

Kansas Department of Agriculture
 Division of Water Resources
CHANGE: PD WORKSHEET

order in matter of
 quantity and
 removal
 of limitation & WUC
 update. *

1. File Number: 28680	2. Status Change Date: 5/20/2021	3. Change Num: C1 CGT	4. Field Code: * 2	5. GMD: 2
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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: 12/30/2019
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8a. Applicant(s) New to system Person ID **56447**
 Add Seq#

JOANN F NIGHTENGALE TRUST
3826 SANDY HOLLOW
CENTURY, FL 32535

MODIFY

8c. Landowner(s) New to system Person ID **67136**
 Add Seq#

GOD IN CHRIST MENNONITE CHURCH
Attn: WAYNE UNRUH
255674 E COUNTY RD 53
FAIRVIEW, OK 73737-7629

8d. Landowner(s) New to system Person ID
 Add Seq#

8b. Landowner(s) New to system Person ID
 Add Seq#

8a

8e. WUC New to system Person ID **67137**
 Add Seq#

CAMERON PENNER
9511 NW 12TH ST
HALSTEAD, KS 67056

9. Documents and Enclosure(s): DWR Meter(s) Date to Comply: **12/31/21** N & P Date to Comply: **12/31/21**

Anti-Reverse Meter Meter Seal Check Valve N & P Form Water Tube Driller Copy H & E Letter x not for this change

Conservation Plan Date Required: Date Approved: Date to Comply:

10. Use Made of Water From: To:

** Please move N&P requirement to D1 & D2 files when divided.

Date Prepared: **3/9/2021** By: **KJN**
 Date Entered: **5/24/2021** By: **L Moody**

5/17/2021 *
L Ireland

File No. **28680** 11. County: **HV** Basin: **Little Arkansas River** Stream: Formation Code: **113** Special Use:

12. Points of Diversion										Rate and Quantity							
CHK	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Rate gpm/cfs	Quantity af/mgy	Rate gpm/cfs	Quantity af/mgy	Overlap PD Files
MOD	6377				NC NE	7	24S	1W	1	3951	1325		680	119.5	680	119.5	none
MOD	25245				NC SE	7	24S	1W	2	1264	1256		700	119.5	700	119.5	none

20197045-MF*

PD'S MODIFIED FEET DISTANCES = UPDATED FROM CURRENT GPS ON FILE

13. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

14. Limitation: _____ **quantity limitation of 239 AF removed with quantity reduction ***
 Limitation: _____ (mgy) when combined with file number(s) _____

15.: Allocation Type _____ Start Year _____ 5 YR Amount _____ Amount Unit _____ Base Acres _____ Comment _____

CHK	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				
CHK	32060				7	24S	1W	1	32.75	32.75	32.75	32.75													131	8a	no	20197045-MF*
CHK	54778				7	24S	1W	2													32.75	32.75	32.75	32.75	131	8c	no Y	20197046-MF*

Base Acres: Year: Minimum Reasonable Quantity: ***20197045-MF STILL PENDING INITIAL REVIEW**
 Comments: **REMOVE CURRENT LIMITATION***

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

TO: Files

DATE: February 4, 2021

FROM: Kris Neuhauser

RE: Water Right, File No. 28,680

Joan Nightengale, owner of the above referenced water right, filed an application for approval to change the point of diversion for Water Right, File No. 28,680; authorized for irrigation use within the Little Arkansas River Basin.

The referenced file number does not appear abandoned pursuant to K.S.A. 82a-718.

File No. 28,680 is authorized two wells, with no overlaps, and is limited to a combined quantity of 239 acre-feet per calendar year for irrigation use on the Northeast Quarter (131 acres) and the Southeast Quarter (131 acres) of Section 7, Township 24 South, Range 1 West, Harvey County, KS (no PU overlaps; total of 262 irrigated acres).

This application proposes to move quantity from the south well to the north well, so that both wells will have an equal authorized quantity of 119.5 acre-feet. Both wells will remain active, the only purpose is to move quantity, and the local source of supply will not change. However, this move will be approximately 2,688 feet, which does not comply with K.A.R. 5-22-8(A)(1). A waiver of K.A.R. 5-22-8(A)(1) will be included.

