

NOTICE

This scan only represents the application as filed. The information contained herein meets the requirements of K.A.R. 5-3-1 or K.A.R. 5-5-1, and has been found acceptable for filing in the office of the Chief Engineer. The application should not be considered to be a complete application as per K.A.R. 5-3-1b or K.A.R. 5-5-2a.

WATER RESOURCES RECEIVED

OCT 07 2022 1:33



KS DEPT OF AGRICULTURE State of Kansas

Submit To: CHIEF ENGINEER
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
http://agriculture.ks.gov/dwr

APPLICATION FOR APPROVAL TO CHANGE THE PLACE OF USE, THE POINT OF DIVERSION OR THE USE MADE OF THE WATER UNDER AN EXISTING WATER RIGHT

Filing Fee Must Accompany the Application
(Please refer to Fee Schedule on signature page of application form.)

Paragraph Nos. 1, 2, 3, 4 & 8 must be completed. Complete all other applicable portions. A topographic map or detailed plat showing the authorized and proposed points(s) of diversion and /or place of use must accompany this application.

1. Application is hereby made for approval of the Chief Engineer to change the

8/10/2023

Place of Use

Water Resources Received

(Check one or more) Point of Diversion *BD 8-9-23*

Use Made of Water

KS Dept Of Agriculture

File No. 40,543

2. Name of applicant: National Beef Packing Company, LLC
1200 N. Ambassador Dr. Ste 500
Address: P.O. Box 20046

City, State and Zip: Kansas City, Missouri 64195-0046

Phone Number: (816) 713-8552 E-mail address: Bud.Ludwig@nationalbeef.com

What is your relationship to the water right; owner tenant agent other? If other, please explain. _____

Name of water use correspondent: Same as applicant

Address: _____

City, State and Zip: _____

Phone Number: (_____) _____ E-mail address: _____

3. The change(s) proposed herein are desired for the following reasons (please be specific): To authorize the dual use of ground-water for industrial use to process food products within the facility of National Beef Packing Company, LLC and for irrigation use to supplement treated wastewater supplied by National Beef Packing Company, LLC in order to produce agricultural commodities to be grown on lands owned by Dan M. Brown, Anna M. Brown and Dean K. Brown.

The change(s) ~~was~~ (will be) completed by immediately on approval for use in year 2022
(Date)

For Office Use Only:														
F.O. Code	<u>4</u>	GMD	<u>3</u>	Meets K.A.R. 5-5-1	<input checked="" type="checkbox"/>	(YES/NO) Use	<u>IRR</u>	Source	<u>G/S</u>	County	By	<u>ALB</u>	Date	<u>9/11/23</u>
Code	<u>C-2</u>	Fee \$	<u>500</u>	TR #	<u>4 of 4</u>	Receipt Date	<u>10/7/22</u>	Check #	<u>3647018</u>					

Additional Payment to add POD Change

CGT

800

8/10/23

1022974

4. The presently authorized place of use is: **DUAL USE: NO CHANGE TO CURRENT IRRIGATION PLACE OF USE**

Owner of Land — NAME: Dean K. Brown

ADDRESS: 8745 Road 7, Liberal, Kansas 67901

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
22	34	33W	34	40	34	12	40	40	40	40									280

List any other water rights that cover this place of use. 41,603

Owner of Land — NAME:

ADDRESS:

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

List any other water rights that cover this place of use.

(If there are more than two landowners, attach additional sheets as necessary.)

5. It is proposed that the place of use be changed to: **DUAL USE: ADD INDUSTRIAL PLACE OF USE**

Owner of Land — NAME: National Beef Packing Co. LLC

ADDRESS: 1200 N. Ambassador Dr. Ste 500, P.O. Box 20046, Kansas City, MO 64195-0046

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
34	34	33W					X	X	X	X									Industrial

List any other water rights that cover this place of use. 15,745; 30,255; 42,805; 44,607; 44,608; 45,181; 45,182 and 45,339

Owner of Land — NAME:

ADDRESS:

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

List any other water rights that cover this place of use.

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

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- 6. The presently authorized point(s) of diversion (is) ~~(are)~~ one well, pump and motor
(Provide description and number of points)
- 7. The proposed point(s) of diversion ~~(is)~~ (are) 1 well, pumps & motors for IRR use & 1 well, pump & motor for IND use: existing PD only for IRR use; new PD only for IND use to produce potable water (KDHE permit); total diversion rate and annual quantity to be List all presently authorized point(s) of diversion: combined and limited to current rate and K.A.R. 5-5-9 quantity for dual use.
(Provide description and number of points)

8. **Presently authorized point of diversion: FOR IRRIGATION USE ONLY (TO BE RETAINED) 828-9-23**

One in the SW Quarter of the NE Quarter of the NE Quarter of Section 22, Township 34 South, Range 33 (E/W), in Seward County, Kansas, 4379 feet North 1300 feet West of Southeast corner of section. Authorized Rate 1000 gpm combined Authorized Quantity 490.6 acre-feet combined with industrial use, reduced from 560 acre-ft.
(DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)

This point will not be changed This point will be changed as follows:

Proposed point of diversion: (Complete only if change is requested) ALTERNATE PD FOR INDUSTRIAL USE ONLY

