

<p style="text-align: center;">Inside This Issue</p> <p>Legislative Update</p> <p>New Rules and Regulations</p> <p>Animal Impacts on Dams</p> <p>Meter Testing</p> <p>Flood Safety Tips</p> <p>Republican River Flows</p> <p>Compact News</p> <p>Incentive Programs</p> <p style="text-align: center;">Staff Changes</p> <p>Promotions:</p> <p>Amanda Hunsaker Senior Administrative Assistant <i>Promoted from Data Management to Water Appropriation Permits</i></p> <p>Transfers:</p> <p>Chelsea Juricek Environmental Scientist Interstate Water Issues <i>Transferred from Garden City to Stockton</i></p> <p>Departures:</p> <p>Bruce Falk Water Commissioner, Stafford <i>Retired</i></p> <p>Brenda Harmon Senior Administrative Specialist Water Management Services <i>Pursuing career in nursing</i></p>	<p>Legislative Update</p> <p>A number of bills dealing with water resource issues were introduced this session. The following summarizes several of these bills and their status as of April 1:</p> <p>Sub. HB 2050 (water appropriation fees) – Passed. Extends the sunset date from June 30, 2010, to June 30, 2015, for all water appropriation fees; adds definition and basic language about term permits; removes the discount for multiple changes to a water right on a single form; reduces the field inspection fee for watershed dams and industrial groundwater pits; and extends the deadline for agency review from 150 days to 180 days.</p> <p>HB 2065 (IGUCAs) – Not worked in committee. Would have established procedures for the chief engineer to initiate intensive groundwater use control area proceedings within a groundwater management district when it is was not requested by the district. This would involve extensive communication between the chief engineer and the district, including data and analysis documenting the groundwater conditions, and opportunities for the district to develop a plan to address the conditions.</p> <p>HB 2272 (IGUCAs) – Failed. Would have limited the chief engineer’s authority to initiate intensive groundwater use control area proceedings within a groundwater management district to only when requested by the district, and would require the chief engineer to cooperate and coordinate with boards of county commissioners or their designees before initiating IGUCA proceedings outside of GMDs.</p> <p>HB 2177 / SB 165 (state water plan fees) – Not worked in committees. Would have increased fees that contribute to the State Water Plan Fund. The commercial fertilizer fee would have increased from \$1.67/lb to \$2.37/lb; the commercial pesticide fee from \$150 to \$200 per year per registrant; the sand and gravel fee from \$0.15/ton to \$0.225 per ton mined from rivers; and the municipal, industrial and stock watering use fees from \$0.03 to \$0.06 per 1,000 gallons.</p> <p>HB 2309 (access) – Not worked in committee. Would have required the chief engineer to dismiss water appropriation applications from applicants who fail to provide proof of legal access to the proposed point of diversion within 30 days of filing the application.</p> <p>SB 64 (eminent domain/access) – Passed. Amends the definition of “water right” to delete the word “voluntary” to clarify that water rights are property rights that pass with any conveyance of the land (voluntary or involuntary) on or in connection with which the water is used. Clarifies that <u>new</u> nondomestic water rights are acquired by</p>
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Cliff Irwin
Environmental Technician
Water Certificates Unit
Retired

Chasity Lloyd
Environmental Technician
Basin Management Team
Pursuing career in nursing

Robert Nichols
Environmental Scientist
Water Use Unit
Accepted job at KDOT

Calendar of Events

April 8

[Southwest Kansas GMD 3](#)
Board meeting
Garden City

April 9

[Big Bend GMD 5](#)
Board meeting
Stafford

April 14

[Equus Beds GMD 2](#)
Board meeting
Halstead

April 17

[Kansas Water Authority](#)
Meeting via conference call

April 21

[Western Kansas GMD 1](#)
Board meeting
Scott City

April 29

[Wichita's Aquifer Storage and Recovery Project](#)
Public hearing
Hutchinson

May 4-14

[Basin Advisory Committee meetings](#)
Various locations

May 7

[Northwest Kansas GMD 4](#)

application to the chief engineer (existing water rights can be bought and sold without the chief engineer's approval, although often a change application is required). Also clarifies the language dealing with priority of use between water rights that have the same priority date (such as nonadjudicated vested rights) and requires applicants to submit a sworn statement or evidence of legal access to or control of the point of diversion when filing water appropriation applications.

