

THE STATE



OF KANSAS

STATE BOARD OF AGRICULTURE

Sam Binswiler, Secretary

DIVISION OF WATER RESOURCES

David L. Pope, Chief Engineer

BEFORE
DAVID L. POPE, CHIEF ENGINEER
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE

IN THE MATTER OF THE APPLICATION OF FORT AUBREY IRRIGATION COMPANY AND
FRONTIER DITCH COMPANY TO CHANGE THE LOCATION OF THE PLACE OF USE AND THE
POINT OF DIVERSION UNDER VESTED RIGHT, FILE NO. HM 026

After due consideration, the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

FINDINGS

1. That on April 8, 1950, the Chief Engineer, in accordance with K.S.A. 82a-704, issued an order in the name of Fort Aubrey Irrigation Company, Syracuse, Kansas, determining and establishing a vested right, now identified in the office of the Chief Engineer as Vested Right, File No. HM 026, to continue the use of surface water in the Arkansas River for beneficial purposes to be diverted at a point in the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 4, Township 24 South, Range 41 West, Hamilton County, Kansas, to a maximum quantity of 5,800 acre feet per calendar year to be diverted at a maximum rate of 35 cubic feet per second for irrigation use on lands located in Hamilton County, Kansas, generally as follows:

Sections 2, 3, 10-12, Township 24 South, Range 41 West;
Sections 7-9, 13-18, 20-21, Township 24 South, Range 40 West; and
Sections 17-21, 29-30, Township 24 South, Range 39 West.

2. That on December 4, 1972, Frontier Ditch Company, in accordance with K.S.A. 82a-708b, filed an application to change the place of use under Vested Right, File No. HM 026 to the place of use authorized under Frontier Ditch Company Vested Right, File No. HM 036 and for approval to change the point of diversion under Vested Right, File No. HM 026 to

a point on the Arkansas River located in the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$, SW $\frac{1}{4}$) of Section 19, Township 23 South, Range 41 West, Prowers County, Colorado (which is the point of diversion Frontier Ditch Company is

(which is the point of diversion Frontier Ditch Company is authorized to divert water from pursuant to Vested Right, File No. HM 036).

3. That Fort Aubrey joined in the application as an additional applicant on January 23, 1974.
4. That by Findings and Order dated June 10, 1974, Guy E. Gibson, Chief Engineer, denied the application for change in place of use and point of diversion of Vested Right, File No. HM 026.
5. That on August 6, 1974, Frontier Ditch Company and Fort Aubrey Irrigation Company filed an appeal of the Order issued by Guy E. Gibson, Chief Engineer, denying the change in place of use and point of diversion under Vested Right, File No. HM 026.
6. That on March 31, 1987, the District Court of Hamilton County signed a Journal Entry of Settlement for Hamilton County, Case No. 4806; that Finding No. 5 of the Journal Entry of Settlement states as follows:

For the reason that the issue on appeal of the transferability of Vested Right HM 026 has been resolved through stipulations of settlement made between the parties to this appeal, there remain no further issues to be determined in Case No. 4806 and the same should be remanded to the Chief Engineer of the Division of Water Resources, Kansas State Board of Agriculture for the making and entry of appropriate orders in accordance with the stipulations of settlement and pursuant to the laws of Kansas, including giving whatever notice is required under Kansas law.

7. That on May 4, 1989, the Court ordered that the effective date of the Journal Entry of Settlement signed by the Court on March 31, 1987, is July 6, 1988, which is the date the Court denied a Motion to Intervene filed by I. David Brownlee disposing of the final issue in the case.
8. That the Stipulations of the Parties referred to in Finding No. 5 of the Journal Entry of Settlement, as quoted in Finding No. 6 above, was filed with the District Court of Hamilton County on January 29, 1987.
9. That Paragraph No. 3 of the Stipulations of the Parties states as follows:

That a portion of the Fort Aubrey Vested Right File No. HM 026 will be transferred to the Frontier Ditch Company in an annual quantity not to exceed 1,946 acre-feet with a diversion rate not exceeding 35 cubic feet per second, to be diverted and placed to beneficial use for irrigation purposes by Frontier Ditch Company under and subject to the following conditions and limitations:

