

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

1. File Number: <b>27121</b>	2. Status Change Date: <b>5/31/2019</b>	3. Change Num: <b>C3</b>	4. Field Office: <b>01</b>	5. GMD:
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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: <b>16-JAN-2019</b>
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8a. Applicant(s) Person ID **28589**  
 New to system  Add Seq# **1**

**ROBERT J & DEBORAH A WIETHARN TRUSTS**  
**ROBERT WIETHARN TRUSTEE**  
**1925 KIOWA RD**  
**CLAY CENTER KS 67432**

8d. Landowner(s) Person ID **53622**  
 New to system  Add Seq# **1**

**GARY N & SARAH E GRIFFITHS FAMILY TRUST**  
**1601 2ND ST**  
**CLAY CENTER KS 67432**

8b. Landowner(s) Person ID **28589**  
 New to system  Add Seq# **1**

**ROBERT J & DEBORAH A WIETHARN TRUSTS**  
**ROBERT WIETHARN TRUSTEE**  
**1925 KIOWA RD**  
**CLAY CENTER KS 67432**

8e. Landowner(s) Person ID **64038**  
 New to system  Add Seq# **1**

**COTT FARMS**  
**C/O ROBERT COTT**  
**1977 INDIAN RD**  
**CLAY CENTER KS 67432**

8c. Landowner(s) Person ID **28966**  
 New to system  Add Seq# **1**

**GALEN F & CLETA WIETHARN TRUSTS**  
**211 WEBSTER ST**  
**CLAY CENTER KS 67432**

8f. Landowner(s) Person ID **63613**  
 New to system  Add Seq# **1**

**WIETHARN INVESTMENTS LLC**  
**ROBERT WIETHARN - MANAGING MEMBER**  
**1925 KIOWA RD**  
**CLAY CENTER KS 67432**

8g. Landowner(s) Person ID **66230**  
 New to system  Add Seq#

**ELSIE MUGLER LLC**  
**1925 KIOWA ROAD**  
**CLAY CENTER KS 67432**

8h. WUC Person ID **28589**  
 New to system  Add Seq# **3**

**NO CHANGE 8b**

9. Documents and Enclosure(s):  DWR Meter(s) Date to Comply: **12/31/2020**  N & P Date to Comply: **12/31/2020**

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: **4/25/19** By: **RAK**  
 Date Entered: **6/3/2019** By: **UM**

File No. **27121**      11. County: **CY**      Basin: **REPUBLICAN RIVER**      Stream: **REPUBLICAN RIVER (27)**      Formation Code:      Special Use:

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

BLANKET R AND Q										500 g.p.m.	30 AF	500 g.p.m.	30 AF		
✓	10082	Lot 4 (NWNW)	28	7	2E	3	4227	4707							27121;34520;35749
✓	83375	Lot 2	2	8	2E	18	4118	2602							27121;34520;35749
DEL	84853	NENENW	14	8	2E	14	5203	2821							49509 remaining
ENT	87564	LOT 7	11	8	2E		102	3000							27121;34520;35749

13. Storage: Rate \_\_\_\_\_ NF      Quantity \_\_\_\_\_ ac/ft      Additional Rate \_\_\_\_\_ NF      Additional Quantity \_\_\_\_\_ ac/ft

14. Limitation: \_\_\_\_\_  
 Limitation: \_\_\_\_\_

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				
✓	18420	28	7	2E	2							L-5 2.00									2.00		No changes		
✓	35751	28	7	2E	4					L-3 3.00	L-4 11.00	L-5 27.00	L-3 16.00								57.00		No changes		
✓	16442	29	7	2E	1			34.00	37.00								33.00	40.00	20.00	12.00	176.00		No changes		
✓	39260	36	7	2E	2									40.00	40.00	40.00	40.00				160.00		No changes		
✓	5540	2	8	2E	2	L-1 35.00	L-2 25.00	31.00	35.00												126.00		No changes		
✓	54084	2	8	2E	9		L-2 7.00			L-3 8.00											15.00		No changes		
✓	67518	10	8	2E	3												39.00	40.00			79.00		No changes		
✓	67519	10	8	2E	4												36.00			40.00	76.00		No changes		
✓	ENT 67520 L-7 (SESW)	11	8	2E	5												L-7 30.00				30.00		8g Yes      27121; 34520;35749; 49508; 49509; 50156 & 50183		
✓	ENT 67521 L-2(NWNE)	14	8	2E	8		L-2 11.00		39.00				38.00								88.00		8g Yes      27121; 34520; 35749; 49508; 49509; 50156 & 50183		

Base Acres:      Year:      Minimum Reasonable Quantity:  
 Comments:

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**  
**MEMORANDUM**

**TO:** Files  
**FROM:** Richelle A. Krueger

**DATE:** May 1, 2019  
**RE:** Water Right  
File Nos. 27,121; 34,520;  
35,749; 37,148 and 41,887  
Appropriation of Water  
49,508 and 49,509

Robert J. and Deborah A. Wietharn Trusts, etal, water right owners, filed applications for approval to change the authorized point of diversion and place of use for Water Right, File Nos. 27,121; 34,520 and 35,749, and applications to change the place of use for Water Right, File Nos. 37,148 and 41,887 and Appropriation of Water, File Nos. 49,508 and 49,509 all authorized surface water from the Republican River for irrigation use.

The referenced changes have been filed along with Application, File Nos. 50,155, 50,156 and 50,183 which are being processed by Doug Schemm, Environmental Scientist, Topeka Field Office.

The referenced files do not appear abandoned as per K.S.A. 82a-718. File Nos. 49,508 and 49,509 perfection periods expire December 31, 2021.

**Changes in PU File Nos. 37,148 and 41,887**

File Nos. 37,148 and 41,887 form a complete overlap in their 127-acre authorized place of use and incompletely overlap File Nos. 21,525 and 44,723 in a 9-acre tract located in the Southwest Quarter of Section 34, Township 7 South, Range 2 East, Clay County. Each file is authorized two pumpsites - File Nos. 37,148 and 41,887 overlap in point of diversion along with File No. 50,156 at one pumpsite (Lot 5 2731'N, 1845'W SE corner 33-7S-2E); the second pumpsite of File No. 37,148 overlaps Water Right, File No. 44,723 and the second pumpsite of File No. 41,887 has no overlap. The reference changes in place of use propose a complete overlap in the place of use with Application File No. 50,155 for a total of 141 acres to be irrigated all in Sections 33 and 34 of the aforementioned township and range, an increase of additional acres. The 9-acre incomplete overlap with File Nos. 21,525 and 44,723 will remain. The total limited quantity of 169.2 acre-feet to be authorized by File Nos. 37,148; 41,887 and 50,155, will irrigate the proposed 141 acres with 1.2 acre-feet per acre, which appears reasonable in Clay County.

**Change in PD/PU File Nos. 27,121; 34,520 and 35,749 PU only File Nos. 49,508 and 49,509**

File Nos. 27,121; 34,520 and 35,749 are all authorized the same three (3) points of diversion. In addition, the southernmost pumpsite authorized by File Nos. 27,121; 34,520 and 35,749 (5,203'N 2,821'W 14-8S-2E) overlaps the pumpsite authorized by Appropriation of Water, File No. 49,509. The referenced changes in point of diversion propose to remove the point of diversion of overlap with File No. 49,509 and move to a pumpsite located 102 feet North and 3,000 feet West of the Southeast corner of Section 11, Township 8 South, Range 2 East, Clay County, a distance of less than 300 feet.

