

**Ogallala Aquifer Advisory Committee  
11:00 a.m., September 21, 2011  
Student Union, Colby Community College  
1255 S. Range, Colby, Kansas  
AGENDA**

- 1. Introductions**
  - 2. Review of Draft Legislative Language**
    - a. Water Right Abandonment**
    - b. Local Enhanced Management Area**
  - 3. Review Flex Account Program and Potential Changes**
  - 4. Review Water Bank Program**
  - 5. Limited Irrigation Insurance Presentation**
  - 6. Presentation on Water Management in Other States**
  - 7. Continued Discussion on Options to Conserve and Extend the Ogallala Aquifer**
  - 8. Set next meeting time and location**
- 3:00 – Adjourn**

**DRAFT**  
**Ogallala Aquifer Advisory Committee (OAAC) Meeting Minutes**  
**Dodge City**  
**August 9, 2011**

The meeting was called to order at 10 a.m., by Chairman Gary Harshberger. There were 19 OAAC members present and two were absent.

Agency Representatives included: Chris Wilson, David Barfield, Lane Letourneau, Tracy Streeter, Earl Lewis, Susan Stover, Katie Patterson-Ingels, Wayne Bossert, Jan King, Mark Rude and Tim Boese

The following motion was made by Greg Graff and seconded by Kim Goodnight. Sixteen voted in favor, three in opposition. **Motion carried.**

*The OAAC recommends modifying K.S.A. 82a-817(e) to remove “means of diversion available to put water to beneficial use within a reasonable time frame.”*

The following motion was made by Mike Ramsey and seconded by Clay Scott. There were no dissenting votes. **Motion passed.**

*The OAAC recommends modifying K.S.A. 82a-1038, the IGUCA statute within the GMD Act, and the implementing regulations to authorize locally initiated IGUCAs within a GMD, requested as part of a management plan.*

**Items for Future Discussion:**

There was a request to:

- 1) Further explore options allowing Groundwater Management Districts to define the criteria of an abandoned water right in their district, perhaps criteria that fit within a conservation plan goals; and
- 2) The OAAC also asked to further explore at a future meeting what authorities the Chief Engineer, Division of Water Resources, may need if this above motion was implemented, to get truly abandoned water rights dismissed and off the books, as opposed to water rights lost through forfeiture due to five or more years of non-use.

The meeting was adjourned at 2 p.m. The next meeting will be held August 23 in Scott City.

## Ogallala Aquifer Advisory Committee (OAAC) Meeting Minutes

Scott City, August 23, 2011

**OAAC Committee Members:** Mike Ramsey, Mike McNiece, Clay Scott, Brian Vulgamore, Steve Irsik, Tracy Streeter, Gary Harshberger, Larry Maxwell, Mitch Baalman, Matt Lee, Gary Baker, Greg Graff, Scott Maurath, Bert Stramel, Curtis Tobias.

**Committee Members Absent:** Carolyn Armstrong, Toby Dougherty, Kim Goodnight, Connie Kuhlman, Cecil O'Brate, Mike Shirley

**Others:** Jan King, Mark Rude, Earl Lewis, Chris Wilson, Mike Corn, Troy Dumler, Susan Stover, Kent Askren, Dan Devlin, Richard Nelson, Gary Hayzlett, Hal Scheuerman, Steven Hines, Ronald Conway, David Barfield, Wayne Bossert, Scott Ross, Brett Berry, Lane Letourneau, Michael Meyer, Greg A. Foley, Tom Robb, Eric Durban, Kyle Spencer, Tina Turner

The meeting was called to order at 12:30 p.m. by Chairman Gary Harshberger. Introductions were made by all present.

Draft legislation was handed out on the abandonment statute *K.S.A. 82a-817(e)*, and on the modification of the Groundwater Management District Act to authorize a locally initiated IGUCA within a GMD, as requested by the OAAC at the last meeting. The draft legislation for changes within the GMD Act is proposed as a new statute, and references a Local Enhanced Management Plan (LEMA). Legislation will be further discussed at a future meeting.

