

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on February 2, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department  
Lisa Montgomery, Revisor of Statutes Office  
Judy Holliday, Committee Secretary

Conferees appearing before the committee:

Constantine Cotsoradis, Assistant Secretary, Department of Agriculture  
Mike Miller, Kansas Department of Health & Environment

Others attending:

See attached list.

Chairperson McGinn directed the Committee's attention to a report the Committee had requested last year on Cedar Bluff Reservoir from Joe Fund of the Kansas Water Office (Attachment 1), and asked that they read it at their leisure.

The minutes of the Committee meetings for January 19, January 26, and January 27 were distributed to each Committee member for their review. Approval will occur on Friday, February 3.

Chairperson McGinn asked for bill introductions. Constantine Cotsoradis, Assistant Secretary of the Department of Agriculture, advised the Committee that the Department had been working to resolve reclassification of dams.

Senator Taddiken moved to introduce this bill, seconded by Senator Ostmeyer. The motion passed.

Chairperson McGinn distributed a handout on Implementing Flex Accounts by David Pope, Chief Engineer, Kansas Department of Agriculture Division of Water Resources (Attachment 2).

Chairperson McGinn recognized Chris Tymeson, Chief Counsel, Kansas Department of Wildlife and Parks, who updated the Committee on the deer management program. He introduced representatives of the Kansas Department of Wildlife and Parks to the Committee: Mike Hayden, Secretary of Wildlife and Parks; Mike Miller, Special Assistant, Pratt; Dr. Lloyd Fox, Biologist, Pratt; Keith Setson, Pratt; and Dick Koerth, Asst. Secretary for Administration, Topeka.

Mike Miller presented a report developed by a ten-member task force on deer management. The task force met weekly to come up with appropriate changes, but because the changes could affect so many landowners, deer hunters and non-hunters, they decided to seek public input over the course of the next year on simplifying the permit process. He provided background of the permitting process, statistics for 2005 hunting licenses purchased, and the number of deer taken by firearms as opposed to archery hunters.

Mr. Miller told the Committee the task force identified several issues to be addressed. First, permit allocation and distribution should be a function of Wildlife and Parks and the opportunity to obtain permits should be a fair and equitable process. Hunters, landowners, and outfitters have expressed an overall dislike of the transferable permit system. Second, the deer resource, especially in the western part of Kansas needs to be conserved. Deer population should be maintained within levels sustainable by the habitat.

Mr. Miller set forth the following recommendations: For non-resident permit demand for white tail, either sex permits, the Department feels that in Eastern Kansas we should be able to provide unlimited white tail, non-resident firearms permits with minimal impact. The demand by non-residents has dropped off a little in 2005. The current system forces landowners to depend on "luck of the draw," not knowing if they or their hunters will draw permits, and outfitters must recruit landowners to apply for transferrable permits hoping to draw enough permits for their clients. There is a secondary market where these permits can sell for thousands of

## CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on February 2, 2006, in Room 423-S of the Capitol.

dollars.

In Western Kansas where the resources are more limited, the task force favors making 25 percent of the permits sold to residents in those areas available to non-residents. The recommendation is to issue them on a 'first come, first served basis.' To simplify the permit process and provide better hunting opportunities, the task force recommends reducing the number of deer management units from 19 to 2, dividing the State into a West unit and an East unit.

Another way to simplify permits is to establish a white tail, any sex, any season permit. This permit will allow the holder to hunt in any season with any legal weapon. They would choose either an East unit or a West unit and would then be able to hunt anywhere in the unit. This has been a request by hunters for years to have that flexibility in their permit.

Other Department proposals include: allowing the landowner's immediate family to qualify for hunting permits regardless of their residence; amending the definition of tenant by including examples of proof and possibly a clause on the license itself for providing proof of qualification if requested; instituting half-price permits for hunters 16 years of age or younger; moving the muzzle-loading season from the current early September season to late September; and opening a youth season and for hunters with disabilities on the last Friday and Saturday in September, followed by the muzzle-loading and archery season on the following Monday. The muzzle loader season would run for two weeks and the archery season would run through the end of December. To maintain balance and deer quality, the Department recommends retaining the one buck per hunter limit and favors maintaining the current firearm season dates which are set after the peak of the deer breeding season when bucks are more vulnerable.

The Department plans to have a series of public meetings and surveys, as well as utilize the Internet for comments from hunters.

In Kansas, where 97 percent of the land is privately owned, access to private land dictates hunting pressure. In 2004, a survey revealed that only 7 percent of the land is involved in private hunting, and 58 percent of that is open to non-residents. In recent years, Kansas has received a great deal of media attention as a trophy white-tail hunting destination. Landowners have discovered that access is a valuable commodity.

The Department strives to work with landowners to manage wildlife, and over the past few years has opened up over a million acres to public hunting through the walk-in hunting program with plans to expand that program. But the Department must also be responsive to non-hunters, and many have expressed concern over efforts to control deer numbers.

Senator Lee questioned which licenses were sold over the counter, and commented that if a person was not lucky in the drawing and then could not buy one over the counter, that was why the demand for non-resident hunting licenses were down. Mr. Miller said the overall number of licenses were down and he did not have the figures for non-resident demand but could get that information for the Committee. Senator Lee advised the Department that she would be introducing a bill that would allow over the counter sales of hunting licenses to residents and non-residents.

Senator Lee asked about landowners with land on both sides of a highway, how does a non-resident who wants to lease land for hunting accomplish this? Mr. Miller responded that county lines do not follow roads so the highways are used because people are more familiar with them.

Senator McGinn reminded the Committee that today is the last day to introduce bills, so if anyone had anything they needed to introduce they may need to meet at the rail.

Senator Teichman told the Committee that hunters from her district had said that most of the permits went to the eastern part of the state where the deer population was higher and needed to be more controlled. She asked what the number of permits was for the units in the eastern part, and asked if the Department would eventually take away from the western half of the state. Mr. Miller responded that in the eastern unit it would be basically unlimited non-resident permits, and unit 16 would be included in that area. She asked how the

## CONTINUATION SHEET

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Department plans to maintain the doe population, and Mr. Miller responded that the Department would maintain an antler-less season as it has in the past.

Senator Teichman commented she appreciated that the Task Force likes getting input from the public in considering its recommendations.

Senator Lee asked if there would be public meetings or a website notice of meetings. Mr. Miller said the agency would start with a website notice which would be available to the Legislature first, and then set public meetings across the state.

Senator Lee asked if the Department's recommendation is that a non-resident can buy a permit over the counter, and Mr. Miller responded that they could buy in the eastern part of the state. Senator Lee asked why they couldn't buy in the western part of the state, and Mr. Miller stated that the deer habitat and deer resources were more limited in the west. Senator Lee asked that he provide the number of non-resident, antler-less over the counter tags that have been purchased.

Chairperson McGinn asked if the Department felt comfortable that there will be adequate permits for all residents that want to hunt in Kansas, and Mr. Miller responded affirmatively. She followed up with a question about the percentage of total per unit recommended, and Mr. Miller responded that in the eastern part of the state it would be unlimited, but to the west would be 25 percent. The permits are set by statute.

Senator Pyle called attention to page 5 of the report, questioning the transfer of permits, or if hunt your own land permits would still be sold. Mr. Miller responded that hunt your own land permits cannot be sold, but can be transferred to relatives only.

Chairperson McGinn recognized Dr. Lloyd Fox, Big Game Coordinator for Wildlife and Parks, who provided an update on the chronic wasting disease in deer. Dr. Fox told the Committee that there has been a case of chronic wasting disease in Kansas. The disease is slow-moving but has expanded from other states. He provided the Committee with a detailed description of the disease, how it is caused, and how it may be transmitted among the deer population.

Chairperson McGinn asked about transferring the disease to humans. Dr. Fox stated that there is no known association of the disease from one species to another or to humans, although the disease is not fully understood at this time. In spite of this species barrier, however, the Department does not recommend consuming an animal with this disease. Chairperson McGinn questioned the mixed message about the species barrier but not eating the animal. Dr. Fox said his agency defers to the recommendations of the state health agencies.

The Department will be having a public meeting at St. Francis to inform farmers and landowners about the disease, and will be sampling deer in that specific area to determine if the disease is established in this area. The Department has a contingency plan and will be providing expansion of that plan in the future.

Senator Huelskamp asked if there was random sampling for the disease, and Dr. Fox stated they have been doing random testing of animals for this disease since 1996 and is part of the ongoing, nationwide program to monitoring this disease. Senator Huelskamp asked if the transmission to an animal in Kansas could be from, for example, Colorado, and Dr. Fox stated the disease could be transmitted horizontally, that is, from excreted materials from a diseased animal that could have migrated from Colorado and ingested by another animal. It is not a genetically determined disease, nor transmitted by reproduction. Senator Ostmeyer asked about the incubation period, and Dr. Fox explained that the prions are resistant in the environment and lose strength over a three-to-five year period.

Chairperson McGinn reminded Committee members to review the minutes and be ready to approve them at the meeting the following morning.

There being no further business to come before the Committee, the meeting adjourned at 9:25 a.m.

# SENATE NATURAL RESOURCES COMMITTEE

## Guest Roster

2/2/06

Name	Representing
Mike Hayden	KIDWP
Mike Miller	KIDWP
Chris Tyner	KIDWP
D. Lloyd Fox	KIDWP
Keith Setson	KIDWP
Dick Krentz	KIDWP
Mary Jane Stankiewicz	KGFA
Joe Lund	KWO
Steve Swaffar	KS Farm Bureau
Todd Lewis	Citizen
Wes TRAW	Citizen
Sheryl MacNair	Hg. Co. Farm Bureau Hg. Co. Economic Development
Mike MacNair	Hg. Co. Conservation District
CV CotsoRADIS	KDA
Mike Beam	K. Louth Ann.
David Rowe	Intern - San Francisco

## STATE OF KANSAS

JOANN LEE FREEBORN  
 REPRESENTATIVE 107TH DISTRICT  
 CLOUD, LINCOLN, OTTAWA  
 AND PART OF DICKINSON COUNTIES  
 1804 N 240TH RD.  
 CONCORDIA, KANSAS 66901-6825  
 785-446-3675



TOPEKA  
 HOUSE OF  
 REPRESENTATIVES

## COMMITTEE ASSIGNMENTS

CHAIR: ENVIRONMENT  
 MEMBER: AGRICULTURE  
 FEDERAL AND STATE AFFAIRS

STATE CAPITOL, RM. 281-W  
 TOPEKA, KS 66612-1504  
 785-296-7648  
 1-800-432-3924  
 e-mail: Freeborn@house.state.ks.us

May 20, 2005

Mr. Tracy Streeter, Director  
 Kansas Water Office  
 901 South Kansas Avenue  
 Topeka, KS 66612

Dear Mr. Streeter:

During the 2005 Legislative Session, considerable time was spent discussing the issue of water releases and management of Cedar Bluff Reservoir. Although no direct legislative action was taken, many members of the Legislature are still interested in the management issues surrounding Cedar Bluff. In order to address that interest, we are requesting that you provide an annual report during the 2006, 2007, and 2008 Legislative Sessions to the House Committee on Environment and the Senate Committee on Natural Resources on or around February 1 of each of those years.

We would like for you to address the following issues each year on a calendar year basis beginning with calendar year 2005 and continuing through calendar years 2006 and 2007. In the presentation, it would be helpful each additional year to have charts compare to the previous reporting year. The issues which we would like for you to include, but would not be limited to the following:

- The number of visitors to Cedar Bluff State Park on an annual basis;
- Any information regarding estimated inflows during the year;
- The amount of water released from Cedar Bluff and the dates and purposes of the releases;
- The monthly gauge readings from each gauge east of the dam on the Smoky Hill River;
- The monthly rate of evaporation from Cedar Bluff Reservoir using current acceptable practices for calculating such rates;
- The estimated water savings resulting from the implementation of intensive groundwater use control areas in the Smoky Hill Basin. This would include, but not be limited to, the information regarding the amount of reduction in authorized use as a result of the implementation of the intensive groundwater use control area in the Smoky Hill Basin below Cedar Bluff Reservoir and a

Senate Natural Resources  
 2-2-06  
 Attachment 1

-2-

comparison of water use reports from the several years prior to implementation of the IGUCA and the years following the implementation;

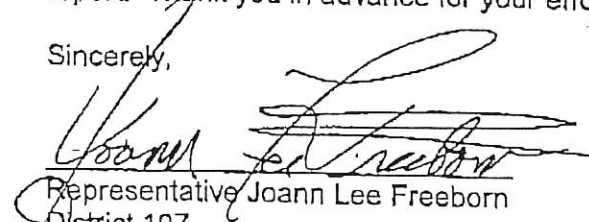
- The rate at which sediment has impacted the pools;
- Data on the stream flow behind dam collected by the Division of Water Resources of the Kansas Department of Agriculture:


Copies of documents showing the probable reasons to file a claim against the State from 2002 through 2005 for impairment, which were said to be part of the reason for the recent Operations Agreement. Document showing any claims made against the State for impairment of water rights for other years in the reporting time frame;

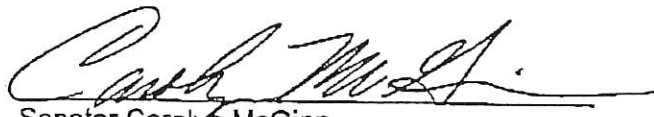
- Information concerning the implementation of the artificial recharge pool operations agreement. Outline and schedule of use of the plans to use the operations agreement between the State and the cities of Russell and Hays and the outcomes which are to be met; and
- The amount of water available for release after the amount calculated for evaporation is subtracted from the amount of water credited to the artificial recharge pool.

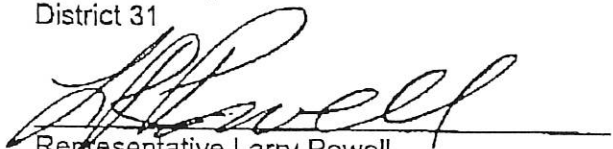
We realize that you may need to consult with other state agencies in order to complete this report. Thank you in advance for your efforts in compiling this information.

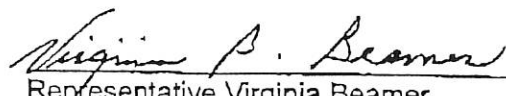
Sincerely,

  
Representative Joann Lee Freeborn  
District 107

  
Senator Ralph Ostmeyer  
District 40

  
Senator Carolyn McGinn  
District 31

  
Representative Larry Powell  
District 117

  
Representative Virginia Beamer  
District 118



# K A N S A S

TRACY STREETER, DIRECTOR

KANSAS WATER OFFICE

KATHLEEN SEBELIUS, GOVERNOR

January 31, 2006

The Honorable Joann Freeborn  
State Capitol, Room 143-N  
Topeka, Kansas 66612

Dear Representative Freeborn:

On May 20, 2005, we received a letter from you requesting information related to water releases and management of Cedar Bluff Reservoir be provided on or around February 1 during the 2006, 2007 and 2008 Legislative Sessions to House Committee on Environment and the Senate Committee on Natural Resources. Attached, please find information in response to that request.

This information was compiled through collection of data from the Kansas Department of Agriculture Division of Water Resources, the Kansas Department of Wildlife and Parks and staff from the Kansas Water Office.

Should you have additional questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Tracy Streeter".

Tracy Streeter, Director  
Kansas Water Office

TS:JLF  
*Attachment*

Cc: Senator Carolyn McGinn  
Senator Ralph Ostmeyer  
Representative Larry Powell  
Representative Virginia Beamer

# Update on Cedar Bluff Issues

Kansas Water Office  
February 1, 2006.

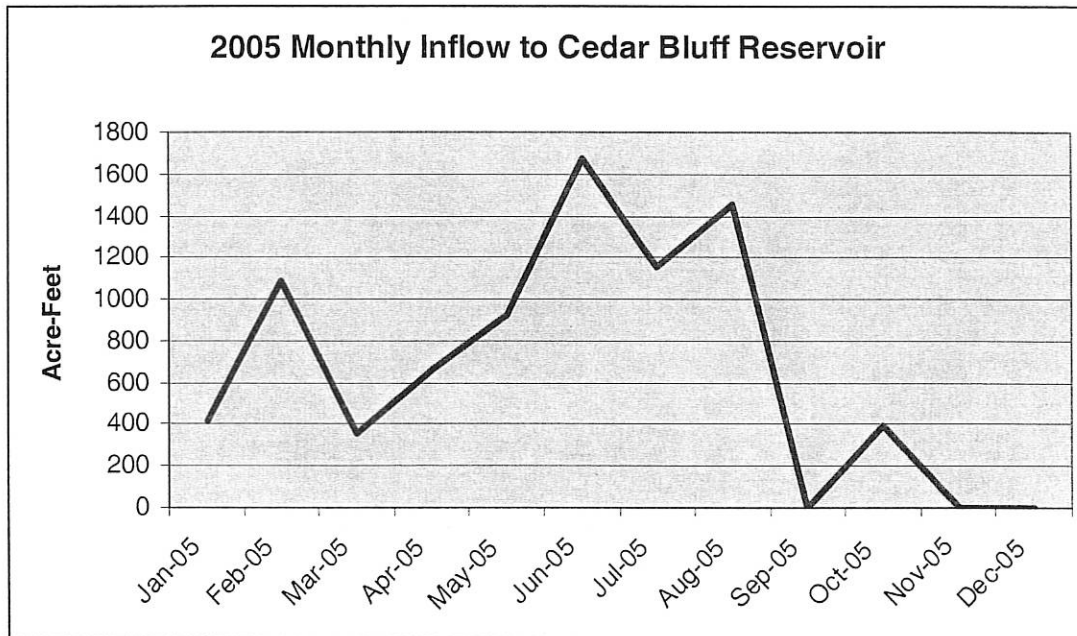
All data is for calendar year 2005.

