JULY 1981

OKLAHOMA water news

MONTHLY NEWSLETTER OF THE OKLAHOMA WATER RESOURCES BOARD

Depletion Allowance on Ogallala Water Possibility for Irrigators?

Although no western Oklahoma irrigator has yet tested a case before the IRS in deducting a depletion allowance on the water he uses from the diminishing Ogallala ground water aquifer, such claims could prove money in the bank. In a June report to the Board, Jim Scheulein of the Planning and Development Division pointed out that studies of cases involving the Ogallala in Kansas, New Mexico and Texas showed the depletion allowance on irrigation water to be an option worthy of consideration by taxpayers who can meet certain IRS requirements.

Since the early 1900s, the IRS has allowed depletion allowances to be deducted from taxable income earned from mining and other extractive activities, recognizing that the extraction of exhaustible natural resources reduces the reserve of that resource. Thus, the deduction allowed the taxpayer a tax-free return on capital based on the value of the resource exhausted during the year.

According to the Internal Revenue Code of 1954, two methods can be used to determine the amount of allowable depletion — the "cost" method and the "percentage" method. Utilizing the former, the depletion allowance is calculated as the cost per unit of the resource (cost basis divided by the number of units of the resource available) multiplied by the number of units extracted in a year. The percentage method allows a statutory percentage (22 percent in the case of oil and gas) of the gross income as a depletion deduction.

Since the mid-1960's, irrigators taking water from the Ogallala in the southern High Plains of Texas and New Mexico have obtained cost depletion allowances, but the Fifth District Court specified that the decision would not establish a precedent applicable to areas outside and thus not affected by the "peculiar conditions" of the southern High Plains. Later interpretations included the area south of the Canadian River.

Studies by the OWRB, USGS and the Kansas Geological Survey have since confirmed that the "peculiar conditions" of the Ogallala which exist in the southern High Plains also exist in the central portion of the basin underlying parts of 10 western Oklahoma counties, the northern portion of the Texas Panhandle, southwestern Kansas and eastern Colorado.

In 1980 attorneys for three southwest Kansas irrigators won a settlement statement from the IRS in a case filed in the District Court in Wichita, where the government

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June Ceremony Breaks Ground for Kaw-to-Stillwater Pipeline

Gov. George Nigh, center, joined 49 others June 2 in manning "golden" shovels to break ground for a pipeline that will connect the City of Stillwater to Kaw Reservoir, a Corps of Engineers project 44 miles north. The ceremony was held on a plot 10 miles north of the city which will be the site of a 4-million gallon water storage tank upon completion of the pipeline in December.

In his keynote address, Gov. Nigh congratulated Stillwater Mayor Bill Thomas and the city for their bold step in water development, but said one of the great disappointments of his tenure has been the lack of success in generating unified support for a statewide water plan. He pointed out that even in the midst of the rainy season, 300 of the state's cities and towns are experiencing water problems.

PHOTO BY CHARLES TURMAN, STILLWATER NEWS-PRESS

Digging in at Gov. Nigh's left was James R. Barnett, OWRB executive director. In his remarks to 375 in attendance, Barnett lauded Stillwater as a leader among Oklahoma communities, and said the city is doing what the Board has so long encouraged other Oklahoma communities to do — plan and build not only for the present, but also for the future.

Depletion Allowance, continued from page 1

conceded that the water source was depletable and therefore, the plaintiffs were entitled to the depletion allowance. The settlement requires the IRS to issue a formal ruling allowing area irrigators to claim the same deduction.

Wayne Wyatt, director of the High Plains Water Conservation District and coordinator of the depletion program for Texas and New Mexico irrigators who have successfully claimed the deduction, estimated the procedure has saved area landowners $10 to $15 million each year since 1966.

Representatives of the IRS stressed that each claimant must have complete and accurate data available for completing IRS Form 665. The taxpayer must establish the amount of water present when the land was acquired, the cost basis of the water, and the net amount of exhaustion of the water resource during the taxable year.

Schuelein said the amount of water present at acquisition is determined by the saturated thickness of the water-bearing formation underlying the land. He pointed out that the USGS, in cooperation with OWRB, has completed, or soon will have completed, accurate contour maps of saturated thickness throughout Oklahoma's Ogallala area.

Cost basis can be determined by the difference in the value of irrigated land and dry land. For instance, if irrigated land cost $400 per acre and comparable dry land $260 per acre, the cost basis of the water is $140 per acre.

Schuelein pointed out that since the Ogallala is an unconfined aquifer, the water table and the water level in wells are nearly identical. As the saturated thickness declines, so will the water table and levels in wells decline. He said that through the OWRB annual well measurement program, exhaustion of the water resource can be calculated.

"However, computation of the depletion allowance will be different for every irrigator, varying with the price paid for the land and the rate of ground water decline," he said. "The most difficult point to establish may be the original cost basis of the water," he warned, "perhaps requiring estimates by registered appraisers to determine the difference in value between dry land and irrigated land."

