

THE STATE  OF KANSAS

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). XXXXXXXXXXXX

ORDER REGARDING INSTALLATION OF WATER FLOWMETERS

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 Arkansas River, Buckner Creek, Cow Creek, Pawnee River and Walnut Creek Basins, 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 Arkansas River, Buckner Creek, Cow Creek, Pawnee River and Walnut Creek Basins, 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 Arkansas River, Buckner Creek, Cow Creek, Pawnee River and Walnut Creek Basins and is/are not used solely for domestic purposes or authorized by a temporary permit(s).
4. The areas within the Arkansas River, Buckner Creek, Cow Creek, Pawnee River and Walnut Creek Basins subject to this order include the following areas:

Barton County

Township 16 South

Range 11 West, Sections 25 and 33 through 36;

Range 11 West, Sections 13, 23, 24 and 26 through 32,

any portion of these sections in the Cow Creek Basin;

Range 12 West, Sections 27, 28 and 31 through 36;

Range 12 West, Sections 19 through 23, 25, 26, 29 and 30,
any portion of these sections in the Cow Creek Basin;
Range 13 West, Sections 25, 26, 29 and 31 through 36;
Range 13 West, Sections 17, 19 through 24, 27, 28 and 30,
any portion of these sections in the Cow Creek Basin;
Range 14 West, Sections 31 through 34 and 36,
any portion of these sections in the Cow Creek Basin;
Range 15 West, Sections 33 through 35;
Range 15 West, Sections 21, 22, 25 through 29, 32 and 36,
any portion of these sections in the Cow Creek Basin;
Township 17 South
Range 11 West, All Sections;
Range 12 West, All Sections;
Range 13 West, All Sections;
Range 14 West, Sections 4, 7 through 9 and 11 through 36;
Range 14 West, Sections 1 through 3, 5, 6 and 10,
any portion of these sections in the Cow Creek Basin;
Range 15 West, Sections 1 through 4 and 7 through 36,
Range 15 West, Sections 5 and 6,
any portion of these sections in the Cow Creek Basin

Edwards County

Township 23 South
Range 19 West, All Sections;
Range 20 West, All Sections;
Township 24 South
Range 19 West, Sections 1 through 11, 15 through 21 and 29 through 31;
Range 20 West, All Sections;

Ellsworth County

Township 16 South
Range 9 West, Sections 31 and 32;
Range 9 West, Sections 18, 19, 28 through 30, 33 and 34,
any portion of these sections in the Cow Creek Basin;
Range 10 West, Sections 20 through 22 and 25 through 36;
Range 10 West, Sections 13 through 19, 23 and 24,
any portion of these sections in the Cow Creek Basin;
Township 17 South
Range 8 West, Sections 20 and 28 through 33;
Range 8 West, Sections 16 through 19, 21, 22, 27 and 34,
any portion of these sections in the Cow Creek Basin;
Range 9 West, Sections 4 through 10, 14 through 23 and 25 through 36;
Range 9 West, Sections 3, 11 through 13 and 24,
any portion of these sections in the Cow Creek Basin;
Range 10 West, All Sections;

Hodgeman County

Township 23 South
Range 21 West, Sections 25, 26 and 33 through 36;
Township 24 South
Range 21 West, Sections 1 through 4 and 8 through 36;
Range 22 West, Sections 24, 25 and 36;

Ness County

Township 16 South,

- Range 21 West, Sections 29 through 32,
any portion of these sections in the Walnut Creek Basin;
- Range 22 West, Sections 19 through 21 and 28 through 36;
- Range 22 West, Sections 15 through 18 and 22 through 27,
any portion of these sections in the Walnut Creek Basin;
- Range 23 West, Sections 23 through 28 and 31 through 36;
- Range 23 West, Sections 13 through 15, 19 through 22, 29 and 30,
any portion of these sections in the Walnut Creek Basin;
- Range 24 West, Sections 31 through 36;
- Range 24 West, Sections 19 through 21 and 23 through 30,
any portion of these sections in the Walnut Creek Basin;
- Range 25 West, Sections 26 through 36;
- Range 25 West, Sections 19 through 25,
any portion of these sections in the Walnut Creek Basin;
- Range 26 West, Sections 25 through 36;
- Range 26 West, Sections 19 through 24,
any portion of these sections in the Walnut Creek Basin;

