

**Kansas Department of Agriculture**  
**Division of Water Resources**  
 APPROVAL OF NEW APPLICATION WORKSHEET

1. File No.: <b>51003</b>	2. Status Change Date: <b>7/25/2024</b>	4. Field Office: <b>01 - Topkea</b> GMD: Structures File No.: Filing/Priority Date: <b>03/28/2023</b> Application Complete Date:
3. Package File No(s):		
5a. <input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner <input checked="" type="checkbox"/> WUC <input type="checkbox"/> Address Change  <b>MATTHEW D WHEELER</b> <b>PO BOX 443</b> <b>HOLTON KS 66436</b>	Person ID <b>68948</b> Add Seq#	5b. <input checked="" type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change  <b>ERIC BERNARD &amp; NANCY OHLSEN</b> <b>16981 K-9 HWY</b> <b>WHITING KS 66552</b>
5c. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change	Person ID Add Seq#	5d. <input type="checkbox"/> Owner <input type="checkbox"/> WUC <input type="checkbox"/> Address Change
6. Change No.: <input type="checkbox"/> PD <input type="checkbox"/> PU <input type="checkbox"/> UMW Base Acres:      Year:      Min Reasonable Q: Previous UMW: MDS Gauge:      Active Admin? <input type="checkbox"/> Completion/Start Date: <b>12/31/2025</b> Perfection/Expiration Date: <b>12/31/2029</b>	7. Use of Water <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water UMW: <b>IRR-Irrigation</b> UMW: UMW:	
8. Action Trail		
9. Special Conditions		
10. 5YR Allocation      Type:      Start Year:      5YR Quantity:      Base Acres: Comment:		
11. Sand & Gravel      Proj ID: <input type="checkbox"/> Active <input type="checkbox"/> Dredge <input type="checkbox"/> IND Evap <input type="checkbox"/> Jr Evap <input type="checkbox"/> Other Diversion <input type="checkbox"/> Rpt on Sr		
12. Waiver      Rule ID: <input type="checkbox"/> New      Date Requested: Applies:      Rule No.:      Justification: Rule Type: Rule SubType:		
Comments	Processed <b>CCB</b> <b>7/16/2024</b>	Entered <b>7/26/2024</b> <b>KAnderson</b>
	Reviewed <b>KAK</b> <b>7/22/2024</b>	

File No. <b>51003</b>	13. County: <b>JA - Jackson</b> Basin: <b>Delaware River</b> Stream: <b>Spring Creek Trib 12</b>		
Structures File No:	Aquifer Code:	Special Use Area:	

14. Points of Diversion, Rates & Quantities										Qty <b>AF</b>		Rate <b>gpm</b>		Storage Qty <b>AF</b>		Storage Rate	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)		Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps
<b>CHK</b>	<b>90207</b>	<b>NW SE NW</b>	<b>20</b>	<b>5</b>	<b>15E</b>	<b>1</b>	<b>3,400</b>	<b>3,525</b>		<b>247.6</b>	<b>247.6</b>	<b>1000</b>	<b>1000</b>	<b>247.6</b>	<b>247.6</b>	<b>NF</b>	<b>+</b>
																	<b>+</b>
																	<b>#</b>
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																	<b>**</b>
																	<b>++</b>

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: **12/31/2025**

17. Place of Use						NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps	
PDIV	S	T	R	ID		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
<b>CHK</b>	<b>71310</b>	<b>17</b>	<b>5</b>	<b>15E</b>	<b>1</b>													<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>40.0</b>	<b>160.0</b>	<b>5a</b>	<input type="checkbox"/>	<b>+</b>	
<b>CHK</b>	<b>71836</b>	<b>17</b>	<b>5</b>	<b>15E</b>	<b>1</b>	<b>4.0</b>	<b>17.0</b>	<b>40.0</b>	<b>39.5</b>													<b>100.5</b>	<b>5b</b>	<input type="checkbox"/>	<b>+</b>	
<b>CHK</b>	<b>71311</b>	<b>20</b>	<b>5</b>	<b>15E</b>	<b>1</b>	<b>35.0</b>	<b>39.5</b>	<b>40.0</b>	<b>40.0</b>	<b>28.0</b>			<b>31.0</b>									<b>213.5</b>	<b>5a</b>	<input type="checkbox"/>	<b>#</b>	
																									<input type="checkbox"/>	<b>^</b>
																									<input type="checkbox"/>	<b>**</b>
																									<input type="checkbox"/>	<b>++</b>

18. Point of Diversion and Place of Use Overlaps	
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# MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

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Date: May 21, 2024

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 51003 – Mathew D Wheeler

## Summary

Mathew D Wheeler has filed the above referenced application to appropriate 247.6 acre-feet of surface water directly out of a tributary of Spring Creek for storage and re-diversion in a 12.8-acre reservoir with a storage capacity of 121.9 acre-feet. The rate of diversion is at a rate of natural flows and a re-diversion rate of 1000 gallons per minute to irrigate 474 acres of ground in Jackson County, Kansas. The proposed point of diversion and the reservoir is owned by the applicant, and they have signed the application form affirming legal access to the point of diversion. The applicant has also agreed to meet minimum desirable streamflow. The dam for this reservoir meets the exemption for a Class A low hazard dam as shown in determination DJA-0369. The structure has been permitted by structures to place fill in the floodplain under permit number LJA-0047.

