

**KANSAS DEPARTMENT OF AGRICULTURE  
Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** June 6, 2016

**FROM:** Lloyd Hemphill

**RE:** Application,  
File Nos. 49,373 & 49,374;  
Water Right, File No. 3,376

Peggy Whitworth filed the referenced applications to appropriate groundwater from two wells to irrigate 288 acres in Dickinson County, within the Smoky Hill River drainage basin. During application review, the land associated with these applications (place of use & points of diversion) was purchased by Ryan K & Sarah R Stirtz and the application will be filed under the name of Stirtz Farms, c/o Ryan Stirtz. The Topeka Field Office was notified of the sale of the property by a "Settlement Statement" document received on June 22, 2015. The proposed place of use is a partial overlap of land previously authorized by Water Right, File No. 3,376. A "Voluntary Dismissal of an Application for Permit to Appropriate Water" form for File No. 3,376 was received that will eliminate this partial overlap. No other permits or water rights will overlap this place of use.

The two proposed points of diversion are wells located as follows:

File No.	Quarter Section	Section	Township	Range
49,373	LOT 6	24	13S	2E
49,374	NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$	25	13S	2E

The proposed place of use includes 288 acres and the maximum reasonable quantity for irrigation of this acreage in Dickinson County is 345.6 acre-feet (288 ac. X 1.2 AF/ac = 345.6 AF, per K.A.R. 5-3-24). In this particular area, however, the available quantity of ground water is **limited by safe yield** as described below.

No test hole logs were submitted with these applications, but based on the location of the proposed wells in reference to the Smoky Hill River, geologic and topographic maps, and a geophysical survey (discussed below) it can be reasonably assumed that the source will be Smoky Hill River alluvium (113). The subsurface lithology shown on a WWC-5 record for the nearest well (IRR: File No. 39,251) consists of clay to a depth of 27 feet, underlain by sand and gravel to 40 feet. Limestone bedrock was encountered at the total well depth of 40 feet. Static water level was recorded at 18 feet, above the top of the sand and gravel. Because of the relatively shallow nature of the aquifer and in the absence of any other information, it is reasonable to evaluate safe yield using the procedures outlined in K.A.R. 5-3-11 for unconfined aquifers. This is consistent with the evaluation of other applications in the area.

**Safe Yield File No. 49,373:**

For File No. 49,373, the safe yield area of consideration, defined by the extent of the alluvial aquifer within a two mile radius, is 5,215 acres. Based on a potential recharge of 2.98 inches, with 100% available for appropriation, safe yield was determined to be 1,295 acre-feet. Existing water rights have appropriated 966.2 acre-feet, within the area of consideration, providing a difference of 328.86 acre-feet available for appropriation. Thus, the requested quantity for this file must be reduced to 328.86 AF in order to meet safe yield criteria. Note that a lower available safe yield quantity was used in some correspondences with the applicant but the quantity stated above was obtained after the applicant requested that the location of the point of diversion location be modified following a geophysical survey (described below) and safe yield was re-analyzed.

**Safe Yield File No. 49,374:**

For File No. 49,374, the safe yield area of consideration, defined by the extent of the alluvial aquifer within a two mile radius, is 5,138 acres. Based on a potential recharge of 2.99 inches, with 100% available for appropriation, safe yield was determined to be 1,280.22 acre-feet. Existing water rights (Including File No. 49,373) have appropriated 1,364.06 acre-feet, within the area of consideration, indicating that there is no remaining water available for appropriation.

The applicant was advised in an August 27, 2015 phone call and followed up with a September 1, 2015 letter that this application would not meet safe yield criteria as proposed. I discussed with the applicant the option of dismissing either one of the pending applications or dividing the available safe yield quantity between the two applications. The applicant requested additional time to determine which of the two well locations would be optimal. The applicant was provided 60 days, until November 1, 2015 to either submit additional information or request additional time. The applicant made subsequent requests for additional time and the applicant was provided until March 30, 2016 to provide information. The applicant hired Hydro Resources from Tulsa, Oklahoma to conduct a geophysical survey to evaluate the aquifer potential at each of the proposed well sites. This survey determined that the best well location would be at a location near the original point of diversion proposed by Application, File No. 49,373. The resistivity imaging study determined that the shallow subsurface at the identified well location consists of porous material, likely sand and gravel to depths of 60 to 70 feet. The sand and gravel is underlain by less porous material, likely shale and limestone bedrock.

