

File No. **51,126** 13. County: **SF Stafford** Basin: **BLUFF CREEK (CIMARRON)** Stream:
 Structures File No: Aquifer Code: **Recent 110** Special Use Area:

14. Points of Diversion, Rates & Quantities										Qty AF		Rate gpm		Storage Qty		Storage Rate	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)		Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps
CHK	90623	SE SE NW	34	32S	19W	4	3,040	2,840		5	5	99	99				+
																	+
																	#
																	^
																	**
																	++

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					
																					<input type="checkbox"/> +
																					<input type="checkbox"/> +
																					<input type="checkbox"/> #
																					<input type="checkbox"/> ^
CHK	71498	34	32S	19W	2	Maintain 1.24 ACRE POND (SE NW)												5B	<input type="checkbox"/>	**	
																			<input type="checkbox"/>	++	

18. Point of Diversion and Place of Use Overlaps

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+	++
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MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

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.

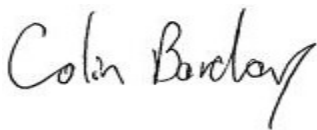
Nearby Water Rights

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

FW: 51126 review and recommendation

Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>

Mon 8/19/2024 2:45 PM

To: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>

 2 attachments (831 KB)

51126 Memo.docx; 51126 SafeYieldReport.docx;

Colin;

Ya I am good with approval on this one. We need to make sure we have the voluntary dismissal on the SW app though.

Thanks
Jeff

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Sent: Monday, August 19, 2024 2:26 PM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>

Subject: FW: 51126 review and recommendation

Jeff, I'll come by to discuss this one with you. What we are looking at is approval of groundwater right 51126 for recreational use in conjunction with a dismissal of surface water right 51085 that had the same pond as place of use, the SW permit was requested to be a direct pull from Calvary Creek to fill the little pond. This has been through structures and no permit was needed per emails with Mr. Herd and Janelle dated August 16, 2023. The original applicant determined a GW right was preferable to a SW right at this location with the Vested Domestic SW right CM-9.5 which is located directly downstream of his property on Calvary Creek (0.35 AF at natural flows).

Cameron

From: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>

Sent: Monday, August 19, 2024 1:58 PM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Subject: 51126 review and recommendation

Jeff and Cameron,

I have attached the draft memo and safe yield report for 51,126. I just received and have uploaded to DocuWare, the new voluntary dismissal form for 51,085 which was the surface water application that covered the same place of use. I tried to include the relevant information about 51,085 into the memo for 51,126 which will also serve as the memo for the dismissed application. There are no nearby GW well neighbors within a half mile of the proposed point of diversion.

Please let me know if you need anything else.

