

**Ogallala Aquifer Advisory Committee**  
**10:00 a.m., August 9, 2011**  
**Ford County Government Center**  
**Rose Room, Basement, 100 Gunsmoke, Dodge City, Kansas**

**AGENDA**

- 1. Introductions**
  - 2. Short review of Ogallala History**
  - 3. Purpose & Scope**
    - a. KWA Directive*
    - b. Governor Brownback's Summit*
      - i. Review of comments, ideas*
    - c. Purpose: Make recommendations to the KWA on actions to promote conservation and management of Ogallala Aquifer while keeping the economy strong.*
  - 4. Potential Legal Barriers to Conservation of Ogallala Aquifer:**
    - a. Abandonment Statute of Prior Appropriation Act ("Use It or Lose It')
    - b. IGUCA Act not conducive to locally defined IGUCA requests
  - 5. Items for future discussions**
  - 6. Items for next meeting. Set next Meeting Date & Location**
- 2:00 – Adjourn**

## Potential Barriers to Groundwater Conservation: “Use It or Lose It”

**Issue:** The Kansas Water Appropriation Act requires a water right to be forfeited if the water right was abandoned because it had not been used for 5 consecutive years without a sufficient reason for non-use. This may be a disincentive to water conservation.

### **Statute:**

Kansas Water Appropriation Act (K.S.A. 82a-701 *et seq.*), Water Right Abandonment Statute (K.S.A. 82a-718): commonly referred to as *Use It or Lose It*

### **Background & Concerns:**

1. The abandonment clause in Kansas Water Appropriation Act (KWAA) may discourage conservation, as five years of no beneficial use and without a due and sufficient cause of non-use can result in the forfeiture of the water right. Some water right owners are pumping water that they would not otherwise pump to ensure their water rights remain in good standing. There is a wide-spread perception of the potential loss of a water right if it isn't used.
2. In the Ogallala aquifer region, there are generally far more water rights than water available to satisfy all the rights and thus it is a declining aquifer.
3. KDA-Division of Water Resources is statutorily required to send notices to owners when there has been three years of no reported use of the water. This may promote periodic pumping only so the water right remains in good standing.
4. Over 700 courtesy letters annually are typically sent to owners about water rights without reported beneficial uses for 3 years.
5. After 5 years of no reported beneficial use or accepted reason for non-use, the water right may be terminated. DWR does not automatically check on the status of a water right after five years, but responds to inquiries about the status of water rights (typically from water right holders or those considering the purchase of them) and reviews for non-use if an application for change is filed with DWR. Typically, 100-150 inquiries are reviewed each year; the number annually determined abandoned is closer to 20 water rights.
6. DWR receives and processes approximately 150-200 voluntary dismissals per year.
7. Agricultural land may be purchased as irrigated land, but the water right may have had 5 or more years of non-use without approved justification, and a buyer could unknowingly purchase land with the water right abandoned by the previous owner.
8. There are 11 reasons for non-use in regulations, and 3 reasons in Statute (82a-718 (d) (e)) and (82a-768) that provide due and sufficient cause for non-use and protect a water right from abandonment status. DWR has generally been liberal in its interpretation of such for the benefit of the water right holders.

9. The Water Right Conservation Program (WRCP), a voluntary program for enrollment of a water right, was authorized by the 2011 Legislature and will again be available as a “due and sufficient cause” for non-use of a water right in areas it applies.
10. The abandonment clause is useful to “clean up” the books, getting inactive water rights officially closed. In open areas, such water is then available to others for appropriation.
11. Some negative consequences of eliminating abandonment may include:
  - a. It complicates change application processing which requires spacing from existing water rights;
  - b. Water use reporting; a non-use report must still be done.
  - c. Surface water rights that have been effectively abandoned continue to be included in basin modeling, must be issued orders for MDS or protection of water releases from federal reservoirs, and require DWR resources to field check when orders are issued.
12. Inactive water rights could be re-activated in the future, thereby increasing use in overdeveloped areas and potentially creating future impairment concern; conversely, the aquifer conditions and potentially other water users have benefitted from the non-use of that water right.
13. The abandonment clause prevents hoarding by water speculators as it promotes beneficial use. It has been a feature in western states’ prior appropriation water law, originating during the development phase when maximizing the immediate benefits of water was promoted.
14. Particularly in the Ogallala region, Kansas has moved out of the development phase of this water resource to the management phase.
15. The term “abandonment” is commonly used in water law when an owner intends to no longer use a water right. When a water right is lost unintentionally by nonuse that extends beyond a statutory period (five years in Kansas), in many states’ law it’s referred to as “forfeiture”. In Kansas law, the Kansas Supreme Court has found that abandonment covers both intentional and unintentional loss of a water right.
16. The 2009 Legislature passed legislation that is now K.S.A. 82a-718 (e). However, there has been debate on the interpretations of “means of diversion are available” and “reasonable time”. The DWR has not yet adopted the implementing regulations, but started discussions with water managers. The DWR is proposing the use of 10 days as a guide for what is considered a reasonable time.
17. The 2009 Legislature introduced SB510 that would have made conservation a “due and sufficient” cause of non-use on an existing water right already in good standing. However, the bill did not pass out of committee.
18. The abandonment statute can aid economic development in areas of Kansas where a new water right can still be permitted and perfected, keeping water available for beneficial use.

