

File No. **50,408** 15. Formation Code: 330 Drainage Basin: BIG BLUE RIVER County: WS Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity MOD ADDL QTY				
MOD DEL ENT	PDIV	Qualifier	S	T	R	ID	'N	'W		Rate gpm	Quantity mgy	Rate gpm	Quantity mgy	Overlap PD Files
√	88279	NE SE NW	29	5	3E	3	3506	2723 (Geo-Ctr)		400	30.2	400	0	NONE
√	88280	NE SE NW	29	5	3E	4	3638	2723 (Batt 1 of 2)						
√	88281	NE SE NW	29	5	3E	5	3373	2723 (Batt 1 of 2)						

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

19. Limitation: 30.2 **MG/yr** at _____ **gpm** (_____ cfs) when combined with file number(s) **40,228; 49,926; and 50,203**
 Limitation: _____ af/yr at _____ gpm (_____ cfs) when combined with file number(s) _____

20. Meter Required? Yes No To be installed by 12/31/2021 Date Acceptable Meter Installed _____

21. Place of Use							NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	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								
√	69286	29	5	3E	2		FEEDLOT (SE)																					7a.	NO	40,228; 49,926; & 50,203
√	14934	34	5	3E	1		FEEDLOT (NE)																					7c.	NO	40,228; 49,926; & 50,203

Comments:

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

TO: Files

DATE: July 22, 2020

FROM: Doug Schemm

RE: Application, File No. 50,408

Hilltop Cattle Company %Travis Bott, has filed the referenced new application to appropriate 30.2 million gallons (93 acre-feet) of groundwater from an existing battery of 2 wells at a rate of 400 gallons per minute for stockwatering use at two feedlots. The wells are located in the Northwest Quarter of Section 29, Township 5 South, Range 3 East, Washington County, within the Big Blue River Drainage Basin. The place of use (2 feedlots) is owned by the applicant and by Bott Cattle Co. Inc.. A representative of the applicant has signed the application form stating they have access to the point of diversion. This battery of wells was discovered by Topeka Field Office staff when completing a Compliance Investigation under File No. 50,203. The applicant was assisted by field office staff in completing and submitting this application to properly authorize this battery of wells.

The feedlot located in the Southeast Quarter of Section 29, is owned by the applicant Hilltop Cattle Company, while the feedlot located in the Northeast Quarter of Section 34 is owned by Bott Cattle Co. Inc. Both feedlots are currently authorized under File Nos. 40,228; 49,926; and 50,203. File No. 40,228 is authorized 9.39 million gallons; File No. 49,926 is authorized 24.8 million gallons (limited to 24.8 million gallons with the senior file); and File No. 50,203 is authorized 30.2 million gallons (limited to 30.2 million gallons with the two senior files). This new application will be limited to 30.2 million gallons when combined with all three senior files, providing 0 additional gallons of water, but will provide flexibility in water sources.

The requested quantity of water of 30.2 million gallons was based on providing an adequate supply of water for 5,000 head of cattle. The applicant provided an estimate for drinking water, as follows: 5,000 head of cattle x 15 gallons per head per day x 365 days = 27.4 million gallons. The additional 2.8 million gallons is for barn cleaning, flushing, and cooling. The requested quantity of water and rate of diversion appear to be reasonable for the intended use.

The applicant identified one domestic well within one-half mile, and a notification letter was sent out during processing of nearby File No. 50,203, and no response of any kind was received. This nearby well owner is a part of the Bott Cattle Co. Inc. and no further notification is required. A review of the WRIS database and aerial photos support this, with no other potential domestic wells (e.g. homes or buildings) within one-half mile of the existing wells. The nearest domestic well is over 1,600 feet away. The point of diversion meets minimum well spacing criteria to all existing domestic wells per the requirements in K.A.R. 5-4-4 for the unconfined Dakota aquifer system, being located over 1,320 feet from the nearest domestic well.

