



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
XXXXX

File No(s). XXXXX

ORDER REGARDING INSTALLATION OF WATER FLOWMETERS

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 OF FACT

1. Totalizing water flowmeters enable holders of water rights to report their water use accurately and in a timely manner, as required by K.S.A. 82a-732.
2. The installation of totalizing water flowmeters on all surface water and groundwater points of diversion within Salt Creek, Saline River, and Smoky Hill River Basins in Russell, Ellsworth, McPherson, Ottawa and Saline Counties will implement the elements of the Kansas Water Plan which recommends installation of water flowmeters on all non-domestic points of diversion by the end of calendar year 2015. Points of diversion that are excluded from this Order are those used solely for domestic purposes or authorized by temporary permits.
3. The areas within Salt Creek, Saline River, and Smoky Hill River Basins in Russell, Ellsworth, McPherson, Ottawa and Saline Counties subject to this order include of the following areas:

Russell County

Township 15 South

Range 15 West through Range 11 West (All Sections)

Township 14 South

Range 15 West, Sections 1 through 2, 26 through 27, 31 through 36, any portion of these sections in the Smoky Hill River Basin

Range 14 West through Range 11 West (All Sections)

Township 13 South

Range 15 West, Sections 25 through 27, 34 through 36, any portion of these sections in the Smoky Hill River Basin
Range 14 West, Sections 21 through 36, any portion of these sections in the Smoky Hill River Basin
Range 13 West, Section 19, Sections 30 through 31, Sections 34 through 36, any portion of these sections in the Smoky Hill River Basin
Range 12 West, Sections 25 through 26, Sections 31 through 36, any portion of these sections in the Smoky Hill River Basin
Range 11 West, Sections 30 through 33, any portion of these sections in the Smoky Hill River Basin

Ellsworth County

Township 14 South

Range 10 West through Range 6 West (All Sections)

Township 15 South

Range 10 West through Range 6 West (All Sections)

Township 16 South

Range 10 West, Sections 1 through 18, Sections 23 through 24, any portion of these sections in the Smoky Hill River Basin

Range 9 West, Sections 1 through 30, Sections 33 through 36, any portion of these sections in the Smoky Hill River Basin

Range 8 West through Range 6 West (All Sections)

Township 17 South

Range 9 West, Sections 1 through 3, Sections 11 through 13, Section 24, any portion of these sections in the Smoky Hill River Basin

Range 8 West, Sections 1 through 19, Sections 21 through 27, Sections 34 through 36, any portion of these sections in the Smoky Hill River Basin

Range 7 West, Sections 1 through 30, Sections 33 through 36, any portion of these sections in the Smoky Hill River Basin

Range 6 West (All Sections)

McPherson County

Township 17 South

Range 5 West through Range 2 West (All Sections)

Range 1 West, Sections 1 through 24, Sections 26 through 36, any portion of these sections in the Smoky Hill River Basin

Township 18 South

Range 5 West (All Sections)

Range 4 West, Sections 1 through 36, any portion of these sections in the Smoky Hill River Basin

Range 3 West, Sections 1 through 24, Sections 27 through 30, Sections 32 through 34, any portion of these sections in the Smoky Hill River Basin

Range 2 West, Sections 1 through 30, Sections 34 through 36, any portion of these sections in the Smoky Hill River Basin

Range 1 West, Sections 1 through 11, Sections 13 through 23, Sections 26 through 34, any portion of these sections in the Smoky Hill River Basin

Township 19 South

Range 5 West, Sections 1 through 6, Sections 8 through 17, Sections 21 through 24, any portion of these sections in the Smoky Hill River Basin

Range 4 West, Sections 5 through 7, any portion of these sections in the Smoky Hill River Basin

Range 2 West, Sections 1 through 2, Section 12, any portion of these sections in the Smoky Hill River Basin

Range 1 West, Sections 3 through 10, Sections 15 through 16, Section 21 through 22, any portion of these sections in the Smoky Hill River Basin

Saline County

Township 16 South

Range 5 West through Range 1 West (All Sections)

Township 15 South

Range 5 West through Range 1 West (All Sections)

