

File No. **50,837** 13. County: **CA-Clark** Basin: **41- Cimarron River** Stream:
 Structures File No: Aquifer Code: **100 Quaternary** Special Use Area:

14. Points of Diversion, Rates & Quantities

PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Qty AF		Rate gpm		Storage Qty		Storage Rate	
									Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps
MOD 89728	SE SW SW	6	34S	23W	1	500	4332		256	256	1000	1000				

15. Limitations Type: Quantity: Rate: combined with file no(s):
 Type: Quantity: Rate: combined with file no(s):

16. Metering Metering Required Anti-Reverse Required Seal Required Compliance Date: **12/30/2025** ³¹

17. Place of Use

PDIV	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps				
					NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE								
MOD 70966	6	34S	23W	1									40				40				40	40			160	5a	<input type="checkbox"/>	
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18. Point of Diversion and Place of Use Overlaps

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MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: May 23, 2024

From: Christa Anhold, Environmental Scientist

Re: New Application File No. 50,837 – Preston Cunningham

Summary

Preston Cunningham has filed the above referenced application proposing to appropriate 256 acre-feet of groundwater per year at a diversion rate of 1,000 gallons per minute from one (1) well to irrigate 160 acres in Clark County. The point of diversion is in DUA CIM75 in Cimarron River Drainage Basin. The applicant has signed the application form stating that he has legal access to the point of diversion and place of use. There are no water rights that overlap the place of use or point of diversion.

Reasonable Rate and Quantity

The requested 256 acre-feet of groundwater applied to 160 acres is equivalent to 1.6 acre-feet per acre, which is the maximum allowable for Clark County. Based on nearby groundwater irrigation sites, 1,000 gallons per minute seems reasonable for the area.

Source of Supply and Safe Yield

A well log provided with the application indicates topsoil from surface to 7 feet, brown clay from 7 to 24 feet, gray clay from 24 to 80 feet, red clay with a 50/50 mix of gravel and coarse to fine sand from 80 to 130 ft, fine to coarse sand from 130 to 157 feet and un-weathered red shale from 157 to 160 feet. The well log provided by the applicant and nearby well logs were used to determine the source of supply to be alluvium.

A safe yield report indicates the source of supply covers 8,042 acres. Based on potential recharge of 1.3 inches, with 50% available for appropriation safe yield was determined to be 435.63 acre-feet. Existing appropriations total 151.96 acre-feet, leaving 283.67 acre-feet of groundwater to irrigate the requested 160 acres with 256 acre-feet. The point of diversion falls within designated unit area CIM75. Water available in CIM75 totals 3,515 acre-feet, allowing for the 256 acre-feet requested by the applicant.

Nearby Water Rights

According to WWC5 database, the closest domestic well is just outside the one-half mile notification radius and is owned by the applicant. The closest nondomestic well is just under 4,000 feet from the point of diversion. The proposed point of diversion meets minimum well spacing according to K.A.R. 5-4-4. The application did not identify any nearby wells. Using Orka one (1) potential domestic water user was identified within one-half mile radius. Nearby notifications were mailed on May 8, 2024. No responses have been received to date.

