



File No. **51,089**      13. County: **EL - ELLIS** Basin: **BIG CREEK** Stream:  
 Structures File No:      Aquifer Code: **321 NIOBRARA CHALK FM**      Special Use Area:

14. Points of Diversion, Rates & Quantities

PDIV	Qualifier	S	T	R	ID	'N	'W	Comment (AKA Line)	Qty <b>AF</b> <b>MGY</b>		Rate <b>gpm</b>		Storage Qty <b>AF</b>		Storage Rate	Overlaps
									Auth	Add	Auth	Add	Auth	Add	Auth/Add	
<b>MOD</b>	<b>90500</b>	<b>SE</b>	<b>NW</b>	<b>NE</b>	<b>22</b>	<b>12</b>	<b>18W</b>	<b>4</b>	<b>4,616</b>	<b>1,417</b>	<del>4.6</del>	<del>4.6</del>	<b>50</b>	<b>50</b>		
											<b>1.5</b>	<b>1.5</b>				

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

PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner(s)	Chg?	Overlaps	
					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"/>	
																					0.00			<input type="checkbox"/>	
<b>CHK</b>	<b>57875</b>	<b>22</b>	<b>12</b>	<b>18W</b>	<b>1</b>	<b>Oil and Gas Well Drilling Within 10 Miles of PD</b>																	<b>5a</b>		<input type="checkbox"/>
																									<input type="checkbox"/>

18. Point of Diversion and Place of Use Overlaps

* <b>PU OVERLAP WITH 46482, 48143, and 51090</b>	**
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#	##
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# MEMORANDUM TO FILE

Division of Water Resources, Water Appropriation Program

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Date: October 11, 2024

From: Colin Barclay, Environmental Scientist

Re: New Application File No. 51,089 and 51,090 – Terrence Braun

## Summary

Terrence Braun filed the above referenced applications to appropriate 4.6 acre-feet of groundwater, at a rate of 50 gallons per minute for both applications. The proposed points of diversions would be a single well for both applications located in Ellis County, Kansas. The applicant has signed the application form affirming legal access to the point of diversion. The proposed place of use is for general industrial purposes within a 10-mile radius of the proposed point of diversion. These applications will have an overlapping place of use with each other and with File Nos. 46,482, 48,143. During a field inspection on the senior files, it was found that the applicant had been pumping water from the above referenced application wells through the meter on 46,482 and 48,143. The applicant was required to file new applications for the two new wells to bring them into compliance.

## Reasonable Rate and Quantity

Quantity of water requested is 4.6 acre-feet at a rate of 50 gallons per minute per application for industrial purposes. In a phone conversation with the applicant, they explained how they primarily use the water to sell for oil well drilling, however they also sell the water for road construction, farming, and other general purposes. The example given on the supplemental sheets indicated they would need 200,000 gallons of water per drilled oil well, and they were hoping to drill 6 – 7 new wells per year per application equating to 1.5 million gallons (4.6 AF) of water requested. Based on these estimates, the requested quantity of 1.5 million gallons (4.6 AF) appears to be reasonable for both applications. Due to the low quantity requested and the number of wells proposed for both applications, no limitation is required and both applications 51,089 and 51,090 will be authorized for the full additional rate and quantity of 4.6 acre-feet at 50 gallons per minute. In addition, both wells are located roughly ~640 feet away from each other, however due to the low rate and quantity requested by both wells and the fact that both wells are owned by the applicant, both wells have existed for several years and both wells have been in use for several years, **a waiver of K.A.R. 5-4-4 will be used to allow these wells to be less than 1,320 feet from each other and to bring them into compliance.**

## Source of Supply and Safe Yield

The source of supply for the proposed point of diversion on both applications appears to be the shallow Niobrara chalk formation of the Colorado group.

The depth of the completed well for application 51,089 is 96 feet ending with a shale layer found at 91-96 feet. Limestone of the Niobrara formation was found from 11 to 91 feet. Depth to groundwater encountered was found at 72 feet with the static water level also found at 72 feet.

The depth of the completed well for application 51,090 is 95 feet ending with a shale layer found at 87 – 95 feet. Limestone and clay of the Niobrara formation was found from 2 to 87 feet. Depth to groundwater encountered was found to be at 64 feet with the wells static water level being found at 40 feet.

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. With a potential annual recharge of 1.1 inches, and 75% of recharge available for appropriation, safe yield was determined to be 552.92 acre-feet. Existing water rights have appropriated 54.85 acre-feet, providing a difference of 498.07 acre-feet available for appropriation, and the applications requesting 4.6 acre-feet each complies with safe yield.