Best,

Colin Barclay

Environmental Scientist

Division of Water Resources

Kansas Department of Agriculture

Phone: (785) 564-6628

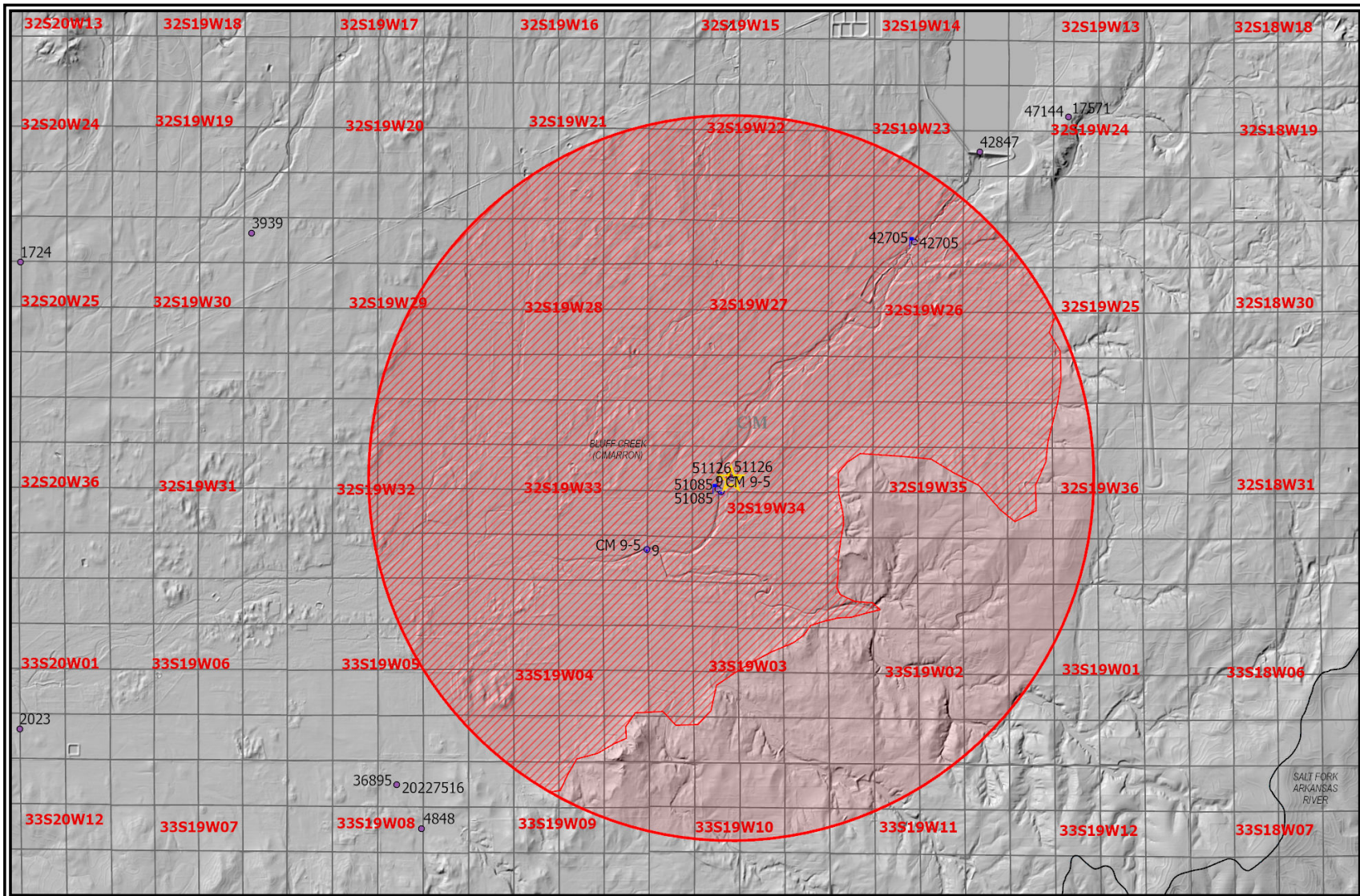
Colin.Barclay@ks.gov

Safe Yield Report Sheet

Water Right- A5112600

Point of Diversion in 34-32S-19W

Footages from SE corner- 3,040 feet North 2,840 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 298.62 AF.

Total prior appropriations in the circle is ~~5.00 AF~~. **0 AF**

Total quantity of water available for appropriation is ~~293.62 AF~~. **298.62 AF**

Safe Yield Variables

The area used for the analysis is set at 5,972 acres.

The potential annual recharge at the circle center is estimated to be 1.2 inches.

The percent of recharge available for appropriation is 50%.

Authorized Quantity values are as of 12-AUG-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 is 1 water right and 1 point 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 51126 00	REC	AY	G		SE	SE	NW	3040	2840	34	32	19W	4	WR	5.00	5.00		-5.00

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. 51,126** of the applicant

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

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 **November 2, 2023**.
2. That the water sought to be appropriated shall be used for recreational use, to maintain water levels in a pond with a maximum surface area of 1.24 acres, located in the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 34, in Township 32 South, Range 19 West, Comanche County, Kansas.
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 Southeast Quarter of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 34, more particularly described as being near a point 3,040 feet North and 2,840 feet West of the Southeast corner of said section, in Township 32 South, Range 19 West, Comanche 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 **5 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 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 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.

15. 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.

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 22 day of August, 2024, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

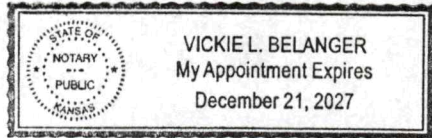
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

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.

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. 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

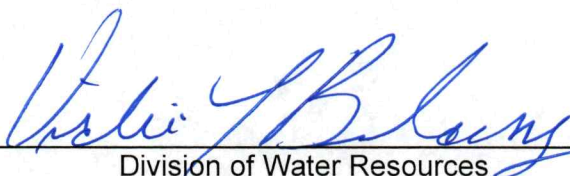
On this 20 day of August, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,126, and the Dismissal of Application, File No. 51,085, dated August 22, 2024, were mailed postage prepaid, first class, US mail to the following:

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