

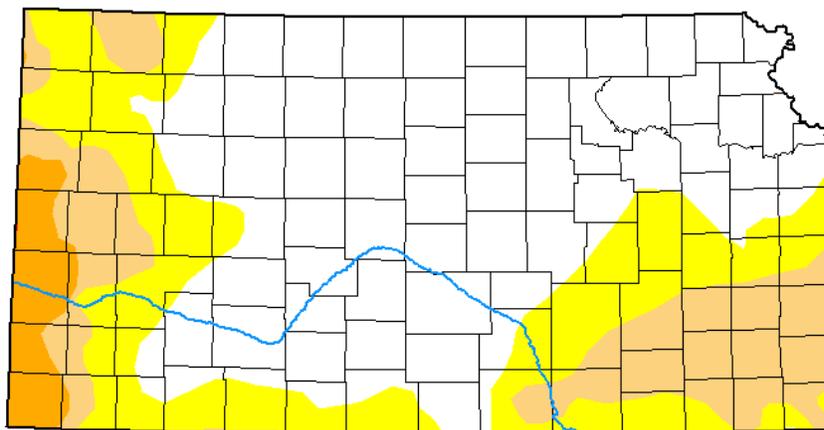
Report of the Kansas Commissioners
to the
KANSAS-OKLAHOMA ARKANSAS RIVER COMMISSION
Annual Meeting – Virtual (Zoom), KS
August 4, 2020

Climate Conditions

Water supply conditions during the 2020 growing session started off very dry over large parts of the state but have since improved over much of western Kansas. Significant portions of western and southeastern Kansas remain moderate to severely very dry.

U.S. Drought Monitor Kansas

July 28, 2020
(Released Thursday, Jul. 30, 2020)
Valid 8 a.m. EDT



Intensity:

- None
- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

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Minimum Desirable Streamflows

MDS were established to protect ecological, water quality, and domestic needs. Under MDS, when prescribed gages fall below statutorily defined values, all surface water and connected groundwater rights junior to MDS (1984) are to be regulated. Even though conditions have been dry across much of the state, thanks to timely rains there has been no MDS administration yet this year.

Legislation

Senate Bill (SB) 182 - Bill to limit the liability of water right owners when their water rights are operated by someone else. There are occasional circumstances where there is a violation of meter requirement or reporting requirements including falsification of records where the water right owner claims it was the hired help that made the mistake and that they shouldn't be held liable for that. It's a

tricky issue. Like most of the others in this COVID-19 session, this bill died in committee, but we suspect the issue will return, maybe next session.

SB 270 – allowed water rights certified after 2009 to enter into a Multi-Year Flex Account (MYFA). One of the ways that the MYFA quantity is calculated is to take the historical period (2000-2009) to establish a base water quantity. This doesn't work for "newer" water rights which do not have that complete record. This bill would allow the chief engineer to use the net irrigation requirement as a substitute for a water user record to provide a way to allow those newer water rights to participate in the MYFA program. We anticipate that this bill will be reconsidered next session.

SB 329 – was introduced to establish that the chief engineer doesn't have to be an engineer. This died in committee.

There were 328 bills carried over from 2019, 355 new bills. Of those 683 bills, 11 were passed by both houses and presented to the governor. 7 were signed and 4 were vetoed.

Arkansas River Basin Matters

Quivira

At the KOARC annual meeting last year in Bartlesville, we reported that we had not reached agreement with the local groundwater management district, GMD #5, on how to address the impairment of Quivira National Wildlife Refuge by junior groundwater pumpers, mostly irrigators, in the district. At that time, we were finalizing our plan to administer some 1600 groundwater rights to reduce their pumping in order to begin to resolve the impairment. On September 30, we sent notice to the water right owners and operators of our intent to administer their water rights in 2020. We scheduled two public meetings in the basin to be held on October 21, 2019 to review the agency's plan and answer questions. On October 18, the Friday before the Monday public meetings, we were informed that Kansas US Senator Moran had met with the director-nominee of USFWS and the latter had agreed to not request that KDA-DWR protect the refuge's water right by ordering reductions in pumping.

In December 2019, USFWS and GMD #5 began frequent meetings to work towards a resolution of the issue. On July 24, 2020 the GMD #5 board of directors approved a memorandum of agreement between the GMD and USFWS. The director of the USFWS traveled to St John, KS and out to the refuge to sign the MOA.

In the agreement, GMD #5 has committed to building and operating an augmentation wellfield to supply the refuge in times of shortage. The USFWS has committed to foregoing a request to KDA-DWR to protect the refuge's water right for 2020-2021 which would involve ordering reductions in pumping by junior appropriators.