Changes to the Farm Bill were discussed. A short presentation on the Farm Bill and the Ogallala was presented by Troy Dumler, KSU Extension, Garden City, and on the Renewable Fuel Standards and Sorghum, by Richard Nelson, KSU, Manhattan.

There was an extended discussion on ideas for future conservation and management of the Ogallala aquifer.

### **Items for Next Meeting:**

Review the proposed legislation on Use It or Lose It, and the changes to the GMD Act for a LEMA or locally defined type IGUCA.

Request a presentation from USDA Risk Management Agency on the Limited Irrigated Crop Insurance development.

Consider a panel to discuss potential legal or political implications of legislative changes.

**Next Meeting Date Changed:** To allow time for GMD4 to review proposed KDA drafted legislation, the September 2<sup>nd</sup> meeting will be postponed. The next meeting date is still to be determined.

**82a-718. Abandonment of water rights; notices; hearing; review of action; exceptions.** (a) All appropriations of water must be for some beneficial purpose. *Except as provided in subsections (e) and (f), Every* 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) ~~Notwithstanding the provisions of subsection (a), an~~ An eligible water right enrolled in and continually in compliance with the water rights conservation program pursuant to [K.S.A. \_\_\_\_\_], and amendments thereto, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.

(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.

## Discussion Draft

### Potential legislative amendments to improve Multi-year Flex Accounts September 20, 2011

K.S.A. 82a-736. Multi-year flex accounts. (a) As used in this section:

(1) "Base average usage" means:

(A) The average amount of water actually used for a beneficial use under a groundwater water right during calendar years 2000 through 2009, excluding any amount used in any such year in excess of the amount authorized by such water right; or

(B) if the holder of a groundwater water right shows to the satisfaction of the chief engineer that the holder has implemented significant water conservation measures during calendar years 2000 through 2009, the average amount of water actually used for a beneficial use under such right during the five calendar years immediately before the calendar year when such measures were implemented, excluding any amount used in any such year in excess of the amount authorized by such water right.

(2) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(3) "Base acreage" means:

(A) The maximum number of acres lawfully irrigated in any one calendar year during calendar years 2000 through 2009; and

(B) any calendar year in which any of the terms, conditions and limitations of the groundwater water right were violated shall not be used to determine base acreage.

(4) "Net irrigation requirement" means the net irrigation requirement for 50% chance rainfall of the county that corresponds to the location of the authorized place of use of the groundwater water right as specified in K.A.R. 5-5-12.

(b) Any holder of a groundwater water right which has not been deposited or placed in a safe deposit account in a chartered water bank may establish a flex account where the holder may deposit, in advance, water from such water right for any five consecutive calendar years, subject to the following:

(1) The water right must be vested or shall have been issued a certificate of appropriation;

(2) the withdrawal of water pursuant to the water right shall be properly and adequately metered;

(3) the water right shall be deemed abandoned and shall be in good standing, based on past water usage and compliance with the terms of the holder's permit and all applicable provisions of law and orders of the chief engineer; and

(4) the amount of water that shall be deposited in the account shall not exceed the greater of the following:

\_\_\_\_\_ (A) 90% of the amount of the holder's base average usage times five;

\_\_\_\_\_ (B) the net irrigation requirement times the base acreage times five;

\_\_\_\_\_ (C) if the authorized place of use is located wholly within the boundaries of a groundwater management district, an amount that shall not increase the long term average use of the groundwater water right as specified by rule or regulation promulgated pursuant to K.S.A. 82a-1028(o); or

\_\_\_\_\_ (D) if a groundwater water right has a flex account established consecutively to a previously established flex account, any unused quantity of water for the previous flex account may carry over and be added to the quantity of water that shall be deposited in the flex account as provided by subsection (b)(4)(A).

(c) The chief engineer shall implement a program providing for the issuance of term permits to holders of groundwater water rights who have established flex accounts in accordance with this section. Such term permits shall authorize the use of water in a flex account at any time during the five consecutive calendar years for which the application for the term permit is made, without annual limits on such use.

