

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

1. File Number: 47,799	2. Status Change Date: 6/28/2021	3. Change Num: C2	4. Field Office: 01	5. GMD:
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6. Status: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied by DWR/GMD <input type="checkbox"/> Dismiss by Request/Failure to Return	7. Filing Date of Change: 25-FEB-2021
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8a. Applicant(s) <input type="checkbox"/> New to system <input type="checkbox"/> Person ID 54073 Add Seq# _____ FRAGER FARMS 2782 KING RD MORROWVILLE, KS 66958	8c. Landowner(s) <input type="checkbox"/> New to system <input type="checkbox"/> Person ID 60329 Add Seq# _____ BARBARA POPELKA 1440 260TH RD CUBA, KS 66940-8030
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8b. Landowner(s) <input type="checkbox"/> New to system <input type="checkbox"/> Person ID 54077 Add Seq# _____ TERRY L & SONJA FRAGER 2782 KING RD MORROWVILLE, KS 66958	8d. WUC <input type="checkbox"/> New to system <input type="checkbox"/> Person ID _____ Add Seq# _____ 8a.
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9. Documents and Enclosure(s): DWR Meter(s) Date to Comply: **12/31/22** N & P Date to Comply: _____

Anti-Reverse Meter Meter Seal Check Valve N & P Form Water Tube Driller Copy H & E Letter
 Conservation Plan Date Required: _____ Date Approved: _____ Date to Comply: _____

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

Date Prepared: **3/24/21** By: **DWS**
 Date Entered: **6/30/2021** By: **LMoody**

6/21/2021
Lireland

File No. **47,799** 11. County: **WS** Basin: MILL CREEK Stream: Formation Code: 330 Special Use:

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

MOD 78543 NW NW NE 14 1S 2E 3 5314 2216 Batt 1 of 2 NONE

MOD 79940 NW NW NE 14 1S 2E 4 5252 2428 Geo-Ctr

MOD 79941 NW NW NE 14 1S 2E 5 5190 2639 Batt 1 of 2

DEL 79942

NEW BATTERY ID #2248

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

14. Limitation: _____ gpm (_____ cfs) when combined with file number(s) _____
 Limitation: _____ gpm (_____ cfs) when combined with file number(s) _____

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

16. Place of Use CHK MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
						NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼				
ENT	52851	13	1	2E	1						35	40									75	8b.	NO	50,455	
MOD	52850	14	1	2E	2	21	35	39	25								34	39.5	38	11	242.5	8a.	NO	50,455	
MOD	59887	23	1	2E	1	5.5	39.5														45	8c.	NO	50,455	

Base Acres: Year: Minimum Reasonable Quantity: Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

MEMORANDUM

TO: Files

DATE: March 24, 2021

FROM: Doug Schemm

RE: New Application, File No. 50,455, and
Appropriation of Water, File No. 47,799

Fragar Farms has filed the referenced new application to appropriate 86.4 acre-feet of groundwater from a proposed battery of four wells at the rate of 800 gallons per minute for irrigation use in Washington County, within the Mill Creek Drainage Basin. There are no overlapping files in point of diversion; however, Appropriation of Water, File No. 47,799 will overlap in place of use after a change application is approved. The expanded place of use is owned by the applicant, Terry and Sonja Frager, and Barbara Popelka. The application has been signed by a representative of the applicant (Terry Frager) stating they have access to the point of diversion. The well battery is located in the Northeast Quarter of Section 14, Township 1 South, Range 2 East, in Washington County.

File No. 47,799 is authorized 342 acre-feet and File No. 50,455 has requested 86.4 acre-feet, for a total of 428.4 acre-feet. The proposed place of use covers 362.5 acres. The maximum allowable to irrigate the proposed 362.5 acres at 1.2 Acre-Feet per acre (maximum allowed in Washington County), would be 435 acre-feet. Therefore, no quantity limitation is required on the junior file since the total quantity of water is less than the maximum allowable.

