

Kansas Department of Agriculture
 Division of Water Resources
**CHANGE: PD WORKSHEET - ADDITIONAL WELL
 REDUCTION IN QUANTITY**

| | | | | |
|---|---|---|-------------------------------|--|
| 1. File Number: 9518 | 2. Status Change Date: 12/14/2023 | 3. Change Num: C1 | 4. Field Office: 04 | 5. GMD: 03 |
| 6. Status: <input type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return | | | | 7. Filing Date of Change: 3/6/2023 |
| 8a. Applicant(s) New to system <input type="checkbox"/> KYLE S. AVERHOFF NOBLE DAIRY LLC 3705 F ROAD GARDEN CITY, KS 67846 | | 8c. Landowner(s) New to system <input type="checkbox"/> Person ID _____ Add Seq# _____ | | |
| 8b. Landowner(s) New to system <input type="checkbox"/> NOBLE DAIRY LLC 3705 F ROAD GARDEN CITY, KS 67846 | | 8d. WUC New to system <input type="checkbox"/> 8b Person ID _____ Add Seq# _____ | | |
| 9. Documents and Enclosure(s): <input checked="" type="checkbox"/> DWR Meter(s) Date to Comply: 12/31/2024 <input checked="" type="checkbox"/> Date to Comply: 12/31/2024 | | | | |
| <input type="checkbox"/> Anti-Reverse Meter <input type="checkbox"/> Meter Seal <input checked="" type="checkbox"/> Check Valve <input checked="" type="checkbox"/> N & P Form <input checked="" type="checkbox"/> Water Tube <input checked="" 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: 12/13/2023 By: LI Date Entered: 12/13/2023 By: KAK Date Reviewed: 12/15/2023 By: KAnderson | | | | |

File No. **9518** 11. County: **FI** Basin: **ARKANSAS RIVER** Stream: **NA** Formation Code: **211** Special Use: **NA**

| 12. Points of Diversion | | | | | | | | | | Rate and Quantity | | | | | | |
|-------------------------|--------------|-----|------|-----------------|-----------|-----------|------------|----------|-------------|-------------------|------------------------|------------|-------------|--------------|-----------------|------------------|
| CHK | MOD | DEL | PDIV | Qualifier | S | T | R | ID | 'N | 'W | Comment (AKA Line) | Authorized | | Additional | | Overlap PD Files |
| ENT | | | | | | | | | | | | Rate gpm | Quantity af | Rate gpm/cfs | Quantity af/mgy | |
| MOD | 21679 | | | SE SW NW | 13 | 26 | 33W | 2 | 2678 | 4440 | | 650 | 256 | 650 | 256 | NONE |
| ENT | 90705 | | | SE SE NW | 13 | 26 | 33W | 6 | 2664 | 2761 | ADDITIONAL WELL | 650 | 256 | 650 | 256 | NONE |

SPECIAL CONDITIONS: 10 YR REVIEW - ADDITIONAL WELL

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) **NONE - NO CHANGE**
 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 | | | | |
| | | | | | | | | | | | | | | | | | | | | | 480 | 8b | NO | NONE |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |

Base Acres: 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: December 13, 2023

FROM: Leslie Ireland

RE: Water Right
File No. 9,518

Kyle S. Averloff, Manager of Noble Dairy LLC, the new owner of the referenced file, has requested to change the point of diversion authorized for irrigation use. The application received on March 6, 2023, proposes to add an additional well and will be processed under K.A.R. 5-5-16., *Additional well*. The application is located in the Arkansas River Basin, Finny County and Southwest Kansas Groundwater Management District No. 3 (GMD).

The referenced water right is considered not to be abandoned as per K.S.A. 82a-718 and also appears to be in compliance with K.S.A. 82a-732. The application appears to comply with K.A.R. 5-5-2a, *Complete change application*, even though a field office form was utilized.

The applicant worked with Groundwater Management District No. 3, (GMD) who completed the flowrate testing. The application proposes to authorize a new well and distributing the rate and quantity between two (2) points of diversion, resulting in an additional well. Both points of diversion will be utilized for irrigation. The GMD completed a flow rate test on March 31, 2023, indicating a flow rate of 1,300 gallons per minute (gpm) on the currently authorized well. The rate test has been divided and assigned between the wells as specified in K.A.R. 5-5-16(d). The owner acknowledged the modification to the assignment of the rate between the points of diversion requesting 650 gpm per well. The application was returned to this office on December 4, 2023.

The referenced file has no overlaps and no additional limitations. A total of 320 acres is authorized 640 acre-feet(AF) at a maximum rate of 1,745 gpm from one well, drilled and completed in 1993. The currently authorized well is located in Section 13, Township 26, Range 33 West, Finney County, Arkansas River Basin. The referenced file developed approximately 2.0 acre-foot per acre. The determination of the quantity for the consumptive use calculation as required by K.A.R. 5-5-16(a)(2)(C)(i) was determined to be:

$$320 \text{ acres} \times 1.34 \text{ (80\%NIR for Finney Co)} \div 0.85 = 512 \text{ acre-feet.}$$

The quantity will be reduced and divided and per the regulation assigned per well. The required reduction of 128 acre-feet should assure that consumptive use will not increase as required by K.A.R. 5-5-3, *Consumptive use*.

