

Minutes: _____ Northwest Kansas Groundwater Management District 4 March 4, 2010 Board Meeting

1. OPEN MEETING, ATTENDANCE AND AGENDA

The March board meeting was opened at 10:10 A.M. CST, March 4, 2010 in the district offices, Colby, KS by President Scott Maurath.

Board members present for some or all of the meeting were:

Lon Frahm	Scott Maurath	Brent Rogers
Shane Mann	Mitch Baalman	Dave Rietcheck

Board Members absent were: Jon Friesen, Jeff Deeds, Doug David, Roger Zwegardt and Monty Biggs

Others present for some or all of the meeting were: Wayne Bossert, Ray Luhman, Dan Simmering – GMD 4 staff; and Scott Ross – DWR.

President called for any additions, corrections or deletions from the published agenda. Staff indicated there were none.

2. CONSENT AGENDA

Dave Rietcheck moved for approval of the consent agenda including: 1) the February 17, 2010 minutes as presented; and 2) receipt of the February, 2010 financial reports including the February, 2010 expenditures totaling \$28,340.97. Mitch Baalman seconded the motion which passed unanimously.

3. MANAGER'S REPORT

Manager briefly covered the items already stated in the board packet and stood for any questions. Mitch Baalman asked for more detail regarding the term permit option discussed within HPA SD-6. It was explained that the intent was to promulgate a regulation requiring all water rights in the HPA to set aside their water rights in lieu of a 5-year term permit based on that right's portion of the reduction goal adopted – with the caveats that: 1) the 5-year term permit was sunsetted at the end of the 5-year term and the set aside water right was returned in tact; 2) the 5-year term permit would allow each water right owner to pump the total 5-year permit amount in any fashion desired; and 3) that a sufficient penalty be specified in the regulation to deter violations.

With this explanation, discussion turned to: 1) whether or not DWR can promulgate a regulation requiring all water rights to seek term permits; and 2) the advantages and disadvantages of using 5-year flexible term permits as opposed to restricted water right orders for the same amounts. The board asked Scott Ross to seek a DWR answer to the first question – Can DWR promulgate a regulation requiring water right owners in the SD-6 HPA to set aside their water rights and accept a single, 5-year term permit instead?

4. UNFINISHED BUSINESS: None

5. NEW BUSINESS

a. **AWEP Discussions/Questions:** The issue needing discussion was how the NW Kansas Groundwater Conservation Foundation wanted to handle any contribution to the AWEP application being contemplated. It was felt that the Foundation board needed to discuss and decide this issue, so a Foundation Board meeting needed to be called in conjunction with the April 8, 2010 GMD 4 board meeting with this discussion as an agenda item.

b. **KAR Testimony Consideration:** Manager presented the testimony recommended by staff for all the KAR's listed in this agenda item. *Following questions and discussion, Brent Rogers moved that the testimony presented by staff be offered on behalf of the Northwest Kansas Groundwater Management District No. 4 at the April 7, 2010 hearing. Mitch Baalman seconded the motion which passed unanimously. The approved testimony is:*

NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 4

STATEMENT OF ISSUE - TESTIMONY

April 7, 2010

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1: DWR Proposed Regulations – KAR 5-4-1 and 5-4-1a - Impairment

Amending the impairment process of the State of Kansas.

BACKGROUND:

The current process of receiving and investigating impairment complaints is proving to be too general to work well in today's more sophisticated water environment. The amendments seek to improve these processes by a more procedurally inclusive and detailed approach. Much of the procedure proposed in the regulation represents an improvement in the impairment process.

CONCERNS & COMMENTS:

1. KAR 5-4-1 (b)(5) allows the chief engineer to require hydrologic testing and the installation of observation wells as part of an investigation. There is no indication as to who can or will pay for this testing and extra installations if required. There being specific roles associated with the investigation for a GMD (if the complaint is for groundwater and filed from with a GMD) we are concerned that the local well owners and/or the GMD may be required to pay for the hydrologic testing and observation well installation authorized by this section.
2. In all other respects, these proposed regulations represent an improved impairment process for the state of Kansas.

RECOMMENDATIONS:

- 1) Since GMD 4 finds no compelling arguments for the notion that anyone but the state should cover the cost of additionally required hydrologic testing and/or installed observation wells, KAR 5-4-1 (b)(5) should be amended to clarify that the state will incur all such additional costs.

2: DWR Proposed Regulation – KAR 5-7-1 – Due and Sufficient Cause for Nonuse

Adding a new reason for due and sufficient cause for nonuse

BACKGROUND:

The recognized reasons for nonuse are important in the maintenance of every water right in the state. Decisions concerning the abandonment and forfeiture of a water right often hang on the owner's reasons for nonuse and the agency's interpretation of the reasons provided. These reasons should be as clear and concise as possible.

CONCERNS & COMMENTS:

1. KAR 5-7-1 (a)(11) is awkwardly written and can be interpreted two ways.
2. KAR 5-7-1 (b)(2) requires the owner to maintain the diversion works in a functional condition in order to successfully meet any of the reasons for nonuse (except for reasons (a)(4) and (a)(7)). This language does not give the regulated community sufficient knowledge and direction as to what is expected of them.
3. In all other respects the proposed amendments to this regulation are positive.

RECOMMENDATIONS:

1. KAR 5-7-1 (a)(11) be amended to read: *"The water right is located in an area of the state that is closed to new appropriations of water by regulation or order of the chief engineer, not to include any area solely closed by safe-yield analysis."*
2. KAR 5-7-1 (b)(2) be expanded to make it clear that removing the pump, motor, gear head and/or meter from the well site and storing this equipment meets the definition of maintained diversion works – so long as the remaining well casing is environmentally protected.

3: DWR Proposed Regulation – KAR 5-1-4 – Flowmeter Specs

BACKGROUND:

This proposed regulation changes the conditions under which meter seals will be required to be installed.

CONCERNS & COMMENTS:

1. None.

RECOMMENDATIONS:

1. None.

This testimony was board approved on March 4, 2010.

Signed: Wayne A. Bossert, GMD 4 Manager

6. DWR REPORT

Scott Ross reported:

- a) DWR was struggling with annual water use reports with their lack of staff;
- b) Not too many meter problems or issues at this time;
- c) the annual water level measurements have been completed, and there were a few problems getting to some of the wells – especially in Decatur, Norton, Rooks and Graham Counties – due to drifted snow.
- d) The KGS Index well program has hired a new person to manage it – Randy Stotler.
- e) BRO program (blatant and recurring overpump) is being discussed by DWR and one of the issues is how long to continue the BRO orders – in other words, should there be a statute of limitations for these orders? Scott asked the board to offer any suggestions or input they had.

7. OPEN SESSION - PUBLIC QUESTIONS/COMMENTS

None.

8. SET NEXT MEETING DATE AND CONSIDER FUTURE AGENDA ITEMS

The full year board meeting schedule has already been set with the remainder of the year meetings as follows: April 8; May 6; June 3; July 1; August 12; September 2; November 4 and December 16.

9. ADJOURNMENT

With no other business and no objections, President Maurath declared the March 4, 2010 board meeting adjourned at 12:00 P.M., CST, March 4, 2010.

Respectfully submitted:

Jeff Deeds, Secretary