

Bits and pieces . . .

Over-Pumping Irrigators Fined by DWR

The *Hays Daily News* recently report on water right holders who were fined for over-pumping of their water rights. *The Hutchinson News* reported that despite augmented efforts to solve the declining Ogallala Aquifer, state water officials are still battling a long, annual list of irrigators who have over-pumped their allotted water right.

State documents released by the Kansas Department of Agriculture's Division of Water Resources show 114 water right holders received civil penalties for over-pumping in 2013, which is a first offense warning.

Another 70 irrigators were warned a second, and, for a few, a third time for over-pumping, and issued a \$1,000 fine and temporary cutbacks to their annual water use.

A handful of others tried to hide their over-pumping, and were caught cheating – either falsifying their water use report or tampering with their meter to make it look like they pumped less.

While the number of irrigators misusing a water right is down from the past few years, it all adds up, said Lane Letourneau, water appropriations program manager for the Kansas

Department of Agriculture's Division of Water Resources.

Last year, state officials hardened the fines, hoping to curb over-pumping.

"It is important folks maintain those amounts – to not cause impairment to nearby wells," Letourneau said. "These people, who are pumping in excess of their authorized quantity, have an advantage over their neighbor."

Plus, he added, these irrigators are pumping from the Ogallala's storage, which, according to a Kansas State University study, could be nearly 70 percent spent in 50 years if nothing changes.

In August, *The Hutchinson News* submitted an open records request to the state for a list of second- and third-time violators. So far, there has never been a fourth-time over-pumping offender, which would mean a revocation of a water right.

The newspaper received a list of violators who were assessed penalties between December 2013 and September 29, 2014 for violations that largely occurred in 2013 being settled and are in the hands of the state's legal department. The state's over-pumping document is an ongoing working document.

Letourneau noted that violations are held to the owner of the water right, the landowner and not necessarily the tenant.

The tenant could have provided the bad information or was the one who over-pumped the right, but because the water right is permitted on the land in which it was established, the state holds the landowner accountable for the water right violation.

Among those on the state's current list are several western Kansas dairies. The Boersma family, which has a dairy in Gray County, was cited for third-offense violation for over-pumping. Also, the Ritzema Rodenhuis family, which has a dairy in Kearny County, was on the list for falsifying water use reports on at least three different wells. Kansas Dairies based in Hamilton County, with two previous penalties on this water right, was fined for over-pumping and meter tampering.

A fourth dairy, the former West Plains Dairy in Scott County owned by the McCarty family, was also on the list for a second offense for over-pumping a stock water right, according to the report in *The Hutchinson News*.

There were others who had third-time offenses, which causes a fine of



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\$1,000 for each day over-pumped – up to \$10,000 – and a suspension of their water right for a year.

The highest penalty was assessed to a Thomas County water right owned by the Wayne Luckert Trust. The file obtained by *The Hutchinson News* showed the trust had two other previous penalties and that the state issued the maximum fine of \$10,000 and suspension of water use for 2015. A note regarding the case showed the fine was reduced to \$8,000 with a reduction of water use by 20 acre feet for 2015.

Other third time offenders include:

- ❖ Cimarron Land Co., located in Gray County, which had two previous penalties against the water right before over-pumping in 2013 and also was charged with falsifying a water use report;
- ❖ Ronald Nickelson, Graham County, also had two previous penalties against the water right before over-pumping in 2013.
- ❖ Two cities also made the list. Junction City was fined \$500 for over-pumping its water right in 2012. The city of Elmdale, a very small community in Chase County, also was fined \$500 for a violation of the city's permit condition.

The Division is reported to be ramping up efforts to curb over-pumping. Agency officials hope stiffer fines starting with 2013 over-pumpers

will make it more difficult for irrigators to misuse a water right.

Besides hefty fines for third-time offenses, second-time offenders are now fined \$1,000 and a reduction of their water right in 2014 by two times the amount over pumped. Previously second offenses were fines of \$500.

Meanwhile, the fourth offense is a water-right revocation. At present, Kansas officials have never had to revoke a water right for over-pumping, according to DWR's Lane Letourneau.

