

Kansas Department of Agriculture
Division of Water Resources
CHANGE: P/U P/D DISMISSAL WORKSHEET

1. File Number: 947	2. Status Change Date: 12/14/2021	3. Change Num: C1	4. Field Office: 01	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: 8/18/20
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8a. Applicant(s) New to system <input checked="" type="checkbox"/>	Person ID <u>7137</u> Add Seq# <u>1</u>
CHARLES HASLOUER 1268 HIGHWAY 4 HOPE, KS 67451	

8c. Landowner(s) New to system <input type="checkbox"/>	Person ID <u>50705</u> Add Seq# <u>1</u>
HARVEY & ROSE FALEN REV TRUST 627 JEEP RD HOPE, KS 97451	
8d. Landowner(s) New to system <input type="checkbox"/>	Person ID <u>67538</u> Add Seq# <u>1</u>
SADOW FAMILY TRUST 2148 MAYWOOD DR MONROE, LA 71201	

8b. Landowner(s) New to system <input type="checkbox"/>	Person ID <u>40515</u> Add Seq# <u>1</u>
CHARLES & ELLEN HASLOUER 1268 HIGHWAY 4 HOPE, KS 67451	

8d. WUC New to system <input type="checkbox"/>	Person ID <u>7137</u> Add Seq# <u>1</u>
CHARLES HASLOUER 1268 HIGHWAY 4 HOPE, KS 67451-9131	

9. Documents and Enclosure(s): <input type="checkbox"/> DWR Meter(s) Date to Comply: _____ <input type="checkbox"/> N & P Date to Comply: _____	
<input type="checkbox"/> Anti-Reverse Meter <input type="checkbox"/> Meter Seal <input type="checkbox"/> Check Valve <input type="checkbox"/> N & P Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input type="checkbox"/> H & E Letter	
<input type="checkbox"/> Conservation Plan Date Required: _____ Date Approved: _____ Date to Comply: _____	

10. Use Made of Water From: _____	To: _____
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Date Prepared: 11/3/21 By: LHH/TFO
Date Entered: 12/22/2021 By: LMoody

File No. **947** 11. County: **DICKINSON** Basin: **Smoky Hill River** Stream: **Middle BR Turkey Creek** Formation Code: Special Use:

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

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											NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
CHK											NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
MOD	PUSE	S	T	R	ID	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE									
DEL						¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼									
ENT																														

Base Acres: Year: Minimum Reasonable Quantity:

Comments: ***NOTE: This dismissal does not effect the change application filed under File No. 12591.**

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

TO: Files

DATE: November 4, 2021

FROM: Lloyd Hemphill

RE: Water Right
 File Nos. 947 and 12, 591

Charles Haslouer, water right owner, has filed an application for approval to change the authorized points of diversion and place of use for Water Right, File No. 947 and an application for approval to change the authorized place of use for File No. 12,591 on August 18, 2020.

Prior to the proposed changes, these two files share partially overlapping places of use and authorize separate points of diversion (pumpsites on Middle Branch Turkey Creek in the Smoky Hill River Basin). The best information on file indicates that the land covered under File No. 947 (62 acres) is owned by Charles and Ellen Haslouer; the Harvey & Rose Falen Family Revocable Trusts; and the Sandow Family Trust, although the maps accompanying the original application filed in 1952 and subsequent Field Inspection are of questionable quality. The land covered under File No. 12,591 (115 acres) is owned by Charles and Ellen Haslouer. The two files share a common 37 acres.

The applicant was notified in a November 6, 2020 letter that signatures from all landowners are required for approval of the change applications and a deadline of December 7, 2020 was established. In various telephone conversations, Mr. and Mrs. Haslouer indicated to the Topeka Field Office that some of the other landowners were unwilling to provide or they were otherwise unable to obtain the signatures. All water right owners were notified in an April 2, 2021 letter that the place of use change application for File No. 12,591 could be approved provided that a waiver of K.A.R.5-3-5n is approved and a Cease and Desist Order is placed on File No. 947 to cease diversion under this file. The place of use and point of diversion change applications will be dismissed for File No. 947, for failure to provide the required signatures.

