

## 2008 MEASUREMENTS COMPLETED

The January, 2008 water level measurements for Kansas have been completed and the news is mixed. In western Kansas, where water is pumped primarily from the Ogallala aquifer portion of the High Plains aquifer, declines were greatest in the southwest where levels dropped an average of 1.65 feet between 2007 and 2008.

During the same time period, water levels in west-central Kansas (from Wallace to Lane counties) dropped an average of 1.1 feet. In the northwest corner of the state (from Cheyenne to Graham counties) they dropped 0.91 feet. The year before (2006-2007) average declines were 2.45 in the southwest, 0.73 in west-central and 0.27 in the northwest. It should be noted that the 2007 measurements for NW Kansas (due to snow) were actually taken mostly in late March and early April, allowing the water table to recover a bit more than usual in these wells. The recovered, April 2007 water levels will tend to make the 2008 levels appear a bit more severe.

In south-central Kansas, water levels in the Great Bend Prairie aquifer area rose 3.1 feet. In the Equus Beds aquifer north of Wichita, they rose 2.04 feet. In comparison, between 2006 and 2007 they dropped 1.19 feet and 2.39 feet, respectively.

The increases and decreases are mainly precipitation-driven. Precipitation in south-central Kansas was 150 percent to 200 percent above normal in 2007 while most of the western Kansas areas had moderate drought to abnormally dry conditions.

## WEBPAGE HELP

We tried to design the webpage ([www.gmd4.org](http://www.gmd4.org)) such that all the information contained within is readily discernable from the opening page, but if you've ever designed a page, you know this is very hard to do. Some of the less obvious information on our site is contained within the District Overview page ([www.gmd4.org/ginfo.html](http://www.gmd4.org/ginfo.html)). On this page there are further links to: 1) a well summary of the district by County; 2) the current Board of Directors listing; 3) Frequently Asked Questions (FAQs); 4) a water Acronym listing; and 5) a set of definitions for Kansas water terms. If you visit our site and can't find what you're looking for, we'd appreciate a notice so we can either make it more noticeable if it's already there, or add it if it isn't. We really want the page to be useful and as informative as it can be.

## IGUCA BILL STALLS IN THE LEGISLATURE

The intensive groundwater use control area (IGUCA) statutes within the groundwater management district act were slated to be amended this session to require a periodic review process for all IGUCAs, and, to reverse a 2002 Attorney General's opinion giving the chief engineer authority to initiate an IGUCA within a GMD on his or her own initiative. These two items were recommendations of an interim legislative committee after 3 days of hearings and study. But the House had different ideas. HB 2625 was introduced into the Ag & Natural Resources Committee and contained both an IGUCA review process and the GMD language authorizing only a local board (or a subset of district members) to be the IGUCA triggering agents within a GMD. It came out of this committee as a substitute bill with an improved IGUCA review process, but, without the IGUCA trigger clarification language – a definite problem for the local GMD's.

The original IGUCA statutes were passed in 1978 such that within a GMD, only the GMD board or a designated subset of members could request an IGUCA, while the chief engineer could do so as necessary anywhere outside a GMD. This arrangement insured that the chief engineer had access to the IGUCA tools (contained in the GMD Act) everywhere outside a GMD, and that the local GMDs were insured that their local management plans would have appropriate standing in every GMD-IGUCA. But this arrangement was upset in 2002 when the Attorney General opined otherwise. The IGUCA bill was supposed to clarify and reinstate the pre-2002 interpretation - until the House Ag & Natural Resources Committee removed the clarification language.

While it seems improbable that the current chief engineer would do an IGUCA within a GMD without the board's involvement, the fact that he or she was able to do so was a concern to the state's GMDs. This bill was amended on the floor of the Senate to re-include the local IGUCA triggering authority removed by the House. The successful amendment was carried by Senator Ralph Ostmeyer with Senators Morris and McGinn speaking for it, and its unanimous passage meant a conference committee. In conference, both chambers held their positions steadfastly, and the bill died for lack of any compromise. As of now, the AG's opinion favoring state-initiated IGUCA's remains unclarified and there is no legislatively required IGUCA review process.

## REPUBLICAN RIVER COMPACT BILL

SB 89 was introduced last session to direct the division of all award funds coming to Kansas from either Colorado or Nebraska from the Republican River settlement agreement. It passed the Senate last session and began its trip through the House this session. It was sent to the House Ag & Natural Resources Committee and went through significant changes - eventually becoming Substitute for SB 89 – which contained a significantly lower direct earmark for the Upper Republican Basin area, but contained language which gave our area "priority" to a portion of some other award moneys.

The thinking was this was the final bill, as it was engrossed and sent to the Governor for signature. But while this was going on, two other bills (SB 690 and HB 2984) were introduced which proposed yet two more methods of dividing the award moneys.

