

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.

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OCT 22 2018
12:59
KS Dept Of Agriculture

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)

File No. 45,368

2. Name of applicant: MARK FITZGERALD MANAGER

Address: ~~101 WEST 4TH STREET~~ 10035 Rd 9

City, State and Zip: LIBERAL, KS. 67901

Phone Number: (620)629 1063 E-mail address: _____

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

Name of water use correspondent: FITZGERALD FARMS LLC

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Address: 101 WEST 4TH STREET

OCT 16 2018

City, State and Zip: LIBERAL, KS. 67901

Garden City Field Office
Division of Water Resources

Phone Number: (620 629 1063) E-mail address: _____

3. The change(s) proposed herein are desired for the following reasons (please be specific): This change is proposed to add the NW 1/4 of Section 10-34-33W, to this file under a rotation agreement. The rotation agreement will allow 240 acres to be irrigated each calendar year and will be monitored by GMD 3.

The change(s) (was) (will be) completed by _____ (Date)

For Office Use Only:					
F.O. Code	<u>4</u>	GMD	<u>3</u>	Meets K.A.R. 5-5-1 (YES / NO) Use	<u>100</u>
	<u>CPU</u>			Source	<u>G/S</u>
				County	<u>SN</u>
				By	<u>DAW</u>
				Date	<u>10/22/18</u>
				Fee \$	<u>200.00</u>
				TR #	
				Receipt Date	<u>10/22-18</u>
				Check #	<u>1440</u>

4. The presently authorized place of use is:

Owner of Land — NAME: FITZGERALD FARMS LLC

ADDRESS: ~~101 WEST 4TH STREET LIBERAL, KS. 67901~~ 10035 Rd Liberal KS

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	
9	34	33W	21.25	31.25	31.25	31.25													115
10	34	33W										31.25	31.25	31.25	31.25				125

List any other water rights that cover this place of use. 42291 , 45367

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: FITZGERALD FARMS LLC

ADDRESS: ~~101 WEST 4TH STREET LIBERAL, KS. 67901~~ 10035 Rd 9 Liberal KS

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	
9	34	33W	21.25	31.25	31.25	31.25													115
10	34	33W					31.25	31.25	31.25	31.25	31.25	31.25	31.25						250

List any other water rights that cover this place of use. 42291 , 45367

Owner of Land — NAME: Note: This is a rotation and a reversion agreement (see agreement) was set as follows:

ADDRESS: The proposed PU will revert to the original PU and acres stated below

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	
9	34	33W	21.25	31.25	31.25	31.25													115
10	34	33W										31.25	31.25	31.25	31.25				125

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

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.

The irrigation will not increase the base 240 acres under the rotation agreement

MEETS KAR 5-5-11

(Please show any calculations here.)

14. It is requested that the maximum annual quantity of water be reduced to no change (acre-feet or million gallons).

15. It is requested that the maximum rate of diversion of water be reduced to no change 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). 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.

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.

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Garden City Field Office
Division of Water Resources

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 Liberal, Kansas, this Thursday day of October, 20 18.

Mark Fitzgerald manager
(Owner)

Deceased
(Spouse)

Mark Fitzgerald MANAGER
(Please Print)

(Please Print)

(Owner)

(Spouse)

(Please Print)

(Please Print)

(Owner)

(Spouse)

(Please Print)

(Please Print)

State of Kansas }
County of Seward } SS

I hereby certify that the foregoing application was signed in my presence and sworn to before me this 11 day of October, 20 18.

My Commission Expires 12-12-18

ARRA BUSHAW
Notary Public
ARRA BUSHAW
Notary Public, State of Kansas
My Appointment Expires
12-12-18

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.**

STATEMENT OF REVIEW
under K.A.R. 5-5-11(b)(3), (4) and (5)
for a Point of Diversion located within GMD No. 3

The items listed below were reviewed by the undersigned person(s) at Liberal, Kansas, on this Thursday day of October, 2018. This review was related to the proposed *Change in Place of Use Under Water Right* for File No. 45368.