SB 185 (abandonment) – Not worked in committee. Would have established “adequate moisture for crop production as determined by the owner or operator” as a due and sufficient cause for nonuse of irrigation water rights. It would also have allowed people to request the chief engineer's reconsideration if their water right was declared abandoned and terminated prior to July 1, 2009, and they supplied the chief engineer data regarding adequate moisture as justification for nonuse. (KDA is working with stakeholder groups on a regulatory amendment in lieu of the bill. The regulatory amendment will have different provisions than the bill.)

You can check the language and status of bills using the “Full Text of Bills” and “Track a Bill” features on the Kansas Legislature's website at www.kslegislature.org.

New Rules and Regulations

Hearing Procedures

Effective March 20, 2009, Chief Engineer David Barfield adopted new and amended rules and regulations on hearing procedures:

- K.A.R. 5-3-4a (amended) specifies the circumstances in which the chief engineer may conduct a hearing prior to issuing an order. An example would be when the chief engineer wants public input in a matter.
- K.A.R. 5-14-3 (amended) specifies the types of matters in which the chief engineer will issue orders that are subject to review under the Kansas Administrative Procedures Act. An example would be the approval or dismissal of an application to appropriate water for beneficial use.
- K.A.R. 5-14-3a (new) specifies the procedures to be followed for hearings held by the chief engineer pursuant to K.A.R. 5-14-3.

The hearing procedures address the following details:

- Designation of parties
- Presiding officer
- Notice of hearing
- Public notices
- Participation and representation
- Telephonic participation
- Prehearing conferences
- Discovery
- Pleadings, objections, and motions
- Ex parte communication

<p>Board meeting Colby</p>	<ul style="list-style-type: none"> • Consolidation of proceedings • Continuances
<p>May 12 Equus Beds GMD 2 Board meeting Halstead</p>	<ul style="list-style-type: none"> • Conduct of hearings • Burden of proof • Order of testimony
<p>May 13 Southwest Kansas GMD 3 Board meeting Garden City</p>	<ul style="list-style-type: none"> • Recording of hearings • Recommendations to the chief engineer • Order of the chief engineer or hearing officer
<p>May 14 Big Bend GMD 5 Board meeting Stafford</p>	<p>These regulations reflect the standard practices of the agency in conducting administrative and public hearings. The regulations are available on DWR's website at www.ksda.gov/dwr.</p>
<p>May 17-20 National Watershed Conference Wichita</p>	<p>IGUCAs The Kansas Department of Agriculture conducted a public hearing February 12, 2009, on proposed new rules and regulations for intensive groundwater use control areas (IGUCAs):</p>
<p>May 17-21 World Environmental & Water Resources Congress Kansas City, MO</p>	<ul style="list-style-type: none"> • K.A.R. 5-20-1 (pending adoption) specifies procedures for the hearing process for intensive groundwater use control areas. In many respects the procedures are similar to other types of hearings conducted by the chief engineer. However, IGUCA proceedings will involve two hearings: a hearing conducted by an independent hearing officer on the question of whether an IGUCA should be established, and, if so, a subsequent hearing by the chief engineer to establish goals and corrective controls to remedy the specific problems warranting an IGUCA.
<p>May 19 Western Kansas GMD 1 Board meeting Scott City</p>	<ul style="list-style-type: none"> • K.A.R. 5-20-2 (pending adoption) specifies procedures for a formal review process for intensive groundwater use control area orders. Review hearings are to be held within seven years after the effective date of the regulation and at least every 10 years thereafter to evaluate the performance of the corrective controls and changes in hydrologic conditions.
<p>May 20 Kansas – Nebraska Big Blue River Compact meeting Beatrice, NE</p>	<p>We anticipate that these regulations will be adopted in 2009 following revisions to address public comments and comments from the Legislature's Rules and Regulations Committee; review and approval by the Department of Administration and Attorney General's Office; and publication in the Kansas Register. A notice will be placed on DWR's website when the regulations have been adopted.</p>
<p>May 26 Southwest Kansas GMD 3 Model Technical Advisory Committee meeting Garden City</p>	<p>The February 12, 2009, public hearing also covered a third proposed regulation concerning IGUCAs:</p>
<p>June 4 Northwest Kansas GMD 4 Board meeting Colby</p>	<ul style="list-style-type: none"> • K.A.R. 5-20-3 (pending further action) would specify procedures for the chief engineer to initiate an intensive groundwater use control area within a groundwater management district without a request from the groundwater management district board or eligible voters of the district.
<p>June 9 Equus Beds GMD 2 Board Meeting Halstead</p>	<p>However, the Rules and Regulations Committee requested that the chief engineer not act on K.A.R. 5-20-3 prior to July 1, 2009, to give the Legislature an opportunity to address the matter. The Kansas</p>
<p>June 10</p>	

