



File No. <b>50,937</b>	15. Formation Code: <b>113</b>	Drainage Basin: <b>17</b>	County: <b>SA</b>	Special Use: <b>N/A</b>	Stream: <b>N/A</b>																																																																																																											
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="5" style="width:50%; vertical-align: top;"> <b>16. Points of Diversion</b>            T            MOD            DEL      PDIV            ENT                      Qualifier      S      T      R      ID      'N      'W         </td> <td colspan="5" style="width:50%; vertical-align: top;"> <b>17. Rate and Quantity</b>            Authorized                      Additional            Rate                      Quantity                      Rate                      Quantity            gpm                      af                      gpm                      af                      Overlap PD Files         </td> </tr> <tr> <td style="text-align: left;"><b>CHK</b></td> <td style="text-align: left;"><b>89976</b></td> <td style="text-align: left;"><b>NE SW SW</b></td> <td style="text-align: left;"><b>8</b></td> <td style="text-align: left;"><b>14S</b></td> <td style="text-align: left;"><b>3W</b></td> <td style="text-align: left;"><b>3</b></td> <td style="text-align: left;"><b>727</b></td> <td style="text-align: left;"><b>4411</b></td> <td style="text-align: left;"><b>99</b></td> <td style="text-align: left;"><b>14</b></td> <td style="text-align: left;"><b>99</b></td> <td style="text-align: left;"><b>14</b></td> <td style="text-align: left;"><b>NONE</b></td> </tr> <tr><td colspan="14"> </td></tr> <tr><td colspan="14"> </td></tr> </table>						<b>16. Points of Diversion</b> T MOD DEL      PDIV ENT                      Qualifier      S      T      R      ID      'N      'W					<b>17. Rate and Quantity</b> Authorized                      Additional Rate                      Quantity                      Rate                      Quantity gpm                      af                      gpm                      af                      Overlap PD Files					<b>CHK</b>	<b>89976</b>	<b>NE SW SW</b>	<b>8</b>	<b>14S</b>	<b>3W</b>	<b>3</b>	<b>727</b>	<b>4411</b>	<b>99</b>	<b>14</b>	<b>99</b>	<b>14</b>	<b>NONE</b>																																																																																			
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Comments: <b>Remove the 8 acres proposed under 50,938 from the authorized place of use; there is no overlap between these two files.</b>																																																																																																																

# MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

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Date: July 23, 2024

From: David Means, Environmental Compliance/Regulatory Spec

Re: New Application File No. 50,937 – Mulberry Creek Farms LLC

## Summary

Mulberry Creek Farms LLC has filed an application to appropriate groundwater to irrigate 7 acres in Saline County, Kansas, requesting one (1) well, with a quantity of 14 acre-feet of water per calendar year, at a diversion rate of 99 gallons per minute. There are no other appropriations or water rights that will overlap in point of diversion or place of use.

## Reasonable Rate and Quantity

The proposed quantity of 14 AF will amount to 2 acre-feet/acre, which is higher than the maximum of 1.3 acre-feet/acre typically allowed for irrigation in Saline County. However, since a specialty crop (sod) is being proposed, the requested quantity appears reasonable and meets the requirements of K.A.R. 5-3-20.

## Source of Supply and Safe Yield

Based on the well log, which shows a layer of clay from 1-31 feet and layers of fine to medium sand and gravel from 31-62 feet where shale is encountered and a static water level of 18 feet, the source of supply appears to be tributary alluvium. The area is open to new applications. Evaluation of the area of consideration only included the extent of the area underlain by the tributary alluvium associated with Mulberry Creek and the mainstem alluvium of the Solomon River, which provided an area of 5,439 acres. With a potential annual recharge of 3.0 inches, and 75% of recharge available for appropriation, safe yield was determined to be 1,019.82 acre-feet. Existing water rights have appropriated 730.04 acre-feet, providing a difference of 289.78 acre-feet available for appropriation, and the application requesting 14 acre-feet complies with safe yield.

## Nearby Water Rights

The source of supply is tributary alluvium; K.A.R. 5-4-4 requires a minimum spacing of 1,320 feet from non-domestic wells and 660 feet to domestic wells. Review of the aerial photography and the WWC-5 database indicates the closest non-domestic well is over 4,435 feet away, authorized by Water Right, File No. 7,175. The closest domestic well is roughly 350 feet away owned by Robert Kline. Mr. Kline was one of several landowners to receive a nearby letter. Mr. Kline contacted our office to let us know of his domestic well and asked several questions about the application process and the local area's water use. Mr. Kline did sign a domestic well spacing consent form, indicating he is ok with the proposed application being approved despite not meeting spacing to his well. No other comments or concerns were received from any other nearby landowner.

