

Kansas Department of Agriculture
Division of Water Resources
CHANGE: PU WORKSHEET & OWNERSHIP & WUC

1. File Number: 36373	2. Status Change Date: 8/1/2023	3. Change Num: C3	4. Field Office: 04	5. GMD: 03
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6. Status: <input type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return	7. Filing Date of Change: 10/20/2022
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8a. Applicant(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____ JOHNSON GROWERS LLC CARY WIMMER 548 S RD I JOHNSON, KS 67855	8c. Landowner(s) Person ID _____ New to system <input type="checkbox"/> Add Seq# _____
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8b. Landowner(s) Person ID 67404 New to system <input type="checkbox"/> Add Seq# 1 JOHNSON GROWERS LLC 548 S RD I JOHNSON, KS 67855	8d. WUC Person ID 67404 New to system <input type="checkbox"/> Add Seq# 1 JOHNSON GROWERS LLC 548 S RD I JOHNSON, KS 67855
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9. Documents and Enclosure(s): DWR Meter(s) Date to Comply: **12/31/2023** Date to Comply: _____

Anti-Reverse Meter Meter Seal Check Valve N & P Form Water Tube Driller Copy H & E Letter

Conservation Plan Date Required: _____ Date Approved: _____ Date to Comply: _____

10. Use Made of Water From: _____ To: _____

Date Prepared: 7/26/2023	By: LI
Date Entered:	By: 8/2/2023 LMoody
Date Reviewed: 7/28/23	By: JDK

File No. **36373** 11. County: **ST** Basin: **N F CIMARRON RIVER** Stream: **NA** Formation Code: **211/331** Special Use: **NA**

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

NO CHANGE remains as a standby well

13. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

14. Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) **82.3MGY COM/W 17644 AS LISTED ON CERT NO CHANGE**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

15. 5YR Allocation: Allocation Type _____ Start Year _____ 5 YR Amount _____ Amount Unit _____ Base Acres _____ Comment _____

16. Place of Use

CHK MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
						NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼				
MOD 30414	33 28 40W 3																								4A YES 8116, 21038, 17644 31925 ,36552, 36553
MOD 9043	4 29 40W 4																								4A YES 8116, 21038, 17644 31925 ,36552, 36553

Base Acres: Year: Minimum Reasonable Quantity:
 Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: July 27, 2023

FROM: Leslie Ireland

RE: Water Right, File Nos. 8116; 17,644;
21,038; 31,925; 36,373; 36,552 & 36,553

Cary Wimmer on behalf of Johnson Growers LLC, the new owner of the referenced water rights, has filed applications for approval to change the place of use for an expansion of the feedlot under all of the referenced files and the use made of water under File Nos. 8116 & 21,038. The owner proposes to supply more water to the expanding feedlot by converting the irrigation use as dual use as stockwater and irrigation uses. The files are located in the North Fork of the Cimarron River Basin, Stanton County. The applications for change were received on October 20, 2022, except File No. 8116, which was received February 27, 2023, along with a place of use reduction to File No. 4734.

The water rights do not appear to be abandoned as per K.S.A. 82a-718, *Abandonment of water rights*. The final updates and acknowledgement by the owners would indicate the applications appear to comply with K.A.R. 5-5-2a, *Complete change application*. Review for the required notice per K.S.A. 82a-1906, found no wells located within 2,640 feet that Johnson Growers is not an owner of record.

The existing livestock facility description will have its place of use updated to describe the footprint more accurately: the feed mill in the Southeast Quarter (SE $\frac{1}{4}$), the ownership of the Northwest Quarter of the Southeast Quarter, (NW $\frac{1}{4}$ SE $\frac{1}{4}$) and exclude the railroad line along the South Side all in Section 33, Township 28 South Range 40 West, (33-28-40W). The expansion of the feedlot is to the South to add the Southeast Quarter of Section 4, Township 29 South Range 40 West, (4-29-40W) that was authorized for irrigation use under File Nos. 4734 and 8116. The updated description will be:

a feedlot located in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), and in the Southeast Quarter (SE $\frac{1}{4}$) excluding a 260 foot portion of the North Half of the Northwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$) and railroad right-of-way on the South Side of Section 33, Township 28 South, and in Lot 1 (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Lot 2 (NW $\frac{1}{4}$ NE $\frac{1}{4}$), and in the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) excluding a railroad right-of-way, and in the Southeast Quarter (SE $\frac{1}{4}$) of Section 4, Township 29 South, all in Range 40 West, Stanton County, Kansas.

File No. 8116 is authorized to irrigate 638.08 acres from one(1)well with a permitted 640 acre-feet (AF) at 2,005 gallons per minute (gpm). The place of use is also authorized by File No. 4743, which has been requested to be reduced to its standalone 160 acres and 320 acre-feet. (Summarized by separate memo.)

