

FEDERAL GOVERNMENT IN WATER?

President Obama has stepped in and issued an executive order in regard to the clean-up of the Chesapeake Bay. His order creates a Federal Leadership Committee led by EPA whose charge is to oversee all ongoing restoration efforts – including those of the existing interstate council comprised of the Chesapeake Bay states of Virginia, Maryland, Pennsylvania, Delaware, West Virginia and District of Columbia. The order also directs EPA to research its authority under the Clean Water Act to restore the bay – as the states' work thus far has concluded that full enforcement of the Clean Water Act by EPA would clean up the bay in 5 years. EPA has also gone on record that stronger regulatory and enforcement actions may be needed under the presidential order. Most of the problem is said to be nitrogen and phosphorus, with agriculture contributing 60% and wastewater treatment plants contributing 20%.

This federal intervention action is applauded by some who think the state-organized interstate council has not been effective enough and not aggressively pursuing significant water quality solutions. It is also questioned by others who think water issues are traditionally states' right's issues.

And at the same time Interior Secretary Ken Salazar just recently said the federal government won't try to broker a solution to a bitter three-state battle over water rights between Georgia, Alabama and Florida, and urged the 3 states to seek a compromise outside of the courtroom. The 3 Governors broke off all negotiations last year after saying they could not resolve the complex battle that began almost 20 years ago.

It's hard to say what the federal water strategy might be when the administration aggressively tackles one problem and another is bypassed. Could an Executive Order on the Ogallala be next?

GENERAL REMINDERS:

- ♦ Plan on operating within your water right(s) in 2009
- ♦ GMD 4 Board Meetings are open meetings
- ♦ Control all Irrigation Tailwater
- ♦ GMD 4 is now on Twitter - posting updates more often

OTHER GROUNDWATER ISSUES AROUND THE WEST

Texas: The 16 designated GMA (groundwater management areas) covering the state are legislatively directed to set Desired Future Conditions (DFCs) by September, 2010. The DFCs established will be that GMAs water budget through the year 2060. Within any GMA there may be no or several GMDs. The GMDs have been given the lead in establishing DFCs – even for those Counties without a local GMD.

Arizona: Prescott is considering a pilot program to catch stormwater runoff and recharge it through a series of transfer drainages, vegetative wetlands and into catchment ponds and dry wells – all aimed at recharging the groundwater supply. They are seeking a grant for most of the \$50,000+ project costs.

Nebraska: Nebraska Department of Environmental Quality has received more than \$200,000 of federal stimulus money to apply to water quality improvements, both surface and groundwater, in the Platte River Basin. The award comes from EPA which has \$39 million nationally to put toward water quality efforts.

Utah: In early 2007 the State Legislature requested a groundwater monitoring-well network in the west desert in response to proposed water-development projects announced. One project is from the Southern Nevada Water Authority (SNWA) to pump Utah water from this area to Las Vegas/Henderson/Clark County, Nevada region. The aim of the drilling program is to characterize the Utah water reserves.

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>
Abandoned Well Plugging: <http://www.oznet.ksu.edu/kelp/WhatsNew.htm>

WTAP PROGRAM UPDATE

The FY 2009 Water Transition Assistance Program (WTAP) application enrollment period has been finalized and closed recently. According to program manager Steve Frost (State Conservation Commission) the 2009 program was successful with 41 applications being submitted from within the state's three eligible areas. GMD 4's designated six high priority areas (HPAs) make up one of the 3 eligible areas.

Thirty-eight of the applications were from within our GMD 4 HPAs, and of these 38, there was funding left for only 11 applications after the FY09 legislative Rescission Bill reduced the \$3.448 million dollar fund to \$2.222 million. The non-selected applications have all been returned.

The FY 2010 program did survive the legislative process but only \$826,334.00 was appropriated, meaning probably that only about \$800,000.00 will be available to fund applications made this Fall. If you are within one of the GMD 4 HPAs and are interested in permanently retiring your water right, watch for any WTAP announcements for the 2010 program signup.

