

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;">50,510</p> | 2. Status Change Date: <p style="text-align: center; font-size: 1.2em; color: purple;">5/25/2022</p> | 3. Field Office: <p style="text-align: center; font-size: 1.2em;">01</p> | 4. GMD: <p style="text-align: center; font-size: 1.2em;">0</p> |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|--------------------------------------------------------------------------|

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

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| <p>7a. Applicant(s) Person ID 66873 New to system <input type="checkbox"/> Add Seq# <u>1</u></p> <p style="margin-left: 20px;">DAVID DWERLKOTTE 2255 NAVAHO RD FRANKFORT, KS 66427</p> | <p>7c. Landowner(s) Person ID _____</p> |
| <p>7b. Landowner(s) Person ID 66873 New to system <input type="checkbox"/> Add Seq# <u>1</u></p> <p style="margin-left: 20px;">DAVID DWERLKOTTE 2255 NAVAHO RD FRANKFORT, KS 66427</p> | <p>7e. Miscellaneous Person ID _____</p> |

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>8. WUR Correspondent Person ID _____ New to system <input type="checkbox"/> Add Seq# _____ Overlap File (s) WUC Notarized WUC Form <input type="checkbox"/> Agree <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="margin-left: 20px;">7a.</p> | <p>9. Use of Water: Changing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p style="margin-left: 40px;"><input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water</p> <p style="margin-left: 40px;"><input checked="" type="checkbox"/> IRR <input type="checkbox"/> REC <input type="checkbox"/> DEW <input type="checkbox"/> MUN</p> <p style="margin-left: 40px;"><input type="checkbox"/> STK <input type="checkbox"/> SED <input type="checkbox"/> DOM <input type="checkbox"/> CON</p> <p style="margin-left: 40px;"><input type="checkbox"/> HYD DRG <input type="checkbox"/> WTR PWR <input type="checkbox"/> ART RECHRG</p> <p style="margin-left: 40px;"><input type="checkbox"/> IND SIC: _____ <input type="checkbox"/> OTHER: _____</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

10. Completion Date: 12/31/2023 11. Perfection Date: 12/31/2027 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: **2/9/2022** By: **LHH**
Date Entered: 6/1/2022 LMoody
5/19/2022
Lireland

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: February 9, 2022

FROM: Lloyd Hemphill

RE: Application, File No. 50,510

David Dwerlkotte has filed the application referred to above proposing to appropriate 130 acre-feet of surface water at a diversion rate of 1,000 gallons per minute from one pump site on South Fork Big Nemaha Trib 6A, within the South Fork Big Nemaha River drainage basin, for irrigation use. This application will allow water to be pumped directly from the stream (when flows are adequate, and permission is granted), into an off-stream reservoir permitted under File No. 50,298 for storage and subsequent re-diversion. The point of diversion (pump site) is located in the Southwest Quarter of Section 10, in Township 3 South, Range 12 East, Nemaha County, Kansas. There are no overlapping files that use this point of diversion. The application was signed by Keith Grimm, on behalf of the applicant, stating he has access to the point of diversion. This application overlaps the place of use authorized by File No. 50,298. The requested quantity of water of 130 acre-feet is less than the maximum allowable quantity of water to irrigate the proposed acreage of 142 acres, with 1.1 acre-feet per acre allowed in Nemaha County. This file will be limited to 156.2 acre-feet (1.1 AF/acre) when combined with the direct use authorized by Appropriation of Water, File No. 50,298

The applicant identified two upstream and downstream landowners adjacent to the stream within one-half mile (complying with K.A.R. 5-3-4). Nearby notification letters were sent to these and three additional landowners on November 24, 2021. No responses of any kind were received. Other than the overlapping file, there are no other permitted water rights within the 2-mile circle. Approval of this application will not impair senior water rights.

Per K.A.R 5-3-15, this application 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 existing off-stream storage pond will provide adequate water storage (see below), and there is no need for direct diversion of water from July 1 through September 30.

