

File No. **51,142** 13. County: **SU -SUMNER** Basin: **ARKANSAS RIVER** Stream: **SLATE CREEK**
 Structures File No: Aquifer Code: **N/A** Special Use Area:

14. Points of Diversion, Rates & Quantities										Qty AF		Rate gpm		Storage Qty AF		Storage Rate	
PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)		Auth	Add	Auth	Add	Auth	Add	Auth/Add	Overlaps
MOD	90703	NW	SW	NE	22	32	1W	5	3496	2161	137.5	137.5	1000	1000			

15. Limitations **NEW** Type: Quantity: **AF** Rate: **gpm** combined with file no(s):
NEW Type: Quantity: **AF** Rate: **gpm** combined with file no(s):

16. Metering Metering Required Anti-Reverse Required Seal Required Compliance Date: **12/31/2026**

17. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps
PUSE	S T R ID	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE				
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
MOD	71623 22 32 1W 2	(10) acre marsh in (NW¼ SW¼) and (40) acre marsh in (SE¼ NW¼), (E½ SW¼ NW¼), (NE¼ SW¼) and (NW¼ SE¼)																	5a	<input type="checkbox"/>	
																				<input type="checkbox"/>	

18. Point of Diversion and Place of Use Overlaps

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MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: October 22, 2024

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 51,142 – KayDee Farms, LLC

Summary

KayDee Farms, LLC has filed the above referenced application to appropriate 137.5 acre-feet of surface water from Slate Creek for storage in two (2) waterfowl marsh's totaling 50 acres in surface acres for recreational purposes. The rate of diversion is a maximum of 1,000 gallons per minute from one (1) proposed pump site located along Slate Creek in Sumner County, Kansas. 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.

Reasonable Rate and Quantity

The proposed structure consists of a series of berms and excavations. The applicant has requested to fill the reservoir to a depth of one (1) foot and to account for evaporative losses for six (6) months out of the year. As confirmed through areal measurements, the proposed reservoirs will have a surface area of roughly 50 acres and an average depth of one (1) foot. Maximum reasonable quantity of water for recreational use was determined to be the storage capacity of the two reservoirs and one (1) year evaporation to cover evaporative losses including during the full year if the applicant chooses to fill the marshes during the full year. Maximum reasonable quantity was found to be 137.5 acre-feet.

$87.5 \text{ acre-feet of indirect use} = 50 \text{ acres (surface area)} \times 21 \text{ inches net evaporation per year}$

$50 \text{ acre-feet capacity} = 50 \text{ acres (surface area)} \times 1 \text{ foot depth}$

$87.5 \text{ AF} + 50 \text{ AF} = 137.5 \text{ acre-feet maximum.}$

Nearby Water Rights

Seven (7) nearby properties were found to be one-half ($\frac{1}{2}$) mile upstream and downstream from the proposed waterfowl marsh. Nearby notification letters were sent out on September 20, 2024. Three written comments were received regarding the above referenced application. All three comments objected to the proposed project with various concerns.

The first written concern, received from a nearby neighbor on October 1, 2024, who expressed objections to the proposed project. They are concerned for the possible impact the marsh may have on the local ecosystem including the local vegetation and wildlife in the area. This appears to be the main concern expressed in the written comment.

The second written concern, received from a separate nearby neighbor on October 7, 2024, who expressed objections to the proposed project. They are concerned for the possible impact the proposed marsh may have on the effects of flooding and the local ecosystem of the area. They also expressed concerns for future access to water if they or someone else may want a water right using water from Slate Creek in the future.

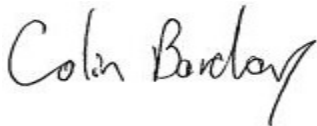
In addition, two phone calls were received from two separate nearby neighbors who believe this project could lead to additional flooding. Both were transferred to structures to talk about the more technical questions they had regarding floodplain permitting.

The third written concern, received from a third nearby neighbor on October 14, 2024, who expressed objections to the proposed project. They are concerned for the possible impact the project might have on flooding effects along Slate Creek. They believe this project can lead to higher flood waters during flooding events. The applicant was informed to reach out to Structures about these possible impacts. Structures has since reached out to the applicant's builders to address these concerns and to ensure the construction of the proposed Eastern marsh will be constructed in a way that does not require additional structures permitting.

Recommendations

The application was sent to Jeff Lanterman, Water Commissioner of the Stafford field office and was recommended for approval in an email dated October 21, 2024.

