

Kansas Moratorium Report on Regulation Changes

In October 2008, Kansas adopted the following Kansas Administrative Regulation revisions:

K.A.R. 5-1-1, 5-1-2, 5-1-7, 5-3-5d, 5-3-16, 5-5-6c, 5-5-13, 5-9-1a, and 5-9-1d.

K.A.R. 5-1-1. Definitions. As used in these regulations and the Kansas water appropriation act, and by the division of water resources in the administration of the Kansas water appropriation act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings specified in this regulation.

- (a) "Above-baseflow stage" means streamflow that is in response to a significant runoff event during which period the water level elevation of the stream is greater than the elevation of the adjacent water table.
- (b) "Acceptable quality surface water" means surface water that will not degrade the quality of the groundwater source into which it is discharged.
- (c) "Application" means the formal document submitted on the form prescribed by the chief engineer for a permit to appropriate water for beneficial use and filed in the office of the chief engineer as provided by K.S.A. 82a-708a and 82a-709, and amendments thereto.
- (d) "Approval of application" means a permit to proceed with construction of diversion works and the diversion and use of water in accordance with the terms and conditions set forth in the permit. Approval of application shall not constitute any permit that may be required by other state laws.
- (e) "Aquifer storage" means the act of storing water in the unsaturated portion of an aquifer by artificial recharge for subsequent diversion and beneficial use.
- (f) "Aquifer storage and recovery system" means the physical infrastructure that meets the following conditions:
 - (1) Is constructed and operated for artificial recharge, storage, and recovery of source water; and
 - (2) consists of apparatus for diversion, treatment, recharge, storage, extraction, and distribution.
- (g) "Artificial recharge" means the use of source water to artificially replenish the water supply in an aquifer.
- (h) "Authorized representative" means any staff employee designated by the chief engineer to perform duties and functions on behalf of the chief engineer.
- (i) "Bank storage" means water absorbed by and temporarily stored in the banks and bed of a stream during above-baseflow stage.
2
- (j) "Bank storage well" means a well used to divert or withdraw water from bank storage.
- (k) "Basin storage area" means the portion of the aquifer's unsaturated zone used for aquifer storage that has defined horizontal boundaries and is delimited by the highest and lowest index water level elevations.
- (l) "Basin storage loss" means that portion of artificial recharge naturally flowing or discharging from the basin storage area.
- (m) "Basin term permit" means a term permit to appropriate surface water from a stream within a specific drainage basin, or a portion of it, for a reasonable quantity of water, not to exceed a maximum of 100 acre-feet per calendar year, for use in either of the following:

- (1) Drilling oil and gas wells; or
- (2) construction projects within the specified basin.
- (n) "Battery of wells" means two or more wells connected to a common pump by a manifold, or not more than four wells in the same local source of supply within a 300-foot-radius circle that are being operated by pumps not to exceed a total maximum rate of diversion of 800 gallons per minute and that supply water to a common distribution system.
- (o) "Beneficial uses of water" are the following:
 - (1) Domestic uses;
 - (2) stockwatering;
 - (3) municipal uses;
 - (4) irrigation;
 - (5) industrial uses;
 - (6) recreational uses;
 - (7) waterpower;
 - (8) artificial recharge;
 - (9) hydraulic dredging;
 - (10) contamination remediation;
 - (11) dewatering;
 - (12) fire protection;
 - (13) thermal exchange; and
 - (14) sediment control in a reservoir.
- (p) "Complete and accurate water use report" means a water use report that the water right owner has filed pursuant to K.S.A. 82a-732, and amendments thereto, that provided all of the information required on the form prescribed by the chief engineer, including the following:
 - (1) The quantity of water diverted during the calendar year;
 - (2) if the diversion of water was required to be metered during the calendar year for which the report is being filed, the information required by K.A.R. 5-3-5e;
 - (3) if the water was used for irrigation purposes, the number of acres that were irrigated; and
 - 3
 - (4) if the water was diverted from a sand and gravel pit operation, the size of the surface area of the pit in acres at the end of the calendar year for which the report was filed.
- (q) "Completed substantially as shown on aerial photograph, topographic map, or plat," as used to define the authorized point of diversion, means within 300 feet of the location as shown on the aerial photograph, topographic map, or plat accompanying the application.
- (r) "Confined Dakota aquifer system" means that portion of the Dakota aquifer system overlain by a confining layer resulting in the aquifer normally being under greater than atmospheric pressure.
- (s) "Conjunctive use" means the safe-yield management and operation of an aquifer in coordination with a surface water system to enhance the use of the total water supply availability in accordance with the provisions of the water appropriation act.
- (t) "Contamination remediation" means the diversion of water by a state agency, or under a written agreement or order of an appropriate state agency, for the purpose of improving the water quality.
- (u) "Dakota aquifer system" shall include the Dakota formation, the Kiowa formation, the Cheyenne sandstone, and, where hydraulically connected, the Morrison formation.