<p>Southwest Kansas GMD 3 Board Meeting Garden City</p>	<p>Legislature considered two separate bills on IGUCAs (Legislative Update, above). One of the bills (HB 2065) would have established procedures similar to those in K.A.R. 5-20-3. The other bill (HB 2272) would have prohibited the chief engineer from initiating an IGUCA within a groundwater management district unless requested by the district. Neither bill passed.</p>
<p>June 11 Big Bend GMD 5 Board Meeting Stafford</p>	<p>The agency will wait until the 2009 legislative session concludes before deciding whether to take further action on K.A.R. 5-20-3.</p>
<p>June 11-12 Kansas Water Authority Meeting El Dorado</p>	<p>Animal Impacts on Dams Embankment dams are vulnerable to damage from wildlife intrusions. Twenty-five states indicate that animal activity has caused or contributed to unsafe operation or outright failure of an embankment dam.</p>
<p>June 16 Western Kansas GMD 1 Board meeting Scott City</p>	<p>Several animal species excavate burrows, tunnels and den entrances for shelter, while other predatory animals will enlarge these structures digging for prey. Similarly, herbivorous species will forage on vegetation growing on embankment dams. All of these activities create open areas in the embankment fill that are detrimental to an embankment dam's safety and performance.</p>
<p>July 2 Northwest Kansas GMD 4 Board meeting Colby</p>	<p>Some of these effects can be identified easily, such as surface erosion. Others, like internal erosion, may not be visible until the dam's integrity is compromised.</p>
<p>July 8 Southwest Kansas GMD 3 Board Meeting Garden City</p>	<p>For information about animal impacts, visit FEMA at www.fema.gov/library/viewRecord.do?id=1441.</p>
<p>July 7 Floodplain Management Basics and Map Reading Wellington</p>	<p>Annual Testing and Certification of Portable Transit-Time Meters The true value of a flow meter measurement is determined by using a perfect measurement process. This value is always unknown because all flow meter measurements are imperfect. To what extent is a flowmeter measurement imperfect?</p>
<p>July 9 Basics of National Floodplain Insurance Program Ottawa</p>	<p>DWR's meters are tested annually to check their condition, to identify measurement error and to set an example by complying with our own regulations that require annual National Institute of Standards and Technology traceability for nonagency flowmeter operators. The tests usually are conducted in February to allow time to repair any faulty meters before the inspection season.</p>
<p>July 9 Big Bend GMD 5 Board Meeting Stafford</p>	<p>The meters are expected to measure a volume of water with less than 2 percent error when new. DWR attempts to define the current quality of transit-time meter measurements by comparing the portable flowmeters to standards that are traceable to the National Institute of Standards and Technology in annual performance tests. For the past three years, the division's transit-time meters were tested in Aurora, Nebraska, on Great Plains Meters' propeller meter test platform. This is the same facility that tests and calibrates most of the new and rebuilt McCrometer propeller meters installed in Kansas.</p>
<p>July 14 Equus Beds GMD 2 Board Meeting Halstead</p>	<p>GPM's test stand uses a volumetric weight tank system to determine the volume of water passing the test meter's sensor. The weights</p>
<p>July 16 Kansas-Lower Republican BAC meeting Courtland</p>	
<p>July 21</p>	

[Western Kansas GMD 1](#)
Board meeting and budget
hearing
Scott City

July 22

KS – OK Arkansas River
Compact Commission meeting
TBD

From the Field



Ice in Jackson County
Photo by Sherry Durst

used to verify their scale come from a scale company and are certified by a state agency. The state agency's standard weights are certified by NIST. This process transfers the standard pound weight by comparison through each step. Depending on the measurement process, the uncertainty assigned is normally quite small. For example, the 1,000-pound weights used to check GPM's tank were assigned uncertainties of 9.1 grams. One gallon of water at 65 degrees weighs approximately 8.335 pounds (3,780 grams). The target volume of water used in DWR's tests is 5,000 gallons. GPM defines the cumulative error incurred when measuring a 5,000 gallon release as 37 pounds (4.43 gallons).

This year 19 meters were tested against this standard, including 12 older meters and seven newer models. The average measurement error of the older meters was 1.8 percent and the newer meters had average errors between 3 percent and 4.5 percent.

DWR scientists use the transit-time meters to measure and determine maximum diversion rate for water right certificates, identify noncompliant meters in the field and verify rates of diversion for impairment investigations. Three hundred to 400 of these comparison tests are conducted each year. An installed water flowmeter is out of compliance if the meter records a difference of more than 6 percent of the true value.