- A. That by reason of the limitations set forth below, the portion of the Fort Aubrey Vested Right File No. HM 026 transferred to Frontier Ditch Company herein will not be

required to enter into a rotation system with the Associated Ditches;

- B. That Frontier Ditch Company may divert water under the Fort Aubrey Vested Right File No. HM 026 at such point or points as are presently authorized points of diversion for the existing Frontier Ditch Company Vested Right File No. HM 036 or any subsequently authorized modifications thereof;
- C. That Frontier Ditch Company may apply waters diverted under the Fort Aubrey Vested Right File No. HM 026 to beneficial use for irrigation purposes only on land presently authorized as a place of use under the Frontier Ditch Company Vested Right File No. HM 036 or any subsequently authorized modifications thereof;
- D. That in no event may Frontier Ditch Company simultaneously divert water under both Vested Right File No. HM 035 and Vested Right File No. HM 026;
- E. That Frontier Ditch Company will not receive any credit for return flows for any water diverted under or pursuant to Fort Aubrey Vested Right File No. HM 026;
- F. That Frontier Ditch Company may divert water under the Fort Aubrey Vested Right, File No. HM 026 when water is being released on call from John Martin Reservoir only if the river channel capacity will allow; that Frontier Ditch Company may call for additional releases of water not exceeding 35 cubic feet per second, with appropriate time allowed for delivery of the water to the state line, all of which will be charged to Frontier Ditch Company's portion of Fort Aubrey Vested Right File No. HM 026, whether diverted or not;
- G. When water is not being released on call from John Martin Reservoir (it being understood that calls may not be placed for releases of water when there is no water currently in reservoir storage), then Frontier Ditch Company may divert the Fort Aubrey Vested Right File No. HM 026 only when any one of the following conditions is present:
 - I. The flow of the Arkansas River at the state line, as defined in the Arkansas River Compact, is 35 cubic feet per second or less;
 - II. The flow of the Arkansas River at the state line, as defined in the Arkansas River Compact, is greater than 35 cubic feet per second, and the Chief Engineer or his duly authorized representative, determines that less than 10% of the authorized diversion rate of any ditch currently in turn under the rotation system would reach

its headgates, to be determined as if the Associated Ditches are in rotation, even if they are not; or

III. No other ditch wants to divert water even though water may be available at its headgates.

10. That paragraph No. 4 of the Stipulations of the Parties states "that the 3,854 acre-feet of the Fort Aubrey Vested Right File No. HM 026, not transferred to Frontier Ditch Company herein will, upon transfer, be assigned to an appropriate subordinate agency of the State of Kansas or some other duly appointed public entity."
11. That paragraph No. 5 of the Stipulations of Parties states that "the change in place of use and point of diversion stipulated to herein is reasonable, will not impair existing rights and will not prejudicially or unreasonably affect the public interest, under K.S.A. 82a-708b and 82a-711, and the water diverted by Frontier Ditch Company under Vested Right No. HM 026 relates to the same local source of supply as waters formerly diverted by Fort Aubrey Irrigation Company under Vested Right No. HM 026."
12. That in accordance with paragraph No. 5 of the Journal Entry of Settlement, set forth in Finding No. 6 above, the Findings and Order of the Chief Engineer dated June 10, 1974, denying the application for change in place of use and point of diversion of Vested Right, File No. HM 026 should be rescinded.
13. That pursuant to paragraph No. 5 of the Journal Entry of Settlement, set forth in Finding No. 6 above, the application for change in place of use and point of diversion filed by Frontier Ditch Company on December 4, 1972, and joined by Fort Aubrey Irrigation Company on January 23, 1974, should be approved in accordance with the stipulations of the parties described in Finding Nos. 8 and 9 above.

