



Stafford Field Office  
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Dale A. Rodman, Secretary  
David W. Barfield, Chief Engineer  
Jeff Lanterman, Water Commissioner

Sam Brownback, Governor

**CERTIFIED MAIL**

May 10, 2011



RE: Minimum Desirable Streamflows-Little Arkansas River  
File No. [REDACTED]

Dear Water User:

Our records indicate that you are the owner of, designated water correspondent for, or a person having an interest in the land on which water is used under the water right(s) and/or approval(s) of application identified above and in the enclosed Order Regarding Minimum Desirable Streamflows (Little Arkansas River), which has been issued by the Chief Engineer. This Order prohibits diversions from each and every water right or approval of application identified in the Order from May 12, 2011, until further notice, except as otherwise provided for in the Order. If you no longer have an ownership or other interest in this water right(s) and/or approval(s) of application, please advise this office immediately so that the proper persons can be notified of this Order.

As of May 9, 2011, the minimum desirable streamflow (MDS) established under the Kansas Water Appropriations Act for the Little Arkansas River at the gaging station at Alta Mills, Kansas, had not been met for seven consecutive days. Therefore, the Chief Engineer has issued the enclosed Order determining that administration of water rights and approvals of application for appropriation of water (MDS Administration) is required under K.A.R. 5-15-1 through 5-15-4.

The enclosed Order prohibits diversions from the Little Arkansas River and its tributaries, in the area set forth in the Order, under water rights and approvals of application with priority dates after April 12, 1984. The Order will remain in effect from May 12, 2011, until the Chief Engineer determines that the MDS required by law have been met and maintained for the Little Arkansas River.

As provided in Paragraph 3 of the Order, the Chief Engineer may grant a temporary stay of the Order to allow diversion of water a limited basis. If you wish to be notified of a temporary stay you must provide the Stafford Field Office with a phone number where you or a person you designate can be reached during normal working hours.

While the Order is in effect, no water may be diverted or pumped under the water right(s) and/or approval(s) of application identified in the Order except as may be provided for by a temporary stay of the Order as set forth in Paragraph 3. Any person who makes unlawful diversions of water while this Order is in effect may be subject to criminal and/or civil enforcement under the Kansas Water Appropriation Act, which may include the assessment of civil penalties of up to \$1,000 per day of violation and modification or suspension of the water right(s) or approval(s) of application.

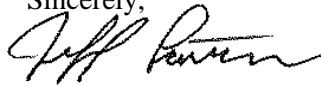
[REDACTED]  
May 10, 2011

File No. [REDACTED]

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If you have questions concerning this matter, please contact the Stafford Field Office, Division of Water Resources, Kansas Department of Agriculture, 300 S. Main Street, Stafford, KS 67578-1342, (620) 234-5311.

Sincerely,



Jeff Lanterman  
Water Commissioner

Enclosures: MDS Order

THE STATE OF KANSAS



**KANSAS DEPARTMENT OF AGRICULTURE**  
Dale A. Rodman, 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

[REDACTED]

File No(s). [REDACTED]

**ORDER REGARDING MINIMUM DESIRABLE STREAMFLOWS**  
**(LITTLE ARKANSAS RIVER)**

The Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, under authority of Kansas Statutes Annotated (K.S.A.) 82a-703a *et seq.* regarding minimum desirable streamflows (MDS), finds the following:

1. Pursuant to K.S.A. 82a-703a and 82a-703c, the Chief Engineer shall withhold from appropriation that amount of water he deems necessary to establish and maintain the desired MDS for the Little Arkansas River at Alta Mills, Kansas.

2. Pursuant to K.S.A. 82a-703b, water rights or approvals of application to appropriate water with a priority date after April 12, 1984, shall be subject to MDS requirements identified and established by the Chief Engineer for the Little Arkansas River at Alta Mills, Kansas.

3. K.A.R. 5-15-1 through 5-15-4, effective August 27, 2002, sets forth standards under which MDS may be administered by the Chief Engineer.

