

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

1. File Number: 36485	2. Status Change Date: 2/11/2022	3. Change Num: C1	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: 4/21/21
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8a. Applicant(s) New to system <input checked="" type="checkbox"/> Person ID 63230 Add Seq# 1 FREE STATE GROWERS INC ATTN MARK ILLAUSKY 12819 189TH ST LINWOOD KS 66052	8c. Landowner(s) New to system <input checked="" type="checkbox"/> Person ID ???? Add Seq# 1 <div style="text-align: right; color: purple;">68224</div> JACKALEX LLC 240 W LAKESHORE DR LAKE QUIVIRA KS 66217
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8b. Landowner(s) New to system <input type="checkbox"/> Person ID 63230 Add Seq# 1 SAME AS 8A	8d. WUC New to system <input type="checkbox"/> Person ID 63230 Add Seq# 1 SAME AS 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: _____

WAIVER INCLUDED	Application Complete 2/9/2022 JDK	Date Prepared: 2/2/22 By: BLB/TFO Date Entered: 2/14/2022 By: LMoody
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File No. **36485** 11. County: **LEAVENWORTH** Basin: **STRANGER CREEK** Stream: Formation Code: Special Use:

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

MOD 4867 SE NE SE 14 12 21E 4 1600 155 WELL #3 NONE

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

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

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

16. Place of Use

CHK MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg?	Overlap Files
						NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼				
MOD	13502	14	12	21E	1																		8B	NO	23802 & 33368
ENT	???	14	12	21E																			8C	NO	NONE
	70722																								

Base Acres: Year: Minimum Reasonable Quantity:

Comments: **PUSE # 13502 - COMMENT = FREE STATE (S1/2 NE1/4) & (N1/2 SE1/4) NEW PUSE # ?? - COMMENT = JACKALEX(N1/2 SE1/4)**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
M E M O R A N D U M

TO: Files
FROM: Brett L. Bungler

DATE: February 3, 2022
RE: Water Right
File No. 36485

Free State Growers Inc., owner of the referenced water right, has filed an application for approval to change the place of use under the referenced water right.

During a compliance check on March 8, 2021, it was discovered that the facility had expanded to the South and went beyond the boundaries of the originally authorized place of use. Additional information acquired at this time indicated that the facility was completely destroyed by a tornado back on May 28, 2019. During the process of rebuilding, the owner installed a more efficient water system which at this point has only required the one well under 36485 to supply all the facilities needs. The owner further indicated that the two wells under File Nos. 23802 & 33368 are still inoperable and that if the one well will continue to supply the needs of the facility that they will ultimately abandon them. They indicated that they would like to have some time to insure that the one well is going to work. With the condition of the two wells under File Nos. 23802 & 33368, the owner did not want to spend the money on change applications which will cause an incomplete overlap in place of use upon approval of the change under 36485. After a meeting between the owner and Katie Tietsort, Water Commissioner, it was agreed that File Nos. 23802 & 33368 would be put under a Cease & Desist Order and a recommendation for waiver of K.A.R. 5-3-5n would be supported with approval of the change under File No. 36485.

Based on a review of the water use history, Water Right, File No. 36485 does not appear to be abandoned as per K.S.A. 82a-718.

A water flow meter is required. A check valve is required if any chemical or foreign substance is injected into the water.

Katie Tietsort, Water Commissioner, Topeka Field Office, recommended approval of the change application in an email dated February 3, 2022.

Brett L. Bungler
Assistant Water Commissioner
Topeka Field Office

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

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

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



STATE OF KANSAS

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

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

File No. 36485

RECEIVED
 2:01 p.m.
APR 21 2021

Topeka Field Office
 DIVISION OF WATER RESOURCES

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

Place of Use Point of Diversion

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

The source of supply is: Groundwater Surface water

2. Name and address of Applicant: Free State Growers Attn--Mark Illausky
12819 198th St Linwood, KS 66052

Phone Number: (913)461-9336 Email address: millausky@freestategrowers.com

Name and address of Water Use Correspondent: Same as applicant

Phone Number: () Email address: _____

3. The presently authorized place of use is:

Owner of Land ---- NAME: Free State Growers Inc.

