

**Rules and Regulations**  
**Division of Water Resources**  
**Kansas Department of Agriculture**  
**Effective September 18, 2009**

**K.A.R. 5-20-1. Intensive groundwater use control area; public hearings.** (a) In any case in which the chief engineer initiates proceedings for the designation of an intensive groundwater use control area (IGUCA), an independent hearing officer shall be appointed by the chief engineer. The independent hearing officer shall meet the following requirements:

(1) Not have been an employee of the department of agriculture for at least five years before the appointment;

(2) be admitted to practice law in this state; and

(3) be knowledgeable by training and experience in water law and administrative procedure.

(b)(1) The independent hearing officer shall conduct one or more public hearings to determine whether both of the following conditions are met:

(A) One or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist.

(B) The public interest requires that one or more corrective control provisions should be adopted.

(2) If both of the conditions in paragraph (b)(1) are met, the independent hearing officer shall recommend the boundaries of the IGUCA.

(c) At the public hearing specified in subsection (b), all of the following requirements shall be met:

(1) Documentary and oral evidence shall be taken, and a full and complete record of the public hearing shall be kept.

(2) The division of water resource's (DWR's) staff shall make a proffer of the records of the division pertaining to the proposed IGUCA and may present background, hydrologic, and other information and an analysis of that information, concerning the area in question.

(3) The DWR's proffer and any other DWR presentations shall be heard first, unless the hearing officer determines that a different order of presentation will facilitate the conduct of the hearing.

(4) If any part of the proposed IGUCA is within the boundaries of a groundwater management district (GMD), a representative of that GMD shall be allowed to present the GMD's own data, analysis, comments, provisions of the GMD's revised management plan, regulations, and recommendations at any public hearing.

(5) Each person shall be allowed to give an oral statement under oath or affirmation or to present documentary evidence, including a signed written statement.

(6) At the end of the public hearing, a reasonable opportunity for any person to submit oral or written comments concerning the matters presented may be allowed by the hearing officer.

(7) The hearing shall be conducted according to the procedure specified in K.A.R. 5-14-3a. The hearing officer shall have the discretion to use a different procedure if it facilitates the conduct of the hearing.

(8) The independent hearing officer shall make the following findings of fact:

(A) Whether one or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist; and

(B) whether the public interest requires that one or more corrective control provisions should be adopted.

(9) The independent hearing officer shall transmit the findings to the chief engineer.

(d) The proceeding shall be concluded if the independent hearing officer finds that at least one of the following conditions is met:

(1) None of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist.

(2) The public interest does not require that any corrective control provisions should be adopted.

(e) The procedure specified in subsection (f) shall be followed by the chief engineer if the independent hearing officer meets all of the following conditions:

(1) Finds that one or more of the conditions specified in K.S.A. 82a-1036, and amendments thereto, exist;

(2) finds that public interest requires that any one or more corrective control provisions should be adopted; and

(3) recommends the boundaries of the proposed IGUCA.

(f) If the independent hearing officer makes the findings and recommendation specified in subsection (e), one or more public hearings shall be conducted by the chief engineer to determine the following:

(1) What the goals of the IGUCA should be;

(2) what corrective control provisions should be adopted; and

(3) what the final boundaries of the IGUCA should be.

After the hearing, the order described in K.S.A. 82a-1038, and amendments thereto, shall be issued by the chief engineer. The chief engineer's order shall include the independent hearing officer's findings of fact.

(g) Notice of the public hearings held by the independent hearing officer shall be given by regular mail and by publication, as specified in K.S.A. 82a-1037 and amendments thereto. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 74-510a, K.S.A. 82a-1036, K.S.A. 82a-1037, and K.S.A. 2008 Supp. 82a-1038; effective Sept. 18, 2009.)

**K.A.R. 5-20-2. Formal review of intensive groundwater use control area orders.** (a) For each intensive groundwater use control area (IGUCA) designated by order of the chief engineer before July 1, 2008, pursuant to K.S.A. 82a-1038 and amendments thereto, a public hearing to review the designation shall be conducted by the chief engineer within seven years of the effective date of this regulation. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer.

(b) For each IGUCA designated by order of the chief engineer on or after July 1, 2008, a public hearing to review the designation shall be conducted by the chief engineer within seven years after the order is final. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer.

(c) Upon the request of a petition signed by at least five percent of the affected water users in an IGUCA designated by order of the chief engineer, a public review hearing to review

the designation shall be conducted by the chief engineer. This requested public review hearing shall not be conducted more frequently than every four years.

(d) Written notice of a public review hearing shall be given to each person holding a water right in the affected area. Notice of the hearing shall be given by publication in a newspaper or newspapers of general circulation within the affected area at least 30 days before the date set for the hearing. The notice shall indicate the reason for the hearing and shall specify the time and place of the hearing. At the public review hearing, documentary and oral evidence shall be taken, and a full and complete record of the public review hearing shall be kept.

(e) The following shall be considered by the chief engineer at the public review hearing:

(1) Whether one or more of the circumstances specified in K.S.A. 82a-1036, and amendments thereto, exist; and

(2) whether the public interest requires that the IGUCA designation be continued. The state shall have the burden of proving the need for continuance of the IGUCA designation.

(f) Based on the review specified in subsection (e), one of the following actions shall be taken by the chief engineer:

(1) Continue the IGUCA with its original or current corrective control provisions;

(2) reduce the restrictions imposed by one or more corrective control provisions within the scope and goals specified in the original IGUCA order;

(3) reduce the IGUCA boundaries;

(4) increase any allocations within the IGUCA;

(5) address any other issues that have been identified in the review; or

(6) revoke the IGUCA order and implement alternative measures, if necessary, to address the water issues in the affected areas.

(g) If, as a result of the review specified in subsection (e), the chief engineer determines that the restrictions imposed by current corrective control provisions may need to be increased or additional corrective control provisions may be needed, a hearing shall be conducted by the chief engineer according to K.A.R. 5-14-3a.

(h) If, as a result of the review specified in subsection (e), the chief engineer determines that the boundaries of the IGUCA may need to be increased, a new IGUCA proceeding shall be initiated by the chief engineer pursuant to K.A.R. 5-20-1. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706 and K.S.A. 82a-1036; effective Sept. 18, 2009.)