

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: August 7, 2024

From: Christa Anhold, Environmental Scientist

Re: New Application File Nos. 51,037 & 51,253 & Voluntary Dismissal File No. 51,038 – Michael Springer

Summary

Michael Springer filed the above referenced applications proposing to appropriate surface water from natural flows and direct diversion for storage and stock watering in Wilson County. The applicant has been granted three temporary permits, File Nos. 20220252, 20230122 and 20230160 for stock watering leading to a term permit, File No. 20239066, which is set to expire December 2024. During the use of his term, the applicant determined he underestimated the amount of water needed to maintain the pond and therefore the quantity requested under File No. 51,038 would be insufficient. New application File No. 51,253 was submitted to increase the quantity and replace File No. 51,038. A voluntary dismissal was received on July 23, 2024, for File No. 51,038, contingent upon the approval of File No. 51,253.

File No. 51,037 proposes to appropriate 51.7AF of surface water from natural flows for storage and re-diversion at a re-diversion rate of 60 GPM for stock watering 8,050 head of hog. The pond for storage was determined to be non-jurisdictional under WSN: SWL-0082 on March 27, 2018.

File No. 51,253 proposes to appropriate 55.24 AF of surface water from direct diversion from one (1) pumpsite in Fall River at a diversion rate of 400 GPM for stock watering 8,050 head of hog.

The applicant signed the applications stating they have legal access to the point of diversion and own the place of use. File Nos. 51,037 and 51,253 will overlap the place of use, with no limitations on rate or quantity.

Reasonable Rate and Quantity

File No. 51,037 proposes 51.7 AF of surface water from natural flows for storage and re-diversion for stock watering of 8,050 head of hog. The proposed pond has an estimated storage capacity of 18.48 AF (14ft deep x 4-acres x 0.33). The requested 51.7AF would allow them to fill and re-divert from the pond multiple times throughout the year. Based on K.A.R. 5-6-5(a) the drainage basin can supply roughly 150AF of water per year, which is adequate to support what is being requested. From the above, the requested 51.7AF can be considered reasonable.

File No. 51,253 proposes to directly divert 55.24 AF of surface water for stock watering of 8,050 head of hog. Based on the applicants past water use, outlined in the supplemental sheet, an average of 2.07 gallons of water per head per day appears reasonable. For 8,050 head of hog that is 18.65 AF (6.082MG) of water per year. Based on K.A.R. 5-3-22 finishing swine need 5 gallons of drinking and an additional 15 gallons per head per day for servicing/flushing the facility, for 8,050 head that is equivalent to 180.4AF (58.785MG) per year. The applicants combined requested quantity of 106.94AF can be considered reasonable since it is less than the maximum quantity calculated using K.A.R. 5-3-22. Therefore, the junior file will not be limited.

Safe Yield

File No. 51,253 will be subject to specific conditions, which stipulate strict requirements for direct surface water diversion. These conditions include the stipulation that no water shall occur unless there is water available to satisfy all demands by senior water rights and permits, written or verbal permission from the Chief Engineer is required prior to diverting water, and streamflow cannot be stopped at the first riffle below the point of diversion

while diversion is taking place. The applicant's storage pond is considered a sufficient alternate water source as to comply with K.A.R. 5-3-15(c)(5).

Nearby Water Rights

File No. 51,037 has no upstream water rights. The nearest downstream water right (File No. 43,663) is over 8 miles away. Names and addresses for nearby neighbors were not provided with the application and none were observed during the review process.

File No. 51,253, the closest upstream water right (File No. 35,711) is over four (4) miles away, the closest downstream water right (File No. WL 11) is over seven (7) miles away. Names and addresses of three (3) stream adjacent landowners' one-half mile up and downstream were provided by the applicant. Nearby notifications were mailed on July 1, 2024. No written responses have been received to date.

Recommendations

The application was sent for consideration to Nathan Westrup, Water Commissioner of the Topeka Field Office, and Shaun Johnson, Assistant Water Commission of the Topeka Field Office, on July 23, 2024, and recommended for approval on August 7, 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

From: Westrup, Nathan [KDA]
Sent: Wed 8/7/2024 3:51 PM
To: Anhold, Christa [KDA]
Subject: RE: 51,037, 51,038 and 51,253 recommendation request

Christa,

Please change Fall Creek to Fall River.

I have no objection to approval.

Thanks,

Nathan Westrup, Water Commissioner

Topeka Field Office
Division of Water Resources
Kansas Department of Agriculture
Phone: 785-296-7064
Mobile: 785-230-2991
Nathan.Westrup@ks.gov

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Sent: Wednesday, August 7, 2024 1:06 PM
To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>
Subject: RE: 51,037, 51,038 and 51,253 recommendation request

Okay draft memo #2 is attached. Let me know what you think.

Christa Anhold
(785)564-6644

From: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>
Sent: Wednesday, August 7, 2024 12:45 PM
To: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Subject: RE: 51,037, 51,038 and 51,253 recommendation request

Sounds good, thanks!

Nathan Westrup, Water Commissioner

Topeka Field Office
Division of Water Resources
Kansas Department of Agriculture
Phone: 785-296-7064
Mobile: 785-230-2991
Nathan.Westrup@ks.gov

From: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Sent: Tuesday, August 6, 2024 3:30 PM
To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>
Subject: RE: 51,037, 51,038 and 51,253 recommendation request

Hey Nathan,

Thanks for checking in. You haven't missed anything. I reworked the reasonable quantity for 51,253 and needed to run some things by Ken and Kristen before I finish up 51,037. I'm hoping to have another memo draft to you later this week.