One in the NW Quarter of the NW Quarter of the SE Quarter of Section 22, Township 34 South, Range 33 (E/W), in Seward County, Kansas, 4207 feet North 1360 feet West of Southeast corner of section. Proposed Rate 1000 gpm combined Proposed Quantity 490.6 a-ft (159.849 mgy) combined with irrigation use.
This point is: Additional Well Geo Center List other water rights that will use this point 41,063

9. **Presently authorized point of diversion:**

One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section. Authorized Rate _____ Authorized Quantity _____
(DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)

This point will not be changed This point will be changed as follows:

Proposed point of diversion: (Complete only if change is requested) FOR INDUSTRIAL USE ONLY

One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section. Proposed Rate _____ Proposed Quantity _____
This point is: Additional Well Geo Center List other water rights that will use this point _____

10. **Presently authorized point of diversion:**

One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section. Authorized Rate _____ Authorized Quantity _____
(DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)

This point will not be changed This point will be changed as follows:

Proposed point of diversion: (Complete only if change is requested)

One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section. Proposed Rate _____ Proposed Quantity _____
This point is: Additional Well Geo Center List other water rights that will use this point _____

- 11. Describe the current condition of and future plans for any point(s) of diversion which will no longer be used. _____

12. The presently authorized use of water is for irrigation purposes.

It is proposed that the use be changed to dual use for irrigation and food processing (industrial) purposes.

13. If changing the place of use and/or use made of water, describe how the consumptive use will not be increased.

Consumptive use will not be increased due to the quantity reduction to the net consumptive use quantity under K.A.R. 5-5-9.
8/10/2023

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(Please show any calculations here.)

KS Dept Of Agriculture

14. It is requested that the maximum annual quantity of water be reduced to 159.849 (~~acres feet~~ million gallons).

15. It is requested that the maximum rate of diversion of water be reduced to N/A gallons per minute (c.f.s.).

16. The application must include either a topographic map or detailed plat. A U.S. Geological Survey Topographic Map, scale 1:24,000, is available through the Kansas Geological Survey, 1930 Constant Avenue, University of Kansas, Lawrence, Kansas 66047-3726 (www.usgs.gov). The map should show the location of the presently authorized point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. The presently authorized place of use should also be shown. Identify the center of the section, the section lines and the section corners and show the appropriate section, township, and range numbers on the map. In addition the following information must also be shown on the map.

a. If a change in the location of the point(s) of diversion is proposed, show:

- 1) The location of the proposed point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. Please be certain that the information shown on the map agrees with the information shown in Paragraph Nos. 9, 10 and 11 of the application.
- 2) If the source of supply is groundwater, please show the location of existing water wells of any kind, including domestic wells, within 1/2 mile of the proposed well or wells. Identify each well as to its use and furnish name and mailing address of the property owner or owners. If there are no wells within 1/2 mile, please indicate so on the map.
- 3) If the source of supply is surface water, the names and mailing addresses of all landowner(s) 1/2 mile downstream and 1/2 mile upstream from your property lines must be shown.

b. If a change in the place of use is desired, show the proposed place of use by crosshatching on the map. Please be certain that the information shown on the map agrees with the information shown in Paragraph No. 5 of the application.

17. Attach documentation to show the change(s) proposed herein will not impair existing water rights and relates to the same local source of supply as to which the water right relates. This information may include statements, plats, geology reports, well logs, test hole logs, and other information as necessary information to show the above. Additional comments may be made below.

18. If the proposed change(s) does not meet all applicable rules and regulations of the Kansas Water Appropriation Act, please identify the rules and regulations for which you request a waiver. State the reason why a waiver is needed and why the request should be granted. Attach documentation showing that granting the request will not impair existing water rights and will not prejudicially and unreasonably affect the public interest.

A waiver of the additional well rule (K.A.R. 5-5-16) may be necessary; however, applicant proposes to operate the irrigation well and the industrial well in a manner so that pumping does not exceed the pumping capacity of the existing irrigation well. Applicant consents to a pumping rate limitation as a condition of approval.

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

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8-9-23

Any use of water that is not as authorized by the water right or permit to authorize water **before** the chief engineer approves this application is a violation of the Kansas Water Appropriation Act for which criminal or civil penalties may be assessed. Such violation is a class C misdemeanor, punishable by a fine not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. K.S.A. 82a-728(b). Civil penalties shall be not less than \$100 nor more than \$1,000 per violation. In the case of a continuing violation, each day such violation continues may be deemed a separate violation. In addition to these penalties the water right may be modified or suspended. K.S.A. 82a-737, as amended.

The application must be signed by all owners of the place of use authorized under the water right and his or her spouse, if married. Please indicate if there is no spouse. If land is being purchased under contract, the seller must sign as landowner until such time as the contract is completed.

In the event that all applicants cannot appear before one notary public, they may as necessary sign separate copies of the application before any notary public conveniently available to them. All copies signed in this manner shall be considered to be valid parts of the application.

If the request is signed on behalf of any Owner by someone with legal authority to do so (for example, an agent, one who has power of attorney, or an executor, executrix, conservator), it will be necessary to attach proper documents showing such authority.

I declare that I am an owner of the currently authorized place of use as identified herein, or that I represent all such owners and am authorized to make this application on their behalf, and declare further that the statements contained herein are true, correct, and complete. By filing this application I authorize the chief engineer to permanently reduce the quantity of water and/or rate of diversion as specified in sections 14 and 15 of this application.