The application complies with all regulations concerning surface water and the application is subject to minimum desirable streamflow requirements. Approval of the application will most likely 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: 51142 review and recommendation request

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

Date Mon 10/21/2024 4:01 PM

To Conant, Cameron [KDA] <Cameron.Conant@ks.gov>; Barclay, Colin [KDA] <Colin.Barclay@ks.gov>

Colin;

I think I am ok with this one being approved with the 5-3-15 SW conditions.

First thing will happen is this guy will call in September wanting to fill his pond. Lol.

Anyway I think we can approve it.

Thanks

Jeff

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

Sent: Monday, October 21, 2024 9:29 AM

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

Subject: FW: 51142 review and recommendation request

Jeff, this is a surface water pull directly from Slate Creek just ½ mile southwest of Wellington. We notified 7 up and downstream neighbors and got several written comments back. Colin summed them up in the memo and you can check the actual written comments out in Docuware. Structures has been involved in this and hopefully has addressed the floodplain concerns some of the nearbys had.

This application falls entirely under 5-3-15 and while not quite like an irrigation right, it still needs permitted and processed accordingly based on this regulation.

5-3-15 (c)(1-6) are applicable here and to me (5) & (6) are important regs most of the time. (5) requires the applicant demonstrate that direct diversion is not needed from July 1 through September 30 each year b/c of lack of need, adequate water storage, alternative water supplies, ect. The application states they will only divert surface water as necessary to fill and maintain the wetlands during the timeframe of October through January. Based on this I think they demonstrate the "lack of need" part of 5-3-15 (c) (5). This justification from them addresses (6) which is basically no direct diversion from July 1-September 30 each year unless allowed by you or CE. Per (4), they will still have to call and get permission to divert during the rest of the year to pump and of course they will have the riffle, can't impair, and MDS additional conditions. Per their supplemental sheet and additional information sheet they supplied this is strictly a waterfowl hunting set up and wildlife enhancement recreational use of water and I think they meet the intent of 5-3-15 and operate accordingly to meet their additional permit conditions.

I had helped them figure the total quantity at 270 AF back when they were working on it but we have revised it to 137.5 AF based on communication with the applicant. Colin worked with them to revise the amount down and it seems like they changed with plans some and have a much shallower wetland, so the 137.5 AF should be ok for them now.

I think we can recommend approval of this application subject to the inclusion of all conditions outlined in 5-3-15 (c)(1-6). Colin noted it in his email and I like the addition of addressing the nearby concerns by adding the following language in the transmittal letter, "any fill placed in the floodplain will require permitting prior to construction per K.S.A. 24-126 and K.A.R. 5-45". Please pass on to Colin if you agree.

Cameron

From: Conant, Cameron [KDA]
Sent: Monday, October 21, 2024 8:29 AM
To: Barclay, Colin [KDA] <Colin.Barcly@ks.gov>
Subject: RE: 51142 review and recommendation request

Hey Colin, I kind of helped the people assisting the applicant with the quantity calculations way back in the beginning. Below is an email to them explaining the genesis of the 270 AF request. I did capacity based on 3' depth, combined with evap and seepage for 4 months out of the year on the wetland, but perhaps what they were doing changed since I messed with this. Are you super comfortable with the 137.5 AF that we have revised this application to?

Marsena, please have Alan review this. The application requested 200 AF. Looks like the dike system covers ~40 acres about 3' deep, so to fill that system from empty will take 120 AF each year. The 8 acre pond is 4' deep so it'll take 32 AF to fill that every year. So just to fill the surface water areas it will take 152 AF each year from Slate Creek. That leaves only 48 AF to cover evaporation and whatever is lost to seepage.

I'm going to assume the ponds will only be kept full from mid-September – mid-January, maybe call it 4 months where the ponds are actually full. So the ponds will be losing seepage and evaporation 4 months out of the year and they may want to replace that loss with additional pumping from Slate Creek.

The evaporation is 21" per year at this location. So, 21" of evaporation on 48 acres for 4 months equals about 28 AF of additional pumping to replace what is lost to evaporation.

The seepage could be around 0.25" per day on the 48 acres which equals 90 AF of additional pumping to replace what is lost to seepage while the ponds are full.

If these ponds are going to be kept full for about 4 months and operated as outlined above, I think you could request 270 AF. If Alan has different thoughts or numbers to justify whatever quantity they end up requesting, he can feel free to use those. Again, just looking for a reasonable, justified total quantity that is representative of how the ponds will be operated and maintained.