(v) “Dakota aquifer system well” means a well or proposed well screened in whole or in part in the Dakota aquifer system.

(w) “Dam” means any artificial barrier, together with all appurtenant works, that does or could impound water.

(x) “Dewatering” means the removal of surface water or groundwater to achieve either of the following:

(1) Facilitate the construction of a building, pipeline, or other facility; or

(2) protect a building, levee, mining activity, or other facility.

(y) “Direct diversion of surface water” means the diversion of surface water directly from a stream by means of a pump, headgate, siphon, or similar installation, for application to beneficial use without storing it behind a dam, levee, or similar type of structure.

(z) “Diversion” means the act of bringing water under control by means of a well, pump, dam, or other device for delivery and distribution for the proposed use.

(aa) “Diversion works” means any well, pump, power unit, power source, dam, and any other devices necessary to bring water under control for delivery to a distribution system by which the water will be distributed to the proposed use and any other equipment required as a condition of the permit, including a check valve, water level measurement tube, meter, or other measuring device.

4

(bb) “Division” means the division of water resources of the Kansas department of agriculture.

(cc) “Dry hydrant” means a permanent, unpressurized intake pipe used to remove water from a pond, stream, reservoir, or other surface water supply by means of suction or vacuum supplied by a fire truck or other portable pumping device.

(dd) “Field inspection” means that for the purpose of issuing a certificate of appropriation pursuant to K.S.A. 82a-714 and amendments thereto, the chief engineer conducts a test of the rate of diversion of the diversion works under the normal and maximum conditions that the diversion works actually applied water to beneficial use during the perfection period.

The chief engineer also collects all other information necessary to prepare a certificate, including the following:

(1) A description of the location and size of the place where water was actually applied to beneficial use during the perfection period in accordance with the terms, conditions, and limitations of the approval of application;

(2) information on the quantity and rate of water that was applied to the authorized use during the perfection period; and

(3) the actual location of the point or points of diversion from which water was diverted in accordance with the terms, conditions, and limitations of the approval of application.

(ee) “Fire protection” means the use of water for fire protection by a fire department for public protection in general.

(ff) “Fish farming” means the controlled cultivation and harvest of aquatic animals.

(gg) “Flow-straightening vanes” means vanes, or other device installed at the upstream throat of a measuring chamber for the purpose of aligning all velocity components of flow parallel with the flow in the measuring chamber at the water flowmeter sensor location.

(hh) “Full irrigation” means the application of water to crops during the growing season. Full irrigation shall include water for preirrigation.

(ii) “Groundwater” means water below the surface of the earth.

(jj) "Growing season" means the average frost-free period of the year.

(kk) "Household purposes" means the use of water by a person for cooking, cleaning, washing, bathing, human consumption, rest room facilities, fire protection, and other uses normally associated with the operation of a household.

(1) "Fire protection" shall be considered to be use of water for "household purposes" if either of the following conditions is met:

(A) Water is available from a "dry hydrant" that has been installed on a pond located within 1,000 feet of the residence.

5

(B) Water can be pumped from a well located within 1,000 feet of the residence for fire protection.

