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DIVISION OF CONSERVATION

Rules and Regulations

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ADMINISTRATIVE RULES AND REGULATIONS

WATER RESOURCES COST-SHARE PROGRAM

K.A.R. 11-1-6 Definitions. (a) "Applicant" means a landowner or legal agent applying for financial assistance to construct or apply conservation or pollution control practices.

(b) "Commission" means the state conservation commission.

(c) "District" means a conservation district that is a political subdivision of the state government with its own governing body of five elected supervisors created under K.S.A. 2-1901 et seq., and amendments thereto, as a special purpose district to develop and carry out soil and water conservation programs within its political boundaries.

(d) "Financial assistance" means financial incentives offered to eligible applicants on a cost-sharing basis to implement approved soil and water conservation and pollution control practices.

(e) "Landowner" means a private or public owner of land or group of persons owning land within the district or, if excepted by the commission, an adjacent district.

(f) "Practice" means a land treatment or management practice constructed or implemented to effect soil erosion control, pollution control, water conservation, and water supply.

(g) "Total maximum daily load" and "TMDL" mean state identification and prioritization of pollutants and specific water bodies with pollutant loadings allocated for specific water bodies and corresponding pollutant-reduction goals developed and strategies implemented.

(h) "Water resources cost-share program" and "WRCSP" mean a state-financed cost-share program providing financial assistance to landowners for the installation of conservation and water quality practices for the restoration and protection of Kansas water resources. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

K.A.R. 11-1-7 Allocation of water resources cost-share program funding. (a) Appropriation for the water resources cost-share program may be used for financial assistance to construct conservation and water quality practices or to contract for technical expertise, with specific allocations for each recommended annually by the commission and approved by the governor and legislature.

(b) The allocation of WRCSP funds shall be made by the commission on or after July 1 to districts or other entities receiving funds.

(c) Appropriated funds for cost-share assistance shall be allocated to districts under three accounts:

(1) The district needs allocation (DNA) shall represent a portion of the total WRCSP appropriation and shall be allocated to all districts. The total amount of the appropriation dedicated to the DNA shall be recommended by the commission and shall be subject to approval by the governor and legislature. The DNA may be used for eligible conservation and water quality improvement practices as determined by the conservation districts. The approved DNA shall be allocated to districts based on the following criteria:

(A) Non-federal rural acres: one point for each 100,000 acres, with a maximum point total of eight;

(B) water quality: ranging from one point for districts in low sedimentation areas up to eight points for districts in high sedimentation areas; and

(C) water quantity: ranging from one point for districts in areas of high rainfall and significant surface water storage up to eight points for districts in areas of low rainfall, limited surface water storage, and depleting groundwater supplies.

(2) The water quality (WQ) or total maximum daily load (TMDL) allocation shall represent a portion of the balance of the appropriation remaining after the DNA is deducted. WQ or TMDL funds may be allocated by the commission to districts if the following requirements are met:

(A) The WQ allocation shall be used only in targeted areas identified by the state water plan and commission for eligible practices that address sedimentation, nutrient and pesticide runoff, and bacteria from livestock waste.

(B) The TMDL allocation shall be utilized in the identified watersheds for only those practices that address the impairment for which the TMDL was established.

(3) The annual irrigation initiative allocation (IIA) shall be made by the commission in accordance with the following criteria:

(A) The amount remaining after the DNA and WQ allocation are deducted;

(B) commission-developed targeting criteria based on irrigation water use in areas of major groundwater decline;

(C) state water plan priority areas;

(D) other priority areas with declining ground-water supplies as identified by the governor, legislature, agencies, groundwater management and conservation districts; and

(E) any other criteria determined by the commission to meet the water resource goals and objectives of the state. (Authorized by and implementing K.S.A. 2-1915; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

K.A.R. 11-1-8 Conservation district program. Each participating district board of supervisors shall develop and submit to the commission for approval, upon commission-prescribed forms, the district's fiscal year financial assistance program under the following provisions: (a) The district shall develop the program after receiving the state program forms and a list of eligible practices from the commission.

(b) Each participating district shall develop annual financial assistance prioritization criteria following commission guidelines, upon which the district shall base its considerations for cost-sharing.

(c) In the installation of any eligible practices, the landowner shall be solely responsible for assuring compliance with any applicable federal, state, or local laws, ordinances, and regulations. The landowner also shall be solely responsible for obtaining all permits, licenses, or other instruments of permission required before the installation of the proposed practice.

