

MINUTES

SPECIAL COMMITTEE ON NATURAL RESOURCES

September 6-7, 1977

Members Present

Senator Charlie Angell, Chairman
Senator Richard Gannon
Senator Fred A. Kerr
Representative James Cubit
Representative Larry E. Erne
Representative Keith Farrar
Representative R. D. McCrum

Staff Present

Emalene Correll, Legislative Research Department
Don Hayward, Revisor of Statutes

Others Present

Guy E. Gibson, Division of Water Resources, Kansas State Board of Agriculture, Topeka Kansas
Harris L. Mackey, Division of Water Resources, Kansas State Board of Agriculture, Topeka, Kansas
David L. Pope, Southwest Kansas Groundwater Management District No. 3, Garden City, Kansas
Chris McKenzie, Division of State Planning and Research, Topeka, Kansas
Grace Wilson, League of Women Voters of Kansas, Topeka, Kansas
Don Christy, Scott City, Kansas
M. Lee Wright, Kansas Water Resources Board, Topeka, Kansas
Richard F. Sloan, Big Bend Groundwater Management District No. 5, St. John, Kansas
Richard L. Mead, Sterling Drilling Company, Sterling, Kansas
Wayne Lebsack, Geologist, Lyons, Kansas
Keith Lebbin, Western Kansas Groundwater Management District No. 1, Scott City, Kansas
Wayne Bossert, Groundwater Management District No. 4, Colby, Kansas
Thomas C. Bell, Groundwater Management District No. 2, Halstead, Kansas
Sidney Watner, Groundwater District No. 3, Garden City, Kansas

The meeting was called to order at 10:10 a.m. by the Chairman, Senator Charlie Angell.

Minutes

A motion was made and seconded to approve the minutes of the August meeting as distributed. The motion carried.

Proposal No. 58 - Well Inspection Personnel

Wayne Lebsack, Geologist and President, Lebsack Oil Production, Inc., and Dick Mead, Sterling Drilling Company, appeared at the request of the Committee to discuss information relative to water information which could be furnished from oil and gas well drilling operations.

They noted three sources of information each of which would be limited: supply well, electric log and radiation log.

Supply wells, usually drilled 100 feet from and 50 feet to the side of the drilling site, would probably be the best source of information. These wells are drilled according to the Groundwater Exploration and Protection Act and logs are turned in to the state. However, since these wells are only drilled deep enough to get enough water for drilling purposes, information would be limited. The top of the water table could be determined. These wells could also be used as monitoring wells prior to and after their use by the driller. It could take a few weeks to a few years after oil and gas drilling operations for oil or gas wells to be clean enough for water sampling. To get some kinds of information, the well would have to be allowed to go static and then be pumped. The feasibility of this was questioned.

Electric logs are normally run after the surface pipe is set and cemented through the waterbearing strata. If there were no pipe, this log could tell if there was water, whether it was good quality or brine, and within 20 percent accuracy what the chloride content might be. It cannot indicate whether it is good for home consumption or irrigation. The log does indicate thickness of sand and where the top of the water table is.

Radioactive logs are run in about 90 percent of the holes. They are run up to a marker after the surface pipe is set and before the well goes into production. Occasionally it will be run up into the surface pipe and in a few instances up to the surface. This log shows the thickness of sand but there is no way to know the quality of water, the amount of water or where the water table is. This log shows where liquid is but it does not distinguish between liquids. It could be run prior to setting the pipe but this would be very expensive. These logs are turned in to the Geological Society which works with the Geological Survey. The Society keeps a library which is a source of information for the public. Logs for wells, except for tight holes which may not be released for two or three years, are available.

In drilling oil and gas wells, samples are brought up and are eyeballed by the driller who determines what type soil it is so this is not a professional opinion. Any samples saved would not necessarily be representative of that zone because of the rapid rate at which drilling is done. Also, the driller is using fluid from another source to drill which has probably caused contamination. Another problem is what material was used to drill the surface hole. It would be necessary to pull the drill to get samples which would be useful and this is expensive - \$95.00 to \$125.00 per hour.

When a well is going to be drilled, a geologist determines where samples are to be taken and this information is given to the driller. In wells where the stress is on gas, samples are not started before 1,000 feet which is well below the fresh water level. Samples are washed and given to the geologist. After the owner is through with them, they are sent to the Geological Society where they are rewashed, studied and filed.

In discussing plugging of wells, Mr. Lebsack and Mr. Mead noted that a state plugger always comes out if the well is an old or previously plugged well. Others which are not going to be used for anything such as dry wells may be plugged after permission is given by the KCC inspector by phone since the procedure is fairly standard. However, this would depend on the area in which the well is located. It would be difficult to hire enough pluggers to always have one on the site so some priorities have been set. Earlier wells were not plugged correctly unless the inspector was right there but there is not much of this anymore. The inspectors know fairly well who is reliable and who is not.

The problem of cement dropping was noted. The process of circulating the cement and recalling the cement trucks if necessary was explained. It was also noted that a well with dropped cement is not difficult to find if it is a source of contamination.

Mr. Lebsack and Mr. Mead were asked how the following example would be plugged: a well is 6,000 feet deep; gas pressure is 2,000 lbs. at the surface and there is so much brine the well cannot be used for production. They stated they would have to squeeze and overbalance this pressure and put a casing in all the way. If cement was not sufficient, a fibrous material would also be used. The cement would be bridged at intervals. The cement would be raised to the top of the surface pipe and possibly used to fill the surface pipe.

Proposal No. 57 - Water Related Issues

The Chairman explained that the Legislature has no statutory authority relative to rules and regulations of water management districts until they have been adopted by the Chief Engineer. They are being reviewed for the Committee's information. Guy Gibson, Division of Water Resources, State Board of Agriculture, stated he has reviewed these rules and regulations but none have been adopted as of this date.

Thomas C. Bell, Manager, Equis Bed Groundwater Management District No. 2, stated they started writing their rules and regulations in January of 1977. After comments from the Water Resources Board, they were rewritten and again submitted for comments in mid-March. They were returned in June and the final draft was adopted by the Management District Board in July and forwarded to the Division of Water Resources. (Attachment A)

Regulation 1. Mr. Bell noted that Regulation 1 included some definitions included in the Groundwater Management District Act so an irrigator would have the definitions without referring to the Act.

The definition of "waste of water" was developed through discussions with the Division of Water Resources, the District No. 2 Board and other groundwater management districts. In answer to a question, Mr. Bell stated he thought all districts were using this definition and noted districts had tried to develop common definitions to the extent possible.

The definition of "waste of water" is an attempt to prevent persons from using water for purposes other than authorized and to prevent any contamination of water. It is aimed at tailwater although this is not specifically stated. The concern is that water be kept on the land where it is to be used.

In answer to a question, Mr. Bell stated that No. 2 (page 1) was included because they felt contamination of water, especially salt contamination, was a waste of water. It was noted that "causing the deterioration of" did not seem to allow for minor changes in the water. There is no standard given such as "unreasonable." Mr. Bell stated this phrase was assumed to mean unreasonable deterioration.

Referring to No. 4 (page 2) it was noted determination of "in excess of the needs for such use" could be difficult. For example, an irrigator's decision to plant closer together or further apart influences how much water is needed. Mr. Bell stated 4 was not speaking to this type situation. It refers to situations such as industry using water only one time when it could be recycled. In answer to a question, he stated that because of time and staff factors, they has not yet set standards for pollutant levels of water to be recycled by industry.

Regulation 2. Mr. Bell stated they are allowing irrigation wells to be closer than one-fourth mile to domestic wells on the assumption that if there is enough water for irrigation there is enough for domestic use too. Agreeing that some feedlot wells could be classified as domestic wells and could possibly use as much water as an irrigation well, he stated this could be a problem.

Concern was expressed that under this regulation the Board of Directors can change criteria established by rules and regulations without going through the procedure of adopting rules and regulations and these criteria would have the force of law. Mr. Bell stated they were trying to develop a way to handle situations such as places in the equis beds where wells could be closer than one-fourth mile and places at the edge of the equis beds where they need to be further than one-fourth mile. Plans are to develop a map showing distances applicable to specific areas. It was noted that the last sentence in this regulation would seem to cover these situations.

Regulation 4. Mr. Bell stated it is necessary to know the amount of water actually used in order to determine assessments. Until the first of this year, the Division of Water Resources sent forms to everyone who had or who had applied to appropriate water asking for the amount of water used. Now the districts will be collecting this information on forms provided by them and forwarding it to the Division.

It was suggested that the districts and the Chief Engineer agree on a form compatible with the computer system to be adopted so all districts will be using the same form.

Regulation 5. In answer to a question, Mr. Bell stated that if a person needing a replacement well cannot find water within 300 feet, he would have to put in a new well and replacement well provisions would not apply. It was noted since a water right is for water to be used on a specified acreage, this new well should not be of concern to the Chief Engineer and the water right should not have to be reestablished. Mr. Gibson stated he would speak to this issue the following day.

It was noted that the abandonment requirement in this regulation might be of concern to state departments responsible for quality and safety of water if a city which is developing a replacement well cannot keep the old well location for use in an emergency. Mr. Bell stated that if the city wishes to keep the first well as a supplemental well, it would have to show the district board that it would not impair their new well or any other wells. The district feels it is important to maintain the one-fourth mile spacing.

Regulation 7. Mr. Bell stated this is in the statutes and is included here only for information.

Regulation 8. It was noted that b (page 8) might be a problem in terms of the powers given to the district board by statute since it seems to imply that the board cannot enforce its own determinations or rules and regulations.

Regulation 9. Mr. Bell noted the power to meter is a statutory power set out in the water appropriation act and the wording of this regulation is essentially the wording of the law. The wording "to divert more than one acre-foot of water per year" is an attempt to exempt domestic wells without exempting feedlot wells using a large amount of water.

Regulation 10. It was suggested that the district name should be the same as it appears elsewhere in the rules and regulations. In answer to a question, Mr. Bell stated the statutory cite in 2 (page 10) was included because they were told they could not include specific fines. It was noted that technically this cite is probably not needed.

In answer to general questions, Mr. Bell stated that they are a groundwater management district so the initial thrust was the management of groundwater only. However, the statute does give the district authority over surface water too and this may be included later.

The management plan outlines the goals of the district in terms of the management of water resources. The rules and regulation are specific to support the management plan and implement the policies of the board. Rules and regulations, not the plan, speak to enforcement. Noting that the purpose of a management district is to regulate the amount of water used in that district, the question of how these rules and regulations brought about less usage of water was raised. Mr. Bell stated they limited the number of wells being drilled; controlled waste water; and could control usage by metering. However, there is no way to reduce the amount of water used by a person who has a water right.

The district board is composed of five irrigators, one dry land farmer, two municipal representatives and one industry representative. Speaking to a specific question about Wichita, Mr. Bell stated the number two man in the Wichita Water Department is on the board and he concurs with the rules and regulations as submitted to the Chief Engineer.

It was noted that the Department of Administration and the Legislature are saying that definitions or provisions included in the statutes are not to be repeated in rules and regulations.

The meeting was recessed for lunch at 12:15 p.m. and was reconvened at 1:55 p.m.

Keith Lebbin, Executive Director, Western Kansas Groundwater Management District No. 1, stated people in the district established the following priorities: initiation of a well spacing program for larger capacity wells; mandatory tailwater control; and cutoffs on sprinklers.

Referring to the District's rules and regulations (Attachment B), Mr. Lebbin stated some were made consistent with 1977 S.B. 4. If the rules and regulations are adopted prior to the effective date of S.B. 4 some changes may have to be made.

Regulation 1. Mr. Lebbin noted the definitions which are also in the statutes would be deleted in the final rules.

In answer to a question, Mr. Lebbin stated the definition of waste water is the one agreed to by the other districts. It was noted that "impairment" is not a term understood by most people.

Answering questions, Mr. Lebbin stated that since 90 percent of the land in the district is between zero and one percent slope, virtually all of it, except the rough draws, is suitable for irrigation. A limited number of acres may be questionable because of ground runoff and erosion but tailwater control procedures can handle most of these. Approximately 40 percent of the one million acres in the district is irrigated but not every year.

Regulation 2. In answer to a question, Mr. Lebbin stated they did not feel they should require a tailwater return system. This should be the owner's choice as long as the water is contained and managed. Most wells pump less than 400 gallons per minute so a pump system is not feasible. They feel there is more to water management. He noted the necessity to hold all water, rain or tailwater, on the field to increase the recharge rate.

