



WATER-RIGHT DOCKET

Fort Larned National Historic Site

Docket No: 1

FRIZELL. SURFACE WATER.

State Water Rights Documentation

10-22-1992: Letter to whom it may concern from assistant chief engineer regarding FOLS/water rights



KANSAS STATE BOARD OF AGRICULTURE

Sam Brownback, Secretary

DIVISION OF WATER RESOURCES

David L. Pope, Chief Engineer-Director
901 S. Kansas Avenue, Second Floor
Topeka, Kansas 66612-1283
(913) 296-3717 Fax (913) 296-1176

Received OCT 26 1992
Water Rights Branch

October 22, 1992

NATIONAL PARK SERVICE
WATER RESOURCES DIVISION
301 S HOWES ST ROOM 353
FT COLLINS CO 80521

RE: Vested Right
File No. PN 011

L54 (479)
FOLS/Water Rights

Dear Madam or Sir:

Reference is made to the application for the approval of the Chief Engineer to change the place of use under the above referenced application which was received in this office on September 14, 1982.

On September 1, 1992, the application for the approval of the Chief Engineer to change the place of use was returned to you and, at that time, you were advised that the application was to be returned to this office, with the requested additional information, no later than September 16, 1992.

Our letter dated September 15, 1992, was to notify you that Chief Engineer extended the time in which to return the application to October 14, 1992.

Since the application with the requested additional information was not returned to this office by October 14, 1992, the application for the approval of the Chief Engineer to change the place of use under the above referenced application is herewith dismissed in accordance with the law.

Should you wish to proceed with this matter, then another application for change should be filed. If you have any questions, you may contact this office.

Sincerely,


Wayland J. Anderson. P. E.
Assistant Chief Engineer

WJA:DSH:dfh
pc: Stafford Field Office
Fort Larned National Historic Site

Compliance, Enforcement,
Water Use and Certificates 296-8495

Legal
Technical Services 296-4623
296-6081

Office Services 296-2688
Water Structures 296-2933

Water Appropriation Permits
and Changes 296-2709

October 9, 1992

L54(479)
FOLS/Water Rights

Douglas Helmke
Division of Water Resources
Kansas State Board of Agriculture
901 S. Kansas Avenue
Topeka, Kansas 66612-1283

Dear Mr. Helmke,

On September 1, 1992, you transmitted correspondence to Fort Larned National Historic Site (FOLS) regarding Vested Water Right No. PN 011. Specifically, you notified FOLS that a 1982 change application regarding Right No. PN 011 would be dismissed if the United States did not refile the change application by September 14, 1992. On September 15, 1992, you provided a written extension of this deadline to October 14, 1992.

This letter **does not** serve to request a refiling of the change application. Rather, the purpose of this letter is to convey our understanding regarding conditions associated with dismissal of the 1982 change application. On October 9, 1992, you spoke with Jeff Albright of my staff on the telephone regarding this change application. In that conversation you indicated that the dismissal of the change application would not injure or in any way alter the United States' water rights as they presently exist under Vested Water Right PN 011. You also indicated that the change application addressed Vested Water PN 011 only; that it does not reference any other water rights in which the United States may have an interest.

If this representation of your statements is not correct, please contact me at (303) 493-1441 as soon as possible.

Alice Johns

Owen R. Williams
Chief, Water Rights Branch

FNP:JALBRIGHT:bb:(303)493-1441:10/09/92:A:\STATE



KANSAS STATE BOARD OF AGRICULTURE

Sam Brownback, Secretary

DIVISION OF WATER RESOURCES

David L. Pope, Chief Engineer-Director
901 S. Kansas Avenue, Second Floor
Topeka, Kansas 66612-1283
(913) 296-3717 Fax (913) 296-1176

September 15, 1992

FORT LARNED NATIONAL HISTORIC SITE
RT 3
LARNED KS 67550

RE: Vested Right
File No. PN 011

Dear Madam or Sir:

In accordance with Jeff Albright's request, the Chief Engineer has extended until October 14, 1992, the time in which to return the application for approval of the Chief Engineer to change the place of use under the referenced file number.

This letter is a reminder that the application must be in this office on or before October 14, 1992, in order to retain its priority of filing. If it is not returned by that date, the application will be dismissed.

Should you have any questions, you may contact this office. If you wish to refer to a specific file, please reference it when you contact us.

Sincerely,

Douglas S. Helmke
Hydrologist
Water Appropriation
Permits and Changes

DSH:dfh

pc: Stafford Field Office
Jeff Albright

COPY
FOR YOUR INFORMATION

Compliance, Enforcement,
Water Use and Certificates 296-2495

Legal
Technical Services 296-4623
296-6081

Office Services 296-2658
Water Structures 296-2953

Water Appropriation Permits
and Changes 296-2709

2-92 WED 15:52 NPS FT LARNED P.02



KANSAS STATE BOARD OF AGRICULTURE

Sam Brownback, Secretary

DIVISION OF WATER RESOURCES

David L. Pope, Chief Engineer-Director
901 S. Kansas Avenue, Second Floor
Topeka, Kansas 66612-1283
(913) 296-3717 Fax (913) 296-1176

September 1, 1992

FORT LARNED NATIONAL HISTORIC SITE
RT 3
LARNED KS 67550

RE: Vested Right
File No. PN 011

Dear Madam or Sir:

Reference is made to an application for approval of the Chief Engineer to change the place of use under the above referenced file number which was received in this office on September 14, 1982. Upon review of your application, we note that major modifications to the vested right have occurred.

As the Federal Government is now the sole owner of the land covered by the referenced file number, the application is being returned to you. As the application proposes to remove the land owned by the Federal Government, it is recommended that the application be dismissed.

The application is being returned to you so that the notarized signature of an authorized representative may be furnished. In order that the application will retain its priority of filing, it must be completed and returned to this office on or before September 16, 1992. According to law, default in the refiling of the completed application as outlined above within the time allowed shall cause dismissal of the application for change under the above referenced file number.

Should you have any questions, you may contact this office. If you wish to refer to a specific file, please reference it when you contact us.

Sincerely,

Douglas S. Helmke
Hydrologist
Water Appropriation
Permits and Changes

DSH:aru
Enclosure(s)
pc: Stafford Field Office

Compliance, Enforcement,
Water Use and Certificates 295-8495

Legal
Technical Services 296-4623
296-6581

Office Services 296-3658
Water Structures 296-3923

Water Appropriation Permits
and Changes 296-2709

22 WED 15:52 NPS FT LARNED

P. 83

THE STATE OF KANSAS



STATE BOARD OF AGRICULTURE

W. W. Dabman, Secretary

Land check \$25 @ 9-14-82.
2.5

DIVISION OF WATER RESOURCES

Guy E. Gibson, Chief Engineer-Director

APPLICATION FOR APPROVAL TO CHANGE THE
 PLACE OF USE, THE POINT OF DIVERSION OR
 THE USE MADE OF THE WATER UNDER AN
 EXISTING WATER RIGHT

Identify the water right which is the subject of this application

(Check one only)

☒ Vested Right

PN 0011

☐ Appropriation Right under Application No. _____

To the Chief Engineer-Director of the Division of Water Resources, Kansas State Board of Agriculture:

I, Name of applicant(s) ALAN W. CONVERSE, NANCY L. CONVERSE
LINDA G. CONVERSE, KENT D. CONVERSE
VIRGINIA L. FRIZEL, DONALD R. KEAST, VIRGINIA M. KEAST
ROBERT L. BLACKWELL, BEVERLY A. BLACKWELL
S.E. FRIZEL, BARBARA H. FRIZEL
UNITED STATES OF AMERICA



I hereby request the Chief Engineer-Director to change

☒ Place of Use☒ Point of Diversion☐ Use Made of the Water

under the above-described water right in accordance with the particulars hereinafter described.

*We understand that should this change application
 be approved, the authorized quantity under this
 Vested Right File PN0011 will be reduced to
 5.81 Ac. Ft./Yr.*

DWR-1-120.0

* CHANGE IN POINT OF DIVERSION PER 1811A
 DATE 8-23-82
 (John H. Hunsley, DWR, 6-24-82)

EE. 11261
BARBARA D. FRIEHL
2109 HEATHER PARKWAY
HUTCHINSON, KS 67301

Owner of Land—NAME: _____
ADDRESS: _____

ADDRESS:

BOARD OF AGRICULTURE

If there are more than two landowners, attach additional sheets as necessary.)

4. It is proposed that the place of use be changed to:

(If there are more than two landowners, attach additional sheets as necessary.)

6. It is proposed that the place of use be changed to:

Owner of Land—NAME: ALAN L. NAOMI L. & LINDA G. COMVERSE (UNDIVIDED TENANT)

ADDRESS: GARFIELD, KANSAS 675.

Owner of Land-NAME: VIRGINIA L. FRIEDEL

ADDRESS: 2223 : HARRISON, GREAT BEND, KANSAS

(If there are more than two landowners, attach additional sheets as necessary.)

387

* (6) PROPOSED

The presently authorized point(s) of diversion (is) (are) 1 Pump Site
(Give number)

located as follows:
(with, pump, or other works for lifting of water)
* NEAR THE CENTER OF THE SOUTH SLUG
One-to-the _____ quarter of the _____ S.W. quarter of the _____ N.W. quarter

3. The presently authorized place of use is:

The presently authorized place of use is _____
Owner of Land—NAME: ALAN L. NAOMI L. & LINDA G. CONVERSE (UN DIVIDED INTEREST)
Address: PO BOX 675

Owner of Land - NAME UNITED STATES OF AMERICA DEPARTMENT OF INTERIOR
NATIONAL PARK SERVICE, FORT HARMED HISTORIC SITE
ADDRESS R.D. 3, LARNED, KANSAS 67550

2. The presently authorized place of use is:

Order of Land-NAME: MISSISSIPPI L. FRIZELL
ADDRESS: 2223 HARRISON GREAT BEND, KANSAS

Owner of Land-NAME: DONALD R. KEAST
ADDRESS: ROUTE 3, LARNED, KANSAS 67550

Gen' Temp Range	NW1			NW1			SW1			SE1			Total	
	NW1	NW1	SW1	SE1	NW1	NW1	SW1	SE1	NW1	NW1	SW1	SE1		
33 70 170													25	2
4 23 170													40 40	80

(If there are more than two landowners, attach additional sheets as necessary.)

4. It is proposed that the place of use be changed to:

Owner of Land—NAME, Alan L. Nadel & Linda G. Conners (undivided interest)
ADDRESS 603 West 1st Street

ADDRESS: GARFIELD, KANSAS 6675

Sec	Type	Range	NE1				NW1				SW1				SE1				Total			
			NE1	NW1	SW1	SE1	NE1	NW1	SW1	SE1	NE1	NW1	SW1	SE1	NE1	NW1	SW1	SE1				
32	215	1700				40								8	14	40	40	40	32	27	40	28

Owner of Land-NAME: D. R. INIA L. FRIZELL

ADDRESS: 2223 HARRISON, GREAT BEND, KANSAS

[illegible]

(If there are more than two landowners, attach additional sheets as necessary.)

387

WED 15:55 NPS FT LARNED

P. 87

* ⑥ PROPOSED

The presently authorized point(s) of diversion (is) (are) 1 PUMP SITE
(One number)located as follows:
NEAR THE CENTER OF THE SOUTH 1/4One-in-the-3/4 quarter of the NW quarterof Section 32, Township 21 S, Range 17 W in PAWNEECounty, Kansas, # SEE ENCLOSED LATER OFFERORand one in the quarter of the quarterof Section , Township , Range , in

County, Kansas.

(If more space is needed, attach additional sheets as necessary.)

* ⑦ PRESENT

The proposed location of the point(s) of diversion (is) (are) NO CHANGE
(One number)located as follows:
ONE PUMP SITEOne-in-the-3/4 quarter of the NW quarterof Section 32, Township 21 S, Range 17 W in PAWNEE

County, Kansas,

and one in the quarter of the quarterof Section , Township , Range , in

County, Kansas.

(If more space is needed, attach additional sheets as necessary.)

7. The works for diversion of water at the proposed location will consist of

1 PUMP, MOTOR AND GARD BOX
(well, pump, etc.)and (was) (will be) completed by JOHN CHANCE IS APPROVED
(date)8. The presently authorized use of water is for IRRIGATION purposes.It is proposed that the use be changed to NO CHANGE purposes.9. The change(s) proposed herein are desired for the reason that THE LAND DELETED BYTHIS CHANGE WILL NOT BE IRRIGATED BY THIS PUMPSITE

10. The application must be supplemented either by a detailed plat, topographic map or an aerial photograph. An aerial photograph, scale one inch equals 1320 feet, can be obtained from the Department of Agriculture, Western Laboratory, Salt Lake City, Utah, through the County ARCS Office of the Department of Agriculture in the county wherein the point of diversion is located. A U.S. Geological Survey Topographic Map, scale 1:24,000, is available through the Kansas Geological Survey, 1930 Avenue "A", Campus West, University of Kansas, Lawrence, Kansas 66044. The following information must be shown on the aerial photograph, plat or map. If a change in the location of the point(s) of diversion is desired, show both the location of the presently authorized point(s) of diversion and the location of the proposed point(s) of diversion. These locations should be shown by plotting the position accurately on the photograph and giving the distance and direction from a section corner or some permanent point. If the source of supply is groundwater, then please show the location of existing water wells of any kind within 1/4 mile of the proposed well or wells. Identify each well as to its use and furnish name and mailing address of the property owner or owners. If there are no wells within 1/4 mile, please advise us. If a change in the place of use is desired, show the proposed place of use by crosshatching on the photograph. Identify the center of the section, the section lines or the section corners and show the appropriate section, township, and range numbers on the aerial photograph. Please be certain that the information shown on the aerial photograph agrees with the information shown in the application.

* ASSIST IN CHANGE POINT OF DIVERSION
PER LETTER DATED 8-23-82
(JOHN MANSION, DNR, 6-29-82)

22 WED 15:56 NPS FT LARNED

P. 08

11. Furnish information to show:

- a. That the proposed change(s) will not impair existing water rights, and
 b. That the proposed change(s) relates to the same local source of supply as that to which the presently authorized water right relates.

(Attach statements, plats, geology reports, and other information as necessary.)

TO THE BEST OF OUR KNOWLEDGE THE PROPOSED CHANGE
 WILL NOT IMPAIR ANY EXISTING WATER RIGHTS. THIS IS
 ONLY A CHANGE IN PLACE OF USE, THE SOURCE OF
 SUPPLY WILL REMAIN THE SAME.

I declare that I am a landowner as identified herein, or that I represent a landowner as identified herein and
 am authorized to make this application in his behalf, and declare further that the statements contained herein
 are true, correct, and complete.

Dated at Shelford, Kansas, this 26 day of Aug, 1992.

Virginia M. Keast
 (Applicant)

(Spouse)

Keith D. Converse
 (Applicant)

(Spouse)

Alan W. Converse
 (Applicant)

(Spouse)

Donald A. Keast
 (Applicant)

(Spouse)

Barbara V. Trivette
 (Applicant)

(Spouse)

County of Leawards
 State of Kansas

SS

I hereby certify that the foregoing application was signed in my presence and sworn to before me this 26th

day of August, 1992



Douglas Helmke
 Notary Public

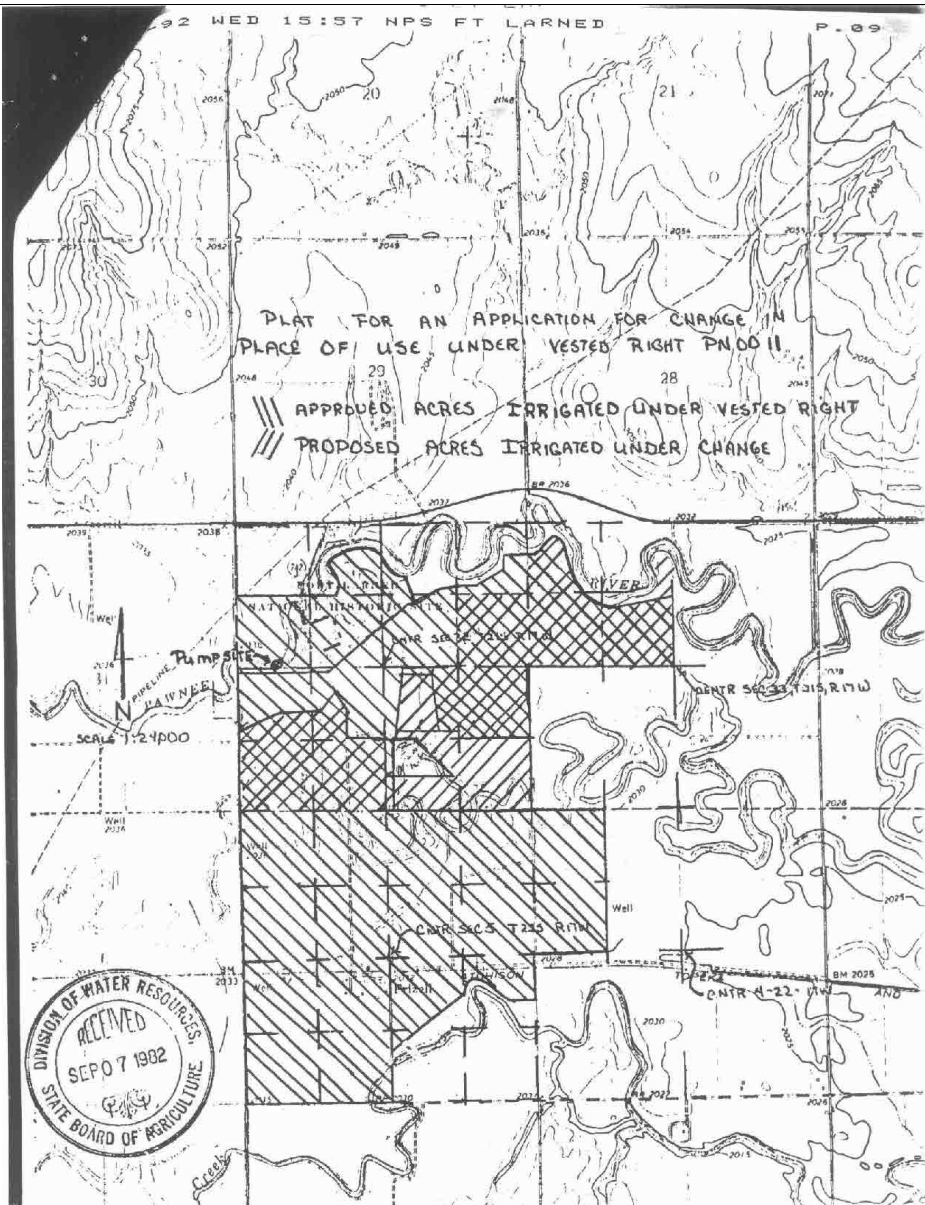
My Commission Expires March 12, 1993

NOTE: The application must be signed by each person and his or her spouse, if married, whose name appears
 as an applicant and all other owners of land covered by the water right. Please indicate if there is no
 spouse. If land is being purchased under contract, the seller must sign as landowner until such time
 as the contract is completed.

In the event that all applicants cannot appear before one notary public, they may as necessary sign
 appropriate copies of the application before any notary public conveniently available to them. All
 copies signed in this manner shall be considered as counterparts of the application.

If the application is signed on behalf of any landowner, by an agent, by one who has power of
 attorney, or by an executor, executrix, conservator, etc., it will be necessary to furnish with the appli-
 cation a copy of letters or court orders to support the representative capacity indicated.