Dated at Liberal, Kansas, this 30 day of September, 2022.
National Beef Packing Company, LLC, by:

_____ Jeff Flowers, Corporate System Engineer (Owner)	_____ (Spouse)	<u>8/10/2023</u>
_____ (Please Print)	_____ (Please Print)	<u>Water Resources Received</u>
<u>Jeff Flowers</u> (Owner)	_____ (Spouse)	<u>KS Dept Of Agriculture</u>
_____ (Please Print)	_____ (Please Print)	
_____ (Owner)	_____ (Spouse)	
_____ (Please Print)	_____ (Please Print)	

State of Kansas)
County of Seward) SS



I hereby certify that the foregoing application was signed in my presence and sworn to before me this 30th day of September, 2022.

Shelly D. Mesa
Notary Public

My Commission Expires 10/15/2024

FEE SCHEDULE

Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

- (1) Application to change a point of diversion 300 feet or less \$100
- (2) Application to change a point of diversion more than 300 feet \$200
- (3) Application to change the place of use \$200
- (4) Application to change the use made of the water \$300

Make check payable to **Kansas Department of Agriculture.**

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**INDUSTRIAL USE
SUPPLEMENTAL SHEET**

File No. 40543, 41603, 41926 and 43075

Name of Applicant (Please Print): National Beef Packing Company, LLC

1. Please describe type of industry or product produced: Beef processing
 _____ Standard Industrial Classification Code Number: 2011

2. Please complete the following table to show your past and present water requirements:

PAST PRODUCT PRODUCTION AND WATER DIVERTED, IF APPLICABLE

	LAST 5 YEARS	AMOUNT OF PRODUCT (Number of head of cattle processed)	WATER DIVERTED		GALLONS PER PRODUCT PER DAY
			Diverted (GALLONS)	Purchased	
(2016)	5 years ago	1,586,410	1,170,117,900	222,739,000	878.0 gal/head
	Last year	1,578,198	1,150,433,700	279,135,380	905.8 gal/head
(2022)	Present year	838,515	Data will be submitted separately for		YTD ending September 2022

3. Please complete the following table to show your future water requirements:

ESTIMATED FUTURE PRODUCT PRODUCTION AND WATER DIVERTED

	NEXT 5 YEARS	AMOUNT OF PRODUCT	WATER TO BE DIVERTED		GALLONS PER PRODUCT PER DAY
			(GALLONS)		
(2023)	Year 1	1,600,000	1,400,000,000 *		875.0 gal/head
(2024)	Year 2	1,600,000	1,600,000,000*		1,000.0 gal/head
(2025)	Year 3	1,600,000	1,700,000,000*		1,062.5 gal/head
(2026)	Year 4	1,600,000	1,700,000,000*		1,062.5 gal/head
(2027)	Year 5	1,600,000	1,700,000,000*		1,062.5 gal/head

Number of days of operation of the industry per year is 290 +/- days.

Please attach any tables, curves or additional information showing past, present and estimated future water requirements to substantiate the amount of water requested.

4. Please designate the legal description of the location where the water is to be used. Show in the space provided below the Section (S), Township (T), and Range (R), and the number of acres in each forty acre tract or fractional portion thereof.

S	T	R	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
34	34	33W					23	40	12										75

You may attach any additional information you believe will assist in informing the Division of the need for your request.

*Assumes no water will be purchased from the City of Liberal.