Regulation 3. Mr. Lebbin noted that after careful study, they felt spacing based on depletion was the best and most equitable system for their district in which a large percentage of the area is 40 percent depleted or more. In answer to a question, he stated this system could be defended in court. It is based on the U.S. Geological Survey data and their system for figuring impairment and impairment has been defended in court.

Mr. Lebbin, answering a question, noted they are really affecting much water being pumped when they limit well spacing. A large percentage of the wells are pumped every year and much of the area is saturated with wells. It is not economically feasible to drill a well 20,000 feet and not use it. He noted their water management program speaks specifically to rate and quantity which is broken down into in-season and off-season irrigation. These are two of the first items looked at on an application form.

If a well is no longer producing the amount a person is entitled to, a supplemental well may be drilled up to one-fourth mile if the spacing requirements from other wells are maintained. A replacement well is limited to a 300 foot radius.

In answer to questions about (a), Mr. Lebbin stated spacing distances would remain the same but the land included in each classification could change. Another regulation provides that if the classification of the well site was changed between the time a permit was requested and the time drilling started, it reverts back to the time the application was filed. Another section allows the district board in conjunction with the Chief Engineer to waive the requirements of this regulation in justified cases. This system has been in operation and most problems have been worked out by sitting down, and talking with the parties involved.

Mr. Lebbin, in answer to a question, stated large surface flows occur only once about every five years so they produce no long-term effect on rates.

Mr. Lebbin stated that at least the first sentence in (e) will probably be deleted since it is based on S.B. 4.

Regulation 4. Mr. Lebbin stated this regulation will be deleted since it is covered under the rules and regulations of the Department of Health and Environment.

Regulation 5. Mr. Lebbin noted this regulation will probably be changed significantly because of changes in the management program.

Regulation 6. In answer to a question, Mr. Lebbin stated they have no objection to the Chief Engineer, in consultation with the districts, developing a form to be used by all districts. Their intent is to stimulate people to know how much water they are using and to avoid requiring them to report the same information two places. Experience is that on the average people report using more water than they actually used. For 1976, the district had assumed it would take a levy of 17 cents per acre-foot to meet the budget. The actual assessment was only 8 cents per acre-foot.

David Pope, Manager, Southwest Kansas Groundwater Management District No. 3, presented their proposed rules and regulations for discussion. (Attachment C)

Regulation 1. Mr. Pope noted that some of the definitions could probably be deleted since they were in the statutes or the proposed rules and regulations of the Division of Water Resources. Other definitions are similar to those of the other districts. Their definition of "waste of water" uses "groundwater" instead of "water". It was noted that "impairment" is defined by a previous section using essentially the language in the law. Mr. Pope noted the following differences from the Division's definitions:

- (i) defines this person as being unique to this district. The Division's definition defines this person as acting in behalf of the Chief Engineer and the board.
- (aa) lists additional entities they felt should be included.
- (b), (dd), (ii), (mm), (nn), and (ss) are District definitions.

It was noted that groundwater management districts have the responsibility to conserve water and treating rain runoff as tailwater would be one way to accomplish this. Therefore, could districts require people to build tailwater systems larger than the size calculated as necessary to handle irrigation runoff? Mr. Pope stated perhaps this should be investigated. Some are larger than necessary and people could be encouraged to make them larger voluntarily, i.e., 208 water pollution planning. He noted a court in their area has said the farmer is responsible only for the water he puts on the land.

Regulation 2. Mr. Pope stated over a year ago the district had adopted a management plan with spacing (one-half mile or 2300 feet for larger wells) in it. During the time this requirement has been in force, some exceptions have been made for some small wells and municipalities because there was no alternative. In about two-thirds of the cases brought to the board the application could be modified to meet the spacing requirement. Six to nine applications for exemptions were denied. Some who do not meet the requirements do not apply for an exemption.

In answer to questions, Mr. Pope stated well spacing is only one factor in water management, (c) is an attempt to include at least two other factors to be taken into account in considering applications and in making recommendations to the Chief Engineer.

Mr. Pope agreed that limiting the amount of water used from each well could be a good way to conserve water. However, restricting users to one acre-foot of water instead of two is not effective if it cannot be enforced. Basically, the district has gone to well spacing because it is easier to enforce.

Regulation 4. Mr. Pope stated this regulation may need to be deleted since the district could probably enforce the plugging of such wells if the Department of Health and Environment did not.

In answer to a question, Mr. Pope stated that on the 30 wells metered this summer, they found owners were relatively accurate on estimates of what they were pumping. The errors found were overestimates. Some wells have no benchmark, but for those that do a spot check rather than continuous monitoring can be used to determine if they are pumping within their approved rights.

Regulation 6. Mr. Pope stated this regulation is similar to District No. 2 and, based on the Committee's previous discussion, may have to be changed. Noting that some areas are totally different from other areas in the district, he stated they had thought designating control areas would be a good approach to handling these differences.

No. 2, page 11, was questioned on the basis there was no system for reporting to the state agency responsible for assessing fines in cases of pollution. Mr. Pope stated they were thinking primarily of agricultural pollution which has not been addressed. It could be assumed the Chief Engineer would report it to the Department of Health and Environment.

Regulation 7. In answer to a question about (d)2, page 13, Mr. Pope stated they did not set a specific time for compliance because of the wide variation in what would have to be done to come into compliance, i.e., from changing a valve to considerable construction or equipment installation.

In answer to a question, Mr. Pope stated they have not had any problems working with the various state agencies relating to water.

Wayne Bossart, Manager, Groundwater Management District No. 4, stated the district opened its office March 16, and is in the process of developing a management program. The plan is to make the program as specific as possible and to make the rules more general.

He stated the management plan includes the following: spacing, including domestic wells, based on discharge; mandatory tailwater control; mandatory re-use of tailwater whenever economically feasible; mandatory position for meter; mandatory check valve; establishment of control areas based on depletion with mandatory metering of all wells in such areas with 30 percent depletion, based on decline from base year; and permit application review similar to that of other districts. The district board will be given a certain amount of discretion if persons not in strict compliance are not violating the spirit of the management plan.

In answer to a question, Mr. Bossart stated the depletion in the district ranges from 15 percent to 30 percent with the average about 18 percent to 20 percent. Plans are to enter into an agreement with the Geological Survey which monitors about 310 wells in the area and to map depletion areas each year. These maps will be used to determine control area boundaries.

In answer to a question, Mr. Bossart stated the slope of the land and whether an amount of water significantly higher than the land will handle is to be pumped per minute, is checked on the permit application. Spot checks of land to see if it is suitable for irrigation are not made because of lack of staff.

In answer to a question, Mr. Bossart stated the district board has said a person has to control runoff regardless of source and regardless of what he has to do to do it.

Mr. Bossart, answering a question, stated their management plan includes a statement relative to compelling compliance with the plan and the enforcement procedure to be followed. It was noted enforcement can be applied to rules and regulations but applying it to a management plan would be questionable. Mr. Pope stated a relative point is that everything they do is done in terms of recommendations to the Chief Engineer so it would be enforceable. The consensus of the conferees was that a legal determination is needed on this point.

Richard Sloan, Manager, Big Bend Groundwater Management District No. 5, stated they are drawing up rules and regulations to be submitted to the Chief Engineer in about two months. He stated water conservation is based on well spacing, a balanced water plan, and optimum usage of water.

Mr. Sloan stated they do not approach well spacing primarily as a conservation measure but as a procedure to keep one well from interfering with another well. Spacing needs to be based on the amount to be pumped and persons are expected to stay within the amount requested in the application.

Mr. Sloan stated the concepts that a person is mining water and balancing the rate of withdrawal with the amount of recharge is not totally idealistic and it can work. Criteria is being developed so approval of applications can be based on water being withdrawn from an area.

Mr. Sloan stated they feel strongly that water conservation must be in conjunction with optimum water use. The irrigator must learn how to manage water and when to use it. He noted they are attempting to set up five test fields of at least one-quarter section each next year with soil monitoring equipment and metered wells.

Referring to the negative attitude toward meters, Mr. Sloan stated they are attempting to show the positive aspects of metering. The meter is an excellent management tool because it lets the farmer know how much water is actually being pumped, and assures that the user is not assessed for more water than is used.

In answer to a question, Mr. Sloan stated they want each person to become an expert on soil types in his field and the infiltration rates for each soil type. An individualized management program can then be developed which the operator can use to his benefit.

A Committee member noted metering is not necessarily effective because a person cannot always wait until the optimum time to water due to the amount of time it takes to get across a field. Also, once watering is started the operator is going to cover the field.

In answer to questions, Mr. Sloan stated there is very little external drainage if a system is used properly. Tailwater pits are useful in some cases. He also noted the location of the pit should be determined by the slope of the land and type of soil.

In answer to a question, all the district managers stated assessments take a great deal of time. One noted it took him three months and another indicated it took longer. The time depends somewhat on the cooperation of the county clerk.

In answer to a question, conferees listed the following things which they felt the Legislature should address: use and definition of impairment with the suggestion "unreasonable" impairment be the term used; question whether or not a district can designate critical areas as control areas, with a strong feeling they should be allowed to do so, and the problem of time involved in assessment.

Based on the assumption that what happens in one groundwater district affects the whole state and not just that district, conferees were asked why they did not want the Chief Engineer to determine control areas based on the district's recommendation. In response it was stated the districts need to accept their responsibility and not pass the buck to Topeka.

The meeting was adjourned at 4:30 p.m.

September 7, 1977

The meeting was called to order at 9:00 a.m.

Rules and Regulations, Water Appropriation Act

Guy Gibson, Chief Engineer, Division of Water Resources reviewed the proposed rules and regulations implementing the Kansas Water Appropriation Act. The copy distributed to the Committee has been revised subsequent to the public hearing held in June. (Attachment G). (D) ?

Regulation No. 1. Mr. Gibson noted that 1(b) "appropriate water supply" can be surface or groundwater. Although (c), (d) and (f) appear in the statute, they were left in because of their importance to someone reading the rules and regulations. The inclusion of (k) "field examination" was questioned since (l) "field investigation" is the only term used in the body of the rules and regulations. Mr. Gibson stated the former term is used by some people and does appear in some of the records. In answer to a question, Mr. Gibson stated "requests to secure water" was included in (l) to cover complaints or objections relative to applications. These investigations are generally done only when there is a complaint.

In answer to questions, Mr. Gibson stated the definition of industrial use relative to feedlots and fish is the same as it is now. Originally the definition of domestic users did not include the operation of a farm. When the first feedlots were developed in the 1950s, the Legislature changed the definition of domestic user to include operation of a farm. He noted his predecessors defined livestock for domestic use to include all cattle owned by the farmer. It became a commercial operation if it included bedding and feeding of animals belonging to someone else. It was noted that a domestic feedlot could have more cattle than a commercial feedlot. Determining domestic feedlot by the number of cattle fed rather than ownership was suggested. Other suggestions were defining commercial feedlot, defining domestic feedlot differently, including the definition of livestock deleted by the Department of Administration.

Reference was made to the Oklahoma law which defines domestic feedlot in terms of what could normally be grazed on that land. Staff was asked to check the particulars of this law.

In answer to a question about (t) "irrigation use," Mr. Gibson stated if a golf course is watered through a municipal system that is a part of the municipal water right. If a well is drilled on the golf course, it is irrigation. An example of (ee) "recreational use" would be if a farmer builds a pond which is needed for watering but it is also used for boating and fishing. He also noted that he thinks of municipal parks as Gage Park and considers this primarily irrigation. State parks are in existence primarily for camping and fishing and therefore come under recreational use.

Questions were raised about possible conflict between the definitions of "off season irrigation" and "pre-irrigation." In answer to questions, Mr. Gibson stated it would be possible for a person to have two acre-feet during the irrigation season and one-acre foot for the off season if it was not for the same land. This could allow a person to acquire a water right who might not be able to do so otherwise because he would be pumping when other users would not be. This has not come up but it has been thought about. It was noted that in one management district the phrase "which will not be irrigated during the growing season" was dropped because the person may need to water once during the growing season if it is an exceptionally dry year. It was noted an irrigator will sometimes flood a field in the middle of the winter. The freezing and thawing makes the land more mellow. This is better than deep plowing and saves energy. The question was raised whether this would be a violation. Mr. Gibson stated this would be pre-irrigation and would be counted against the two-acre feet. This was questioned since the use was not for irrigation primarily.

In answer to a question about the phrase "instantaneous discharge" in (hh) "streamflow," Mr. Gibson stated a right is to be based on the streamflow right now not what it might be a month from now.

