

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: July 8, 2021

FROM: Leslie Ireland

RE: Vested Right, File Nos. SC 096 -D1; SC 098 & SC 099
Water Right, File Nos. 3,037; 9,867; 29,282; 33,887
37,944.05; 37,944.06 & 38,867

Ty Rumford on behalf of High Choice Feeders LLC, as an owner of the referenced water rights, filed applications for approval to change the place of use and the use made of water under, File Nos, SC 096-D1; SC 098; SC 099 & 3,037. These applications along with applications to change the stockwatering place of use under File Nos. 33,887, 37,944.05; 37,944.06, & 38,867 along with a change in place of use for File No. 29,282 (IRR) were received on December 17, 2018. It was determined the change under File No. 29,282 should have requested a change in use made of water. The change in use made of water for File No. 29,282, was submitted on November 6, 2020. The division of File No. SC 096, resulting in High Choice Feeders authorized irrigation and stockwatering under the D1 portion and the D2 portion to be owned by the Wasinger family was completed in February 2021. The owner further modified the change applications on May 4 2021, to expand the stockwatering area and modify the irrigation portion in Section 13 resulting in complete overlaps by use.

The water rights do not appear to be abandoned as per K.S.A. 82a-718, *Abandonment of water rights*. The applications appear to comply with K.A.R. 5-5-2a, *Complete change application*, and the rights are in compliance with K.A.R. 82-732, *Annual water use report required; penalty for violations*.

File Nos. SC 096-D1, 29,282; 33,887; 37,944.05; 37,944.06 & 38,867 stockwatering use authorize a total combined 109.768 million gallons in the feedlot located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 12 and in the North Half (N $\frac{1}{2}$) and a small portion of the Northwest corner of the Southwest Quarter (SW $\frac{1}{4}$) of Section 13, all in Township 20 South, Range 33 West, Scott County. When utilized as stockwatering these files have no additional limitations. The facility reports an annual average of 36,300 head of beef cattle watered, utilizing eight gallons per head per day at the reported maximum of 36,540 head they propose to expand to 50,0880 head. Currently, File Nos. SC 096-D1 and 29,282 are also authorized for irrigation use.

File Nos. SC 096-D1 & 29,282 irrigation use authorize 213 acres located in the Northwest Quarter (NW $\frac{1}{4}$) and in the West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of 12-20-33W. The newly divided vested right will authorize 196 AF and have a combined total of 359 acre-feet (AF) for irrigation use with File No. 29,282.

File No. 29,282 is authorized a limited 163 AF at a 300 gallons per minute for irrigation use from the point of diversion located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, for the irrigation of 213 acres with File No. SC 096, divided to SC 096-D1. A 1997 change approval limitation restricted the incomplete overlap with all the files to not exceed 2 acre-feet per acre with File No. SC 096. The summary memo for this change listed the base acres were determined to be 910 acres which would equate to 1,820 AF prior to the old change and 1,583.4 AF for irrigation after the 1997 change. Due to the division of SC 096 and now complete overlap it appears the limitation is no longer needed as these two files have an irrigation ratio of 1.69 AF/A. The right also authorizes 13.03 mgd (40 AF) at 25 gallons per minute for stockwatering from the well located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12. The dual use will authorize a total of 56.03 mgd for stockwatering use as assigned per well.

File Nos. SC 098 & 3,037, irrigation use authorizes a combined total of 766 AF on 383 acres located in the Northeast Quarter (NE $\frac{1}{4}$) and the Southwest Quarter (SW $\frac{1}{4}$) and a portion of the Northwest Quarter (NW $\frac{1}{4}$) all in 13-20-33W. There are no additional limitations.

File Nos. SC 099, & 9,867 authorized a combined total of 298 AF on 160 acres located in the Northeast Quarter (NE $\frac{1}{4}$) of 14-20-33W. There are no additional limitations.