Township 14 South

Range 5 West through Range 1 West (All Sections)

Township 13 South

Range 5 West through Range 3 West (All Sections)

Range 2 West, Sections 6 through 9, Sections 15 through 22, Sections 28 through 35, any portion of these sections in the Saline River Basin

Range 1 West, Sections 24 through 26, Sections 32 through 36, any portion of these sections in the Smoky Hill River Basin

Ottawa County

Township 9 South

Range 5 West, Section 7, Sections 15 through 23, Sections 25 through 36, any portion of these sections in the Salt Creek Basin

Range 4 West, Section 31, any portion of this section in the Salt Creek Basin

Range 2 West, Section 1, Sections 12 through 13, Sections 24 through 25, Section 36, any portion of these sections in the Smoky Hill River Basin

Range 1 West (All Sections)

Township 10 South

Range 5 West (All Sections)

Range 4 West, Sections 5 through 9, Sections 14 through 23, Sections 26 through 34, any portion of these sections in the Salt Creek Basin

Range 1 West, Sections 1 through 6, Sections 9 through 14, Sections 23 through 25, Section 36, any portion of these sections in the Smoky Hill River Basin

Township 11 South

Range 5 West (All Sections)

Range 4 West, Sections 3 through 36, any portion of these sections in the Salt Creek and Saline River Basins

Range 3 West, Section 18 through 19, Sections 29 through 31, any portion of these sections in the Salt Creek Basin

Range 1 West, Section 1, Sections 12 through 13, any portion of these sections in the Smoky Hill River Basin

Township 12 South

Range 5 West (All Sections)

Range 4 West, Sections 2 through 11, Sections 13 through 36, any portion of these sections in the Saline River Basin

Range 3 West, Sections 18 through 20, Sections 27 through 36, any portion of these sections in the Saline River Basin

4. The points of diversion included in this Order are authorized by Vested Rights, Water Rights or Appropriations of Water identified as being located within Salt Creek, Saline River, and Smoky Hill River Basins in Russell, Ellsworth, McPherson, Ottawa and Saline Counties as described above, and are not being used solely for domestic purposes or authorized by temporary or term permits.

CONCLUSIONS OF LAW

1. The Kansas Water Appropriations 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 pursuant to K.S.A. 82a-706.
4. 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.
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.

ORDER

IT IS, THEREFORE, ordered that:

1. Owners of non-domestic water rights or appropriations of water whose points of diversion are located in the areas described in Paragraph 3 of the Findings of Fact of this Order shall install a totalizing water flowmeter which meets or exceeds specifications adopted by the Chief Engineer on each authorized point of diversion.
 - A. **Totalizing flowmeters shall be installed on all such points of diversion no later than April 1, 2009.**
2. Subsequent to the date of this order, there shall be no diversions of water from any point of diversion authorized by the Vested Rights, Water Rights or Appropriations of Water included in this order unless a totalizing water flowmeter has 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 flowmeter shall be maintained in operating condition satisfactory to the Chief Engineer as set forth in K.A.R. 5-1-8 and other regulations.
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 Flowmeter 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 installation, maintenance and use of water flowmeters shall henceforth be conditions of every Vested Right, Water Right or Appropriation of Water included in the order.
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, 2009**. Such notice shall be provided on a Notice of Completion of Diversion Works and/or Report of Flowmeter 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 flowmeter, 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 flowmeter shall be installed as required by this order at such time as the current water flowmeter is replaced or modified; and
 - 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.
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.

Reconsideration pursuant to K.S.A. 2006 Supp. 77-529. Within 15 days after service of this order, any party may file a petition for reconsideration with the chief engineer, stating the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.
9. This order contains terms, conditions, and limitations imposed by the Chief Engineer on the referenced water rights or appropriations of water. 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.

David W. Barfield, P.E.
Chief Engineer

Dated at Topeka, Kansas this 1st day of October, 2008

Certificate of Service

The foregoing Order was sent by first class U.S. mail, on 1st day of October, 2008, to the following:

XXXXXX

Staff

A copy of this Order was sent by first class, U.S. Mail to the following:

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