

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

1. File Number: <p style="text-align: center;">50537</p>	2. Status Change Date: <p style="text-align: center;">5/25/2022</p>	3. Field Office: <p style="text-align: center;">01</p>	4. GMD:
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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) Person ID **63729**
New to system Add Seq# _____

FRIESS FARMS LAND & CATTLE LLC
Attn: STEVE FRIESS
23458 6600 RD
THAYER, KS 66776

7b. Landowner(s) Person ID _____
New to system Add Seq# _____

7A

7c. Landowner(s) Person ID _____
New to system Add Seq# _____

7d. Misc Person ID _____
New to system Add Seq# _____

8. WUR Correspondent Person ID _____
New to system Add Seq# _____
Overlap File (s) WUC Notarized WUC Form
Agree Yes No

7a

9. Use of Water: Changing? Yes No

Groundwater Surface Water

IRR REC DEW MUN

STK SED DOM CON

HYD DRG WTR PWR ART RECHRG

IND SIC: _____ OTHER: _____

12/31/2027

10. Completion Date: **12/31/2023** 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: **12/8/21** By: **BMM**
Date Entered: **6/1/2022** By: **LMoody**

File No. **50537** 15. Formation Code: Drainage Basin: **Verdigris River** County: Wilsonhvn Special Use: Stream: **DRUM CRK TRIB 2 (VERDIGRIS)**

16. Points of Diversion											
T	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W
	ENT			82980	NW NW SE	33	30S	17E	1	2634 2635	2494

17. Rate and Quantity				
Authorized			Additional	
Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files
100	184	100	184	49050, 49051
2500		985 GPM	28 AF	

18. Storage: Rate _____ NF Quantity **184** ac/ft Additional Rate **0** NF Additional Quantity **0** ac/ft

19. Limitation: **184** af/yr at **2500** gpm (_____ cfs) when combined with file number(s) **49,050**
 Limitation: **184 Storage** af/yr at _____ gpm (_____ cfs) when combined with file number(s) **49,050**

20. Meter Required? Yes No To be installed by **12/31/2023** Date Acceptable Meter Installed _____

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
T	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				
	MOD			65859	3	31	17E	1				2	26					7		9	35	40	9	28	39	195	7a	N	49050/49051
	MOD			65858	33	30S	17E	1		40	38	40	40	40	40	40	40			7	10				335	7a	N	49050/49051	

Comments: **ACRES GOT FLIPPED BETWEEN P/U'S. CONFIRMED WITH JDK.**

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KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: January 11, 2022

FROM: Brandon Milner

RE: Application, File No. 50,537

Friess Farms Land and Cattle LLC has filed the application referred to above for a permit to appropriate 184 acre-feet of surface water in a proposed reservoir at a rate not to exceed all natural flows of Drum Creek Tributary No. 2. This quantity (184) acre-feet of the stored water will then be rediverted at 2,500 gallons per minute for irrigation use. The point of diversion is the centerline of a dam located in the Southeast Quarter of Section 33, Township 30 South, Range 17 East, in Wilson County. The existing reservoir is located within the Verdigris River drainage basin and has a capacity of 200 acre-feet. The applicant has signed the application form stating he has access to the point of diversion. This application overlaps in the point of diversion with Water Right No. 49,050 and overlaps with the place of use with Water Right Nos. 49,050 and 49,951. Change applications have been filed on Water Right Nos. 49,050 and 49,051 to form a complete overlap with this new application.

Runoff calculations determined that there is 23 inches of runoff per acre, and the small drainage area of 96 acres will only provide for 184 acre-feet of runoff in 1 out of every five (5) years (a 20% chance). Therefore, per K.A.R. 5-6-5, the runoff quantity is the limiting factor. The proposed direct use quantity of 184 acre-feet, is equivalent to 0.92 times the capacity (200 AF), which is well within the normal “rule of thumb” of direct use quantity being no more than 5 times the capacity of the reservoir at normal pool for reasonable storage quantity.

~~The total quantity of water that will be rediverted (184 acre-feet), is less than the maximum allowable to irrigate the proposed 530 acres, based on the allowable quantity for irrigation in Wilson/Montgomery Counties of (1.0/1.1) AF/acre. However, this still provides 0.63 AF/acre which may be considered reasonable for irrigation purposes in this part of the state.~~

The applicant identified three upstream and downstream owners for this application. Nearby letters were sent out on December 22, 2021, and no responses were received to date.

The proposed structure was reviewed by DWR Water Structures Program staff permitted Under File No. DWL-0088.

As allowed by K.S.A. 82a-706(c) an approved water flow meter shall be installed on the secondary diversion works (pump site) for this file. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

In a January 11, 2022, phone conversation, 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 dam is non-jurisdictional for structures permitting, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

The total authorized quantity to irrigate the 530 acres will be a total of 364 Acre-feet from Water Right 49,050 (154 acre-feet) 49051 (180 acre-feet) and application no. 50,537 (28 acre-feet additional). This would provide 0.69 acre-feet per acre which would be considered reasonable.

Application no. 50,537 will be limited to 184 acre-feet at 2500 gallons per minute when combined with Water Right No

Brandon Milner
Environmental Scientist
New Applications Unit

From: Tietsort, Katie [KDA]
Sent: Tue 1/11/2022 3:33 PM
To: Milner, Brandon [KDA]
Subject: Voice Mail (13 seconds)
Attachments: audio.mp3

I was just calling about 5537. It's all good. I just wanted to ask you about something up making sure I understand something correct. Thanks bye.