In discussion of (ii) "surface water," (jj) "unlawful appropriation," and (kk) "unlawful diversion," Mr. Gibson gave the following answers to examples which were given:

If rain falls in natural depressions creating shortages in excess of 15 acre feet, an application should be filed so the rights of other persons can be determined.

Persons building, for example, a three-foot dike at the end of a field which catches water which would have run off the field before the construction of the dike have been filing and there have been no problems.

If a person on a stream such as Ladder Creek wants to hold water after a rain, he would need a permit and would have to release enough water for the rights of persons downstream.

If a person builds something larger than 15 acre-feet and makes application to use the water, an investigation might be made. Complaints must be timely filed. Otherwise the person storing it has the right to use it.

Mr. Gibson noted that filing an application to use water from a heavy rain would establish that the person filing came first. It was noted that some cases would come under "unreasonable impairment" and would need to be settled case by case because of differing circumstances. Mr. Gibson stated this was one of the reasons for not wanting to define "impairment" too specifically. Staff noted that "unreasonable" is a legal term used by courts and therefore does establish a standard.

In answer to a question, Mr. Gibson stated he felt it was necessary to be reasonable in enforcing (mm), the waste of water, subsection (c). There are times and circumstances when some water gets away from a person unavoidably. In these instances common sense should be used. In other instances, the statute should be enforced.

In further discussion of (mm), it was noted that using pipe irrigation is the most efficient way to irrigate in some instances. In these instances there may be no runoff but too much water is being used.

The use of "the deterioration" in (mm) (c) was questioned since this seems to be an absolute term. The quality of water can be deteriorated to the extent it is not usable for drinking water but would still be usable for irrigation which is its intended use. Would this constitute a violation of this subsection? Mr. Gibson stated this was not the intent. The intent was to cover only deterioration in relation to the purpose for which it is used.

Regulation No. 2. In answer to questions, Mr. Gibson stated they are considering a cutoff date for filing for vested water rights and will be making recommendations to the Legislature.

He noted the name of the drainage basin rather than the aquifer has always been used because the same aquifer may be known locally by different names. If the irrigator wants to go deeper for water he may get into a different aquifer. In answer to a question, Mr. Gibson stated the vested right to water goes with the land.

Regulation No. 4. Mr. Gibson noted they sometimes receive an application with very little information. This would allow the return of that application to get the information needed.

In answer to a question, Mr. Gibson stated that if the point of diversion is changed, i.e., a well caves in, the person should be allowed to replace the well within a 300 foot radius without a new application. If the owner has to go beyond that radius, he has to comply with spacing requirements and a new application is needed.

Regulation No. 5. In answer to questions, Mr. Gibson stated that when an application is made, the priority date is established by the date it is received in the office.

Regulation No. 6. Mr. Gibson stated this codifies past practice. In answer to a question, he stated the determination for "reasonable storage and conservation practice" is based on a one year supply. After discussion of possible conflict between this regulation and S.B. 4 relative to domestic use, it was noted S.B. 4 exempts domestic use from the 15 acre-foot restriction. It was pointed out that, although this may be true, there is still a conflict because the first sentence of Regulation No. 6 says "Any person."(04)

Regulation No. 11. In answer to a question, Mr. Gibson stated they are approximately eight years behind on certificates of appropriation. However, there is validity in having them because the certificate of appropriation is the amount of the final water right.

Regulation No. 12. Mr. Gibson was given the following example: the City of Coffeyville or an industry in Coffeyville is given a permit for water and water is so low that Oklahoma complains. Would action be taken on this complaint? Mr. Gibson explained that the compact with Oklahoma pertains only to storage of water and does not require the release from storage.

Regulation No. 15. In answer to questions, Mr. Gibson stated that "Any person" could apply to federal agencies. However, it is suggested that such an agency file in the name of whoever is going to make use of the water and they usually do. If a federal agency does file, care is taken not to set a precedent that would allow the federal government to say they have a right to the water in the reservoir but the state does not. He noted this situation is occurring in some other states.

In answer to a question, Mr. Gibson stated that the form to be used by the districts in collecting information relative to water used is an administrative procedure. He stated he agrees that the management districts should collect the information on their form and send the information to his office. The form should be developed jointly by the management districts and his office. Stating on the form that it is approved by the Chief Engineer was suggested.

Mr. Gibson, answering a question, stated he had no objection to groundwater management districts including the definition of "waste of water" in their rules and regulations. Mr. Gibson stated he felt it was important to distribute the rules and regulations to the public after January 1. Although the 1979 budget is in, it may not be too late to get a line item in.

A Committee member noted that Mel Gray, at the August Committee meeting, stated 75 percent of domestic wells and a higher percentage of irrigation wells were located outside of groundwater management districts. Mr. Gibson stated he would agree with the percentage for domestic wells but most irrigation wells are within management districts.

Groundwater Management District Rules and Regulations

Mr. Gibson made the following comments relative to the rules and regulations of the groundwater management districts:

Some changes in wording relative to the formation of control areas are probably needed. The Chief Engineer cannot delegate this responsibility.

The responsibility for disapproval of applications needs to rest with the Chief Engineer. Therefore, the wording of the district regulations should show the intent that the district board would recommend to the Chief Engineer that an application be disapproved.

Some changes are needed in the procedure for handling noncompliance since the rules and regulations become those of the Chief Engineer. Using anybody 18 years of age may cause problems but it would be acceptable if districts feel strongly about it.

Definitions need to be in alphabetical order and, in compliance with the request of the Department of Administration, those also appearing in the statute need to be deleted.

There is agreement with the concept of the district board adopting additional criteria but the wording needs to be changed.

Regulations relating to well plugging will probably have to be deleted since the Chief Engineer cannot enforce the rules and regulations of another agency. Wording to the effect that the proper department will be notified of violations might be used.

Rules and Regulations for S.B. 4

Mr. Gibson stated he feels there is still a problem relative to the amount of water under a temporary permit. He noted that when he appeared before the Energy and Natural Resources Committees during the

session he was thinking in terms of three acre-feet or a million gallons of water. However, if a temporary permit is limited to three acre-feet for road projects, does this mean that at the end of 60 to 90 days another application for a temporary permit will have to be filed because more water is needed to complete the project. Amounts for these types of projects may need to be larger. He stated he feels there needs to be a temporary permit covering each type of diversion with no temporary permit to exceed six months.

In answer to a question, Mr. Gibson stated temporary permits were not intended to cover cases in which the water was to be used for irrigation purposes.

Hopefully, an application for a temporary permit can be a one-sheet form with a strip stating it has been approved and giving an expiration date which can be stapled to it. The form can then be returned to the applicant.

There may still be a problem with the fact that permits are not transferrable. For example, a little town is destroyed by a storm or runs out of water. Town X ships them three truckloads of water. It should be clear this is not a violation.

Other things to be included in the rules and regulations are a procedure for termination and abandonment of water rights, a procedure for holding hearings for approval of water rights, a procedure for an application for new use of water, authority for holding hearings, and how to determine the need for a hearing.

The meeting was recessed for lunch at 12:05 p.m. and was reconvened at 1:35 p.m.

Directions to Staff on Proposal No. 58

The report is to note the problem of tying up a rig and crew if the plugger is not available; note the constitutional problem relative to payment; note the effect of the increased price of oil and gas on the amount of drilling being done and the workload of the plugger; note that not all holes are plugged under direct supervision and note the reasons given; note the need to delete the word "groundwater" and insert "water" in the section of the Groundwater Exploration and Protection Act pertaining to what a driller should know in any bill amending this law. Consensus seemed to be not to include a recommendation to raise the licensing fee for a contractor because some areas of the state are dependent on out-of-state drillers and raising the fee would not make the program self-supporting.

The problem the Corporation Commission has utilizing personnel interchangeably in all three divisions is to be noted, the bill introduced last session noted, and a statement that the Committee endorses the concept of the bill. Staff was asked to bring a copy of this bill to the next meeting.

A motion was made and seconded to repeal the statutes relating to artesian wells. Motion carried.

A motion was made and seconded to recommend adding one technician to Mel Gray's staff to carry out the well inspection program. Motion carried. The report is to include the basis for this recommendation as presented by Mel Gray in his testimony.

Rules and Regulations for Water Appropriations Act

In discussion the Committee noted the need to clarify "domestic use," "commercial feedlot" and what is used in a "farming operation" either by statute or by rules and regulations. Distinguishing between a commercial feedlot and a domestic feedlot on the basis of the number of cattle or the amount of water used was suggested. The consensus seemed to be that using ownership as is presently done is neither sufficient nor fair. The following points were made during the discussion: the Chief Engineer inherited the present definition and recommending he change it by rules and regulations could put him in an untenable position. Clarifying the definition of domestic use by statute might give him more support. It was also pointed out that the charge to the Committee is not clear since another committee is charged with the review of all rules and regulations. The Chairman was asked to get a clarification of this.

Staff was asked to report on alternative definitions for domestic use for the Committee to consider at its next meeting. Staff was also asked to review the Oklahoma law and the law of other surrounding states to see how they define domestic use.

Groundwater Management Districts

Any report is to indicate the Committee reviewed the management districts' proposed regulations for its information and made some suggestions. It appears the management districts are carrying out the intent of the Legislature and are doing what the Chief Engineer would like to see done. Since they have not been in operation very long no changes should be made at this time.

Coordination of Agencies and Their Activities

It was noted that coordination between agencies seems to be relatively good and any overlapping is minimal. Points to be given further consideration are support for a computer system in the Chief Engineer's office and problems the Chief Engineer has in securing staff.

October Meeting

The agenda is to include discussion of the Division's proposals for computer system and staffing problems in the Chief Engineer's office, hearing from water users on cooperation; consideration of a date for terminating vested rights; staff report on alternatives relating to the definition of domestic use in the Water Appropriations Act; and a report on cooperation between county assessors and groundwater management district managers on determining assessments.

Water users to be invited are: League of Kansas Municipalities; KACI, for industrial users; Kansas Farm Bureau; Kansas Livestock Association; and Kansas Farm Organizations.

Staff is to check with Mr. Gibson to see exactly what he is considering relative to recommending a date for terminating vested rights.

Committee members are to contact county assessors to see what problems there are in cooperating with groundwater management districts on determining assessments. At least one assessor is to be invited to appear.

The meeting was adjourned at 3:30 p.m.

Prepared by Emalene Correll

Approved by Committee on:

10/3/77
(Date)

PROPOSED RULES AND REGULATIONS
OF THE
EQUUS BEDS GROUNDWATER MANAGEMENT
DISTRICT NO. 2

Regulation 1

Definitions. The terms used in these rules and regulations shall have the same meanings ascribed to them respectively in K.S.A. 82a-1021 and K.S.A. 82a-701 and all acts amendatory thereof or supplemental thereto, unless the context herein indicates otherwise.