ADDRESS: 12819 198th St Linwood, KS 66052

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

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES	
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼		
14	12	21			3.5	10.5										6	2			22

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

Owner of Land ---- NAME: Free State Growers Inc.

ADDRESS: 12819 198th St Linwood, KS 66052

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

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES	
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼		
14	12	21			5	11.5										7.5	3.5			27.5

For Office Use Only: Code cpu Fee \$ 200⁰⁰ TR # — Receipt Date 4/21/21 Check # 44757

5. **Presently authorized point of diversion:**
 One in the SE Quarter of the NE Quarter of the SE Quarter of Section 14, Township 12 South, Range 21 E, in LV County, Kansas, 1650 feet North 100 feet West of Southeast corner of section. Authorized Rate 75 gpm Authorized Quantity 48 AF Depth of well 60.5 (feet)
(DWR use only: Computer ID No. 4 GPS 39.004760, -95.038050 feet North _____ feet West)
 This point will not be changed This point will be changed as follows: No change, point better described with GPS as follows:
Proposed point of diversion: (Complete only if change is requested or if existing point is better described by GPS)
 One in the SE Quarter of the NE Quarter of the SE Quarter of Section 14, Township 12 South, Range 21 E, in LV County, Kansas, 1600 feet North 155 feet West of Southeast corner of section. Proposed Rate _____ Proposed Quantity _____ Proposed well depth (feet) _____.
 This point is: Additional Well Geo Center List other water rights that will use this point _____.

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

7. The changes herein are desired for the following reasons?
 (please be specific) To authorize area being used to stage plants and allow for watering

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

9. The change(s) (was)(will be) completed by?
Upon approval

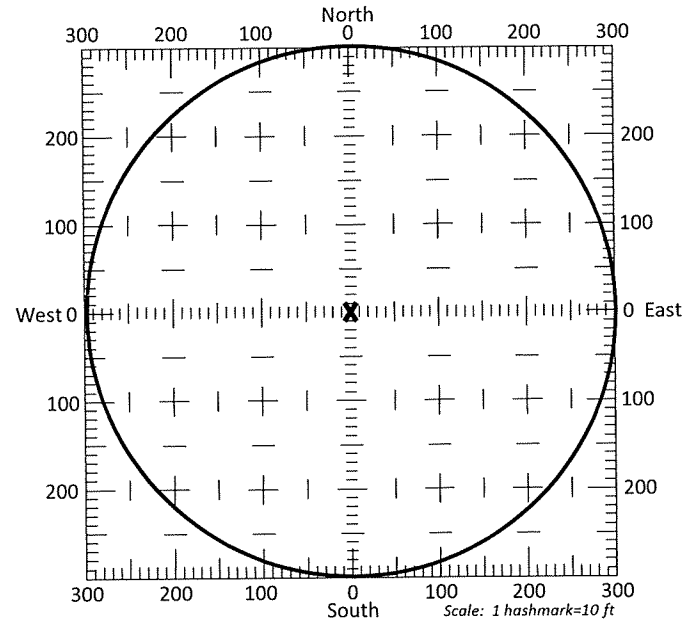
10. If the point of diversion is a well:
 (a) What are you going to do with the old well?

 (b) When will this be done? _____

11. Groundwater Management District recommendation attached?
 Yes No

12. Assisted by NRG _____

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



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

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

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

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

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

Dated at LINWOOD, Kansas, this 8th day of APRIL, 20 21.

[Signature]

 (Owner)

MARK P. JELLAUSKY

 (Please Print)

 (Owner)

 (Please Print)

 (Owner)

 (Please Print)

 (Spouse)

 (Please Print)

 (Spouse)

 (Please Print)

 (Spouse)

 (Please Print)

State of Kansas }
County of LEAVENWORTH } SS



I hereby certify that the foregoing application was signed in my presence and sworn to before me this 8th day of APRIL, 20 21.

[Signature]
Notary Public

My Commission Expires 4-23-2024.