As noted above, a Change in Place of Use Application has been filed on File No. 47,799 to create a complete overlap in place of use of 362.5 acres. The referenced right appears not to be abandoned as per K.S. A. 82a-718, and in compliance with K.S.A. 82a-732. In conjunction with the processing of File No. 50,455, the change application appears to comply with K.A.R. 5-5-2a, *Complete application*. The application for change was signed by Terry L& Sonja Frager, Gerry & Shirley Frager, and Barbara Popelka. The proposed change application complies with part 6 of K.A.R. 5-5-11, *Applications for change in place of use for irrigation purposes*, with the additional 86.4 acre-feet that will be authorized under File No. 50,455, will be sufficient to cover any potential increase in consumptive use, complying with K.A.R. 5-5-3, *Change in consumptive use*. The applicant proposes to create an exact overlap in the place of use between the two referenced files pursuant to K.A.R. 5-5-11(b)(1) *Identical places of use*.

The applicant did not identify any wells of any kind within one-half mile, so no notification letters are required. The nearest non-domestic well (File No. 47,799 also owned by the applicant) is located 2,682 feet away, which exceeds the minimum well spacing criteria to all existing non-domestic wells of 2,640 feet per the requirements in K.A.R. 5-4-4 for the unconfined Dakota aquifer system. The applicant owns all the irrigation wells within the 2-mile radius circle.

Per the definition in K.A.R. 5-1-1(iiii) the "Unconfined Dakota aquifer system" means that portion of the Dakota aquifer system not overlain by a confining layer in which the aquifer is in equilibrium with atmospheric pressure. The applicant has drilled multiple test holes and wells within the local area, and typically the well logs describe gray, brown and yellow clays (with some shallow sandstone units) extending to depths over 100 feet below ground surface, underlain by interbedded sandstone and clay layers extending to total depths of 400 feet below ground surface. The well log provided for nearby File No. 47,799 shows that there are two primary aquifers in this local area. A shallow sandstone formation between 145 feet and 163 feet below ground surface, and a deeper sandstone formation from 300 feet to 387 feet below ground surface. Static water level was listed at 131 feet below ground surface, which is a few feet above the top of the sandstone formation (145' depth). Since the static water level extends only a bit above the top of the aquifer, and all other nearby wells are sourcing the unconfined Dakota aquifer system, the aquifer is in equilibrium with atmospheric pressure (i.e. unconfined).

In addition, information regarding Washington County geology provided by the Kansas Geological Survey was reviewed to better define the extent of the unconfined Dakota aquifer system in this area. Based on this review, it appears that the unconfined Dakota aquifer system extends further to the north than had previously been indicated and also appears to be more continuous throughout this immediate area (i.e. less inter-fingering between the confined and unconfined Dakota aquifer systems). This preliminary review indicates that the aquifer is likely to receive more recharge than anticipated and safe yield quantities would also increase with a larger area of consideration.

Per K.A.R. 5-3-11, an evaluation of safe yield includes the entire 2-mile area of consideration around the point of diversion within the limits of the unconfined aquifer. The area of consideration shall not include any portion of the circle located outside the state of Kansas. For this specific file, based on area well logs, it appears that the unconfined Dakota aquifer system extends across the entire two-mile circle, providing an area of consideration of 8,042 acres. With a recharge of 3.3 inches, and 100% available for appropriation, this results in a safe yield of 2,211.68 acre-feet. There are multiple water rights within the area of consideration that have appropriated 2,120.2 acre-feet, leaving 91.48 acre-feet of water available. The new application is requesting 86.4 acre-feet, and the application meets safe yield.

This safe yield calculation is based on the extent of the unconfined Dakota aquifer system in this area, complies with K.A.R. 5-3-11 criteria for determination of safe yield, and is consistent with previous determination of safe yield for appropriations in this same aquifer.

In accordance with K.S.A. 82a-706c, the Chief Engineer retains full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R. 5-1-12. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

In a March 24, 2021 e-mail, Katie Tietsort, Water Commissioner, Topeka Field Office, recommended approval of the referenced applications. Based on the above discussion, well spacing and safe yield criteria are met, and approval of the new application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced new application be approved.

Based on the above discussion, that the change is reasonable, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, it is recommended that the change application also be approved, in conjunction with the pending new application listed above.

The approval under File No. 47799 will update the geographic center to that as determined by the August 2015 FIS for the two wells of the battery. Placing the GEO CTR in the NW NW NE approximately 5,252'N and 2,639'W of the SE corner of 14-1-2E, WS Co. LI/DWR 6/21/2021



Douglas W. Schemm
Environmental Scientist
Topeka Field Office

The updated well location that of the geo center under File No. 50,455 are approximately 2,716 feet apart. LI/DWR

ATTACHMENT "A"
FILE NO. 47799

Authorized Points of Diversion - Battery of 3 Wells

1 Well - (NW NW NE)	14-1-2E	5225'N & 2262'W	I.D.# 3
1 Well - (NW NW NE)	14-1-2E	5225'N & 2456'W	I.D.# 5
1 Well - (NW NW NE)	14-1-2E	5225'N & 2630'W	I.D.# 6
GEO CTR – (NW NW NE)	14-1-2E	5225'N & 2449'W	I.D.# 4

Actual Points of Diversion – Battery of 2 Wells

1 Well - (NW NW NE)	14-1-2E	5314'N & 2216'W	I.D.# 3
1 Well - (NW NW NE)	14-1-2E	5190'N & 2639'W	I.D.# 6
GEO CTR – (NW NW NE)	14-1-2E	5252'N & 2428'W	I.D.# 4

GPS DATA

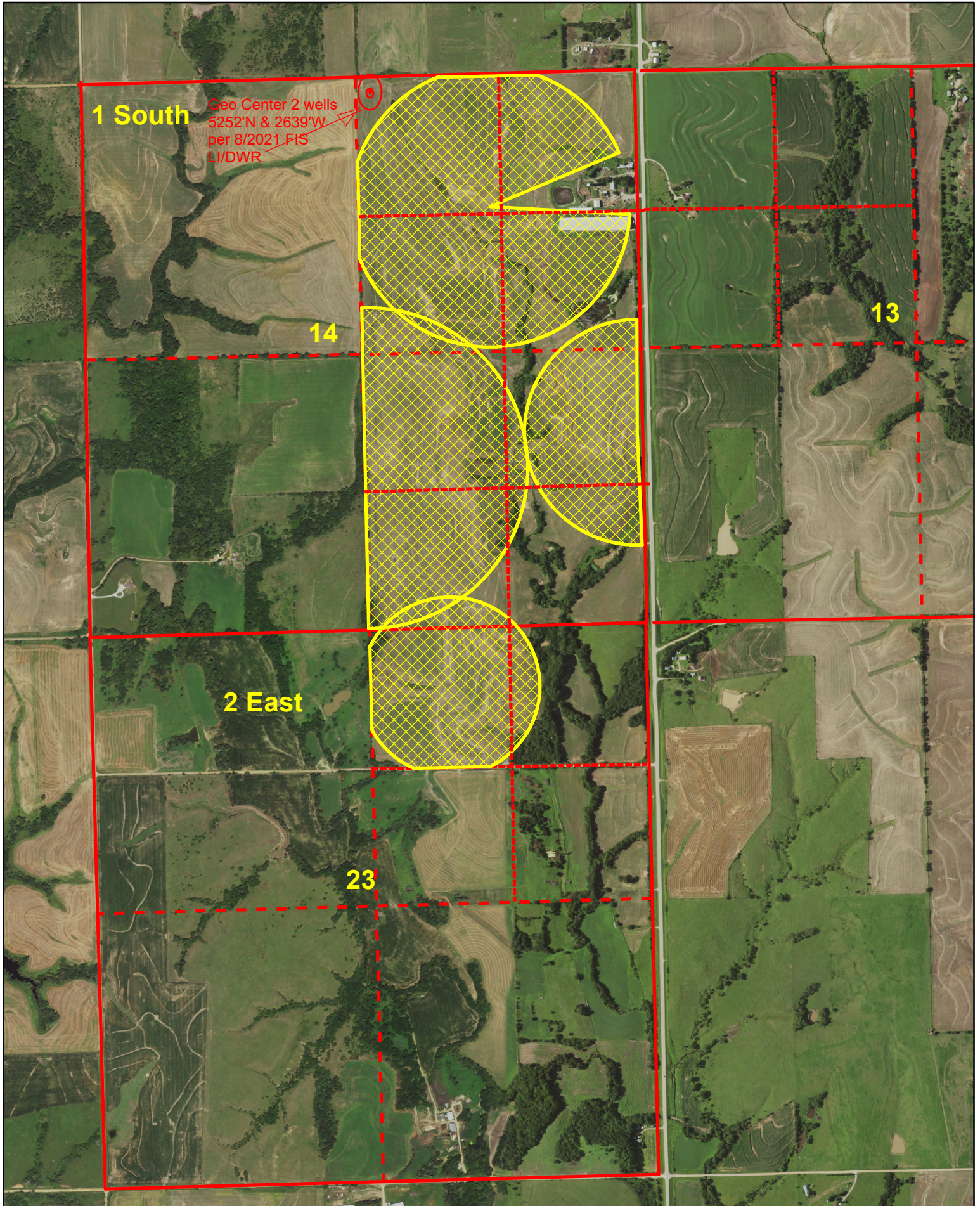
Well (ID#03) Latitude = 39.973730 Longitude = 97.170290

