



File No. <b>50,589</b>	15. Formation Code:	Drainage Basin: <b>Arkansas River</b>	County: <b>SU</b>	Special Use:	Stream: <b>Arkansas River</b>																													
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="10" style="width:50%; vertical-align: top;"> 16. Points of Diversion  T  MOD  DEL PDIV  ENT  <div style="display: flex; justify-content: space-between;"> <span>Qualifier</span> <span>S</span> <span>T</span> <span>R</span> <span>ID</span> <span>'N</span> <span>'W</span> </div> </td> <td colspan="5" style="width:50%; vertical-align: top;"> 17. Rate and Quantity  <div style="display: flex; justify-content: space-around;"> <span>Authorized</span> <span>Additional</span> </div> <div style="display: flex; justify-content: space-around;"> <span>Rate gpm</span> <span>Quantity af</span> <span>Rate gpm</span> <span>Quantity af</span> <span>Overlap PD Files</span> </div> </td> </tr> <tr> <td><b>DEL</b></td> <td><b>88871</b></td> <td><b>NW NE SE</b></td> <td><b>35</b></td> <td><b>32S</b></td> <td><b>1W</b></td> <td><b>1</b></td> <td><b>2,550</b></td> <td><b>1,240</b></td> <td><b>1,000</b></td> <td><b>116</b></td> <td><b>1,000</b></td> <td><b>116</b></td> <td><b>NONE</b></td> </tr> </table>						16. Points of Diversion T MOD DEL PDIV ENT <div style="display: flex; justify-content: space-between;"> <span>Qualifier</span> <span>S</span> <span>T</span> <span>R</span> <span>ID</span> <span>'N</span> <span>'W</span> </div>										17. Rate and Quantity <div style="display: flex; justify-content: space-around;"> <span>Authorized</span> <span>Additional</span> </div> <div style="display: flex; justify-content: space-around;"> <span>Rate gpm</span> <span>Quantity af</span> <span>Rate gpm</span> <span>Quantity af</span> <span>Overlap PD Files</span> </div>					<b>DEL</b>	<b>88871</b>	<b>NW NE SE</b>	<b>35</b>	<b>32S</b>	<b>1W</b>	<b>1</b>	<b>2,550</b>	<b>1,240</b>	<b>1,000</b>	<b>116</b>	<b>1,000</b>	<b>116</b>	<b>NONE</b>
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18. Storage: Rate _____ NF    Quantity _____ ac/ft    Additional Rate _____ NF    Additional Quantity _____ ac/ft																																		
19. Limitation: _____ af/yr at _____ gpm ( _____ cfs) when combined with file number(s) _____ Limitation: _____ af/yr at _____ gpm ( _____ cfs) when combined with file number(s) _____																																		
20. Meter Required? <input type="checkbox"/> Yes <input type="checkbox"/> No    To be installed by _____    Date Acceptable Meter Installed _____																																		
21. Place of Use T MOD DEL ENT		<b>NE¼</b>				<b>NW¼</b>				<b>SW¼</b>				<b>SE¼</b>				<b>Total</b>	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																	
<b>DEL</b>	<b>70435</b>	<b>2</b>	<b>33S</b>	<b>1W</b>	<b>2</b>														<b>7a</b>	<b>NO</b>	<b>NONE</b>													
Comments:																																		

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** February 12, 2024

**FROM:** Jessica Engelbrecht

**RE:** Application, File No. 50,589

Luke McClure filed the above referenced application on behalf of Western Land and Cattle, LLC., to appropriate groundwater for irrigational use and requested 60 days to locate the point of diversion on May 26, 2021. A letter was mailed to the applicant on February 3, 2022, notifying the applicant that the application for the construction of a dam received on May 26, 2021, was incomplete and requesting additional information. The applicant was mailed a second letter on March 12, 2023, providing 30 days to provide additional information by April 14, 2023.

The landowner contacted this office and requested a six (6) month extension. The landowner was given a deadline of December 8, 2023. No contact of any kind was received from the applicant by the December 8, 2023, deadline. A letter was mailed on December 29, 2023, informing the landowner and applicant that no notice had been received by the deadline. The legger gave a deadline to submit the required information of February 2, 2024.

No contact of any kind was received from the applicant by the February 2, 2024, deadline. Therefore, it is recommended that the application be dismissed.