- a) "Board" means the board of directors constituting the governing body of the Equus Beds Groundwater Management District No. 2, as used in these rules and regulations.
- b) "District" means the Equus Beds Groundwater Management District No. 2, as used in these rules and regulations.
- c) "Waste of Water" shall mean
 - 1) Groundwater which has been diverted or withdrawn from a source of supply which is not used or reapplied to a beneficial use on or in connection with land authorized as the place of use by a vested right, an appropriation right or an approved application for permit to appropriate water for beneficial use,
 - 2) Any act or omission causing the deterioration of the quality of water in any source of supply thereby causing impairment of a person's right to the use of water,
 - 3) Water which an irrigator permits to escape and drain from the authorized place of use, and

- 4) Water applied to an authorized beneficial use in excess of the needs for such use.
- d) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug or otherwise constructed when the intended use of such excavation is for the acquisition, diversion, or artificial recharge of groundwater.
- e) "Landowner" means the person who is the record owner of any real estate within the boundaries of the district or who has an interest therein as contract purchaser of forty (40) or more contiguous acres in the district not within the corporate limits of any municipality. Owners of oil leases, gas leases, mineral rights, easements, or mortgages shall not be considered landowners by reason of such ownership.
- f) "Water user" means any person who is withdrawing or using groundwater from within the boundaries of the district in an amount not less than one acre-foot per year. If a municipality is a water user within the district, it shall represent all persons within its corporate limits who are not water users as defined above.
- g) "Tailwater" means that portion of the irrigation water applied which appears as excess water on the lower end of the field.
- h) "Person" means any natural person, private corporation, partnership, organization, municipality, or other public corporation.
- i) "Abandoned Well" means that well for which all intended uses

have been permanently discontinued. Any well shall be deemed abandoned that is in such a state of disrepair that using it to obtain groundwater is impracticable. Authorized by K.S.A. 82a-1028(o)

Regulation 2

Well Spacing. The minimum well spacing for well locations described in applications for permit to appropriate water for beneficial use shall be one-fourth mile, except for the spacing from domestic wells. The Board of Directors may by resolution adopt additional criteria to use as a guide for the spacing of wells. Exceptions to the well spacing requirement may be granted provided that it is proven to the satisfaction of the Board of Directors and the Chief Engineer, that any closer well spacing neither will impair a use under an existing right, nor prejudicially and unreasonably affect the public interest. Authorized by K.S.A. 82a-1028(o)

Regulation 3

Waste of Water. It shall be a violation of these rules and regulations for any person, private corporation, public corporation, municipality, company, institution, township, county, state agency or federal agency to waste water as defined in these regulations. Authorized by K.S.A. 82a-1028(o)

Regulation 4

Reported Water Use. The amount of water withdrawn from each well

under each water right during each calendar year shall be reported annually on forms provided by the district. Such reports shall be received by the district no later than 90 days following the end of each calendar year. Authorized by K.S.A. 82a-1028(o)

Regulation 5

Replacement Well. The location of all replacement wells shall be within a radius of three hundred feet of the original well notwithstanding the minimum well-spacing requirements of the rules and regulations. The owner or operator shall abandon the well to be replaced upon completion of the replacement well and shall follow the abandonment procedures stated in these regulations. Authorized by K.S.A. 82a-1028(o)

Regulation 6

Change in Point of Diversion. If it becomes necessary to change the point of diversion, the change in point of diversion shall meet the well spacing requirements of these rules and regulations, except as provided in Regulation 5. The diversion rate and quantity shall not exceed the authorized rate and quantity at the change in point of diversion. Authorized by K.S.A. 82a-1028(o)

Regulation 7

Abandonment of Wells. All well abandonment procedures within the district shall comply with all Kansas statutes and the rules and regulations of the Kansas Department of Health and Environment. Authorized

by K.S.A. 82a-1028(o)

Regulation 8

Establishment of Critical Groundwater Areas. The board upon its motion or upon the receipt of a petition signed by not less than twenty percent of the eligible voters in the area in question, may initiate the proceedings to establish a critical groundwater area whenever the board has reason to believe that:

- 1) Groundwater levels in the area in question are declining or have declined excessively; or
- 2) The wells of two or more persons within the area in question interfere substantially with one another; or
- 3) The rate of discharge in the area nearly equals or exceeds the rate of recharge; or
- 4) The groundwater in the area has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health, and safety; or
- 5) Other conditions occurring in the area require regulation in the public interest.

Upon initiation of the proceedings to establish a critical groundwater area, the board shall notify the Chief Engineer in writing of the action by the board. The notification shall set forth the reasons for the action and the geographic boundary to be considered. The notification shall also contain a recommendation by the board that the Chief Engineer not approve further applications for appropriation.

rights from the area set forth by the board.

Before a critical groundwater area is established, the board shall hold a public hearing on the matter. Notice of the hearing shall be published in at least one issue each week for at least two consecutive weeks in at least one newspaper of general circulation in the area in question. The first publication date shall be at least twenty-eight days prior to the hearing.

Oral and documentary evidence may be taken at the public hearing. A full record shall be kept of all evidence taken at the hearing, and the procedure shall be such as to secure a full, fair and orderly proceeding and to permit all relevant evidence to be received.

If, at the conclusion of the public hearing, the board finds that any of the circumstances set forth in parts one through five of Section 8 are true, and further finds that the public welfare, health, or safety require that any one or more corrective controls be adopted, the board shall by order declare the area in question to be a critical groundwater area. The order shall be entered only upon the affirmative vote of the majority of the total board.

The order of the board shall define the boundaries of the critical groundwater area.

The order of the board may include any one or more of the following corrective control provisions:

- a) A provision closing the critical groundwater area to any further appropriation of groundwater, in which event the Chief Engineer shall thereafter not approve any application for a permit to appropriate groundwater located within such

critical area.

- b) A provision requiring the abatement, in whole or in part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the groundwater supply or responsible for the progressive impairment of the quality of the groundwater supply by dispersing polluting materials that have entered the groundwater supply previously.
- c) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health, or safety.

The board shall file with the Chief Engineer the board's findings of fact based upon the evidence and the board's order based upon such findings made as provided in the preceding paragraphs. Upon request, the board shall furnish copies of such findings for the determination of a critical groundwater area.

The board may suspend or cancel any order upon notice and in such manner as the board deems proper.

An appeal of the board order establishing a critical groundwater area must be filed with the board within ninety calendar days and a petition requesting the appeal shall be signed by not less than twenty percent of the eligible voters within the critical groundwater area.

Within ten days after receipt of a certified and verified copy of the petition, or the petition as amended, the chairman of the board shall call a meeting of the board and shall set the time and place

of an election at which all eligible voters of the critical groundwater area shall be entitled to vote on the question of whether or not the board's order establishing a critical groundwater area shall be upheld. The board shall cause a notice of the election to be published once each week for three consecutive weeks in a newspaper or newspapers of general circulation within the proposed district, the first publication to be not less than twenty-eight days prior to such election. If the proposed area lies in more than one county, a similar notice shall be published in a newspaper of general circulation in each of the counties in which a part of the proposed district is located. The notice shall set forth when and where the election shall be held and the proposition to be voted on. The board shall conduct the election, canvass the votes, and certify the results to the Chief Engineer.

- a) If a majority of the votes cast are in favor of the question, the board shall be authorized to function in accordance with the provisions of these regulations.
- b) If a majority of those voting on the proposition vote against, the board shall endorse that fact on the face of the petition and the order of the board establishing the critical groundwater area shall have no force and effect. Authorized by K.S.A. 82a-1028(o)

Regulation 9

Metering. The Board of Directors of the Equus Beds Groundwater Management District may install or require the installation of meters, gauges, or other measuring devices on any or all wells that divert or

are suspected to divert more than one acre-foot of water per year within the district.

The board may require that an authorized representative of the district or the water user read and report the readings to the district annually or at specified times or intervals deemed necessary by the board to determine the quantity of water withdrawn.

Each meter, gauge, or measuring device used shall meet the minimum specifications adopted by the board. It shall be the responsibility of the owner or user of the measuring device to:

- 1) maintain the meter and to insure that the meter is in good working condition whenever the diversion works are in use;
- 2) insure that the meter is properly installed as recommended by the manufacturer.

A representative of the district shall have the right to read the meter or measuring device whenever deemed necessary. Authorized by K.S.A. 82a-1028(o)

Regulation 10

Procedures for Noncompliance With Regulations. The Equus Beds Groundwater Management District No. 2, its board, its manager, any eligible voter within the district, or any person residing within the district that is at least eighteen years of age may file a written complaint with the district alleging a violation of these regulations, the management program, the Groundwater Management District Act (K.S.A. 82a-1020 et seq), the Water Appropriation Act (K.S.A. 82a-701 et seq), or any acts amendatory thereof and supplemental thereto. The written

complaint shall be filed at the district office.

Within thirty days following the filing of the complaint, a notice that the complaint has been filed shall be delivered to the alleged violator in person or by certified mail.

Within a reasonable period of time following the filing of the complaint, a representative of the district designated by the board shall investigate the complaint. If the representative of the district finds that a violation exists or did exist, the representative shall have the authority to issue a directive to the violator stating the nature of the violation and directing the violator to come into compliance with these rules and regulations within a reasonable period of time.

If the violator fails to comply with the directive of the representative within a reasonable period of time, the board may:

- 1) seek to enjoin the violator's use of water by suitable action in District court until such time as the individual complies; or
- 2) seek the assistance of the Chief Engineer and Attorney General of the State of Kansas to enjoin the violator's use of water until such time as the individual complies. Authorized by K.S.A. 82a-706d

If the alleged violator wishes to appeal the directive of the representative, he shall cause a written notice of appeal to be served upon an officer of the district not more than ten days after the receipt by the alleged violator of the directive of the representative. The board shall then hold a hearing within a reasonable period of

time concerning the alleged violation. Notice of the hearing shall be delivered to the alleged violator in person or by certified mail at least seven calendar days before the hearing. Oral and documentary evidence may be taken at the hearing and all interested persons shall be allowed to present evidence relative to the alleged violation. A full record shall be kept of all evidence taken at the hearing, and the procedure shall be such as to secure a full, fair, and orderly proceeding and to permit all relevant evidence to be submitted.

If at the conclusion of the hearing the board finds that the alleged violator is in violation of these regulations or the management program, the board shall issue a directive to the violator ordering the violator to come into compliance with these regulations or the management program within a reasonable period of time designated by the board. If the alleged violator is found not in violation of these regulations, it shall be so noted in the proceedings of the hearing and the hearing shall be concluded. Authorized by K.S.A. 82a-1028(o)

Regulation 11

Revocation. If any section, sentence, paragraph, clause, or part of these regulations should be held or declared invalid or unconstitutional, for any reason by a final judgement of the courts of this State or of the United States, such decision or holding shall not affect the validity of the remaining portions of these regulations, and the board does hereby declare that it would have adopted and promulgated such remaining portions of such regulations irrespective of the fact that any other sentence, section, paragraph, clause or

part thereof may be declared invalid or unconstitutional.

7/12/77

RULES AND REGULATIONS
FOR THE
WESTERN KANSAS GROUNDWATER
MANAGEMENT DISTRICT NO. 1

APR 1 27 1977
DIVISION OF WATER RESOURCES

Purpose

Pursuant to K. S. A. 82a-1028 (o) the following rules and regulations are hereby recommended to the Chief Engineer, Division of Water Resources, State Board of Agriculture to implement and enforce the policies of the Western Kansas Groundwater Management District No. 1.

Due to the rapid depletion of the Ogallala Aquifer in west central Kansas, the District has hereby formulated the following rules and regulations.

Part 1 - Definitions

Regulation No. 1

- (a) Abandoned Well The well for which all intended uses have been permanently discontinued. Any well shall be deemed abandoned that is in such a state of disrepair that using it for the purpose of obtaining groundwater is impracticable.
- (b) Application The document made on a prescribed form furnished by the Division of Water Resources, State Board of Agriculture, for permit to appropriate water for beneficial use filed in the office of the Chief Engineer as provided by K. S. A. 82a-708a and 709.
- (c) Appropriate To establish a water appropriation right in accordance with procedures set forth in K. S. A. 82a-701 et seq.
- (d) Board The Board of Directors constituting the governing body of the Western Kansas Groundwater Management District No. 1, as used in these rules and regulations.
- (e) Beneficial Use Beneficial uses of water recognized by K. S. A. 82a-707 are: domestic, municipal, irrigation, industrial, recreational, and water power.
- (f) Calendar Year The period of January 1 through December 31 of the same year.

- (g) Chief Engineer The Chief Engineer of the Division of Water resources of the Kansas State Board of Agriculture.
- (h) District The Western Kansas Groundwater Management District No. 1 as used in these rules and regulations.
- (i) Diversion The act of bringing water under control by means of a well, pump, dam or other devices for delivery and distribution for the proposed use.
- (j) Diversion Works Wells, pumps, dams, or other devices by means of which water is brought under control for delivery and distribution for the proposed use.
- (k) Domestic Use The use of water by any person or by a family unit or household for household purposes, or for the watering of livestock, poultry, farm and domestic animals used in operating a farm, and for the irrigation of lands not exceeding a total of two (2) acres in area for the growing of gardens, orchards and lawns.
- (l) Field Investigation The determination of physical facts and conditions relating to complaints, such as tailwater complaints, complaints of impairment, etc., requests to secure water, or other problems which may arise.
- (m) Groundwater Water below the surface of the earth whatever may be the geologic structure in which it is standing or moving.
- (n) Landowner The person who is the record owner of any real estate within the boundaries of the District or who has an interest therein as contract purchaser of forty (40) or more contiguous acres in the District not within the corporate limits of any municipality. Owners of oil leases, gas leases, mineral rights, easements, or mortgages shall not be considered landowners by reason of such ownership.
- (o) Person Any natural person, private corporation, partnership, organization, municipality, or other public corporation.
- (p) Place of Use For irrigation use, it is the number of irrigable acres in each forty (40) acre tract or fractional portion thereof which is authorized to be irrigated. ~~For industrial or other uses, it is the land on or in connection with which water is authorized to be used.~~ For industrial or other uses, it is the land on or in connection with which water is authorized to be used.
- (q) Point of Diversion The location within a ten acre tract at which water is diverted or withdrawn from a source of water supply.