## Reasonable Quantity and Safe Yield

Maximum reasonable quantity was determined to be 247.6 acre-feet. As per K.A.R. 5-6-5 maximum reasonable annual quantity for storage of water for beneficial use in a reservoir. The maximum reasonable annual quantity in a reservoir shall be limited to the lesser of the following.

As per K.A.R. 5-6-4, a runoff calculation was prepared and found that 247.6 acre-feet of runoff could be expected on a 20% chance of occurrence from the following variables.

- 204-acre drainage area.
- Mean annual precipitation of 36 inches per year.
- Soil covers complex number of 76.

As per K.A.R. 5-6-5(b)(1)(A) and (B) Three years of direct and indirect use was calculated to be 1447.59 acre-feet of water.

- 474 acres of ground x 1.0 acre-feet per acre per year in Jackson County = 474.0 acre-feet of direct use.
- 8 inches of net evaporation / 12 inches per foot = .67 feet of net evaporation x 12.8 surface acres = 8.53 acre-feet of indirect use.
- 474.0 acre-feet of direct use + 8.53 acre-feet of indirect use = 482.53 acre-feet per year.
- 482.53 acre-feet per year x 3 years = 1447.59 acre-feet.

As per K.A.R. 5-6-5(2)(A) 1 year of direct, indirect, and reservoir capacity was calculated to be 604.43 acre-feet of water.

- 474 acres of ground x 1.0 acre-feet per acre per year in Jackson County = 474.0 acre-feet of direct use.
- 8 inches of net evaporation / 12 inches per foot = .67 feet of net evaporation x 12.8 surface acres = 8.53 acre-feet of indirect use.
- Reservoir capacity is 121.9 acre-feet.

- 474.0 acre-feet of direct use + 8.53 acre-feet of indirect use + 121.9 acre-feet of reservoir capacity = 604.43 acre-feet.

The quantity of 247.6 acre-feet only provides for .522 acre-feet per acre. However, the requested quantity is the maximum that can be requested because of the limitations of the drainage area so it should be considered reasonable. The applicant will need to manage the limited water that is available on the 474.0-acre place of use.

## Nearby Water Rights

Four (4) nearby neighbors were found to be within one-half ( $\frac{1}{2}$ ) mile upstream and downstream of the applicant's property boundary. Nearby notification letters were sent out on May 2, 2024. No responses of any kind were received during the 15-day period open to comments and concerns.

## Recommendations

The application was sent for consideration to Brett Bunger, Water Commissioner of the Topeka Field Office on May 16, 2024, and recommended for approval in an e-mail dated May 16, 2024.

The application complies with all regulations and the application is subject to minimum desirable streamflow requirements. Approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.



Colin Barclay  
Environmental Scientist  
Water Appropriation Program

**RE: 51003 review and recommendation**

Bunger, Brett [KDA] &lt;Brett.Bunger@ks.gov&gt;

Thu 5/16/2024 12:29 PM

To: Barclay, Colin [KDA] &lt;Colin.Barclay@ks.gov&gt;

Colin, I see no reason not to approve the application. Please proceed.

Thanks

Brett

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**From:** Barclay, Colin [KDA] <Colin.Barclay@ks.gov>**Sent:** Thursday, May 16, 2024 9:38 AM**To:** Bunger, Brett [KDA] <Brett.Bunger@ks.gov>**Subject:** 51003 review and recommendation

Hello Brett,

I have attached the draft memo for 51,003 for your review and recommendation. I sent out nearby letters on May 2nd and have not heard from anyone. There is still 1 day left in the comment period which will end tomorrow plus an additional 3 days incase anything is still in the mail. I wanted to get this to you before you leave, I don't expect to hear from anyone but I will be sure to document any concerns and let Ken and Lane know if I hear back from anyone. Please let me know if you need anything else.

Thank you!

Colin Barclay

Environmental Scientist

Division of Water Resources

Kansas Department of Agriculture

Phone: (785) 564-6628

[Colin.Barclay@ks.gov](mailto:Colin.Barclay@ks.gov)

**REGISTRATION FORM FOR EXEMPT CLASS A DAMS**

**K.S.A. 82a-301**

"Dam" means any artificial barrier including appurtenant works with the ability to impound water, wastewater or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and a storage volume at the top of the emergency spillway elevation of 50 or more acre-feet. *The height of a dam or barrier shall be measured from the lowest elevation of the streambed, downstream toe, or outside limit of the dam to the elevation of the top of the dam.*

The prior written consent or permit of the chief engineer shall not be required for construction or modification of a hazard class A dam that:

1. has a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125-acre feet, **and the dam location and dimensions have been registered with the Division of Water Resources in a written form prescribed by the chief engineer; or**
2. is a wastewater storage structure for a confined feeding facility that has been approved by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto.

