

Avoiding Civil Penalties Related to Overpumping – Know Your Water Rights!



Katie Tietsort is Water Commissioner, Topeka Field Office, Kansas Department of Agriculture- Division of Water Resources. She has been in that position since

2003. As Water Commissioner, Katie acts as a delegate of the Chief Engineer and is responsible for ensuring compliance with the Kansas Water Appropriation Act in the eastern third of Kansas.

The Kansas Department of Agriculture Division of Water Resources (KDA-DWR) made changes to the regulations under the Kansas Water Appropriation Act (KWAA) related to the penalties for overpumping water rights, which became effective in 2017. The intent of the changes were to significantly increase the monetary penalties and the water “payback” required when overpumping occurs. This was in part due to some water right owners considering the previous, lower civil penalties as a cost of doing business. Monetary penalties are a straightforward civil penalty fine.

Water “payback” or a suspension of water use, is when the penalty requires reduced water use the year following the penalty, as outlined in the penalty order. The severity of the penalty is based on the amount of water pumped over an authorized quantity, and the number of previous offenses. The Chief Engineer may waive the suspension if the reduced use could cause a public health or safety issue for the PWS system.

Each year, after water use reports have been submitted and entered into the KDA-DWR’s Water Right Information System (WRIS) database, KDA-DWR generates a list of files that

Category	Level A <24 Hours	Level B 24 - 72 Hours	Level C More than 72 Hours
No Penalty w/in 5 yrs	Written Notice of Non-Compliance	\$1000 per day and a reduction in quantity equal to 2X quantity overpumped (not to exceed one year suspension)	\$1000 per day and a reduction in quantity equal to 3X quantity overpumped (not to exceed one year suspension)
One Penalty w/in 5 yrs	\$1000 per day and a reduction in quantity equal to 2X quantity overpumped (not to exceed one year suspension)	\$1000 per day and a one year suspension	\$1000 per day and a three year suspension
Two Penalties w/in 5 yrs	\$1000 per day and a one year suspension	\$1000 per day and a three year suspension	\$1000 per day and a four year suspension
Three Penalties w/in 5 yrs	\$1000 per day and a three year suspension	\$1000 per day and a four year suspension	\$1000 per day and a five year suspension

Overpumping Matrix under K.A.R. 5-14-12. Civil penalties for exceeding the authorized quantity of water. Effective July 14, 2017.

Another thing we have been seeing is that owners don't realize that their perfected or certified quantity can be less than the quantity originally approved on the Approval of Application and Permit to Proceed.

restricted ability of the programming to discern between files within groups of water rights that have overlaps in point of diversion and/or place of use. Files with these overlaps and an overall limitation only ended up on the list if the overall limitation quantity was exceeded. This year additional effort was made to advance programming in order to produce a more complete list. It looks into these overlap groups to

determine if individual files within the group overpumped, in addition to whether or not the overall limitation was overpumped.

Unfortunately, this change in the law and the change to how programming generates the list of overpumped files, both happened in the same year. A number of owners were caught unaware of overpumping that has been masked inside one of

Overpump City			Quantity Authorized	Limitations
Water Right	File No. 123	Well #1	20.0 mgy	
Water Right	File No. 2,344	Well #2	20.0 mgy	Limited to 20.0 mgy with File No. 123
Water Right	File No. 34,544	Well #3	30.0 mgy	Limited to 44 mgy with File Nos. 123 & 2344

reported diverting a quantity of water in excess of the quantity authorized. That list is reviewed and follow-up occurs. Ultimately, if the KDA-DWR determines that overpumping occurred, they take regulatory compliance action based on the regulations in place. In past years, the list of files that resulted was incomplete, meaning many files were absent. This was due to the

Fictitious City example of water rights and what they authorize.

File	Quantity pumped in calendar year	Cumulative Tool
File No. 123	25.0 mgy	25 mg
File No. 2,344	10.0 mgy	25 mg
File No. 34,544	10.0 mgy	45 mg

Example of Fictitious City reported water use from the annual water use report.

