

Department of Agriculture, Division of Water Resources
Notice of Hearing on Proposed
Administrative Regulations, Statewide

A public hearing will be conducted at 10:00 a.m. Thursday, October 10, 2019, in room 124 of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of proposed regulations.

Individuals wishing to participate by teleconference may go to one of the following locations on the date and time of the public hearing:

Garden City Field Office, 2508 Johns Street, Garden City, Kansas
Stafford Field Office, 300 S. Main Street, Stafford, Kansas

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, 66502, or by e-mail to ronda.hutton@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and their economic impact follows:

K.A.R. 5-21-7 was adopted by the Chief Engineer of the Divisions of Water Resources, Kansas Department of Agriculture at the request of the Western Kansas Groundwater Management District No. 1 (“GMD1”) in 2003. The regulation adopted rules applicable only in GMD1 which governed applications for a change in use made of water from irrigation to any other type of beneficial use based on past use. In 2017, the Chief Engineer updated K.A.R. 5-5-9, which is the statewide rule applicable to change in use made from irrigation to other uses. The GMD1 Board of Directors has requested their specific rule be repealed so that the new statewide rule may be applied within GMD1. K.A.R. 5-5-9 adopts irrigation return flows for each county for which changes in use from irrigation can be based, rather than using the past use and the alternative maximum caps previously adopted by GMD1.

Economic Impact Statement for K.A.R. 5-21-7:

This regulation will likely enhance business activities and growth by increasing the predictability of water right quantities when the type of use is changed from irrigation to other uses, including changes to livestock use. GMD1 has approximately 25 medium to large livestock facilities as well as numerous smaller operations within the District’s boundaries. One could argue they are the main economic driver in the area, providing local grain markets for irrigation and dryland farmers. Because K.A.R. 5-21-7 was based on the previous 10-year historical use, it was rendering inactive or little used irrigation water rights almost worthless and was preventing livestock facilities from expanding, and municipalities from securing water for the future. Since the District is closed to new appropriations the only way to secure water is the purchase of existing water rights. The board did not want 5-21-7 to be the cause for livestock facilities moving out of the area and harming the local economy.

This regulation is not mandated by federal law.

There are no additional economic effects by changing the calculation method for consumptive use.

All entities that own or purchase irrigation water rights, including farmers, ranchers, and any other water right owners that wish to change them from irrigation to other types of use would be directly affected by the proposed regulation.

The changes will create a simplified and predictable method for converting water rights from irrigation use to other types of use, which in turn will allow greater utilization of remaining resources within the district for entities that require additional water to grow. Without this change, future growth could be hampered because of the inability to secure additional water for new purposes or expanded purposes and additional unnecessary use of the depleted aquifer could occur in order to increase the 10-year average use calculation used by the existing regulation.

The rule change itself will minimize the cost and impact on business and economic development within the State of Kansas, local government and individuals. Other methods were considered but ultimately not adopted because they did not prevent the total quantity of water consumed from increasing.

No costs will be incurred by or passed along to businesses, local governments, or members of public.

There are no actions mandated by updating this regulation. Only those persons wishing to change the type of use of a water right are subject to the regulation. This regulation changes the formula used, so that a predictable outcome from a change in consumptive use can be achieved without additional costs.

It is not anticipated that this regulation will impose any function or responsibilities upon cities, counties, or school districts.

The agency did extensive outreach prior to the passage of K.A.R. 5-5-9, and the GMD1 conducted their own process through public board meetings. GMD1 began discussions at their April 2016 board meeting and the topic was discussed at virtually every meeting through September 2017. The board was presented with numerous comments for requests in the change from irrigators, livestock facilities, and municipalities.

K.A.R. 5-25-2, 5-25-4 and 5-25-22 are intended to assist Big Bend Groundwater Management District No. 5 (“GMD5”), and the water users located therein, in finding a solution to the impairment complaint filed by the United State Fish and Wildlife Service regarding the senior surface water right for Quivira National Wildlife Refuge located at the bottom of Rattlesnake Creek. These regulations will assist in developing an augmentation project pursuant to K.S.A. 82a-706b and in moving water out of a high impact zone near the stream and refuge.

K.A.R. 5-25-2 – This regulation is amended to allow augmentation wells to be drilled closer in proximity to one another than the standard allowance for new wells. GMD5 has proposed an

augmentation wellfield made up of multiple low-volume wells, that they believe will meet standard spacing requirements. However, engineering work has not been completed on the project and this amendment is to ensure the project can continue if circumstances require closer spacing than is currently allowed.

K.A.R. 5-25-4 – New water rights may only be established under limited specific circumstances within GMD5. This regulation is amended to add two additional circumstances. First, any application for the development of augmentation wells, and second, an application to move an existing water right out of the identified high impact area along Rattlesnake Creek. In both cases, existing water rights are protected from impairment by the new water right.

K.A.R. 5-25-22 – This is a new regulation that will allow an existing water right in the identified high impact area around Rattlesnake Creek to be transferred to another area of GMD5 if the stated conditions are met. When a water right is transferred, it will take a new priority number in the new location.

Economic Impact Statement for K.A.R. 5-25-2, 5-25-4 and 5-25-22:

The proposed regulations will protect business activities in the district. While it is not possible to determine their actual impact as allowable actions under these regulations are voluntary, without development of an augmentation system for Rattlesnake Creek and the reduction of water use within the high impact area, it may become necessary to strictly administer water rights throughout the basin. This could result in a catastrophic cut in water use that would cut income to local farmers and cause drastic changes in land values as they shifted from irrigated to dryland use.

These regulations are not mandated by federal law.

The proposed regulations do not require any implementation or compliance costs. If GMD5 or some other entity decides to develop augmentation or individuals decide to move water rights, they will incur costs in those activities, but none are mandated.

Farmers, ranchers, feedlots, and other water right owners located within GMD5 will be directly affected by the proposed regulations.

As there are no direct costs mandated, these regulations offer the benefit of additional methods to solve the impairment of the Quivira National Wildlife Refuge that are much cheaper than strict administration of the basin.

The agency has worked with GMD5 to remove all obstacles to the establishment of augmentation, including development of an MOU with GMD5 and the amendment of these regulations.

No cost will be incurred by or passed along to businesses, local governments, or members of the public.

It is not anticipated that this regulation will impose any function or responsibilities upon cities, counties, or school districts.

The agency has worked extensively with GMD5 to develop these regulations so that they

could continue to move forward with their plans for augmentation. The GMD5 Board passed a resolution requesting that these regulations be adopted by the Chief Engineer. Numerous public meetings on solving the impairment of Quivira National Wildlife Refuge have been held over the last two years and these regulations are just part of a larger conversation about solutions to the impairment.

Failure to adopt these regulations could, if they prevented the development of an augmentation project or enough water use is not reduced, cause a large loss in income for local water right owners if they are strictly administered. Land values would decrease and also cause a corresponding decrease in tax revenue for local entities.

Any individual with a disability may request accommodations in order to participate in the public hearing and may request the proposed regulations and impact statements in an accessible format. Requests for accommodations should be made at least five working days in advance of the hearing by contacting Ronda Hutton at (785) 564-6715 or fax (785) 564-6777. Handicapped parking is available on the west side of the building located at 1320 Research Park Drive in Manhattan. Entrance to the building is also located on the west side of the building and is accessible to individuals with disabilities. If you have questions about accessibility for any of the above listed teleconference locations, please contact Ronda Hutton at (785) 564-6715 or email ronda.hutton@ks.gov.

Copies of the regulations and their economic impact statements may be obtained by contacting the Department of Agriculture, Ronda M. Hutton, 1320 Research Park Drive, Manhattan, KS 66502 or (785) 564-6715 or by accessing the department's Web site at agriculture.ks.gov. Comments may also be made through our website under the proposed regulation.

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Kansas Department of Agriculture