Recommendations

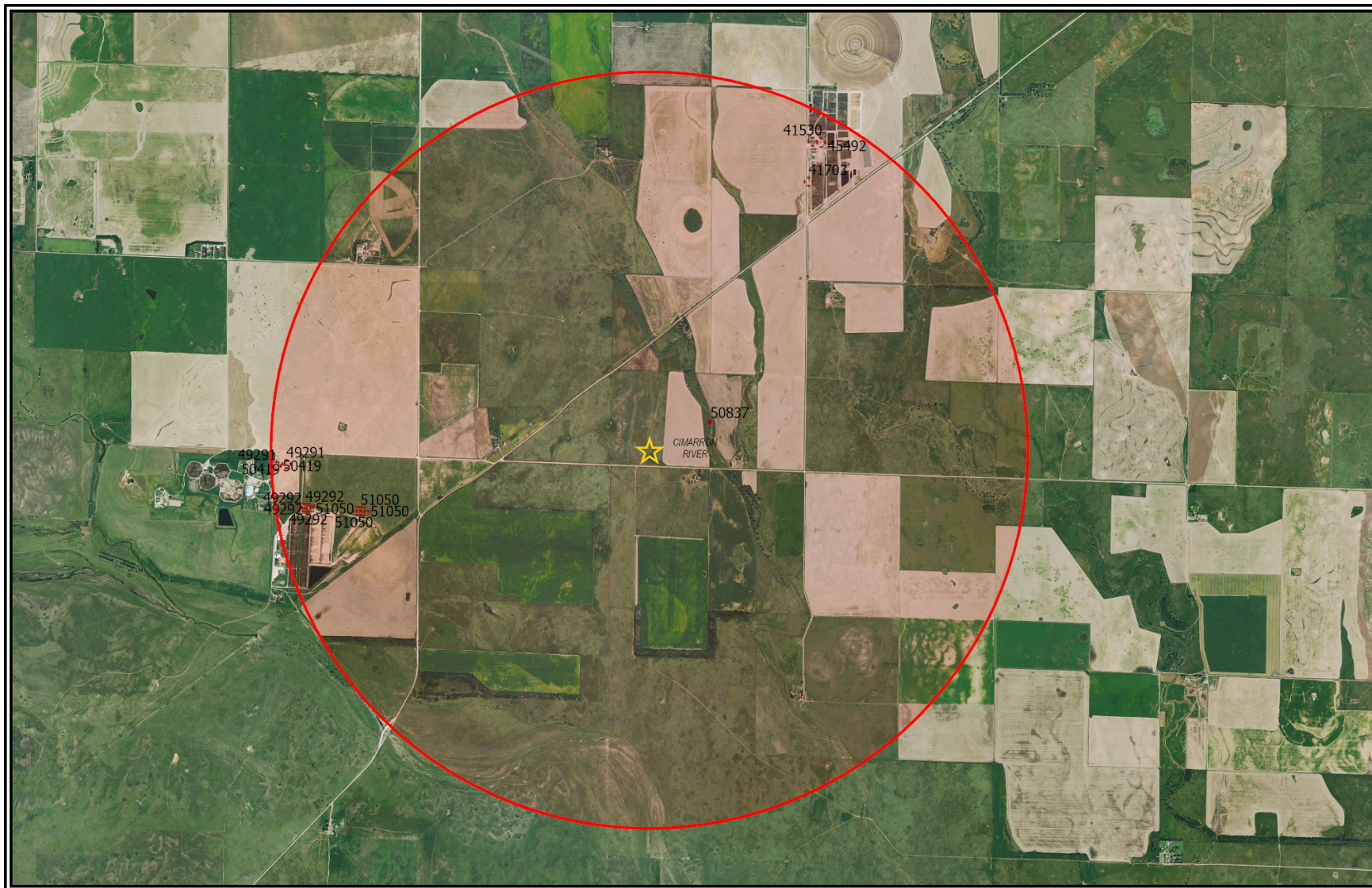
The application was sent for consideration to Cameron Conant, Assistant Water Commissioner and Jeff Lanterman, Water Commissioner of the Stafford Field Office on May 23, 2024, and recommended for approval in an email dated June 26, 2024.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum spacing requirements. It does not appear that approval of the application will impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Christa Anhold
Environmental Scientist
Manhattan Headquarters

Safe Yield Report Sheet
Water Right- Proposed Point of Diversion
Point of Diversion in 06-34S-23W
Footages from SE corner- 500 feet North 4,332 feet West



Analysis Results

The selected PD is in an area OPEN to new appropriations.

The safe yield based on the variables listed below is 435.63 AF.

Total prior appropriations in the circle is 470.89 AF. $-256 - 62.95 + .02 = 151.96$

Total quantity of water available for appropriation is ~~0.00 AF~~ $435.63 - 151.96 = 283.67AF$

Safe Yield Variables

The area used for the analysis is set at 8,042 acres.

The potential annual recharge at the circle center is estimated to be 1.3 inches.

The percent of recharge available for appropriation is 50%.