File Nos. 27,121; 34,520 and 35,749 are authorized a limited total quantity of 167 acre-feet for 691 acres, form a complete overlap with each other in place of use and incompletely overlap the place of use with several other water rights, including a 155-acre overlap with File No. 49,508 in Section 10, Township 8 South, Range 2 East. The referenced changes in place of use for File Nos. 27,121; 34,520 and 35,749 propose to add the 118-acre place of use now authorized by Appropriation of Water, File No. 49,509 in Sections 11 and 14, Township 8 South, Range 2 East, creating a 273-acre overlap in place of use among File Nos. 27,121; 34,520; 35,749; 49,508; 49,509; 50,156 and 50,183. The incomplete overlap in place of use with other files to the north will remain, so that File Nos. 27,121; 34,520 and 35,749 will be authorized a total of 809 acres.

The applications to change the place of use for File Nos. 49,508 (155 acres) and 49,509 (118 acres) propose to create a complete overlap in place of use with each other along with Application, File Nos. 50,156 and 50,183 for a total of 273 acres in Sections 10, 11 and 14, Township 8 South, Range 2 East and as mentioned above, this 273 acres will incompletely overlap File Nos. 27,121; 34,520 and 35,749.

Memorandum

File Nos. 27,121; 34,520; 35,749; 37,148; 41,887; 49,508 and 49,509

May 1, 2019

Page 2

File No. 49,508 is authorized 186 acre-feet limited to 186 acre-feet for irrigation on the currently authorized 155-acre place of use (1.2 AF/ac). The existing quantity limitation will be changed to 327.6 acre-feet when combined with File Nos. 27,121, 34,520 and 35,749 to reflect the increase in acres to 273 acres.

File No. 49,509 is authorized 141.6 acre-feet for 118 acres with no current overlaps in the authorized place of use. A quantity limitation will be added to File No. 49,509 limiting the file to 327.6 acre-feet when combined with File Nos. 27,121, 34,520, 35,749 and 49,508 to keep the quantity reasonable for the 273-acre place of use (1.2 AF/ac).

Doug sent nearby landowner letters on February 21, 2019 for both new applications and changes. Note that the notification letters listed each of the new applications and the related change applications for File Nos. 27,121; 34,520; 35,749; 37,148; 41,887; 49,508; and 49,509. Doug indicated that two telephone calls were received, asking general questions about the applications, but they did not express any specific impairment concerns. No written responses of any kind were received.

In an April 19, 2019 e-mail Katherine Tietsort, Water Commissioner of the Topeka Field Office, indicated she recommends approval of the package.

Water flow meters are required. Check valves are required if any chemical or foreign substance is injected into the water through the diversion works.

  
Richelle A. Krueger  
Environmental Scientist

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

ROBERT J & DEBORAH A WIETHARN TRUSTS  
ROBERT WIETHARN TRUSTEE  
ELSIE MUGLER LLC  
1925 KIOWA RD  
CLAY CENTER KS 67432

June 7, 2019

**FILE COPY**

RE: Water Right, File Nos. 27,121; 34,520; 35,749; 37,148 and 41,887  
Appropriation of Water, File Nos. 49,508 and 49,509

Dear Mr. and Mrs. Wietharn:

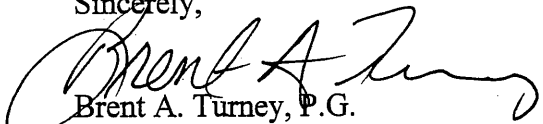
Enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the above referenced file numbers.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in these approvals for change. A condition of these approvals is that acceptable water flow meters must be installed on the diversion works authorized under the referenced file numbers. Please return the required notification of completion of the diversion works and/or installation of the required meters as soon as these actions are completed.

Since the orders modify the original documents referred to above, the orders for File Nos. 27,121; 34,520; 35,749; 37,148 and 41,887 should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions, please contact this office. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

  
Brent A. Turney, P.G.  
Change Application Unit Supervisor  
Water Appropriation Program

BAT:rak

pc: Topeka Field Office  
Galen F. and Cleta Z. Wietharn Trusts

# THE STATE OF KANSAS



**KANSAS DEPARTMENT OF AGRICULTURE**  
Mike Beam, Secretary of Agriculture

**DIVISION OF WATER RESOURCES**  
David W. Barfield, Chief Engineer

## APPROVAL OF APPLICATION FOR CHANGE IN PLACE OF USE AND POINT OF DIVERSION WATER RIGHT FILE NO. 27,121

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Robert J. and Deborah A. Wietharn, on behalf of Robert J. and Deborah A. Wietharn Trusts, Wietharn Investments, L.L.C., Elsie Mugler, L.L.C., 1925 Kiowa Road, Clay Center, Kansas, 67432, and Galen F. and Cleta Z. Wietharn, on behalf of Galen F. and Cleta Z. Wietharn Trusts, 211 Webster Street, Clay Center, Kansas, 67432, received in this office on January 16, 2019, for approval of a change in the location of the place of use and point of diversion under the certificate of appropriation issued pursuant to the permit to appropriate water for beneficial use, as modified and amended by the Orders of the Chief Engineer dated February 11, 1986, December 22, 1988, and February 5, 1990, approving the applications to change the place of use, by the Findings and Order of the Chief Engineer dated July 28, 2004 better defining the authorized point of diversion, and by the Orders of the Chief Engineer dated July 31, 2014 and December 20, 2016, approving the applications to change the place of use and point of diversion finds that the changes are reasonable and will not impair existing rights, and that the application should be and is hereby approved.

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

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	
28	7S	2E					Lot 3 3.00	Lot 4 11.00	Lot 5 29.00	Lot 3 16.00									59.00
29	7S	2E			34.00	37.00								33.00	40.00	20.00	12.00		176.00
36	7S	2E								40.00	40.00	40.00	40.00						160.00
2	8S	2E	Lot 1 35.00	Lot 2 32.00	31.00	35.00	Lot 3 8.00												141.00
10	8S	2E												36.00	39.00	40.00	40.00		155.00
11	8S	2E												Lot 7 30.00					30.00
14	8S	2E		Lot 2 11.00			39.00			38.00									88.00

a total of 809.00 acres in Clay County, Kansas, and the authorized locations of the points of diversion shall be:

one(1) pumpsite located in Lot 4 of Section 28, more particularly described as being near a point 4,227 feet North and 4,707 feet West of the Southeast corner of said section, in Township 7 South,

one(1) pumpsite located in Lot 2 of Section 2, more particularly described as being near a point 4,118 feet North and 2,602 feet West of the Southeast corner of said section, in Township 8 South, and

one(1) pumpsite located in Lot 7 of Section 11, more particularly described as being near a point 102 feet North and 3,000 feet West of the Southeast corner of said section, in Township 8 South,

all in Range 2 East, Clay County, Kansas,

located substantially as shown on the maps accompanying the application to change the place of use and point of diversion.

Installation of the works for diversion of water shall be completed on or before December 31, 2020, or within any authorized extension of time. The water right owner shall notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, when construction of the works for diversion has been completed.

All 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.

The water right owner shall properly install an acceptable water meter on the diversion works authorized under this water right, prior to the use of water, in strict accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The water right owner shall notify the Chief Engineer when installation of the water meter has been completed. The water right owner shall maintain the water meter in an operating condition satisfactory to the Chief Engineer, at all times during diversion of water and shall maintain records from which the total quantity of water diverted may be determined. The water right owner shall also report the reading of said water meter and the total quantity of water diverted annually to the Chief Engineer. Such records shall be furnished to the Chief Engineer by March 1 following the end of each calendar year.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 27,121, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated December 3, 1980, as modified and amended by the aforementioned orders.

**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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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.

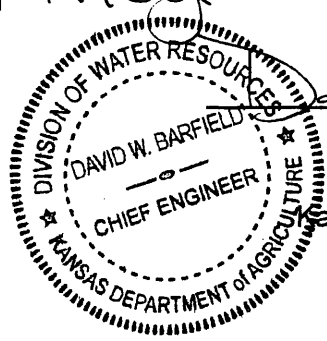
To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (i.e., within a total of 18 days after this Order was mailed to you), with the Kansas Department of Agriculture, Attn: Legal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

Ordered this 31<sup>st</sup> day of May, 2019, in Manhattan, Riley County, Kansas.