# THE STATE OF KANSAS



**KANSAS DEPARTMENT OF AGRICULTURE**  
Mike Beam, Secretary of Agriculture

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

## FINDINGS AND ORDER

### **IN THE MATTER OF THE DISMISSAL OF APPLICATION FILE NO. 50,589**

After due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

#### FINDINGS

1. That on May 26, 2021, the Chief Engineer received an application from Luke Theurer, on behalf of Western Land and Cattle, for a permit to appropriate water for beneficial use, assigned File No. 50,589, proposing the appropriation of 116 acre-feet of surface water, to be stored in a reservoir created by a dam located in the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of Section 35, more particularly described as being near a point 2,550 feet North and 1,240 feet West of the Southeast corner of said section, in Township 32 South, Range 1 West, Sumner County, Kansas.
2. That upon examination of the application, it was found to be defective, inadequate, and insufficient to determine the nature and amount of the proposed appropriation. Specifically, the application was not accompanied by a complete water structure application pertaining to the proposed dam, as required by K.A.R. 5-3-1a.
3. That the Kansas Water Appropriation Act, in K.S.A. 82a-710, requires that the applicant shall submit acceptable data, proofs, maps, plats, plans, drawings, along with information regarding proposed dams, reservoirs, and other structures, and that default in filing complete information within a specified time limit shall constitute a forfeiture of the priority date and the dismissal of the application.
4. That by letters dated February 3, 2022, March 13, 2023, and June 6, 2023, the applicant was notified that additional information must be submitted, in order to complete the application, and to comply with the Obstructions in Streams Act, K.S.A. 82a-301 through 82a-328.
5. That the Western Land and Cattle was further notified by letter dated December 29, 2023, that additional information would need to be submitted by February 2, 2024, or within any authorized extension of time, and that failure to do so would constitute a forfeiture of the priority date, and result in dismissal of the Application to Appropriate Water for Beneficial Use.

- 6. That no additional information and no request for an extension of time has been submitted within the time allowed.
- 7. That the application should be dismissed, and its priority forfeited, as provided by K.S.A. 82a-710 and K.A.R. 5-3-1a.
- 8. That K.A.R. 5-30-1 further states that the Chief Engineer shall not approve or grant a permit for any dam subject to the jurisdiction of the Chief Engineer under the authority of K.S.A. 82a-301 through 305a, as amended, unless the applicant also receives prior approval of his or her Application to Appropriate Water for Beneficial Use to be diverted by means of the dam for which the approval or permit is sought.

**ORDER**

NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that effective the date of this order, in accordance with the law, the Application to Appropriate Water for Beneficial Use, assigned File No. 50,589, is hereby dismissed and the priority assigned to it is considered to be forfeited.

ORDERED this 22<sup>nd</sup> day of April, 2024, 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 22<sup>nd</sup> day of April, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

*Katie N. Anderson*

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

April 26, 2024

PRESTON WITHERS  
WESTERN LAND & CATTLE CO INC  
2257 100TH RD  
COPELAND KS 67837-7039

Re: Dismissal of Application  
File No. 50,589

Dear Mr. Withers:

A letter was mailed to you on December 29, 2023, requesting additional information needed to complete the above referenced Application to Appropriate Water for Beneficial Use and to comply with the Obstructions in Streams Act, K.S.A. 82a-301 through 82a-328. Enclosed is a Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing the referenced application, for failure to provide the required information, prior to the deadline of February 2, 2024.

If you have any questions, please contact our office. 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 blue ink that reads "Kristen Baum". The signature is written in a cursive style.

Kristen Baum  
New Applications and Changes Unit Supervisor  
Water Appropriation Program

KAB:kak:jne

Enclosures

pc: Stafford Field Office  
DWR Water Structures Program (DSU-0048)



## RIGHT TO PETITION FOR REVIEW UNDER THE KANSAS JUDICIAL REVIEW ACT

This is a final agency action as defined in K.S.A. 77-607(b). You may pursue judicial review of this Order as provided in the Kansas Judicial Review Act, K.S.A. 77-601 et seq. A petition for judicial review must be filed in a Kansas court of competent jurisdiction within 30 days after service of this Order as provided in K.S.A. 77-613. The agency officer designated to receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture is the Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Dr. Manhattan, KS 66502.

### CERTIFICATE OF SERVICE

On this 26 day of April, 2024, I hereby certify that the attached Dismissal of Application, File No. 50,589, dated 22 April, 2024, was mailed postage prepaid, first class, U.S. Mail to the following:

Original to:

PRESTON WITHERS  
WESTERN LAND & CATTLE CO INC  
2257 100TH RD  
COPELAND KS 67837-7039

Photocopy to:

KDA-DWR Stafford Field Office

KDA-DWR Water Structures Program

  
\_\_\_\_\_  
DWR Staff