## 1. Cedar Bluff Annual Visitation

The Kansas Department of Wildlife and Parks reports Cedar Bluff State Park visitation was 237,225 in 2004 and 87,226 in 2005.

## 2. Inflows

Inflows into Cedar Bluff Reservoir for 2005 are shown in the table below.



Also see Attachment A, Table of Cedar Bluff Accounting.

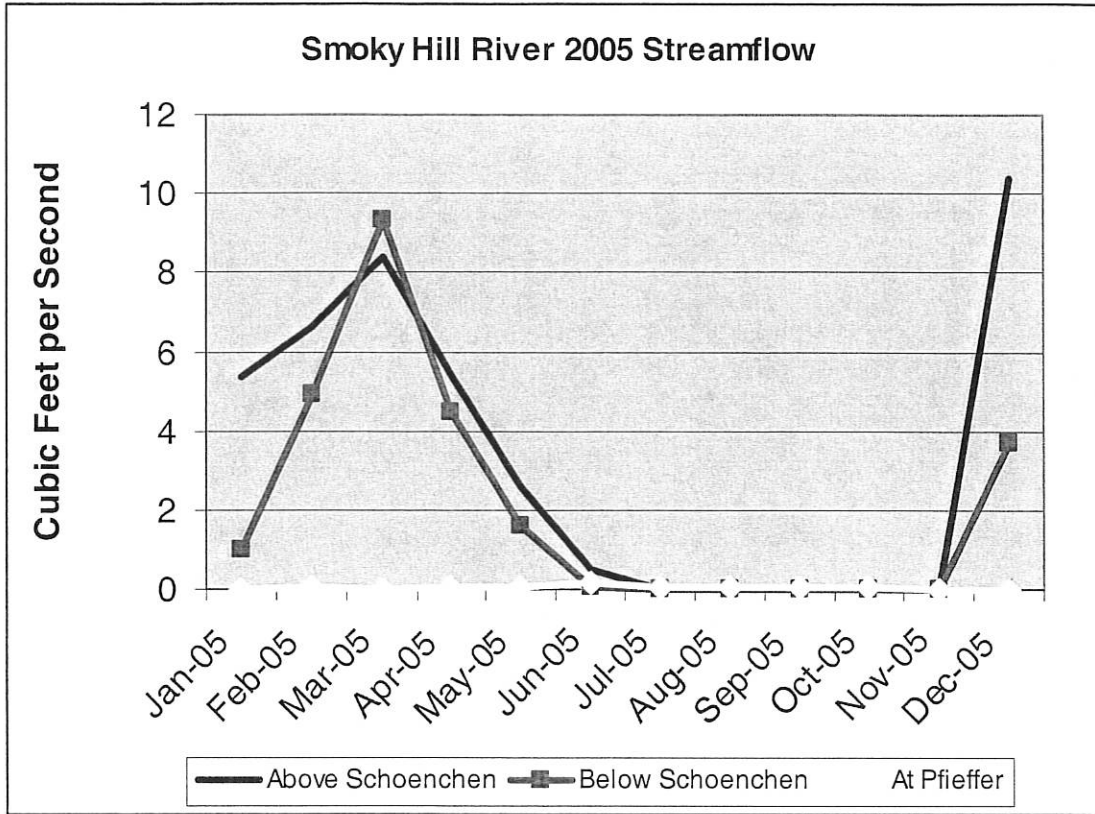
## 3. 2005 Releases

The Bureau of Reclamation reports three releases from Cedar Bluff Reservoir in 2005. These were three (3) acre feet in June, one (1) acre foot in July and 1409 acre feet in December for a total of 1409 acre feet released in 2005. The December release was for the City of Russell. Details of that release are included in Attachment B; Report to the House Agriculture and Natural Resources Budget Committee. Also see Attachment A, Table of Cedar Bluff Accounting for reservoir pool quantities throughout the year.

## 4. Smoky Hill River Gauge Readings East of Cedar Bluff

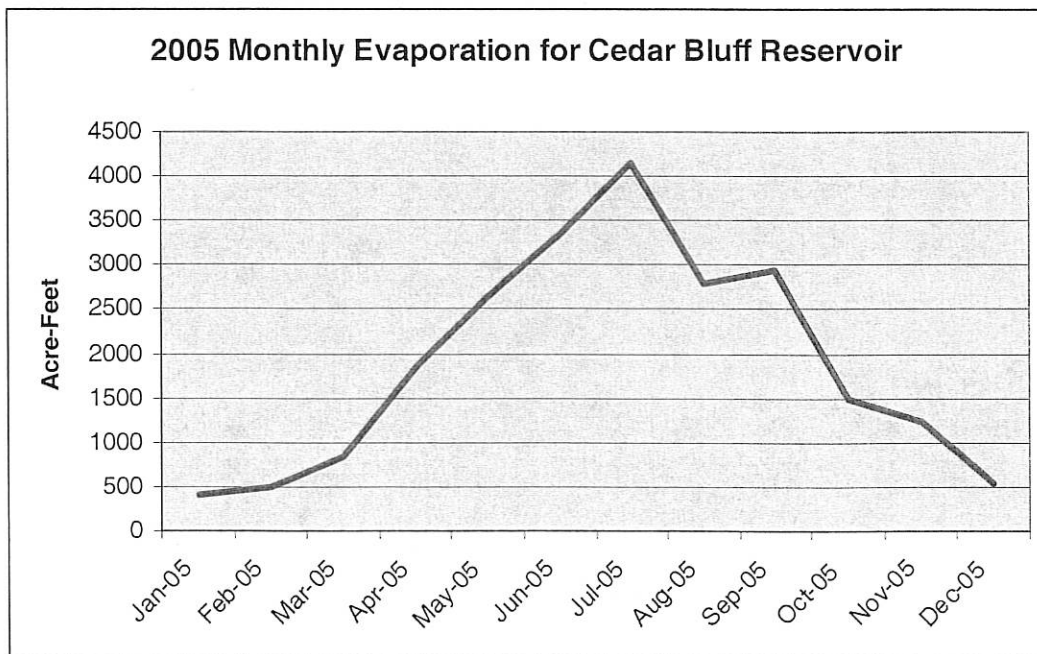
Smoky Hill River stream flow, as recorded at United State Geological Survey stream gages at three locations below, Cedar Bluff Reservoir are shown in the following table.





#### 5. Monthly Evaporation

Evaporation for 2005 is shown in the table below. Evaporation for the year totaled 22,755 acre feet.



Also see Attachment A, Table of Cedar Bluff Accounting.

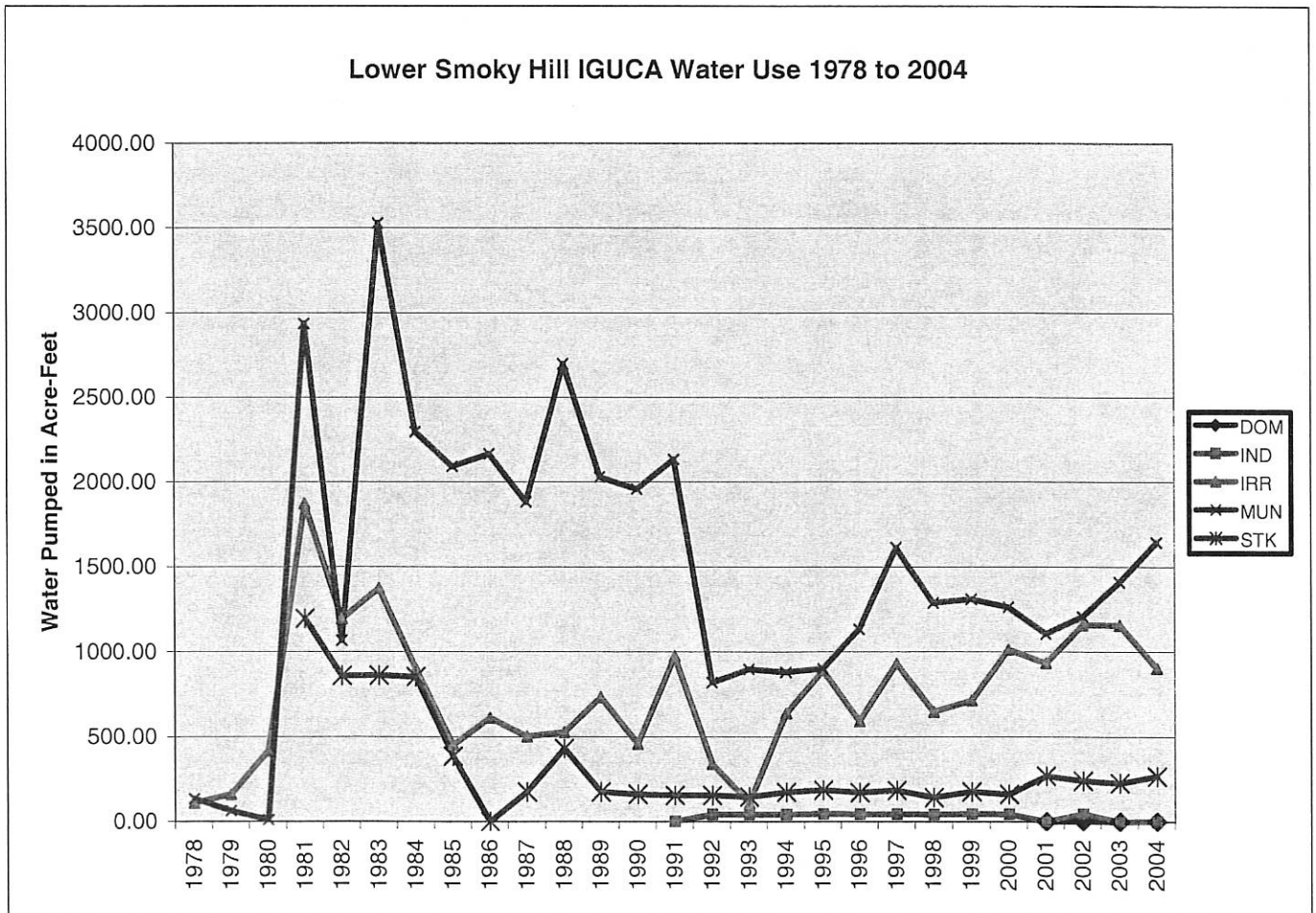
**6. Water Savings from IGUCA**

**Reduction in authorized use**

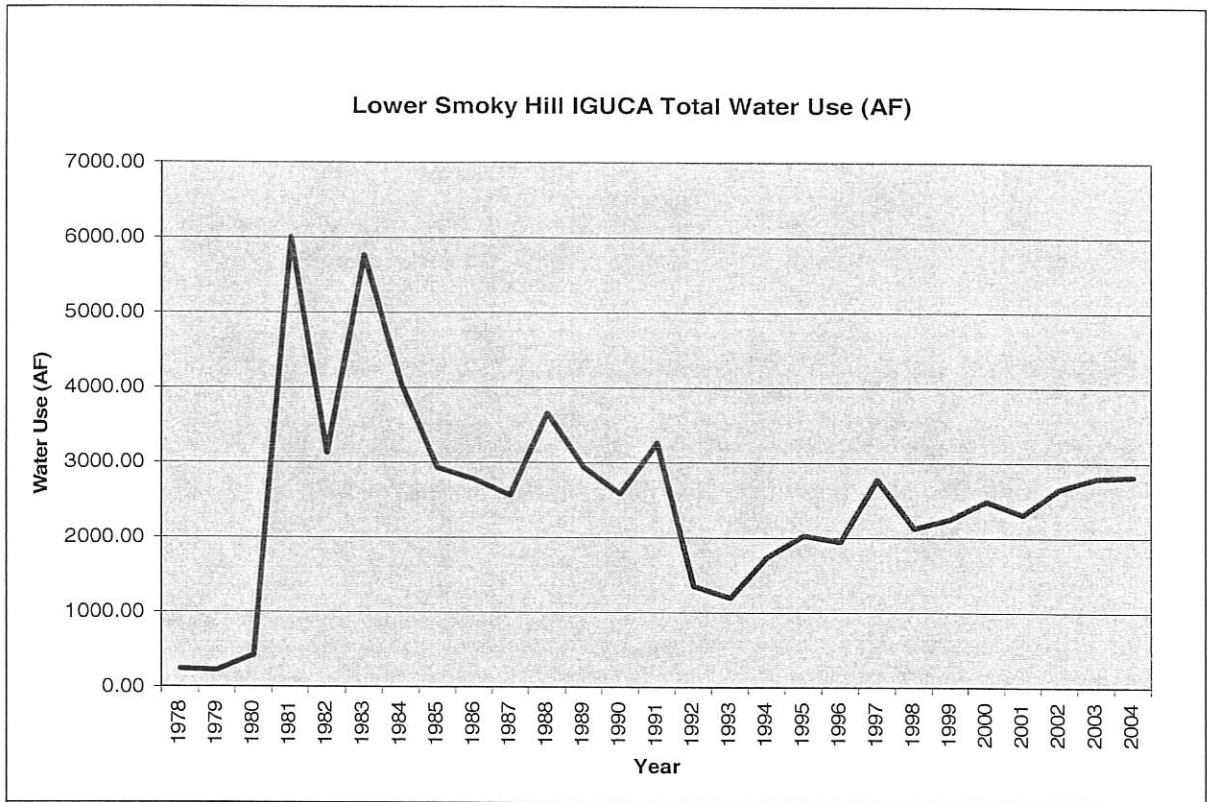
The IGUCA went into effect in 1984 with the first water use reductions beginning that year. Irrigation use was restricted to 15 inches on the maximum number of authorized acres irrigated under those rights during any one of the calendar years 1977-1982 or the amount authorized, whichever is less. For uses other than irrigation, usage was restricted in 1984 to 95% of maximum usage for any one of the calendar years 1981-1983, and for 1985 and any subsequent year usage was restricted to 90% of maximum usage for any one of the calendar years 1981-1983, but in no case was usage to exceed the amount authorized.

**Comparison of water use reports pre IGUCA and post**

Intensive groundwater control area (IGUCA) reductions began in 1984. The following table shows reported water use before and after required reductions by beneficial use category. Kansas Department of Agriculture, Division of Water Resources reports the water use by type in the IGUCA shown in the table below.



The total water use before and since the creation of the IGUCA is summarized by the table below.



### 7. Sedimentation Rate and Impact on Reservoir Pools

A sediment survey was completed in the year 2000 which indicated that a total of 12,608 acre-feet of sediment had been deposited in Cedar Bluff Reservoir. Of this total 8,779 acre-feet of sediment was deposited in Cedar Bluff Reservoir between the elevations of 2090.00 and 2144.00. According to the data, the flood pool gained 30 acre-feet of space and the pool below elevation 2090.00 lost 3,859 acre-feet of space. The following tables indicate the original and pool storage and the updated storage based on the incorporation of the 2000 sediment data according to water right:

Water Right Pools (including 2000 Sediment Survey)

Water Right File No.	Pool	Holder	Original Pool Size (af)	Quantity (af)
7,627	Fish, Wildlife and Recreation	KDWP	10,900	10,900
7,628	Municipal Water Supply	Russell	2,700	2,700
7,684	Artificial Recharge	KWO	5,400	5,110
7,684	Fish, Wildlife and Recreation	KDWP	22,140	10,161
7,684	Joint Use	KDWP	147,090	139,179

Storage lost to sediment deposition was deducted from the pools with storage covered by Water Right File No. 7,864, based on the percentages of 3.31, 6.58 and 90.11 of the water right.

#### **8. Stream Flow Below the Dam**

The US Bureau of Reclamation reports that there are four toe drains below Cedar Bluff Dam. These drains do not and have not had any flow for several years, regardless of reservoir elevation and would therefore not contribute to any streamflow. There is a small amount of leakage on the river regulating gate, but this leakage does not reach the stream.

The weir located northeast of the dam operator's house in the natural draw does flow a small amount of water, however, it appears that the flow in this gully is decreasing as the reservoir level drops. There is no "sill" on the north end of the dam that would allow for overtopping resulting in discharge down the gully. The BOR investigation nearly 15 years ago found no other avenues for reservoir seep.

The total flow leaving the reservoir is captured by the parshall flume, those measurements have been maintained by the USBR and will continue to be in the future as a Dam Safety program.

Additional stream flow investigation has been carried out by the Division of Water Resources (DWR) during 2005. Attachment B contains a description of that investigation. Attachment C discusses the DWR investigation into a potential stream gage site for seepage measurements and related measurement issues.

A summary of the 2005 average monthly stream flow at the three (3) gages was provided in section 4.

#### **9. 2002-2005 impairment documents**

Attachment D contains documentation of shortage of water for water rights in the area representing potential impairments.

#### **10. Artificial Recharge Pool Operation Agreement Implementation**

Preliminary triggers were determined based on best available information. Triggers are a function of stream flow, groundwater levels and season. If there is water in the Artificial Recharge pool and if any one of the release triggers is met, it may be requested that a release be made. The rate and duration of releases will be adjusted as system response is evaluated.

##### **Schedule for Artificial Recharge Pool**

There is no set schedule for releases. Any releases are based on trigger thresholds and requests by water users for a release. One water right holder requested release of artificial recharge water.

