

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
XXXXXXX
XXXXXXXXXXXX
XXXXXXXXXX XX XXXXX

File No(s). XXXXXXX

ORDER REGARDING INSTALLATION OF WATER FLOW METERS

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

1. The Kansas Water Plan directs the Chief Engineer to require the installation of water flow meters on all non-domestic points of diversion by the end of calendar year 2010, and recommends that the Chief Engineer implement regulatory solutions as necessary for areas of declining groundwater and decreased stream flows within the Upper Smoky Hill River Basin, which includes its tributaries outside a groundwater management district.
2. The Chief Engineer is authorized, pursuant to K.S.A. 82a-706c, to require the installation of water meters 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.
3. The installation of totalizing water flow meters on all surface water and groundwater points of diversion within the Big Creek and Hackberry Creek, Saline River, and Smoky Hill River, Basins in Gove, Logan, Ness, Trego and Wallace counties will implement the requirements of the Kansas Water Plan and will provide information to the Chief Engineer for the purpose of implementing regulatory decisions. Points of diversion that are excluded are those used solely for domestic purposes or authorized by temporary permits.

4. The Big Creek, Hackberry Creek, Saline River, and Smoky Hill River Basins in Gove, Logan, Ness, Trego and Wallace counties subject to this order consist of the following areas:

Gove County

Township 12 South

- Range 26 West, Sections 19 through 36
- Range 27 West, Sections 19 through 36
- Range 28 West, Sections 19 through 36
- Range 29 West through Range 31 West (All Sections)

Township 13 South

- Range 26 West through Range 31 West (All Sections)

Township 14 South

- Range 26 West through Range 31 West (All Sections)

Township 15 South

- Range 26 West through Range 31 West (All Sections)

Graham County

Township 9 South

- Range 21 West, Sections 19 and 20, 25 through 36
- Range 22 West, Sections 18 through 22, 24 through 36
- Range 23 West, Sections 13, 24 through 27, 30 through 36
- Range 24 West, Sections 25 through 36
- Range 25 West, Sections 19 through 36

Township 10 South

- Range 21 West through Range 25 West (All Sections)

Logan County

Township 11 South

- Range 35 West, Sections 14 through 23; 26 through 35
- Range 36 West, Sections 13 through 36
- Range 37 West, Sections 13 through 36

Township 12 South

- Range 32 West through Range 37 (All Sections)

Township 13 South

- Range 32 West through Range 37 (All Sections)

Township 14 South

- Range 32 West through Range 37 (All Sections)

Township 15 South

- Range 32 West through Range 37 (All Sections)

Ness County

Township 16 South

- Range 21 West, Sections 1 through 28, 33 through 36
- Range 21 West, Sections 29 through 32, any portion of these sections in the Smoky Hill River Basin

Range 22 West, Sections 1 through 14
Range 22 West, Sections 15 through 18; 22 through 27, any portion of these sections in the Smoky Hill River Basin
Range 23 West, Sections 1 through 18
Range 23 West, Sections 13 through 15; 19 through 22; 29 & 30, any portion of these sections in the Smoky Hill River Basin
Range 24 West, Sections 1 through 18
Range 24 West, Sections 19 through 30, any portion of these sections in the Smoky Hill River Basin
Range 25 West, Sections 1 through 18
Range 25 West, Sections 19 through 25, any portion of these sections in the Smoky Hill River Basin
Range 26 West, Sections 1 through 17
Range 26 West, Sections 18 through 24, any portion of these sections in the Smoky Hill River Basin
Township 17 South
Range 21 West, Sections 1 through 3; 11 through 14
Range 21 West, Sections 4, 9, 10, 15; 22 through 24, any portion of these sections in the Smoky Hill River Basin

Trego County

Township 11 South
Range 21 West through Range 25 West (All Sections)
Township 12 South
Range 21 West through Range 25 West (All Sections)
Township 13 South
Range 21 West through Range 25 West (All Sections)
Township 14 South
Range 21 West through Range 25 West (All Sections)
Township 15 South
Range 21 West through Range 25 West (All Sections)

Wallace County

Township 11 South
Range 38 West through Range 41 West (All Sections)
Range 42 West, Sections 19 through 36
Range 43 West, Sections 24, 25 and 36
Township 12 South
Range 38 West through Range 42 West (All Sections)
Range 43 West, Sections 1, 12, 13, 24, 25 and 36
Township 13 South
Range 38 West through Range 41 West (All Sections)
Range 42 West, Sections 1 through 18; 22 through 27; 34 through 36
Range 43 West, Sections 1, 12 and 13

5. The points of diversion authorized by the water rights or appropriation of water permits identified above are within the Big Creek, Hackberry Creek, Saline River, and Smoky Hill River Basins in Gove, Logan, Ness, Trego and Wallace counties, as described above, and are not used solely for domestic purposes or authorized by temporary permits.

