

File No. **50,594** 15. Formation Code: Drainage Basin: Mill Creek County: WS Special Use: Stream: Riddle Creek Trib 2B (Mill Creek)

16. Points of Diversion										17. Rate and Quantity						
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional			
											Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files	
√				86489	SW SW SW	2	1	2E	4	567	4746	1400	176.64	1400	176.64	NONE

18. Storage: Rate **NF** _____ Quantity **228** _____ ac/ft Additional Rate **NF** _____ Additional Quantity **228** _____ 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 **12/31/2023** 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						
MOD			70433	2	1S	2E	1																						
√			70434	2	1S	2E	3																						

Comments
This permit replaces dismissed File No. 49,955.

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

TO: Files

DATE: March 23, 2022

FROM: Lloyd Hemphill

RE: Application, File No. 50,594

Livingston Family Farms LLC has filed the application referenced above for a permit to store 228 acre-feet of surface water in a reservoir at the rate of natural flows and to re-divert 176.64 acre-feet at the rate of 1,400 gallons per minute for irrigation use. The proposed point of diversion is an existing reservoir located in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter (SW¼, SW¼, SW¼) of Section 2, Township 1 South, Range 2 East, Washington County, Kansas. The dam is located on Riddle Creek Trib 2B (Mill Creek). The point of diversion is owned by the Brian and Traci Livingston Trust and the application is signed stating they have legal access to, or control of, the point of diversion. The place of use (147.2 acres) is owned by the Brian and Traci Livingston Trust and the Linda Friess Living Trust. This application does not overlap any other files in point of diversion or place of use, although it essentially replaces Appropriation of Water, File No, 49,955, which was dismissed for failure to complete.

The proposed structure was reviewed by DWR Water Structures Program staff, under File No. DWS-130, and they determined that it is exempt from dam safety permit requirements specified in K.S.A. 82a- 301(a) to 305a (see March 8, 2018 letter).

The quantities requested on the Water Appropriation application are justified as follows:

1-yr Direct Use:	176.64 AF
Reservoir Capacity:	40 AF (from 3/22/18 memo for original file)
Reservoir Surface Area:	3.8 ac.
Potential Evaporation:	17 in/yr X 1ft/12 in X 3.8 ac. = 5.38 AF
Seepage (remaining balance):	5.98 AF (0.047 in/day)
Storage Quantity:	176.64 AF + 40 AF + 5.38 AF + 5.98 AF = 228 AF

Runoff computations, completed during review of the original file, determined that the 288 acres of drainage area, will generate a runoff quantity (9.5") of 228 acre-feet in 1 out of every five (5) years (a 20% chance). Therefore, this application is requesting to store all of the potential runoff yielded by this basin. The requested quantity of water for direct use (re-diversion) of 176.64 acre-feet for irrigation use on 147.2 acres, provides 1.2 acre-feet per acre, which is the maximum allowable in Washington County, Kansas (1.2 AF/ac.), per K.A.R. 5-3-24. The proposed direct use quantity of 176.64 acre-feet, is equivalent to 4.4 times the capacity, which is within the normal "rule of thumb" of direct use quantity being no more than 5 times capacity for reasonable storage quantity. The proposed re-diversion rate of 1,400 gpm appears reasonable for the project.

Stephen Ohlde owns the property upstream and downstream within one-half (1/2) mile of the property lines. A nearby notification letter was sent out on January 28, 2022. No response of any kind was received. There are only three other surface water rights within a two-mile radius according to the WRIS database. These senior files authorize two different dams, on different tributary streams, and no senior water rights will be impaired with approval of this application.

As allowed by K.S.A. 82a-706(c) an approved water flow meter shall be installed on the secondary diversion works (pump site) for this file. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

Katie Tietsort, Water Commissioner, Topeka Field Office, recommended in a March 22, 2022 e-mail that the referenced new application should be approved. Based on the above discussion, that this area is open to new appropriations, the proposed appropriation of water is reasonable, the dam is exempt from permitting under the DWR Water Structures Program, and senior rights will not be impacted, it is recommended that the referenced new application be approved.

Lloyd Hemphill
Environmental Scientist
Topeka Field Office

Hemphill, Lloyd [KDA]

From: Tietsort, Katie [KDA]
Sent: Tuesday, March 22, 2022 2:44 PM
To: Hemphill, Lloyd [KDA]
Subject: RE: File No. 50594: For Your Recommendation

Lloyd,

The request appears to meet the provisions of the KWAA. I agree with your recommendation for approval. Thanks!

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: Monday, March 21, 2022 10:36 AM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Subject: File No. 50594: For Your Recommendation

Katie,

Will you provide your recommendation on Application, File No. 50594 (Livingston Family Farms)? This is a storage and re-diversion irrigation permit in WS CO that will replace File 49,955 which was dismissed for failure to N&P.

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. 50,594** of the applicants

LIVINGSTON FAMILY FARMS LLC
PO BOX 136 70663 560 AVE
REYNOLDS, NE 68429

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 **June 1, 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	W¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
2	1S	2E								40	34.5	40	32.7					147.2	

3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to Riddle Creek, designated in the office of the Chief Engineer as Riddle Creek Trib 2B (Mill Creek), not needed to satisfy all vested rights and prior appropriation rights to be incrementally accumulated as reservoir storage space becomes available to a maximum extent of **228 acre-feet** per calendar year in one (1) reservoir created by a dam located in the Southwest Quarter of the Southwest Quarter of the Southwest Quarter (SW¼ SW¼ SW¼) of Section 2, more particularly described as being near a point 567 feet North and 4,746 feet West of the Southeast corner of said section, in Township 1 South, Range 2 East, Washington County, Kansas, to provide **176.64 acre-feet** of water as needed for direct irrigation use to be withdrawn, released or otherwise diverted from the reservoir at a re-diversion rate of approximately **1,400 gallons per minute** (3.12 c.f.s.). A reasonable maximum re-diversion rate will be established during the perfection period and assigned at certification.

4. 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, 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 submitted prior to the expiration of the deadline and shall be accompanied by the required statutory fee, which is currently \$100.00.

5. 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, which is currently \$100.00.

6. 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.

7. 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.

8. 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.

9. 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.

10. That all re-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 re-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.

11. That an acceptable water flow meter shall be installed and maintained on the re-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).

12. 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.

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

14. 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.

15. 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 14, 2022

LIVINGSTON FAMILY FARMS LLC
PO BOX 136 70663 560 AVE
REYNOLDS, NE

RE: Appropriation of Water, File No. 50,594

Dear Mr. & Mrs. Livingston:

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 re-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
Enclosure(s)

pc: Topeka Field Office
Linda Friess

CERTIFICATE OF SERVICE

On this 14 day of June, 2022, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,594, dated 7 June, 2022 was mailed postage prepaid, first class, US mail to the following:

LIVINGSTON FAMILY FARMS LLC
PO BOX 136 70663 560 AVE
REYNOLDS, NE 68429

With photocopies to:

LINDA FRIESS
2947 WICHITA RD
NEODESHA, KS 66757

Topeka Field Office



Division of Water Resources