

THE STATE



OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Joshua Svaty, Acting Secretary of Agriculture

DIVISION OF WATER RESOURCES
David W. Barfield, Chief Engineer

**BEFORE THE KANSAS DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES**

IN THE MATTER OF
«FIRST_NAME» «LAST_NAME»

File No(s). «FILE_NO»

**ORDER REGARDING INSTALLATION OF WATER FLOWMETERS
IN THE ELK RIVER BASIN**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, under authority of Kansas Statutes Annotated (K.S.A.) 82a-701 *et seq.*, after due consideration, hereby makes the following Findings and Order:

FINDINGS OF FACT

1. Installation of totalizing water flowmeters on all surface water and groundwater points of diversion located within the Elk River Basin, with the exception of those points of diversion used solely for domestic purposes or authorized by temporary permits, will provide accurate water use data to enable the Chief Engineer to manage the water resources of the State, and will enable holders of water rights to report their water use accurately and in a timely manner, as required by K.S.A. 82a-732.
2. Installation of totalizing water flowmeters on all surface water and groundwater points of diversion located within the Elk River Basin, with the exception of those points of diversion used solely for domestic purposes or authorized by temporary permits, will implement elements of the Kansas Water Plan, which recommends the installation of water flowmeters on all non-domestic points of diversion by the end of calendar year 2015.
3. The point(s) of diversion authorized by the Water Right(s), Appropriation(s) of Water or Term Permit(s) identified above is/are within the Elk River Basin and is/are not used solely for domestic purposes or authorized by a temporary permit(s).

CONCLUSIONS OF LAW

4. The Chief Engineer is required to control, conserve, regulate, allot, and aid in the distribution of the water resources of the State pursuant to K.S.A. 82a-706.
5. The Chief Engineer is authorized, pursuant to K.S.A. 82a-706c, to require the installation of water flowmeters and has adopted minimum specifications for such meters. K.S.A. 82a-706c also authorizes the Chief Engineer to require water users to report the reading of such meters at reasonable intervals.

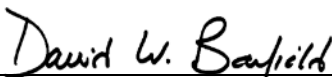
ORDER

NOW, THEREFORE, it is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture:

6. That the owner of the Water Right(s), Appropriation(s) of Water or Term Permit(s) identified in this order shall install a totalizing water flowmeter which meets or exceeds specifications adopted by the Chief Engineer on each authorized point of diversion no later than **June 1, 2010**.
7. The totalizing water flowmeter shall be maintained in operating condition satisfactory to the Chief Engineer as set forth in K.A.R. 5-1-8.

8. The owner of the Water Right(s), Appropriation(s) of Water or Term Permit(s) shall notify the Chief Engineer, in writing, within 30 days of completion of the meter installation required under this order. Such notice shall be provided on a Notice of Completion of Diversion Works and/or Report of Flowmeter Installation form obtained from the Division of Water Resources.
9. If a water flowmeter was installed on any point of diversion included within this order prior to the date of this order, the owner shall notify the Chief Engineer, in writing, by **March 1, 2010**. Such notice shall be provided on a Notice of Completion of Diversion Works and/or Report of Flowmeter Installation form obtained from the Division of Water Resources. Any water flowmeter installed prior to this order, installed according to specifications at the time of the installation and maintained in accordance with those specifications, shall be considered in compliance with this order unless the meter's accuracy is in question.
10. The owner of the Water Right(s), Appropriation(s) of Water or Term Permit(s) shall report on the annual water use report, pursuant to K.S.A. 82a-732 and K.A.R. 5-3-5e, by March 1 following the end of the calendar year in which the meter was installed, the following information:
 - A) Usage for the portion of the year in which the diversion was not metered, and
 - B) Beginning and ending meter readings for the portion of the year the diversion was metered.
 The owner shall report meter readings each subsequent year on the annual water use report thereafter.
11. The conditions of this order requiring installation, maintenance and use of water flowmeters shall become conditions of the Water Right(s), Appropriation of Water or Term Permit(s) identified in this order.
12. This is a final order of the Chief Engineer. Any appeal of this order must be made within 30 days to a Kansas court of competent jurisdiction, such as the District Court of Shawnee County, pursuant to the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* The agency officer who will receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture is H. David Starkey, Chief Legal Counsel, Kansas Department of Agriculture, Legal Section, 109 SW 9th Street, 4th Floor, Topeka, KS, 66612.
13. This order contains terms, conditions, and limitations imposed by the Chief Engineer on the referenced Water Rights(s), Appropriation(s) of Water or Term Permit(s). Failure to comply with the provisions of this order may result in civil penalties of up to \$1000 per day of violation and/or the modification or suspension of the water right or use of water under this water right or appropriation of water permit pursuant to K.S.A. 82a-737.
14. The Chief Engineer specifically retains jurisdiction in this matter to make such changes, additions, or deletions to this order, as he deems necessary in the public interest.