Water will be diverted under this permit and stored in a reservoir authorized by Appropriation of Water, File No. 50,298. This reservoir was previously reviewed under WSN: DNM-386 (Class A exempt dam) and LNM-34 (floodplain fill). According to information submitted to DWR Structures, the storage capacity is 62.7 acre-feet at principal spillway elevation. The potential storage capacity is approximately 48% of the quantity proposed by this application. Therefore, it appears that the pond will provide adequate water supply during the irrigation season months satisfying the requirements of K.A.R 5-3-15(c)(5).

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.

In a February 9, 2022 e-mail discussion, Katie Tietsort, Water Commissioner, Topeka Field Office, recommended that the application be approved.

David Dwerlkotte - Memorandum
File No. 50,510
Page 2

Based on the above discussion, the area remains open to new appropriations, the approval is subject to specific conditions relative to direct surface water diversions, diversion is limited to availability of water supply, and no 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]

From: Tietsort, Katie [KDA]
Sent: Tuesday, February 8, 2022 3:52 PM
To: Hemphill, Lloyd [KDA]
Subject: RE: File No. 50510: For Your Recommendation

Hi Lloyd,

This one looks ready to move forward for approval. Thanks for your work on it,
Katie

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: Hemphill, Lloyd [KDA] <Lloyd.Hemphill@ks.gov>

Sent: Tuesday, February 8, 2022 2:04 PM

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

Subject: File No. 50510: For Your Recommendation

Katie,

Will you provide your recommendation for Application, File No. 50,510 (David Dwerlkotte)?

It is for a pumpsite on a SF Big Nemaha tributary. This permit will be used for off season filling of an irrigation pond authorized by File No. 50298.

Thanks,

Lloyd

Lloyd Hemphill, Environmental Scientist

Kansas Department of Agriculture

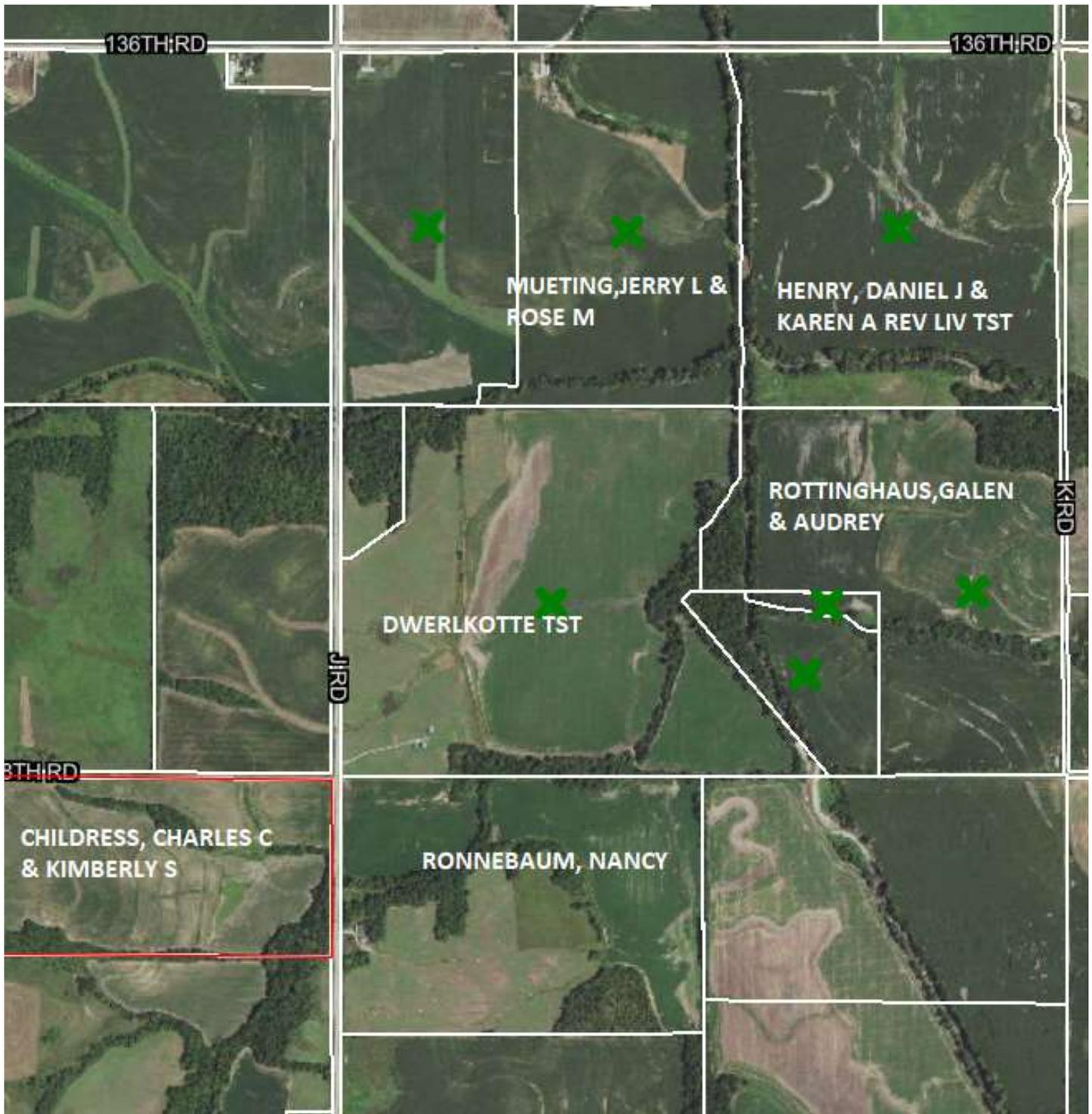
Division of Water Resources, Topeka Field Office