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these overlap groups, which many PWS have. In some cases, overpumping has actually been occurring for numerous years, but the utility was unaware. Another thing we have been seeing is that owners don't realize that their perfected or certified quantity can be less than the quantity originally approved on the Approval of Application and Permit to Proceed. Additionally, overall limitations to a quantity tying a newer water right back to the already certified water rights can be confusing. An example follows:

In this example, all three files are overpumped. File No. 123 overpumped its face value of 20 MGY by pumping 25 MG. File No. 2,344 overpumped the limitation with File No. 123 since File Nos. 123 and 2,344 pumped 35 MG and the limitation was 20 MGY. Finally, File No. 34,544 also overpumped the limitation of 44 MG, since the limitation was 44 MG with File Nos. 123, 2,344 and 34,544 and a total of 45 MG was pumped. In this example, the overpumped quantity for

Several PWS systems were penalized \$10,000 for each file overpumped in 2017, mostly because they didn't understand their water rights.

each water right is divided by the authorized rate of diversion and then divided by 60 (mins to hours) divided by 24 (hours to days) gives the number of days the right was overpumped. The KDA-DWR rounds down and applies the monetary penalty based on the number of days. Several PWS systems were penalized \$10,000 for each file overpumped in 2017, mostly because they didn't understand their water rights.

This was a fictitious example, but it could happen to any utility if you do not know exactly what each of your rights authorize and understand specific limitations. The bottom line is that the KDA-DWR is committed to helping owners understand their water rights and our goal is always to help owners achieve and stay in compliance with their rights, not to issue civil penalties or other negative actions. However, we have to treat all customers the same once overpumping has happened. The goal would be to file for an additional water right on the well or diversion point that is in danger of being overpumped before overpumping occurs, to cover the needed quantity rather than issuing penalties after overpumping has occurred. The bottom line is that if you have any questions about your utility's water rights, please contact your area field office for a review of all your water rights to be prepared and sent to you, including water use over the last few years. We are happy to explain the information in person or by telephone to your utility. Below shows the field offices:

Topeka

6531 SE Forbes Ave., Suite B
Topeka, Kansas 66619
(785) 296-5733

Stafford

300 South Main St.
Stafford, Kansas 67578
(620) 234-5311

Stockton

820 South Walnut
Stockton, Kansas 67669
(785) 425-6787

Garden City

2508 Johns Street
Garden City, Kansas 67846
(620) 276-2901

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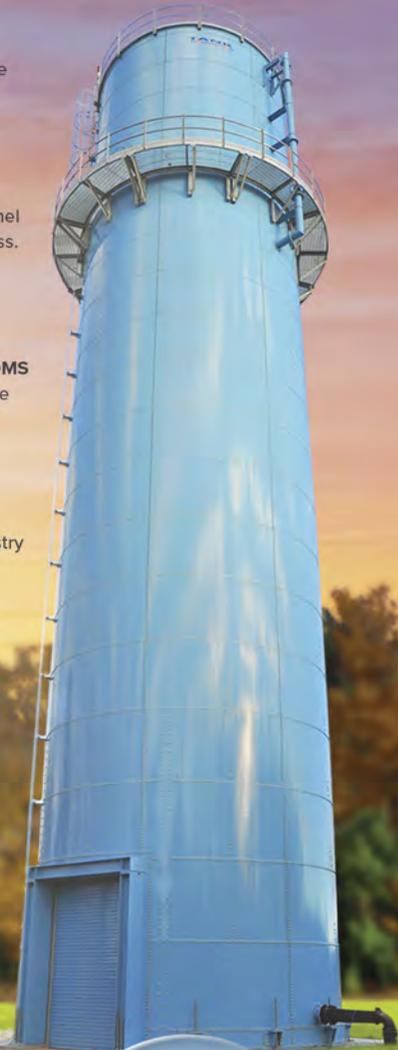
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