There may be exceptions to the progression listed above. For example if over-pumping is flagrant – or 125

percent over the water right's allotment – the agency will proceed to a stricter penalty without waiting for repeat offenses.

Also, water use penalties are now recorded with the local county register of deeds to ensure individuals who purchase land are aware of any water pumping violations.

For those in violation, there is an appeals process, he said. That includes a hearing and a settlement conference. If not settled at that time, cases go to a full hearing with an independent officer.

City of Iola Increases Water and Sewer Rates

Iola, KS located in Allen County in the east-central part of the state, recently voted to increase water and sewer rates, effective January 1, 2015. The average monthly residential water bill will increase about \$2, from just under \$40 to \$42 a month, according to City Administrator Carol Slaugh.

Meanwhile, residential sewer charges will increase from an average of \$15.67 to about \$16.45.

Each water customer will pay a \$20.44 meter charge each month, plus \$3.80 for each unit of water. Wholesale customers will pay either \$3.69 or \$3.21 for each unit of water.

Basic monthly sewer service charges will go to \$6.83 with \$2.15 for each 100 cubic feet of water used on average over three winter months. Commercial and industrial sewer users will see their base fees increase from \$8.13 to \$8.54, with water usage rates increasing to \$2.87 from \$2.68.

Iola's rates remain competitive when compared to similarly sized communities. Part of the reason is that Iola's sewer system successfully treats wastewater with ponds or lagoons which has avoided the need to construct a mechanical treatment plant.

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Hays and Russell Continue to Look at R9 Ranch as Water Source

The cities of Hays and Russell continue to evaluate the R9 Ranch near Kinsley in Edwards County as a potential water supply. Recently, the cities of Russell and Hays approved an inter-local agreement to partner in developing the R9 Ranch as such a source.

Russell has an 18 percent ownership in the R9 Ranch and Hays has an 82 percent ownership.

According to the *Russell County News*, Russell and Hays lease the R9 ranch's land to a farmer.

Russell City Manager Jon Quinday reports that developing the ranch as a municipal water source could require ten years and between \$60 million and \$90 million in development costs, before Russell and Hays might see any additional water.

There are a total of about 8,000 acre-feet of water rights which can be provided by the R9 Ranch each year to Russell and Hays. However, Quinday reported that because of various state regulatory considerations, the actual total available to Russell and Hays may be about 6,000 acre-feet. The 6,000 acre-fee is estimated to supply the needs of Russell and Hays for the next 50 to 100 years. There may even be enough water from the R9 Ranch to allow Russell and Hays to sell some to other towns and cities in the region, thus generating some revenue.

Bartlett & West Engineers, Topeka, KS recently completed a study of regional water sources for the city of Russell. Russell recently added a well near Pfeifer to the

water supply. The city is also continuing to negotiate with a landowner for water from yet another well which could also be used in conjunction with the Pfeifer well field, according to the news report.

The engineering study was reported to examine eleven regional water sources, in order to see which ones are worthy of further study for possible development as municipal sources. The study narrowed down the options from eleven to three.

The three options are to develop a new Well No. 12 so it can work with the Pfeifer well field, negotiate to buy water from Ellsworth RWD 1 and conduct further study of potentially viable groundwater sites which are located in the Saline River Valley north of Russell.

Other possible short-term to mid-term water sources which were examined as part of the Bartlett & West study are considered too expensive to pursue, with development costs estimated at between \$40 million and

\$60 million each. Those other potential water sources include the building of a pipeline to transport water from the Cedar Bluff Reservoir to the Pfeifer well field and, finally, to Russell; seek viable supplies of groundwater in the Smoky Hill area; utilize any groundwater available near Big Creek; build a water reservoir near Canyon Road north of Russell; and, dredge and expand Fossil Lake which is located just south of Russell.

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Independence Increases Water, Sewer Rates by Five Percent

The Independence, KS city commission has approved ordinances that increase water and sewer rates by five percent, effective 1/1/15.

The new water rates for users within the city limits will be \$6.84 for the first 1,000 gallons or less. The previous rate was \$6.51.

