

Waiting on 3 change apps for the place of use to include with entire package. Doug sent letter on 3/19/21*

PU change for 44071, 47208, 50157*

9/15/2021
KJN

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

1. File Number: 50,433	2. Status Change Date: 9/28/2021	3. Field Office: 01	4. GMD: 0
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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

7a. Applicant(s) New to system <input type="checkbox"/> 2 I FEEDERS LLC 884 RD 350 ALLEN, KS 66833	Person ID 60473 Add Seq# _____	7c. Landowner(s) New to system <input type="checkbox"/>	Person ID _____ Add Seq# _____
7b. Landowner(s) New to system <input type="checkbox"/> 7a.	Person ID _____ Add Seq# _____	7d. Landowner New to system <input type="checkbox"/>	Person ID _____ Add Seq# _____

8. WUR Correspondent New to system <input type="checkbox"/> Overlap File (s) WUC Agree <input type="checkbox"/> Yes <input type="checkbox"/> No	Person ID _____ Add Seq# _____ Notarized WUC Form <input type="checkbox"/>	9. Use of Water: Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water <input type="checkbox"/> IRR <input type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN <input checked="" type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON <input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG <input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____
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10. Completion Date: **12/31/2022** 11. Perfection Date: **12/31/2026** 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: **11/5/2020** By: **DWS**
Date Entered: _____ By: _____
9/29/2021
L Moody

4/20/2021
L Ireland

File No. **50,433** 15. Formation Code: Drainage Basin: NEOSHO RIVER County: **LY** Special Use: Stream: ALLEN CREEK TRIB 1 (NEOSHO RIVER)

16. Points of Diversion										17. Rate and Quantity						
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized	MOD	ADDL	QTY	Additional	Overlap PD Files
											Rate gpm	Quantity mgy	Rate gpm	Quantity mgy		
√				64474 SE SW NW	9	16	11E	1	2834	4480	1000	112.42	1000	0	DLY-151	44,071**
√				88374 SW NW SW	9	16	11E	3	1863	4750		76.575 MGY			none	

Upper Dam only comment

18. Storage: Rate _____ NF Quantity **235** ac/ft Additional Rate _____ NF Additional Quantity **160** ac/ft

19. Limitation: **112.42 MG/yr (Direct Use)** at _____ gpm (_____ cfs) when combined with file number(s) **44,071; 47,208; 49,697; and 50,157 (On Place of Use)**
 Limitation: **235 af/yr (Storage)** at _____ gpm (_____ cfs) when combined with file number(s) **44,071**

20. Meter Required? Yes No To be installed by **12/31/2022** Date Acceptable Meter Installed _____

21. Place of Use								NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files	
MOD	DEL	ENT	PUSE	S	T	R	ID	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					
√			53084	8	16	11E	1	FEEDLOT (SE)				FEEDLOT (SE & NE) (E2 SW)													7a.	No	see below	
√			53085	9	16	11E	1	FEEDLOT (SW)				FEEDLOT (SW & NW)														7a.	No	see below
√			60148	16	16	11E	1	FEEDLOT (N2 N2)				FEEDLOT (N2)														7a.	No	see below
√			60297	17	16	11E	1	FEEDLOT (N2 NE)				FEEDLOT (N2 NE) (NW)														7a.	No	see below

Comments: **File Nos. 44,071; 47,208; 49,697; 50,157; and 50,158* overlap in STK place of Use.**

*File No. 50,158 is being Voluntarily Dismissed by the Owner.

**File No. 44,071 will overlap in Points of Diversion (2 Dams) after pd change.

NOTE: BOTH DAMS AND RESERVOIRS ARE IN LYON COUNTY.

9/16/2021
KJN

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
MEMORANDUM

TO: Files

DATE: November 5, 2020

FROM: Doug Schemm

RE: New Application, File No. 50,433;
Appropriation of Water, File No. 50,158; and
Change in Point of Diversion Application, File No. 44,071

2 I Feeders LLC has filed the above referenced new application (File No. 50,433) proposing to appropriate water for stockwatering use. The application is requesting 76.575 million gallons (235 acre-feet) of storage and the rediversion of 76.575 million gallons of surface water from both an existing reservoir and a proposed reservoir. The existing reservoir is currently authorized under File Nos. 44,071 and 50,158. The applicant has filed a change in point of diversion application for File No. 44,071 to authorize the proposed reservoir and create a complete overlap with this new application. In addition, the owner has voluntarily requested that File No. 50,158 be dismissed. The new application, change application and the dismissal will be processed together.

