

File No. 50,938	15. Formation Code: 113	Drainage Basin: 17	County: SA	Special Use: N/A	Stream: N/A																																																																												
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="5">16. Points of Diversion</td> <td colspan="5">17. Rate and Quantity</td> </tr> <tr> <td colspan="5"></td> <td colspan="2" style="text-align:center">Authorized</td> <td colspan="3" style="text-align:center">Additional</td> </tr> <tr> <td style="font-size:small;">T MOD DEL ENT</td> <td style="font-size:small;">PDIV</td> <td style="font-size:small;">Qualifier</td> <td style="font-size:small;">S</td> <td style="font-size:small;">T</td> <td style="font-size:small;">R</td> <td style="font-size:small;">ID</td> <td style="font-size:small;">'N</td> <td style="font-size:small;">'W</td> <td style="font-size:small;">Rate gpm</td> <td style="font-size:small;">Quantity af</td> <td style="font-size:small;">Rate gpm</td> <td style="font-size:small;">Quantity af</td> <td style="font-size:small;">Overlap PD Files</td> </tr> <tr> <td>CHK</td> <td>89977</td> <td>NW SW SW</td> <td>8</td> <td>14S</td> <td>3W</td> <td>4</td> <td>1247</td> <td>5026</td> <td>99</td> <td>16</td> <td>99</td> <td>16</td> <td>NONE</td> </tr> <tr><td colspan="14"> </td></tr> <tr><td colspan="14"> </td></tr> </table>						16. Points of Diversion					17. Rate and Quantity										Authorized		Additional			T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files	CHK	89977	NW SW SW	8	14S	3W	4	1247	5026	99	16	99	16	NONE																												
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18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft																																																																																	
19. Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____ Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____																																																																																	
20. Meter Required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by 12/31/2025 Date Acceptable Meter Installed _____																																																																																	
21. Place of Use																																																																																	
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ENT 71851	8	14S	3W																																																																														

Comments: **50937 & 50938 do not overlap in place of use. Need new PUSE ID and PU CIN assigned to 50938.**

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: July 23, 2024

From: David Means, Environmental Compliance/Regulatory Spec

Re: New Application File No. 50,938 – Mulberry Creek Farms LLC

Summary

Mulberry Creek Farms LLC has filed an application to appropriate groundwater to irrigate 8 acres in Saline County, Kansas, requesting one (1) well, with a quantity of 16 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 16 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

The source of supply appears to be tributary alluvium based on the well log, which shows various layers of clay from 4-38 feet, fine sand and clay from 38-45 feet, creek sand and gravel from 45-52 feet, gray clay from 52-56 feet, and creek sand and gravel from 56-62 feet where shale is encountered. The static water level was 17 feet. 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 5,379 acres. With a potential annual recharge of 3.0 inches, and 75% of recharge available for appropriation, safe yield was determined to be 1,008.63 acre-feet. Existing water rights have appropriated 744.03 acre-feet, providing a difference of 264.6 acre-feet available for appropriation, and the application requesting 16 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 permitted non-domestic well is over 4,374 feet away, authorized by Water Right, File No. 8,007. There do not appear to be any domestic wells within 660 feet of the proposed point of diversion. The proposed well under pending application file no. 50,937 will be approximately 805 feet away, which has also been filed by the same applicant. Given the low capacity of both wells (proposed 99 g.pm. for each well) the spacing guidelines contained in K.A.R. 5-4-4 do not appear to be necessary to prevent direct impairment. Twelve nearby notification letters were mailed on July 1, 2024. No responses have been received to date.

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 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.

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

David,

I recommend approval of this application.

Kelly

From: Means, David [KDA] <David.Means@ks.gov>
Sent: Tuesday, July 23, 2024 10:43 AM
To: Stewart, Kelly <Kelly.Stewart@ks.gov>
Subject: New App Recommendation

