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Staff News

Jessica (Ahlquist) Ebert, Topeka Field Office – Recently married

Will Gilliland, Water Appropriation Permit Unit Leader – Retired

Jonathan Gutierrez, Water Right Certificates – Hired

David Nagle, Stream Obstruction Unit – Retired

Drew Pearce, Dam Safety Unit, Intern – Hired

Calendar of Events

July 7 - 9 a.m.
Floodplain Management Basics and Map Reading
Wellington

2009 Amendments to Kansas Water Appropriation Act

As reported in the April edition of *DWR Currents*, the 2009 Legislature passed two bills dealing with water appropriation permits. The bills have since been signed into law by Governor Parkinson. More information on these statutory amendments is provided below.

Term Permits

Basic criteria for term permits were added in the Kansas Water Appropriation Act by House Bill 2050. Term permits allow appropriation of water for a limited, specified time in excess of six months. Temporary permits are generally used when water is needed for less than six months, while term permits are used for projects such as road construction, secondary oil recovery, hydraulic dredging, dust suppression at mining operations, contamination remediation, or any other similar use of water for a set duration.

While term permits do not have the same regulatory restrictions on maximum authorized quantity or duration as temporary permits, term permits do receive a higher level of review to ensure that existing water rights and existing water appropriation permits will not be significantly impacted. Term permits approvals are subject to metering requirements and water use report requirements. At the end of the term and any authorized extensions, a term permit is automatically dismissed. No real property right is ever developed through the use of water authorized by a term permit.

As set forth in the recent regulations relating to term permits, which were adopted October 31, 2008, they generally are approved for a period of not more than five years and cannot be extended beyond five years. At the end of five years, another application and filing fee must be submitted, and the application will be evaluated based on the hydrologic conditions and the regulatory framework in effect at the time the application is filed. There is no guarantee that future applications will be approved.

Exceptions include:

- Contamination remediation permits, which may be issued initially for 20 years and extended in 10-year increments to a maximum of 40 years.
- Hydraulic dredging and fire protection, which may be issued initially for 10 years and extended in 10-year increments to a maximum of 30 years.
- Use of water containing more than 5,000 milligrams of chlorides

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| <p>July 7 - 9 a.m. Smoky Hill-Saline BAC Meeting Sunflower Electric W. 13th and Ash Hays</p> | <p>per liter may be issued initially for not more than 10 years and extended in 10-year increments to a maximum of 20 years.</p> |
| <p>July 8 - 9 a.m. Southwest Kansas GMD 3 Board Meeting District Office Garden City</p> | <p>A term permit that has had an authorized period of use of less than five years may be eligible for an extension of time to continue the authorized use of water. All requests for extensions of time must be filed at least 60 days prior to the expiration of the term permit and must include a \$100 filing fee effective July 1, 2009.</p> |
| <p>July 8 - 9 a.m. Lower Arkansas BAC Meeting McPherson</p> | <p><i>Access to Point of Diversion</i></p> |
| <p>July 8 Upper Arkansas BAC Meeting</p> | <p>Senate Bill 64, as passed by the Kansas Legislature and signed into law by Governor Parkinson, requires that any person or entity seeking to acquire new water appropriation or permit must either provide a sworn statement or evidence of legal access or control of the land on which a proposed point of diversion is located. The sworn statement or evidence must be part of an acceptable application to appropriate water for beneficial use. Issues of access, easement or eminent domain will need to be fully resolved and documented before a new application can be accepted for filing. Applications received on or after July 1, 2009, that do not include a sworn statement or evidence of legal access will not be accepted for filing and will be returned to the applicant without receiving a file number or priority date. This new requirement affects all new water appropriation applications, including regular new applications, temporary permits and term permits.</p> |
| <p>July 9 - 1 p.m. Cimarron BAC Meeting Grant County Civic Center 1000 W. Patterson Ulysses</p> | <p><i>Application and Inspection Fees</i></p> |
| <p>July 9 - 12:30 p.m. Basics of NFIP Ottawa</p> | <p>House Bill 2050 extended existing water appropriation fees to July 1, 2015, and made minor modifications to some fees.</p> |
| <p>July 9 - 1:30 p.m. Big Bend GMD 5 Board Meeting District Office Stafford</p> | <p>Notification to the chief engineer of diversion works completion that relate to applications filed on or after July 1, 2009, for works constructed for sediment control (watershed dams) and for evaporation from a groundwater pit for industrial use (sand and gravel operations) must be accompanied by a reduced field inspection fee of \$200. The field inspection fee for other uses is still \$400.</p> |
| <p>July 14 - 1 p.m. Equus Beds GMD 2 Board Meeting District Office Halstead</p> | <p>The fee schedule for change applications was also modified to eliminate a discount for individuals or entities filing for multiple types of changes on one application. For instance, a change application proposing a change in place of use, change in point of diversion moving greater than 300 feet, and a change in the use made of water will now be \$700 instead of \$500. This is based on the actual cost to the agency to process these changes. The new fee schedule became effective on July 1, 2009. The existing fee schedule for each type of change application remains in effect as follows:</p> |
| <p>July 14 - 9:30 a.m. GMD3 TAC meeting KWO Conference Room Topeka</p> | <p>Application to change a point of diversion 300 feet or less:..... \$100 Application to change a point of diversion 300 feet or more:..... \$200 Application to change the place of use: \$200 Application to change the use made of water: \$300</p> |
| <p>July 14 - 9 a.m. Missouri BAC Meeting Benedictine College Atchison</p> | <p><i>Updated Forms and Other Information</i></p> |