(d) Term permits provided for by this section shall be subject to the following:

(1) A separate term permit shall be required for each point of diversion.

(2) The quantity of water authorized for diversion shall be limited to the amount deposited pursuant to subsection (b)(4).

(3) The authorized place of use for the term permit shall not be greater than that authorized by the existing groundwater right.

(4) The chief engineer may establish, by rules and regulations, criteria for such term permits when the water right authorizes multiple points of diversion or multiple water rights authorize a single point of diversion or overlapping places of use.

(5) Except as explicitly provided for by this section, such term permits shall be subject to all provisions of the Kansas water appropriation act, and rules and regulations adopted under such act, and nothing in this section shall authorize impairment of any vested right or prior appropriation right by the exercise of such term permit.

(e) Unless a term permit is issued pursuant to an application filed before November 1 of the year prior to the first year for which the application is made, the quantity of water used under the water right during the year in which the application for the term permit is filed shall be deducted from the amount of water deposited into the account authorized by the term permit.

(f) All costs of administration of this section shall be paid from fees for term permits provided for by this section. Any appropriation or transfer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be repaid to the fund from which such appropriation or transfer is made. At the time of repayment, the secretary of agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.

(g) The chief engineer shall submit a written report on the implementation of this section to the house standing committee on environment and the senate standing committee on natural resources on or before February 1 of each year.

(h) This section shall be part of and supplemental to the Kansas water appropriation act.

**K.A.R. 5-5-12- Net irrigation requirements (NIR)**

The following amounts shall be used as the net irrigation requirements (NIR).

<b>County</b>	<b>50% Chance Rainfall</b>	<b>80% Chance Rainfall</b>
Allen	7.1" = 0.59'	9.9" = 0.83'
Anderson	6.1" = 0.51'	9.4" = 0.78'
Atchison	7.2" = 0.60'	10.3" = 0.86'
Barber	12.6" = 1.05'	14.6" = 1.22'
Barton	12.0" = 1.00'	14.4" = 1.20'
Bourbon	6.8" = 0.57'	9.6" = 0.80'
Brown	7.1" = 0.59'	10.6" = 0.88'
Butler	9.2" = 0.77'	12.0" = 1.00'
Chase	8.7" = 0.73'	11.4" = 0.95'
Chautauqua	8.6" = 0.72'	11.4" = 0.95'
Cherokee	7.0" = 0.58'	9.9" = 0.83'
Cheyenne	13.7" = 1.14'	15.4" = 1.28'
Clark	13.7" = 1.14'	15.7" = 1.31'
Clay	9.2" = 0.77'	12.2" = 1.02'
Cloud	10.3" = 0.86'	12.7" = 1.06'
Coffey	6.8" = 0.57'	9.9" = 0.83'
Comanche	13.0" = 1.08'	15.1" = 1.26'
Cowley	9.7" = 0.81'	12.3" = 1.03'
Crawford	7.0" = 0.58'	9.8" = 0.82'
Decatur	12.7" = 1.06'	14.8" = 1.23'
Dickinson	9.4" = 0.78'	12.3" = 1.03'
Doniphan	7.3" = 0.61'	10.3" = 0.86'
Douglas	6.8" = 0.57'	9.8" = 0.82'
Edwards	13.0" = 1.08'	15.1" = 1.26'
Elk	8.7" = 0.73'	11.3" = 0.94'
Ellis	12.2" = 1.02'	14.6" = 1.22'
Ellsworth	11.5" = 0.96'	13.7" = 1.14'
Finney	14.5" = 1.21'	16.3" = 1.36'
Ford	13.7" = 1.14'	15.7" = 1.31'
Franklin	5.8" = 0.48'	9.1" = 0.76'
Geary	8.4" = 0.70'	11.5" = 0.96'
Gove	13.1" = 1.09'	15.3" = 1.28'
Graham	12.4" = 1.03'	14.7" = 1.23'
Grant	14.9" = 1.24'	16.7" = 1.39'
Gray	13.8" = 1.15'	16.1" = 1.34'
Greeley	14.7" = 1.23'	16.5" = 1.38'
Greenwood	8.1" = 0.68'	11.1" = 0.93'
Hamilton	15.2" = 1.27'	16.9" = 1.41'
Harper	11.7" = 0.98'	14.0" = 1.17'
Harvey	10.2" = 0.85'	12.9" = 1.08'
Haskell	14.5" = 1.21'	16.4" = 1.37'
Hodgeman	13.4" = 1.12'	15.5" = 1.29'
Jackson	7.4" = 0.62'	10.5" = 0.88'
Jefferson	7.0" = 0.58'	10.1" = 0.84'
Jewell	10.6" = 0.88'	13.1" = 1.09'

