

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

File Number: 46373 FO: 2 GMD:

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IRR	8/22/2021	172	STATEWIDE	DEFINITIONS	BATTERY
Rule Number	Date Granted	Date Denied	Justification:	Well was redrilled approx. 47 ft beyond 300' radius due to the facility layout.	
K.A.R. 5- 1-1(n)	4/28/2023				

WAIVER RULE:

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
	STATEWIDE	DEFINITIONS	BATTERY	K.A.R. 5- 1-1(n)		

Date Prepared 3/23/23 By LI

Date Entered 5/1/2023 By LMoody

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
WATER RIGHT
FILE NO. 46,373**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Douglas Thiessen on behalf of Triple T Livestock, LLC, 14429 NW 100th Street, Whitewater, Kansas 67154, received in this office on August 22, 2022, for approval of a change in the location of the point of diversion under the certificate of appropriation issued pursuant to the permit to appropriate water for beneficial use, as modified and amended by the Order of the Chief Engineer dated April 9, 2007, approving the application to change the point of diversion, and by the Order of the Chief Engineer dated May 4, 2017, approving the application to change the place of use, and Order in the matter of the authorized point of diversion, finds that the change is reasonable and will not impair existing rights, and that the application should be and is hereby approved.

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:

a battery of three(3) wells with a geographic center located in the Northwest Quarter of the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 16, more particularly described as being near a point 4,724 feet North and 2,008 feet West of the Southeast corner of said section, in Township 24 South, Range 3 East, Butler County, Kansas.

located substantially as shown on the topographic map accompanying the application to change the point of diversion.

That all wells shall be located within the same local source of supply and shall supply water to a common distribution system.

Installation of the works for diversion of water shall be completed on or before December 31, 2023, 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 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. 46,373, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated September 15, 2020.

Ordered this 28th day of April, 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 28 day of April, 2023, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings
Notary Public



THE STATE  OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

WAIVER OF REGULATION
K.A.R. 5-1-1(n)

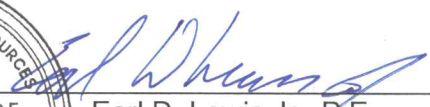
Date: April 28, 2023

RE: Water Right, File Nos. 28,286.05 & 46,373

- 1) K.A.R. 5-1-1(n) currently defines and restricts batteries of wells to a maximum radius of 300 feet from a geographical center.
- 2) That the overlapping files originally authorized a domestic stockwater operation that was changed to a battery of three(3) wells.
- 3) That the most northern well was drilled further north due to the facility layout and is 47 feet beyond the allowable 300 feet.
- 4) The battery authorizes 48 acre-feet at 80 gallons per minute meets all other rules and definitions of a battery.
- 5) No nearby well owners within one-half ($\frac{1}{2}$) mile of the proposed geographic center of the battery.
- 6) The approval of the change should not result in the impairment of any existing domestic or water rights nor shall the change adversely affect the public interest.

Comments:




Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files **DATE:** April 23, 2023
FROM: Leslie Ireland **RE:** Water Right,
File Nos. 28,286.05 & 46,373

Douglas Thiessen, signing as owner of Triple T Livestock LLC, the listed owner of the referenced files authorized for stockwatering use, filed applications for change in point of diversion under File No. 28,286.05 & 46,373. The applications were received on August 22, 2022, with a proposed new appropriation assigned File No. 50,847. The new appropriation is summarized in a separate memo. The referenced files are located in the Walnut River Basin, Butler County.

The subject rights appear to be in compliance with K.S.A. 82a-732 and not abandoned per K.S.A. 82a-718. The applications for change appear to comply with K.A.R. 5-5-2a, *Complete change application*.

The source of supply has been determined to be the Wellington Formation, (Code 533)

File Nos. 28,286.05 & 46,373 are certified to provide a limited quantity of 15.641 million gallons (mg) (48.0 acre-feet) per year from a battery of three(3) wells with a complete overlap in point of diversion and place of use located in the Northeast Quarter (NE $\frac{1}{4}$) and a portion in the Northwest Quarter (NW $\frac{1}{4}$) of Section 16, Township 24, Range 3 East. File No. 46,373 certified only 80 gallons per minute while the senior file certified 120 gallons per minute.

The change is to authorize one(1) of the three(3) wells being redrilled with all of the three wells remaining authorized by File Nos. 28,286.05 & 46,373. It appears the wells were drilled to fit the layout of the facility and not the definitions of a battery of wells as detailed in K.A.R. 5-2-3, *Battery of wells*. A well drilled to the Southwest is far enough away (1,272 feet) from the authorized geographical center it was required to be permitted by File No. 50,847. The North well was redrilled has been determined to be located approximately 5,047 feet North and 1,881 feet West of the Southeast corner of Section 16. When evaluated with the two(2) remaining authorized wells, it was determined to be 47 feet outside of the 300 foot required radius for battery wells. A **waiver of K.A.R. 5-1-1, Definitions(n) "Battery of wells"** has been requested. Looking at the site it could be due to the nature of the facility authorizing cattle and swine with the existing infrastructure. The change will shift the geographical center 62 feet North from the authorized location of the Northwest Quarter of the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$) near a point 4,684 feet North and 2,055 feet West of the Southeast corner to a point approximately 4,724 feet North and 2,008 feet West of the Southeast corner, remaining with the same qualifiers.

The well log is on the KGS web site. This newly drilled North well is indicated as 107 feet deep and similar lithology of the other wells. It appears the source of supply will remain unchanged.

The proposed (updated) geographical center meets K.A.R. 5-4-4, *Well spacing*, actually 1,342 feet from the new well. A review of the area indicates there are no other wells other than the applicant/owners proposed new well under File No. 50,847 within one-half ($\frac{1}{2}$) mile.

