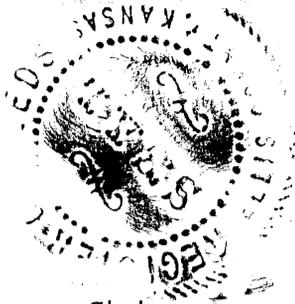


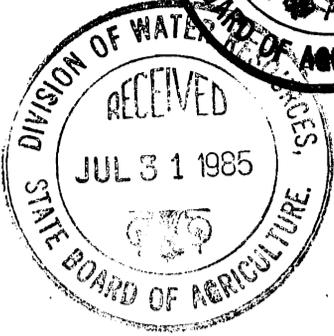
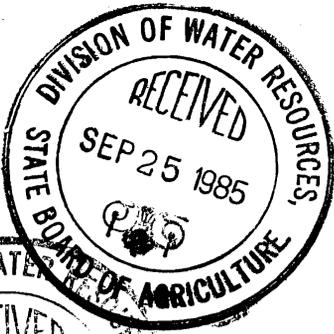
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STATE OF KANSAS  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE  
TOPEKA, KANSAS



BEFORE

DAVID L. POPE, CHIEF ENGINEER-DIRECTOR  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE

IN THE MATTER OF THE DESIGNATION OF  
AN INTENSIVE GROUNDWATER USE CONTROL AREA  
IN HAYS, KANSAS, AND THE IMMEDIATE AREA

The Chief Engineer-Director, Division of Water Resources, Kansas State Board of Agriculture, after having given due consideration to evidence, testimony and other information presented to him at, or as a result of, the hearing held in Hays, Kansas, on May 30, 1985, regarding the proposed designation of the City of Hays, Kansas, and the immediate area, as an intensive groundwater use control area, makes the following findings, conclusions and order:

FINDINGS

1. That by letter dated February 15, 1985, Mr. Ken Carter, city manager, City of Hays, informed David L. Pope, Chief Engineer-Director, Division of Water Resources (hereinafter referred to as the "Chief Engineer"), that at a regular meeting of the city commission of the City of Hays on February 14, 1985, a motion was unanimously passed requesting the Division of Water Resources (hereinafter referred to as the "DWR"), to initiate proceedings to designate an intensive groundwater use control area in the City of Hays and in a small area surrounding the city; that the purpose for the request was designed to "solely" address the issue of private water wells and their usage for outside discretionary activities.
2. That in February 1985, based upon information in the files of the office of the Chief Engineer, it appeared that preventable waste of water was occurring, or may occur, within the area in question and other conditions existed within the area in question which required regulation in the public interest.
3. That in accordance with the provisions of K.S.A. 82a-1036 through K.S.A. 82a-1040, the Chief Engineer may upon his own initiative, initiate proceedings for designation of an intensive groundwater use control area (hereinafter referred to as a "control area") whenever he or she has reason

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to believe that preventable waste is occurring, or may occur within an area, or conditions exist within an area in question which require regulation in the public interest.

4. That on February 26, 1985, the Chief Engineer issued a findings and order initiating the proceedings for designation of a control area within the City of Hays and the immediate area; the immediate area is defined to mean that area outside the corporate limits of the City of Hays and within the area described below:

That part of Section 20, Township 13 South, Range 18 West lying East of Highway 183 Alternate and South of Interstate 70;

Those parts of Sections 21, 26, 27 and 28, Township 13 South, Range 18 West, lying South of Interstate 70;

The West one half of Section 35, Township 13 South, Range 18 West;

The West one half of Section 2, Township 14 South, Range 18 West;

All of Section 3, Township 14 South, Range 18 West;

Those parts of Sections 4 and 5, Township 14 South, Range 18 West lying North of Highway 183 Alternate;

Those parts of Sections 29 and 32, Township 13 South, Range 18 West lying East of Highway 183 Alternate;

all in Ellis County, Kansas,

a total of 9.9 square miles, more or less.

