

Kansas Department of Agriculture
 Division of Water Resources
CHANGE: P/U WORKSHEET

1. File Number: 34405	2. Status Change Date:	3. Change Num: 2	4. Field Office: 02	5. GMD: 05
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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: 2/11/21
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8a. Applicant(s) New to system <input type="checkbox"/> Person ID _____ Add Seq# _____	8c. Landowner(s) New to system <input checked="" type="checkbox"/> HOWARD PEACOCK PO BOX 32 BURRTON KS 67020-0032 Person ID _____ Add Seq# 1
---	--

8b. Landowner(s) New to system <input type="checkbox"/> GAYLA S MOECKEL TRUST GAYLA S MOECKEL 9118 S NETHERLAND RD SYLVIA KS 67581 Person ID 62028 Add Seq# 1 <--ADD LINE	8d. Landowner(s) New to system <input checked="" type="checkbox"/> TODD E SMILEY 8516 S NETHERLAND RD SYLVIA KS 67581 Person ID _____ Add Seq# 1 (SEE COMMENT)
---	--

8e. WUC New to system <input type="checkbox"/> 4A Person ID 62028 Add Seq# 1	
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9. Documents and Enclosure(s): <input checked="" type="checkbox"/> DWR Meter(s) Date to Comply: 12/31/21 <input type="checkbox"/> N & P Date to Comply: _____	
<input type="checkbox"/> Anti-Reverse Meter <input type="checkbox"/> Meter Seal <input type="checkbox"/> Check Valve <input type="checkbox"/> N & P Form <input type="checkbox"/> Water Tube <input type="checkbox"/> Driller Copy <input type="checkbox"/> H & E Letter	
<input type="checkbox"/> Conservation Plan Date Required: _____ Date Approved: _____ Date to Comply: _____	

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

Date Prepared: 3/1/21 By: EKF Date Entered: _____ By: _____

File No. **34405** 11. County: RN Basin: N F NINNESCAH RIVER Stream: N/A Formation Code: 180 Special Use: N/A

12. Points of Diversion										Rate and Quantity							
CHK	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
MOD	63753				NW SE NW	23	24	10W	5	3,848	3,603		840	140	840	107	3750

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

14. Limitation: 165 af/yr at 840 gpm (--- cfs) when combined with file number(s) 3750
 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 _____

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	29409				23	24	10W	01					31.25	12.5	32	31.25									107	8b & 8c	Y	3750	
ENT					23	24	10W							18.5												8d land only	Y	3750	
																										8b & 8c own water right			

Base Acres: _____ Year: _____ Minimum Reasonable Quantity: _____

Comments: **Per Amended Judgment on Mandate from Kansas Court of Appeals dated 11/19/2020, the water right is reserved from the land owned by Todd Smiley.**

Submit completed application to:
 Kansas Department of Agriculture
 Division of Water Resources
 Field Office for your area.

Call for address:

Topeka -- (785) 296-5733
 Stafford -- (620) 234-5311
 Stockton -- (785) 425-6787
 Garden City -- (620) 276-2901
<http://agriculture.ks.gov/dwr>

DWR FIELD OFFICE APPLICATION FOR APPROVAL TO CHANGE THE PLACE OF USE AND/OR THE POINT OF DIVERSION



STATE OF KANSAS

WATER METER REQUIRED

Filing Fee Must Accompany the Application, K.S.A. 82a-708b(b), as amended.
 Fee Schedule is on the third page of this application form.

Paragraph Nos. 1, 2, 3 & 5 must be completed. Complete all other applicable portions. If change in point of diversion is greater than 100 feet, or if place of use will be changed, include a topographic map or detailed plat showing the authorized and proposed point(s) of diversion and/or place of use.

File No. 34405

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 4:11 pm
 FEB 11 2021

1. Application is hereby made for approval of the Chief Engineer to change the (check one or both):

Place of Use Point of Diversion

Stafford Field Office
 DIVISION OF WATER RESOURCES

under the water right which is the subject of this application in accordance with the conditions described below.

The source of supply is: Groundwater Surface water

2. Name and address of Applicant: Gayla S Moeckel Trust & Gayla S Moeckel (individual) /// Howard Peacock
9118 S Netherland Rd, Sylvia KS 67581 /// PO Box 32 Burrton, KS 67020-0032

Phone Number: (620)486-2207 Email address: farmgroundhog@yahoo.com

Name and address of Water Use Correspondent: Gayla S Moeckel Trust
9118 S Netherland Rd, Sylvia KS 67581

Phone Number: (620)486-2207 Email address: farmgroundhog@yahoo.com

3. The presently authorized place of use is:

Owner of Land ---- NAME: Gayla S Moeckel Trust & Gayla S Moeckel (individual) /// Howard Peacock

ADDRESS: 9118 S Netherland Rd, Sylvia KS 67581 /// PO Box 32, Burrton KS 67020-0032

(If there is more than one landowner, attach supplemental sheets as necessary.)

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
23	24	10W					40	12	40	40									132

4. If this application is for a change in place of use, it is proposed that the place of use be changed to:

Owner of Land ---- NAME: *Gayla S Moeckel Trust & Gayla S Moeckel (individual) /// *Howard Peacock // **See note

ADDRESS: 9118 S Netherland Rd, Sylvia KS 67581 /// PO Box 32, Burrton KS 67020-0032

(If there is more than one landowner, attach supplemental sheets as necessary.)

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
*23	24	10W					31.25	12.5	32	31.25									107
**23	24	10W						18.5											18.5
																			125.5

****Land owned by Todd Smiley. See attached Amended Judgement from Reno County District Court that grants a lease for the lives of Gayla S Moeckel and Howard L Peacock, whomever is last to survive, to farm and irrigate the described property, to which no water right or permits shall attach or become appurtenant to in Reno County, Kansas.**

For Office Use Only: Code _____ Fee \$ <u>ADD</u> TR # _____ Receipt Date _____ Check # <u>1500</u>
--

5. **Presently authorized point of diversion:**
 One in the NW Quarter of the SE Quarter of the NW Quarter
 of Section 23, Township 24 South, Range 10 W,
 in Reno County, Kansas, 3,795 feet North 3,594 feet West of Southeast corner of section.
 Authorized Rate 840 gpm-Limited Authorized Quantity 140 AF-Limited Depth of well 72 (feet)
(DWR use only: Computer ID No. 05 GPS 3,848 feet North 3,603 feet West)
 This point will not be changed This point will be changed as follows: No change, point better described with GPS as follows:
Proposed point of diversion: (Complete only if change is requested or if existing point is better described by GPS)
 One in the NW Quarter of the SE Quarter of the NW Quarter
 of Section 23, Township 24 South, Range 10 W,
 in Reno County, Kansas, 3,848 feet North 3,603 feet West of Southeast corner of section.
 Proposed Rate No Change Proposed Quantity No Change Proposed well depth (feet) N/A
 This point is: Additional Well Geo Center List other water rights that will use this point 3750

6. **Presently authorized point of diversion:**
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter
 of Section _____, Township _____ South, Range _____ (E/W),
 in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section.
 Authorized Rate _____ Authorized Quantity _____ Depth of well _____ (feet)
(DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)
 This point will not be changed This point will be changed as follows: No change, point better described with GPS as follows:
Proposed point of diversion: (Complete only if change is requested or if existing point is better described by GPS)
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter
 of Section _____, Township _____ South, Range _____ (E/W),
 in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section.
 Proposed Rate _____ Proposed Quantity _____ Proposed well depth (feet) _____
 This point is: Additional Well Geo Center List other water rights that will use this point _____

7. The changes herein are desired for the following reasons?
 (please be specific) Change the authorized place of use
to allow the center pivot to make a full circle

8. If a well, is the test hole log attached? Yes No

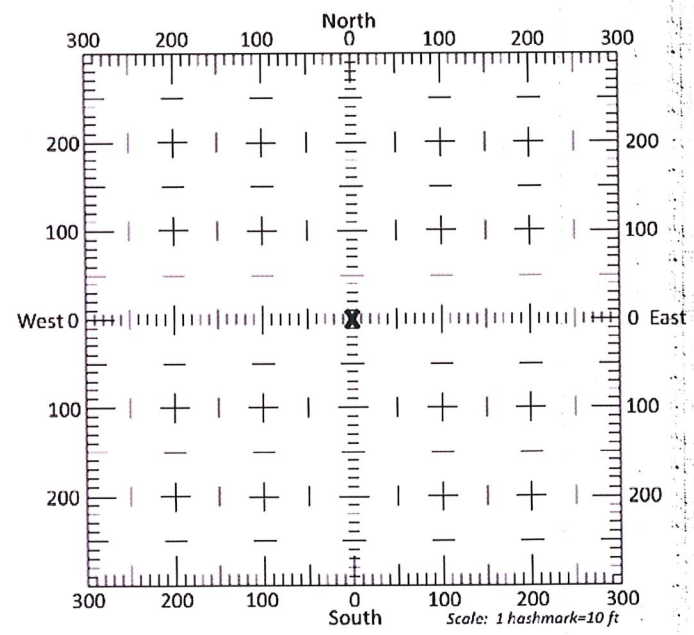
9. The change(s) (was)(will be) completed by?
Spring 2021

