

FARM BILL PROPOSAL SUBMITTED

A local partnership consisting of GMD 4, the Sherman County Conservation District, the Sherman County Farm Bureau and the NW Kansas Groundwater Conservation Foundation submitted an Agricultural Water Enhancement Program (AWEP) proposal on March 20, 2009. AWEP, within the 2008 Farm Bill, replaces the Ground and Surface Water program within EQIP but is more flexible in dealing with the most significant groundwater conservation approaches – permanent retirements of water usage.

Our proposal is requesting \$3,900,000 to permanently retire (voluntarily) 2,000 acrefeet of historic consumptive water use within the designated high priority area (HPA) SH-1 in southwest Sherman County. The local Foundation will be contributing \$100,000 if the proposal is approved. Approximately 1,900 acres of irrigated land, 2,400 acrefeet of pumped groundwater and all the energy used to operate these wells will be eliminated in a step toward slowing the decline rates and extending the economic life of the local aquifer. The stakeholders of HPA SH-1 have been met with twice to discuss this approach and have as a group supported this proposal.

AWEP has been provided \$58.4 million for fiscal year 2009, and is authorized for \$73 million for fiscal year 2010, \$74 million for fiscal year 2011, and \$60 million for fiscal year 2012 and each year thereafter. Moreover, according to the guidelines, the ranking criteria gives higher priority to proposals that: are located in specified regions – including the Ogallala Aquifer; propose to convert irrigated lands to dry land farming; and are located in states with water quantity concerns.

It is expected that the nationwide proposals will be reviewed and evaluated by NRCS over the next 3 months before any announcements are made.

GENERAL REMINDERS:

- ♦ Plan on operating within your water right(s) in 2009
- ♦ GMD 4 Board Meetings are open meetings
- ♦ Control all Irrigation Tailwater
- ♦ Read your newsletter front to back - every edition

METERS & WATER USE REPORTS

If you are required to have a meter installed, which should be everyone in GMD 4 before beginning pumping this year, you should note that the annual water use report **requires** the beginning and ending meter reading to be reported. You may continue reporting hours and rate, which often serves as a check on the meter readings, but the meter values must also be provided. It is actually easier to report the metered values once you get in the habit, and GMD 4 has provided a meter calculator on its website (see link below) to help you get started. Not only does the meter calculator explain the meter register numbering convention, it also allows you to enter your values and see how many acrefeet you pumped. We also assist several water users by keeping meter records for them from year to year.

Now that the meter installation program is wrapping up, GMD 4 and DWR are beginning to discuss a meter monitoring effort, which will have proper reporting of beginning and ending meter readings as a point of emphasis. You can help this effort by making sure you report meter values from here on out if you have not been doing so already. If you have ideas of how best to monitor meters, give us or DWR a call.

In a related note, we're told the online water use reporting procedure which was tested this year for the 2007 water use reports, has experienced a setback in that the person working most on that effort is no longer with the agency, and the hiring freeze and budget shortfalls make it likely no one will pick it back up in the near future.

STATE AND LOCAL ONLINE RESOURCES OF INTEREST

- Water Rights information: <http://hercules.kgs.ku.edu/geohydro/wimas/index.cfm>
Well Completion Records: <http://magellan.kgs.ku.edu/WaterWell/index.html>
Water Level Data: <http://www.kgs.ku.edu/Magellan/WaterLevels/index.html>
GMD 4 Webpage: <http://www.gmd4.org>
Meter Calculator Site: <http://www.gmd4.org/MtrCalc/mtrcalc.htm>

CONSEQUENCES OF OVERPUMPING

(Article has been excerpted from the DWR newsletter: DWR Currents)

Kansas water rights have legally established limits concerning the quantity of water authorized, rate of diversion, place of use, use made of water, and other conditions and limitations. Owners should be aware of the legal limits of their water rights because violations can result in substantial penalties.

In general, the Division of Water Resources applies the following progressive penalties when an individual diverts more water than is authorized by his or her water right or permit to appropriate water:

- First offense: Notice of Noncompliance
- Second offense: \$500 fine and 1x water penalty*
- Third offense: \$500 per day fine and 2x water penalty**
- Fourth offense: 1-year suspension of authorization to use water
- Fifth offense: Revoke water right or permit

(* 1x water penalty means the authorized quantity for the following year is decreased by the same amount overpumped. ** 2x water penalty means that the authorized quantity for the following year is decreased by twice the amount overpumped.)

There can be exceptions to this stated progression if overpumping is flagrant – meaning DWR can jump a step or two in certain cases.

WATER AND ENERGY GAINING STEAM

Two years ago DOE began a “Water and Energy Nexus” process because much water is used in energy production and much energy is used in water supply and treatment efforts – and both are dwindling. From the beginning the process (under DOE) seemed obviously oriented toward water for energy despite all the “nexus” verbiage. Now a bill has been introduced calling for 6 studies/efforts – all but 1 being water for energy rather than energy for water. The DOE report to Congress characterizes their effort as: *“a report to Congress on the interdependency of energy and water focusing on threats to national energy production resulting from limited water supplies, utilizing where possible the multi-laboratory Energy-Water Nexus Committee.”* Still sounds like a “water for energy” focus. This effort needs to be watched closely.

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NEW REGULATIONS BEING PROMULGATED

Several new regulations regarding water rights are being proposed by the Kansas Department of Agriculture, division of water resources. One amends existing regulation KAR 5-7-1 dealing with due and sufficient cause for non-use – or water right abandonments. The amendment eliminates the requirement to have had an irrigated crop in order to claim non-use due to adequate rainfall. With this change one simply needs to grow a crop and maintain the well and pump. For water right owners this means that virtually no water right will ever be abandoned for non-use as long as the owner claims non-use due to adequate rainfall. The downside of this choice will hit if regulation of water rights is ever needed for any reason. Regulated cuts to active water rights will be deeper because of the inactive rights still on the books.