*David W. Barfield*  
 \_\_\_\_\_  
 David W. Barfield, P.E.  
 Chief Engineer  
 Division of Water Resources  
 Kansas Department of Agriculture

State of Kansas )  
 County of Riley ) SS

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of May, 2019, by David W. Barfield, P.E, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



*Karen Hunter*  
 \_\_\_\_\_  
 Notary Public



**CERTIFICATE OF SERVICE**

On this 7<sup>th</sup> day of June, 2019, I hereby certify that the attached Approval of Application for the Change in Place of Use and Point of Diversion, File No. 27,121, dated May 31, 2019 was mailed postage prepaid, first class, US mail to the following:

ROBERT J. AND DEBORAH A. WIETHARN TRUSTS  
WIETHARN INVESTMENTS LLC  
ELSIE MUGLER LLC  
1925 KIOWA RD  
CLAY CENTER KS 67432

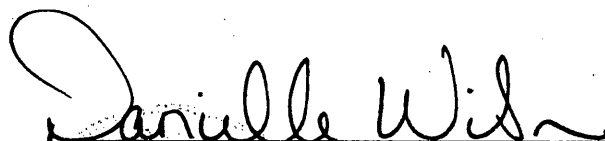
With photocopies to:

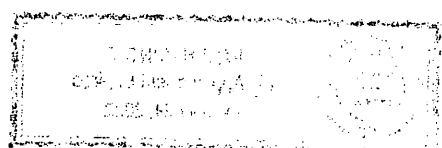
GALEN F & CLETA WIETHARN TRUSTS  
211 WEBSTER ST  
CLAY CENTER KS 67432

GARY N & SARAH E GRIFFITHS FAMILY TRUST  
1601 2ND ST  
CLAY CENTER KS 67432

COTT FARMS  
RICHARD & ROBERT COTT  
1977 INDIAN RD  
CLAY CENTER KS 67432

Topeka Field Office

  
Division of Water Resources



Submit To: CHIEF ENGINEER  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
http://agriculture.ks.gov/dwr

**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**



State of Kansas

**Filing Fee Must Accompany the Application**  
(Please refer to Fee Schedule on signature page of application form.)

Paragraph Nos. 1, 2, 3, 4 & 8 must be completed. Complete all other applicable portions. A topographic map or detailed plat showing the authorized and proposed points(s) of diversion and /or place of use must accompany this application.

1. Application is hereby made for approval of the Chief Engineer to change the

- Place of Use  
 Point of Diversion  
 Use Made of Water

(Check one or more)

Water Resources  
Received

JAN 16 2019

11:21

KS Dept Of Agriculture

File No. 27,121

2. Name of applicant: ROBERT J & DEBORAH A WIETHARN TRUSTS %ROBERT WIETHARN TRUSTEE

Address: 1925 KIOWA ROAD

City, State and Zip: CLAY CENTER, KS 67432

Phone Number: (785) 630-0611

E-mail address: Bob Wietharn <bob@riverscreen.com>

What is your relationship to the water right;  owner  tenant  agent  other? If other, please explain. \_\_\_\_\_

Name of water use correspondent: Same as Applicant

Address: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ E-mail address: \_\_\_\_\_

3. The change(s) proposed herein are desired for the following reasons (please be specific): \_\_\_\_\_

This Place of Use Change will add the current place of Use under File No. 49,509 to File Nos. 27,121; 34,520 & 35,749.

PD CHANGE WILL ELIMINATE OVERLAP WITH JUNIOR FILE 49,509.

The change(s) (was) (will be) completed by Spring 19

(Date)

**For Office Use Only:**

F.O. 1 GMD --- Meets K.A.R. 5-5-1 (YES)NO Use IRR Source G(S) County Cy By BAH Date 1-16-19  
Code C-2 Fee \$ 300<sup>00</sup> TR # \_\_\_\_\_ Receipt Date 1/16/19 Check # 50002

APPLICATION COMPLETE  
5.11.19  
Reviewer RAIC

4. The presently authorized place of use is:

**4A. Owner of Land** — NAME: WIETHARN INVESTMENTS LLC  
 ROBERT WIETHARN - MANAGING MEMBER  
 ADDRESS: 1925 KIOWA ROAD, CLAY CENTER, KS 67432

*(\*) 206 acres  
 Gary & Sarah Griffiths  
 Family Trust &  
 Cott Farms  
 Land only  
 Wietharn has  
 water rights*

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
28	7S	2E					Lot 3 3	Lot 4 11	Lot 5 29	Lot 3 16									59
29	7S	2E			34	37									33	40	20	12	176
10	8S	2E														39	40		79

List any other water rights that cover this place of use. 20,870; 21,194; 27,121; 34,520; 35,759; 39,355; 39,858; 40,842; 41,978; 41,979; 42,598; 43,824; 44,111; 45,025; 48,904; 49,166. (49,508 O/L SEC. 10)

**4B. Owner of Land** — NAME: GALEN F & CLETA WIETHARN TRUSTS  
 ADDRESS: 211 WEBSTER ST, CLAY CENTER, KS 67432

**AND 4A.** \_\_\_\_\_

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		
36	7S	2E														40	40	40	40	160
*2	8S	2E		Lot 2 7			Lot 3 8													15*

List any other water rights that cover this place of use. 17,098; 20,870; 27,121; 34,520; 35,749; 39,355; 44,612; & 48,904

\*LAND IN SEC. 2 OWNED BY 4A ONLY.

5. The presently authorized place of use is:

Owner of Land NAME: ROBERT J & DEBORAH A WIETHARN TRUSTS  
 ROBERT WIETHARN TRUSTEE  
 ADDRESS: 1925 KIOWA ROAD, CLAY CENTER KS 67432

**AND 4A.** \_\_\_\_\_

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
2	8S	2E	Lot 1 35	Lot 2 25	31	35														126

List any other water rights that cover this place of use. 20,870; 27,121; 34,520; 35,749; 38,535; 38,537; 39,355; 45,979 & 48,904

Owner of Land — NAME: NAME: GALEN F & CLETA WIETHARN TRUSTS  
 ADDRESS: 211 WEBSTER ST, CLAY CENTER, KS 67432

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		
10	8S	2E														36			40	76

List any other water rights that cover this place of use. 27,121; 34,520; 35,749 & 49,508

**ALL LAND LISTED ABOVE UNDER 4A, 4B, AND 5 WILL REMAIN AS AUTHORIZED. ADD THE 118 ACRES IN SECTIONS 11 AND 14, CURRENTLY AUTHORIZED UNDER FILE NO. 49,509.**

SEE ADDITIONAL SHEET

Water Resources  
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JAN 16 2019

KS Dept Of Agriculture

SCANNED

*(\*) per WRES & own records  
 (\*) per own 4/25/19*

APPLICATION FOR APPROVAL TO CHANGE  
THE PLACE OF USE AND/OR POINT OF DIVERSION  
SUPPLEMENTAL SHEET  
**FILE NO. 27,121**  
MAKE ADDITIONAL COPIES AS NECESSARY

3. *Continued:* The presently authorized place of use is:

Owner of Land ---- NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

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			

Owner of Land ---- NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

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				

Owner of Land ---- NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

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					

5. *Continued:* If this application is for a change in place of use, it is proposed that the place of use be changed to:  
**ADD THIS PROPERTY – FILE NO. 49,509**

Owner of Land — NAME: ELSIE MUGLER LLC  
ADDRESS: 1925 KIOWA ROAD, CLAY CENTER KS 67432

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				
11	8S	2E																				30
14	8S	2E					39															88

Owner of Land — NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_

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						

Water Resources  
Received

6. The presently authorized point(s) of diversion (is) (are) THREE PUMP SITES  
(Provide description and number of points)