10. If the point of diversion is a well:
 (a) What are you going to do with the old well?
N/A
 (b) When will this be done? N/A

11. Groundwater Management District recommendation attached?
 Yes No

12. Assisted by EKF/SFFO

13a. If the proposed point of diversion will be relocated more than 300
feet but within 2,640 feet of the existing point of diversion, attach
 a topographic map or aerial photograph. For groundwater
 sources, show all wells (including domestic) within one-half mile
 of the proposed point of diversion and the names and mailing
 addresses of the owners. For surface water sources, show the
 names and addresses of the landowner(s) one-half mile
 downstream and one-half mile upstream from your property
 lines



13b. If the proposed point of diversion will be relocated within 300 feet
 of the existing point of diversion, indicate its location on the
 diagram shown above in relation to the existing point of
 diversion. **(PLEASE NOTE: The "X" in center of diagram**
above represents the present authorized point of
diversion.)

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14. If the proposed groundwater point of diversion is 300 or fewer feet from the existing point of diversion, complete the following:

- (a) Does the undersigned represent all owners of the currently authorized place(s) of use identified in this application?
 Yes No (If no, all owners must sign this application.)
- (b) Will the ownership interest of any owner of the currently authorized place(s) of use identified in this application be adversely affected if this application is approved as requested?
 Yes No (If yes, all owners must sign this application.)
- (c) If this application is not approved expeditiously, will there be substantial damage to property, public health or safety?
 Yes No (If no, all owners must sign this application.)

If the application proposes a surface water change in point of diversion, a groundwater change in point of diversion greater than 300 feet, or a change in place of use, the application must be signed by all owners of the currently authorized place of use, or their duly authorized agent (attach notarized statement authorizing representation).

I hereby verify, being first duly sworn upon my oath or affirmation and under penalty of perjury, that I am of lawful age and the owner, the spouse of the owner, or a duly authorized agent of the owner(s) to make this application on their behalf, in regards to the water right(s) to which this application pertains. I further verify that the statements contained in this application are true, correct and complete.

Dated at Hitchinson, Kansas, this 5th day of February, 2021.

Gayla S. Moeckel
(Owner)

(Spouse)

Gayla S. Moeckel
(Please Print)

(Please Print)

Howard L. Percock
(Owner)

(Spouse)

HOWARD L. PERCOCK
(Please Print)

(Please Print)

Gayla S. Moeckel
(Owner)

(Spouse)

Gayla S. Moeckel Trust, Trustee
(Please Print)

(Please Print)

State of Kansas }
County of Renov } SS



I hereby certify that the foregoing application was signed in my presence and sworn to before me this 5th day of February, 2021.

Debra L. Caffrey
Notary Public

My Commission Expires 12-3-2023.

ONLY COMPLETE APPLICATIONS WILL BE PROCESSED. To be complete, all of the applicable portions of the application form must be completed with accurate information; maps, if necessary, must be included; signatures of all the appropriate owners' must be affixed to the application and notarized; and the appropriate fee must be paid.

FEE SCHEDULE

Each application to change the place of use or the point of diversion under this section shall be accompanied by the application fee set forth in the schedule below: Make checks payable to: **Kansas Department of Agriculture**

- (1) Application to change a point of diversion 300 feet or less \$100
- (2) Application to change a point of diversion more than 300 feet \$200
- (3) Application to change the place of use \$200

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SUMMARY ORDER APPROVING APPLICATION FOR CHANGE AND IMPOSING CONDITIONS

This Summary Order is issued under authority of K.S.A. 82a-708b, as amended, and K.A.R. 5-5-1, *et seq.* and other applicable provisions of the *Kansas Water Appropriation Law, K.S.A. 82a-701 et. seq.*, and rules and regulations promulgated thereunder, With the exception of those conditions expressly contained herein, this Summary Order does not change the terms, conditions and limitations of File No. 34405.