## Considerations

- Should abandonment clause be addressed:
  - statewide, or
  - In all areas closed to new water rights by rule, regulation or order of the chief engineer or by safe yields, or
  - In all areas closed by rules, regulation or order of the chief engineer, or
  - only in Ogallala closed by rule, regulation or order of the chief engineer
  
- Should issue be addressed through
  - removal of abandonment statute, or
  - exemption of areas to abandonment, or
  - develop a new beneficial use called conservation use?
  
- Other?

## Options:

1. Keep law as it is but
  - expand education on various “due and sufficient” causes allowed by DWR Chief Engineer for nonuse of a water right; and/or
  
2. Specifically exempt from abandonment or consider as a “due and sufficient cause for non-use”:
  - Groundwater rights over the formally closed areas of the Ogallala aquifer
    - Modify 82a-718(d) to remove “means of diversion available to put water to beneficial use within a reasonable time frame”.
  - Groundwater and surface water rights over formally closed areas of the Ogallala aquifer
  - Groundwater rights in areas formally closed to new water rights statewide
  - Groundwater and surface water rights in areas formally closed to new water rights or by safe yield statewide
  
3. Add conservation use as a new beneficial use to the Kansas Water Appropriation Act.
  
4. Remove the abandonment statute from the KWAA statewide.
  
5. Other?

**KSA 82a-718. Abandonment of water rights; notices; hearing; review of action; exceptions.** (a) All appropriations of water must be for some beneficial purpose. Every water right of every kind shall be deemed abandoned and shall terminate when without due and sufficient cause no lawful, beneficial use is henceforth made of water under such right for five successive years. Before any water right shall be declared abandoned and terminated the chief engineer shall conduct a hearing thereon. Notice shall be served on the user at least 30 days before the date of the hearing. The determination of the chief engineer pursuant to this section shall be subject to review in accordance with the provisions of K.S.A. 2010 Supp. 82a-1901, and amendments thereto.

The verified report of the chief engineer or such engineer's authorized representative shall be prima facie evidence of the abandonment and termination of any water right.

(b) When no lawful, beneficial use of water under a water right has been reported for three successive years, the chief engineer shall notify the user, by certified mail, return receipt requested, that: (1) No lawful, beneficial use of the water has been reported for three successive years; (2) if no lawful, beneficial use is made of the water for five successive years, the right may be terminated; and (3) the right will not be terminated if the user shows that for one or more of the five consecutive years the beneficial use of the water was prevented or made unnecessary by circumstances that are due and sufficient cause for nonuse, which circumstances shall be included in the notice.

(c) The provisions of subsection (a) shall not apply to a water right that has not been declared abandoned and terminated before the effective date of this act if the five years of successive nonuse occurred exclusively and entirely before January 1, 1990. However, the provisions of subsection (a) shall apply if the period of five successive years of nonuse began before January 1, 1990, and continued after that date.

(d)(e) Notwithstanding the provisions of subsection (a), a groundwater right, which has as its local supply an aquifer area that has been closed to new appropriations by rule, regulation 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.

#### **SENATE BILL No. 124**

AN ACT concerning water; relating to water supply storage access; water rights conservation program; multi-year flex accounts; Arkansas river gaging fund; amending K.S.A. 2010 Supp. 82a-718, 82a-731 and 82a-736 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Sec. 26. K.S.A. 2010 Supp. 82a-718 is hereby amended to read as follows:

82a-718. (d) Notwithstanding the provisions of subsection (a), an eligible water right enrolled in and continually in compliance with the water rights conservation program, pursuant to section 25, and amendments thereto, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.