If such instrument is dated more than six months previous to the date the application is received in
 the office of the Chief Engineer-Director, it must be accompanied by an instrument showing that the
 power of attorney, letters of conservatorship or administration (executor, executrix, etc.) are currently
 in full force and effect.



WED 16:01 NPS FT LARNED

P. 01

Mr. Guy E. Gibson, Chief Engineer-Director
Division of Water Resources
Kansas State Board of Agriculture
901 Kansas Avenue
Topeka, Kansas 66612

Re: Vested Right Code PN 011
PAWNEE County

Dear Mr. Gibson:

An error was made in the order dated FEBRUARY 15, 1956,
determining and establishing a vested right in the name of E.D. FRUELL
AND SON to continue the beneficial use of water.

1. The point of diversion is described in the order as follows:

THE PAWNEE RIVER AT A POINT IN THE NW 1/4
NW 1/4 OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE
17 WEST, PAWNEE COUNTY, KANSAS.

It is requested that it be corrected to show the point of diversion
as follows: FROM THE PAWNEE RIVER AT A POINT NEAR
THE CENTER OF THE SOUTH SIDE OF THE SLICK OF THE
NW 1/4 OF SECTION 32, TOWNSHIP 21 SOUTH, RANGE 17 WEST, PAWNEE
COUNTY, KANSAS.

2. The place of use is described in the order as follows: 10 ACRES IN THE
NEW NE 1/4, 5 ACRES IN THE NW 1/4 NE 1/4, THE SW 1/4, 10 ACRES IN THE NEW NW 1/4
THE SW 1/4 NW 1/4, THE SLICK, THE NEW SE 1/4, 25 ACRES IN THE NW 1/4 SE 1/4, 5 ACRES IN THE SW 1/4 SE 1/4
SECTION 32, 15 ACRES IN THE NW 1/4 NW 1/4, 25 ACRES IN THE SE 1/4 NW 1/4 OF SECTION 33, T21S, R17W;
THE SW 1/4, 25 ACRES IN THE NEW SE 1/4 AND 3 ACRES IN THE NW 1/4 SE 1/4 OF SECTION 35, THE NW 1/4 NW 1/4
OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 17 WEST, PAWNEE COUNTY, KANSAS.
It is requested that it be corrected to show the place of use as

follows: IT IS CORRECT AS STATED ON THE VESTED RIGHT
ORDER.

The statements made above are true and correct to the best of my
knowledge.



Very truly yours,

Douglas W. Helmke
Box 24, Shubert, Mo 64529
(Mailing Address)



KANSAS STATE BOARD OF AGRICULTURE

SAM BROWNBACK, Secretary

DIVISION OF WATER RESOURCES

901 S. Kansas Avenue, Second Floor
TOPEKA, KANSAS 66612-1283

DAVID L. POPE, Chief Engineer-Director
(913) 296-3717

Respond to: (913) 296-4621
FAX: (913) 296-1176

March 17, 1992

MR JEFF ALBRIGHT
US PARK SERVICE
WATER RESOURCES DIVISION
301 SOUTH HOWES ROOM 353
FT COLLINS CO 80521

RE: Vested Right
File No.: PN 011

Dear Jeff:

Enclosed, please find a copy of the Pawnee River Intensive Groundwater Use Control Area order, a map showing the location of the Pawnee IGUCA and a copy of K.S.A. 2-1915(c) and 2-1919 regarding retiring water rights in the State of Kansas. The terms of the order itself begin on page 15 of the document. I am not sure that K.S.A. 2-1915(c) is the statute Ms. Liggett referred to because this act pertains to providing cost share monies to individuals who would like to retire a water right to the custodial care of the state.

I have asked Connie Crittenden, our Assistant Legal Counsel, to call you either March 30, or 31, 1992, as she has time to discuss the options that the federal government might find palatable. If I might be able to help or if Connie could be of assistance, please feel free to call. 296-4623

Sincerely,

A handwritten signature in cursive script, appearing to read "Matt Scherer".

Matt Scherer, III, P.E.
Conservation Engineer

MAS:dv

Enc.

pc: Ms. Connie Crittenden, Legal
Stafford Field Office

The Division of Water Resources administers laws relating to dams, levees, channel modifications, floodplains management, water rights, conservation, management and utilization of Kansas water resources

(j) as a condition to the extending of any benefits under this act, to or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as will tend to the permanent use of such lands as will tend to prevent or control erosion thereon;

(k) no provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state;

(l) the supervisors of any district shall not contract debts or obligations in the name of the district beyond the current appropriation made available to the district by the committee or federal grants or other financial sources; and

(m) to accept and expend funds donated to the district for purposes of providing at least 20% cost-share for the purchase of an eligible water right from the holder of the water right under the provisions of K.S.A. 2-1913, and amendments thereto.

History: L. 1937, ch. 5, § 8; L. 1955, ch. 7, § 2; L. 1979, ch. 6, § 3; L. 1988, ch. 396, § 1; July 1.

Attorney General's Opinions:

Conservation district personnel are covered by Kansas tort claims act. 87-31.

2-1909 to 2-1912.

History: L. 1937, ch. 5, §§ 9 to 12; Repealed, L. 1949, ch. 6, § 1; March 30.

2-1913. Co-operation with another district. The supervisors of any two or more districts organized under the provisions of this act may co-operate with one another in the exercise of any or all powers conferred in this act.

History: L. 1937, ch. 5, § 13; April 10.

2-1914. Publicly-owned lands. Agencies of this state [which] shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly-owned lands, lying within the boundaries of any district organized hereunder, shall co-operate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. The supervisors of such districts shall be given free access to enter and perform work upon such publicly-owned lands. The provisions of land-use regulations adopted pursuant to K.S.A. 2-1909 shall have the force and effect of law over all such publicly-owned lands, and shall be in all respects observed by the agencies administering such lands.

History: L. 1937, ch. 5, § 14; April 10.

2-1915. Conservation structures and practices; riparian and wetland protection programs; appropriations for grants, limits; cost-share program; administration; rules and regulations. (a) Appropriations may be made for grants out of funds in the treasury of this state for terraces, terrace outlets, check dams, dikes, ponds, ditches, critical area planting, grassed waterways, tailwater recovery irrigation systems, precision land forming, range seeding, detention and grade stabilization structures and other enduring water conservation practices installed on public lands and on privately owned lands. Except as provided by the multipurpose small lakes program act, any such grant shall not exceed 80% of the total cost of any such practice.

(b) A program for protection of riparian and wetland areas shall be developed by the state conservation commission and implemented by the conservation districts. The conservation

districts shall prepare district programs to address resource management concerns of water quality, erosion and sediment control and wildlife habitat as part of the conservation district long-range and annual work plans. Preparation and implementation of conservation district programs shall be accomplished with assistance from appropriate state and federal agencies involved in resource management.

(c) Subject to the provisions of K.S.A. 1988 Supp. 2-1919, and amendments thereto, any holder of a water right, as defined by subsection (g) of K.S.A. 82a-701, and amendments thereto, who is willing to voluntarily return all or a part of the water right to the state shall be eligible for a grant not to exceed 80% of the total cost of the purchase price for such water right. The state conservation commission shall administer this cost-share program with funds appropriated by the legislature for such purpose. The chief engineer shall certify to the state conservation commission that any water right for which application for cost-share is received under this section is eligible in accordance with the criteria established in K.S.A. 1988 Supp. 2-1919, and amendments thereto.

(d) The state conservation commission shall adopt rules and regulations to administer such grant and protection programs.

(e) Any district is authorized to make use of any assistance whatsoever given by the United States, or any agency thereof, or derived from any other source, for the planning and installation of such practices.

History: L. 1937, ch. 5, § 15; L. 1976, ch. 7, § 5; L. 1979, ch. 9, § 1; L. 1985, ch. 342, § 9; L. 1986, ch. 7, § 1; L. 1987, ch. 10, § 1; L. 1988, ch. 396, § 2; L. 1989, ch. 305, § 1; April 27.

History: L. 1937, ch. 5, § 16; L. 1959, ch. 5, § 3; June 30.

Research and Practice Aids:

Agricultures3.
C.J.S. Agriculture §§ 7 et seq.

2-1917. Invalidity of part. If any provisions of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

History: L. 1937, ch. 5, § 17; April 10.

2-1918. Inconsistent laws. Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: L. 1937, ch. 5, § 18; April 10.

2-1919. Cost-share limitations; purchase of surface water right outside the state. (a) Except as provided by subsection (b), any application for cost-share for the purchase of the water right under the provisions of K.S.A. 2-1915, and amendments thereto, shall be subject to the following limitations:

(1) The water right is an active vested or certified water appropriation right that has not been abandoned under the provisions of K.S.A. 82a-718, and amendments thereto;

(2) (A) in the case of a water right for diverting groundwater, such water right is in an area where the rate of withdrawal of groundwater equals or exceeds the rate of recharge

and the chief engineer has closed the area to further appropriations and designated the area as being in need of aquifer restoration; (B) in the case of a water right for diverting groundwater or surface water, such water right is within a stream reach where the chief engineer has closed the stream reach to further appropriations and designated the stream reach as being in need of stream recovery;

(3) a local entity has provided an assurance that it will pay at least 20% of the purchase price negotiated by the entity and the holder of the water right; and

(4) the holder of the water right agrees to return the water right to the custodial care of the state.

(b) In the case of a purchase of a surface water right from outside the state, such purchase shall be considered and evaluated by the chief engineer on the basis of the potential of the water right to provide stream recovery within a designated stream reach.

History: L. 1988, ch. 396, § 4; July 1.

2-1920. Conservation district capital outlay fund; use of moneys. (a) There is hereby authorized to be established in every conservation district of the state a fund which shall be called the capital outlay fund. The fund shall consist of any moneys deposited therein from funds received according to provisions of the conservation district law.

(b) Any moneys in the capital outlay fund of the conservation district may be used for the purpose of acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing and equipping of buildings necessary for district operations, including architectural expenses incidental thereto and the acquisition of building sites and the acquisition of other equipment to carry out the activities and functions of the district.

(c) The conservation district board of supervisors is hereby authorized to invest any portion of the capital outlay fund, which is not currently needed in investments authorized by K.S.A. 12-1675, and amendments thereto. All interest received on any such investment shall be credited to the capital outlay fund.

History: L. 1989, ch. 5, § 4; July 1.

REPORT OF TELEPHONE CONVERSATION

Park/Project: FOLS/Not an active project, response to state correspondence on a water right that includes FOLS lands

Date: 03/09/92 92

Time:

Who Initiated Call: NPS

NPS-WRD Party: Jeff Albright

Other Party: Connie Crittendon, Assist. Legal Counsel

Organization: Division of Water Resources, Kansas

Phone No: 913-296-4623

Address: Topeka, KS

Re: Followup of my previous discussion with Matt Scherer, a Conservation Engineer with the Div. of Water Res.

FOLS acquired part of an irrigation right in 1966 with purchase of a private land parcel. The irrigation right has not been exercised since about 1964. In 1988, Kansas declared the privately owned portion of this right to be abandoned. This left the US owned portion intact. The park would like to convert the right to instream flow protection. Is there a way to accomplish this?

This question was first addressed in 1988 by communication between WRB and the state. No mutually acceptable mechanism was identified. The issue resurfaced in February 1992. FOLS received notice from the state (Scherer) requesting a change application from irrig to recreation. (FOLS has been submitting annual water use reports but has been stating that water is used for recreation and not irrigation.)

The problem is that state law requires control of water as a condition of a water right, which is not applicable here. Connie and I discussed the possibility of a State-Fed agreement to allow recreation purpose w/special agreement to exempt the 'control of water' requirement. She will discuss this with her superiors and call me back. No other viable alternatives identified.

4/13/92

Also talked to Steve Linderer (supt at FOLS). He says we should be aware of two other water right issues: 1) there are 3 domestic use wells at FOLS w/out state rights (non required since use is domestic?); 2) there is 1 irrigation well in the park that has a partial ownership interest outside of the park boundary (south of park).

TELEPHONE CONVERSATION

DATE 3/11/92 TIME 0930 AM/PM
PROJECT FOLS

NPS PERSON ON CALL: Jeff Albright ☐ I CALLED ☒ S/HE CALLED
PERSON Matt Scherer (sp?) *Returned my call*
ORGANIZATION Kansas Div of Water Resources
ADDRESS Topeka
TELEPHONE NO. (913) 296-3717 EXT.

SUBJECTS DISCUSSED Vested Right File No. PN011

Only way to achieve instream flow is to give water
right to state. Also, ^{recreation} ~~recreation~~ rights require diversion
from water course — these confirm our previous understandings
of state law.

FOLS area may be within Pawnee River IGUCA
(Intensive Groundwater Use Control Area) — see K.S.A. 82a-1036
of Groundwater Right District Act. This would prohibit
future development of water within Pawnee IGUCA
He will send info on this.

ACTION TO BE TAKEN He will have state engineer's attorney
review this issue and call us. (Connie C. Henderson sp?)

COPIES TO:

TELEPHONE CONVERSATION

DATE 2/10/92 TIME 1100 AM/PM
PROJECT FOLA (Fort Larned)
FOLS

NPS PERSON ON CALL: Jeff Albright ☐ I CALLED ☒ S/HE CALLED

PERSON Steve Linderer
ORGANIZATION Fort Larned (FOLS)
ADDRESS Kansas

TELEPHONE NO. (316) - 285-6911 EXT.

SUBJECTS DISCUSSED Ken Czernawski handled this issue previously -

FOLA acquired vested WR with land, co-owned right with
other user. Subsequently, a portion of right was declared abandoned,
state allowed Park to keep its share.

WR is for irrig., park ~~user~~ wants use of instream flow
protection. State may allow this use if WR is donated to
State? Some says his files indicate SOL would allow assigning
WR to state for that purpose, but wouldn't allow donation.
(84 acres?). State law ~~prohibits~~ allows recreation as valid use, but requires
donation to use

1987 Memo from WRD (Pence) to park recommends no change
in permit to rec at that time.

State requires annual report on WR. Recently, state called
park (which has been submitting forms, saying no irrig use) to say that
change applic should be submitted (w/80) to recreation if no irrig
use.

Park will send state letter & change applic form for our
review. Could submit change to recreation and specify instream
flow (in our name) & see how state responds?

COPIES TO:



KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES
DAVID L. POPE, Chief Engineer-Director
109 SW Ninth Street, Suite 202
Topeka, Kansas 66612-1283
(913) 296-3717

SAM BROWNBACK
Secretary

April 20, 1988

CERTIFIED MAIL

John B. Arnold, Superintendent
Fort Larned National Historic Site
Route 3
Larned, Kansas 67550

COPY
FOR YOUR INFORMATION

RE: Vested Right
File No. PN 011

Dear Mr. Arnold:

Enclosed is the Findings and Order of the Chief Engineer dated April 15, 1988, which declares a portion of the above referenced water right abandoned and terminated. That portion of Vested Right, File No. PN 011 acquired by the United States in 1966 was not declared abandoned and terminated. The authorized use made of water and the point of diversion remain as set forth in the Order of the Chief Engineer dated February 15, 1956. If the United States desires to change either of those aspects of Vested Right, File No. PN 011, it must file an application with the Chief Engineer.

At the Abandonment Hearing regarding Vested Right, File No. PN 011 on December 16, 1987, Mr. Ralph Canaday, on behalf of the National Park Service, stated that the United States would be willing to donate their portion of Vested Right, File No. PN 011 to the State of Kansas as long as certain conditions were met. I have enclosed a copy of HB 2036, passed by the Kansas Legislature in the 1988 session, which might provide a mechanism by which such a donation could be accomplished.

If you have any questions, please feel free to contact me.

Sincerely,

Rebecca J. Liggett
Assistant Legal Counsel

RJL:sa
Enclosure
pc: Stafford Field Office
Groundwater Management District No. 5
Ralph Canaday
Stanley L. Ponce
✓ Ken Czarnowski

The Division of Water Resources administers laws relating to water supply, conservation, management and utilization of the water resources of Kansas, dam safety, flood control and drainage of the water.

THE STATE



OF KANSAS

STATE BOARD OF AGRICULTURE
Sam Brownback, Secretary

DIVISION OF WATER RESOURCES
David L. Pope, Chief Engineer

IN THE MATTER OF THE ABANDONMENT AND TERMINATION

OF VESTED RIGHT

FILE NO. PN 011

COPY
FOR YOUR INFORMATION

After due consideration, the Chief Engineer, Division of Water Resources,
Kansas State Board of Agriculture, makes the following findings and order:

FINDINGS

1. That E. D. Frizell & Son submitted Information to Aid in the Determination of a Vested Right and on February 15, 1956, the Chief Engineer issued an Order Determining and Establishing a Vested Right to Continue the Beneficial Use of Water; said Order was referred to in the Office of the Chief Engineer as "Vested Right, Code 6211, Pawnee County, Kansas" and is now identified as "Vested Right, File No. PN 011," and authorizes the holder of said vested right to continue the beneficial use of surface water of the Pawnee River to be diverted at a point located in the Northwest Quarter of the Northwest Quarter (NW¼ NW¼) of Section 32, Township 21 South, Range 17 West, Pawnee County, Kansas at a rate not in excess of 6,500 gallons per minute (14.5 c.f.s.) and a quantity not to exceed 2,000 acre feet per calendar year for irrigation use in Sections 32 and 33, both in Township 21 South, and Sections 4 and 5, both in Township 24 South, all in Range 17 West, Pawnee County, Kansas.
2. That information in the office of the Chief Engineer more precisely describes the location of the works for diversion of water as a point

located near the center of the south side of the Southwest Quarter of the Northwest Quarter (SW¼ NW¼) of Section 32, Township 21 South, Range 17 West, Pawnee County, Kansas.

3. That on February 3, 1981, the files of the Chief Engineer showed that no lawful beneficial use had been made of the water under Vested Right, File No. PN 011 since 1964, which is a period of 16 successive years.
4. That the water users and water right holders of record as shown in the files of the Division of Water Resources were notified by the Chief Engineer by certified mail and given an opportunity to appear at a designated time and place and show why their water right, Vested Right, File No. PN 011, should not be declared abandoned and terminated; that such notice was mailed on March 21, 1984, which was more than 30 days prior to the hearing; that the notice also met the other requirements of K.S.A. 82a-718.
5. That on April 13, 1984, the Chief Engineer received a written request from John B. Arnold, Superintendent, Fort Larned National Historic Site, that the hearing be continued for 90 days in order to prepare evidence concerning the possible abandonment and termination of Vested Right, File No. PN 011; that by letter dated April 17, 1984, the Chief Engineer granted a continuance for a period of 90 days and further stated that the actual hearing date may be later than July 25, 1984; that by letter dated April 17, 1984, the Chief Engineer notified the remaining water users and water right holders of record that a continuance had been granted.
6. That on October 30, 1987, the files of the Chief Engineer showed that no lawful beneficial use had been made of the water under Vested Right, File No. PN 011 since 1964, which is a period of 22 successive years.
7. That the water users and water right holders of record as shown in the files of the Division of Water Resources were notified by the Chief Engineer by certified mail and given an opportunity to appear at a designated time and place and show why their water right, Vested Right, File No. PN 011, should not be declared abandoned and terminated; that such notice was mailed on October 30, 1987, which was

more than 30 days prior to the hearing; that the notice also met the other requirements of K.S.A. 82a-718.

