

AWEP UPDATE

The Agricultural Water Enhancement Program (AWEP) is a voluntary conservation initiative that provides financial and technical assistance to agricultural producers to implement agricultural water enhancement activities on agricultural land for the purposes of conserving surface and ground water and improving water quality. This NRCS program is within the 2008 Farm Bill and is part of EQIP. 2010 is the second year it has been offered. Last year (2009 program) \$58 million was awarded to 63 projects in 21 states. Kansas had 5 applications submitted, one of which was from NW Kansas, but none awarded.

The 2010 AWEP was announced several weeks ago - \$61.2 million available. However, of this amount, \$40.4 million will be dedicated to continuing 2009 awarded projects. Only \$20.7 million will be available for new projects. This tightens up the competition a bit.

Several entities in NW Kansas have formed an AWEP Partnership to submit a 2010 application – GMD 4, the Kansas Water Office, Conservation Districts in Sherman, Cheyenne, Thomas and Sheridan Counties; Farm Bureau office in Sherman County; and the NW KS Groundwater Conservation Foundation. Our application will be requesting \$9 million to permanently transition irrigated acres to dry land production in the 6 designated high priority areas of GMD 4.

Announced priorities for the 2010 AWEP include projects: located in special areas – one of which is the Ogallala Aquifer; that convert irrigated acres to dry land; that assist producers in meeting state or local program goals or mandates; and projects that have local funds contributed or are leveraged with other federal, state or local funds. Our partnership application meets all of these NRCS priorities. For more info, contact your NRCS office or GMD 4.

GENERAL REMINDERS:

- ♦ Plan on operating within your water right(s) all the time
- ♦ GMD 4 Board Meetings are open meetings
- ♦ Control all irrigation tail water on your authorized acres
- ♦ Metered water use must be reported annually
- ♦ Report beginning AND ending meter readings

SEVERAL STATE SUPREME COURTS BUSY ON WATER CASES

The states of Texas and Nebraska are busy with supreme court cases over water. In Nebraska last year a Scotts Bluff County judge ruled that the Central Nebraska Public Power and Irrigation District didn't have a right to challenge how much groundwater use the North Platte Natural Resources District allows in the Pumpkin Creek basin – a tributary that flows into the North Platte River and eventually into Lake McConaughy. Central is arguing that lower water levels in McConaughy are in part due to wells pumping groundwater in Pumpkin Creek, and that reduced water in the lake reduces power generation and irrigation water to its members. Farmers have been limited to either 8.4 inches per acre or less of water over the past five years irrigation seasons. The NRD continues to argue that Central has no standing to sue as it is not a water right owner within the NRD boundaries – essentially the ruling rendered last year.

In the Texas case, *Edwards Aquifer Authority v. Day*, it'll be a decision to possibly settle the question of who owns the groundwater. From the Texas Tribune: "*The basic facts are these: Day and McDaniel, who are farmers, requested a permit to pump from the Edwards Aquifer in 1996 to grow crops on their 350-acre ranch.... They figured they had rights to the water because their ranch sits right on top of it, within the boundaries of the aquifer.... But because they were unable to prove "historical use" — the method the EAA allocates water under its enacting legislation — of the full 700 acre-feet of water they wanted, the authority granted them a permit for only 14 acre-feet. Their subsequent "takings claim," which alleged the EAA had violated their constitutional rights by depriving them of their property without compensation, failed at the district court but was upheld by the San Antonio Court of Appeals. The EAA then appealed the case to the Texas Supreme Court*".

If upheld (confirming that landowners own the water under their land) the Texas groundwater districts are in a pickle. Such a ruling would also appear to be at odds with Texas' newest super water law – requiring all management areas to plan and set upper limits to withdrawals.

BTW, Nevada SC is also ruling on a case involving the procedure used by the state in approving a set of SNWA water rights. If upheld that the procedure was flawed, some 14,500 other water rights could also be affected. Some heavy issues in these three cases.

KANSAS CONSERVATION EFFORTS OF LATE

On December 31, 2009 the state's Water Rights Conservation Program (WRCP) was eliminated due to budget constraints. This was a fairly popular program in which some 975 water rights were enrolled at the time.

With the elimination of WRCP, the questions then posed were: Is Kansas giving up on promoting water conservation? and If not, what can we do to replace WRCP with something else? Everyone lamented the demise of WRCP and committed to work on a replacement program. Since the predominant issue was budgetary, our first efforts were aimed at providing the funds to DWR – either in a fee-funded program, GMD contributions; and/or Legislative budgetary support.

In what usually happens when you're trying to make something better, other issues came up. The chief engineer wanted, in addition to a dedicated funding source, a more specified (and limited) enrollment period and a conservation reduction when the right came out of the program. Others opposed either or both of these suggestions.

From here discussion turned to a GMD counter-proposal ... and a new idea from the Secretary of Ag – a legislatively created "Conservation" use of water. The GMD proposal guaranteed the status of the water right when in the program and upon exiting it – feeling these were critical criteria to foster participation. It also had a more limited enrollment period, was fee funded and only eligible in overappropriated areas of the state. The KDA proposal was available statewide, required change applications going into and out of the program, and had no time limits.

Also at this time several bills were introduced and even a regulation change to address these issues. The bill to create the new conservation use type didn't progress. The bill to declare "non use" of any water right in overappropriated areas (as long as the well was maintained) passed. The regulation is still under promulgation, but will need to change as a result of the bill that did pass.

The end result of all this is we now have individual conservation available in overappropriated areas of the state, but with no additional program support built in (EQIP), no way to clear abandoned rights in these areas for any reason or purpose, no budgetary impacts to DWR, and no specified time frames for the conservation. This entire issue may need to be revisited again next year.