## Nearby Water Rights

Two (2) appropriated wells were found to be within a half mile of the proposed point of diversion, however both are owned by the applicant. Nine (9) domestic wells were found to be within one-half (½) mile of the proposed points of diversion. The nearest prior appropriated well (File No. 48,143) was found to be 1,270 feet away from 51,089, however the well for File No. 48,143 is drilled to the deeper Dakota Sandstone and does not source the shallow Niobrara chalk. The nearest domestic well was found to be roughly 1,000 feet away from the nearest pending well (51,089).

Two (2) phone calls and two (2) written complaints were received during the 15-day comment period. One phone call was received from Leann Zimmerman, who asked for more information on the applications. A written comment was then received from Mrs. Zimmerman who expressed concern for the future of the aquifer and her ability to have water in the area. However, the applicants proposed rate of 50 gallons per minute should ensure that impact to the aquifer is minimal.

A separate written comment was received from the Williams family. They expressed concerns about the possible contamination the well might create and the impact it might have on their ability to source water in the future should they choose to drill a domestic well. They believe the well is drilled deeper to the Dakota formation. However, the well log submitted by the applicant shows the bottom of the well reaching 96 feet and ending at the shale layer. The applicants' wells are not deep enough to penetrate the deeper Dakota aquifer.

## Recommendations

Both applications comply with all regulations concerning reasonable quantity, safe yield, and a waiver of 5-4-4 will be used to allow the wells to meet 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 referenced application be approved.



Colin Barclay  
Environmental Scientist  
Water Appropriation Program

**RE: 51,089 and 51,090 review and recommendation request**

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**From** Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>

**Date** Fri 10/11/2024 9:34 AM

**To** Barclay, Colin [KDA] <Colin.Barclay@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>

**Cc** Hageman, Nancy [KDA] <Nancy.Hageman@ks.gov>

Colin,

I recommend approval of these applications.

Kelly

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

**Sent:** Friday, October 11, 2024 9:18 AM

**To:** Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>

**Subject:** 51,089 and 51,090 review and recommendation request

Kelly and Mark,

I have attached my draft combined memo for pending applications 51,089 and 51,090. I have also attached the safe yield reports for both applications. These are Terrence Brauns applications. We received a few phone calls and written comments that I have tried to document in my memo.

Please let me know if I need to alter anything in my memo or if you have any questions.

Thanks,

Colin Barclay

Environmental Scientist

Division of Water Resources

Kansas Department of Agriculture

Phone: (785) 564-6628

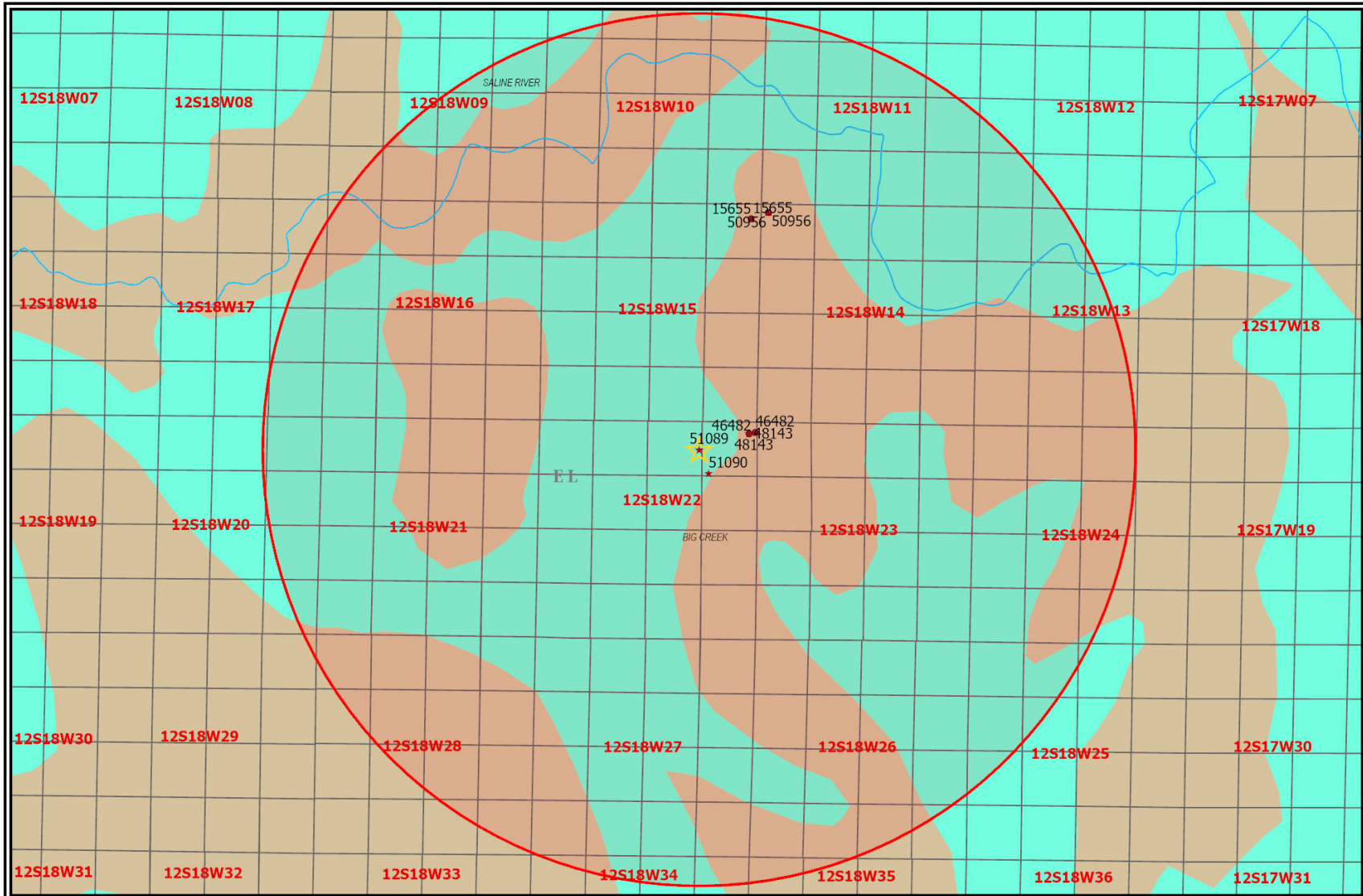
[Colin.Barclay@ks.gov](mailto:Colin.Barclay@ks.gov)