Authorized Quantity values are as of 07-MAY-2024 and are based on Appropriated and Vested ground water right and possible stream nodes for GMD #2. Domestic, Term and Temporary water rights have been excluded.

There are 8 water rights and 14 points of diversion within the circle.

File Number	Use	ST	SR	Q4	Q3	Q2	Q1	FeetN	FeetW	Sec	Twp	Rng	ID	Qind	Auth Quant	Add Quant		Tot Acres	Net Acres
A 41530 00	STK	NK	G		SW	NW	NW	3975	5255	32	33	23W	7	WR	23.05	23.05			
A 41703 00	STK	NK	G		SW	SW	NW	2851	5336	32	33	23W	9	WR	34.61	32.82	+02		
A 45492 00	STK	NK	G		NW	SW	NW	3953	5007	32	33	23W	11	WR	7.81	7.81			
A 49291 00	STK	KE	G		NE	NE	NE	4927	568	10	34	24W	5	WR	16.79	16.79			
Same	STK	KE	G		NE	NW	NW	4914	4236	11	34	24W	2	WR					
A 49292 00	STK	KK	G		NE	SE	NW	3800	3250	11	34	24W	4	WR	50.42	50.42			
Same	STK	KK	G		NE	SE	NW	3795	3151	11	34	24W	5	WR					
Same	STK	KK	G		NE	SE	NW	3797	3160	11	34	24W	6	WR					
Same	STK	KK	G		NE	SE	NW	3795	3080	11	34	24W	7	WR					
A 50419 00	STK	GY	G		NE	NE	NE	4927	568	10	34	24W	5	WR	21.06	21.06			
Same	STK	GY	G		NE	NW	NW	4914	4236	11	34	24W	2	WR					
A 50837 00	IRR	AY	G			NC	S2	1320	2640	06	34	23W	1	WR	256.00	256.00	-256.00	160.00	160.00
A 51050 00	STK	AY	G		NE	SW	NE	3731	1634	11	34	24W	8	WR	62.95	62.95	-62.95		
Same	STK	AY	G		NE	SW	NE	3736	1731	11	34	24W	9	WR					
Same	STK	AY	G		NE	SW	NE	3728	1635	11	34	24W	10	WR					
Same	STK	AY	G		NE	SW	NE	3728	1536	11	34	24W	11	WR					

Limitations

File Number	Seq Num	Limitations
A 41703 00	1	31.966MGY COM/W #13901.5, #41530, & #41531 $(98.100AF) = 31.966MGY$
A 50419 00	1	100 GPM COM/W #49291

DUA CIM75 available water = 3,515 AF. Allowing for the requested 256 AF

From: Lanterman, Jeff [KDA]
Sent: Wed 6/26/2024 3:07 PM
To: Anhold, Christa [KDA]
Cc: Conant, Cameron [KDA]
Subject: RE: 50837 Recommendation Request

Yep. Go ahead and approve it.

Thanks!

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Sent: Wednesday, June 26, 2024 3:07 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Cc: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 50837 Recommendation Request

Jeff,

Am I good to move the application along or are there any other concerns?

Christa Anhold
(785)564-6644

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Wednesday, June 26, 2024 10:09 AM
To: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>; Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Cc: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 50837 Recommendation Request

Awesome, Thanks Janelle.

Probably still a bad idea to tear out riparian areas and cross creeks. Had big meetings yesterday about reservoirs and reducing sediment loads 🙄 I don't think we are upstream of anything here though.

From: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Sent: Wednesday, June 26, 2024 9:49 AM
To: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Cc: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: RE: 50837 Recommendation Request

The stream is not jurisdictional so he can cross it will a pivot without anything from us.

Janelle Phillips, P.E.
Water Structures Team Lead
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan KS 66502
785-564-6656 - office
785-307-8292 – cell
Janelle.phillips@ks.gov

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Sent: Monday, June 24, 2024 1:41 PM
To: Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>
Subject: RE: 50837 Recommendation Request

Janelle,

Do we need structures permit for the below mentioned. Preston Cunningham wants to irrigate 160-acres in Clark County using groundwater, part of what he intends to irrigate covers some streams. He doesn't intend to collect surface water.