- (1) Water flow meters will be required on all wells authorized by the above-referenced file number. These flow meter(s) shall be properly installed and maintained on each well to the satisfaction of the Chief Engineer. The metered quantity of water diverted during the past year by each well shall be reported on the annual water use report required by law to be provided to the Division of Water Resources (Division).
- (2) Southwest Kansas Groundwater Management District No. 3 (GMD No. 3) will make at least one visit per calendar year to this farm. The purpose of this visit is to monitor the compliance with conditions under which this change will be approved, if granted. Reports of verification of compliance and status reports will be completed by GMD No. 3 and furnished to the Division.
- (3) The amount of water required to irrigate the acreage proposed under this change application has been reviewed. The five-year allocation, if required, has been reviewed and is understood to be -- _____ acre-feet. The five-year allocation is the quantity of water that will be authorized for diversion under this water right for each five-year period.
- (4) The approval of this application will be conditioned so that any use of water in excess of the five-year allocation will result in a two-year suspension of all water use under that water right and a subsequent restriction of the authorized place of use to a place of use equivalent to the base acres at a location specifically set forth on the change application approval.
- (5) For an application that proposes an increase in authorized acres solely for the purpose of rotation of the irrigated land within the authorized place of use, the base acres are 240 acres. The acres irrigated in any one calendar year shall not exceed 240 base acres each calendar year. The land to be irrigated will be certified to GMD No. 3 in writing before applying any water in that calendar year.
- (6) The approval of this application will be conditioned so that the use of water on more than the base acres certified to GMD No. 3 in any calendar year will result in a two-year suspension of all water use under this water right and a subsequent restriction of the authorized place of use equivalent to the base acres at a location specifically set forth on the change application approval.

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Garden City Field Office
Division of Water Resources

- (7) Changes in the Memorandum of Understanding between GMD No. 3 and the Division may affect the above-referenced files. If the Memorandum of Understanding related to K.A.R. 5-5-11 between the GMD No. 3 and the Division is rescinded because of the fault of GMD No. 3, the authorized place of use will revert to the equivalent of the base acres at a location specifically set forth in the change approval.

By signing below, I am indicating that I have reviewed and understand the items set forth above and agree that I am willing to abide by those conditions if my application for change in place of use is approved.

Mark Fitzgerald manager
Signature

Signature

Signature

Signature

State of Kansas)
County of _____)

I hereby certify that the foregoing document was signed in my presence and sworn before me this 11 day of October, 20 18.

Ann Bushen
Notary Public

My commission expires 12-12-18.

Signature, Division of Water Resources' Staff
Person Assisting in the Review

STATE OF KANSAS

DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES
GARDEN CITY FIELD OFFICE
2508 JOHNS STREET
GARDEN CITY, KS 67846-2804



PHONE: (620) 276-2901
FAX: (620) 276-9315
www.agriculture.ks.gov

GOVERNOR JEFF COLYER, M.D.
JACKIE McCLASKEY, SECRETARY OF AGRICULTURE

August 23, 2018

FITZGERALD FARMS LLC
RICHARD R YOXALL - RES AGENT
101 WEST 4TH STREET
LIBERAL KS 67901-3224

RE: Water Right, File No. 45368

Dear Mr. Fitzgerald:

This is a follow up letter from our conversation on August 22, 2018. You requested that an application be filed to change the place of use. Attached is that application. A \$200.00 filing fee is required to process the application.

Please review the application, map (make sure all wells have been plotted within one half mile of your irrigation well), and statement of review. If you agree, sign all. Whomever can sign for Fitzgerald farm, sign the application in the presence of a notary. Once all completed, make a check out to Kansas Department of Agriculture, and send all to the address located in the top left hand corner of the application. As we discussed, if approved, this rotation of acres would not start until calendar year 2019.

Thank you for your prompt attention to this resolved issue. If you have any questions please contact this office. Thank you again for your attention to this issue.

Sincerely,


Michael A. Meyer
Water Commissioner

MAM

Pc: gmd3

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Garden City Field Office
Division of Water Resources

STATE OF KANSAS

DEPARTMENT OF AGRICULTURE
1320 RESEARCH PARK DRIVE
MANHATTAN, KS 66502
PHONE: (785) 564-6700
FAX: (785) 564-6777

900 SW JACKSON, ROOM 456
TOPEKA, KS 66612
PHONE: (785) 296-3556
www.agriculture.ks.gov



GOVERNOR JEFF COLYER, M.D.
JACKIE McCLASKEY, SECRETARY OF AGRICULTURE

MARK FITZGERALD, MANAGER
10035 RD 9
LIBERAL, KS 67901

October 24, 2018

RE: File No 45368

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.

