

File No. **51149** 13. County: **CM - COMANCHE** Basin: **BLUFF CREEK (CIMARRON)** Stream: **N/A**
 Structures File No: Aquifer Code: **211 OGALLALA FORMATION** 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	90694	SW SW NW	28	31	19W	2	2835	5152		7.5	7.5	50	50				

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				
MOD	71621 28 31 19W 1							3.2										3.20	5a	<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
MOD	71621 28 31 19W 1	Maintain water level in a 3.2 acre reservoir (SW¼ SW¼ NW¼)																	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: November 25, 2024

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 51149 & 51152 – F&S Farms LLC, Brian Woody

Summary

Brian Woody, on behalf of F&S Farms LLC has filed the above referenced applications to appropriate 7.5 acre-feet of ground water for storage and to supplement water levels in a 3.2-acre waterfowl marsh and a 4.6-acre waterfowl marsh for recreational purposes. The rate of diversion is a maximum of 50 gallons per minute from two separate wells for each application both being located in Comanche County, Kansas. The place of use is 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 no permitting is required for either waterfowl marsh. The applications originally asked for 5 acre-feet each to comply with K.A.R. 5-3-16a, however upon review, the applications meet the exemption for K.A.R. 5-3-16 as the points of diversion are not located within a closed area. **A waiver of K.A.R. 5-3-1(b) will be used** to increase the quantity on both applications to 7.5 acre-feet each for a combined 15 acre-feet between the applications.

Reasonable Rate and Quantity

Application 51,149 and 51,152 will be used to supplement water levels in a 3.2-acre and a 4.6 acre-waterfowl marsh. This will help to compensate for evaporation losses. Therefore, reasonable quantity of water for recreational use will be defined as accounting for net evaporation for seven and a half (7.5) months out of the year. As confirmed through areal measurements, the proposed waterfowl marshes will have a surface area of roughly 3.2 and 4.6 acres for a combined total of 7.8 acres.

Net evaporation is 7.8 acres x 37 inches / 12 inches per foot = 24.05 acre-feet per year evaporation.

24.05 acre-feet per year / 12 months = 2.00 acre-feet per month of evaporation x 7.5 months = 15 acre-feet.

Source of Supply and Safe Yield

The source of supply for both wells appears to be the Ogallala formation. Both applications are located within Designated Unit Area BLC65 which is over appropriated. Per the requirements in K.A.R. 5-3-11, safe yield is determined by the extent of the unconfined aquifer within a two-mile circle radius of the point of diversion, which establishes the area of consideration. Evaluation of the area of consideration included the extent of the unconfined aquifer, which provided an area of consideration of 8,042 acres for both applications. With a potential annual recharge of 1.3 inches, and 50% of recharge available for appropriation, safe yield was determined to be 435.63 acre-feet. Existing water rights have appropriated 661.00 acre-feet, providing a difference of -225.37 acre-feet available for appropriation, and the applications requesting a total of 10 acre-feet **do not comply with safe yield**. However, as per K.A.R. 5-3-16 applications 51,149 and 51,152 meets the small use exemption from safe yield as both applications are requesting 7.5 acre-feet each for a combined total of 15 acre-feet and there are no other appropriations within two miles that are also claiming the 15-acre-foot exemption. Therefore applications 51,149 and 51,152 complies with safe yield as per K.A.R. 5-3-16.

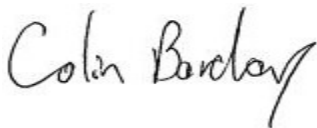
Nearby Water Rights

No appropriated wells were found to be within one-half ($\frac{1}{2}$) mile of either proposed point of diversion. Two (2) possible nearby domestic wells were found to be within one-half ($\frac{1}{2}$) mile of the proposed point of diversion for application 51,152. Both proposed points of diversions meet well spacing requirements as the nearest possible domestic well is roughly 993 feet away from 51,152 and the nearest nondomestic well is located roughly 2,809 feet away from 51,152. 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. Nearby well notification letters were sent out on October 16, 2024. No comments of any kind were received during the 15-day period open to comments and concerns.