8. That written notice of intent to appear at the hearing was received by the Chief Engineer from Stanley L. Ponce, Chief, Water Rights Branch, U.S. Department of the Interior, on behalf of the National Park Service.
9. That on December 16, 1987, a hearing was held at the Division of Water Resources of the Kansas State Board of Agriculture; that the files of the Division of Water Resources contain a verified report of an authorized representative of the Chief Engineer containing prima facie evidence of the abandonment and termination of Vested Right, File No. PN 011.
10. That Robert Reed Frizell appeared at the hearing and testified as follows: that he holds no legal interest in Vested Right, File No. PN 011; that no water has been diverted from the Pawnee River for irrigation purposes under Vested Right, File No. PN 011 since 1974. That Mr. Frizell presented no testimony regarding the issue of whether there was due and sufficient cause for nonuse of water under Vested Right, File No. PN 011.
11. That Ralph O. Canaday, Department Counsel, United States Department of the Interior, Office of the Regional Solicitor, and John B. Arnold, Superintendent, Fort Larned National Historic Site, appeared on behalf of the National Park Service.
12. That Ralph O. Canaday made an opening statement in behalf of the National Park Service as follows: That the National Park Service has not abandoned Vested Right, File No. PN 011 because it has used the water as Congress directed, which was to use it in the interpretation and use of the Fort Larned Historic Site; that the State of Kansas has no authority or jurisdiction to take away property that Congress has authorized the United States to acquire; that the Court in U.S. v. Ballard, 184 Fed. Supp. 1 (D.C.N.M. 1960), stated that waste, nonuse or abandonment were not bars to an action by the United States for injunctive relief to enforce its right to use water from certain springs; that the United States might be willing to donate its water right under Vested Right, File No. PN 011 to the State of Kansas if

the United States could be assured that the water would not be reappropriated and would be used in the stream.

13. That Mr. John B. Arnold testified and presented evidence on behalf of the National Park Service regarding the history of Fort Larned and the relationship of the Pawnee River to the Fort; that Mr. Arnold also testified that subsequent to the National Park Service's acquisition of the land surrounding the Fort in 1964 no water has been diverted by the National Park Service from the Pawnee River pursuant to Vested Right, File No. PN 011 and no water under that right has been used by the National Park Service for irrigation purposes; that Mr. Arnold testified that the National Park Service believes they have used the water under Vested Right, File No. PN 011 for recreation purposes.
14. That at the conclusion of the hearing, the hearing officer granted a 60 day extension of time in order for the National Park Service to submit a brief regarding the issue of whether they have abandoned their portion of Vested Right, File No. PN 011.
15. That on February 3, 1988, the Chief Engineer received a brief from Ralph O. Canaday, Department Counsel, United States Department of the Interior, Office of the Regional Solicitor, submitted on behalf of the National Park Service; that one argument set forth in the National Park Service's brief was that the portion of Vested Right, File No. PN 011 held by the National Park Service is a real property right of the United States and as such is not subject to claims of waste, nonuser or abandonment; that in support of that argument the brief cited U.S. v. Ballard, 184 F. Supp. 1 (D.C.N.M. 1960), in which the United States had purchased the right to use water from certain springs and the Court held that such right was property of the United States and as such was controlled by Congress under the Federal Constitution and waste, nonuser or abandonment were not bars to an action by the United States for injunctive relief to enforce such right.
16. That Hunter v. U.S., 159 Ct. Cl. 356 (1962), held that the fact that the United States, having appropriated certain public waters, failed to use such rights for several years and did not prevent the use of those waters by private citizens, did not constitute an abandonment of the United States right to such waters.

17. That the land that constitutes a portion of the authorized place of use under Vested Right, File No. PN 011 owned by the United States is as follows:

10 acres in the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$),

5 acres in the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$),

40 acres in the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$),

10 acres in the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$), and

80 acres in the South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$),

a total of 145 acres in Section 32, Township 21 South, Range 17 West, Pawnee County, Kansas; that the above described land and appurtenant water right were purchased by the United States in 1966.

CONCLUSIONS

1. That no lawful beneficial use has been made of the water under Vested Right, File No. PN 011 since 1964, which is a period of 22 successive years.
2. That no due and sufficient cause for nonuse of the water under Vested Right, File No. PN 011 has been shown to the Chief Engineer.
3. That the portion of the quantity and rate of Vested Right, File No. PN 011 appurtenant to the land described in Finding No. 17 is 260 acre feet and 845 gallons per minute (1.885 c.f.s.), respectively.
4. That based on U.S. v. Ballard, 184 F. Supp. (D.C.N.M. 1960), cited in Finding No. 15, and Hunter v. U.S., 159 Ct. Cl. 356 (1962), cited in Finding No. 16, the United States' portion of the water right under Vested Right, File No. PN 011 is not subject to a claim of abandonment.

ORDER

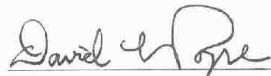
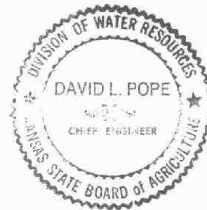
NOW THEREFORE, it is the decision and order of the Chief Engineer of the Division of Water Resources, Kansas State Board of Agriculture, that the portion of Vested Right, File No. PN 011 not acquired by the United States in 1966 shall be and hereby is declared abandoned and terminated in accordance with the provisions of K.S.A. 82a-718.

After the effective date of this Order, the authorized place of use under Vested Right, File No. PN 011 shall be as follows:

10 acres in the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$),
5 acres in the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$),
40 acres in the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$),
10 acres in the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$),
and 80 acres in the South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$),
a total of 145 acres in Section 32, Township 21 South, Range 17 West, Pawnee County, Kansas; the authorized quantity of water shall be 260 acre feet; the authorized rate of diversion shall be 845 gallons per minute (1.885 c.f.s.).

In all other respects, not inconsistent with this Order, Vested Right, File No. PN 011 shall be as set forth in the Order of the Chief Engineer dated February 15, 1956. This Order shall become effective upon execution on the date set forth below.

Dated at Topeka, Kansas this 15th day of April 1988.



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

COPY

FOR YOUR INFORMATION

HOUSE BILL No. 2036

AN ACT concerning water; authorizing the purchase of a water right on a cost-sharing basis; amending K.S.A. 2-1908 and 82a-707 and K.S.A. 1987 Supp. 2-1915 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2-1908 is hereby amended to read as follows: 2-1908. A conservation district organized under the provisions of ~~this act~~ K.S.A. 2-1901 *et seq.*, and amendments thereto, shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) (a) To conduct surveys, investigations, and research relating to the character of soil erosion, flood damage and the preventive and control measures needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures; ~~Provided, however, That~~ In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) (b) to conduct demonstrational projects within the district on lands, owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; and to demonstrate by example, the means, methods, and measures by which water and water resources may be conserved, developed, used and disposed of to alleviate drought, to maintain and improve water quality and to reduce flooding and impaired drainage;

(3) (c) to carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of K.S.A. 2-1902, ~~or acts amendatory thereof or supplemental and amendments thereto~~, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) (d) to cooperate, or enter into agreements with, and within the limits limitations of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control flood prevention and water management operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) (e) to obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interest therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this act;

(6) (f) to make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

HOUSE BILL No. 2036—page 2

(8) (g) to develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion, flood damages, impaired drainage, the effects of drouth within the district and the maintenance and improvement of water quality, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(8) (h) to take over, by purchase, lease, or otherwise, and to administer, any soil-conservation, erosion-control, or erosion-prevention, flood prevention or water management project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, erosion-control, or erosion-prevention, flood prevention or water management project within its boundaries; to act for the district or as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, maintenance, or administration of any soil-conservation, erosion-control, or erosion-prevention, flood prevention, or water management project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and from persons, firms, corporations or associations, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(9) (i) to sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this act, to carry into effect its purposes and powers;

(10) (j) as a condition to the extending of any benefits under this act, to or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;

(11) (k) no provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state;

(12) (l) the supervisors of any district shall not contract debts or obligations in the name of the district beyond the current appropriation made available to the district by the committee or federal grants or other financial sources; and

(m) to accept and expend funds donated to the district for purposes of providing at least 20% cost-share for the purchase of an eligible water right from the holder of the water right under the provisions of K.S.A. 2-1915, and amendments thereto.

Sec. 2. K.S.A. 1987 Supp. 2-1915 is hereby amended to read as follows: 2-1915. Appropriations may be made for grants out of funds in the treasury of this state for terraces, terrace outlets, check dams, dikes, ponds, ditches, critical area planting, grassed waterways, tailwater recovery irrigation systems, precision land forming, range seeding, watershed detention and grade stabilization structures and other enduring water conservation practices installed on public lands and on privately owned lands. Except as provided by the multipurpose small lakes program act, any such grant shall not exceed 80% of the total cost of any such

HOUSE BILL No. 2036—page 3

practice. Subject to the provisions of section 4, any holder of a water right, as defined by subsection (g) of K.S.A. 82a-701, and amendments thereto, who is willing to voluntarily return all or a part of the water right to the state shall be eligible for a grant not to exceed 80% of the total cost of the purchase price for such water right. The state conservation commission shall administer this cost-share program with funds appropriated by the legislature for such purpose. The chief engineer shall certify to the state conservation commission that any water right for which application for cost-share is received under this section is eligible in accordance with the criteria established in section 4. The state conservation commission shall adopt rules and regulations to administer such grant program. Any district is authorized to make use of any assistance whatsoever given by the United States, or any agency thereof, or derived from any other source, for the planning and installation of such practices.

Sec. 3. K.S.A. 82a-707 is hereby amended to read as follows: 82a-707. (a) Surface or ground waters of the state may be appropriated as herein provided. Such appropriation shall not constitute ownership of such water, and appropriation rights shall remain subject to the principle of beneficial use.

(b) Where uses of water for different purposes conflict, such uses shall conform to the following order of preference: Domestic, municipal, irrigation, industrial, recreational and water power uses. However, the date of priority of an appropriation right, and not the purpose of use, determines the right to divert and use water at any time when the supply is not sufficient to satisfy all water rights that attach to it. The holder of a water right for an inferior beneficial use of water shall not be deprived of his or her use of the water either temporarily or permanently as long as he or she such holder is making proper use of it under the terms and conditions of his or her such holder's water right and the laws of this state, other than through condemnation.

(c) As between persons with appropriation rights, the first in time is the first in right. The priority of the appropriation right to use water for any beneficial purpose except domestic purposes shall date from the time of the filing of the application therefor in the office of the chief engineer. The priority of the appropriation right to use water for domestic purposes shall date from the time of the filing of the application therefor in the office of the chief engineer or from the time the user makes actual use of water for domestic purposes, whichever is earlier.

(d) Any water right returned to the state under the provisions of K.S.A. 2-1915, and amendments thereto, shall be placed in the custodial care of the state. While in the custodial care of the state, the priority of the water right shall remain in effect and water available under the terms and conditions of the water right shall not be considered available for further appropriation. Any surface water right held in the custodial care of the state shall neither directly benefit nor impair any other surface water right within the stream reach designated for recovery. Any water right donated to the state shall be placed in the custodial care of the state or retired at the discretion of the chief engineer.

(4)(e) Appropriation rights in excess of the reasonable needs of the appropriators shall not be allowed.

New Sec. 4. (a) Except as provided by subsection (b), any application for cost-share for the purchase of the water right under the provisions of K.S.A. 2-1915, and amendments thereto, shall be subject to the following limitations:

(1) The water right is an active vested or certified water appropriation right that has not been abandoned under the provisions of K.S.A. 82a-718, and amendments thereto;

(2) (A) in the case of a water right for diverting groundwater, such water right is in an area where the rate of withdrawal of groundwater equals or exceeds the rate of recharge and the chief engineer has closed the area to further appropriations and designated the area as being in need of aquifer restoration; (B) in the case of a water right for diverting groundwater or surface water,

HOUSE BILL No. 2036—page 4

such water right is within a stream reach where the chief engineer has closed the stream reach to further appropriations and designated the stream reach as being in need of stream recovery;

(3) a local entity has provided an assurance that it will pay at least 20% of the purchase price negotiated by the entity and the holder of the water right; and

(4) the holder of the water right agrees to return the water right to the custodial care of the state.

(b) In the case of a purchase of a surface water right from outside the state, such purchase shall be considered and evaluated by the chief engineer on the basis of the potential of the water right to provide stream recovery within a designated stream reach.

Sec. 5. K.S.A. 2-1908 and 82a-707 and K.S.A. 1987 Supp. 2-1915 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.



KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES
DAVID L. POPE, Chief Engineer-Director
109 SW Ninth Street, Suite 202
TOPEKA, KANSAS 66612-1283
(913) 296-3717

HARLAND E. PRIDDLE
Secretary

April 17, 1984

John B. Arnold, Superintendent
Fort Larned National Historic Site
Route 3
Larned, KS 67550

RE: Vested Right
File No. PN 011
L54-(479)
FOLN/WR #1

Dear Mr. Arnold:

In accordance with your written request of April 13, 1984, I hereby grant you a continuance of 90 days, in which to prepare evidence concerning the possible abandonment and termination of Vested Right, File No. PN 011. You will be notified of the new hearing date by mail. The actual hearing date may be later than July 25, 1984.

Should you have any questions, please feel free to write or call this office.

Very truly yours,

David L. Pope
David L. Pope, P. E.
Chief Engineer-Director

DLP:MCA:eab
cc: Stafford Field Office

FOLS		APR 23 1984	
TO	DATE		
☒ SUPT.			
☐ ADJ. IN			
☐ ASST. SGT.			
☐ SGT.			
☐ FILE			

THE STATE



OF KANSAS

STATE BOARD OF AGRICULTURE

Harland E. Priddle, *Secretary*

DIVISION OF WATER RESOURCES

David L. Pope, *Chief Engineer-Director*

STATE OF KANSAS
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
TOPEKA, KANSAS

BEFORE

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

IN THE MATTER OF VESTED RIGHT, FILE NO. PN 011

NOTICE OF HEARING

TO ALL INTERESTED PARTIES:

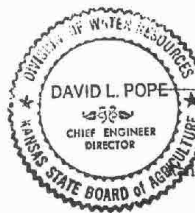
You are hereby notified that there will be a hearing in Conference Room B of the State Board of Agriculture in its offices at 109 S.W. 9th Street, Topeka, Kansas 66612, at 9:00 A.M. on Wednesday April 25, 1984, to determine whether a water right established pursuant to Vested Right, File No. PN 011, should be declared abandoned and terminated in accordance with K.S.A. 82a-718.

1. E. D. Frizell and Son filed an Information to Aid in the Determination of a Vested Right which was assigned Vested Right, Code 6211, Pawnee County, now identified as Vested Right, File No. PN 011. On February 15, 1956, an order determining the extent to which the vested right was established was issued by the Chief Engineer to allow the vested right holder to continue the beneficial use of surface water in Pawnee River to be diverted at a point in the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 32, Township 21 South, Range 17 West, Pawnee County, Kansas, at a rate not in excess of 6500 gallons per minute and a quantity not to exceed 2000 acre-feet per calendar year for irrigation use in Sections 32 and 33 of Township 21 South, Range 17 West and Sections 4 and 5 of Township 22 South, Range 17 West, Pawnee County, Kansas.
2. A review of the file shows that an error was made in the description of the point of diversion in the vested right order. The point of diversion

should have been described as near the center of the South side of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 32, Township 21 South, Range 17 West, Pawnee County, Kansas.

3. The files of the Chief Engineer-Director show that no water has been applied to beneficial use under the authority of Vested Right, File No. PN 011 since 1964, which is a period of 19 consecutive years.
4. Unless the holder of the water right, or his or her duly authorized representative, appears at the hearing at the time and place set forth above and shows due and sufficient cause why the water right determined under Vested Right, File No. PN 011, should not be declared abandoned and terminated, such water right will be declared abandoned and terminated.
5. If the holder of the water right intends to appear at the above hearing in person or by counsel, the Chief Engineer-Director must receive written notification of this intent to appear prior to April 17, 1984.

Dated at Topeka, Kansas, this 21st day of March, 1984.



(913) 296-3717

David L. Pope

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

Received 23 APR 1984
Water Resources Branch

April 13, 1984

L54 (479)
FOLN/WR #1

Mr. David L. Pope
Chief Engineer - Director
Division of Water Resources
Kansas State Board of Agriculture
109 S.W. 9th Street
Topeka, Kansas 66612-1283

Dear Mr. Pope:

This responds to your Notice of Hearing, dated March 21, 1984, regarding the Federal water right established pursuant to Vested Right, File No.

PN 011. We hereby request a six-month continuance or extension of time of the hearing scheduled for 9:00 a.m. on Wednesday, April 25, 1984.

This will allow us proper time to assemble our records and properly prepare for the hearing.

Sincerely,

SIGNED

Superintendent
Fort Larned NHS

cc: Regional Director, MWR
0475 - Brown
0475 - Berte' w/c inc.
0479 - Lucke

Ralph Canaday, Field Solicitor, Denver, CO w/c inc.

4
FIELD INVESTIGATION-SUPPLEMENT TO
VERIFIED REPORT OF FEBRUARY 3, 1981

Vested Right, File No. PN 011
March 13, 1984

On March 13, 1984 the pumpsite on the Pawnee River included under the above referenced file was again viewed. The pump and motor at the site remain exactly as described on the Verified Report of February 3, 1981.

Contacted on this investigation was John B. Arnold, Superintendent of Fort Larned National Historic Site. He replaced Bill Henry (mentioned in Verified Report) in March of 1981. He stated that no water has been pumped from the Pawnee River at the site in question since he assumed the position of superintendent.

Mr. Arnold questioned George Elmore about the pumpsite. Mr. Elmore has been an employee at the historic site since 1973. He could not remember any water ever being pumped from the river, but did remember that in 1974 it was attempted to pump from the river, but the pump wouldn't work.

The headquarters for the Fort Larned National Historic Site is only 1000' from the pumpsite. The pumpsite is located on property owned by the United States of America. Mr. Arnold wishes to be notified of any hearing or changes made under this Vested Right. His address is:

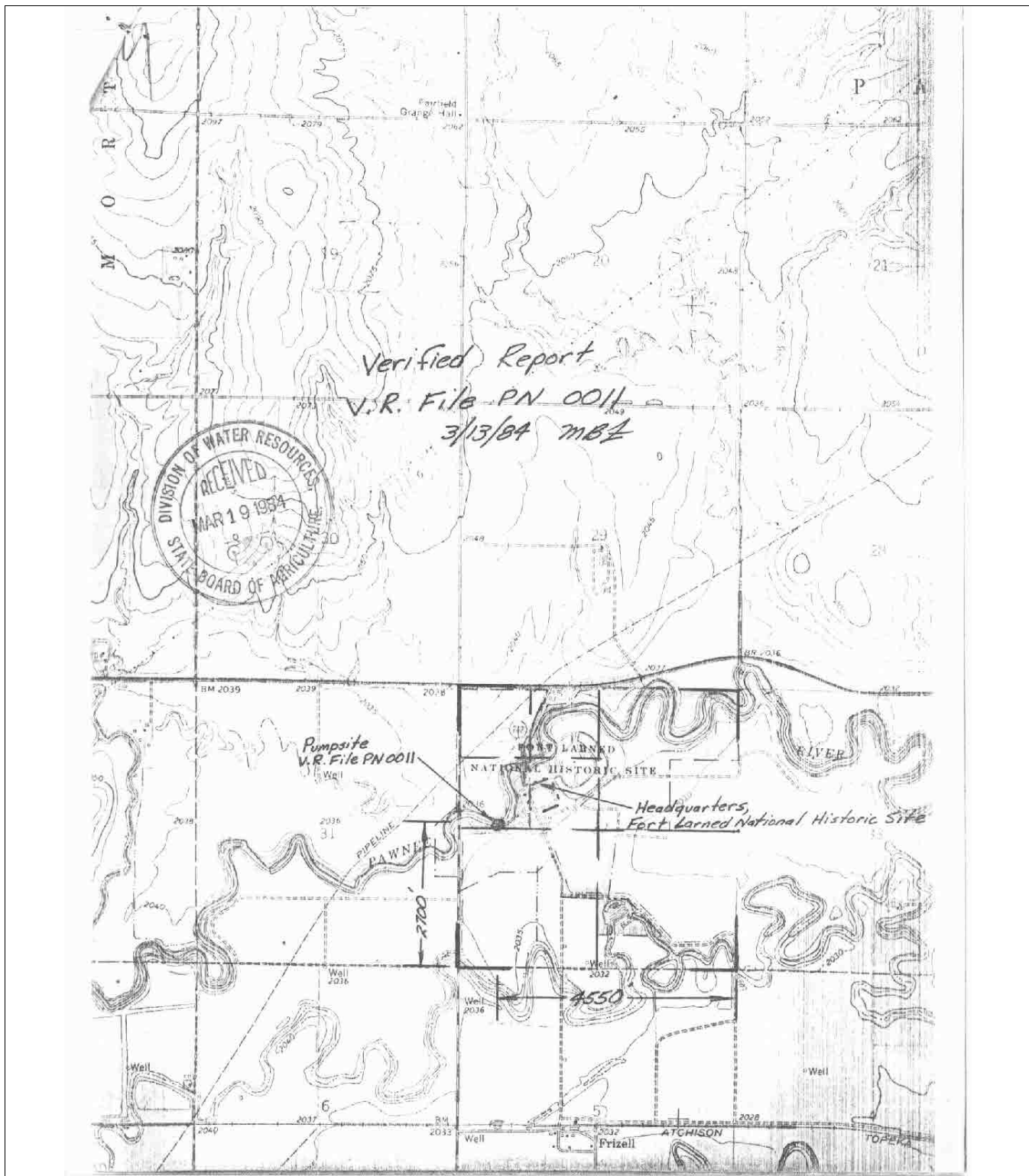
John B. Arnold, Superintendent
Fort Larned National Historic Site
Route 3
Larned, Kansas 67550

He is employed by the U.S. Dept. of the Interior, National Park Service.