The application is being filed in conjunction with a division request, and subsequent MYFA applications. The division will create 28,680 D-1 (20197045-MF) and 28,680 D-2 (20197046-MF). The total quantity will be as follows: 119.5 AF = 119.5 AF = 239 AF. The current limitation on File No. 28,860 is proposed to be removed, since the total quantity between the two wells will equal 239 acre-feet.

The proposed footages for each point of diversion reflect updated GPS information on file.

Six domestic wells were identified within ½ miles of the point(s) of diversion. Nearby notification letters were sent by Environmental Scientist Richelle Krueger (since retired) on May 13, 2020, notifying nearby well owners of the applicant's submission of this change application. No responses of any kind were received.

In a letter dated November 4, 2020 (to Justin Koehn), Tim Boese, Manager of Equus Beds Groundwater Management District No. 2 recommended that the change application be approved.

In an e-mail dated March 2, 2021 Jeff Lanterman, Water Commissioner of the Stafford Field Office, and Cameron Conant, Assistant Water Commissioner of the Stafford Field Office, indicated no objection to approval of the application.

Based on the above discussion, that the changes are reasonable, that impairment to existing water rights is unlikely, and that no change in the same local source of supply will occur, it has been recommended that the referenced application be approved.



Kris Neuhauser

Environmental Scientist

From: Baum, Kristen [KDA]
Sent: Tue 3/2/2021 5:39 PM
To: Neuhauser, Kris [KDA];Lanterman, Jeff [KDA];Conant, Cameron [KDA]
Subject: RE: 28680 change/division, 20197045-MF, 20197046-MF recommendation request

Hmm, I'm not sure but I don't think we need a Board Review. I think we can waive whatever we think needs to be waived. I don't see anything in statute or reg that would prohibit it. It may go against their policy though.

Kristen A Baum
New Applications and Changes Supervisor
DWR Appropriations

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Tuesday, March 2, 2021 5:00 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: RE: 28680 change/division, 20197045-MF, 20197046-MF recommendation request

Oh shoot, I missed that note about a possible waiver of 5-22-8(a)(1) on #18 of the change app entirely. Thanks for the details on everything, will wait to see what Kristen says regarding a board review.

Kris

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Tuesday, March 2, 2021 4:33 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: RE: 28680 change/division, 20197045-MF, 20197046-MF recommendation request

Kris;

I was wondering... In GMD #5 even if it is between wells we have to waive their (no more than 2640' rule) because the reg explicitly precludes a move of more than 2640. GMD 2 is worded a bit differently but says the same thing. They are moving water 2688'

Outside a gmd if they are the same file we don't have to do that because it is same file- same sos. I don't see in the GMD recommendation where they recommended to waive 5-22-8 (a)(1)

Honestly I am OK with approving it with a waiver of the reg. But do we need to have a board review it to recommend a waiver of it? Copied Kristen to get her take on it as well.

It was even noted on the change application.

Jeff

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Monday, March 1, 2021 4:38 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 28680 change/division, 20197045-MF, 20197046-MF recommendation request

Hi guys,

Here is a package for you review and recommendation. Change Application/Division for 28680, and two MYFA's (Base Rights 28680 D1 and 28680 D2).

Justin received an approval recommendation from Tim on the change app before he left. I just received approval recommendations from him for both MYFA's. Planning to coordinate with Ty on the division. Can get them all in the same package review folder for Kristen – and eventual signatures.

Let me know if you need anything else.

Kris

From: Neuhauser, Kris [KDA]
Sent: Friday, February 5, 2021 3:14 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 28680

Will do!

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Friday, February 5, 2021 3:13 PM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 28680

Ya. I would say do it as a package and send to us.

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Friday, February 5, 2021 3:03 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: 28680

Have my memo here for a change app for 28680 (will equalize quantities between the two authorized wells). It was filed in conjunction with a division and two MYFA's (will be for 28680 D-1 and 28680 D-2 once the division is worked). Justin was working this one, but handed it over to me before he went on military leave.

Same question as I had on 50191 I suppose! Should I send you guys the change, division, and two MYFA's as a full package? Ty may knock out the division. I'd do the change and MYFA's.

