

File No. **50770** 15. Formation Code: **500** Drainage Basin: **Smoky Hill River** County: **Clay** Special Use: Stream:

16. Points of Diversion											
T	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W
	MOD			89440	NE NW NW	4	10S	2E	10	5114	4067 Well 6
	ENT			90539	NW NW NW	4	10S	2E		5100	4660 Well 7
	ENT			90540	NE NW NW	4	10S	2E		5107	4364 Geo-C
BATT ID 2366											

17. Rate and Quantity				
Authorized		Additional		
Rate gpm	Quantity mgy	Rate gpm	Quantity mgy	Overlap PD Files
99	19.805	99	0	NA

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft

19. Limitation: **19.805** mgy at _____ gpm (_____ cfs) when combined with file number(s) **50,442 & 50,443**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? Yes No To be installed by **12/31/2024** Date Acceptable Meter Installed _____

21. Place of Use				NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files					
T	MOD	DEL	ENT	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼									
	CHK			70117	4	10S	2E	2	Swine Facility NW NE																	7a	N	50,442, 50,443

Comments: **Application Filed for more flexibility in pumping for swine facility.**

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: August 25, 2023

FROM: Brandon Milner

RE: Application, File No. 50,770

Marc Henry has filed the referenced applications to appropriate groundwater from a battery of two wells for stockwatering use at a hog facility located in the Northeast Quarter of Section 4, Township 10 South, Range 2 East, in Clay County. The two applications will overlap in place of use. The facility is located within the Smoky Hill River basin. The proposed place of use is wholly owned by the applicant, and the application forms have been signed by the applicant, stating he has access to the points of diversion. Application, File No. 50,770 is requesting 19.805 million gallons (60.78 acre-feet) of groundwater, at a rate of diversion of 99 gallons per minute.

The applicant has provided information with the new application, to justify the requested quantity of water, as follows: Drinking Water for 6,196 head of hogs (sows, finishing, and nursery) = 12.645 million gallons. Servicing, cooling, and sanitation = 7.158 million gallons, for a total of 19.803 million gallons (60.78 acre-feet). This application will be limited to 19.805 million gallons when combined with the senior file, providing no additional water, but will provide flexibility in pumping the wells. The applicant has provided well logs that depict alternating shales and limestones, which are likely sourcing the Permian system (most likely the Sumner or Chase Group). The primary aquifer appears to be a weathered limestone and shale layer extending from roughly 50 feet to 60 feet below ground surface. In general, total depths of the wells range from 90 to 100 feet, with depths to groundwater ranging from 24 feet or more below ground surface. Well production rates are typically low (30 to 50 gpm).

In keeping with area senior files, safe yield was evaluated using the extent of the bedrock aquifer, which is also consistent with other applications completed in this area of the state. Using the extent of the bedrock aquifer as the area of consideration provides a total of 8,042 acres for both files. For File No. 50,770 potential recharge is 2.6 inches, with 100% available for appropriation, safe yield was determined to be 1742.54 acre-feet. With only 277.16 acre-feet previously appropriated in this area, there is sufficient quantity of water available for appropriation, and this application meets safe yield criteria. A review of the well logs show that water was encountered at the same depth as static water levels or slightly below the static level. This indicates that the bedrock aquifer is under semi-confined conditions. This is typical for wells in this area where the limestone strata are believed to be the water source for the wells. Since the aquifer is likely confined, K.A.R. 5-3-14 describes the methodology to determine safe yield, as follows:

A review of the well logs show that water was encountered at the same depth as static water levels or slightly below the static level. This indicates that the bedrock aquifer is under semi-confined conditions. This is typical for wells in this area where the limestone strata are believed to be the water source for the wells. Since the aquifer is likely confined, K.A.R. 5-3-14 describes the methodology to determine safe yield, as follows: (a) Each application to appropriate water from a confined aquifer shall be processed on a case by case basis so that the safe yield of the source of water supply is not exceeded. (b) Until a specific regulation is adopted by the chief engineer for the confined source of water supply, the analysis shall be made using the best information reasonably available to the chief engineer.

No specific regulation has been adopted by the chief engineer for the Permian bedrock aquifer; therefore the best information available should be utilized. The potential annual recharge established for this area for unconfined aquifers (2.6 inches) would provide a maximum quantity of recharge possible. Although it is likely that the confined bedrock aquifer system would receive somewhat less recharge than a near-surface, unconfined aquifer, this safe yield value for unconfined aquifers per K.A.R. 5-3-11 provides a maximum quantity of water available in the area of consideration. If there is a significant quantity of water still remaining, then even with significant reduced recharge to the confined aquifer (in this case it would require only 19% of the maximum recharge value or 0.5 inches of recharge) there would still be sufficient water available.