The feedlot is located in Sections 8, 9, 16 and 17, all in Township 16 South, Range 11 East, in Lyon County, within the Neosho River Drainage Basin. The applicant is the owner of the place of use, and a representative has signed the application stating they have access to the point of diversion. File Nos. 44,071; 47,208; 49,697; 50,157 and 50,158 all overlap in Place of Use. File No. 49,697 is authorized to divert 96.452 million gallons from a proposed reservoir, which would be owned by Allen Creek Watershed District No. 89. However, it is highly unlikely that this reservoir will ever be constructed.

Documentation in the senior file shows that the capacity of the existing (upper) reservoir is 32 acre-feet, and the drainage area will produce 203 acre-feet of runoff in 1 out of every five (5) years (a 20% chance). The existing, upper dam is already permitted by the structures program under File No. DLY-151. File No. 44,071 is certified for 75 acre-feet of storage, and 11.498 million gallons of direct use. As noted above, File No. 50,158, which overlaps this same reservoir, will be voluntarily dismissed.

The pending new application is requesting 235 acre-feet of storage, which is the maximum that can be requested per the potential annual runoff (201 acres x 14" / 12). This junior file will be limited to 235 acre-feet of storage with File No. 44,071. The storage and rediversion quantity requested under the pending application (235 acre-feet) is to supply additional water from these two reservoirs. Upstream and downstream landowners were notified of both the new application and change application for File No. 44,071 on September 25, 2020. No responses of any kind were received. There will be no impairment of senior water rights with approval of these applications.

File No. 44,071 is authorized 11.498 million gallons (direct use), File No. 47,208 is authorized 3.692 million gallons (limited to 13.295 million gallons with senior file), and File No. 49,697 is authorized 96.452 million gallons (limited to 96.452 million gallons direct use with the senior files). File No. 50,157 is authorized 20 million gallons (limited to 112.42 million gallons with the senior files). The applicant provided information with the recently approved files, to justify the requested quantity of water, as follows: 17,600 head of cattle x 15.0 gallons per head per day x 365 days = 96.4 million gallons. However, similar stockwatering facilities typically request additional water for cooling and sanitation, as follows:

Drinking water	96.4 million gallons
Cooling = 80 gpm x 60 min/hr x 10 hrs/day x 240 Days/year	= 11.52 million gallons
Sanitation, pen cleaning, etc.	= 3.5 million gallons
Other (Misc.)	= <u>1.0 million gallons</u>
Total	= 112.42 million gallons

This pending new application will be limited to 112.42 million gallons when combined with the senior files, providing no additional water when combined with the senior files, however, this new application and change will provide greater flexibility in management of water for stockwatering use.

The proposed direct use quantity of 235 AF, is equivalent to 3.1 times the combined capacity of the two reservoirs (75 AF), well within the “normal” rule of thumb of direct use being no more than 5 times the capacity for reasonable storage quantity. The proposed reservoir is exempt from permitting by DWR Water Structures Program.

The referenced water right File No. 44,071 appears not be abandoned as per K.S. A. 82a-718, and in compliance with K.S.A. 82a-732. In conjunction with the processing of File No. 50,433, the change application appears to comply with K.A.R. 5-5-2a, *Complete application*. The same local source of supply will not change, which has been designated as Allen Creek Trib 1 (Neosho River).

The applicant has submitted a signed and notarized Minimum Desirable Streamflow (MDS) statement with the new application. By completing this statement, the applicant affirms his knowledge that there could be times when the diversion of water may not be allowed under this permit.

In accordance with K.S.A. 82a-706c, the Chief Engineer retains full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R 5-1-12. The application indicates that no chemicals will be injected into the water pumped under this permit, therefore a check valve will not be required.

In an October 27, 2020 e-mail, Katie Tietsort, Water Commissioner, Topeka Field Office, stated that the referenced new application should be approved. Based on the above discussion, that this area is open to new appropriations, the proposed appropriation of water is reasonable, the application complies with rules and regulations, approval will give the owner an additional source of water for STK use, and no senior rights will not be impacted, it is recommended that the referenced new application be approved.

In addition, based on the above discussion, the change is reasonable, that impairment to existing water rights is unlikely, that no change in the local source of supply will occur, and if Application, File No. 50,433 can be approved, it is recommended that the application for change be approved.



