

Kansas Department of Agriculture
 Division of Water Resources
CHANGE: P/D WORKSHEET
FINDINGS & ORDER - DISMISSAL OF CHG APP

1. File Number: 28971	2. Status Change Date: 1/23/2023	3. Change Num: C2	4. Field Office: 02	5. GMD:
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6. Status: <input type="checkbox"/> Approved <input checked="" type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return	7. Filing Date of Change: 4/11/2019
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8a. Applicant(s) Person ID 7209 New to system <input type="checkbox"/> Add Seq# _____ ROBERT D HAY REV TRUST 9171 S WEST ST HAYSVILLE, KS 67060	8c. Landowner(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____
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8b. Landowner(s) Person ID 7209 New to system <input type="checkbox"/> Add Seq# _____ ROBERT D HAY REV TRUST 9171 S WEST ST HAYSVILLE, KS 67060	8d. WUC Person ID 7209 New to system <input type="checkbox"/> Add Seq# _____ ROBERT D HAY REV TRUST 9171 S WEST ST HAYSVILLE, KS 67060
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9. Documents and Enclosure(s): DWR Meter(s) Date to Comply: _____ N & P Date to Comply: _____

Anti-Reverse Meter Meter Seal Check Valve N & P Form Water Tube Driller Copy H & E Letter

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

10. Use Made of Water From: _____ To: _____

Date Prepared: **6/3/2022** By: **LI**
 Date Entered: **1/24/2023** By: **LMoody**

File No. **28971** 11. County: **SG** Basin: **NINNESCAH RIVER** Stream: **NA** Formation Code: **100** Special Use: **NA**

12. Points of Diversion
 CHK
 MOD
 DEL PDIV
 ENT Qualifier S T R ID 'N 'W Comment (AKA Line) Rate gpm Quantity af/mgy Rate gpm Quantity af/mgy Overlap PD Files

NO CHANGE

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

16. Place of Use 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				
NO CHANGE																				

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: File

DATE: June 16, 2022

FROM: Leslie Ireland

RE: File Nos. 28,971 & 48,026

The April 11, 2019, received Applications for Approval to Change the Point of Diversion under the referenced files proposed to switch the files between the points of diversion. The proposed location for File No. 48,026, that is an appropriation approved in 2017, is closed to new appropriations. It was determined the change under File No. 48,026 fails to meet statute.

As K.S.A. 82a-708b(a) states in part: "Any owner of a water right may change the place of use, point of diversion or the use made of water, without losing priority of right,..." The statute refers to a water right and makes no mention of a permit to appropriate. The owner was afforded several years to perfect, File No. 48,026 but only 34 acre-feet of the 87.1 acre-feet authorized would have been perfected and certification would be required prior to consideration of the requested changes.

In my discussions with Brad Vincent who assisted with the applications kind of indicated the well under File No. 48,026 may not have been constructed to take into consideration the full aquifer. There was also the discussion regarding the function of the meter which being a new meter and four years in should have been discovered prior to our April 2022 letter.

Other than an extension request that was granted no additional information was submitted by the owner or agent.

The applications should be dismissed for File No. 48,026 failure to comply with statute.



Leslie Ireland
Environmental Scientist

From: Lanterman, Jeff [KDA]
Sent: Mon 3/28/2022 4:39 PM
To: Baum, Kristen [KDA];Conant, Cameron [KDA]
Cc: Koehn, Justin [KDA];Ireland, Leslie [KDA]
Subject: RE: Change PD Applications, File Nos. 28971 & 48026 HAY

That sounds perfect.

This is what we are trying to get away from.

From: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Sent: Friday, March 25, 2022 3:44 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Cc: Koehn, Justin [KDA] <Justin.Koehn@ks.gov>; Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Subject: RE: Change PD Applications, File Nos. 28971 & 48026 HAY

Our email traffic points to 82a-708b pertaining to water rights and not permits as the basis for not allowing unperfected water to move. I would be hesitant to go a different direction with our grounds for denial but I'm also not sure we have a very strong case. How about something like this, feel free to expand on it.

Please note that **K.S.A. 82a-708b(a)** of the Kansas Water Appropriation Act states in part:

"Any owner of a water right may change the place of use, point of diversion or the use made of water, without losing priority of right,..."