Well (ID#06) Latitude = 39.973390 Longitude = 97.171800

Difference between authorized & actual GEO CTR = 34 Feet

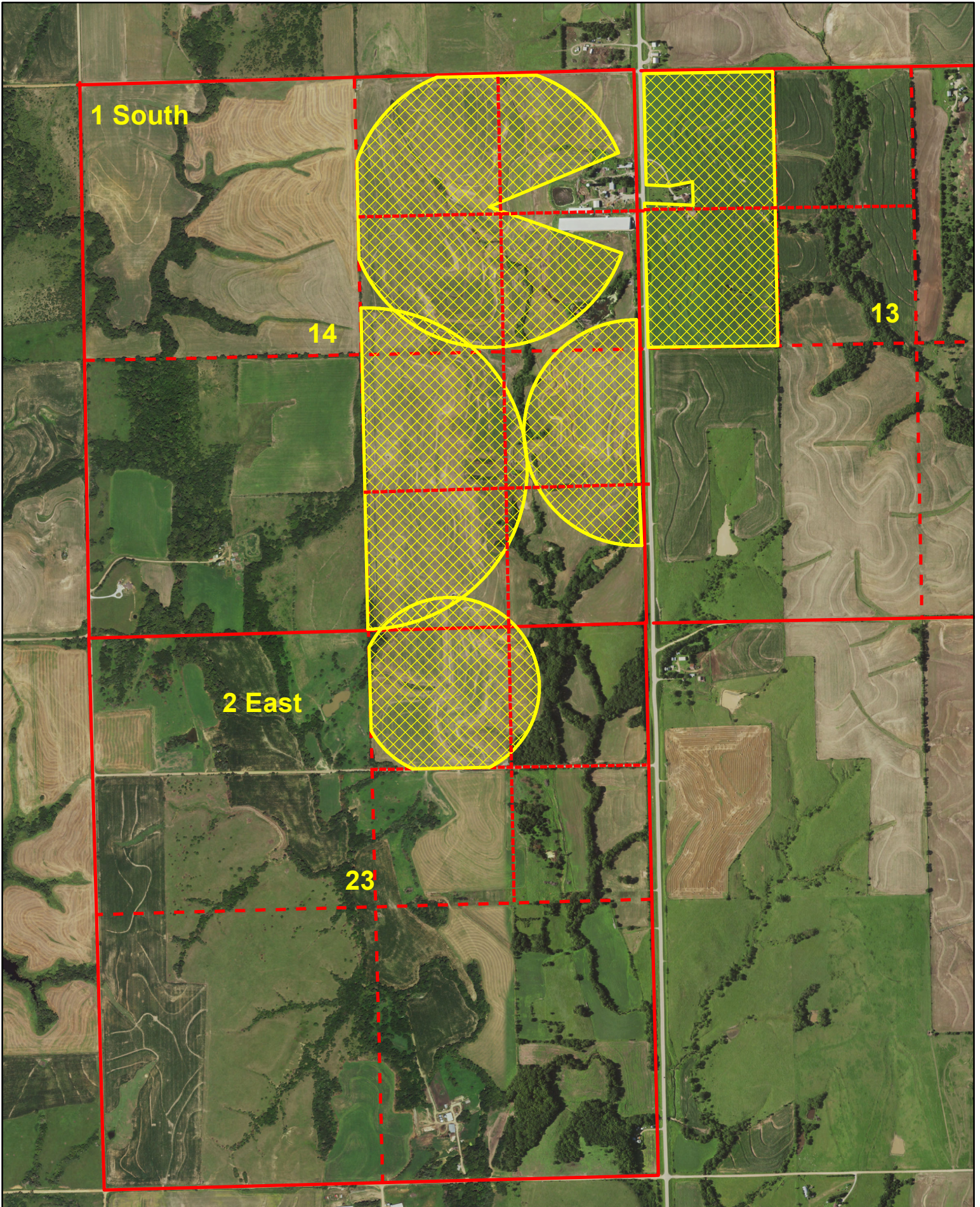
1:14,000

Authorized Place of Use File No. 47799



1:14,000

Revised Place of Use
File No. 50455



THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

APPROVAL OF APPLICATION FOR CHANGE IN PLACE OF USE AND ORDER BETTER DESCRIBING THE LOCATION OF THE AUTHORIZED POINT OF DIVERSION APPROPRIATION OF WATER, FILE NO. 47,799

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Terry and Sonja Frager, along with Gerry and Shirley Frager, on behalf of Frager Farms, 2782 King Road, Morrowville, Kansas 66958; and Barbara Popelka, 1440 260th Road, Cuba, Kansas, 66940-8030, received in this office on February 25, 2021, for approval of a change in the location of the place of use under the Approval of Application, File No. 47,799 for permit to appropriate water for beneficial use, as modified and amended by the Order of the Chief Engineer dated February 1, 2012, approving the application to change the point of diversion, finds that the change is reasonable and will not impair existing rights, and that the application should be and is hereby approved.

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

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
13	1S	2E					35.0	40.0											75.0
14	1S	2E	21.0	35.0	39.0	25.0								34.0	39.5	38.0	11.0	242.5	
23	1S	2E	5.5	39.5														45.0	

a total of 362.5 acres in Township 1 South, Range 2 East, Washington County, Kansas,

located substantially as shown on the map accompanying the application to change the place of use, and the location of the authorized point of diversion is more accurately described as:

a battery of two (2) wells with a geographic center located in the Northwest Quarter of the Northwest Quarter of the Northeast Quarter (NW¼ NW¼ NE¼) of Section 14, more particularly described as being near a point 5,252 feet North and 2,428 feet West of the Southeast corner of said section, in Township 1 South, Range 2 East, Washington County, Kansas.

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.

