

File No. 51,307	13. County: KM - Kingman Basin: Chikaskia Stream: Duck Creek Trib 1 (Chikaskia) <-- Fix name		
Structures File No:	Aquifer Code:	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
CHK	91237	SE SE NW	8	30	6W	2	2841	2719					24.44	24.44	NF		

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:

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					
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
																		0.00		<input type="checkbox"/>	
MOD	71003	8	30	6W	1	3.62 Acre Marsh (SW¼ SW¼ NE¼ and SE¼ SE¼ NW¼)												5a	<input type="checkbox"/>		
																			<input type="checkbox"/>		

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

MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

Date: December 12, 2024

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 50,858 and 51,307 – 3B Messenger Ranch, LLC

Summary

3B Messenger Ranch, LLC has filed the above referenced application to appropriate 24.44 acre-feet of surface water through natural flows flooding from Duck Creek for storage in a 3.62-acre waterfowl marsh for recreational use in Kingman County, Kansas. The rate of diversion is at a rate of natural flows. File No. 51,307 has been filed to replace pending application 50,858 which is a proposed groundwater well for the same waterfowl marsh. The applicant no longer plans to drill a well due to the minimal groundwater in the area. The applicant has signed the voluntary dismissal form for pending application 50,858. The applicant has signed the application form for 51,307 affirming legal access to the point of diversion. Structures has determined the waterfowl marsh does not require permitting.

Reasonable Quantity and Safe Yield

As the marsh consists of an excavation near a natural stream and the applicant intends for the marsh to capture flood water from the nearby stream, maximum reasonable quantity was determined to be three years of evaporation and was found to be 24.44 acre-feet.

3.62 acres of surface area x 27 inches of net evaporation / 12 inches per foot = 8.145 acre-feet per year of evaporation.

8.145 acre-feet x 3 years = 24.44 acre-feet of evaporation.

Nearby Water Rights

Four nearby neighbors were found to be within one-half ($\frac{1}{2}$) mile upstream and downstream from the edge of the property boundary. Two (2) nearby notification letters were sent out on September 27, 2024. No responses of any kind were received during the 15-day period open to comments and concerns.

Recommendations

The application was sent to Jeff Lanterman, Water Commissioner of the Stafford Field Office and recommended for approval in an email dated December 12, 2024. The recommendation included adding a condition to the permit to allow natural flows to be bypassed and allowed downstream during times where minimum desirable streamflow is administered.

The application complies with all regulations concerning reasonable quantity, safe yield, and minimum spacing 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: 50858 & 51307 review and recommendation request

From Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Date Thu 12/12/2024 11:12 AM
To Barclay, Colin [KDA] <Colin.Barclay@ks.gov>
Cc Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

 1 attachment (34 KB)
50858 & 51307 updated Memo.docx;

Colin Sorry about this one. I need to do better going back if I miss an email(s)

We will be doing some MDS on the Chikaskia from time to time. And this file will be subject. I recommend approval as long as they have the ability to pass inflows if needed pursuant to MDS. I did see some reference to a stop log structure in the plans but I did not necessarily see that in the drawings. Luckily we haven't had to administer MDS on the Chikaskia at Corbin in awhile. MDS at Corbin for December is 30 CFS current flows are 101 CFS.

Along with the dismissal of 50858.

It is a bit of a stretch that this even needs a permit. I agree

Thanks
Jeff

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Thursday, December 5, 2024 8:25 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: FW: 50858 & 51307 review and recommendation request

Cameron R. Conant
Assistant Water Commissioner
Stafford Field Office
(620) 234-5311

From: Conant, Cameron [KDA]
Sent: Thursday, November 7, 2024 8:54 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: FW: 50858 & 51307 review and recommendation request

Here you go Jeff please pass on to Colin once you look at it. I don't think they need a permit here due to 82a-728 BUT Colin said they really wanted a permit so they have documentation in case anything

comes up with the state later.

Cameron

From: Conant, Cameron [KDA]
Sent: Friday, November 1, 2024 3:43 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: FW: 50858 & 51307 review and recommendation request

Jeff, I think I understand this correctly here is my take on it. They filed a GW app to fill a duck marsh. They didn't hit adequate water and so HQ helped them file a new SW app and bumped the SW app ahead in line so it'd be processed more quickly since the GW app had taken a while then was determined to be not workable during processing. The proposed wetland is about 3.62 acres in size and less than a foot deep. We filled the app out with 8.145 AF of evaporative losses per year and we assigned 3 years of evap for the quantity so the permit shows 24.44 AF as the requested quantity.

If we found this pond in a pasture I do not think we would even try to permit it because seems to me it falls under the small use small storage exemption outlined in KSA 82a-728. They are storing and using less than 15 AF in a year, my estimation is they'd be using 11 or 12 AF tops. Do you want to follow through with this permit or do you think we should let them know that as designed, their plans meet the small use small storage exemption in KSA 82a-728 and no permit is required from us?