4. K.A.R. 5-15-1(d) provides that, "If the streamflow at an MDS gaging station falls below the level established in K.S.A. 82a-703c, and amendments thereto, for a period of seven consecutive days and no streamflow trigger has been set for an MDS gaging station in K.A.R. 5-15-4, a determination of whether and when MDS administration will begin and how it should occur shall be made by the chief engineer...", based on several factors, including:

- KAR 5-15-4(d)(1) the general hydrologic conditions affecting streamflow in the stream reach;
- (2) the magnitude and duration of recent streamflows;
  - (3) the extent to which groundwater contributes to stream flow;
  - (4) the effects of drought on streamflow;
  - (5) the existence and effect of relevant water management agreements;
  - (6) the magnitude of the effect that the administration of water rights with priorities junior to the MDS values would have on stream flow; and
  - (7) the effect of reservoir operations.

5. As of May 9, 2011, the actual daily streamflow in the Little Arkansas River at the gaging station at Alta Mills has been below the streamflow established in K.S.A. 82a-703c, and amendments thereto, for seven consecutive days, and that no streamflow trigger has been established for the Little Arkansas River in KAR 5-15-4.

6. The Chief Engineer has confirmed that the gaging station is accurately recording the flows of the Little Arkansas River, and that such flows are insufficient to meet those minimum desirable streamflows set forth in K.S.A. 82a-703c. The determination to administer MDS immediately was based upon the general hydrologic conditions affecting stream flow in the stream reach, the magnitude and duration of recent stream flows, the extent to which groundwater contributes to streamflow and the magnitude of the effect that the administration of water rights with priorities junior to the MDS values would have on the stream flow and the effect of reservoir operations.

7. Administration of water rights and approvals of application for appropriation of water **with priority dates after April 12, 1984**, is required to establish and maintain the desired MDS for the Little Arkansas River within that portion of the Little Arkansas River upstream from the United States Geological Survey gaging station located at Alta Mills at the intersection of The Little Arkansas River and the county highway bridge located about 0.4 miles south of Alta Mills in the Southwest Quarter of the Northwest Quarter of the Northwest Quarter of Section 30, Township 22 South, Range 2 West in Harvey County, Kansas.

**IT IS THEREFORE ORDERED THAT:**

1. Effective May12, 2011, and continuing until such time as the Chief Engineer determines minimum desirable streamflows have been met and maintained for the Little Arkansas River, there shall be **no diversion of water** under the water right(s) or approval(s) of application identified by the file number(s) above, which has a priority date after April 12, 1984, as required by K.S.A. 82a-703a and 82a-703b.

2. Any diversion of water from the appropriation right subject to this order on or after May12, 2011, shall constitute an unlawful diversion of water and shall subject the party in violation of this order to all applicable criminal and/or administrative penalties which may include civil penalties up to \$1000 per day the violation continues, and suspension or modification of the water right.

3. If, during the administration of this order, stream flows increase temporarily to a level above the established MDS, the Chief Engineer **may** provide a **temporary stay** of this Order to allow diversion of water under a water right or approval of application subject to this order on a limited basis. The Division of Water Resources will immediately notify the holder of the water right(s) or approval(s) of application identified above or designated water use correspondent of the granting of any temporary stay and its anticipated duration. Any questions regarding this provision should be directed to the Stafford Field Office at 620-234-5311.

4. This is a final agency action as defined in K.S.A. 77-607(b). You may pursue judicial review of this order as provided in the Kansas Act for Judicial Review (K.S.A. 77-601 *et seq.*). A petition for judicial review must be filed in a Kansas court of competent jurisdiction within 30 days after service of this order as provided in K.S.A. 77-613. The agency officer designated to receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture is Chief Legal Counsel, Kansas Department of Agriculture, 109 SW 9th Street, 4th Floor, Topeka, Kansas 66612.

Entered in SHAWNEE COUNTY, KANSAS.

David W. Barfield May10, 2011  
David W. Barfield, P.E. Date  
Chief Engineer

**Certificate of Service**

A copy of the foregoing Order was sent by certified mail service this 10th day of May 2011, to the following:



Cathy Darnall  
Cathy Darnall