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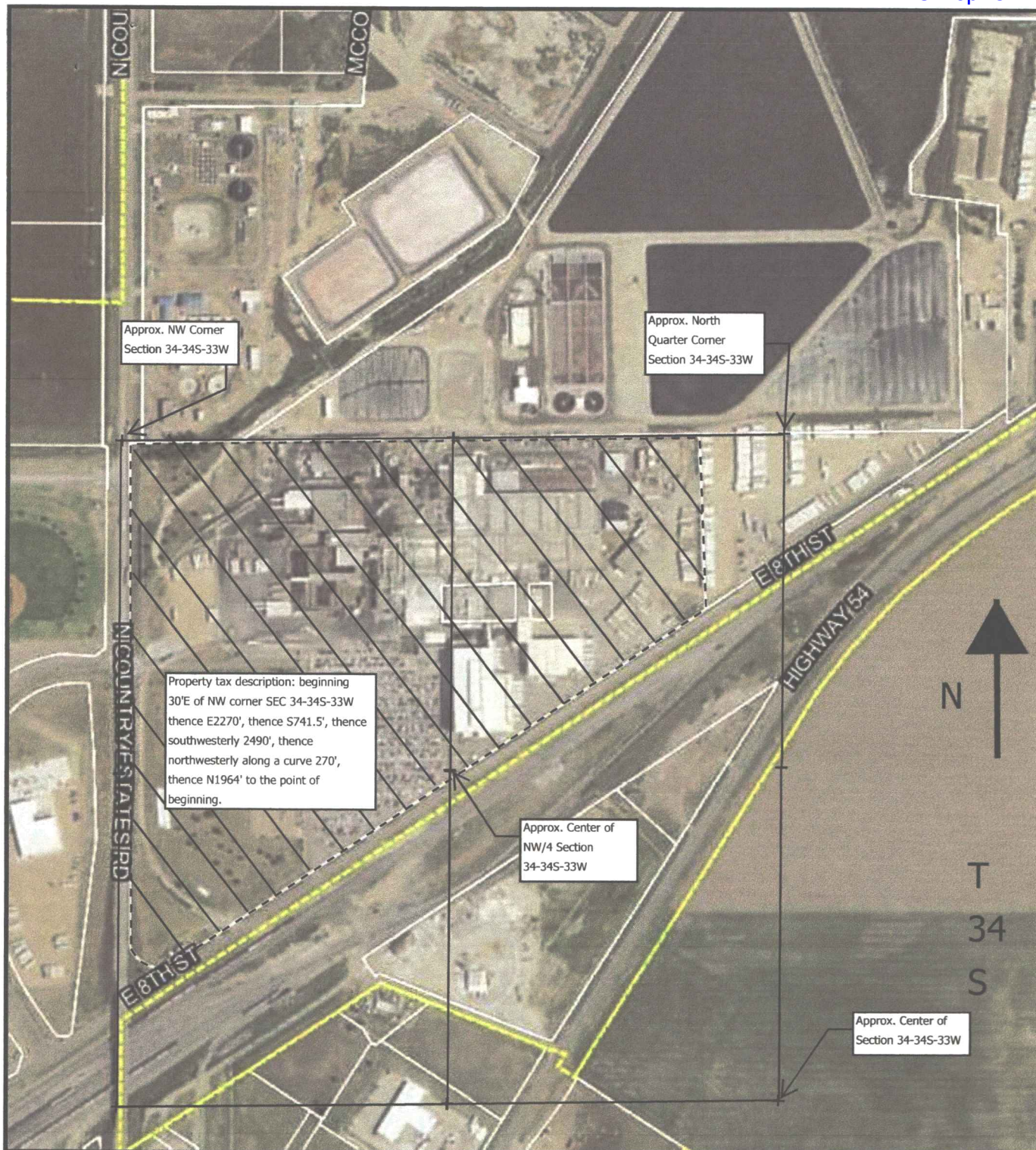
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National Beef Pacing Co.

R 33 W



Proposed additional industrial place of use for appropriation water right file numbers 40543, 41603, 41926 and 43075.

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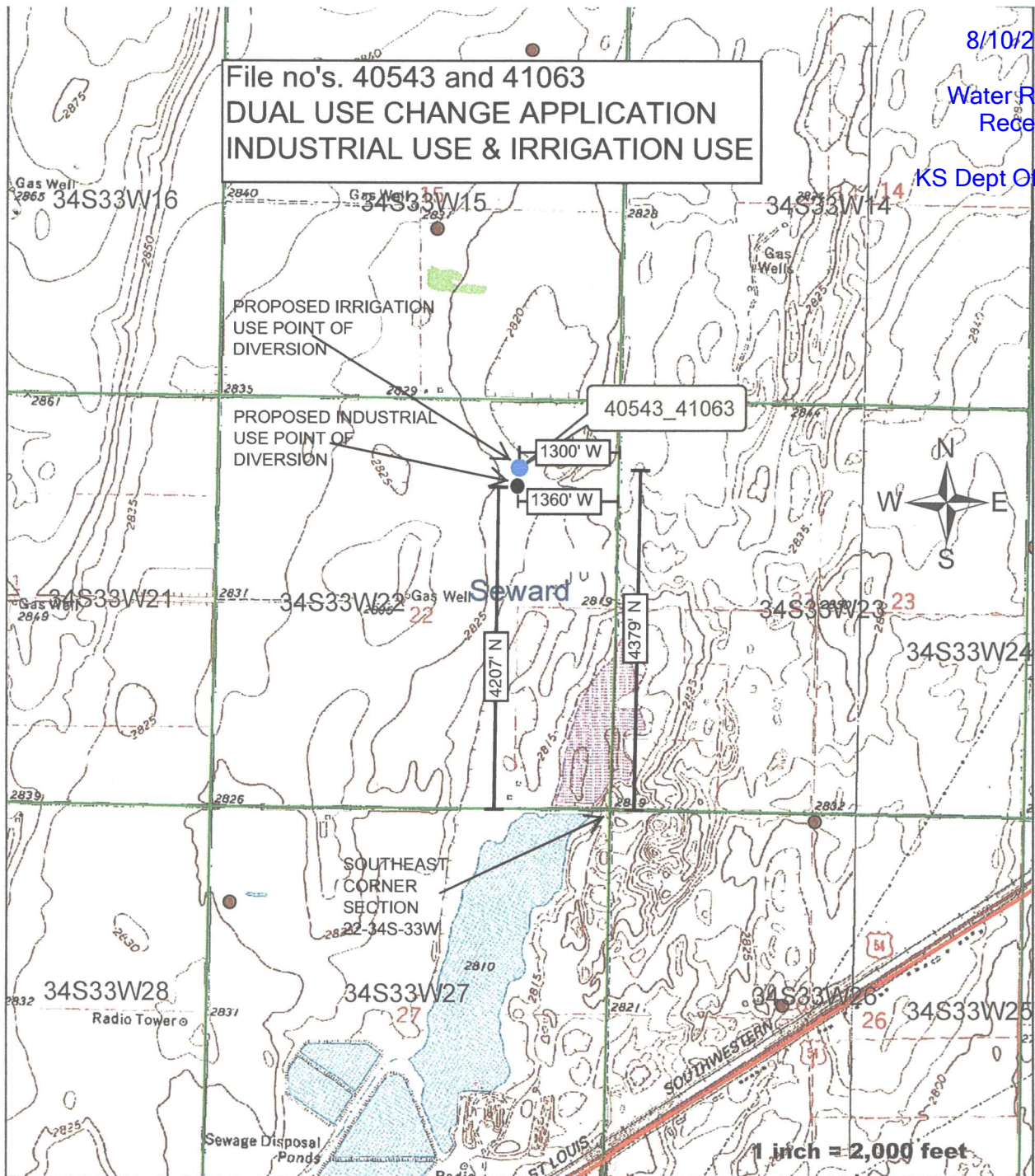
8/10/2023