The irrigation files, File Nos. SC 096-D1; SC 098; SC 099; 3,037; 9,867 & 29,282 currently authorize a combined total of 1,423 AF. The dual use authorization for irrigation and stockwatering with the 81.8% reduction for Scott County as detailed in the Consumptive Use Percentages by County and K.A.R. 5-5-9, resulting in a combined total of 1,164 AF (379.3 million gallons (mgy) when authorized for dual use. The existing stockwatering authorized by File Nos. SC 096-D1 (32.59 mgy) and 29,282 (13.03 mgy) will result in a total of 424.92 mgy for stockwatering if no water is diverted for irrigation use by these six files.

The proposed changes to the irrigated place of use under File Nos. SC 096-D1 & 29,282 removes the acres in the South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$) and those in the West Half of the Southwest Quarter, (W $\frac{1}{2}$ SW $\frac{1}{4}$) both in 12-20-33W. The removed acres will become part of the stockwatering place of use. The remaining irrigation acres propose a completed overlap of 620 noncontiguous acres under File Nos. SC 096-D1; SC 098; SC 099; 3037; 9867 & 29,282. The irrigated acres are located in the Northwest Quarter (NW $\frac{1}{4}$) of Section 12, the Northeast Quarter (NE $\frac{1}{4}$) Southwest Quarter (SW $\frac{1}{4}$) of Section 13, and Northeast Quarter (NE $\frac{1}{4}$) of Section 14, all in Township 20 South, Range 33 West, Scott County. The requested change to the irrigation rights appears to comply with part (b)(1) of K.A.R. 5-5-11, *Applications for change in place of use for irrigation purposes*. The proposal is for an identical overlap of authorized acres with no new acres added. The proposed 620 acres is allowed a maximum of 1,240 AF per K.A.R. 5-3-23 and Part(a) of K.A.R. 5-3-19, *Maximum reasonable annual quantity of water for irrigation use*. When File Nos. SC 096-D1; SC 098; SC 099; 3,037; 9,867 & 29,282 are operated as dual use the irrigation quantities have a combined total of 1,164 AF. No additional limitation on the quantity authorized for irrigation use will be needed at this time.

The 424.92 mgy that could be diverted for stockwatering use if no water is diverted for irrigation use when File Nos. SC 096-D1; SC 098; SC 099; 3,037; 9,867 & 29,282 irrigation portions are operated for dual use (including stockwatering under File Nos. SC 096-D1 & 29,282) when combined the 64.15 mgy currently authorized by the stockwatering use only rights, File Nos. 33,887; 37,944 and 38,867, yields 489.058 mgy (1,500.86 AF) for stockwatering use. If all of the requested quantity and previously stockwatering quantities were diverted for stockwatering use would facilitate the watering of approximately 89,325 head at detailed in KAR 5-3-22, *Maximum reasonable quantity of water for livestock and poultry*, at the maximum allowed 15 gallons per head per day. It appears this would be an unlikely use of the referenced files and the facility would operate under KDHE permitting with an annual average estimated 45,000 head per year affords 246.375 mgy or 756.097 AF. A basic 10% increase the 49,500 head affords 271.013 mgy 831.706 AF, justifying so no additional limitations will be applied to the stockwatering use.

The quantity under File No. SC 098 will have the assignment of the currently authorized blanket rate of 3,200 gallons per minute (gpm) and a quantity of 383 AF between the two authorized points of diversion. The well located in the Northwest Quarter (NW $\frac{1}{4}$) of Section 13, requested 100 AF at 1,000 gpm and the well located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 13, requested 213.294 AF at 2,200 gpm. The change approval will assign the quantity and rate for the requested use made of water.

There is a point of diversion overlap between the Southwest well under SC 098 and File No. 3,037. This overlap will remain as the change under File No. 3,307 did not request a change in point of diversion on the first page of the application for change, and the fee was for only a change in use made of water and place of use. It does appear a change in point of division may be needed for File No. 3,037, but at this time will remain overlapped with File No. SC 098. The well (ID 9) shared by the rights will be updated to the actual location determined by the 2016 Compliance Check locating it approximately 105 feet from authorized location. The point of diversion under File No. SC 099, will have the well location updated approximately 112 feet to the West also as determined by a 2016 Compliance Investigation. The point of diversion under File Nos. 9,867 and 29,282 will remain as authorized. As the wells are not moving the well to well spacing will not be evaluated by the requested changes.