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| <p>July 14 - 1 p.m. Marais des Cygnes BAC Meeting Courthouse Annex Building Mound City</p> | <p>DWR has incorporated a sworn statement and updated fee schedule into the appropriate applications forms to meet the requirements of the new laws. Please be sure to visit our forms page (www.ksda.gov/appropriation/content/299) to ensure that you have the latest version of the water appropriation application forms.</p> |
| <p>July 15 - 1 p.m. Neosho BAC Meeting First Community Bank Iola</p> | <p>The full text of Senate Bill 64 and House Bill 2050 may be found online using the quick search function at www.kslegislature.org.</p> |
| <p>July 16 - 10 a.m. Kansas-Lower Republican BAC Meeting Courtland</p> | <p>Flexible Water Use</p> <p>Water right holders who would like to use more than their annual authorized quantity of water in some years, and correspondingly less water in other years, have until October 10 to apply for a term permit that allows for more flexible water use over a five-year period that begins January 1, 2010.</p> |
| <p>July 16 - 10 a.m. Kansas-Lower Republican BAC meeting Courtland</p> | <p>The multiyear flex account option is available to vested and certified groundwater water right holders. Water users establish a five-year allocation based on an average of their actual reported water use between 1992 and 2002, less a 10 percent conservation amount required by law and excluding any amount used in excess of the authorized quantity.</p> |
| <p>July 21 - 9 a.m. GMD 1 Board Meeting District Office Scott City</p> | <p>"This is one tool irrigators can use to deal with variations in precipitation from year to year, or to deal with a water right that has an authorized quantity that is insufficient to irrigate the full irrigated area every year," said David Barfield, chief engineer of the Division of Water Resources.</p> |
| <p>July 21 - 10 a.m. GMD 1 Budget Hearing District Office Scott City</p> | <p>Staff in DWR field offices are prepared to answer questions about flex accounts and to help water users complete application forms.</p> |
| <p>July 21 Rattlesnake Creek Partnership Meeting</p> | <p>Field office locations and contact information are at www.ksda.gov/dwr/content/309.</p> |
| <p>July 21 Kansas-Oklahoma Arkansas River Compact Commission Port of Muskogee, Oklahoma</p> | <p>More information about flex accounts, including possible scenarios for their use, can be found at www.ksda.gov/appropriation/?cid=297.</p> |
| <p>July 23 - 10 a.m. GMD 4 Board Meeting Colby</p> | <p>KAFM Annual Conference</p> <p>The Kansas Association of Floodplain Managers annual conference will be September 2 and 3 in Emporia. Topics will include state permits for floodplain fills, flood-proofing and 404 permitting. Floodplain professionals, emergency managers and building inspectors are encouraged to attend. Registration information is online at www.ekafm.org</p> |
| <p>August 6-7 Kansas Water Congress Kansas State University Manhattan</p> | <p></p> |
| <p>August 12 GMD 4 meeting Colby</p> | <p></p> |