The change to the irrigated place of use will create an identical overlap with File No. 21,038 to authorize 638.08 acres located in the West Half (W $\frac{1}{2}$) of Section 3 and the South Half (S $\frac{1}{2}$) of Section 10. This complies with part (b) of K.A.R. 5- 5-11, *Applications for change in place of use for irrigation purposes*. Prior to the proposed use made of water as dual use, the total combined quantity of 1,168 AF is sufficient for irrigating the proposed place of use providing 1.83 acre-feet per acre. The quantity of 2.0 acre foot per acre complies with K.A.R. 5-3-19 *Maximum reasonable annual quantity of water for irrigation use*.

Stanton County is afforded to retain 86.6% of the authorized quantity when irrigation use is changed to another use. This consumptive use percentage is detailed in K.A.R. 5-5-9, *Approval of application for a change in the use made of water from irrigation to any other type of beneficial use of water*.

The change in place of use and use made of water for File No. 8116 requests to authorize the feedlot for the stockwater use as dual use per K.A.R. 5-5-9. The use made of water to dual use requires the 640 AF to be temporarily reduced while irrigation and stockwater use are authorized. The dual use will authorize:

$$640 \text{ AF} \times 0.866 = 554.24 \text{ AF} \text{ (180.60 mgy) for irrigation and stockwater uses combined}$$

File No. 21,038 is authorized to irrigate 320 acres from one(1) well with a permitted 528 acre-feet (AF) at 1,355 gallons per minute (gpm). The place of use in the South Half (S½) of Section 10, Township 29 South, Range 40 West, Stanton County is not authorized by any other files, but as stated above the irrigated acres propose a complete overlap with File No. 8116. The requested use made of water change is a K.A.R. 5-5-9, as dual use. The 528 AF to be temporarily reduced while irrigation and stockwater use are authorized. The dual use will authorize:

$$528 \text{ AF} \times 0.866 = 457.25 \text{ AF} \text{ (149.00 mgy) for irrigation and stockwater uses combined}$$

Together, File Nos. 8116 & 21,038 could provide 1,011.5 AF (329.60 mgy) total for stockwater use. The minimum irrigation with a 50% chance of rainfall Stanton County would utilize 1.30 AF per acre as detailed in K.A.R. 5-5-12, *Net irrigation requirements*, for the proposed 638.08 acres would need 829.5 AF for corn.

Review of the currently authorized stockwater quantity found a total of 209.25 million gallons, (642.16 acre-feet) by File Nos. 17,644; 31,925; 36,373; 36,552 & 36,553. File No. 36552 is for a standby well and provides only limited quantity

The *Stockwater Supplemental Sheet* submitted with the application listed a maximum of 364.54 mgy (1,118.7 AF) for the proposed 66,500 head which included sanitation. It did not list any additional water for the feed mill. A review of the wells in the mills immediate area, File No. 17,644 is stockwater use and File No. 31,924, irrigation use, indicate the mill is served by the referenced files as stockwater wells. As detailed in KAR 5-3-22, *Maximum reasonable quantity of water for livestock and poultry*, the projection 66,500 head would be afforded a maximum reasonable quantity of 364.09 million gallons (1,117.3 AF) per year at 15 gallons per head per day without sanitation.

The use made of water changes under File Nos. 8116 & 21,038, will provide a portion or all of the dual use quantity of 1011.5 AF (209.25 mgy) for the stockwater use. However, irrigation use at the 50% NIR or minimal would reduce the maximum quantity for stockwater use to 182 AF (59.3 mgy). Considering the minimum for irrigation use, with the total quantity currently authorized a total of 268.5 mgy (824.1 AF) is reasonably available and less than the 364.09 million gallons (1,117.3 AF) per year justified for the new owners projected 66,500 head of beef feeder cattle. The dual use quantities will not have an additional limitation.

The wells located within one-half ($\frac{1}{2}$) mile of each proposed existing point of diversion were identified and it was determined Johnson Growers is an owner. No notices were sent.

The point of diversion under File No. 8116 will be updated to the GPS locations listed in the WRIS database and as stated on the application. The update moving the well approximately 50 feet to the North will not require the qualifiers to be updated, they will remain as the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$. The point of diversion under File No. 21,038 will be updated to its GPS locations listed in the WRIS database and as stated on the application. The update moving the well approximately 51 feet to the Northwest will require the qualifiers to be updated from the SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ to the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$. Both appear comply with K.A.R. 5-5-6c, *Authorized point of diversion or place of use*.

The revised applications were sent to the Southwest Kansas Groundwater Management District No. 3. In a letter dated July 25, 2023, Jason Norquest, Assistant Manager indicated the applications comply with the current management program and recommended for approval.

In an e-mail dated July 27, 2023, Michael Meyer, Water Commissioner, Garden City Field Office, indicated that he recommended approval of the applications with the additional limitations.