The irrigated acres will be updated due to dual use made of water authorizations. The requested changes in the stockwatering place of use is to update the place of use in Section 12 and add the Northeast Quarter (NE $\frac{1}{4}$) for the full North half (N $\frac{1}{2}$) and a portion of the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 13, all in Township 20, Range 33 West, Scott County.

The wells located within one-half ($\frac{1}{2}$) mile of each proposed existing point of diversion were identified and informed by letter dated November 23, 2020, of the proposed changes. No comments were received to the sent notices.

In letters dated December 16, 2020 & May 17, 2021 (stockwatering place of use update), from Kyle Spencer, District Manager of Western Kansas Groundwater Management District No. 1, stated the applications were recommended for approval by a unanimously vote of their Board. Pursuant to the Rules and Regulations of the Western Kansas Groundwater Management District No. 1, it appears the district's rules and regulations have been met.

In an e-mail dated May 28, 2021, Michael Meyer, Water Commissioner, Garden City Field Office, indicated that he recommended approval of the applications.

Water flowmeters will be required by the change approvals. As the owners have indicated they will use effluent, check valves should be installed. The approvals will have the standard wording about the injection or any chemical or foreign substance into the water through the diversion works.

Based on the above discussion, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, the applications comply with K.A.R. 5-5-9, and the changes should not increase the historical consumptive use per KAR 5-5-3, *Change in consumptive use*, the referenced applications have been recommended to be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

From: Meyer, Mike [KDA]
Sent: Fri 5/28/2021 8:28 AM
To: Ireland, Leslie [KDA]
Subject: RE: Review & Recommendation Changes PU & UMW File Nos. SC 096-D1, SC 098 99 3037,, High Choice

approve to get this done

Mike

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Friday, May 28, 2021 8:27 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: RE: Review & Recommendation Changes PU & UMW File Nos. SC 096-D1, SC 098 99 3037,, High Choice

Mike,

Yes dual use will be authorized by the wells so stockwatering authorized from
Water right 29282-00, 2952N 4860W
Water right SC 96-00, 5200N 2268W

SC 098 did not change PD just GPS updated pd with overlap with 3037.

Working to get this package signed June 3 by Earl... so let me know if gtg.
Thanks,

Leslie

From: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Sent: Tuesday, May 25, 2021 4:46 PM
To: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Subject: RE: Review & Recommendation Changes PU & UMW File Nos. SC 096-D1, SC 098 99 3037,, High Choice

so this allows for the adjustment of SC 96 as ty requested and 29282 right?

so SC 098 did not change pd, you just correct the location just like 3037 right?

Mike

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Tuesday, May 25, 2021 11:53 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: Review & Recommendation Changes PU & UMW File Nos. SC 096-D1, SC 098 99 3037,, High Choice

Mike,

Please review the summary memo let me know if you could recommend the proposed changes.

As always comments and concerns are welcome.

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 IN THE MATTER OF THE AUTHORIZED QUANTITY OF WATER AND BETTER DESCRIBE THE AUTHORIZED POINT OF DIVERSION WATER RIGHT, FILE NO. 3,037

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Ty Rumford on behalf of High Choice Feeders LLC, 553 W Road 40, Scott City, Kansas 67871, as owner of the referenced water right, received in this office on December 17, 2018, for approval of a change in the location of the place of use and the use made of water, under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, by the Findings and Order of the Chief Engineer dated August 21, 1981, to better describe the authorized point of diversion, the Order of the Chief Engineer dated June 4, 1991, approving the application to change the place of use, the Order of the Chief Engineer dated October 6, 2005, approving the application to change the point of diversion, finds that the change is reasonable and will not impair existing rights, and that the application should be and are hereby approved.

