

File No. **50,434** 15. Formation Code: Drainage Basin: Neosho River County: **NO** Special Use: Stream: BROGAN CREEK TRIB 2

16. Points of Diversion										17. Rate and Quantity						
MOD	DEL	ENT	PDIV	Qualifier	S	T	R	ID	'N	'W	Authorized		Additional		Overlap PD Files	
											Rate gpm	Quantity af	Rate gpm	Quantity af		
√				88376	SE SW SW	28	29	21E	1	47	4372	0	0	0	0	NONE
Pd comment: STRUCTURES PERMIT #LNO-0163																

18. Storage: Rate _____ NF Quantity **279** ac/ft Additional Rate _____ NF Additional Quantity **279** 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 _____ Date Acceptable Meter Installed _____

MOD	DEL	ENT	PUSE	S	T	R	ID	NE¼				NW¼				SW¼				SE¼				Total	Owner	Chg? NO	Overlap Files
								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	70093	28	29	21E	1			WILDLIFE MARSH (SW)					WILDLIFE MARSH - UP TO 98 ACRES IN SURFACE AREA (SW 1/4)										7a.	NO	NONE		

Comments:

KJN 1/12/2021*

1/12/2021
 KAB

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

TO: Files

DATE: December 22, 2020

FROM: Doug Schemm

RE: Application, File No. 50,434

Scott Cuthbertson has filed the above-referenced application to appropriate 279 acre-feet of surface water from natural flows of Brogan Creek Trib 2 within the Neosho River basin, for recreational use in a wildlife marsh. As typical for these types of projects, the surface water will be collected via natural flows (especially during flood events). The marsh is located in the Southwest Quarter of Section 28, Township 29 South, Range 21 East, in Neosho County, Kansas. The point of diversion represents one water control structure located at the point where the tributary stream leaves the applicant's property. This project is being permitted under Structures Program File No. LNO-0163. The marsh is located adjacent to the Neosho State Waterfowl Management Area. The applicant has signed the application stating he has access to the point of diversion. There are no overlapping files in point of diversion or place of use.

The Recreational Use Supplemental sheet notes that the surface area of the marsh covers 98 acres. Filled to a depth of 2.5 feet would equal 245 acre-feet. One year of evaporation (4" per year) is calculated by 98 acres x 4"/12= 34 acre-feet, bringing the total water quantity to 279 acre-feet.

Upstream and downstream landowners were notified by letter dated October 30, 2020. A telephone call was received from one nearby owner who asked general questions about the application but had no specific concerns. I assured him that the applicant could not access property he did not own, or back-up water onto adjacent properties. The nearest pump site (File No. 8,358 owned by KDWP&T) is located over 3,200 feet downstream, directly on Brogan Creek, and would not be impacted by this natural flow collector. The Cottonwood and Neosho River Water Assurance District No. 3 was also notified of the application and had no response.

The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) has confirmed that there are **no** NRCS easements on this property (See December 2, 2020 e-mail from Lynn Thurlow). This is a critical determination because any property that has an NRCS easement must complete a Compatible Use Agreement (CUA) application for water level management, and ultimately have it approved.

For wetland projects such as this the water levels are typically maintained only between October 1 and April 1 of each year, and then natural vegetation will be allowed to grow in the dry pool during the remaining time. A flow meter is not practical and should not be required as a condition of the approval of this application. The applicant will be required to maintain records from which the amount of water actually diverted may be readily determined. This is consistent with permits granted for similar types of natural flow collector projects.

The applicant has submitted a signed and notarized Minimum Desirable Streamflow form acknowledging that there may be times when diversion of water will not be allowed.

In a December 14, 2020 discussion, Katie Tietsort, Water Commissioner, Topeka Field Office, recommended that the referenced application be approved. Based upon the above discussion, the area is open to new applications, the application meets all rules and regulations, the project has the necessary Structures Permit, and there is no indication that the proposed beneficial use of water will impair existing water rights, it is recommended that the referenced application be approved.