**82a-768. Application of law relating to abandonment of water right.** Depositing a water right in a water bank or placement of water in a safe deposit account in a water bank shall constitute due and sufficient cause pursuant to K.S.A. 82a-718, and amendments thereto, for failure to use water for a lawful, beneficial use for the term of the deposit or the placement.

**K.A.R. 5-7-1. Due and sufficient cause for nonuse.** (a) Each of the following circumstances shall be considered "due and sufficient cause," as used in K.S.A. 82a-718, and amendments thereto:

- (1) Adequate moisture from natural precipitation exists for the production of grain, forage, or specialty crops, as determined by the moisture requirements of the specific crop.
  - (2) A right has been established or is in the process of being perfected for use of water from one or more preferred sources in which a supply is available currently but is likely to be depleted during periods of drought.
  - (3) Water is not available from the source of water supply for the authorized use at times needed.
  - (4) Water use is temporarily discontinued by the owner for a definite period of time to permit soil, moisture, and water conservation, as documented by any of the following:
    - (A) Furnishing to the chief engineer a copy of a contract showing that land that has been lawfully irrigated with a water right that has not been abandoned is enrolled in a multiyear federal or state conservation program that has been approved by the chief engineer;
    - (B) enrolling the water right in the water right conservation program in accordance with K.A.R. 5-7-4; or
    - (C) any other method acceptable to the chief engineer that can be adequately documented by the owner before the nonuse takes place.
  - (5) Management and conservation practices are being applied that require the use of less water than authorized. If a conservation plan has been required by the chief engineer, the management and conservation practices used shall be consistent with the conservation plan approved by the chief engineer to qualify under this subsection.
  - (6) The chief engineer has previously approved the placement of the point of diversion in a standby status in accordance with K.A.R. 5-1-2.
  - (7) Physical problems exist with the point of diversion, distribution system, place of use, or the operator. This circumstance shall constitute due and sufficient cause only for a period of time reasonable to correct the problem.
  - (8) Conditions exist beyond the control of the owner that prevent access to the authorized place of use or point of diversion, as long as the owner is taking reasonable affirmative action to gain access.
  - (9) An alternate source of water supply was not needed and was not used because the primary source of supply was adequate to supply the needs of the water right owner.
  - (10) The chief engineer determines that a manifest injustice would result if the water right were deemed abandoned under the circumstances of the case.
  - (11) The water right is located in an area of the state that is closed to new appropriations of water by regulation or order of the chief engineer but is not closed by a safe yield analysis.
- (b) In addition to circumstances considered due and sufficient cause pursuant to subsection (a), both of the following requirements shall also be met to constitute due and sufficient cause for nonuse of water:
- (1) The reason purporting to constitute due and sufficient cause shall have in fact prevented, or made unnecessary, the authorized beneficial use of water.

- (2) Except for the temporarily discontinued use of water as provided by paragraph (a)(4) and for physical problems with the point of diversion or distribution system as provided by paragraph (a)(7), the owner shall maintain the diversion works in a functional condition.
- (c) Each year of nonuse for which the chief engineer finds that due and sufficient cause exists shall be considered to interrupt the successive years of nonuse for which due and sufficient cause does not exist.
- (d) When a verified report of the chief engineer, or the chief engineer's authorized representative, is made a matter of record at a hearing held pursuant to K.S.A. 82a-718, and amendments thereto, that establishes nonuse of a water right for five or more successive years, the water right owner shall have the burden of showing that there have not been five or more successive years of nonuse without due and sufficient cause.

(Authorized by K.S.A. 82a-706a; 119 implementing K.S.A. 82a-706a and K.S.A. 2009 Supp. 82a-718; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1986; amended May 31, 1994; amended Oct. 24, 2003; amended May 21, 2010.)

**Example of letter sent to owners for 3 years of inactive water right use:**

«FIRST\_NAME» «LAST\_NAME»  
«ADDRESS\_LINE\_1»  
«ADDRESS\_LINE\_2»  
«CITY» «ST» «ZIP»

Re: Notice Given Under K.S.A. 82a-718(b)  
File No(s). «WR\_NUM»

According to the Division of Water Resources' records you are the owner of or water use correspondent for the above referenced water right(s) or permit(s) to appropriate water.