Township 17 South

- Range 21 West Sections 5 through 8, 16 through 21 and 25 through 36;
- Range 21 West Sections 4, 9, 10, 15 and 22 through 24,
any portion of these sections in the Walnut Creek Basin;
- Range 22 West, All Sections;
- Range 23 West, All Sections;
- Range 24 West, All Sections;
- Range 25 West, Sections 1 through 31, 35 and 36;
- Range 26 West, All Sections;

Township 18 South

- Range 22 West, Sections 5 and 6;
- Range 23 West, Sections 1 through 18 and 20 through 24;
- Range 24 West, Sections 1 through 12 and 28 through 34;
- Range 25 West, Sections 6 through 9, 14 through 23, 25 through 32, 35 and 36;
- Range 26 West, All Sections;

Township 19 South,

- Range 21 West, Sections 1 through 3 and 10 through 36;
- Range 22 West, Sections 13 through 16 and 19 through 36;
- Range 23 West, Sections 24 through 36;
- Range 24 West, Sections 3 through 6 and 30 through 36;
- Range 25 West, Sections 4 through 10 and 14 through 36;
- Range 26 West, All Sections;

Pawnee County

Township 20 South

- Range 16 West, All Sections;
- Range 17 West, All Sections;
- Range 18 West, All Sections;
- Range 19 West, All Sections;
- Range 20 West, All Sections;

Township 21 South

- Range 16 West, Sections 3 through 9, 18 and 19;
- Range 17 West; Sections 1 through 24;
- Range 18 West, Sections 1 through 24;

Range 19 West, Sections 1 through 6;
Range 20 West, Sections 1 through 6;
Township 22 South
Range 17 West, Sections 19, 20 and 30;
Range 18 West, Sections 19 through 36;
Range 19 West, Sections 13 through 36;
Range 20 West, Sections 13 through 36;
Township 23 South
Range 18 West, Sections 2 through 10, 17 through 20 and 30;

Rice County

Township 18 South
Range 8 West, Sections 3 through 10, 15 through 22 and 27 through 34;
Range 9 West, All Sections;
Range 10 West, All Sections;
Township 19 South
Range 7 West, Sections 7, 17 through 21 and 27 through 34;
Range 8 West, Sections 1 through 32 and 36;
Range 9 West, All Sections;
Range 10 West, All Sections;
Township 20 South
Range 7 West, Sections 3 through 6, 8 through 10, 15, 16, 22, 27, 34 and 35;
Range 9 West, Sections 2 through 11 and 14 through 18;
Range 10 West, Sections 1 through 18;
Township 21 South
Range 6 West, Sections 7, 17 through 20 and 28 through 33;

Rush County

Township 17 South
Range 16 West, Sections 18, 19, 24 through 30 and 36;
Range 16 West, Sections 1, 11 through 14 and 23,
any portion of these sections in the Cow Creek Basin;
Range 16 West, Sections 7, 8, 17 and 20 through 23,
any portion of these sections in the Walnut Creek Basin;
Range 17 West, Sections 10 and 13 through 18;
Range 17 West, Sections 3, 4, 6 through 9, 11 and 12,
any portion of these sections in the Walnut Creek Basin;
Range 18 West, Sections 13 through 15;
Range 18 West, Sections 2, 9 through 12 and 16 through 18,
any portion of these sections in the Walnut Creek Basin;
Range 19 West, Sections 27 through 30;
Range 19 West, Sections 13 through 15 and 19 through 22,
any portions of these sections in the Walnut Creek Basin;
Range 20 West, Sections 25 through 27 and 31 through 34;
Range 20 West, Sections 13, 14, 19, 21 through 24 and 28 through 30,
any portion of these sections in the Walnut Creek Basin;
Township 19 South
Range 16 West, Sections 1, 2 and 7 through 36;
Range 17 West, Sections 7 through 36;
Range 18 West, Sections 7 through 36;
Range 19 West, Sections 8 through 36;
Range 20 West, Sections 3 through 10 and 13 through 36;

CONCLUSIONS OF LAW

1. 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.
2. 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:

1. 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.
2. 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.
3. 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.
4. 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 December 31, 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.
5. 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.
6. 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.
7. 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.

- 8. 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.
- 9. 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.
- 10. 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 15th day of January, 2009.

David W. Barfield

 David W. Barfield, P.E.
 Chief Engineer

Certificate of Service

A copy of the foregoing Order was sent by First Class mail service this 15th day of January, 2009, to the following:

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 XXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXX
 XXXXXX XX XXXXX

Cathy Darnall

 Cathy Darnall