M. Bruce Falk

M Bruce Falk





STATE OF KANSAS
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
TOPEKA, KANSAS

BEFORE CUY E. GIBSON, CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE

IN THE MATTER OF THE PROPOSED DESIGNATION
OF AN INTENSIVE GROUNDWATER USE CONTROL AREA
IN THE PAWNEE RIVER VALLEY

The Chief Engineer-Director, Division of Water Resources, Kansas State Board of Agriculture, (hereinafter referred to as the "Chief Engineer") after having given due consideration to all evidence, testimony and other information presented to him at the hearing on November 25, 1980, and the information submitted to him as a result of orders issued at that hearing, regarding the proposed designation of approximately 140 square miles of the Pawnee River Valley generally located in Pawnee County, Kansas, as an intensive groundwater use control area makes the following findings, conclusions and order:

1. That on May 11, 1978, the Board of Directors of the Big Bend Groundwater Management District No. 5 (hereinafter referred to as the "District"), voted to request that the Chief Engineer declare a moratorium on approving new applications in the area drained by the Pawnee River within the boundaries of the District; that the Board requested the Chief Engineer to impose a moratorium in the following area: Section 31 of Township 21 South, Range 16 West; Sections 26 through 36 of Township 21 South, Range 17 West; Sections 25 through 36 of Township 21 South, Range 18 West; Sections 7 through 36 of Township 21 South, Range 19 West; Sections 7 through 36 of Township 21 South, Range 20 West; Section 5 of Township 22 South, Range 16 West; Sections 1 through 10 and 16 through 18 of Township 22 South, Range 17 West; Sections 1 through 18 of Township 22 South, Range 18 West; Sections 1 through 12 of Township 22 South, Range 19 West; Sections 1 through 12 of Township 22 South, Range 20 West, all in Pawnee County, Kansas.

2. That on May 22, 1978, the Chief Engineer received a letter from Mr. Larry Panning, President, and Jerry E. Mott, Secretary, of the District, attesting to the fact that on Thursday, May 11, 1978, the Board of Directors of Big Bend Groundwater Management District No. 5 voted seven to zero to recommend to the Chief Engineer that a moratorium area be established in that portion of the Pawnee River Valley lying within the District.
3. That by letter dated May 24, 1978, Richard F. Sloan, District Manager, indicated the Board's requested action was based upon the slow decline of water levels measured in the Pawnee Valley since 1943 and that the action was requested pending the completion of a re-charge withdrawal modeling study which would be undertaken by the Kansas Geological Survey; that Mr. Sloan further indicated that based upon the results of the study by the Kansas Geological Survey, a further recommendation would be made to the Chief Engineer from the Board of Directors of the District.
4. That by letter dated June 9, 1978, Mr. Sloan advised the Chief Engineer that the groundwater modeling study of the area would be undertaken to determine the maximum permissible annual withdrawal of groundwater without resulting in permanent groundwater depletion in the area and that following the effective date of House Bill 2702, that the Board would petition the Chief Engineer to initiate proceedings to designate the area as an intensive groundwater use control area.
5. That on June 19, 1978, the Chief Engineer designated the area within the District boundaries lying west of the east line of Townships 21 and 22 South, Range 18 West; Sections 26 through 36, Township 21 South, Range 17 West; Sections 1 through 10 and Sections 16 through 18, Township 22 South, Range 17 West; Section 31, Township 21 South, Range 16 West; and Section 6, Township 22 South, Range 16 West, all in Pawnee County, Kansas, an area of approximately 140 square miles, as an area where applications to appropriate water for beneficial use, other than for domestic use, received after June 19, 1978, would be assigned priority dates but would not be acted upon until sufficient information was available

FOLS
mostly
in S32,
some in
T 29, 34, 31
FOLS
is
included
in
designated
area

to determine the amount of water, if any, which might be available for future appropriation; that those applications presently on file in the office of the Chief Engineer as of June 19, 1978, would be processed in the usual manner.

6. That by letter dated April 11, 1980, Dr. Manoutch Heidari of the Kansas Geological Survey transmitted to the Chief Engineer the final report on "Hydro-Geologic Investigations in the Pawnee Valley," dated April, 1980, prepared by Dr. Marios Sophocleous.
7. That by letter dated June 20, 1980, and received in the office of the Chief Engineer on June 23, 1980, Mr. Sloan advised the Chief Engineer that at the June 12, 1980, Board meeting in St. John, Kansas, after considerable discussion, the Directors of the District had voted 8 to 0 in favor of requesting the Chief Engineer to initiate proceedings for the establishment of an intensive groundwater use control area in accordance with the provisions of K.S.A. 1979 Supp. 82a-1036.
8. That by letter dated June 30, 1980, received on July 1, 1980 by the Chief Engineer, Mr. Sloan forwarded copies of recommendations which he had made to the Board of Directors of the District regarding options for formulating a groundwater policy in the Pawnee River Valley; that Mr. Sloan advised that the Board of Directors had not taken any action on any of his recommendations.
9. That K.S.A. 1979 Supp. 82a-1036, 82a-1037 and 82a-1038 provide that upon recommendation of the groundwater management district, the Chief Engineer shall initiate, as soon as practicable, proceedings for the designation of a specifically defined area within such groundwater management district as a control area; that these statutes further provide the Chief Engineer has the authority and duty to hold a public hearing on the question of designating such area as a control area; that the Chief Engineer shall make written notice of the hearing to every person holding a water right in the area in question and publish notice of the hearing by one publication in a newspaper or newspapers of general circulation within the area at least thirty days prior to the date for such hearing; that at the hearing documentary and oral evidence shall be taken and a full and complete record of the same shall be kept.

10. That on October 17, 1980, a notice was published in the Larned Tiller and Toiler, a daily newspaper of general circulation in Pawnee County, Kansas, regarding the public hearing that would be held at 10:00 a.m. on Tuesday, November 23, 1980, at the Larned Courthouse, Broadway and 7th, Third Floor, Larned, Kansas 67550, at which time all interested parties would have an opportunity to be heard regarding the proposed designation of an intensive groundwater use control area (hereinafter referred to as "control area") in Pawnee County, Kansas; that such notice complied with the statutory requirements of K.S.A. 1979 Supp. 82a-1037; that Jack Zygmund, publisher of the Larned Tiller and Toiler, provided an affidavit of publication which was received by the Chief Engineer on October 22, 1980; that also as required by K.S.A. 1979 Supp. 82a-1037 a copy of the notice was mailed to each water right holder in the proposed control area as shown in the records of the office of the Chief Engineer including all persons known to the Chief Engineer to have a domestic right in the area; that notice was also mailed to Dr. Bill Hambleton, Director, Kansas Geological Survey, Mr. Charles F. Bredahl, Executive Secretary, State Conservation Commission, Mr. Jerry Conley, Kansas Fish and Game Commission, Mrs. Francine Neubauer, Kansas Water Resources Board, Mr. Gerald Stoltenberg, Director of Environment, Kansas Department of Health and Environment, and Mr. Lynn Burris, Director of Park and Resources Authority.
11. That no written statements or letters were received prior to the hearing relative to the above described notice.
12. That on November 23, 1980, the Chief Engineer held a hearing beginning at approximately 10:10 a.m. in the District Court Room, Third Floor, Courthouse, Larned, Kansas, to consider the possible designation of a control area in Pawnee County, Kansas; that Leland E. Rolfs, Legal Counsel for the Division of Water Resources, and David L. Pope, Assistant Chief Engineer, Division of Water Resources, were also present and assisting the Chief Engineer at the hearing.
13. That Mr. Douglas McClure, Attorney at Law, appeared on behalf of the District.

14. That Mr. Glee S. Smith, Att at Law, Smith, Burnett and Larson, 111 E. 8th Street, P.O. Box 360, Larned, Kansas 67550, appeared on behalf of approximately 50 landowners and operators of land in the area affected by the proposed control area.
15. That Mr. Richard F. Sloan, Manager of the District, testified on behalf of the District, as follows: that a portion of the Pawnee River Valley is within the District; that the District adopted its first management program on June 18, 1976, and that the District has in its revised management program adopted a "safe yield concept" which essentially means that withdrawals of water cannot exceed re-charge; that the main source of aquifer re-charge to the Pawnee Valley is from the Pawnee River; that Mr. Sloan summarized the history of well development in the Pawnee Valley within the District; that there were approximately 37 wells that have vested rights in the Pawnee Valley within the District; that development was static until the drought of 1952 through 1956 and that there was another boom of well drilling in the mid-60's through the mid-70's; that there are now approximately 300 wells in the Pawnee River Valley within the District; that approximately 33% of the Pawnee River Valley lies within the district and present moratorium area and 67% lies without; that the Division of Water Resources has authorized the withdrawal of approximately 50,000 acre-feet of groundwater per calendar year in the Pawnee Valley moratorium area; that such water is primarily used for irrigation purposes; that four applications to appropriate water have been filed since the moratorium went into effect; Application No. 32,482, Application No. 32,055, Application No. 33,708 and Application No. 33,097; that he stated the District had not had any serious complaints of waste in that area; that there has not been any known degradation of water quality in the moratorium area at the present time; that the alluvial aquifer in the Pawnee River Valley overlays the Dakota aquifer; that the District had done no study to determine what actual annual water usage has been in the Pawnee River Valley; that approximately 10% of the 300 wells in the Pawnee Valley are Dakota wells.

16. That Dr. Marics Sophocleous, Assistant Scientist in the Geo-Hydrology Section of the Kansas Geological Survey, Lawrence, Kansas, testified he had worked with the Geological Survey since June, 1978; that he had received his Master's Degree in Water Resources from the University of Kansas and his Doctorate Degree in Hydro-Geology from the University of Alberta, Canada; that he had been requested by the District and the Chief Engineer to study the Pawnee River Valley; that he had made his study from approximately November, 1978, until March, 1980; that the purpose of the study was to determine the amounts of groundwater re-charge to the alluvial aquifer of the Pawnee River Valley and the possible effects from the present rates of pumping and increased rates of pumping; that Dr. Sophocleous testified his study was based in part on a study of the literature published on the Pawnee Valley including the Fishel Report completed in 1952.
17. That Dr. Sophocleous further testified that, in general, the alluvial aquifer and the Dakota sandstone aquifer are separated by relatively thick amounts of shale but that it is possible in some areas there is a hydraulic connection; that the Pawnee River Valley alluvium is re-charged primarily by the Pawnee River itself and its tributaries; that Dr. Sophocleous also testified that irrigated acreage in the Pawnee Valley has increased approximately 10 times since the 1940 and now approximately 60,000 acres; that generally the contribution from groundwater to the Pawnee River base flow has decreased since 1945; that a comparison of the groundwater levels now with the water level shown in the Fishel Report for the mid-40's shows an areal shrinkage of the aquifer of approximately 15%; that the depletion of groundwater in storage of over 35% has occurred from the mid-40's to the present; that he has estimated re-charge in the Pawnee River Valley by using two methods: (1) he studied the streamflow records during the early stages of irrigation and assumed there was an equilibrium between the amount of water pumped from wells during the 30's and 40's and the amount of water that was replenishing the groundwater aquifer; that by making an analysis of streamflow records of the Pawnee River from 1925 to 1945, he estimated the re-charge into the aquifer was about six tenths of one inch per year; that the average annual precipitation in the region is about 21 to 22 inches per year; (2) that the second method of calculating ground-

water re-charge is called the soil-moisture budget which involves an analysis based on soil types and plant types as to how much water the soils of that area can absorb under a given rainfall; that the amount of natural groundwater re-charge that has been taking place, as derived by this technique, is four tenths of one inch; that the aquifer area is approximately 300 square miles for the entire Pawnee Valley and that to approximately 4,000 acre-feet per calendar year in estimated natural groundwater re-charge occurs in the Valley.

18. That Dr. Sophocleous further testified that the groundwater rights authorized in the entire Pawnee Valley are approximately 84,000 acre-feet per calendar year, about 11 times more than the average annual re-charge; that the study considered six options to see what effect each of these options would have on future water levels and the Pawnee Valley aquifer; that the study concluded that if pumping rates continue as they are today, by the year 2,000, the central area of the Pawnee Valley will experience more than 30 feet of decline in saturated thickness, especially those areas around Sanford, Rozel and Burdett.
19. That Dr. Sophocleous also testified that he concluded the study shows that withdrawals from the Pawnee Valley are of such magnitude that even without any additional development that the water level declines will continue indefinitely, and according to the projections would exceed 30 and 40 feet or more by the year 2,000 and therefore, unless the groundwater management district and the people in the area make a consistent effort to remedy the situation, the future looks rather bleak; that the water surface profile is based on a 170 data points measured during calendar years 1979 and 1980 and that the study was based on a long history of 18 wells in the area; that the study was based on an assumption that irrigators were pumping the approved amounts; that based on the water use reports, that it appeared that in the Pawnee Valley most users appeared to be using 90 to 100% of the authorized quantities; that no study had been done to determine what quantity pumping in the area would have to be cut back in order to maintain a safe yield.

20. That Mr. Sloan further testi_____ on behalf of the District that he had computed an 11 year running average of streamflow in the Pawnee River just west of Larned, Kansas, which showed that streamflow peaked in 1953 and had fallen off or held steady since that time and that the streamflow has never recovered to the level of the late 40's or early 50's; that he also computed some 11 year running averages of static water levels in wells; that using an analysis involving a one mile radius circle to evaluate potential applications would be hydrologically sound for the Pawnee River Valley; that in his opinion there is not a reasonable possibility in most of the valley for allowing significant additional wells to go in without causing further significant declines in the water table; that the only way an accurate record could be made of water usage in the area is if meters were required; that the Board has discussed the option of curtailing all future development in the Pawnee River Valley except for domestic and temporary wells; that spacing the wells one quarter mile would result in no direct well interference; that to allow appropriations in the Pawnee River Valley proportionate to those allowed in the remainder of the District would allow 1,500 acre-feet to be appropriated in a one mile circle.

21. That Larry Panning, farmer, Director and Chairman of the District, testified on behalf of the District that the Board had initially requested a moratorium to give time for a study and then the Board asked the Chief Engineer for a control area which required notification of all water right holders in the area and a hearing; that the Board had not decided on any option but had discussed several options for controls in the Pawnee River Valley such as: (a) lifting the moratorium and using the same formula in effect in the remainder of the District, or (b) asking the Chief Engineer to declare an intensive groundwater use control area, and (1) utilizing the same concept as the rest of the District except using the one mile radius circle, or (2) requiring metering, or (3) allowing the development of certain areas and eliminating others; that to date the Board has not made any specific recommendations; that the Board had considered requesting a moratorium for one to two years

before it did so; that a moratorium was requested in July so that it would not affect development for approximately one year and it was anticipated the study would be complete within that year, which unfortunately, it was not.

22. That Mr. Larry Skelton, farmer in the proposed intensive control area, testified that he had been instrumental as a member of the Pawnee County Irrigators Association to instigate the Pawnee Valley's joining of the District and that the moratorium was imposed without his knowledge; that in his opinion a safe yield formula would be more suitable for the Pawnee Valley; that he felt most of the people in the area felt some controls were necessary on the amount of water that could be allowed for appropriation but that some additional wells could be allowed in certain areas; that the Chief Engineer directed him to furnish a map showing the area that he and others in his area felt should be allowed to have more wells; that he was in favor of a safe yield policy, minimizing water table decline.
23. That Mr. Howard Zook, irrigator in the Pawnee Valley, testified he is a present member of the Board of Directors of District; that possibilities of placing re-charge structures in Pawnee Valley River had been discussed; that he would recommend using a one mile radius circle with 1,600 acre-feet per circle as the amount available for appropriation; that he was opposed to metering because of the cost.
24. That Mr. Allen Klein, an irrigator in the Pawnee River Valley, testified that he is a Director at large in the District; that he felt if the moratorium was continued it should be a larger area; that he would be interested in having research done on a re-charge project that would transfer water from the Pawnee River over into Saw Mill Creek; that he would like to see the groundwater static water level stabilized; that the water table in the Pawnee River Valley is generally declining and that he would like to see a safe yield concept put into effect in the valley based on a one mile radius; that irrigation is vitally important to not only the farmers but the supporting businesses in the District; that he assured the Chief Engineer that as a board member he would make certain that the people at the Pawnee River Valley were aware of

any proposed recommendations made by the Board to the Chief Engineer in the next several months concerning the proposed control area; that to his knowledge no one had ever notified the Chief Engineer that the people in the moratorium area were unhappy with the moratorium and had not requested that it be lifted; that he recommended the moratorium be lifted and that some controls be put into place at the same time; that he felt there was no local support among the irrigators for installation of water meters.

25. That Mr. Arden Schartz, an irrigator in the Pawnee Valley, and a resident there since 1953, testified that the creek had silted in at least four feet since he had been there; that four wells in the area, the Musil, the Powers, the Sanford and the Luther wells, over an 11 year period, averaged approximately a four-foot decline; that the detention dams and terraces in the area have also decreased the streamflow and the re-charge in the Pawnee River Valley; that the people from the Pawnee Valley had passed a resolution and given it to the District Board to lift the moratorium but that the District Board had not made such a request to the Chief Engineer; that he favored lifting the moratorium and imposing the control of allowing 1,600 acre-feet of water per one mile radius circle; that in his opinion the water table in the valley was declining and he would like to preserve it as long as possible; that he felt like the moratorium should be continued until controls could be imposed.
26. That Mr. Marvin Finger, irrigator and farmer in the Pawnee Valley since 1948, testified that in his opinion he did not agree with Dr. Sophocleous' estimates that there had been a 35% decline in the water; that he was opposed to requiring meters because of the economic hardship to the irrigators and the lack of accuracy of current meters; that he felt the Board should adopt a 40% depletion policy on future applications.
27. That Mr. Raymond Scott, an irrigator in the Pawnee Valley since 1933 or 1934 testified that he favored lifting the moratorium area and instituting the safe yield policy of allowing 1,600 acre-feet in a one-mile radius.
28. That Mr. Leonard Finger, irrigator and farmer in the Pawnee River Valley since 1950, testified that he recommended adopting a policy of allowing 1,600 acre-feet in a one-mile radius circle; that the water table in the Pawnee Valley has not dropped in his area in the last 12 years.

