

File No. **44856** 13. County: **SA** Basin: **SMOKY HILL RIVER** Stream:
 Structures File No: Aquifer Code: **113** Special Use Area: **NA**

14. Points of Diversion, Rates & Quantities										Qty mgd		Rate cfs		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	66705 NC S2 NW	17	15	2W	1	3300	3960	GEO CTR		84.395		NE	NE				+
ENT	90845 NC NW SW	7	15	2W		1864	1991	PIT PROJECT GEO CTR		84.395		NE	NE				++
																	#

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	54569 17 - 15S - 2W 1																		5A	<input type="checkbox"/>	^
ENT	71703 7 - 15S - 2W	PROJECT PERMIT - GW PIT (S½ N½) and (S½) 148 AC																	5a	<input type="checkbox"/>	^

18. Point of Diversion and Place of Use Overlaps

+ NONE	*
++ NONE	**
#	***
^ NONE	^^

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 aggregate 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. 44,856**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Tod Roberg on behalf of TR Investments Incorporated, 1334A North Ohio Street, Salina, Kansas 67401-2405, received in this office 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. 44,856, 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 point of diversion shall be:

a groundwater pit with a geographical center near the center of the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 7, more particularly described as being near a point 1,864 feet North and 1,991 feet West of the Southeast corner of said section, in Township 15 South, Range 2 West, Saline County, Kansas,

and the authorized place of use shall be described as:

a sand and gravel pit not to exceed 148 surface acres of groundwater exposure in the South Half of the North Half (S $\frac{1}{2}$ N $\frac{1}{2}$), and the South Half (S $\frac{1}{2}$) of Section 7, in Township 15 South, Range 2 West, Saline County, Kansas,

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

That the groundwater pit shall be constructed, maintained, and operated in a manner that will prevent degradation to the water quality of the source of supply, which could cause impairment to existing water rights.

In all other respects, the Approval of Appropriation, File No. 44,856, for permit to appropriate water for beneficial use, is as stated and set forth in the approval dated September 18, 2003.

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

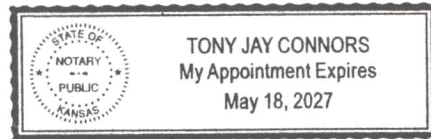
Lane P. Letourneau

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 Connors
Notary Public



Submit To:
CHIEF ENGINEER
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
www.agriculture.ks.gov

PROJECT PERMIT FOR EXISTING SAND AND GRAVEL OPERATIONS

WATER RESOURCES RECEIVED

JUL 14 2023

1244



KS DEPT OF AGRICULTURE State of Kansas

STATUTORY FILING FEE MUST ACCOMPANY THIS APPLICATION
(Make check payable to the Kansas Department of Agriculture)

The purpose of this application is to implement Senate Bill No. 148 relating to project permits for sand and gravel operations. This application is for **existing sand and gravel pits only, and only** if the sand and gravel pit is in a township where the average annual potential net evaporation is greater than 18 inches per year, as determined by the chief engineer. This will serve to **convert** your existing industrial use permit authorizing net evaporation to a project permit. This permit shall authorize net evaporation as the primary use, and hydraulic dredging and sand washing as secondary uses of water if such secondary uses are located within the same source of supply and are associated with the operation. Any secondary uses shall use water in a manner in which there is no significant net consumptive use. The permit shall not be subject to the installation of a water flow meter or administration of minimum desirable stream flow. Any application for a project permit shall be accompanied by a filing fee of **\$500.00**.

Current File Number: 44,856

- Name of Applicant (Please Print): TR INVESTMENTS INC
Address: 1334 N OHIO ST A
City: SALINA State KS Zip Code 67401-2405
Telephone Number: () _____ E-mail address: _____
- Location of Point of Diversion (Geographic Center of Groundwater Pit):
Section 7, Township 15S, Range 02, West, SALINE County, Kansas.
Distance from Southeast Corner of Section:
1864 feet North,
1991 feet West of the Southeast Corner.
- Outline on an aerial photograph or topographical map the current and FINAL outline of the sand and gravel pit, and indicate the proposed final size of the pit in acres. 148 acres.

As noted above, hydraulic dredging and sand washing are considered secondary uses of water at this site, and will be permitted under this project permit. Separate permits for these specific uses are no longer required, and any current term permits for these uses shall be dismissed in conjunction with approval of this project permit. Therefore, this application for project permit will serve as your voluntary request to dismiss **Term Permit, File Nos.:** _____

You must inform the Chief Engineer prior to modifying any current secondary uses, or commence new secondary uses under the authority of this project permit. Any request for modification of this project permit shall be accompanied by a fee of \$250, and must include sufficient information to adequately determine the extent of your modification.

The undersigned states that the information set forth above is true to the best of his/her knowledge, that this application is submitted in good faith, and acknowledges the voluntary dismissal of current secondary use term permits.

Dated at Salina, Kansas, this 14th day of July, 2023.
[Signature] Pres. Tod Roberg Pres.
(Signature of Applicant or Authorized Representative) (Please Print)

for Office Use Only:			
Code	3 GMD	Use	RMP
Source	G/S	County	SA
Fee	\$ 500	Receipt Date	7/14/23
TR #		Check #	2331
By	ALB	Date	7/17/23

PROJECT PERMIT APPROVED

File No. 44,856

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

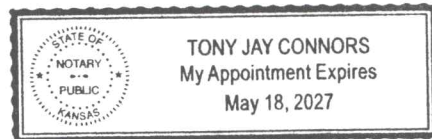
Lane P. Letourneau

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 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

TOD ROBERG
TR INVESTMENTS INC
1334 N OHIO ST A
SALINA KS 67401

RE: Approval of Application for Change and Project Permit

Appropriation of Water
File No. 44,856

Dear Mr. Roberg:

Your Approval of Application for Change and Project Permit for Existing Sand and Gravel Operations have been approved and are being returned herewith for your records.

The approvals serve to change the authorized place of use and point of diversion and to convert your existing industrial use permit authorizing net evaporation to a Project Permit. This Permit shall authorize net evaporation as the primary use, and hydraulic dredging and sand washing as secondary uses of water. Such secondary uses must be located within the same source of supply and associated with the operation and shall use water in a manner in which there is no significant increase in net consumptive use.

The approval of your application does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

The Project Permit is subject to the condition that the area adjacent to the pit shall be graded or bermed so as to exclude overland flow of surface water from entering the pit. Applicable structures permits/approvals must be obtained from the Structures Program of the Division of Water Resources if the land surface within the floodplain of the Smoky Hill River is raised more than an average of one foot above the existing land surface in the process of excluding overland flow of surface water from entering the pit and/or if any aggregate material is stored within the floodplain. It is also advisable to construct the pit in a manner which will not cause the river to breach into the pit. If this happens, a Water Structures permit will be required for the breach as a channel change.

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 kswaterusereport.org.

TOD ROBERG
File No. 44,856
Page 2 of 2

If you have any questions regarding the enclosed document, please contact our office at 785-564-6640. Inquiries about the metering should be directed to our staff at the Stockton Field Office, 785-425-6787. If you contact us to discuss a specific file, please have the file number ready so that we may 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

KAB:kak:li
Enclosures
pc: Stockton 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 25 day of April, 2024, I hereby certify that the attached Project Permit for Existing Sand and Gravel Operations, File No. 44,856, was mailed postage prepaid, first class, US mail to the following:

TR INVESTMENTS INC
TOD ROBERG
1334 N OHIO ST A
SALINA, KS 67401

With photocopies to:

Stockton Field Office



Division of Water Resources