

FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway, Suite 100  
Wichita, KS 67206-4466  
316-267-6371

IN THE DISTRICT COURT OF GOVE COUNTY, KANSAS,  
TWENTY-THIRD JUDICIAL DISTRICT

JON and ANN FRIESEN; FRIESEN FARMS, LLC; )  
DOYLE SADDLER; 1885 ENTERPRISES, LLC; JUSTIN )  
SLOAN; TOM SLOAN; BERT STRAMEL; STRAMEL )  
FARMS, INC.; FRED ALBERS; MARVIN ALBERS; FRANK )  
BOUITS; DENISE J. BURROWS, TRUSTEE OF THE )  
CHARLES SCHROEDER FAMILY TRUST; GARY E. )  
COOPER; ELFRIEDE U. COOPER; GARY E. COOPER, )  
TRUSTEE OF THE GARY E. COOPER AND MARY )  
PAWLUS TRUSTS; COOPER GRAIN, INC.; CAMERON )  
EPARD; F. DOYLE FAIR, TRUSTEE OF THE A.L. ) Case No. 2018-CV-000010  
ABERCROMBIE MARITAL TRUST; LOIS L. FERGUSON; )  
BRYAN FRAHM; MEADOW LAKE FARMS, INC.; LON )  
FRAHM; FRAHM FARMLAND, INC.; LON FRAHM, )  
TRUSTEE OF THE PEGGY FRAHM EVANS TRUST; )  
SHEILA FRAHM; JAMES FRITZ; VINCENT V. GLAD and )  
TENLEY S. GLAD, doing business as GLAD FARMS; PAT J. )  
HAFFNER; WILBURN HOLLOWAY; DAVID HOUSTON; )  
DOUGLAS IRVIN; IRVIN FARMS, INC.; SHARON K. )  
MANN; JOHN P. McKENNA; BRENT MERANDA; )  
BERWYN PETERSEN; S.Q.I. FARMS, INC.; PAUL STEELE; )  
RICHARD A. STEFAN; JOSEPH G. WALDMAN; DENNIS )  
WALKER; WALKER TESTING CO., INC.; KEVIN W. )  
WARK; WARK PROPERTIES, LLC; PRAIRIE DOG )  
PROPERTIES, LLC; KEVIN W. WARK, TRUSTEE OF THE )  
BERRIE FAMILY TRUST; KEVIN W. WARK, TRUSTEE OF )  
THE FLIPSE LIVING TRUST; DARREL E. WARK; DANIEL )  
WAYAND; WENDY WEISHAAR; and DONALD RALL; )  
)

	Plaintiffs,	)
vs.		)
		)
	DAVID BARFIELD, P.E., THE CHIEF ENGINEER OF THE	)
	THE STATE OF KANSAS, DEPARTMENT OF	)
	AGRICULTURE, DIVISION OF WATER	)
	RESOURCES, in his official capacity,	)
		)
	Defendant.	)
		)

---

PURSUANT TO K.S.A. CHAPTER 77

**FIRST AMENDED  
PETITION FOR JUDICIAL REVIEW**

Come now the Plaintiffs, by and through their attorney, David M. Traster of Foulston Siefkin LLP, Wichita, Kansas, pursuant to K.S.A. 77-614(c) and K.S.A. 60-215(a)(B), and for their cause of action against the Defendant, allege and state as follows:

**The Parties**

1. Plaintiffs, Jon and Ann Friesen, are residents of Thomas County, Kansas, residing at 2267 County Road K, Colby, Kansas 67701 and own or hold an interest in agricultural land and water rights in Thomas County.
  
2. Plaintiff, Friesen Farms, LLC, is a Kansas limited liability company, active and in good standing in the State of Kansas, with a registered office located at 2267 County Road K, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

3. Plaintiff, Doyle Saddler, is a resident of Thomas County, Kansas, residing at 1375 County Road 25, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

4. Plaintiff, 1885 Enterprises, LLC, is a Kansas limited liability company, active and in good standing in the State of Kansas, with a registered office located at 1375 County Road 26, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

5. Plaintiff, Justin Sloan, is a resident of Thomas County, Kansas, residing at 1925 County Road 23, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

6. Plaintiff, Tom Sloan, is a resident of Thomas County, Kansas, residing at 545 Woofter Ave., Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

7. Plaintiff, Bert Stramel, is a resident of Thomas County, Kansas, residing at 1267 Highway K25, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

8. Plaintiff, Stramel Farms, Inc., is a Kansas for-profit corporation, active and in good standing in the State of Kansas, with a registered office located at Rt. 1, Box 22, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

9. Plaintiff, Fred Albers, is a resident of Thomas County, Kansas, residing at 2091 Rd. 34, Rexford, Kansas 67753 and owns or holds an interest in agricultural land and water rights in Thomas and Sheridan Counties.

10. Plaintiff, Marvin Albers, is a resident of Thomas County, Kansas, residing at 744 County Road 31, Oakley, Kansas 67748 and owns or holds an interest in agricultural land and water rights in Thomas County.

11. Plaintiff, Frank Bouts, is a resident of Sheridan County, Kansas, residing at 210 West Main Street, Selden, Kansas 67757 and owns or holds an interest in agricultural land and water rights in Sheridan County.

12. Plaintiff, Denise J. Burrows, Trustee of the Charles W. Schroeder Family Trust, is a resident of Arapahoe County, Colorado, residing at 20606 E. Ida Circle, Centennial, Colorado 80015 and owns or holds an interest in agricultural land and water rights in Thomas County.

13. Plaintiff, Gary E. Cooper, is a resident of Thomas County, Kansas, residing at 730 Woofter Ave., Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

14. Plaintiff, Elfriede U. Cooper, is a resident of Thomas County, Kansas, residing at 730 Woofter Ave., Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

15. Plaintiff, Gary E. Cooper, Trustee of the Gary E. Cooper and Mary Pawlus Trusts, is a resident of Thomas County, Kansas, residing at 730 Woofter Ave., Colby, Kansas and owns or holds an interest in agricultural land and water rights in Thomas and Sherman Counties.

16. Plaintiff, Cooper Grain, Inc., is a Kansas for-profit corporation, active and in good standing in the State of Kansas, with a registered office located at 465 E. 8th, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

17. Plaintiff, Cameron Epard, is a resident of Maricopa County, Arizona, residing at 18171 N. 99th St., Scottsdale, Arizona 85255 and owns or holds an interest in agricultural land and water rights in Thomas County.

18. Plaintiff, F. Doyle Fair, Trustee of the A.L. Abercrombie Marital Trust, is a resident of Sedgwick County, Kansas, residing at 7309 E. 21st N. #140, Wichita, Kansas 67206 and owns or holds an interest in agricultural land and water rights in Sheridan County.

19. Plaintiff, Lois L. Ferguson, is a resident of Denver County, Colorado, residing at 760 York Street, Denver, Colorado 80206 and owns or holds an interest in agricultural land and water rights in Thomas County.

20. Plaintiff, Bryan Frahm, is a resident of Thomas County, Kansas, residing at 375 S. Range Ave., Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

21. Plaintiff, Meadow Lake Farms, Inc., is a Kansas for-profit corporation, active and in good standing in the State of Kansas, with a registered office located at 375 S. Range Ave., Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

22. Plaintiff, Lon Frahm, is a resident of Thomas County, Kansas, residing at 375 S. Range Ave., Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Logan, Sherman, and Thomas Counties.

23. Plaintiff, Frahm Farmland, is a Kansas for-profit corporation, active and in good standing in the State of Kansas, with a registered office located at 135 West 6th, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Sherman County.

24. Plaintiff, Lon Frahm, Trustee of the Peggy Frahm Evans Trust, is a resident of Thomas County, Kansas, residing at 375 S. Range Ave., Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

25. Plaintiff, Sheila Frahm, is a resident of Pima County, Arizona, residing at 2149 W. Escondido Canyon Drive, Green Valley, Arizona 85622 and owns or holds an interest in agricultural land and water rights in Thomas County.

26. Plaintiff, James Fritz, is a resident of Sherman County, Kansas, residing at 7102 Road 8, Goodland, Kansas 67735 and owns or holds an interest in agricultural land and water rights in Sherman County.

27. Plaintiffs, Vincent V. Glad and Tenley S. Glad, doing business as Glad Farms, are residents of Thomas County, Kansas, residing at 935 South Range Ave., Colby, Kansas 67701 and own or hold an interest in agricultural land and water rights in Thomas County.

28. Plaintiff, Pat J. Haffner, is a resident of Sheridan County, Kansas, residing at 7380 E. Road 105, Hoxie, Kansas 67740 and owns or holds an interest in agricultural land and water rights in Sheridan County.

29. Plaintiff, Wilburn Holloway, is a resident of Thomas County, Kansas, residing at 2266 County Road 12, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

30. Plaintiff, David Houston, is a resident of Lyon County, Kansas, residing at 1821 Road 330, Reading, Kansas 66868 and owns or holds an interest in agricultural land and water rights in Thomas County.

31. Plaintiff, Douglas Irvin, is a resident of Thomas County, Kansas, residing at 915 Fountainview Ct., Goodland, Kansas 67735 and owns or holds an interest in agricultural land and water rights in Sherman County.