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

July 1, 2021

FRAGER FARMS
2782 KING RD
MORROWVILLE KS 66958

RE: Appropriation of Water, File Nos. 50,455 and 47,799

Dear Mr. Frager:

Enclosed is a permit (File No. 50,455) authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An acceptable water flowmeter must be installed on the diversion works authorized by this permit prior to using water. An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements. Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/divisions-programs/dwr.

In addition, enclosed is an Order executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the application for change under the above referenced file number (File No. 47,799). Your attention is directed to the enclosure and to the terms, conditions, and limitations specified in this approval for change. A condition of this approval is that an acceptable water flow meter must be installed on the diversion works authorized under the referenced file number. Please return the required notification of completion of the diversion works and/or installation of the required meter as soon as this action is completed.

Frager Farms
File Nos. 50,455 and 47,799
Page 2

If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,



Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB:dws:li

Enclosure(s)

pc: Topeka Field Office
Gerry & Shirley Frager
Barbara Popelka

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.

CERTIFICATE OF SERVICE

On this 1st day of July, 2021, I hereby certify that the attached Approval of Application for the Change in Place of Use and Order Better Describing the Location of the Authorized Point of Diversion, under Appropriation of Water, File No. 47,799, dated 28 June 2021 was mailed postage prepaid, first class, US mail to the following:

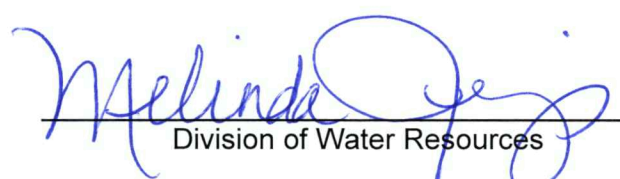
FRAGER FARMS
2782 KING RD
MORROWVILLE KS 66958

With photocopies to:

TERRY & SONJA FRAGER
2782 KING RD
MORROWVILLE KS 66958

BARBARA POPELKA
1440 260TH RD
CUBA KS 66940-8030

Topeka Field Office


Division of Water Resources