Therefore, based on the above discussion, it appears that these applications can be approved per K.A.R. 5-3-14, using the best information reasonably available to the chief engineer. The applicant did not identify any other wells within one-half (1/2) mile of the proposed points of diversion. A review of aerial photographs supports that there are no nearby structures or facilities that would indicate domestic wells. Therefore, no notification letters were required. Both of the applications comply with minimum well spacing criteria of 1,320 feet to all other existing non-domestic wells. However, the geographic centers of the two well batteries requested under these applications do not meet spacing to each other, being located 1,150 feet apart. There are several unique circumstances that should be considered in this specific instance regarding minimum well spacing.

- This well for stockwatering use are operated as a system supplying water to the same hog facility and are not likely to be separated or divided in any way in the future.
- The wells are not typically pumped at the same time, and they are pumped based on water supply demands at the hog facility, not on a continuous basis. This operational flexibility in pumping sources will provide for more efficient management of the source of supply.
- The applicant has stated that these are all low yield wells and will not affect each other. Pumping at these low rates will minimize any potential drawdown.
- All nearby wells are owned by the applicant. Therefore, per K.A.R. 5-4-4, the required minimum well spacing criteria is not necessary to prevent direct impairment in this specific instance, and the proposed well spacing is sufficient to prevent direct impairment and to protect the public interest. Both new appropriations will be limited to a maximum pumping rate of only 99 gpm.

In accordance with K.S.A. 82a-706c, the Chief Engineer retains full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R. 5-1- 12. If any chemical or foreign substance is injected into the water pumped under these permits, check valves will also need to be installed. In an email on September 5th, 2023, Brett Bunger, Water Commissioner, Topeka Field Office, recommended approval of the referenced applications. Based on the above discussion, reduced well spacing and safe yield criteria are met, and approval of the applications will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced new applications be approved.

Brandon
Environmental Scientist
New Applications Unit

From: Bunger, Brett [KDA]
Sent: Tue 9/5/2023 3:23 PM
To: Milner, Brandon [KDA]
Subject: RE: 50770 Recommendation

I see nothing to be concerned about. Please proceed with approval.

Brett

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>
Sent: Tuesday, September 5, 2023 2:10 PM
To: Bunger, Brett [KDA] <Brett.Bunger@ks.gov>
Subject: 50770 Recommendation