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| <p>August 12 GMD 3 Meeting Garden City</p> | <p>Annual Testing and Certification of Portable Transit-Time Meters</p> |
| <p>August 12 Republican River Compact Administration annual meeting, Lincoln, Nebraska</p> | <p>The true value of a flowmeter measurement is determined by using a perfect measurement process. This value is always unknown because all flowmeter measurements are imperfect. To what extent is a flowmeter measurement imperfect?</p> |
| <p>August 13 GMD 5 meeting Stafford</p> | <p>DWR's meters are tested annually to identify measurement error, check their condition and to set an example by complying with our own regulations that require annual National Institute of Standards and Technology traceability for non-agency flowmeter operators. The tests are normally conducted in February to allow time to repair any faulty meters prior to the start of the inspection season.</p> |
| <p>August 13-14 Kansas Water Authority Meeting Salina</p> | <p>The meters were 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 NIST-traceable 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>September 2 KAFM Conference Emporia</p> | <p>Great Plains Meters' test stand uses a volumetric weight tank system to determine the volume of water passing the test meter's sensor. The weights 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 Great Plains Meters' 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. Great Plains Meters defines the cumulative error incurred when measuring a 5,000 gallon release as 37 pounds (4.43 gallons) – less than 0.1 percent error.</p> |
| <p>September 7 Labor Day – State Holiday</p> | <p>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.</p> |
| <p>September 9 GMD 3 Meeting Garden City</p> | <p>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 to four hundred 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.</p> |
| <p>September 10 GMD 5 Meeting Stafford</p> | <hr/> |
| <p>September 15 GMD 1 Meeting Scott City</p> | |
| <p>September 17 RSDE Seminar Olathe</p> | |
| <p>September 22 Dam Safety Seminar Johnson County Offices Shawnee</p> | |
| <p>October 21 RSDE Class Wichita</p> | |

From the Field



Wind-damaged tower in
Princeton, Kansas
Photo by Sherry Durst



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Interstate Water Issues

Republican River Compact – The nonbinding arbitration process over Nebraska’s overuse of Republican River basin waters for years 2005 and 2006 is nearing an end. 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) periods, which was the first accounting period prescribed in the settlement of Kansas’ 1998 lawsuit against Nebraska. Kansas has called for Nebraska to pay economic damages for its violations and to sharply cut use to prevent future violations. Nebraska does not dispute that they are out of compliance, but disagrees with Kansas’ claims to damages and prescription for what Nebraska needs to do to achieve future compliance. Furthermore, Nebraska has suggested that changes be made to the compact accounting procedures. The arbitration trial concluded in April and the arbiter issued his decision June 30, 2009. The chief engineer and attorneys from the Kansas Attorney General’s office are examining the decision to decide on Kansas’ response.

This nonbinding arbitration is a step along the dispute procedure defined in the compact. Though the findings and decisions of the arbiter are nonbinding, they are important because the facts and arguments that are presented in this process lay the foundation for the next process. If the states choose not to abide by the decisions of the arbiter, the dispute becomes a matter before the United States Supreme Court.

Colorado’s overuse of the river basin waters has also put that state out of compliance with the compact. Colorado has proposed an augmentation pipeline that would deliver groundwater pumped in northeast Colorado to a point on the North Fork of the Republican River. At an April 28 special meeting of the Republican River Compact Administration, Colorado’s plan was rejected when Kansas and Nebraska both voted against it. Kansas Commissioner and Chief Engineer David Barfield cited the plan’s lack of critical detail, especially regarding Colorado’s plan for compliance on the South Fork Republican River. The states continue discussing the plan.