## Recommendations

Kelly Stewart, Water Commissioner of the Stockton field office recommended approval of the application on July 24, 2024. Based on the above discussion, the area is open to new appropriations, the application complies with safe yield and well spacing, and approval of the application should not impair senior water rights nor

prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved as requested.

**From:** Stewart, Kelly  
**Sent:** Wed 7/24/2024 11:41 AM  
**To:** Means, David [KDA]  
**Cc:** Hageman, Nancy [KDA]  
**Subject:** RE: New App Recommendation

David,

I recommend approval of this application.

Kelly

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**From:** Means, David [KDA] <David.Means@ks.gov>  
**Sent:** Tuesday, July 23, 2024 10:39 AM  
**To:** Stewart, Kelly <Kelly.Stewart@ks.gov>  
**Subject:** New App Recommendation

Kelly,  
Attached is the memo for 50,937. Please provide your recommendation and/or comments.

Thanks,

David

Submit To: CHIEF ENGINEER  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
<http://agriculture.ks.gov/dwr>

# DOMESTIC WELL SPACING CONSENT FORM



I, the undersigned, own a well in the Southeast Quarter of the Southwest Quarter of the Southwest Quarter of Section 8, Township 14 South, Range 3  E  W, Saline County, Kansas.

Water from the above referenced well is used only for domestic purposes, as follows:

- household use;
- watering of livestock, poultry, farm and domestic animals used in operating a farm; and/or
- irrigation of lands not exceeding a total of two (2) acres in area for the growing of gardens, orchards and lawns.

I understand that an application for a permit to appropriate water, Application, File No. 50,937, has been filed with DWR and that the applicant seeks to use water from an irrigation well located closer to my domestic well than allowed by the rules and regulations of the Chief Engineer, in particular K.A.R. 5-4-4(c)(2)(C).

I hereby give my permission to the applicant to install an irrigation well at a location approximately 350 feet from my domestic well if the same is allowed and permitted by the Chief Engineer.

By giving my permission, I do not waive any right I may have to file a complaint with the Chief Engineer or to make a written request to secure water, pursuant to K.A.R. 5-4-1, if the use of my well becomes impaired such that I am unable to exercise my domestic water right, nor do I waive any other rights I may have under the Kansas Water Appropriation Act or the rules and regulations of the Chief Engineer.

I acknowledge that my permission has been given freely and voluntarily. I further acknowledge that I have not entered any agreement either oral or in writing with any person(s) including the Applicant, land owner, or any representative or agent of the applicant or land owner that condition my permission on giving up any of my rights under the Kansas Water Appropriation Act or the rules and regulations of the Chief Engineer or that condition my permission on reliance on any person or entity other than the Chief Engineer to investigate any claims of impairment I may make with respect to my domestic well or to secure water to satisfy my domestic water right.

Raymond Kline  
Signature  
3852 State  
Address  
785-873-8217  
Phone

Raymond Kline  
Print Name  
Salina, Ks. 67401  
City, State, Zip  
\_\_\_\_\_  
Email

State of Kansas )  
County of Saline ) SS

I hereby certify that the foregoing instrument was signed in my presence and sworn to before me this 10 day of July, 2024.

Connie R Rawson  
Notary Public

My Commission Expires:



DLM  
DWR Initials







# Analysis Results

The selected PD is in an area OPEN to new appropriations.  
 The safe yield based on the variables listed below is 1,019.82 AF.  
 Total prior appropriations in the circle is ~~564.21 AF~~ **736.04 AF**  
 Total quantity of water available for appropriation is ~~455.62 AF~~ **289.78 AF**