### Outcomes during 2005

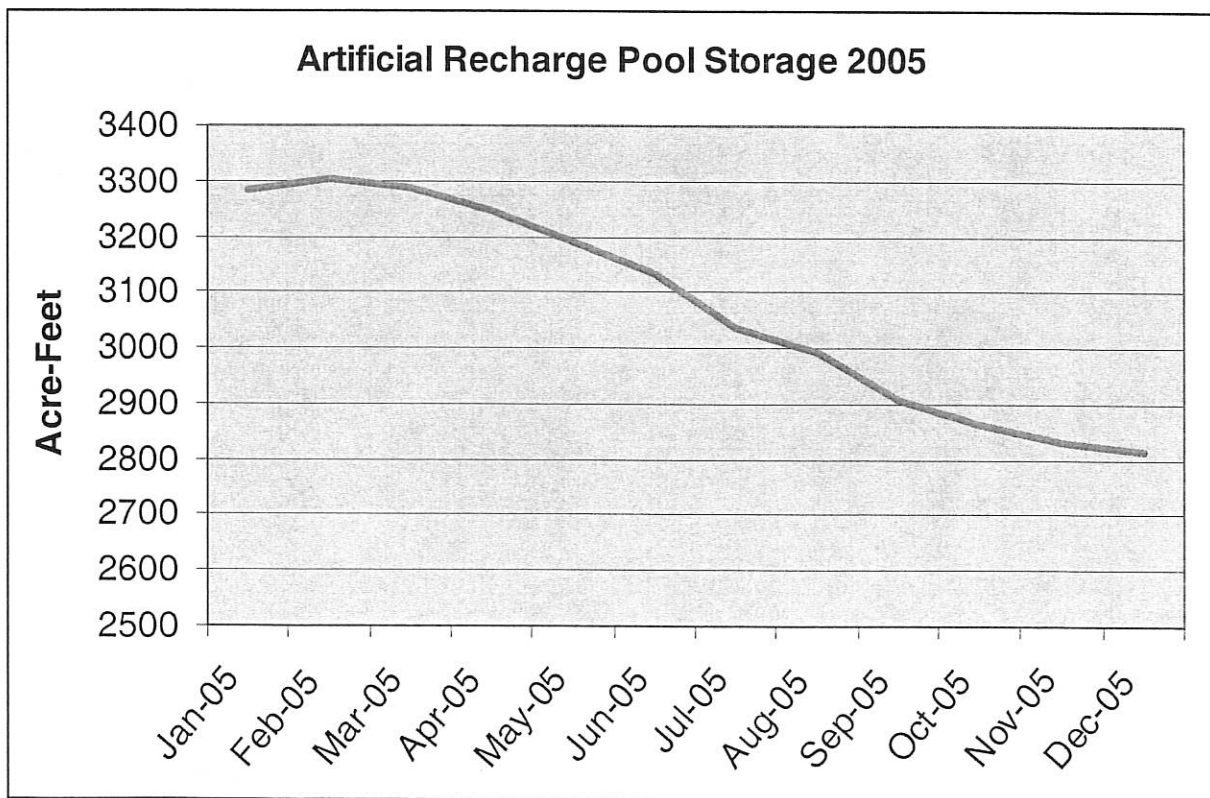
After sufficient experience has been gained by releasing water for the benefit of the downstream water right holders, the amount and timing of future releases may be refined or changed.

Although triggers were met in 2005 and a release was requested by the City of Russell, there was no release from the Artificial Recharge Pool due to litigation.

Full agreement is provided in Attachment E, the September 22, 2004 Artificial Recharge Pool Operation Plan.

### 11. Water Available for Release from Artificial Recharge Pool

Storage in the artificial recharge pool is calculated on a monthly basis with charges for evaporation and credits for inflows in proportion to spool size and according to water right priority. The 2005 storage quantities varied throughout the year as shown in the table below. The complete accounting for 2005 is included in Attachment A, Table of Cedar Bluff Accounting.



**ATTACHMENT A**

**TABLE OF CEDAR BLUFF ACCOUNTING**

## CEDAR BLUFF RESERVOIR ACCOUNTING

Calendar Year 2005

Date	CEDAR BLUFF RESERVOIR		Dead Pool Storage (AF)	INFLOW Monthly Inflow (AF)	EVAP Reservoir Evap. (AF)	Water Rights											
	EOM Elevation	EOM Storage (AF)				Fish Hatchery (Water Right No. 7,627)				City of Russell (Water Right No. 7,628)				State of Kansas (Water Right No. 7,687)			
						Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)	Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)	Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)
Jan-05	2134.93	117211	4402	415	415	136	0	40	10900	34	0	10	2700	245	0	365	99209
Feb-05	2135.04	117789	4402	1083	505	49	0	49	10900	12	0	12	2700	1022	0	444	99787
Mar-05	2134.95	117316	4402	360	833	80	0	80	10900	20	0	20	2700	260	0	733	99314
Apr-05	2134.72	116116	4402	668	1868	180	0	180	10900	45	0	45	2700	443	0	1643	98114
May-05	2134.39	114413	4402	926	2629	257	0	257	10900	64	0	64	2700	605	0	2308	96411
Jun-05	2134.06	112731	4402	1678	3357	336	3	333	10900	82	0	82	2700	1260	0	2942	94729
Jul-05	2133.46	109726	4402	1152	4156	419	1	418	10900	104	0	104	2700	629	0	3634	91724
Aug-05	2133.19	108397	4402	1456	2785	288	0	288	10900	71	0	71	2700	1097	0	2426	90395
Sep-05	2132.58	105447	4402	0	2950	0	0	309	10591	0	0	77	2623	0	0	2564	87831
Oct-05	2132.35	104354	4402	396	1489	396	0	156	10831	0	0	39	2584	0	0	1294	86537
Nov-05	2132.09	103130	4402	0	1224	0	0	133	10698	0	0	32	2552	0	0	1059	85478
Dec-05	2131.67	101181	4402	0	544	0	0	59	10639	0	1405	14	1133	0	0	471	85007
<b>TOTAL</b>				8134	22755	2141	4	2302		432	1405	570		5561	0	19883	

CEDAR BLUFF RESERVOIR ACCOUNTING

CALENDAR YEAR 2005

1-12

Date	EOM Elevation	EOM Storage (AF)	INFLOW EVAP		Dead Pool Storage (AF)	City of Russell				KDWP				KWO				Joint Use			
			Monthly Inflow	Reservoir Evap.		Inflow	Use	Evap.	EOM	Inflow	Use	Evap.	EOM	Inflow	Use	Evap.	EOM	Inflow	Use	Evap.	EOM
			(AF)	(AF)		Share		Share	Storage	Share		Share	Storage	Share		Share	Storage	Share		Share	Storage
			(AF)	(AF)		(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)	(AF)
Jan-05	2134.93	117211	415	415	4402	34	0	10	2700	152	0	64	17428	8	0	12	3284	221	0	329	89397
Feb-05	2135.04	117789	1083	505	4402	12	0	12	2700	116	0	78	17466	34	0	15	3303	921	0	400	89918
Mar-05	2134.95	117316	360	833	4402	20	0	20	2700	97	0	128	17435	9	0	24	3287	234	0	661	89492
Apr-05	2134.72	116116	668	1868	4402	45	0	45	2700	209	0	288	17356	15	0	54	3248	399	0	1481	88411
May-05	2134.39	114413	926	2629	4402	64	0	64	2700	297	0	409	17244	20	0	76	3191	545	0	2080	86876
Jun-05	2134.06	112731	1678	3357	4402	82	0	82	2700	419	3	527	17133	42	0	97	3136	1135	0	2651	85360
Jul-05	2133.46	109726	1152	4156	4402	104	0	104	2700	460	1	657	16935	21	0	120	3036	567	0	3275	82652
Aug-05	2133.19	108397	1456	2785	4402	71	0	71	2700	360	0	448	16848	36	0	80	2992	989	0	2186	81455
Sep-05	2132.58	105447	0	2950	4402	0	0	77	2623	0	0	478	16370	0	0	85	2907	0	0	2310	79145
Oct-05	2132.35	104354	396	1489	4402	0	0	39	2584	396	0	241	16525	0	0	43	2864	0	0	1166	77978
Nov-05	2132.09	103130	0	1224	4402	0	0	32	2552	0	0	203	16322	0	0	35	2829	0	0	954	77024
Dec-05	2131.67	101181	0	544	4402	0	1405	14	1133	0	0	90	16232	0	0	16	2814	0	0	424	76600
TOTAL	0.00	0	8134	22755		432	1405	570	0	2507	4	3610		184	0	658		5011	0	17917	



**ATTACHMENT B**

**REPORT TO THE HOUSE AGRICULTURE AND NATURAL  
RESOURCES BUDGET COMMITTEE**

**UPDATE ON CEDAR BLUFF ISSUES  
HOUSE AGRICULTURE AND NATURAL RESOURCES BUDGET COMMITTEE**

**Tracy Streeter, Director  
Kansas Water Office**

**January 24, 2006**

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## STATUS OF CEDAR BLUFF RESERVOIR MOU ON THE JOINT USE POOL

Over the past few legislative sessions, the Kansas Water Office and the Kansas Department of Wildlife and Parks have been asked about the possibility of transferring the storage owned by the Kansas Water Office in Cedar Bluff Reservoir to the Kansas Department of Wildlife and Parks. Under the transfer of storage to the state from the federal government and the Cedar Bluff Irrigation District in the early 1990's, the Kansas Water Office owned the Artificial Recharge Pool and an undivided one half interest in the Joint Use Pool. The Artificial Recharge Pool was intended to replace return flows from the irrigation district. Both agencies believed that this purpose fit better with the role of the Kansas Water Office. The KWO and the KDWP agree that the appropriate use of the Joint Use Pool is for recreation within the reservoir. As such, it is appropriate to transfer full ownership and control to the KDWP.

The Kansas Water Office and Kansas Department of Wildlife and Parks developed a memo of understanding to transfer KWO portion of Joint Use Pool to KDWP. The MOU was posted on web for public comment Dec.9 – Jan. 3 and signed by the Secretary of KDWP and the Director of KWO on January 9<sup>th</sup> 2006. (Copy attached)

### Cedar Bluff Sub-Pools

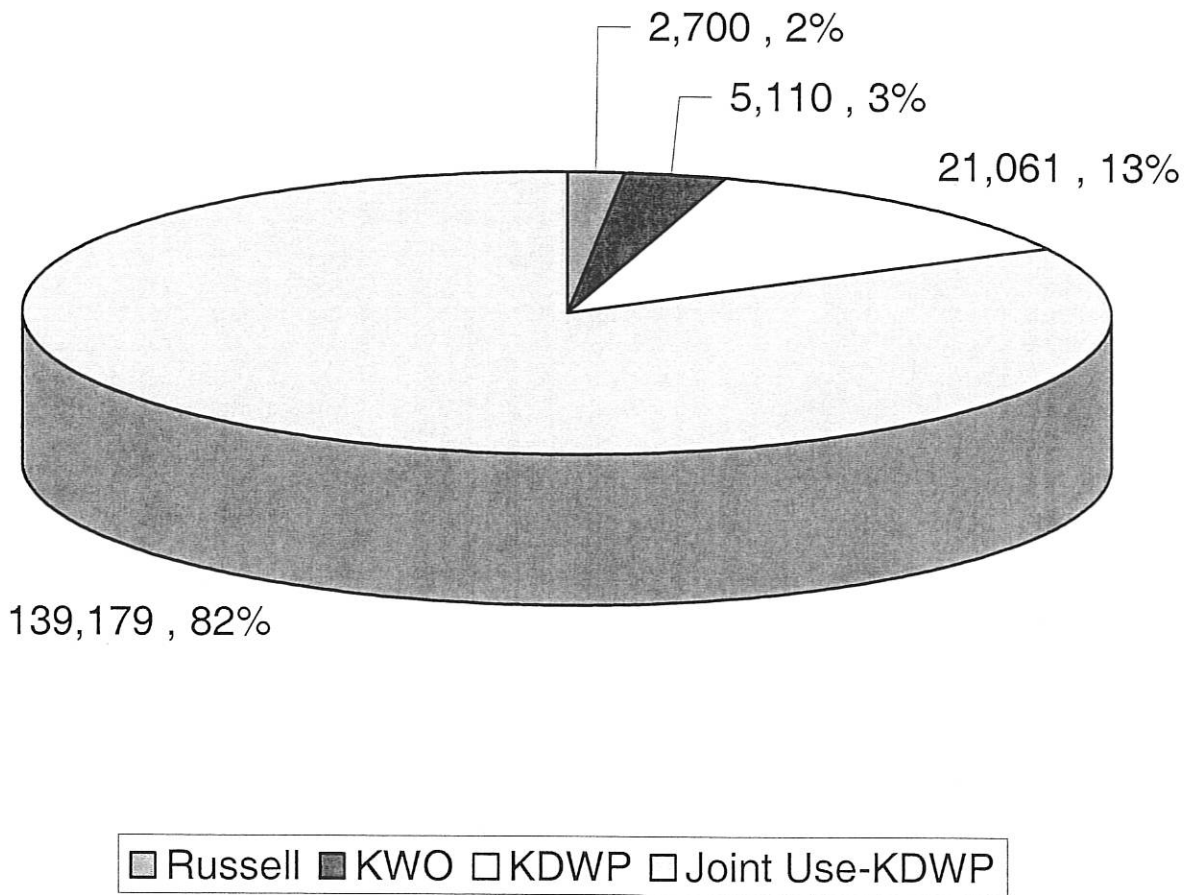


Figure 1. Relationships of "pools" in Cedar Bluff. Joint use pool now controlled solely by KDWP.

After the Cedar Bluff Irrigation District disbanded, the allocation pools in the Reservoir included the City of Russell's original water storage right, which remained unchanged; an artificial recharge pool under control of the Kansas Water Office; and a fish, wildlife, and recreation pool under control of the Kansas Department of Wildlife and Parks. A "joint-use pool" was established for water supply, flood control, and environmental and recreation purposes. Water rights for the joint-use pool were held jointly between the Kansas Department of Wildlife and Parks and the Kansas Water Office. The January 2006 MOU changes control of the joint use pool water rights solely to KDWP.

**RUSSELL'S RELEASE OF WATER FROM CEDAR BLUFF RESERVOIR**

Russell released a total of 1405 AF from their pool beginning on December 14, 2005 at 7:30 AM. The 50 CFS release continued until 11:30 AM on December 28, 2005.

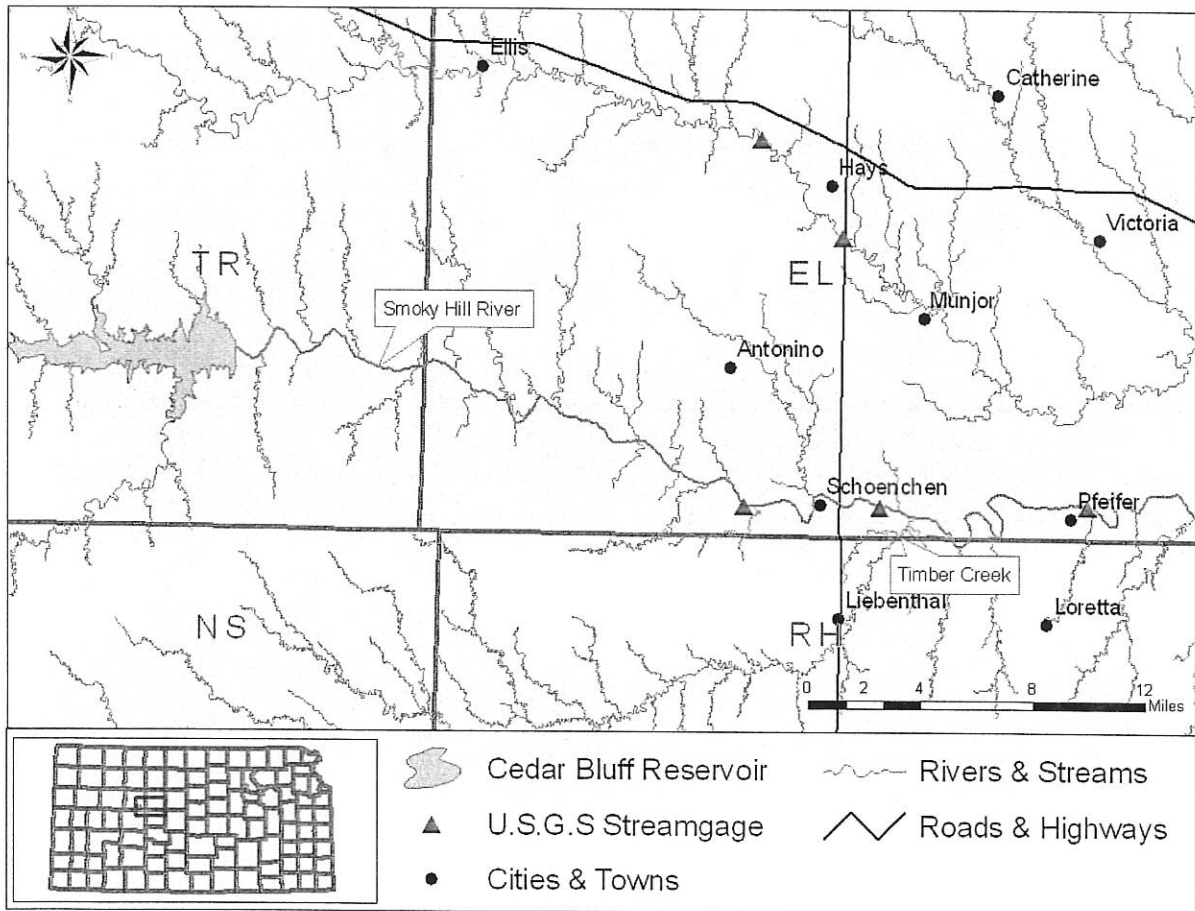


Figure 2. Hydrologic components related to Smoky Hill River system.

