



File No. <b>49,856</b>	15. Formation Code:	Drainage Basin:	County:	Special Use:	Stream:																
16. Points of Diversion			17. Rate and Quantity																		
T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized Rate gpm/cfs	Quantity af/mgy	Additional Rate gpm/cfs	Quantity af/mgy	Overlap PD Files								
<b>DEL</b>	<b>86181</b>	<b>NW SW NW</b>	<b>27</b>	<b>31S</b>	<b>21E</b>	<b>1</b>	<b>3800</b>	<b>5180</b>					<b>NONE</b>								
<b>DEL</b>	<b>86182</b>	<b>SW SW NW</b>	<b>27</b>	<b>31S</b>	<b>21E</b>	<b>2</b>	<b>2760</b>	<b>4730</b>													
<b>DEL</b>	<b>86183</b>	<b>SW NW NW</b>	<b>27</b>	<b>31S</b>	<b>21E</b>	<b>3</b>	<b>2760</b>	<b>4810</b>													
18. Storage: Rate _____ NF    Quantity _____ ac/ft    Additional Rate _____ NF    Additional Quantity _____ ac/ft																					
19. Limitation: _____ af/yr at _____ gpm ( _____ cfs) when combined with file number(s) _____ Limitation: _____ af/yr at _____ gpm ( _____ cfs) when combined with file number(s) _____																					
20. Meter Required? <input type="checkbox"/> Yes <input type="checkbox"/> No    To be installed by _____    Date Acceptable Meter Installed _____																					
21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? <b>NO</b>	Overlap Files
T 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				
<b>DEL</b>	<b>68421</b>	<b>27</b>	<b>31</b>	<b>21E</b>	<b>1</b>														<b>7a</b>	<b>NO</b>	<b>NONE</b>
<b>DEL</b>	<b>68422</b>	<b>27</b>	<b>31</b>	<b>21E</b>	<b>2</b>														<b>7a</b>	<b>NO</b>	<b>NONE</b>
Comments:																					

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

TO: Files

DATE: March 9, 2021

FROM: Doug Schemm

RE: Application, File No. 49,856

Roy Carter filed the above referenced application to appropriate surface water from three pump sites located on the Neosho River, for recreational use. Two of the proposed pump sites are located within a Wetland Reserve Program (WRP) permanent easement with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), and the Division of Water Resources (DWR) was informed that the NRCS will not allow pump sites to be installed within this easement area. In addition, DWR was informed that the third pump site is located within a utility tract owned by Kansas Gas and Electric.

K.A.R. 5-3-3a states, in part, that if the chief engineer is aware, or becomes aware, that the applicant does not have legal access to either the point of diversion or the place of use, before an application can be approved by the chief engineer, the applicant shall demonstrate that the applicant has legal access to the proposed point of diversion and the proposed place of use before the approval of the application. The applicant was asked to provide additional information documenting written permission from the landowner where the points of diversion are located.

In addition, as noted above, the marsh is included in an NRCS easement. In order for the applicant to pump water into this marsh, he must have completed a Compatible Use Agreement (CUA) application for water level management, and ultimately have it approved, by the NRCS. Because this project requires specific approval from the NRCS before any pumping is allowed, DWR cannot issue our appropriation permit without this documentation. Therefore, the applicant was required to submit the CUA application to the NRCS prior to approval of Application, File No. 49,856.

On February 3, 2021, the original appropriation application was returned to the applicant, with a cover letter requesting that additional information be submitted in order to complete the application. The applicant was provided a deadline until March 5, 2021, the time in which to provide the requested information and return the original application. The applicant was informed that the application would be dismissed if it was not returned by the March 5, 2021 deadline, or within any authorized extension of time.

The original application and requested information were not returned by the deadline, nor was there a request for an extension of time. Based on the available information, that the application was not returned within the time allowed, it is recommended that the file be dismissed for failure to return, as provided by K.S.A. 82a-710.

