, you must request it before the expiration of time. Failure to comply with this regulation will result in the dismissal of your permit or your water right. Any request for an extension of time shall be accompanied by the required statutory fee, which is currently \$100.00.

Failure to notify the Chief Engineer of the Division of Water Resources of the completion of the diversion works within the time allowed, or within any authorized extension of time thereof, will result in the dismissal of the referenced appropriation. All forms and related information may be found at our web site agriculture.ks.gov/dwr.

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.

If you have any questions, please contact our office at 785-564-6640, or our staff at the Stockton Field Office at 785-425-6787. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

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

KAB:kak:li
Enclosure
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: 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 25 day April, 2024, I hereby certify that the attached Approval of Application for Change in Place of Use and Point of Diversion under Appropriation of Water, File No. 49,991 dated, April 9, 2024, was mailed postage prepaid, first class, US mail to the following:

HARBIN FARM ENTERPRISES LLC
523 S SANTA FE AVE
SALINA KS 67401-4145

With photocopies to:

KDA-DWR Stockton Field Office



Division of Water Resources