### Cedar Bluff Reservoir

The Bureau of Reclamation, which manages the reservoir, recorded the official, lake level declined during the period of release as 4.32 inches. Reservoir losses were from two mechanisms, the 1,405 acre-feet of water (458 million gallons) released and another 218 acre-feet of water (16 million gallons) during this time period from evaporation. The reservoir lost 68 acres of water surface. The monthly accounting of water in storage accounts can be found at [www.kwo.org](http://www.kwo.org). The current accounting table is included as Attachment B.

Current conditions (January 20, 2006) at the reservoir are:

Pool Elevation is 2131.6 Feet

Reservoir Storage is 100,769 Acre-Feet

Reservoir Inflow is 0.0 CFS

Reservoir Outflow is 0.0 CFS

Reservoir Active Conservation Pool is 54.4 % Full

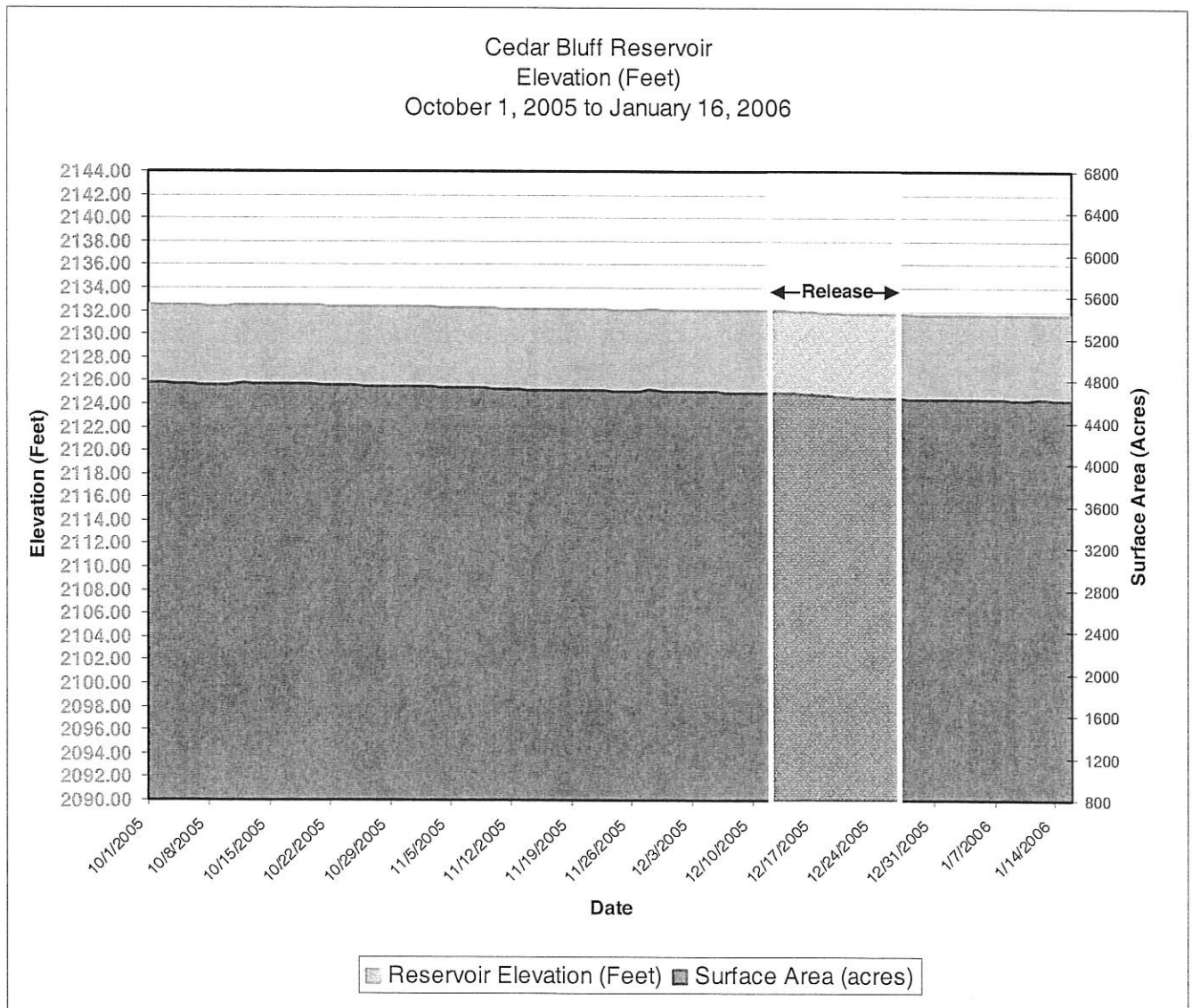


Figure 3. Cedar Bluff Reservoir elevation (feet) and surface area (acres) from October 1, 2005 to January 16, 2006.

## Streamflow

The release traveled slowly, pooling behind ice dams and recharging the alluvium in order to move downstream.

Flows reached the first observation point 1.42 miles below the outlet works after 6 hours putting the initial travel time at about .23 miles per hour. This is reach that is fairly clear of debris and vegetation as it is maintained by USBR for dam safety reasons. In subsequent reaches the speed of the water slowed down.

The crest of the released flow arrived at the Near Schoenchen USGS Gage Station (Upper Schoenchen Gage) approximately 25.87 miles, after 188 hours, at 3:30 AM on December 22, 2005. The speed to that point was approximately 0.13 MPH.

Estimates by the USGS at approximately 11:00 AM on December 22, 2005 were 12.3 CFS at the gage above the Schoenchen well field. Note: Those are not official measurements due to the ice conditions in the river at the time off the measurements.

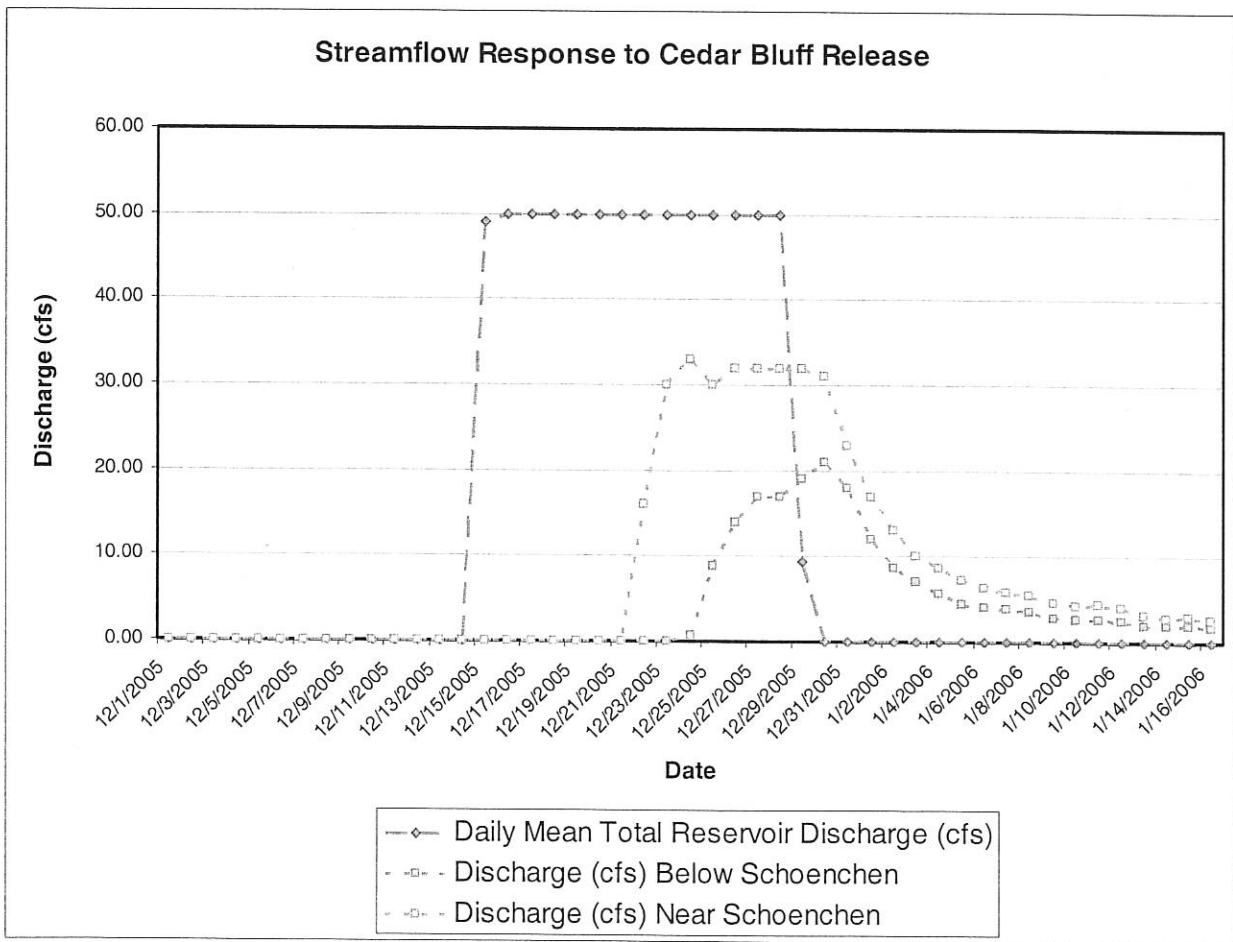


Figure 4. Smoky Hill River response to December release from Cedar Bluff Reservoir.

By December 26, 2005, flow had reached the confluence of the Smoky Hill River and Timber Creek, which is approximately 10 river miles above the Russell well field at Pfeifer. The flow in the Smoky Hill River near the Timber Creek confluence was estimated at 3 CFS about noon.

As of 9:00am, Friday, December 30, 2005, the water released from Cedar Bluff had made it to about ¼ miles west of the Pfeifer Pump station/dam. At this time, the USGS gage below the Schoenchen well field was flowing 20 CFS and the gage station above the Schoenchen well field was flowing 32 CFS.

The flow during the release was considerably slower than could be expected during normal conditions due to the cold weather. The release experienced some ice dams as it progress and took time to either break through or go around the ice dam. The slow progress and temporary storage behind ice dames probably resulted in additional recharge to the aquifer.



## Alluvium

The Kansas Department of Agriculture, Division of Water Resources (DWR) observed the flow on Friday December 23, 2005 as well as measured ground water levels along the river. Well measurement provided an indication of water infiltration into the alluvial deposit, for bank storage.

DWR also watched the water levels in the Schoenchen area well field which was nearly 2 feet below normal levels for the area prior to the release. Water levels in the Schoenchen well field were on the rise at this time. It was reported that most come up significantly, the rate of rise being fairly steady.

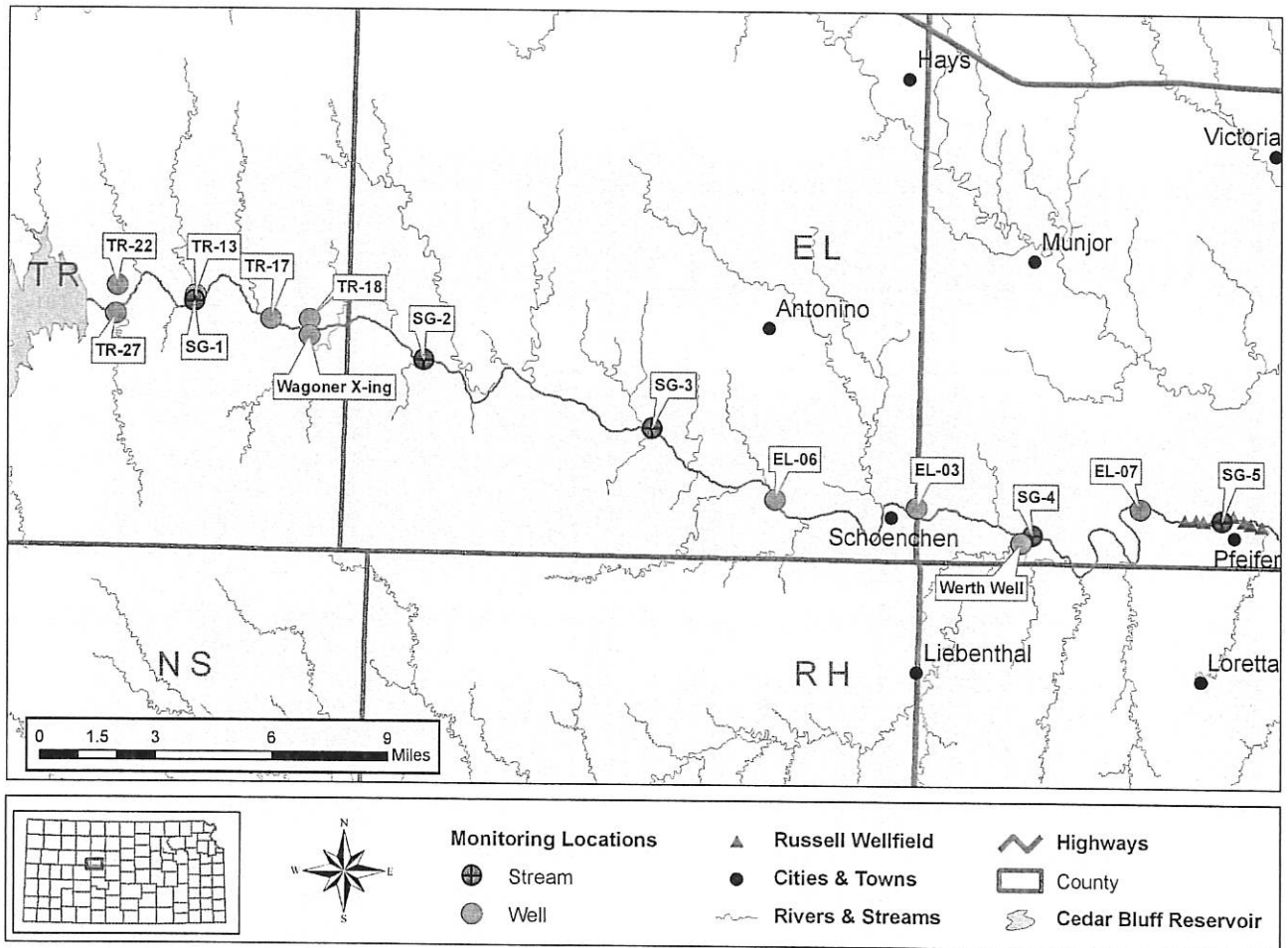


Figure 5. Release monitoring, green dots are observation wells, and the cross hairs are the locations where DWR measured the river elevations.

## Groundwater Response to Reservoir Release

### Trego and Ellis County and Werth Wells

The following hydrographs from monitoring well TR-13 and the Werth Well in Russell County (see Figure 4) illustrate changes in the alluvial aquifer because of the release from Cedar Bluff Reservoir. A release at this rate, quantity and duration did have a measurable impact on the water table in the alluvial aquifer. Similar groundwater increases were observed in wells from immediately below Cedar Bluff (TR-27 and TR-22) and further downstream towards Schoenchen (EL-6 and EL-3).

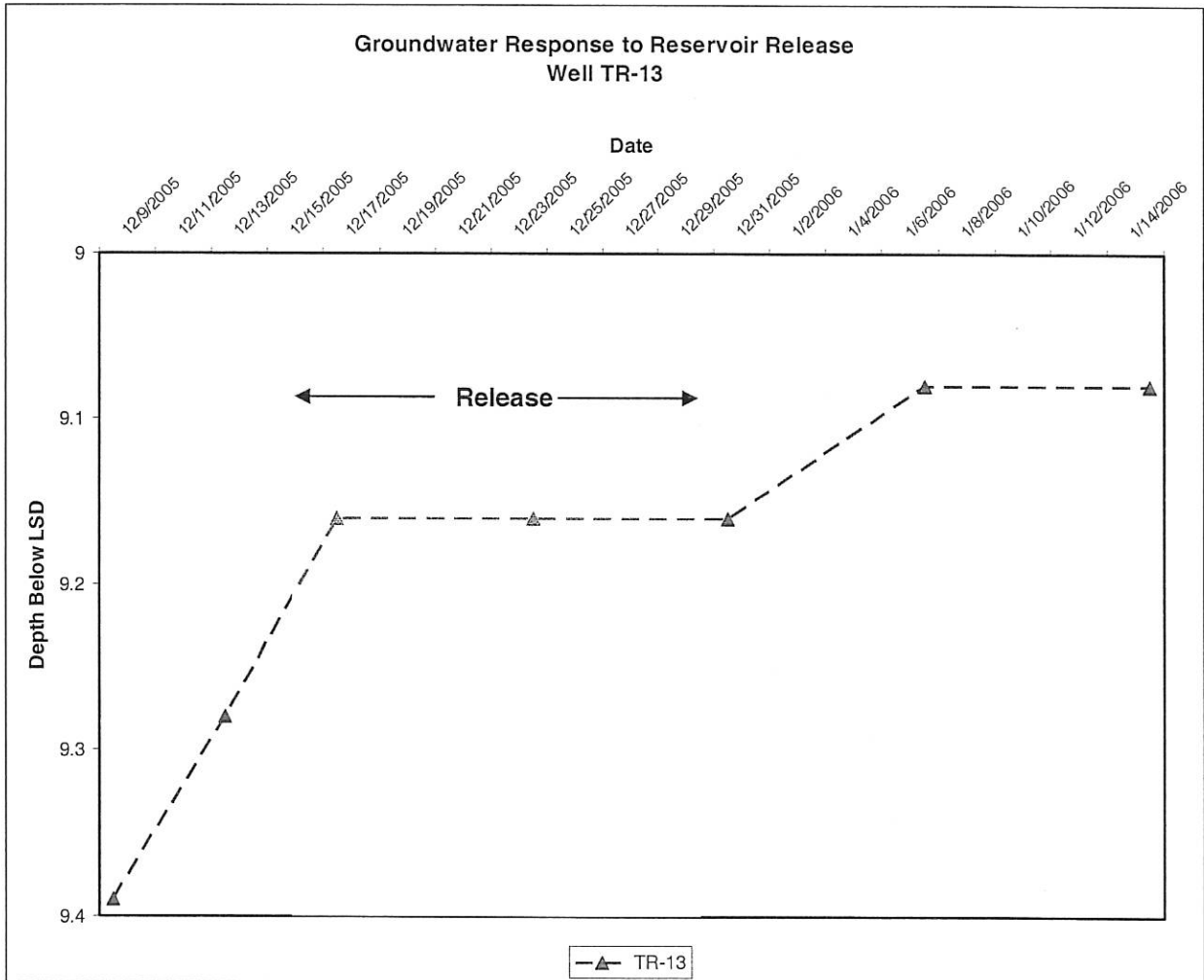


Figure 6. Groundwater response to reservoir release, Well TR-13.