7. The proposed point(s) of diversion (is) (are) THREE PUMP SITES  
(Provide description and number of points)

**List all presently authorized point(s) of diversion:**

8. **Presently authorized point of diversion:**  
 One in the \_\_\_\_\_ Quarter of the \_\_\_\_\_ Quarter of the LOT 4  
 of Section 28, Township 7 South, Range 2 (E),  
 in CLAY County, Kansas, 4227 feet North 4707 feet West of Southeast corner of section.  
 Authorized Rate \_\_\_\_\_ Authorized Quantity \_\_\_\_\_  
 (DWR use only: Computer ID No. \_\_\_\_\_ GPS \_\_\_\_\_ feet North \_\_\_\_\_ feet West)  
 This point will not be changed     This point will be changed as follows:  
**Proposed point of diversion: (Complete only if change is requested)**  
 One in the \_\_\_\_\_ Quarter of the \_\_\_\_\_ Quarter of the \_\_\_\_\_ Quarter  
 of Section \_\_\_\_\_, Township \_\_\_\_\_ South, Range \_\_\_\_\_ (EW),  
 in \_\_\_\_\_ County, Kansas, \_\_\_\_\_ feet North \_\_\_\_\_ feet West of Southeast corner of section.  
 Proposed Rate \_\_\_\_\_ Proposed Quantity \_\_\_\_\_  
 This point is:  Additional Well     Geo Center    List other water rights that will use this point 34,520 & 35,749

9. **Presently authorized point of diversion:**  
 One in the \_\_\_\_\_ Quarter of the \_\_\_\_\_ Quarter of the LOT 2,  
 of Section 2, Township 8 South, Range 2 (E),  
 in CLAY County, Kansas, 4118 feet North 2602 feet West of Southeast corner of section.  
 Authorized Rate \_\_\_\_\_ Authorized Quantity \_\_\_\_\_  
 (DWR use only: Computer ID No. \_\_\_\_\_ GPS \_\_\_\_\_ feet North \_\_\_\_\_ feet West)  
 This point will not be changed     This point will be changed as follows:  
**Proposed point of diversion: (Complete only if change is requested)**  
 One in the \_\_\_\_\_ Quarter of the \_\_\_\_\_ Quarter of the \_\_\_\_\_ Quarter  
 of Section \_\_\_\_\_, Township \_\_\_\_\_ South, Range \_\_\_\_\_ (EW),  
 in \_\_\_\_\_ County, Kansas, \_\_\_\_\_ feet North \_\_\_\_\_ feet West of Southeast corner of section.  
 Proposed Rate \_\_\_\_\_ Proposed Quantity \_\_\_\_\_  
 This point is:  Additional Well     Geo Center    List other water rights that will use this point 34,520 & 35,749

10. **Presently authorized point of diversion:**  
 One in the NE Quarter of the NE Quarter of the NW Quarter  
 of Section 14, Township 8 South, Range 2 E,  
 in CLAY County, Kansas, 5203 feet North 2821 feet West of Southeast corner of section.  
 Authorized Rate \_\_\_\_\_ Authorized Quantity \_\_\_\_\_  
 (DWR use only: Computer ID No. \_\_\_\_\_ GPS \_\_\_\_\_ feet North \_\_\_\_\_ feet West)  
 This point will not be changed     This point will be changed as follows:  
**Proposed point of diversion: (Complete only if change is requested)**  
 One in the \_\_\_\_\_ Quarter of the \_\_\_\_\_ Quarter of the LOT 7  
 of Section 11, Township 8 South, Range 2 E,  
 in CLAY County, Kansas, 102 feet North 3000 feet West of Southeast corner of section.  
 Proposed Rate \_\_\_\_\_ Proposed Quantity \_\_\_\_\_  
 This point is:  Additional Well     Geo Center    List other water rights that will use this point NONE

11. Describe the current condition of and future plans for any point(s) of diversion which will no longer be used. 34,520 & 35,749

**IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY**

Water Resources  
 Received  
**JAN 16 2019**

**SCANNED**

12. The presently authorized use of water is for IRRIGATION purposes.

It is proposed that the use be changed to NO CHANGE purposes.

13. If changing the place of use and/or use made of water, describe how the consumptive use will not be increased.

NEW APPLICATIONS FILED WILL ENSURE NO INCREASE IN CONSUMPTIVE USE.

(Please show any calculations here.)

14. It is requested that the maximum annual quantity of water be reduced to \_\_\_\_\_ (acre-feet or million gallons).

15. It is requested that the maximum rate of diversion of water be reduced to \_\_\_\_\_ gallons per minute (\_\_\_\_\_ c.f.s.).

16. The application must include either a topographic map or detailed plat. A U.S. Geological Survey Topographic Map, scale 1:24,000, is available through the Kansas Geological Survey, 1930 Constant Avenue, University of Kansas, Lawrence, Kansas 66047-3726 ([www.usgs.gov](http://www.usgs.gov)). The map should show the location of the presently authorized point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. The presently authorized place of use should also be shown. Identify the center of the section, the section lines and the section corners and show the appropriate section, township, and range numbers on the map. In addition the following information must also be shown on the map.

a. If a change in the location of the point(s) of diversion is proposed, show:

- 1) The location of the proposed point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. Please be certain that the information shown on the map agrees with the information shown in Paragraph Nos. 9, 10 and 11 of the application.
- 2) If the source of supply is groundwater, please show the location of existing water wells of any kind, including domestic wells, within 1/2 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 1/2 mile, please indicate so on the map.
- 3) If the source of supply is surface water, the names and mailing addresses of all landowner(s) 1/2 mile downstream and 1/2 mile upstream from your property lines must be shown.

b. If a change in the place of use is desired, show the proposed place of use by crosshatching on the map. Please be certain that the information shown on the map agrees with the information shown in Paragraph No. 5 of the application.

17. Attach documentation to show the change(s) proposed herein will not impair existing water rights and relates to the same local source of supply as to which the water right relates. This information may include statements, plats, geology reports, well logs, test hole logs, and other information as necessary information to show the above. Additional comments may be made below.

ONE PUMP SITE IS MOVING LESS THAN 300 FEET. NO CHANGE IN SOURCE OF SUPPLY

18. If the proposed change(s) does not meet all applicable rules and regulations of the Kansas Water Appropriation Act, please identify the rules and regulations for which you request a waiver. State the reason why a waiver is needed and why the request should be granted. Attach documentation showing that granting the request will not impair existing water rights and will not prejudicially and unreasonably affect the public interest.

N/A

**IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY**

Water Resources  
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JAN 16 2019

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Any use of water that is not as authorized by the water right or permit to authorize water **before** the chief engineer approves this application is a violation of the Kansas Water Appropriation Act for which criminal or civil penalties may be assessed. Such violation is a class C misdemeanor, punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. K.S.A. 82a-728(b). Civil penalties shall be not less than \$100 nor more than \$1,000 per violation. In the case of a continuing violation, each day such violation continues may be deemed a separate violation. In addition to these penalties the water right may be modified or suspended. K.S.A. 82a-737, as amended.

The application must be signed by all owners of the place of use authorized under the water right and his or her spouse, if married. 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 separate copies of the application before any notary public conveniently available to them. All copies signed in this manner shall be considered to be valid parts of the application.

If the request is signed on behalf of any Owner by someone with legal authority to do so (for example, an agent, one who has power of attorney, or an executor, executrix, conservator), it will be necessary to attach proper documents showing such authority.

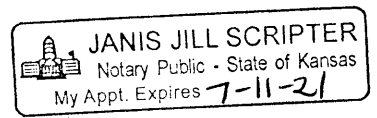
I declare that I am an owner of the currently authorized place of use as identified herein, or that I represent all such owners and am authorized to make this application on their behalf, and declare further that the statements contained herein are true, correct, and complete. By filing this application I authorize the chief engineer to permanently reduce the quantity of water and/or rate of diversion as specified in sections 14 and 15 of this application.

Dated at Clay Center, Kansas, this 14 day of January, 2019.

