

Kansas Department of Agriculture  
Division of Water Resources  
**PERMIT OF NEW APPLICATION WORKSHEET**

1. File Number: <p style="text-align: center;"><b>51,071</b></p>	2. Status Change Date: <p style="text-align: center;"><b>10/17/2023</b></p>	3. Field Office: <p style="text-align: center;"><b>01</b></p>	4. GMD: <p style="text-align: center;"><b>0</b></p>
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5. Status:     Approved                       Denied by DWR/GMD                       Dismiss by Request/Failure to Return

6. Enclosures:     Check Valve             N of C Form             Water Tube             Driller Copy             Meter

<p>7a. Applicant(s)                      Person ID <b>68585</b> New to system <input type="checkbox"/>                      Add Seq# <u>1</u></p> <p><b>TBR FARM LLC</b> <b>13121 WALMER STREET</b> <b>OVERLAND PARK, KS 66209</b></p>	<p>7b. Landowner(s)                      Person ID _____ New to system <input type="checkbox"/>                      Add Seq# _____</p>
<p>7b. Landowner(s)                      Person ID <b>68585</b> New to system <input type="checkbox"/>                      Add Seq# <u>1</u></p> <p><b>7a.</b></p>	<p>7e. Miscellaneous                      Person ID _____ New to system <input type="checkbox"/>                      Add Seq# _____</p>

<p>8. WUR Correspondent                      Person ID <b>68585</b> New to system <input type="checkbox"/>                      Add Seq# <u>1</u> Overlap File (s) WUC                      Notarized WUC Form <input type="checkbox"/> Agree <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>7a.</b></p>	<p>9. Use of Water:    Changing?    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p style="padding-left: 40px;"><input type="checkbox"/> Groundwater            <input checked="" type="checkbox"/> Surface Water</p> <p><input type="checkbox"/> IRR                      <input checked="" type="checkbox"/> REC                      <input type="checkbox"/> DEW                      <input type="checkbox"/> MUN</p> <p><input type="checkbox"/> STK                      <input type="checkbox"/> SED                      <input type="checkbox"/> DOM                      <input type="checkbox"/> CON</p> <p><input type="checkbox"/> HYD DRG            <input type="checkbox"/> WTR PWR            <input type="checkbox"/> ART RECHRG</p> <p><input type="checkbox"/> IND SIC: _____    <input type="checkbox"/> OTHER: _____</p>
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10. Completion Date: 12/31/2025            11. Perfection Date: 12/31/2029            12. Exp Date: \_\_\_\_\_

13. Conservation Plan Required?  Yes  No Date Required: \_\_\_\_\_ Date Approved: \_\_\_\_\_ Date to Comply: \_\_\_\_\_

14. Water Level Measuring Device?  Yes  No Date to Comply: \_\_\_\_\_ Date WLMD Installed: \_\_\_\_\_

Date Prepared: 10/13/2023    By: LHH  
Date Reviewed: 10/16/2023    By: KAK  
Date Entered: 10/18/2023    By: LMoody

File No. **51,071**      15. Formation Code:      Drainage Basin: **NEOSHO RIVER**      County: **CF**      Special Use:      Stream: **LONG CREEK TRIB 9 (Neosho)**

16. Points of Diversion											
T	MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W
<b>ENT</b>	<b>90451</b>				<b>SW NW SE</b>	<b>28</b>	<b>20S</b>	<b>16E</b>	<b>3</b>	<b>1,529</b>	<b>2,537</b>

17. Rate and Quantity				
Authorized			Additional	
Rate gpm	Quantity af		Rate gpm	Quantity af
				Overlap PD Files

18. Storage: Rate all NF NF      Quantity 23.3 ac/ft      Additional Rate all NF NF      Additional Quantity 23.3 ac/ft

19. Limitation: \_\_\_\_\_ af/yr at \_\_\_\_\_ gpm (\_\_\_\_\_ cfs) when combined with file number(s) \_\_\_\_\_  
 Limitation: \_\_\_\_\_ af/yr at \_\_\_\_\_ gpm (\_\_\_\_\_ cfs) when combined with file number(s) \_\_\_\_\_

20. Meter Required?  Yes  No      To be installed by \_\_\_\_\_      Date Acceptable Meter Installed \_\_\_\_\_

21. Place of Use										NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
T	MOD	DEL	ENT	PUSE	S	T	R	ID		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				
<b>ENT</b>	<b>71008</b>																										<b>7a</b>	<b>NO</b>	<b>50860</b>

Comments:

**KANSAS DEPARTMENT OF AGRICULTURE**  
**Division of Water Resources**

**M E M O R A N D U M**

**TO:** Files

**DATE:** October 13, 2023

**FROM:** Lloyd Hemphill

**RE:** New Application, File Nos. 50,860 and  
51,071

Craig Raiford, on behalf of TBR Farm LLC, has filed the new applications referenced above proposing to appropriate surface water for recreational use in a marsh located in the Southeast Quarter (SE¼) of Section 28, in Township 20 South, Range 16 East, Coffey County, Kansas. Storage of natural runoff (File No. 51,071) will be supplemented by direct diversion from Long Creek (File No. 50,860). The applicant owns the property that contains the place of use and point of diversion. The applicant provided a signed supplemental sheet on July 11, 2023 (File No. 50,860) and a signed application (File No. 51,071) stating legal access to the points of diversion.

Application, File No. 50,860 was submitted on September 15, 2022. The application indicated that the layout of the marsh was based on "preliminary designs". DWR was notified on July 5, 2023 that the marsh had been constructed and that the location of the point of diversion and place of use had changed since the application was filed. As-built plans were submitted to DWR Water Structures to facilitate their review. DWR Structures' review and permit determination was based solely on the existing structure. These plans show that the existing marsh was constructed in the southern portion of the proposed place of use. Based on the information provided, it was determined that a water appropriation permit would be required for the collection of natural flows/runoff. An application for this permit was submitted on July 17, 2023 (File No. 51,071). This file will create a partial overlap with File No. 50,860, because the natural flow/runoff collected by the structure will not fill the northern portion of the place of use. The applicant wishes to retain the full place of use as originally proposed by File No. 50,860, but will spread out the construction cost and develop the remaining marsh area at a later date. At this time the applicant cannot provide additional designs for future marsh pools. The applicant will provide additional information (i.e. engineering plans) for DWR to review prior to developing additional structures. Additional permitting may be required based on the updated plans.

**File No. 50,860 – Direct diversion**

This application proposes to appropriate 135 acre-feet of surface water at a diversion rate of 5,000 gallons per minute from two pumpsites on Long Creek (Neosho River). This application will allow water to be pumped directly from the creek (when flows are adequate, and permission is granted). The water will be used to fill and maintain water levels in the marsh (i.e. offset evaporative and seepage losses). The proposed points of diversion (pumpsites) are both located in the Northwest Quarter of the Southeast Quarter (NW¼ SE¼) of Section 28, in Township 20 South, Range 16 East, Coffey County, Kansas.

The proposed place of use includes 27 acres of marsh, including an existing 7.2 acre marsh in the southern portion of the place of use. The remaining place of use will be developed at a later date. The requested quantity of 135 acre-feet was justified as three fills of the marsh to the auxiliary spillway elevation plus net evaporation. Net evaporation at this location is 12 inches per year, resulting in a total evaporation of 27 acre-feet. The remaining quantity of water is equal to 3 times a volume of 36 acre-feet (135 AF - 27 AF = 108 AF / 3 = 36 AF). This is equivalent to an average marsh depth of 16 inches. The applicant did not specifically request a quantity for seepage, however, this quantity appears sufficient to cover some seepage loss, if necessary. The requested quantity appears reasonable for this project.

The existing portion of the marsh has a surface area of 7.2 acres and storage capacity of 16.12 acre-feet at auxiliary spillway elevation. This results in an average depth of 26.9 inches when filled to the auxiliary spillway.

The applicant's consulting engineer, Brian Severin of Sustainable Environmental Consultants, has provided further description of the management practices typically followed for similar projects. Actual wetland cell operation varies by location, manager, and season. The wetland will not be managed the same every year. The water level in the wetland cells is managed to best attract wildlife and migratory waterfowl at various times of the year. Water levels will be used to control vegetation and feed sources. Typically, wetland cells are filled prior to the waterfowl season.

There may be releases and additional pumping throughout the hunting season to create a water profile for the specific species and hunting experience. The wetland cells are often drained following the hunting season for dike and storage area maintenance. Some undesirable vegetation is often best managed by flooding, therefore additional pumping may be used to manage vegetation. Pumping will help maintain soil saturation throughout the year as well. Minimal seepage is anticipated in the floodplain soils, especially since soil saturation will be maintained throughout the year. The wetland may be pumped full (if precipitation/runoff is not adequate) and water released more than once a year.

This approval will be subject to specific conditions, which stipulate strict requirements for direct surface water diversion. These conditions include the stipulation that no diversion shall occur unless there is water available to satisfy all demands by senior water rights and permits, written or verbal permission from the Chief Engineer, or an authorized representative is required prior to diverting water, and streamflow cannot be stopped at the first riffle below the point of diversion while diversion is taking place. The application also complies with K.A.R 5-3-15 (c)(5) because the proposed use of water for recreational use is primarily during the fall season, and there is no need for direct diversion of water from July 1 through September 30.

