

THE STATE



OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Jamie Clover Adams, Secretary of Agriculture

DIVISION OF WATER RESOURCES
David L. Pope, Chief Engineer

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

SUMMARY SUPPLEMENTAL AMENDED ORDER(III)

NOW ON this 29th day of June, 2001, the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, does hereby make the following findings and orders 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. The original IGUCA Order was modified by a Supplemental Order issued by the Chief Engineer on December 6, 1996, and also by an Amended Order issued by the Chief Engineer on June 24, 1998.
2. The boundaries of the Walnut Creek IGUCA are described in the original IGUCA order "In the Matter of the Designation of an Intensive Groundwater Use Control Area in Barton, Rush and Ness Counties, Kansas", dated January 29, 1992 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 and 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 paragraph 12 of the IGUCA Order provides, "That approximately each five years the Chief Engineer may evaluate the information collected from additional studies conducted in the IGUCA and the status of the water rights and permits to appropriate water in the IGUCA and make adjustments in the corrective control provisions as necessary to allocate water so that the use of groundwater does not exceed the long-term sustainable yield of the aquifer."
4. That paragraph 21 of the IGUCA Order provides, "That an advisory committee is hereby established to make recommendations to the Chief Engineer concerning:
 - a. The types, locations and frequency of data to be collected to monitor groundwater levels, streamflow, aquifer recharge, groundwater withdrawals, surface water

diversions and any other data it might deem necessary to evaluate and refine the management of the IGUCA.

- b. Modifications to the corrective control provisions as deemed appropriate to optimize the efficient use of water and benefits from the use of water in the area consistent with the protection of existing water rights and the public interest.
5. That paragraph 25 of the IGUCA Order 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 provisions 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."
6. That paragraph 2 of the IGUCA Order 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."
7. That effective September 22, 2000, the Chief Engineer adopted K.A.R. 5-4-5, which allows for the filing and approval under certain conditions of applications for permit to appropriate water for additional rate only from a point of diversion already authorized by another water right or approval of application. Specifically, K.A.R. 5-4-5 (c) provides, "If the chief engineer adopts a regulation pertaining to applications for additional rate only for a specific groundwater management district, or issues an order concerning that type of application pursuant to an intensive groundwater use control area (IGUCA) proceeding authorized by K.S.A. 82a-1036 *et seq.* and amendments thereto, the application for additional rate shall be processed by the chief engineer pursuant to the provisions of that regulation or IGUCA order."
8. That the IGUCA Order dated January 29, 1992, did not contemplate the promulgation of K.A.R. 5-4-5 which establishes the process by which applications for additional rate of diversion are submitted.
9. That the Walnut Creek IGUCA Advisory Committee was established by the Chief Engineer and has met periodically since June 2, 1992. The Committee met at Barton

County Community College on February 7, 2001, and recommended the following to the Chief Engineer pursuant to paragraph 21 of the original IGUCA order :

- a. Each water right owner shall be allowed to carry over unused allocations from any one five-year allocation period to the next five-year allocation period in an amount not to exceed the maximum annual quantity authorized by each water right, taking into account any applicable conditions and limitations. The Chief Engineer may suspend this provision for the next five-year allocation period upon recommendation of the Advisory Committee after the Advisory Committee reviews the current five-year allocation period water use and hydrological conditions within the control area during the fourth year of the current allocation period.
- b. The Chief Engineer amend the Walnut Creek IGUCA Order to allow the Chief Engineer to accept new applications which request only an increase in the rate of diversion authorized for points of diversion which are currently authorized by existing water rights within the IGUCA boundaries. These new applications will be subject to K.A.R. 5-4-5, but the Chief Engineer will also consider the proximity to and any possible effects to Wet Walnut Creek. These applications are anticipated to be filed for the purpose of facilitating more efficient use of water.

ORDER

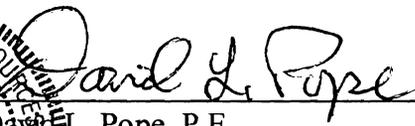
WHEREFORE, it is hereby ordered:

1. Each water right owner shall be allowed to carry over unused allocations from any one five-year allocation period to the next five-year allocation period in an amount not to exceed the maximum annual quantity authorized by each water right, subject to applicable conditions and limitations. This provision will be subject to Advisory Committee review in 4 years, as established in the original IGUCA Order paragraph 12.
2. The Chief Engineer, (in addition to the applications listed in paragraph 2 of the original IGUCA Order dated January 29, 1992), will accept for filing new applications for permit to appropriate water for additional rate only as provided for in K.A.R. 5-4-5. Applications pursuant to K.A.R. 5-4-5 will be accepted **only** in situations in which the point of diversion is currently authorized under a water right or approval of application for permit to appropriate water within the IGUCA. Approval of such applications filed pursuant to the provisions of K.A.R. 5-4-5 will be subject to the conditions for approval as set forth in K.A.R. 5-4-5 and any other applicable conditions.
3. Except as expressly modified by this order and the orders issued in this matter on December 6, 1996, and June 24, 1998, respectively, the original Walnut Creek IGUCA Order issued by the Chief engineer on January 29, 1992 remains fully in force.

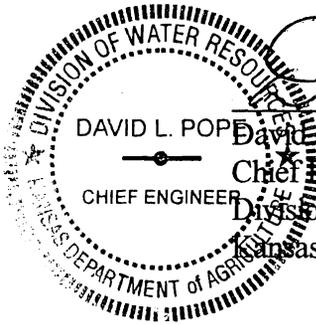
You may seek review of this order by requesting a hearing within 15 days of the issuance of this order, at which time the order becomes a final order. Your hearing request must be in writing, must state the specific challenge or objection you seek to raise and your standing for requesting a hearing. The request should be sent to:

Kansas Department of Agriculture
Legal Section, c/o Dan Riley
109 SW 9th Street
Mills Bldg. 4th Floor
Topeka, Kansas 66612-1280

Dated at Topeka, Kansas, this 29th day of June, 2001.



DAVID L. POPE, P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture



State of Kansas)
) SS
County of Shawnee)

The foregoing instrument was acknowledged before me this 29th day of June, 2001, by David L. Pope, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.


DENISE J. ROLFS
Notary Public - State of Kansas
My Appt. Expires March 1, 2002



Notary Public

My appointment expires: