

File No(s). **20219026**

11. Points of Diversion

T
MOD
DEL PDIV
ENT Qualifier S T R ID 'N 'W

DEL 47755

12. Rate and Quantity

Authorized Additional
Rate gpm/cfs Quantity af/mgy Rate gpm/cfs Quantity af/mgy Overlap PD Files

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) _____
Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

15. Place of Use

T
MOD
DEL
ENT PUSE S T R ID

NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
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				

DEL 13093

DEL 36313

DEL 38856

16. Comments: **Failure to Return**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
M E M O R A N D U M

TO: Files

DATE: January 28, 2022

FROM: Austin McColloch

RE: Term Permit,
File No. 20219026

One-Each Farms – Marlin Heger filed the referenced application for Term Permit on April 16, 2021, to appropriate groundwater for irrigation use in Stevens County. The applicant proposed a quantity of 200 acre-feet of groundwater per year, at a maximum diversion rate of 700 gallons per minute. The proposed term period was from March 31, 2021 to December 31, 2022.

K.A.R.5-9- 1 b of the Kansas Water Appropriation Rule and Regulations states in part: "Approvals and extensions of term permits. (a) Except as specified in subsection (b), each approved term permit shall be valid for five years or less. A term permit shall not be extended for a total of more than five years, including the original approval..."

There have been five previous term permits for the project requesting a year term each thus the current applied term permit will be the sixth consecutive request. The five previous term are as follows: 20169055; 20179043; 20189006; 20199022 and 20209035.

On October 18, 2021, the application for approval of the Chief Engineer for Term Permit was returned ~~to you and, at that time, you were~~ ^{he was} advised that the application was to be returned to this office, with the requested additional information, no later than November 2, 2021.

The application with the requested additional information was not returned to this office by November 2, 2021, or a request for additional time beyond the 15 days to submit additional information has been received.

The included Findings and Order will be issued for this ~~voluntary~~ dismissal. **due to failure to return.***

Austin McColloch
Assistant Water Commissioner

* LI/DWR

From: Baum, Kristen [KDA]
Sent: Tue 10/12/2021 10:36 AM
To: McColloch, Austin [KDA]
Subject: RE: Term Permit File No. 20219026

I'd say we start with a reference to 82a-708c and emphasis they are for a limited specified period. Then reference 5-9-1b(a) to explain that they should be limited to 5 yrs or less. Then we say something like successive terms filed year after year should not be a means to circumvent complying with 82a-708b and 82a-742.

Then follow with telling them they were informed in 2020 that it would be the final term so we're denying this application for failure to comply with 82a-708c.

One problem here though is that we internally said last one, but I'm looking at the transmittal for 20209035 and it doesn't look like we told them last one. Honestly, I was thinking we had decided that since the 2021 term was already filed, we'd let them have it as the last one and make sure we got it out before they could refile again.

Kristen A Baum
New Applications and Changes Supervisor
DWR Appropriations

From: McColloch, Austin [KDA] <Austin.McColloch@ks.gov>
Sent: Tuesday, October 12, 2021 10:20 AM
To: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: RE: Term Permit File No. 20219026

Correct, cant get the signatures sorted out for both divisions and PU changes. Family issues.

Austin McColloch
Ph: (620) 276-2901

From: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Sent: Tuesday, October 12, 2021 10:13 AM
To: McColloch, Austin [KDA] <Austin.McColloch@ks.gov>
Subject: RE: Term Permit File No. 20219026

Remind me on these – is it a change in Puse that needs to happen or is it a division? And either way, we can't get the necessary signatures, right?

Kristen A Baum
New Applications and Changes Supervisor
DWR Appropriations

From: McColloch, Austin [KDA] <Austin.McColloch@ks.gov>
Sent: Tuesday, October 12, 2021 9:46 AM
To: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: FW: Term Permit File No. 20219026

Any thoughts on if this wording in a letter to the applicant would be good to send for planning on dismissing the application?

Austin McColloch
Ph: (620) 276-2901

From: McColloch, Austin [KDA]
Sent: Tuesday, October 5, 2021 8:53 AM
To: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: FW: Term Permit File No. 20219026

Would a good criteria be K.A.R. 5-9-1b

“K.A.R. 5-9-1b. Approvals and extensions of term permits. (a) Except as specified in subsection (b), each approved term permit shall be valid for five years or less. A term permit shall not be extended for a total of more than five years, including the original approval.....

