

AWEP UPDATE – NW KANSAS PROJECT A GO -- AUGUST 13, 2010 APPLICATION DEADLINE --

The Agricultural Water Enhancement Program (AWEP) is a voluntary conservation initiative providing aid to producers for implementing water enhancement activities on ag land which conserve surface and ground water and improve water quality. Announced priorities for 2010 include projects: in special areas (including the Ogallala Aquifer); that convert irrigated acres to dry land; that assist producers in meeting state or local program goals; and projects that are leveraged with other funds.

GMD 4, Cheyenne, Sherman, Thomas and Sheridan County Conservation districts, Sherman County Farm Bureau, Kansas Water Office and the NW Kansas Groundwater Conservation Foundation filed a \$9 million proposal to permanently convert irrigated acres in our 6 HPAs to non-irrigated acres. We requested \$8.8 million from NRCS (\$2.933 million per year for 3 years) and \$200,000 from the Foundation.

On July 2 NRCS awarded our proposal and provided \$2.666 million for year 1. The program is now a 6-year conversion of irrigated acres to non-irrigated acres for 5 annual payments of about \$200.00 per acre – depending on practices chosen. Unless federal funding is cut, we expect FFY 2011 and 2012 funding at the same level - as long as the pending applications are enough to justify continued funding. FFY 2010 contracts will be approved only to the \$2.666 million level, so all will be guaranteed their payments. Unfunded 2010 applications can be carried forward and will gain ranking points if left active. Applying early is important for both reasons.

NRCS has set an aggressive timeframe - **August 13, 2010 is the application deadline.** Final contracts will need to be signed by August 27, so application approvals will happen very quickly.

AGAIN – APPLICATION DEADLINE IS AUGUST 13, 2010.

All irrigated landowners in the 6 designated HPAs will want to look closely at this program as an alternative to business as usual. Staff is also exploring use of the Kansas WTAP program and other funding sources to help AWEP in permanently transitioning acres for those interested in this option. Questions? Contact the GMD 4 office or NRCS.

REPUBLICAN RIVER COMPACT UPDATE

On May 3, 2010, Kansas filed suit in the U.S. Supreme Court again to enforce the final settlement stipulation. Kansas argues that Nebraska continues to violate the compact, has failed to take actions necessary to avoid future violations and should be held in contempt of court for not obeying the court's 2003 order (final settlement stipulation – FSS). Kansas asks the court to require Nebraska's compliance, ensure that Nebraska will not violate the compact again, and that Nebraska pay damages for violations of the decree.

In early July, Nebraska responded by pleading: *"..Kansas' allegations .. do not merit this Court's jurisdiction.."* This response goes on to articulate why this is the case, but there are too many issues and sub-issues to cover here.

Colorado's has also responded with: *"..The State of Kansas has specifically not made any direct claims against .. Colorado .. at this time.. Therefore, .. Colorado need not respond directly to any of Kansas' allegations and takes no position on whether the Court should take the Petition. However, Colorado files this Response .. to provide additional .. information so the Court may be more fully cognizant of the history and prior proceedings relating to Kansas' current claims against the State of Nebraska."* Their response is actually a Colorado summary of the suit's timeline and rendering of issues thus far.

All three documents can be viewed in their entirety at Kansas' DWR website as follows:
http://www.ksda.gov/interstate_water_issues/content/142

Also, on July 8 Colorado ordered the BoR to release 5,000 AF of water from Bonny Reservoir for compact compliance reasons. Apparently Colorado wants the water released with no undue delay judging by their order language: *"..as soon as practicable and in such amounts as is the maximum safe and practicable flow through Bonny Dam. Such releases shall continue until 5,000 acre feet have been released with reasonable considerations to dam safety and the avoidance of damage downstream due to flood flows."*

Finally, Colorado has requested arbitration on their pipeline system, and this trial was begun on July 12 in Kansas City – arbitrator Martha Pagel, Portland, Oregon. Her ruling is expected on or before September 30, 2010, but again, will be non-binding.

CONSERVATION USE TYPE – ANOTHER LOOK?