ORDER

IT IS, THEREFORE, ordered that:

1. Owners of the water rights or appropriation of water permits identified in this order shall install a totalizing water flow meter which meets or exceeds specifications adopted by the Chief Engineer on each authorized point of diversion.
 - A. Totalizing flow meters shall be installed on all points of diversion under the authority of the above referenced Vested Right; Water Right or Appropriation of Water, no later than May 1, 2008.
2. Subsequent to the date of this order, there shall be no diversions of water from any point of diversion authorized by the water rights or appropriation of water permits referred to in this order unless water flow meters have been installed in accordance with this order or the Chief Engineer has granted, in writing, an extension of the applicable deadline.
3. The totalizing water flow meter meters shall be maintained in operating condition satisfactory to the Chief Engineer as set forth in K.A.R. 5-1-8.
4. 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 Flow Meter Installation form included with this order or otherwise obtained from the Division of Water Resources.
5. The owner of the water right shall report meter readings on the annual water use report, pursuant to K.S.A. 82a-732 and K.A.R. 5-3-5(e), by March 1 following the end of the calendar year in which the meter was installed and on each subsequent annual water use report.
6. The conditions of this order requiring installation, maintenance and use of water flow meters shall be considered conditions of the water rights or appropriation of water permits henceforth.
7. Existing meter installations at the date of issuance of this order may be considered conditionally compliant with this order if the following conditions are met:
 - A. The owner of the water right shall notify the Chief Engineer of the existence of the meter, in writing, by March 1, 2008. Such notice shall be provided on a Notice of Completion of Diversion Works and/or Report of Flow Meter Installation form obtained from the Division of Water Resources, and shall mail to the following address: Division of Water Resources, Kansas Department of Agriculture, P.O. Box 192, Stockton KS 67669.
 - B. The water flow meter, as installed prior to the issuance of this order, shall be considered to be in compliance with this order provided that it meets the accuracy requirements of K.A.R. 5-1-4(a) and (b).
 - C. A totalizing water flow meter shall be installed as required by this order at the time the existing water flow meter is replaced or modified.
 - D. The owner of the water right shall report meter readings as required by this order no later than March 1 of each calendar year.

8. 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.). Any party seeking judicial review must also serve notice upon: Chief Legal Counsel, Kansas Department of Agriculture, Legal Section, 109 SW 9th Street, 4th Floor, Topeka, KS, 66612.
9. This order contains terms, conditions, and limitations imposed by the Chief Engineer on the referenced water rights or appropriations of water permits. 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.

Entered in SHAWNEE COUNTY, KANSAS.

December 10, 2007
 David W. Barfield, P.E.
 Chief Engineer

Certificate of Service

The foregoing Order was sent by first class, U.S. Mail on 10th day of December, 2007, to the following:

XXXXXXXXX
 XXXXXXXXXXXX
 XXXXXXXXXXXX XX XXXXX

Staff

December 10, 2007

XXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXX XX XXXXX

Re: File No(s). XXXXXXX

Dear Madam or Sir:

Enclosed is an Order requiring that the owner of the point(s) of diversion authorized under the file numbers shown above install water flow meter(s) on the point(s) of diversion by **May 1, 2008**, or before any diversion of water for any use other than domestic use in 2008. This Order further requires the owner to maintain a record of any diversions made on or after **January 1, 2008** until the required water flow meter(s) are installed.

The Chief Engineer is requiring the installation of water flow meters on all points of diversion. The purpose of requiring the installation of water flow meters is to facilitate the need for increased water management in Kansas. **This Order requires your immediate attention. Please read it carefully, as it affects the use of the point(s) of diversion and sets further a deadline 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 deadline for installing water flow meters 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 or appropriation of water permit. Any request for an extension of time to install the required water flow meters must be in writing on a form provided for that purpose no later than **March 1, 2008**, and must state compelling reasons why additional time is needed. You may obtain an extension request form by contacting the Stockton Field Office.

Enclosed with this order is a "Notice of Completion of Diversion Works and/or Report of Flow Meter Installation" form. A separate Notice of Completion must be filled out for each flow meter that is installed and submitted to the Stockton Field Office by **May 1, 2008**, or within 30 days after completion of installation of the required water flow meter. **If a water flow meter currently is installed, the Notice of Completion form must be submitted by March 1, 2008.** Additionally, meter readings must be included on the annual water use reports submitted by the Chief Engineer by March 1 following the end of each calendar year. A copy of the Chief Engineer's specifications for the water flow meters found in K.A.R 5-1-1 through 5-1-12 can be obtained from our website located at the following web address: www.ksda.gov/appropriation/statutes/ or by contacting the Stockton Field Office. A partial list of meters that have been found to be acceptable if installed and maintained correctly can also be obtained from the Stockton Field Office upon request.

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 Act of Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601 *et seq.*) Any party seeking judicial review must also serve notice upon: Chief Legal Counsel, Kansas Department of Agriculture, Legal Section, 109 SW 9th Street, 4th Floor, Topeka KS 66612.

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,

Scott E. Ross, L.G.
Water Commissioner

Enclosures
pc: Lane Letourneau