Happy Friday,

Kris Neuhauser
Environmental Scientist
Water Appropriations Program – Kansas Dept of Agriculture
(785) 564-6643

From: Koehn, Justin [KDA]
Sent: Mon 12/28/2020 2:20 PM
To: Tim Boese
Cc: Neuhauser, Kris [KDA]
Subject: RE: No. 28680 change in PD application

Tim – Hope you had a Merry Christmas. I wanted to let you know that I’m not going to get all of these done before I leave. Kris Neuhauser will be taking over the Change, Division and MYFA. His email is Kris.neuhauser@ks.gov and phone number is 785-564-6643. Thanks

Justin

From: Tim Boese <tboese@gmd2.org>
Sent: Saturday, December 19, 2020 2:35 PM
To: Koehn, Justin [KDA] <Justin.Koehn@ks.gov>
Subject: RE: No. 28680 change in PD application

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Thanks Justin. Are you going to work the Division application and MYFAs also before you leave, or will someone else be handling those?

Thank you for your service and stay safe and well during active duty.

Tim Boese, Manager
Equus Beds GMD2
313 Spruce, Halstead, Kansas 67056
316-835-2224
Fax: 316-835-2225
tboese@gmd2.org
www.gmd2.org

From: Koehn, Justin [KDA] [<mailto:Justin.Koehn@ks.gov>]
Sent: Wednesday, December 16, 2020 11:18 AM
To: Tim Boese
Subject: RE: No. 28680 change in PD application

Tim - I found out that I am going on Active Duty Orders starting Jan 1st until Oct or Nov. This app is one that I’m trying to complete before then.

From: Tim Boese <tboese@gmd2.org>
Sent: Wednesday, December 16, 2020 10:00 AM
To: Koehn, Justin [KDA] <Justin.Koehn@ks.gov>
Subject: RE: No. 28680 change in PD application

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Good morning Justin. I was just checking on the status of the change in PD application for No. 28680, as well as the pending division and MYFA. The tenant for the SE /4 is coming in this morning to discuss the water right and I am guessing he will ask. I don’t see in WRIS that the change in PD has been approved yet, is that correct?

Thanks!

Tim Boese, Manager
Equus Beds GMD2
313 Spruce, Halstead, Kansas 67056
316-835-2224
Fax: 316-835-2225
tboese@gmd2.org
www.gmd2.org

From: Koehn, Justin [KDA] [<mailto:Justin.Koehn@ks.gov>]
Sent: Friday, November 06, 2020 10:37 AM
To: Tim Boese
Subject: RE: No. 28680 change in PD application

Thanks for pointing this out, I will take care of correcting the feet distances. Have a great weekend.

Justin

From: Tim Boese <tboese@gmd2.org>
Sent: Friday, November 6, 2020 8:51 AM
To: Koehn, Justin [KDA] <Justin.Koehn@ks.gov>
Subject: No. 28680 change in PD application

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Justin – We sent you our recommendation for No. 28680 change in PD application on November 4, 2020. I noticed a possible error/typo on the change application in Section 8. In the proposed point of diversion description for the north well, the west footage measurement wasn't carried down from the GPS footage measurements. I believe it should be 1325 feet west. See the attached. It does not affect our recommendation and I used 1325 feet west in the review, but thought you might want to correct that as you process the change application.

Thanks.

Tim Boese, Manager
Equus Beds GMD2
313 Spruce, Halstead, Kansas 67056
316-835-2224
Fax: 316-835-2225
tboese@gmd2.org
www.gmd2.org

Kansas Department of Agriculture
 Division of Water Resources
WAIVER REQUEST & WAIVER RULE WORKSHEET

File Number: **28,680**

FO: **2**

GMD: **2**

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IND			GMD 2	Change Approval	Exceeds Move Distance
Rule Number	Date Granted	Date Denied	Justification:	The application to change the point of diversion for Water Right, File No. 28,680, received 12/30/2019, proposes to move the authorized quantity from the south well to the north well, so that both wells will have an equal authorized quantity of 119.5 acre-feet, a distance move of approximately 2,688 feet. The proposal does not comply with K.A.R. 5-22-8(a)(1). The local source of supply is the same for both wells. This waiver will not prejudicially nor unreasonably affect the public interest, and it will not impair an existing water right.	
K.A.R. 5-22-8 (a)(1)					

WAIVER RULE (complete only if a new rule needs to be created):

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
				K.A.R.		