Based on a review of the water use history, Water Right, File No. 12,591 does not appear abandoned as per K.S.A. 82a-718. The pumpsites authorized under Water Right, File No. 947 have not been active in the recent past but some of the common land authorized by both water rights has been routinely irrigated. The case can be made that the same pumping equipment used for File No. 12,591 could have been moved to the pumpsites under the other file if there had been the need to do so. Therefore, File No. 947 would not be abandoned either.

The purpose of the place of use change application for File No. 12,591 is to reconfigure the place of use to include all land under the existing pivot. The pivot has previously irrigated some unauthorized land. This change application proposes to reconfigure the authorized 115 acres and add 10 acres, resulting in a total of 125 irrigated acres. The base acreage established for this file is 115 acres, thus the increase in acreage to 125 acres complies with K.A.R. 5-5-11. The new place of use will be described as follows:

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
12	16S	2E					24	34	32	35									125

The point of diversion description for File No. 12,591 will not be modified as a result of this change application, although the feet distances for one of the points will be updated based on G.P.S. data collected during an August 2, 2018 compliance investigation. The updated description for (PDIV ID: 40798 - ID #4) will be:

one (1) point located in the Northeast Quarter of the Southwest Quarter of the Northwest Quarter (NE¼ SW¼ NW¼) of Section 12, more particularly described as being near a point 3,635 feet North and 4,402 feet West of the Southeast corner of said section in Township 16 South, Range 2 East, Dickinson County, Kansas.

No nearby landowners were notified as the proposed change under File No. 12,591 is a change in place of use involving only land owned by the applicant. No change will occur as a result of this application in the quantity of water pumped or the rate of diversion.

File No. 12,591 is authorized a quantity of 68 acre-feet and this change application proposes a place of use of 125 acres. This is 0.54 acre-feet per acre which appears reasonable.

A water flow meter is required. A check valve is required if any chemical or foreign substance is injected into the water through the diversion works.

Katie Tietsort, Water Commissioner of the Topeka Field Office recommended approval of the referenced change application in an e-mail dated November 4, 2021 along with the Cease & Desist Order for Water Right, File No. 947

Lloyd Hemphill
Environmental Scientist

Hemphill, Lloyd [KDA]

From: Tietsort, Katie [KDA]
Sent: Thursday, November 4, 2021 11:06 AM
To: Hemphill, Lloyd [KDA]
Cc: Baum, Kristen [KDA]
Subject: RE: Water Right File Nos. 947 & 12591: Haslouer - For your recommendation

Lloyd,

Please proceed with this package. This appears to meet all the requirements of the KWAA. Haslouer will receive the formal CD on the senior right 947, and will be pumping from the junior right only, 12591, which will not cover his pivot. Thanks for working this package.

Katie Tietsort

Water Commissioner

Katie.Tietsort@ks.gov
Ph. 785-296-5733 Cell 785-213-9188
Kansas Department of Agriculture
Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

From: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>
Sent: Wednesday, November 3, 2021 3:48 PM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Cc: Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: Water Right File Nos. 947 & 12591: Haslouer - For your recommendation

Katie,

Will you provide your recommendation on the Haslouer package? This includes a change in PU application for Water Right, File No. 12,591; and the dismissal of change application and cease and desist order for Water Right File No. 947.

I have made the modifications suggested by Brett.

If you care to see the transmittals and worksheets, I will make them available. Let me know if you have any questions.

Thanks,
Lloyd

Lloyd Hemphill, Environmental Scientist
Kansas Department of Agriculture
Division of Water Resources, Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615
(785) 296-5733

NOTE NEW ADDRESS

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 THE APPLICATION TO CHANGE
THE AUTHORIZED PLACE OF USE AND POINT OF DIVERSION
UNDER
WATER RIGHT, FILE NO. 947**

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 2, 1955, the Chief Engineer, in accordance with K.S.A. 82a-714, issued a certificate of appropriation pursuant to Appropriation of Water, File No. 947, for permit to appropriate water for irrigation use. The point of diversion descriptions were subsequently corrected by Orders of the Chief Engineer on January 21, 1981 and June 10, 1983.
2. That on August 18, 2020, an Application for Approval to Change the Authorized Place of Use and Point of Diversion was received in the office of the Chief Engineer under File No. 947.
3. That it has been determined the currently authorized place of use is owned by multiple owners, and that the application only contains the signature of Charles Haslouer.
4. K.A.R. 5-5-1(c) *Filing an application for change* of the Rules and Regulations of the Water Appropriation Act requires all of the water right owners, including their spouses, or duly authorized agent of the owners of the water right, shall verify upon oath or affirmation that the statements contained in the application are true and complete.
5. K.A.R. 5-5-5 *Signatures required on change applications* of the Rules and Regulations of the Water Appropriation Act requires in part that if the extent of each owners interest in the water right has not been legally determined, then all landowners holding an undetermined portion of the water right must sign the change application or the landowners must submit an agreement signed by all landowners agreeing how the water right should be divided.