S-T-R: 6-34S-23W

Lat & Long: 37.10689856 , -99.86587953

Christa Anhold
(785)564-6644

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>

Sent: Monday, June 24, 2024 10:50 AM

To: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Phillips, Janelle [KDA] <Janelle.Phillips@ks.gov>

Subject: RE: 50837 Recommendation Request

Christa;

Thank you for the summary. I checked the DUA and it appears that there is plenty of water pursuant to our rough spreadsheet.

Spacing is more than adequately met in all cases. Sadly we don't have a good well measurement network down there but the one well appears stable.

The well log looks pretty good as well. Approval of this thing may start a gold rush down that way of new applications similar to what happened in KM county.

I believe this one can be approved.

Prior to approving it, I did notice that he appears to be putting the place of use on a couple pretty good creeks or other drainages. If he is planning to put a pivot in or otherwise farm through those creek channels (or worse reroute the creeks with this project) I think there may be some structures permitting involved. Can you check with Janelle Phillips and see if she has any concerns here with Structures or if it is even jurisdictional. Copied Janelle on this email.

Thanks
Jeff

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>

Sent: Thursday, May 23, 2024 9:34 AM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Subject: 50837 Recommendation Request

Good morning Jeff and Cameron,

Attached is the draft memo for 50837, for your review and recommendation. Nearby notifications were mailed on May 8, 2024. No responses have been received to date.

Here is the link to the nearest WIZARD water well, which is 6.5miles from the applicants proposed PD.

https://geohydro.kgs.ku.edu/geohydro/wizard/wizardwelldetail.cfm?usgs_id=370822099452801

Let me know if you have any questions or need anything else.

Christa Anhold

Environmental Scientist
Department of Water Resources
(785)-564-6644
Christa.anhold@ks.gov



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. 50,837** of the applicant

PRESTON CUNNINGHAM
PO BOX 194
MEAD KS 67867

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 1, 2022**.

2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6 - 34S - 23W									40			40		40	40		160

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well located in the Southeast Quarter of the Southwest Quarter of the Southwest Quarter (SE¼ SW¼ SW¼) of Section 6, more particularly described as being near a point 500 feet North and 4,332 feet West of the Southeast corner of said section, in Township 34 South, Range 23 West, Clark County, Kansas, located substantially as shown on the topographic map accompanying the application.

4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **1,000 gallons per minute (2.23 c.f.s.)** and to a quantity not to exceed **256 acre-feet** of water for any calendar year.

5. That installation of works for diversion of water shall be completed on or before **December 31, 2025**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee of \$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 of \$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, 2029**, 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 of \$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 all 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 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.

12. That all wells with a diversion rate of 100 gallons per minute or more drilled under the authority of this permit shall have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer. This tube or device shall be suitable for making water level measurements and shall be maintained in a condition satisfactory to the Chief Engineer.

13. That an acceptable water flow meter shall be installed and maintained on the diversion works authorized by this permit in accordance with 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).

14. 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.

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

16. 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.

17. That failure without cause to comply with the provisions of this 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.

Ordered this 2 day of July, 2024, in Manhattan, Riley County, Kansas.

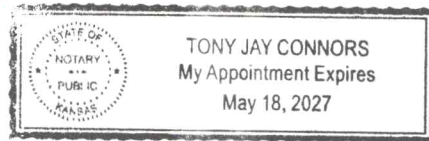
Lane P. Letourneau

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 2 day of July, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Tony Jay Connors
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

July 10, 2024

PRESTON CUNNINGHAM
PO BOX 194
MEAD KS 67867

RE: Appropriation of Water
File No. 50,837

Dear Mr. Cunningham:

Enclosed is a permit authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use. 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.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.

Also included 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/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 Stafford Field Office at (620)-324-5311. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

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

KAB:kak:cla
Enclosure(s)
pc: Stafford 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 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 10 day of July, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,837, dated July 2, 2024, was mailed postage prepaid, first class, US mail to the following:

Original to:

PRESTON CUNNINGHAM
PO BOX 194
MEAD KS 67867

With photocopies to:

KDA-DWR Stafford Field Office



Division of Water Resources