Christa Anhold
(785)564-6644

From: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>
Sent: Tuesday, August 6, 2024 3:15 PM
To: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Subject: RE: 51,037, 51,038 and 51,253 recommendation request

Hi Christa,

I haven't seen anything more on this and wanted to make sure I haven't missed anything.

Thanks,

Nathan Westrup, Water Commissioner

Topeka Field Office
Division of Water Resources
Kansas Department of Agriculture
Phone: 785-296-7064
Mobile: 785-230-2991
Nathan.Westrup@ks.gov

From: Westrup, Nathan [KDA]
Sent: Wednesday, July 24, 2024 4:45 PM
To: Anhold, Christa [KDA] <Christa.Anhold@ks.gov>
Cc: Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>; Baum, Kristen [KDA] <Kristen.Baum@ks.gov>
Subject: RE: 51,037, 51,038 and 51,253 recommendation request

Hi Christa,

Good work on these. Although, I have a few recommendations and some ideas for retooling a bit.

As you correctly described in your memo, the maximum reasonable quantity for 8,050 hogs is 58.785 (180.4 AF) and the total combined quantity for the two applications is 106.94 AF. I would like to provide the maximum flexibility for these two permits during the perfection period, allowing a total of 106.94 AF for direct stockwatering.

File No. 51,037:

Despite how the storage quantity was justified (1+1+1), we should be able to allow for the storage of 51.7 AF and direct use of 51.7 AF for stockwatering purposes – because it is reasonable. The potential runoff calculation in the application is 150 AF, so the storage quantity and direct use quantity could have been 150 AF. I think the 1+1+1 is most relevant when the 1 year direct is at the max reasonable. So, I would describe how the quantity was developed but just reorient to allow the max reasonable and avoid the applicant's self-inflicted restrictions – we just end up with more new applications...ugh Another slightly problematic issue is the capacity of the pond. In the application it is described as 4 surface acres and an estimated to be 30 AF, based on an average depth of 7.5 ft. I think this is way too high. Lloyd looked at Lidar collected in 2013 and he estimated the max depth to be about 14 feet. If we were using the (1+1+1) for the justification, I would want to estimate the capacity as 18.48 AF (4*14*.33).

File No. 51,253:

Again, describing how the quantity was arrived at is fine but then just put it into the context of reasonable quantity. I believe in your memo you have 23.5 as the storage capacity and the direct as the number that was described as seepage (28.74) in the application (which I don't quite understand). Let's just focus on

the fact that 55.24 AF is reasonable for the proposed stockwatering use. I would like mention that I don't like to use the word storage in association with a diversion from a river or well and put into a holding pond – yes, they are pumping it into a pond but I think it is important to keep the word storage exclusive to when there is a dam collecting and storing natural flows. Maybe I am being too picky but might lead to misunderstanding. I think, if I was assisting with this application, I probably would have had them file for the full direct stockwatering need with some estimated indirect loss and then limited the quantity.

Hopefully, my ramblings make some sense!

Thanks,

Nathan Westrup, Water Commissioner

Topeka Field Office

Division of Water Resources

Kansas Department of Agriculture

Phone: 785-296-7064

Mobile: 785-230-2991

Nathan.Westrup@ks.gov

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

Sent: Tuesday, July 23, 2024 10:06 AM

To: Westrup, Nathan [KDA] <Nathan.Westrup@ks.gov>

Cc: Johnson, Shaun [KDA] <Shaun.Johnson@ks.gov>

Subject: 51,037, 51,038 and 51,253 recommendation request

Good morning,

I have attached a draft memo for new applications 51,037, 51,038 and 51,253 for your review and recommendation. Nearby notifications were mailed on July 1, 2024, no responses have been received to date.

Let me know if you 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. 51,037** of the applicant

**MICHAEL SPRINGER
8603 500 RD
NEODESHA, KS 66757**

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 **May 12, 2023**.
2. That the water sought to be appropriated shall be used for stockwatering in the North Half of the North Half of the Northeast Quarter (N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 13, Township 30 South, Range 14 East, Wilson County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Fall River, designated in the office of the Chief Engineer as Fall River Trib 11, not needed to satisfy all vested rights and prior appropriation rights to be accumulated to a maximum extent of **16.85 million gallons of water (51.7 acre-feet)** per calendar year in a reservoir created by a dam located in the Southwest Quarter of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 13, more particularly described as being near a point 2,712 feet North and 2,237 feet West of the Southeast corner of said section, in Township 30 South, Range 14 East, Wilson County, Kansas, to provide **16.85 million gallons of water (51.7 acre-feet)** as needed for direct stockwatering use, to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **60 gallons per minute (0.13 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 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 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).

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 *8th* 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 *8th* 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 15, 2024

MICHAEL SPRINGER
8603 500 RD
NEODESHA KS 66757

RE: Appropriation of Water
File Nos. 51,037 and 51,253

Dismissal of Application
File No. 51,038

Dear Mr. Springer:

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. Also enclosed is an order dismissing your above referenced Application to Appropriate Water for Beneficial Use, as requested in the voluntary dismissal form, received on July 23, 2024.

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.

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 Certificates 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 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:cla
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 *15th* day of *August*, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File Nos. 51,037 and 51,253, and Dismissal of Application to Appropriate Water for Beneficial Use, File No. 51,038, dated *August 8*, 2024, were mailed postage prepaid, first class, US mail to the following:

Original to:

MICHAEL SPRINGER
8603 500 RD
NEODESHA KS 66757

With photocopies to:

KDA-DWR Topeka Field Office



Division of Water Resources

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: August 7, 2024

From: Christa Anhold, Environmental Scientist

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Environmental Scientist
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