The law requires the Division of Water Resources to notify you that:

The records show there has been no use of water as authorized by the referenced file(s) for a minimum of 3 successive years.

This file may be terminated if no lawful, beneficial use is made for a total of 5 successive years unless the beneficial use of the water was prevented or made unnecessary by circumstances that are considered due and sufficient cause for the non-use.

The circumstances considered to be due and sufficient cause for the non-use of water can be found in Kansas Administrative Regulation K.A.R. 5-7-1. (copy enclosed)

The reasons for non-use of water should always be noted on the annual water use report. If you have not reported reasons for non-use, you can provide this information to Division of Water Resources, in writing, at any time.

If you believe the Division of Water Resources' records are incorrect and there has been use of water within the past three years, provide documentation to that effect. It is to your benefit to provide this information as soon as you can.

This notice provides you the opportunity to remedy any abandonment situation that may exist with your project before a total of five years of non-use takes place.

If you have questions concerning this matter, please contact the Division of Water Resources at 785-296-3717. If you would prefer, please call the «FOname» field office at «FO\_phone» to arrange for an appointment.

Sincerely,



Lane P. Letourneau, L.G.  
Program Manager  
Water Appropriation Program

LPL:ccd

cc: «FOname» Field Office  
«GMD»

## **Potential Barriers to Groundwater Conservation: Intensive Groundwater Use Control Areas (IGUCAs)**

**Issue:** There is not a legal mechanism to assure that a locally defined, GMD recommended corrective control measures in an IGUCA will not be significantly altered from what was proposed to the Chief Engineer, KDA-DWR because of the public hearing process. This lack of certainty may discourage the development of such conservation proposals.

**Statute:** Groundwater Management District Act K.S.A. 82a-1020) Intensive Groundwater Use Control Areas (K.S.A. 82a-1036)

### **Background & Concerns:**

1. The IGUCA statutes in the Groundwater Management District Act (K.S.A 82a-1036) and regulations (KAR 5-20-1) require the Chief Engineer to consider the public interest when determining the corrective measures for an area with groundwater declines.
2. The public interest considered by the Chief Engineer is based on the testimony given at public hearings.
3. Thus, the IGUCA the Chief Engineer ultimately orders may or may not be the corrective measures that the locals have supported because other relevant testimony was provided at the public hearing.
4. The State Water Plan directs the GMDs to define priority aquifer subunits or areas and propose conservation goals for those priority areas.
5. Northwest Kansas GMD4 has met with landowners in the District's six identified High Plains Areas (HPA) to discuss conditions and what they'd want to do about it.
6. One of the six HPA, Sheridan County 6 (SD-6), met multiple times, and had majority agreement on specific plans to administer water rights to reduce water use (except for domestic rights). SD-6's plan involved an allocation scheme rather than a standard priority administration. Their plan was discussed with DWR to determine potential options to achieve their purpose.
7. Because there was not 100% agreement by water right owners in HPA SD-6, a voluntary consent agreement was not an option. A consent agreement would have been a contract between land owners and the GMD; a violation of the consent agreement could be addressed through civil court.
8. Under current statute the IGUCA tool is the only program available for the SD-6 HPA proposed water management plan that would have administration authority for an allocation reduction and not strict prior appropriation.
9. Neither the GMD4 nor SD-6 has expressed desire for local administration authority; they propose the IGUCA administration authority remains with the Chief Engineer.
10. DWR cannot provide assurance that the final IGUCA would be with measures that SD-6 group proposed; Chief Engineer is legally bound to a broader input and consideration process.
11. A change in the IGUCA law would protect pro-active plans by locals from getting measures imposed that they do not support.

12. GMD4 and SD-6 leadership are exploring changes to IGUCA statutes to allow a locally defined, pro-active, IGUCA plan submitted to the Chief Engineer to be implement as proposed, rejected, or returned with deficiencies cites and allow for local modifications and re-submittal.

**Considerations:**

- Amend State law to allow for more local control of conservation measures
- Would state or GMD enforce a locally defined IGUCA?
- If the Chief Engineer has begun a findings to determine whether an IGUCA should be established whose boundaries are, at least in part, within a GMD, would it disqualify the development of a proactive, GMD requested IGUCA?
- Should the Chief Engineer be able to initiate an IGUCA inside a GMD without GMD consent or a petition by stakeholders?
- How would impairment filings be considered if there is a locally defined IGUCA proposed and in the process?
- Desire to keep the changes to Statutes simple and focused.

**Options:**

1. Amend state law and regulations such that a GMD requested IGUCA for the purpose of proactive groundwater management within the boundaries of the GMD be authorized to submit as part of the IGUCA request a local enhanced management plan, and:
  - a. The Hearing required by an independent hearing officer will commence according to regulations (KAR 5-20-1 (b)).
  - b. Upon second hearing (KAR 5-20-1 (f)) the locally proposed enhanced management plan shall be the sole focus of the hearing and anyone can testify in support or opposition to any or all parts of the plan.
  - c. The locally proposed management plan shall:
    - i. Include all the elements of KAR 5-20-1(f)(1)-(3); and
    - ii. Be consistent with state law; and
    - iii. Be consistent with the GMD public interest as expressed in their management program.
  - d. Following the second hearing (KAR 5-20-1 (f)) and based on all testimony, the Chief Engineer, KDA-DWR, must either:
    - i. Determine the plan to be in the local public interest, consistent with state law, contains the required elements and thereby implement the GMD submitted plan unaltered via an IGUCA order (KSA 82a-1038); OR
    - ii. Reject the plan; OR
    - iii. Return the plan to the GMD with all deficiencies cited and provide the GMD with an opportunity for local modifications and re-submittal for a subsequent hearing process (KAR 5-20-1 (f)).
  - e. If approved and implemented via the Chief Engineer's order, the IGUCA becomes subject to the periodic review process (KAR 5-20-2).
2. Clarify whether the Chief Engineer can implement an IGUCA within a GMD.

3. Create a new program to encourage and support locally defined conservation goals and reductions to water use.
4. Other

**Statute: 82a-1036. Initiation of proceedings for designation of intensive groundwater use control areas; duties of chief engineer; findings.** Whenever a groundwater management district recommends the same or whenever a petition signed by not less than three hundred (300) or by not less than five percent (5%) of the eligible voters of a groundwater management district, whichever is less, is submitted to the chief engineer, the chief engineer shall initiate, as soon as practicable thereafter, proceedings for the designation of a specifically defined area within such district as an intensive groundwater use control area. The chief engineer upon his or her own investigation may initiate such proceedings whenever said chief engineer has reason to believe that any one or more of the following conditions exist in a groundwater use area which is located outside the boundaries of an existing groundwater management district: (a) Groundwater levels in the area in question are declining or have declined excessively; or (b) the rate of withdrawal of groundwater within the area in question equals or exceeds the rate of recharge in such area; or (c) preventable waste of water is occurring or may occur within the area in question; (d) unreasonable deterioration of the quality of water is occurring or may occur within the area in question; or (e) other conditions exist within the area in question which **require regulation in the public interest.**

**K.A.R. 5-20-1. Intensive groundwater use control area; public hearings.** (a) In any case in which the chief engineer initiates proceedings for the designation of an intensive groundwater use control area (IGUCA), an independent hearing officer shall be appointed by the chief engineer. The independent hearing officer shall meet the following requirements:

- (1) Not have been an employee of the department of agriculture for at least five years before the appointment;
  - (2) be admitted to practice law in this state; and
  - (3) be knowledgeable by training and experience in water law and administrative procedure.
- (b)
- (1) The independent hearing officer shall conduct one or more public hearings to determine whether both of the following conditions are met:
    - (A) One or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist.
    - (B) The public interest requires that one or more corrective control provisions should be adopted.
  - (2) If both of the conditions in paragraph (b)(1) are met, the independent hearing officer shall recommend the boundaries of the IGUCA.
- (c) At the public hearing specified in subsection (b), all of the following requirements shall be met:
- (1) Documentary and oral evidence shall be taken, and a full and complete record of the public hearing shall be kept.
  - (2) The division of water resource's (DWR's) staff shall make a proffer of the records of the division pertaining to the proposed IGUCA and may present background, hydrologic, and other information and an analysis of that information, concerning the area in question.

