

File No. 50,428	15. Formation Code: 113		Drainage Basin: MEDICINE LODGE RIVER				County: SG		Special Use:		Stream:											
16. Points of Diversion										17. Rate and Quantity												
T MOD DEL ENT										Authorized		Additional										
PDIV Qualifier S T R ID 'N 'W										Rate gpm	Quantity mgy	Rate gpm	Quantity mgy	Overlap PD Files								
CHK	88366	NW NE NE	8	28S	1E	17	4860	944		99	1	99	1	20200215, 20210019								
										MOD		MOD										
18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ ac/ft																						
19. Limitation: _____ MG/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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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		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	70088	8	28S	1E	12	HYDROPONIC — BEAN SPROUT FACILITY (NW NE NE)														7b	no	none
Comments:																						

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: October 3, 2021

FROM: Kris Neuhauser

RE: New Application, File No. 50,428

Tri Vo has filed the above referenced new application proposing to appropriate 3.07 acre-feet of groundwater per calendar year at a maximum diversion rate not to exceed 99 gallons per minute for industrial use (growing bean sprouts). The proposed point of diversion is one (1) existing well, that has previously been authorized by Temporary Permit, File No. 20200215, and is currently authorized by Temporary Permit, File No. 20210019 (which expires on August 1, 2021).

The point of diversion is located in the Northwest Quarter of the Northeast Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 8, more particularly described as being near a point 4,860 feet North and 944 feet West of the Southeast corner of said section, in Township 28 South, Range 1 East, Sedgwick County, Kansas (Arkansas River Basin). The point of diversion is owned by the applicant. Based on nearby well logs, the source of supply appears to be main stem Arkansas River alluvium.

The proposed place of use is a bean sprout growing facility located in the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of Section 8, Township 28 South, Range 1 East, Sedgwick County, Kansas.

In 2004 the United States Geological Survey (USGS) completed a hydrologic model of a portion of the Arkansas River and associated drainage basins (Ninnescah River), generally bounded by Ranges 2 West to 3 East and Townships 26 South to 34 South (near state line). The USGS model indicated that the aquifer in this area receives more recharge from precipitation than DWR has historically used in safe yield calculations. The data and analyses are detailed in the USGS Scientific Investigations Report 2004—2005 entitled "Characterization and Simulation of Flow in the Lower Arkansas River Alluvial Aquifer, South-Central Kansas". In order to evaluate the potential impact of this study on our safe yield calculations, DWR suspended processing applications for new appropriations of water in the model area.

DWR completed an evaluation of a USGS model and has determined that the precipitation recharge value of 5.4 inches per year that is used in the USGS model is reasonable and appropriate. In order to reserve water in the alluvial aquifers that can contribute to base flow to area streams and for domestic use, it was determined that 75 percent of the 5.4 inches of precipitation recharge shall be available for appropriation. This is consistent with safe yield appropriation in many other basins across the state, and is the current percent available for applications in the Ninnescah River basin in the area. Therefore, for pending applications within the model area, safe yield will be valued using the standard methodology in K.A.R. 5-3-11, which is based on the extent of the unconfined aquifer (area of consideration), a potential annual recharge value of 5.4 inches, and a percent of recharge available for appropriation of 75 percent.

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 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 5.4 inches, and 75% of recharge available for appropriation, safe yield was determined to be 2,714.34 acre-feet. Existing water rights have appropriated 584.85 acre-feet, providing a difference of 2,129.49 acre-feet available for appropriation, and the application requesting 3.07 acre-feet complies with safe yield. *

A review of both aerial photographs and the WWC5 database indicates a large number of domestic wells in the area. Therefore, a letter was sent to the applicant, requesting a public notice be published in a local newspaper. An affidavit of publication for the Wichita Eagle was received via email on September 24, 2021. No responses of any kind were received.