Since the depletion allowance is equivalent to a business expense, it is deducted from income to reach federal adjusted gross income for individuals, or federal taxable income for corporations. Thus, use of the depletion allowance on federal returns will also lower incomes reported on Oklahoma tax returns. Attorneys for the Kansas plaintiffs estimated that they could decrease federal income tax collections in Kansas by as much as $25 million annually, and the state income tax collections by roughly 10 percent of that — or $2.5 million.

"The Kansas estimates of lost tax revenues are based on the irrigation of two to three million acres of land — significantly more than are irrigated presently in Oklahoma," Schuelein concluded.

Landowners Cautioned Against "Forever" Water Sale Contracts

"I guess I just didn't realize what I was signing. I didn't mean to sell the rights to my water for $50 *forever*," said the aged widow.

"After we inherited Dad's land, we only then realized he'd sold the rights to part of his water for 40 years. Now we need that water for irrigation," complained the well dressed young couple.

"Is there any way I can change this contract now?" both ask.

These are typical of the appeals which come with alarming frequency to OWRB's Ground Water Division as growing populations push the water supply capabilities of small cities and towns and oil producers and other industries seek to slake the thirst of their quickened operations. Contracting to buy the unused water allocated to a landowner is often the fastest and cheapest way to supplement water supplies overtaxed by growing towns and industry.

J.A. Wood, Ground Water Division chief, said, "the soundest advice I could give any landowner considering a contract for the sale of water is to have an attorney review the lease agreement. Often the language of the contract is very difficult to understand, and only an attorney can advise the landowner if all the terms of the agreement are fair."

Wood warned landowners with rights to available water beyond their own needs to beware of potential purchasers who would require long-term water use contracts at a fixed price. "A landowner would be well advised to limit the term of the contract to a reasonable number of years — surely not 99 years like some of the agreements that have come to our attention. A 'reasonable' period might be two, five or 10 years, with an option to renew the contract," he said.

Wood pointed out that such leases give landowners the option to adjust the price of water if the price of water increases or to adjust the amount of water sold if their own needs increase. When the lessee is a municipality, a prudent lessor might consider including a clause entitling him to adjust his price in proportion to any rate increase charged water users by the city.

"A contract for 99 years can work an extreme hardship on heirs to the property or subsequent owners," he said. "Often people just don't think that far ahead or realize the contract is binding on those who later assume ownership of the land."

Another point to clarify in the lease is the rental of land required for drilling sites, pipelines, pumphouses and other structures necessary to produce and transport water. Wood also suggested that lessors consider use of clauses providing for restitution of damages that may occur during construction and assigning the lessee financial responsibility for relocating fences.

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Landowners Cautioned, continued from page 2

Wood also recommended that landowners require meters to record the actual amount of water pumped from the leased well or wells to insure that charges are fair to both lessors and lessees. "Water is generally priced in units of 1,000 gallons," he said.

"Again, these are very general rules and may or may not be useful in a specific instance. I can't emphasize strongly enough the importance of seeking competent legal assistance in executing a contract that is equitable to both parties. I believe the fee for such services is a bargain in the long run, and a good contract might save money now and remorse later."

Board Plans Work Sessions, Hearing in Roger Mills County

J.A. Wood, OWRB Ground Water Division chief, announced a public hearing has been scheduled at 9 a.m. July 29 in Cheyenne for applicants and claimants in Roger Mills County for prior rights to the beneficial use of ground water. The work sessions and hearing will be held at the County Agricultural Pavilion at the Fairgrounds.

He pointed out that any person who used ground water under the requirements of the existing laws prior to July 1, 1973 (the effective date of the present Oklahoma Ground Water Law) is given the opportunity to establish a prior right. Wood said he wants the citizens of the area who own lands in the county to be aware that much more information is needed by OWRB, and that such information must be received by the September 28 deadline.

OWRB staff members will be available at the County Agricultural Pavilion before the hearing on July 27 from 1 p.m. to 5 p.m. and July 28 from 9 a.m. to 5 p.m.; and following the hearing on July 29 until 5 p.m., July 30 from 9 a.m. to 5 p.m. and July 31 from 9 a.m. to 1 p.m. to assist claimants in filing further information concerning the determination of prior rights or answer questions concerning ground water use in Roger Mills County. Exempt from permit requirements are ground water users who use the water solely for domestic purposes or for watering livestock under normal grazing capacity of the land.

Wood pointed out that all OWRB files pertinent to Roger Mills County will be available at the work sessions and that it is very important that landowners attend.