#### **File No. 51,071 – Natural Flow Storage**

As discussed above, one marsh pool has already been constructed. This marsh was constructed with a berm on the lower edge with the upper edge open to collect natural runoff. The storage capacity of the marsh is greater than 15 acre-feet. Based on this, an additional permit is required for collection of natural flows/runoff. The applicant was advised of this requirement and an application was received on July 17, 2023.

This application proposes to collect 23.3 acre-feet of natural flows in the marsh. The proposed point of diversion is a water control structure at a low point in the marsh pool. The point of diversion is located in the Southwest Quarter of the Northwest Quarter of the Southeast Quarter (SW¼ NW¼ SE¼) of Section 28, in Township 20 South, Range 16 East, Coffey County, Kansas, as described on the application. The source of water will be designated as Long Creek Trib 9 (Neosho).

The proposed place of use only includes the existing southern marsh pool. This will create a partial overlap with the place of use for File No. 50,860. The partial overlap is reasonable because the natural runoff collected by this pool will not fill the northern part of the marsh. Further permitting may be required if additional marsh pools are constructed that will collect runoff.

This application requests a quantity sufficient to cover the normal pool capacity of the existing marsh (16.1 acre-feet) and one year of net evaporation (7.2 AF). The net evaporation in this area is 1 foot per year and the marsh surface area is 7.2 acres resulting in a total of 7.2 acre-feet of evaporation. This justification is typical for this type of permit. The requested quantity is 23.3 acre-feet.

Runoff computations were completed considering a normal precipitation of 35 inches, soil complex number of 79, and drainage area of approximately 26.7 acres. These calculations determined that the drainage basin will generate 33 acre-feet of runoff in 1 out of every five (5) years (a 20% chance), therefore it will provide the requested quantity.

Notification letters were sent to upstream and downstream landowners on September 15, 2023. Two phone calls were received in response to this letter. Both owners had general concerns over the potential impact to wildlife and overall stream health but neither caller uses the stream for any beneficial use. Standard permit conditions were discussed, and no further information was provided to indicate impairment of any water right. According to WRIS there are two other permitted water rights within two miles of these files. One authorizes sediment control reservoirs located on different tributaries and the other is a similar marsh project (#50136) with pumpsites located about two stream miles upstream. Approval of this application will not impair senior water rights.

The existing wetland was reviewed by DWR Structures under WSN: DCF-112. The structure was determined to be non-jurisdictional to Structures permitting and the applicant was notified of this determination in a July 18, 2023 letter. Also, the structure is located outside of the FEMA Zone A boundary so a Floodplain Fill permit is not required.

Brent Turney United States Department of Agriculture, Natural Resources Conservation Service (USDA-NRCS) confirmed in an October 3, 2023 email that there are no NRCS easements located on this property.

The proposed points of diversion are located on a tributary stream that joins the Neosho River above the Minimum Desirable Streamflow (MDS) gages near Iola and Parsons so this permit will be subject to MDS administration and streamflows at these gages. The applicant has submitted a signed MDS acknowledgement form.

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.

Brett Bunger, Water Commissioner, Topeka Field Office, recommended in an October 13, 2023 e-mail that the referenced new application should be approved. Based on the above discussion, the area remains open to new appropriations, the approval of File No. 50,860 is subject to specific conditions relative to direct surface water diversions, diversion is typically limited to fall "off-season" pumping, the project is non-jurisdictional to Structures Program permitting, and there is no indication that existing water rights will be impaired, it is recommended that the referenced application be approved.

Lloyd Hemphill  
Environmental Scientist  
Topeka Field Office

## Hemphill, Lloyd [KDA]

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**From:** Bunger, Brett [KDA]  
**Sent:** Thursday, October 12, 2023 3:09 PM  
**To:** Hemphill, Lloyd [KDA]  
**Subject:** RE: Application, File Nos. 50860 & 51071: For your recommendation

Bingo! Please proceed with approval.

Thanks

Brett

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**From:** Hemphill, Lloyd [KDA] <[Lloyd.Hemphill@ks.gov](mailto:Lloyd.Hemphill@ks.gov)>  
**Sent:** Thursday, October 12, 2023 3:00 PM  
**To:** Bunger, Brett [KDA] <[Brett.Bunger@ks.gov](mailto:Brett.Bunger@ks.gov)>  
**Subject:** RE: Application, File Nos. 50860 & 51071: For your recommendation

Here is a map that may not be in docuware yet. See if that answers your question.

