

NOTICE

This scan only represents the application as filed. The information contained herein meets the requirements of K.A.R. 5-3-1 or K.A.R. 5-5-1, and has been found acceptable for filing in the office of the Chief Engineer. The application should not be considered to be a complete application as per K.A.R. 5-3-1b or K.A.R. 5-5-2a.

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
11:24
KS Dept Of Agriculture

File No. 49,509

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

Address: 1925 KIOWA RD

City, State and Zip: CLAY CENTER, KS 67432

Phone Number: (785) 630-0611 OR 447-0671 E-mail address: 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): _____

PU Change will create an overlap with File Nos. 27,121; 34,520; 35,749; 49,508 and new applications.

The change(s) (was) (will be) completed by Spring 2019

(Date)

For Office Use Only:							
Code	<u>1</u>	<u>GMD</u>	Meets K.A.R. 5-5-1 (YES/NO)	Use	Source	County	By
	<u>CRU</u>		<u>(YES)</u>	<u>IRR</u>	<u>G</u>	<u>CLY</u>	<u>BAT</u>
			Fee \$	TR #	Receipt Date	Check #	Date
			<u>200.00</u>		<u>1/16/19</u>	<u>50000</u>	<u>1-16-19</u>

1/22/2019 CRU

4. The presently authorized place of use is:

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	30
14	8S	2E		11			39				38									88

List any other water rights that cover this place of use. NONE

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		

List any other water rights that cover this place of use. _____

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

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

Owner of Land 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; 50,156 & 50,183

Owner of Land — NAME: WIETHARN INVESTMENTS LLC %ROBERT WIETHARN – MANAGING MEMBER
 ADDRESS: 1925 KIOWA RD, 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														39	40			79

List any other water rights that cover this place of use. 27,121; 34,520; 35,749; 49,508; 50,156 & 50,183

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	30
14	8S	2E		11			39				38									88

List any other water rights that cover this place of use. 27,121; 34,520; 35,749; 49,508; 50,156 & 50,183

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

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

7. The proposed point(s) of diversion (is) (are) NO CHANGE
(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 _____ Quarter
 of Section _____, Township _____ South, Range _____ (E/W),
 in _____ County, Kansas, _____ feet North _____ 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 _____ (E/W),
 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 _____

9. **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 _____
 (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 _____ (E/W),
 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 _____

10. **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 _____
 (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 _____ (E/W),
 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 _____

11. Describe the current condition of and future plans for any point(s) of diversion which will no longer be used. _____

Water Resources

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

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

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

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

NEW APPLICATIONS WILL ENSURE NO INCREASE IN CONSUMPTIVE USE.

(Please show any calculations here.)

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

14. It is requested that the maximum rate of diversion of water be reduced to _____ gallons per minute (____ c.f.s.).

15. 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). 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.

16. 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.

SOURCE REMAINS THE SAME (REPUBLICAN RIVER)

17. 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

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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, 20 19.

Robert J. Wietharn
(Owner)

Deborah A. Wietharn
(Spouse)

Robert J. Wietharn
(Please Print)

Deborah A. Wietharn
(Please Print)

Clare Muehle LLC by Robert J. Wietharn
(Owner)

Deborah A. Wietharn
(Spouse)

(Please Print)

(Please Print)

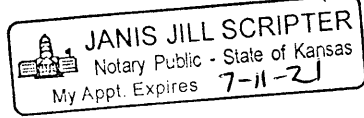
Galen F. Wietharn
(Owner)

Cleta Z. Wietharn
(Spouse)

Galen F. Wietharn
(Please Print)

Cleta Z. 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, 20 19.

My Commission Expires 07/11/2021.

Janis Jill Scripter
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.**

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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 **49509**

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
- 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...