1. A change application was received on February 11, 2021 requesting that the place of use and / or point of diversion authorized under the above-referenced file number be changed as described in the application.
2. On and after the effective date of this summary order, the authorized place(s) of use shall be located substantially as shown on the topographic map accompanying the application to change the place of use. Applicable Not Applicable
3. The change in point of diversion shall not impair existing rights and shall be limited to the same source or sources of water as previously authorized. The point of diversion authorized by this summary order shall be located within a _____ foot radius of the authorized point(s) of diversion. Applicable Not Applicable
4. The point(s) of diversion described herein is administratively corrected to be more accurately described using the Global Positioning System (GPS), as described in the application. Applicable Not Applicable
5. The point(s) of diversion authorized herein shall not actually be located more than _____ feet from the previously authorized point(s) of diversion. Applicable Not Applicable
6. As required by K.A.R. 5-3-5d, if the works for diversion is a well with a diversion rate of 100 gallons per minute or more, a tube or other device suitable for making water level measurements shall be installed, operated and maintained in accordance with K.A.R. 5-6-13. Applicable Not Applicable
7. **The owner of the authorized place(s) of use shall properly install an acceptable water flow meter on or before December 31, 2021**, or before the first use of water, whichever occurs first. The water flow meter shall be installed, operated and maintained in accordance with K.A.R. 5-1-4 through 5-1-12. As required by K.S.A. 82a-732, as amended, and K.A.R. 5-3-5e, the owner shall maintain records and report the reading of the water flow meter and the total quantity of water diverted annually to the Chief Engineer by March 1 following the end of each calendar year. Applicable Not Applicable
8. **Installation of the works for diversion of water shall be completed on or before December 31, 20_____**, or within any authorized extension of time. By March 1, 20_____ the applicant shall notify the Chief Engineer that construction of the works for diversion has been completed, on the form provided by the Chief Engineer, as required by K.A.R. 5-8-4e. Applicable Not Applicable
9. **The completed well log shall be submitted with the required notice.** Applicable Not Applicable
10. All diversion works into which any type of chemical or other foreign substance will be injected into the water shall be equipped with an in-line, automatic, quick-closing check valve capable of preventing pollution of the source of the water supply. The check valve(s) shall be installed, operated and maintained in accordance with K.A.R. 5-3-5c. Applicable Not Applicable
11. Additional Conditions are attached. Yes No
12. In accordance with K.S.A. 82a-708a, as amended, and K.A.R. 5-5-14, all of the owners of the authorized place(s) of use of water appropriated under the above-referenced file number are responsible for compliance with its terms, conditions and limitations, as amended and/or supplemented by this Summary Order, and with applicable provisions of the *Kansas Water Appropriation Law* and the *Rules and Regulations* promulgated thereunder. Failure to comply with these provisions may result in civil penalties pursuant to K.S.A. 82a-737, as amended, and/or the suspension or revocation and dismissal of the water or appropriation right or any other enforcement actions authorized by law.

Administrative Appeal and Effective Date of Order

If you are aggrieved by this order, 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. A request for hearing by the Chief Engineer must be filed within **15 days** of service of this Order and a request for administrative review by the Secretary must be filed within **30 days** pursuant to K.S.A. 77-531. Any request for administrative review must state a basis for review pursuant to K.S.A. 77-527. File any request with **Kansas Department of Agriculture, Legal Division, 1320 Research Park Drive, Manhattan, KS 66502**. Failure to timely request a hearing or review may preclude review under the Kansas Judicial Review Act.

For Use by Register of Deeds

FOR OFFICE USE ONLY
**APPLICATION APPROVED AND
 SUMMARY ORDER ISSUED**

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Stafford Field Office
 DIVISION OF WATER RESOURCES

By: Jeff Lanterman
 Duly Authorized Designee of the Chief Engineer

(Print Name): Jeff Lanterman
 Division of Water Resources - Kansas Department of Agriculture

Date of Issuance: 3/2/2021

State of Kansas)

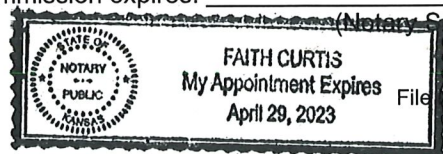
County of Stafford) SS

Acknowledged before me on 3/2/2021

by Faith Curtis

Signature: Faith Curtis
 Notary Public

My commission expires: _____



Stafford Field Office
300 S. Main Street
Stafford, KS 67578-1521



Phone: 620-234-5311
Fax: 620-234-6900
www.agriculture.ks.gov

Mike Beam, Secretary

Laura Kelly, Governor

March 2, 2021

Gayla Moeckel Trust
9118 S Netherland Rd
Sylvia, KS 67581

Re: Water Right, File No(s). 34405

Dear Water Right Owner:

Enclosed is the order executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the application for change under the above referenced file number(s).