The well log of the proposed well to be completed East of the existing well indicate the same lithology. The source of supply for the existing well has been determined be the Ogallala formation (Code 211). The 1993 log indicated the 16 inch diameter well was completed to a depth of 502 feet by Henkle Drilling with a static water level of 168. A stratigraphic log completed in February 2023 by Downey Drilling Inc., for the proposed well was submitted. This log recorded the lithology to soapstone 510 feet and clay to 523 feet with the log completed to shale at 650 feet. The log did indicate the well design would have 70 feet of more screening than the currently authorized well. This increase in depth would not be considered a major physical enlargement of the well capacity. Both wells are 16 inch cased and a static water level measurement of 125 feet recorded in 1993 for the existing and 260 feet for the proposed would indicate similar capture abilities. It appears the requirements of K.A.R. 5-5-16(b) have been met and that the existing and proposed are from the same source of supply.

The currently authorized point of diversion located near the center of the West Half of the West Half (NC $W\frac{1}{2}$ $W\frac{1}{2}$) of Section 13, approximately 2,640 feet North and 2,678 feet West of the Southeast corner has been determined to be 2,678 feet North and 4,440 feet West, by a 2016 Compliance Investigation. The proposed additional well approximately 1,650 feet to the East and determined to be located 2,664 feet North and 2,761 feet West of the Southeast corner, further described as being located in the Southeast Quarter of the Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}$ $SE\frac{1}{4}$ $NW\frac{1}{4}$) of Section 13, both wells in Township 31, Range 33 West, Finney County. The existing well (West Well) will be reduced to 256 AF at 650 gpm, with the additional well (East well) authorized 256 AF at 650 gpm with a priority date of March 6, 2023, for impairment.

As the max acres irrigated and those authorized are the same 320 acres and the quantity reduction was based on the Net Irrigation Requirement at the 80% level for Finney County, it appears the quantity will be sufficient for the 320 acres authorized.

The proposed change in point of diversion is less than 2,640 feet (1,650 feet) thus complying with part (b) of K.A.R. 5-23-3, *Minimum well spacing requirements: high plains aquifer*. Under part (a) of this regulation the 256 AF requires a minimum well spacing of 1,600 feet. The proposed change meets the well to well(s) spacing requirements.

Only the applicant's irrigation well under the referenced file, is located within one-half ($\frac{1}{2}$) mile of the proposed additional well. It does appear the GMD notified three nearby well owners who were within their notification area which is greater than one-half ($\frac{1}{2}$) mile. It does not appear their notification resulted in any comments on the proposed change. It also appears the notices required for the proposed change per K.S.A. 82a-1906, have been completed.

Southwest Kansas Groundwater Management District No. 3 assisted with the application. In a letter dated December 11, 2023, Jason Norquest, Assistant Manager, was sent the application for comment within the standard 15 day comment period. In a December 11, 2023 letter, the GMD stated the proposed change is not in conflict with their Management Program and recommended approval of the project as proposed.

Mike Meyer, Water Commissioner of the Garden City Field Office was notified of the proposed change and has reviewed the summary memo and waiver. He indicated by E-mail on December 12, 2023, that he has no objection to the approval of the proposed change.

A water flow meter will be required on each well as per K.A.R. 5-5-16(e) and a check valve is required if any chemical or foreign substance is injected through the diversion works. A water level measurement tube will be required. As per K.A.R. 5-5-16(a)(4), a condition will be placed on the approval that should direct impairment result the additional well will have the priority date of the date the application for change was received in the office of the Chief Engineer, March 6, 2023. The approval will contain the jurisdictional wording as required by K.A.R. 5-5-16(f).

Based on the above discussion that the change will remain in the source of supply, is reasonable, that impairment to existing water rights is unlikely, that there are no pending applications within the vicinity of this proposed change, it is recommended that the application for change be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

From: Meyer, Mike [KDA]
Sent: Tuesday, December 12, 2023 3:54 PM
To: Ireland, Leslie [KDA]
Subject: RE: Review and Recommendation Change in PD File No. 9518 Noble Dairy

Approve thanks

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Tuesday, December 12, 2023 12:14 PM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: Review and Recommendation Change in PD File No. 9518 Noble Dairy

Mike,

The attached summary and GMD recommendation for your review and recommendation.

The proposed additional well log information is summarized at the bottom of memo page 1,, not a geologist so logs are attached to application in Dware.