# Safe Yield Report Sheet

## Water Right- A5108900

### Point of Diversion in 22-12S-18W

Footages from SE corner- 4,616 feet North 1,417 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 552.92 AF.

Total prior appropriations in the circle is 54.85 AF.

Total quantity of water available for appropriation is 498.07 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 1.1 inches.

The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 06-SEP-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 6 water rights and 6 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 15655 00	IND	NK	G		NE	NE	NE	4950	200	15	12	18W	1	WR	14.50	14.50		
A 46482 00	IND	NK	G		NE	NE	NE	5050	52	22	12	18W	1	WR	4.24	4.24		
A 48143 00	IND	NK	G		NE	NE	NE	5020	211	22	12	18W	2	WR	3.85	3.85		
A 50956 00	MUN	AY	G		NW	NW	NW	5122	5066	14	12	18W	1	WR	32.26	32.26		
A 51089 00	IND	AY	G		NE	SW	NE	4616	1417	22	12	18W	4	WR	4.60	0.00		
A 51090 00	IND	AY	G		SW	NE	NE	4037	1181	22	12	18W	5	WR	4.60	0.00		

## Limitations

File Number	Seq Num	Limitations
A 15655 00	1	45GPM COM/W UNDER ANY USE

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. 51,089** of the applicant

**TERENCE BRAUN  
207 W 38TH ST  
HAYS KS 67601**

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 **August 21, 2023**.
2. That the water sought to be appropriated shall be used for industrial use within ten (10) miles of the authorized point of diversion, in Ellis County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by a one (1) well located in the Southeast Quarter of the Northwest Quarter of the Northeast Quarter (SE $\frac{1}{4}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of Section 22, more particularly described as being near a point 4,616 feet North and 1,417 feet West of the Southeast corner of said section, in Township 12 South, Range 18 West, Ellis 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 **1.5 million gallons of water (4.6 acre-feet)** 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 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 18<sup>th</sup> day of October, 2024, in Manhattan, Riley County, Kansas.



*Earl D. Lewis Jr.*

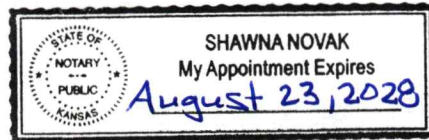
Earl D. Lewis Jr., P.E.  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas )  
                          ) SS  
County of Riley )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

*Shawna Novak*

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

October 22, 2024

TERENCE BRAUN  
207 W 38 ST  
HAYS KS 67601-1654

RE: Appropriation of Water  
File Nos. 51,089 and 51,090

Dear Mr. Braun:

Enclosed are permits authorizing you to proceed with construction of the proposed diversion works and to appropriate water for beneficial use. 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 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 the 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 [kswaterusereport.org](http://kswaterusereport.org).

The approval of your applications constitutes permits 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](http://agriculture.ks.gov/dwr). If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640, or your local Stockton Field Office at 785-425-6787. If you call, please reference the file numbers 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: Stockton 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 22 day of October, 2024, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File Nos. 51,089 and 51,090, dated October 18, 2024, were mailed postage prepaid, first class, US mail to the following:

TERENCE BRAUN  
207 W 38 ST  
HAYS KS 67601-1654

With photocopies to:

KDA-DWR Stockton Field Office

  
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Division of Water Resources