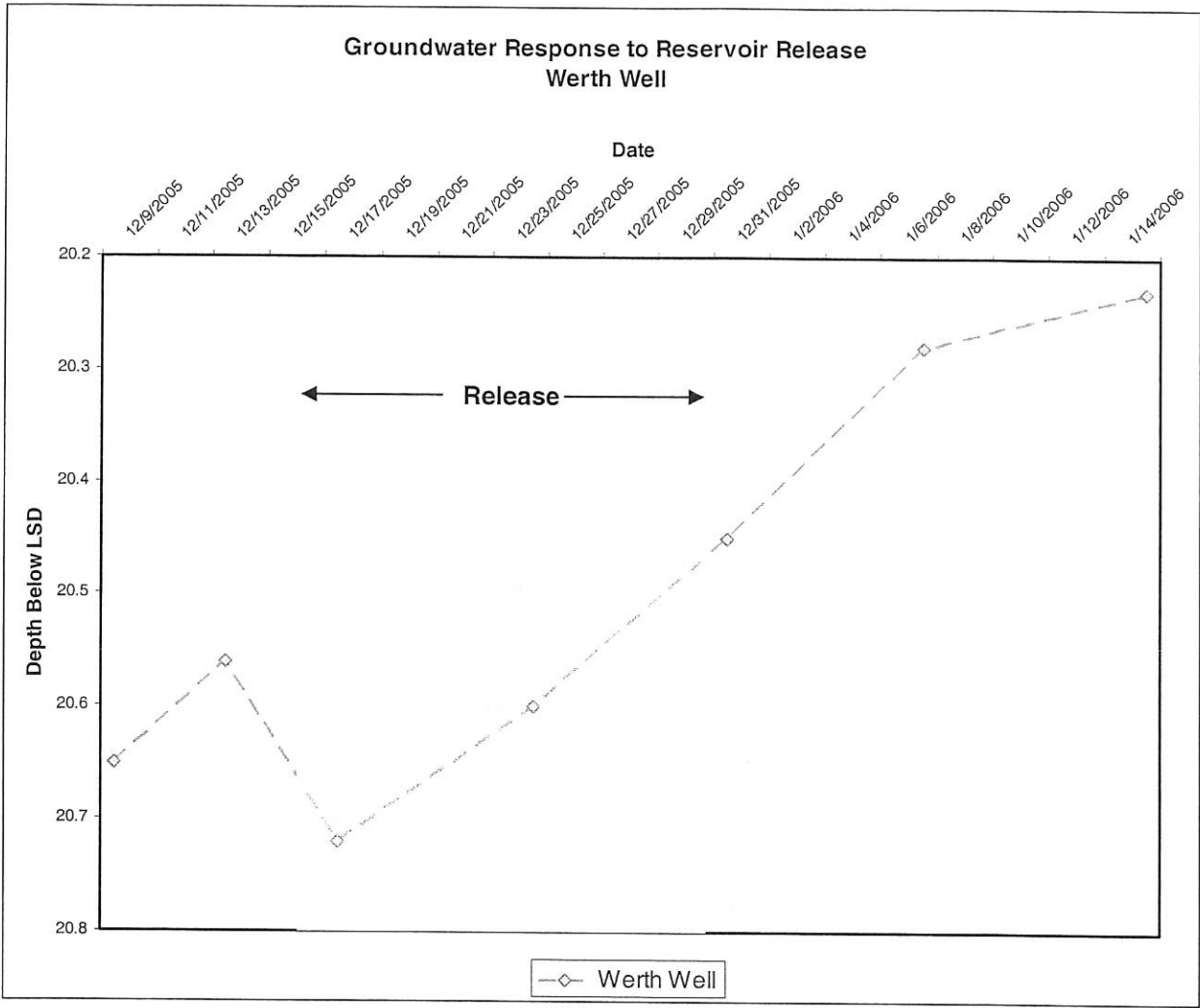


Figure 7. Groundwater response to reservoir release, Werth Well.

### City of Hay's Schoenchen Wellfield

Groundwater levels in the alluvium have risen up to four (4) feet in the Hays wellfield while changes of 0.5 to 1.5 feet are common in the remaining alluvial wells. Subsequent to the release, water levels have come down, but have not yet returned to pre-release levels.

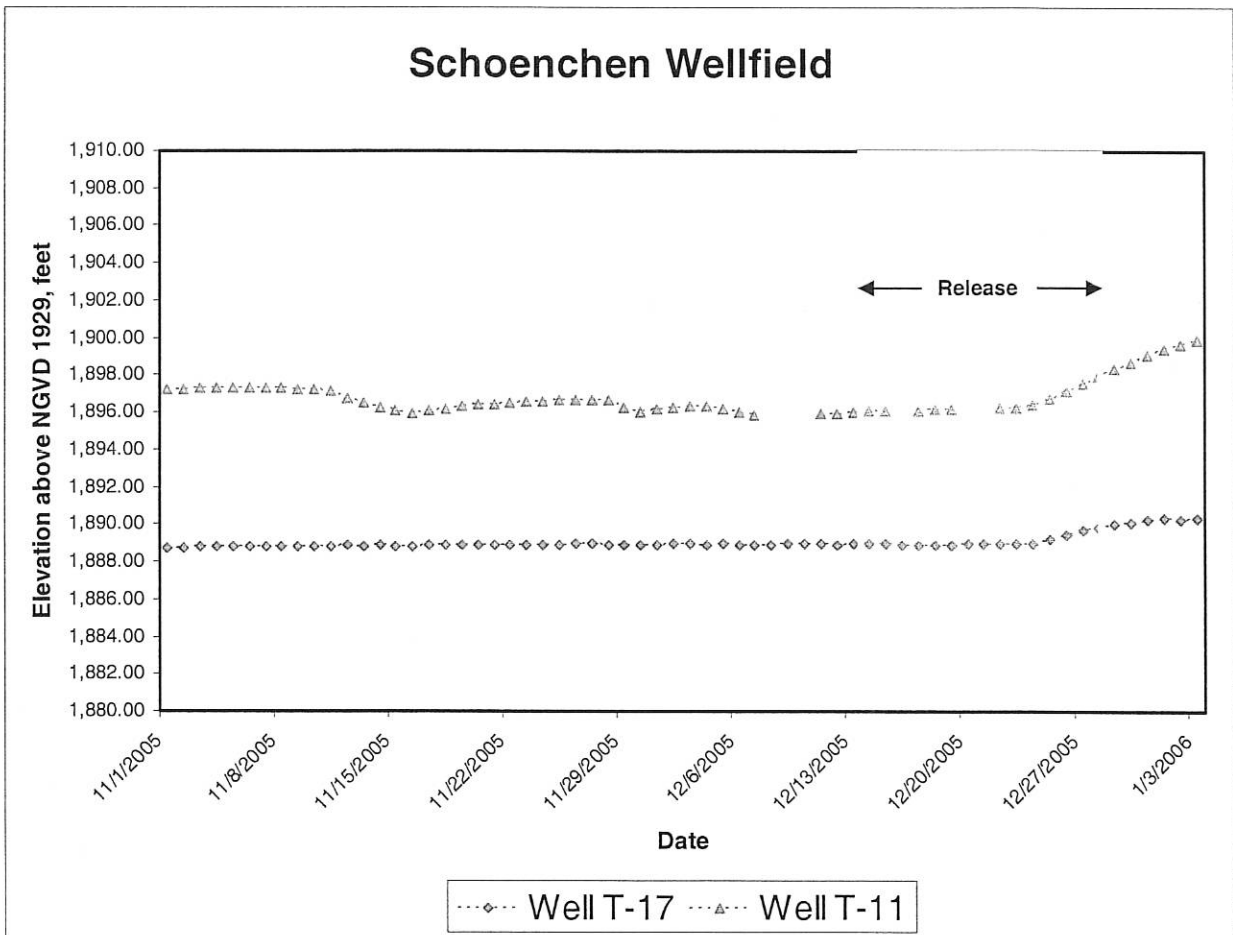


Figure 8. Elevation changes of Schoenchen wellfield, November 1, 2005 to January 3, 2006.

### Russell's Pfeiffer Wellfield

On May 31<sup>st</sup>, 2005 the average depth to water level in the water supply wells for the City of Russell, at Pfeifer was 18 feet. On December 20<sup>th</sup>, 2005, the average depth to water level in the wells was 27 feet. This is a drop in water level average of 9 feet. The average depth of water over the intake screens was 7 feet prior to the December release.

As of January 17, 2006, the release of Russell's water from Cedar Bluff Reservoir has resulted in a cumulative rise in water level in each of nine wells that varied from 0.67 to 9.08 feet depending on proximity to the river, the alluvial deposits and location along the river.

Average of all wells increase was 0.9 feet between December 13 and December 30, 2005, then another 2.03 feet by January 2, 2006. The increase in ground water level has continued as water is held by the Russell structure below the well field.



Figure 9. Smoky Hill River at Russell Well Field, January 3, 2006.

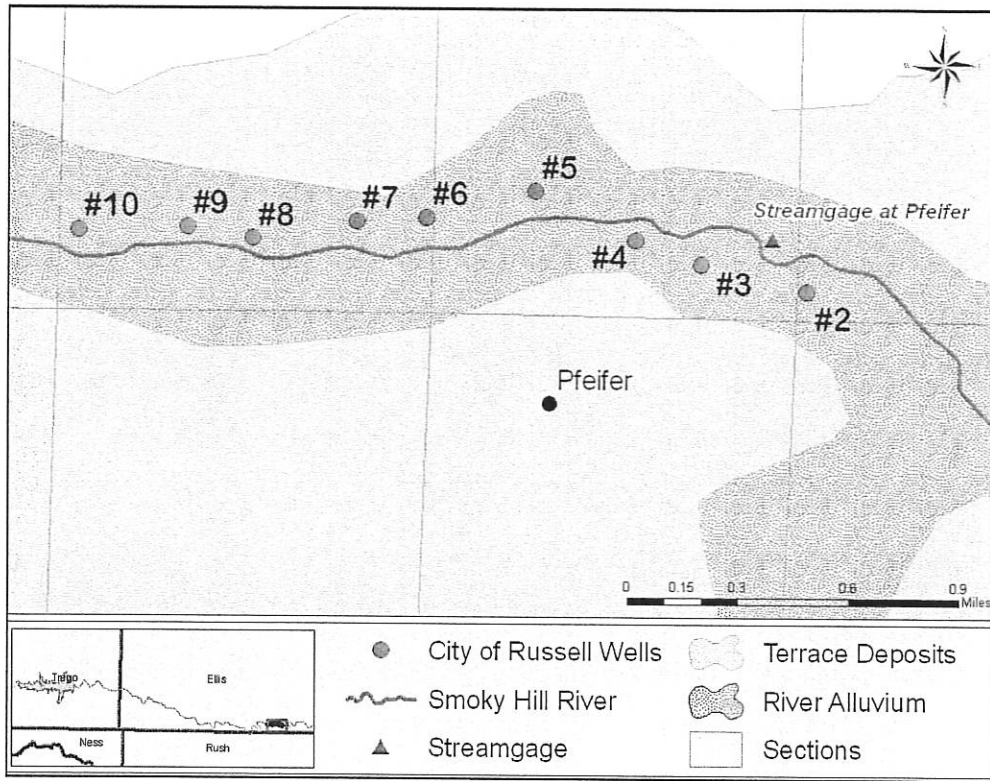


Figure 10. Russell Wells near Pfeifer.

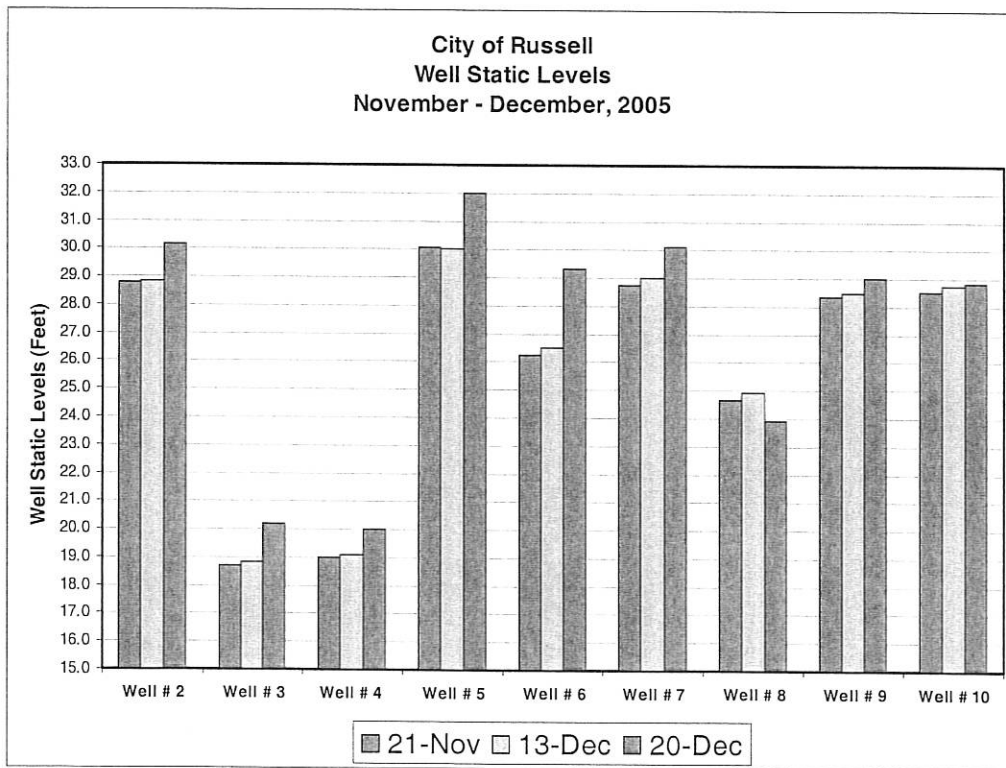


Figure 11. Russell well water level changes.

## SEEPAGE OF WATER THROUGH THE DAM AT CEDAR BLUFF RESERVOIR

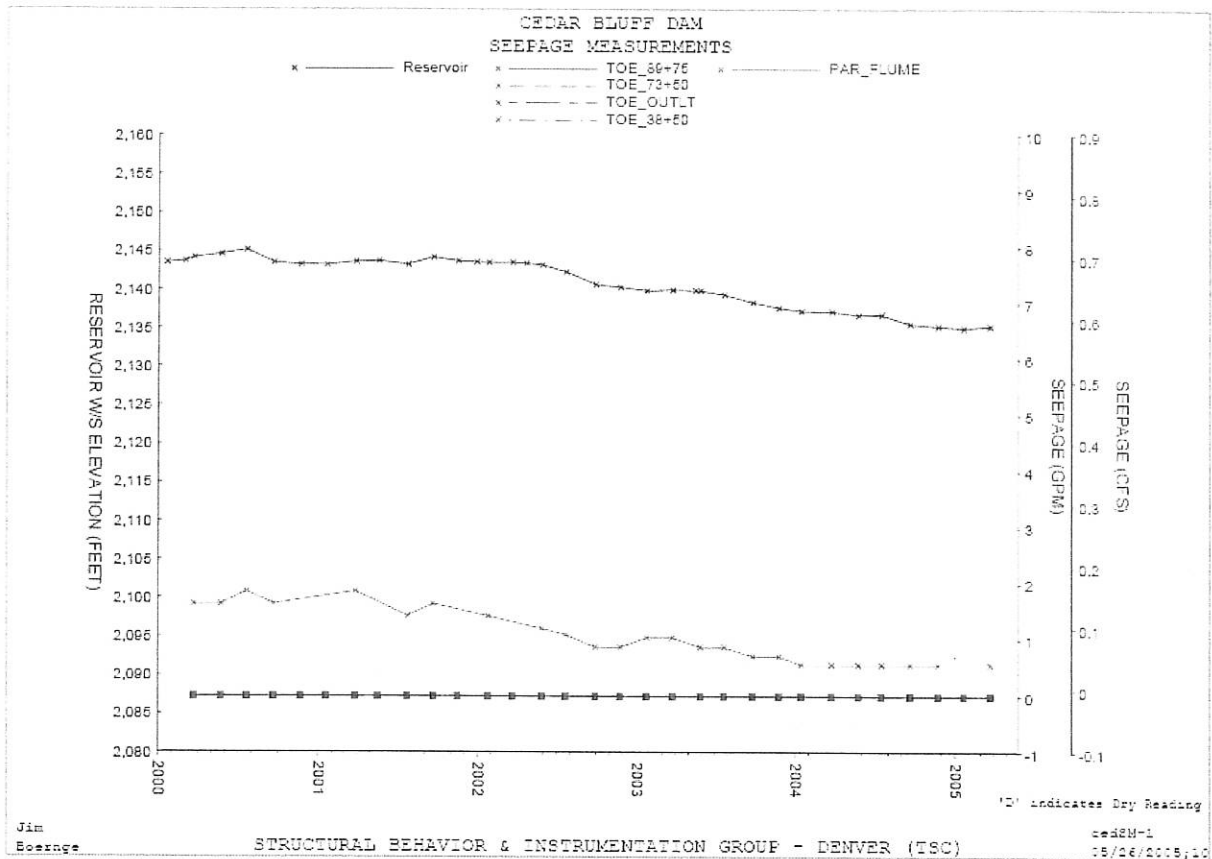
The U.S. Bureau of Reclamation reports that there are four toe drains below Cedar Bluff Dam. These drains do not and have not had any flow for several years, regardless of reservoir elevation and would therefore not contribute to any streamflow. There is a small amount of leakage on the river regulating gate, but this leakage does not reach the stream.