Your attention is directed to the enclosures and to the terms, conditions and limitations specified in this approval for change. An acceptable water flow meter must be installed on your well before any water is applied as authorized under this change approval. A copy of the approved list of Certified Water Flowmeters as well as the regulations regarding the installation of flowmeters, measurement tubes and check valves can be found at www.ksda.gov/includes/document_center/dwr/Forms/ApprovalPack.pdf. If you do not have access to the internet, please contact this office and we will send you a paper copy of the referenced information.

Since this order modifies the original document referred to above, it should be recorded with the Register of Deeds as other instruments affecting real estate.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Lanterman".

Jeff Lanterman
Water Commissioner

Enclosures

pc: Water Rights Section
Groundwater Management District No.5

CERTIFICATE OF SERVICE

On this **2 March 2021**, I hereby certify that the attached Change in Place of Use, File No. 34405 dated 3/2/2021 was mailed to the following:

Gayla S Moeckel Trust
9118 S Netherland Rd
Sylvia, KS 67581

pc: Water Rights Section
GMD #5



Staff

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: February 23, 2021

FROM: Elizabeth K Fitch

RE: Water Right File No(s). 3750 & 34405

Gayla S Moeckel and Howard Peacock, on behalf of themselves and the Gayla S Moeckel Trust, as owners of the referenced files authorized for irrigation use, have submitted two (2) applications for approval to change the authorized place of use. All the owners of record signed both applications.

The referenced files appear to be in compliance with 82a-732 (Annual water use report required). A review of the applications found that they comply with K.A.R. 5-5-1, *Filing an application for change*. The referenced files do not appear abandoned as per K.S.A. 82a-718.

The referenced files currently have an overlapped place of use on 132 acres authorized in the Northwest Quarter (NW¼) of Section 23, Township 24 South, Range 10 West, Reno County.

File Nos. 3750 and 34405 currently authorize the same groundwater well in the Northwest Quarter of the Southeast Quarter of the Northwest Quarter (NW¼ SE¼ NW¼) of Section 23, more specially described as 3,795 feet North and 3,594 feet West of the Southeast corner of said section, Township 24 South, Range 10 West, Reno County. A compliance inspection on June 1, 2017, found the water rights to be in compliance. The authorized point of diversion will be better described based on GPS coordinates.

- **File No. 3750** authorizes 58 acre-feet (AF) at 650 gallons per minute (gpm).
- **File No. 34405** authorizes 140 AF at 840 gpm, limited to 165 AF per year at 840 gpm when combined with File No. 3750. Both files are certified.

The referenced change applications, received on February 11, 2021, propose to maintain the existing overlap under the associated water rights while modifying the acreage to allow the center pivot system to run a full 360 degrees. A portion of the proposed place of use is owned by Todd Smiley. Accompanying the change applications was an Amended Judgment on Mandate from Kansas Court of Appeals dated November 19, 2020. In this judgment, it was ordered that Gayla S Moeckel and Howard L Peacock were given a lifetime lease for the property in question "to which no water right or permits shall attach or become appurtenant to in Reno County, Kansas".

When combined, these files have a shared 120 "Base Acres," as defined by K.A.R. 5-5-11. The proposed 125 acres complies with part (b) of K.A.R. 5-5-11 and the 10 acre increase above the *Base Acres* is allowed by the regulation.

The proposed changes will result in a maximum quantity of 165 AF irrigating 125 acres, resulting in an irrigation ratio of 1.32 AF per acre. It would appear this irrigation ratio is reasonable as the ratio is less than the 1.5 AF per acre maximum for Reno County found in K.A.R. 5-3-24, Reasonable quantity for irrigation use, thus complying with K.A.R. 5-3-23, *Maximum reasonable annual quantity for irrigation use for an application for change in place of use and a request to reduce a water right.* The generally accepted minimum quantity per acre for Reno County is 1.12 AF per acre, so the proposed quantity meets this threshold as well.