## Safe Yield Variables

The area used for the analysis is set at 5,439 acres.  
 The potential annual recharge at the circle center is estimated to be 3.0 inches.  
 The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 13-JUN-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 9 water rights and 18 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 7175 00	IRR	NK	G	NC	N2	SE	NE	0	0	17	14	03W	1	WR	27.00	27.00	40.00	40.00
A 8007 00	IRR	NK	G		NE	NW	NW	0	0	18	14	03W	1	WR	60.00	60.00	40.00	40.00
A 17723 00	IRR	NK	G		NW	NE	NE	5180	1255	13	14	04W	1	WR	45.00	45.00	33.00	33.00
A 44484 00	MUN	LR	G		SW	SE	NW	2993	3963	07	14	03W	1	WR	138.10	0.00	40.00	40.00
Same	MUN	LR	G		SW	SE	NW	2807	3964	07	14	03W	2	WR				
Same	MUN	LR	G		SW	SE	NW	3179	3963	07	14	03W	3	WR				
A 46939 00	MUN	LO	G		SW	SE	NW	2993	3963	07	14	03W	1	WR	57.73	9.21	46.824	46.824
Same	MUN	LO	G		SW	SE	NW	2807	3964	07	14	03W	2	WR				
Same	MUN	LO	G		SW	SE	NW	3179	3963	07	14	03W	3	WR				
A 47994 00	IRR	MM	G		SE	SE	SE	200	344	01	14	04W	2	WR	195.00	195.00	150.00	150.00
Same	IRR	MM	G		SE	SE	SE	443	582	01	14	04W	3	WR				
Same	IRR	MM	G		SE	SE	SE	64	29	01	14	04W	4	WR				
Same	IRR	MM	G		SE	SE	SE	53	417	01	14	04W	5	WR				
Same	IRR	MM	G		SE	SE	SE	241	348	01	14	04W	6	WR				
A 49524 00	IRR	LR	G		SW	NE	SW	1771	3465	12	14	04W	2	WR	198.00	198.00	153.00	153.00
Same	IRR	LR	G		SW	NE	SW	1742	3671	12	14	04W	3	WR				
Same	IRR	LR	G		SW	NE	SW	2044	3580	12	14	04W	4	WR				
Same	IRR	LR	G		SW	NE	SW	1579	3174	12	14	04W	5	WR				
Same	IRR	LR	G		SW	NE	SW	1717	3433	12	14	04W	6	WR				
A 50937 00	IRR	AY	G		NE	SW	SW	727	4411	08	14	03W	3	WR	14.00	14.00	7.00	7.00
A 50938 00	IRR	AY	G		NW	SW	SW	1247	5026	08	14	03W	4	WR	16.00	16.00	8.00	8.00

Added due to limits w/ 22388, 34435 outside of 2 mile circle.



# Limitations

File Number	Seq Num	Limitations
A 44484 00	1	45.05MGY COM/W #22388, 34435
A 46939 00	1	66.811MGY COM/W #22388, 34435, 44484 & 46926
Same	2	500GPM COM/W #44484

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. 50,937** of the applicant

**MULBERRY CREEK FARMS LLC  
PO BOX 1012  
SALINA KS 67402**

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 **January 6, 2023**.

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	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTAL
	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
8 - 14S - 3W											7						7

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 Northeast Quarter of the Southwest Quarter of the Southwest Quarter (NE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section 8, more particularly described as being near a point 727 feet North and 4,411 feet West of the Southeast corner of said section, in Township 14 South, Range 3 West, Saline 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 **99 gallons per minute (0.22 c.f.s.)** and to a quantity not to exceed **14 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 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. The required 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).

13. 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.

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



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 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 *1<sup>st</sup>* day of *August*, 2024, in Manhattan, Riley County, Kansas.

*Lane P. Letourneau*

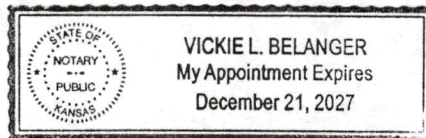
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Lane P. Letourneau, P.G.  
Water Appropriation Program Manager  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas    )  
                              ) SS  
County of Riley    )

The foregoing instrument was acknowledged before me this *1<sup>st</sup>* day of *August*, 2024, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

*Vickie L. Belanger*

\_\_\_\_\_  
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

August 9, 2024

MULBERRY CREEK FARMS LLC  
PO BOX 1012  
SALINA KS 67402

RE: Appropriation of Water  
File Nos. 50,937 and 50,938

Dear Sir or Madam:

Enclosed are permits 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 each permit.

Notices of completion of the wells must be filed on the enclosed forms 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 the permit(s). 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, per file number.

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](http://www.kswaterusereport.org).

The approval of your applications constitutes permits to appropriate water. They do not give authority to construct any dam or other stream obstruction regulated by K.S.A. 82a-301 through 305a. They do 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 rights. Additional information and applicable forms may be found on our website at [agriculture.ks.gov/dwr](http://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 Stockton Field Office at 785-425-6787. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

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

KAB:kak:dlm  
Enclosure(s)  
pc: Stockton Field Office



## RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may 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.

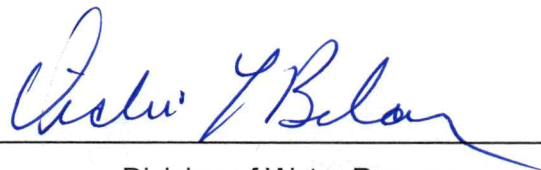
## CERTIFICATE OF SERVICE

On this 9<sup>th</sup> day of August, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,938, dated August 1, 2024, was mailed postage prepaid, first class, US mail to the following:

MULBERRY CREEK FARMS LLC  
PO BOX 1012  
SALINA KS 67402

With photocopies to:

KDA-DWR Stockton Field Office



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Division of Water Resources



## 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 9<sup>th</sup> day of August, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,937, dated August 1, 2024, was mailed postage prepaid, first class, US mail to the following:

MULBERRY CREEK FARMS LLC  
PO BOX 1012  
SALINA KS 67402

With photocopies to:

KDA-DWR Stockton Field Office



Division of Water Resources