Recommendations

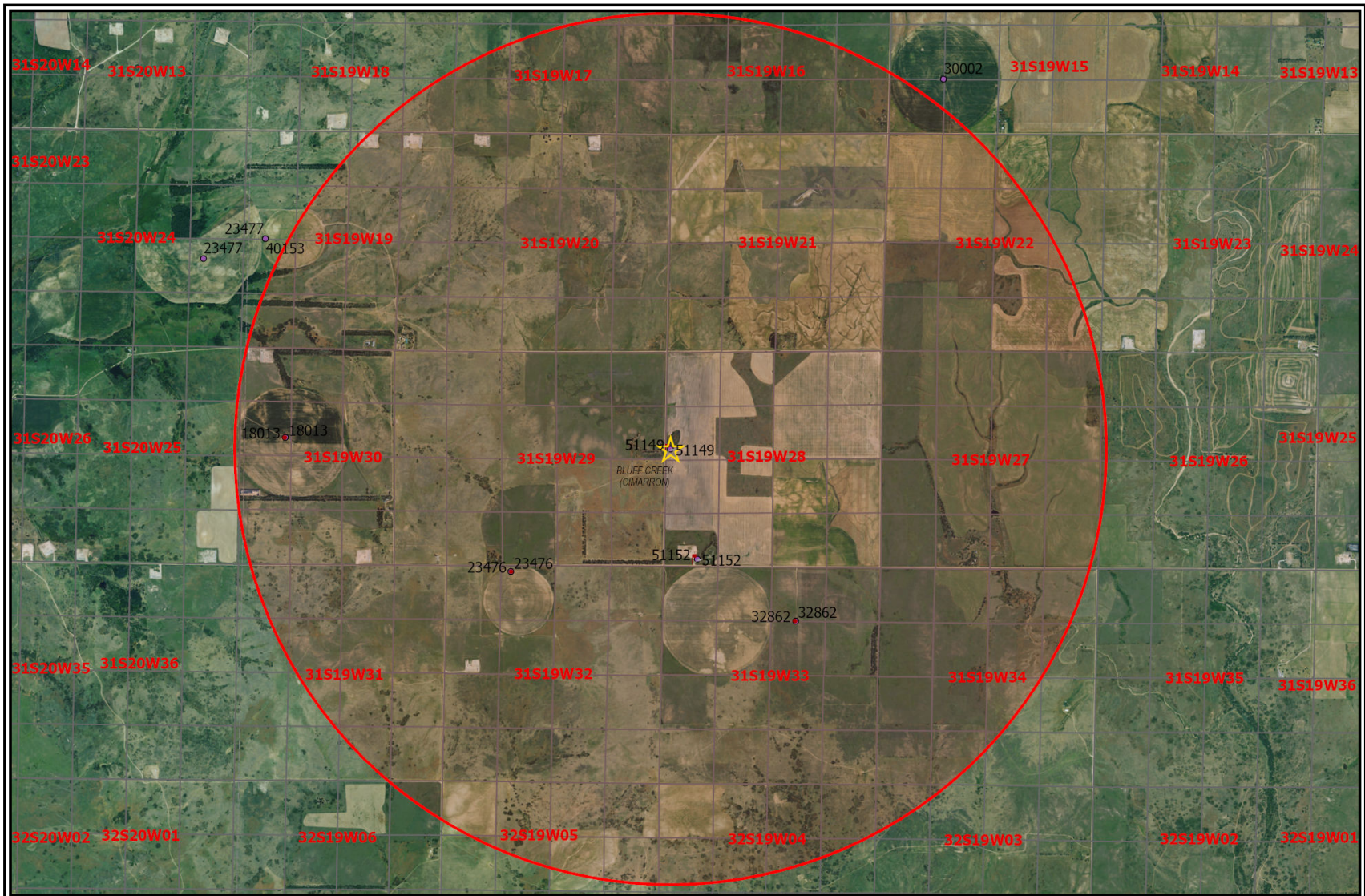
A meeting was held with the Chief Engineer on November 21, 2024, and a recommendation was made to approve the applications with K.A.R. 5-3-16, as a 15-acre-foot exemption.

Both applications comply with all regulations concerning reasonable quantity, safe yield, and minimum spacing requirements. The proposed applications are subject to minimum desirable streamflow requirements. Approval of the applications will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the above referenced applications be approved.



Colin Barclay
Environmental Scientist
Water Appropriation Program

Safe Yield Report Sheet
Water Right- A5114900
Point of Diversion in 28-31S-19W
Footages from SE corner- 2,835 feet North 5,152 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 435.63 AF.

Total prior appropriations in the circle is ~~671.00 AF~~. **661.00 AF**

Total quantity of water available for appropriation is ~~0.00 AF~~. **-225.37 AF**

Safe Yield Variables

The area used for the analysis is set at 8,042 acres.

The potential annual recharge at the circle center is estimated to be 1.3 inches.

The percent of recharge available for appropriation is 50%.