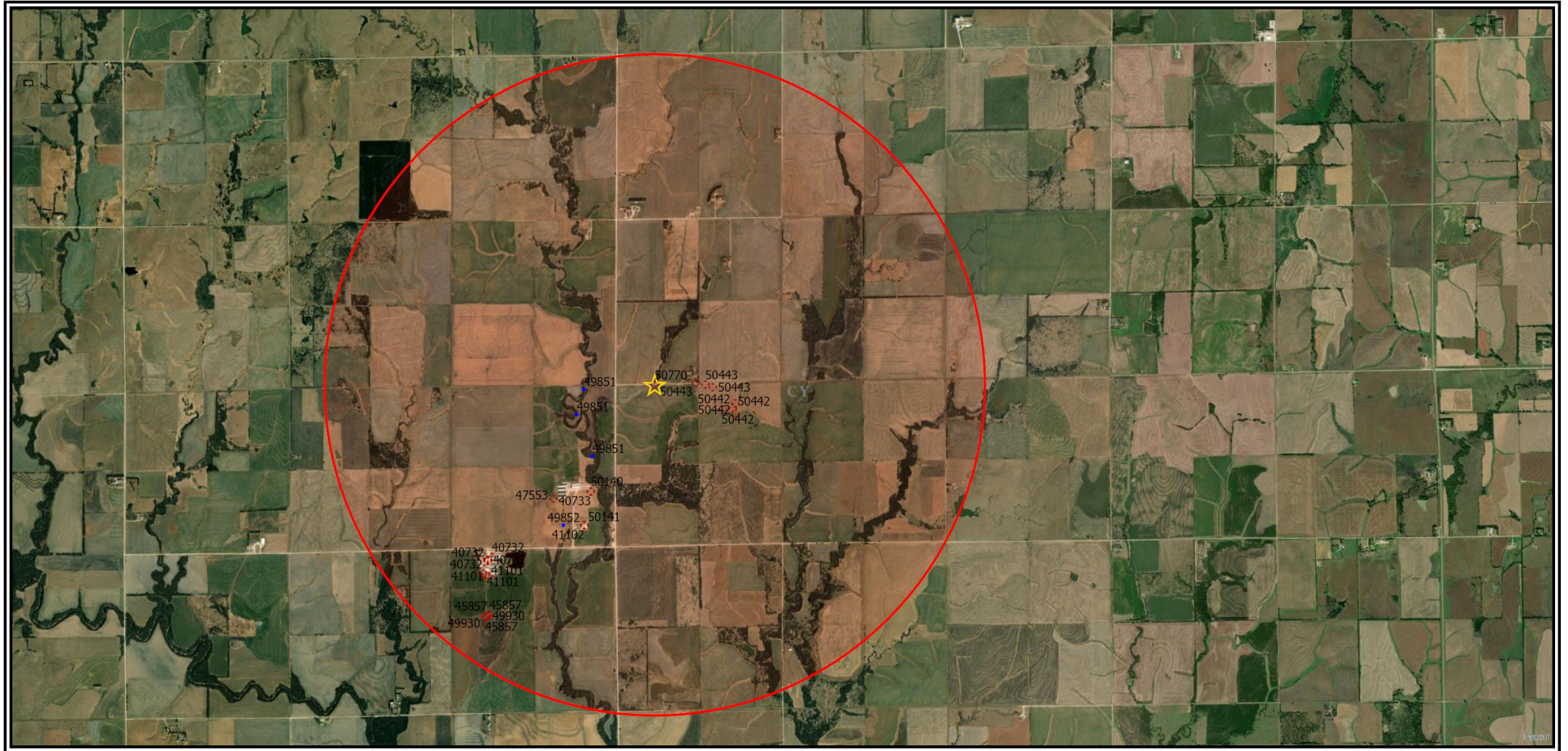
Brett,

I've attached a memo for recommendation on file 50,770 for a pig farm in Clay County. This looks to be in conjunction with already approved appropriations no. 50,442 and 50,443. The volume of the pigs on the farm has not changed since these earlier applications but it appears that the applicant is not pumping enough water for their permitted allotment so they are drilling more wells for better production. The only minor thing that I noticed with this application is the logs for this new battery of wells seems to show more confinement of the Permian aquifer. (Static water level is somewhat higher than formation level). I'm not convinced that this is something to worry about since the overall formation is a poor producing one. Thoughts on the recommendation here?

P.S. I used one of Doug's templates for this memo so I hope that I didn't leave something/take something out that shouldn't be there.

Brandon Milner
Environmental Scientist
Water Appropriation Program

Safe Yield Report Sheet
Water Right- A5077000
Point of Diversion in 04-10S-02E
Footages from SE corner- 5,114 feet North 4,067 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 1,742.54 AF.

Total prior appropriations in the circle is ~~337.94 AF~~ **277.16**

Total quantity of water available for appropriation is ~~1,404.60 AF~~ **1465.38**

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 2.6 inches.

The percent of recharge available for appropriation is 100%.

Authorized Quantity values are as of 01-AUG-2023 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 12 water rights and 21 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 40732 00	STK	NK	G		NE	NW	NW	4972	4014	08	10	02E	1	WR	39.90	39.90		
Same	STK	NK	G		NE	NW	NW	4880	4138	08	10	02E	5	WR				
Same	STK	NK	G		NE	NW	NW	4852	4142	08	10	02E	2	WR				
Same	STK	NK	G		NE	NW	NW	4815	4258	08	10	02E	3	WR				
A 40733 00	STK	NK	G		SW	NE	SE	1770	776	05	10	02E	1	WR	8.59	8.59		
A 41101 00	STK	NK	G		SE	NW	NW	4353	4116	08	10	02E	4	WR	29.91	4.75		
Same	STK	NK	G		SE	NW	NW	4399	4210	08	10	02E	6	WR				
Same	STK	NK	G		SE	NW	NW	4444	4303	08	10	02E	7	WR				
A 41102 00	STK	NK	G		NW	SE	SE	688	999	05	10	02E	3	WR	3.76	0.49		
A 45857 00	STK	NK	G		SE	SW	NW	3121	4116	08	10	02E	8	WR	10.54	0.00		
Same	STK	NK	G		SE	SW	NW	3048	4250	08	10	02E	9	WR				
Same	STK	NK	G		SE	SW	NW	3085	4183	08	10	02E	10	WR				
A 47553 00	STK	MM	G		SW	NW	SE	1550	2100	05	10	02E	6	WR	67.21	67.21		
A 49930 00	STK	LO	G		SE	SW	NW	3121	4116	08	10	02E	8	WR	123.00	78.42		
Same	STK	LO	G		SE	SW	NW	3048	4250	08	10	02E	9	WR				
Same	STK	LO	G		SE	SW	NW	3085	4183	08	10	02E	10	WR				
A 50140 00	STK	LO	G		SW	NE	SE	1770	776	05	10	02E	1	WR	46.03	17.04		
A 50141 00	STK	LO	G		NW	SE	SE	688	999	05	10	02E	3	WR	46.03	0.00		
A 50442 00	STK	LO	G		SE	NW	NE	4353	1570	04	10	02E	3	WR	60.78	60.78		
Same	STK	LO	G		SE	NW	NE	4530	1421	04	10	02E	4	WR				
Same	STK	LO	G		SE	NW	NE	4198	1443	04	10	02E	5	WR				
Same	STK	LO	G		SE	NW	NE	4330	1845	04	10	02E	6	WR				
A 50443 00	STK	LO	G		NW	NW	NE	5104	2440	04	10	02E	7	WR	60.78	0.00		
Same	STK	LO	G		NW	NW	NE	5066	2143	04	10	02E	8	WR				
Same	STK	LO	G		NE	NE	NW	5143	2737	04	10	02E	9	WR				