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File no's. 40543 and 41063
DUAL USE CHANGE APPLICATION
INDUSTRIAL USE & IRRIGATION USE

T
34
S



R 33 W

All wells within 1/2
mile of the proposed
point of diversion are
shown.

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8/10/2023

SUPPLEMENTAL INFORMATION
TO APPLICATIONS TO CHANGE
USE MADE OF WATER AND PLACE OF USE
TO AUTHORIZE DUAL INDUSTRIAL USE AND IRRIGATION USE

Water Resources
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Applicant: National Beef Packing Company, LLC

Applicant requires additional quantities of fresh water, plus additional delivery rates, to supply its beef processing plant ("Applicant's Facility") located in Liberal, Kansas.

Currently, six wells supply Applicant's Facility with groundwater under eight water right file numbers: 15745, 30255, 42805, 44607, 44608, 45121, 45182 and 45399. The six wells also are permitted by the Kansas Department of Health and Environment as public water supply wells. Applicant's six wells are authorized to provide a maximum annual quantity of not more than 1,199,290,000 gallons.

During years 2014 through 2021 Applicant found it necessary to purchase water from the City of Liberal to supplement water supplied by Applicant's six wells. The quantity of water that Applicant purchased from the City of Liberal in any year depended on daily production from Applicant's six wells to meet daily demand driven by the number of head of cattle processed at Applicant's Facility. The number of head processed depended in turn on market forces and the supply of livestock available for processing. A graphical annual summary of Applicant's well production and water purchases from the City of Liberal is attached as Schedule A.

The quantity of water that Applicant used at its facility peaked at 1,228,878,600 gallons in year 2017. During year 2017 Applicant purchased 239,268,000 gallons from the City of Liberal. In year 2017 the quantity pumped by Applicant's six wells exceeded the authorized quantity by the amount of 29,588,600 gallons. Had Applicant been able to purchase an additional 29,588,600 gallons of water from the City of Liberal during year 2017, Applicant would not have exceeded the maximum authorized quantity for its six wells. The water purchases from the City of Liberal in year 2017, plus the additional quantity that might have been purchased that same year to avoid exceeding pumping authority, established a baseline requirement for additional quantity at Applicant's facility of 298,445,200 gallons (239,268,000 gallons purchased plus 29,588,600 additional need).

From Dan Brown, Anna Brown and Dean Brown ("Brown Family"), Applicant acquired a deeded term interest in five irrigation water right file numbers: 40543, 41603, 41926, 42943 and 43075¹. There are four irrigation wells that are the authorized points of diversion for the five

¹ The acquisition was made possible by the negotiation of a long-term agreement between Applicant and the Brown Family, by which Applicant will provide the Brown Family with treated wastewater from Applicant's Facility, treated and processed by Applicant's substantial investment in its own wastewater treatment facility. In exchange the Brown Family provided Applicant with water rights to utilize a groundwater source near Applicant's Facility. The wastewater Applicant will provide to the Brown Family would have been discharged miles away into surface waters. Thus, the long-term agreement to exchange wastewater to be used for irrigation, for fresh groundwater to be used to process food at Applicant's facility results in a dual benefit of not increasing consumptive use demands on the groundwater supply, while retaining the economic benefits of both enterprises.

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Water Resources

Received File No's: 40543, 41603, 41926 and 43075

KS Dept Of Agriculture

water rights. Three wells are located in section 15-T34S-R33W and one well is in section 22-T34S-R33W. To use water from the acquired water rights for food processing, KDHE requires Applicant to construct the wells to public water supply standards. Applicant has filed applications with the Division of Water Resources to change the authorized points of diversion for file numbers 40543 and 41603 to one well in section 22-T34S-R33W. Applicant has also filed applications to change the authorized points of diversion for file numbers 41926 and 43075 to one well in section 15-T34S-R33W. Currently, Applicant does not propose to change file number 42943, due to its distance from Applicant's proposed well in section 15.

Applicant has determined that changing the use made of water from irrigation use to industrial use will provide Applicant with an additional annual quantity of 459 MGY, as summarized in Table 1.

Table 1

Water Right No.	Point of Diversion					Rate Gross	Add'l	IRR Quantity (Acre-ft)		IND Quantity (MGY)	Total Quantity	
	Ft N	Ft W	S	T	R			Gross	Additional	Converted ²		
41926	2235	2442	15	34	33	1210	1210	717	717	204.7		
43075	4546	1252	15	34	33	1380	1380	735	331	94.5		
40543	4379	1300	22	34	33	1000	1000	560	560	159.8		
41603	4379	1300	22	34	33	1035	35	560	0	0.0		
							Col. Total	2926	1700	299.2	159.8	459.0

The first 298.45 MGY of the available 459 MGY will be used to replace the maximum demand for water formerly purchased from the City of Liberal, leaving 160.55 MGY available to meet additional future water requirements at Applicant's Facility.

