

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

| | | | |
|---|---|--|---------|
| 1. File Number: <p style="text-align: center; font-size: 1.2em;">50,610</p> | 2. Status Change Date: <p style="text-align: center; color: purple;">9/20/2021</p> | 3. Field Office: <p style="text-align: center; font-size: 1.2em;">01</p> | 4. GMD: |
|---|---|--|---------|

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

7a. Applicant(s) Person ID 67877
New to system Add Seq# _____

SCHWARTZ WILKE FARMS LLP
32296 190TH STREET SE
SLEEPY EYE, MN 56085

7b. Landowner(s) Person ID _____
New to system Add Seq# _____

7c. Landowner(s) Person ID 59737
New to system Add Seq# _____

PRAIRIE HAVEN PORK
1476 HWY 383
LONG ISLAND, KS 67647

7d. Misc Person ID _____
New to system Add Seq# _____

~~7a~~
(7a is in the process of purchasing the facility but we haven't received deed yet.)

8. WUR Correspondent Person ID _____
New to system Add Seq# _____
Overlap File (s) WUC Notarized WUC Form
Agree Yes No

9. Use of Water: Changing? Yes No

Groundwater Surface Water

~~IRR~~ REC DEW MUN

STK SED DOM CON

HYD DRG WTR PWR ART RECHRG

IND SIC: _____ OTHER: _____

10. Completion Date: 12/31/2022 11. Perfection Date: 12/31/2026 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: **9/1/21** By: **BMM**
Date Entered: 9/20/2021 By: LMoody

File No. **50610** 15. Formation Code: **540** Drainage Basin: **Kansas River** County: **MR** Special Use: Stream:

| 16. Points of Diversion | | | | | | | | | | 17. Rate and Quantity | | | | |
|-------------------------|-------|-----------|---|-----|----|----|------|------|-----|-----------------------|----------------|----------------|----------------|------------------|
| T MOD DEL ENT | PDIV | Qualifier | S | T | R | ID | 'N | 'W | GEO | Authorized | | Additional | | Overlap PD Files |
| | | | | | | | | | | Rate gpm | Quantity af | Rate gpm | Quantity af | |
| CHK | 88964 | SW SW SE | 3 | 16S | 5E | 11 | 251 | 2475 | GEO | 800 | 145 mg | 800 | 145 | NA |
| CHK | 88965 | SW SW SE | 3 | 16S | 5E | 12 | 384 | 2573 | | 800 | 145 | 800 | 145 | NA |
| CHK | 88966 | SW SW SE | 3 | 16S | 5E | 13 | 117' | 2376 | | 800 | 145 | 800 | 145 | NA |
| CHK | 88964 | SW SW SE | 3 | 16S | 5E | 11 | 251 | 2475 | | 800 | 145 | 800 | 145 | NA |

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

19. Limitation: ~~475.6 (155 million gallons)~~ at/yr at _____ gpm (_____ cfs) when combined with file number(s) ~~43,819 & 46351-A~~
 Limitation: _____ at/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? Yes No To be installed by 12/31/2022 Date Acceptable Meter Installed _____

| T MOD DEL ENT | PUSE | S | T | R | ID | NE 1/4 | | | | NW 1/4 | | | | SW 1/4 | | | | SE 1/4 | | | | Total | Owner | Chg? NO | Overlap Files |
|------------------------|------|---|-----|----|----|-------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|-------------------|---------|---------------|
| | | | | | | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | | | | |
| CHK | 5288 | 3 | 16S | 5E | 1 | Hog Facility in S/2 E/2 of 3-16S-5E | | | | | | | | | | | | | | | | | 7A, 7B | N | NA |
| | | | | | | | | | | | | | | | | | | | | | | 7c | 43819, 46351-A | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
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Comments:

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources
M E M O R A N D U M

TO: Files

DATE: September 2, 2021

FROM: Brandon Milner

RE: Application, File No. 50,610

Schwartz Wilke Farms, LLC has filed the referenced new application to appropriate 145 million gallons (445 acre-feet) of groundwater from a new battery of three wells at a rate of 800 gallons per minute for stockwatering use at an existing Hog facility. The proposed battery of three wells will be located in the Southwest Quarter of Section 3, Township 16 South, Range 5 East, Morris County, within the Kansas River Drainage Basin. The place of use (hog facility) is owned by the applicant and applicant has signed the application form stating they have access to the point of diversion.

