

**KANSAS DEPARTMENT OF AGRICULTURE**

Adrian J. Polansky, 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

XXXXXXXX

File No(s). xxxxxxxx

**ORDER REGARDING INSTALLATION OF WATER FLOWMETERS
IN THE FALL 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 Fall 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 Fall 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 points(s) of diversion authorized by the Water Right(s), Appropriation(s) of Water or Term Permit(s) identified above is/are within the Fall 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.

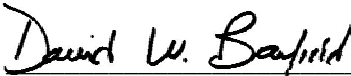
ORDER

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 December 31, 2009.
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 Report of Installation of Water Flowmeter 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 May 1, 2009. Such notice shall be provided on a Report of Installation of Water Flowmeter 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 KSA 82a-732 and KAR 5-3-5e, by March 1 following the end of the calendar year in which the meter was installed:
 - A) Usage for the portion of the year the diversion was not metered, and
 - B) 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 Act for Judicial Review and Civil Enforcement of Agency Actions (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. Reconsideration pursuant to K.S.A. 2006 Supp. 77-529. Within 15 days after service of this order any party may file a petition for reconsideration with the chief engineer, stating the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.
14. 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.
15. 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 6th day of January, 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 6th day of January, 2009, to the following:

xxxxxxx xxxxxx
 xxxxxxxxxxxxxxx
 xxxxxxxxxxx
 xxxxxxx xx xxxxx



 Cathy Darnall