Recent remodeling and expansion projects at Applicant's Facility during year 2022 have created a need for additional water for processing. The remodeling and expansion projects consist of the construction of a new and larger fabrication floor and new product storage area and testing area. Formerly products were stored in trailers, outside of buildings on Applicant's Facility. The larger fabrication floor requires a larger edible rendering area. All the new area will require cleaning and sanitation. The new and remodeled areas to be cleaned are 155,038 square feet. Applicant's historic water accounting indicates the cleaning requirement is 3 gallons per square foot. Cleaning is performed on average 300 days per year. The new remodeling and expansion projects have increased water requirements at Applicant's Facility by 139.53 MGY. The new water requirements will reduce the available fresh water for processing from 160.55 MGY of fresh water to 21.02 MGY that Applicant will need to satisfy future regulatory requirements.

Applicant anticipates new food security and sanitation requirements will be implemented in the future, requiring the use all the remaining 21.02 MGY. The current and anticipated future water requirements at Applicant's Facility justify a need for the entire 459 MGY as a reasonable quantity that can be made available to Applicant from changing the use made of water and place of use of water right file numbers 40543, 41603, 41926 and 43075.

² K.A.R. 5-5-9(a)(1). Seward County change of use factor from irrigation to another use is 87.6%.

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Applicant requests a dual use change that will preserve the existing use of water for irrigation of the currently authorized place of use from the currently authorized irrigation wells. The agreement between Applicant and the Brown Family requires Applicant to allow the Brown Family to use groundwater diverted under right files numbers 40543, 41603, 41926 and 43075 for irrigation, but irrigation use is contingent on treated wastewater becoming unavailable for irrigation due to mechanical or other physical problems that reduce or curtail the delivery of the treated wastewater to the fields, or due to regulatory limitations on the use of the treated wastewater for irrigation that might be imposed by KDHE. Because Applicant's wells must meet public water supply requirements imposed by KDHE, Applicant's public water supply wells cannot be used for irrigation purposes due to the risk of cross-contamination with treated wastewater. The Brown Family's existing irrigation wells must remain authorized as points of diversion for irrigation use, when, if ever, the contingencies mentioned in this paragraph occur and such use must be allowed.

Applicant's Facility provides a market for live beef cattle raised on local ranches, farms and cattle feeding facilities, provides local employment and economic security for thousands of individuals and their families and stabilizes the economies of the City of Liberal, Seward County, surrounding counties and the state of Kansas.

A disruption of processing at Applicant's Facility due to a lack of required water would impact not only the local area and the state of Kansas, but also the entire nation's supply of a nutritious food source. The ripple effect of a single plant shutdown is real, as evidenced by recent history. Applicant's Facility has the capacity to process over 6,000 head of cattle per day, numbers that can significantly impact the national food supply. Cases in point include:

- a. The plant fire at the Tyson Foods plant in Holcomb, Kansas, caused the plant to be shut down for approximately six months during the recent virus pandemic. The major impact the Tyson plant fire had on the cattle markets is well documented. Beef supplies were limited and prices for beef-related products increased significantly.
- b. The JBS USA cybersecurity threat closed several JBS plants, including plants that process beef and beef products. The shut-down was relatively short lived (only a few days), but still had an adverse impact on the cattle market, cattle supplies, and beef prices.
- c. A fire in the rendering plant of JBS USA in Grand Island, Nebraska, threatened to discontinue operations at that location for an extended period of time. Although processing operations at the plant resumed within a day or two, the short-term cattle market reacted unfavorably in terms of potential disruptions in cattle supplies and in beef inventories.

It is important that Applicant's change applications be processed promptly. Applicant respectfully requests to be kept informed of the progress in processing Applicant's proposed changes.

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August 9, 2023

Leslie Ireland
Environmental Specialist
Water Appropriation Program
Kansas Department of Agriculture
Division of Water Resources
1320 Research Park Drive
Manhattan, KS 66502

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AUG 10 2023

KS DEPT OF AGRICULTURE

**RE: Water Right, File Numbers 40,543; 41,603; 41,926; and 43,075
Division of Water Resources Request for Additional Information**

Dear Ms. Ireland:

The Division of Water Resources (DWR) has requested additional information from National Beef regarding the submittal of applications to change the use made of water and place of use under File Numbers 40,543; 41,603; 41,926; and 43,075. With the request, National Beef is asking for additional points of diversion for each water right so that water from each water right may be used for both Irrigation and Public Water Supply purposes.

National Beef understands that an additional point of diversion for a single water right may require the Division of Water Resources to waive the additional well regulation in granting this approval. The additional point of diversion, however, would solve a problem by eliminating a potential source of cross-contamination and allow the water right to be a dual use right, used for both Irrigation on existing farmland owned by the Brown Family, and as an additional Public Water Supply Source to be used by National Beef.

It is National Beef's understanding that current standards of the Kansas Department of Health and Environment (KDHE) for a potable water supply from a dual use well and water right would require National Beef to design some type of air break to ensure that water used for Irrigation cannot back-feed into the water line that would supply potable water to the National Beef plant. Such a design would require the installation of an open tank (or something similar) that would be controlled by a variable frequency drive (VFD) motor controller.