1131 SW Winding Rd, Suite 400

Topeka, KS 66615

(785) 296-5733

NOTE NEW ADDRESS



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. 50,510** of the applicant

DAVID DWERLKOTTE
2255 NAVAHO RD
FRANKFORT, KS 66427

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 **January 22, 2021**.
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 | | | | | |
| 10 | 3S | 12E | | | | | | | | | 40 | 32 | 18 | 38 | | | | | 4 | 10 | | | 142 |

3. That the authorized source from which the appropriation shall be made is surface water from an unnamed tributary to the South Fork Big Nemaha River, designated in the office of the Chief Engineer as South Fork Big Nemaha Trib 6A (South Fork Big Nemaha), to be diverted at one (1) pump site located in the Southeast Quarter of the Southeast Quarter of the Southwest Quarter (SE¼ SE¼ SW¼), of Section 10, more particularly described as being near a point 140 feet North and 3,140 feet West of the Southeast corner of said section, in Township 3 South, Range 12 East, Nemaha 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 **1,000 gallons per minute (2.23 c.f.s.)** and to a quantity not to exceed **130 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.

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 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).

13. 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.

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

15. 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.

16. That the stream flow shall not be stopped at the first riffle below the point of diversion while diversion is taking place under the authority of this water right or permit.

17. That diversion of natural flows shall not take place unless there is water available to satisfy all demands by senior water rights and permits.

18. 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.

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

June 6, 2022

DAVID DWERLKOTTE
2255 NAVAHO RD
FRANKFORT, KS 66427

RE: Appropriation of Water, File No. 50,510

Dear Mr. Dwerlkotte:

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, specifically conditions 19, 20 and 21.

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 Application Unit Supervisor
Division of Water Resources

KAB:lh:li
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:

- 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 6 day of June, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,510, dated 25 May 2022 was mailed postage prepaid, first class, US mail to the following:

DAVID DWERLKOTTE
2255 NAVAHO RD
FRANKFORT, KS 66427

With Photocopies to:

Topeka Field Office


Division of Water Resources