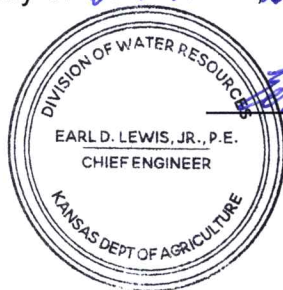
- 6. That in a letter dated November 6, 2020, the applicant was advised the notarized signatures of all landowners of record and their spouses would be required for the referenced application to be processed. The applicant was informed that all required signatures must be completed and returned to the office of the Chief Engineer on or before December 7, 2020 or the application would be submitted to the Chief Engineer for dismissal.
- 7. That the applicant was unable to collect the required signatures of all landowners.
- 8. Since no additional information has been received to show that the proposed change in point of diversion will comply with K.A.R. 5-5-1(c) and K.A.R. 5-5-5, nor was a request for additional time received, the Application for Approval to Change the Authorized Place of Use and Points of Diversion, Water Right, File No. 947, should be dismissed for failure to meet the requirements of K.A.R. 5-5-1(c) and K.A.R. 5-5-5 of the Rules and Regulations 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, the Application for Approval to Change the Authorized Place of Use and Point of Diversion received on August 18, 2020, under Water Right, File No. 947, shall be denied and dismissed.

In all other respects, the Certificate of Appropriation for Beneficial Use of Water, issued pursuant to File No. 947, dated November 2, 1955, remains as authorized, as modified and amended by the orders of the Chief Engineer dated January 21, 1981 and June 10, 1983.

Ordered this *14th* day of *December, 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)
) SS
 County of Riley)

The foregoing instrument was acknowledged before me this *14* day of *December 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

December 23, 2021

CHARLES & ELLEN HASLOUER
1268 HIGHWAY 4
HOPE, KS 67451

RE: Water Right, File No. 947
Dismissal of Change Application, and
Cease & Desist Order

Dear Mr. & Mrs. Haslouer:

Enclosed is the Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, which dismisses the Application for Approval to Change the Point of Diversion and Place of Use under Water Right, File No. 947, received on August 18, 2020. This dismissal is a result of the failure of the proposed change to meet the requirements of the rules and regulations of the State of Kansas, specifically K.A.R. 5-5-1(d) *Filing an application for change* and K.A.R. 5-5-5 *Signatures required on change applications*.

Also enclosed is an Order requiring all persons to cease & desist diversion of water from the pump sites authorized by this water right for anything other than domestic uses. These pump sites are separate from those authorized under Water Right, File No. 12,591. Any diversion of water prior to your Notice of Non-Compliance being vacated is a violation of the provisions of K.S.A. 82a-737 and K.S.A. 82a-728. Such violations will result in further legal action which may include fines, suspension of the right to divert water, and/or loss of the right to divert water. You have a period of 30 days from the date of this Order to comply.

If you have any questions, please contact Lloyd Hemphill at (785) 296-8682. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB:llh

Enclosure(s)

pc: Topeka Field Office
Harvey & Rose Falen Rev Trust
Sandow Family Trust

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 23 day of December, 2021, I hereby certify that the attached Dismissal of Application to Change the Authorized Place of Use and Point of Diversion, File No. 947, dated 14 December 2021, was mailed postage prepaid, first class, US mail to the following:


CHARLES & ELLEN HASLOUER
1268 HIGHWAY 4
HOPE, KS 67451

With photocopies to:

HARVEY & ROSE FALEN REV TRUST
627 JEEP RD
HOPE, KS 97451

SANDOW FAMILY TRUST
2148 MAYWOOD DR
MONROE, LA 71201

Topeka Field Office



Division of Water Resources