After determining that the most favorable well location is at the point of diversion proposed by File No. 49,373, the applicant submitted a signed "Voluntary Dismissal of an Application for Permit to Appropriate Water" to dismiss Application, File No. 49,374.

Based on the discussion above, the requested quantity for File No. 49,373 will be reduced to **328.86 acre-feet**. The requested rate of diversion is **1,000 gallons per minute** which appears reasonable for the project.

As mentioned above, a "Voluntary Dismissal of an Application for Permit to Appropriate Water" form for File No. 3,376 was received that will eliminate the partial place of use overlap with File No. 49,373. File No. 3,376 authorizes the diversion of surface water from the Smoky Hill River. No water use has been reported under this file since 1986 and Stirtz Farms does not intend to utilize this right in the future. The authorized place of use for File No. 3,376 includes 243 acres. A review of Dickinson County property records indicated that approximately 10 acres of the authorized place of use for File No. 3,376 is currently owned by Gregory C Huston (not reflected in WRIS). This tract of land (and land owner) is not part of the proposed place of use for File No. 49,373. The voluntary dismissal for File No. 3,376 was signed by all owners of the place of use. Therefore, Application, File No. 3,376 should be dismissed as requested by the owners.

The applicant identified two irrigation wells within one-half mile of the proposed points of diversion. Notification letters were sent to the nearby well owners on July 2, 2015. Randy Leckron (tenant) called on the behalf of Jen-Da Management on July 8, 2015 with general questions. No other response was received.

The closest non-domestic well to File No. 49,373 is located approximately 2,888 feet away and on the opposite side of the river. There are no domestic wells located within one half mile of the proposed well. Therefore, the proposed wells meet minimum well spacing requirements, per K.A.R. 5-4-4 and the proposed diversion is not expected to impact existing water rights.

Stirtz Farms  
File No. 49,373; 49374; & 3,376  
Page 3 of 3

The applicant has submitted signed Minimum Desirable Streamflow forms for each application, which have been properly notarized. The proposed diversion is located well downstream of the nearest MDS gaging station on the Smoky Hill River and administration of this water right is not expected during periods of low streamflow.

In accordance with K.S.A. 82a-706c, the Chief Engineer retains full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R. 5-1-12. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

Katie Tietsort, Water Commissioner, Topeka Field Office, recommended approval of the referenced application in a June 3, 2016 e-mail. Based on the above discussion, the area is open to new appropriations, the application meets safe yield and well spacing criteria, and the approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that Application, File No. 49,373 be approved in conjunction with the dismissal of File Nos. 3,376 and 49,374.

Lloyd Hemphill  
Environmental Scientist  
Topeka Field Office

1320 Research Park Drive  
Manhattan, Kansas 66502  
(785) 564-6700



900 SW Jackson, Room 456  
Topeka, Kansas 66612  
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

July 1, 2016

STIRTZ FARMS  
1400 2200 AVE  
ENTERPRISE KS 67441

RE: Dismissal of Water Right, File No. 3,376

Dear Sir or Madam:

Reference is made to Water Right File No. 3,376, authorizing water to be diverted for irrigation use.

In the "Voluntary Waiver of Hearing & Dismissal of Water Right" received on May 20, 2016, the Chief Engineer was advised that this water right is no longer needed and a dismissal of the file was requested.

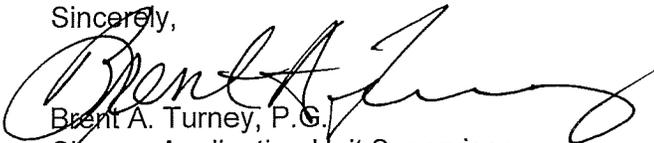
According to State Law (K.S.A. 82a-718), a hearing must be held before any water right is declared abandoned. The voluntary dismissal described is considered a waiver of any such hearing. Therefore, the water right is dismissed as of the date of the enclosed order.