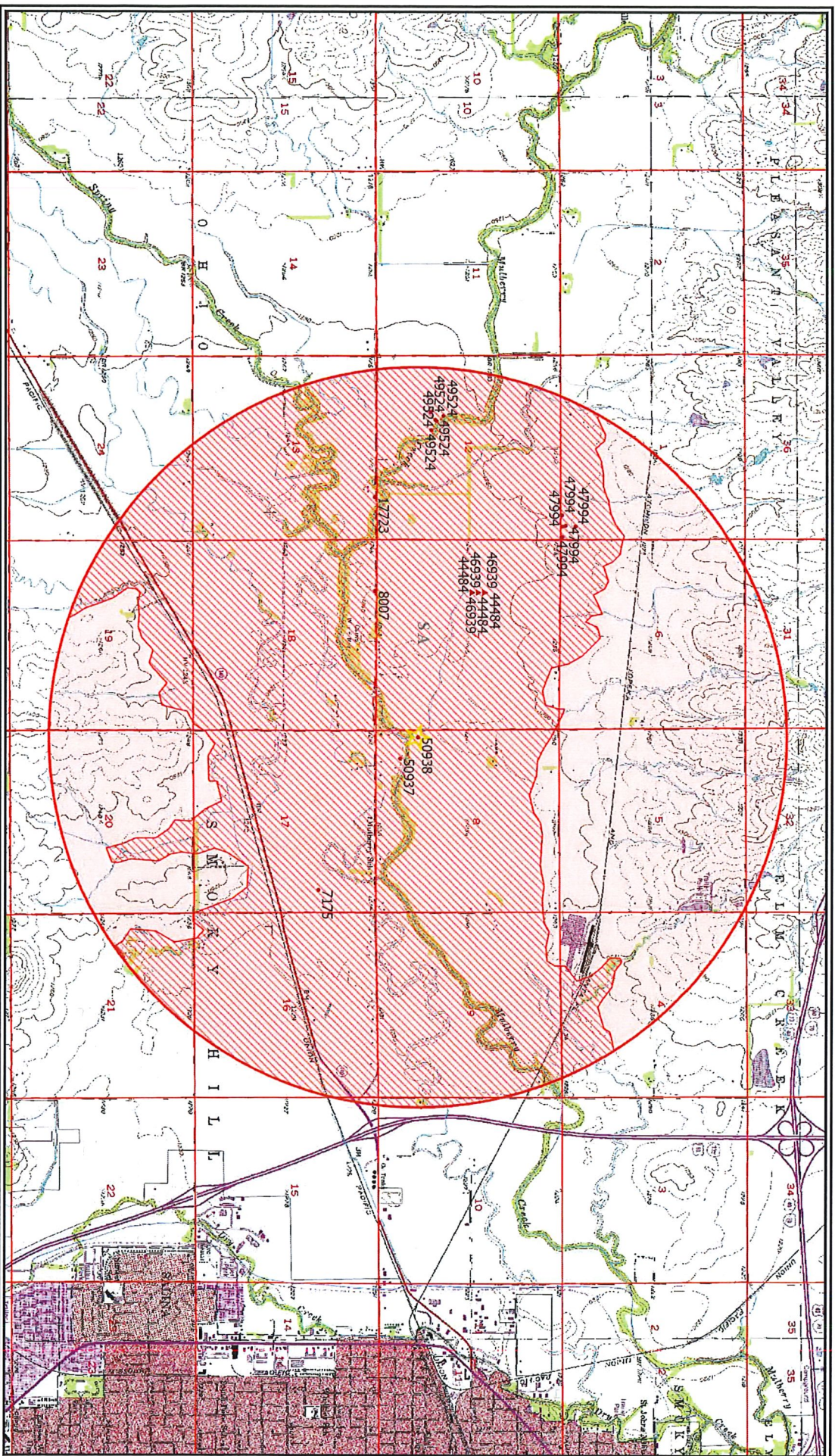
Kelly,
Attached is the memo for 50,938. Please provide your recommendation and/or comments.

Thanks,

David

Safe Yield Report Sheet
Water Right- Proposed Point of Diversion
Point of Diversion in 08-14S-03W

Footages from SE corner- 1,247 feet North 5,026 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 1,008.63 AF.
 Total prior appropriations in the circle is ~~564.21 AF~~ **744.03 AF**
 Total quantity of water available for appropriation is ~~444.42 AF~~ **264.6 AF**

Safe Yield Variables

The area used for the analysis is set at 5,379 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	45.00	40.00	40.00
Same	MUN	LR	G		SW	SE	NW	2807	3964	07	14	03W	2	WR		0.00		
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	34435, 46926	33.00
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	0.00

Added due to limits w/ 20888, outside of 2 mi. 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. 50,938** 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											8						8

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 Northwest Quarter of the Southwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 8, more particularly described as being near a point 1,247 feet North and 5,026 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 **16 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 *1st* day of *August*, 2024, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

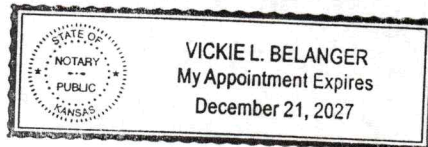
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this *1st* 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.

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. 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.

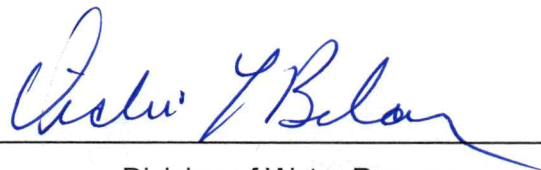
CERTIFICATE OF SERVICE

On this 9th 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



Division of Water Resources

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MULBERRY CREEK FARMS LLC
PO BOX 1012
SALINA KS 67402

With photocopies to:

KDA-DWR Stockton Field Office



Division of Water Resources