Robert J. Wietharn  
(Owner)  
Robert J Wietharn  
(Please Print)  
Elsie Mergler by Robert J. Wietharn  
(Owner)

Galen F Wietharn  
(Owner)  
Galen F. Wietharn  
(Please Print)

State of Kansas }  
County of Clay } SS



I hereby certify that the foregoing application was signed in my presence and sworn to before me this 14th day of January, 2019.

My Commission Expires 07/11/2021

Janis Jill Scripster  
Notary Public

**FEE SCHEDULE**

Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

- (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
- (4) Application to change the use made of the water ..... \$300

Make check payable to **Kansas Department of Agriculture.**

Water Resources  
Received

JAN 16 2019

SCANNED

## Krueger, Richelle [KDA]

---

**From:** Tietsort, Katie [KDA]  
**Sent:** Friday, April 19, 2019 8:00 AM  
**To:** Krueger, Richelle [KDA]  
**Cc:** Bunger, Brett [KDA]; Schemm, Doug [KDA]; Turney, Brent [KDA]  
**Subject:** RE: Request for Recommendation, Change in PD PU File Nos. 27121; 34520; 35,749 Change in PU File Nos. 37148; 41887; 49508; 49509 Wietharn

Good Morning,

If you are both confident that this final package represents what the intended project was and incorporates all of the modifications made along the way to address requirements of pumping these ponds and to incorporate the metering, I agree with both your recommendations for approval. The package does meet the regulations of the KWAA and is a new way to mitigate MDS on the Republican. Please include the overall map and the metering map with the package before it moves on. Doug- for the overall map, each PD should be labeled with the total quantity authorized on each PD and the sr vs jrs marked.

Have a great weekend, Katie

Katie Tietsort

Kansas Department of Agriculture  
6531 SE Forbes Ave Ste B  
Topeka, KS 66619  
[katie.tietsort@ks.gov](mailto:katie.tietsort@ks.gov)  
Phone 785-296-5733

---

**From:** Krueger, Richelle [KDA]  
**Sent:** Thursday, April 18, 2019 12:48 PM  
**To:** Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>  
**Cc:** Bunger, Brett [KDA] <Brett.Bunger@ks.gov>; Schemm, Doug [KDA] <Doug.Schemm@ks.gov>; Turney, Brent [KDA] <Brent.Turney@ks.gov>  
**Subject:** Request for Recommendation, Change in PD PU File Nos. 27121; 34520; 35,749 Change in PU File Nos. 37148; 41887; 49508; 49509 Wietharn

Hi Katie,  
Attached is a draft memo for the referenced changes, I think Doug and I have this figured out. Do you recommend approval of the referenced changes?  
Thanks,  
Richelle



## Krueger, Richelle [KDA]

---

**From:** Schemm, Doug [KDA]  
**Sent:** Monday, April 15, 2019 2:05 PM  
**To:** Krueger, Richelle [KDA]  
**Subject:** RE: Wietharn applications

Richelle,

I have worked through the questions and believe they are all answered except for #1.

---

**From:** Krueger, Richelle [KDA]  
**Sent:** Wednesday, April 10, 2019 9:05 AM  
**To:** Schemm, Doug [KDA] <Doug.Schemm@ks.gov>  
**Subject:** Wietharn applications

Hi Doug!

How's it going this morning? Pretty quiet here at the moment...Hey I have looked over the Wietharn changes and here are things I need to confirm..

- That he only wants the one pumpsite for File No. 50155 and 50156 at Lot 4 of Section 33, 3014'N and 3420'W of SE corner 33-7S-2E?
- Guess we need the two reservoir pds for File No 50183 confirmed? Yes, these are as shown on the new application.
- On the place of use description on the Elsie Mugler LLC Tract in 11-8S-2E based on the map and approval for File No. 49509 - the 30 acre tract should be in the SE¼ SW¼(Lot 7) not the SE¼ SE¼ correct? Yes, you are correct, should be SE SW qtr.
- The limitation on File No. 49508 will be modified to 327.6 acre-feet when combined with File Nos. 27,121, 34,520 and 35,749 to reflect the increase in acres to 273 acres (1.2 AF/AC)? Yes, agreed.
- A limitation on File No. 49509 will be added limiting it to 327.6 acre-feet when combined with File Nos. 27,121, 34,520; 35,749 and 49508 to reflect the increase in acres to 273 acres (1.2 AF/AC)? Yes, agreed.

I guess that's the questions I have, thanks as always, for your help!

Richelle

Topeka Field Office  
6531 SE Forbes Ave., Suite B  
Topeka, KS 66619



Phone: 785-296-5733  
Fax: 785-296-8298  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

GARY N & SARAH E GRIFFITHS FAMILY TRUST  
1601 2<sup>ND</sup> STREET  
CLAY CENTER KS 67432

Re: Pending New Applications, File Nos. 50,155; 50,156; and 50,183; and  
Change Applications, Water Right, File Nos. 27,121; 34,520; 35,749; 37,148; 41,887; 49,508; and 49,509

Dear Sir or Madam:

This is to advise you that Robert Wietharn has filed the pending new applications referred to above for permits to appropriate surface water for irrigation use. Application, File No. 50,155 is requesting 169.2 acre-feet of surface water per calendar year from the Republican River, for irrigation use to be diverted at a maximum rate of 3,000 gallons per minute from one pump site. Application, File No. 50,156 is requesting 339.07 acre-feet of surface water per calendar year from the Republican River, for irrigation use to be diverted at a maximum rate of 5,000 gallons per minute from two pump sites. This water will be used to fill two off-stream storage reservoirs. Application, File No. 50,183 is requesting to appropriate 235.5 acre-feet of surface water per calendar year at the rate of natural flows to be stored in two proposed reservoirs, and re-divert 235.5 acre-feet of the stored water for irrigation use. All of these applications are located in Section 33, Township 7 South, Range 2 East, Clay County, Kansas.

In conjunction with these new applications, Robert Wietharn has filed change applications proposing to modify both the points of diversion and place of use authorized under Water Right, File Nos. 27,121; 34,520; and 35,749; and modify the place of use under File Nos. 37,148; 41,887; 49,508 and 49,509.

Records in this office indicate that you own land along the stream in this vicinity and you are being notified of receipt of these applications in order that you may be fully informed of the proposed locations of the applicant's points of diversion and proposed use of water. Consideration will be given to comments or other information which you desire to submit to this office **within 15 days** from the date of this letter.

You can find the applications and site maps posted by the file numbers referenced above at:  
<http://agriculture.ks.gov/divisions-programs/dwr/water-appropriation/notices>

If you have any questions or comments, you may also contact me at (785) 296-3495. If you call, please reference the file number so I can help you more efficiently.

Sincerely,

A handwritten signature in black ink that reads "Doug Schemm".

Douglas Schemm  
Environmental Scientist  
Topeka Field Office

pc: Robert Wietharn

Topeka Field Office  
6531 SE Forbes Ave., Suite B  
Topeka, KS 66619



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Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

JANA L COTT TRUST  
1977 INDIAN ROAD  
CLAY CENTER KS 67432

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Sincerely,

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Douglas Schemm  
Environmental Scientist  
Topeka Field Office

pc: Robert Wietharn

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6531 SE Forbes Ave., Suite B  
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Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

RICHARD & JODY COTT  
1047 20<sup>TH</sup> ROAD  
CLAY CENTER KS 67432

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Douglas Schemm  
Environmental Scientist  
Topeka Field Office

pc: Robert Wietharn

Topeka Field Office  
6531 SE Forbes Ave., Suite B  
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Fax: 785-296-8298  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

CROSSVIEW PROPERTIES LLC  
1488 ELK ROAD  
CLAY CENTER KS 67432

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Douglas Schemm  
Environmental Scientist  
Topeka Field Office

pc: Robert Wietharn

Topeka Field Office  
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Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

BRETT & JENNA PFIZENMAIER  
1831 HACKBERRY ROAD  
CLAY CENTER KS 67432

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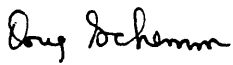
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If you have any questions or comments, you may also contact me at (785) 296-3495. If you call, please reference the file number so I can help you more efficiently.