REPUBLICAN RIVER COMPACT REPORT ISSUED

The non-binding arbitrators report was issued June 30 and included 159 Findings, 53 Conclusions and 12 Recommendations. Among the findings were: 1) Nebraska has deprived Kansas of its rightful share of the Republican River, and has violated a US Supreme Court decree by 78,960 acre-feet AF for the years 2005 and 2006; 2) Agreement with Kansas that Nebraska's current plan for achieving compliance is inadequate and Nebraska must address its overdevelopment through additional reductions; 3) Rejection of Nebraska's request to alter the current methods of quantifying the water supplies and water uses in the Republican River Basin; 4) Dissatisfaction with both state's methods of calculating damages. A \$10,000 nominal damage award was recommended for Kansas until Kansas can clarify its method of deriving damages – possibly leaving the final determination to a future proceeding; and 5) future sanctions against Nebraska if compliance does not occur will be likely be imposed on top of future monetary awards. The arbitrator also did not recommend a river master at this time citing the lack of specific duties & responsibilities being agreed upon.

Non-Profit
U.S. Postage
PAID
Permit #12
Zip + 4
Colby, KS

Northwest Kansas Groundwater
Management District No. 4
PO Box 905
1175 S. Range, Colby, KS 67701-0905

CHANGE SERVICE REQUESTED

Assisted by RSVF Printed on recycled paper with soybean ink

SHERIDAN COUNTY (SD-6) HPA UPDATE

The Sheridan County SD-6 HPA met June 17, 2009 to continue discussing issues and options. Discussions focused on water use reduction approaches involving: 1) the currently available multi-year flex account (MFA) process; 2) the development of an allocation system; and 3) water right retirements – all having advantages and disadvantages. The allocation system will: require an IGUCA to be formed; provide multiple-year allocated water use flexibility; and will be fairer to water rights that have already conserved in the past. The MFA approach will: provide even more multiple-year allocated water use flexibility; can be done outside an IGUCA (provided a local regulation can be promulgated); but, without some tweaking, is less fair to the water rights that have conserved in the past. The water right retirements are: 100% voluntary; require willing water right owners; and require outside funding. All approaches can achieve any water use goal chosen, but only the allocation and MFA approaches do not result in the elimination of some wells and water rights entirely.

The group decided on a steering committee jointly chaired by Mitch Baalman and Brent Rogers that will be responsible for drafting a set of possible water use reduction methodologies for further public consideration. That draft list will be distributed to all water right owners and water users in the HPA before a follow-up meeting is called to discuss them in earnest. There will be room at the bottom of the list for additional ideas from any interested participant.

For more information contact either of the designated chairmen mentioned above, or, the GMD 4 office.

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.

DIRECTORS: Roger Zwegardt - St Francis, CN Cty; Monty Biggs - Atwood, RA/DC Cty; Jeff Deeds - Secretary, Goodland, SH/WA Cty; Dave Rietcheck - Treasurer, Goodland, SH/WA Cty; Jon Friesen - Colby, TH Cty; Lon Frahm - Colby, TH Cty; Mitch Baalman - Vice President, Menlo, SD Cty; Brent Rogers - Hoxie, SD Cty; Doug David - Hill City, GH Cty; Scott Maurath - President, Oakley, LG Cty; Shane Mann - Quinter, GO Cty.

STAFF: Wayne Bossert - Manager; Ray Luhman - Assistant Manager; Dan Simmering - Field Technician; Rita Wade - Secretary/Receptionist; Ron Vignery - Attorney.

ADDRESS CORRECTIONS ARE APPRECIATED

THE NATURE OF A KANSAS WATER RIGHT

Impairment – How is it handled?

Many think the chief engineer is the only water person in Kansas that can deal with impairment issues, and that all impairment complaints must be made through his or her agency – Division of Water Resources (DWR). While the state engineer is the principal person involved, and there is a specific procedure outlined in regulation for filing impairment complaints, such a complaint to him or her is not the only way to go. There are provisions in the Kansas Water Appropriation Act for individuals to restrain or enjoin, in court, others who are impairing them. If the court decides that impairment is occurring and the water supply needs to be adjudicated between users, a decree is issued and the chief engineer then must administer that decree as issued. The court action can also result in the award of property damages (due compensation) rather than an adjudication decree. Both approaches have their advantages and disadvantages, and which approach is best will depend on the persons and specific circumstances involved.