Douglas Schemm  
Environmental Scientist  
Topeka Field Office

# 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 FILE NO. 49,856**

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 June 14, 2017, the Chief Engineer received an application from Roy E. Carter for permit to appropriate surface water for beneficial use, assigned File No. 49,856, proposing the appropriation of 90 acre-feet of surface water from the Neosho River per calendar year at a maximum diversion rate of 10,000 gallons per minute. The points of diversion were three (3) pump sites located as follows: one in the Northwest Quarter of the Southwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ ), of Section 27, more particularly described as being near a point 3,800 feet North and 5,180 feet West of the Southeast corner of said section; one in the Southwest Quarter of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ ), of Section 27, more particularly described as being near a point 2,760 feet North and 4,730 feet West of the Southeast corner of said section; and one in the Southwest Quarter of the Northwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$ ), of Section 27, more particularly described as being near a point 1,460 feet North and 4,810 feet West of the Southeast corner of said section, all in Township 31 South, Range 21 East, Labette County, Kansas.
2. That Division of Water Resources (DWR) Topeka Field Office staff were informed that two of the proposed pump sites are located within a Wetland Reserve Program (WRP) permanent easement with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), and that the NRCS will not allow pump sites to be installed within this easement area. In addition, DWR was informed that the third pump site is located within a utility tract owned by Kansas Gas and Electric.
3. That K.A.R. 5-3-3a states, in part, that if the Chief Engineer is aware, or becomes aware, that the applicant does not have legal access to either the point of diversion or the place of use, before an application can be approved by the Chief Engineer, the applicant shall demonstrate that the applicant has legal access to the proposed point of diversion and the proposed place of use before the approval of the application. The applicant was asked to provide additional information documenting written permission from the landowner where the points of diversion are located.
4. That because the marsh is included in an NRCS easement, the applicant must have completed a Compatible Use Agreement (CUA) application for water level management, prior to pumping water into the marsh, and ultimately have it approved by the NRCS. Because this project requires specific approval from the NRCS before any pumping is allowed, DWR cannot issue an appropriation permit without this documentation. Therefore, the applicant was required to submit the CUA application to the NRCS prior to approval of Application, File No. 49,856.

- 5. That on February 3, 2021, original appropriation application, File No. 49,856 was returned to the applicant, with a cover letter requesting that additional information, as described above, be submitted in order to complete the application. The applicant was provided a deadline until March 5, 2021, the time in which to provide the requested information and return the original application. The applicant was informed that the application would be dismissed if it was not returned by the March 5, 2021 deadline, or within any authorized extension of time.
- 6. That the original application was not returned by the March 5, 2021 deadline, nor was there any request for an extension of time.
- 7. That the application should be dismissed and its priority forfeited as provided by K.S.A. 82a-710, for failure to return the application.

**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, Application, File No. 49,856, is herewith dismissed and the priority assigned to it is considered to be forfeited.

Ordered this 28 day of June, 2021, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

Lane P. Letourneau, P.G.  
Program Manager  
Water Appropriation Program  
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 June, 2021, by Lane P. Letourneau, P.G., Program Manager, 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

June 30, 2021

ROY E CARTER  
108 SAINT JOSEPH ST  
SAINT PAUL KS 66771-4093

RE: Application, File No. 49,856

Dear Mr. Carter:

Enclosed is the Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing Application, File No. 49,856 for failure to return the original application and provide the requested information, prior to the deadline of March 5, 2021.

This is a final agency action. If you choose to appeal this 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.

The Chief Legal Counsel for the Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, is the agency officer who will receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture, Division of Water Resources. If you have questions or would like clarification concerning this order, you may contact the Chief Engineer.

If you have any questions, please contact our office at (785)564-6640. 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 Unit Supervisor  
Water Appropriation Program

KAB: dws: li

Enclosures

pc: Topeka Field Office

**RIGHT TO PETITION FOR REVIEW  
UNDER THE KANSAS JUDICIAL REVIEW ACT**

This is a final agency action. If you choose to appeal this 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.

The Chief Legal Counsel for the Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, is the agency officer who will receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture, Division of Water Resources. If you have questions or would like clarification concerning this order, you may contact the Chief Engineer.

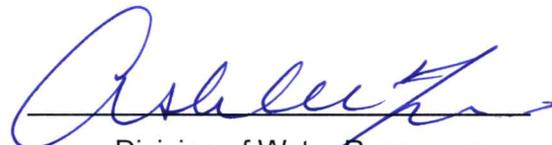
**CERTIFICATE OF SERVICE**

On this 30 day of June, 2021, I hereby certify that the foregoing Dismissal of Application, File No. 49,856, dated 28 June, 2021, was mailed postage prepaid, first class, US mail to the following:

ROY E CARTER  
108 SAINT JOSEPH ST  
SAINT PAUL KS 66771-4093

With photocopies to:

Topeka Field Office

  
Division of Water Resources