Users outside of the city limits will pay \$10.27 for the first 1,000 gallons, compared to the prior rate of \$9.78.

The new rate structure includes incremental increases for additional water use for customers within the city limits and outside the city limits.

The new minimum charge for sewer service for customers within the city limits will increase to \$19.45 per month compared to the current rate of \$18.52 per month. The new hardship rates for sewer service will be a \$14.58

per month minimum charge, with an additional \$2.72 per 1,000 gallons of water used per month.

The new rates for customers living in the Sewer District No. 2 will be a monthly charge of \$29.49, compared to the current rate of \$28.09 and \$6.08 per month per 1,000 gallons of water used compared to \$5.79.

The city's ordinance also establishes new rates for water connection fees inside and outside the city limits. The fee will be \$300 for a 5/8-inch meter inside city limits, and a charge of \$350 for those outside city limits. Costs of larger meters are determined by the cost of labor and materials but will not be less than \$300 for in-city users and \$350 outside of city.

Sewer service connection fees inside Independence city limits are \$100, but \$150 for connections outside the city.

Public Wholesale District No. 23 Receives \$24 Million in USDA Funding

Public Wholesale Water Supply District No. 23 (PWWS D 23) has received more than \$24 million in federal funding for construction of a new water treatment facility at Fredonia. Design and construction of the facility will utilize an \$11,034,000 Rural Development Grant made available from the U.S. Department of Agriculture Farm Bill.

PWWS D No. 23 is a regional water utility that treats and delivers potable water to more than 12,000 customers in four southeast Kansas communities and 16 rural water districts. The new facility will increase PWWS D's daily water production to six million gallons per day (GPD) up from its rated capacity of 2.35 million gpd. When constructed in 2009, PWWS D 23 involved the purchase of the then existing water treatment plant at the city of Fredonia which was used as the water source. An estimated \$2 million of improvements were made to the plant. Bids for the original project were in the fall of 2008. C&F Construction received the contract to install water lines at a cost of about \$10 million. Engineering America was contracted in an amount of almost \$2 million for construction of water storage tanks. LaForge & Budd Construction, Parsons, KS, did the renovation of the Fredonia water plant. The project was completed in 2009.

The USDA funding for the new plant project dedicates a large amount of grant funding that was available from the 2014 National USDA Rural Development pooling of uncommitted funds. The full financing for the facility comes in the form of a contribution of \$440,000 from PWWS D 23, a USDA Rural Development Loan of \$13,504,000, and the USDA \$11,034,000 grant for a combined project total of \$24,978,000.

The need to upgrade the current facility has been influenced by several factors. Portions of the existing plant are reported to be more than 100 years old, deteriorating and failing, the treatment process does not meet its stated capacity or all of the Kansas Department of Health and Environment (KDHE) regulations – and the current site is located inside the flood zone, with portions of the facility having flooded numerous times. The last significant flooding event happened in 2009 when the Federal Emergency Management Association was called

in to assist as high water levels contaminated the drinking water system. In the years since, PWWS D No. 23 has found it increasingly difficult to garner insurance coverage for the current facility.

The funding will allow the PWWS D to design and build a new facility outside the flood zone, while preserving some aspects of the existing system which include the river dam and water intake, sited inside the historic millworks building in Fredonia.

PWWS D No. 23 is also facing a consent order from Kansas Department of Health and Environment (KDHE) which requires suppliers to provide a treatment process

that ensures removal of cryptosporidium in water systems by increasing contact times. The Long Term 2 Enhanced Surface Water Treatment Rule indicates basins must provide additional treatment, a requirement not possible in the current system.

Alternatives for plant improvements, including addressing flooding issues and reducing cryptosporidium levels, were studied by the engineering firm of Shafer, Kline & Warren, Inc. PWWS D No. 23 evaluated all alternatives and determined that a new facility would allow PWWS D No. 23 the best value to address all system needs.