Flood Safety Tips

Floods, especially flash foods, kill more people each year than any other weather phenomenon. March was Severe Weather Preparedness Month and FEMA reminded people of the dangers of floods.

If a flood is likely in your area, you should:

- Listen to the radio or television for information.
- Be aware that flash flooding can occur. If there is any possibility of a flash flood, move immediately to higher ground. Do not wait for instructions to move.
- Be aware of streams, drainage channels, canyons and other areas known to flood quickly. Flash floods can occur in these areas with or without such typical warnings as rain clouds or heavy rain.
- If you must prepare to evacuate, you should do the following:
 - Secure your home. If you have time, bring in outdoor furniture. Move essential items to an upper floor.
 - Turn off utilities at the main switches or valves if instructed to do so. Disconnect electrical appliances. Do not touch electrical equipment if you are wet or standing in water.
- If you have to leave your home, remember these evacuation tips:
 - Do not walk through moving water. Six inches of moving water can make you fall. If you have to walk in water, walk where the water is not moving. Use a stick to check the firmness of the ground in front of you.
 - Do not drive into flooded areas. If floodwaters rise around your car, abandon the car and move to higher ground if you can do so safely. You and the vehicle can be quickly swept away.

- Six inches of water will reach the bottom of most passenger cars, causing loss of control and possible stalling.
- A foot of water will float many vehicles.
- Two feet of rushing water can carry away most vehicles, including sport utility vehicles and pick-ups.

About 60 percent of all flood deaths result from people trying to cross flooded roads in vehicles when the moving water sweeps them away. FEMA provides information about how to protect yourself and your property from flooding. FEMA publications provide helpful information about what to do before, during and after a flood in order to decrease the toll such disasters take on lives and property.

You can order these publications by calling 1-800-480-2520, or you can download or order copies from the FEMA website at www.fema.gov. Many publications are available in Spanish and other languages.

Republican River Flows

Water users in the lower Republican River basin are urged to use a Kansas Department of Agriculture-hosted web page to keep track of streamflow conditions that could trigger minimum desirable streamflow water use restrictions.

The web page is at www.ksda.gov/appropriation/?cid=1388.

Under Kansas law, when flow drops below an established threshold, pumping restrictions are imposed to protect existing water rights and to meet in-stream water uses related to water quality, recreation, and fish and wildlife. These minimum desirable streamflow requirements were made part of the Kansas Water Appropriation Act by the 1984 Legislature, and they affect only those water rights granted after April 12, 1984.

Pumping restrictions were in place from 2002 to 2007, when drought plagued much of Kansas. Throughout that time, restrictions were imposed on 177 water rights along the Republican River in Clay, Cloud, Jewell, Republic and Washington counties because streamflow remained below minimum desirable streamflow values. Heavy precipitation in spring 2007 brought back higher sustained flows, and flows throughout 2008 were sufficiently high that MDS administration was not triggered.

In recent years, water users in the Republican River basin have been allowed to enter into agreements with the Division of Water Resources to use at least some groundwater or surface water, even while minimum desirable streamflow administration is under way. Consent agreements will be available again in 2009, but only if and when MDS administration becomes necessary. Temporary changes, another mitigation tool, will be allowed should administration occur in 2009.

Currently, Republican River flows remain above MDS trigger levels. The department will notify affected water users if conditions change and if it looks like MDS administration could be required.

Water right holders who want to know more about Republican River MDS issues are encouraged to view the web page or to contact the Division of Water Resources field office in Topeka at (785) 368-8251 or Stockton at (785) 425-6787.

Compact News

The following paragraphs provide a brief description of the current status of the two river compacts involving litigation. More information about the four river compacts in which Kansas is a member is available on DWR's website at

www.ksda.gov/interstate_water_issues.

Republican River Compact – Kansas is currently involved in nonbinding arbitration concerning Nebraska's overuse of Republican River basin waters. The compact requires compliance on a five-year running average, and during dry periods compliance is required on a two-year running average as well. In 2007, Kansas determined that Nebraska was out of compliance for the 2005-2006 water-short (dry) period and also for the 2003-2007 five-year accounting period. Nebraska does not dispute that they are out of compliance, but they claim the compact accounting procedures are flawed and that the amount of their overuse is significantly less than Kansas claims.

This nonbinding arbitration is a necessary step in the dispute resolution process defined in the compact. Although the findings and decisions of the arbitrator are, as the name implies, nonbinding, they are important because facts and arguments that are presented lay the foundation for the next process. If the states choose to not abide by the decisions of the arbitrator, the dispute becomes a matter before the U.S. Supreme Court.