This order should be recorded with the Register of Deeds Office in the county wherein the point of diversion was located.

This Order is a final agency action. If you choose to appeal this decision of any finding or part thereof, you must do so by filing a petition for review in the manner described in the enclosed Order.

Thank you for your cooperation in this matter. 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,



Brent A. Turney, P. G.  
Change Application Unit Supervisor  
Water Appropriation Program

BAT:lh

Enclosures

pc: Gregory C Huston  
Topeka Field Office



KANSAS DEPARTMENT OF AGRICULTURE  
Jackie McClaskey, Secretary of Agriculture

DIVISION OF WATER RESOURCES  
David W. Barfield, Chief Engineer

**FINDINGS AND ORDER  
IN THE MATTER OF  
THE DISMISSAL OF  
WATER RIGHT, FILE NO. 3,376**

This is to certify that on May 20, 2016, a voluntary request to dismiss Water Right, File No. 3,376, was filed with the office of the Chief Engineer by the following Water Right owners:

**RYAN STIRTZ  
1714 NW 4<sup>TH</sup> ST  
ABILENE KS 67410**

**GREGORY C HUSTON  
1650 INDY RD  
ABILENE KS 67410**

Per this request, those above have agreed to waive any and all rights that they might have to a hearing pursuant to K.S.A. 82a-718 or any other applicable statute.

The Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, acknowledges this request, and so orders the dismissal of Water Right, File No. 3,376, and forfeiture of its priority. The file to be dismissed authorizes the beneficial use of surface water to be diverted and withdrawn from the Smoky Hill River at points of diversion described as:

one (1) pump site located in Lot 7 of Section 24 more particularly described as being near a point 1,350 feet North and 3,850 feet West of the Southeast corner of said section; and

one (1) pump site located in Lot 1 of Section 25 more particularly described as being near a point 4,600 feet North and 1,350 feet West of the Southeast corner of said section; and

both in Township 13 South, Range 2 East, Dickinson County Kansas, at a maximum diversion rate not in excess of **1,000 gallons per minute (2.22 c.f.s.)** and in a quantity not to exceed **69 acre-feet** per year for irrigation purposes on the following described property:

80 acres in the North Half of the Northwest Quarter (N $\frac{1}{2}$  NW $\frac{1}{4}$ ) and  
35 acres in Lot 1 of Section 25, and

25 acres in Lot 4,  
40 acres in Lot 6,  
38 acres in Lot 7,  
25 acres in Lot 8, of Section 24;

all in Township 13 South, Range 2 East, Dickinson County, Kansas, a total of 243 acres.

Any further diversion of water pursuant to the conditions and terms of the dismissed file shall be unlawful and subject to the penalties of K.S.A. 82a-728.

This is a final agency action. If you choose to appeal this decision or any finding or part thereof, you must do so by filing a petition for review in the manner prescribed by the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA K.S.A. 77-601 et seq.) within 30 days of service of this order. Your appeal must be made with the appropriate district court for the district of Kansas.

The Chief Legal Counsel for the Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, is the agency officer who will receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture, Division of Water Resources. If you have questions or would like clarification concerning this order, you may contact the Chief Engineer.

Ordered this 1<sup>st</sup> day of July, 2016, in Topeka, Shawnee County, Kansas.

*Lane P. Letourneau*

Lane P. Letourneau, P.G.  
Program Manager  
Water Appropriation Program  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas        )  
                                  ) SS  
County of Riley        )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of July, 2016, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.