The nearest non-domestic well is 2,085 feet away (Water Right, File No. 48,403). Two domestic wells fall within the allowable 660 feet. After discussion with Jeff Lanterman, it was determined no domestic consent spacing forms will be required due to the low rate and quantity. Multiple temporary permits have been approved at the same point of diversion, with no known complaints or impairment of nearby well owners. In addition to the public notice, nearby notification letters were mailed on October 28, 2021, to the two owners of the wells falling inside 660 feet of the proposed point of diversion. No responses of any kind have been received to date. Therefore, a waiver of spacing (K.A.R. 5-4-4(c)(2)(C)) will be included with the approval of this application.

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 this permit, a check valve will also need to be installed.

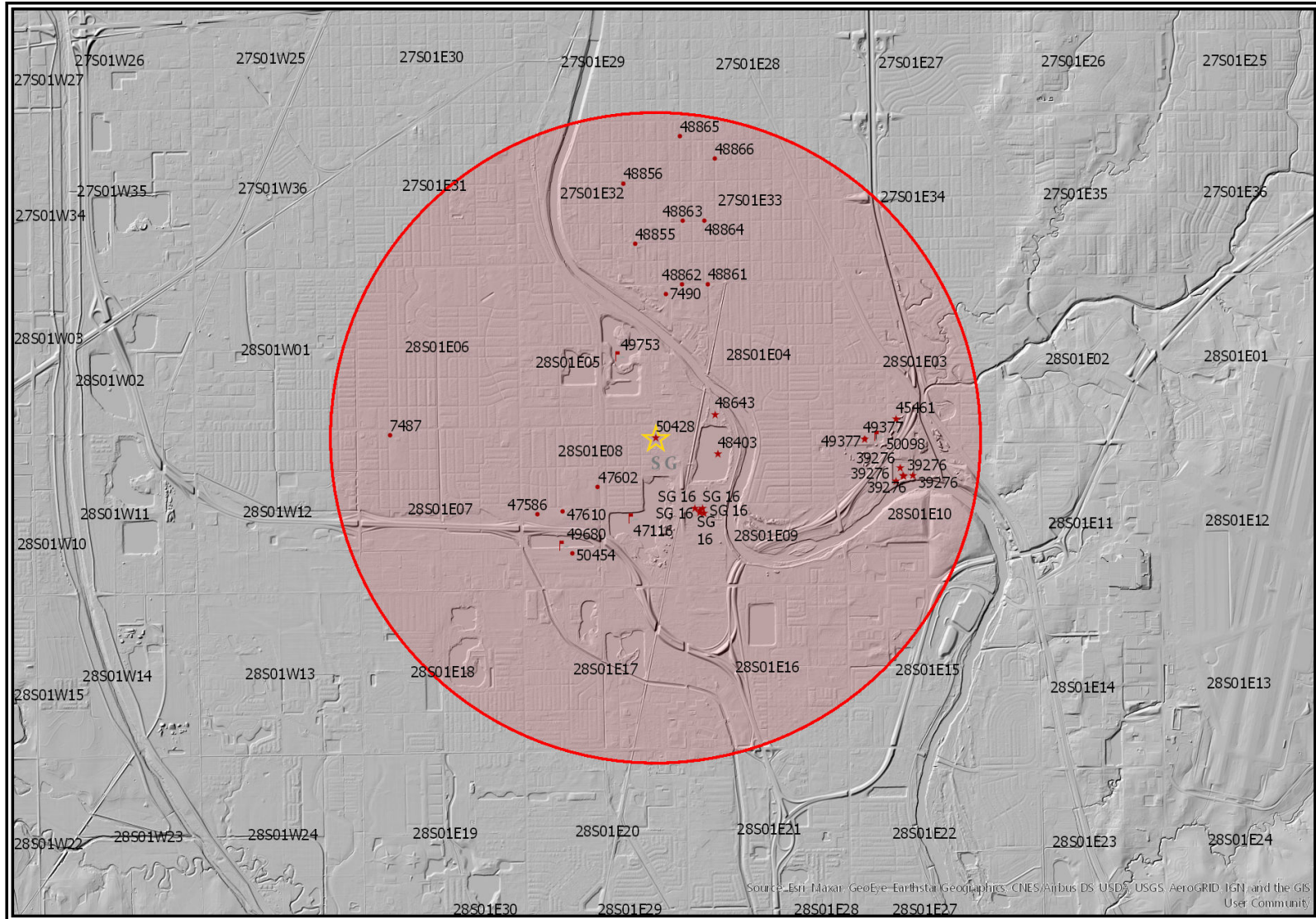
Jeff Lanterman, Water Commissioner of the Stafford Field Office, and Cameron Conant, Assistant Water Commissioner of the Stafford Field Office, gave a recommendation that the new application should be approved, in an e-mail conversation on November 10, 2021.