Doug Schemm
Environmental Scientist
Topeka Field Office

Schemm, Doug [KDA]

From: Thurlow, Lynn - NRCS, Salina, KS <lynn.thurlow@usda.gov>
Sent: Wednesday, December 2, 2020 3:18 PM
To: Schemm, Doug [KDA]
Cc: Masenthin, Roger - NRCS, Salina, KS
Subject: RE: New Marsh Project - Neosho County

EXTERNAL: This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

That one is cleat too.

Lynn Thurlow
Soil Conservationist
Natural Resources Conservation Service
760 South Broadway
Salina, Kansas 67401
785-823-4548

From: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Sent: Wednesday, December 2, 2020 3:01 PM
To: Thurlow, Lynn - NRCS, Salina, KS <lynn.thurlow@usda.gov>
Subject: FW: New Marsh Project - Neosho County

Hello Lynn,
This was the first e-mail.
Thanks, Doug

From: Schemm, Doug [KDA]
Sent: Tuesday, November 17, 2020 3:30 PM
To: 'Thurlow, Lynn - NRCS, Salina, KS' <Lynn.Thurlow@ks.usda.gov>
Cc: Masenthin, Roger - NRCS, Salina, KS <roger.masenthin@ks.usda.gov>
Subject: New Marsh Project - Neosho County

Good Afternoon,
I am checking to see if there are any NRCS easements or agreements for a new marsh project located in the SE Quarter of Section 28, T29S, R21E in Neosho County, under the name Scott Cuthbertson.
Thank you,
Doug

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File Number      Use ST SR
> KANSAS DEPT OF WILDLIFE PARKS & TOURISM
> JAMES SCHNEIDER (TOP STAGE LEVELS)
> 512 SE 25TH AVE
> PRATT KS 67124
>-----
> DAVID M JENKINS
>
> 505 S DREHER
> WEIR KS 66781
>-----
> KANSAS DEPT OF WILDLIFE PARKS & TOURISM
> JAMES SCHNEIDER (TOP STAGE LEVELS)
> 512 SE 25TH AVE
> PRATT KS 67124
>-----
> DAVID M JENKINS
>
> 505 S DREHER
> WEIR KS 66781
>-----
> WESTERN LANDSCAPE
> WATER RIGHTS ACCOUNT
> PO BOX 128
> SAINT PAUL KS 66771
>-----
> DAVID M JENKINS
>
> 505 S DREHER
> WEIR KS 66781
>-----
> WESTERN LANDSCAPE
> WATER RIGHTS ACCOUNT
> PO BOX 128
> SAINT PAUL KS 66771
>-----
> NICK SMITH
>
> 528 WASHINGTON
> SAINT PAUL KS 66771
>-----
> NICK SMITH
>
> 528 WASHINGTON
> SAINT PAUL KS 66771
>-----
> F J LAFORGE FARM LLC
>
> 22155 70TH RD
> SAINT PAUL KS 66771
>-----
> KANSAS DEPT OF WILDLIFE PARKS & TOURISM
> JAMES SCHNEIDER (TOP ACTIVE DIVERSIONS)
> 512 SE 25TH AVE
> PRATT KS 67124
>-----
> DAVID M JENKINS
>
> 505 S DREHER
> WEIR KS 66781
>-----
> KANSAS DEPT OF WILDLIFE PARKS & TOURISM
> JAMES SCHNEIDER (TOP ACTIVE DIVERSIONS)
> 512 SE 25TH AVE
> PRATT KS 67124
>-----
> SCOTT CUTHBERTSON
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>
> 649 W 590TH AVE
> GIRARD KS 66743
>-----

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From: Schemm, Doug [KDA]
Sent: Tue 12/22/2020 9:22 AM
To: Warren, Chris [KDA]
Cc: Baum, Kristen [KDA]
Subject: RE: Water Right for LNO-0163 (Scott Cuthbertson)

Hello Chris,
Our number for this File is 50,434, and it is pending final review in HQ.
Doug

From: Warren, Chris [KDA]
Sent: Wednesday, September 9, 2020 1:17 PM
To: Schemm, Doug [KDA] <Doug.Schemm@ks.gov>
Subject: Water Right for LNO-0163 (Scott Cuthbertson)

Hi Doug,

I'm wrapping up my review today and I was told you are working on the WR. It is located in the SW ¼ of 28-29-21E. Where are you at in your review and what is your number? Thanks.