However, the applicant's well under File No. 50,203 is located less than ½ mile from the point of diversion under this pending application, being located approximately 700 feet away. These wells are owned by the same owner, will supply water to the same stockwatering project, and will not be separated or divided in the future. The applicant is experienced in operating these well systems to ensure that the wells do not interfere with each other, by managing pumping rates and quantities, and alternating well usage. Therefore, per K.A.R. 5-4-4, the required minimum well spacing criteria is not necessary to prevent direct impairment in this specific instance, and the proposed well spacing is sufficient to prevent direct impairment and to protect the public interest.

The well under File No. 50,203 showed sandstone was encountered at a very shallow depth of 8 feet below ground surface, and it extended to a depth of 56 feet, where gray shale was encountered. Static water level was 16 feet below ground surface, which is within the sandstone aquifer, indicating the unconfined Dakota aquifer system is the source. This is also consistent with the applicant's senior files, Nos. 40,228 and 49,926 located over one-half mile to the northeast.

To maintain consistency with processing of senior files sourcing this same aquifer, and per the safe yield criteria in K.A.R. 5-3-11, it is imperative to determine the extent of the unconfined aquifer (area of consideration). Wells to the south of this application have little or no sandstone aquifer, while the wells to the north are sourcing the unconfined Dakota aquifer system. Therefore, a portion of the two-mile circle to the south was excluded from the area of consideration (see enclosed map). Therefore, for this application the extent of the unconfined Dakota aquifer system was determined to be 6,421 acres. Based on a potential recharge of 2.6 inches, with 75% available for appropriation, safe yield was determined to be 1,043.47 acre-feet. Existing appropriations total only 92.68 acre-feet, leaving 950.79 acre-feet available for appropriation, and the application complies with safe yield criteria. The only water rights in the entire two-mile circle are Bott Cattle Co. Inc. and the applicant's senior file.

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 a July 20, 2020 e-mail, 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 to authorize this existing battery of wells.

Douglas W. Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Tietsort, Katie [KDA]
Sent: Monday, July 20, 2020 1:30 PM
To: Schemm, Doug [KDA]
Subject: RE: 50,408 Hilltop Cattle

Doug- Please Proceed.

These are low capacity wells that will not interfere with the other wells that all serve the identical exact same place of use.

This will get the groups into compliance since two of their 3 wells failed last year.

Thank you.

Katie Tietsort
Water Commissioner

Katie.Tietsort@ks.gov

785-296-5733

PLEASE NOTE OUR NEW ADDRESS:

Kansas Department of Agriculture

Topeka Field Office

1131 SW Winding Rd, Suite 400

Topeka, KS 66615

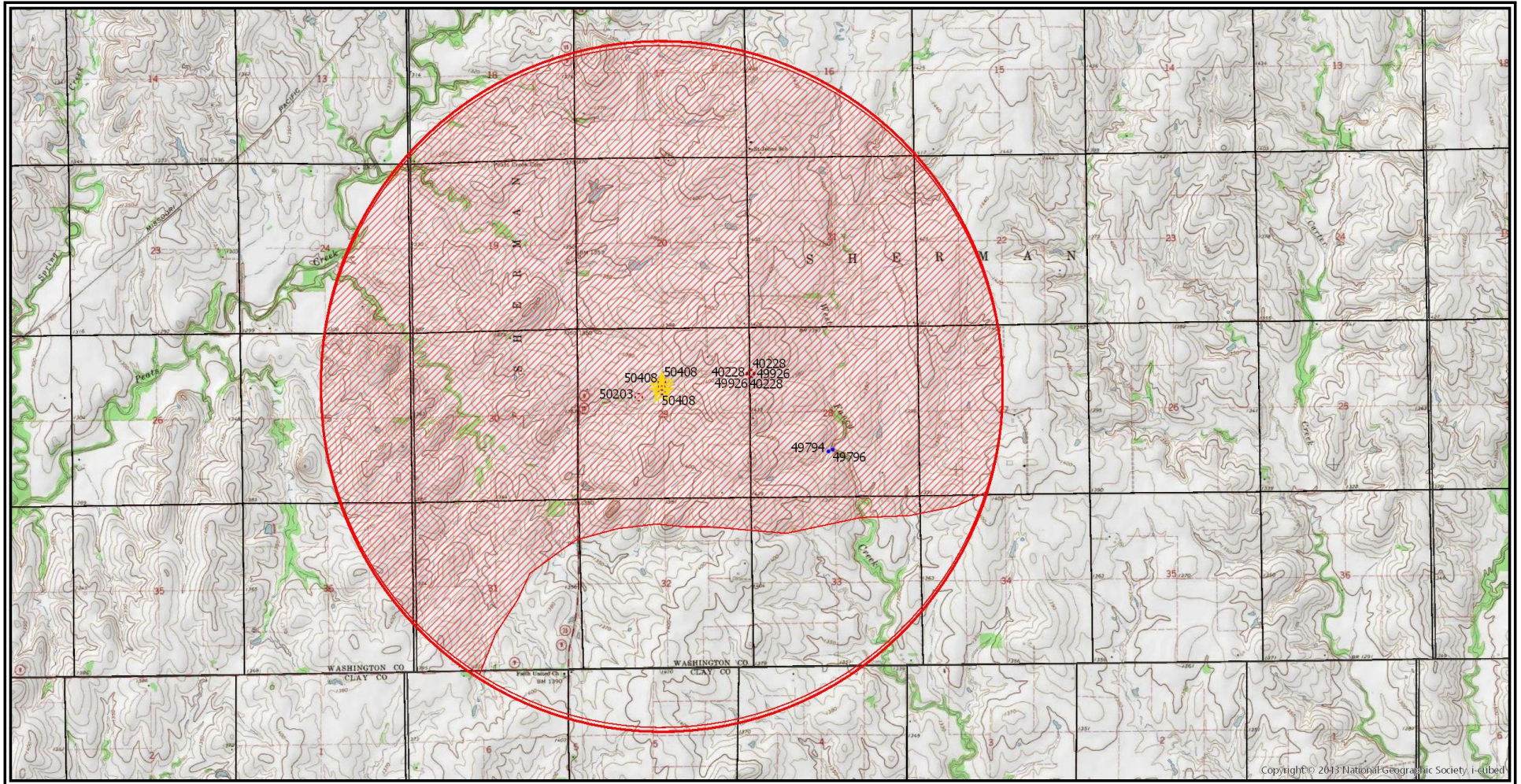
From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Monday, July 13, 2020 10:57 AM
To: Tietsort, Katie [KDA] <Katie.Tietsort@ks.gov>
Subject: 50,408 Hilltop Cattle

Doesn't meet spacing to other STK well owned by the applicant, but reduced spacing will not cause any impairment.

Please review,

Doug

Safe Yield Report Sheet
Water Right- A5040800
Point of Diversion in 29-05S-03E
Footages from SE corner- 3,506 feet North 2,723 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 1,043.47 AF.

Total prior appropriations in the circle is 185.36 AF. - 92.68 AF = 92.68 AF

Total quantity of water available for appropriation is ~~858.10 AF~~ --

950.79 AF

Application File No. 50,408 - Requesting 92.68 AF
Meets Safe Yield
dws/dwr 7/13/20

Safe Yield Variables

The area used for the analysis is set at 6,421 acres.

The potential annual recharge at the circle center is estimated to be 2.6 inches.