- (r) Tailwater That portion of the irrigation water applied which appears as excess water on the lower end of the field.
- (s) Tailwater Re-Use System A facility to collect, store, and transport irrigation tailwater for reapplication in the farm irrigation distribution system.
- (t) Unconsolidated Aquifer This generally consists of uncemented alluvial sediments containing sand, gravel, silt, clay, and caliche. In the sub-surface of the Western Kansas Groundwater Management District No. 1, the Ogallala Formation and alluvial deposits of Pleistocene form the principal deposits in the unconsolidated aquifer.
- (u) Waste of Water (a) Water which has been diverted or withdrawn from a source of supply which is not used or reapplied to a beneficial use on or in connection with land authorized as the place of use by a vested right, an appropriation right or an approved application for permit to appropriate water for beneficial use, (b) Any act or omission causing the deterioration of the quality of water in any source of supply thereby causing impairment of a person's right to the use of water, (c) Groundwater which an irrigator permits to escape and drain from the authorized place of use, and (d) Water applied to an authorized beneficial use in excess of the needs for such use.
- (v) Water User Any person who is withdrawing or using groundwater from within the boundaries of the District in an amount not less than one acre foot per year. If a municipality is a water user within the District, it shall represent all person's within its corporate limits who are not water users as defined above.
- (w) Well Any excavation that is drilled, cored, bored, washed, driven, dug or otherwise constructed when the intended use of such excavation is for the acquisition, diversion, or artificial recharge of groundwater.

(Authorized by K. S. A. 82a-1028 (o))

Part 2 - Tailwater Control and Waste

Regulation No. 2

(a) No water user shall allow water which is pumped or diverted from any aquifer to leave the land under their direct supervision and control, and shall apply said water consistent with their approved application, vested rights, or appropriation rights to appropriate water for beneficial use. All water users shall construct and operate their water distribution systems in such a manner as to prevent waste of water, and shall do everything necessary and proper to preserve the quality of the groundwater resources within the District. (Authorized by K.S.A. 82a-1028 (o))

Part 3 - Well Spacing

Regulation No. 3

(a) All well locations described in applications for permit to appropriate water for beneficial use (other than domestic) which propose the diversion or withdrawal of water from the Ogallala Formation shall meet the following spacing:

1. 0 to 10 percent depletion - minimum spacing 1,320 feet
2. 11 to 25 percent depletion - minimum spacing 1,650 feet
3. 26 to 40 percent depletion - minimum spacing 1,980 feet
4. 41 to 50 percent depletion - minimum spacing 2,640 feet

This spacing is determined by the percent of depletion of the aquifer using 1950 as the base year. This will be annually determined by actual water level measurements and developed into a map to determine spacing. This will become effective July first of each year. Exceptions to the spacing regulation may be granted on an individual basis by approval of the Board of Directors in conjunction with the Chief Engineer.

(b) All well locations described in applications to appropriate water for beneficial use (other than domestic) which propose the diversion or withdrawal of water from the Dakota Aquifer shall be spaced a minimum of 2,640 feet from any other well constructed into the same Dakota Aquifer. (Authorized by K.S.A. 82a-1028 (o))

(c) All wells included in applications to appropriate water for beneficial use (other than domestic) which propose the diversion or withdrawal of water shall be a minimum of 1,320 feet away from a domestic well constructed into the same aquifer. The only exception shall be those applications which involve only the domestic well or wells of the applicant or those applications for which the applicant received written permission from the neighboring well owner. (Authorized by K.S.A. 82a-1028 (o))

(d) If it becomes necessary to move an authorized point of diversion the relocation shall be limited to a three hundred foot radius of the existing well, or a move not to exceed 1,320 feet from the originally authorized point of diversion, as long as the move is not violating the minimum spacing as adopted by the Board. The three hundred feet shall not apply to changes for approved applications for which the well has not been drilled. (Authorized by K.S.A. 82a-1028 (o))

(e) No well, other than for domestic uses, located inconsistent with these requirements shall be allowed to yield water unless the well is covered by an existing water right or an approved application for permit to appropriate water for beneficial use. New wells shall be drilled in a location substantially as shown on the approved application and aerial photograph or plat. Substantially shall mean within three hundred (300) feet of the approved location, but in no case closer to other wells than the minimum spacing requirements allow. (Authorized by K.S.A. 82a-1028 (o))

Part 4 - Abandonment of Wells

Regulation No. 4

Any owner or operator of land within the District upon which is located any open, uncovered or abandoned well shall be required to close or plug such well in accordance with all Kansas Statutes and the rules and regulations of the Kansas Department of Health and Environment. (Authorized by K.S.A. 82a-1028 (o))

Part 5 - Control Areas

Regulation No. 5

(a) The Board of Directors of the Western Kansas Groundwater Management District No. 1 shall have the authority to establish control areas for the control, management and conservation of water supplies. These areas shall be designated whenever the depletion of the unconsolidated deposits equals or exceeds fifty (50) percent, as determined from the annual water level measurements and based on the year of 1950. (Authorized by K.S.A. 82a-1028 (o))

(b) All wells included in applications to appropriate water for beneficial use (other than domestic) which propose the diversion or withdrawal of water in areas in which the depletion equals or exceeds fifty (50) percent of the 1950 base year measurements shall not be recommended for approval. (Authorized by K.S.A. 82a-1028 (o))

Part 6 - Reports

Regulation No. 6

(a) The amount of water withdrawn from each well or the amount of water used under each water right during each calendar year shall be reposted annually on forms provided by the district. Such reports shall be filed within sixty (60) days after the end of the calendar

year and shall include such information deemed reasonable and necessary by the Board. (Authorized by K. S. A. 82a-1028 (o))

Part 7 - Procedures for Noncompliance With Regulations

Regulation No. 7

- (a) Any eligible voter, any person residing within the District who is at least eighteen (18) years of age, the Board or persons designated by the Board may file a written complaint with the District alleging a violation of these rules and regulations or K. S. A. 82a-701 et seq, known as the Water Appropriation Act.
- (b) Complaints shall be filed at the office of the District by mail or in person during normal working hours. The Board may make available complaint forms at the District Office and at other offices designated by the Board.
- (c) Within a reasonable time following the filing of the complaint, an authorized inspector designated by the Board shall investigate the complaint, and shall cause a notice of the complaint to be delivered to the alleged violator in person or by registered or certified mail. The inspector shall file a report of findings of the investigation with the Board.
- (d) If the report of findings indicated that a violation exists or did exist at the time the complaint was filed, the Board or a person designated by the Board shall issue an order to the violator in person or by registered or certified mail which:
- (1) State the nature of the violation, and,
 - (2) Directs the violator to come within compliance with the rules and regulations within a reasonable period of time for the type violation and circumstances involved, and
 - (3) Informs the violator of the right to appeal the order by requesting a hearing within ten (10) days.
- (e) If the violator fails to comply with the order within the specified time and does not appeal, the Board may:
- (1) Seek to enjoin the use of water by suitable action in the District Court, until such time as the violator complies, or
 - (2) Seek the assistance of the Chief Engineer and Attorney General of the State of Kansas to enjoin the use of water until such time as the violator complies.
- (f) If the alleged violator wishes to appeal the order, the Board shall hold a hearing within a reasonable period of time. Notice of the hearing shall be delivered to the alleged violator in person or by registered or certified mail at least ten (10) calendar days before the hearing.

(g) Hearings shall be conducted in such manner as the Board deems most suitable to the particular case. Oral and documentary evidence may be taken at the hearing and any party at interest in a proceeding may appear in person or by an attorney or both. A full record shall be kept of all evidence taken at the hearing, and the procedure shall be such as to secure a full, fair, and orderly proceeding, and to permit all relevant evidence to be submitted. A hearing officer may be designated by the Board to conduct the hearing.

(h) After the hearing, if the Board finds that the alleged violator is in violation, the Board shall issue a final order directing compliance in accordance with the original order or a modified order as appropriate. The Board shall cause the order to be delivered to the violator in person or by registered or certified mail and may enforce the order in the manner provided by subsection (e) of this section. (Authorized by K. S. A. 82a-1028 (o))

Part 8 - Revocation

Regulation No. 8

(a) If any section, sentence, paragraph, clause, or part of these Rules and Regulations should be held or declared invalid or unconstitutional, for any reason by a final judgement of the Courts of this State or of the United States, such decision or holding shall not affect the validity of the remaining portions of these Rules and Regulations, and the Board does hereby declare that it would have adopted and promulgated such remaining portions of such rules irrespective of the fact that no other sentence, section, paragraph, clause or part thereof may be declared invalid or unconstitutional.

PROPOSED

Rules and Regulations
Southwest Kansas Groundwater Management District No. 3

Regulation No. 1. DEFINITIONS -- The terms used in these rules and regulations shall have the same meanings ascribed to them respectively in K.S.A. 82a-1021 and K.S.A. 82a-701 and all acts amendatory thereof or supplemental thereto, unless the context herein indicates otherwise.

- (a) "Abandoned" - The failure without due and sufficient cause to exercise a right to the use of water by failure to apply water to the authorized beneficial use to the extent authorized for three successive years.
- (b) "Abandoned Well" - That well for which all intended uses have been permanently discontinued. Any well shall be deemed abandoned that is in such a state of disrepair that using it for the purpose of obtaining groundwater is impracticable.
- (c) "Applicant" - The person in whose name an application for permit to appropriate water for beneficial use is filed in the office of the Chief Engineer as provided by K.S.A. 82a-709.
- (d) "Application" - The document made on prescribed form furnished by the Division of Water Resources, State Board of Agriculture, for permit to appropriate water for beneficial use filed in the office of the Chief Engineer as provided by K.S.A. 82a-708a and 709. It is the plan of the applicant setting forth the annual quantity of water and maximum rate of diversion desired, the source of supply, point of diversion, the place of use and such other information as may be required for proper understanding of the proposed use of water.

- (e) "Appropriate" - To establish a water appropriation right in accordance with procedures set forth in K.S.A. 82a-701 et seq.
- (f) "Appropriate Water Supply" - The source of supply from which it is proposed that water will be diverted as set forth in an application for permit to appropriate water for beneficial use. In the case of surface water, the appropriate water supply is a river, creek or stream and tributaries thereto. In the case of groundwater, the appropriate water supply is a definite aquifer or aquifers.
- (g) "Appropriator" - A person who has an appropriation right that has been perfected in conformity with Article 7 of Chapter 82a of the General Statutes of 1949 and acts amendatory thereof and supplemental thereto.
- (h) "Approval of Application" - A permit to proceed with construction of diversion works and the diversion and use of water in accordance with the terms and conditions set forth in the permit. Approval of Application does not constitute any permit which may be required by other state laws.
- (i) "Authorized Representative" - The person designated by the Board to perform duties and function on its behalf.
- (j) "Beneficial Use" - Beneficial uses of water recognized by K.S.A. 82a-707 are:
domestic, municipal, irrigation, industrial, recreational, and water power.
- (k) "Board" - The Board of Directors constituting the governing body of the Southwest Kansas Groundwater Management District No. 3, as used in these rules and regulations.
- (l) "Calendar Year" - The period of January 1 through December 31 of the same year.

- (m) "Chief Engineer" - The Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture.
- (n) "District" - The Southwest Kansas Groundwater Management District No. 3, as used in these rules and regulations.
- (o) "Diversion" - The act of bringing water under control by means of a well, pump, dam or other devices for delivery and distribution for the proposed use.
- (p) "Diversion Works" - A well, pump, dam or other devices by means of which water is brought under control for delivery and distribution for the proposed use.
- (q) "Full Irrigation" - The application of water to crops during the growing season. Full irrigation includes water for preirrigation.
- (r) "Groundwater" - Water below the surface of the earth whatever may be the geologic structure in which it is standing or moving.
- (s) "Growing Season" - The average frost-free period of the year.
- (t) "Impairment" - The unreasonable raising or lowering of the static water level or the unreasonable increase or decrease of stream-flow or the unreasonable deterioration of the water quality at the user's point of diversion beyond a reasonable economic limit.
- (u) "Industrial Use" - The use of water in the manufacture, production, transport or storage of products. Such use shall include but is not limited to water used in connection with steam electric power plants, secondary and tertiary oil recovery, water used in connection with feeding of livestock in commercial feed lots, water used in connection with the raising and feeding of fish for commercial purposes or the raising or feeding of livestock or fish by institutions for educational purposes.