Jeff Lanterman, Water Commissioner was sent a copy of this memorandum for comments and a recommendation. He indicated in an e-mail dated April 5, 2023, he recommends approval the changes and the new permit.

Water flowmeters are required according to KSA 82a-706c, for all the referenced files. The proposed change in point of diversion under File No. 28,286.05 & 46,373, will not require a water level measurement tube as all the wells under File No. 28,286.05 & 46,373, have not been constructed with a tube as the wells appear to be operated at less than 100 gallons per minute. As a WWC-5 log was obtained from the KGS web site, a WWC-5 will not be a condition of the approval.

Based on the above discussion, the waiver is granted for the changes, they appear to be reasonable, that impairment to existing water rights is unlikely, that there are no pending applications within the vicinity of the proposed changes and filed prior that may be affected by the approvals and that no change in the local source of supply will occur, it is recommended that the applications be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

From: Lanterman, Jeff [KDA]
Sent: Wednesday, April 5, 2023 3:04 PM
To: Ireland, Leslie [KDA]; Conant, Cameron [KDA]
Subject: RE: Review & Recommendation File Nos. 28286.05 46373 & 50847

The additional Q sounds like a fine idea Leslie. I'm OK with going that route.

The quantity will all work itself out at certification time should they not need the additional water. We can look at that an apply an LTM then.

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Wednesday, April 5, 2023 2:50 PM
To: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: RE: Review & Recommendation File Nos. 28286.05 46373 & 50847

Cameron,

I have not spoken with Doug. Seems like you'd be OK if I ask him if he is considering expansion and to have him submit additional information?

Yep it was messy the well driller should be fined,, but maybe presented as domestic stockwatering...so was drilled without DWR permitting.
There is a lot of water that could be put to use, just no cheap money,, but would choose water over money any day.

Let me know about asking Doug..???

Leslie

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Wednesday, April 5, 2023 2:40 PM
To: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>; Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: RE: Review & Recommendation File Nos. 28286.05 46373 & 50847

I don't think his intention is to expand this facility at all and the point of the new application was to cover an illegal/unauthorized well that was re-drilled incorrectly and outside the distances allowed by the senior files...so it violated the battery of wells so needed a new app to cover the new well. I think he has justified the quantity that he currently has and not more than that, so I think the limitation on the new app back to the senior files is appropriate and is ok.

This was a mess b/c he had an illegal well too far away that we needed to cover. He wasn't going for more quantity or a large expansion with these applications but I'm open to more discussion if we need?

Have you spoken with Doug and if so, can he justify the additional quantity with some proposed expansion or flaker mill use? If so, I'm not against doing it as additional since there is 2500 AF open in the area, but that wasn't the starting point for these changes.

Cameron

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>

Sent: Thursday, March 23, 2023 3:48 PM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Subject: Review & Recommendation File Nos. 28286.05 46373 & 50847

Jeff & Cameron,

This project is for Doug Thiessen in Butler Co. The stockwatering facility serves swine, cattle and has a feed mill. The battery of three wells was redrilled off.. so much so a new app was considered for one of the wells, and a waiver of 300 foot radius for the other 3 wells remaining in the battery.

The new app is says it is limited with the senior files but feel that would be wrong as the rate should be able to be developed as it is a separate well. It is located close to the cattle pens... also the quantity should be allowed to be developed separately as we have gotten better at doing certificates and there is a feed mill on the site. I would think we would want to allow this new permit to accommodate an expansion of the operation. The new app also lists the quantity for the senior file only and not the total Q under both files makes for a wanky limitation.. so better to just allow it to develop another quantity from this well for use at the livestock complex. Also there is over 2500 AF available for appropriations. Gosh I feel like we want these guys to grow their business... maybe this appropriation with just the quantity and rate without additional Q& R back to a senior file.. would be just the ticket. Don't see it as to different from doing some of the files out west where there are two files limited and a third or fourth that are not.

Please let me know your comments and concerns. The new app well has been operating under a temporary that expired 2/19.

Leslie Ireland
Environmental Scientist
Change Application Unit
Division of Water Resources



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

May 2, 2023

TRIPLE T LIVESTOCK LLC
Attn: DOUGLAS THIESSEN
14429 NW 100TH ST
WHITEWATER, KS 67154-8961

RE: Water Right, File Nos. 28,286.05 & 46,373

Dear Mr. Thiessen:

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 files.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approvals. A condition of the approvals is that an acceptable water flowmeter must be installed on the diversion works authorized. Please complete and return the required enclosed form for the *Notification of the Completion of the Diversion Works and/or Report of Flowmeter Installation* prior to December 31, 2023. There is no fee for the required Notice of Completion on approvals of applications for change.

Please be reminded that the battery of wells authorized by these files is limited to 15.64 million gallons of water per year and an operational rate of 120 gallons per minute.

Since these orders modify the original documents referred to above, they should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions, please contact this office at 785-564-6640 or your area staff at the Stafford Field Office at 620-234-5311. If you call, please reference a file number so we can help you more efficiently.

Sincerely,

A handwritten signature in blue 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: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 2 day of May, 2023, I hereby certify that the attached Approval of Application for the Change, Water Right, File Nos. 28,286.05 & 46,373 dated April 28, 2023, were mailed postage prepaid, first class, US mail to the following:

TRIPLE T LIVESTOCK LLC
Attn: DOUGLAS THIESSEN
14429 NW 100TH ST
WHITEWATER, KS 67154-8961

With a Photocopy to:

Stafford Field Office



Division of Water Resources