Kansas Department of Agriculture Division of Water Resources APPROVAL OF CHANGE APPLICATION WORKSHEET

1. File No.: 11383	2. Status Change Date:	4/9/2024	GMD: 0	 Field Office: 04 - Garden City GMD: 03 - Southwest Structures File No.: 						
3. Package File No(s): 728 11383			Filing/Pr	Filing/Priority Date: 03/24/2023 Application Complete Date:						
 5a. Applicant Owner WU Address Change SEABOARD ENERGY KANS 9000 W 67TH STREET SUITI SHAWNEE MISSION, KS 662 	Add Seq# 1 SAS LLC E 200	5b. Owner WUC Person ID Address Change Add Seq#								
5c. 🗌 Owner 🔲 WUC 🗋 Address Change	Person ID Add Seq#	5d. Owner WUC Person ID Address Change Add Seq#								
Previous UMW: IND-Industrial MDS Gauge: Active Admin?	⊠ UMW Reasonable Q: n/Expiration Date:	 7. Use of Water ⊠ Groundwater UMW: IRR-Irrigation UMW: IND-Industrial SIC: 2869 UMW: 								
GZ C2 - CHAN	GE APP PLACE OF USE A GE APP USE OF WATER A TER OF POINT OF DIVERS	APPROVED - Comp			5-10 Dual Use					
9. Special Conditions DUAL USE IND I	IRR									
10. 5YR Allocation Type: Star Comment:	rt Year: 5YR Quan	tity: Base A	cres:							
11. Sand & Gravel Proj ID:	Active Dredge	IND Evap] Jr Evap 🗌	Other Diversion	Rpt on Sr					
12. Waiver Rule ID: Applies: Rule No.: Rule Type: Rule SubType:	ate Requested:	Justification:								
Comments				Processed LI 4/3/2024	Entered					
				Reviewed KAK 4/5/2024	4/10/2024 KAnderson					

File	No. 113	33			13. C	ounty: S	V Bas	sin: CII	MARRO	ON RIV	ER S	Stream:													
Stru	Aquifer Code: 200 Special Use Area: NA																								
14. P	oints of Div	ersion	, Rates &	Quant	tities										Otv	mgy		Rate g	mai	S	Storage Q	Qtv	Storage	e Rate	
	PDIV	Qua	lifier		S	Т	R	ID	'N	'W	Cor	mment (AKA Li	ne)	Auth		Add	Auth	Add		-	Add	Auth/A		Overlaps
MOD	6626	SW	SW SW		17	33	37W	1	140	5247	,				100	.36 (0	3195	229	5					++
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15.	Limitation	-	/pe: /pe: DU			ity: 177 ity: 177	-	-			gpm				no(s): e no(s)		8 when	IND &	IRR A	uthor	ized				
16.	Metering	\boxtimes] Meteri	ng Re	quire	d 🗌	Anti-Re	everse	Requir	red [] Sea	al Requ	iired	Comp	liance	Date:	12/31/2	2024							
17. Place of Use			NE¼				NW ¹ ⁄4					SW1⁄4				SE1⁄4			al	Owner(s) Chg		? Overlaps			
	PUSE S		R	ID	N	E NW	sw	SE	NE	NW	sw	SE	NE	NW	sw	SE	NE	NW	sw	SE					
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^	728; 10,	520; <i>'</i>	10,889	& 24,	931								~~												

KANSAS DEPARTMENT OF AGRICULTURE Division of Water Resources

<u>M E M O R A N D U M</u>

TO:	Files	DATE: April 5, 2024
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FROM: Leslie Ireland **RE:** Water Right, File Nos. 728 & 11,383

Gary Louis, President & CEO of Seaboard Energy Kansas LLC, filed applications for approval to change the place of use and use made of water for operation as dual use from industrial (biomass energy production) to industrial and irrigation uses under the files referenced above. The applications were received on March 24, 2023. The files are in the Cimarron River Basin, Stevens County, and Groundwater Management District No. 3

The water rights do not appear to be abandoned as per K.S.A. 82a-718, *Abandonment of water rights* and the rights are in compliance with K.A.R. 82-732, *Annual water use report required; penalty for violations*.

The owners are requesting the change in use made of water per K.A.R. 5-5-8, *Standards for approval of an application for change in the place of use and a change in the use made of water* applied to the consumptive use consideration and to authorize a limited "dual use" of industrial and irrigation use. The change in place of use is to add the irrigated acres that historically were authorized by the files. The proposed irrigated place of use has been authorized under term permits for some time the most recent being Term Permit File No. 20239026. The irrigated place of use is not authorized by any water rights. The industrial facility will remain as an authorized place of use. The industrial portion also authorized by File Nos. 10,520; 10,889 & 24,931 will remain as authorized. These three files have a combined total of 435.26 million gallons (1,336 acre-feet) per year.