- (3) The DWR's proffer and any other DWR presentations shall be heard first, unless the hearing officer determines that a different order of presentation will facilitate the conduct of the hearing.
  - (4) If any part of the proposed IGUCA is within the boundaries of a groundwater management district (GMD), a representative of that GMD shall be allowed to present the GMD's own data, analysis, comments, provisions of the GMD's revised management plan, regulations, and recommendations at any public hearing.
  - (5) Each person shall be allowed to give an oral statement under oath or affirmation or to present documentary evidence, including a signed written statement.
  - (6) At the end of the public hearing, a reasonable opportunity for any person to submit oral or written comments concerning the matters presented may be allowed by the hearing officer.
  - (7) The hearing shall be conducted according to the procedure specified in K.A.R. 5-14-3a. The hearing officer shall have the discretion to use a different procedure if it facilitates the conduct of the hearing.
  - (8) The independent hearing officer shall make the following findings of fact:
    - (A) Whether one or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist; and
    - (B) whether the public interest requires that one or more corrective control provisions should be adopted.
  - (9) The independent hearing officer shall transmit the findings to the chief engineer.
  - (
    - d) The proceeding shall be concluded if the independent hearing officer finds that at least one of the following conditions is met:
      - (1) None of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist.
      - (2) The public interest does not require that any corrective control provisions should be adopted.
    - e) The procedure specified in subsection (f) shall be followed by the chief engineer if the independent hearing officer meets all of the following conditions:
      - (1) Finds that one or more of the conditions specified in K.S.A. 82a-1036, and amendments thereto, exist;
      - (2) finds that public interest requires that any one or more corrective control provisions should be adopted; and
      - (3) recommends the boundaries of the proposed IGUCA.
    - f) If the independent hearing officer makes the findings and recommendation specified in subsection
      - e), one or more public hearings shall be conducted by the chief engineer to determine the following:
        - (1) What the goals of the IGUCA should be;
        - (2) what corrective control provisions should be adopted; and
        - (3) what the final boundaries of the IGUCA should be.
- After the hearing, the order described in K.S.A. 82a-1038, and amendments thereto, shall be issued by the chief engineer. The chief engineer's order shall include the independent hearing officer's findings of fact.

(g) Notice of the public hearings held by the independent hearing officer shall be given by regular mail and by publication, as specified in K.S.A. 82a-1037 and amendments thereto.

(Authorized by K.S.A. 82a-706a; implementing K.S.A. 74-510a, K.S.A. 82a-1036, K.S.A. 82a-1037, and K.S.A. 2008 Supp. 82a-1038; effective Sept. 18, 2009.)

**Regulations:**

**K.A.R. 5-20-2. Formal review of intensive groundwater use control area orders.** (a) For each intensive groundwater use control area (IGUCA) designated by order of the chief engineer before July 1, 2008, pursuant to K.S.A. 82a-1038 and amendments thereto, a public hearing to review the designation shall be conducted by the chief engineer within seven years of the effective date of this regulation. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer.

(b) For each IGUCA designated by order of the chief engineer on or after July 1, 2008, a public hearing to review the designation shall be conducted by the chief engineer within seven years after the order is final. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer.

(c) Upon the request of a petition signed by at least five percent of the affected water users in an IGUCA designated by order of the chief engineer, a public review hearing to review the designation shall be conducted by the chief engineer. This requested public review hearing shall not be conducted more frequently than every four years.

(d) Written notice of a public review hearing shall be given to each person holding a water right in the affected area. Notice of the hearing shall be given by publication in a newspaper or newspapers of general circulation within the affected area at least 30 days before the date set for the hearing. The notice shall indicate the reason for the hearing and shall specify the time and place of the hearing. At the public review hearing, documentary and oral evidence shall be taken, and a full and complete record of the public review hearing shall be kept.

(e) The following shall be considered by the chief engineer at the public review hearing:

- (1) Whether one or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist; and
- (2) whether the public interest requires that the IGUCA designation be continued. The state shall have the burden of proving the need for continuance of the IGUCA designation.

(f) Based on the review specified in subsection (e), one of the following actions shall be taken by the chief engineer:

- (1) Continue the IGUCA with its original or current corrective control provisions;
- (2) reduce the restrictions imposed by one or more corrective control provisions within the scope and goals specified in the original IGUCA order;
- (3) reduce the IGUCA boundaries;
- (4) increase any allocations within the IGUCA;

- (5) address any other issues that have been identified in the review; or
- (6) revoke the IGUCA order and implement alternative measures, if necessary, to address the water issues in the affected areas.
  