<b>County</b>	<b>50% Chance Rainfall</b>	<b>80% Chance Rainfall</b>
Johnson	6.6" = 0.55'	9.5" = 0.79'
Kearny	14.9" = 1.24'	16.6" = 1.38'
Kingman	11.7" = 0.98'	14.0" = 1.17'
Kiowa	13.2" = 1.10'	15.1" = 1.26'
Labette	7.3" = 0.61'	10.3" = 0.86'
Lane	13.7" = 1.14'	15.7" = 1.31'
Leavenworth	7.0" = 0.58'	9.9" = 0.83'
Lincoln	11.3" = 0.94'	13.6" = 1.13'
Linn	5.6" = 0.47'	9.0" = 0.75'
Logan	13.9" = 1.16'	15.8" = 1.32'
Lyon	7.5" = 0.63'	10.5" = 0.88'
Marion	9.6" = 0.80'	12.2" = 1.02'
Marshall	8.7" = 0.73'	11.4" = 0.95'
McPherson	10.8" = 0.90'	13.1" = 1.09'
Meade	14.3" = 1.19'	16.1" = 1.34'
Miami	5.0" = 0.42'	9.0" = 0.75'
Mitchell	10.8" = 0.90'	13.3" = 1.11'
Montgomery	8.1" = 0.68'	10.9" = 0.91'
Morris	8.5" = 0.71'	11.4" = 0.95'
Morton	15.4" = 1.28'	17.1" = 1.43'
Nemaha	7.8" = 0.65'	10.9" = 0.91'
Neosho	7.1" = 0.59'	10.2" = 0.85'
Ness	13.3" = 1.11'	15.3" = 1.28'
Norton	12.3" = 1.03'	14.4" = 1.20'
Osage	7.0" = 0.58'	9.9" = 0.83'
Osborne	11.7" = 0.98'	13.8" = 1.15'
Ottawa	10.5" = 0.88'	12.9" = 1.08'
Pawnee	12.7" = 1.06'	14.9" = 1.24'
Phillips	11.7" = 0.98'	14.0" = 1.17'
Pottawatomie	8.1" = 0.68'	11.1" = 0.93'
Pratt	12.6" = 1.05'	14.6" = 1.22'
Rawlins	13.2" = 1.10'	15.1" = 1.26'
Reno	11.4" = 0.95'	13.8" = 1.15'
Republic	10.0" = 0.83'	12.6" = 1.05'
Rice	11.5" = 0.96'	13.8" = 1.15'
Riley	8.5" = 0.71'	11.4" = 0.95'
Rooks	12.0" - 1.00'	14.3" = 1.19'
Rush	12.6" = 1.05'	14.8" = 1.23'
Russell	11.3" = 0.94'	14.1" = 1.18'
Saline	10.8" = 0.90'	13.1" = 1.09'
Scott	14.0" = 1.17'	15.9" - 1.33'
Sedgwick	10.7" = 0.89'	13.1" = 1.09'
Seward	14.5" = 1.21'	16.4" = 1.37'
Shawnee	7.4" = 0.62'	10.2" = 0.85'
Sheridan	12.9" = 1.08'	15.0" = 1.25'
Sherman	14.1" = 1.18'	15.7" = 1.31'
Smith	11.4" = 0.95'	13.6" = 1.13'
Stafford	12.3" = 1.03'	14.5" = 1.21'
Stanton	15.6" = 1.30'	17.2" = 1.43'