29. That Mr. Dale N. Olsen, an irrigator in the moratorium area for approximately 25 years, testified that he recommended the moratorium be lifted and that he felt the regulations that the groundwater management district has in effect right now will take care of any new well drilling; that he was in favor of regulating new wells in the Pawnee Valley and that every landowner should be allowed to develop his land for irrigation; that he felt meters were a good idea because they helped the irrigator to better regulate the amount of water applied to the crops.
30. That Mr. Earl Meckfessel, irrigator in the Pawnee Valley since 1962, testified that he was generally in favor of lifting the moratorium and that he did not feel that much other development would occur in the area even without controls.
31. That Mr. Elmer Musil, irrigator in Pawnee County for 23 years, testified that records show his wells have dropped 20.7 feet in the period between 1944 through 1979; that his wells are in Section 29, Township 21 South, Range 20 West; that he favored a five year extension of the moratorium area because (1) the groundwater levels could be closely monitored and feasibility studies for re-charge could be continued by the District in cooperation with Kansas Division of Water Resources until more conclusive data is obtained, (2) within a five year period, there could be a return to seasons of excessive rainfall or even average rainfall which would raise the water table due to reduced need for irrigation, (3) an intensive educational program could be developed by the District in conjunction with other agencies such as the Soil Conservation Service, Cooperative Extension Service, and Agricultural Stabilization and Conservation Service, (4) with predictions that energy costs may double by the mid-1980's, the expense of pumping water may be a deterrent to using water and (5) budget increases and increased property tax levies for the groundwater management districts would be minimal; that he further testified he was opposed to the establishment of an intensive groundwater control area because (1) it would be expensive because of added personnel and operational costs and metering costs, (2) that the

farmers in the area were opposed to increased taxes to finance operational costs of the District to enforce the control area and (3) farmers were not ready to accept such drastic controls in irrigation operations.

32. That Mr. Sloan was recalled to the stand and further testified it would probably take approximately four months for the Board to consider the various options for different types of management strategy in the Pawnee Valley area and to formulate a recommendation to furnish the Chief Engineer.
33. That the hearing was continued by the Chief Engineer until February 13, 1981, at which time the Board of the District was to make recommendations to the Chief Engineer and the hearing was continued for 15 additional days after the recommendation was furnished to Mr. Smith to allow Mr. Smith and his clients to comment on the recommendation.
34. That by letter dated February 9, 1981, and received in the office of the Chief Engineer on February 10, 1981, Mr. Larry Stelton, as directed by the Chief Engineer at the hearing, furnished through his attorney, Mr. Glee Smith, a map showing areas of the present moratorium district in which wells could be drilled in his area under the one mile/1500 acre-foot safe-yield principle; that the map indicated four wells could be drilled in the South Halves of Sections 8 and 9, both in Township 22 South, Range 17 West, Pawnee County, Kansas.
35. That on March 16, 1981, the Chief Engineer received from Mr. Sloan a resolution of the Board of Directors of the District, dated March 13, 1981, concerning recommendations regarding the establishment of an intensive groundwater use control area in the Pawnee River Valley west of Larned, Kansas, in which the District Board of Directors recommended as follows:
 - "1. An Intensive Groundwater Use Control Area be established in an area west of Larned, Kansas, the boundaries of which shall be identical to the present Moratorium Area in effect. The Moratorium Area presently in effect shall be dissolved at the same time the Intensive Groundwater Use Control Area is created;

2. That a safe-yield like approach to proposed appropriations of groundwater identical to that program presently in effect in our district be implemented, with the exception that a 1 mile/1500 acre-feet criterion be utilized for future applications to appropriate water for beneficial use, instead of the 2 mile/6000 acre-feet criterion presently utilized in the remainder of the District;
3. That a 1 mile/1500 acre-feet limitation be applicable only to those proposed uses of groundwater in which a permanent water right accrues. Exceptions to the 1 mile/1500 acre-feet limitation include the following: uses of water for domestic purposes, and those uses of groundwater granted under the temporary permit system;
4. In all other respects, those provisions contained in the Revised Management Program of the Big Bend Groundwater Management District No. 5, effective February 21, 1979, shall apply to the Intensive Groundwater Use Control Area;
5. That all applications for permit to appropriate water for beneficial use filed in the office of the Chief Engineer, Division of Water Resources, after the Pawnee Valley Moratorium became effective on June 19, 1978, shall be processed in the manner herein set forth."
36. That by letter dated April 17, 1981, in accordance with a prior request, the Chief Engineer furnished Mr. Walter F. Stuckemann, Attorney at Law, P.O. Box 307, Jetmore, Kansas 67854, with a copy of the recommendations of the District regarding the proposed intensive control area.
37. That by letter dated April 17, 1981, the Chief Engineer extended the time in which the District was allowed to submit recommendations until March 16, 1981.
38. That by letter dated April 17, 1981, the Chief Engineer provided a copy of the District's recommendations to Mr. Glee Smith and allowed 15 days for Mr. Smith and his clients to review the recommendations of the District and submit comments to the Chief Engineer.

39. By letter dated May 5, 1981, received in the office of the Chief Engineer May 13, 1981, Walter F. Stuckemann submitted his comments regarding the proposed intensive control area and Mr. Stuckemann indicated he did "not necessarily agree with" the recommendations submitted by the District but felt that water use should be regulated but that those persons "who have land suitable for irrigation should not be denied the right to irrigate just because others have already obtained water rights in the area."

40. That K.S.A. 1979 Supp. 82a-1038 provides:

"(a) In any case where the chief engineer finds that any one or more of the circumstances set forth in K.S.A. 1978 Supp. 82a-1036 exist and that the public interest requires that any one or more corrective controls be adopted, said chief engineer shall designate, by order, the area in question, or any part thereof, as an intensive groundwater use control area.
(b) The order of the chief engineer shall define specifically the boundaries of the intensive groundwater use control area and shall indicate the circumstances upon which his or her findings are made. The order of the chief engineer may include any one or more of the following corrective control provisions: (1) A provision closing the intensive groundwater use control area to any further appropriation of groundwater in which event the chief engineer shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such area; (2) a provision determining the permissible total withdrawal of groundwater in the intensive groundwater use control area each day, month or year, and, insofar as may be reasonably done, the chief engineer shall apportion such permissible total withdrawal among the valid groundwater right holders in such area in accordance with the relative dates of priority of such rights; (3) a provision reducing the permissible withdrawal of groundwater by any one or more appropriators thereof, or by wells in the intensive groundwater use control area; (4) a provision requiring and specifying a system of rotation of groundwater use in the intensive groundwater use control area; (5) any one or more other provisions making such additional requirements as are necessary to protect the public interest.
(c) The order of designation of an intensive groundwater use control area shall be in full force and effect from the date of its entry in the records of the chief engineer's office unless and until its operation shall be stayed by an appeal therefrom in accordance with the provisions of subsection (d) of K.S.A. 1978 Supp. 60-2101. The chief engineer upon request shall deliver a copy of such order to any interested person who is affected by such order, and shall file a copy of the same with the register of deeds of any county within which such designated control area lies."

CONCLUSIONS

1. That the groundwater levels in the area in question have declined;
2. That the rate of withdrawal of groundwater within the area in question exceeds the rate of recharge in that area;
3. That the public interest requires that further non-domestic, non-temporary, and non-short-term appropriation should be limited by restricting new applications to allow no more than 1,500 acre-feet of water to be appropriated per calendar year in a one mile radius circle surrounding a proposed well;

4. That the boundaries of the control Area should be an area of approximately 140 square miles of the Pawnee River Valley generally located between Larned, Kansas, on the East and the Pawnee-Hodgeman County line on the West which includes the following described tracts of land: Section 31 of Township 21 South, Range 16 West; Sections 26 through 36 of Township 21 South, Range 17 West; Sections 25 through 36 of Township 21 South, Range 18 West; Sections 7 through 36 of Township 21 South, Range 19 West; Sections 7 through 36 of Township 21 South, Range 20 West; Section 6 of Township 22 South, Range 16 West; Sections 1 through 10 and 16 through 18 of Township 22 South, Range 17 West; Sections 1 through 18 of Township 22 South, Range 18 West; Sections 1 through 12 of Township 22 South, Range 19 West; Sections 1 through 12 of Township 22 South, Range 20 West; all in Pawnee County, Kansas.

ORDER

NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, that an intensive groundwater use control area should be and is hereby established in Pawnee County, Kansas, within the boundaries set forth below, and the following corrective control provisions shall be in full force and effect within the area described from and after the date of this Order:

1. That the boundaries of the District shall be an area of approximately 140 square miles of the Pawnee River Valley generally located between Larned, Kansas, on the East and the Pawnee-Hodgeman County line on the West which includes the following described tracts of land: Section 31 of Township 21 South, Range 16 West; Sections 26 through 36 of Township 21 South, Range 17 West; Sections 25 through 36 of Township 21 South, Range 18 West; Sections 7 through 36 of Township 21 South, Range 19 West; Sections 7 through 36 of Township 21 South, Range 20 West; Section 6 of Township 22 South, Range 16 West; Sections 1 through 10 and 16 through 18 of Township 22 South, Range 17 West; Sections 1 through 18 of Township 22 South, Range 18 West; Sections 1 through 12 of Township 22 South, Range 19 West; Sections 1 through 12 of Township 22 South, Range 20 West; all in Pawnee County, Kansas.

2. That this intensive groundwater use control area shall be subject to the following corrective control provisions:

- (a) That within the intensive control area, the approval of all applications for permit to appropriate water for beneficial use, (except those for domestic use, temporary permits, applications for permit to appropriate water for which no permanent water right accrues, and those applications for permit to appropriate water from the Dakota aquifer) and the approval of all applications for change in the point of diversion if the diversion works have not been completed under the original approved application (except where the source of supply is the Dakota aquifer), shall be subject to the following criteria: the proposed appropriation, when added to the vested rights, prior appropriation rights, and earlier priority applications shall not exceed 1,500 acre-feet within a one mile radius circle whose center is the location of the proposed well; that all applications to appropriate water for beneficial use filed after June 19, 1978, shall be processed according to the procedures and controls set forth in this Order;
- (b) That the Board of Directors of the Big Bend Groundwater Management District No. 5 shall annually review all the water use and static water level and information and other water related information in the intensive groundwater use control area; that annually the District may, no later than April 1, request a re-hearing before the Chief Engineer on the matter of the boundaries of the intensive control area, the reconsideration of the corrective control provisions or any other matters relative to the establishment of this intensive groundwater use control area;
- (c) That in all other respects, not inconsistent with this Order, the Chief Engineer shall continue to administer water rights and process applications filed pursuant to the Kansas Water Appropriation Act in accordance with the Kansas Water Appropriation Act and rules, and regulations and policies in effect in Big Bend Groundwater Management District No. 5;

(d) That the order of the Chief Engineer relative to the Pawnee River Valley in Pawnee County, Kansas, dated June 19, 1978, is hereby declared to be null and void and of no force and effect simultaneous with the creation of this intensive control area;

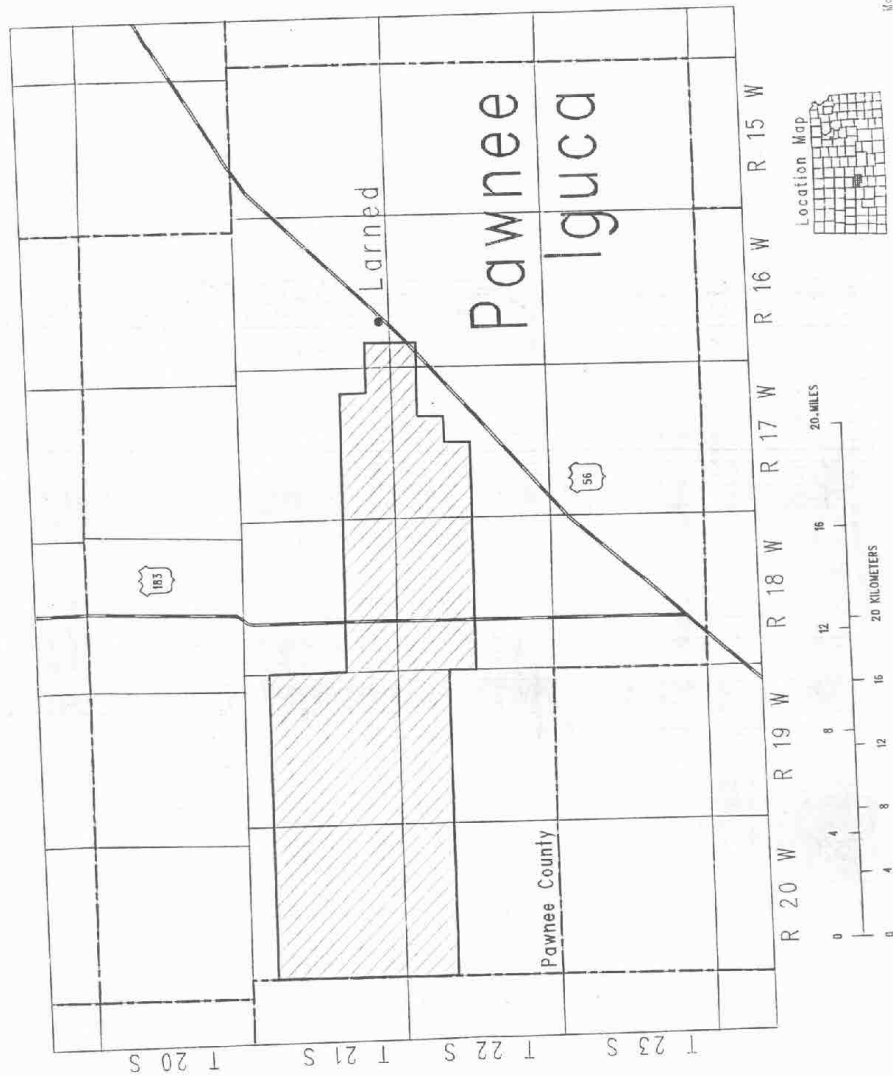
(e) That the Chief Engineer specifically retains jurisdiction in this matter with authority to make such changes in the boundaries of the intensive groundwater use control area or the corrective control provisions which have been instituted within the area or any other provisions of this Order which he may deem to be in the public interest.

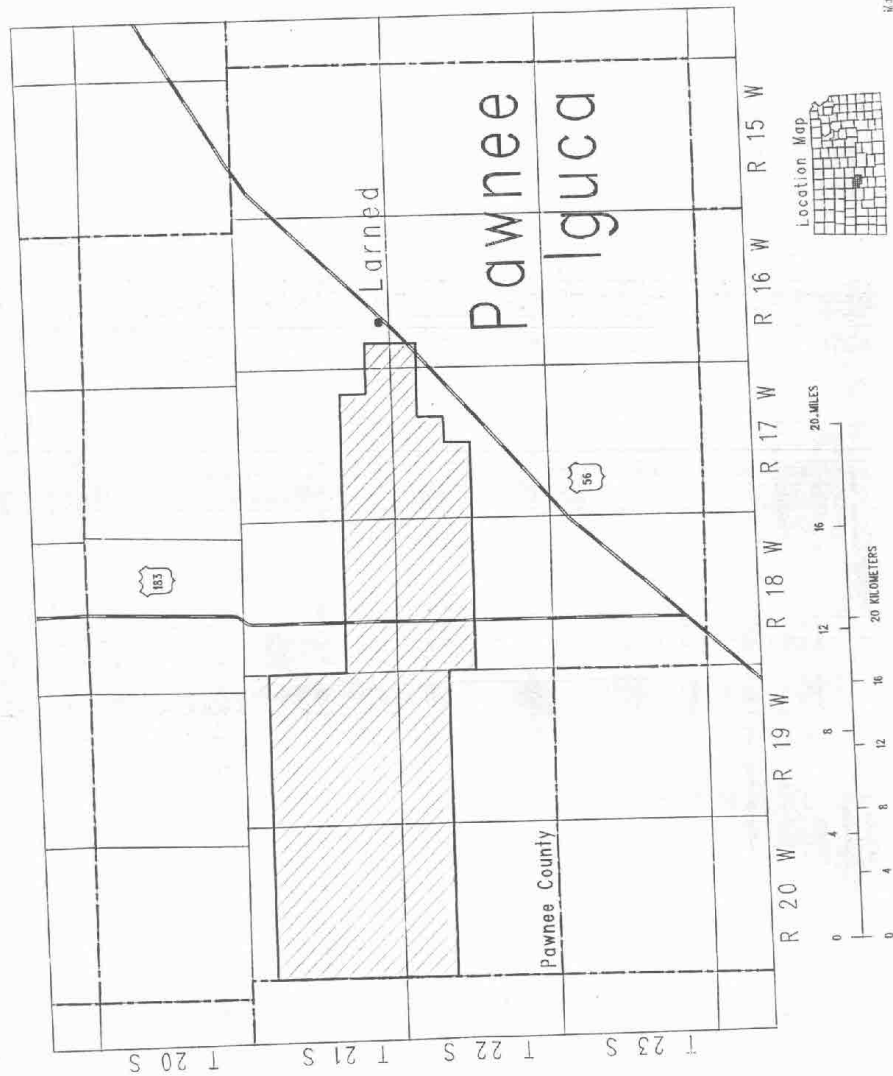
Dated at Topeka, Kansas, this 8th day of July, 1981.



Guy E. Gibson
Guy E. Gibson, Chief Engineer-Director
Division of Water Resources
Kansas State Board of Agriculture

#2012
The foregoing was filed for record on
the 7 day of July, 1981 at
Topeka, Kansas, and duly recorded in
book MKK 4 page 285
Jelmario Alhite, Registrar
Ruth Rodriguez





March 17, 1992

STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF ENVIRONMENT

PERMIT No. 17044
**For Supplying Water to the Public for
Domestic Purposes**
NON-COMMUNITY

In accordance with the provisions of Kansas Statutes Annotated 65-163

PERMISSION IS HEREBY GRANTED

to Ft. Larned National Historic Site, Pawnee County,
Larned, Kansas

NAME OF MUNICIPALITY, INSTITUTION, DISTRICT, CORPORATION OR PERSON

to supply water to the public for domestic purposes, from an existing shallow well
(location: NW 1/4, NW 1/4, Sec. 32, T21S, R17W) new pump house, chlorination
facilities, a 65-gallon pressure tank and service piping for a Highway
Rest Stop Area

in conformity with plans and specifications approved by the Department of Health
and Environment, and the following-named conditions and requirements to wit:

Provided, the water is of satisfactory bacteriological and chemical quality
as shown by representative samples submitted to KDHE, Division of
Laboratories or to a Certified private or municipal Laboratory.

Provided, further, that all water supplied to the public from this source
be subjected to continuous chlorination treatment.

Provided, further, that no sanitary sewers, wastewater facilities, feedlots,
buried tanks for the storage of petroleum products or toxic
chemicals, or similar potential pollution sources will be
permitted within 100 feet of the well.