ACTIVE CONSERVATION STORAGE IN SELECTED OKLAHOMA LAKES AND RESERVOIRS AS OF JUNE 17, 1981

PLANNING REGION LAKE/RESERVOIR	CONSERVATION STORAGE (AF)	PERCENT OF CAPACITY
SOUTHEAST		
Atoka	87,300	70.7
Broken Bow	918,100	100.0
Pine Creek	77,700	100.0
Hugo	157,600	100.0
CENTRAL		
Thunderbird	84,251	79.4
Hefner	71,800	95.3
Overholser	15,169	100.0
Draper	75,800	75.8
SOUTH CENTRAL		
Arbuckle	62,571	100.0
Texoma	2,637,700	100.0
Waurika	135,486	66.7[1]
SOUTHWEST		
Altus	35,355	26.6
Fort Cobb	66,308	84.6
Foss	136,311	55.9[2]
Tom Steed	72,185	81.1
EAST CENTRAL		
Eufaula	2,273,027	97,6
Tenkiller	627,500	100.0
Wister	27,100	100.0
NORTHEAST		
Eucha	33,820	42.5
Grand	1,396,400	93.6
Oologah	544,240	100.0
Hulah	19,640	64.2
Fort Gibson	365,200	100.0
Heyburn	6,600	100.0
Birch	19,200	100.0
Hudson	200,300	100.0
Spavinaw	26,400	88.0
NORTH CENTRAL		
Kaw	428,600	100.0
Keystone	616,000	100.0
NORTHWEST		
Canton	50,500	43.5
Optima	3,413	—[1]
Fort Supply	13,900	100.0
Great Salt Plains	31,400	100.0
STATE TOTALS	**11,316,876**	**94.4[3]**

1. In initial filling stage.
2. Temporarily lowered for maintenance.
3. Lake Optima storage excluded from state total.

Data courtesy U.S. Army Corps of Engineers, Bureau of Reclamation, Oklahoma City Water Resources Dept., City of Tulsa Water Superintendent's Office.

mainstream

June Rains Improve State Lake Levels

By mid-June conservation storage in 33 reservoirs monitored by OWRB totaled 11,316,876 acre-feet, 94 percent of capacity and 799,541 acre-feet above totals registered in mid-April. The most dramatic increases occurred in the Northeast Planning Region, up 500,409 acre-feet over earlier readings. However, due to low runoff in Lake Eucha's watershed, Tulsa's largest municipal lake which has been unusable due to low water levels since February, continues to register only 42.5 percent of capacity. Conservation storage in the Northwest Planning Region declined slightly.

Seventeen of the 33 monitored reservoirs held 100 per-

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cent of storage capacity, with almost 500,000 acre-feet in flood control storage.

In spite of heavy rains over most of the state by mid-month, Lake Altus recorded less than 30 percent of the storage capacity normally expected in June, and Lake Hulah remained at only 64.2 percent of its storage capacity.

Sweeping Changes Move Bureau Personnel

Commissioner of Reclamation Robert Broadbent last month announced sweeping changes in the assignment of key personnel, among them the transfer of Bob Weimer from Southwest Division headquarters in Amarillo to the Upper Missouri Region at Billings, Montana.

Other reassignments include Assistant Commissioner Clifford I. Barrett from Washington, D.C. to Regional Director in Salt Lake City and Regional Director Bill Plummer from the Upper Colorado Region to the Southwest Region in Amarillo. These moves created a vacancy in the Assistant Director's post and continued Mike Catino as acting Regional Director at Sacramento in the Mid-Pacific Region.

Need a Program? Book OSU's New Film

A splendid new 19-minute film, "Water for Tomorrow," is available without charge from OSU's Water Resources Research Institute. It focuses on water supplies stressed by growing populations, industries and agriculture. The film describes OWRRI's research in new irrigation techniques, modeling of an underground water supply and use of aquatic communities to monitor water quality changes.

Bookings may be arranged by contacting Tom Johnston of OSU's Division of Public Information or the Audiovisual Center (405) 624-7212.

"Clean Lakes" Projects Announced by Board

Lakes Lawtonka (near Lawton) and Frances (near the Oklahoma-Arkansas line) have qualified for studies directed by OWRB's Water Quality Division. Costs will be shared by city and state funds and in-kind services matched with money provided by an EPA grant. The federal program seeks to protect or restore the recreational potential of at least one publicly owned lake within a 25-mile radius of every metropolitan area.

Upon completion in early 1983, the studies will identify sources of pollution and propose remedial measures.

JUNE CROP AND WEATHER SUMMARY

Despite delays caused by rain and high humidity, 70 percent of the state's wheat acreage had been cut by June 22, compared to 30 percent a year earlier. Barley and oats continue to be in good-to-fair condition. Thirty percent of the oat crop and 35 percent of the barley have been harvested. Corn, sorghum, peanuts, cotton and soybeans are rated good. The first cutting of alfalfa is complete with the crop rated in good condition. Pastures and ranges remain good with forage supplies generous over 95 percent of the state.

Mid-month temperatures were near normal statewide with several readings above 100 degrees. Rainfall ranged from 1.75 inches in the northeast to 0 in the Panhandle. Soil temperatures averaged from 83 to 92 degrees for highs and from 64 to 76 degrees for lows.

Oklahoma Crop and Livestock Reporting Service

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