

File No. 50,427	15. Formation Code: 190	Drainage Basin: LITTLE ARKANSAS RIVER	County: MP	Special Use:	Stream:																																																																																																															
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="10">16. Points of Diversion</th> <th colspan="5">17. Rate and Quantity</th> </tr> <tr> <td>T MOD DEL ENT</td> <td>PDIV</td> <td>Qualifier</td> <td>S</td> <td>T</td> <td>R</td> <td>ID</td> <td>'N</td> <td>'W</td> <td></td> <td></td> <td>Rate gpm</td> <td>Quantity af</td> <td>Rate gpm</td> <td>Quantity af</td> <td>Overlap PD Files</td> </tr> <tr> <td>MOD</td> <td>84017</td> <td>NW SE SW</td> <td>29</td> <td>20</td> <td>1W</td> <td>7</td> <td>1310</td> <td>3679</td> <td>(Geo-Ctr)</td> <td></td> <td>800</td> <td>203</td> <td>0</td> <td>203</td> <td>49,279</td> </tr> <tr> <td>MOD</td> <td>84808</td> <td>NW SE SW</td> <td>29</td> <td>20</td> <td>1W</td> <td>9</td> <td>1297</td> <td>3391</td> <td>(Batt 1 of 4)</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>MOD</td> <td>84809</td> <td>NW SE SW</td> <td>29</td> <td>20</td> <td>1W</td> <td>10</td> <td>1028</td> <td>3658</td> <td>(Batt 2 of 4)</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>MOD</td> <td>84810</td> <td>SW NE SW</td> <td>29</td> <td>20</td> <td>1W</td> <td>11</td> <td>1578</td> <td>3706</td> <td>(Batt 3 of 4)</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>MOD</td> <td>84811</td> <td>SW NE SW</td> <td>29</td> <td>20</td> <td>1W</td> <td>12</td> <td>1337</td> <td>3959</td> <td>(Batt 4 of 4)</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>						16. Points of Diversion										17. Rate and Quantity					T MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W			Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files	MOD	84017	NW SE SW	29	20	1W	7	1310	3679	(Geo-Ctr)		800	203	0	203	49,279	MOD	84808	NW SE SW	29	20	1W	9	1297	3391	(Batt 1 of 4)							MOD	84809	NW SE SW	29	20	1W	10	1028	3658	(Batt 2 of 4)							MOD	84810	SW NE SW	29	20	1W	11	1578	3706	(Batt 3 of 4)							MOD	84811	SW NE SW	29	20	1W	12	1337	3959	(Batt 4 of 4)						
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18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft																																																																																																																				
19. Limitation: _____ af/yr at 800 gpm (_____ cfs) when combined with file number(s) 49,279																																																																																																																				
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20. Meter Required? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No To be installed by 12/31/2022 Date Acceptable Meter Installed _____																																																																																																																				
21. Place of Use		NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files																																																																																															
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Comments: * FILE NOS. 50427; 49,279; 49,280; and 49,624 ALL OVERLAP IN PLACE OF USE.																																																																																																																				

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

MEMORANDUM

TO: Files

DATE: December 22, 2020

FROM: Doug Schemm

RE: Application, File No. 50,427 and
Appropriation of Water, File Nos. 49,279; 49,280;
and 49,624

Jost Farms LLC %Clyde Jost, has filed the referenced new application to appropriate 203 acre-feet of groundwater for irrigation use from an existing battery of wells. The proposed appropriation is located within the boundaries of Groundwater Management District No. 2, and the source of water is the Equus Beds Aquifer. The new application overlaps in point of diversion with File No. 49,279, and will overlap in place of use with File Nos. 49,279; 49,280; and 49,624. Change in Place of Use Applications have been filed on each of the senior files to create a complete overlap in place of use of 428.5 acres in Sections 29 and 31, in Township 20 South, Range 1 West, McPherson County. These files are located within the Little Arkansas River basin.

The referenced rights appear not be abandoned as per K.S. A. 82a-718, and in compliance with K.S.A. 82a-732. In conjunction with the processing of File No. 50,427, the change applications appear to comply with K.A.R. 5-5-2a, *Complete application*. The applications for change were also signed by Clyde Jost, on behalf of Jost Farms LLC owner of the acreage requested to be added to the referenced files. The proposed change applications complies with part 6 of K.A.R. 5-5-11, *Applications for change in place of use for irrigation purposes*, indicating the additional 203 AF that will be authorized under File No. 50,427, will be sufficient to cover any potential increase in consumptive use, complying with K.A.R. 5-5-3, *Change in consumptive use*.

Each of the senior files is authorized 320 acre-feet at 800 gallons per minute, from three separate well batteries. They are limited to 353.6 acre-feet when combined. Based on the proposed 428.5 acres and with 1.3 Acre-Feet per acre allowed in Harvey County, the maximum quantity of water that could be authorized is 557.05 acre-feet, a difference of 203.45 acre-feet (557.05 AF – 353.6 AF). Therefore, this pending application does not require an overall quantity limitation because the requested quantity of 203 acre-feet when combined with the senior files is slightly less than the allowed maximum. The rate of diversion will be limited to 800 gallons per minute with the senior file.