The existing feedlot is located in the South half of the Southeast Quarter of Section 3, is owned by the applicant Schwartz Wilke Farms LLC. The place of use shares a complete overlap with Senior Water Right Nos. 43,819 and 46,351-A. These two senior water rights provide 9.832 million gallons for 7,680 head of swine as they have both been certified. This application aims to add a new water source to increase the volume of swine at this facility from 7,680 to 16,904.

The requested quantity of water of 145 million gallons from this application and 9.832 million gallons from Senior Water Right Nos. 43,819 and 46,351-A was based on providing an adequate supply of water for 16,904 head of swine. The applicant provided an estimate for water, as follows: 16,904 head of swine x 25 gallons per head per day x 365 days = 154.2 million gallons. The requested quantity of water and rate of diversion appear to be reasonable for the intended use. File No. 43,819 is authorized 8.739 million gallons, and File No. 46,351-A is authorized 1.093 million gallons additional (limited to 9.832 million gallons with the senior file). ~~This new application will be limited to 155 million gallons (depending on what is certified) when combined with the senior files, providing 145 million gallons of additional water.~~

No need for a limit.

The applicant identified no domestic wells and two water rights within one-half mile of this point of diversion. However, the water rights are owned by the applicant do meet spacing. The nearest non-domestic well is over 2,100 feet away, and the nearest domestic well is over 3,100 feet away. The point of diversion meets minimum well spacing criteria to all existing wells per the requirements in K.A.R. 5-4-4.

The well proposed under this application shows limestone was encountered at roughly 60-70' below ground surface, and it extended to a depth of 90 feet, where blue shale was encountered. Static water level was 50 feet below ground surface, which is within the Limestone aquifer, indicating the unconfined Chase Group system is the source. This is also consistent with the applicant's senior files, Nos. 43,819 and 46,351-A located to the northeast.

The aquifer for this application is the unconfined Chase Group aquifer system based off well logs and this area was determined to be 8,042 acres. Based on a potential recharge of 3.3 inches, with 75% available for appropriation, safe yield was determined to be 1,658.76 acre-feet. Existing appropriations total only 30.17 acre-feet, leaving 1628.59 acre-feet available for appropriation, and the application complies with safe yield criteria.

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.

In an September 7, 2021 discussion, Katie Tietsort, Water Commissioner, Topeka Field Office, recommended approval of the referenced new application. Based on the above discussion, well spacing and safe yield criteria are met, and approval of the 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.

Brandon Milner
Environmental Scientist
Manhattan Headquarters

From: Tietsort, Katie [KDA]
Sent: Tue 9/7/2021 2:15 PM
To: Milner, Brandon [KDA]
Subject: RE: Memo for 50610

Hello Brandon,

I think what they are requesting for quantity is the up to 8 GPH/D plus up to 17 additional GPH/D for servicing allowed by the reg right? That would get them to the quantity requested. Yes, the TFO agrees with your recommendation for approval of this pending application.

Thanks for working it. You guys are all ON FIRE this week!

| | | |
|----------------|---|--------------|
| Swine | | |
| finishing | 5 | 15 (cbc) |
| nursery | 1 | 4 (cbc) |
| sow and litter | 8 | 35 (cbc) |
| gestating sow | 6 | 25 (cbc) |
| | | 0 (open lot) |

