

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 28th, 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 10, 2019, Jane Wenstrom 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.

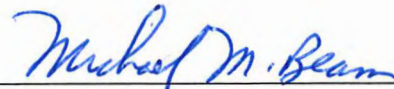
That prior to his appointment and confirmation as Secretary of Agriculture, the Secretary was employed by the Kansas Livestock Association ("KLA") and was the staff member appointed to the KLA Water Policy Committee. Such committee directly considered the merits of the matters contained in the Master 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.

The issues raised in the request for review by the Secretary also primarily concern issues that should be specifically considered under the Water Transfer Act, K.S.A. 82a-1501 *et seq.*,

and therefore are more properly reviewed by the Water Transfer Panel, when that body is convened.

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 29th 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

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 29th day of April, 2019, first class postage prepaid, addressed to the following:

Jane Wenstrom
2171 120th Avenue
Kinsley, Kansas 67547

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

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

David M. Traster
FOULSTON SIEFKIN LLP
1551 N. Waterfront Parkway, Suite 100
Wichita, Kansas 67206-4466
dtraster@foulston.com

Kenneth L. Cole
WOELK & COLE
4 S. Kansas St.
P.O. Box 431
Russell, KS 67665-0431
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
tdpowell@haysamerica.com



KDA Staff