Water flowmeters will be required by the change approvals with the wells authorized for dual use to have a designated meter for stockwater and irrigation use. As effluent might be utilized, check valves will be a condition of the approvals.

Based on the above discussion, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, complies with K.A.R. 5-5-9, the changes should not increase the historical consumptive use per KAR 5-5-3, *Change in consumptive use*. The referenced applications have been recommended to be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

From: Meyer, Mike [KDA]
Sent: Thursday, July 27, 2023 9:45 AM
To: Ireland, Leslie [KDA]
Subject: RE: Review and Recommendation Applications For Change, File Nos. 8116; 17,644; 21,038; 31,925; 36,373; 36,552 & 36,553 Johnson Growers

Approve.
Thank you

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Wednesday, July 26, 2023 9:48 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: Review and Recommendation Applications For Change, File Nos. 8116; 17,644; 21,038; 31,925; 36,373; 36,552 & 36,553 Johnson Growers

Mike,

Got these applications revised and GMD OK (attached).

Please let me now if you'd recommended.

As always comments and concerns are welcome

Leslie Ireland
Environmental Scientist
Change Application Unit
Division of Water Resources



THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

APPROVAL OF APPLICATION FOR CHANGE IN PLACE OF USE WATER RIGHT FILE NO. 36,373

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Cary Wimmer on behalf of Johnson Growers LLC, 548 S Road I Johnson, Kansas 67855 received in this office on October 20, 2022, for approval of a change in the location of the place of use under the certificate of application, issued pursuant to the permit to appropriate water for beneficial use, as modified and amended by the Order of the Chief Engineer, dated October 1, 2002, approving the application to change the authorized place of use, by the Findings and Order of the Chief Engineer dated June 29, 2016, in the matter of the place of use, by the Order of the Chief Engineer, dated dated May 16, 2019, approving the application to change the location of the point of diversion, finds that the change is reasonable and will not impair existing rights and that the application should be and is hereby approved.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the authorized location of the place of use shall be:

a feedlot located in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), and in the Southeast Quarter (SE $\frac{1}{4}$) excluding a 260 foot portion of the North Half of the Northwest Quarter of the Southeast Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$) and railroad right-of-way on the South Side of Section 33, Township 28 South, and in Lot 1 (NE $\frac{1}{4}$ NE $\frac{1}{4}$), Lot 2 (NW $\frac{1}{4}$ NE $\frac{1}{4}$), and in the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) excluding a railroad right-of-way, and in the Southeast Quarter (SE $\frac{1}{4}$) of Section 4, Township 29 South, all in Range 40 West, Stanton County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the place of use.

All diversion works into which any type of chemical or other foreign substance will be injected into the water pumped from the diversion works shall be equipped with an in line, automatic, quick-closing check valve capable of preventing pollution of the source of the water supply. The type of valve installed shall meet specifications adopted by the Chief Engineer and shall be maintained in an operating condition satisfactory to the Chief Engineer.

1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

August 3, 2023

JOHNSON GROWERS LLC
CARY WIMMER
548 S RD I
JOHNSON, KS 67855

RE: Water Right, File Nos. 8,116; 17,644; 21,038; 31,925; 36,373; 36,552 & 36,553

Dear Mr. Wimmer:

Enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the referenced files.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approvals for change. A condition of each approval is that an acceptable water flowmeter must be installed on the diversion works authorized. The approvals under File Nos. 8,116 and 21,038, require an acceptable water flowmeter must be installed so both irrigation and stockwatering uses can be metered independent of each other for the well authorized by each of these files for dual use, prior to the diversion of water. Please return the required notification of installation of the meters as soon as this action is completed.

Since these orders modify the original documents referred to above, they should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions regarding the enclosed documents, please contact our office at 785-564-6640. Inquiries about the metering please contact our staff at the Garden City Field Office, 620-276-2901. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

A handwritten signature in blue ink that reads "Kristen A. Baum". The signature is written in a cursive style.

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

KAB:li

Enclosures

pc: Garden City Field Office
Groundwater Management District No. 3

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may request an evidentiary hearing before the Chief Engineer or request administrative review by the Secretary of Agriculture. Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (i.e., within a total of 18 days after this Order was mailed to you), with the Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, Kansas 66502, or by FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for review may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (i.e., within a total of 33 days after this Order was mailed to you), and be filed with the Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, or by FAX (785) 564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Fax: (785) 564 - 6777.

CERTIFICATE OF SERVICE

On this 3 day of August, 2023, I hereby certify that the attached original Approval of Applications for Change under Water Right, File Nos. 8,116; 17,644; 21,038; 31,925; 36,373; 36,552 & 36,553 dated August 1, were mailed postage prepaid, first class, US mail to the following:

JOHNSON GROWERS LLC
CARY WIMMER
548 S RD I
JOHNSON, KS 67855

With photocopies to:

Garden City Field Office
Groundwater Management District No. 3


Staff