**Complete the following information to satisfy the registration for exempt low, hazard class A dams defined in K.S.A. 82a-301(d)(1).**

**Dam owner information**

Name: Matthew D Wheeler

Mailing Address: PO Box 443 Holton KS 66436

Phone: 75-393-2868

E-mail Address: mwheeler2727@gmail.com

**The following information is to be stamped and submitted by, or under the supervision of, a licensed professional engineer or registered land surveyor competent in the design and construction of dams.**

**Legal description of location:** The location of the proposed dam is (use intersection of dam centerline and stream centerline): NW quarter of the se quarter of the nw quarter of Section 20, Township 5 South, Range 15e (East/West) Jackson County, Kansas, across, along, or in (stream or watercourse name): Unnamed Trib to spring Creek.

Latitude 39.604360 Longitude -95.764085 (decimal degrees specified to at least 6 significant digits)

**Location map:** Submit a U.S.G.S. topographic map, aerial photograph, KMZ file, or a detailed plat showing the location and layout of the proposed dam. This should include the latitude and longitude of the point where the centerline of the dam crosses the centerline of the stream (or in feet north and west of the southeast corner of the section) as well as the latitude and longitude of each abutment. The map should be marked with a north arrow and scale.

**Location of each end of the dam at the centerline (decimal degrees specified to at least 6 significant digits.):**

Latitude and Longitude of the left abutment is: 39.604491, -95.762404

Latitude and Longitude of the right abutment is: 39.605968, -95.764637.

**Benchmarks: Submit location and elevation information on two permanent benchmarks that comply with K.A.R. 5-40-2a. (decimal degrees specified to at least 6 significant digits.)**

Latitude, Longitude, and Elevation of Benchmark No. 1 is: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Latitude, Longitude, and Elevation of Benchmark No. 2 is: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

**Drainage area (acres):** 210

*Use intersection of dam centerline and stream centerline as termination point of drainage area.*

**Top of Dam Elevation (feet):** 1078

**Elevation of Lowest Point on Downstream Toe (feet):** 1051.29

**Dam Height (feet):** 26.71

**Elevation of Auxiliary Spillway (feet):** 1075.25

**Area capacity table:** Please attach a reservoir area capacity table for the dam. The table identifies the number of acres enclosed by each contour within the reservoir area and the total storage capacity of the reservoir in acre-feet at the elevation of each contour. The data shall be compiled for all contours in the reservoir up to and including the elevation of the top of the dam. Computations of capacity shall be based on the natural topography of the reservoir basin but may include the volume of any excavation in the reservoir made during construction of the dam. **The storage in acre-feet must be shown in the table for the proposed emergency spillway elevation. This will be used to identify the jurisdiction of the dam.**

**Hazard class determination:** List any homes, businesses, highways, improved roads, railroads, campgrounds, recreational facilities, or public utilities located downstream from the dam that could be inundated if the dam fails.



# 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. 51,003** of the applicant

**MATTHEW D WHEELER**  
**PO BOX 443**  
**HOLTON KS 66436**

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 28, 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	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
17 - 5S - 15E	4.0	17.0	40.0	39.5									40.0	40.0	40.0	40.0	260.5
20 - 5S - 15E	35.0	39.5	40.0	40.0	28.0			31.0									213.5

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Spring Creek, designated in the office of the Chief Engineer as Spring Creek Trib 12 (Delaware), 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 **247.6 acre-feet** of water per calendar year in a reservoir created by a dam located in the Northwest Quarter of the Southeast Quarter of the Northwest Quarter (NW¼ SE¼ NW¼) of Section 20, more particularly described as being near a point 3,400 feet North and 3,525 feet West of the Southeast corner of said section, in Township 5 South, Range 15 East, Jackson County, Kansas, to provide **247.6 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 **1,000 gallons per minute (2.23 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, 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.
5. 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.
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 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 Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This required water flow meters 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 diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

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 25<sup>th</sup> day of July, 2024, in Manhattan, Riley County, Kansas.

*Lane P. Letourneau*

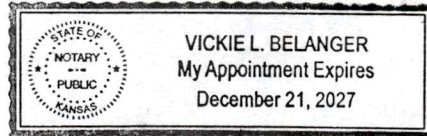
Lane P. Letourneau, P.G.  
Water Appropriation Program Manager  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas )  
                          ) SS  
County of Riley )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 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

July 31, 2024

MATTHEW D WHEELER  
PO BOX 443  
HOLTON KS 66436-0443

RE: Appropriation of Water  
File No. 51,003

Dear Mr. Wheeler:

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 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 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](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 Topeka Field Office at 785-296-5733. 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:ccb  
Enclosure(s)  
pc: Topeka 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.

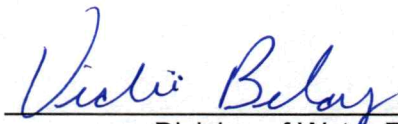
## CERTIFICATE OF SERVICE

On this 31<sup>st</sup> day of July, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,003, dated July 25, 2024, was mailed postage prepaid, first class, US mail to the following:

MATTHEW D WHEELER  
PO BOX 443  
HOLTON KS 66436-0443

With photocopies to:

KDA-DWR Stafford Field Office



Division of Water Resources