Katie Tietsort

Water Commissioner

Katie.Tietsort@ks.gov

Ph. 785-296-5733 Cell 785-213-9188

Kansas Department of Agriculture

Topeka Field Office

1131 SW Winding Rd, Suite 400

Topeka, KS 66615

From: Milner, Brandon [KDA] <Brandon.M.Milner@ks.gov>

Sent: Tuesday, September 7, 2021 9:26 AM

To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>

Subject: Memo for 50610

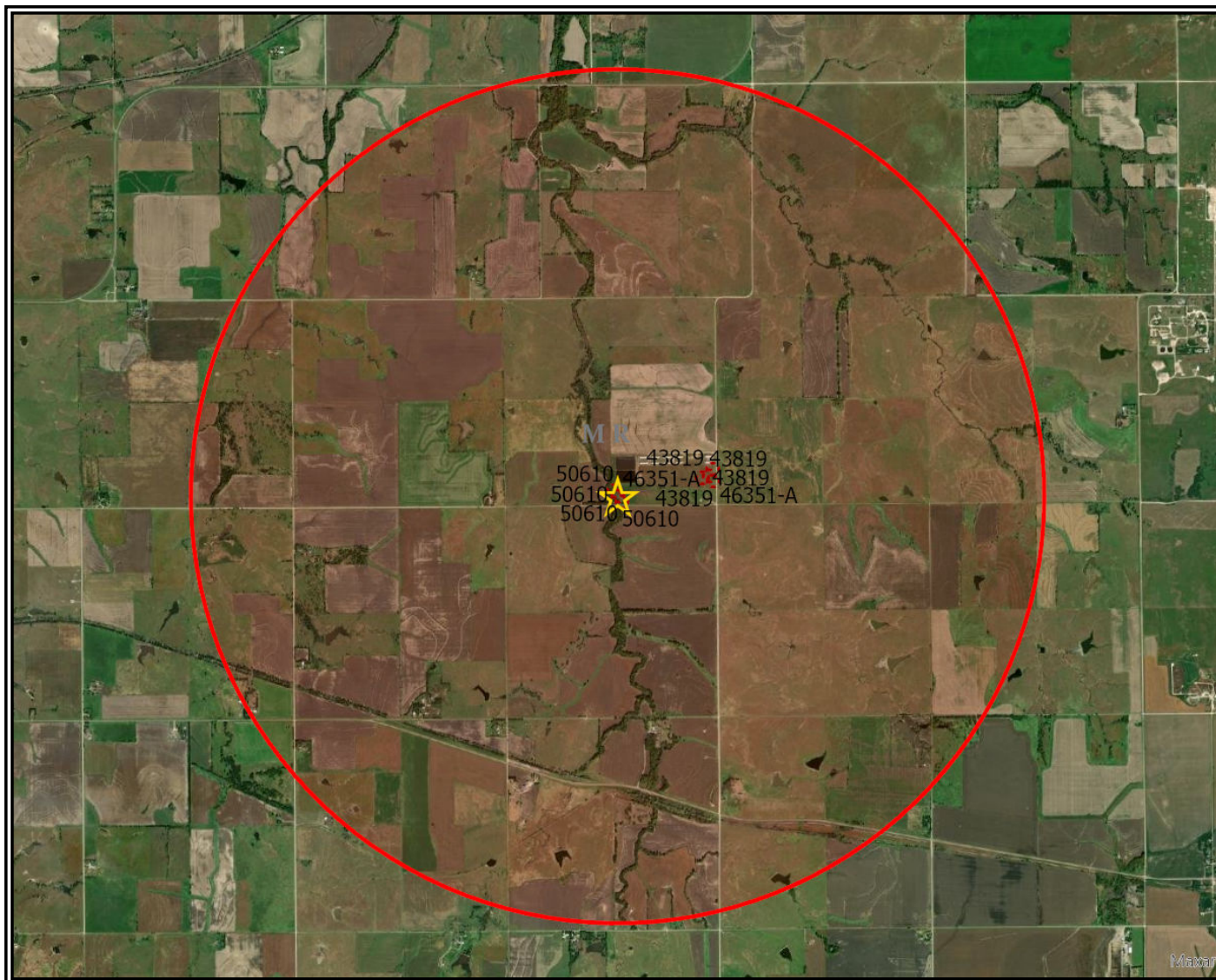
Attached is a memo for application no. 50,610 for Tim Schwartz. I'm believe this one should be pretty straight forward with a battery of three wells completed in the Chase formation and based off the completed senior files nearby, this battery will not be certified for the 800 gallons per minute but it is what it is. Could you please provide a recommendation on this?