A weir located northeast of the dam operator's house in a natural draw does flow a small amount of water, however, it appears that the flow in this gully is decreasing as the reservoir level drops. There is no "sill" on the north end of the dam which would allow for some seepage resulting in discharge down the gully. The BOR investigation nearly 15 years ago found no other avenues for reservoir seepage.



**Figure 12. DWR photo of outlet from existing deposits.**

The total flow leaving the reservoir is captured by the Parshall flume, those measurements have been maintained by the USBR and will continue to be in the future as a Dam Safety program. A graphic from a Bureau of Reclamation study of the seepage compared to reservoir elevation as measured by the Parshall flume is shown in Figure 13.



**Figure 13. U.S. Bureau of Reclamation Seepage.**

DWR field investigation this past year of seepage at seven sites identified as potentially contributing to river flow below Cedar Bluff Dam. Observations of tributary contributions to flow were observed and measurements taken where possible on the initial survey May 4, 2005 and a walking survey June 23, 2005. Measuring locations are shown in Figure 4. Dry drainages were observed on the June 23, 2005 survey at Map sites 1 and 5. Site 2 had flow that was measured at 0.47 CFS. Minimal flow in vegetation was observed at Site 3 but could not be measured directly. A man-made channel and drop structure enabled measurements at Site 4 that includes any flow from sites 1, 2 and 3. This combined flow was measured in the June survey flow as 1.04 CFS at Site 4. There is a staff gage at Site 6 providing a good measurement. This water is leakage from terrace deposits (KGS Bulletin No. 174) and not seepage from Cedar Bluff Dam.



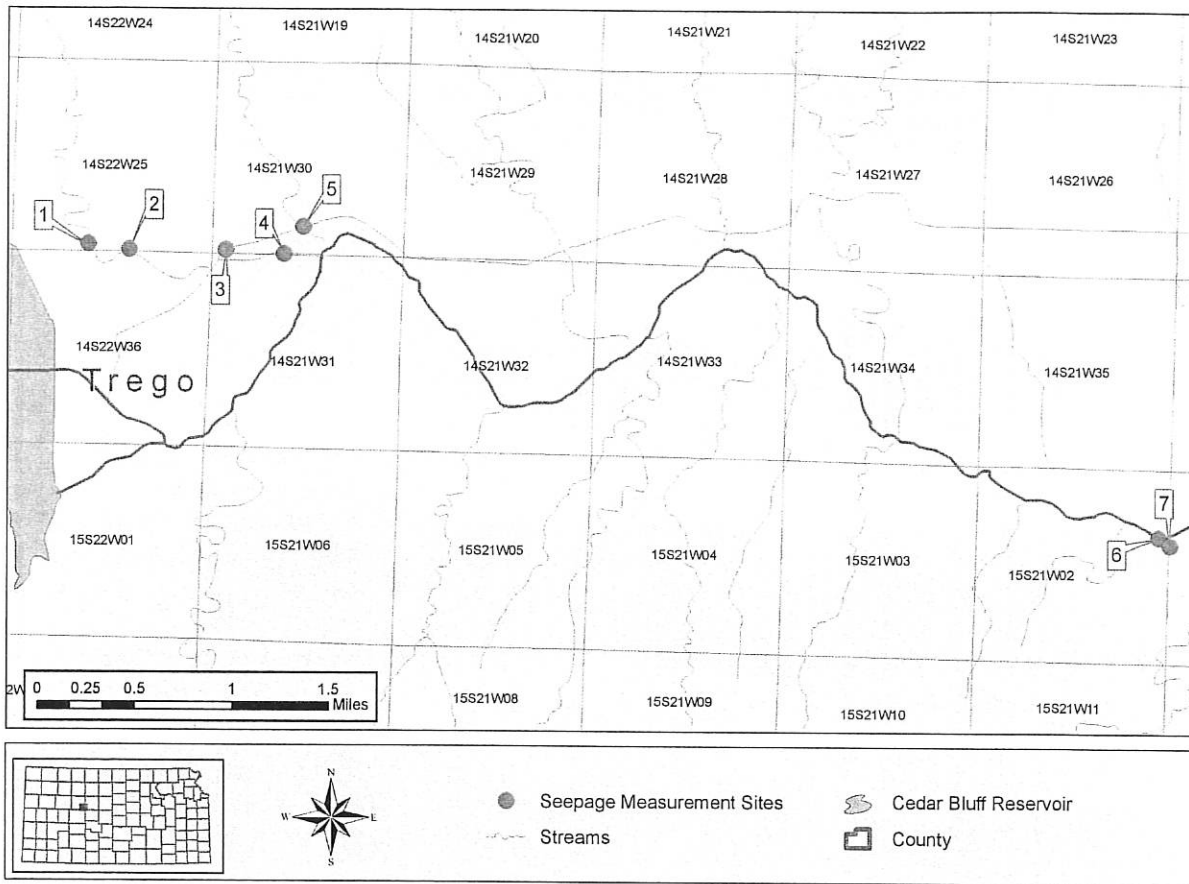


Figure 14. Map of Seepage Measurement Sites.

Date	Site 1	Site 2	Site 3	Site 4	Site 5	Site 6	Site 7
5/4/2005	<.05 cfs	.3 cfs	0.5	0.6	0.05	1.08	1.04 cfs
5/10/2005	dry	.1 cfs	0.5	0.6	0.5	1.9	0.55
5/19/2005	dry	0.43 cfs*	0.5	0.6	0.5	1.05	0.42
5/23/2005	dry	0.4	0.5	0.6	0.5	0.65	0.42
6/8/2005	dry	0.4	0.5	0.6	0.5	0.42	0.31
6/15/2005	dry	0.4	0.5	0.6	0.5	0.72	0.29 cfs *
6/23/2005	dry	0.47 cfs*	0.5	1.04 cfs *	dry	0.31	0.27 cfs *
7/7/05						dry	dry
7/20/2005	dry	0.4	0.5	0.5	dry	dry	dry
7/26/2005	dry	0.3	0.3	0.5	dry	dry	dry
9/7/2005	dry	0.2	0.2	0.3	dry	dry	dry
10/19/2005	dry	0.2	0.2	0.2	dry	dry	dry
11/21/2005	dry	0.2	0.2	0.3	ponded	ponded	ponded
12/12/2005	dry	0.2	0.2	0.3	0.3	ponded	ponded

Table 1. Seepage Measurements below Cedar Bluff Reservoir.

An in-stream measuring device was completed July 20, 2005 to obtain flow data. The first flow through the gage was reported December 5, 2005 at 0.1 foot.



Figure 15. DWR photo of culvert gage constructed summer of 2005.

**ATTACHMENT A**

**JOINT USE POOL**

**MEMORADUM OF UNDERSTANDING**

**JANUARY 2006**

Memorandum of Understanding  
 Between  
 The Kansas Water Office  
 and  
 The Kansas Department of Wildlife and Parks  
 For  
 The Control of Cedar Bluff Reservoir Water Storage

This Memorandum of Understanding is entered into this ninth (9th) day of January, 2006, by and between the following parties, the Kansas Water Office (hereinafter referred to as KWO) located at 901 S. Kansas Avenue, Topeka, Kansas 66612 and the Kansas Department of Wildlife and Parks (hereinafter referred to as KDWP) located at 1020 S. Kansas, Topeka, Kansas 66612.

WHEREAS, the Purpose of this Memorandum of Understanding is to identify the control and management of the stored water owned by the State of Kansas in Cedar Bluff Reservoir;

WHEREAS, this Memorandum of Understanding seeks to replace an existing Operations Agreement for Cedar Bluff Reservoir by and between the Kansas Water Office and the Kansas Department of Wildlife and Parks originally dated February 4, 1994;

WHEREAS, this Memorandum of Understanding is in accordance with Contract Number 9-07-60-W0387 by and between the United States of America and the State of Kansas, initially entered into on February 27, 1989 and last amended October 21, 1993 for the acquisition of an interest in the conservation capacity of Cedar Bluff Reservoir (hereinafter referred to as Contract No. 9-07-60-W0387);

WHEREAS, KWO and KDWP seek to enter into this Memorandum of Understanding for the control of the stored water owned by the State in Cedar Bluff Reservoir to better identify allowed uses of water and historic operations of the Reservoir;

NOW THEREFORE, the rules regarding the portions of the conservation capacity of Cedar Bluff Reservoir between KWO and KDWP are herein established by this Memorandum of Understanding, and are as follows:

1. KWO and KDWP agree that as of the date of this Agreement, storage allocations within the conservation pool are as follows:

Table 1. Storage Space Allocation

Water Right	Pool Owner	Purpose	Pool Size (af)
7627	Kansas Department of Wildlife & Parks	Fish, Wildlife & Recreation	10,900
7628	City of Russell	Municipal Water Supply	2,700
7684	Kansas Water Office	Artificial Recharge	5,110
7684	Kansas Department of Wildlife & Parks	Fish, Wildlife and Recreation	10,161
7684	KWO & KDWP	Joint Use	139,179

operation, maintenance and replacement costs associated with the designated operating pool whichever is greater.

II. For KDWP, the remaining state share of the operation, maintenance and replacement costs.

b) In the event funding designated for payments outlined in section I. is excluded from either KWO or KDWP budget authority, responsibility for payment of KWO or KDWP proportionate share of annual operation, maintenance and replacement costs shall revert to those as detailed in Contract No. 9-07-60-W0387.

8. Any water rights currently held by KWO for storage in Cedar Bluff Reservoir in the "joint use pool" as defined in Contract No. 9-07-60-W0387 shall be transferred to KDWP with the execution of this MOU and with written notice to the Division of Water Resources. This will result in pool ownership in the table 2.

Table 2. Cedar Bluff Storage Allocation after Transfer.

Water Right	Pool Owner	Purpose	Pool Size (af)
7627	Kansas Department of Wildlife & Parks	Fish, Wildlife and Recreation	10,900
7628	City of Russell	Municipal Water Supply	2,700
7684	Kansas Water Office	Artificial Recharge	5,110
7684	Kansas Department of Wildlife & Parks	Fish, Wildlife & Recreation	10,161
7684	Kansas Department of Wildlife & Parks	Joint Use	139,179

9. KWO and KDWP shall consult and agree on administration of water rights or changes of the use of any pool before application to Kansas Department of Agriculture, Division of Water Resources is made.

10. KWO shall maintain the accounts of the suballocation pools on a monthly basis and report the account to KDWP. Procedures used to account for inflows, releases, losses and water in storage in each pool within Cedar Bluff Reservoir multipurpose pool will follow all provisions of the "Contract Administration Memorandum (Memo) between the United States represented by the Department of Interior Bureau of Reclamation and the City of Russell, Kansas, and the State of Kansas regarding Reservoir Accounting Procedures for Cedar Bluff Reservoir, Trego County, Kansas" dated November 2003.

TERMS AND CONDITIONS

1. This Memorandum of Understanding shall be subject to the laws of the State of Kansas.
2. The parties agree not to assign this Memorandum of Understanding to any other entity, nor the respective rights or duties thereof.

## **ATTACHMENT B**

### **CEDAR BLUFF STORAGE ACCOUNTS**

## CEDAR BLUFF RESERVOIR ACCOUNTING

Calendar Year 2005

Date	CEDAR BLUFF RESERVOIR		Dead Pool Storage (AF)	INFLOW Monthly Inflow (AF)	EVAP Reservoir Evap. (AF)												
	EOM Elevation	EOM Storage (AF)				Fish Hatchery (Water Right No. 7,627)				City of Russell (Water Right No. 7,628)				State of Kansas (Water Right No. 7,687)			
						Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)	Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)	Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)
									10804				2676				99329
Jan-05	2134.93	117211	4402	415	415	136	0	40	10900	34	0	10	2700	245	0	365	99209
Feb-05	2135.04	117789	4402	1083	505	49	0	49	10900	12	0	12	2700	1022	0	444	99787
Mar-05	2134.95	117316	4402	360	833	80	0	80	10900	20	0	20	2700	260	0	733	99314
Apr-05	2134.72	116116	4402	668	1868	180	0	180	10900	45	0	45	2700	443	0	1643	98114
May-05	2134.39	114413	4402	926	2629	257	0	257	10900	64	0	64	2700	605	0	2308	96411
Jun-05	2134.06	112731	4402	1678	3357	336	3	333	10900	82	0	82	2700	1260	0	2942	94729
Jul-05	2133.46	109726	4402	1152	4156	419	1	418	10900	104	0	104	2700	629	0	3634	91724
Aug-05	2133.19	108397	4402	1456	2785	288	0	288	10900	71	0	71	2700	1097	0	2426	90395
Sep-05	2132.58	105447	4402	0	2950	0	0	309	10591	0	0	77	2623	0	0	2564	87831
Oct-05	2132.35	104354	4402	396	1489	396	0	156	10831	0	0	39	2584	0	0	1294	86537
Nov-05	2132.09	103130	4402	0	1224	0	0	133	10698	0	0	32	2552	0	0	1059	85478
Dec-05	2131.67	101181	4402	0	544	0	0	59	10639	0	1405	14	1133	0	0	471	85007
<b>TOTAL</b>				8134	22755	2141	4	2302		432	1405	570		5561	0	19883	

CEDAR BLUFF RESERVOIR ACCOUNTING

CALENDAR YEAR 2005

1-36

Date	EOM Elevation	EOM Storage (AF)	INFLOW EVAP		Dead Pool Storage (AF)	City of Russell				KDWP				KWO				Joint Use			
			Monthly Inflow (AF)	Reservoir Evap. (AF)		Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)	Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)	Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)	Inflow Share (AF)	Use (AF)	Evap. Share (AF)	EOM Storage (AF)
Jan-05	2134.93	117211	415	415	4402	34	0	10	2700	152	0	64	17428	8	0	12	3284	221	0	329	89397
Feb-05	2135.04	117789	1083	505	4402	12	0	12	2700	116	0	78	17466	34	0	15	3303	921	0	400	89918
Mar-05	2134.95	117316	360	833	4402	20	0	20	2700	97	0	128	17435	9	0	24	3287	234	0	661	89492
Apr-05	2134.72	116116	668	1868	4402	45	0	45	2700	209	0	288	17356	15	0	54	3248	399	0	1481	88411
May-05	2134.39	114413	926	2629	4402	64	0	64	2700	297	0	409	17244	20	0	76	3191	545	0	2080	86876
Jun-05	2134.06	112731	1678	3357	4402	82	0	82	2700	419	3	527	17133	42	0	97	3136	1135	0	2651	85360
Jul-05	2133.46	109726	1152	4156	4402	104	0	104	2700	460	1	657	16935	21	0	120	3036	567	0	3275	82652
Aug-05	2133.19	108397	1456	2785	4402	71	0	71	2700	360	0	448	16848	36	0	80	2992	989	0	2186	81455
Sep-05	2132.58	105447	0	2950	4402	0	0	77	2623	0	0	478	16370	0	0	85	2907	0	0	2310	79145
Oct-05	2132.35	104354	396	1489	4402	0	0	39	2584	396	0	241	16525	0	0	43	2864	0	0	1166	77978
Nov-05	2132.09	103130	0	1224	4402	0	0	32	2552	0	0	203	16322	0	0	35	2829	0	0	954	77024
Dec-05	2131.67	101181	0	544	4402	0	1405	14	1133	0	0	90	16232	0	0	16	2814	0	0	424	76600
TOTAL	0.00	0	8134	22755		432	1405	570	0	2507	4	3610		184	0	658		5011	0	17917	



**ATTACHMENT C**

**DIVISION OF WATER RESOURCES MEMO**



## KANSAS DEPARTMENT OF AGRICULTURE

MEMORANDUM

TO: File

FROM: Mark Billinger

DATE: January, 18 2006

SUBJECT: Streamflow measurement below Cedar Bluff Dam

On this day upon request from Scott Ross, I met Bill Scott below Cedar Bluff dam to measure streamflow at a site he has selected. He met me there and was accompanied by the owner of the Sport Haven bait and tackle store, also present was Pete Weber, owner of property where Mr. Scott wanted the measurement done. The site was the drainage canal below the concrete drop structure located next to the north entrance road to the feedlot (see attached map).