The statute refers to a water right and makes no mention of a permit to appropriate, therefore any unperfected portion of Water Appropriation File No. 48,062 cannot be moved to the proposed location.

Kristen A Baum
New Applications and Changes Supervisor
DWR Appropriations

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Wednesday, March 23, 2022 12:52 PM
To: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Cc: Koehn, Justin [KDA] <Justin.Koehn@ks.gov>
Subject: Change PD Applications, File Nos. 28971 & 48026 HAY

Kristen & Jeff,

The maximum water use of 34 AF is only 40% of the 87.1 AF authorized, so no way near the quantity to perfect and per our discussion the 2019 filed applications would be dismissed if not perfected by the end of 2021. There are not any previous similar saturations so don't know applicable rule for denial Do you? I listed two of the most common not local source and source of supply be Quaternary System moving closer to a steam. So I will need some direction.

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

FINDINGS AND ORDER IN THE MATTER OF THE DISMISSAL OF APPLICATION FOR APPROVAL TO CHANGE THE AUTHORIZED POINT OF DIVERSION UNDER WATER RIGHT FILE NO. 28,971

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 November 18, 1986, the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, in accordance with K.S.A. 82a-714, issued a Certificate of Appropriation, pursuant to Water Right, File No. 28,971, for permit to appropriate water for irrigation use, authorizing the use of groundwater, to be withdrawn by means of:

one (1) well located near the center of the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 19, more particularly described as being 1,320 feet North and 3,320 feet West of the southeast quarter of said section, in Township 29 South, Range 1 East, Sedgwick County, Kansas.
2. That on April 11, 2019, an Application for Approval to Change the Authorized Point of Diversion was received in the office of the Chief Engineer, under the water right described in Paragraph No. 1 of these findings.
3. That in a letter dated April 7, 2022, the applicant was advised that the Application for Change in Point of Diversion, as proposed, did not comply with K.S.A. 82a-708b of the Kansas Water Appropriation Act, and that the application would be submitted to the Chief Engineer with a recommendation that it be denied and dismissed.
4. That in the letter dated April 7, 2022, the applicant was allowed until April 22, 2022, to supply additional information to be considered, or to request additional time in which to do so, prior to the Application being submitted to the Chief Engineer for a final decision.
5. That in response to a request for an extension of time, further action on the application was delayed until May 23, 2022, to allow the applicant an opportunity to supply additional information to be considered by the Chief Engineer.

- 6. That no additional information has been submitted, nor has the applicant requested additional time to supply information, prior to the extended deadline of May 23, 2022.
- 7. That the Application for Approval to Change the Point of Diversion, filed pursuant to Water Right, File No. 28,971, should be dismissed, and its priority forfeited for failure to meet the requirements of K.S.A. 82a-708b of the Kansas Water Appropriation Act.

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, the Application for Approval to Change the Point of Diversion, filed pursuant to Water Right, File No. 28,971, received on April 11, 2019, is herewith dismissed and the priority assigned to it is considered to be forfeited.

Ordered this 23 day of January, 2023, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

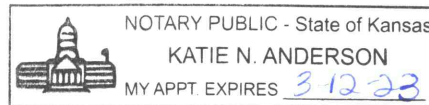
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 23 day of January, 2023, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Katie Anderson

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

January 24, 2023

ROBERT D HAY REV TRUST
9171 S WEST ST
HAYSVILLE KS 67060

RE: Dismissal of Change Applications
Water Right, File No. 28,971
Appropriation of Water, File No. 48,026

Dear Mr. Hay:

Enclosed are Findings and Orders by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing your pending Applications for Approval to Change the Point of Diversion, which were received in this office on April 11, 2019, under the above referenced file numbers.

The dismissal of the applications for change is a final agency action. If you choose to appeal the 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.

Sincerely,

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

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

KAB:li

Enclosures
pc: Stafford Field Office

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 Division, 1320 Research Park Drive, Manhattan, Kansas 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 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: 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 24 day of January, 2023, I hereby certify that the attached order for Water Right, File No. 28,971, dated January 23, 2023, was mailed postage prepaid, first class, US Mail to the following:

ROBERT D HAY REV TRUST
9171 S WEST ST
HAYSVILLE KS 67060

With a Photocopies sent to:

Stafford Field Office



Division of Water Resources