

Kansas Department of Agriculture
Division of Water Resources
PERMIT OF NEW APPLICATION WORKSHEET

1. File Number: <p style="text-align:center">50,349</p>	2. Status Change Date: <p style="text-align:center">1/15/2021</p>	3. Field Office: <p style="text-align:center">03</p>	4. GMD: <p style="text-align:center">0</p>
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5. Status: Approved Denied by DWR/GMD Dismiss by Request/Failure to Return

6. Enclosures: Check Valve N of C Form Water Tube Driller Copy Meter

<p>7a. Applicant(s) New to system <input type="checkbox"/> Person ID 67180 Add Seq# _____</p> <p>JAMES & BARBARA FITZWATER 204 E ANDERSON ST BROOKVILLE, KS 67425</p>	<p>7c. Landowner(s) New to system <input type="checkbox"/> Person ID _____ Add Seq# _____</p>
<p>7b. Landowner(s) New to system <input type="checkbox"/> Person ID _____ Add Seq# _____</p> <p>7a.</p>	<p>7d. Misc. New to system <input type="checkbox"/> Person ID _____ Add Seq# _____</p>

<p>8. WUR Correspondent New to system <input type="checkbox"/> Person ID _____ Overlap File (s) WUC Add Seq# _____ Agree <input type="checkbox"/> Yes <input type="checkbox"/> No Notarized WUC Form <input type="checkbox"/></p> <p>7a.</p>	<p>9. Use of Water: Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water</p> <p><input type="checkbox"/> IRR <input checked="" type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN</p> <p><input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON</p> <p><input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG</p> <p><input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____</p>
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10. Completion Date: ~~12/31/2021~~ **22** 11. Perfection Date: ~~12/31/2025~~ **26** 12. Exp Date: _____

13. Conservation Plan Required? Yes No Date Required: _____ Date Approved: _____ Date to Comply: _____

14. Water Level Measuring Device? Yes No Date to Comply: _____ Date WLMD Installed: _____

Date Prepared: **6/16/2020** By: **DWS**
Date Entered: 1/21/2021 By: LMoody

File No. **50,349** 15. Formation Code: Drainage Basin: SALINE RIVER County: LC Special Use: Stream: **OWL CREEK (SALINE)**

16. Points of Diversion									
MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	
√		87953 NE SW NW	20	13	6W	1	3608	4264	
STRUCTURES PERMIT DLC-0086									

17. Rate and Quantity				
Authorized		Additional		
Rate gpm	Quantity mgy	Rate gpm	Quantity mgy	Overlap PD Files
--	--	--	--	NONE

18. Storage: Rate _____ NF Quantity **235** ac/ft Additional Rate _____ NF Additional Quantity **235** 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? Yes No To be installed by _____ Date Acceptable Meter Installed _____

21. Place of Use																		Owner	Chg? NO	Overlap Files					
MOD DEL ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total			
ENT						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				
		20	13	6W		RESERVOIR (W2) 38 AC																7a.	NO	NONE	
DEL 69861																									

Comments: _____

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

TO: Files

DATE: June 16, 2020

FROM: Doug Schemm

RE: Application, File No. 50,349

James and Barbara Fitzwater have filed the above-referenced new application to appropriate 235 acre-feet of surface water storage at a rate not to exceed natural flows of Owl Creek (Saline) for recreational use in an existing reservoir. The application is designed to cover the indirect use of water (evaporation + seepage) from a reservoir located in the West Half of Section 20, in Township 13 South, Range 6 West, Lincoln County, Kansas. Based on information on the application, the reservoir was built in 1962. The point of diversion represents the point at which the center of the dam intersects the stream, and the applicant has signed the form stating they have access to this point of diversion. The reservoir is already permitted by the DWR Water Structures Program under File No. DLC-0086. DWR staff assiduously determined that this existing reservoir did not have the required appropriation permit, and assisted in bringing the applicant into compliance with regulations.

The requested quantity of 235 acre-feet appears to be reasonable for indirect use, plus reservoir capacity, based on the following information. The reservoir surface area at normal pool storage elevation is 38 acres and the storage volume is 156 acre-feet. Potential net evaporation in inches, based on K.A.R. 5-6-3, is 25 inches; therefore the natural evaporation can be estimated as follows:

38 acres x 25 inches of evaporation / 12 inches = 79.2 acre-feet (1 year of evaporation)
Reservoir Capacity = 156 acre-feet
Total storage quantity = 79 AF + 156 AF = 235 acre-feet.

A runoff calculation was not prepared because it is reasonable to assume that with a drainage area in excess of 1,150 acres, engendering the requested 235 acre-feet of runoff in 1 out of every five (5) years (20% annually), will be readily accomplished. The capacity of the reservoir is the controlling factor. As noted above, the dam is already permitted under DWR Water Structures Program, File No. DLC-0086. Since the reservoir is currently storing water, no Special Condition on the Permit is needed to provide an initial fill quantity.

There is only one other permitted surface water right within a two-mile radius circle, which is a reservoir located on a different tributary to Owl Creek (File No. 48,923). No senior water right would be impacted in any way. As noted above, this is an existing reservoir (in place since 1962), and the appropriation permit is merely to authorize the on-going beneficial recreational use of water (evaporation and seepage) from the reservoir. Typically for these types of applications, nearby landowners are not notified, since they would be cognizant of the current storage of water in this reservoir. In keeping with this consistent processing of new applications, no notification letters are required. The applicant provided a list of upstream and downstream landowners, which complies with K.A.R. 5-3-4.

Mark Billinger, Assistant Water Commissioner, Stockton Field Office, recommended approval of the application in a June 15, 2020 e-mail.