Arkansas River Compact – As a result of litigation brought by Kansas, Colorado adopted use rules that specifically require replacing river depletions attributed to pumping 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 from 1997 through 2006. As a result of that evaluation, the states completed an agreement that will refine how Colorado will implement their use rules. The states worked cooperatively to reach an agreement without proceeding fully through the dispute resolution procedure.

The states also are discussing the new rules Colorado is proposing to address the issue of reduced return-flows caused by efficiency improvements to Colorado irrigation ditch systems. While it seems

intuitive that greater efficiency is a good thing, the result is that less water returns to the surface water systems, depriving downstream users of this water. Modern, more efficient systems reduce that return flow so that only 5 percent to 15 percent makes its way back to the river.

One of the fundamental tenets of the compact is that the waters of the Arkansas River must not be “materially depleted” by post-compact development. Kansas is working to ensure that Colorado accounts for reduced return-flows and that increases in consumption are offset.

Big Blue River Compact Annual Meeting

The annual Big Blue River Compact meeting was May 20, 2009, in Beatrice, Nebraska. The compact administration consists of appointed members from Kansas and Nebraska, as well as the federally appointed chairman, and they reviewed and approved minutes from the 2008 annual meeting.

The standard business of the compact included hearing reports by the compact commissioners and the budget, engineering and water quality committees. During 2008, flows at the state line gaging stations were above the compact targets for the period from May through September. Therefore, Kansas did not have to ask Nebraska to administer water rights junior to the date of the compact (1971). So far stream flows in 2009 have been well above the target flows for the May to September administrative season.

Dam Owners Encouraged to Inspect Dams After Heavy Rainfall

In light of June rains, the Kansas Department of Agriculture’s water structures program is urging dam owners to inspect their dams for signs of damage.

“The spring and summer storms may have put some dams under extra stress or even caused structural damage,” said Matt Scherer, manager of the water structures program. “Dam owners need to be vigilant for signs of damage and to report their concerns to either our department or to a qualified engineer.”

Some of the more common problems that develop after a precipitation event are debris accumulating around the pipe inlet and erosion of the embankment and spillway. Less common problems, such as holes on the embankment, also can develop.

In rare instances, dams can fail and put life and property downstream at risk. Dam failures need to be reported to the dam safety program immediately by calling their emergency, toll-free number at (800) 915-6163. Reports also can be made online at www.ksda.gov/structures/open_records/id/12.

Individuals with more routine questions about dams and dam safety, or who want to report nonemergency concerns, should call (785) 296-2933.

FEMA Funds Available for Kansas Disaster Victims

From FEMA's website: "The head of the U.S. Department of Homeland Security's Federal Emergency Management Agency announced that federal disaster aid has been made available for Kansas and ordered federal aid to supplement state and local recovery efforts in the area struck by severe storms, flooding, straight-line winds and tornadoes during the period of April 25 to May 16, 2009.

"FEMA Administrator Craig Fugate said the president's action makes federal funding available to state and eligible local governments and certain private, nonprofit organizations on a cost-sharing basis for emergency work and the repair or replacement of facilities damaged by the severe storms, straight-line winds, flooding and tornadoes in the counties of Anderson, Barber, Bourbon, Butler, Chase, Cherokee, Coffey, Cowley, Crawford, Elk, Finney, Greenwood, Harper, Harvey, Kingman, Labette, Linn, Lyon, Marion, Marshall, Montgomery, Morris, Neosho, Reno, Rice, Sumner, Wabaunsee and Wilson.

"Federal funding is also available on a cost-sharing basis for hazard mitigation measures for all counties and tribes within the state.

"Fugate named Michael L. Karl as the federal coordinating officer for federal recovery operations in the affected area. Karl said that additional designations may be made at a later date if requested by the state and warranted by the results of further damage assessments.

"FEMA's mission is to support our citizens and first responders and ensure that as a nation we work together to build, sustain and improve our capability to prepare for, protect against, respond to, recover from and mitigate all hazards."

For more information, contact your local county emergency manager.