Members of PWWS D No. 23 are the cities of: Altoona, Buffalo, Fredonia, Neodesha and Thayer. Membership also includes these rural water districts: Montgomery RWDs 9 and 12; Neosho RWDs 4, 6, 7, 9 and 12; Wilson RWDs 1, 2, 5, 7, 10, 11, 13 and Woodson RWD 1.

The present water rate from PWWS D 23 is \$4.15 per thousand gallons. The PWWS D has reportedly approved a target rate of \$5.75 to amortize the additional debt. The charge is estimated to be in the range of \$5.50 to \$5.75 per thousand.

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Other Voices . . .

Water Abusers

Is it possible there is anybody in Kansas unaware of the Ogallala Aquifer's precarious decline? That in any given year, up to four feet drops in the nation's largest source of underground fresh water overwhelms the less than one-half inch of natural recharge? Or that irrigators, following the guidance of state and federal policy decisions, are responsible for more than 90 percent of the entire state's usage?

Anything is possible, we suppose, in an age of distraction and apathy. That is the sad reality facing those who care not simply about good stewardship of natural resources – but the sustainability of High Plains communities in the future.

City dwellers and the willfully ignorant should not be forgiven for a lack of concern, but any resident of western Kansas who doesn't comprehend the severity of the situation needs to wake up. And any irrigator deliberately over-pumping their allocated amount of water deserves the utmost punishment allowable by law.

An investigative story produced by *The Hutchinson News* reveals the state is attempting to curb such violations, and there are many. An examination of documents from the Kansas Department of Agriculture's division of Water Resources identified 114 water-right holders were penalized for over-pumping in 2013.

It is bad enough the state of Kansas over-allocated rights to irrigators as far back as the 1940s when technology allowed drills to reach the water trapped deep beneath the earth's surface millions of years ago. Agriculture policies designed to boost the economy encouraged crops such as corn to be planted on land more properly suited for wheat and sagebrush. State law that transferred a common resource into private property incentivized irrigators to use or lose their maximum allotments.

After much deliberation last year, the DWR formulated stiffer penalties for those who use more than they should. First-time offenders receive a warning. A second violation results in a \$1,000 fine and a reduction of their water rights for a year that is twice the amount over-pumped. The third time can cost the irrigator up to a \$10,000 fine and suspension of water use for a year. The fourth can result in permanent revocation of the water right.

While there likely are some instances in which honest mistakes were made, there were multiple examples in the 114 of purposeful tampering with meters and falsification of reports. Nobody has had their water rights permanently

retired, but there were plenty of second- and third-time offenders.

These people should know best the vulnerable situation facing all residents of this semi-arid region. Placing their individual pursuit of profits higher than the common good violates the social contract to which all should adhere. We encourage state and local officials to continue close monitoring and even expand their efforts.

Complain about government over-regulation and over-reach all you want, but it is apparent self-control and responsible stewardship does not automatically go hand-in-hand with owning a water right. The majority seems to be following the rules, but we need 100-percent compliance. Our lives depend on it.

– *Hays Daily News*

Wichita Increases Rates for Water, Wastewater Services

The Wichita city council recently voted to increase water and sewer rates. The new rates went into effect January 1, 2015. Residential customers using 3,750 gallons monthly will see a 4.4 percent increase. Those using four times as much will have a 5.9 percent increase.

Bills for commercial and industrial customers will increase more than 6 percent as the city continues to close a gap discovered in 2011.

According to a report in *The Wichita Eagle* newspaper, some of the money raised will go to improving infrastructure, especially a 66-inch, 50 year-old sewer main that winds along the Arkansas River almost three miles from one treatment plant to another. Checking the condition of that line is one requirement set by the Kansas Department of Health and Environment because of a 2012 sewer leak.

The rate changes do not apply uniformly to all customers. In 2012 it was discovered that residential customers were paying more than it cost to serve them. Since then, rates have been increased more for non-residential customers to slowly close that gap over a five year period.

Although Wichita has low water and sewer rates compared to the nation's 50 largest cities, it has been necessary to increase rates in recent years to improve infrastructure. City Manager Robert Layton said, "We recognize that five to six percent increases are not sustainable. Hopefully when we can get this bubble taken care of, we can get under four percent."

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