Last Legislative session the idea of a new type of Kansas water use - "conservation" – was floated as an alternative to the elimination of the Water Rights Conservation Program (WRCP). It stalled in a Senate committee when the chair did not see enough consensus. Kansas Ag Secretary Svaty has since indicated his continued interest in the idea, and there are indications it may be considered for interim study.

The essence of the program is that anyone wanting to conserve their water right by not using it would change the right from its current use type (irrigation, M&I etc.) to the new "conservation" (beneficial) use type created by the Legislature. The change would be permanent until an application is filed again to change it to another use type. As left least year, any water right in the state would be eligible and there would be no time limit a water right could exist as a conservation use type.

While seemingly simple, this idea has some challenges. Some wanted only closed areas to have this option – believing that participation in open areas could prevent new water right applications from being approved. Others felt the future change process from conservation could subject the water right to new or untold criteria.

Anyway, if this issue gets looked at again, everyone needs to clearly understand all the side issues so we'll get a workable program.

SMALLER WTAP SLATED FOR 2011

The State Conservation Commission indicates that a scaled down version of the Water Transition Assistance Program (WTAP) will be available this Fall for the 3 eligible areas in Kansas – the Rattlesnake creek designated area in south central Kansas; the Prairie Dog Creek designated area in NW Kansas and GMD 4's 6 high priority areas within this GMD. WTAP allows applicants in the designated areas to retire their water rights permanently based on a bid value for each acre-foot of water consumptively used over the preceding 7 years. The bid values are capped at \$2,000 per AF of historic consumptive water use.

The announcement should be made soon for this program with the application period being October 1 through November 15, 2010. If your water right is within GMD 4 and you are interested in looking into this program, contact the office and let's look at your reported water use history. Based on this data, we should be able to determine what the payments will be for any legitimate bid value.

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GMDA ENTERS SUIT AGAINST FSA

The Groundwater Management Districts Association (GMDA) recently obtained the Courts approval to join an ongoing lawsuit against US Department of Ag, et. al. (specifically the Farm Service Agency – FSA) filed by the Central Platte Natural Resources District (NE) over FSA's failure to release records and data needed by the NRD to fulfill its management mission. GMDA has filed an Amicus brief in support of the Central Platte NRD. The open records nature of FSA's data and records is the main issue in this suit. The NRD is asking for access to certain non-production/financial records to support its requirement to register irrigated acres for local management purposes.

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

AUSTRALIAN GOVERNMENT BUYS WATER

In the Murray-Darling River basin in SE AU water is overappropriated and getting scarcer. Last year the authorities implemented a new illegal water use penalty that was a real eye-opener – they increased the private water theft fine from \$35,000 AUD to \$700,000 AUD, and corporate theft fines from \$70,000 AUD to \$2.2 million AUD. Just announced was a government purchase program where 803 billion liters of water entitlements were purchased for \$1.28 billion AUD.

In US numbers: 803 billion liters equals about 615,000 AF. At \$1.28 billion AUD total cost, this equates to \$2,075 AUD per AF. The current exchange is 1 USD = 1.217 AUD, so the cost of buying these 615,000 AF in US dollars is roughly \$1,700 per AF. Funny, this is eerily close to what our producers are saying water is worth.

GMD 4 ASKS FOR NEW AWEP DIALOG

GMD 4 manager Wayne Bossert as recently asked a host of entities (NRCS, KWO, DWR, SCC, GMDs, etc.) to begin a Kansas dialog on the potential benefits of tweaking EQIP and AWEP so that these 2 programs can be applied toward reducing consumptive water use (conserving water) AND minimizing any economic impacts as the water conservation is happening.

Both programs are now recognizing the much greater water conservation benefits of transitioning irrigated acres to dryland production – thus truly conserving 100% of the historic consumptive water use. To this end, the program developers are to be commended. But both programs have been focusing on complete water right set asides or conversions in order to qualify.

New economic and hydrologic modeling is convincingly showing that reducing the least efficient portion of water use from a number of irrigation systems will have less economic impact on a region than reducing the same amount of water use completely from fewer systems. These two approaches have the same hydrologic results, but different economic impacts.