Mr. Weber asked Mr. Scott what his intentions were and what the Western Water Watcher's organization was trying to accomplish. Mr. Scott said he was doubtful of the accuracy of the USBR measurement of the recent release made of the reservoir and that he wanted a USGS gaging station installed to more accurately account for seepage from the reservoir. Mr. Scott said that they feel this seepage should count against water rights associated with Hays and Russell's well fields and should be recognized as fulfilling requirements to recharge well fields downstream. Mr. Weber replied that he was opposed to a gaging station being installed on his property because it will create more government involvement on his property. He said he didn't mind wells being measured or a streamflow measurement done from time to time but if he can help it he wants to minimize the government presence on his land. Mr. Scott also expressed negativity towards the recent release made by Russell stating that it did not benefit Russell's well field that much, only Hays' well field. After much discussion between Mr. Weber and Mr. Scott, Mr. Weber granted us permission to conduct the measurement and also requested that DWR notify him when doing well or stream measurements on his property in the future. Mr. Weber told Mr. Scott that he has a surface water right to divert water out of this canal (WR file # 1706B) and when he uses it will divert all flowing surface water out of this canal. Mr. Weber also stated that back in 1980's when Cedar Bluff was nearly dry that the flow in this canal remained constant and thought it was likely that the water was coming from the north from the "sand pit area" and not exclusively from the reservoir.

I measured the open channel flow approximately 300 ft downstream of the concrete drop structure (see attached map). The measured flow was 0.84 cfs. Mr. Scott seemed displeased with the results (thought there was more than 2 cfs flowing through the concrete drop structure) and requested if I could measure farther upstream. I made a second measurement approximately 20 feet upstream of the concrete drop structure and the measured flow was 0.82 cfs.

Attached is a map of the general area, stream discharge notes and computed discharge. Mr. Scott requested a copy of the discharge calculation to be mailed to him.

## ATTACHMENT D

### DOCUMENTS OF PROBABLE CLAIMS OF IMPAIRMENT

City of Hays letter to Governor Sebelius  
State Response letter  
City of Russell emails

April 28, 2003

RECEIVED

MAY 01 2003

KS WATER OFFICE

GOV. KATHLEEN SEBELIUS  
212-S State Capitol  
300 S.W. 10<sup>th</sup> Ave.  
Topeka, Kansas 66612-1590

Dear Governor Sebelius:

I represent the City of Hays, Kansas.

As I am sure you know, scarcity of water has been an albatross around the neck of the City of Hays for many years. The problem has been compounded by unreasonable administrative roadblocks we have faced in our dealings with Kansas water agencies. This letter describes the specific problems we face in this regard. I am asking for your direct intervention in the situation before we are forced to turn to the courts for a solution.

*Kansas Water Law*

Please forgive me if what follows is perceived as elementary, but one of the things I have discovered in attempting to deal with these problems over the last two decades is that water law is so arcane that few people know the jargon or the rules that have been laminated onto the hydrological facts.

Kansas law provides that all water within the State is dedicated to the use of the State and subject to its control and regulation. K.S.A. 82a-702. The Division of Water Resources ("DWR"), under the Department of Agriculture, which is ultimately subject to your direction and control, administers the system of water appropriation rights. K.S.A. 82a-706. One of the most important principles of Kansas water law is "first in time is first in right." K.S.A. 82a-706, 82a-707(c), 82a-711(b)(3), and 82a-716. The date of priority of a water appropriation right, and not its purpose of use, determines the right to divert and use water when the supply is not sufficient to satisfy all water rights that draw from the same source of supply. *Id.* When uses of water for different purposes conflict, *and* the priority in time is equal, the order of preference is: 1. domestic; 2. municipal; 3. irrigation; 4. industrial; 5. recreational; and 6. water power. K.S.A. 82a-707(b).

GOV. KATHLEEN SEBELIUS

April 28, 2003

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Owner:	Priority Date:	DWR File No.:	Authorized Use:
Hays	March 4, 1953	1248	Municipal RIVER
Hays	July 3, 1956	5757	Municipal RIVER
Russell	October 18, 1956	7628	Municipal 2,000 AF
<del>KWO WTP</del>	October 18, 1956	7627	Recreation 21,639 AF HATCHER
KWP/KWO	January 3, 1958	7684	Recreation, Artificial RWO 5,400 RECHG Recharge, Municipal. JR. USE 176,040

#### *The Intensive Groundwater Use Control Area*

In 1978, the State of Kansas enacted legislation providing that the Division of Water Resources could initiate proceedings, under certain conditions, to designate Intensive Groundwater Use Control Areas (IGUCAs). DWR could implement various remedies, such as closing an area to new appropriations, apportioning permissible total withdrawal among right holders, (subject however to the provision that it had to be done "in accordance with dates of priority"), and others not relevant to this dispute.

In 1984, the Division of Water Resources, acting through David Pope, Chief Engineer, implemented an IGUCA along the Smoky Hill River, purporting to reduce the City of Hays water rights by 10%. Thus began a period of steady decline in Hays' ability to take water from its primary well field at Schoenchen.

#### *The Hays Water Problem*

In 1992, the City of Hays reached a low point in its ability to extract water from the Schoenchen well field. Because of the administrative restrictions that had been placed on the well field by the Division of Water Resources and a shortage of water in the river and its associated aquifer, the City was unable to produce more than about 700-800 acre feet annually from its Schoenchen well field.

To say that this has been a learning experience for the residents and representatives of the City of Hays would be the understatement of the century. We have attempted to deal with the situation in as responsible a manner, both socially and hydrologically, as possible. We have met with less than full and complete cooperation and assistance from the various State agencies which have involved themselves in the situation. In some instances we have been the victim of active and hostile opposition by State agencies and employees.

GOV. KATHLEEN SEBELIUS

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*DWR Roadblocks*

DWR has been actively, albeit slowly and steadily, throttling back Hays' ability to exercise its rights, knowing that the real problem was that water rights granted to junior holders (in this case, the Department of Wildlife and Parks and the Kansas Water Office) were preventing the City from obtaining the water to which it had an absolute right. While there has been the facial appearance of cooperation in our dealings with DWR, it has now become apparent that the Division was never dealing in complete good faith with Hays. We recently unearthed an internal memorandum, dated April 4, 1984, from a DWR employee to David L. Pope, Chief Engineer, Division of Water Resources, which states,

"After observing the situation around Norton, Webster, Kirwin, and Cedar Bluff reservoirs, I have come to the conclusion that these dams are impairing senior downstream domestic, municipal, irrigation and other rights. In the past few years below each of these reservoirs a "dead zone" has developed where there is no base flow for several miles downstream from the dam, probably due to the effectiveness of the dam construction. At the same time inflow above the dam is stopped and stored. No natural flows are released downstream, thus depriving stream flow and groundwater recharge in the valley.

If upstream junior rights are regulated, as per Bureau of Reclamation demand, then downstream senior rights to storage should be entitled to streamflow and recharge because any additional flows would come downstream, if the dam were not present. At the present time senior domestic rights have not been taken into account. There is no doubt in my mind if these people understood the law, banded together, and demanded their share of the inflow, all of the above reservoirs would be bypassing all but extreme flood flows.

I listened to numerous comments in 1983 below Cedar Bluff Dam concerning its operation. The most frequent comment was: Why waste all the inflows since 1978 (last year of district) for evaporation? Why not release these flows downstream? We (mostly domestic rights) were here before the dam.

After watching the severe decline in summer-fall of 1983, I believe the downstream rights have a valid point. You may wish to point this out to the Bureau of Reclamation."

This memorandum and its message were never revealed during the IGUCA process or at any time after that. The Division of Water Resources, acting by and through its Chief Engineer, imposed the IGUCA, purporting to reduce the City's water rights in violation of the language of the statute which makes it clear that it can only reduce the water rights in accordance with dates of priority.

GOV. KATHLEEN SEBELIUS

April 28, 2003

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The cities spent significant amounts of money on the Ranch and preparing to acquire new water rights along the Smoky Hill River. DWR and KWO began chipping away at the potential water rights, imposing stricter and stricter requirements, making the options less and less attractive to the cities and the water district.

The City of Hays and the City of Russell, because of disparities in short-term need for water because of potential industrial prospects, began looking at the possibility of constructing a relatively short pipeline to Cedar Bluff Reservoir for the purpose of transferring Russell's 2,000 acre feet of water in a non-evaporative method and allocating the water between the two cities according to contractual principles that were being negotiated.

The KWO, knowing of existing contracts between and among Hays, Russell and PWWSD #15, acting through Mr. Clark Duffy, and, we believe, in concert with the Economic Development Director of Trego County, Kansas, began manipulating the situation in an attempt to separate Hays and Russell from each other and to create a situation where the only alternative was to construct a pipeline to Kanopolis Reservoir, at a cost of as much as 80 million dollars. Mr. Duffy told Russell representatives that unless it ceased cooperating with Hays, its water rights in Cedar Bluff would be administratively and politically reduced to the point of elimination. Hays has been given the message that Kanopolis is the only solution palatable to the State.

We believe that the actions of the Director of the Kansas Water Office went far beyond his statutory powers, and constitute a tortuous interference with contractual rights and business relationships.

#### *Wildlife and Parks Roadblocks*

The Department of Wildlife and Parks acquired water rights in Cedar Bluff Reservoir and other reservoirs, and is involved in other projects involving impoundment of water in Kansas for purposes related to its legislative charge. It evinced an interest in acquiring the Edwards County ranch in return for water rights in Cedar Bluff, but when recent events resulted in some opposition to Hays and Russell accessing water from Cedar Bluff, that interest waned.

#### *Legal Issues and Remedies*

The Fifth Amendment to the Constitution of the United States, applicable to states by way of the Fourteenth Amendment, prohibits government from taking property for public use without compensation. As you know, normally, when the State decides to take someone else's property, it exercises that power through the use of eminent domain. When it fails to use formal condemnation proceedings and there is no intention or willingness on the part of the State to bring an action to acquire the property, Kansas courts have recognized the principle of inverse condemnation, which is what the situation is here. Where there has been inverse condemnation, the condemnee (City of Hays) is required to file suit to force payment.

GOV. KATHLEEN SEBELIUS

April 28, 2003

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once and for all. If we proceed along the path towards litigation, the cost to the State will be far greater than many of the potential solutions. In addition, this situation may afford you with a unique opportunity to break a long standing deadlock in this state regarding water policy. We propose to meet with you and the appropriate staff to further inform you of the situation and to begin the process of resolution. We are sensitive to the nuances of the situation and can assure you that our sole goal is to secure a long-term resolution to the water problem in Hays, Kansas, and we will conduct ourselves accordingly.

Thank you for your consideration of this request.

Very truly yours,

GLASSMAN, BIRD & BRAUN, L.L.P.

By

JOHN T. BIRD

City Attorney

City of Hays, Kansas

JTB/elk

c: Randy Gustafson

C:\City (Active)\Water Issues\03-04-28\_Sebelius, Gov. Kathleen.wpd





K A N S A S

KANSAS WATER OFFICE

KATHLEEN SEBELIUS, GOVERNOR

May 23, 2003

John T. Bird, Attorney  
City of Hays  
113 W. 13<sup>th</sup> St.  
Hays, Kansas 67601-6313

RE: Water supply for the City of Hays, Kansas

Dear Mr. Bird:

I am writing in response to your letter of April 28, 2003, which discusses the City of Hays' need to expeditiously obtain an adequate water supply, not only for its current uses, but also for future growth in the City of Hays. Governor Sebelius fully supports the City of Hays' goal.

To begin that process of cooperation between the City of Hays and the State, I met with you and Randy Gustafson on Friday, May 16, 2003. The state of Kansas will do everything that it can to assist the City of Hays in obtaining an adequate water supply insofar as it is able to do so within the powers and jurisdiction of the State.

All this having been said, I would like to respond to some of the points that you have raised in your letter in an attempt to clear up some apparent misunderstandings.

*Kansas Water Law*

Kansas has one of the most comprehensive and efficient water administration systems in the 17 western states, and one of the most important principles of the Kansas water appropriation act is the principle of "first in time is first in right." K.S.A. 82a-707(b) provides in part, "...the date of priority of an appropriation right, and not the purpose of use, determines the right to divert and use water at any time when the supply is not sufficient to satisfy all water rights that attach to it."

901 S. KANSAS AVENUE, TOPEKA, KS 66612-1249

Voice 785-296-3185 Fax 785-296-0878 www.kwo.org

John T. Bird, Attorney  
 RE: City of Hays water supply  
 May 23, 2003  
 Page 2

As you pointed out, it also provides, "Where uses of water for different purposes conflict, such uses shall conform to the following order of preference: domestic, municipal, irrigation, industrial, recreational, and water power uses." However, in Kansas once an application for a water right is received and given a file number, each application has a separate priority, even if it is received on the same day. In times of shortage, water rights do not conflict and are administered based solely on priority, unless an order has been issued pursuant to the intensive groundwater use control area proceeding, which I will discuss more later. For example, the water right held by the Department of Wildlife and Parks, File No. 7,627 and the water right held by the City of Russell, File No. 7,628 are not of equal priority. The water right held by the Department of Wildlife and Parks is senior to the water right held by the City of Russell. When water rights are being administered according to the priority system, the water right held by the Kansas Department of Wildlife and Parks would be senior and therefore entitled to water before the water right held by the City of Russell.

On page three of your letter, you set forth a table summarizing certain aspects of various water rights held by the City of Hays, the City of Russell, Kansas Water Office, and the Kansas Department of Wildlife and Parks. While that table is generally correct, set forth below is a corrected summary of that information as shown in the records of the chief engineer.

Owner:	Priority Date:	File No.	Type of Use:	Annual Quantity
Hays	March 4, 1953	1,248	Municipal	Limited to a total combined quantity of 2,286 acre-feet
Hays	July 3, 1956	5,757	Municipal	
Hays	July 19, 1979	33,296	Municipal	
KDWP	October 18, 1957	7,627	Recreation	Limited to 375 a.f.
Russell	October 18, 1957	7,628	Municipal	Limited to 1,436 a.f at Pfeifer
KDWP/KWO	January 3, 1958	7,684	Recreation, Artificial Recharge, Municipal	19,035 a.f.

*Intensive groundwater use control area*

In 1978 the legislature passed laws providing that the Chief engineer could initiate proceedings under certain circumstances to designate an intensive groundwater control area.

John T. Bird, Attorney  
RE: City of Hays water supply  
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K.S.A. 82a-1038(b) provides the chief engineer with the authority to enact any one of the five following corrective control provisions, "(1) A provision closing the intensive groundwater use control area to any further appropriation of groundwater in which event the chief engineer shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such area; (2) a provision determining the permissible total withdrawal of groundwater in the intensive groundwater use control area each day, month or year, and, insofar as may be reasonably done, the chief engineer shall apportion such permissible total withdrawal among the valid groundwater right holders in such area in accordance with the relative dates of priority of such rights; (3) a provision reducing the permissible withdrawal of groundwater by any one or more appropriators thereof, or by wells in the intensive groundwater use control area; (4) a provision requiring and specifying a system of rotation of groundwater use in the intensive groundwater use control area; (5) any one or more other provisions making such additional requirements as are necessary to protect the public interest."

In accordance with this statutory authority, the chief engineer initiated proceedings to designate an intensive groundwater control area, gave notice of hearings, held hearings, and on May 31, 1984 issued an order declaring an Intensive Groundwater Use Control Area (IGUCA) in the Smoky Hill River Basin below Cedar Bluff Reservoir to its confluence with Big Creek subject to certain corrective control provisions.

As part of those corrective control provisions, all non-irrigation "usage" was limited by the IGUCA order to "90 percent of the maximum usage for any one of the calendar years 1981, 1982 and 1983..." or the maximum annual quantity of water authorized, whichever was less. In the early 1980's, the City of Hays still had fairly high per capita usage of water because that was before its conservation efforts had taken place. Because its per capita usage is now lower, the 10 percent reduction of water use from the Smoky Hill basin has had a relatively minor impact on Hays' water supply. Irrigation uses were also restricted pursuant to the IGUCA order to a similar degree. It should be noted that the City of Hays participated in the IGUCA hearings and the following persons testified on behalf of the city: Laren Dinkel, water and sewage plant superintendent; Leo Wellbrock, public works director; and Ken Carter, city manager. At the hearings, the city generally documented its water usage and its efforts to conserve water. There is no indication in the record that the City of Hays opposed the creation of the IGUCA or its control provisions.

The IGUCA order also created a task force to study the water supply and demand situation in the Smoky Hill Valley and make further recommendations to the chief engineer. Ken Carter, city manager of Hays, was Hays' representative on the task force. The task force filed its unanimous report and recommendations in November, 1985.

John T. Bird, Attorney  
RE: City of Hays water supply  
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In a letter dated June 18, 1986, the City of Hays filed a written request with the chief engineer requesting that he "develop a plan to protect" the City of Hays water rights from impairment. Following discussions on July 1, 1986, the chief engineer responded to Hays' request on October 21, 1986 reviewing Hays' various alternatives and concluding that the "IGUCA and the task force appointed in connection with it is such a plan." Recommendation number 11 of the task force was that the chief engineer "extend the boundaries of the control area above Cedar Bluff Dam...." On July 20, 1988, the chief engineer extended the boundary of the IGUCA above Cedar Bluff Dam and closed the Smoky Hill and Hackberry Creek basins above the dam to new appropriations with certain minor exceptions. This was done primarily to protect the inflows to Cedar Bluff from further degradation.