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

FEE SCHEDULE

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

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

SUMMARY ORDER APPROVING APPLICATION FOR CHANGE AND IMPOSING CONDITIONS

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

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

Administrative Appeal and Effective Date of Order

If you are aggrieved by this order, pursuant to K.S.A. 82a-1901, you may request an evidentiary hearing before the Chief Engineer or request administrative review by the Secretary of Agriculture. A request for hearing by the Chief Engineer must be filed within **15 days** of service of this Order and a request for administrative review by the Secretary must be filed within **30 days** pursuant to K.S.A. 77-531. Any request for administrative review must state a basis for review pursuant to K.S.A. 77-527. File any request with **Kansas Department of Agriculture, Legal Division, 1320 Research Park Drive, Manhattan, KS 66502.** Failure to timely request a hearing or review may preclude review under the Kansas Judicial Review Act.

For Use by Register of Deeds

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

By: _____
Duly Authorized Designee of the Chief Engineer
(Print Name): _____
Division of Water Resources - Kansas Department of Agriculture
Date of Issuance: _____
State of Kansas _____)
County of _____) SS
Acknowledged before me on _____
by _____
Signature: _____
Notary Public
My commission expires: _____
(Notary Seal)

Free State Growers Inc

Scale: 1:12,000



APPLICATION FOR APPROVAL TO CHANGE
THE PLACE OF USE AND/OR POINT OF DIVERSION
SUPPLEMENTAL SHEET

FILE NO. 36485

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	

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

Owner of Land ---- NAME: JackAlex LLC
ADDRESS: 240 W Lakeshore Dr Lake Quivera, KS 66217

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	
																			6

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	

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
M E M O R A N D U M

TO: Files

DATE: February 2, 2022

FROM: Brett L. Bungler

RE: Water Right, File Nos. 23,802
& 33,368

On March 8, 2021, a compliance investigation to address a meter replacement was conducted for File No. 36,485, one of Free State Growers (FSG) Inc's three files that overlap in Place of Use. As a result of this investigation, it was discovered that the facility had expanded beyond the Place of Use authorized under its files. This investigation also included discussion of a tornado that occurred on May 28, 2019 that traveled through Linwood, KS and destroyed FSG's facility including its diversion works. Since the tornado, FSG has refurbished one well that is now their primary one, Well #3, which is authorized under File No. 36,485, and updated the facility's distribution system. This new system is substantially more efficient in terms of water use. The other two wells—2 & 4, authorized under File Nos. 23,802 & 33,368—remain unequipped. During a subsequent meeting with Katie Tietsort, Water Commissioner, Mark Illausky of FSG, and Nicole Gentry, it was decided that more time was needed to gage the water needs of the facility with this new situation since the tornado, and to determine whether the destroyed wells under the other two files will be needed. Therefore, a Place of Use Change is being completed for File No. 36,485 to bring its place of use into compliance and the other two overlapping files—23,802 & 33,368—are receiving Cease & Desist orders for wells 2 & 4 while FSG determines need for them. Once this is determined, the necessary changes and/or dismissals will be completed to achieve a compliant place of use. This will be decided within 5 years of the tornado to avoid concerns of abandonment.

Kansas Department of Agriculture
Division of Water Resources
WAIVER REQUEST & WAIVER RULE WORKSHEET

File Number: 36485

FO: 1

GMD:

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IRR	2/3/22	171	Statewide	Change Approval	Change Approval
Rule Number	Date Granted	Date Denied	Justification:	The May 28, 2019, tornado destroyed this facility. As part of the rebuilding process the owner refurbished the well under 36485 and constructed a more efficient water distribution system. Preliminary information indicates that the more efficient distribution system may have eliminated the need for the two wells under 23802 & 33368. The owner did not want to spend the money on change apps under 23802 & 33368 if they were not going to use them. Approval of the change in place of use application under 36485 will create an incomplete overlap. Katie Tietsort Water Commissioner recommended the waiver request in conjunction with Cease & Desist Orders under 23802 & 33368. This will give the owner time to assess the water needs of the recently reconstructed facility.	
K.A.R. 5-3-5n	2/11/2022				

WAIVER RULE (complete only if a new rule needs to be created):

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
171	STATEWIDE	CHG APPROVAL	INCOMPLETE OVERLAP	K.A.R. 5-3-5n	2/11/2022	

Application Complete
2/9/2022 JDK

Date Prepared 2/2/22 By BLB/TFO

Date Entered 2/14/2022 By LMoody

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

WAIVER OF REGULATION
K.A.R. 5-3-5n – Authorized Place of Use

Date: February 11, 2022.