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 POINT OF DIVERSION
AND
ORDER REDUCING THE AUTHORIZED QUANTITY OF WATER
WATER RIGHT
FILE NO. 9,518**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Kyle S. AverHoff, on behalf of Noble Dairy LLC, 3705 F Road, Garden City, Kansas 67846, received in this office on March 6, 2023, for approval of a change in the location of the point of diversion under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, as modified and amended by the Order of the Chief Engineer dated October 16, 1972, approving an application to change the point of diversion, finds that the change is reasonable and will not impair existing rights, that the change relates to the same local source of supply and that the application should be and is hereby approved.

This order effectively reduces the authorized quantity of water to 512 acre-feet of water per calendar year accordance with the Application for Approval to Change the Point of Diversion received in this office on March 6, 2023.

The application, therefore, is approved subject to the condition that for the sole purpose of administering wells concerning direct impairment, the additional well shall be considered to have the priority of the date the application was filed (March 6, 2023) to add the additional well.

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 points of diversion shall be:

one (1) well located in the Southeast Quarter of the Southwest Quarter of the Northwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 13, more particularly described as being near a point 2,678 feet North and 4,440 feet West of the Southeast corner of said section, at a diversion rate not in excess of 650 gallons per minute (1.45 c.f.s.) and a quantity not to exceed 256 acre-feet per calendar year, and

one (1) well located in the Southeast Quarter of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 13, more particularly described as being near a point 2,664 feet North and 2,761 feet West of the Southeast corner of said section, at a diversion rate not in excess of 650 gallons per minute (1.45 c.f.s.) and a quantity not to exceed 256 acre-feet per calendar year, (additional well)

both in Township 26 South, Range 33 West, Finney County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the 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 applicant 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.

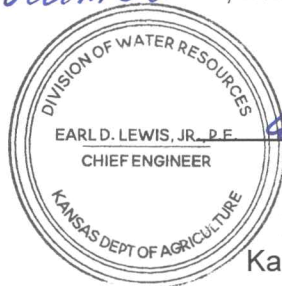
All wells with a diversion rate of 100 gallons per minute or more drilled under the authority of this order shall have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer. This tube or device shall be suitable for making water level measurements and shall be maintained in a 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.

The Chief Engineer specifically retains jurisdiction in this matter with authority to review the approval of the additional well at intervals of no fewer than five years, and no more than ten years to determine if the total annual quantity of water actually being withdrawn by all wells authorized by the approval of application for change is exceeding the total annual quantity of water that could have been physically withdrawn if the additional well had not been approved, and based on the review, the Chief Engineer retains authority to make a reasonable reduction in the authorized quantity of water as may be deemed to be in the public interest.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 9,518, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated September 29, 1978, as modified and amended by the aforementioned order.

Ordered this 14th day of December, 2023, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.

Earl D. Lewis Jr., P.E.

Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 14th day of December, 2023, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings

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

December 20, 2023

KYLE S AVERHOFF
NOBLE DAIRY LLC
3705 F ROAD
GARDEN CITY KS 67846

RE: Water Right
File No. 9,518

Dear Mr. AverHoff:

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. Since this order modifies the original certificate of appropriation for the above referenced water right, it should be recorded with the Register of Deeds as other instruments affecting real estate.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approval for change. Please note a water level measurement tube meeting the regulatory specifications is required. A condition of the approvals is that acceptable water flowmeter must be installed on the diversion works authorized. Please return the required form Notification of the Completion of the Diversion Works and Report of Flowmeter Installation, as soon as these actions are completed.

The change approval adds an additional point of diversion which is subject to the condition that for the sole purpose of administering wells concerning direct impairment, the quantity and rate approved as the portion of the additional well shall be considered to have the priority of the date the application was filed (March 6, 2023) to add the additional well. In addition, the Chief Engineer specifically retains jurisdiction in this matter with authority to review the approval of the additional well at intervals of no fewer than five years, and no more than ten years to determine if the total annual quantity of water actually being withdrawn by all wells authorized by the approval of application for change is exceeding the total annual quantity of water that could have been physically withdrawn if the additional well had not been approved, and based on the review, the Chief Engineer retains authority to make a reasonable reduction in the authorized quantity of water as may be deemed to be in the public interest.

If you have any questions, please contact us at 785-564-6640, or the Garden City Field Office at 620-276-2901. 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
Division of Water Resources

KAB:kak:li
Enclosures

pc: Garden City Field Office
Southwest Kansas GMD No. 3

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 the Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, Kansas 66502, or by 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 the Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, or by 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.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Fax: (785) 564-6777.

CERTIFICATE OF SERVICE

On this 20 day of December, 2023, I hereby certify that the attached Approval of Application for Change under Water Right, File No. 9,518, dated December 14, 2023, was mailed postage prepaid, first class, US mail to the following:

NOBLE DAIRY LLC
KYLE S AVERHOFF, MANAGER
3705 F ROAD
GARDEN CITY KS 67846

With a Photocopy to:

KDA-DWR Garden City Field Office

Southwest Kansas GMD No. 3


KDA-DWR Staff