Brandon Milner

Environmental Scientist

Water Appropriation Program

Safe Yield Report Sheet
Water Right- Proposed Point of Diversion
Point of Diversion in 03-16S-05E
Footages from SE corner- 251 feet North 2,475 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 1,658.76 AF.
 Total prior appropriations in the circle is 475.16 AF.
 Total quantity of water available for appropriation is 1,183.60 AF.

**475.16-
445= 3016
Prior
Allowed**

**1658.76-
30.16=1628.6
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 3.3 inches.
 The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 02-SEP-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 3 water rights and 8 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 43819 00 | STK | NK | G | | NE | SE | SE | 739 | 189 | 03 | 16 | 05E | 4 | WR | 26.82 | 26.82 | | |
| Same | STK | NK | G | | NE | SE | SE | 691 | 363 | 03 | 16 | 05E | 5 | WR | | | | |
| Same | STK | NK | G | | NE | SE | SE | 913 | 104 | 03 | 16 | 05E | 6 | WR | | | | |
| Same | STK | NK | G | | SE | SE | SE | 614 | 101 | 03 | 16 | 05E | 7 | WR | | | | |
| A 46351 A | STK | NK | G | | NE | SE | SE | 739 | 189 | 03 | 16 | 05E | 4 | WR | 30.17 | 3.35 | | |
| Same | STK | NK | G | | NE | SE | SE | 691 | 363 | 03 | 16 | 05E | 5 | WR | | | | |
| Same | STK | NK | G | | NE | SE | SE | 913 | 104 | 03 | 16 | 05E | 6 | WR | | | | |
| Same | STK | NK | G | | SE | SE | SE | 614 | 101 | 03 | 16 | 05E | 7 | WR | | | | |
| A 50610 00 | STK | AY | G | | SW | SW | SE | 251 | 2475 | 03 | 16 | 05E | 11 | WR | 444.99 | 444.99 | | |
| Same | STK | AY | G | | SW | SW | SE | 251 | 2475 | 03 | 16 | 05E | 12 | WR | | | | |
| Same | STK | AY | G | | SW | SW | SE | 384 | 2573 | 03 | 16 | 05E | 13 | WR | | | | |
| Same | STK | AY | G | | SW | SW | SE | 117 | 2376 | 03 | 16 | 05E | 14 | WR | | | | |

Limitations

| File Number | Seq Num | Limitations |
|-------------|---------|---------------------------------|
| A 46351 A | 2 | 9.832 MGY @ 96 GPM COM/W #43819 |

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. 50,610** of the applicant

SCHWARTZ WILKE FARMS LLP
32296 190TH STREET SE
SLEEPY EYE, MN 56085

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 20, 2021.
2. That the water sought to be appropriated shall be used for stockwatering use at a swine facility located in the South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 3, in Township 16 South, Range 5 East, Morris County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater to be withdrawn by means a battery of three (3) wells whose geographical center is located in the Southwest Quarter of the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 3, more particularly described as being near a point 251 feet North and 2,475 feet West of the Southeast corner of said section, in Township 16 South, Range 5 East, Morris County, Kansas located substantially as shown on the 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 **145 million gallons (445 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, 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 accompanied by the required statutory fee, which is currently \$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, which is currently \$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 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. 82a703c for the source of supply to which this water right applies.

Ordered this 20 day of September, 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)
County of Riley) SS

The foregoing instrument was acknowledged before me this 20 day of September, 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

SCHWARTZ WILKE FARMS LLP
32296 190TH STREET SE
SLEEPY EYE, MN 56085

September 20, 2021

RE: Appropriation of Water, File No. 50,610

Dear Sir or Madam:

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.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 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 Applications and Changes Supervisor
Division of Water Resources

KAB:bmm
Enclosure(s)
pc: Topeka Field Office

PRAIRIE HAVEN PORK
1476 HWY 383
LONG ISLAND, KS 67647

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 20 day of September, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,610, dated 20 September, 2021, was mailed postage prepaid, first class, US mail to the following:

SCHWARTZ WILKE FARMS LLP
32296 190TH STREET SE
SLEEPY EYE, MN 56085

With photocopies to:

PRAIRIE HAVEN PORK
1476 HWY 383
LONG ISLAND, KS 67647

Topeka Field Office


Division of Water Resources