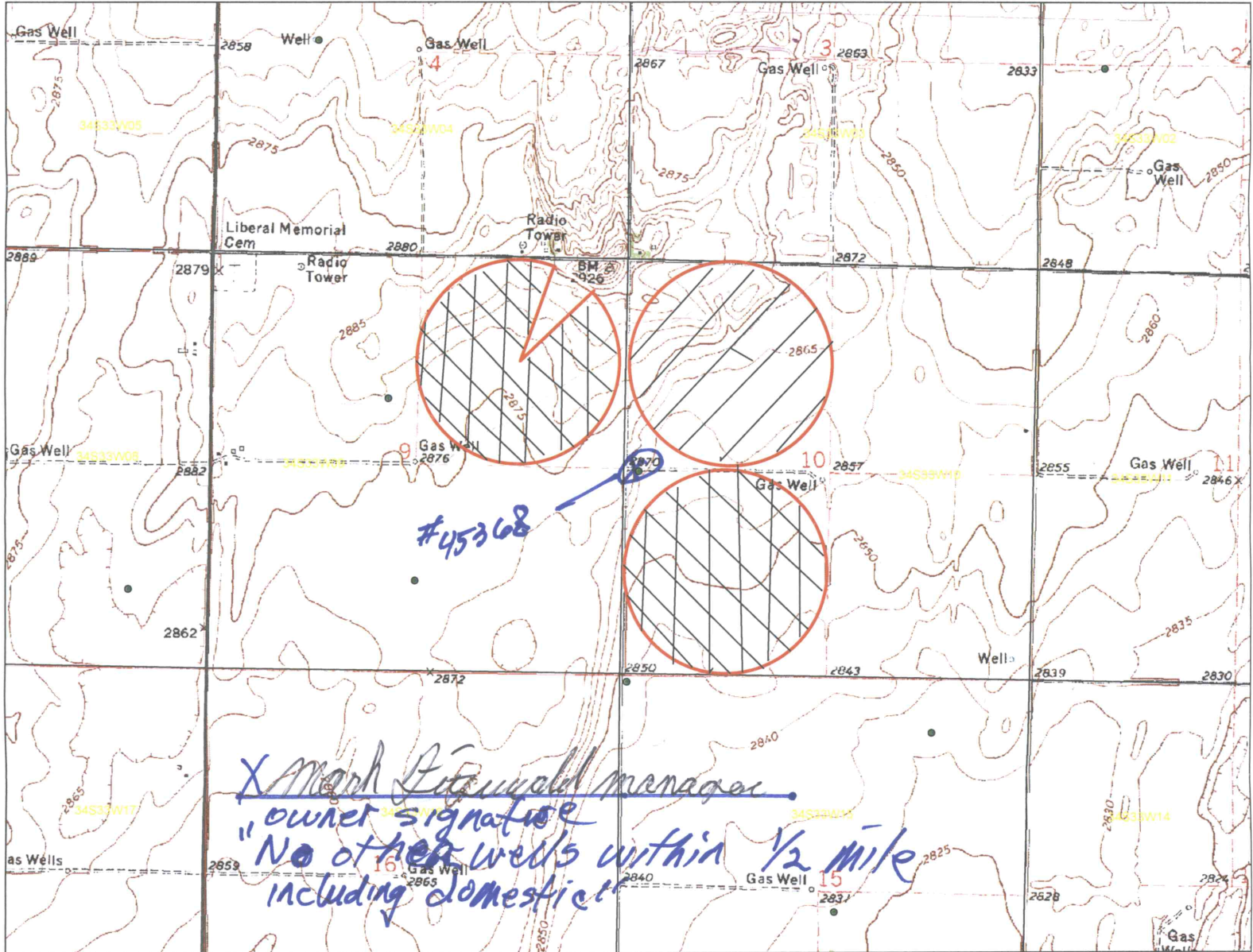
If you have any questions, please contact me at (785) 564-6645. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

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

BAT: DLW
pc: GARDEN CITY Field Office GMD3

Place of Use Change (Rotation)
 File No(s). 45368
 T34 R33 Seward Co.



(2006 Scaled air photo)

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Garden City Field Office
 Division of Water Resources

- Authorized PD
- Requested PD
- Point of Diversion



- Authorized PU
- Requested PU
- Reversion PU acres