- (v) "Irrigation Use" - The use of water for the growing of crops including but not limited to grains, vegetables, fruits, lawns and the watering of golf courses and parks.
- (w) "Landowner" - The person who is the record owner of any real estate within the boundaries of the District or who has an interest therein as contract purchaser of forty (40) or more contiguous acres in the District not within the corporate limits of any municipality. Owners of oil leases, gas leases, mineral rights, easements, or mortgages shall not be considered landowners by reason of such ownership.
- (x) "Municipal Use" - The various uses of water obtained from a common source by a municipality, a rural water district, other water supply district, or a group of householders where water is delivered through a common distribution system.
- (y) "Off-season Irrigation" - The application of water to land for the purpose of storing moisture in the soil for future use by a crop.
- (z) "Perfect" - The actions of a water user to bring an appropriation right into final form by the completion of diversion works and application of water to the proposed use in accordance with terms, conditions and limitations of his approval of application for permit to appropriate water for beneficial use.
- (aa) "Person" - A natural person, a partnership, an organization, a corporation, a municipality, a trust, an estate, and any unit of Local, State or Federal Government.
- (bb) "Place of Use" - For irrigation use, it is the number of irrigable acres in each forty (40) acre tract or fractional portion thereof which is authorized to be irrigated. For industrial or other uses, it is the land on or in connection with which water is authorized to be used.

- (cc) "Point of Diversion" - The point at which water is diverted or withdrawn from a source of water supply.
- (dd) "Preirrigation" - The application of water to the land for a crop prior to planting to assure adequate moisture for early plant growth. Water for preirrigation is a part of the water for full irrigation.
- (ee) "Prior Right" - A vested right, an appropriation right with earlier priority or a permit with earlier priority to that of a subsequent appropriation right or permit.
- (ff) "Priority" - The priority of the appropriation right to use water for any beneficial purpose except domestic dates from the time of the filing of an application for permit to appropriate water for beneficial use in the office of the Chief Engineer. The priority of an appropriation right to the use for domestic purposes dates from the time of the filing of an application therefor in the office of the Chief Engineer or from the time the user makes actual use of water for domestic purposes, whichever is earlier.
- (gg) "Proper Form" - Complete with all required information furnished in the prescribed manner.
- (hh) "Quantity" - The total amount of water in acre feet or million gallons per calendar year diverted from a source of supply or authorized to be diverted from a source of supply and applied to beneficial use.
- (ii) "Recreational Use" - A use of water in accordance with a water right which provides entertainment, enjoyment and relaxation to the user.
- (jj) "Source of Water" - Surface water or groundwater.
- (kk) "Static Water Level" - The depth of the top of the groundwater level below land surface which is not affected by recent pumpage.

- (ll) "Surface Water" - Water in creeks, rivers or other water courses, and in reservoirs, lakes and ponds where water is accumulated as a result of run-off from the surface of the land.
- (mm) "Tailwater" - Irrigation water applied which appears on the lower end of the field.
- (nn) "Tailwater Re-Use System" - A facility to collect, store, and transport irrigation tailwater for re-application to the authorized place of use.
- (oo) "Unlawful Appropriation" - The diversion, storage or use of water by a person without a vested right, an appropriation right or a permit to appropriate water for beneficial use.
- (pp) "Unlawful Diversion" - The diversion or taking of water which prevents it from moving to a person with a prior right to the use of the same.
- (qq) "Waste of Water" - (a) Groundwater which has been diverted or withdrawn from a source of supply which is not used or reapplied to a beneficial use on or in connection with land authorized as the place of use by a vested right, an appropriation right or an approved application for permit to appropriate water for beneficial use, (b) Any act or omission causing the deterioration of the quality of water in any source of supply thereby causing impairment of a person's right to the use of water, (c) Groundwater which an irrigator permits to escape and drain from the authorized place of use, or (d) Groundwater applied to an authorized beneficial use in excess of the needs for such use.
- (rr) "Water User" - Any person who is withdrawing or using groundwater from within the boundaries of the District in an amount not less than one acre foot per year. If a municipality is a water user within the District, it shall represent all persons within its corporate limits

who are not water users as defined above.

- (ss) "Well" - Any excavation that is drilled, cored, bored, washed, driven, dug or otherwise constructed when the intended use of such excavation is for the acquisition, diversion, or artificial recharge of groundwater.

(Authorized by K.S.A. 82a-1028 (o)).

Regulation No. 2. APPLICATIONS FOR PERMIT TO APPROPRIATE WATER FOR BENEFICIAL USE AND APPLICATIONS TO CHANGE THE POINT OF DIVERSION OF AN EXISTING WATER RIGHT --

- (a) All wells, except for domestic uses, included on an application for permit to appropriate water for beneficial use shall be located twenty-three hundred (2300) feet to all other wells, except to domestic wells, unless approval for a closer spacing is authorized in accordance with section (c) or (d) of this regulation.
- (b) The location of a well or wells on an application for approval to change the point of diversion under an existing water right shall be no more than thirteen hundred twenty (1320) feet from the authorized point of diversion and shall not decrease the existing spacing to other wells by more than three hundred (300) feet, unless the minimum spacing requirements for new applications are met or authorization is given in accordance with section (d) of this regulation. The three hundred (300) feet shall not apply to proposed changes in points of diversion under an approved application for which the well has not been drilled.
- (c) The Board may adopt policies as a part of the District Management Program outlining additional criteria to use relative to the consideration of applications for permit to appropriate water for beneficial use. Such criteria may deal with but is not limited to the following:
1. The maximum rate of diversion or annual quantity of water, or both,

to be approved on said application.

2. The evaluation of said applications based on the available water which can be appropriated in a given area with respect to the existing supply, the prior appropriations and vested rights to the supply, and the rate of aquifer depletion with time.
 3. Additional criteria to use as a guide for the spacing of wells.
- (d) The Board may recommend approval to the Chief Engineer of applications not consistent with the terms as set forth in sections (a), (b), or (c) hereinabove if the Board determines that the proposed diversion and use will neither impair a use under an existing water right nor prejudicially and unreasonably affect the public interest. The Board may require the applicant to submit such information as it deems necessary in order to make such a determination.
- (e) No well, other than for domestic uses, shall be allowed to yield water unless the well is covered by an existing water right or an approved application for permit to appropriate water for beneficial use. New wells shall be drilled in a location substantially as shown on the application and aerial photograph or plat which accompanies the application. Substantially shall mean within three hundred (300) feet of the approved location but in no case closer to other wells than the minimum spacing requirements allow.

(Authorized by K.S.A. 82a-1028 (o)).

Regulation No. 3. TAILWATER CONTROL AND WASTE OF WATER -- No water user shall waste groundwater which is pumped or diverted from aquifers within the District. All water users shall construct and operate their wells, tailwater re-use systems, reservoirs, and water distribution systems in such a manner as to prevent waste of water and shall do everything necessary and proper to preserve the quality of

the groundwater resources within the District. (Authorized by K.S.A. 82a-1028 (o)).

Regulation No. 4. ABANDONMENT OF WELLS -- Any owner or operator of land within the District upon which is located any open, uncovered or abandoned well is and shall be required to close or plug such well in accordance with all Kansas Statutes and the Rules and Regulations of the Kansas Department of Health and Environment. (Authorized by K.S.A. 82a-1028 (o)).

Regulation No. 5. WATER MEASUREMENT, WELL EQUIPMENT, AND REPORTING WATER USE --

- (a) The Board may, by resolution, cause to be installed or require the installation of meters, gages, or other measuring devices on any or all wells within the District for the purpose of determining the rate of diversion, quantity of water diverted or to measure the water level in any such well. The Board may also require the installation of check valves or other devices to prevent the pollution of the groundwater supply. Each such meter, gage, check valve or other device used shall meet minimum specifications as adopted by the Board as to type, quality, and installation standards.
- (b) Measuring devices or water levels may be read by authorized representatives designated by the Board or the Board may require water users to read and report the readings to the District annually in accordance with section (c) of this regulation or at other specified times or intervals deemed necessary by the Board in order to protect and conserve the groundwater resources within the District.
- (c) The Board may require any or all water users to file a report of water use for each well or water right during each calendar year on forms provided by the District. Such reports shall be filed within ninety (90) days after the end of the calendar year and shall include such information deemed reasonable and necessary by the Board.

(Authorized by K.S.A. 82a-1028 (o)).

Regulation No. 6. CONTROL AREAS -- The Board upon its motion or upon receipt of a petition signed by not less than twenty (20) percent of the eligible voters in the area in question, may initiate the proceedings to establish a control area whenever the Board has reason to believe that:

1. Groundwater levels in the area in question are declining or have declined excessively; or
2. Wells in the area in question are interfering substantially with one another; or
3. Groundwater in the area in question has been or may reasonably be expected to become polluted to an extent contrary to the public welfare, health, or safety; or
4. Conflicts between users are occurring; or
5. Other conditions occurring in the area in question that requires regulation in the public interest.

Upon the initiation of proceedings to establish a control area, the Board shall notify the Chief Engineer in writing. Such notification shall set forth the reasons for the action, the geographic area to be considered, and may contain a recommendation that the Chief Engineer not approve further applications for permit to appropriate water for beneficial use filed in said area after the date of notice until it is determined if a control area will be established.

Before a control area is established, a public hearing shall be held. The Board shall fix a time and place either within or conveniently near the proposed control area for the hearing. A notice of the hearing shall be given by publication once each week for two (2) consecutive weeks in a newspaper or newspapers of general circulation within the proposed control area, the first publication to be not less than twenty-eight (28) days prior to the date fixed for the hearing. The notice shall set forth when and where the hearing shall be held, the reasons

for establishment of the control area and the legal description of lands to be included within the proposed control area.

If, after the hearing and consideration of all relevant information, the Board determines that the reasons for establishment of a control area are valid and further finds it in the public interest to adopt special provisions, the Board shall issue an order declaring the area in question to be a control area. The order shall be entered only upon the affirmative vote of a majority of the total Board.

The order of the Board shall define the boundaries of the control area and may include one or more of the following provisions or such additional provisions necessary to protect the public welfare, health or safety:

1. A provision closing the control area to any further appropriation of groundwater except for domestic uses or for municipal or industrial uses where the availability of other water supplies are not economically feasible.
2. A provision requiring the abatement in whole or in part, or the sealing of any well in the control area responsible for the admission of polluting materials into the groundwater supply.
3. A provision requiring the installation of meters or other devices or the reporting of water use in accordance with Regulation No. 5.

The Board shall file with the Chief Engineer a copy of the order establishing the control area including the provisions adopted and the effective date of such actions. Additional copies of the order shall be furnished to interested parties upon request. Any amendment or change involving enlargement of the control area in size or regulations shall be made only after the same notice and hearing provisions involved in originally establishing the control area.

The order of the Board may be appealed within ninety (90) days by filing

a petition with the Board, signed by not less than twenty (20) percent of the eligible voters within the control area.

Within ten (10) days after receipt of a certified and verified copy of the petition, or the petition as amended, the President of the Board shall call a meeting of the Board and shall set the time and place of an election at which all eligible voters in the control area shall be entitled to vote on the question of whether the order of the Board shall be upheld. The Board shall cause a notice of the election to be published once each week for three (3) consecutive weeks in a newspaper or newspapers of general circulation within the proposed control area, the first publication to be not less than twenty-eight (28) days prior to such election. If the control area lies in more than one county, a similar notice shall be published in a newspaper of general circulation in each of the counties in which a part of the control area is located. The notice shall set forth when and where the election shall be held and the proposition to be voted on. The Board shall conduct the election, canvass the votes, and certify the results to the Chief Engineer.

- a) If a majority of the votes cast are in favor of the question, the Board shall be authorized to function in accordance with the Order.
- b) If a majority of those voting on the proposition vote against, the Order shall be cancelled and have no force or effect.

(Authorized by 82a-1028 (o)).

Regulation No. 7. PROCEDURES FOR NONCOMPLIANCE WITH REGULATIONS --

- (a) Any eligible voter, any person residing within the District who is at least eighteen (18) years of age, the Board or persons designated by the Board may file a written complaint alleging a violation of these rules and regulations, the District Management Program, or K.S.A.

82a-701 et seq.