5. That on April 25, 1985, notice of hearing was sent to every water right holder of record and all known landowners within the boundaries of the proposed control area but outside of the corporate boundaries of the City of Hays. Notices were also sent to the Kansas Register, The Hays Daily News, and various governmental officials, state agencies, and members of the Kansas Water Authority. Notice of hearing was also sent to all customers of water, sewage and refuse services of the City of Hays. The notice stated that a public hearing would be held at 9:00 a.m. on Thursday, May 30, 1985, at the Auditorium of the Fort Hays State University Experiment Station, Hays, Kansas, at which time all interested parties would have an opportunity to be heard regarding the proposed designation of a control area.
6. That on May 30, 1985, a public hearing was held at the time and place set forth in the notice of hearing.
7. That Iaren Dinkel, Water and Sewer Plant Superintendent for the City of Hays (hereinafter referred to as "the city"), testified that he had heard

an estimate made of the number of private water wells in the city as being around 1,500 in 1978 or 1979; that Mr. Dinkel also testified that the city obtains its water from well fields in the Smoky Hill River Basin and Big Creek Basin.

8. That Leo Wellbrock, Public Works Director for the city, testified that the current water problem facing the city is to meet demand rates with the available supply; that during the last eight to ten years the city has had problems meeting demands during hot dry weather periods; that the problem has increased since May 1984 when the DWR declared an intensive groundwater use control area in the Smoky Hill River Basin which reduced the amount of water the city could pump from its wells in that basin.
9. That Mr. Wellbrock testified that on a continual basis he has observed evidence of waste of water such as water flowing along street gutters, water sprinklers being adjusted to include driveways, sidewalks, and at times even the street surfaces, lawns being watered during rain periods or shortly after a sufficient rainfall, watering of lawns on a daily basis and during times of extreme heat and the washing of vehicles with hose running wide open.
10. That Mr. Wellbrock read a letter dated April 11, 1985 from Terrence L. Mannell, Ellis County Extension Horticulture Agent, addressed to Ken Carter, City Manager, concerning lawn irrigation; that Mr. Mannell's letter stated that frequency of watering, the amount of water applied, and the time of day the lawn is watered all play an important part in both managing a healthy lawn and conserving water; that said letter stated that one inch of water per week during the summer is the requirement for cool-season grasses such as bluegrass and fescue; that a good soaking once a week will develop a good lush lawn with good drought tolerance, that frequent shallow irrigation not only causes a poor rooted turf, but wastes water, and that the morning hours from 5:00 a.m. to 10:00 a.m. are ideal for lawn irrigation to maintain a healthy lawn and conserve water.
11. That Mr. Wellbrock also testified that he has no way of knowing whether the outside waste of water was due to private water wells or the city system; that the city has no records of who has private water wells.
12. That Ken Carter, City Manager, testified that residential water use peaks during the four summer months when people would be doing such things as outside lawn watering, washing cars, and watering shrubs and trees; that

the peak is higher during the summer in years when annual precipitation is lower.

13. That Mr. Carter also testified that the city does not presently have any regulation concerning private water wells; that he did not know how many private water wells were within the city but that he had heard estimates of from 500 to 2,500; that while the city has authority to regulate and control water users on the city water system, it has no authority over private water wells.
14. That Mr. Carter testified that the reason the City Commission requested the control area was that it would have to impose some pretty stringent conservation measures to live within the limitations on its Smoky Hill River Basin well field and that if two individuals live side-by-side and one is on city water and the other has a private water well, it could enforce its regulations against the city water user but could not do anything to the one with the private water well; that the commission felt as a matter of fairness and equity private water wells should also be regulated.
15. That Mr. Carter testified that the City Commission has been working on a water conservation plan, a draft of which was submitted for the record.
16. That Mr. Carter testified that it would be helpful for the city in enforcing its conservation plan if it knew where the private water wells were located.
17. That James Bagley, an engineer on the staff of the DWR, testified that according to records the DWR obtained from the Kansas Department of Health and Environment, a total of 356 water wells had been reported as having been drilled within the boundaries of the proposed control area from 1974 through 1984.
18. That a publication of the Kansas State University Cooperative Extension Service entitled "Watering Your Lawn" was submitted for the record; that said publication states that early morning is the best time to water lawns because the cool air temperature makes it the most efficient time from a water use standpoint and wind is least likely to alter the distribution pattern, and that the disadvantages of mid-day watering are that evaporation is greatest and strong winds are more likely.
19. That Neil DeWerff, Greens Superintendent at the Smoky Hill Country Club, testified that said country club has bluegrass fairways and that most of the watering is done at night; that it is not feasible to soak the golf course down one day a week; that it is better to water nightly and use a

lighter irrigation to avoid problems of compaction and runoff; that the maximum amount of water applied to the fairways is about one-sixth of an inch per night, or a total of one and one-sixth of an inch per week; that the greens take a little more water and that they are watered only at night.