- (g) If, as a result of the review specified in subsection (e), the chief engineer determines that the restrictions imposed by current corrective control provisions may need to be increased or additional corrective control provisions may be needed, a hearing shall be conducted by the chief engineer according to K.A.R. 5-14-3a.
  
- (h) If, as a result of the review specified in subsection (e), the chief engineer determines that the boundaries of the IGUCA may need to be increased, a new IGUCA proceeding shall be initiated by the chief engineer pursuant to K.A.R. 5-20-1.

(Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and K.S.A. 82a-1036; effective Sept. 18, 2009.)

## Brief History of Ogallala Aquifer in Kansas

- 1930's – 1950's: The aquifer was referred to as a “vast underground river” and considered an inexhaustible supply.
- 1945 – Kansas Water Appropriation Act (K.S.A. 82a-701 *et seq.*) established. It provides a priority system for water rights, with groundwater and surface water under the same system. After June 28, 1945, a permit must be issued by the State to establish a legal right to appropriate water for beneficial use.
- 1958 and later: Attitudes changed with the realization the Ogallala aquifer was a resource that could be exhausted and water being depleted, at least in areas. Kansas Water Resources Board issued a 1958 report highlighting the water mining problem in the Cimarron Basin, southwest Kansas.
- 1963: The State Water Resource Planning Act (K.S.A. 82a-901 *et seq.*) passed. The Act established goals for Kansas (K.S.A. 82a-927) including:
  - The development to meet the anticipated future needs of the people of the state, of sufficient supplies of water for beneficial purposes;
  - The sound management, both public and private, of the atmospheric, surface, and ground water supplies of the state; and
  - The protection of the public interest through the conservation of the water resources of the state in a technologically and economically feasible manner.
- 1972 – Groundwater Management District Act (82a-1020) established. Provides local water users control for the proper management of groundwater resources, conservation of groundwater resources, prevent of economic deterioration, and stabilize agriculture. (First GMD Act passed in 1968, but had problems with language and no districts formed until 1972 Act.)
- 1976 – Congress authorized a \$6 million, six year study of the Ogallala aquifer in six states. This is indicative that there is recognition now at all levels of government that the water reserves in the Ogallala are in fact declining, and that addressing this problem is a federal concern.
- 1977 – 1978 – Governor Bennett's Task Force on Water Resources addressed a wide range of issues that included groundwater management. Their report highlighted depletion problems in the Ogallala aquifer. Some of the outcomes include:
  - Development of State Water Plan Fund;
  - Substantial updating of State Water Plan to be more functional and effective in water resource planning and coordination;
  - Amending GMD Act (K.S.A. 82a-1030; 1028) to increase maximum possible water use charge; to require GMDs to base the water charge on the amount of groundwater allocated or used and to allow the GMDs to receive gifts and grants.
  - Chief Engineer, Division of Water Resources, defining in greater detail the categories of beneficial use.

- 1978 – Legislation passed that required water right permits be issued by the State before water wells can be drilled. Water Appropriation Act modified to indicate that after January 1, 1978, it will be illegal to appropriate water for non-domestic purposes without prior approval of the Chief Engineer.
- 1978 – Intensive Groundwater Use Control Area (IGUCA) legislation added to Groundwater Management District Act (K.S.A. 82a-1036).
- 1980 – *Groundwater Management in Kansas* report by Kansas Groundwater Management Districts Association, (p. 18) “Much of western Kansas will one day return to dryland farming. The handwriting is on the wall. Policies of the western Groundwater Management Districts will not prevent this, but will allow that part of the state to plan a gradual return to that type of farming. In addition, industrial, municipal and domestic water users will be affected by the depleting water supplies.”
- 1982 – Six State High Plains Ogallala federally funded study completed.
- 1984 – *Geohydrology of High Plains Aquifer*, U.S. Geological Survey Professional Paper 1400-B. Status report on conditions of the resource across the eight states.
- 1990 – Groundwater mining issues addressed in the *Kansas Water Plan*.
- 1990 – 1991- Western Groundwater Management Districts begin to impose moratoriums and close townships to new water right development.
- 1993 – Report of the Kansas Agriculture Ogallala Task Force. Recommended ways of maintaining and enhancing the agricultural economy of the Ogallala region, while at the same time lessen crop demands for irrigation water. Outcomes include:
  - Division of Water Resources adopt consumptive use regulations for change orders, to protect from more water consumption due to change in use (such as from irrigation to municipal use).
  - Division of Water Resources add to the accepted “due and sufficient causes” for a water right non-use. (KAR)
- 1998 - Kansas Water Authority adopts 2010 objectives in Kansas Water, including “Reduce water level decline rates within the Ogallala aquifer and implement enhanced water right management in targeted areas.”
- 1999 – State Legislature H.S. for S.B. 287 requested reports on: a) Aquifer resources, recharge rates, long term prospects related to any necessary transition to dryland farming in areas of the state to maintain sustainable yields... b) The potential for competing water needs for at least the next 20 years and the means of addressing that competition. Outcomes included:
  - Kansas Geological Survey, with support from Kansas Water Office, produced *Atlas of Kansas High Plains Aquifer* (2000)
- July, 2000, Solomon Basin Advisory Committee – Requested a basin goal of achieving sustainable use of aquifer by year 2015. Kansas Water Authority considered, but modified basin goal for High Plains Aquifer to a rate that will sustain the usable life of the aquifer to at least 50 to 75 years.