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 50770 00	STK	AY	G		NE	NW	NW	5114	4067	04	10	02E	10	WR	60.77	60.77		

Limitations

File Number	Seq Num	Limitations
A 41101 00	1	14.547MGY COM/W #40732
A 41102 00	2	2.958MGY COM/W #40733
A 45857 00	2	14.547 MGY COM/W #40732 & #41101
A 49930 00	1	40.08 MGY COM/W #40732, #41101 & #45857 (ON P/U)
A 50140 00	1	30.41 MGY COM/W #40733, #41102 & #47553 (ON P/U)
Same	2	99 GPM COM/W #40733
A 50141 00	1	30.41 MGY COM/W #40733, #41102, #47553 & #50140 (ON P/U)
Same	2	99 GPM COM/W #41102
A 50443 00	1	19.805 MGY COM/W #50442 ON P/U

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. 50,770** of the applicant

**MARC HENRY
875 6TH ROAD
LONGFORD KS 67458**

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 **April 22, 2022**.
2. That the water sought to be appropriated shall be used for stockwatering use in the Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 4, in Township 10 South, Range 2 East, Clay County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by battery of two (2) wells with a geographical center located in the Northeast Quarter of the Northwest Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 4, more particularly described as being near a point 5,107 feet North and 4,364, feet West of the Southeast corner of said section, in Township 10 South, Range 2 East, Clay County, Kansas, located substantially as shown on the aerial photograph accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **99 gallons per minute (0.22 c.f.s.)** and to a quantity not to exceed **19.805 million gallons of water (60.78 acre-feet)** for any calendar year.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2024**, 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, 2028, 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 all wells with a diversion rate of 100 gallons per minute or more drilled under the authority of this permit shall have a tube or other device installed in a manner acceptable to, and in accordance with specifications adopted by, the Chief Engineer. This tube or device shall be suitable for making water level measurements and shall be maintained in a condition satisfactory to the Chief Engineer.

13. 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 meters 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).

14. 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.

15. That no water user shall engage in nor allow the waste of any water diverted under the authority of this permit.

16. 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.

17. That this permit is limited such that all wells shall be located within a three hundred (300) foot radius circle, in the same local source of supply, and shall supply water to a common distribution system.

18. That the quantity of water approved under this permit is further limited to the quantity which combined with Appropriation of Water, File Nos. 50,442 and 50,443, will provide a total not to exceed **19.805 million gallons of water (60.78 acre-feet)** per calendar year for stockwatering at the place of use as described herein.

19. That failure without cause to comply with provisions of the 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 *18th* day of *September*, 2023, 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 *18th* day of *September*, 2023, by Earl D. Lewis Jr, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

Melinda Jennings

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

September 18, 2023

MARC HENRY
875 6TH ROAD
LONGFORD KS 67458

RE: Appropriation of Water
File No. 50,770

Dear Mr. Henry:

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.

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 acceptable water flowmeter must be installed on the diversion works authorized by this permit prior to using water. 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.kswateruserereport.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.

Enclosed 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 Topeka Field Office at 785-296-5733. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New and Change Applications Unit Supervisor
Division of Water Resources

KAB:kak:bmm
Enclosure(s)
pc: Topeka 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 18 day of September, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50770, dated September 7, 2023, was mailed postage prepaid, first class, US mail to the following:

MARC HENRY
875 6TH ROAD
LONGFORD KS 67458

With photocopies to:

KDA-DWR Topeka Field Office



Division of Water Resources