(c) An application for new term permit or a request to extend an existing term permit that does not meet the criteria specified in subsections (a) and (b) shall not be approved. If the applicant proposes to continue the water use, the applicant shall amend the new application or file a new application. Approval of the amended or new application by the chief engineer shall be received by the applicant before the proposed water use may continue.”

Austin McColloch
Ph: (620) 276-2901

From: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Sent: Monday, October 4, 2021 10:32 AM
To: McColloch, Austin [KDA] <Austin.McColloch@ks.gov>
Subject: RE: Term Permit File No. 20219026

according to lane, we need to send this term permit back. we will not process it. I assume you need to get with Kristin on our criteria on why we will dismiss...
see lane email to earl

Mike

From: McColloch, Austin [KDA] <Austin.McColloch@ks.gov>
Sent: Monday, October 4, 2021 9:46 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: Term Permit File No. 20219026

This is one each farms / marlin heger. The sixth term for this project. The 2019 term we said final term for project, the 2020 term we again said final term for this project. I don't see how we can allow this term. I get that the irrigation season is almost over and he probably irrigated the land on this term when he sent in the application. it's a place of use issue and I don't know what there is to enforce if we do deny the term. Thoughts?

Austin McColloch
Ph: (620) 276-2901

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

FINDINGS AND ORDER
IN THE MATTER OF THE DISMISSAL OF APPLICATION
FILE NO. 20219026

After due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

FINDINGS

- 1. That on April 16, 2021, the Chief Engineer received an Application for Term Permit filed by One-Each Farms - Marlin Heger, to appropriate ground water for beneficial use, assigned File No. 20219026, proposing the appropriation of 200 acre-feet of groundwater per year, at a maximum diversion rate of 700 gallons per minute, for irrigation use.
2. That on October 18, 2021, the application for approval of the Chief Engineer for Term Permit was returned to the applicant with the recommendation that the application would be dismissed for failure to meet K.S.A.82a-708(C) and K.A.R. 5-9-1b and further the application would be recommended for denial unless additional information and the application was returned no later than November 2, 2021.
3. That the application with the requested additional information was not returned to this office by November 2, 2021, or a request for additional time beyond the 15 days to submit additional information has been received.

ORDER

NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that effective the date of this order, in accordance with the law, Application, File No. 20219026, is herewith dismissed and the priority assigned to it is considered to be forfeited.

Dated at Manhattan, Kansas, this 25 day of May, 2022.

[Handwritten signature of 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 25 day of May, 2022, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.

[Handwritten signature of 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

June 6, 2022

ONE EACH FARMS LLC ET AL
1080 ROAD 21
HUGOTON, KS 67951-5303

RE: Dismissal of Term Permit
File No. 20219026

Dear Mr. Heger:

Reference is made to the application for approval of the Chief Engineer for Term Permit under the above referenced file number which was received in this office on April 16, 2021.

On October 18, 2021, the application for approval of the Chief Engineer for Term Permit was returned to you and, at that time, you were advised that the application was to be returned to this office, with the requested additional information, no later than November 2, 2021.

Since the application with the requested additional information was not returned to this office by November 2, 2021, the application for approval of the Chief Engineer for Term Permit under the above referenced file number is herewith dismissed in accordance with the law.

This order shall become final agency action without further notice to the parties, if a request for hearing or a petition for administrative review is not filed in a manner set forth in the enclosed order.

If you have any questions, please contact our 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
Division of Water Resources

KAB:am:li
Enclosure(s)

pc: Garden City Field Office
Groundwater Management District No. 3

**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

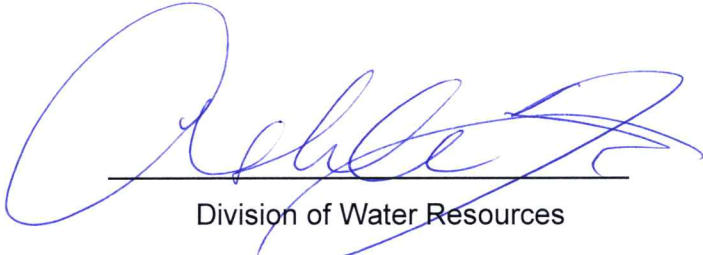
On this 6 day of June, 2022, I hereby certify that the foregoing Dismissal of Application, File No. 20219026, dated 25 May 2022 was mailed postage prepaid, first class, US mail to the following:

ONE EACH FARMS LLC ET AL
1080 ROAD 21
HUGOTON, KS 67951-5303

With photocopies to:

Garden City Field Office

Groundwater Management District No. 3



Division of Water Resources