Cameron

From: Barclay, Colin [KDA] <Colin.Barcly@ks.gov>
Sent: Thursday, October 17, 2024 10:31 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: Re: 51142 review and recommendation request

Jeff and Cameron,

I have attached my updated memo that documented another written comment we received. It seems as though there were some concerns about the possible effect this project might have on flooding in the

area. Janelle spoke with the nearby and with the builders to ensure the marsh would be constructed to meet structures regulations. In addition, we will be adding "any fill placed in the floodplain will require permitting prior to construction per K.S.A. 24-126 and K.A.R. 5-45." to the transmittal letter.

I have tried to document the phone calls and the additional written concern. If any more phone calls or written comments are received I will let you know.

Please let me know if you have any questions.

Colin

From: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Sent: Monday, October 14, 2024 3:00 PM
To: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: RE: 51142 review and recommendation request

Can you add that stuff to the memo? I haven't really looked but did this need any structures permitting. Im just thinking those comments seemed more like structures problems than appropriation problems.

And if flooding is a concern that should be mitigated with proper structures construction. Maybe.

From: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>
Sent: Monday, October 14, 2024 2:13 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: Re: 51142 review and recommendation request

Jeff and Cameron,

I have been receiving a lot of phone calls today from some of the nearby on this application, they are mostly concerned with the possible effects this may have on flooding along that portion of the stream. I am expecting to receive a couple more written comments sometime soon. I just wanted to let you know.

Colin

From: Barclay, Colin [KDA]
Sent: Wednesday, October 9, 2024 1:15 PM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: 51142 review and recommendation request

Jeff and Cameron,

I have attached my draft memo for pending surface water application 51,142 for your review and recommendation. This application is located just South of Wellington along Slate Creek. I sent out nearby notification letters on September 20th and have received two written comments that I have documented in my memo.

Please let me know if you have any questions.

Best,

Colin Barclay

Environmental Scientist

Division of Water Resources

Kansas Department of Agriculture

Phone: (785) 564-6628

Colin.Barclay@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. 51,142** of the applicant

**KAYDEE FARMS LLC
605 CRESCENT BLVD STE 200
RIDGELAND MS 39157**

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 27, 2023**.
2. That the water sought to be appropriated shall be used for recreational use in two (2) wetland marshes; a ten (10) acre wetland marsh in the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$); and a forty (40) acre wetland marsh in the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), the East Half of the Southwest Quarter of the Northwest Quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$), the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), and the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 22, all in Township 32 South, Range 1 West, Sumner County, Kansas.
3. That the authorized source from which the appropriation shall be made is surface water from Slate Creek (Arkansas), to be diverted at a point located in the Northwest Quarter of the Southwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 22, more particularly described as being near a point 3,496 feet North and 2,161 feet West of the Southeast corner of said section, in Township 32 South, Range 1 West, Sumner 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 **1,000 gallons per minute (2.23 c.f.s.)** and to a quantity not to exceed **137.5 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, 2026**, 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, 2030**, 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 stream flow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of this water right or permit.

16. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

17. 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.

18. That during the period July 1 through September 30, of each calendar year, no direct diversions of surface water shall occur unless written permission is obtained from the Chief Engineer, or the Chief Engineer's authorized representative.

19. That during the period October 1 through June 30, the verbal or written permission of the Chief Engineer, or an authorized representative of the Chief Engineer, shall be obtained in order to divert water each time the applicant desires to divert water.

20. 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 29 day of October, 2024, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

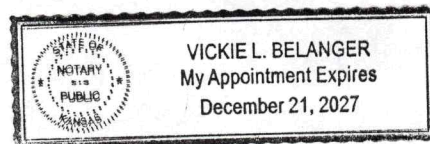
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 29 day of October, 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

November 14, 2024

KAYDEE FARMS LLC
605 CRESCENT BLVD STE 200
RIDGELAND MS 39157-8659

RE: Appropriation of Water
File No. 51,142

Dear Sir or Madam:

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. In addition, any fill placed in the floodplain will require permitting prior to construction per K.S.A. 24-126 and K.A.R. 5-45.

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 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. 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:ccb
Enclosure(s)
pc: Stafford 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 14 day of November, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,142, dated October 29, 2024, was mailed postage prepaid, first class, US mail to the following:

KAYDEE FARMS LLC
605 CRESCENT BLVD STE 200
RIDGELAND MS 39157-8659

With photocopies to:

KDA-DWR Stafford Field Office



Division of Water Resources