Back when they wanted a well we needed a permit. Now, with only natural flows this doesn't need a permit and we might be well served to let them know they fit the exemption and a permit is not required. What do you think?

Cameron

From: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>
Sent: Wednesday, October 23, 2024 12:15 PM
To: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: Re: 50858 & 51307 review and recommendation request

Hey Cameron,

I went with 1 foot capacity to be generous. When I spoke to the applicant on the phone they mentioned that it is a natural wetland that holds a few inches of water. Based on their survey map, their starting elevation was 1397, they were going to excavate to 1396 across the whole marsh and only removed 160 cubic feet of material.

And for the structures permitting, I forgot to upload the determination from 50858 to 51307. It should be with 51307 now.

Their reasoning for not going with the well is that they drilled a test hole near the PD for 50858 and according to them, they could not find water.

Colin

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Wednesday, October 23, 2024 9:32 AM
To: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>
Subject: RE: 50858 & 51307 review and recommendation request

Hello Colin, what is the capacity of the pond? I'm not seeing it on the DU drawing. Was Janelle good with the excavation in the floodplain and spoil material location and all that?

Do you know what made them change their mind and not go with the well? I am curious b/c it doesn't look like very much water will flow in the pond.

Cameron

From: Barclay, Colin [KDA] <Colin.Barclay@ks.gov>
Sent: Monday, October 21, 2024 11:59 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: Re: 50858 & 51307 review and recommendation request

Apologies, I sent an older copy of that memo. Please use this one for your review.

Colin

From: Barclay, Colin [KDA]
Sent: Monday, October 21, 2024 11:47 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: 50858 & 51307 review and recommendation request

Jeff and Cameron,

I have attached my combined draft memo for 50,858 and 51,307 for your review and recommendation. This surface water application was originally a groundwater well that was to be permitted under 50,858. However, the applicant is no longer going to drill a well but still wanted a permit to cover the natural flows marsh and has filed this new application (51,307) for surface water. They have signed the voluntary dismissal form for 50,858. I sent out nearby letters on September 27th and have not heard back from anyone.

Please let me know if you have any questions.

Thanks,

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. 51,307** of the applicant

**3B MESSENGER RANCH LLC
PO BOX 939
ENNIS MT 59729-0939**

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 **September 11, 2024**.
2. That the water sought to be appropriated shall be used for recreational use in a wetland marsh, located in the Southwest Quarter of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$) and the Southeast Quarter of the Southeast Quarter of the Northwest Quarter of (SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 8, Township 30 South, Range 6 West, Kingman County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary of Duck Creek, designated in the office of the Chief Engineer as Duck Creek Trib 1 (Chikaskia), not needed to satisfy all vested rights and prior appropriation rights, to be accumulated to a maximum extent of **24.44 acre-feet** per calendar year at a point 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 8, more particularly described as being near a point 2,841 feet North and 2,719 feet West of the Southeast corner of said section, in Township 30 South, Range 6 West, Kingman County, Kansas, located substantially as shown on the topographic map accompanying the application.
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 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 the owner shall bypass natural flow and/or release water from storage when directed by the Chief Engineer or his authorized representative, in order to satisfy reasonable requests by senior water rights and permits, and to comply with any applicable minimum desirable streamflow requirements.

17. 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 13 day of December, 2024, in Manhattan, Riley County, Kansas.

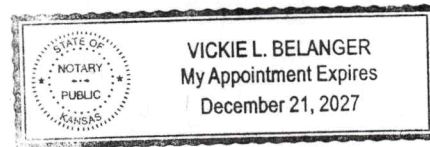
Lane P. Letourneau

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 13 day of December, 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

December 17, 2024

3B MESSENGER RANCH LLC
PO BOX 939
ENNIS MT 59729-0939

RE: Appropriation of Water
File No. 51,307

Dismissal of Application
File No. 50,858

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. Also enclosed is a Findings and Order dismissing Application, File No. 50,858, as you had requested in your form letter dated September 11, 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 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 with your permit 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

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.

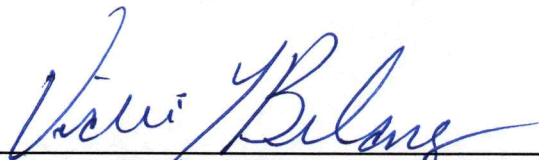
CERTIFICATE OF SERVICE

On this 17 day of December, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 51,307, and the Dismissal of Application to Appropriate Water for Beneficial Use, File No. 50,858, dated December 13, 2024, were mailed postage prepaid, first class, US mail to the following:

3B MESSENGER RANCH LLC
PO BOX 939
ENNIS MT 59729-0939

With photocopies to:

KDA-DWR Stafford Field Office



Division of Water Resources