The applicant identified three nearby domestic well owners, and notification letters for both the new application and change applications were sent out on September 18, 2020. A telephone call was received from one domestic well owner well (Robert E. Price III) with general concerns of how the approval of the new application might impact his domestic well. He was assured that no new wells were being drilled. No other responses of any kind were received. Per K.A.R. 5-22-2. Well spacing requirements. (b) The minimum spacing interval from the geographic center of a battery of wells to each nondomestic well, groundwater pit, and baseflow node shall be 1,620 feet. The minimum spacing interval from the geographic center of a battery of wells to each domestic well shall be 960 feet. The nearest permitted well (geo-center) is over 1,620 feet away. The nearest domestic well is over 1,200 feet away, so the new application complies with well spacing criteria.

The applicant proposes to create an exact overlap in the place of use between all of the referenced files for a total of 428.5 acres pursuant to K.A.R. 5-5-11(b)(1) *Identical places of use*. As noted above, the total quantity of water to be authorized for the proposed place of use, 557.05 acre-feet, is slightly less than the maximum quantity for the proposed 428.5 acres, of 1.3 acre-feet per acre.

These files are all sourcing the Equus Beds aquifer, no points of diversion are being changed (being better described), and the same local source of supply will not change for any of the files. Note that the approval will update the location of the wells to their actual feet distances per Compliance Investigations by Stafford Field Office staff.

The applicant drilled multiple test hole logs and submitted them with the senior applications during their initial review. In general the well logs show alternating clay and sand layers, with a fine to medium sand layer approximately 20 feet thick (primary aquifer), immediately above the shale bedrock. The shale bedrock was approximately 70 feet below ground surface and static water level was 25 feet below ground surface. Estimated production rates were 200 to 300 gpm.

A copy of the new and change applications was submitted to the Equus Beds Groundwater Management District No. 2 (GMD #2) for their review on October 8, 2020. GMD #2 recommended approval of the applications in a letter received by e-mail on November 24, 2020, with the stipulation that the pending new application be limited to 800 gallons per minute with File No. 49,279.

A review of the KGS Wizard data base shows that there have been minor water level fluctuations over the last several years. However, the last few years show a slight increase, especially in 2020 water levels. With over 45 feet of saturated thickness, and the historical pattern of aquifer recovery, approval of these applications will not impair existing water rights nor prejudicially and unreasonably affect the public interest.

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 a December 10, 2020 e-mail, Jeff Lanterman, Water Commissioner, Stafford Field Office, recommended approval of the referenced applications. Based on the above discussion, well spacing and safe yield criteria are met, GMD 2 recommended approval of the new application, and approval of the new application will not impair senior water rights nor prejudicially or unreasonably affect the public interest, it is recommended that the referenced new application be approved.

Based on the above discussion, that the changes are reasonable, that impairment to existing water rights is unlikely, and that no change in the local source of supply will occur, and GMD 2 recommended approval of the change applications, it is recommended the change applications be approved, in conjunction with the pending new application listed above.

Douglas W. Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Schemm, Doug [KDA]
Sent: Thursday, December 10, 2020 4:58 PM
To: Schemm, Doug [KDA]
Subject: FW: Jost Farms New app 50,427 and PU changes 49,279 49,280 and 49,624
Attachments: 50427 49279 49280 and 49624 Memo.docx; 49279 PU Change Application Approval Recommendation Letter 11-22-20.pdf; 49624 PU Change Application Approval Recommendation Letter 11-22-20.pdf; 49280 PU Change Application Approval Recommendation Letter 11-22-20.pdf; 50427 New Application Approval Recommendation Letter 11-22-20.pdf

From: Lanterman, Jeff [KDA]
Sent: Thursday, December 10, 2020 4:06 PM
To: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Cc: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Subject: FW: Jost Farms New app 50,427 and PU changes 49,279 49,280 and 49,624

Doug.

Go ahead and approve this.

And Merry Christmas if I don't talk to you before then.

Jeff

From: Conant, Cameron [KDA] <Cameron.Conant@ks.gov>
Sent: Thursday, December 10, 2020 3:43 PM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: FW: Jost Farms New app 50,427 and PU changes 49,279 49,280 and 49,624

Here is an updated review on this packet of changes and a new application-Elizabeth and I discussed limitations-nothing extra is needed, looks good to pass on to Doug with a recommendation of approval.

Cam

From: Conant, Cameron [KDA]
Sent: Wednesday, December 2, 2020 11:58 AM
To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>
Subject: FW: Jost Farms New app 50,427 and PU changes 49,279 49,280 and 49,624

Jeff, this is for a new application on for additional water from an existing battery of wells to an increased place of use--- all files have p/u changes also filed to continue the complete overlap in p/u. The quantity continues to be reasonable b/c additional AF was added with the new file. This is proposed to be 4 files, 3 batteries of wells, 3 pivots, and a complete place of use overlap.