Another set of proposed regulations (KAR 5-4-1 and 1a) deal with the impairment process. Being proposed: Non-domestic well owners claiming impairment must first hire a professional to study the well, casing, pump and motor to make sure these are not the supply problem. If they are not, and the impairment investigation continues, the complainant becomes obligated for 50% of the investigation cost (not to exceed \$2,500) if the state's study concludes no impairment. This may be an imposed risk that significantly stifles impairment complaints. On the positive side, the regs apply different approaches to direct impairment and regional impairment situations, and appropriately involve the GMDs if the complaint is inside a district.

All these regs will likely go to public hearing this Summer.

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 for State holidays.

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ADDRESS CORRECTIONS ARE APPRECIATED

THE NATURE OF A KANSAS WATER RIGHT

In considering the approval or denial of a new water right application, K.S.A. 82a-711 says if a proposed use neither **impairs** an existing right nor prejudicially and unreasonably affects the **public interest**, the chief engineer shall approve it so long as it is made in good faith, in proper form and proposes a beneficial use. The only exception is an application for fresh water where other waters are economically and technologically feasible.

The act goes on to say that in determining if the **public interest** will be affected, the chief engineer shall consider established minimum desirable stream flows, safe yield and recharge rates, the priority of all existing claims to use water, the amount of each existing claim to use water, and all other matters pertaining to such question.

The act finally says that **impairment** shall include the unreasonable raising or lowering of the static water level, the unreasonable increase or decrease of stream flow, or the unreasonable deterioration of water quality beyond a reasonable economic limit.

An interesting issue regarding impairment is that K.S.A. 82a-711 defines it in terms of the unreasonable raising or lowering of the **static water table**. While it almost sounds like impairment cannot actually occur during the pumping season (non static conditions) this is not likely the case, as K.S.A. 82a-706b says that no person can prevent any waters of the state from moving to a person having a prior right to the use of the water. This more clearly covers all supply problems – in the pumping season and otherwise.

In reality the GMD 4 regulation prohibiting new appropriations, adopted by the chief engineer for our district alone, is actually defining the local **public interest** in regard to new water rights. It is also not hard to see how important **public interest** is in Kansas water law, and how flexible it can be when “*all other matters pertaining to such question*” are lawfully defined as part of the **public interest**.

CORRECTION...

My apologies, but in my haste to get the last newsletter out I forgot to update the Masthead with the new board member and officers. Please note that **Brent Rogers** is now correctly listed in this edition's Masthead as your Sheridan County board member. Brent is the only change in board members from last year. My apologies Brent.

WEBPAGE ADDITION – WELL CHARTS

Individual County charts of the observation well network have just been posted to the webpage under the “Water Level Data” clickable. Each chart graphs the saturated thickness of the 4 observation wells in the County that have: the most and least saturated thickness and the most and least declines. Also included is a graph of the average saturated thickness of all observation wells in the County - by year. Most GMD 4 Counties surprisingly have a fairly wide range of saturated thicknesses and decline rates. These charts are updates of similar charts done in 2001 and published in the May/June, 2001 newsletter edition.

IGUCA AMENDMENT BILL FAILS

The Kansas GMDs tried again this session to have the Legislature clarify the IGUCA triggering language a former Attorney General found so confusing. HB 2272 passed out of the Ag and Natural Resources committee by a slim margin, but was easily defeated on the floor of the House. The failure of this bill leaves the issue clouded. The statute appears to say that the chief engineer cannot initiate an IGUCA within a GMD without the district's request, while the AG's opinion says that an IGUCA can be so initiated. An agency regulation based on the AG's opinion interpretation is in the works. It appears that the Legislature is not going to clarify this issue which is problematic because it appears that the Attorney General is now creating law in Kansas.

Pumping the Tailwater

By Wayne Bossert, GMD 4 Manager

IS LOCAL CONTROL IMPORTANT?

NW Kansas Representative John Faber was one of those who rose on the floor of the House to speak against the IGUCA clarification language the 5 Kansas GMDs were seeking. One of his statements was that GMD 4 had all irrigators on its board of directors. I was not present, so I don't know exactly in what context this statement was made, but since he was speaking in opposition to the bill GMD 4 wanted, I have to assume it was not meant as a positive, pat-on-the-back to our local GMD process.

While it actually is a true statement, everyone should know that GMD 4's sitting board is by no means a result of any GMD 4 design. We operate our board elections per KSA 82a-1026 - a law passed in 1972 by the Kansas Legislature. Every eligible voter is allowed to attend every annual meeting and elect the local board they want. This is not an insignificant responsibility. Since irrigators are outnumbered easily 6 to 1 (even with the non-irrigators who have forfeited their membership rights by opting out of the district) we should all be asking ourselves why the GMD 4 board make-up is as it is. Quite simply, those choosing to participate make the district what it is and those choosing not to participate allow it to happen. The process itself is not at fault when it comes to any GMD issue.

It is also no secret that Representative Faber has on several occasions expressed disappointment with the local district activity and stated his concerns regarding the level of irrigation existing in his area - hence his position on local groundwater management. And this is fine - his perspectives could actually be right. But if an all-irrigator board is a problem, wouldn't a better fix be to use the local processes already provided to elect a different board makeup rather than working to restrict (eliminate?) our local abilities to do this?

I respect Representative Faber's position, but will continue to question his efforts to erode local GMD authority based on his stated belief that we're not doing our job. I will also stand by our local accomplishments in halting new development and waste, and reducing existing water use as among the most active in the state. We've not solved all the water problems yet, but then again, no one else has either. Any comments are invited for further discussion.