Since the referenced applications to change the place of use do not propose to add more than 10 acres or 10% of the base acres to the authorized place of use, water well owners within one-half mile of the authorized point of diversion were not notified of the proposed change in place of use (EKF Memo dated 02/15/2021).

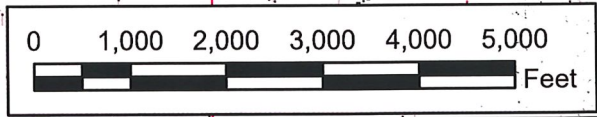
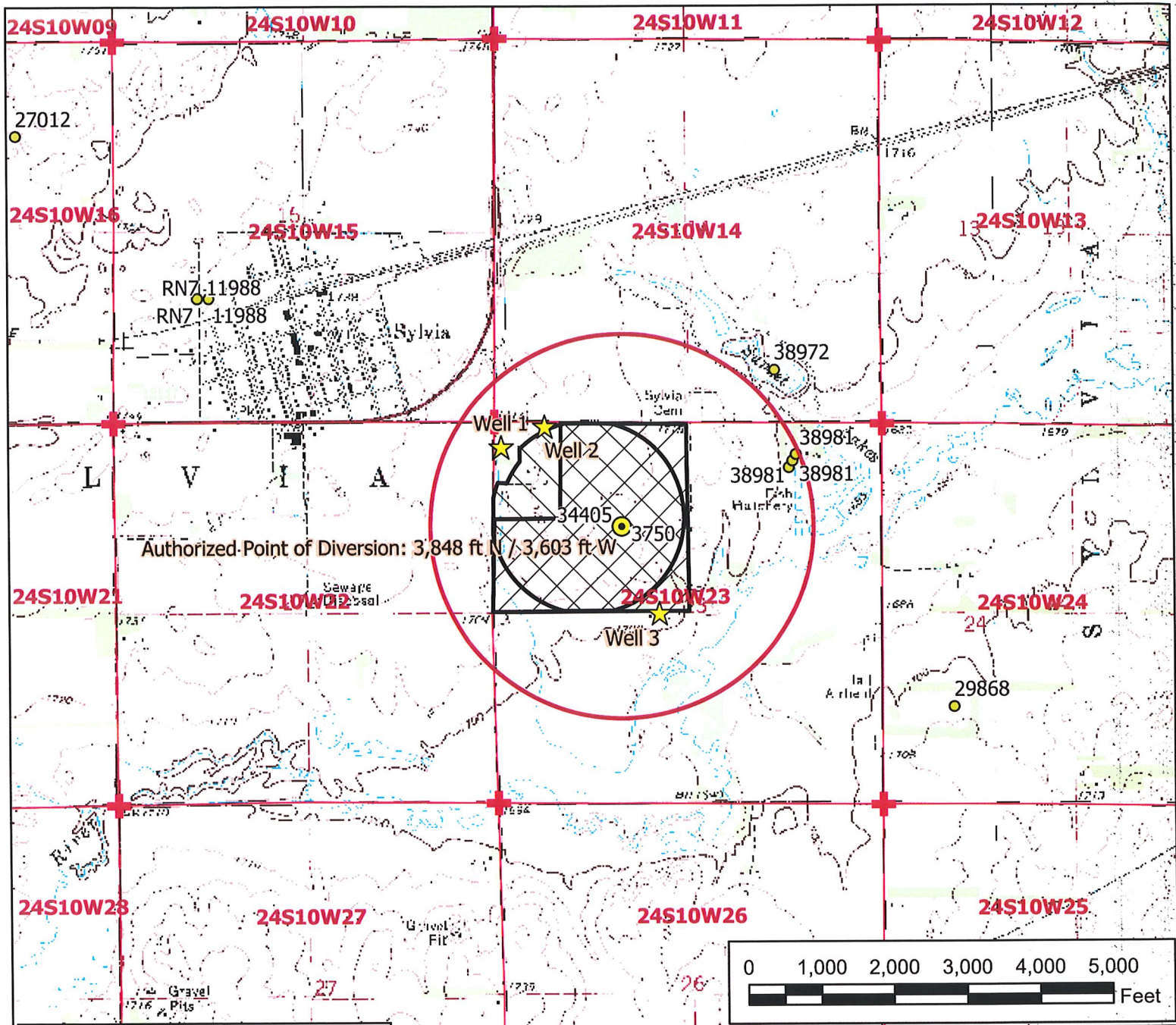
The referenced water rights are not in a special use area.

