

**BEFORE THE KANSAS DEPARTMENT OF AGRICULTURE**

1320 Research Park Drive  
Manhattan, Kansas 66502

**In the Matter of the**

City Hays' and the City of Russell's Applications for Approval to Change the Place of Use, the Point of Diversion and the use made of the Water Under an Existing Water Right.

**Water Right File Nos. 21,729-D1; 21,729-D2; 21,730; 21,731; 21,732-D1; 21,732-D2; 21,733; 21,734; 21,841; 21,842; 22,325; 22,326; 22,327; 22,329; 22,330; 22,331; 22,332; 22,333; 22,334; 22,335; 22,338; 22,339; 22,340; 22,341; 22,342; 22,343; 22,345; 22,346; 27,760; 29,816; 30,083; and 30,084.**

Pursuant to K.S.A. 82a-1901 and K.S.A. 77-527.

Case No. 15856 WATER 2019.

**ORDER DECLINING REQUEST FOR SECRETARIAL REVIEW**

**COMES NOW**, Michael M. Beam, Secretary, Kansas Department of Agriculture ("Secretary") and hereby declines to exercise review of the Master Order Contingently Approving Change Applications Regarding R9 Water Rights ("Master Order") for the reasons stated herein.

That on March 28<sup>th</sup>, 2019, David W. Barfield, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture issued the Master Order approving changes to multiple water rights owned by the City of Hays and the City of Russell.

That on April 11, 2019, Leroy Wetzel timely submitted a request for review of the Master Order by the Secretary pursuant to K.S.A. 82a-1901.

Pursuant to K.S.A. 77-527, should the Secretary decline to exercise review, the parties must be notified of such decision within 20 days.

That prior to his appointment and confirmation as Secretary of Agriculture, the Secretary was employed by the Kansas Livestock Association ("KLA") and was the staff member appointed to the KLA Water Policy Committee. Such committee directly considered the merits of the matters contained in the Master Order and developed a public policy statement regarding the proposed applications which was ultimately adopted by the KLA. The committee included members that have now asked the Secretary to exercise review of the Master Order, which could hamper the Secretary from objectively reviewing and acting on such a request for review.

Further, any concerns about if the amount of water changed to municipal use in the Master Order will impair any water rights may be considered by the Transfer Panel, when that body is convened, pursuant to the Water Transfer Act, K.S.A. 82a-1501 *et seq.*

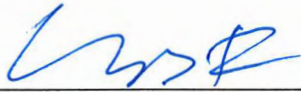
**THEREFORE**, considering all the reasons set forth herein, the Secretary hereby declines to exercise review in the above matter pursuant to K.S.A. 77-527(b).

**IT IS SO ORDERED, THIS 29<sup>th</sup> DAY OF APRIL 2019 IN MANHATTAN,  
RILEY COUNTY, KANSAS.**



Michael M. Beam, Secretary  
Kansas Department of Agriculture

PREPARED BY:



Kenneth B. Titus #26401

Chief Counsel

Kansas Department of Agriculture

1320 Research Park Drive

Manhattan, Kansas 66502

Phone: (785) 564-6715

Fax: (785) 564-6777

Email: [kenneth.titus@ks.gov](mailto:kenneth.titus@ks.gov)

### **Final Order**

This is a final order of the Secretary which shall become effective upon service pursuant to K.S.A. 77-530.

### **Judicial Review**

Review of this order may be had pursuant to the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* Any petition for such judicial review must be filed within thirty (30) days after service of this order in a Kansas court of competent jurisdiction. The agency officer designated to receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture is:

Kenneth B. Titus  
Chief Legal Counsel  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing *Order Declining Secretarial Review* was deposited in the U.S. mail on the 29<sup>th</sup> day of April, 2019, first class postage prepaid, addressed to the following:

Leroy Wetzel  
2167 20<sup>th</sup> Avenue  
Offerle, Kansas 67563

and to the following parties via electronic mail:

Toby Dougherty, City Manager  
CITY OF HAYS  
City Hall, 16th & Main  
P.O. Box 490  
Hays, KS 67601  
[tdougherty@haysusa.com](mailto:tdougherty@haysusa.com)

Jon Quinday, City Manager  
CITY OF RUSSELL  
133 W. 8th Street  
P.O. Box 112  
Russell, KS 67665  
[quinday@russellcity.org](mailto:quinday@russellcity.org)

David M. Traster  
FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway, Suite 100  
Wichita, Kansas 67206-4466  
[dtraster@foulston.com](mailto:dtraster@foulston.com)

Kenneth L. Cole  
WOELK & COLE  
4 S. Kansas St.  
P.O. Box 431  
Russell, KS 67665-0431  
[ken@russellcity.org](mailto:ken@russellcity.org)

John T. Bird  
Todd Powell  
GLASSMAN BIRD AND POWELL, LLP  
Attn: Attorneys for the City of Hays, Kansas  
200 West Thirteenth Street  
Hays, KS 67601-0727  
[jtbird@haysamerica.com](mailto:jtbird@haysamerica.com)  
[tdpowell@haysamerica.com](mailto:tdpowell@haysamerica.com)

  
\_\_\_\_\_  
KDA Staff