- (b) Complaints shall be filed at the office of the District by mail or in person during normal working hours. The District may make available complaint forms at the District Office and at other offices designated by the Board.
- (c) Within a reasonable time following the filing of the complaint, an authorized representative of the Board shall investigate the complaint and shall cause a notice of the complaint to be delivered to the alleged violator in person or by registered or certified mail. The authorized representative shall file a report of findings of the investigation with the District.
- (d) If the report of findings indicates that a violation exists or did exist at the time the complaint was filed, the Board or a person designated by the Board shall issue an order to the violator in person or by registered or certified mail. In the event the violator is not the landowner, a copy of the order shall also be served on the landowner in the same manner. The order shall state as follows:
1. The nature of the violation, and
 2. Direct the violator to come within compliance with the rules and regulations, the District Management Program or K.S.A. 82a-701 et seq., within a reasonable period of time for the type of violation and circumstances involved, and
 3. Inform the violator of the right to appeal the order by written request for a hearing within ten (10) days of receipt thereof.
- (e) If the violator fails to comply with the order within the specified time and does not appeal, the Board may:
1. Seek to enjoin the violation by filing suit in a court of

competent jurisdiction requesting a permanent or temporary injunction or other suitable relief.

2. Seek the assistance of the Chief Engineer and Attorney General of the State of Kansas to bring suit in a court of competent jurisdiction requesting a permanent or temporary injunction or other suitable relief.

- (f) If the alleged violator wishes to appeal the order, the Board shall hold a hearing within a reasonable period of time. Notice of the hearing shall be delivered to the alleged violator and landowner in person or by registered or certified mail at least ten (10) days before the hearing.
- (g) Hearings shall be conducted in such manner as the Board deems most suitable to the particular case. Oral and documentary evidence may be taken at the hearing and any party with an interest in the proceeding may appear in person or by an attorney or both. A full record shall be kept of all evidence taken at the hearing, and the procedure shall be such as to secure a full, fair, and orderly proceeding and to permit all relevant evidence to be submitted. A hearing officer may be designated by the Board to conduct the hearing.
- (h) After the hearing, if the Board finds that the alleged violator is in violation, the Board shall issue a final order directing compliance in accordance with the original order or a modified order as appropriate. The Board shall cause the order to be delivered to the violator in person or by registered or certified mail and may enforce the order in the manner provided by section (e) of this regulation.

(Authorized by K.S.A. 82a-1028 (o)).

Regulation No. 8. REVOCATION -- If any section, sentence, paragraph, clause,

or part of these rules and regulations should be held or declared invalid or unconstitutional, for any reason by a final judgment of the courts of this State or of the United States, such decision or holding shall not affect the validity of the remaining portions of these rules and regulations and the Board does hereby declare that it would have adopted and promulgated such remaining portions of such rules irrespective of the fact that any other sentence, section, paragraph, clause or part thereof may be declared invalid or unconstitutional. (Authorized by K.S.A. 82a-1028 (o)).

WATER APPROPRIATION

Part 1 - Definitions

Regulation No. 1

As used in these rules and regulations, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section:

- (a) Application - The document made on prescribed form furnished by the Division of Water Resources, State Board of Agriculture, for permit to appropriate water for beneficial use filed in the office of the Chief Engineer as provided by K.S.A. 82a-708a and 709. It is the plan of the applicant setting forth the annual quantity of water and maximum rate of diversion desired, the source of supply, point of diversion, the place of use and such other information as may be required for proper understanding of the proposed use of water.
- (b) Appropriate Water Supply - The source of supply from which water will be diverted.
- (c) Appropriator - A person who has an appropriation right that has been perfected in conformity with Article 7 of Chapter 82a of the General Statutes of 1949 and acts amendatory thereof and supplemental thereto.
- (d) Approval of Application - A permit to proceed with construction of diversion works and the diversion and use of water in accordance with the terms and conditions set forth in the permit. Approval of Application does not constitute any permit which may be required by other state laws.

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- (e) Authorized Representative - Any staff employee designated by the Chief Engineer to perform duties and functions in his or her behalf.
- (f) Beneficial Use - Beneficial uses of water recognized by K.S.A. 82a-707 are: domestic, municipal, irrigation, industrial, recreational, and water power.
- (g) Calendar Year - The period of January 1 through December 31 of the same year.
- (h) Chief Engineer - The Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture.
- (i) Diversion - The act of bringing water under control by means of a well, pump, dam or other devices for delivery and distribution for the proposed use.
- (j) Diversion Works - The well(s), pump(s), dam(s) or other devices by means of which water is brought under control for delivery and distribution for the proposed use.
- (k) Field Examination - A term synonymous with field review.
- (l) Field Investigation - The determination of physical facts and conditions relating to complaints, such as tail-water complaints, complaints of impairment, etc., requests to secure water, or other problems which may arise.
- (m) Field Inspection - The examination of completed diversion works, including tests of such works to determine diversion rates and the gathering of all information and data pertinent to the determination of the extent to which a water appropriation right has been perfected. Such information and data is recorded on the form "Field Inspection Report".

- (n) Field Report - The record of information and data gathered in connection with all field investigations, field reviews and field examinations recorded on a form entitled "Field Report".
- (o) Field Review - The evaluation by field personnel of applications for permit to appropriate water or applications for approval to change the point of diversion, place of use or use of water to determine that the application is in proper form, etc.
- (p) Full Irrigation-The application of water to crops during the growing season. Full irrigation includes water for preirrigation.
- (q) Groundwater - Water below the surface of the earth whatever may be the geologic structure in which it is standing or moving.
- (r) Growing Season -The average frost-free period of the year.
- (s) Industrial Use -The use of water in the manufacture, production, transport or storage of products. Such use shall include but is not limited to water used in connection with steam electric power plants, secondary and tertiary oil recovery, water used in connection with feeding of livestock in commercial feed lots, water used in connection with the raising and feeding of fish for commercial purposes or the raising or feeding of livestock or fish by institutions for educational purposes.
- (t) Irrigation Use- The use of water for the growing of crops including but not limited to grains, vegetables, fruits, lawns, and the watering of golf courses and parks.

- (u) Legal Notice - The written directive of the Chief Engineer, or his or her authorized agent, to a water user that he shall regulate his or her works for diversion of water as may be necessary to secure water to the person having a prior right to its use, or to secure water for the purpose for which it was released from storage under the authority of the State of Kansas or pursuant to an agreement between the state and federal governments.
- (v) Municipal Use - The various uses of water obtained from a common source by a municipality, a rural water district, other water supply district, or a group of householders where water is delivered through a common distribution system.
- (w) Off Season Irrigation - The application of water to land for the purpose of storing moisture in the soil for future use by a crop which will not be irrigated during the growing season.
- (x) Perfect - The actions of a water user to bring an appropriation right into final form by the completion of diversion works and application of water to the proposed use in accordance with terms, conditions and limitations of his approval of application for permit to appropriate water for beneficial use.
- (y) Place of Use - For irrigation use, it is the number of irrigable acres in each forty (40) acre tract or fractional portion thereof which is authorized to be irrigated. For industrial or other uses, it is the land on or in connection with which water is authorized to be used.

- (z) Point of Diversion - The point at which water is diverted or withdrawn from a source of water supply.
- (aa) Preirrigation - The application of water to the land for a crop prior to planting to assure adequate moisture for early plant growth. Water for preirrigation is a part of the water for full irrigation.
- (bb) Prior Right - A vested right, an appropriation right with earlier priority or a permit with earlier priority to that of a subsequent appropriation right or permit.
- (cc) Proper Form - Complete with all required information furnished in the prescribed manner.
- (dd) Quantity - The total amount of water in acre feet or million gallons per calendar year diverted from a source of supply or authorized to be diverted from a source of supply and applied to beneficial use.
- (ee) Recreational Use - A use of water in accordance with a water right which provides entertainment, enjoyment and relaxation to the user.
- (ff) Source of Water- Surface water or groundwater.
- (gg) Static Water Level - The depth of the top of the groundwater level below land surface which is not affected by recent pumpage.
- (hh) Streamflow - The instantaneous discharge of a stream measured in cubic feet per second or gallons per minute.
- (ii) Surface Water - Water in creeks, rivers or other water courses, and in reservoirs, lakes and ponds where water is accumulated as a result of run-off from the surface of the land.

- (jj) Unlawful Appropriation - The diversion, storage or use of water by a person without a vested right, an appropriation right or a permit to appropriate water for beneficial use.
- (kk) Unlawful Diversion - The diversion or taking of water which prevents it from moving to a person with a prior right to the use of the same.
- (ll) Verified Report - A written account of the facts of record which show that no lawful beneficial use of water has been made for three successive years.
- (mm) Waste of Water- (a) Water which has been diverted or withdrawn from a source of supply which is not used or reapplied to a beneficial use on or in connection with land authorized as the place of use by a vested right, an appropriation right or an approved application for permit to appropriate water for beneficial use, (b) Any act or omission causing the deterioration of the quality of water in any source of supply thereby causing impairment of a person's right to the use of water, (c) Water which an irrigator permits to escape and drain from the authorized place of use, and (d) Water applied to an authorized beneficial use in excess of the needs for such use.
- (nn) Water Power Use - The use of falling water for hydro-electric or hydro-mechanical power.

(oo) Water

Commissioner -

The person appointed by the Chief Engineer, with the approval of the State Board of Agriculture, to be in charge of a field office and who is the agent of the Chief Engineer in supervising the distribution of water according to rights and priorities of all parties concerned, who is responsible for determining that appropriation diversion works have been completed and appropriation rights perfected in accordance with approved applications for permit to appropriate water for beneficial use and who shall be responsible for the performing of such other duties as the Chief Engineer or his or her designated representative may direct.

(Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Part 2 - Vested Rights

Regulation No. 2. Information -- Any person who claims that he or she has a vested right for any purpose other than domestic shall furnish information to the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, showing the extent of water used prior to June 28, 1945. The information is to be submitted on a prescribed form furnished by the Division of Water Resources, Kansas State Board of Agriculture. The information to be furnished shall include:

1. The name and mailing address of the person making claim to the vested right.
2. The name of the stream, in case of surface water, or the name of the drainage basin, in case of groundwater.
3. The purpose of use.
4. The maximum quantity of water used during one calendar year prior to June 28, 1945, in millions of gallons or acre-feet.
5. The maximum rate at which water was diverted from the source of supply prior to June 28, 1945, in gallons per minute or cubic feet per second.
6. The date that use of water was first commenced.
7. The date that diversion works now in use were completed.
8. If for surface water, the plans for diversion works constructed or under construction on or prior to June 28, 1945.
9. If for groundwater, the number of wells now in use with the depth and diameter of each, and the number of wells constructed or under construction on or prior to June 28, 1945, with the depth and diameter of each.
10. The type(s) and size of pump(s) in use on or before June 28, 1945.

11. The location of the points of diversion in use on or prior to June 28, 1945, described by quarter, quarter, quarter section, township, range, and county or such other legal description that will identify the specific location of the diversion works.
12. If the water was used for municipal purposes, the population of the city in 1945 and the present population.
13. If the water was used for irrigation, the number of acres in each quarter, quarter section that were irrigated on or before June 28, 1945.
14. If for industrial, recreational or water power use, the legal description of the tract of land where the water was used.
15. All other information as may be required for a clear understanding of the vested right.

The form shall be dated and signed by the person making the claim to the vested right.

The information shall be supported by affidavits made by persons familiar with the use of water on or before June 28, 1945, attesting to the accuracy of the information furnished by the claimant. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 3. Investigation -- The Chief Engineer or his or her authorized representative shall review the information submitted and make such investigation of the matter as may be necessary for the proper understanding and determination of the vested right. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Part 3 - Appropriation Rights

Regulation No. 4. Application Acceptable for Filing -- To be acceptable for filing an application for permit to appropriate water for beneficial use shall be accompanied by the statutory application fee, except application for domestic use, shall show the name and mailing address of the applicant, shall be signed by the applicant or an authorized representative, shall show the source of water supply, and either shall show a description of the location of the proposed point of diversion or shall request a 60-day period of time in which to establish the location of the proposed point of diversion within a limited area. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 5. Priorities -- (a) Upon receipt in the office of the Chief Engineer of an acceptable application for permit to appropriate water for beneficial use, accompanied by the statutory application fee, a stamp showing the date and time of receipt shall be placed on the application form. The date and time of receipt of the application for any use, other than domestic, shall establish the priority of whatever appropriation right that may be subsequently perfected pursuant to the application; (b) The date and time of the receipt of an application for permit to appropriate water for domestic use or the date of the first use of water for such purpose, whichever is earlier, shall establish the priority of the appropriation right for domestic use. When the first use of water is earlier in time than the filing date of an application, the applicant shall furnish affidavits from disinterested parties to substantiate the date that water was first used from the appropriate water supply for domestic purposes. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 6. Storage of Water for Domestic Use -- Any person entitled to use water for beneficial purposes may collect and store the same so long as such collection, storage, use and times of use thereafter are consistent with reasonable storage and conservation practices. A reasonable quantity of water stored for domestic use shall be considered to be that quantity sufficient to satisfy the domestic use for the current year and two succeeding years. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 7. Application Contents -- (1) Each application for permit to appropriate water for beneficial use shall contain all the information requested for the proposed uses as set forth in the prescribed application form and such other information as may be required for a proper understanding of the proposed appropriation. (2) Each application shall be accompanied by an aerial photograph or a detailed plat preferably to a scale of 1 inch equals 1,320 feet, or a U.S. Geological Survey topographic map, scale 1:24,000. Information that shall be plotted on the plat, photograph, or topographic map is as follows:

- (a) The section corners.
- (b) The center of the section, identified by the section number, township and range.
- (c) The location of the point of diversion -- well location, stream bank pump site, dam location or location of other works for diversion of water -- indicated by an appropriate symbol.
- (d) The location of the place of use identified by cross-hatching or by some other appropriate method.
- (e) The location of all other water wells of every kind within one-half mile of the well(s) covered by the

proposed appropriation, each of which shall be identified as to its use and the name and mailing address of the owner, if the proposed appropriation is for use of groundwater.