Done at Topeka, this 16 day of November 1982

[Signature]
SECRETARY, DEPARTMENT OF HEALTH & ENVIRONMENT

VERIFIED REPORT

Date of Investigation 2/3/81

Application No. _____ Certificate Issued (No) (Yes - Date _____)

Vested Right, Code 62 11, Pawnee County

Current Landowner(s) of Record in Office of Division of Water Resources:

Name(s) ^{Part owner} G.L. Frizell Estate, 1/6 E.E. Frizell, II, ExecutorAddress(s) 2609 Heather Parkway
Hutchinson, Kansas 67501

Person(s) Representing Owner of Record During Investigation:

Name(s) Bill HenryAddress(s) Fort Larned National Historic Site, Larned Ks. 67550Relationship to Owner(s) Acting Supt. of Ft. Larned Historic Site
Fort Larned National Historic Site is also part owner of this vested right.

Water Use Classification:

Domestic () Municipal () Irrigation ☒ Industrial ()
Stockwatering () Recreational () Water Power ()

Groundwater () Drainage Basin _____

Surface Water ☒ Stream Pawnee RiverAuthorized Point(s) of Diversion:
(10-acre tract or equivalent)* Pawnee River does not
run through the NW 1/4
NW 1/4 32-21-17W* NW 1/4 NW 1/4Sec. 32, T. 21 S., R. 17W.Actual Point(s) of Diversion:
(10-acre tract or equivalent)No. ctr. of south side of the SW 1/4 NW 1/4Sec. 32, T. 21 S., R. 17W.Authorized Quantity 3000 Ac. Ft. Rate 6500 G.P.M.

Field Inspected

Date N/A Rate N/A @ N/A r.p.m.

Power Unit Information

Make International Model — Fuel Not. Gas

Pump Information

Make American Model 12" Cent.Serial No. Shop no. 33906 Type Cent.

Gear Head Information

Make None Model —Serial No. — Drive —Distribution System: Ditches - in bad repairLast Year of Usage: 1964. - last water use reportPumping Time 2338 hours or Gallons _____ or other _____

DWR 1-303



-2-

If no use, give reason (explain fully): Reason for no use unknown.

Application #8559, for surface water from the Pawnee River,
1/2 mile upstream from this vested right, reports pumping
water from the river in 1965, 1966, 1967, 1968, 1969,
1971, 1972, 1973, 1976, 1977, 1978

If additional space is needed, attach sheet(s).

Condition of Equipment (give detailed summary): Engine - spark plug
wires rotted off and all gages are busted out.
Pump could not be turned by hand.

If additional space is needed, attach sheet(s).

Disinterested Parties Contacted (if any) and their comments:

Name	Address	Comments
<u>None</u>		

VERIFICATION

2/4, 1981

STATE OF KANSAS, Stafford COUNTY, ss.

M. Bruce Falk of lawful age, being first duly sworn

upon oath, deposes and says: that he is an Engineering Tech.,
 Division of Water Resources, an authorized representative of the Chief Engineer,
 Division of Water Resources, Kansas State Board of Agriculture; that he has read
 the above and foregoing report and knows the contents thereof; that the state-
 ments and information contained therein are true and correct as he is informed
 and verily believes.

M. Bruce Falk
 (name)

E. T. IV
 (title)

STATE OF KANSAS, STAFFORD COUNTY, ss.

Appeared before me, J. Marlene Whitlock, a Notary Public, in the

State of Kansas, County of Stafford, M. Bruce Falk

, personally known to me this 4th day of February,

1981.



J. Marlene Whitlock
 Notary Public

March 6, 1984

STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF ENVIRONMENT

PERMIT No. 16170
**For Supplying Water to the Public for
Domestic Purposes**

In accordance with the provisions of Kansas Statutes Annotated 65-163

PERMISSION IS HEREBY GRANTED

Non-Community

to Fort Larned National Historic Site, Larned, Pawnee County, Kansas

NAME OF MUNICIPALITY, INSTITUTION, DISTRICT, CORPORATION OR PERSON

to supply water to the public for domestic purposes, from one shallow well, one 6,000
gallon storage tank, one 100,000 gallon below ground storage tank,
chlorination facilities, booster pump, pressure cells and piping system

in conformity with plans and specifications approved by the Department of Health
and Environment, and the following-named conditions and requirements to wit:

Provided, the water is of satisfactory bacteriological and chemical quality
as shown by representative samples submitted to the Environmental
laboratories.

Provided, further, that all water supplied to the public from this source
be subjected to continuous chlorination treatment.

Provided, further, that no sanitary sewers, wastewater facilities, feedlots,
buried tanks for the storage of petroleum products or toxic
chemicals, or similar potential pollution sources will be
permitted within 100 feet of the well.



Done at Topeka, this 28 day of January 1981

J. J. Harkins
SECRETARY, DEPARTMENT OF HEALTH & ENVIRONMENT



DIVISION OF WATER RESOURCES
R. V. SMRHA, Chief Engineer
1026-S STATE OFFICE BUILDING
TOPEKA, KANSAS 66612

KANSAS STATE BOARD OF AGRICULTURE

ROY FREELAND
Secretary

March 13, 1972

Mr. & Mrs. Robert R. Frizell
519 W. 4th Street
Larned, Kansas 67550

United States Government
c/o Mr. Bryant
Fort Larned Park Manager
Larned, Kansas 67550

Re: Vested Right, Code 6211,
Pawnee County, Kansas

Appropriation of Water
Application No. 8819

Dear Sirs and Madam:

We are in receipt of deeds which set forth that the United States Government have purchased from Robert R. and Virginia Lee Frizell (husband and wife) the North Half of the Northeast Quarter ($N\frac{1}{2} NE\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter ($SW\frac{1}{4} NE\frac{1}{4}$), and the Northwest Quarter ($NW\frac{1}{4}$) of Section 32, Township 21 South, Range 17 West, except parcels owned by the Kansas Highway Commission.

Our records under Vested Right, Code 6211, Pawnee County, show, among other land to be irrigated, a total of 415 acres in Section 32, Township 21 South, Range 17 West.

Based on the above information, we will change our records under Vested Right, Code 6211, Pawnee County, to show the following land to be owned by the United States Government:

- 10 acres in the Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4} NE\frac{1}{4}$),
- 5 acres in the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4} NE\frac{1}{4}$),
- 10 acres in the Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4} NW\frac{1}{4}$),
- 80 acres in the South Half of the Northwest Quarter ($S\frac{1}{2} NW\frac{1}{4}$),
- 40 acres in the Southwest Quarter of the Northeast Quarter ($SW\frac{1}{4} NE\frac{1}{4}$),

a total of 145 acres in Section 32, Township 21 South, Range 17 West.

The remainder of the land to be irrigated under this vested right will be in the name of Robert R. and Virginia Lee Frizell.

Mr. & Mrs. Robert R. Frizell
United States Government

-2-

March 13, 1972

Our records under Application No. 8819 show, among other land to be irrigated, a total of 330 acres in Section 32, Township 21 South, Range 17 West.

Based on the above information, we will change our records under Application No. 8819 to show the following land to be owned by the United States Government:

- 30 acres in the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$),
- 30 acres in the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$),
- 40 acres in the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$),
- 30 acres in the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$),
- 30 acres in the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$),
- 40 acres in the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$),
- 30 acres in the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$),

a total of 230 acres in Section 32, Township 21 South, Range 17 West.

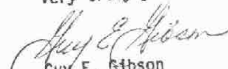
The remainder of the land to be irrigated under this application will be in the name of Robert R. and Virginia Lee Frizell.

Mr. Street of our Stafford Field Office informs us that Mr. Robert Frizell and Mr. Bryant have called at his office. The question was raised as to apparent errors in the land to which the vested right is appurtenant, and errors in the land proposed to be irrigated under Application No. 8819.

We understand that you are working with Mr. Street to have these errors taken care of, and upon information from you or Mr. Street's office the appropriate action will be taken to correct the errors.

Should you have any questions, please feel free to write or call us.

Very truly yours,


Guy E. Gibson
Engineer

GEG:crg

- C O P Y -

- C O P Y -

- C O P Y -

THE STATE OF KANSAS

Number 8819APPLICATION FOR PERMIT TO
APPROPRIATE WATER FOR BENEFICIAL USE

To the Chief Engineer of the Division of Water Resources, Kansas State
Board of Agriculture:

Comes now the applicant ^(Mr.)~~(Mrs.)~~ Robert R. Frizell whose post office
address is Rt #3 Larned, Kansas and makes application to the Chief Eng-
ineer of the Division of Water Resources, Kansas State Board of Agricul-
ture, for a permit to appropriate for beneficial use such unappropriated
groundwater as may be available in Pawnee River drainage basin in the
county of Pawnee, state of Kansas, to the extent and in accordance with
the particulars hereinafter described:

1. The quantity of water desired is in the amount of 1488 per year
to be diverted at a maximum rate of 2000 G.P.M.
2. The location of the proposed wells or other works for diversion
of water is in the SE quarter of the S4 quarter of section 32,
township 21S, range 17W, in Pawnee County, Kansas.
3. The works for diversion and distribution of water will consist
of Pumps, wells, ditches and syphon tubes, and will be completed and in
operation by Feb. 1957.
4. The first actual application of water for the beneficial use pro-
posed was or is estimated to be Feb. 1957.

5. The water is intended to be appropriated for :

		Amount
(a) Domestic use	()	_____
(b) Municipal use	()	_____
(c) Irrigation use	(X)	<u>1488 *</u>
(d) Industrial use	()	_____
(e) Recreational use	()	_____
(f) Water Power use	()	_____

(check intended use or uses and show intended quantity for each use)

* Mostly Corn and Alfalfa acreage on a heavy clay soil with high water
requirements.

- C O P Y -

- C O P Y -

- C O P Y -

- COPY -

- COPY -

- COPY -

and water requirements of the city.

7. If for irrigation use list below or attach name and address of each landowner and the legal description of the lands to be irrigated by designating the actual number of acres to be irrigated in each forty acre tract or fractional portion thereof:

Owner of Land—NAME: Robert R. Frizell

ADDRESS: Rt #3 Larned, Kansas

Sec.	Twp.	Range	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Total
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
32	21	17				40					40	40	40	40	40	40	40	10	330
4	22	17					34	40											74

Owner of Land—NAME: Vern R. Frizell & Robert R. Frizell (undivided interest)

ADDRESS: 519 We 4th Larned, Kansas

Sec.	Twp.	Range	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Total
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
32	21	17	30	30	40		30	30	40	30									230

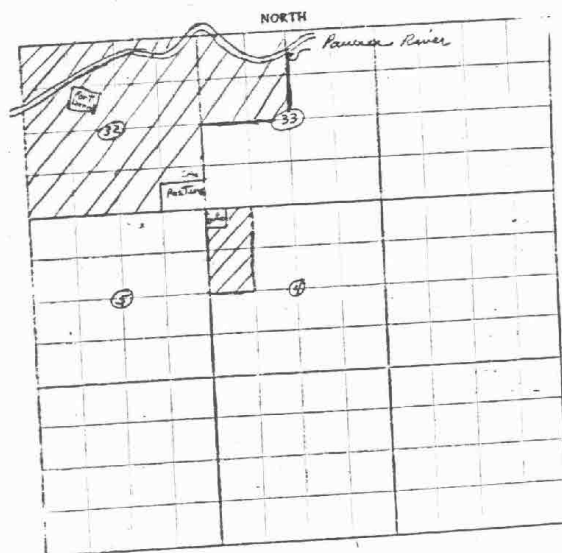
Owner of Land—NAME: W.W. Frizell & Robert R. Frizell (undivided interest)

ADDRESS: We 4th Larned, Ka.

Sec.	Twp.	Range	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Total
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
33	21	17					10	20	40	40									110

Total acreage 744

List and describe other applications filed or vested rights held by applicant:
V.R. from Pawnee Creek



9. The relation of the subscriber to this application if not the owner is that of _____
and he is authorized to make this application in behalf of the interest affected.
Dated at _____ Kansas, this 23 day of October 1961

W. P. Dwyer
By: _____
(Agent or Attorney)

NOTE: This application is subject to the approval of the Board of Directors of the Kansas State Board of Agriculture.

- C O P Y -

- C O P Y -

- C O P Y -

6211

6211 of
011

INFORMATION SUBMITTED TO AID IN THE
DETERMINATION OF VESTED RIGHT TO
BENEFICIAL USE OF WATER

This Statement is made by E. D. Frizell & Son of Larned, Kans. to
to aid the Chief Engineer of the Division of Water Resources of the Kansas
State Board of Agriculture in determination of vested rights of all parties
using water for beneficial purposes other than domestic. I herewith
assert and describe my claim to a vested right for the beneficial use of
water as follows:

1. Water has been actually applied from the Pawnee Creek for beneficial use for Irrigation purposes, to the maximum extent of 2000 acre feet of _____ million gallons for any period of one year between June 28, 1942, and June 28, 1945, at a maximum rate of 8500 G.P.M. cubic feet per second or _____ million gallons per day. 14.5 cfs

2. Such use was first commenced About 1912.

3. Diversion works now in use were completed on About 1914 and consist of small concrete dam, pump, stationary gas motor, weir box, ditches, laterals.

4. Diversion works under construction on or prior to June 28, 1945, were commenced on _____ and consist of _____. Such works are expected to be completed by no later than _____, and it is intended that water will be actually applied to beneficial use by not later than _____.

5. _____ wells now in use. The diameter of each is _____ inches and the depth of each is _____ feet. (Add additional information below if necessary)

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

NOTICE OF CONTENTS OF ORDER DETERMINING AND ESTABLISHING
VESTED RIGHTS TO CONTINUE THE BENEFICIAL USE OF WATER

TO E. D. Frizell & Son
Larned, Kansas

You are hereby notified that on the 15th day of February,
19 56, the Chief Engineer of the Division of Water Resources, Kansas
State Board of Agriculture, entered in the records of his office in accord-
ance with the provisions of Section 82a-704 of the 1947 Supplement to the
General Statutes of Kansas, 1935, the following order, made by him, deter-
mining and establishing your vested right to continue the use of water for
beneficial purposes from the Pawnee River at a point in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of -
Section 32, Township 21 South, Range 17 West, Pawnee County, Kansas.

ORDER

The extent of your vested right to continue the beneficial use of w
water from the source as stated has been determined and established to be
a maximum quantity of 2000 acre feet per year to be diverted at a maximum
rate of 6500 gallons per minute for irrigation use at or upon the
following described property: 10 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, 5 acres in the
NW $\frac{1}{4}$ NE $\frac{1}{4}$, the S $\frac{1}{2}$ NE $\frac{1}{4}$, 10 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, the S $\frac{1}{2}$ NW $\frac{1}{4}$, the SW $\frac{1}{4}$, the
NE $\frac{1}{4}$ SE $\frac{1}{4}$, 25 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 5 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32;
25 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 21 South, Range 17 West;
the N $\frac{1}{2}$, the SW $\frac{1}{4}$, 25 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 35 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of
Section 5; the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, Township 22 South, Range 17 West,
Pawnee County, Kansas.

Any appeal from this order must be made to the district court of the
county in which the point of diversion is located within 60 days after
posting and mailing of this notice.

Dated at Topeka, Kansas, this 15th day of February, 19 56.

(signed) R.V. Smrha
Chief Engineer
Division of Water Resources
Kansas State Board of Agriculture

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

PERMIT
and
APPROVAL OF APPLICATION
(This Is Not a Certificate of Appropriation)

This is to certify that I have examined application No 8819 of the applicant Robert R. Frizell Route #3, Larned, Kansas for a permit to appropriate water to beneficial use, together with the maps, plans and other submitted data, and that the application is hereby approved and the applicant is hereby authorized, subject to vested rights and prior appropriations, to proceed with the construction of the proposed diversion works and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect the proposed appropriation subject to the following terms, conditions and limitations:

1. The priority date assigned to such application is October 25, 1961.
2. The water sought to be appropriated shall be used for irrigation on the land described in the application.
3. The source from which the appropriation is made shall be from ground water in the drainage basin of the Pawnee River to be withdrawn by means of wells located in all of Section 32, and the Northwest Quarter (NW $\frac{1}{4}$) of Section 33, all in Township 21 South, Range 17 West in Pawnee County, Kansas.
4. The appropriation sought shall be limited to a maximum diversion rate not in excess of 2000 gallons per minute (4.46 c.f.s.) and to a quantity of not to exceed 1488 acre feet for any calendar year.
5. The appropriation shall be perfected on or before December 31, 1964, or within any authorized extension of time.
6. The applicant shall notify the Chief Engineer of the Division of Water Resources when construction of necessary works has been completed and water applied to the proposed use.
7. The applicant shall maintain records from which the quantity of water actually diverted during each calendar year may be readily determined. Such records shall be furnished to the Chief Engineer as soon as practicable after the close of each calendar year.

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

- C O P Y -

8. The applicant shall not be deemed to have acquired a water application for a . . .

9. The right of the appropriator shall relate to a specific quantity of water and such right . . .

10. This permit does not constitute authority under Sections 82a-...

11. Failure without cause to comply with provisions of the permit and its terms . . .

12. The quantity of water approved under this application is further limited to that quantity which combined with any other water rights will provide a total of not to exceed 1488 acre feet per calendar year for use on that land listed under this application.

Dated this 29th day of November, 19 61

(signed) R.V. Smrha
Chief Engineer
Division of Water Resources
Kansas State Board of Agriculture

- C O P Y -

- C O P Y -

- C O P Y -



KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES
R. V. SMRHA, Chief Engineer
1026-S STATE OFFICE BUILDING
TOPEKA, KANSAS 66612

ROY FREELAND
Secretary

March 13, 1972

Mr. & Mrs. Robert R. Frizell
519 W. 4th Street
Larned, Kansas 67550

United States Government
c/o Mr. Bryant
Fort Larned Park Manager
Larned, Kansas 67550

FORT LARNED N. H. S.	
TO	INIT.
MAR 14 1972	
MGMT. ASS'T.	
SECRETARY	
MAINTENANCE	
HISTORIAN	

Re: Vested Right, Code 6211,
Pawnee County, Kansas

Appropriation of Water
Application No. 8819

Dear Sirs and Madam:

We are in receipt of deeds which set forth that the United States Government have purchased from Robert R. and Virginia Lee Frizell (husband and wife) the North Half of the Northeast Quarter ($N\frac{1}{2} NE\frac{1}{4}$), the Southwest Quarter of the Northeast Quarter ($SW\frac{1}{4} NE\frac{1}{4}$), and the Northwest Quarter ($NW\frac{1}{4}$) of Section 32, Township 21 South, Range 17 West, except parcels owned by the Kansas Highway Commission.

Our records under Vested Right, Code 6211, Pawnee County, show, among other land to be irrigated, a total of 415 acres in Section 32, Township 21 South, Range 17 West.

Based on the above information, we will change our records under Vested Right, Code 6211, Pawnee County, to show the following land to be owned by the United States Government:

- 10 acres in the Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4} NE\frac{1}{4}$),
- 5 acres in the Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4} NE\frac{1}{4}$),
- 10 acres in the Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4} NW\frac{1}{4}$),
- 80 acres in the South Half of the Northwest Quarter ($S\frac{1}{2} NW\frac{1}{4}$),
- 40 acres in the Southwest Quarter of the Northeast Quarter ($SW\frac{1}{4} NE\frac{1}{4}$),

a total of 145 acres in Section 32, Township 21 South, Range 17 West.

The remainder of the land to be irrigated under this vested right will be in the name of Robert R. and Virginia Lee Frizell.

Mr. & Mrs. Robert R. Frizell
United States Government

-2-

March 13, 1972

Our records under Application No. 8819 show, among other land to be irrigated, a total of 330 acres in Section 32, Township 21 South, Range 17 West.