<b>County</b>	<b>50% Chance Rainfall</b>	<b>80% Chance Rainfall</b>
Stevens	14.8" = 1.23'	16.8" = 1.40'
Sumner	10.3" = 0.86'	13.2" = 1.10'
Thomas	13.5" = 1.13'	15.4" = 1.28'
Trego	12.9" = 1.08'	15.0" = 1.25'
Wabaunsee	7.8" = 0.65'	10.7" = 0.89'
Wallace	14.3" = 1.19'	16.1" = 1.34'
Washington	9.2" = 0.77'	12.0" = 1.00'
Wichita	14.4" = 1.20'	16.3" = 1.36'
Wilson	8.0" = 0.67'	10.7" = 0.89'
Woodson	7.4" = 0.62'	10.4" = 0.87'
Wyandotte	7.0" = 0.58'	9.8" = 0.82'

*(Authorized by K.S.A. 82a-706a; implementing K.S.A. 1993 Supp. 82a-708b; effective Nov. 28, 1994.)*

## **Water Banking in Kansas: Program Overview and Recommendations for Improvement**

September 15, 2011

- A Water Bank provides a market for voluntary, temporary movement of water rights from one area to another within the same hydrologic unit and to build in a conservation component.
- A Water Bank can be structured to encourage movement of water rights away from stressed areas to areas of growing need, or to supplement streamflow.
- A Water Bank must have at least 10% water conservation.
- The Water Bank allows for three types of accounts:
  - Water Right Deposits (restricted to historically consumed quantities)
  - Leases of Deposited Water (must occur within the same hydrologic unit as deposit)
  - Safe Deposit Accounts (25% of unused allocated amount for owner's future use, not to exceed annual allocation quantity, with an annual 10% conservation loss)
- A full or partial water right can be deposited for lease for another use, to another user or at another location of withdrawal within the bank boundary and the same hydrologic unit (HUC 8).
- The amount of water that can be deposited is restricted to the historically used quantity of the water right, not to exceed its allocation.
- The water right depositor sets the selling price for leased water.
- A conservation component is applied to each deposit and lease to assure a 10% or greater water savings.
- Leases allow for more water to be applied where additional water rights are not available.
- A safe deposit account is for the depositor's own use in which up to 25% of the unused water in one year can be deposited for future use, when less than 85% of the authorized quantity has been used. Safe deposit accounts are "leaky", losing 10% of their holdings each year.
- The Water Bank may facilitate the sale or lease of water rights, but does not own, buy or sell them.
- Water Bank operations are supported by the bank account fees.

- The Kansas Water Banking Act (K.S.A. 82a-761 *et seq*) authorized up to two banks.
- The Central Kansas Water Bank, chartered in 2005 is currently the only water bank in Kansas; it only allows for groundwater deposits.
- The Central Kansas Water Bank operates over the entire Big Bend GMD5 district.
- A deposit can occur anywhere in the Central Kansas Water Bank. A lease can occur in many, but not all, areas of this bank, within the same hydrologic unit as the deposit.
- A full or partial water right can be deposited for lease for another use, to another user or at another location of withdrawal within the bank boundary and the same hydrologic unit (HUC 8).
- An evaluation of the Central Kansas Water Bank occurred in 2010 to make recommendations to Chief Engineer on whether to renew the Bank's charter. Findings included:
  - The Water Bank is a potentially important water management program.
  - Keep the Bank in place for when the demand and need increases.
  - Improve the operation and usefulness of the Bank. Simplify the rules. Reduce the high level of conservation currently required (23% minimum) closer to the statutorily required 10%. Make the Central Kansas Bank's status permanent.