GMD 4 is wondering if it is time to consider approaching USDA, NRCS and perhaps others in asking that water conservation programs such as EQIP and AWEP take fuller advantage of the modeling results to lower the economic impacts of their water conservation benefits? To do this, these programs will need to allow for partial consumptive water use reductions from a larger number of participants. This means that EQIP and AWEP are going to need changes accordingly. Are these issues important enough to start developing?

GMD 4 welcomes any comments, ideas or suggestions regarding an open dialog on this issue. Perhaps a specific set of AWEP rules should also be discussed as operating AWEP under EQIP rules has brought to light a few glitches – at least what we consider glitches.

2011 BUDGET HEARING SET

The required public hearing for the proposed 2011 operating budget has been scheduled for July 22, 2010 beginning at 11:30 A.M. in the GMD 4 offices at 1175 S. Range, Colby. The budget being proposed at this hearing was approved by the eligible voters present during the 35th annual meeting held on February 17, 2010. A copy of the proposed budget is available for inspection in the district office during normal office hours. Should a board quorum not be possible on July 22, 2010, July 29, 2010 will become the alternative hearing date - with all other meeting details remaining unchanged.

ALLIANCE UPDATE

The draft Reconnaissance Engineering Report is wrapping up with the final comments having already been made. Of the 9 original projects offered for discussion by the Alliance, only 4 were reliant on the increased water supply expected from Colorado as this state comes into compliance with the compact. These 4 projects, then, are the only ones being evaluated in the reconnaissance engineering study. They are: 1) Groundwater recharge project; 2) small irrigation district supplied by additional settlement water; 3) Impoundment project for recharge/fish wildlife and recreation; and 4) a reverse osmosis facility for public water supply that could replace current water supplies.

The reconnaissance study is leaning on promoting 3 of the 4 projects for additional study: 1) managed recharge for the Ogallala and/or alluvial aquifers in the HPAs; 2) a regional pipeline for municipal water supply and potential delivery to Keith Sebelius Lake; and 3) Impoundment/storage for recreation and recharge. Again, these are only projects contemplating use of the additional water supplies provided by Colorado. Several other conservation projects that can be funded by money arriving from Colorado and/or Nebraska still remain on the table.

In any event, we're still quite a ways off from any of these efforts. But first, we've got to receive the additional water from Colorado. While it'll eventually arrive, discussions continue on where Kansas might receive it.

Pumping the Tailwater

By Wayne Bossert, GMD 4 Manager

DUE AND SUFFICIENT CAUSE..

The Kansas Water Appropriation Act's abandonment laws were amended this year changing how water rights are viewed in closed areas. The new law reads in part "... a groundwater right, which has as its local supply an aquifer area that has been closed to new appropriations by rule, regulations or order of the chief engineer and where means of diversion are available to put water to a beneficial use within a reasonable time, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned."

Depending on how the phrases "an aquifer area that has been closed to new appropriations" and "where means of diversion are available to put water to a beneficial use within a reasonable time" are defined, this could have a significant impact on water rights and management into the future. In the short term, this new statutory language will allow anyone in an area closed to new appropriations to NOT use his or her well without the possibility of abandonment and forfeiture by the state. This will initially be very good for conservation in these closed and over-appropriated areas. However, all these rights will still be viable rights if and when there is ever a need to formally adjudicate or regulate water rights in the future. To what extent the total available water supply is to be allocated to active water rights at that time (including those that have not been pumping at all due to this law change) could become very lively discussions.

The other term: "where means of diversion are available to put water to a beneficial use within a reasonable time" is another definition that is going to need careful consideration. Putting water to a beneficial use within 12 hours is logistically very different than being capable of using water within 30 or 60 days. Depending on how this phrase is defined will dictate if the pump and motor and power source and meter must remain in and on the well, or can be removed and stored for protection.

In any event, this new law will considerably change the water rights landscape in the closed areas for some time to come. Perhaps with sufficient conservation, we'll never need future adjudication.