(2) Household purposes shall also include the replacement of the potential net evaporation from a domestic pond of up to 1/2 acre in surface area if both of the following conditions are met:

(A) The pond is utilized for aesthetic purposes as an integral part of the landscaping of a house.

(B) Any portion of the pond is located within 300 feet of the closest edge of the house.

(3) The maximum reasonable annual quantity of groundwater that may be pumped into a pond to be withdrawn later for domestic fire protection shall not exceed 0.06 acre-feet plus the average annual potential net evaporation for a pond at that location in the state having a surface area of 0.2 of an acre.

(4) Household purposes shall also include the use of 1 1/2 acre-feet of water or less per calendar year by an industrial user, restaurant, hotel, motel, church, camp, correctional facility, educational institution, or similar entity for household purposes.

(ll) "Hydraulic dredging" means the removal of saturated aggregate from a stream channel, pit, or quarry by means of hydraulic suction and the pumping of the aggregate and water mixture as a slurry to a location where at least 95% of the water returns directly to the source of supply.

(mm) "Immediate vicinity," as used in specifying the place of use for a water right in which the water is authorized to be used for municipal purposes, means within 2,640 feet of the corporate limits of the municipality, rural water district, or other entity.

(nn) "In compliance" means that a water flowmeter does not meet any of the criteria of K.A.R. 5-1-9 for being out of compliance.

(oo) "Index water level" means water level elevations established spatially throughout a basin storage area to be used to represent the maximum volume of a basin storage area, and storage available for recovery based upon accounting methodology, and conditions of the permit.

(pp) "Indirect use" means the total of the seepage loss and the average annual potential net evaporation loss from the surface of water originally impounded in a reservoir for beneficial use.

(qq) "Industrial use" means the use of water in connection with the manufacture, production, transport, or storage of products, or the use of water in connection with providing commercial services, including water used in connection with steam electric power plants, greenhouses, fish farms, poultry operations that are not incidental to the operation of a traditional farmstead pursuant to K.S.A. 82a-701(c) and amendments thereto, secondary and tertiary oil recovery, air conditioning, heat pumps, equipment cooling, and all uses of water associated with

the removal of aggregate for commercial purposes except the following:

6

(1) The evaporation caused by exposing the groundwater table or increasing the surface area of a stream, lake, pit, or quarry by excavation or dredging, unless the evaporation has a substantially adverse impact on the area groundwater supply; and

(2) hydraulic dredging.

(rr) "Irrigation use" means the use of water for the following:

(1) The growing of crops;

(2) the watering of gardens, orchards, and lawns exceeding two acres in area; and

(3) the watering of golf courses, parks, cemeteries, athletic fields, racetrack grounds, and similar facilities.

(ss) "Measuring chamber" means a cylindrical chamber in which a water flowmeter is installed that is calibrated to match the measuring element of the water flowmeter and the nominal size of the pipe in which it is installed.

(tt) "Municipal use" means the various uses made of water delivered through a common distribution system operated by any of the following:

(1) A municipality;

(2) a rural water district;

(3) a water district;

(4) a public wholesale water supply district;

(5) any person or entity serving 10 or more hookups for residences or mobile homes;

or

(6) any other similar entity distributing water to other water users for various purposes.

Municipal use shall also include the use of water by restaurants, hotels, motels, churches, camps, correctional facilities, educational institutions, and similar entities using water that does not qualify as a domestic use.

(uu) "Nonvolatile memory" means the ability of a water flowmeter to retain the values stored in the mechanical or electronic memory if all power, including backup battery power, is removed.

(vv) "Normal operating range" means the range of flow rates for which the water flowmeter will meet the accuracy requirements of K.A.R. 5-1-4 (a), as certified by the water flowmeter manufacturer.

(ww) "Off-season irrigation" means the application of water to land for the purpose of storing moisture in the soil for future use by a crop that will not be irrigated during the growing season.

(xx) "Operator," as used in the regulation of sand and gravel pits, means any person who engages in mining sand or gravel, or both.

