

October 14, 2009

RE: File No(s).

Dear Sir or Madam:

Enclosed is an Order requiring that the owner of the water right identified by the above-referenced file install a water flowmeter on each authorized point of diversion by **April 1, 2010**. Water right owners will be required to report metered quantities of all water diverted on or after **April 1, 2010**.

The enclosed Order requires your immediate attention. Please read it very carefully because it affects your use of water as authorized by the water right 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 flowmeters. The Chief Engineer is requiring the installation of water flowmeters on all non-domestic wells and surface water pump sites located in the Stockton Field Office area. The purpose of requiring the installation of water flowmeters is to facilitate increased water management and to promote the efficient use of water in the area. Most areas in Kansas are already required to have water flowmeters.

The deadline for installing water flowmeters will be strictly enforced. If you fail to install the flowmeter by the deadline, then enforcement action may include civil penalties and/or modification or suspension of the water right. Any request for an extension of time to install the required water flowmeter must be made in writing to the Stockton Field Office at least 30 days prior to the meter installation deadline and must state compelling reasons why additional time is needed. Please contact the Stockton Field Office if you have questions concerning proper meter installations or an extension of time.

Those involved in the installation of water flowmeters should be aware of the Division of Water Resources' water flowmeter regulations. A list of certified flowmeters, a Report of Installation of Water Flowmeter form and an information page on acceptable meter installation can be found on the KDA/DWR website at www.ksda.gov/dwr/. If a written copy of this information is needed, please feel free to contact the Stockton Field Office. A separate report of installation form must be submitted for each flowmeter that is installed. The form must be sent to the Stockton Field Office, P.O. Box 192, Stockton, Kansas 67669-0192, within 30 days after the meter is installed. If a water flowmeter is currently installed, the report of installation form must be submitted by **March 1, 2010**. Additionally, beginning and ending meter readings for each calendar year must be included on the annual water use reports submitted to the Chief Engineer by March 1 following the end of each calendar year.

An 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.)

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If you have any questions, please feel free to contact the Stockton Field Office at (785) 425-6787. 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 blue ink, appearing to read "Scott E. Ross".

Scott Ross, L.G.
Water Commissioner
Stockton Field Office

SER:nld
Enclosures
pc:



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

File No(s).

ORDER FOR INSTALLATION OF WATER FLOWMETERS

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, under authority of K.S.A. 82a-701 *et seq.*, after due consideration, hereby issues this Order:

FINDINGS OF FACT

1. The Kansas Water Appropriation Act (Act), K.S.A. 82a-701 *et seq.*, grants the chief engineer broad authority to enforce and administer the laws of Kansas pertaining to the beneficial use of water, and to control, conserve, regulate, allot and aid in the distribution of the water resources of Kansas. K.S.A. 82a-706.
2. Pursuant to K.S.A. 82a-721, the Act "shall be construed liberally to effectuate the purposes hereof, and the enumeration of specific powers in [the] act shall not operate to restrict the meaning of any general grant of power contained in this act or to exclude other powers comprehended in such general grant."
3. The Chief Engineer is required to control, conserve, regulate, allot, and aid in the distribution of the water resources of the State. K.S.A. 82a-706.
4. The Chief Engineer is authorized to require the installation of water meters and require water users to report the reading of such meters at reasonable intervals. K.S.A. 82a-706c.
5. K.S.A. 82a-732 requires owners of a water right or permit to appropriate water for beneficial use, except for domestic use, to file an annual water use report which completely and accurately sets forth such water use information as requested by the Chief Engineer.
6. Specifications for water flowmeters are found at K.A.R. 5-1-4.
7. Water flowmeters enable holders of water rights to report water use accurately and in a timely manner as required by K.S.A. 82a-732.

8. Elements of the Kansas Water Plan recommend installation of water flowmeters on all non-domestic points of diversion by the end of calendar year 2015.

CONCLUSIONS OF LAW

9. Installation of water flowmeters on all surface water and groundwater points of diversion within Republican River/Creek Basins will implement the Kansas Water Plan.
10. Points of diversion authorized by water rights located within the Republican River/Creek Basin and which are not being used solely for domestic purposes or authorized by temporary or term permits should be required to install water flowmeters.
11. The water right identified by the above-captioned file number is subject to the water flowmeter requirement.

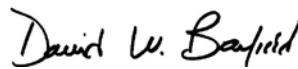
ORDER

IT IS, THEREFORE, ORDERED that:

12. The owner of each water right identified by the above-captioned file number shall install a water flowmeter on each point of diversion. The water flowmeter shall meet or exceed specifications adopted by the Chief Engineer in K.A.R. 5-1-6.
13. **Water flowmeters shall be installed no later than April 1, 2010.**
14. Subsequent to the date of this order, there shall be no diversion of water from any point of diversion authorized by the water right identified by the above-captioned file number unless a water flowmeter has been installed in accordance with this order or the Chief Engineer has granted, in writing, an extension of the applicable deadline.
15. The water flowmeter shall be maintained in operating condition satisfactory to the Chief Engineer as set forth in K.A.R. 5-1-8 and other relevant regulations.
16. The owner of the water right 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 included with this order or otherwise obtained from the Division of Water Resources.
17. Pursuant to K.S.A. 82a-732 and K.A.R. 5-3-5(e), the owner of the water right shall report meter readings on the annual water use report by March 1 following the end of the calendar year in which the meter was installed and on each subsequent annual water use report.
18. The installation, maintenance and use of water flowmeters shall henceforth be conditions of every water right included in this order.
19. Water flowmeters installed on the date of this order may be considered conditionally compliant with this order if all of the following conditions are met:

- A. By **March 1, 2010**, the Chief Engineer shall receive from the owner of the water right a Notice of Completion of Diversion Works and/or Report of Flowmeter Installation form obtained from the Division of Water Resources. The form shall show the existence of the water flowmeter and shall be mailed to the following address: Division of Water Resources, Kansas Department of Agriculture, P.O. Box 192, Stockton, Kansas 67669.
 - B. The water flowmeter, as installed prior to the issuance of this order, meets the accuracy requirements of K.A.R. 5-1-4(a) and (b).
 - C. A water flowmeter shall be installed as required by this order when the existing water flowmeter is replaced or modified.
 - D. The owner of the water right shall report the annual beginning and ending meter readings as required under K.S.A. 82a-732 no later than March 1 of each calendar year.
20. This order contains terms, conditions, and limitations imposed by the Chief Engineer on the water right identified by the file number captioned-above. 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 pursuant to K.S.A. 82a-737.
21. The Chief Engineer specifically retains jurisdiction in this matter to make such changes, additions, or deletions to this order.
22. This is a final agency action. Review of this order may be had pursuant to the Kansas Judicial Review Act (K.S.A. 77-601 *et seq.*). Any petition for such judicial review must be filed within 30 days after service of this order in a Kansas court of competent jurisdiction. The agency officer designated to 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, 109 SW 9th Street, 4th Floor, Topeka, Kansas 66612.

Entered this 14th day of October, 2009, in Topeka, Shawnee County, Kansas.



David W. Barfield, P.E.
Chief Engineer

Certificate of Service

The foregoing Order was sent by first class U.S. mail, on the 14th day of October, 2009, to the following:

Staff

A copy of the foregoing Order was sent by first class U.S. mail to the following: