



File No. <b>51,085</b>	13. County: <b>SF Stafford</b> Basin: <b>BLUFF CREEK (CIMARRON)</b> Stream: <b>Calvary Creek</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		Storage Rate		
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)		Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps	
<b>DEL</b>	<b>90493</b>																	<b>+</b>
																		<b>+</b>
																		<b>#</b>
																		<b>^</b>
																		<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:

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						
																					<input type="checkbox"/>	<b>+</b>
																					<input type="checkbox"/>	<b>+</b>
																					<input type="checkbox"/>	<b>#</b>
																					<input type="checkbox"/>	<b>^</b>
<b>DEL</b>	<b>71498</b>	<b>34</b>	<b>32S</b>	<b>19W 2</b>														<b>5a</b>	<input type="checkbox"/>	<b>**</b>		
																			<input type="checkbox"/>	<b>++</b>		

18. Point of Diversion and Place of Use Overlaps	
*  +  #  ^	**  ++  ##  ^^

# MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

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Date: August 19, 2024

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 51,126 – Brian Etheridge

## Summary

Brian Woody had filed the above referenced application to appropriate 5 acre-feet of ground water for storage in a 1.24-acre pond for recreational purposes. However, the original applicant, Brian Woody has sold the property to a new landowner, Brian Etheridge who will now be considered as the applicant of the above referenced application. The rate of diversion is a maximum of 99 gallons per minute from a well located in Comanche County within closed DUA BLC 39. The place of use is solely owned by the applicant, and they have signed the application form affirming legal access to the point of diversion. DWR Structures has made the determination that dam, stream obstruction, and floodplain fill permits are not required.

In addition, this application covers the same place of use as 51,085 which is a surface water pumpsite application, however, a dispute occurred with a downstream landowner over the possible impact that the pumpsite might have on their vested senior water right (CM 9-5). Therefore, the applicant made the decision to dismiss pending new application 51,085 contingent upon the approval of the above referenced application.

## Reasonable Rate and Quantity

Reasonable quantity of water for recreational use was defined as one year of net evaporation, and one reservoir fill per year. As confirmed through areal measurements, the proposed reservoir will have a surface area of roughly 1.24 acres and an average depth of 22 inches. Maximum reasonable capacity was found to be 5 acre-feet.

Net evaporation is  $1.24 \text{ acres} \times 38 \text{ inches} / 12 \text{ inches per foot} = 3.92 \text{ acre-feet per year evaporation}$ .

Reservoir capacity is  $1.24 \text{ acres} \times 22\text{-inch depth} = 2.73 \text{ acre-feet per year per filling}$ .

$3.92 \text{ acre-feet per year of evaporation} + 2.73 \text{ acre-feet per year of reservoir capacity} = 6.65 \text{ acre-feet}$ .

In addition, as the applicant is applying in DUA BLC 39 which is closed, the maximum reasonable quantity that can be authorized is 5 acre-feet per year to meet the exemption as per K.A.R. 5-3-16a. In addition, as per the applicant "the pond may not be held full for the entire 12 months of the year so the evaporation number may be considerably less than shown above, the pond holds water very well so seepage may be minimal. The applicant understands that the limit here is 5 AF and will abide by that quantity and will fill and maintain the pond level accordingly." Therefore, the above referenced application requesting 5 acre-feet appears reasonable.

## Source of Supply and Safe Yield

No well log was provided however, nearby well logs and the Kansas Geological Survey maps indicate the source of supply appears to be the recent alluvium. As per K.A.R. 5-3-16a.

As per K.A.R. 5-3-16a (a). The above application meets the exemption as it is the only authorized well within a two-mile radius circle.

As per K.A.R. 5-3-16 (b) as the annual quantity of water requested is reasonable for the proposed beneficial use.

As per K.A.R. 5-3-16a (c) All other criteria for processing a new application to appropriate water at the (proposed) location, including spacing criteria, have been met.

As per K.A.R. 5-3-16a (d) The approval of the application does not authorize an additional quantity of water out of an existing well that would result in a total combined annual quantity of water authorized from that well in excess of five acre-feet per calendar year.

As per K.A.R. 5-3-16a (e) The proposed beneficial use of water will significantly benefit the public interest and help maximize economic development.

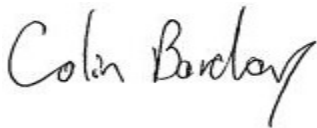
## Nearby Water Rights

No appropriated wells were found to be within one-half ( $\frac{1}{2}$ ) mile of the proposed point of diversion. One (1) nearby domestic was found to be within one-half ( $\frac{1}{2}$ ) mile of the proposed point of diversion however it is owned by the applicant. Therefore, no nearby well notification letters were sent out. The proposed point of diversion meets well spacing requirements as the nearest domestic well is roughly ~1,720 feet away and the nearest nondomestic well is located roughly two (2) and one half ( $\frac{1}{2}$ ) miles away feet away. Per the requirements of K.A.R. 5-4-4 for all other aquifers, the minimum well spacing should be one-quarter ( $\frac{1}{4}$ ) mile to all other non-domestic wells and 660 feet to domestic wells.