7

(yy) "Perennial stream" means a stream, or part of a stream, that normally flows during all of the calendar year, except during a drought.

(zz) "Perfect" means the actions taken by a water user to develop an approval of application into a water right. These actions shall consist of the completion of the diversion works and the actual application of water to the authorized beneficial use in accordance with the terms, conditions, and limitations of the approval of application.

(aaa) "Point of diversion" means the point at which water is diverted or withdrawn

from a source of water supply.

(bbb) "Point of diversion of a dewatering site" means the geographic center of the area from which water is temporarily removed to lower the static water level or streamflow to allow one construction project or one excavation to take place. Each one-quarter linear mile of construction trench, or part thereof, shall have at least one point of diversion.

(ccc) "Point of diversion of a remediation site" means the geographic center of the area from which water is being removed to be treated or injected into a single disposal well.

(ddd) "Point of diversion for storage of surface water in a reservoir created by a dam" means the point at which the longitudinal axis of the dam crosses the centerline of the stream impounded by the reservoir.

(eee) "Potential annual runoff" means the mean annual runoff for the watershed of the reservoir.

(fff) "Preirrigation" means the application of water to the land for a crop before planting to ensure adequate moisture for early plant growth.

(ggg) "Primary well" means a well for which a standby well is available.

(hhh) "Prior right" means a vested right, an appropriation right with earlier priority, or a permit with earlier priority than that of a subsequent appropriation right or permit.

(iii) "Proven reserves" means extractable sand and gravel deposits for which good estimates of the quantity and quality have been made by various means, including core drilling.

(jjj) "Recharge" means the natural infiltration of surface water or rainfall into an aquifer from its catchment area.

(kkk) "Recharge credit" means the quantity of water that is stored in the basin storage area and that is available for subsequent appropriation for beneficial use by the operator of the aquifer storage and recovery system.

8

(lll) "Recreation storage" means the storage and use of water within the reservoir for recreational use as defined in this regulation. Water stored for recreation use in a reservoir shall be considered to be an indirect use of water.

(mmm) "Recreational use" means a use of water in accordance with a water right that provides entertainment, enjoyment, relaxation, and fish and wildlife benefits.

(nnn) "Rediversion of water" means releasing or withdrawing water that had been previously impounded behind a dam, levee, or similar type of structure, by use of a pump, outlet tube, headgate, or similar type of device, and the application of the water directly to beneficial use.

(ooo) "Register" means an integral or remote device that displays the quantity of water passing the water flowmeter sensor and is part of the water flowmeter.

(ppp) "Remediation site" means the geographic area where contamination is being removed from groundwater.

(qqq) "Reservoir" means the area upstream from a dam that contains, or will contain, impounded water.

(rrr) "Reservoir capacity" means the volume of water that can be stored below the lower of either of the following:

(1) The elevation of the principal spillway tube; or

(2) the lowest uncontrolled spillway in the reservoir.

(sss) "Reservoir having a total water volume of less than 15 acre-feet," as used in K.S.A. 82a-728 and amendments thereto, means a reservoir having a capacity of 15 acre-feet or

less as measured at the principal spillway tube or the lowest uncontrolled spillway, whichever is lower.

(ttt) "Safe yield" means the long-term sustainable yield of the source of supply, including hydraulically connected surface water or groundwater.

(uuu) "Sand and gravel pit operation" means a project that meets the following conditions:

(1) Excavates overburden for mining sand or gravel, or both, exposing the underlying groundwater table to evaporation; and

(2) has a perimeter equal to or greater than its depth.

(vvv) "Sediment control in a reservoir" means a beneficial use of water that meets both of the following criteria:

(1) The water is stored in a reservoir that has no other authorized type of beneficial use, except domestic use.

9

(2) The water is stored only in the part of the reservoir designed and constructed for the storage of sediment.

(www) "Source water" means water used for artificial recharge that meets the following conditions:

(1) Is available for appropriation for beneficial use;

(2) is above base-flow stage in the stream;

(3) is not needed to satisfy minimum desirable streamflow requirements; and

(4) will not degrade the ambient groundwater quality in the basin storage area.