<u>File No. 728</u> authorizes 177.95 million gallons (mgy) 546 acre-feet (AF) per year to be diverted at 900 gallons per minute, from one well located in the (SW¹/₄ SW¹/₄ SW¹/₄) of Section 17, approximately 100 feet North and 5,180 feet West of the Southeast corner of Section 17, Township 33, Range 37 West for at for industrial use (SIC Code 2869) at a cellulosic ethanol plant located in the North Half (S¹/₂) and Southwest Quarter (SW ¹/₄) and located North of the railroad tracks in Section 18. The point of diversion overlaps with File No. 11,383. The actual location has been determined to be located approximately 140 feet North and 5,247 feet West of the Southeast corner placing it 83 feet from the authorized point. The location will be updated by approval as it appears to comply with K.A.R. 5-5-6c, *Authorized point of diversion or place of use*.

<u>File No. 11,383</u> authorizes industrial use as described above to divert a limited 100.36 million gallons (mgy) 308 acre-feet (AF) per year at 3,195 gallons per minute, from the well shared with File No. 728. This junior file is required not to exceed 177.95 mgy and 3,195 gpm when combined with File No. 728. This file essentially provides a higher diversion rate to a portion of the authorized quantity.

The proposed use made of water change will not require the standard consumptive use factor of 89.1 percent for Stevens County to be applied to the authorized quantity as it is considered that irrigation use is less consumptive that the industrial use to manufacture ethanol. File No. 728 will allow the full 177.95 mgy (546.12 AF) for both industrial and irrigation uses combined. File No. 11,383 will allow a limited 177.95 mgy (546 AF) would be allowed for the proposed dual use of industrial and irrigation uses.

It would appear the diversion of the authorized quantity as industrial and irrigation uses as dual use, may not result in an increase consumptive use and the changes comply with K.A.R. 5-5-3, *Change in consumptive use*.

Page 2

The proposed irrigation use change in place of use is to irrigate the acres that appear to have been authorized prior to the change to industrial use. The proposed 434 acres are comprised of three pivots located in the West Half (W'_2) and the Southeast Quarter (SE¹/₄) of Section 17, Township 33, Range 37 West. The total combined quantity 546 AF will result in 1.25 AF per acre under File Nos. 728 & 11,383. The Net Irrigation Requirement for Stevens County at a 50% chance is 1.23 AF. It appears the change complies with K.A.R. 5-3-23, *Maximum reasonable annual quantity approvable for irrigation use for an application for change in place of use and a request to reduce a water right*.

The industrial use at the existing facility will remain as authorized. The applicant has appeared to own the plant since 2019. The total authorized industrial quantity of 613.21 mgy (1,882 AF) less the quantity proposed for irrigation use would afford 435.26 mgy (1,336 AF) to remain for the industrial use if the full quantity was diverted for irrigation use. A quick review of reported water use would indicate the plant has operated with a maximum of 1,100 AF. It would appear to not be unreasonable to authorize a portion of the authorized quantity as dual use for industrial and irrigation use. Further, the operation under a term permits appear to have provided a trial for the proposed change.

The review of the change application identified only the applicant's wells within one-half $(\frac{1}{2})$ mile of the well proposing to change. No nearby notification letters were sent. It appears the processing of the application follows K.S.A. 82a-1906.

In a letter dated March 15, 2024, a copy of the applications were sent to Jason Norquest, Assistant Manager of Southwest Kansas Groundwater Management District No. 3 (GMD 3) along with a request to make a recommendation. In a letter dated March 26, 2024, Jason Norquest, Assistant Manager of GMD 3, indicated the proposals are not in conflict with their management plan and recommended approval of the applications.

Mike Meyer, Water Commissioner of the Garden City Field Office, indicated that he recommended approval of the applications and temporary reduction, by email April 4, 2024.

A condition of the approvals will be the requirement of a flow meter for each use authorized, pursuant to K.S.A. 82a-706c. A check valve will be required if chemigation occurs. The water use correspondent will remain as designated.

Based on the above discussion, that the changes are reasonable, consumptive use will not increase, impairment of 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.

Rulie Ireland

Leslie Ireland Environmental Scientist Water Appropriation Program

Ireland, Leslie [KDA]

From:Meyer, Mike [KDA]Sent:Thursday, April 4, 2024 9:19 AMTo:Ireland, Leslie [KDA]Subject:RE: Review & Recommendation for PU & UMW File Nos. 728 & 11383 Seaboard Energy

Approve please

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Thursday, April 4, 2024 8:51 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: Review & Recommendation for PU & UMW File Nos. 728 & 11383 Seaboard Energy

Mike,

Please let me know if you'd recommend.

As always comments and concerns are welcome.