20. That John Ratzlaff testified that he believes time of day lawn watering restrictions, such as no watering between 12:00 noon and 7:00 p.m., would be a step in the right direction and that such restriction should apply to every water user, including private water well owners; that he also testified that, on the basis of a statistical study of evaporation which he conducted, the amount of evaporation which occurs when the maximum temperature is 100 degrees Fahrenheit is about three times the amount when the maximum temperature is 70 degrees Fahrenheit; that in addition, when humidity is low and wind speed is relatively high, the increase in evaporation can be much greater.
21. That James Bieker, owner of Kraus Pump and Supply, testified that there was very easily 2,000 or more private water wells in the city in his opinion; that his company has drilled close to 100 domestic wells in the Hays area since last year and part of this year.
22. That Anthony P. Bollig testified that he thought the city should pass an ordinance that water should not be allowed to run down the streets whether from private wells or the city system and that there be no watering after 12:00 noon; that private well owners should be left alone, except the ones wasting water.
23. That Mel Karst, President of Karst Water Well Drilling in Hays, testified that his company had drilled hundreds of wells in the Hays area and serviced hundreds more; that last year his company drilled nearly 100 wells in the Hays area and that there are probably more being drilled than are reported to the Kansas Department of Health and Environment because private individuals can drill them with little hand rigs; that he estimated there are 1,500 wells in the city now.
24. That the following individuals testified that they were essentially opposed to the control area: Darrell G. Seibel, Dave Brown, Jim Tuttle, James Bieker, JoAnn Jennings, Marcellus Schmidt, Brent Spaulding, Ozie Meckel, Mel Karst, and the Smoky Hill Country Club; that the reasons given for opposing the control area included: it would reduce the market value of

development properties, it would adversely affect certain businesses, private wells are helping reduce the demand on the city system, other alternatives should be considered first, unnecessary government regulation should be avoided, and the state already regulates the wells at the Smoky Hill Country Club.

25. That the Chief Engineer directed that the formal record of the proceeding would remain open for a period of ten days following the hearing so that anyone who wished could submit additional data or statements for the record.
26. That a letter dated May 31, 1985 from Dave Van Doren, President of Van Doren Industries, Inc. in Hays, was received in the office of the Chief Engineer on June 5, 1985; that Mr. Van Doren's letter stated that if private water wells were limited to the number of days they may be used for irrigation, it may cause a real hardship on a few households in Hays which use water-cooled compressor-type air conditioners or heat pumps where the water which exits the air conditioner is not returned to the aquifer but rather is sprinkled upon the lawn; that therefore he requested that an exception be made for those situations if limitations were imposed on all water users in the proposed control area.
27. That K.S.A. 82a-705a provides in pertinent part:

"The use of water for domestic purposes instituted subsequently to June 28, 1945, to the extent that it is beneficial, shall constitute an appropriation right. The chief engineer, however, may require any person using water for any purpose to furnish information with regard to such use thereof."

#### CONCLUSIONS

1. That there is inadequate information on the number and locations of domestic water wells within the proposed control area, and that the locations and uses of all domestic water wells within said area should be determined.
2. That conditions exist within the proposed control area that require regulation in the public interest.
3. That watering of lawns, gardens, trees, shrubs and other similar outdoor vegetation at a time when high temperatures, strong winds and high solar radiation exist causes excessive evaporation which is considered to be preventable waste.
4. That an intensive groundwater use control area should be established within the area as set forth in Finding No. 4.

