

Kansas Moratorium Report on Regulation Changes

In August and December 2011, Kansas adopted the following Kansas Administrative Regulation revisions:

K.A.R. 5-16-5. Maximum annual quantity of water authorized by term permit.

K.A.R. 5-16-3. Establishing a flex account.

K.A.R. 5-16-1. Definitions.

K.A.R. 5-16-1. Definitions. As used in this article, in the Kansas water appropriation act, and by the chief engineer 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) “Base amount” and “BA” mean the quantity of water deposited into a flex account.

(b) “Base average usage factor” and “BAUF” mean the percentage of the “base average usage,” as this term is defined in K.S.A. 82a-736 and amendments thereto, that is multiplied by five as a part of the calculations specified in K.A.R. 5-16-5 to determine the quantity of water that may be deposited into a flex account. The BAUF shall not exceed the maximum of 90% established by K.S.A. 82a-736 and amendments thereto.

(c) “Base water right” means a vested or certified water right or rights for which the owner applies to the chief engineer to establish a flex account pursuant to K.S.A. 82a-736, and amendments thereto.

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(d) “BAU” means the “base average usage” as defined in K.S.A. 82a-736, and amendments thereto.

(e) “Good standing,” only as that term is used in K.S.A. 82a-736, and amendments thereto, in reference to base water rights, means a base water right that meets the following conditions:

(1) Has been lawfully exercised within the period specified in K.A.R. 5-16-5;

(2) has had all required water use reports filed and any civil fines assessed for failure to timely file a complete and accurate water use report paid; and

(3) has had no period of nonuse with a duration of five or more consecutive years since January 1, 1990, except for enrollment in the water right conservation program pursuant to K.A.R. 5-7-4 or L. 2011, ch. 89, sec. 25 and amendments thereto, enrollment in the federal conservation reserve program, or enrollment in another multiyear federal or state conservation program.

(f) “Significant water conservation measures” means actual physical changes in a water distribution system or management practices that improve water use efficiency, including the following:

(1) Conversion from flood irrigation to center pivot irrigation with a nozzle package designed to improve water use efficiency;

(2) irrigation scheduling;

(3) conversion to subsurface drip irrigation; and

(4) removal of an end gun, resulting in a significant reduction in the number of

irrigated acres. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2010 Supp. 82a-736, as amended by L. 2011, ch. 89, sec. 28; effective Oct. 11, 2002; amended Jan. 6, 2006; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011.)

K.A.R. 5-16-3. Establishing a flex account. (a) A flex account shall be established by filing an application for a flex account and a term permit on a form prescribed by the chief engineer. Each application shall meet the following requirements.

(1) Show the location of all wells located within one-half mile of the proposed point of diversion, and the names, addresses, and telephone numbers of the owners of those wells. Except as specified in subsection (e), a separate application shall be filed for each water right and each point of diversion for which the owner desires to establish a flex account. Each application shall be accompanied by the filing fee specified in K.A.R. 5-16-2;

(2) be date-stamped showing the date the application was filed with the chief engineer;

(3) indicate the five consecutive years that are to be designated as the flex account period; and

(4) indicate whether the flex account period will commence with the year in which the application is filed or with the next year after the year in which the application is filed.

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(b) Before any application to establish a flex account and a term permit will be accepted for filing, the application shall be signed by at least one owner of the water right, or a duly authorized agent of an owner of the water right.

(c) Before the flex account can be established or the term permit approved, all of the water rights owners, or a duly authorized agent of the owners, shall verify upon oath or affirmation that the statements contained in the application are true and complete.

(d) If one or more owners refuse to sign the application or if a written request is filed by one or more of the owners to withdraw their signatures from the application before the application is approved, the application shall be dismissed.

(e) A single application to establish a flex account and apply for a term permit may be filed in the following situations:

(1) Multiple water rights authorize the diversion of water from a single point of diversion that diverts water to an identical place of use for a single type of use.

(2) Multiple points of diversion are authorized by the chief engineer to divert water through a single water flowmeter before going to an identical place of use.

(f) The flex account shall not be established, and the term permit to exercise the flex account shall not be valid until both have been approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2010 Supp. 82a-736, as amended by L. 2011, ch. 89, sec. 28; effective Oct. 11, 2002; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011.)

K.A.R. 5-16-5. Maximum annual quantity of water authorized by term permit. (a)

Except as specified in subsections (b) through (e), the maximum quantity of water deposited in a flex account and authorized to be diverted in five consecutive calendar years under the authority of a term permit shall be determined in accordance with K.S.A. 82a-736, and amendments thereto, by means of performing the following calculations:

(1) Add the quantity of water lawfully used under the base water right or rights each year during the period 2000 through 2009. This sum is the total quantity of water;

(2) divide that total quantity of water by 10;

(3) multiply that resulting quantity in paragraph (a)(2) by the BAUF;

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(4) multiply that resulting quantity in paragraph (a)(3) by five; and

(5) if the application required by K.A.R. 5-16-3 was filed after November 1 of the year designated as the first year of the flex account period, subtract the quantity of water used under the base water right during the year in which the application was filed from the resulting quantity in paragraph (a)(4).

(b) If significant water conservation measures were implemented under the base water rights at any time during the period of calendar years 2000 through 2009, the average annual quantity of water actually used may be calculated using the five consecutive calendar years immediately preceding the implementation of significant water conservation measures, but these five calendar years shall not begin before calendar year 1995. The five-year allocation under the term permit shall be determined by performing the following calculations:

(1) Add the quantity of water lawfully used each year under the base water right or rights for the five consecutive calendar years. This sum is the total quantity of water;

(2) divide that total quantity of water by five;

(3) multiply that resulting quantity in paragraph (b)(2) by the BAUF;

(4) multiply that resulting quantity in paragraph (b)(3) by five; and

(5) if the application required by K.A.R. 5-16-3 was filed after November 1 of the year designated as the first year of the flex account period, subtract the quantity of water used under the base water right during the year in which the application was filed from the resulting quantity in paragraph (b)(4).

(c) If water use records for a base water right are inadequate to accurately determine actual water use during any calendar year during the period used to determine the base average usage, then that year shall be counted as having no water use.

(d) No flex account shall be allowed if the flex account is inconsistent with the provisions of any intensive groundwater use control area created pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto.

(e)(1) If water was authorized to be diverted for less than the entire period used to determine the base average usage, the five-year allocation shall be determined by means of these calculations:

(A) Add the quantity of water lawfully used each year under the base water right or rights for the entire period used. This sum is the base average usage;

(B) divide the base average usage by the number of years, or parts thereof, that water was authorized to be diverted by the chief engineer;

(C) multiply that resulting quantity in paragraph (e)(2) by the BAUF;

(D) multiply that resulting quantity in paragraph (e)(3) by five; and

(E) if the application required by K.A.R. 5-16-3 was filed after November 1 of the year designated as the first year of the flex account period, subtract the quantity of water used under the base water right during the year in which the application was filed from the resulting quantity in paragraph (e)(4).

(2) Water rights that authorized use of water for less than two calendar years during period used to determine the base average usage shall not be eligible for a flex account.

(Authorized by K.S.A. 82a-706a; implementing K.S.A. 2010 Supp. 82a-736, as amended by L.

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2011, ch. 89, sec. 28; effective Oct. 11, 2002; amended Jan. 6, 2006; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011.)