- October, 2000 – *Federal Actions Necessary for the Conservation and Environmental Preservation of the High Plains Aquifer* report by Mayo Committee, appointed by Kansas Water Authority. Outcomes included:
  - Governor Graves supportive of report recommendations and shared with Senators Brownback and Roberts, and Representative Moran.
  - Kansas Concurrent Resolution 5009, 2001, Encouraging federal action to conserve the High Plains Aquifer using Mayo Report as a guide.
  - Support in subsequent Farm Bill for conservation in Ogallala (NRCS, EQIP, Ground and Surface Water Conservation (2005-2008), special consideration for Ogallala aquifer), which allowed targeting of funds to Quick Response Areas to transition to dryland farming. Quick Response Areas still targeted through regular EQIP (2009 – current)
  
- January 2000 – Kansas Water Office and Division of Water Resources introduce “two pools” idea for managing the Ogallala aquifer. The Kansas Water Authority directed agencies to present this idea at stakeholder and public meetings.
  
- April, 2001 - Kansas Water Authority meeting. The Kansas Water Office reported on comments heard at the 50 plus meetings on the 2-pools idea. Kansas Water Authority recommended appointment of Ogallala advisory committees (management and technical) to make recommendations for the Ogallala management.
  
- 2001 – Legislation (K.S.A. 82a-737) gives Division of Water Resources authority to assess civil penalties for overpumping. After a year of over pumping, a warning is issued. A second year of overpumping incurs a civil penalty. First civil penalty issued in 2004.
  
- November, 2001: Ogallala Aquifer Management Advisory Committee report, *Discussion and Recommendations for the Long Term Management of the Ogallala Aquifer in Kansas*, recommendations approved by Kansas Water Authority for inclusion in State Water Plan. Conserve and extend the life of the Ogallala aquifer became the state goal. Outcomes include:
  - Conservation Reserve Enhancement Program (CREP) along the Upper Arkansas River Corridor (2007)
  - Development of Water Transition Assistance Program (WTAP)
  - Hydrologic computer modeling of northwest Kansas, southwest Kansas, and middle Arkansas River basin.
  - Economic modeling tied to hydrologic modeling of management options in GMD4 and GMD3.
  - GMD4 identifies six high plains areas as priorities.
  - Sheridan County 6, one of the six priority areas, develops a conservation goal and plan, and seeks option to implement.

- 2006, Two studies (KSU, USGS – Kansas office) indicate that more efficient irrigation systems in Kansas High Plains aquifer have not, in general, had a statistically significant correlation to increased water conservation. More efficient irrigation systems do provide water to crops with less waste, which is a benefit to production, but not necessarily conserving water. Cost sharing on more efficient irrigation systems to achieve water conservation was discontinued as state program shortly thereafter.
- 2008 U.S. Farm Bill includes Agricultural Water Enhancement Program, administered through the USDA-NRCS Environmental Quality Incentive Program (EQIP). GMD4, GMD5 and GMD2 awarded AWEP grants in 2010; GMD3 awarded an AWEP grant in 2011.
- 2011 Division of Water Resources makes a one time, 2-year drought term permit available to water users in counties declared federal agricultural disasters due to drought, temperatures and/or winds.
- 2011 USDA-Risk Management Agency works on development for possible 2012 implementation a limited irrigated crop insurance option.