*Karen Hunter*  
Notary Public

**CERTIFICATE OF SERVICE**

On this 1<sup>st</sup> day of July, 2016, I hereby certify that the foregoing Dismissal of Water Right, File No. 3,376, dated July 1, 2016, was mailed postage prepaid, first class, US mail to the following:

RYAN STIRTZ  
1714 NW 4TH ST  
ABILENE KS 67410

GREGORY C HUSTON  
1650 INDY RD  
ABILENE KS 67410

With photocopies to:  
Topeka Field Office

*Dann Hill*  
Division of Water Resources





**Kansas Department of Agriculture / Division of Water Resources**  
**Topeka Field Office**

TO: HEADQUARTERS

RE  Vested Right;  Water Right;  Appropriation of Water;  Application

File No(s) 3,376 County Dickinson

Enclosed are the following checked items:

A \_\_\_\_\_ FIR  Full  Partial Inspection  Return to Field Office  
 Proposed Certificate to deliver to Certificate Unit

A Compliance Check Inspection on \_\_\_\_\_  
 Meter Install  New App  Chg App  Other \_\_\_\_\_  
 In Compliance  Not in Compliance, why \_\_\_\_\_  
Modify Point of Diversion  No  Yes, document attached  
Indicate all overlapping p/d files NONE

An application and judgment sheet with recommendation.

A memorandum dated \_\_\_\_\_

A request for an extension of time to perfect or complete.

A verified report.

A closure request. *(2 signature pages)*

A field investigation report.

Notice of Non-Compliance

An ownership change (name(s) and address(es) below).

A water use report for \_\_\_\_\_

A letter dated \_\_\_\_\_

A copy of an **Approval** to Change the  place of use and/or  point of diversion,  
 Filing Fee attached.

An Advanced **copy** of a change application and the filing fee, to be processed at the field office.

An original field office change **application** and the filing fee needing headquarters office review and further processing.

Other: \_\_\_\_\_

Lloyd Hemphill / TFO  
Water Commissioner

6-6-16  
Date

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

**LANDOWNER - WU CORRESPONDENT**

1. File No(s) <b>3376</b>	1a. <input type="checkbox"/> Vested Right <input checked="" type="checkbox"/> Water Right <input type="checkbox"/> Appropriation of Water	1b. FO <b>01</b>	1c. GMD
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2.  Computer Only       Letter Attached       Stamped Document       WUC Des Form

3. Informed by **Dickinson County records on 4-20-2016. LHH/TFO**

<p>4a. Landowner(s) <span style="float:right">Person ID <u>57085</u></span>          New to system <input type="checkbox"/> <span style="float:right">Add Seq# _____</span></p> <p><b>RYAN K STIRTZ</b>  <b>1714 NW 4<sup>TH</sup> ST</b>  <b>ABILENE, KS 67410-3563</b></p>	<p>4b. Landowner(s) <span style="float:right">Person ID _____</span>          New to system <input checked="" type="checkbox"/> <span style="float:right">Add Seq# _____</span></p> <p><b>GREGORY C HUSTON</b>  <b>1650 INDY RD</b>  <b>ABILENE, KS 67410</b></p>
<p>5. WUR Correspondent <span style="float:right">Person ID _____</span>          New to system <input type="checkbox"/> <span style="float:right">Add Seq# _____</span>          Notarized WURC Form <input type="checkbox"/></p> <p><b>4A.</b></p>	<p>6. Other <u>Partner of 4b.*</u> <span style="float:right">Person ID _____</span>          New to system <input checked="" type="checkbox"/> <span style="float:right">Add Seq# _____</span></p> <p><b>TERRY SWEARINGEN</b>  <b>550 2700 AVE</b>  <b>ABILENE, KS 67410</b></p>

7. Name and person ID code of former WUR correspondent \_\_\_\_\_  
Name \_\_\_\_\_ Person ID \_\_\_\_\_

8. Place of Use – County \_\_\_\_\_

File No.	PUSE ID	S	T	R	ID#	Owner	Chg?	Overlap Files

9. Comments Date Prepared **5/24/16** by **LHH/TFO**  
Date Entered \_\_\_\_\_ by \_\_\_\_\_

**\* Terry Swearingen signed a Voluntary Dismissal of Water Right form for this file as "Partner". However this name is not reflected on county records.**

**The description of the land owned by each of the above owners was not described on this worksheet, as this file is to be dismissed, per Voluntary Waiver of Hearing & Dismissal of Water Right. LHH/TFO**

RECEIVED

MAY 20 2016

Topeka Field Office  
DIVISION OF WATER RESOURCES

**VOLUNTARY WAIVER OF HEARING & DISMISSAL OF WATER RIGHT**

To: Kansas Department of Agriculture  
Division of Water Resources (DWR)  
1320 Research Park Drive  
Manhattan, Kansas 66502  
<http://agriculture.ks.gov/dwr>

Re: Appropriation of Water   
Water Right   
Vested Right   
Term Permit   
(Check Appropriate Box Above)  
File No. 3376

The undersigned owner(s) and/or authorized agent(s) of the above referenced water right, or permit, freely and voluntarily request that the file be dismissed and its priority forfeited. By signing this waiver, I am indicating my understanding and agreement that I am relinquishing all right, title and interest in said water right.