Re: Water Right, File No. 36,485

1. During a March 8, 2021, compliance investigation for Water Right, File No. 36,485, it was observed that water was being applied to land not authorized under this water right.
2. That on April 21, 2021, the Chief Engineer received a DWR Field Office Application For Approval to Change the Place of Use pursuant to Water Right, File No. 36,485.
3. That K.A.R. 5-3-5n states in part, that the approval of any application for change shall describe the authorized place of use as either: land not authorized for beneficial use of water by any other water right or approval of application; or exactly the same land authorized for beneficial use of water by one or more prior approvals of applications or water rights.
4. That the facilities water rights under File Nos. 23,802, 33,368 & 36,485 currently authorize the same place of use. The change in place of use application under File No. 36,485, proposes to expand the authorized place of use to match the current boundaries of this facility.
5. As a result of the May 28, 2019, tornado this facility had to be completely reconstructed. During reconstruction a more efficient water system was installed. Preliminary information indicates that the refurbished well under File No. 36,485 is the only well that will be needed due to the more efficient system. Based on this information, the owner did not want to spend money on change applications for File Nos. 23,802 & 33,368 if they were not ever going to be used. The owner requested additional time to evaluate the facilities water needs and would file the proper change applications under File Nos. 23,802 & 33,368 should they need to be put back into operation. Approval of the change application under File No. 36,485 will create an incomplete overlap in place of use between the facilities water rights.
6. That in discussions with various DWR personnel it was determined that the place of use change application for Water Right, File No. 36,485 could be approved if a Cease and Desist Order is placed on Water Right, File Nos. 23,802 & 33,368 ordering that the diversion of water cease until the place of use issue is resolved.
7. That a waiver of K.A.R 5-3-5n will not prejudicially or unreasonably affect the public interest and no senior rights will be impaired by the proposed use.

Comments:



Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources

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 WATER RIGHT FILE NO. 36,485

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Mark P. Illausky on behalf of Free State Growers Inc., 12819 198th St, Linwood, Kansas 66052, received in this office on April 21, 2021, for approval of a change in the location of the place of use under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use as modified and amended by the Findings & Order of the Chief Engineer dated February 13, 1995, changing the use made of water to industrial use, 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 changes shall be the date this order is executed by the Chief Engineer, after which the authorized place of use shall be:

Industrial use at a facility located in the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) and the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 14, in Township 12 South, Range 21 East, Leavenworth County, Kansas,

located substantially as shown on the aerial photo accompanying the application to change the place of use, and the location of the authorized point of diversion shall be more accurately described as:

one (1) well located in the Southeast Quarter of the Northeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 14, more particularly described as being near a point 1,600 feet North and 155 feet West of the Southeast corner of said section, in Township 12 South, Range 21 East, Leavenworth County, Kansas.

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

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. 36,485, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated February 24, 1994, and as modified and amended by the aforementioned order.

Dated at Manhattan, Kansas, this 11th day of February, 2022.



Earl D. Lewis Jr.

Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 11th day of February, 2022, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Ashlee Freeman

Notary Public



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: Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, KS 66502, 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 hearing 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: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, KS 66502, 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.

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

February 14, 2022

FREE STATE GROWERS INC
ATTN MARK ILLAUSKY
12819 198TH ST
LINWOOD KS 66052

RE: Water Right, File No. 36485

Dear Mr. Illausky:

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

Your attention is directed to the enclosures 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, if not already installed. A list of certified water flowmeters can be obtained from our website at the following web address:

<http://agriculture.ks.gov/meters>

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

If you have any questions, please contact this 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,

A handwritten signature in blue ink that reads "Kristen A. Baum".

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

KAB:blb
Enclosure(s)

pc: Topeka Field Office
JackAlex LLC

CERTIFICATE OF SERVICE

On this *14* day of *February*, 2022, I hereby certify that the attached Approval of Application to Change the Authorized Place of Use, File No. 36,485, dated *11 February* 2022, was mailed postage prepaid, first class, US mail to the following:

FREE STATE GROWERS INC.
MARK P ILLAUSKY
12819 198th ST,
LINWOOD, KANSAS 66052

With photocopies to:

Topeka Field Office
JackAlex LLC



Staff