All 4 versions were tabulated to project how each would support the Upper Republican Basin area, and they were all over the board in regard to direct (earmarked) funding for conservation for our area. The prevailing bill, Substitute for SB 89, was the third worst bill in this regard while the last bill, HB 2984, was the best. However, Sub. for SB 89 provided our area priority status towards other state water plan funds while HB 2984 gave our area priority to additional funds for the entire Republican Basin area – both upper and lower.

GMD 4 testified in support of SB 89 initially (before the other 3 bills were considered) and then supported HB 2984. These were the two bills that seemed to support the Upper Republican Basin area the best. In the final analysis, it's hard to tell which bill was actually the best, because all 4 bills must be interpreted as to how much of the total award moneys goes to each basin area. The good news is that the Kansas Water Office director in charge of the interpretation has shown thus far to be open and accessible and a fair and reasonable person in these regards – wanting primarily good conservation. We'll just have to wait and see and stay on top of the process as it unfolds.

## www.gmd4.org WEBSTATS

For the combined months of February and March 2008: Our webpage experienced 3,815 visits resulting in 4,701 page views. The top 3 pages were: Water Quotes (74.4%); The Home Page (8.5%) and Formulas (7.9%). From startup (April 1, 2007) to March 31, 2008, we've averaged 1,533 visits and 1,948 pageviews per month.

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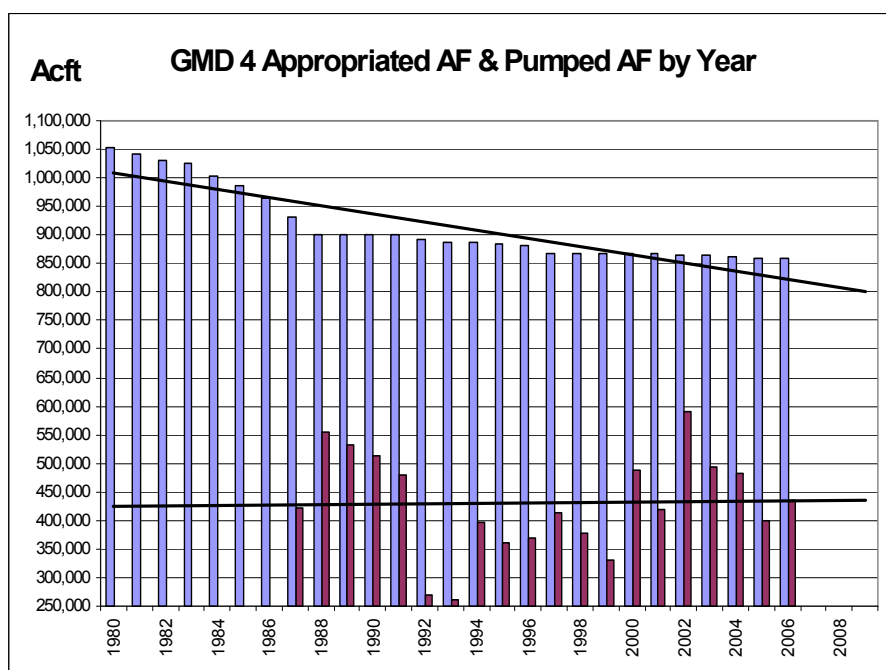
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**A NEW WINDMILL FOR WATER?**

Last edition a water purifying tricycle was reported on. As you may recall, a team of university students invented a tricycle that would purify water as it was pedaled home. One of that team, Zach Pearl, was recently selected to work on the next water purification project – a wind-powered device that can be used in remote areas with no power, or disaster areas when power is temporarily disrupted. This project is going global with participating students from the US, Sweden and Venezuela, and the group hopes to develop an economically viable product that can be commercially sold. Eventually, the design process will be opened up to the internet where anyone can offer ideas. Two professors at Western Kentucky University, Robert Choate and Kevin Schmaltz are advising the design group.

**APPROPRIATED AND PUMPED GROUNDWATER**



**The Water Table**

Sponsored by the NW Kansas Groundwater Management District No. 4, 1175 S. Range, Colby, KS 67701-0905. Office hours: 8:00 a.m. to 5:00 p.m. Monday through Friday (except the noon hour) - closed during State holidays.