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GMDA CONFERENCE SET

The Groundwater Management Districts Association (GMDA) has scheduled its Summer session for June 6-8, 2010 in Little Rock, Arkansas at the Capital Hotel, downtown. The major presentation topics will be on irrigation in Texas, Kansas, Nebraska, Mississippi, Colorado and Arkansas – how irrigation is done, how irrigation water is conserved, and how conservation programs contribute to reducing groundwater use. There will also be presentations by Corps of Engineers and the USGS. The after-conference field tour will be all about Arkansas Irrigation within the Grand Prairie Irrigation Project – a major rice growing area.

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

What are Base Acres and Why Should I Care?

KAR 5-5-3 basically states that the extent of the consumptive use for a vested or appropriation right shall not be increased substantially after that right has been established. In an effort to insure that changes in place of use for irrigation water rights do not substantially increase consumptive use, DWR adopted KAR 5-5-11 in November 1994.

KAR 5-5-11 defines base acreage as:

- (1) the maximum number of acres actually legally irrigated in any one calendar year on or before December 31, 1994 if the perfection period expired on or before December 31, 1994 or the water right is a vested right; or
- (2) if the perfection period expires after December 31, 1994, and the perfection period has not expired at the time the change application has been filed, the base acreage shall be the acres authorized by the permit; or
- (3) if the perfection period expires after December 31, 1994, and the perfection period has expired at the time the change application was filed, the base acreage shall be the maximum acreage legally irrigated in any one calendar year during the perfection period.
- (4) Any year in which any of the terms, conditions and limitations of the water right or permit were violated shall not be used to determine base acreage.

“An application to change the authorized place of use for irrigation purposes which would permit the applicant to exceed the base acreage by 10 acres or 10 percent, whichever is less, shall not be approved by the chief engineer because it would result in a substantial increase in net consumptive use in violation of K.A.R. 5-5-3 except when one of the six following criteria are met.”

As is evident in the preceding excerpts, it is important to know what the base acreage is before proceeding with any change in land covered by a water right. This acreage value will put limits on how many additional acres, if any, can be authorized by the approval of a change place of use application. The base acreage value is determined by DWR from the historical water use reports that are on record.

Typically in GMD 4, changes that propose acreage increases above the 10 acres or 10 percent limit are handled in one of two ways. Either the total 5 year quantity allowed to be pumped by the right involved is limited to an amount that doesn't exceed the calculated county average irrigation requirement for corn on the base acreage, or the total amount of acres allowed to be irrigated in any one calendar year is limited to no more than the base acreage.

MICHIGAN – WATER – PUBLIC TRUST

Rep. Dan Scripps has introduced HB 5319 in the Michigan Legislature - intended to preserve Michigan's water as a public trust resource. HB 5319 declares water a public trust, imposes a duty on the state and government (as trustee) to protect water and related natural resources, and prohibits anyone from violating the public trust principles. Water cannot be sold for a private purpose and profit as if water were a product or commodity; it cannot be transferred or diverted if it impairs the use or common rights of the public in water, or is used to subsidize a few at the expense of all. The bill also grants each citizen the right to bring a lawsuit in the courts if the government or another violates the public trust principles.

ALLIANCE UPDATE

The Upper Republican River Conservation Projects Alliance met with the Kansas Water Office and a representative of Spronk Water Engineers to frame up the impending reconnaissance engineering study of potential conservation projects to be undertaken. The process identified 4 conservation ideas to study: 1) a Municipal pipeline with excess to Keith Sebelius; 2) a centralized, 4-county, multi-purpose water storage facility; 3) a groundwater recharge facility supporting one or more HPA's; and 4) Alluvial recharge IF the surface diversions are significant. Spronk has completed the first draft of the reconnaissance engineering study which is under review for comments by the participants at this time. GMD 4 has provided several comments as has the Kansas Department of Wildlife and Parks and the Kansas Water Office. This engineering study is designed to indicate which of the original Alliance ideas has reasonable merit, and which don't. Once completed, everything will be on hold until funding or water comes to Kansas from either Nebraska and/or Colorado. But, we'll be ready.

Pumping the Tailwater

By Wayne Bossert, GMD 4 Manager

THIS AND THAT

We had a little excitement in late March – a car failed to stop out front, hopped the curb and came into our front office a foot or so. The good news was no one was hurt - other than the driver's pride and a bit of Rita's nerves – and the building itself was untouched. The front door, however, literally exploded inward and every piece of glass in the door and both window side panels ended up on the floor. If you visit the office you're likely to notice a brand new front door – if you pull in slowly, that is.

The annual water level measurements went pretty well this January. The NW part of the state was the only area in western Kansas that showed an increase - but it wasn't much at +.18 foot. At least we live for another year. South Central Kansas had average rises of about +.6 feet, but more importantly for them, this is the third year in a row their average change has been positive.

I've been having a discussion with a Philadelphia lawyer on the clean water restoration act (CWRA) – he supports it, I, not so much. This bill is simple - it eliminates the word “navigable” from the clean water act, which is primarily a water quality statute. This change would then put the federal government in charge of all waters of the US – not just navigable waters of the US. My attorney friend argues (in part) that the feds need to be in charge of water quality regulatory actions (rather than the states) for cases like the Delaware River where multiple states are involved in its quality. I argue (in part) that the states should retain this discretion and form coalitions to handle the water quality issues themselves. Besides, the Delaware being a navigable river is already under the CWA and does not need the amended language to address its issues. And who doesn't think the federal government will start managing water quantity as it impacts water quality? He has been nice and respectful, but we simply agree to disagree.

We're headed into another irrigation season, so watch the tailwater, pump and apply only what you need, and consider using some of the irrigation tools available – like Crop Water Allocator, Crop Yield Predictor and KanSched – all free programs from KSU. Have a great 2010 cropping season – irrigated or not.