COMMENTS: Will not be a new rule

Date Prepared **3/8/2021** By **KJN**

Date Entered _____ By _____

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,
REDUCTION IN THE QUANTITY OF WATER
AND
ORDER IN THE MATTER OF THE ADDITIONAL LIMITATION
UNDER
WATER RIGHT
FILE NO. 28,680**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of JoAnn F. Nightengale, Trustee of the JoAnn F. Nightengale Trust, 3820 Sandy Hollow, Century, Florida 32535, and Wayne Unruh on behalf of the God in Christ Mennonite Church, 255674 E County Road 53, Fairview, Oklahoma 73737-7629, received in this office on December 30, 2019, 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, 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 not to exceed 239 acre-feet per calendar year and effectively removes the additional limitation on the quantity as set forth by the Certificate of Appropriation, File No. 28,680, dated December 12, 1989.

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 point of diversion shall be:

one (1) well located near the center of the Northeast Quarter (NE $\frac{1}{4}$) of Section 7, more particularly described as being near a point 3,951 feet North and 1,325 feet West of the Southeast corner of said section, at a diversion rate not in excess of 680 gallons per minute (1.52 c.f.s.) and a quantity of water not to exceed 119.5 acre-feet per calendar year, and

one (1) well located near the center of the Southeast Quarter (SE $\frac{1}{4}$) of Section 7, more particularly described as being near a point 1,264 feet North and 1,256 feet West of the Southeast corner of said section, at a diversion rate not in excess of 700 gallons per minute (1.56 c.f.s.) and a quantity of water not to exceed 119.5 acre-feet per calendar year,

both in Township 24 South, Range 1 West, Harvey 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, 2021, 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.

The water right owner shall properly install an acceptable water meter on each of 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.

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. 28,680, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated December 12, 1989.

Ordered this 20 day of May, 2021, 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)
County of Riley) SS

The foregoing instrument was acknowledged before me this 20 day of May 2021, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

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

JO ANN F NIGHTENGALE TRUST
JO ANN F NIGHTENGALE
3826 SANDY HOLLOW
CENTURY, FL 32535

May 26, 2021

RE: Water Right, File No. 28,680

Dear Ms. Nightengale:

Enclosed is the order executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the application for change under the above referenced file number and updating the water use correspondent to Cameron Penner.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in this approval for change. A condition of the approval is that an acceptable water flow meter must be installed on the diversion works authorized under the referenced file number. Please return the required enclosed forms, Notification of the Completion of the Diversion Works prior to December 31, 2021.

Since this order modifies the original document referred to above, it should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions, please contact Kris Neuhauser, Environmental Scientist, at (785) 564-6640 or Jeff Lanterman, Water Commissioner, Stafford City Field Office at (620) 234-5311. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

A handwritten signature in black ink that reads "Kristen A. Baum". The signature is written in a cursive, flowing style.

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

KAB: kjn: li

Enclosures

pc: Wayne Unruh, God In Christ Mennonite Church
Cameron Penner
Stafford Field Office
Groundwater Management District No. 2

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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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, KS 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.

Any request for a 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 *26* day of *May*, 2021, I hereby certify that the attached Approval of Application for Change, File No. 28,680, dated *20 May*, 2021, was mailed postage prepaid, first class, U.S. Mail to the following:

JO ANN NIGHTENGALE TRUST
JO ANN NIGHTENGALE TRUSTEE
3826 SANDY HOLLOW
CENTURY, FL 32535

With a true and correct copy to:
GOD IN CHRIST MENNONITE CHURCH
WAYNE UNRUH
255674 E COUNTY RD 53
FAIRVIEW, OK 73737-7629

With photocopies to:
CAMERON PENNER
9511 NW 12TH ST
HALSTEAD, KS 67056

Stafford Field Office
Groundwater Management District No. 2


Division of Water Resources, Staff