

File No. **50,667** 15. Formation Code: Drainage Basin: **Walnut River** County: **BU** Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity					
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		Overlap PD Files
											Rate gpm	Quantity af	Rate gpm	Quantity af	
DEL	89095			NE SW SW	1	32S	6W	6	750	4,150	1,000	196.9	1,000	196.9	NONE

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ 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?	Overlap Files
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	NE ¼	NW ¼	SW ¼	SE ¼						
DEL	70613		29	29S		4E	2							12.0	38.0													50.0	7b	NO	NONE		
DEL	70614		29	29S		4E	3									40.0	31.0	4.00	39.0								114.00	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: November 3, 2023

FROM: Jessica Engelbrecht

RE: Application, File No. 50,667

Luke McClure has filed an application proposing the direct diversion of 196.9 acre-feet of surface water from the Walnut River, at a maximum diversion rate of 1,000 gallons per minute, for irrigation use in Butler County, Kansas.

The application is subject to K.A.R. 5-3-15, which restricts the direct diversion of surface water from the Walnut River from July 1, through September 30, of each calendar year. Furthermore, the regulation requires that an applicant must demonstrate that the direct diversion of streamflow is not necessary during that period due to lack of need, the availability of adequate water storage, alternative water supplies, or other similar reasons. The application failed to demonstrate that direct diversion of streamflow is not necessary during the period of July 1, through September 30, due to lack of need, the availability of adequate water storage, alternative water supplies, or other similar reasons.

A letter was mailed to the applicant on July 17, 2023, stating the application did not demonstrate the necessary requirements to meet K.A.R. 5-3-15, and stating that it would be recommended to the Chief Engineer that the application, File No. 50,667 be denied and dismissed due to failure to provide adequate off-site storage. The applicant was provided 30 days (until August 18, 2023) to either (1) submit additional information to our office or (2) request additional time beyond the 30 days to submit additional information. No further contact of any kind was received from the applicant.

Therefore, based on the existing information, it is recommended that application, File No. 50,667 be denied and dismissed for failure to meet safe yield criteria.

THE STATE  OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

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

FINDINGS AND ORDER

**IN THE MATTER OF THE
DISMISSAL OF APPLICATION
FILE NO. 50,667**

After due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

FINDINGS

1. That on October 12, 2021, the Chief Engineer received an application from Luke McClure, on behalf of MDM Farms LLC, for a permit to appropriate water for beneficial use, assigned File No. 50,667, proposing the appropriation of 196.9 acre-feet of surface water from the Walnut River, for irrigation use, from a proposed pumpsite located in the Northeast Quarter of the Southwest Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 29, more particularly described as being near a point 750 feet North and 4,150 feet West of the Southeast corner of said section, in Township 29 South, Range 4 East, Butler County, Kansas.
2. That K.S.A. 82a-711 states, in part, that the Chief Engineer that shall consider whether a proposed use will prejudicially and unreasonably affect the public interest and shall consider the established minimum desirable streamflow requirements, the area, safe yield and recharge rate of the appropriate water supply, the priority of existing claims of all persons to use water of the appropriate water supply, the amount of each claim to use water from the appropriate water supply and all other relevant matters.
3. That safe yield is defined by K.A.R. 5-1-1 as the long-term sustainable yield of the source of supply, including hydraulically connected surface water or groundwater.
4. That the application does not comply with the safe yield requirements contained in K.A.R. 5-3-15, which restrict the direct diversion of surface water from the Walnut River from July 1, through September 30, of each calendar year, since the applicant has not demonstrated that the direct diversion of streamflow will not be necessary during that period, due to lack of need, the availability of adequate water storage or alternative water supplies or other similar reasons.

- 5. That on July 17, 2023, a letter was mailed to the applicant stating that the application did not comply with the safe yield requirements of K.S.A. 82a-711, K.A.R. 5-3-10 and K.A.R. 5-3-15, that the application would be submitted to the Chief Engineer with a recommendation that the pending application be denied and dismissed, for failure to meet safe yield criteria and that the applicant would have 30 days, until August 18, 2023, to either submit additional information to the Chief Engineer for consideration, or to request additional time to do so, prior to final action on the application.
- 6. That the applicant, has not submitted additional information for consideration, nor requested an extension of time, for Application, File No. 50,667, thus the applicant should be denied and dismissed, and its priority forfeited for failure to comply with K.S.A. 82a-711, K.A.R. 5-3-10 and K.A.R. 5-3-15.

ORDER

NOW, THEREFORE, It is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that effective the date of this order, in accordance with the law, Application, File No. 50,667, is hereby dismissed and the priority assigned to it is considered to be forfeited.

ORDERED this *12th* day of *December*, 2023, Manhattan, Riley County, Kansas.



[Signature]

 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 *12th* day of *December*, 2023, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

[Signature]

 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

December 20, 2023

MDM FARMS
22311 SW ADAMS RD
DOUGLASS KS 67039

Re: Dismissal of Application
File No. 50,667

Dear Sir or Madam:

A letter was mailed to you on July 17, 2023 requesting additional information to complete the above referenced Application to Appropriate Water for Beneficial Use. Specifically, the information submitted with the application did not meet the requirements of K.A.R. 5-3-15. Enclosed is a Findings and Order by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, dismissing Application, File No. 50,667, for failure to provide the additional information, prior to the deadline of August 18, 2023, and for failure to comply with safe yield requirements contained in the statutes and regulations.

If you have any questions, please contact our office. If you wish to discuss a specific file, please have the file number ready so that we may help you more efficiently.

Sincerely,

Kristen Baum
New Application Unit Supervisor
Water Appropriation Program

KAB:kak:jne

Enclosure(s)

pc: Stafford Field Office
McClure Brothers Farms

RIGHT TO PETITION FOR REVIEW UNDER THE KANSAS JUDICIAL REVIEW ACT

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 20 day of December, 2023, I hereby certify that the foregoing Dismissal of Application, File No. 50,667, dated December 12, 2023, was mailed postage prepaid, first class, US mail to the following:

MDM FARMS
22311 SW ADAMS RD
DOUGLASS KS 67039

With photocopies to:

KDA-DWR Stafford Field Office

MCCLURE BROTHERS FARMS LLC
5175 SW 157TH TERR
DOUGLASS KS 67039-8661



Division of Water Resources