Doug Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Tietsort, Katie [KDA]
Sent: Thursday, October 29, 2020 8:28 AM
To: Schemm, Doug [KDA]
Cc: Smith, Tyler [KDA]
Subject: RE: 2 I Feeders 50433 and 44071

Doug,

You can proceed Doug- Tyler when you meet with them Tuesday you may need to be aware of these changes/dismissals etc and let them know they should be getting their approvals soon.

Katie Tietsort
Water Commissioner

Katie.Tietsort@ks.gov

785-296-5733

PLEASE NOTE OUR NEW ADDRESS:
Kansas Department of Agriculture
Topeka Field Office
1131 SW Winding Rd, Suite 400
Topeka, KS 66615

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Monday, October 26, 2020 11:46 AM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Subject: 2 I Feeders 50433 and 44071

New app for second pond, change in pd will create complete overlap (list both reservoirs as pds).
No issues, no comments from nearbys.
Please review.

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. 50,433** of the applicant

**2 I FEEDERS LLC
884 RD 350
ALLEN, KS 66833**

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 **August 26, 2020**.

2. That the water sought to be appropriated shall be used for stockwatering use at a feedlot located in the Southeast Quarter (SE $\frac{1}{4}$) of Section 8, the East Half of the Southwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$) of Section 8, the Northeast Quarter (NE $\frac{1}{4}$) of Section 8, the East Half of the Northwest Quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 8, the Northwest Quarter (NW $\frac{1}{4}$) of Section 9, a portion of the Southwest Quarter (SW $\frac{1}{4}$) of Section 9, the North Half of the Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$) and the Northwest Quarter (NW $\frac{1}{4}$) of Section 16, the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) and the Northeast Quarter (NE $\frac{1}{4}$) of Section 17, all in Township 16 South, Range 11 East, Lyon County, Kansas.

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to the Neosho River, designated in the office of the Chief Engineer Allen Creek Trib 1, not needed to satisfy all vested rights and prior appropriation rights to be incrementally accumulated as reservoir storage space becomes available to a maximum extent of **235 acre-feet** (76.575 million gallons) of water per calendar year in two (2) reservoirs created by two (2) dams; one located in the Southeast Quarter of the Southwest Quarter of the Northwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 9, more particularly described as being near a point 2,834 feet North and 4,480 feet West of the Southeast corner of said section, assigned Division of Water Resources Structure Permit No. DLY-151, and the second located in the Southwest Quarter of the Northwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 9, more particularly described as being near a point 1,863 feet North and 4,750 feet West of the Southeast corner of said section, both in Township 16 South, Range 11 East, Lyon County, Kansas, to provide **235 acre feet** (76.575 million gallons) of water as needed for direct stockwatering use to be withdrawn, released or otherwise diverted at a re-diversion rate of approximately **1,000 gallons per minute** (2.23 c.f.s.). A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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.

13. 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.

14. That the quantity of water approved under this file number is further limited to a quantity which when combined with File No. 44,071, will provide a total not to exceed 235 acre-feet of water per calendar year.

15. That the quantity of water approved under this file number for stockwatering use is further limited to the quantity which when combined with Water Right, File Nos. 44,071 & 47,208; Appropriation of Water, File Nos. 49,697 and 50,157 will provide a total not to exceed 112.42 million gallons (345 acre-feet) of water per calendar year.

Ordered this 28 day of September, 2021, in Manhattan, Riley County, Kansas.

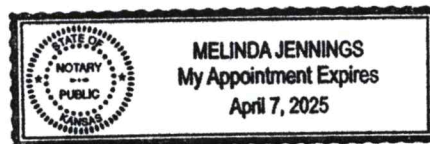
Lane P. Letourneau

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 28 day of September, 2021, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings
Notary Public



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 day of
Application, File No. 50,433, dated
mail to the following:

, 2021, I hereby certify that the foregoing Approval of
was mailed postage prepaid, first class, US

2 I FEEDERS LLC
884 RD 350
ALLEN, KS 66833

With photocopies to:

Topeka Field Office

Division of Water Resources

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

September 30, 2021

2 I FEEDERS LLC
DEREK THOMPSON
884 RD 350
ALLEN, KS 66833

RE: Appropriation of Water, File No. 50,433

Dear Mr. Thompson:

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 Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB: kjn: li
Enclosure(s)

pc: Topeka Field Office

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

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CERTIFICATE OF SERVICE

On this 30 day of September, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,433, dated 28 September 2021 was mailed postage prepaid, first class, US mail to the following:

2 I FEEDERS LLC
884 RD 350
ALLEN, KS 66833

With photocopies to:

Topeka Field Office



Division of Water Resources