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ADDRESS CORRECTIONS ARE APPRECIATED

**THE NATURE OF A KANSAS WATER RIGHT**

Impairment of water rights is a hot topic these days, but how do you know if your water right is being impaired? The most common basis of impairment is when a water right cannot be exercised due to the impact(s) of another water right(s). It is not always clear cut. Wells can drop off in yield for other reasons than impairment – such as poor well design and/or construction, well or pump failure, and in some cases changes in aquifer zones as the well pumps over time. However, they can also drop off due to interference from another well or wells, or, due to the general water table decline in the region caused by all pumpage. Direct impacts of 1 well on another are fairly straight forward, however regional impacts of many wells on 1 well are much more difficult. Under the appropriation doctrine, junior rights are shut off to protect senior rights when impairment occurs. This sounds pretty simple, but determining how much impairment is happening and over what time period are critical questions to doing this correctly. Is it right to shut down a junior right completely and forever if the impairment happens only in late August in only the dry years? Other issues that get discussed are: what if administering junior rights will not fix the senior’s problem (futile call); priority is relative – a senior right in one area can easily be a junior right just a few miles away; and how should economic impairment be recognized? Your right not to be impaired is important, but it’s not always easy to quantify, qualify and solve.

**Pumping the Tailwater**

Editorial Comment by Wayne Bossert, GMD 4 Manager

**The Waterscape is Changing**

I came to Northwest Kansas in March, 1977 to manage this new entity called a groundwater management district, or GMD. Coming from Oklahoma, I looked really hard at the Kansas water law at that time - as anyone would starting such a new job. The chief engineer at that time was Guy Gibson. The new GMDs spent a lot of time with Mr. Gibson discussing the finer points of Kansas water law and the relationship of the Kansas Water Appropriation Act to the new, GMD act.

One very important aspect of water administration in Kansas at that time involved the circumstances under which water administration (regulation) would be undertaken. At that time, the only way to fix a water problem in Kansas was to administer junior water rights until the problem was solved. It was then the position of the agency that the administration process would be started only when a “call for water” was made by a water right property owner. Today the agency is reporting that in the public interest it has the authority to make a “call for water” on behalf of any senior water right owner(s). I don’t know which interpretation is right or lawful, but I do know this is a big change.

Another important issue is the expression of state water policy. Several statutes are involved but one can identify all the legislatively stated policies in these statutes. KSA 74-2621 is one such statute, and it says that new policy recommendations from the water planning process must be put in bill draft form and submitted to the Legislature. It seems clear that the Legislature did not want the water planning process to decide new state water policy. They have always been the only body to pass or amend laws (including designating or changing of agency powers).

When discussing this very issue, one agency employee came up with a new answer - that the Legislature approves agency budgets, which include programs, so everything the agency does with a legislatively approved budget is therefore state policy. Somehow I don’t think this is legally constituted state policy, but it appears some may think so.

Another important issue is the IGUCA. In 1978 when the IGUCA laws were implemented into the GMD Act, it was clear to everyone that only a GMD board, or a specified subset of GMD members, could ask for one inside a GMD while the chief engineer could do so anywhere else in the state on his or her own initiative. This was a delicate crafting of IGUCA-responsibilities that: a) gave the state new IGUCA tools outside the GMDs; b) insured a local check over state-imposed IGUCAs inside GMDs; and c) did not hinder the state’s power to otherwise administer water rights anywhere in the state to address any problem.

In 2002 the attorney general opined that the IGUCA triggering language was not clear - even though it had been clear to everyone for 25 years. As such, “legislative intent” on this issue needed to be discerned so that we’d all know how the language was supposed to be read. The opinion next wrote that “..legislative history does not indicate why the limiting language was added..”, so, it next had to derive “legislative intent” from the general consideration of the entire GMD act. (It seems to me that with the quoted statement the AG admits that the language was clear and in fact limited the state engineer - she just didn’t know why they wrote it that way) Anyway, no clues in the GMD act, either. The AG finally chose to go to a completely different law - the Kansas Water Appropriation Act - to finally conclude that the chief engineer can initiate an IGUCA within a GMD by using the GMD Act, but under powers granted in the water appropriation act. We feel this opinion is in error, created new state agency authority and new state policy as well.

It is the first, post 2002 IGUCA, which brings all these issues together. This IGUCA was done partially inside a GMD under the agency’s new, AG-provided power (no GMD request). It was precipitated primarily from a state water plan objective – safe yield in a stream/aquifer reach – considered as state water policy but not having received legislative blessing as such. The next case could find the agency’s justification as being that senior water rights need protection in the public interest. We should all insist that the state’s official water policies drive all new IGUCAs, and, be mindful of who’s public interest is being slated for protection – and upon whose request.

These cumulative events seem to be changing the waterscape in Kansas. But why? And are these the right changes? In debating the IGUCA bill this year, the most prevalent state position was: the state needs IGUCA powers in a GMD in case the locals won’t act. Regardless of the reason(s), somewhere in this process there must be a suitable role for the local public interest, and the locals must get about the business of properly defining their public interest and this role. The best way to do this is to become more pro-active in local groundwater problems and to find suitable, local solutions for them. Otherwise, the state will.