

File No. **50,694** 15. Formation Code: **330** Drainage Basin: **Solomon River** County: **OT** Special Use: Stream:

16. Points of Diversion										17. Rate and Quantity						
BATTERY # 2341										Authorized		Additional				
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Rate gpm	Quantity af	Rate gpm	Quantity af	Overlap PD Files	
MOD				89186	NW NW SW	16	9S	2W	6	2345	4955	800	230	800	230	none
(GEO)																
ENT				new	NW NW SW	16	9S	2W	new	2345	4950	90198				
ENT				new	NW NW SW	16	9S	2W	new	2345	4960	90199				
ENT				new	NW NW SW	16	9S	2W	new	2340	4955	90200				
ENT				new	NW NW SW	16	9S	2W	new	2350	4955	90201				

18. Storage: Rate _____ NF Quantity _____ ac/ft Additional Rate _____ NF Additional Quantity _____ 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? **x Yes** No To be installed by _____ 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						
CHK				70680	16	9S	2W	2								15	35	40	18					108	7b	no	none		
CHK				70681	17	9S	2W	1																40	29	69	7b	no	none

Comments:

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

TO: Files

DATE: March 1, 2023

FROM: Kris Neuhauser

RE: Application, File No. 50,694

Robert Cott has filed the above referenced new application to appropriate 230 acre-feet of groundwater at a diversion rate of 800 gallons per minute for irrigation use from a battery of four (4) wells, with a geocenter located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 16, Township 9 South, Range 2 West, Ottawa County, Kansas.

The place of use is entirely owned by Cott Farms LLC, which is comprised of 177 acres in the Southwest Quarter (SW $\frac{1}{4}$) of Section 16, and the Southeast Quarter of Section 17, both in Township 9 South, Range 2 West, Ottawa County, Kansas. The requested quantity of 230 acre-feet is the maximum allowable to irrigate the proposed 177 acres (1.3 Acre-Feet per acre allowed in Ottawa County). There are no overlaps in point of diversion or place of use.

Based on the test hole log provided, and other logs in the area, the source of supply appears to be unconfined Dakota aquifer system.

Safe yield was determined by the extent of the unconfined aquifer within a two-mile radius of the point of diversion. Evaluation of the area of consideration included the extent of the unconfined aquifer, which provided an area of consideration of 8,042 acres. With a potential annual recharge of 2.6 inches, and 75% of recharge available for appropriation, safe yield was determined to be 1,306.9 acre-feet. Existing water rights have appropriated 561.60 acre-feet, providing a difference of 745.3 acre-feet available for appropriation, and the application requesting 230 acre-feet complies with safe yield.

There are no wells indicated within one-half mile of the proposed point of diversion. A review of aerial photograph and the WWC-5 database reinforces this statement. Therefore, no nearby letters were required. The closest non-domestic well (battery) is authorized by Appropriation of Water, File No. 49,122, which is also owned by the applicant. The geocenter of said battery is roughly 0.6 mile away. The closest domestic well is over a mile away. The point of diversion complies with well spacing criteria for the unconfined Dakota aquifer system to both domestic and non-domestic wells.

Initially the proposed point of diversion was further East, sitting roughly 0.28 mile away from File No. 49,122. In discussions with DWR Headquarters staff and Stockton Field Office staff, it was decided that 0.5 mile spacing should maintained, if this application was to be approved. Mr. Cott was notified of the decision. He explained that another test hole was drilled further West that could meet spacing requirements. The test log was submitted and spacing was determined to be adequate. Mr. Cott agreed to this updated location in a text conversation on March 1, 2023.

In accordance with K.S.A. 82a-706c, the Chief Engineer retains full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time. Water flowmeter requirements are further described in K.A.R. 5-1-4 through K.A.R. 5-1-12. If any chemical or foreign substance is injected into the water pumped under this permit, a check valve will also need to be installed.

In an email conversation on March 1, 2023, Kelly Stewart, Water Commissioner of the Stockton Field Office, recommended approval of the referenced application.

Based on the above discussion, safe yield criteria is met and approval of the application should not impair senior water rights nor prejudicially or unreasonably affect the public interest. Therefore, it is recommended that the referenced application be approved.

A handwritten signature in black ink, appearing to read "Kris Neuhauser". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kris Neuhauser
New Applications Lead
Water Appropriation Program

From: Stewart, Kelly [KDA]
Sent: Wed 3/1/2023 12:58 PM
To: Neuhauser, Kris [KDA];Billinger, Mark [KDA]
Subject: RE: 50694

Yes, if it meets spacing, let's move forward on it. Thanks.

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Wednesday, March 1, 2023 12:03 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: RE: 50694

Probably should attach the jpeg eh.

From: Neuhauser, Kris [KDA]
Sent: Wednesday, March 1, 2023 12:02 PM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: RE: 50694

Robert has another test hole where the yellow star is, 0.6 mile away from 49122. Doesn't add any other water rights into the SY area of consideration either. Meets spacing. He said if it works for us let's go with that location.

Should I go ahead and proceed with approval?

Kris

From: Neuhauser, Kris [KDA]
Sent: Tuesday, February 21, 2023 9:18 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: RE: 50694

Sounds like a plan, I'll let you know what we figure out. Thanks!

From: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Sent: Tuesday, February 21, 2023 9:10 AM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: RE: 50694

Yes, and if he does that, we'd recommend approval.

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>
Sent: Tuesday, February 21, 2023 8:55 AM
To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: RE: 50694

Correct, calling it unconfined. I believe he can move far enough west to get that .5 mile spacing. Shall I let him know that he'll need to get that spacing for approval?