Based on the above discussion, the area is open to new appropriations, the application meets safe yield and well spacing criteria, and the approval of the application will not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved with a waiver of K.A.R. 5-4-4(c)(2)(C).



Kris Neuhauser
New Applications Lead
Water Appropriation Program

Safe Yield Report Sheet
Water Right- Proposed Point of Diversion
Point of Diversion in 08-28S-01E
Footages from SE corner- 4,860 feet North 944 feet West



Passes Safe Yield*

Analysis Results

The selected PD is in an area OPEN to new appropriations.

The safe yield based on the variables listed below is 2,714.34 AF.

Total prior appropriations in the circle is ~~593.84 AF~~. **584.85 AF**

Total quantity of water available for appropriation is ~~2,120.49 AF~~. **2,714.34 AF - 584.85 AF = 2,129.49 AF available**

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 5.4 inches.

The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 17-FEB-2021 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 25 water rights and 33 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 7487 00	IRR	NK	G		NE	NW	NW	5080	4310	07	28	01E	1	WR	30.00	30.00	20.00	20.00
A 7490 00	IRR	NK	G		SE	NE	NE	4260	500	05	28	01E	1	WR	19.00	19.00	33.00	33.00
A 39276 00	IND	NK	G		SE	NE	NW	4092	3085	10	28	01E	7	WR	12.28	12.28		
Same	IND	NK	G		SE	NE	NW	4060	2773	10	28	01E	10	WR				
Same	IND	NK	G		NW	SE	NW	3910	3323	10	28	01E	12	WR				
Same	IND	NK	G		SE	NE	NW	4340	3173	10	28	01E	8	WR				
Same	IND	NK	G		SE	NE	NW	4060	3073	10	28	01E	9	WR				
V SG 16 00	IND	AA	G					2546	4713	09	28	01E	2	WR	8.82	8.82		
Same	IND	AA	G					2546	4971	09	28	01E	4	WR				
Same	IND	AA	G					2380	4675	09	28	01E	5	WR				
Same	IND	AA	G					2400	4800	09	28	01E	6	WR				
Same	IND	AA	G					2468	4790	09	28	01E	7	WR				
A 45461 00	IND	NK	G		SW	SE	SW	852	3280	03	28	01E	2	WR	15.74	15.74		
A 47116 00	REC	NK	G		NE	NW	SE	2388	1448	08	28	01E	9	WR	85.00	85.00		
A 47586 00	IRR	NK	G		NW	NW	SW	2421	4813	08	28	01E	11	WR	2.00	2.00	3.50	3.50
A 47602 00	IRR	NK	G		SE	SE	NW	3291	2861	08	28	01E	12	WR	2.00	2.00	3.00	3.00
A 47610 00	IRR	NK	G		NE	NW	SW	2497	3994	08	28	01E	13	WR	9.30	9.30	4.00	4.00
A 48403 00	IND	KE	G		SE	NW	NW	4300	4200	09	28	01E	3	WR	65.00	65.00		
A 48643 00	IND	LO	G					856	4179	04	28	01E	6	WR	1.35	1.35		
A 48855 00	IRR	KE	G		NW	SE	SE	1300	1102	32	27	01E	2	WR	161.30	161.30	74.00	74.00
A 48856 00	IRR	KE	G		SE	SW	NE	3280	1475	32	27	01E	3	WR	161.30	23.70	74.00	0.00
A 48861 00	IRR	KE	G					5350	4085	04	28	01E	7	WR	161.30	0.00	74.00	0.00
A 48862 00	IRR	KE	G					5350	4930	04	28	01E	8	WR	161.30	0.00	74.00	0.00
A 48863 00	IRR	KE	G		SW	NW	SW	1970	4890	33	27	01E	6	WR	161.30	0.00	74.00	0.00
A 48864 00	IRR	KE	G		SE	NW	SW	1970	4170	33	27	01E	7	WR	161.30	0.00	74.00	0.00