The authorized quantity of water under this right will remain 383 acre-feet (124.80 million gallons). This order effectively limits the authorized quantity of water to 313.294 acre-feet (102.09 million gallons) per calendar year for both stockwatering and irrigation uses combined. That the limitation on the quantity of water shall exist until such a time that the quantity of water for stockwatering use authorized by this approval is no longer required.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the portion retained for irrigation use shall be authorized a maximum quantity not to exceed 313.294 acre-feet (102.09 million gallons) of groundwater per calendar year, for irrigation use on the following described property:

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
12	20S	33W					40.0	40.0	30.0	30.0									140
13	20S	33W										40.0	32.5	40.0	40.0				152.5
14	20S	33W	40.0	40.0	40.0	40.0													160

a total of 452.2 acres in Township 20 South, Range 33 West, Scott County, Kansas.

The portion changed to stockwatering use shall be authorized a quantity not to exceed:

313.294 acre-feet (102.09 million gallons) of groundwater per calendar year,

for use at the location described as being:

a feedlot located in the South Half of the South Half of the Northwest Quarter (S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$), and the Southwest Quarter (SW $\frac{1}{4}$) of Section 12, and in the North Half (N $\frac{1}{2}$) and a portion of the Southwest Quarter (SW $\frac{1}{4}$) of Section 13, all in Township 20 South, Range 33 West, Scott County, Kansas,

all located substantially as shown on the topographic map accompanying the application to change the use made of water and place of use.

That information in the office of the Chief Engineer finds that the point of diversion authorized would more accurately be defined as:

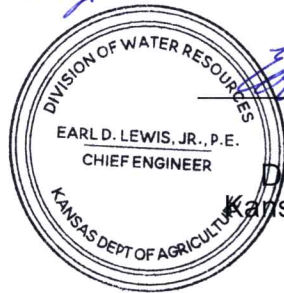
one (1) well located in the Southwest Quarter of the Northwest Quarter of the Southwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 13, more particularly described as being near a point 1,662 feet North and 5,285 feet West of the Southeast corner of said section, in Township 20 South, Range 33 West, Scott County, Kansas.

The water right owner shall properly install a separate acceptable water meter for each use made of water for 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 for irrigation and stockwatering use 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.

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.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 3,037, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation dated March 15, 1956, as modified and amended by the aforementioned orders.

Ordered this 26th day of August, 2021, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.
Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
County of Riley) SS

The foregoing instrument was acknowledged before me this 26 day of August, 2021, by, Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman
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, 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.

Any request for hearing or petition for administrative review shall be in writing and shall be submitted to the attention of: Chief Legal Counsel, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, Fax: (785) 564 – 6777.

CERTIFICATE OF SERVICE

On this 31 day of August, 2021, I hereby certify that the attached Approval of Application for Change in Use Made of Water, Place of Use and Order in the Matter of the Authorized Quantity of Water and Better Describe the Authorized Point of Diversion under Water Right, File No. 3,037; dated 26 August 2021 was mailed postage prepaid, first class, US mail to the following:

HIGH CHOICE FEEDERS LLC
553 W ROAD 40
SCOTT CITY KS 67871

With a Photocopy to:

Garden City Field Office
Groundwater Management District No. 1


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

August 31, 2021

HIGH CHOICE FEEDERS LLC
DOUG CLASSAN
553 W ROAD 40
SCOTT CITY KS 67871-5038

RE: Vested Right, File Nos. SC 096 -D1; SC 098 & SC 099
Water Right, File Nos. 3,037; 9,867; 29,282; 33,887; 37,944.05; 37,944.06 & 38,867

Dear Mr. Classan:

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

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approvals for change. A condition of each approval is the requirement that an acceptable water flow meter must be installed so both irrigation and stockwatering uses can be metered independent of each other, from each of the diversion works that will now be authorized for dual irrigation and stockwatering use prior to the diversion of water.

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 regarding the enclosed documents, please contact our office at (785) 564-6640. Inquiries about the metering please contact our staff at the Garden City Field Office, (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 Application and Change Unit Supervisor
Water Appropriation Program

KAB:LI

Enclosures

pc: Garden City Field Office
Groundwater Management District No. 1