Based upon the above discussion, the area is open to new applications, the structure has been properly permitted under DWR water structures program, approval will bring this beneficial use of water into compliance, and there is no indication that the proposed beneficial use of water will impair existing water rights, it is recommended that the referenced application be approved.

Douglas W. Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Billinger, Mark [KDA]
Sent: Monday, June 15, 2020 3:57 PM
To: Schemm, Doug [KDA]; Stewart, Kelly [KDA]
Subject: RE: 50349 Fitzwater

Yep this one is pretty straight forward. Sorry I missed this last week. We have no objections to the approval of this application.

Mark Billinger
Assistant Water Commissioner
Stockton Field Office
Division of Water Resources
Kansas Department of Agriculture
mark.billinger@ks.gov
785-425-6787

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Thursday, June 11, 2020 1:02 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Cc: Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: 50349 Fitzwater

No issues with this one. Meets all the regs.
Please review.
Thanks, Doug

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 and PERMIT TO PROCEED

(This Is Not a Certificate of Appropriation)

This is to certify that I have examined Application, **File No. 50,349** of the applicant

**JAMES & BARBARA FITZWATER
204 E ANDERSON ST
BROOKVILLE KS 67425**

for a permit to appropriate water for beneficial use, together with the maps, plans and other submitted data, and that the application is hereby approved and the applicant is hereby authorized, subject to vested rights and prior appropriations, to proceed with the construction of the proposed diversion works (except those dams and stream obstructions regulated by K.S.A. 82a-301 through 305a, as amended), and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect the proposed appropriation subject to the following terms, conditions and limitations:

1. That the priority date assigned to such application is **February 18, 2020**.
2. That the water sought to be appropriated shall be used for recreational use at a reservoir located in the West Half (W $\frac{1}{2}$) of Section 20, in Township 13 South, Range 6 West, Lincoln County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of Owl Creek, designated in the office of the Chief Engineer as Owl Creek (Saline), not needed to satisfy all vested rights and prior appropriation rights to be stored to a maximum extent of **235 acre-feet** per calendar year, in a reservoir created by a dam located in the Northeast Quarter of the Southwest Quarter of the Northwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 20, more particularly described as being near a point 3,608 feet North and 4,264 feet West of the Southeast corner of said section, in Township 13 South, Range 6 West, Lincoln County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That the structure creating the above referenced reservoir has been assigned Division of Water Resources Structures Permit No. DLC-0086.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2022**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$400.00, when construction of the works has been completed. Failure to timely submit the notice and the fee will result in revocation of the permit. Any request for an extension of time shall be accompanied by the required statutory fee, which is currently \$100.00.

6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before December 31, 2026, or any authorized extension thereof. Any request for an extension of time shall be submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee, which is currently \$100.00.

7. That the applicant shall not be deemed to have acquired a water appropriation for a quantity in excess of the amount approved herein nor in excess of the amount found by the Chief Engineer to have been actually used for the approved purpose during one calendar year subsequent to approval of the application and within the time specified for perfection or any authorized extension thereof.

8. That the use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.

9. That the right of the appropriator shall relate to a specific quantity of water and such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion.

10. That this permit does not constitute authority under K.S.A. 82a-301 through 305a to construct any dam or other obstruction; nor does it grant any right-of-way, or authorize entry upon or injury to, public or private property.

11. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date shall cause the applicant to be subject to a civil penalty.

12. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

13. That failure without cause to comply with provisions of the permit and its terms, conditions and limitations will result in the forfeiture of the priority date, revocation of the permit and dismissal of the application.

14. That the right to appropriate water under authority of this permit is subject to any minimum desirable streamflow requirements identified and established pursuant to K.S.A. 82a-703c for the source of supply to which this water right applies.

Ordered this 15 day of January, 2021, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

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

State of Kansas)
County of Riley) SS

The foregoing instrument was acknowledged before me this 15 day of January, 2021, by Lane P. Letourneau, P.G., Program Manager, 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

January 21, 2021

JAMES & BARBARA FITZWATER
204 E ANDERSON ST
BROOKVILLE KS 67425

RE: Appropriation of Water, File No. 50,349

Dear Sir or Madam:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permit. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in this permit.

Notice must be filed on the enclosed form once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at www.kswaterusereport.org.

The approval of your application constitutes a permit to appropriate water. It does not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. It does not give authority to access any right-of-way or authorize trespassing upon or injury to public or private property. It may also be necessary for you to comply with other local, state or federal requirements.

Enclosed is an informational sheet that sets forth the procedure to obtain a Certificate of Appropriation which will establish the extent of your perfected water right. Additional information and applicable forms may be found on our website at agriculture.ks.gov/divisions-programs/dwr. If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640 or your local Stockton Field Office at 785-425-6787. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB:dws
Enclosure(s)

pc: Stockton Field Office

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, Kansas 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, Kansas 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.

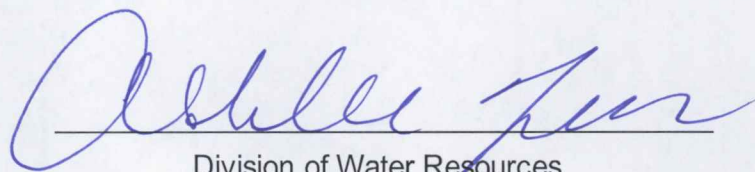
CERTIFICATE OF SERVICE

On this 15 day of January, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,349, dated 15 January 2021 was mailed postage prepaid, first class, US mail to the following:

JAMES & BARBARA FITZWATER
204 E ANDERSON ST
BROOKVILLE KS 67425

With photocopies to:

Stockton Field Office



Division of Water Resources