

**IN THE MATTER OF THE DESIGNATION OF AN
INTENSIVE GROUNDWATER USE CONTROL AREA IN
BARTON, RUSH AND NESS COUNTIES, KANSAS**

SUPPLEMENTAL ORDER

COMES NOW, David W. Barfield, Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture (“Chief Engineer”), and hereby makes the following findings and order pursuant to K.S.A. 82a-1038.

FINDINGS

1. That on January 29, 1992, the Chief Engineer established by Order, an Intensive Groundwater Use Control Area (“IGUCA”) in Barton, Rush, and Ness Counties, Kansas pursuant to K.S.A. 82a-1038 (“IGUCA Order”). The IGUCA Order was modified by a Supplemental Order issued on December 6, 1996; by an Amended Order issued on June 24, 1998; and by a Supplemental Amended Order issued on June 29, 2001.
2. The boundaries of the Walnut Creek IGUCA are described in the IGUCA Order as follows:

Barton County

T18S R13W Sections 28 through 33;
T18S R14W Sections 4 through 10 and 14 through 36;
T18S R15W Sections 1 through 36;
T19S R13W Sections 3 through 11 and 14 through 23;
T19S R14W Sections 1 through 6, 9 through 15, and 22 through 24;
T19S R15W Section 1.

Rush County

T17S R16W Sections 31 through 35;
T17S R17W Sections 19 through 36;
T17S R18W Sections 19 through 36;
T17S R19W Sections 23 through 26 and 31 through 36;
T17S R20W Sections 35 and 36;
T18S R16W Sections 1 through 36;
T18S R17W Sections 1 through 36;
T18S R18W Sections 1 through 36;
T18S R19W Sections 1 through 36;
T18S R20W Sections 1 through 36;
T19S R16W Sections 3 through 6;
T19S R17W Sections 1 through 6;
T19S R20W Sections 1, 2, 11, and 12;

Ness County

T17S R25W Sections 32 through 34
T18S R21W Sections 1 through 36
T18S R22W Sections 1 through 4 and 7 through 36
T18S R23W Sections 19, 25 through 36
T18S R24W Sections 13 through 27, 35, and 36
T18S R25W Sections 1 through 5, 10 through 13, 24, 33, and 34
T19S R21W Sections 4 through 9
T19S R22W Sections 1 through 12, 17, and 18
T19S R23W Sections 1 through 23
T19S R24W Sections 1, 2, and 7 through 29
T19S R25W Sections 1 through 3 and 11 through 13.

3. That the IGUCA Order, Order Section, Paragraph No. 25 provides, “That the Chief Engineer specifically retains jurisdiction in this matter with authority to make such changes in the boundaries of the IGUCA or the corrective control provisions which have been instituted or any other provision of this Order, and to hold any subsequent hearings in the matter of the IGUCA or the corrective control provisions which he or she may deem to be in the public interest.”
4. That the IGUCA Order, Order Section, Paragraph No. 2 provides, “That this IGUCA shall be closed to further appropriation except for domestic use, any use authorized by temporary permit granted under the authority of K.S.A. 82a-727, and any appropriation of groundwater that may be authorized on a non-renewable term basis not to exceed one year when deemed by the Chief Engineer to be necessary for emergencies or to protect the public health, safety or welfare; that the Chief Engineer shall refuse to accept any other application for a permit to appropriate groundwater within the IGUCA; that this IGUCA shall be closed to further surface water appropriation except for domestic use, any diversion of flows that would not otherwise be usable, any use authorized by temporary permit granted under the authority of K.S.A. 82a-727, and any appropriation of surface water that may be authorized on a non-renewable term basis not to exceed one year when deemed by the Chief Engineer to be necessary for emergencies or to protect the public health, safety or welfare.”
5. That in 2009 the Kansas Legislature adopted K.S.A. 82a-708c, explicitly granting the Chief Engineer the authority to issue term permits in excess of six months and proscribing other requirements for term permits.
6. That the Chief Engineer has further promulgated regulations regarding term permits in K.A.R. 5-9-1a through K.A.R. 5-9-1d.
7. That the IGUCA Order did not contemplate the issuance of term permits by the Chief Engineer as defined by K.S.A. 82a-708c and K.A.R. 5-9-1a through 5-9-1d.

8. That upon review of the IGUCA Order the great weight of evidence entered into the record makes it clear that the Walnut Creek IGUCA was intended to regulate and preserve Walnut Creek, its tributaries, their alluviums, and any hydrologically connected groundwater. The IGUCA Order, Conclusions Section, Paragraph No. 3 provides “That Walnut Creek and its valley alluvium are hydraulically connected; that declining groundwater water levels are at least in part responsible for declines in baseflow in Walnut Creek.”

The IGUCA Order, Conclusions Section, Paragraph No. 8 further provides “that all other land originally proposed to be included in the IGUCA should remain in the IGUCA since the surface water drainage and the valley aquifer are hydrologically part of the stream-aquifer system in Walnut Creek valley.”

9. That when considering applications for the beneficial use of water pursuant to K.S.A. 82a-711, the Chief Engineer “shall not approve any application submitted for the proposed use of fresh water in any case where other waters are available for such proposed use and the use thereof is technologically and economically feasible.”

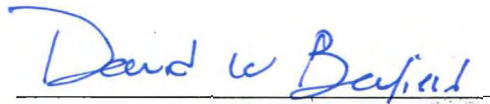
ORDER

NOW THEREFORE, it is the decision and order of the Chief Engineer that the order dated January 29, 1992, establishing an Intensive Groundwater Use Control Area in Barton, Rush, and Ness Counties, Kansas, including all amendments and supplemental orders thereto, shall be and is hereby amended to read as follows:

1. That the Chief Engineer, in addition to the applications listed in the IGUCA Order, Order Section, Paragraph No. 2, will accept for filing new applications for term permits to appropriate water from a non-fresh source not connected to the Walnut Creek or its related groundwater systems as further described below. Term permit applications submitted pursuant to K.S.A. 82a-708c and K.A.R. 5-9-1a through K.A.R. 5-9-1d will be approved only if the applicant demonstrates and the Chief Engineer finds that the source of water has a chloride concentration greater than 5,000 milligrams per liter; the approval of any such permit will not negatively impact the streamflow of Walnut Creek, its tributaries, their alluviums or any other hydrologically-related groundwater aquifers; will not negatively impact any water right holder within the IGUCA; will not negatively impact the quality or quantity of any available fresh water sources located within the IGUCA; and that the proposed use of the term permit is in the public interest. Such application shall meet all other requirements for approval of term permits at the time it is issued. The Chief Engineer may add other requirements deemed necessary to protect the quantity and quality of water available in the IGUCA as conditions of the permit.

IT IS SO ORDERED.

ENTERED THIS 31st DAY OF July 2017.



David W. Barfield, P.E.
Chief Engineer, Division of Water Resources
Kansas Department of Agriculture

PREPARED BY:



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RIGHT TO ADMINISTRATIVE REVIEW

As provided in K.S.A. 82a-1038 and K.S.A. 82a-1901 as amended, you may petition for administrative review of this order by the Secretary of Agriculture. The petition for review shall be in writing and state the basis for requesting administrative review pursuant to K.S.A. 77-527. A petition for review must be filed within 30 days after service of this order as provided in K.S.A. 77-531 and filed with:

Secretary of Agriculture
Attn: Legal Section
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
Fax: (785) 564-6777
Email: ronda.hutton@ks.gov

If a petition for administrative review is not timely filed this order shall be effective, and become a final agency action as defined in K.S.A. 77-607(b).