(xxx) "Specialty crop" means a crop other than a normal Kansas field crop. This term shall include turf grass, trees, vegetables, ornamentals, and other similar crops.

(yyy) "Standby well" means a well that can withdraw water from the same source of supply as the primary well and that is used only when water is temporarily unavailable from the primary well or wells authorized to be used on the same place of use because of mechanical failure, maintenance, or power failure. A standby well may also be used for fire protection or a similar type of emergency.

(zzz) "Static water level" means the depth below land surface at which the top of the groundwater is found when not affected by recent pumping.

(aaaa) (1) "Stockwatering" means the watering of livestock and other uses of water directly related to either of the following:

(A) The operation of a feedlot with the capacity to confine 1,000 or more head of cattle; or

(B) any other confined livestock operation or dairy that would divert 15 or more acrefeet of water per calendar year.

(2) Stockwatering shall not include the irrigation of feed grains or other crops.

(3) For the purposes of this subsection, a group of feedlots or other confined feeding operations shall be considered to be one feedlot or confined feeding operation if both of these conditions are met:

(A) There are common feeding or other physical facilities.

(B) The group of facilities is under common management.

(bbbb) "Straight pipe" means a straight length of pipe free of all internal obstructions, including size changes, valves, cooling coils, injection ports, sand or foreign material, and any other condition that would cause a disturbance of the internal velocity profile

in the pipe. Internal obstructions shall not include properly designed, constructed, and installed straightening vanes and inspection ports.

(cccc) "Stream channel aquifer" means unconsolidated water-bearing deposits in river valleys, flood plains, and terraces that are separate and distinct from any other aquifer and capable of yielding water in sufficient quantities for beneficial use.

10

(dddd) "Surface water" means water in creeks, rivers, or other watercourses, and in reservoirs, lakes, and ponds.

(eeee) "Term permit" means a permit to appropriate water that is issued for a specified period of time and exceeds the criteria for a temporary permit specified in K.S.A. 82a-727, and amendments thereto, and K.A.R. 5-9-3 through K.A.R. 5-9-5. At the end of the specified time, or any authorized extension approved by the chief engineer, the term permit shall be automatically dismissed, and any priority it may have had shall be forfeited.

(ffff) The production and return of saltwater in connection with the operation of oil and gas wells in accordance with the written approval granted therefor by the Kansas corporation commission pursuant to K.S.A. 55-901, and amendments thereto" means only that saltwater actually produced during the primary production of oil and gas wells and shall not include the following:

- (1) Saltwater used in the drilling of an oil and gas well; and
- (2) saltwater injected into an enhanced recovery injection well, unless that saltwater was produced in the primary production of the oil and gas well, separated from the oil and gas, and then subsequently reinjected.

(gggg) "Thermal exchange" means the use of water for climate control in a nondomestic building and in a manner that is essentially nonconsumptive to the source of supply.

(hhhh) "Totalizer" means the mechanical or electronic portion of the register that displays the total quantity of water that has passed the water flowmeter sensor.

(iiii) "Unconfined Dakota aquifer system" means that portion of the Dakota aquifer system not overlain by a confining layer in which the aquifer is in equilibrium with atmospheric pressure.

(jjjj) "Unconsolidated regional aquifer" means a body of mostly unconsolidated and heterogeneous water-bearing deposits that are hydraulically and geologically contiguous, and are capable of yielding water in sufficient quantities for beneficial use.

(kkkk) "Waste of water" means any act or omission that causes any of the following:

- (1) The diversion or withdrawal of water from a source of supply that is not used or reapplied to a beneficial use on or in connection with the place of use authorized by a vested right, an appropriation right, or an approval of application for a permit to appropriate water for beneficial use;
- (2) the unreasonable deterioration of the quality of water in any source of supply, thereby causing impairment of a person's right to the use of water;
- (3) the escaping and draining of water intended for irrigation use from the authorized place of use; or
- (4) the application of water to an authorized beneficial use in excess of the needs for this use.

