

Enforcement of Water Rights by the Division of Water Resources



The Kansas Rural Water Association (KRWA) recently assisted a small community after it received a \$1,000 penalty order from the Division of Water Resource, Kansas Dept. of Agriculture (DWR) for overpumping the city's water rights. Water rights in Kansas have strict limits on the amount of water that may be used during a calendar year. Since most water rights in Kansas authorize irrigation use, the majority of compliance problems understandably pertain to that use of water. A smaller subgroup of water right violations also occur with municipal (public water supply) water rights. Some of the most common enforcement issues that public water suppliers face include overpumping the authorized quantity of water and failure to maintain an accurate raw water flowmeter on the diversion works. However, violation of any term, condition or limitation of a water right, or violation of any of the Chief Engineer's laws, rules and regulations can result in enforcement action by DWR.

Often, water systems don't realize they have or will exceed their

KRWA Tech Assistant Tony Kimmi works at testing a large master meter for a rural water district in northeast Kansas. KRWA provide meter testing at no charge to public water systems as a benefit of funding through the Clean Drinking Water Fee and under contract administered by the Kansas Water Office. Many system designs did not incorporate test ports; in such cases a non-intrusive meter such as shown here is required.

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authorized quantity until late in the calendar year. By then, it is too late to take corrective measures. Leaks in distribution systems commonly result in high unaccounted for water (UFW) and ultimately overpumping of the water right's authorized quantity when that system loss is not recognized and dealt in a timely manner. It is important to pay close attention to the daily raw water use records in order to recognize when something may have gone wrong that may not have presented itself

elsewhere in the distribution system. In conjunction with DWR, the U.S. Geological Survey publishes information annually detailing typical water use for all water systems in Kansas in gallons per person per day (gpcd). A link to this data may be found on the KRWA Website, under technical assistance and water rights. Not only can you view your own system's average water use in gpcd, a comparison can be made to other public water systems in your region and across the entire state of Kansas. Using this information, it is highly recommended that your system develop internal guardrails such that if daily raw water diversions exceed a certain quantity (gpcd) for a certain period of time, it will trigger an evaluation of whether you will be able to stay within your authorized quantity. Obviously, water use for communities and rural water districts will vary

Annual and average gallons per capita per day for public water suppliers in Kansas, by region and size, 2010–14.

[gpcd, gallons per capita per day]

GPCD Region ¹	Average gpcd					2010–14 average gpcd
	2010	2011	2012	2013	2014	
1	259	282	316	280	264	280
2	224	237	261	227	218	233
3	223	229	256	217	210	227
4	168	196	199	175	154	178
5	137	149	149	126	116	135
6ML ²	139	151	152	126	132	140
6S	114	134	131	110	111	120
7L	134	140	139	120	127	132
7M	98	103	105	93	94	99
7S	87	93	93	84	86	89
8L	125	130	134	115	119	125
8M	93	94	95	88	87	91
8S	79	81	81	73	73	77
Kansas³	114	122	125	110	108	116

¹S, indicates small suppliers of 25 to 499 people; M, indicates medium suppliers of 500 to 9,999 people; L, indicates large suppliers of 10,000 people or more.

²Medium and large are combined because of the limited number of systems in region 6.

³State-wide GPCD is computed as the average of public-water supplier's gpcds specified for use in a regional average.

considerably throughout the year, so it is important to review your previous years' records, when setting up your internal guardrails.

If you notice a significant surge or decline in your daily water use numbers, it is also important to make sure that your raw water flowmeter hasn't malfunctioned, providing false information. DWR requires meter installations to meet the manufacturer's guidelines for installation, including straightening vanes, along with adequate upstream and downstream spacing from obstructions to prevent turbulence in the pipe flow. Your meter must be on the DWR list of certified meters and when installed it must be accurate to within six percent. Any time a water flowmeter is repaired or replaced, you must contact DWR immediately, to advise the agency of this issue. Failing to do so may result in enforcement action. KRWA is a great resource for testing meters or for leak detection and should be your first call if you suspect something water loss is increasing.

Graphic from U.S. Geological Survey data release, <http://dx.doi.org/10.5066/F7N29V1D>