Lloyd

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**From:** Bunger, Brett [KDA] <[Brett.Bunger@ks.gov](mailto:Brett.Bunger@ks.gov)>  
**Sent:** Thursday, October 12, 2023 2:56 PM  
**To:** Hemphill, Lloyd [KDA] <[Lloyd.Hemphill@ks.gov](mailto:Lloyd.Hemphill@ks.gov)>  
**Subject:** RE: Application, File Nos. 50860 & 51071: For your recommendation

In your memo you make mention of an incomplete overlap in place of use. In both files I see the same map and marsh area. What am I missing??

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**From:** Hemphill, Lloyd [KDA] <[Lloyd.Hemphill@ks.gov](mailto:Lloyd.Hemphill@ks.gov)>  
**Sent:** Thursday, October 12, 2023 1:37 PM  
**To:** Bunger, Brett [KDA] <[Brett.Bunger@ks.gov](mailto:Brett.Bunger@ks.gov)>  
**Subject:** Application, File Nos. 50860 & 51071: For your recommendation

Brett,

Will you provide your recommendation on Application, File No. 50860 and 51071 (TBR Farm LLC). This is a direct diversion & natural flow collector pair of REC use permits for a marsh in CF CO. The direct diversion is from Long Creek, a tributary to the Neosho River.

Thanks,  
Lloyd

Lloyd Hemphill, Environmental Scientist  
Kansas Department of Agriculture  
Division of Water Resources, Topeka Field Office  
1131 SW Winding Rd, Suite 400  
Topeka, KS 66615

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. 51,071** of the applicant

**TBR FARM LLC  
13121 WALMER STREET  
OVERLAND PARK KS 66209**

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 **July 17, 2023**.
2. That the water sought to be appropriated shall be used for recreational use in a marsh located in the West Half of the Southeast Quarter ( $W\frac{1}{2} SE\frac{1}{4}$ ) of Section 28, in Township 20 South, Range 16 East, Coffey County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to Long Creek, designated in the office of the Chief Engineer as Long Creek Trib 9 (Neosho), not needed to satisfy all vested rights and prior appropriation rights, to be stored to a maximum extent of **23.3 acre-feet** per calendar year in a marsh created by one (1) water control structure located in the Southwest Quarter of the Northwest Quarter of the Southeast Quarter ( $SW\frac{1}{4} NW\frac{1}{4} SE\frac{1}{4}$ ) of Section 28, more particularly described as being near a point 1,529 feet North and 2,537 feet West of the Southeast corner of said section, in Township 20 South, Range 16 East, Coffey County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That installation of works for diversion of water shall be completed on or before **December 31, 2025**, or within any authorized extension thereof. The applicant shall notify the Chief Engineer and pay the statutorily required field inspection fee, which is currently \$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, which is currently \$100.00.
5. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2029**, 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, which is currently \$100.00.



6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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.

13. 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 17 day of October, 2023, in Manhattan, Riley County, Kansas.

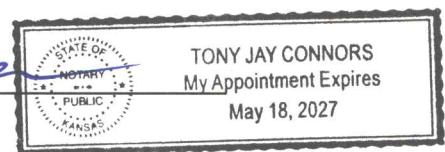
*Lane P. Letourneau*

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 17 day of October, 2023, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

*Tony Jay Connors*  
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 19, 2023

CRAIG RAIFORD  
TBR FARM LLC  
13121 WALMER ST  
OVERLAND PARK KS 66209

RE: Appropriation of Water  
File Nos. 50,860 and 51,071

Dear Mr. Raiford:

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 the permits.

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 the permits. If you need extensions 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, per file number.

An acceptable water flowmeter must be installed on the diversion works authorized by File No. 50,860, 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 may be submitted online at [www.kswaterusereport.org](http://www.kswaterusereport.org) for no charge. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee.

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 is an informational sheet that sets forth the procedure to obtain Certificates of Appropriation, which will establish the extent of your perfected water rights. Additional information is available on our website at [agriculture.ks.gov/dwr](http://agriculture.ks.gov/dwr). If you have any questions or need assistance, please contact our office at 785-564-6640 or the 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 Application Unit Supervisor  
Division of Water Resources

KAB:kak:lhh  
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.

## CERTIFICATE OF SERVICE

On this 19 day of October, 2023, I hereby certify that the foregoing Approval of Application, File No. 51,071, dated October 17, 2023, was mailed postage prepaid, first class, US mail to the following:

TBR FARM LLC  
13121 WALMER STREET  
OVERLAND PARK KS 66209

With photocopies to:

KDA-DWR Topeka Field Office



Division of Water Resources