Sincerely,

  
Douglas Schemm  
Environmental Scientist  
Topeka Field Office

pc: Robert Wietharn

Topeka Field Office  
6531 SE Forbes Ave., Suite B  
Topeka, KS 66619



Phone: 785-296-5733  
Fax: 785-296-8298  
[www.agriculture.ks.gov](http://www.agriculture.ks.gov)

Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

STEFANIE L GISSELBECK TRUST  
1933 INDIAN ROAD  
CLAY CENTER KS 67432

Re: Pending New Applications, File Nos. 50,155; 50,156; and 50,183; and  
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Douglas Schemm  
Environmental Scientist  
Topeka Field Office

pc: Robert Wietharn

Topeka Field Office  
6531 SE Forbes Ave., Suite B  
Topeka, KS 66619



Phone: 785-296-5733  
Fax: 785-296-8298  
www.agriculture.ks.gov

Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

CORALEE GRIFFITHS  
1042 LINCOLN AVE  
CLAY CENTER KS 67432

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Environmental Scientist  
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pc: Robert Wietharn



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Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

R & R COTT  
1047 20<sup>TH</sup> ROAD  
CLAY CENTER KS 67432

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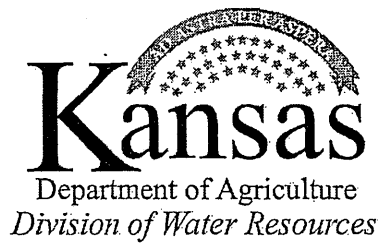
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Mike Beam, Acting Secretary

Laura Kelly, Governor

February 21, 2019

VIRGINIA COUPAL SMITH  
190 18 ROAD  
CLAY CENTER KS 67432

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Douglas Schemm  
Environmental Scientist  
Topeka Field Office

pc: Robert Wietharn

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, Interim Secretary

Laura Kelly, Governor

ROBERT J & DEBORAH A WIETHARN TRUSTS  
1925 KIOWA RD  
CLAY CENTER, KS 67432

January 18, 2019

RE: File No 27121

Dear Sir or Madam:

An application for approval of the Chief Engineer to change the following condition or conditions of the file number referred to above has been received:

- place of use            PU/PD
- point of diversion
- use made of water

As a matter of record, the Division of Water Resources has on hand a large number of applications awaiting processing. Therefore, to be fair to all concerned, and so that we can process those applications on hand in the order they were received, we intend to concentrate on the backlog of applications until the issue is resolved. You will be contacted regarding this application as soon as it has been examined.

In accordance with the provisions of the Kansas Water Appropriation Act, a portion of which is included below, the use of water prior to approval of the application is unlawful. You should not proceed and divert water as indicated by your plans in your application for a change for this file until you receive approval for this change from the Chief Engineer. Once approved, compliance with the terms, conditions and limitations of the permit is necessary. Conservation of the water resources of Kansas is required.

**Section 82a-728 of the Kansas Water Appropriation Act, provides (a) except for the appropriation of water for the purpose of domestic use, . . . it shall be unlawful for any person to appropriate or threaten to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the provisions of the Water Appropriation Act or for any person to violate any condition of a vested right, appropriation right or an approved application for a permit to appropriate water for beneficial use.**

**(b) (1) The violation of any provision of this section by any person is a class C misdemeanor...**

**A class C misdemeanor is punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. Each day that the violation occurs constitutes a separate offense.**

If you have any questions, please contact me at (785) 564-6645. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

Brent Tourney, L.G.  
Change Applications Unit Supervisor  
Water Appropriation Program

BAT: DLW

SCANNED

## Krueger, Richelle

---

**From:** Tietsort, Katie  
**Sent:** Monday, November 14, 2016 2:02 PM  
**To:** Krueger, Richelle  
**Subject:** Fwd: Request for Recommendation Changes in PD PU File Nos. 27121,34520 & 35749

Sent from my iPhone

Begin forwarded message:

**From:** "Tietsort, Katie" <Katie.Tietsort@ks.gov>  
**Date:** November 14, 2016 at 1:24:44 PM CST  
**To:** "Krueger, Richelle" <Richelle.Krueger@ks.gov>  
**Cc:** "Bunger, Brett" <Brett.Bunger@ks.gov>, "Turney, Brent" <Brent.Turney@ks.gov>  
**Subject:** Re: Request for Recommendation Changes in PD PU File Nos. 27121,34520 & 35749

Good Afternoon Richelle,

The Wietharn's are essentially requesting to mitigate prolonged MDS administration of the Republican River on their property. By moving/adding the downstream pump site, they can choose which properties/crops to pump to in the event of prolonged administration on the junior files. It is essentially a good business set up. As you mentioned we did previously approve a very similar set of change applications, which has allowed the senior water to be used on the "home place" properties. Bob is now asking to do the same on the south property he has acquired.

A couple things that have been specifically considered in these change package requests includes that this specific area and stretch of the Republican River has no intervening tributaries, which is pretty unique. Additionally, as you mention, there are a number of intervening water rights. However, this request will not physically create any impairment, because the majority of the rights are junior to MDS, so when this pump site is operated under the senior right, those rights will be under administration just like the junior right on this property. Where the senior right pumps from is not an issue because the quantity restricts the overall pumping under the senior files.

The TFO did field a call of concern from an adjacent owner, however after we explained the unique conditions on his stretch of the Republican River and how this was set up and how it would pump, he apparently agreed that it would not affect his water rights and chose not to provide written comment.

The TFO recommends approval of this package. Thank you for your significant work on this package.

Have a great day,  
Katie

Sent from my iPhone

On Nov 14, 2016, at 12:02 PM, Krueger, Richelle <Richelle.Krueger@ks.gov> wrote:

Hi Katie,

---

Attached is a draft memo for the referenced change in pd and pu for Wietharns, do you recommend approval?

Thanks,  
Richelle

<27121,34520,35749surfaceirrpdpumem.docx>

## **Krueger, Richelle**

---

**From:** Krueger, Richelle  
**Sent:** Wednesday, October 12, 2016 1:02 PM  
**To:** Tietsort, Katie  
**Cc:** Bunger, Brett; Turney, Brent; Letourneau, Lane  
**Subject:** RE: Applications to change the PD PU File Nos. 27121, 34520 and 35749 Wietharn

Hi Katie,  
Thanks for your help, I will get working on them!  
Richelle

---

**From:** Tietsort, Katie  
**Sent:** Wednesday, October 12, 2016 12:48 PM  
**To:** Krueger, Richelle  
**Cc:** Bunger, Brett; Turney, Brent; Letourneau, Lane  
**Subject:** RE: Applications to change the PD PU File Nos. 27121, 34520 and 35749 Wietharn

Hi Richelle,

I ran this package by Lane when Bob came to me with the request before it was drafted up in final form and went out and we agreed it met the same criteria as the package Wietharn did previously- Brent has all the file numbers for the references. It should be written up, processed and justified the exact same way.

- The incomplete overlap is justified by 5-5-11 because the south pumpsite cannot physically serve land up north.
- You guys can add whatever land limitations you wish.
- As I recall, the water right has been severed off the 2 acre tract owned by Cott. You can put that on your worksheet however you need to. The water right has no ownership by Cotts but they do own the two-acre tract. It doesn't matter how you guys want to put that in the computer it is clear in the hard files.
- The same local supply is not changed. There are no intervening perennially flowing streams.
- Nope. The senior files will keep on pumping and all the juniors require permission and only obtain permission when the flow is sufficient for all juniors. The proposed Republican Access District would make all this a non-issue too.

It is really just exactly like that last set of changes we did for Bob. You have a perfect example in those files so this should be smooth.