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 48865 00	IRR	KE	G	NW	NW	NW		4720	4940	33	27	01E	9	WR	161.30	0.00	74.00	0.00
A 48866 00	IRR	KE	G	SW	NE	NW		3990	3810	33	27	01E	8	WR	185.00	0.00		
A 49377 00	IND	KE	G		SE	SW	SW	215	4295	03	28	01E	11	WRF	34.43	34.43		
A 49377 00	IRR	KE	G		SE	SW	SW	215	4295	03	28	01E	11	WRF	9.84	9.84	3.28	3.28
A 49680 00	REC	KE	G		SW	NE	SW	1370	3950	08	28	01E	14	WR	35.90	35.90		
A 49753 00	REC	GY	G		NW	NW	SE	2230	2000	05	28	01E	3	WR	66.70	66.70		
A 50098 00	REC	KE	G		SW	SE	SW	291	3809	03	28	01E	13	WR	2.50	2.50		
A 50428 00	IND	AY	G	NW	NE	NE		4860	944	08	28	01E	17	WR	3.07	3.07		
A 50454 00	IRR	AY	G	NW	SE	SW		1115	3700	08	28	01E	18	WR	5.92	5.92	4.55	4.55

Limitations

File Number	Seq Num	Limitations
A 48856 00	1	185 AF/YR COM/W #48855
A 48861 00	1	185 AF/YR COM/W #48855, 48856, 48858 & 48859-A
A 48862 00	1	185 AF/YR COM/W #48855 ETAL (SEE FILE FOR DETAILS)
A 48863 00	1	185 AF/YR COM/W #48855 ETAL (SEE FILE FOR DETAILS)
A 48864 00	1	185 AF/YR COM/W #48855 ETAL (SEE FILE FOR DETAILS)
A 48865 00	1	185 AF/YR COM/W #48855 ETAL (SEE FILE FOR DETAILS)
A 48866 00	1	185 AF/YR COM/W #48855 ETAL (SEE FILE FOR DETAILS)

Kansas Department of Agriculture
 Division of Water Resources
WAIVER REQUEST & WAIVER RULE WORKSHEET

File Number: **50,428**

FO: **2**

GMD:

WAIVER REQUEST:

UMW	Date Requested	Rule ID	Applies	Rule Type	Rule Subtype
IND	8/4/2020	6	Statewide	Well Spacing Domestic	Unconfined
Rule Number	Date Granted	Date Denied	Justification:	Multiple domestic wells fall within this 660-foot radius of the proposed well, which has been operating for two years under two temporary permits (File Nos. 20200215 and 20210019) and no complaints of impairment have been received. A public notice was published in the Wichita Eagle once a week for three consecutive weeks (September 9th, 16th, and 23rd, 2021) and no responses of any kind were received. Nearby notification letters were sent to two landowners and no responses of any kind were received.	
K.A.R. 5-4-4 (c)(2)(C)	11/23/2021				

WAIVER RULE (complete only if a new rule needs to be created):

Rule ID	Applicability	Type	Subtype	Rule Number	Date Active	Date Inactive
				K.A.R.		

