

Kansas Department of Agriculture - Division of Water Resources

Procedural Guideline

2011 Emergency Drought Term Permit Applications

Chapter 6 - Part A

Updated: August 16, 2011

Due to exceptional drought conditions in Kansas, the Chief Engineer will consider a one-time only "Emergency Drought Term Permit Application" during the 2011 calendar year, to allow holders of existing water rights to borrow a portion of next year's authorized quantity in order to complete the 2011 growing season. The following guidelines are to be used in evaluating these applications.

This procedure is to allow flexibility in the amount of water used during 2011. No water may be "banked" during 2011 for use during 2012.

For the purpose of this guideline, "base right" means a vested right, certified water right or approved permit to appropriate water for beneficial use, that will be voluntarily suspended during the remainder of calendar years 2011 and 2012, in order that the right holder may borrow a portion of the quantity authorized for use in 2012, during calendar year 2011, under the authority of a two (2) year term permit allocation.

The term permit application must pertain to a base right with an authorized point of diversion and place of use that are located within an agricultural drought disaster declaration area designated by the U.S. Department of Agriculture, prior to filing of the application.

The base right shall not have been deemed abandoned and shall be in good standing, based on past water usage and compliance with the terms of the holder's permit and all applicable provisions of law and orders of the chief engineer.

The base right shall not have had five or more consecutive years of non-use, since January 1, 2006, except for enrollment in the water right conservation program according to K.A.R. 5-7-4, enrollment in the federal conservation reserve program, or enrollment in another multiyear federal or state conservation program.

The base right shall have all required water use reports filed and any civil fines assessed for failure to timely file a complete and accurate water use report paid.

No drought term permit may be issued for a base right that is already under enforcement sanctions, as of July 1, 2011.

A drought term permit may be approved within the boundaries of an intensive groundwater use control area (IGUCA) created pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto,

provided approval would not be contrary to any provision of the IGUCA order.>Drought Emergency Term Permits will be considered within the boundaries of the following IGUCA's:

- Arkansas River IGUCA, except that a drought term will not be considered where the approval of such will increase depletions to surface flows of the Arkansas River needed by senior appropriators within 2011.
- Burrton IGUCA
- Pawnee Valley IGUCA

Before any application for a drought 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.

In order to be deemed "complete," the application shall be accompanied by a signed "Drought Term Permit Supplemental Sheet and Agreement."

A separate term permit shall be required for each point of diversion.

The chief engineer may establish additional criteria and limitations for term permits when the base right authorizes multiple points of diversion or where multiple water rights authorize a single point of diversion or overlapping places of use.

The chief engineer may establish additional criteria and limitations in cases where the base right is limited to a five (5) year fixed allocation, as required by Article 5-5 of the Kansas Administrative Regulations. Water pumped under the authority of an approved emergency drought term permit, where the base right is limited to a five (5) year fixed allocation, and the base right is in the fifth and final year of the fixed allocation, shall be deducted from the total amount of water authorized by the next five year allocation for the base water right.

Impairment of any vested right or prior appropriation right by the exercise of such term permit shall result in suspension of the term permit.

Drought Term Permit Applications must be filed on or before December 31, 2011.

Drought Term Permit Applications filed after December 31, 2011, shall be accepted for filing and subsequently dismissed.

Drought Term Permits shall be subject to the following conditions:

The quantity of water authorized for diversion shall be limited to not more than the sum of the quantity of water authorized by the base right for 2011 and 2012.

The authorized place of use for the term permit shall be identical to that authorized by the base right.

The quantity of water already used under the base right during calendar year 2011 shall be counted toward the total amount of water authorized by the term permit.

The term permit shall not be extended beyond December 31, 2012.

No unused quantity may be carried over beyond December 31, 2012.

The existing base right will be suspended and may not otherwise be exercised, during the effective dates of the term permit.

The terms, conditions and limitations of the term permit are binding upon all owners and subsequent owners of the base right.

Failure to comply with the terms, conditions and limitations of the term permit (including pumping a quantity of water in excess of the allocation quantity), may result in civil enforcement, in accordance with K.S.A. 82a-737 and K.A.R. 5-14-10, and may result in suspension of the base right(s), effective immediately after the expiration or dismissal of the term permit.

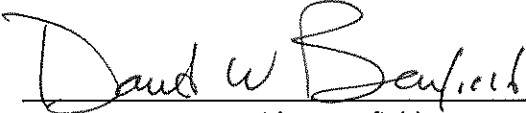
The term permit can be subject to other Orders by the Chief Engineer, such as Minimum Desirable Streamflow (MDS) and prevention of impairment.

The owner(s) of the base right(s) pertaining to the term permit must maintain monthly meter readings, which must be made readily available to the chief engineer or authorized agent upon request. Any meter malfunction must be reported immediately to the appropriate field office and the operator must keep records to clearly establish the use during any malfunction period.

Water flowmeter(s) meeting the requirements of the chief engineer shall be installed and maintained to the satisfaction of the chief engineer on each point of diversion authorized by the term permit. If an existing water flowmeter had been required on or after September 22, 2000 or if there is no existing water flowmeter, the water flowmeter shall meet the requirements of the chief engineer in effect at the time the term permit is approved. If a water flowmeter was installed before September 22, 2000, the water flowmeter shall meet the requirements of K.A.R. 5-1-6(b).

No extensions of time shall be considered or granted beyond December 31, 2012.

Effective Date: August 16, 2011, revising that adopted on June 30, 2011.



David W. Barfield, P.E.
Chief Engineer
Division of Water Resources