- Chris

Chris R. Warren
Water Structure Program- Permits Team
Kansas Dept of Agriculture
Division of Water Resources
1131 SW Winding Rd Ste 400
Topeka KS 66615
(785) 296-0501

NEW E-MAIL ADDRESS: chris.warren@ks.gov
<https://agriculture.ks.gov/divisions-programs/dwr/stream-and-floodplain-permits>

Our applications have changed. Please visit our website to obtain them for new projects at:
<http://agriculture.ks.gov/divisions-programs/dwr/stream-and-floodplain-permits>

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. 50,434** of the applicant

**SCOTT CUTHBERTSON
649 W 590TH AVE
GIRARD KS 66743**

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 **September 1, 2020**.
2. That the water sought to be appropriated shall be used for recreational purposes in a wildlife marsh up to 98 acres in surface area, located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 28, Township 29 South, Range 21 East, Neosho County, Kansas.
3. That the appropriation sought shall be limited to all natural flows of an unnamed tributary to Brogan Creek, designated in the office of the Chief Engineer as Brogan Creek Trib 2 (Neosho), not needed to satisfy all vested rights and prior appropriation rights, to be stored to a maximum extent of **279 acre-feet** per calendar year in a wildlife marsh created by one (1) water control structure located in the Southeast Quarter of the Southwest Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 28, more particularly described as being near a point 47 feet North and 4,372 feet West of the Southeast corner of said section, in Township 29 South, Range 21 East, Neosho County, Kansas, located substantially as shown on the topographic map accompanying the application.
4. That the structure creating the above referenced wildlife marsh has been assigned Division of Water Resources Structures Permit No. LNO-0163.
5. That installation of works for diversion of water shall be completed on or before **December 31, 2022** 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.
6. That the proposed appropriation shall be perfected by the actual application of water to the proposed beneficial use on or before **December 31, 2026** 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.

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

January 21, 2021

SCOTT CUTHBERTSON
649 W 590TH AVE
GIRARD KS 66743

RE: Appropriation of Water, File No. 50,434

Dear Mr. Cuthbertson:

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 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 Applications and Changes Supervisor
Division of Water Resources

KAB: dws
Enclosure(s)

pc: Topeka Field Office

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may:

- 1) request an evidentiary hearing before the Chief Engineer, or
- 2) request administrative review by the Secretary of Agriculture.

Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary. To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Section, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for hearing may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX (785) 564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

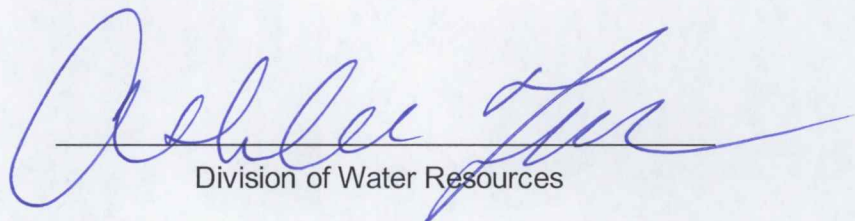
CERTIFICATE OF SERVICE

On this 21 day of January, 2021, I hereby certify that the foregoing Approval of Application, File No. 50,434, dated 15 January was mailed postage prepaid, first class, US mail to the following:

SCOTT CUTHBERTSON
649 W 590TH AVE
GIRARD KS 66743

With photocopies to:

Topeka Field Office


Division of Water Resources