COMMENTS: Will not be a new rule

Date Prepared **11/10/2021** By **KJN**

Date Entered **12/14/2021** By **LMoody**

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

WAIVER OF REGULATION K.A.R. 5-4-4(c)(2)(C) Well Spacing

Date: November 23, 2021

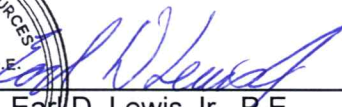
RE: Appropriation of Water, File No. 50,428

1. That K.A.R. 5-4-4(c)(2)(C) states: In addition to meeting the minimum spacing requirements, the minimum distance from the well which is the subject of the application to all domestic wells, except where the domestic well owner has given the applicant written permission to reduce the spacing interval, shall be: 660 feet for wells whose common source of supply is any other aquifer.
2. That multiple domestic wells fall within this 660-foot radius of the proposed well under New Application, File No. 50,428.
3. That the proposed well has been operating for two years under two temporary permits File Nos. 20200215 and 20210019 without any comments received.
4. That a public notice, explaining the proposed diversion was published in the Wichita Eagle once a week for three consecutive weeks (September 9th, 16th, and 23rd, 2021) and no responses of any kind were received.
5. That according to the WWC5 database, two domestic wells fall within the allowable 660 feet of the proposed point of diversion, and nearby notification letters were sent to each landowner. No responses of any kind were received.
6. That the requested rate and quantity (1 million gallons per year at 99 gpm) are small in terms of a new application for permit to appropriate water for beneficial use.
7. That a waiver of K.A.R. 5-4-4(c)(2)(C) will not prejudicially or unreasonably affect the public interest.

Comments:



EARL D. LEWIS, JR., P.E.
CHIEF ENGINEER


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

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. 50,428** of the applicant

**TRI VO
2705 W 43RD ST S
WICHITA, KS 67217**

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 24, 2020**.
2. That the water sought to be appropriated shall be used for industrial use for hydroponic food production, at a facility located in the Northwest Quarter of the Northeast Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 8, Township 28 South, Range 1 East, Sedgwick County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of one (1) well located in the Northwest Quarter of the Northeast Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 8, more particularly described as being near a point 4,860 feet North and 944 feet West of the Southeast corner of said section, in Township 28 South, Range 1 East, Sedgwick 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 **99 gallons per minute (0.22 c.f.s.)** and to a quantity not to exceed **1 million gallons (3.07 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, 2023** 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, 2027** 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.

1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

December 20, 2021

TRI VO
2705 W 43RD ST S
WICHITA, KS 67217

RE: Appropriation of Water, File No. 50,428

Dear Mr. Vo:

Enclosed is a permit authorizing you to proceed with the construction of the proposed diversion works for your bean sprout growing facility (hydroponic food production) 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 with the required inspection fee of \$400.00, once the diversion works have been completed. Failure to complete the diversion works within the time allowed, or within any authorized extension of time thereof, will result in dismissal of this permit. If you need an extension of time, you must request it before the deadline for completion set forth in the permit. Any request for an extension of time must be accompanied by the statutorily required fee, which is currently \$100.00.

An annual water use report must be filed with the Chief Engineer by March 1, following the end of each calendar year. If a complete annual water use report is not received by the deadline, then a fine may be assessed and all water use under such permit or right may be suspended. Reports submitted in paper form will be assessed a \$20 per file number paper filing fee. In order to avoid this filing fee, you may submit your report online at 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. 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: kjn:li
Enclosure(s)

pc: Stafford Field Office

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may:

- 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

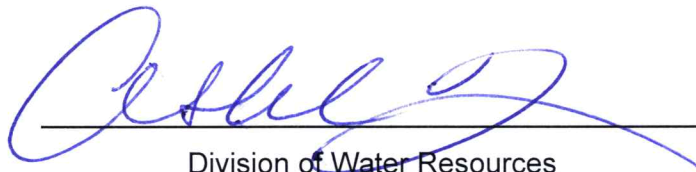
CERTIFICATE OF SERVICE

On this 20 day of December, 2021, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,428, dated 23 November, 2021, was mailed postage prepaid, first class, US mail to the following:

TRI VO
 2705 W 43RD ST S
 WICHITA, KS 67217

With photocopies to:

Stafford Field Office



Division of Water Resources