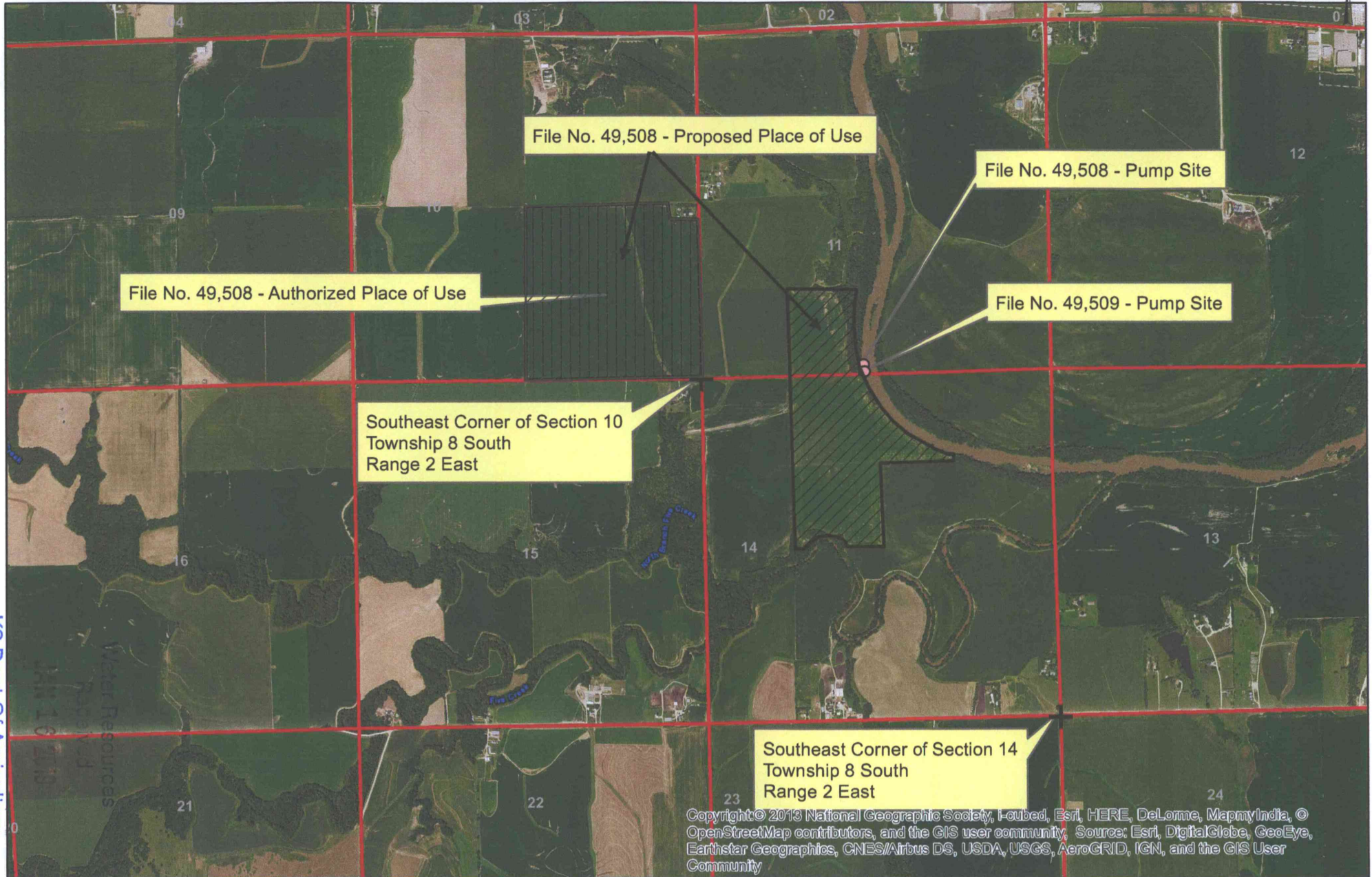
A class C misdemeanor is punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. Each day that the violation occurs constitutes a separate offense.

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 Tournay, L.G.
Change Applications Unit Supervisor
Water Appropriation Program

BAT: DLW



File No. 49,508 - Authorized Place of Use

File No. 49,508 - Proposed Place of Use

File No. 49,508 - Pump Site

File No. 49,509 - Pump Site

Southeast Corner of Section 10
Township 8 South
Range 2 East

Southeast Corner of Section 14
Township 8 South
Range 2 East

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KS Dept Of Agriculture



Proposed Place of Use



Authorized Place of Use

All upstream and downstream landowners adjacent to the stream within 1/2 mile of property lines have been identified.

WATER SHARING AGREEMENT

THIS AGREEMENT, Made and entered into this 26 day of December, 2018, by and between the WIETHARN INVESTMENTS, LLC, a Kansas limited liability company, hereinafter called the Owner; and Cleta Z. Wietharn Trust No. 1 Dated October 7, 1994 and the Galen F. Wietharn Trust No. 1 Dated October 7, 1994, 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 Ten (10) in Township Eight (8), Range Two (2) & Section Thirty-Six (36) 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) day 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.

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.