Leslie Ireland Environmental Scientist Change Application Unit Division of Water Resources



THE STATE



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 USE MADE OF WATER, PLACE OF USE, ORDER IN THE MATTER OF THE AUTHORIZED QUANTITY OF WATER AND BETTER DESCRIBING THE AUTHORIZED POINT OF DIVERSION WATER RIGHT, FILE NO. 11,383

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Gary Louis, President and Chief Executive Officer of Seaboard Energy Kansas LLC, 9000 West 67th Street Suite 200, Shawnee Mission, Kansas 66202, as owner of the referenced water right, received in this office on March 24, 2023, for approval of a change in the location of the place of use and the use made of water, 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 5, 2007, approving the application to change the place of use, and by the Order of the Chief Engineer, dated November 29, 2012, approving the application to change the use made of water and place of use, finds that the change is reasonable and will not impair existing rights, and that the application should be and are hereby approved.

The authorized quantity of water under this right will remain a limited 177.95 million gallons (546.12 acre-feet) when combine with Water Right, File No. 728. This order effectively limits the authorized quantity of water to 177.95 million gallons (546.12 acre-feet) per calendar year for both industrial and irrigation uses combined and with Water Right, File No. 728. That the limitation on the quantity of water shall exist until such a time that the quantity of water for either the industrial use or irrigation use authorized by this approval is no longer required.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the portion retained for industrial use shall be authorized a maximum quantity not to exceed 177.95 million gallons (546.12 acre-feet) of groundwater per calendar year with Water Right, File No. 728, for industrial use on the following described property:

the North Half (N½) and the Southwest Quarter (SW¼) lying North of the railroad tracks all in Section 18, Township 33 South, Range 37 West, Stevens County, Kansas.

The portion changed to irrigation use shall be authorized a quantity not to exceed 546.12 acre-feet (177.95 million gallons) of groundwater per calendar year with Water Right, File No. 728, for irrigation use on the following described property:

	NE1⁄4				NW1⁄4					SV	V1⁄4						
Sec. Twp. Range	NE¼	NW1/4	SW1⁄4	SE1⁄4	NE¼	NW1⁄4	SW1⁄4	SE1⁄4	NE ¹ ⁄ ₄	NW1⁄4	SW1⁄4	SE1⁄4	NE¼	NW1⁄4	SW1⁄4	SE1⁄4	TOTAL
17 - 33S - 37W					40.0	40.0	39.0	36.0	40.0	37.0	38.5	38.5	27.0	40.0	38.5	19.5	434.0

a total of 434 acres in Section 17, in Township 33 South, Range 37 West, Stevens County, Kansas,

File No. 11,383

all located substantially as shown on the topographic map accompanying the application to change the use made of water and place of use.

That information in the office of the Chief Engineer finds that the point of diversion authorized would more accurately be defined as:

one (1) well located in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter (SW¼ SW¼ SW¼) of Section 17, more particularly described as being near a point 149 feet North and 5,247 feet West of the Southeast corner of said section, in Township 33 South, Range 37 West, Stevens County, Kansas.

The water right owner shall properly install a separate acceptable water meter for each use made of water for 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 for irrigation and industrial use 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.

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.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 11,383, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated May 2, 1986, as modified and amended by the aforementioned orders.

Ordered this 9 day of April

, 2024, in Manhattan, Riley County, Kansas.

Lavel Getowneau

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 \mathcal{Y} day of \mathcal{H} ,2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Notary Public



1320 Research Park Drive Manhattan, KS 66502 785-564-6700 www. agriculture.ks.gov

Mike Beam, Secretary



900 SW Jackson, Room 456 Topeka, KS 66612 785-296-3556

Laura Kelly, Governor

April 11, 2024

JENNIFER NELSON SEABOARD ENERGY KANSAS LLC 9000 W 67TH STREET SUITE 200 SHAWNEE MISSION KS 66202

> RE: Water Right File Nos. 728 and 11,383

Dear Ms. Nelson:

Enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the referenced file numbers.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approvals for change. <u>A condition of the approval of your applications is the requirement that acceptable water flowmeters be installed</u> so both industrial and irrigation uses can be metered independent of each other, from the diversion works prior to the <u>diversion of water</u>. Meters should be installed prior to the diversion of water. Please complete and return the form, Notice of Completion of Diversion Works for the installation of the meters as soon as this action is completed. The form and other information may be found at our web site <u>http://agriculture.ks.gov</u>. There is no fee for the notice of completion.

Since these orders modify the original Certificates of Appropriation for the above referenced water rights, they should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions regarding the enclosed document, please contact our office at 785-564-6640. Inquiries about the metering requirements should be directed to our staff at the Garden City Field Office, at 620-276-2901. If you contact us to discuss a specific file, please have a file number ready so that we may help you more efficiently.

Sincerely,

ListeraBan

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

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: Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, KS 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 hearing 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 day of April , 2024, I hereby certify that the attached Approvals of Application for Change in Use Made of Water, Place of Use and Order in the Matter of the Authorized Quantity of Water and Better Describing the Authorized Point of Diversion under File Nos. 728 & 11,383 dated , 2024, were mailed postage prepaid, first class, US mail to the following:

Seaboard Energy Kansas LLC 9000 W 67th Street Suite 200 Shawnee Mission, KS 66202

With a Photocopies to:

Garden City Field Office

Southwest Kansas GMD No. 3

Division of Water Resources