Kris

From: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>
Sent: Tuesday, February 21, 2023 8:14 AM
To: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>
Subject: RE: 50694

Kris,

So are you calling this one unconfined? If you are, then I do think he should meet .5 mile spacing from 49,122.

Kelly

From: Neuhauser, Kris [KDA] <Kris.Neuhauser@ks.gov>

Sent: Monday, February 20, 2023 12:13 PM

To: Stewart, Kelly [KDA] <Kelly.Stewart@ks.gov>; Billinger, Mark [KDA] <Mark.Billinger@ks.gov>

Subject: 50694

Kelly and Mark,

Kristen, Ken, and I have been meeting every few weeks on Dakota apps. Been having some good discussions.

This one is slightly odd, but we came to the conclusion we want to use the full two-mile circle for SY. 50627 on the western edge of the circle is considered unconfined, however, Doug called 49122 confined. 49122 is owned by Robert Cott as well. We took the approach of going with what we think is correct based off the well log and location, vs. staying consistent with what Doug did in the past. If you guys are comfortable with how we ran SY, it easily passes. The only issue is spacing to 49122. The geocenter of that battery is 0.28 mile away. We were leaning towards making Robert move his PD to try and meet 0.5 mile unconfined Dakota spacing.

Let me know your thoughts. We can set up a Teams call if you'd like to discuss it further.

Kris Neuhauser

New Applications Lead

Kansas Department of Agriculture, Division of Water Resources

Phone: 785-564-6643

Analysis Results

The selected PD is in an area OPEN to new appropriations.

The safe yield based on the variables listed below is 1,306.90 AF.

Total prior appropriations in the circle is 791.60 AF. **- 230 AF = 561.60 AF**

Total quantity of water available for appropriation is ~~515.30 AF.~~ **745.3 AF AVAILABLE***

Safe Yield Variables

The area used for the analysis is set at 8,042 acres.

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

The percent of recharge available for appropriation is 75%.

Authorized Quantity values are as of 20-FEB-2023 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 12 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 15839 00	IRR	NK	G			NC	E2	2572	1252	29	09	02W	1	WR	119.00	119.00	195.00	195.00
A 49122 00	IRR	LR	G			SE	NW	1350	1923	16	09	02W	1	WR	286.00	286.00	219.00	219.00
Same	IRR	LR	G			SE	NW	1550	1923	16	09	02W	2	WR				
Same	IRR	LR	G			NE	SW	1150	1923	16	09	02W	3	WR				
Same	IRR	LR	G			SW	NW	1350	2123	16	09	02W	4	WR				
Same	IRR	LR	G			SE	NW	1350	1723	16	09	02W	5	WR				
A 50627 00	IRR	GY	G			SE	NE	1597	2899	18	09	02W	1	WR	156.60	156.60	120.50	120.50
Same	IRR	GY	G			NE	SE	1297	2899	18	09	02W	2	WR				
Same	IRR	GY	G			SE	NE	1447	2899	18	09	02W	3	WR				
Same	IRR	GY	G			SE	NE	1747	2899	18	09	02W	4	WR				
Same	IRR	GY	G			SE	NE	1897	2899	18	09	02W	5	WR				
A 50694 00	IRR	AY	G			SE	SE	502	3153	16	09	02W	6	WR	230.00	230.00	177.00	177.00

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. 50,694** of the applicant

**ROBERT J COTT TRUST
1977 INDIAN RD
CLAY CENTER, KS 67432**

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 **December 16, 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	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTAL
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
16	9S	2W									15	35	40	18					108
17	9S	2W															40	29	69

3. That the authorized source from which the appropriation shall be made is groundwater, to be withdrawn by means of a battery of four (4) wells, with a geographical center located in the Northwest Quarter of the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 16, more particularly described as being near a point 2,345 feet North and 4,955 feet West of the Southeast corner of said section, in Township 9 South, Range 2 West, Ottawa 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 **800 gallons per minute (1.78 c.f.s.)** and to a quantity not to exceed **230 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, 2024** 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, 2028** 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 acceptable water flow meters shall be installed and maintained on the diversion works authorized by this permit in accordance with Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. These water flow meters 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 this permit is further limited such that all wells shall be located within a three hundred (300) foot radius circle, in the same local source of supply, and shall supply water to a common distribution system.

Ordered this 27th day of March, 2023, in Manhattan, Riley County, Kansas.

Lane P. Letourneau

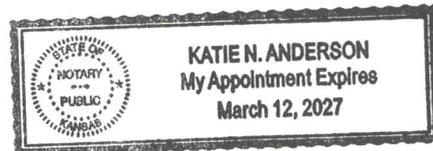
Lane P. Letourneau, P.G.
Water Appropriation Program Manager
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 27th day of March, 2023, by Lane P. Letourneau, P.G., Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.

Katie N. Anderson

Notary Public



1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

March 29, 2023

ROBERT J COTT TRUST
1977 INDIAN RD
CLAY CENTER, KS 67432

RE: Appropriation of Water, File No. 50,694

Dear Mr. Cott:

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 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 Stockton Field Office at 785-425-6787. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Applications and Changes Supervisor
Division of Water Resources

KAB: kjn
Enclosure(s)

pc: Stockton 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 request an evidentiary hearing before the Chief Engineer, or 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 Division, 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 review 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 29th day of March, 2023, I hereby certify that the foregoing Approval of Application and Permit to Proceed, File No. 50,694, dated March 27, 23 was mailed postage prepaid, first class, US mail to the following:

ROBERT J COTT TRUST
1977 INDIAN RD
CLAY CENTER, KS 67432

With photocopies to:

Stockton Field Office



Division of Water Resources