32. Plaintiff, Irvin Farms, Inc., is a Kansas for-profit corporation, active and in good standing in the State of Kansas, with a registered office located at 923 Arcade, Goodland, Kansas 67735 and owns or holds an interest in agricultural land and water rights in Sherman County.

33. Plaintiff, Sharon K. Mann, is a resident of Sherman County, Kansas, residing at 1411 Arcade Ave., Goodland, Kansas 67735 and owns or holds an interest in agricultural land and water rights in Sherman County.

34. Plaintiff, John P. McKenna, is a resident of Decatur County, Kansas, residing at #11-2500th Rd., Jennings, Kansas 67643 and owns or holds an interest in agricultural land and water rights in Sheridan County.

35. Plaintiff, Brent Meranda, is a resident of Gove County, Kansas, residing at 8020 County Road BB, Quinter, Kansas 67752 and owns or holds an interest in agricultural land and water rights in Gove County.

36. Plaintiff, Berwyn Petersen, is a resident of Thayer County, Nebraska, residing at 235 N. 6th Street, Hebron, Nebraska 68370 and owns or holds an interest in agricultural land and water rights in Thomas County.

37. Plaintiff, S.Q.I. Farms, Inc., is a foreign for-profit corporation, active and in good standing in the State of Kansas, with a registered office located at 214 E. 10th Street, Goodland, Kansas 67735 and owns or holds an interest in agricultural land and water rights in Thomas County.



38. Plaintiff, Paul Steele, is a resident of Thomas County, Kansas, residing at 965 Prairie View, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

39. Plaintiff, Richard A. Stefan, is a resident of Thomas County, Kansas, residing at 615 North Chikanmauga, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Sherman County.

40. Plaintiff, Joseph G. Waldman, is a resident of Gove County, Kansas, residing at 5853 County Road Y, Park, Kansas 67751 and owns or holds an interest in agricultural land and water rights in Gove County.

41. Plaintiff, Dennis Walker, is a resident of Sheridan County, Kansas, residing at 501 13th St., Hoxie, Kansas 66740 and owns or holds an interest in agricultural land and water rights in Sheridan County.

42. Plaintiff, Walker Testing Co., Inc., is a Kansas for-profit corporation, active and in good standing in the State of Kansas, with a registered office located at 501 13th, Hoxie, Kansas 67740 and owns or holds an interest in agricultural land and water rights in and Sheridan County.

43. Plaintiff, Kevin W. Wark, is a resident of Thomas County, Kansas, residing at 2477 US Highway 24, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

44. Plaintiff, Wark Properties, LLC, is a Kansas limited liability company, active and in good standing in the State of Kansas, with a registered office located at 1124 SE 35th Terrace, Topeka, Kansas 66605 and owns or holds an interest in agricultural land and water rights in Thomas County.

45. Plaintiff, Prairie Dog Properties, LLC, is a Kansas limited liability company, active and in good standing in the State of Kansas, with a registered office located at 1124 SE 35th Terrace, Topeka, Kansas 66605 and owns or holds an interest in agricultural land and water rights in Thomas County.

46. Plaintiff, Kevin W. Wark, Trustee of the Berrie Family Trust, is a resident of Thomas County, Kansas, residing at 2477 US Highway 24, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

47. Plaintiff, Kevin W. Wark, Trustee of the Flipse Living Trust, is a resident of Thomas County, Kansas, residing at 2477 US Highway 24, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

48. Plaintiff, Darrel E. Wark, is a resident of Thomas County, Kansas, residing at 1635 Sewell Ave., Apt. 4, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

49. Plaintiff, Daniel Wayand, is a resident of Gove County, Kansas, residing at 519 West 6th Street, Quinter, Kansas 66552 and owns or holds an interest in agricultural land and water rights in Gove County.

50. Plaintiff, Wendy Weishaar, is a resident of Thomas County, Kansas, residing at 375 S. Range, Colby, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Sherman and Thomas Counties.

51. Plaintiff, Donald Rall, is a resident of Thomas County, Kansas, residing at 130 Kansas Ave., Rexford, Kansas 67701 and owns or holds an interest in agricultural land and water rights in Thomas County.

52. The Defendant, David Barfield, P.E., is the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture. He may be served at his official office located at 1320 Research Park Drive, Manhattan, Kansas 66502-5000.

53. Other parties to the administrative proceeding included the Department of Agriculture, Division of Water Resources and the GMD.

54. Plaintiffs are owners of agricultural land within the boundaries of the Northwest Kansas Groundwater Management District No. 4 ("GMD") and within the boundaries of the recently created Local Enhanced Management Area ("LEMA").

55. The Plaintiffs own water appropriation rights that authorize the diversion of groundwater for irrigation use within the GMD and within the LEMA.

56. Plaintiffs seek judicial review of the Chief Engineer's April 13, 2018, Order establishing a LEMA in GMD for the reasons set out in the Petition for Administrative Review which sought review of the April 13, 2018, Order and is attached to the original Petition as Exhibit C. The Chief Engineer's April 13, 2018, Order is attached as Exhibit F.

57. Pursuant to K.S.A. 77-527, on April 29, 2018, Plaintiffs filed a Petition for Administrative Review of the April 13, 2018, Order (Exhibit F), as reflected in Exhibit C to the original Petition.

58. On May 18, 2018, the Secretary of Agriculture declined review of the Chief Engineer's April 13, 2018, Order. Exhibit E to the original Petition.

59. Plaintiffs also seek judicial review of the Chief Engineer's failure to enact regulations as specifically directed by the Legislature in K.S.A. 82a-1041(k) for the reasons set out in the Petition for Judicial Review filed in Stafford County District Court attached as Exhibit D to the original Petition.

60. Venue in Gove County is proper because the Chief Engineer's Order is effective in Gove County and the Chief Engineer's failure to promulgate regulations is effective in Gove County, Kansas. K.S.A. 77-609(b).

### **Relief Requested**

The Plaintiffs request that the Court set aside the April 13, 2018, Order establishing the LEMA for the reasons set out in the Petition for Administrative Review.

The Plaintiffs further request that the Court enter declaratory judgment interpreting provisions of the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*; the Kansas Groundwater Management District Act, K.S.A. 82a-1020, *et seq.*, including K.S.A. 82a-1041; and the United States and Kansas Constitutions holding:

- a. that K.S.A. 82a-1041(k) requires the Chief Engineer to adopt rules and regulations to effectuate and administer the provisions of the LEMA statute;
- b. that the LEMA statute does not permit the Chief Engineer to ignore the prior appropriation doctrine in crafting rules and regulations for LEMA Plans;
- c. that the United States and Kansas Constitutions require the Chief Engineer to provide persons whose property rights may be affected by a LEMA Plan with equal protection and due process of law; and
- d. for such other relief as the Court, in its discretion, deems appropriate, just, and equitable.

Respectfully submitted,

FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway, Suite 100  
Wichita, KS 67206-4466  
Tel (Direct): 316-291-9725  
Fax (Direct): (866) 347-3138

By s/ David M. Traster  
David M. Traster, #11062  
[dtraster@foulston.com](mailto:dtraster@foulston.com)  
*Attorneys for Plaintiffs*

## CERTIFICATE OF SERVICE

On this 19th day of July, 2018, I certify that the above and foregoing First Amended Petition for Judicial Review was electronically filed with the clerk of the court using the eFlex system and served on counsel of record via same and by email as follows:

Adam C. Dees  
Clinkscales Elder Law Practice, PA  
718 Main St., Suite 205  
P.O. Box 722  
Hays, Kansas 67601  
[adam@clinkscaleslaw.com](mailto:adam@clinkscaleslaw.com)

Jackie McClaskey, Secretary  
Kansas Dept. of Agriculture  
1320 Research Drive  
Manhattan, KS 66502  
[jackie.mccaskey@ks.gov](mailto:jackie.mccaskey@ks.gov)

David W. Barfield, Chief Engineer  
Division of Water Resources  
Kansas Dept. of Agriculture  
1320 Research Drive  
Manhattan, KS 66502  
[david.Barfield@ks.gov](mailto:david.Barfield@ks.gov)

Kenneth B. Titus, Chief Counsel  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
[kenneth.titus@ks.gov](mailto:kenneth.titus@ks.gov)

Aaron Oleen, Staff Attorney  
Kansas Department of Agriculture  
1320 Research Drive  
Manhattan, KS 66502  
[aaron.Oleen@ks.gov](mailto:aaron.Oleen@ks.gov)

Lane P. Letourneau, P.G.  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502-5000  
[lane.letourneau@ks.gov](mailto:lane.letourneau@ks.gov)

Ray Luhman, District Manager  
Northwest Kansas Groundwater Management District No. 4  
P.O. Box 905  
1175 S. Range  
Colby, KS 67701  
[rluhman@gmd4.org](mailto:rluhman@gmd4.org)

With a copy by U.S. Mail to the following:

Derek Schmidt  
Kansas Attorney General  
120 SW 10<sup>th</sup> Ave., 2nd Floor  
Topeka, KS 66612

By s/ David M. Traster  
David M. Traster, #11062