Thanks for working it up! I know Bob will appreciate it.

Katie

Katie Tietsort  
Water Commissioner, Topeka Field Office  
Kansas Department of Agriculture, Division of Water Resources  
6531 SE Forbes Ave, Ste B  
Topeka, KS 66619  
(785) 296-5733  
[Katie.Tietsort@ks.gov](mailto:Katie.Tietsort@ks.gov)

**From:** Krueger, Richelle  
**Sent:** Tuesday, October 11, 2016 2:28 PM  
**To:** Tietsort, Katie <Katie.Tietsort@ks.gov>  
**Cc:** Bunger, Brett <Brett.Bunger@ks.gov>; Turney, Brent <Brent.Turney@ks.gov>  
**Subject:** Applications to change the PD PU File Nos. 27121, 34520 and 35749 Wietharn

Hi Katie,

How's it going? Hey I have begun looking at the referenced changes and have some questions I thought I better clear with you before I proceed. As you probably recall, the package is proposing to add a pumpsite now authorized by File No. 49,509 and a place of use now authorized by File No. 49508 to File Nos. 27121; 34520 and 35749.

- It looks like the proposal will create an incomplete overlap in pu between File Nos. 49508 and File Nos. 27121; 34520 and 35749. What are the base acres for this package and are you comfortable that this complies with 5-5-11?
- I am thinking we will need to do an F&O on File No. 49,508 limiting it to 186 AF when combined with File Nos. 27121; 34520 and 35749 for irrigation on the land in 10-8-2E- do you agree?
- Do the Griffiths and Cotts still own that 2 acre overlap piece in the SW¼ NW¼ 28-7-2E as shown in WRIS, or did they sell it to Wietharn Investments, as indicated in Paragraph 4 A of the application? I didn't know if I was supposed to do an ownership change on that piece, or if I am supposed to get their signatures on the applications?
- Do you think the same local source of supply will not change?
- Do you think there are any issues with File Nos. 27121; 34520 and 35749 moving a pumpsite downstream of the junior priority pumpsites of File Nos. 44867/45544; 46836/47823/49154 and 47748, none under common ownership?

I know this is a complex project and do not want to add problems, so thought I better get your input. Thanks, as always, for your help!

Richelle

## WATER SHARING AGREEMENT

THIS AGREEMENT, Made and entered into this 27 day of February, 2014, by and between the WIETHARN INVESTMENTS, LLC, a Kansas limited liability company, hereinafter called the Owner; and ROBERT E. COTT, JANA L. COTT, RICHARD COTT, JODY COTT, GARY N. GRIFFITHS and SARAH E. GRIFFITHS, hereinafter collectively called the Users:

### 1. Rights Used.

WITNESSETH, That the Owner agrees to allow Users to use water rights held by Owner on their property in Section Twenty-eight (28) in Township Seven (7), Range Two (2) East of the 6th P.M., in Clay County, Kansas. The numbers of the water permits governed by this Agreement are: 39355, 27121, 34520, 35749, 48904, and 20870.

### 2. Terms of Use.

Users will be entitled to use said rights to irrigate their aforementioned property. Users agree to fully comply with the terms of use as set forth in the permits and established by the Kansas Water Office.

### 3. Termination of Agreement

Any party to this Agreement may terminate, for any reason, its involvement in this Agreement upon thirty (30) days notice to the other parties, in writing. Under all circumstances, the Owner shall continue to own the permits and rights in their entirety.

### 4. Assignment of Agreement.

No party to this Agreement shall have the authority to assign this Agreement, or any interest under this Agreement in and to said water rights.

### 5. Recording Agreement.

In the event either party desires to record this Agreement of record in the office of the Clay County Register of Deeds, said party recording same shall pay any fees associated with the filing.

### 6. Persons Bound.

This agreement shall be binding upon their heirs, executors, administrators, devisees, trustees, surviving joint tenants, and approved assigns of the parties hereto.

### 7. Entire Agreement.

WATER RESOURCES  
RECEIVED

MAR 05 2014

KS DEPT OF AGRICULTURE



This Agreement, represents the entire agreement between the parties, and any and all other agreements previously entered into by the parties regarding the use of these water rights is superseded by this Agreement.

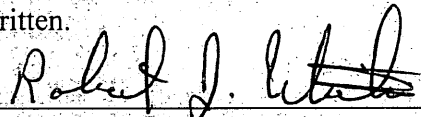
8. Severability.

The provisions of this Agreement are severable and in the event any provision, clause, sentence, section or part thereof is held to be invalid, illegal, unconstitutional, inapplicable or unenforceable to any person or circumstances, such invalidity, illegality, unconstitutionality, inapplicability or unenforceability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, parts of the Agreement or their application to the parties or other persons or circumstances. It is understood and agreed that the terms, conditions and covenants of this Agreement would have been made by both parties if such invalid, illegal, unconstitutional, inapplicable or unenforceable provision, sentence, clause, section or part had not been included therein to the extent that portion of this agreement may be invalid by striking of certain words or phrases, such words or phrases shall be deemed to be stricken and the remainder of the provisions and the remainder of the other portions of this Agreement shall remain in full force and effect. It is further agreed that this Agreement may be executed in counterparts, each of which when considered together shall constitute the original contract.

9. Choice of Law.

The parties agree that this is a binding contract and intend for it to be enforceable under the laws governing contracts in the state of Kansas. This entire contract shall be governed by the laws of the state of Kansas.

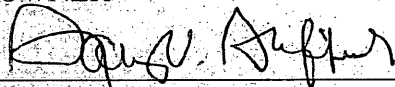
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year above written.