This is in GMD2. We and they have done multiple reviews of this since about 2016 when the first ones were applied for and approved. We have some additional water level measurements from hydrographs we have used in the past for this set of files reviews, neither of which indicate (in my opinion) a decline in area water levels, continues to look pretty steady to me.

[Wizard Water Well Detail \(ku.edu\)](#) (~2.2 miles NE)

[Wizard Water Well Detail \(ku.edu\)](#) (1.7 miles N)

I think this new application can be recommended for approval and I think the 3 place of use change applications can be recommended for approval. We now have a p/u covering 428.5 acres (428.5 x 1.3 = 557.05 AF max reasonable). There does not need to be a limitation on the junior file, the authorized quantities are ok as they stand and this should wash out during perfection. Please pass on to Doug if you agree.

FILE NO	Auth Q	limitation
**49279	320 AF	none
49280	320 AF	353.6 AF comb w/ 49279
49624	320 AF	353.6 AF comb w/ 49279 & 49280 (all currently on 272 acres)
**50427	203 AF add	none, it is all additive.

**pd overlap

Cameron

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>

Sent: Tuesday, November 24, 2020 2:16 PM

To: Lanterman, Jeff [KDA] <Jeff.Lanterman@ks.gov>; Conant, Cameron [KDA] <Cameron.Conant@ks.gov>

Subject: Jost Farms New app 50,427 and PU changes 49,279 49,280 and 49,624

Hello Stafford,

More water from an existing well battery and increase in the place of use. Meets all the regulations.

Change applications will create a complete overlap in PU. Tim recommended approval of all the applications.

Please review,

Thanks, Doug

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. 50,427** of the applicant

JUST FARMS LLC
% CLYDE JOST
913 220TH
HILLSBORO KS 67063

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 20, 2020**.

2. That the water sought to be appropriated shall be used for irrigation use on land described in the application, as follows:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
29 20S 1W					18.0	40.0	40.0	18.0	36.0	40.0	40.0	40.0					272.0
31 20S 1W	39.5	40.0	40.0	37.0													156.5

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of four (4) wells with a geographic center located in the Northwest Quarter of the Southeast Quarter of the Southwest Quarter (NW¼ SE¼ SW¼) of Section 29, more particularly described as being near a point 1,310 feet North and 3,679 feet West of the Southeast corner of said section, in Township 20 South, Range 1 West, McPherson 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 **800 gallons per minute (1.78 c.f.s.)** and to a quantity not to exceed **203 acre-feet** of water for any calendar year.

5. That installation of works for diversion of water shall be completed on or before **December 31, 2022** 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, 2026** 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 the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. This 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).

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 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.

17. 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.

18. That the rate of diversion of water approved under this permit is further limited to the rate which combined with Appropriation of Water, 49,279, will provide a total **not to exceed 800 gallons per minute** (1.78 c.f.s.) from the authorized point of diversion.

Ordered this 29 day of January, 2021, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

Lane P. Letourneau, P.G.
Program Manager
Water Appropriation Program
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 29 day of January, 2021, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman
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

JOST FARMS LLC
Attn: CLYDE JOST
913 220TH
HILLSBORO KS 67063

February 2, 2021

RE: Appropriation of Water, File Nos. 50,427; 49,279; 49,280; and 49,624

Dear Mr. Jost:

Enclosed is a new permit (File No. 50,427) 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.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.

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/divisions-programs/dwr.

In addition, enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the above referenced File Nos. 49,279; 49,280; and 49,624. Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in these approvals for change.

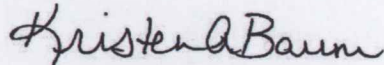
Jost Farms LLC

File Nos. 50,427; 49,279; 49,280; and 49,624

A condition of these approvals is that acceptable water flow meters must be installed on the diversion works authorized under the referenced file numbers. Please return the required notification of completion of the diversion works and/or installation of the required meters as soon as these actions are completed.

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:dws
Enclosure(s)

pc: Stafford Field Office
Groundwater Management District No. 2

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:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) 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 Section, 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 hearing 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.

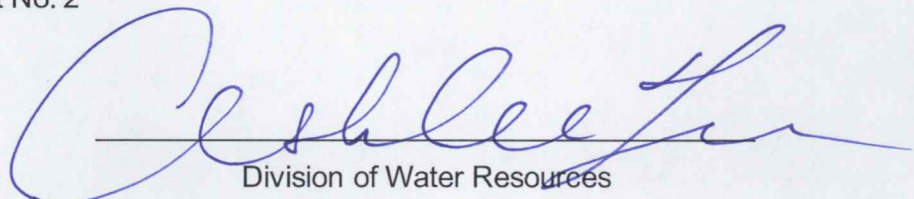
CERTIFICATE OF SERVICE

On this 2 day of February, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,427, dated 29 January, 2021, was mailed postage prepaid, first class, US mail to the following:

JOST FARMS LLC
% CLYDE JOST
913 220TH
HILLSBORO KS 67063

With photocopies to:

Stafford Field Office
Groundwater Management District No. 2


Division of Water Resources