Authorized Quantity values are as of 31-OCT-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 are 5 water rights and 5 points 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 18013 00	IRR	NK	G		SE	SW	NW	3250	4030	30	31	19W	1	WR	188.00	188.00		126.00	126.00
A 23476 00	IRR	NK	G		NW	NE	NW	5190	3705	32	31	19W	1	WR	83.00	83.00		63.00	63.00
A 32862 00	IRR	NK	G		SW	NW	NE	4000	2020	33	31	19W	1	WR	390.00	390.00		320.00	320.00
A 51149 00	REC	AY	G		SW	SW	NW	2835	5152	28	31	19W	2	WR	5.00	5.00	-5.00		
A 51152 00	REC	AY	G		SE	SW	SW	161	4472	28	31	19W	3	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. 51,149** of the applicant

**F&S FARMS LLC
1361 INDIGO CT
ROCK HILL, SC 29730**

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 **December 6, 2023**.
2. That the water sought to be appropriated shall be used for recreational use to maintain water levels in a reservoir, with a maximum surface area of 3.2 acres, located in the Southwest Quarter of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 28, Township 31 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 Southwest Quarter of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 28, more particularly described as being near a point 2,835 feet North and 5,152 feet West of the Southeast corner of said section, in Township 31 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 **50 gallons per minute (0.11 c.f.s.)** and to a quantity not to exceed **7.5 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).

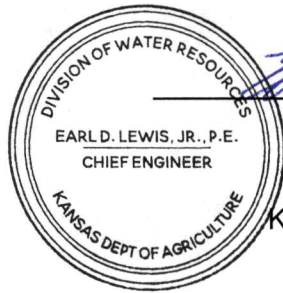
13. That the applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined and the applicant shall file an annual water use report with the Chief Engineer by March 1 following the end of each calendar year. Failure 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 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 *26th* day of *November*, 2024, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.

Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this *26th* day of *November*, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Shawna Novak

Notary Public



THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

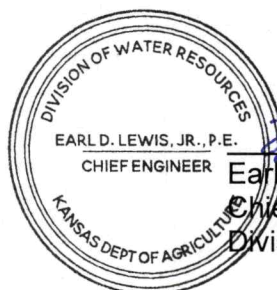
WAIVER OF REGULATION
K.A.R. 5-3-1(b)

Date: November 26, 2024

Re: Application, File Nos. 51,149 and 51,152

1. The above referenced applications were filed on December 6, 2023, and December 8, 2023, each proposing a rate of diversion of 50 gallons per minute and a quantity of 5 acre-feet per calendar year for recreational use in two separate ponds.
2. When staff with the Division of Water Resources (DWR) assisted the applicant with the preparation of the applications, there was a misunderstanding regarding the type of safe yield exemption that would be allowed in a fully appropriated Designated Use Area, as defined in K.A.R. 5-3-11.
3. On November 21, 2024, DWR staff discussed the type of exemption allowed in DUAs, clarifying the quantity that could have been requested following K.A.R. 5-3-16, allowing for a combined total of 15 acre-feet between both applications.
4. K.A.R. 5-3-1(b) states that when an application is received in the office of the Chief Engineer and assigned a number, the maximum quantity of water per calendar year and the maximum rate of diversion shall not be increased.
5. The quantity proposed by the above referenced applications should have been 7.5 acre-feet, for each application, to meet the maximum allowable quantity of 15 acre-feet as provided in K.A.R. 5-3-16, which is considered reasonable for the proposed use.
6. A waiver of K.A.R. 5-3-1(b) will not prejudicially or unreasonably affect the public interest and will not impair any existing water rights.

Comments:

The seal of the Division of Water Resources, featuring the text "DIVISION OF WATER RESOURCES" and "KANSAS DEPT OF AGRICULTURE" around a central emblem.
EARL D. LEWIS, JR., P.E.
CHIEF ENGINEER
Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources

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

December 6, 2024

BRIAN WOODY
F&S FARMS LLC
1361 INDIGO CT
ROCK HILL SC 29730-6456

RE: Appropriation of Water
File Nos. 51,149 and 51,152

Dear Mr. Woody:

Enclosed are permits authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use as set forth in the permits. Your attention is directed to the enclosures and to the terms, conditions, limitations, and requirements specified in each permit.

Notices must be filed on the enclosed forms 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(s). If you need an extension of time, you must request it before the deadline for completion set forth in the permits. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00 per file number.

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 a permit 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 with your permits is an informational sheet that sets forth the procedure to obtain a Certificate 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 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

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 6th day of December, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File Nos. 51,149 and 51,152, dated November 26th, 2024, were mailed postage prepaid, first class, US mail to the following:

F&S FARMS LLC
1361 INDIGO CT
ROCK HILL SC 29730-6456

With photocopies to:

KDA-DWR Stafford Field Office



Division of Water Resources