Wietham Investments, LLC

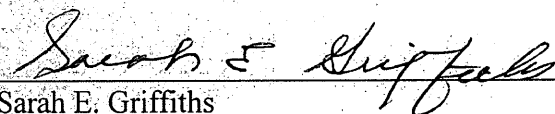
Robert Wietham, Member

OWNER



Gary N. Griffiths

USER



Sarah E. Griffiths

USER

SCANNED

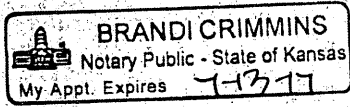
WATER RESOURCES  
RECEIVED

MAR 05 2014

KS DEPT OF AGRICULTURE







Brandi Crimmins  
Notary Public

My Appointment Expires: 7-13-17

WATER RESOURCES  
RECEIVED

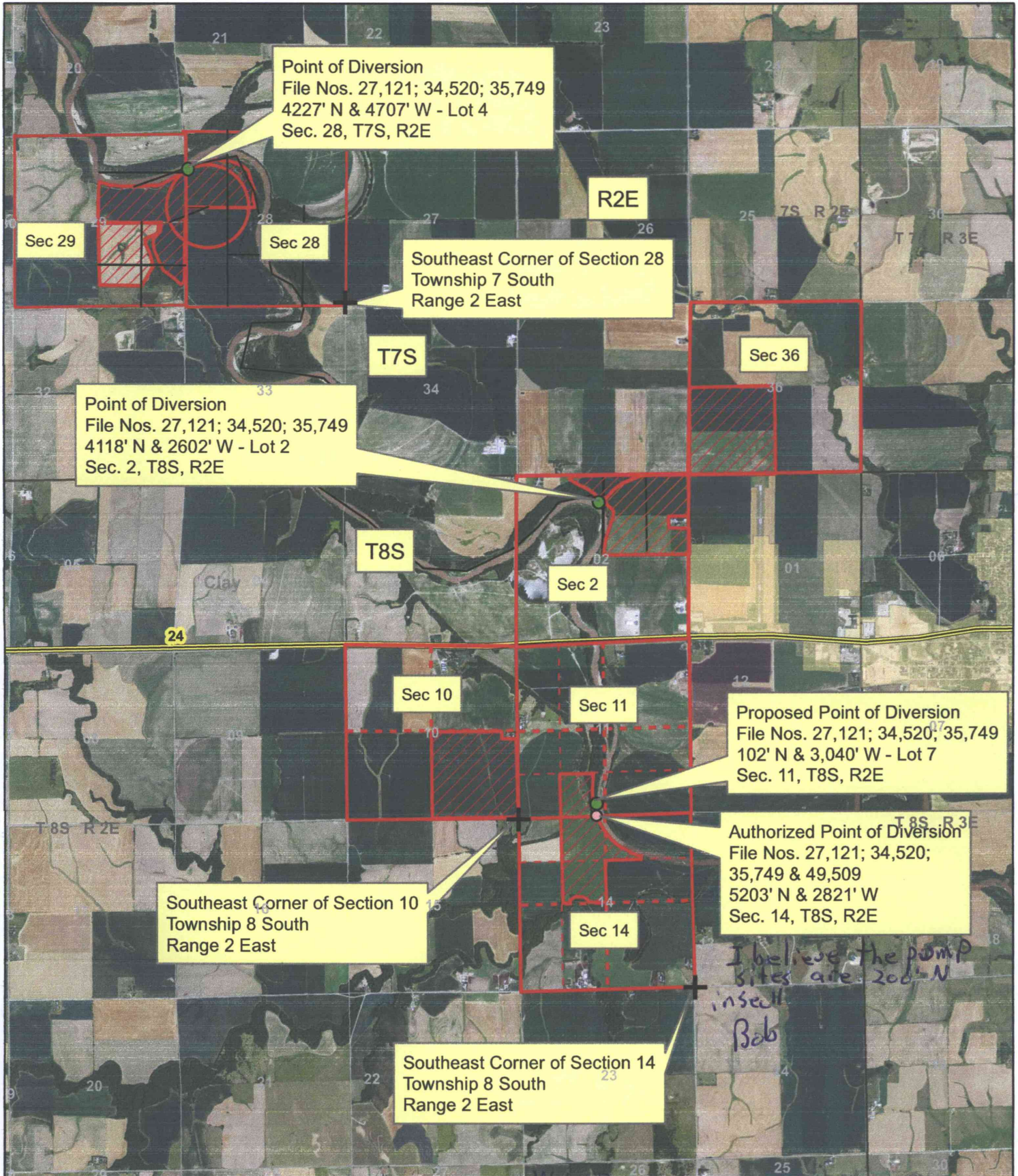
MAR 05 2014

KS DEPT OF AGRICULTURE

SCANNED



WIETHARN - FILE NOS. 27,121; 34,520; & 35,749  
 PROPOSED PLACE OF USE and POINTS OF DIVERSION



Point of Diversion  
 File Nos. 27,121; 34,520; 35,749  
 4227' N & 4707' W - Lot 4  
 Sec. 28, T7S, R2E

Southeast Corner of Section 28  
 Township 7 South  
 Range 2 East

Point of Diversion  
 File Nos. 27,121; 34,520; 35,749  
 4118' N & 2602' W - Lot 2  
 Sec. 2, T8S, R2E

Proposed Point of Diversion  
 File Nos. 27,121; 34,520; 35,749  
 102' N & 3,040' W - Lot 7  
 Sec. 11, T8S, R2E

Authorized Point of Diversion  
 File Nos. 27,121; 34,520;  
 35,749 & 49,509  
 5203' N & 2821' W  
 Sec. 14, T8S, R2E

Southeast Corner of Section 10  
 Township 8 South  
 Range 2 East

Southeast Corner of Section 14  
 Township 8 South  
 Range 2 East

*I believe the pump sites are 200' N insect Bob*

1:48,000



Proposed Place of Use



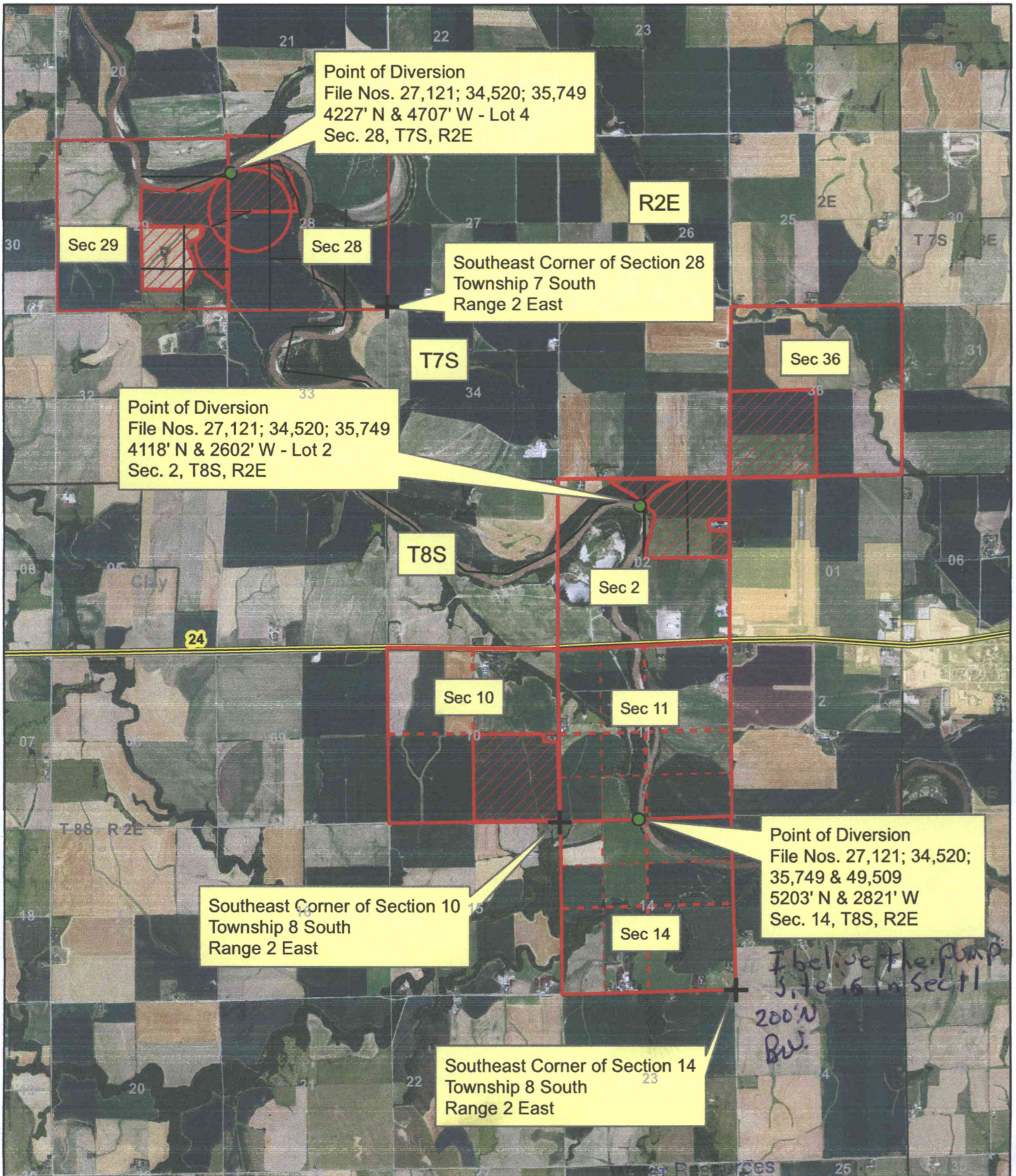
Proposed Point of Diversion

All Upstream and Downstream Landowners Adjacent to the stream have been identified.



JAN 16 2019



WIETHARN - FILE NOS. 27,121; 34,520; & 35,749  
 AUTHORIZED PLACE OF USE and POINTS OF DIVERSION



1:48,000

 Authorized Place of Use  
 Authorized Point of Diversion

Received  
 JAN 16 2019

KS Dept Of Agriculture **SCANNED**