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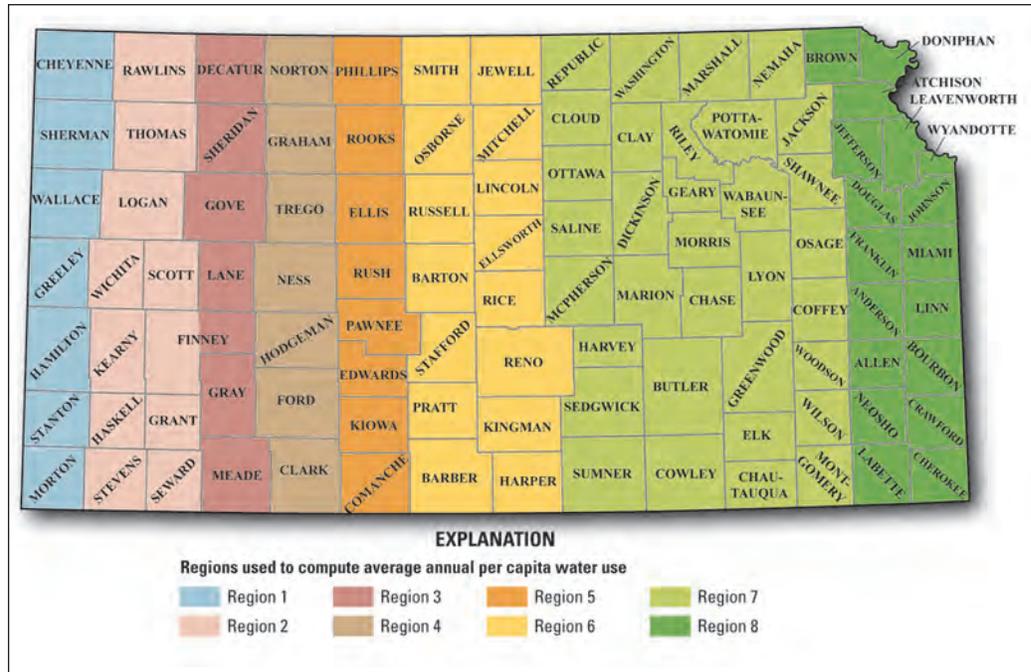
Avoiding fines, penalties

It is also important to note that DWR's main objective is not collecting fines, but rather compliance with the terms, conditions and limitations of water rights. That is why the Division's first step has traditionally been to issue a notice of non-compliance (NoNC), without a fine, to put the water right holder on notice that a violation is occurring and that corrective actions need to be taken. If the Division receives no response or if the violations continue, they will move to more progressively harsher penalties until the issue or issues that generated the initial notice are resolved. This may include monetary fines or temporary reductions in authorized quantities. In

more severe compliance cases where violations are blatant and recurring, the Chief Engineer may ultimately suspend or revoke a water right. Generally, DWR will rely heavily on monetary

fines for public water systems due to potential risk to public health and welfare that could result from reduced quantities or water rights suspension and revocation.

If your system receives a compliance notice or penalty order from DWR, it is very important to contact the agency to make sure you understand the issue(s) that have identified and to let the agency know that corrective actions will be taken. Should your compliance issue result in a fine, DWR's penalty orders allow an opportunity for appeal. It is highly recommended that you contact DWR about this opportunity as soon as possible within the deadline, which is usually 15 days. In some, but certainly not all cases, DWR may consider a request to reduce the fine if there are unusual or mitigating circumstances and they believe that corrective actions can and will be taken by the water right holder. DWR may also allow a public water supplier to enter into a consent agreement that incorporates a plan for corrective measures, in lieu of a fine. By contacting DWR in a timely manner, you keep your options open for potentially less severe sanctions.



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As time goes on, there has been considerable public debate about whether DWR is being tough enough with their enforcement program. Especially for irrigators, public opinion seems to be that penalties for overpumping should be much more severe. Since DWR is hesitant to treat different types of water users differently, which may constitute a violation of equal protection, these penalties will ultimately also become more severe for public water suppliers who find themselves in violation of their water rights. The Governor's long-term vision for the future of water supply in Kansas specifically calls for increased enforcement and implementation of more stringent fees and penalties for overpumping and other water right violations.

By the time you read this, you should already have filed your 2016 water use report card with DWR. One aspect of enforcement that has become stricter is the requirement to file that water use report before the March 1 deadline.

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Legislative changes to the Water Appropriation Act on July 1, 2016, require that the Chief Engineer issue a \$250 per file number penalty for water use reports that are not filed by March 1 and a \$1,000 per file number penalty for water use reports that are not filed by June 1. This is a significant increase over the former water use report penalty structure that started at \$50 per file number. If you do not wish to file your water use information online, it is highly recommended that you use

certified mail to adequately document your report's mailing.

If your system receives a notice of non-compliance or penalty order from DWR, please contact KRWA's water rights specialists, Ken Kopp or Doug Helmke, for advice about how to respond. While there is no flexibility with regard to late water use fines, there may be mitigating factors the Division of Water Resources will consider if you receive penalty orders for other compliance issues such as metering or overpumping. Those decisions are ultimately up to the Chief Engineer and DWR staff. Moreover, DWR needs to see that you are working to address compliance problems.

Ken Kopp, P.G., Water Rights/Source Water Specialist, joined KRWA as Water Rights/Source Water Specialist in early 2016. He previously worked for twenty-three years at the

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