This design is, at the least, both impractical and cost prohibitive. Rising equipment costs and supply chain delays make the installation of a large tank, pump, and VFD system extremely expensive and difficult to manage. The operation of the system in terms of diverting water flow from Irrigation use to Public Water Supply use would be extremely difficult to manage and control. If one of the system operators were to incorrectly open a valve or adjust a control sequence at the wrong time, then Irrigation water could enter the Public Water Supply system and cause a major disruption in operations at the National Beef plant. This is a significant concern since the National Beef plant is a federally inspected

meat packing facility that is operated under the watchful eye of the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS.) Potable water standards must be maintained at all times in order to meet the requirements of these federal agencies, as well as meet the demands and requirements of National Beef's domestic and overseas customers.

A more practical approach to the dual use of these water rights would be to install a second well in the proximity of the existing well, keeping in mind the requirements of the KDHE to maintain a proper separation distance between an Irrigation Well and a Public Water Supply Well. National Beef would propose to construct the second well at least 100 feet from the present well that is being used for Irrigation. This distance would meet KDHE requirements.

In addition, of course, National Beef would install controls that would prevent both the Irrigation Well and the Public Water Supply System well from operating at the same time. These controls would include the ability to provide documentation to both DWR and KDHE that both wells associated with each water right did not operate simultaneously.

Again, understanding that this request for dual use of a water right is different and unique, National Beef welcomes the opportunity to meet with DWR (and KDHE, if required) to further discuss this venture and come to an agreement for the dual use operation of these water rights.

With this letter I am returning the applications to change the water rights, each of which has been modified to make it clear that two wells are requested, one for irrigation and one for potable water supply for industrial food processing purposes. Also enclosed is a check in the amount of \$800.00 in payment of the additional fees for the request to change the point of diversion. If you have any questions or need additional information, please contact me via e-mail at bud.ludwig@nationalbeef.com or call me at (816) 713-8552.

Sincerely,

NATIONAL BEEF PACKING COMPANY, L.L.C.



William A. Ludwig, Jr.
Corporate Environmental Director

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Enclosures

cc: David Kalscheur, National Beef
Jeff Flowers, National Beef
Michael Ramsey; Hope, Mills, Bolin, Collins & Ramsey

SUPPLEMENTAL INFORMATION
TO APPLICATIONS TO CHANGE
USE MADE OF WATER AND PLACE OF USE
TO AUTHORIZE DUAL INDUSTRIAL USE AND IRRIGATION USE

8/10/2023

Water Resources
Received

KS Dept Of Agriculture

Applicant: National Beef Packing Company, LLC

Applicant requires additional quantities of fresh water, plus additional delivery rates, to supply its beef processing plant ("Applicant's Facility") located in Liberal, Kansas.

Currently, six wells supply Applicant's Facility with groundwater under eight water right file numbers: 15745, 30255, 42805, 44607, 44608, 45121, 45182 and 45399. The six wells also are permitted by the Kansas Department of Health and Environment as public water supply wells. Applicant's six wells are authorized to provide a maximum annual quantity of not more than 1,199,290,000 gallons.

During years 2014 through 2021 Applicant found it necessary to purchase water from the City of Liberal to supplement water supplied by Applicant's six wells. The quantity of water that Applicant purchased from the City of Liberal in any year depended on daily production from Applicant's six wells to meet daily demand driven by the number of head of cattle processed at Applicant's Facility. The number of head processed depended in turn on market forces and the supply of livestock available for processing. A graphical annual summary of Applicant's well production and water purchases from the City of Liberal is attached as Schedule A.

The quantity of water that Applicant used at its facility peaked at 1,228,878,600 gallons in year 2017. During year 2017 Applicant purchased 239,268,000 gallons from the City of Liberal. In year 2017 the quantity pumped by Applicant's six wells exceeded the authorized quantity by the amount of 29,588,600 gallons. Had Applicant been able to purchase an additional 29,588,600 gallons of water from the City of Liberal during year 2017, Applicant would not have exceeded the maximum authorized quantity for its six wells. The water purchases from the City of Liberal in year 2017, plus the additional quantity that might have been purchased that same year to avoid exceeding pumping authority, established a baseline requirement for additional quantity at Applicant's facility of 298,445,200 gallons (239,268,000 gallons purchased plus 29,588,600 additional need).

From Dan Brown, Anna Brown and Dean Brown ("Brown Family"), Applicant acquired a deeded term interest in five irrigation water right file numbers: 40543, 41603, 41926, 42943 and 43075¹. There are four irrigation wells that are the authorized points of diversion for the five

¹ The acquisition was made possible by the negotiation of a long-term agreement between Applicant and the Brown Family, by which Applicant will provide the Brown Family with treated wastewater from Applicant's Facility, treated and processed by Applicant's substantial investment in its own wastewater treatment facility. In exchange the Brown Family provided Applicant with water rights to utilize a groundwater source near Applicant's Facility. The wastewater Applicant will provide to the Brown Family would have been discharged miles away into surface waters. Thus, the long-term agreement to exchange wastewater to be used for irrigation, for fresh groundwater to be used to process food at Applicant's facility results in a dual benefit of not increasing consumptive use demands on the groundwater supply, while retaining the economic benefits of both enterprises.