The referenced water rights are in the Big Bend Groundwater Management District No. 5 (GMD5), so a recommendation request was sent to the District on February 17, 2021. A response was received from GMD5 Manager, Orrin Feril on February 18, 2021. In his response, Mr. Feril recommended approval for the change applications filed under each of the referenced water rights.

No structures permit appears to be needed.

A water flow meter is required for each point of diversion. A check valve is required if any chemical or foreign substance is injected into the water through the diversion works. Based on the above discussion, that the change is reasonable, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, it has been recommended that applications are approved.

Elizabeth K Fitch
Environmental Scientist - SFFO



- Legend**
- Water Appropriation
 - ⊗ Proposed Point of Diversion
 - Authorized Point of Diversion
 - ★ Domestic Well
 - ⊕ Section Corner
 - Section Line
 - Half Mile Circle
 - ▨ Proposed Place of Use
 - ▨ Authorized Place of Use

Water Right, File No. 3750 & 34405

Change in Place of Use Application Map

23-24-10W // Reno County

To the best of my knowledge, all wells within one-half mile of the authorized point of diversion have been shown.

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Stafford Field Office
DIVISION OF WATER RESOURCES

Howard L. Perovich

Signature / Date

2/3/2021 EKF/SFFO 1:24,000 scale



File No. 3750 & 34405 Change Application Near-by Well Owners

Domestic Well No. 1 & 2

Todd E Smiley
8516 S Netherland Rd
Sylvia KS 67581

Domestic Well No. 1 & 2

Applicant

Water Right, File No. 38981

Sara T Steven Rev Trust
Zack Steven
2772 N North Short Ct
Wichita KS 67205

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Stafford Field Office
DIVISION OF WATER RESOURCES

ELECTRONICALLY FILED
2020 Nov 19 PM 3:22
CLERK OF THE RENO COUNTY DISTRICT COURT
CASE NUMBER: 2016-CV-000238



Court: Reno County District Court
Case Number: 2016-CV-000238
Case Title: Howard Lynn Peacock, et al. vs. Todd Eric Smiley,
et al.
Type: Amended Judgment on Mandate from Kansas Court of
Appeals

SO ORDERED.

A handwritten signature in black ink that reads "Timothy Chambers".

/s/ Honorable Timothy Chambers, District Court
Judge

Electronically signed on 2020-11-19 15:22:37 page 1 of 6

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Stafford Field Office
DIVISION OF WATER RESOURCES

**IN THE TWENTY-SEVENTH JUDICIAL DISTRICT
COURT OF RENO COUNTY, KANSAS
CIVIL DEPARTMENT**

HOWARD L. PEACOCK,)
GAYLA S. MOECKEL and)
GAYLA S. MOECKEL, TRUSTEE)
OF THE GAYLA S. MOECKEL)
TRUST,)
Plaintiffs,)
v.)
TODD E. SMILEY, AND)
MARCELLA MOECKEL SMILEY,)
Defendants)

Case No.: 2016-CV-000238

Pursuant to Chapter 60, Kansas Statutes Annotated

AMENDED JUDGMENT

on

MANDATE FROM KANSAS COURT OF APPEALS

WHEREUPON:

1. The above captioned action was tried to the Honorable Timothy Chambers, District Judge, without a jury, on January 23 and 24, 2018. Thereafter, Judgment was filed of record on October 2, 2018.
2. Plaintiffs thereafter filed a timely Notice of Appeal with the Kansas Court of Appeals on December 14, 2018. The Defendant did not file a cross appeal. Following briefing, the Kansas Court of Appeals granted oral argument which was heard on November 12, 2019.
3. The Kansas Court of Appeals granted Judgment in the case in an unpublished opinion on February 21, 2020. The opinion, which is filed of record in this court in its entirety, held *inter alia* that:

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- a. The finding of the district court that the parties abandoned the written contract at issue dated November 11, 2011, is not supported by substantial evidence, and therefore is reversed.
- b. The district court's decision to limit Howard and Gayla's right to farm and irrigate the disputed land in Tract II identified in the written contract dated November 11, 2011 through the fall harvest 2020 is unsupported and reversed.
- c. The parties to the written contract dated November 11, 2011 entered a later oral agreement that amended the written contract between the parties "in two ways: (1) to correct the erroneous Tract II land description to reflect the parties' actual intent and (2) to amend the clause requiring Todd and Marcella to convey a life estate in Tract II, so that Todd and Marcella need only grant Howard and Gayla a life lease in Tract II."
- d. "Because of this amendment to the original contract, the district court correctly rejected Howard and Gayla's request that it reform the original contract and order specific performance of the reformed contract."
- e. The action is remanded to the district court with directions to grant Howard and Gayla a life lease to farm and irrigate the disputed land in parcels 1, 4, 5 and 6.
- f. Because Howard and Gayla violated the plain language of the written contract which required them to convey their land to Cash subject to

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their own life estates, the district court did not abuse its discretion in denying Howard and Gayla's request for attorney fees.