Arkansas River Compact – As a result of litigation brought by Kansas, Colorado adopted use rules that govern pumping of high-capacity irrigation wells along the Arkansas River in Colorado from near Pueblo to the Colorado-Kansas state line.

The states agreed to evaluate the sufficiency of the Colorado use rules and their administration for the period from 1997 through 2006. As a result of that evaluation, the states are working on an agreement that will establish how Colorado will implement the requirements of their use rules. The period of engineering expert discussions have passed, with good progress made toward agreement.

A joint report of the experts is being submitted to the Colorado state engineer and the Kansas chief engineer. They will have 60 days to resolve any remaining issues related to this agreement. Subsequently, the matter will be submitted to the Arkansas River Compact Administration for possible resolution.

On December 1, 2008, Kansas Attorney General Steve Six appeared before the U.S. Supreme Court in an effort to recover approximately \$9 million in expert witness fees that Kansas incurred during the Kansas v. Colorado litigation that ran from 1985 to 2008. On March 9, 2009, the court adopted the Special Master's Final Decree and

ruled that Kansas is not entitled to more than the \$40 per day previously awarded for expert witness fees as prescribed in federal code. With this decision, the court has addressed the last remaining issue. The litigation is finally concluded after nearly a quarter century.

Voluntary Incentive Programs

The following paragraphs provide news on two of the voluntary incentive programs for reducing consumptive use of water in areas with declining water resources. More information about voluntary incentive programs in Kansas is available on our website at www.ksda.gov/subbasin/content/316.

Water Transition Assistance Pilot Project Program (WTAP) – In 2006, the Kansas Legislature authorized WTAP to achieve significant gains in meeting State Water Plan goals to reduce aquifer depletion, foster stream recovery and meet interstate compact obligations.

WTAP is a voluntary, incentive-based water right retirement program that provides a structured mechanism for the permanent dismissal of irrigation water rights and the reduction of the consumptive use of groundwater in focused, overappropriated areas with sustainable irrigation potential. Targeted areas currently approved for the program are the Rattlesnake Creek Subbasin, Prairie Dog Creek Basin, and Groundwater Management District #4 High-Priority Areas.

In fiscal year 2008, four applications were made to the program and one was approved. It represented consumptive use reductions of 6.43 acre-feet of water and a payment of \$83,000 to the water right holder.

In fiscal year 2009, 14 of 41 applications have been approved, representing consumptive use reductions of 1,568 acre-feet of water and payments of over \$2 million to water right holders. The State Conservation Commission administers WTAP. The groundwater management districts and the Kansas Department of Agriculture's Division of Water Resources help with implementation. For more information on WTAP see:

[WTAP 2009 Legislative Report](#)

[WTAP 2008 Legislative Report](#)

[WTAP 2008 Brochure](#)

Agricultural Water Enhancement Program (AWEP) – The U.S. Department of Agriculture established the Agricultural Water Enhancement Program to be funded up to \$58.4 million for financial assistance in federal fiscal year 2009 for the Natural Resources Conservation Service to enter into contracts with producers to address the following goals:

- Water quality or water conservation plan development, including resource condition assessment and modeling.
- Water conservation restoration or enhancement projects, including the conversion to the production of less water-intensive agricultural commodities or dryland farming.
- Water quality or quantity restoration or enhancement projects.

- Irrigation system improvement and irrigation efficiency enhancements.
- Activities designed to mitigate the effects of drought, (e.g., construction, improvement, or maintenance of irrigation ponds, small on-farm reservoirs, or other agricultural water-impounding structures designed to capture surface water runoff).
- Related activities that the chief of NRCS determines will help achieve water quality or water conservation benefits on agricultural land.

Proposals were due to USDA by April 1, 2009. Payments to producers are for financial assistance incurred for performing or implementing conservation practices, including costs for: planning, materials, equipment, labor, design and installation, maintenance and management, and will be provided by NRCS. Producers will need to meet requirements of the NRCS Environmental Quality Incentives Program.

The Kansas Department of Agriculture's Division of Water Resources partnered with the State Conservation Commission and the Kansas Water Office to target Beaver Creek, Prairie Dog Creek and Hodgeman County alluvial and Ogallala subunits for Agricultural Water Enhancement Program. The state has requested \$4.5 million over the next three years for water right retirement in these targeted areas.

The Hodgeman County Conservation Commission, upper Arkansas Basin Advisory Committee, Kansas Water Office and the State Conservation Commission each provided letters of support for the proposal.