The signature(s) below represent all present owners (or an authorized agent) for the file number shown above (attach duplicate copies of this document as necessary).

The signature(s) below also indicate(s) a waiver of any right to a hearing or an appeal that I/we may have had regarding the dismissal and termination of the above referenced file. I/we recognize that if this closure request is submitted to the Division of Water Resources, it will terminate this water right and forfeit any priority associated with it forever.

Indicate here if you wish to retain the well(s) for domestic use (DWR water right not required):

Gregory C Huston  
(Signature of Owner or Authorized Agent)

Terry Swearingen  
(Signature of Spouse or Title of Authorized Agent)

Gregory C Huston  
(Please print name here)

Terry Swearingen Partner  
(Please print name here)

1650 Indy KO  
(Mailing Address)

550 2700 Ave  
(Mailing Address)

Abilene KS 67410  
(City, State, Zip)

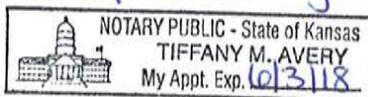
Abilene Ks 67410  
(City, State, Zip)

**ACKNOWLEDGMENT**

State of Kansas )  
County of Dickinson )

This instrument was acknowledged before me this 27 day of April, 2016 by  
(owners:) Terry Swearingen, Greg Huston

(Seal)



Tiffany M Avery  
Notary Public

My appointment expires: 6/3/18

LHH/TFO  
DWR Initials

RECEIVED

MAY 20 2016

Topeka Field Office  
DIVISION OF WATER RESOURCES

**VOLUNTARY WAIVER OF HEARING & DISMISSAL OF WATER RIGHT**

To: Kansas Department of Agriculture  
Division of Water Resources (DWR)  
1320 Research Park Drive  
Manhattan, Kansas 66502  
<http://agriculture.ks.gov/dwr>

Re: Appropriation of Water   
Water Right   
Vested Right   
Term Permit   
(Check Appropriate Box Above)  
File No. 3376

The undersigned owner(s) and/or authorized agent(s) of the above referenced water right, or permit, freely and voluntarily request that the file be dismissed and its priority forfeited. By signing this waiver, I am indicating my understanding and agreement that I am relinquishing all right, title and interest in said water right.

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The signature(s) below also indicate(s) a waiver of any right to a hearing or an appeal that I/we may have had regarding the dismissal and termination of the above referenced file. I/we recognize that if this closure request is submitted to the Division of Water Resources, it will terminate this water right and forfeit any priority associated with it forever.

Indicate here if you wish to retain the well(s) for domestic use (DWR water right not required):

[Signature]  
(Signature of Owner or Authorized Agent)  
Ryan Stirtz  
(Please print name here)  
1714 NW 4th St  
(Mailing Address)  
Ablene, KS 67410  
(City, State, Zip)

\_\_\_\_\_  
(Signature of Spouse or Title of Authorized Agent)  
\_\_\_\_\_  
(Please print name here)  
\_\_\_\_\_  
(Mailing Address)  
\_\_\_\_\_  
(City, State, Zip)

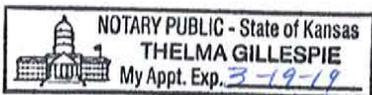
**ACKNOWLEDGMENT**

State of Kansas )  
County of Dickinson )

This instrument was acknowledged before me this 11th day of May, 2016 by  
(owners:) Ryan Stirtz  
(Seal)

[Signature]  
Notary Public

My appointment expires: 3-19-19



LHH/TFO  
DWR Initials