11

(llll) "Waterpower use" means the use of falling water for hydroelectric or hydromechanical power.

(mmmm) “Water balance” means the method of determining the amount of water in storage in a basin storage area by accounting for inflow to, outflow from, and changes in storage in that basin storage area.

(nnnn) “Water flowmeter” means the combination of a flow-sensing device, measuring chamber, integral or remote display device or register, and any connecting parts required to make a working assemblage to measure, record, and allow determination of flow rate and total quantity of water flowing past the water flowmeter sensor.

(oooo) “Water storage device” means a reservoir, elevated water tank, pressurized water tank, including a bladder tank, or other container into which water is pumped and stored before beneficial use.

(pppp) “Water use correspondent” means a person designated in writing, on a form prescribed by the chief engineer, by one of the owners of a water right to file the water use reports required by K.S.A. 82a-732 and amendments thereto, on behalf of the owner or owners of that water right. (Authorized by and implementing K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended Dec. 3, 1990; amended May 31, 1994; amended Sept. 22, 2000; amended Oct. 24, 2003; amended Oct 31, 2008.)

K.A.R. 5-1-2. Standby well. In order for a well to qualify as a standby well, all of the following requirements shall be met:

(a) The well shall be maintained in operable condition and be capable of being hooked to a power source within a reasonable amount of time to allow the well to function effectively as a standby well.

(b) Both the primary well or wells and the standby well or wells shall be required to be metered by order of the chief engineer or as a condition of the water right or permit.

(c) The standby well shall be located close enough to the primary well so that both wells withdraw water from the same local source of supply. However, a standby well shall not be required to meet the well spacing requirements from the standby well to the primary well.

(d) The standby well shall be authorized to divert the same rate and quantity as the primary well or wells. A limitation clause shall be placed on any water right or permit authorizing a standby well or wells limiting the standby well to no more than the rate and quantity authorized for the primary well or wells. With the limitation clause or clauses in effect, the standby well or wells shall not be counted in any safe yield, allowable appropriation, depletion or similar type of analysis.

12

(e) A primary well and a standby well shall not be operated at the same time, unless one of the wells is being operated for maintenance, testing, fire protection, or a similar reason. (Authorized by and implementing K.S.A. 82a-706a; effective May 31, 1994; amended Oct. 31, 2008.)

K.A.R. 5-1-7. Requirement to install a water flowmeter or other suitable watermeasuring device.

(a) All nondomestic, nontemporary wells and pump sites operated under the authority of an approval of application issued on or after the effective date of this regulation shall be equipped with a water flowmeter that meets or exceeds the specifications of the chief engineer effective at the time the application is approved by the chief engineer.

16

(b)(1) All nondomestic, nontemporary gravity diversions of water, including irrigation

ditches, operating under the authority of an approval of application issued on or after the effective date of this regulation shall be equipped with a continuous recording gauge, or other suitable water-measuring device located at or near the headgate. Before installation, the water right owner shall submit plans and specifications for the proposed gauge, or other suitable watermeasuring

device, to the chief engineer and shall receive approval in writing from the chief engineer before installing the gauge or other suitable water-measuring device.

(2) The gauge or other suitable water-measuring device shall meet the following criteria:

(A) Register not less than 94% and not more than 106% of the actual volume of water passing the device under normal operating conditions when compared to a field test made by, or approved by, the chief engineer;

(B) be installed in accordance with the installation requirements of the chief engineer; and

(C) be maintained in a satisfactory operating condition any time water can reasonably be expected to be diverted.

(c) An approval of a nondomestic application for change in place of use, the point of diversion, or the use made of the water, or any combination of these, shall require the owner of the water right to install a water flowmeter on all points of diversion authorized by the water right or approval of application, unless any of the following conditions is met:

(1) The applicant demonstrates to the chief engineer that the application to change the place of use meets the requirements of K.A.R. 5-5-11(e).