The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 13-JUL-2020 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 4 water rights and 7 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 40228 00	STK	NK	G			CW	NW	3875	5245	28	05	03E	3	WR	28.82	28.82		
Same	STK	NK	G			CW	NW	3875	5238	28	05	03E	2	WR				
Same	STK	NK	G			CW	NW	3875	5241	28	05	03E	1	WR				
A 49926 00	STK	KE	G			CW	NW	3875	5245	28	05	03E	3	WR	76.11	47.29		
Same	STK	KE	G			CW	NW	3875	5238	28	05	03E	2	WR				
Same	STK	KE	G			CW	NW	3875	5241	28	05	03E	1	WR				
A 50203 00	STK	GY	G		SW	SE	NW	3196	3435	29	05	03E	2	WR	92.68	16.57 ✓		
A 50408 00	STK	AY	G		NE	SE	NW	3506	2723	29	05	03E	3	WR	92.68	92.68		
Same	STK	AY	G		NE	SE	NW	3638	2723	29	05	03E	4	WR				
Same	STK	AY	G		NE	SE	NW	3373	2723	29	05	03E	5	WR				

Limitations

File Number	Seq Num	Limitations
A 49926 00	1	24.8 MGY COM/W #40228
A 50203 00	92.68 AF 1	30.2 MGY COM/W #40228 & #49926 ✓

THE STATE OF KANSAS



KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Christopher W. Beightel, Acting 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. 50,408** of the applicant

**HILLTOP CATTLE CO
TRAVIS BOTT
1740 3RD RD
LINN KS 66953**

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 6, 2020**.
2. That the water sought to be appropriated shall be used for stockwatering use at cattle feedlots located in the Southeast Quarter (SE $\frac{1}{4}$) of Section 29, and the Northeast Quarter (NE $\frac{1}{4}$) of Section 34, all in Township 5 South, Range 3 East, Washington County, Kansas.
3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of two (2) wells with a geographic center located in the Northeast Quarter of the Southeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 29, more particularly described as being near a point 3,506 feet North and 2,723 feet West of the Southeast corner of said section, in Township 5 South, Range 3 East, Washington County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That the appropriation sought shall be limited to a maximum diversion rate not in excess of **400 gallons per minute (0.89 c.f.s.)** and to a quantity not to exceed **30.2 million gallons** (93 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, 2021** 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, 2025** 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 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 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).

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. 82a-703c for the source of supply to which this water right applies.

18. That the quantity of water approved under this permit is further limited to the quantity which combined with Water Right, File No. 40,228 and Appropriation of Water, File Nos. 49,926 and 50,203, will provide a **total not to exceed 30.2 million gallons** of water per calendar year for stockwatering use at the place of use described herein.

Ordered this 29 day of September, 2020, 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)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 29 day of September, 2020, by Lane P. Letourneau, P.G., Program Manager, Division of Water Resources, Kansas Department of Agriculture.



Ashlee Freeman

Notary Public

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

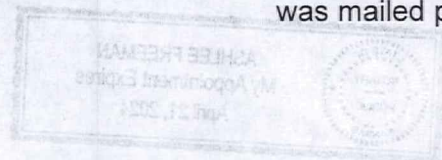
On this _____ day of _____, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,408, dated _____ was mailed postage prepaid, first class, US mail to the following:

HILLTOP CATTLE CO
TRAVIS BOTT
1740 3RD RD
LINN KS 66953

With photocopies to:

BOTT CATTLE CO INC
1663 1ST RD
PALMER KS 66962

Topeka Field Office



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

October 6, 2020

HILLTOP CATTLE CO
% TRAVIS BOTT
1740 3RD RD
LINN KS 66953

RE: Appropriation of Water, File No. 50,408

Dear Mr. Bott:

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 Application Unit Supervisor
Division of Water Resources

KAB:dws
Enclosure(s)

pc: Topeka Field Office
Bott Cattle Co. Inc.

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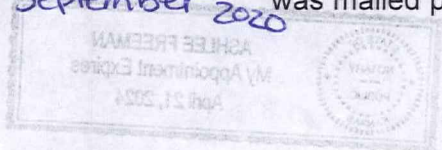
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If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either 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 October, 2020, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,408, dated 29 September 2020 was mailed postage prepaid, first class, US mail to the following:



HILLTOP CATTLE CO
TRAVIS BOTT
1740 3RD RD
LINN KS 66953

With photocopies to:

BOTT CATTLE CO INC
1663 1ST RD
PALMER KS 66962

Topeka Field Office

Ashlee Freeman

Division of Water Resources