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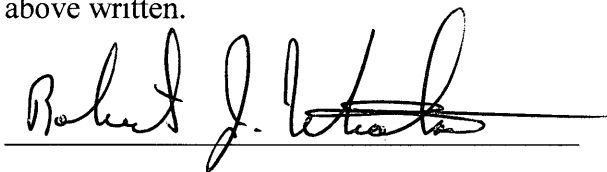
8. Severability.

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 laws of the state of Kansas.

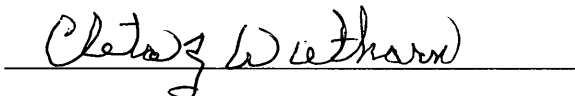
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year above written.



Wietharn Investments, LLC

Robert J. Wietharn, Member

OWNER



Cleta Z. Wietharn Trust No. 1 Dated October 7, 1994

Cleta Z. Wietharn

USER

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Galen F. Wietharn

Galen F. Wietharn Trust No. 1 Dated October 7, 1994

Galen F. Wietharn

USER

ACKNOWLEDGMENT

STATE OF KANSAS)

) ss:

COUNTY OF CLAY)



BE IT REMEMBERED, that on this 26th day of December, 2018, before me, a Notary Public in and for the County and State aforesaid, came **Robert J.**

Wietharn, Member of Wietharn Investments LLC, who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of same.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

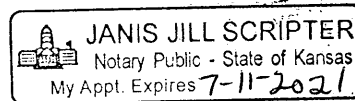
Janis Jill Scripter

My Appointment Expires: 7-11-2021

STATE OF KANSAS)

) ss:

COUNTY OF CLAY)



BE IT REMEMBERED, that on this 26th day of December, 2018, before me, a Notary Public in and for the County and State aforesaid, came **Cleta Z. Wietharn**,

who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of same.

Water Resources
Received

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KS Dept Of Agriculture

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal,
the day and year last above written.

Janis Jill Scriptor

My Appointment Expires: 7-11-2021

STATE OF KANSAS)

) ss:

COUNTY OF CLAY)



BE IT REMEMBERED, that on this 26th day of December, 2018, before me, a Notary Public in and for the County and State aforesaid, came **Galen F. Wietharn**, who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of same.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal,
the day and year last above written.

Janis Jill Scriptor

My Appointment Expires: 7-11-2021

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WATER SHARING AGREEMENT

THIS AGREEMENT, Made and entered into this 26 day of December, 2018, by and between the WIETHARN INVESTMENTS, LLC, a Kansas limited liability company, hereinafter called the Owner; and ELSIE MUGLER, LLC, 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 Sections Eleventh (11) and Fourteen (14) in Township Eight (8), 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) day 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.

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.

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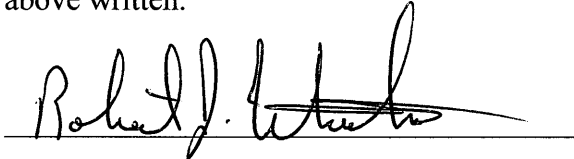
8. Severability.

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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 laws of the state of Kansas.

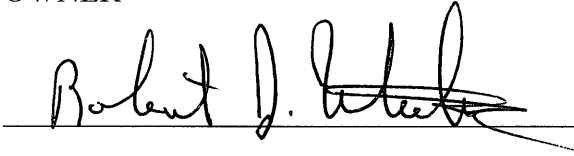
IN WITNESS WHEREOF, the parties have executed this agreement on the day and year above written.



Wietharn Investments, LLC

Robert J. Wietharn, Member

OWNER



Elsie Mugler, LLC

Robert J. Wietharn

USER

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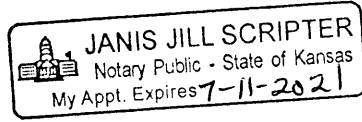
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ACKNOWLEDGMENT

STATE OF KANSAS)

) ss:

COUNTY OF CLAY)



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IT WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

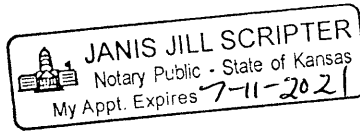
Janis Jill Scripster

My Appointment Expires: 7-11-2021

STATE OF KANSAS)

) ss:

COUNTY OF CLAY)



BE IT REMEMBERED, that on this 26th day of December, 2018, before me, a Notary Public in and for the County and State aforesaid, came **Robert J. Wietharn, User of Elsie Mugler, LLC**, who is personally known to me to be the same person who executed the above instrument and duly acknowledged the execution of same.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Janis Jill Scripster

My Appointment Expires: 7-11-2021

Water Resources
Received

JAN 16 2019