Wichita ASR

The local groundwater management district, GMD #2 within which the Wichita ASR project is situated, is stridently opposing Wichita's proposed modifications to the ASR project, claiming that the city's proposal will impair existing users. There have been 11 days of formal hearing with all manner of legal

briefs, expert testimony, motions and the like. The hearing officer estimates that there may be three more days of hearing needed to complete the hearing process. After that the hearing officer will develop a report and submit it to the chief engineer for consideration and decision on the matter.

Hays – Russell R9

The City of Hays purchased the 7,000-acre R9 ranch some 60 miles to the south of the city with the intention of converting the ranch's water rights to municipal use to supply the city. WaterPACK, a local non-profit group is helping to represent water right owners near the R9 ranch. WaterPACK is claiming that 1) the R9 water right was not established correctly and therefore the amount of consumptive use that can be changed is too high; 2) that the amount of pumping contingently authorized by the change will impair existing rights, and 3) that the agency has no authority to contingently approve changes. The matter is before Edwards CO district court – briefs have been filed by all parties and oral arguments are set for October.

Other Water management activities – (for information visit <http://www.agriculture.ks.gov/dwr>)

Local Enhanced Management Areas (LEMAs)

In 2012, the Kansas Groundwater Management Districts was amended to allow GMDs to initiate the creation of these special management area in over-appropriated areas, providing a two-hearing process for their consideration.

As reported last year, the **Sheridan-6 LEMA** was renewed for 2018-2022 and continues to operate.

Building on the success of the SD-6 LEMA, GMD #4, within which the SD-6 LEMA is situated, developed a **district-wide LEMA** also in place 2018-2022 which places pumping restrictions based on the rate of water level declines on a township scale. A group of intervenors challenged the constitutionality of the LEMA law in district court. In its October 15, 2019 order, the court upheld the chief engineer's decision and the LEMA law. The intervenors asked the court to reconsider, the court declined, and the intervenors have chosen not to appeal.

West-central Kansas GMD #1 approved a LEMA plan and sent it to the chief engineer in late March 2020. This has started the formal, two-hearing process. **GMD #1's Wichita County LEMA** plan proposes to reduce pumping from recent historical levels (2009-2015 baseline) by between 15% and a little over 20% depending on the participation of vested water rights. This action is desperately needed in the area, where the saturated thickness of the aquifer has dwindled to around 20 feet. The initial hearing will be a hybrid virtual, in-person proceeding with the hearing officer at KDA headquarters in Manhattan, and public testimony presented via Zoom remote meeting software. If the first hearing which focuses mostly on findings of fact, is favorable, then a second hearing to consider the merits of the plan will be held. If the second hearing is favorable, then the LEMA will be designated and the plan will be ordered. GMD #1 is hoping that the plan will be in effect starting in 2021.

Water Conservation Areas (WCAs)

In 2015, the Legislature amended Kansas' Water Appropriation Act to allow for the development of WCAs, which allows a water right owner or group of owners to enter into an agreement with the chief engineer to reduce groundwater withdrawals to extend the usable life of the Ogallala-High Plains Aquifer, typically with increased flexibility to manage the reduced use. We now have 53 approved WCAs covering over 86,000 acres, with more actively being considered. The largest plan to date is the Garden City Company WCA, with over 15,500 acres enrolled, and over 12,000 acre-feet of estimated annual savings.

Evaluating the effectiveness of water conservation tools

We continue developing and refining methods to determine if our water management tools (LEMAs, WCAs, MYFAs) are working as intended. The technique we have been developing for the last couple of years evaluates changes in irrigation behavior by establishing a relationship between seasonal precipitation and irrigation application, using that relationship to predict future behavior, and then observing whether implementing the management tool caused a change in behavior. Using this technique, we have observed that water use by irrigators in GMD #4's SD-6 LEMA was 30% less on average over 2013-2018 than the water use predicted over that time. Similarly, water use across the GMD #4 District-Wide LEMA, which started in 2018, was over 30% less than predicted (a savings of 120,000 acre-feet) in 2019 alone. This year, we also took our first comprehensive look at the MYFA since that tool's conservation requirement was removed in 2012. The MYFA tool allows a water right operator to manage their water over a 5-year period instead of year-by-year. Our evaluation was provided to the Legislature this year and showed that the MYFA has not expanded use.

Changes to the Kansas Delegation

On February 29, 2020, Kansas Chief Engineer David Barfield retired after 35 years of state service including 12 years as chief engineer and ex officio commissioner of the Kansas-Oklahoma Arkansas River Compact. Kansas will offer a resolution honoring Mr. Barfield's service to the compact later in today's meeting.

On March 2, 2020, I was appointed acting chief engineer and am honored to serve the compact administration as Kansas ex officio commissioner until a permanent appointment is made for the chief engineer position.

I currently serve as treasurer to the compact commission and I also serve on the finance and engineering committees. At the appropriate time in today's agenda, I will nominate Elizabeth Hickman of my staff to replace me in serving the commission in those roles.