ORDER

NOW, THEREFORE, It is the decision and order of the Chief Engineer-Director, Division of Water Resources, Kansas State Board of Agriculture, that an intensive groundwater use control area should be and is hereby established within the area set forth below, and the following corrective control provisions shall be in full force and effect within the area described from and after the date of this Order:

1. The area to which this order relates is the area within the corporate boundaries of the City of Hays, Kansas and the immediate area. The immediate area is defined to mean that area outside the corporate limits of the City of Hays and within the area described below:

That part of Section 20, Township 13 South, Range 18 West lying East of Highway 183 Alternate and South of Interstate 70; ~~W~~ X/

Those parts of Sections 21, ~~W~~ 26, ~~W~~ 27 ~~W~~ and 28, ~~W~~ Township 13 South, Range 18 West, lying South of Interstate 70; X/

The West one half of Section 35, Township 13 South, Range 18 West; ~~W~~ X/

The West one half of Section 2, Township 14 South, Range 18 West; ~~W~~ X/

All of Section 3, Township 14 South, Range 18 West; ~~W~~ X/

Those parts of Sections 4 ~~W~~ and 5, ~~W~~ Township 14 South, Range 18 West lying North of Highway 183 Alternate; X/

Those parts of Sections 29 ~~W~~ and 32, ~~W~~ Township 13 South, Range 18 West lying East of Highway 183 Alternate; X/

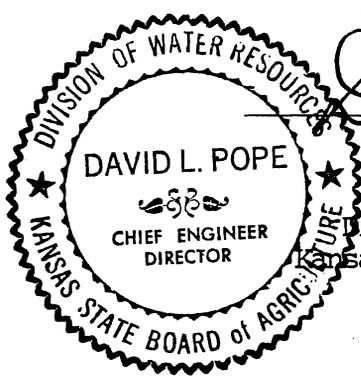
all in Ellis County, Kansas,

a total of 9.9 square miles, more or less, which includes that area within the corporate limits of the City of Hays, Kansas.

2. That all domestic water wells in existence at the time of this Order within the control area shall be registered with the office of the Chief Engineer-Director on or before August 5, 1985 or within any authorized extension of time thereof. That all domestic water wells which may be constructed within the control area after the date of this Order shall be registered with the office of the Chief Engineer-Director within 30 days of the date of completion of the same. Water wells within the control area which are authorized by a vested right order or a permit to appropriate water for beneficial use are considered to be registered within the meaning of this section.

3. That the use of registered water wells shall not be subject to the mandatory provisions of any water conservation plan adopted by the City of Hays, except as provided in paragraph 4 below. That the use of water wells which have not been registered as set forth in paragraph 2 above shall be subject to the mandatory provisions of any water conservation plan properly adopted by the City of Hays, and approved by the Chief Engineer-Director, until such time as they are registered.
4. That the Chief Engineer-Director reserves the right to ban, or allow the City of Hays to ban, the use of wells to water lawns, gardens, trees, shrubs and other similar outdoor vegetation during the hours of 12:00 noon through 7:00 p.m. daily from June 1 through September 30 inclusive each year, should information show that well users are not voluntarily avoiding the watering of such vegetation during times of high temperature, strong winds and high solar radiation which results in the occurrence of preventable waste of water.
5. That the Chief Engineer-Director specifically retains jurisdiction in this matter with authority to make such changes in the boundaries of the intensive groundwater use control area or the corrective control provisions which have been instituted or any other provisions of this Order, and to hold any subsequent hearings in the matter of the control area or the corrective control provisions, which he or she may deem to be in the public interest.

Dated at Topeka, Kansas, this 3rd day of July, 1985.

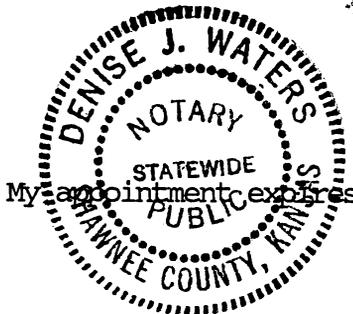


*David L. Pope*

David L. Pope, P.E.  
 Chief Engineer-Director  
 Division of Water Resources  
 Kansas State Board of Agriculture

State of Kansas )  
 ) SS  
 County of Shawnee)

The foregoing instrument was acknowledged before me this 3rd day of July, 1985, by David L. Pope, P.E., Chief Engineer-Director, Division of Water Resources, Kansas State Board of Agriculture.



*Denise J. Waters*  
 Notary Public

My appointment expires: *March 1, 1986*