(2) The applicant demonstrates to the chief engineer both of the following:

(A) Installation of a water flowmeter meeting these specifications is not physically feasible.

(B) The applicant agrees to implement a reasonable, objective alternative of measuring the quantity of water diverted that is acceptable to the chief engineer.

(3) The water is being diverted from multiple points of diversion authorized by one water right that does not limit the maximum annual quantity and maximum rate of diversion by point of diversion, and all of the water flows to a common point where a water flowmeter meeting the requirements of K.A.R. 5-1-4 and K.A.R. 5-1-6 measures all of the water pumped from all of the points of diversion authorized by that water right.

(4) An application for change in point of diversion only is filed to change the point of diversion of only one well, when more than one well is authorized by the approval of application or water right that authorizes the well for which a change in point of diversion is sought. In this case, only the well that is being relocated shall be required to have a water flowmeter.

(5) The water is being diverted from multiple points of diversion, and all of the following conditions are met:

(A) All points of diversion deliver water to only one distribution system.

(B) Each point of diversion can reasonably be expected to operate simultaneously and for the same total amount of time each calendar year.

(C) Each individual point of diversion has a tested diversion rate of less than 400 gallons per minute.

17

(D) A water flowmeter is installed that will measure 100 percent of the water pumped from all points of diversion.

(E) If the flow rate has not been tested within the last five years by the chief engineer or a person approved by the chief engineer, the owner shall have each point of diversion tested by a person approved by the chief engineer pursuant to K.A.R. 5-1-11. If the chief engineer becomes aware of information that the tested rates could no longer be correct, the chief engineer, or someone approved by the chief engineer pursuant to K.A.R. 5-1-11, may retest the rate of diversion produced by each point of diversion and those flow rates shall subsequently be used to determine the quantity diverted by each point of diversion.

(F) The owner has signed a consent agreement with the chief engineer that includes the following:

(i) A determination of the percentage of flow that will be attributed to each point of diversion if future administration becomes necessary; and

(ii) an agreement that the chief engineer may require a water flowmeter for each point of diversion if the chief engineer determines there are issues concerning impairment, violations of the conditions of the permit or water right, or a violation of the Kansas water appropriation act and its regulations.

(G) All uses of water are authorized by either a vested water right or a water right that has been certified pursuant to K.S.A. 82a-714, and amendments thereto.

(d) Except as set forth in subsection (c), if an approval of an application for change requires the installation of a water flowmeter, the requirement to install a water flowmeter shall also be placed on all other water rights and approvals authorizing diversion of water from the same point of diversion.

(e) If any water right or approval of application has a condition requiring development, adoption, and implementation of a water conservation plan pursuant to K.S.A. 82a-733 and amendments thereto, a water flowmeter or suitable water-measuring device shall be installed on each authorized point of diversion in compliance with these regulations.

(f) The owner of a water right, including a domestic water right, or an approval of application shall also be required by the chief engineer to install a water flowmeter or other suitable water-measurement device that meets the requirements of these regulations on each authorized point of diversion if it is necessary for the chief engineer to effectively administer water rights to prevent impairment, to protect minimum desirable stream flows, to conserve water, or to otherwise carry out the duties of the chief engineer as set forth in the Kansas water appropriation act, K.S.A. 82a-701 et seq., and amendments thereto.

(g) Except as set forth in subsection (c), if a water flowmeter is required by the chief engineer, each point of diversion authorized by the approval of application or water right shall be required to have a separate meter. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 31, 2008.)

K.A.R. 5-3-5d. Requirement to install a water level measurement tube. Each well with an authorized maximum rate of diversion of 100 or more gallons per minute drilled after the effective date of this regulation, except those wells authorized under a temporary permit, or a domestic right, shall have a tube installed in accordance with specifications adopted by the chief engineer. This tube shall be suitable for making water level measurements and shall be maintained in working condition. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective May 1, 1980; amended Sept. 22, 2000; amended Oct. 31, 2008.)

K.A.R. 5-3-16. Safe yield; exemptions for up to 15 acre-feet of groundwater.