Based on the above information, we will change our records under Application No. 8819 to show the following land to be owned by the United States Government:

- 30 acres in the Northeast Quarter of the Northeast Quarter
(NE $\frac{1}{4}$ NE $\frac{1}{4}$),
- 30 acres in the Northwest Quarter of the Northeast Quarter
(NW $\frac{1}{4}$ NE $\frac{1}{4}$),
- 40 acres in the Southwest Quarter of the Northeast Quarter
(SW $\frac{1}{4}$ NE $\frac{1}{4}$),
- 30 acres in the Northeast Quarter of the Northwest Quarter
(NE $\frac{1}{4}$ NW $\frac{1}{4}$),
- 30 acres in the Northwest Quarter of the Northwest Quarter
(NW $\frac{1}{4}$ NW $\frac{1}{4}$),
- 40 acres in the Southwest Quarter of the Northwest Quarter
(SW $\frac{1}{4}$ NW $\frac{1}{4}$),
- 30 acres in the Southeast Quarter of the Northwest Quarter
(SE $\frac{1}{4}$ NW $\frac{1}{4}$),

a total of 230 acres in Section 32, Township 21 South,
Range 17 West.

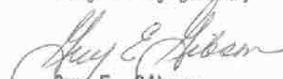
The remainder of the land to be irrigated under this application will be in the name of Robert R. and Virginia Lee Frizell.

Mr. Street of our Stafford Field Office informs us that Mr. Robert Frizell and Mr. Bryant have called at his office. The question was raised as to apparent errors in the land to which the vested right is appurtenant, and errors in the land proposed to be irrigated under Application No. 8819.

We understand that you are working with Mr. Street to have these errors taken care of, and upon information from you or Mr. Street's office the appropriate action will be taken to correct the errors.

Should you have any questions, please feel free to write or call us.

Very truly yours,


Guy E. Gibson
Engineer

GEG:crg

PORT LARNED NATIONAL HISTORIC SITE

Route 3

Larned, Kansas 67550

May 10, 1971

154
Smith & Burnett
Attorneys at Law
111 East Eighth Street
Larned, Kansas 67550

Dear Mr. Smith:

Thank you for your letter of May 3, 1971.

I believe I am correct in summing up the various interests in water rights as follows: Acquired water right, filed October 25, 1961, Robert Frizell 58.5%, National Park Service 41.5%, this water from a drilled well located south of the southern National Park Service-Frizell boundary; vested water right, Robert Frizell, 33%, George Frizell, 48%, National Park Service 19%, water from Pawnee River.

In reference to dike maintenance, I am afraid you have been misinformed as to the status of the dikes and also as to potential causes of flood damage.

First, let me state that since the National Park Service has acquired Fort Larned, we have upgraded the dike system along the Pawnee River. In the Spring of 1968 we rebuilt and raised approximately 1000 ft. of the dike from the Oxbow Lake East dam, along in an Easterly direction. This portion of the system had been subject to much abuse and erosion due to a feedlot operation conducted adjacent to and on top of the dike.

In Spring 1970, about 600 feet of dike north of buildings 1 and 2 was widened, seeded and the low spots were raised. Another 2600 feet in a long river meander east of the Oxbow Lake received like maintenance. This Spring, during a re-seeding program we moved topsoil from the rivers edge for use in the quadrangle. When we were finished moving topsoil, we raised the dike six inches on the portion adjacent to the work area.

I cannot speak for the maintenance program of the dike system on the Frizell land, but can certainly state that we keep our portion of the system in good repair.

- 2 -

Now, to your concern on flooding. I certainly share your concern but would like to point out that any flood condition would be directly attributed to poor land management practices of your client. I refer specifically to the erection and subsequent raising of a dam on the Pawnee River northeast of the fort. It is obvious that when a dam silts to the top, the river bed rises an equal amount, and this is just what has happened. In fact to compound the problem the dam was raised a few years back which has allowed the siltation and subsequent water level raising to continue.

Mr. Smith, your client's family has established, and your client perpetuates a flood hazard situation. It is my earnest hope that your client will take immediate steps to remedy this hazardous situation before the flood season. Please advise us as soon as possible as to your client's program to relieve this very serious situation. As always the National Park Service will cooperate to the utmost of our resources and legal restraints.

Sincerely,

Theodore C. Bryant
Superintendent

WARRANTY DEED

Tract #1

THIS INDENTURE made the 14th day of October, in the year 1966, between Verne Frizell, a widow, and Robert R. and Virginia Lee Frizell, husband and wife, the seller, and THE UNITED STATES OF AMERICA, the purchaser.

WITNESSETH

THAT the seller, for and in consideration of the sum of Two Hundred Thirty Thousand Dollars (\$230,000), lawful money of the United States of America, to it in hand paid, by the purchaser, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the purchaser and its assigns forever;

THAT parcel of land in the County of Pawnee, State of Kansas, described as follows:

The N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ of Sec. 32, T. 21 S., R. 17 W. of the 6th Principal Meridian, except the following parcels owned by the State of Kansas, State Highway Division:

- (1) A tract of land in the N $\frac{1}{2}$ of Sec. 32, T. 21 S., R. 17 W., described as follows: Beginning at the northwest corner of Sec. 32; thence south 70.8 feet; thence easterly and parallel to the north line of said Sec. 32, 1965.4 feet; thence along the arc of a curve to the left, 5804.65 feet (the radius of which curve is 907.2 feet, more or less), to the point where said curve intersects said north line of Sec. 32; thence westerly along said section line, 2867.1 feet, more or less, to the point of beginning.
- (2) A tract of land in the N $\frac{1}{2}$ of Sec. 32, T. 21 S., R. 17 W., described as follows: Beginning at a point on the south right-of-way line of U.S. Highway 156, (formerly U.S. 50 N), 70.8 feet south and 1,700 feet east of the northwest corner of said Sec. 32; thence S 24° 47' W., 54.8 feet to a point 50 feet south of the south right-of-way line of U.S. Highway 156; thence east 400 feet; thence N 24° 47' E, 56.7 feet to the south right-of-way line of U.S. Highway 156; thence westerly along the south right-of-way of said highway 401.7 feet to the point of beginning.
- (3) A tract of land in the NW $\frac{1}{4}$ of Sec. 32, T. 21 S., R. 17 W., described as follows: Beginning at a point on the south right of way line of U.S. Highway 156, 1680 feet east and 120.8 feet south of the northwest corner of said NW $\frac{1}{4}$; thence southwesterly 327.8 feet to a point 120.3 feet west and 305 feet south of the point of beginning; thence northeasterly 802 feet to a point 175 feet southerly at right angles from said right-of-way line; thence northeasterly to a point on said south right-of-way line 2275.2 feet east and 82.5 feet south of the northwest corner; thence westerly along said right-of-way line to the point of beginning.

#1151

STATE OF Kansas { SS. Fee \$ 3.05
Pawnee County

This instrument was filed for record on the 18 day of Oct, 1966, at 11:59 o'clock A. M., and duly recorded in book 50 of Deeds, page 426
Marian L. Schomer Registrar



Entered in Transfer Record in my office this 18 day of Oct, A.D. 1966

Claude Young
County Clerk
Deputy

D.G.

- (4) A tract of land in Sec. 32, T. 21 S., R. 17 W. described as follows: Beginning on the north line 1679.2 feet east of the northwest corner of said Sec. 32, said north line having an assumed bearing of N 90° 00' E; thence S 23° 34' W, 1171.7 feet; thence southerly along the arc of a curve to the left, with a radius of 623.69 feet, a distance of 285.4 feet (the chord of which arc bears S 10° 27' W, 283.3 feet); thence S 2° 41' E, 359.3 feet; thence S 21° 40' E, 155.8 feet; thence S. 22° 24' E, 45.4 feet; thence N 67° 36' E, 50 feet; thence N 22° 24' W, 58.8 feet; thence N 00° 36' E, 118.1 feet; thence N 01° 53' W, 359.3 feet; thence northerly along the arc of a curve to the right with a radius of 518.69 feet, a distance of 237.3 feet (the chord of which arc bears N 10° 27' E, 235.6 feet); thence N 23° 34' E, 1217.5 feet to the north line of said Sec. 32; thence west, 114.6 feet along said north line to the place of beginning.

The tract of land herein conveyed contains 267 acres, more or less.

The rights and title conveyed by this instrument are subject to the following reservations, provisions, and agreements:

- (1) The right of the seller and its employees to occupy and use for ranching and residential purposes;
 - a. The lands and facilities presently being used for ranching purposes until October 31, 1967.
 - (1) These include but are not necessarily limited to the use of north end of the Blacksmith's building for feed storage; the use of the east half of the East Enlisted Men's Barracks for an equipment storage shed.
 - b. Buildings known as the Commanding Officer's and the North Bachelor Officers' Quarters until October 31, 1971.
 - c. Subject to the following terms and conditions:
 - (1) Maintain the aforesaid improvements in good repair, not to suffer or commit waste thereof, nor to erect additional structures or substantially alter existing structures except with the written consent of the United States.
 - (2) Use ordinary care to prevent fires from originating on the premises, use their best efforts to have all such fires and fires originating on adjacent premises extinguished and to notify immediately the agent of the United States of the existence of such fires.

(3) Use said improvements in a manner consistent with the policies governing the National Park Service.

(4) The Seller shall carry insurance against losses by fire, public liability, employee liability and other hazards in a reasonable amount which is to be specified by the Secretary of the Interior, such insurance to be in the name of the Seller and Secretary of the Interior.

(2) The right of the seller to retain and remove the following:

a. The feed rolling mill, motors and scales in the north wing of the West Enlisted Men's Barracks.

b. The fuel pumps and storage tanks for gasoline, diesel and propane located at the northwest and northeast corners of the Quadrangle.

c. All feed bunks, bins and bases in feed lots.

d. Windmill and pump in northeast corner of feed lot.

e. All fencing in or around feed lots.

f. Gas heated water tanks in or about pastures.

(All the above described properties or any other personal properties not removed from the land by October 31, 1968, shall become the properties of the purchaser.)

(3) The right of the seller to remove the electrical light fixtures dropped from the center of the ceilings of the dining room, dinnette, kitchen, entrance hall and two bedrooms of the Commanding Officer's Quarters.

(4) The right of the seller to remove any sandstone, dimensional lumber or other material declared excess to the needs of the purchaser.

(5) The purchaser and the seller agree to cooperate fully with each other by using all resources available to them for the proper and fair use of water including the prevention of floods. The purchaser hereby acquires the right to water which is appurtenant to the land conveyed and title to all water diversion and distribution facilities thereon. Furthermore, the purchaser may relocate any of the said water facilities at no.

expense to the seller, providing that water to which the seller is legally entitled shall continue to be furnished at the same places on the parties' common boundary and in at least the same quantity as was supplied to the seller's adjacent land prior to this conveyance. The purchaser hereby agrees to allow the seller ingress to operate and maintain said water facilities for the seller's benefit on the adjacent land as long as the seller's activities under this provision are compatible with the purposes for which the land is being acquired by the purchaser.

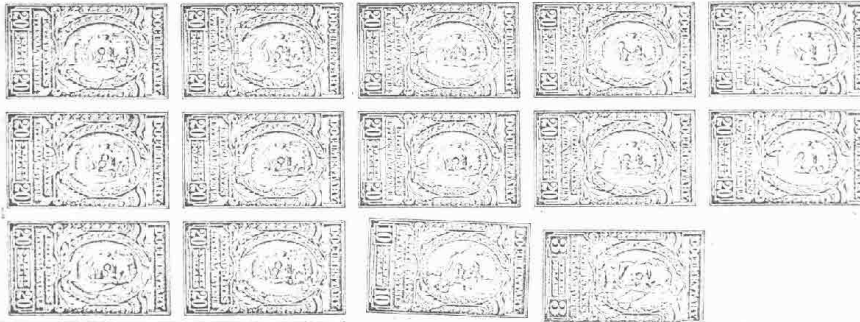
TO HAVE and to HOLD, all and singular, the above mentioned and described premises, together with the appurtenances save those excluded in the above provisions unto the purchaser, and to its assigns forever. And the seller, and its assigns, the said premises, in the quiet and peaceable possession of the purchaser and its assigns, against the seller, and its assigns and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

IN WITNESS WHEREOF, the seller has executed these presents the day and year first above written.

IN WITNESS WHEREOF I have hereunto set my hand and

notarially seal the day and year first

Verne Frizell
Verne Frizell
Robert R. Frizell
Robert R. Frizell
Virginia Lee Frizell
Virginia Lee Frizell





IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
Water Resources Division
1201 Oakridge Drive, Suite 250
Ft. Collins, Colorado 80525
November 25, 1992



L54(479)
FOLS/Water Rights

Memorandum

To: Superintendent, Fort Larned National Historic Site

From: Chief, Water Rights Branch

Subject: Change Applications for Vested Water Right No. PN 011 and Water Right No. 8819

The purpose of this memo is to summarize recent developments regarding two water right change applications, Vested Water Right No. PN 011 and Water Right No. 8819. The United States has sole interest in the first right, and a partial interest in the second right. It is my understanding that you have recently discussed these issues at length with Jeff Albright of my staff.

Both change applications were originally filed in 1982. The State of Kansas recently notified the current owners of these two water rights that specific action must be taken to carry them forward, otherwise the change applications would be dismissed. Dismissal of the change applications would cause the water rights to retain their original terms and conditions of use.

The change application for Vested Right No. PN 011 was filed by all of the (then) joint-interest owners, excepting the United States. The change application proposed removal of United States' lands from the water right. Subsequently, in 1988, all but the United States' apportionment of the water right was declared abandoned.

The United States has previously indicated (to the State of Kansas) that it considers this right important for the purpose of instream flow protection for the Pawnee River. Based on conversations with the Fort Larned National Historic Site (FOLS) staff, Kansas State Division of Water Resources and Ralph Canaday of the Office of the Solicitor regarding the effect of the change application for Vested Right No. PN 011, there did not appear to be any need for the United States to carry this change application forward. The Water Rights Branch (WRB) recommended that FOLS not take action to maintain the change application. Subsequently FOLS did not take action and the change application was dismissed.

2

Please refer to the attached notices from the State of Kansas regarding the change application for Vested Right No. PN 011, and WRB's letter to the state.

The change application for Water Right No. 8819 also proposes the removal of United States' lands from the subject water right. The State of Kansas has indicated that this change application will be dismissed if the United States, as an interest holder in the water right, does not agree to carry the change application forward. It remains to be determined whether the United States' has need for this water for future administrative or resource protection purposes.

The United States' apportionment of this water right constitutes a federally-owned property right. Therefore, should FOLS ever determine that it is in best interests of the United States to agree to any change in the status of Water Right No. 8819, WRB strongly recommends that you first contact the Office of the Solicitor to discuss the property-right implications of such an action. Communication with the Office of the Solicitor on this issue indicates that it may be possible to convey this property right to a private party, should this be in the United States' interest, as a part of any boundary exchange or property enlargement transaction undertaken with respect to FOLS lands.

If you have any questions regarding these two change applications, please contact Jeff Albright of my staff at (303) 225-3528.



Attachments

cc: MWR - Hiebert
SOL - Canaday

12/4/87

Strategy for Protecting
Vested Water Right No. PN 011,
Fort Larned, Kansas.

Issue:

The State of Kansas has notified the United States that it has scheduled a hearing before the Chief Engineer to consider the cancellation of State Vested Right PN 011 in Fort Larned National Historic Site. State law defines any water right not used beneficially for three consecutive years as forfeited. The State claimed that the vested right had been forfeited because it had not been used beneficially since 1964 when Congress established Fort Larned as a National Historic Site.

Background:

Fort Larned was established as a National Historic Site by an Act of Congress on August 31, 1964. The enabling legislation stated "...the Secretary of the Interior may acquire on behalf of the United States by gift, purchase or other means, not more than seven hundred and fifty acres of land, or interests in land, which comprise the site and remaining historic structures of Fort Larned, located in Pawnee County, Kansas or which he deems necessary to accomplish the purposes of this Act, including nearby remains of the Santa Fe Trail. The land acquired by the Secretary shall be known as the Fort Larned National Historic Site, and shall be administered in accordance with the provisions of the Act entitled "An Act to establish a National Park Service, and for other purposes," approved August 25, 1916...

As authorized by the enabling legislation, the United States acquired approximately 415 acres of land from Mr. E. D. Frizell in 1966. This portion of land was part of 1000 acres of land owned by Mr. Frizell that had a vested right of 2000 acre feet of water per year for irrigation. The United States purchased a proportional share of the vested water right and is now using the water for park purpose related to the historical interpretation of the site.

The specific purpose of this paper is to assist National Park Service Management and the Solicitor in developing a strategy to resolve the issue in a timely manner, by working within the framework of Kansas law. The Park's interest and goal is to secure state recognition of its vested water right in the amount of 850 acre feet per year for park purposes. These purposes require the maintenance of instream flow values.

Strategy:

It is the intent of the National Park Service to convince the State Engineer that the NPS vested right PN 011 should not be declared abandoned. The Office of the Solicitor will represent the Service at the hearing with staff from the Water Rights Branch, and the Superintendent serving as technical backup.

Tactics:

Two avenues could be pursued depending on the receptivity of the State Engineer. The first, and the preferred approach, will be to argue the following points:

- o The N.P.S. is appearing as a "good neighbor" and is voluntarily presenting evidence that will show that the vested right is being put to beneficial use for park purposes.
- o Fort Larned was built as a defensive post along the Pawnee River and is located on a site where it is surrounded on three sides by water. Although the United States agrees that no diversions from the Pawnee River have been made in many years, it argues that instream flows in the river are needed to provide visitors with a realistic interpretation of the Fort's historic importance. Thus, because this use of the water helps accomplish the purposes of the Historic Site as denoted in its establishing legislation, the water has been beneficially used. We would be willing to make application to the State to change the vested right for irrigation to a recreation use if it would be accepted by the State. It should be noted that Kansas law does recognize recreational use as a beneficial use if it "provides entertainment, enjoyment and relaxation." We can point to the recent acceptance in Colorado of a change of a water right used for irrigation to an instream water right in Onahu Creek in Rocky Mountain National Park.
- o The NPS acquired a portion of Vested Right No PN 011 from Vern Frizell and Robert E. and Virginia Lee Frizell by warranty deed dated October 14, 1966 when it acquired the land for the fort. The pertinent language in the warranty deed is as follows:

"The purchaser hereby acquires the right to water which is appurtenant to the land conveyed and title to all water diversion and distribution facilities thereon." The important point is that the United States purchased both the land and the water right. The original water right was then converted from irrigation to recreation and other instream flow purposes.
- o The United States, by utilizing its 850 acre feet for instream flow purposes, is furthering the purposes of the Kansas Water Appropriation Act (K.S.A. 82a-703b) minimum stream flows. We could petition the State Legislature to establish minimum desirable stream flows for the Pawnee River in accordance with State water law. The vested rights of the United States would then contribute to the minimum desirable stream flows.

The second approach could be used only if the Chief Engineer is not receptive to the above arguments. Specific points that could be raised include the following:

- o The United States purchased a portion of a vested water right from Robert E. and Virginia L. Frizell by warranty deed. Again, the language in the warranty deed states "The purchases hereby acquires the right to water which is appurtenant to the land conveyed and title to all water diversion and distribution facilities thereon."

The United States purchased both the land and the water right and in Kansas, a water right is recognized as a real property right (K.S.A. 82a-701). The U.S. Government cannot allow its property to be taken by the State of Kansas.