ORDER

NOW, THEREFORE, it is the decision and order of the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, that:

1. The Findings and Order of the Chief Engineer dated June 10, 1974, denying the application for change in place of use and point of diversion of Vested Right, File No. HM 026 to the point at which Frontier diverts water from the Arkansas River is hereby rescinded.
2. The application to change the place of use and point of diversion for Vested Right, File No. HM 026 filed by Frontier Ditch Company on December 4, 1972, and joined by Fort Aubrey Irrigation Company on January 23, 1974, is hereby approved for a quantity not to exceed 1,946 acre feet for any calendar year with a maximum diversion rate not in excess of 35 cubic feet per second, to be diverted and placed to beneficial use for irrigation purposes by Frontier Ditch Company under the following terms, conditions and limitations:

- (a) 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

at the point of diversion currently authorized under the existing Frontier Ditch Company Vested Right, File No. HM 036, which is a point on the Arkansas River located in the Southwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$, SW $\frac{1}{4}$) of Section 19, Township 23 South, Range 41 West, Prowers County, Colorado, or any subsequently authorized modifications thereof,

and after which the authorized location of the place of use shall be as set forth in the Supplemental Order of the Chief Engineer dated July 2, 1959, attached hereto.

- (b) In no event may Frontier Ditch Company simultaneously divert water under both Vested Right, File No. HM 036 and Vested Right, File No. HM 026.
- (c) Frontier Ditch Company will not receive any credit for return flows for any water diverted under or pursuant to the Fort Aubrey Vested Right, File No. HM 026.
- (d) Frontier Ditch Company may divert water under the Fort Aubrey Vested Right, File No. HM 026 when water is being released on call from John Martin Reservoir only if the river channel capacity will allow; Frontier Ditch Company may call for additional releases of water not exceeding 35 cubic feet per second, with appropriate time allowed for delivery of the water to the state line, all of which will be charged to Frontier Ditch Company's portion of Fort Aubrey Vested Right, File No. HM 026 transferred under this approval whether diverted or not.
- (e) When water is not being released on call from John Martin Reservoir (it being understood that calls may not be placed for releases of water when there is no water currently in reservoir storage), Frontier Ditch Company may divert the portion of Fort Aubrey Vested Right, File No. HM 026 transferred under this approval only when any one of the following conditions is present:
- I. The flow of the Arkansas River at the state line, as defined in the Arkansas River Compact, is 35 cubic feet per second or less;
 - II. The flow of the Arkansas River at the state line, as defined in the Arkansas River Compact, is greater than 35 cubic feet per second, and the Chief Engineer or his duly authorized representative, determines that less than 10 percent of the authorized diversion rate of any ditch currently in turn under the rotation system would reach its headgates to be determined.

as if the Associated Ditches are in rotation, even if they are not;

III. No other ditch wants to divert water even though water maybe available at its headgates.

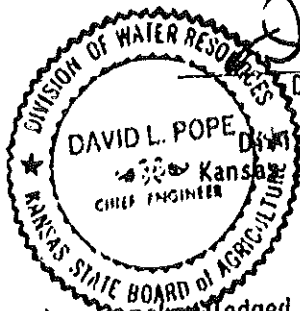
(f) By reason of the limitations set forth above, the portion of the Fort Aubrey Vested Right, File No. HM 026 transferred under this approval to Frontier Ditch Company is not required to enter into a rotation system with the Associated Ditches.

(g) No water user shall engage in nor allow the waste of any water diverted under the authority of this approval.

3. The 3,854 acre feet of the Fort Aubrey Vested Right, File No. HM 026, not transferred to Frontier Ditch Company under this approval, upon transfer, shall be assigned to an appropriate subordinate agency of the State of Kansas or some other duly appointed public entity.

4. In all other respects, the vested right order determining and establishing a vested right to continue the beneficial use of water, now identified in the office of the Chief Engineer as Vested Right, File No. HM 026, is as stated and set forth in the vested right order executed by the Chief Engineer on April 8, 1950.

Dated at Topeka, Kansas, this 28th day of August, 1990.

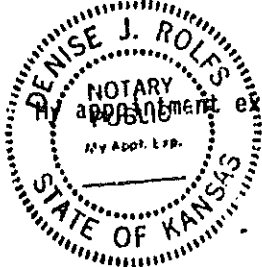


David L. Pope
David L. Pope, P.E.
Chief Engineer
Division of Water Resources
Kansas State Board of Agriculture

State of Kansas }
County of Shawnee } SS

The foregoing instrument was acknowledged before me this 28th day of August, 1990, by David L. Pope, P.E., Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture.

Denise J. Roles
Notary Public



My appointment expires: 3-1-94