(a) Each application to appropriate groundwater in any area of the state shall be exempt from meeting the safe yield criteria if all of the conditions in subsection (b) are met.

(b)(1) The proposed point of diversion will be located in an area that is outside a groundwater management district that is subject to safe yield criteria and meets either of the following conditions:

(A) Is not closed by regulation or intensive groundwater use control area order by the chief engineer to new nondomestic, nontemporary permits, and term permits for more than five years; or

(B) has not exceeded the quantity of water available to be appropriated in the hydrologic unit as set forth in K.A.R. 5-3-11.

(2) The sum of the annual quantity requested by the proposed appropriation and the total annual quantities authorized by prior permits and water rights allowed because of an exemption pursuant to this regulation does not exceed 15 acre-feet in a two-mile-radius circle surrounding the proposed point of diversion.

(3) The approval of the application does not authorize an additional quantity of water to be diverted from an existing authorized well with a nondomestic permit or water right, which would result in a total combined annual quantity of water authorized from that well in excess of 15 acre-feet.

(4) The approval of the application does not authorize an additional quantity of water to be used on a currently authorized nondomestic place of use in excess of 15 acre-feet.

(5) The maximum authorized rate of diversion does not exceed 50 gallons per minute.

61

(6) All other criteria for processing a new application to appropriate water at that location have been met.

(c) After an application has been approved pursuant to this regulation, no application to change that water right shall be approved if that approval would authorize the water use approved under that application to be diverted from any other point of diversion authorized at the time the application is filed or to be used on any other place of use authorized at the time the application for change is filed. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2007 Supp. 82a-711; effective Nov. 28, 1994; amended Sept. 22, 2000; amended Oct. 31, 2008.)

K.A.R. 5-5-6c. Authorized point of diversion or place of use. (a) If a point of diversion or place of use meets the following conditions, the authorized location shall be administratively corrected by the chief engineer to the more accurate location and the owner notified of this action:

(1) Has been determined by the chief engineer to be located at the authorized location by a vested right determination, a certificate of appropriation, or other similar action or approval by the chief engineer;

(2) has not been physically moved or expanded since the location was certified or otherwise approved by the chief engineer; and

(3) is determined by the chief engineer to be incorrect based on a more accurate survey, a global positioning system determination, or other reliable means.

No enforcement action shall be taken against the owner of the water right solely because the location was determined to be at an unauthorized location with the use of better technology than was previously available.

(b) The maximum annual quantity of water authorized to be used by the water right shall not be decreased or increased because of any administrative correction made to the water

right pursuant to subsection (a). (Authorized by and implementing K.S.A. 82a-706a; effective Oct.31, 2008.)

K.A.R. 5-5-13. Relocation of alluvial wells. (a) If an authorized point of diversion is a well that has as its source of supply an alluvium in a reach of a basin that is fully appropriated or closed to new appropriations, the approval of a change in point of diversion, and any subsequent approvals of changes in points of diversion, shall not authorize the distance between the well and the centerline of the stream to be decreased by more than 10 percent as measured from the following:

(1) The authorized well location when the basin became fully appropriated or was closed to new appropriations; and

(2) the centerline of the stream when the change application was filed.

(b) Only for the purposes of applying this regulation, the term “stream” shall include the main stem and any tributary to the main stem that was a perennial stream when the basin was closed to new appropriations. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 1999 2007 Supp. 82a-708b; effective Sept. 22, 2000; amended Oct. 31, 2008.)

K.A.R. 5-9-1a. Term permit application. Each application for a term permit shall meet the following requirements: (a) Be submitted on a form prescribed by the chief engineer; and

(b) be accompanied by the fee for any new application to appropriate water for beneficial use specified in K.S.A. 82a-708a(b), and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. 2007 Supp. 82a-708a(b), and K.S.A. 82a-709; effective Oct. 31, 2008.)

K.A.R. 5-9-1d. No water right perfected under term permit. No water right shall be perfected pursuant to a term permit. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and 82a-712; effective Oct. 31, 2008.)