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water rights. Three wells are located in section 15-T34S-R33W and one well is in section 22-T34S-R33W. To use water from the acquired water rights for food processing, KDHE requires Applicant to construct the wells to public water supply standards. Applicant has filed applications with the Division of Water Resources to change the authorized points of diversion for file numbers 40543 and 41603 to one well in section 22-T34S-R33W. Applicant has also filed applications to change the authorized points of diversion for file numbers 41926 and 43075 to one well in section 15-T34S-R33W. Currently, Applicant does not propose to change file number 42943, due to its distance from Applicant's proposed well in section 15.

Applicant has determined that changing the use made of water from irrigation use to industrial use will provide Applicant with an additional annual quantity of 459 MGY, as summarized in Table 1.

8/10/2023

Table 1

Water Right No.	Point of Diversion					Rate Gross	Add'l	IRR Quantity (Acre-ft)		IND Quantity (MGY) Converted ²	Total Quantity	
	Ft N	Ft W	S	T	R			Gross	Additional			
41926	2235	2442	15	34	33	1210	1210	717	717	204.7		
43075	4546	1252	15	34	33	1380	1380	735	331	94.5		
40543	4379	1300	22	34	33	1000	1000	560	560	159.8		
41603	4379	1300	22	34	33	1035	35	560	0	0.0		
							Col. Total	2926	1700	299.2	159.8	459.0

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The first 298.45 MGY of the available 459 MGY will be used to replace the maximum demand for water formerly purchased from the City of Liberal, leaving 160.55 MGY available to meet additional future water requirements at Applicant's Facility.

Recent remodeling and expansion projects at Applicant's Facility during year 2022 have created a need for additional water for processing. The remodeling and expansion projects consist of the construction of a new and larger fabrication floor and new product storage area and testing area. Formerly products were stored in trailers, outside of buildings on Applicant's Facility. The larger fabrication floor requires a larger edible rendering area. All the new area will require cleaning and sanitation. The new and remodeled areas to be cleaned are 155,038 square feet. Applicant's historic water accounting indicates the cleaning requirement is 3 gallons per square foot. Cleaning is performed on average 300 days per year. The new remodeling and expansion projects have increased water requirements at Applicant's Facility by 139.53 MGY. The new water requirements will reduce the available fresh water for processing from 160.55 MGY of fresh water to 21.02 MGY that Applicant will need to satisfy future regulatory requirements.

Applicant anticipates new food security and sanitation requirements will be implemented in the future, requiring the use all the remaining 21.02 MGY. The current and anticipated future water requirements at Applicant's Facility justify a need for the entire 459 MGY as a reasonable quantity that can be made available to Applicant from changing the use made of water and place of use of water right file numbers 40543, 41603, 41926 and 43075.

² K.A.R. 5-5-9(a)(1). Seward County change of use factor from irrigation to another use is 87.6%.

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Applicant requests a dual use change that will preserve the existing use of water for irrigation of the currently authorized place of use from the currently authorized irrigation wells. The agreement between Applicant and the Brown Family requires Applicant to allow the Brown Family to use groundwater diverted under right files numbers 40543, 41603, 41926 and 43075 for irrigation, but irrigation use is contingent on treated wastewater becoming unavailable for irrigation due to mechanical or other physical problems that reduce or curtail the delivery of the treated wastewater to the fields, or due to regulatory limitations on the use of the treated wastewater for irrigation that might be imposed by KDHE. Because Applicant's wells must meet public water supply requirements imposed by KDHE, Applicant's public water supply wells cannot be used for irrigation purposes due to the risk of cross-contamination with treated wastewater. The Brown Family's existing irrigation wells must remain authorized as points of diversion for irrigation use, when, if ever, the contingencies mentioned in this paragraph occur and such use must be allowed.

Applicant's Facility provides a market for live beef cattle raised on local ranches, farms and cattle feeding facilities, provides local employment and economic security for thousands of individuals and their families and stabilizes the economies of the City of Liberal, Seward County, surrounding counties and the state of Kansas.

A disruption of processing at Applicant's Facility due to a lack of required water would impact not only the local area and the state of Kansas, but also the entire nation's supply of a nutritious food source. The ripple effect of a single plant shutdown is real, as evidenced by recent history. Applicant's Facility has the capacity to process over 6,000 head of cattle per day, numbers that can significantly impact the national food supply. Cases in point include:

- a. The plant fire at the Tyson Foods plant in Holcomb, Kansas, caused the plant to be shut down for approximately six months during the recent virus pandemic. The major impact the Tyson plant fire had on the cattle markets is well documented. Beef supplies were limited and prices for beef-related products increased significantly.
- b. The JBS USA cybersecurity threat closed several JBS plants, including plants that process beef and beef products. The shut-down was relatively short lived (only a few days), but still had an adverse impact on the cattle market, cattle supplies, and beef prices.
- c. A fire in the rendering plant of JBS USA in Grand Island, Nebraska, threatened to discontinue operations at that location for an extended period of time. Although processing operations at the plant resumed within a day or two, the short-term cattle market reacted unfavorably in terms of potential disruptions in cattle supplies and in beef inventories.

It is important that Applicant's change applications be processed promptly. Applicant respectfully requests to be kept informed of the progress in processing Applicant's proposed changes.

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