Dated at Topeka, Kansas, this 2nd day of November, 2009.



 David W. Barfield, P.E.
 Chief Engineer

Certificate of Service

A copy of the foregoing Order was sent by First Class mail service this 2nd day of November, 2009, to the following:

«FIRST_NAME» «LAST_NAME»
 «ADDRESS_LINE_1»
 «ADDRESS_LINE_2»
 «CITY_____ST» «ZIP_CODE»



 Cathy Darnall

November 2, 2009

NAME
ADDRESS
STATE

Re: File No(s).

Dear Sir/Madam:

Enclosed is an Order requiring that the owner of the point(s) of diversion authorized under the file numbers shown above install water flowmeters on the authorized point(s) of diversion by June 1, 2010.

This Order requires your immediate attention. Please read it very carefully, as it affects the use of the point(s) of diversion and sets forth deadlines you must meet in order to preserve your legal rights. This is the only notice you will receive prior to the deadline for installation of water flow meters.

The Chief Engineer is requiring the installation of water flowmeters on all points of diversion within the Elk River Basin. The purpose of requiring the installation of water flowmeters is to provide accurate water use data to enable the Chief Engineer to manage the water resources of the State within the Elk River Basin and to meet Kansas Water Plan recommendation to have water flowmeters installed on all diversions by 2015.

The deadline for installing water flowmeters will be enforced. Enforcement may include civil penalties and/or modification or suspension of the water right or use of water under this Water Right, Appropriation of Water or Term Permit. Any request for an extension of time to install the required water flowmeter(s) must be made in writing on a form provided for that purpose no later than June 1, 2010, and must state compelling reasons why additional time is needed. You may obtain an extension request form by contacting the Topeka Field Office.

Please visit the website for the Elk River Meter Order at <http://www.ksda.gov/appropriation/content/274> for a copy of the Chief Engineer's specifications for the water flowmeters, a partial list of meters that have been found to be acceptable if installed and maintained correctly, and a "Notice of Completion of Diversion Works and/or Report of Flowmeter Installation" form. A separate Notice of Completion must be filled out for each flowmeter that is installed. The Notice of Completion must be submitted within 30 days after completion of installation of the required water flowmeter to the Topeka Field Office at the following address:

Division of Water Resources
Topeka Field Office
109 S.W. 9th Street, 1st Floor
Topeka, Kansas 66612-2216

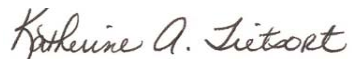
If a water flowmeter currently is installed, the Notice of Completion form must be submitted by March 1, 2010. Additionally, meter readings must be included on the annual water use reports submitted to the Chief Engineer by March 1 following the end of each calendar year. If you do not have internet access, you may contact the Topeka Field Office to obtain a copy of this information.

Division staff from the Topeka Field Office will conduct a public informational meeting on these metering requirements on December 2, 2009, at 6:30 PM at the Elk Valley School Board Room located at 710 Delaware in Longton, Kansas. We encourage you to attend this meeting to obtain information about the order, including exceptions that may be granted on your currently metered system, and specifics you will need to address to be in compliance with the order whether or not your system is currently metered.

Any appeal of the enclosed Order must be made within 30 days to a Kansas court of competent jurisdiction, such as the District Court of Shawnee County, pursuant to the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* Any party seeking judicial review must also serve notice upon: H. David Starkey, Chief Legal Counsel, KS Dept of Agriculture, Legal Section, 109 SW 9th Street, 4th Floor, Topeka, KS 66612.

If you have any questions, please feel free to contact the Topeka Field Office at 785-368-8251. When you contact us, please refer to the above referenced file number(s) and indicate you have questions regarding this meter order.

Sincerely,

A handwritten signature in cursive script that reads "Katherine A. Tietsort".

Katherine A. Tietsort
Water Commissioner

Enclosures