- o Property of the United States may not be lost due to the laches or neglect of its officers and employees. Therefore, the United States cannot abandon a property right. As was mentioned above, the State of Kansas recognizes a water right as a real property right.
- o The State of Kansas has no jurisdiction over the United States in the matter. The McCarren Amendment does not apply because 1) this hearing is not in a court of law and 2) this is not a basin wide adjudication including all water claimants.

PNP:K.Czarnowski:skp:12-4-87:221-5341

Appropriative Rights upstream of Fort Larned.

(Listed in upstream, order)

Owner	Quantity (acre ft.)	Priority Date
Moffett	231	1-26-61
Cleveland	555	2-13-70
Smith	120	5-28-56
VanMeter	70	3-31-53
Zook	242	5-7-68
Feist	71	4-15-65
Feist	33	8-9-65
Olsen	<u>177</u>	8-13-70
	1499	

Note $1 \text{ cfs} = 723.79 \text{ acre feet per year}$

Therefore $1499 \text{ acre feet} = 2.07 \text{ cfs}$

Do not recommend we take a 1987 priority date

Beth Voelkel
by
Walter Ruzinski
Stanley R. Ronce

April 21, 1987

L54 (479)
MWR/FOLS Water Rights
A FOLS Docket #1

Memorandum

To: Superintendent, Fort Larned National Historic Site
From: Chief, Water Rights Branch, Water Resources Division
Subject: Proposed cancellation of Vested Water Right PN 011

This memorandum relates the findings of the Water Rights Branch on the issue of the proposed cancellation of Vested Water Right PN 011 (or Water Right 6211) within Fort Larned National Historic Site (FOLS).

Issue

In March of 1984 the State of Kansas notified the United States that it had scheduled a hearing in April to consider the cancellation of State Vested Right PN 011 in Fort Larned National Historic Site. State law defines any water right not used beneficially for three consecutive years as abandoned and the State claimed that the vested right had been abandoned because it had not been used beneficially since 1964 when Congress established Fort Larned as a National Historic Site. The State, however, has taken no further action.

Water Rights Background

State Vested Right PN 011 was originally issued to E.D. Frizell on February 15, 1956. The right granted Frizell the use of 2000 acre feet of water per year from the Pawnee River for irrigation of roughly 1000 acres of land. Part of this water right and about 415 acres of the Frizell's 1000 acres, including the point of diversion, were acquired by the United States in 1966. Based on the proportion of land it bought, the United States should have a right to approximately 830 acre feet of water per year. Although the remaining part of this right is owned today by the Converse family, the State has never officially quantified and separated the two rights.

The Park also has a related irrigation water right (# 8819). Part of this water right is being used for domestic purposes at Fort Larned. We understand that the United States has received approval from Kansas for a change in use, although our files do not reflect this change. In addition, part of the land originally irrigated under # 8819 is included in the land identified as being irrigated under Vested Right PN 011. The State has not threatened abandonment of Water Right # 8819.

Under Kansas law, a water right is defined as a "real property right" under which a person may "lawfully divert and use water." To maintain the right, the water must be put to beneficial use. Until such time as vested rights are adjudicated in Kansas, all vested rights have been granted equal priority. Kansas law does recognize recreational use as a beneficial use if it "provides entertainment, enjoyment, and relaxation."

State law also provides for the protection of instream flows through legislative establishment of minimum desirable stream flows for any water course in the state. It is our understanding that, due to the great number of vested rights, the Pawnee River has not been considered for such legislation.

Concerns

Fort Larned was built along the Santa Fe Trail in the 19th century to offer protection and shelter for travelers. To provide a defensible post, the fort was located on a site along the Pawnee River and surrounded on three sides by water.

Although the United States agrees that no diversions from the Pawnee River have been made in many years, it argues that instream flows in the river are needed to provide visitors with a realistic interpretation of the Fort's historic importance. Thus, because this use of the water helps accomplish the purpose of the Historic Site as denoted in its establishing legislation, the water has been beneficially used.

Another concern is that irrigation withdrawals resulting in the frequent dewatering of the Pawnee River have clogged the river bed with silt. In addition to affecting the interpretive experience, then, the situation has also increased the flood danger at Fort Larned. Although this dewatering is likely to continue, barring any change in the present flow pattern, removal of Fort Larned's water right would exacerbate the situation.

Options

In an attempt to dissuade the State from taking any further action toward declaring the Park's right abandoned, there seem to be two plausible alternatives.

One approach would be to apply to Kansas for a change in use. This would require a determination of the exact amount of Fort Larned's water right as separate from the Converse right and State acceptance that the use of the water for purposes of the Historic Site is consistent with Kansas law, even though State law makes no provision for instream recreational uses. If Kansas approves such a change, the Park's water right would be protected. But this would not necessarily assure adequate instream flows because of the great number of vested water rights upstream from the Park.

An alternative approach would be to take no action at this time. Although in May of 1985 the State of Kansas indicated that it did not intend to drop the abandonment procedure, it is possible that the State has done just that. As long as the United States takes no action, the State may be willing to let the matter rest indefinitely.

Our recommendation then would be to take no action at this time. If State law was more flexible in allowing instream flows, we would recommend that a change in use be sought. But this is not the case. If Kansas takes further action toward declaring this right abandoned, an application for change in use may be warranted. At that time, we will also remind the State that the taking of Federal property is unconstitutional.

If you have any additional suggestions or if you wish to discuss these options further, please contact Walter Kusinek at 303-221-5341.

Stanley L. Ponce

Stanley L. Ponce

cc: Mike Ruggiero, Chief, Science Division, NWR

PNP:BVoelkel:bv:4/21/87:221-5341:30413voe.mml

(Sgd.) Richard W. Ketcham

William Werrell

/sgd/ Thomas W. Lucke

TWP

7/30/84

July 30, 1984

LS4 (479)
FOLS/Water Rt. PN 011

Memorandum

To: Superintendent, Fort Larned NHS

Through: Regional Director, Midwest Region
Chief, Water Resources Branch, Fort Collins, CO

From: Hydraulic Engineer, Water Resources Branch
Fort Collins, CO

Subject: Trip Report July 17-19 to Fort Larned to discuss NPS position on the abandonment of our surface water right to Pawnee Creek.

Purpose of Trip: This trip was made in response to a telephone request by the Superintendent to attend a meeting with the Midwest Regional Office personnel, the Field Solicitor, and the Park staff. Specifically, the trip was made to participate in establishing our position with the State of Kansas which is proposing to declare abandonment of Water Right PN 011 on Pawnee Creek, Fort Larned. A meeting (hearing) with the state is now scheduled to be held on August 25, or perhaps later.

Itinerary: I departed Fort Collins 10:00 am July 17 and returned to Fort Collins 4:00 pm July 19.

Companion: Ralph Canaday, Field Solicitor, Denver, CO.

Discussion: As arranged, I met Ralph Canaday at Stapleton Airport on Tuesday morning to depart for Fort Larned. At that time he informed me that he had to return to Denver by the next afternoon. During the flight, we discussed some of the possible legal options we may have with the State. Upon arriving at Fort Larned about 4:00 pm, the Superintendent showed both the Solicitor and myself the historic features of the Historic Site. This was important because the NPS case will probably be based on the historic significance of the protection given by the water of the Creek and its relationship to the Army's chosen location for building the fort.

Wednesday morning, Mr. Canaday, myself, and the area staff visited the physical features involved with the Water Right. This included, but was not limited to, the old pumping unit on Pawnee Creek, the irrigation ditches, the oxbow and the concrete dam on Pawnee Creek located to the east of the Park.

At 10:00 am, Wednesday, Regional representatives arrived at the park for the meeting which included: myself, Ralph Canaday, Field Solicitor, Denver, CO; Randall Pops, Deputy Regional Director, Midwest Region; Gary Larson, Regional Chief Scientist, Midwest Region; Paul Kausch, Realty Specialist, Midwest Region; Gary Willson, Ecologist, Midwest Region, and the Fort Larned staff. Field Solicitor Canaday explained the legal options available for our presentation at the State of Kansas hearing to be held at Topeka in the near future. These opinions have been presented to the Regional Office and your office by memorandum from the Solicitor dated July 20, 1984.

One part of Kansas Water Law not noted in the Field Solicitor's memorandum is:

"K.S.A. 82a-703a. Minimum streamflow; duties of chief engineer. Whenever the legislature enacts any section or amendment of the state water plan which identifies a minimum desirable streamflow for any watercourse in this state, the chief engineer shall withhold from appropriation that amount of water deemed necessary to establish and maintain for the identified watercourse the desired minimum streamflow."

It would appear that NPS would be remiss if we did not press for such a state water plan or to assist in the development of such a plan if requested by the state. This classification of the stream would prevent any future appropriator from taking additional water from this section of Pawnee Creek. The flow of Pawnee Creek was extremely low at the time of our visit due mostly to water withdrawal for farming irrigation from the river. The amount of irrigation water withdrawn (diverted) from the river appears to be far more than any reasonable water requirement necessary for fish, wildlife or historical/recreational use that the State should be required to set. The river was dry 100 to 200 feet upstream from the concrete dam.

Conclusions and Recommendations: We concur with the legal stance/position as expressed in Solicitor's memorandum of July 20. Also, we recommend that we follow Mr. Canaday's verbal advice as given at the meeting -- if we lose at the State hearing, we should appeal to the District Court, and, if we lose there, we then appeal to the State Supreme Court. If the matter goes to the Federal system, it is recommended that the Department of Justice take the lead in presenting our case.

We do not recommend that we attempt to maintain water in the oxbow. This has been tried many times in the past with no practical success. The infiltration of water into the soil is extreme in this area. Historically, the oxbow has been dry. To line the oxbow with Bentonite would be prohibitively expensive.

To provide further assistance in this matter, we will proceed to identify and plot on USGS topographic maps the quantity and ownership of all water right appropriations upstream and downstream from the Historic Site for easy reference. These maps will be provided to the Solicitor and the Park.

Lastly, we must know Mr. Converse's interest in the water right as his decision may have tremendous impact on any decision made by us, or for us, by the State of Kansas.

Richard W. Ketcham

cc: Superintendent, Fort Larned
Regional Director, Midwest Region
Gary Larson, Midwest Region
Paul Kausch, Midwest Region
WASO-475
Field Solicitor Ralph Canaday, Denver

PNP:RKetcham:pml:7/23/84:221-5341:0723ket8.mm1

(Sgd) Richard W. Ketchum
weq404
Rk572

May 21, 1984

LS4 (479)
FOLS/Water Right #1
X General

Memorandum

To: Superintendent
Ft. Larned WRS

Through: Regional Director
Midwest Region

Through: Chief, Water Resources Branch
Ft. Collins, CO

From: Hydraulic Engineer
Water Resources Branch - Ft. Collins, CO

Subject: Trip Report: May 10 Visit to Field Solicitor Office, Denver,
Concerning Ft. Larned Water Rights

PURPOSE OF TRIP: To visit the Field Solicitor's Office on May 10, 1984 to informally discuss the State of Kansas' action to declare abandonment of water right PN 011 on Pawnee Creek, Ft. Larned. Specifically, to discuss this matter with Mr. Ralph Canaday.

ITINERARY: Departed Ft. Collins on May 10, and returned same day.

COMPANIONS: William Werrell, Acting Chief, Water Services Unit, Ft. Collins, CO.

DISCUSSION: On March 21, 1984 Superintendent Arnold of Ft. Larned received written notification from Chief Engineer, Division of Water Resources, State of Kansas, that our vested water right to take water from Pawnee Creek (PN 011) would be the topic at a hearing in Topeka on April 25, 1984. Specifically, the State of Kansas is in the process of declaring this water right abandoned due to nonuse. Their records indicate no usage since 1970. Kansas State Water Law states that after three years of nonuse a water right will be declared abandoned, and thus void. The Superintendent immediately verbally notified the Region and the Water Services Unit of Ft. Collins. Through subsequent telephone calls with the Superintendent and appropriate regional personnel, it would appear that the most appropriate action would be to attempt to maintain (as closely as possible) the natural flow of Pawnee Creek. Accordingly, we

suggested that the Superintendent apply with the State for a six month extension of time to allow our further consideration and proper assembly of material. The Superintendent requested this time extension and on April 17 was granted 90 days by the State, or until July 25, 1984, to prepare the NPS case.

Our investigation to date includes the following: The Warranty Deed acquired by the National Park Service in 1966 when the land was purchased from Mr. Frizell states, "the purchaser and seller agree to cooperate fully for the proper and fair use of water. The National Park Service acquires the right to water which is appurtenant to the land." Two water rights were involved in this sale: PN 011 for 6500 gallons per minute (g.p.m.) not to exceed 2000 acre-feet per year (a.f./yr) from Pawnee Creek and Permit 8819 from wells in the Pawnee River drainage basin at 2000 g.p.m. not to exceed 1400 a.f./yr. It should be noted that this wordage is not specific to the amount of NPS entitlement. Both rights are for irrigation. Current State records indicate these water rights are currently owned by the U.S. and Frizell. However, the Superintendent reports that Frizell's water rights are now held by Kent and Alan Converse.

We have reviewed the U.S. Geological Survey gaging station flow records for station (#07141200) on Pawnee Creek which is located about 7 miles upstream of Fort Larned for water years 1977 through 1982. It was seen that Pawnee Creek is very inconsistent/intermittent in flow. For years Mr. Frizell had tried to solve this intermittent stream flow problem and provide a constant water source for farming by various impoundments. However, this was largely unsuccessful. The oxbow lake located in Section 32 will not hold water during the irrigation season and the dam located on Pawnee Creek in Sections 28 and 29 has silted on the upstream side to the extent that reservoir storage is nil. Therefore, over time, more reliance has been placed on Permit 8819 from wells in the Pawnee River drainage than on water from Pawnee Creek under PN 011.

The National Park Service uses two wells in Section 32, T21S, R17W for potable water and fire protection. These wells were drilled by NPS and the State of Kansas. No other wells, except historically dug wells, are known on our property. Our restoration of Fort Larned has continued from 1966 until the present time and the Superintendent estimates that when we have completed our development plan the visitation to Fort Larned will quadruple. Our present water usage has been reported annually to the Kansas Water Resources Division. This use of water by the National Park Service is about one a.f./yr. Our projected water use under the development plan is 10,000 gallons per day for potable use and fire protection, or about 4 a.f./yr. Additional wells may have to be drilled to improve our distribution system. Mr. Frizell is using the remainder of the water, under permit 8819, for irrigation on sections adjoining the boundaries of Fort Larned NPS.

ATTACHMENTS: We attach the following documents for your ready reference:

1. A copy of the Warranty Deed transmitting Land and Water rights to the United States.
2. Copy of Vested Right PN 011.
3. Copy of Permit Application 8819.
4. USGS Records of Flow for Pawnee Creek 1977 through 1982.
5. Application for approval to change a small portion of the use under Permit No. 8819 to include domestic and municipal supplies.
6. Water Right Laws of Kansas.
7. Permit No. 16170, State of Kansas, to supply water for domestic purposes.
8. Letter from Kansas Division of Water Resources listing water rights on Pawnee River.

CONCLUSIONS: Through our discussions with Field Solicitor Canaday it was felt that an agreement with Mr. Frizell should be reached before we meet in Topeka, Kansas for the hearing on abandonment of Vested Right PN 011. This appears appropriate because the water rights are owned jointly with Frizell under unquantified amounts. We can only hope that our proposals and solutions will be acceptable to him, i.e., attempting to maintain the water right for recreation purposes to allow flow of water in Pawnee Creek. We proposed that as an inducement to Frizell to assist us in this matter, we may request the State to increase the quantity of Permit 8819 from the present 1480 a.f./yr to 2000 a.f./yr (the quantity of Permit 011.) This would be an increase of 520 a.f./yr under Permit 8819. Mr. Canaday concurred that this might be a good strategy. The National Park Service and Frizell would agree to the reclassification of PN 011 on Pawnee Creek to a recreational and historical river, thereby maintaining the instream flows as they exist in a natural state under 82a-707 of the Kansas statute. This action, if successful, will not fully protect the flow of water in Pawnee Creek because recreation is the lowest priority use in Kansas.

RECOMMENDATIONS: It appears that some possibility exists for our interaction with the State to acquire some water right protection of flow in Pawnee Creek. To achieve this, we recommend that a meeting be held at Ft. Larned to discuss this problem before the State hearing at Topeka. If we are to rely on recreational use as a water right, we would recommend that this meeting be attended by a Natural Resource planner from the region to present the riparian values we have on Pawnee Creek, e.g. to describe trees, fish, birds and animal life using the habitat on the river environment. A representative from the Division of History might also attend for any discussions on the "historical scene" or the historical importance of Pawnee Creek! Additionally, the

Division of Lands could research the original files on the Ft. Larned land acquisition to determine if an appraisal of the water rights was made at that time. Such an appraisal could be useful in some evaluation of our proportionment of the water purchased by the Service. In the event that Frizell does not choose to join us in this action, we may proceed with the State to request recreational use for our established flow only. Discussions/conclusions of the meeting should determine our future action such as meeting with Frizell and our stance at the state meeting.

If you so desire, we would be pleased to provide further assistance and/or attendance at the park and state meetings.

(Sgd.) Richard W. Ketcham

Richard W. Ketcham

Attachments (8)

cc: 0475 - Berte'

bc: Superintendent, Ft. Larned

PNP:RKetcham:scp:pml:5/14/84:221-5341:0514KET7.MM1



KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES
DAVID L. POPE, Chief Engineer-Director
109 SW Ninth Street, Suite 202
TOPEKA, KANSAS 66612-1253
(913) 296-3717

HARLAND E. PRIDDLE
Secretary

May 15, 1984

Mr. Richard W. Ketcham
National Park Service
Room 343
Federal Building
301 S. Howes Street
Fort Collins, Colorado 80521

Dear Mr. Ketcham:

I have prepared a list, (as follows) of the priority dates of the appropriation surface rights along the Pawnee River. As we discussed earlier, there is no priority among vested rights, all are equal.

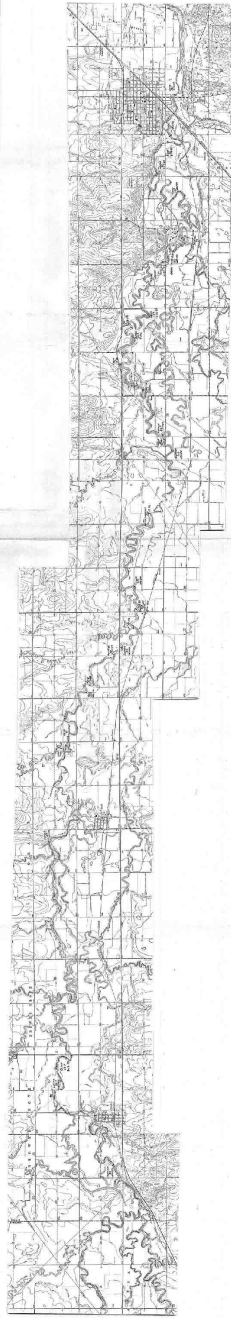
<u>File Number</u>	<u>Priority Date</u>
1325	3-31-53
5018	1-17-56
5639	5-28-56
7768	3-28-58
8559	1-26-61
8788	9-1-61
10,977	4-15-65
11,265	8-9-65
15,167	5-7-68
15,286	5-24-68
16,326	3-10-69
16,998	2-13-70
17,418	8-13-70
31,121	12-30-77
33,046	4-30-79
34,293	6-24-80

Should you have any questions, please don't hesitate to contact us.

Sincerely,

Mary C. Adkins
Mary C. Adkins
Administrative Officer

MCA:srf



Docket Information

Number of Documents in Docket 95

Documents Dated from 2/15/1956 to 11/25/1992

Docket Compiled: 6/25/2012