Having said this, you should also be aware that there are new regulations being promulgated by DWR on the filing of impairment complaints with the agency. These regulations are intending to make it a more serious effort to undertake such a complaint – all designed to dampen frivolous complaints. The draft continues to obligate the complainant to first prove his or her well is not the cause of the supply problem (domestic wells may be exempted), then assume 50% of the cost of a DWR investigation (not to exceed \$2,500.00) if the process continues and no impairment is found. If these regulations are successful, potential impairment complainants may start looking at the alternative court process rather than the agency administrative process. Whether or not court impairment decisions would build consistency in the impairment process, or result in a series of mismatched decisions and decrees is not known, but probably will be important. Impairment activity could force a number of water right issues – IGUCAs included.

LEADERSHIP KANSAS COMING TO NW AREA

According to Leadership Kansas alumnus (and program committee member) Lon Frahm, this year's program will include a segment in NW Kansas visiting both Colby and Goodland in late July. Water and Agriculture will be focus points in Colby on July 30 and Health Care and Weather Services will be on the Goodland venue on July 31. Leadership Kansas almost always has a water segment during at least one of their 6 individual venues, and for the past several years it has been during their visit to NW Kansas. This program consists of 40 individuals from around the state that engage in discussion sessions on a number of topics including: business; education; agriculture; public policy; societal health and development; economics; and government. Each participant commits to six, 2-day sessions usually held between May and September. We're happy to once again be involved in covering water issues for this prestigious group of Kansans.

RSVP – 25 YEARS OF ASSISTANCE

The Retired Senior Volunteer Program (RSVP) started helping this GMD label and mail its newsletter in September, 1984 and has been involved in every edition since. That's 25 years of assistance, times 6 editions a year, times an average of 4,600 labels per edition – a whopping 690,000 labels! While I don't remember writing that much, I am sure pleased that the RSVP has been such an integral part of this effort. And like any good relationship, there is mutual gain. We offer them a cozy and comfortable place to label, and they keep us informed of many who have passed away, moved, sold their land or whatever. I hope the relationship lasts another 25 years and that our current group is still participating. Kudos to RSVP.

Pumping the Tailwater

By Wayne Bossert, GMD 4 Manager

THE TIMES, THEY ARE A CHANGIN'

A 1967 presentation in Garden City and Colby by Kansas chief engineer R. V. Smrha was an interesting read. He said in part:

"It appears that one of the most difficult problems in the administration of water rights will be in the application of the rule of priority of right to the use of ground water...One approach to the question of administration of water rights is provided in the Water Appropriation Law wherein the Chief Engineer is authorized...to adopt, amend,...and enforce...rules, regulations...necessary for the...achievement of the...Water Appropriation Act. It is believed that problems in administration of water rights involving questions of priority in connection with the use of ground water can be dealt with under this provision of the existing law. The Division of Water Resources is prepared to proceed in this direction at any time that there is a demand for it on the part of local affected interests. This authority, however, is not about to be invoked nor exercised so as to impose from the State level any rules and regulations upon a local area. Even if such a course should be deemed necessary or desirable, it would not be undertaken except upon formal petition of a substantial majority of the landowners and water users who would be affected by it."

BTW, Mr. Smrha's speech was in connection with the Legislative Council's work on Proposal 27 – a study concerning groundwater use and conservation. Out of the Proposal 27 report came the Kansas concept of local groundwater management districts, and eventually the Kansas Groundwater Management District Act. The 1967 Proposal 27 report said: "...it is considered desirable that local, affected water users have an opportunity to participate in any decisions relating to the management of available groundwater. For this reason the committee believes the legislature should authorize the creation of local groundwater management districts." This recommendation (and 4 others) were in fact the basis of the first Kansas GMD Act.

Today, the chief engineer is still, in my opinion, very good about enacting regulations on behalf of those "local interests" – at least those who are organized – like the GMDs. We appreciate this very much. He's also become pretty good at doing his own regulations - duly noting the Legislature's directive to convert all DWR policies into regulations. Whether DWR's current approach to regulations is too passive, too aggressive or just about right is certainly in the eye of the beholder, or otherwise stated, determinable only from your own perspective.