4. On March 31, 2010, the Court of Appeals issued a Mandate commanding execution of the judgment of the Court of Appeals that the judgment of the district court be affirmed in part, reversed in part, and remanded with directions which such Mandate was filed of record by the Clerk of the District Court on April 13, 2020.

NOW THEREFORE, it is Ordered Adjudged and Decreed that the district court adopts the findings of the Court of Appeals set forth in its opinion and that the written contract between the parties dated November 11, 2011 is amended to grant Gayla S. Moeckel and Howard L. Peacock a lease for the lives of Gayla S. Moeckel and Howard L. Peacock, whomever is last to survive, to farm and irrigate the following described real property, to which

no water right or permits shall attach or become appurtenant to in Reno

County, Kansas:

PARCEL 1:

A portion of the Northwest Quarter of Section 23, Township 24 South, Range 10 West of the 6th Principal Meridian, Reno County, Kansas more particularly described as follows: Commencing at the Northwest Corner of the Northwest Quarter of Section 23, Township 24 South, Range 10 West of the 6th Principal Meridian; thence with an assumed bearing South 88°45'10" East along the North line of said Northwest Quarter 342.26 feet for the point of beginning; thence continuing South 88°45'10" East along the North line of said Northwest Quarter 581.82 feet; thence South 02°01'14" West parallel with the West line of said Northwest Quarter 610.55 feet; thence North 88°45'10" West parallel with the North Line of said Northwest Quarter 564.82 feet; thence North 00°25'30" East 610.55 feet to the point of beginning.

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PARCEL 4

A portion of the Northwest Quarter of Section 23, Township 24 South, Range 10 West of the 6th Principal Meridian, Reno County, Kansas more particularly described as follows: Commencing at the Northwest Corner of the Northwest Quarter of Section 23, Township 24 South, Range 10 West of the 6th Principal Meridian; thence with an assumed bearing South 02°01'14" West along the West line of said Northwest Quarter 660.05 feet for the point of beginning; thence South 88°45'10" East parallel with the North line of said Northwest Quarter 330.93 feet; thence South 31°37'16" West 129.51 feet; thence North 61°17'54" West 131.42 feet; thence North 87°58'46" West 149.50 feet to the West line of said Northwest Quarter; thence North 02°01'14" East along the West line of said Northwest Quarter 49.12 feet to the point of beginning.

PARCEL 5

A portion of the Northwest Quarter of Section 23, Township 24 South, Range 10 West of the 6th Principal Meridian, Reno County, Kansas more particularly described as follows: Commencing at the Northwest Corner of the Northwest Quarter of Section 23, Township 24 South, Range 10 West of the 6th Principal Meridian; thence with an assumed bearing South 02°01'14" West along the West line of said Northwest Quarter 709.12 feet for the point of beginning; thence South 87°58'46" East 149.50 feet; thence South 61°17'54" East 131.42 feet; thence North 31°37'16" East 129.51 feet; thence South 88°45'10" East parallel with the North line of said Northwest Quarter 593.07 feet; thence South 02°00'12" West 181.50 feet; thence North 88°44'58" West 924.00 feet to the West line of said Northwest Quarter; thence North 02°01'14" East along the West line of said Northwest Quarter 132.38 feet to the point of beginning.

PARCEL 6

A tract in the Northwest Quarter of Section 23, Township 24 South, Range 10 West of the 6th P.M., Reno County, Kansas, described as follows: Beginning at a point 51 rods South of the Northwest corner of the Northwest Quarter and continuing Easterly on a line at right angles for a distance of 56 rods; thence Southerly on a line parallel with Section line, a distance of 29 rods; thence Westerly on a line at right angles to Section line, a distance of 56 rods; thence Northerly on the Section line, a distance of 29 rods to the place of beginning.

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IT IS SO ORDERED

Timothy J. Chambers, District Judge

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