

File No. **8869** 11. County: **SC** Basin: **ARKANSAS RIVER** Stream: **NA** Formation Code: **211** Special Use: **NA**

12. Points of Diversion										Rate and Quantity					
CHK										Authorized		Additional		Overlap PD Files	
MOD	DEL	PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Rate gpm	Quantity mgy	Rate gpm		Quantity mgy
MOD	19930	NW NE NE		18	20	32W	1	5212	1177	GPS UPDATE	600	48.88	600	48.88	22396

Same quantity, just MOD to mgy instead of AF

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) **NONE NO CHANGE**
 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					
DEL	37052	18	20	32W	1	40	37	40	40											157	8B	NO	22396	24894*		
ENT	69678	20	20	32W		FEEDLOT (W2 SW)																	8B	NO	**	8630; 8869; 9488; 12594; 13938; 15843; 22396 24894; 26218; 36291; 36292; 36293; 37908; 40778; 44366; 49186 8869
ENT	53620	8	20	32W	1	FEEDLOT (SW)																	8B	NO	**	
ENT	60746	17	20	32W	2	FEEDLOT (SW)																	8B	NO	**	
ENT	23565	18	20	32W	5	FEEDLOT (S2)																	8B	NO	**	
ENT	54924	19	20	32W	4	FEEDLOT (E2)																	8B	NO	**	

Base Acres: Year: Minimum Reasonable Quantity:
 Comments: **ADD 8869 & 22396 TO STK USE**

3/31/2021
KJN

* irr PU under 24894 eliminated 2009 ii/DWR4/29/2021

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: March 23, 2021

FROM: Leslie Ireland

RE: Water Right, File Nos. 8,869 & 22,396

Grant Morgan on behalf of Pokey Feeders LLC, owner of the referenced water rights has filed applications for approval to change the use made of water and place of use that were received on October 2, 2020. The applications are for the existing stockwatering operations located in Scott County, the Arkansas River Basin. The applicant was assisted by Frank Mercurio with Rural Resources Consulting LLC.

The referenced water rights would be considered not to be abandoned as per K.S.A. 82a-718 and in good standing as per K.S.A. 82a-732. The required notice of well owners to comply with K.S.A. 82a-1906 does not appear to be needed as the applicants are the owners of all the wells within the notification area. The applications appear to be complete per K.A.R. 5-5-2a, *Complete change application*.

File No. 8,869 is authorized 150 acre-feet (AF) at 600 gallons per minute (gpm) for irrigation use from a well located in the Northeast Quarter of Section 18 Township 20, Range 32 West, Scott County, Kansas for the irrigation of 157 acres. File No. 22,396 overlaps the place of use and point of diversion to authorize a limited 263.9 acre-feet per acre and 710 gallons per minute when combined with File No. 8,869.

The owner has proposed to change the referenced files from irrigation ~~and stockwatering~~ use to ~~all~~ stockwatering use. The applications will be processed by K.A.R. 5-5-9, *Changes in the use made of water from irrigation to another type of beneficial use*. The quantity allowed to be changed according to this proposed change in use made of water for Scott County based on the consumptive use of 81.8 % was calculated as follows:

Combined quantity 263.9 AF x 81.8% CU Scott County = 215.87AF (70.34 million gallons (mgy))

The owners have requested to maintain the 150 acre-feet under File No. 8,869 and have the required consumptive use adjustment to occur under File No. 22,396 as both of the referenced files are being changed to stockwatering use. The shifting of the assignment is not uncommon with use made of water changes. This will result in File No. 8,869 to be authorized 150AF (48.88 mgy) and File No. 22,396, reduced to authorize 65.85 AF (21.46 mgy) and allow the additional limitation on the quantity to be removed. The rate under File No. 22,396 will remain as authorized limited 710 gpm with File No. 8,869.

The owner has submitted justification for the stockwatering listing feeder cattle, with nursery and finishing swine, indicating a total combined 1,742.59 acre-feet. All requested quantities comply with K.A.R. 5-3-22, *Maximum reasonable quantity of water for livestock and poultry*. The addition of the 215.87 AF (70.34 mgy) will result in 1,482.23 AF to be authorized under File Nos. 8630; 12,594; 13,938; 24,894; 26,218; 36,291; 36,292; 34,908; 9,488; 15,843; 8,869 & 22,398, providing 85% of the justified quantity for stockwatering use. The approval will remove the irrigation quantity limitation and restate the rate limitation on File No. 22,396.

The change in place of use will result in the elimination of 157 acre pivot irrigation of the Northeast Quarter (NE $\frac{1}{4}$) of Section 18, Township 20 South, Range 32 West Scott County. The place of use will authorize the existing stockwatering use located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 17, South Half (S $\frac{1}{2}$) Section 18, East Half Section 19, and a portion of the Southwest Quarter (SW $\frac{1}{4}$) of Section 20, all in Township 20 South, Range 31 West, Scott County. As the authorized quantity will not increase and irrigated acres will be eliminated the historical consumptive use should not increase and the change in use made of water complies with K.A.R. 5-5-3 *Change in consumptive use*.