## Recommendations

The application was sent for consideration to Jeff Lanterman, Water Commissioner of the Stafford Field Office, and recommended for approval in an e-mail dated August 19, 2024.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum spacing requirements. The proposed 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

**VOLUNTARY DISMISSAL OF AN  
APPLICATION FOR PERMIT TO APPROPRIATE WATER**

To: Chief Engineer  
Kansas Department of Agriculture  
Division of Water Resources  
1320 Research Park Drive  
Manhattan, Kansas 66502

Re: Application,  
File No. 51,085

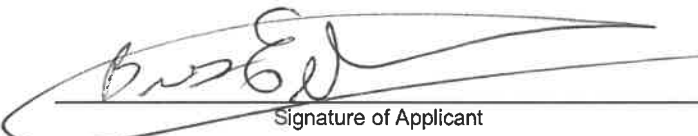
Date: 8/19/2024

The undersigned applicant(s) of the above referenced application freely and voluntarily request that the application be dismissed and its priority forfeited.

The signature(s) below indicate a waiver of any right to a hearing or an appeal that I/we may have had regarding the dismissal and termination of the above referenced application. I/we recognize that if this closure request is submitted to the Division of Water Resources, it will terminate this application and forfeit any priority associated with it forever.

Check the following if applicable:

Processing this dismissal is contingent upon approval of: 51,126  
New or Change Application, etc., include File No.

  
\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Applicant

Brian L Etheridge  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

4035 Staysail Pointe Drive  
\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

Denver, NC 28037  
\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
City, State, Zip

CCB-MHQ  
DWR Initials

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

FINDINGS AND ORDER
IN THE MATTER OF THE DISMISSAL OF
APPLICATION TO APPROPRIATE WATER FOR BENFICIAL USE
FILE NO. 51,085

After due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

FINDINGS

- 1. That on August 18, 2023, an Application to Appropriate Water for Beneficial Use was received in the office of the Chief Engineer, assigned File No. 51,085, proposing to use water for recreational use from the following point of diversion:
one (1) pumpsite located in the Southeast Quarter Southeast Quarter Northwest Quarter (SE1/4 SE1/4 NW1/4) of Section 34, more particularly described as being near a point 2,720 feet North and 3,230 feet West of the Southeast corner of said section, in Township 32 South, Range 19 West, Comanche County, Kansas.
2. That on August 19,, 2024, the office of the Chief Engineer received a voluntary dismissal form, signed by the landowner of record, pertaining to File No. 51,085, indicating that all plans to proceed with the proposed appropriation had been abandoned.
3. That Application, File No. 51,085, should be dismissed as requested by the applicant.

ORDER

NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that effective the date of this order, in accordance with the law, Application, File No. 51,085, is herewith dismissed and the priority assigned to it is considered to be forfeited.

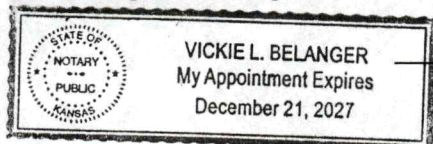
It is so ordered this 22 day of August, 2024, in Manhattan, Riley County, Kansas.

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 22 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 26, 2024

BRIAN L ETHERIDGE  
4035 STAYSAIL POINTE DRIVE  
DENVER NC 28037-7008

RE: Appropriation of Water  
File No. 51,126

Dismissal of Application  
File No. 51,085

Dear Mr. Etheridge:

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.

Also enclosed is a Findings and Order dismissing Application, File No. 51,085, as you had requested in your form letter dated August 19, 2024.

Notice must be filed on the enclosed form once the approved 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.

BRIAN L ETHERIDGE  
File Nos. 51,085 and 51,126  
Page 2 of 2

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 Stafford Field Office at (620) 234-5311. 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: Stafford Field Office  
Brian Woody



## 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

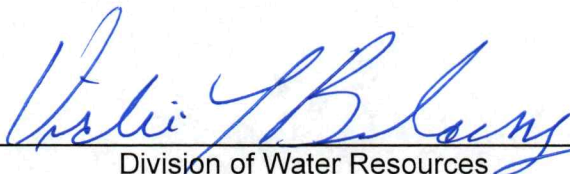
On this 20 day of August, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,126, and the Dismissal of Application, File No. 51,085, dated August 22, 2024, were mailed postage prepaid, first class, US mail to the following:

BRIAN L ETHERIDGE  
4035 STAYSAIL POINTE DRIVE  
DENVER NC 28037-7008

With photocopies to:

BRAIN WOODY  
F&S FARMS LLC  
1361 INDIGO CT  
ROCK HILL SC 29730

KDA-DWR Stafford Field Office

  
Division of Water Resources