You received a voice mail from Tietsort, Katie [KDA] at Katie.Tietsort@ks.gov.

Job Title: Water Commissioner
Company: Topeka Field Office
Work: [+1 785-296-1886](tel:+17852961886)
Mobile: [+1 785-213-9188](tel:+17852139188)
Email: Katie.Tietsort@ks.gov

Thank you for using Transcription! If you don't see a transcript above, it's because the audio quality was not clear enough to transcribe.

[Set Up Voice Mail](#)

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. 50,537** of the applicant

FRIESS FARMS, LAND, AND CATTLE LLC
23458 6600 RD
THAYER, KS 66776

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 **March 16, 2021**.
2. That the water sought to be appropriated shall be used for irrigation use on land described in the

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
33	30S	17E			2	26					7		9	35	40	9	28	39	195
3	31S	17E					40	38	40	40	40	40	40	40		7	10		335

application, as follows:

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to DRUM CREEK designated in the office of the Chief Engineer as Drum Creek Trib. 2 (Verdigris), 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 **184 acre-feet** per calendar year in one (1) reservoir created by a dam located in the Northwest Quarter of the Northwest Quarter of the Southeast Quarter (NW¼ NW¼ SE¼) of Section 33, more particularly described as being near a point 2,635 feet North and 2,494 feet West of the Southeast corner of said section, in Township 30 South, Range 17 East, Wilson County, Kansas, to provide **184 acre-feet** of water as needed for direct irrigation use to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **2,500 gallons per minute (5.57 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, 2023** 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 submitted prior to the expiration of the deadline and 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, 2027** 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 all re-diversion works constructed under the authority of this permit into which any type of chemical or other foreign substance will be injected into the water pumped from the re-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.

11. That an acceptable water flow meter shall be installed and maintained on the re-diversion works authorized by this permit in accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This water flow meter shall be used to provide an accurate quantity of water diverted as required for the annual water use report (including the meter reading at the beginning and end of the report year).

12. 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.

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

14. 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.

15. 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.

16. That the owner shall bypass natural flow and/or release water from storage when directed by the Chief Engineer or his authorized representative, in order to satisfy reasonable requests by senior water rights and permits, and to comply with any applicable minimum desirable streamflow requirements. That for purposes of water right administration, all water collected and stored in these reservoirs shall be considered to be natural flows.

17. That the quantity of water approved for storage under this permit is further limited to the storage quantity, which combined with Water Right File No. 49,050, for the specific reservoir described herein, will provide a total not to exceed **184 acre-feet** of water per calendar year for storage of water.

18. That the quantity of water and rate of re-diversion approved under this permit is further limited to the quantity and rate which combined with Water Right, File No. 49,050, will provide a total not to exceed **184 acre-feet** of water per calendar year to be re-diverted at a maximum diversion rate not in excess of **2,500 gallons per minute** (5.57 c.f.s.) for irrigation use on the land described herein.

Ordered this 25 day of May, 2022, 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)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 25 day of May, 2022, by Lane P. Letourneau, P.G., Program Manager, 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 request an evidentiary hearing before the Chief Engineer, or 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 Division, 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 review 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. 50,537, dated
mail to the following:

, 2022, I hereby certify that the foregoing Approval of
was mailed postage prepaid, first class, US

FRIESS FARMS, LAND, AND CATTLE LLC
23458 6600 RD
THAYER, KS 66776

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

FRIESS FARMS, LAND, AND CATTLE LLC
23458 6600 RD
THAYER, KS 66776

June 6, 2022

RE: Appropriation of Water, File No.
50,537

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 acceptable water flowmeter must be installed on the diversion works authorized by this permit prior to using water. 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.kswateruserreport.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,

A handwritten signature in cursive script that reads "Kristen A. Baum".

Kristen A. Baum
New & Change Applications Unit Supervisor
Division of Water Resources

KAB:bmm
Enclosure(s)
pc: Topeka Field Office

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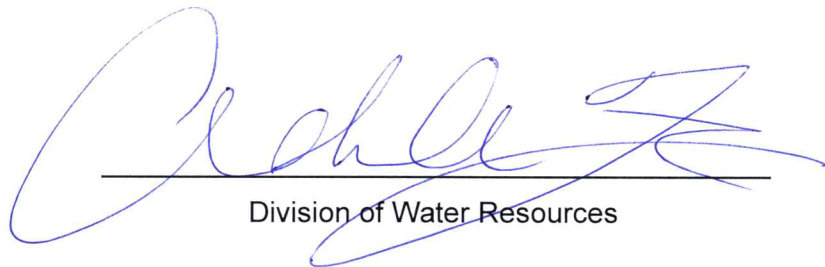
CERTIFICATE OF SERVICE

On this 6 day of June, 2022, I hereby certify that the foregoing Approval of Application, File No. 50,537, dated 25 May 2022 was mailed postage prepaid, first class, US mail to the following:

FRIESS FARMS, LAND, AND CATTLE LLC
23458 6600 RD
THAYER, KS 66776

With photocopies to:

Topeka Field Office



Division of Water Resources