PU: and SW Quarter of Section 8*

The order will update the location of the point of diversion to the actual well location as determined by the 2008 Compliance Investigation from 5,150 feet North and 950 feet West to 5,212 feet North and 1,177 feet West in Section 18, Township 20 South, Range 32 West, Scott County, Kansas. The correction of the 235 foot difference by order appears to comply with K.A. R. 5-5-6, *Failure to construct diversion works at authorized location*, due to the age and history of the senior file.

In a letter dated December 16, 2020, Kyle Spencer, Manager, Western Kansas Groundwater Management District No. 1, recommend approval of the applications for change.

As stated in an e-mail note dated March 23, 2021, Michael Meyer, Water Commissioner of the Garden City Field Office has no objection to the approval of the applications.

A water flow meter will be required and a check valve is required if any chemical or foreign substance is injected into the water through the diversion works according to K.A.R. 5-3-5(c). A water level measurement tube is not applicable to these changes, as no new wells have been authorized.

Based on the above discussion, that the changes are reasonable, that impairment to existing water rights is unlikely, that no change in the local source of supply will occur, and that the consumptive use should not significantly increase, it has been recommended that the applications be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

3/31/2021
KJN

From: Meyer, Mike [KDA]
Sent: Tue 3/23/2021 9:25 AM
To: Ireland, Leslie [KDA]
Subject: RE: Review & Recommendation File Nos. 8869 & 22396 Pokey,

please approve
thank you

Mike

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Tuesday, March 23, 2021 8:43 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: FW: Review & Recommendation File Nos. 8869 & 22396 Pokey,

Mike,

Please let me know if you could recommend these changes and order to fix the pd location.. top of page 2.

As always comments and concerns are welcome.

Sorry I sent you Kelly's work, know you have enough of yours to do.

Leslie Ireland
Environmental Scientist
Change Application Unit
Division of Water Resources



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 USE MADE OF WATER
PLACE OF USE
AND
ORDER BETTER DESCRIBING THE AUTHORIZED POINT OF DIVERSION
WATER RIGHT
FILE NO. 8,869**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Grant Morgan, on behalf of Poky Feeders Incorporated, 600 East Road 30, Scott City, Kansas, 67871, received in this office on October 2, 2020, for approval of a change in the use made of water and location of the place of use under the certificate of appropriation issued pursuant to the permit to appropriate water for beneficial use, as modified and amended by the Orders of the Chief Engineer dated July 20, 2007 and August 28, 2007, approving the applications to change the point of diversion, and by the Findings and Order of the Chief Engineer dated October 28, 2009, in the matter of the location of the place of 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 change shall be the date this order is executed by the Chief Engineer, after which the authorized use made of water shall be:

Stockwatering use

and authorized location of the place of use shall be:

the Southwest Quarter (SW $\frac{1}{4}$) of Section 8, the Southwest Quarter (SW $\frac{1}{4}$) of Section 17, the South Half (S $\frac{1}{2}$) of Section 18, the East Half (E $\frac{1}{2}$) of Section 19, and the West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 20, all in Township 20 South, Range 32 West, Scott County, Kansas,

located substantially as shown on the map accompanying the application to change the use made of water and place of use and the location of the authorized point of diversion shall be better described as:

one (1) well located in the Northwest Quarter of the Northeast Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 18, more particularly described as being near a point 5,212 feet North and 1,177 feet West of the Southeast corner of said section, in Township 20 South, Range 32 West, Scott 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. 8,869, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated December 22, 1999, as modified and amended by the aforementioned orders.

Ordered this 6 day of May, 2021, in Manhattan, Riley County, Kansas.

Lane P. Letourneau
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 6 day of May, 2021, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Water Appropriation Program, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman
Notary Public

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

May 11, 2021

POKY FEEDERS INC
GRANT MORGAN
600 E ROAD 30
SCOTT CITY KS 67871

RE: Water Right, File Nos. 8,869 & 22,396

Dear Mr. Morgan:

Enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the reference files.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approvals for change. A condition of the approvals is that an acceptable water flowmeter must be installed on the diversion works authorized under the referenced files.

Since these orders modify the original documents referred to above, they should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions, please contact our office at (785)564-6640 or your local Garden City field office at (620) 276-2901. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

A handwritten signature in black ink that reads "Kristen A. Baum". The signature is written in a cursive style.

Kristen A. Baum
New Applications & Change Unit Supervisor
Water Appropriation Program

KAB:LI:

Enclosures

pc: Garden City Field Office
Groundwater Management District No. 1
Frank Mercurio, P.E., Rural Resources Consulting LLC

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.

CERTIFICATE OF SERVICE

On this 11 day of May, 2021, I hereby certify that the attached Approval of Application for the Change in Use Made of Water, Place of Use and Order Better Describing the Point of Diversion, Water Right, File No. 8,869, dated 6 May, 2021, was mailed postage prepaid, first class, US mail to the following:

POKY FEEDERS INC
GRANT MORGAN
600 E ROAD 30
SCOTT CITY KS 67871

With photocopies to:

RURAL RESOURCES CONSULTING LLC
ATTN FRANK MERCURIO, P.E.
751 SE CR 36
SYRACUSE, KS 67878

Garden City Field Office
Groundwater Management No. 1


Division of Water Resources