*Hays' water problem*

The City of Hays has reported the following water usage from its Schoenchen well field.

YEAR	AF PUMPED	YEAR	AF PUMPED
1981	2300.37	1992	765.64
1982	662.79	1993	846.72
1983	2540.06	1994	826.16
1984	1998.35	1995	790.24
1985	1906.79	1996	868.65
1986	1788.09	1997	1055.78
1987	1590.48	1998	1181.76
1988	1972.15	1999	1173.47
1989	1704.69	2000	956.07
1990	1871.42	2001	759.90
1991	1745.14	2002	876.12

Since 1984, the quantity of water diverted from the Schoenchen well field has never reached the annual quantity of water of 2,286 acre-feet currently authorized from the well field. Failure to divert 2,286 acre-feet from the well field in any one year appears to be due entirely to lack of water supply, operational decisions by the City of Hays, use of other water supplies, or reduced

John T. Bird, Attorney  
RE: City of Hays water supply  
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demand, not to any administrative restrictions imposed on the Hays well field by the chief engineer. For example, the reduction of use of the Schoenchen well field may have occurred because of reduced demand due to Hays' excellent water conservation plan, its use of new water from the Dakota aquifer, and maximization of water use from the Big Creek Alluvium.

On page 4 of your letter, you indicate that there was "stiff but sometimes subtle opposition to the use of the Edwards County Ranch from DWR and KWO." Without more information it is not possible to comment on this statement. I have no knowledge of any position being taken by any of the agency heads involved regarding the Edwards County Ranch and certainly no formal proceedings. It is my understanding that DWR staff member responded to inquiries regarding the transfer of water use by citing the requirements of K.S.A 82a-708b and also K.S.A. 82a-1501 *et. seq.*, which are the applicable provisions to any water user under similar circumstances. Application of the relevant law should not be construed as opposition to the City's proposed change of use.

The State agrees that there is a need for more water for economic development and growth in Hays, Kansas. It also agrees that the city has in place an excellent water conservation plan, which is one of the best in the state of Kansas.

*Kansas Department of Commerce & Housing*

The Department of Commerce and Housing has had, and continues to have, an excellent working relationship with the Ellis County Coalition for Economic Development. The Department is very aware of the positive steps that have been taken over the last several years to improve the long-term water availability in Hays. The Department has recommended Ellis County and Hays to many prospects in the last ten years. When water availability is an important requirement in a project, the Ellis County Coalition has had the opportunity to address the issue, just like every other community that is being considered for the project. Simply stated, the Department of Commerce and Housing has not diverted prospects from the Hays area.

*DWR roadblocks*

The chief engineer does not understand the statement that DWR has "been actively, albeit slowly and steadily, throttling back Hays' ability to exercise its rights..." In fact, under the provisions of the Kansas Water Appropriation Act the City of Hays has every right to ask to have its water rights administered in priority with other water rights from the same source of supply. As stated above the chief engineer has not further restricted the quantity of water Hays could use from its Smoky Hill well fields since 1984. In fact, the Division has also worked with Hays to utilize water from the Dakota and enhance its water use from Big Creek alluvium. At Hays' request the chief engineer also declared an IGUCA in Hays in 1985 to support the city's conservation of water used for lawn watering.

John T. Bird, Attorney  
RE: City of Hays water supply  
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Since 1978, the chief engineer has had a regulation, K.A.R. 5-4-1, setting forth the procedures for a water right owner to file a complaint that its water right is being impaired. To our knowledge, the City of Hays has never filed a formal request to have its water right administered in priority on the Smoky Hill River. If such a request were filed, the chief engineer would act on that request and determine whether the City of Hays' water rights were being impaired. If they were, he would determine whether administration of junior water rights would provide any significant benefit to the City of Hays at the time that the City of Hays needed the water. It should be noted at this point that determination of whether water rights above a reservoir could be administered to provide benefits to a well field below the reservoir is not a simple matter, and considerable time and expense would be necessary to make such a determination. At this time that the City of Hays has no water right of any kind in Cedar Bluff Reservoir, nor does it have any contract with the Bureau of Reclamation for storage of water in Cedar Bluff. At this time the City of Hays has no legal right to call for releases of stored water. The city's only apparent option is to call for water entering Cedar Bluff Reservoir to be by-passed through the reservoir. This assumes water is flowing into the reservoir at a time when the City of Hays' use of water is being impaired by junior water right holders, and administration of those water rights will actually provide the City of Hays with a significant increase of water.

#### *KWO roadblocks*

Neither the chief engineer nor the Kansas Water Office has denied any request from the City of Hays or the City of Russell to utilize any source of water. They have however, explained to the City of Hays on numerous occasions the legal processes and requirements necessary to obtain and use water from various sources. These were not new requirements that were imposed on the City of Hays. The chief engineer and the Kansas Water Office were merely explaining the statutory and regulatory restrictions that apply to all water users in the State.

Kansas Water Office does have a desire to sell water to users with a need. The Kansas Water Office has had long-term discussions with Public Wholesale Water Supply District No. 15 regarding the use of Kanopolis Reservoir. The discussions predate June 10, 1996, when the District filed an application to negotiate a water supply contract.

The Kansas Water Authority must provide final approval of water marketing contracts. Their longstanding policy has been focused on preventing the sale of water until the need for water is documented. The Authority has never had a policy of actively promoting the sale of water from State storage.

#### *Wildlife and Parks Roadblocks*

Interest by the State in acquiring the Edwards County Ranch has not waned. The State is still willing to negotiate a possible purchase of the ranch.

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RE: City of Hays water supply  
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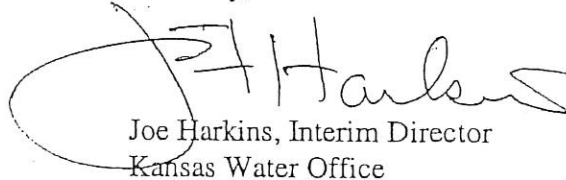
*Legal issues and remedies*

Finally, you raised the issue of whether the reduction of a water right constitutes a compensable taking. The State would agree that the takings clause of the Fifth Amendment to the United States Constitution prohibits the State from taking private property for public use without compensation and is made applicable to the states through the Fourteenth Amendment. Granting of a water right does not guarantee that waters will be available and water is subject to appropriation only upon legal and physical availability. The State does not agree that the partial reduction in "water usage" imposed upon the City of Hays by the lawful IGUCA proceedings is a compensable taking. The IGUCA order was issued in May, 1984, and was not timely appealed. For this and many other reasons, the State believes that the City of Hays is not entitled to compensation for water that it may not have diverted since 1984.

*Conclusion*

I assure you that the state of Kansas, including the Kansas Water Office, Kansas Department of Agriculture Division of Water Resources, and the Kansas Department of Wildlife and Parks, and any other appropriate state agencies, will work together with the City of Hays to resolve its water supply problem. I will be your contact person for this joint effort.

Sincerely,



Joe Harkins, Interim Director  
Kansas Water Office

cc: Governor Kathleen Sebelius  
Adrian Polansky, Secretary of Agriculture  
Mike Hayden, Secretary of Wildlife and Parks  
David L. Pope, Chief Engineer, Division of Water Resource, Kansas Department of  
Agriculture  
Randy Gustafson, City Manager, Hays, Kansas  
Rod Bremby, Secretary of Health & Environment  
Lt. Governor John Moore, Secretary of Commerce and Housing

**From:** Lewis, Earl  
**Sent:** Tuesday, January 31, 2006 11:38 AM  
**To:** Coe, Diane  
**Subject:** FW: November static levels

**Attachments:** November static levels.xls

---

**From:** Gary Hobbie [mailto:garyh@russellcity.org]  
**Sent:** Monday, November 07, 2005 3:32 PM  
**To:** Lewis, Earl  
**Subject:** FW: November static levels

Earl, I received this email today from the water department and it has a suggestion that I send this to you. I agreed so here it comes.

So, the attached spreadsheet shows our water well levels taken recently. We are unable to use our Big Creek surface water due to low flow and a chemical spill upstream, causing us to use Pfeifer 100% of the time. (KDHE staff from Hays relayed the spill information to us two weeks ago.) These levels show extreme usage this year, caused by TTHM's and low flow in Big Creek. We asked DWR to shut down irrigator upstream in Big Creek but flows have not resumed to normal levels. We drove the creek back from a Hays meeting last week, and every crossing shows the same low flow.

We need to have you release some water from Cedar Bluff to wet the stream bed and we will consider releasing water from our pool at a later time to sustain our well field. I understand the law suit has changed complexities, but with notice this water could be released, in my understanding.

Let me know your thoughts.

Gary Hobbie  
 City of Russell

---

**From:** Arlyn [mailto:aunrein@russellcity.org]  
**Sent:** Monday, November 07, 2005 11:31 AM  
**To:** garyh@russellcity.org; mark@russellcity.org  
**Subject:** FW: November static levels

Gary: I think we should forward these levels to Earl Lewis. Last winter the stream did not begin running until late in the year and then only ran for a short time.

Do we need to ask the state to do a release from Cedar Bluff?

Arlyn

---

**From:** Gerald Penka [mailto:butch@russellcity.org]  
**Sent:** Monday, November 07, 2005 9:46 AM  
**To:** Arlyn Unrein  
**Subject:** november static levels

Arlyn; I am getting very concerned about the static levels in the Pfeifer well field. there seems to be a considerable difference in them from 2004 to 2005. The static levels seem to increase every month.

Butch

1-52



**From:** Lewis, Earl  
**Sent:** Tuesday, January 31, 2006 11:38 AM  
**To:** Coe, Diane  
**Subject:** FW: Water Release

---

**From:** Gary Hobbie [mailto:garyh@russellcity.org]  
**Sent:** Tuesday, November 29, 2005 2:02 PM  
**To:** Lewis, Earl  
**Subject:** Water Release

Earl, we have been looking at our water well levels and are seriously considering a release of water from Cedar Bluff early next month. We will be calling on Friday this week to verify releases from the Bureau and to notify you of our intent. We are considering a short release of high volumes then slow the release down to the minimum for as little time as it takes to get water at our Russell Well Field, with the goal of not taking anymore release water as necessary and when it gets to or near Russell we would shut it off.

We ask that you consider requesting Hays cease water production from the Smokey Hill River during our release period, allowing us the maximum flow into our well field. Is this a possibility for KWO to do this request?

Thanks for your help.  
Gary Hobbie  
City of Russell  
City Manager

**ATTACHMENT E**

**ARTIFICIAL RECHARGE POOL OPERATION PLAN  
SEPTEMBER 22, 2004**

CEDAR BLUFF RESERVOIR  
ARTIFICIAL RECHARGE POOL  
OPERATIONS AGREEMENT

September 22, 2004

This Operation Agreement constitutes the policies and responsibilities of operating the artificial recharge storage identified in Section 1 for the Cedar Bluff Reservoir. Since the responsibility of water management along the Smoky Hill River is shared between the Kansas Water Office and the Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as "the Division of Water Resources"), those responsibilities are outlined and acknowledged in Section 2 of this Operations Agreement.

This agreement recognizes the hydraulic connection between streamflow in the Smoky Hill River and the adjoining alluvium. The purpose of this Operation Agreement is to effectively manage the water stored in Cedar Bluff Reservoir for artificial recharge under File No. 7,684 for the benefit of all water users in the valley. It is believed that maintaining the hydrologic system as a source of supply within the parameters allowed by the above noted file number is in the best interest of the State and the region. It is recognized that at the time of this agreement File No. 7,684 includes 5,110 acre-feet of storage space for artificial recharge and that this space will be reduced over time as sedimentation replaces some storage space.

**Section 1. Reservoir Allocations**

The Kansas Water Office, Division of Water Resources, and the Cities of Hays and Russell agree that as of April 20, 2004, the storage allocation for Cedar Bluff Reservoir are as presented in Table 1.

Table 1. Storage Space Allocation – 1994 Agreement, Original Pool Ownership

Pool Owner	Purpose	Pool Size (af)
City of Russell	Municipal Water Supply	2,700
Kansas Water Office	Artificial Recharge	5,110
Kansas Department of Wildlife and Parks	Fish, Wildlife and Recreation	21,061
KWO & KDWP	Joint Use	139,179

**Section 2. Operational Policies and Responsibilities**

The Kansas Water Office, the Division of Water Resources, and the Cities of Hays and Russell agree to the following terms and responsibilities regarding the operation of Cedar Bluff Reservoir to maintain the water supplies of the Smoky Hill Valley as well as flows of the Smoky Hill River.

- I. Release Triggers
  - A. Table 2 shows the primary trigger values associated with the releases used in this Operations Agreement. Trends in measured values and the season of the year are also important factors to consider in rate of releases.

- D. If there is water in the Artificial Recharge pool and if any one of the release triggers are met, the Kansas Water Office will contact the other parties to determine if a release from Artificial Recharge storage is needed. If a release is needed the Kansas Water Office will contact the Bureau of Reclamation to request a release from the Artificial Recharge pool and notify all parties.
- E. The Kansas Water Office will coordinate with the U.S. Bureau of Reclamation for the release of water from storage from the Artificial Recharge pool.
- F. If no water is available in the Artificial Recharge pool and any one of the release triggers are met, the Kansas Water Office will notify both the City of Russell and the City of Hays.
- G. The Cities of Russell and Hays will monitor the progress of any release from Cedar Bluff Reservoir made pursuant to the agreement.
- H. The Division of Water Resources will protect releases from the Municipal Water Supply storage from diversion by users not covered as an authorized place of use under Water Right No. 7,628.

### III. Release Accounting

- A. Accounting of releases will follow all provisions of the "Contract Administration Memorandum (Memo) between the United States represented by the Department of Interior Bureau of Reclamation and the City of Russell, Kansas, and the State of Kansas regarding Reservoir Accounting Procedures for Cedar Bluff Reservoir, Trego County, Kansas" dated November 2003.
- B. All water released from Cedar Bluff Reservoir in response to release triggers identified in this agreement will be charged to the Artificial Recharge pool as long as water is available in such pool.

### Section 3 Binding Nature of Agreement

The provisions of this agreement shall be binding on the parties insofar as the operations of Cedar Bluff Reservoir and associated river reaches are concerned. However, any party may call for temporary changes to meet unforeseen circumstances and upon agreement by all parties such changes will be implemented.

It is recognized that this agreement can not address the regulation of water appropriated to those not party to this agreement. The State of Kansas is required by law to regulate all water users withdrawing water from the same source of supply in accordance with the provisions of the Kansas Water Appropriation Act.

### Section 4. Data Exchanges

Upon reasonable notice, each party to this agreement shall timely furnish any hydrologic, operational, and other data necessary to administer and evaluate this agreement to any other party requesting data.

### Section 5. Agreement Renewal

- A. This Operations Agreement shall remain in effect for the effective life of Cedar Bluff Reservoir.

ATTEST:

Mark Loughry  
MARK LOUGHRY  
City Clerk

9-24-04  
Date

(SEAL)



City of Russell

Henrietta Wenthe  
HENRIETTA WENTHE  
Mayor of Russell

10.17.04  
Date

ATTEST:

Karen Gates  
KAREN GATES  
City Clerk

10.17.04  
Date

(SEAL)



# KANSAS

DEPARTMENT OF AGRICULTURE  
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Report on Implementing Flex Accounts (K.S.A. 82a 736)  
to  
the Senate Natural Resources Committee**

**by David Pope, Chief Engineer  
Kansas Department of Agriculture  
Division of Water Resources**

**February 2, 2006**

K.S.A. 82a 736, which became law May 9, 2001, requires the chief engineer of the Kansas Department of Agriculture's Division of Water Resources to implement a program that provides for issuing term permits to water right holders to allow them to establish flex accounts for groundwater use. There also is a provision that requires the chief engineer to submit a written report on the law's implementation to your standing committees by February 1 of each year.

K.S.A. 2004 Supp. 82a-736 was amended by the Legislature in 2005. The amendments change the base average usage period from 1996 through 2000 to 1992 through 2002. The amendments also provide for the amount to be deposited into a flex account not to exceed 90 percent of the base average usage multiplied by five, as opposed to being exactly 90 percent of the base average usage multiplied by five.

Attached are a copy of the rules and regulations promulgated in 2002 and the revisions to those rules, which became effective January 6, 2006, to implement the program within the statutory criteria as amended in 2005. The criteria allow eligible, participating water right holders to use, within a five-year period, an amount of groundwater that is no more than 90 percent of their actual base average use times five and as long as it does not impair other existing water rights.

The law requires that any groundwater right holder who wants to establish a flex account, and exercise its use through a term permit, must file the term permit application no later than October 10 of the year preceding the first year for which application is made.

In 2005, water right holders were reminded of the flex account provision through a news release to media outlets statewide. As of October 10, 2005, no applications for term permits had been filed with the chief engineer, nor have any applications been received for participation in the program beginning in 2007.

Currently, there are only four active flex accounts: Two were filed in 2002 and are for the period from 2003 through 2007. Three were filed in 2003, one of which was dismissed prior to approval because it proposed to deposit only a portion of a water right, which does not comply with K.A.R. 5-16-6(f), and are for the period from 2004 through 2008.

Due to the limited interest shown in this program, no additional staff were hired to process applications. All applications have been handled by existing staff in the water appropriation program. The \$400 filing fee was paid for the five permit applications we received in 2002 and 2003.

We will again remind water users of this option by issuing a news release this summer. We also plan to work with groundwater management districts, the Kansas Water Office, farm organizations and others to let water right holders know about the flex account option. Information about flex accounts is also on our website at <http://www.ksda.gov/Default.aspx?tabid=321>.