- (f) The name and mailing address of the owner(s) of each tract of land adjacent to the stream for a distance of one-half mile upstream and one-half mile downstream from the property lines of the land owned or controlled by the applicant, if the proposed appropriation is for the use of surface water.
- (g) The locations of proposed or existing dams, dikes, reservoirs, canals, pipelines, power houses and other structures for the purpose of storing, conveying or using water.
- (h) A North arrow and scale.

The information shown on the photograph or plat shall be legible. Black line prints may be submitted in lieu of the original drawing if a plat is submitted. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 8. Approval of Application -- The approval of an application on the prescribed form shall constitute a permit to proceed with the construction of authorized diversion works and the diversion and use of water and shall set forth the following:

1. The name and mailing address of the applicant.
2. The priority date assigned to the application.
3. The beneficial use to which water is to be applied.
4. The source of water supply from which the appropriation is to be made.
5. The location of the authorized point of diversion and the place of use.
6. The maximum rate of diversion to which the appropriation sought is limited.

7. The quantity of water per calendar year to which the appropriation sought is limited.
8. The time in which the works for diversion of water shall be completed.
9. The time in which the proposed appropriation shall be perfected by actual application of water to the proposed beneficial use.
10. A condition that the applicant shall notify the Chief Engineer of the Division of Water Resources when construction of the works for diversion of water have been completed.
11. A condition that the applicant shall maintain records from which the quantity of water actually diverted during each calendar year may be readily determined and that such records shall be furnished to the Chief Engineer as soon as practicable after the close of each calendar year.
12. Such other terms, conditions and limitations as may be deemed necessary for the proper understanding of the authorized appropriation and for the protection of the public interest.

The applicant shall be notified of the approval of the application by transmitting to him or her the original document setting forth the terms, conditions, and limitations of the permit which has been duly dated and signed by the Chief Engineer or his or her authorized representative. A copy of the approval of application and permit to proceed shall be maintained in the office of the Chief Engineer or the appropriate field office. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 9. Forfeiture, Revocation and Dismissal -- Failure of the applicant or his or her successors to comply with the provisions of the approval of application and permit to proceed and its terms, conditions and limitations without good cause shall result in the forfeiture of the priority date, revocation of the permit and dismissal of the application. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 10. Request for Extension of Time -- For applications filed after the effective date of these regulations, any request for extension of time either for completion of diversion works or for perfecting the appropriation shall be submitted to the Chief Engineer prior to the expiration of the time allowed for completing the diversion works or perfecting the appropriation. The request shall be signed by the holder of the approval of application and permit to proceed, by the owner of the land to be irrigated, by an authorized official of a municipality, corporation or partnership, or by some such person that has a recognized interest in the appropriation. Failure to request an extension of time to perfect the appropriation within the time allowed shall limit the water appropriation right to the extent perfected in accordance with the terms, conditions and limitations set forth in the approval of application.

The request for an extension of time either for completion of diversion works or for perfecting the appropriation shall set forth the following:

1. The application number.
2. The date by which it is expected the diversion works will be completed or the appropriation will be perfected.
3. The progress that has been made toward completing the diversion works or perfecting the appropriation.
4. If for irrigation, the number of acres of land to which water has been applied during one calendar year.

5. The reason why the diversion works have not been completed or the appropriation has not been perfected.
6. The plans for completing the diversion works or perfecting the appropriation.

(Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 11. Certificate of Appropriation -- Upon determination that the appropriation diversion works have been completed and an appropriation right perfected in conformity with an approved application and plans, the Chief Engineer shall issue a certificate of appropriation setting forth the extent the appropriation right was perfected. No appropriation shall be determined for a quantity of water or a diversion rate in excess of that set forth in the approval of application and permit to proceed or in excess of that found to have been actually applied to the approved beneficial use or for any quantity of water found to have been wasted during the calendar year of record used as the basis for perfecting the appropriation right.

The certificate of appropriation shall set forth but shall not be limited to the following:

1. The application number.
2. The priority date.
3. The purpose of use.
4. The source of supply and legal description of the location of the authorized point(s) of diversion.
5. The authorized place of use.
6. The quantity of water appropriated.
7. The maximum rate of diversion perfected.
8. Conditions limiting the appropriate rate and quantity when combined with any other water right or rights.

9. A certificate of appropriation number.
10. Any other conditions or limitations the Chief Engineer deems to be necessary.

(Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Part 4 - Distribution of Water Between Users

Regulation No. 12. Distribution of water between users where a prior right is being impaired -- When a complaint is received that a prior right to the use of water is being impaired, the following procedure shall be followed:

1. The complaint shall be made in writing to the Chief Engineer or his or her authorized representative. A complaint may be accepted verbally in person or by telephone but shall be confirmed in writing.
2. An investigation of the physical conditions involved shall be made by the Chief Engineer or his or her authorized representative.
3. A written report of the investigation shall be prepared and a copy given to the complainant. If the investigation shows there is no basis for further action by the Division of Water Resources, the complainant shall be so advised.
4. The complainant shall make a written request to secure water to satisfy his or her prior right.
5. The Chief Engineer or his or her authorized representative shall give a written legal notice and directive to other water users whose use of water must be regulated to secure water to satisfy the complainant's prior rights.

The request to secure water shall be made on a prescribed form furnished for that purpose by the Division of Water Resources. The request shall set forth the need for a specific quantity of water to be diverted at a specific rate from a

specific point of diversion. The request shall also set forth the time and date the user will be prepared to start to divert and apply water to beneficial use at the specified rate or less. All water delivered to the user's point of diversion for his or her use at the specified rate or less shall be applied to the authorized beneficial use and count against the quantity of water specified unless the user notifies the Chief Engineer or his or her authorized representative that diversion and use will be discontinued for a period of time for good reason.

When the quantity of water needed has been delivered to the user's point of diversion or when the user discontinues his or her use of water, those persons who have been directed to regulate their use shall be notified that they may resume the diversion and use of water.

If the available water supply in the source should increase, the Chief Engineer or his or her authorized representative shall allow some or all of the users regulated to resume use depending on the supply. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Part 5 - Change in the Place of Use, the Point of Diversion or
the Use made of Water under an Existing Water Right

Regulation No. 13. Application form -- An application for approval to change the place of use, the point of diversion, the use made of water or combinations thereof shall be made on a prescribed form furnished by the Division of Water Resources. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 14. Application contents -- The application shall be made by the owner of the water right and shall include all the information to be shown in the appropriate place on the prescribed application form. The application shall be signed by the owner(s) of the water right and his or her spouse, or his or her authorized agent, who shall declare that the applicant is the owner of the water right described in the application and that statements contained in the application are true, correct and complete. The application shall be signed and sworn to before a notary public.

The application shall be supplemented by a detailed plat or an aerial photograph, preferably to a scale of 1 inch equals 1,320 feet, or a U.S. Geological Survey topographic map, scale 1:24,000. Information as requested in the application shall be shown on the detailed plat, aerial photograph, or topographic map.

The application shall be supported by such other information as may be necessary for the proper understanding of the proposed change in the place of use, the point of diversion, the use made of water or combinations thereof. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Part 6 - Storage of Water

Regulation No. 15. Application Proposing Storage, Contents -- Any person intending to store water may make application to the Chief Engineer in the same manner as any other person making application for permit to appropriate water for beneficial use. The application shall set forth the same general information as any other application for permit to appropriate water for beneficial use and, in addition, shall be accompanied by information to show:

- (a) The area-capacity data of the reservoir in which the water is to be stored.
- (b) The drainage area.
- (c) The names and mailing addresses of the owners of lands that will be inundated by water accumulated in the reservoir.
- (d) Any additional information as may be required by the Chief Engineer for a proper understanding of the proposed appropriation and storage of water.

(Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 16. Storage of Water in Watershed District Reservoirs -- When a person makes application for permit to appropriate water for beneficial use proposing the storage of water in a watershed district reservoir, the application shall be accompanied by one of the following:

- (a) A copy of an agreement or letter from the Board of Directors of the Watershed District that states it was mutually agreed and understood at the time an easement was granted by the landowner that the landowner was to

have the use of space in the sediment pool to store the water to which he or she might be entitled under the Water Appropriation Act.

- (b) A copy of a resolution by the Board of Directors that shows, as of a certain date, the Board allocated or gave to the landowner all or part (specify what part) of the sediment pool for the storage of water in accordance with the Water Appropriation Act.

(Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Part 7 - Abandonment and Termination

Regulation No. 17. Non Use -- Any water right of any kind shall be deemed abandoned and terminated when without due and sufficient cause no lawful beneficial use is made of the water for three successive calendar years. Due and sufficient cause shall include but shall not be limited to the following reasons:

- (a) Adequate moisture for production of crops provided by natural precipitation.
- (b) A right has been established or is in the process of being perfected for use of water from one or more preferred sources in which a supply is available currently but is likely to be depleted during periods of drought.
- (c) No water is available from the source for the authorized use at times needed.
- (d) Purpose for which water is used is temporarily discontinued for a definite period of time to permit soil, moisture and water conservation.
- (e) Management and conservation practices are being applied which require the use of less water than authorized.

(Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 18. Waiver of Hearing -- The owner of a water right may waive any hearing on the questions of abandonment and termination of such right by letter to the Chief Engineer requesting that it be terminated and its priority forfeited. In the event of such waiver the Chief Engineer shall cause the termination and forfeiture of priority date to be made a matter of record in his office.

and shall notify the owner of the water right of his or her action by regular mail. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)

Regulation No. 19. Hearing -- Hearings on matters of abandonment and termination of a water right shall be held as provided by K.S.A. 82a-718 before the Chief Engineer, or a person designated by the Chief Engineer, who may:

- (a) Administer oaths and affirmations.
- (b) Examine witnesses.
- (c) Rule upon offers of proof and receive evidence.
- (d) Regulate the course of the hearing.
- (e) Dispose of procedural requests or similar matters.
- (f) Make initial decisions; and
- (g) Take any other appropriate action.

Each party may be represented by counsel. An individual may appear for himself or herself and any member of a partnership or corporation which is party to the proceeding may appear for such partnership or corporation upon adequate identification.

Contemptuous conduct by any person appearing at the hearing shall be grounds for his or her exclusion from the hearing by the presiding officer.

The official record of the hearing shall be stenographically or mechanically recorded by a person assigned by the Chief Engineer capable of doing such reporting.

A motion for continuance or postponement of any hearing may be granted by the Chief Engineer or the person designated by the Chief Engineer for good cause shown.

The testimony of witnesses at a hearing shall be presented under oath or affirmation administered by the Chief Engineer or the person designated by the

Chief Engineer and shall be subject to cross-examination. The Chief Engineer or the person designated by the Chief Engineer may interrogate witnesses at any stage of the proceeding.

Every party shall have the right to present evidence in support of his or her case or defense, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a complete and full disclosure of the facts.

The Chief Engineer or the person designated by the Chief Engineer shall give the parties to the proceeding adequate opportunity for the presentation of arguments in support of motions and objections. If request therefor is made, he or she shall also allow adequate opportunity for the parties to present briefs or oral arguments on the facts and law prior to his or her decision. (Authorized by K.S.A. 82a-706a, effective February 15, 1978.)