(d) Unless a special allowance is granted by the commission, the minimum standards of design, construction, operation, and maintenance specified in section IV of the "Kansas field office technical guide," as adopted by reference in K.A.R. 11-7-14 and the other standards adopted by the commission in K.A.R. 11-7-14 shall be the basis for determining the need and practicability of the proposed practice. Specifications for additional soil and water conservation and water quality pollution control practices not set forth in section IV of the "Kansas field office technical guide," and modifications to those included in the technical guide may be considered and authorized by the commission at the request of the district. Practice descriptions and specification information shall be on file in the district office.

(e) A responsible technician or a qualified representative of the district, as determined by the district board of supervisors, shall inspect the work in progress to determine that all specifications are met. Following each installation, the district shall certify to the commission that the practice was properly installed.

(f) Financial assistance levels set by the district shall not exceed 70% of the actual cost or the countywide average cost, whichever is less, and shall not change during the fiscal year unless a specific allowance is granted by the commission.

(g) The maximum amount of financial assistance allowed for each practice, except \$20,000 for livestock waste systems and irrigation systems, shall be \$10,000 unless exempted by the commission.

(h) Each district shall submit to the commission, in writing, all amendments to the district program for commission approval or disapproval. The only permissible amendments shall be the following:

(1) Changes in district representatives authorized to sign cost-share forms;

(2) the addition of conservation practices within the current year; and

(3) county average costs under exceptional circumstances. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

K.A.R. 11-1-9 Financial assistance contract. (a) Each request for a financial assistance payment shall be submitted to the district on forms prescribed by the commission. All requests submitted on commission-prescribed forms shall be considered for approval or disapproval by the district board of supervisors or its designee and duly recorded in the minutes of the regularly scheduled board meeting.

(b) Financial assistance requests shall be consistent with each district's current fiscal year program as approved by the commission, and all commission requirements and procedures shall be followed in the submittal of financial requests.

(c) The actual cost or county average cost, whichever is less, shall be used as a basis for determining financial assistance earned.

(d) (1) The applicant shall not begin construction until written approval of the submitted request is given by the commission to the district, unless the commission determines that an exception is warranted.

(2) If the applicant requests immediate approval, verbal approval may be given by the commission if either of the following conditions is met:

(A) The practice has been designed and surveyed, and the contractor or installer is at the site and ready to proceed with practice construction on the same day that the request is made.

(B) The commission will not receive the financial assistance request form before an uncommitted funds cancellation deadline.

(e) Partial payments shall not be awarded to an applicant approved for financial assistance, unless specifically granted by the commission, until the project is certified as complete and includes all components installed according to the design and installation requirements of the commission.

(f) Each contract shall be assigned by the commission an expiration date of 60 days following the date the contract is approved by the commission if the conservation district does not assign the expiration date.

(g) Districts may grant an extension of any length of time during the contract period but not beyond June 30.

(h) Contract cancellation and amendments of an approved contract shall be considered by the district for approval or disapproval and shall be duly recorded in the regularly scheduled board of supervisors' meeting minutes. If a cancellation or amendment is approved by the commission, the district shall retain one copy and forward one copy to the applicant or legal agent.

(i) Each applicant implementing a livestock waste control system funded from the water resources cost-share program shall ensure that the system meets the requirements specified in K.A.R. 11-7-14.

(j) The district shall submit the original of each completed and signed contract, on a commission-approved form, to the commission for approval or disapproval. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

K.A.R. 11-1-10 Cancellation of funds. (a) A status report of all active contracts and each district's uncommitted balance shall be prepared by the commission on or after June 1 and shall be provided to each district.

(b) Cost-share funds uncommitted and not under contract at the close of business on June 30 shall become void.

(c) Cost-share funds under contract for practices on which construction has not begun by June 30 shall be individually evaluated by the commission and may be encumbered and continued for one or more years or may become void.

(d) Cost-share funds under contract for practices on which construction has not begun by June 30, due to inclement weather or other factors beyond the control of the applicant, shall be individually evaluated by the commission and may be encumbered and continued for one or more years.

(e) Cost-share funds under contract for practices on which construction has begun but has not been completed by June 30 may be encumbered and continued for one year.

(f) Encumbered contracts not completed within the year of encumbrance may expire and become void, if not extended by the commission.

(g) Any contract may be extended by the commission if the contract is determined by the commission to be highly significant in pollution reduction. (Authorized by and implementing K.S.A. 2-1915; effective Aug. 23, 2002.)

K.A.R. 11-1-11 Contract between the landowner and the state conservation commission. (a) Each applicant for financial assistance shall sign a contract on the form or forms approved by the commission.

(b) The applicant shall agree to maintain the practice according to maintenance procedures prescribed by the commission for 10 years or the life of the practice, whichever is greater.

(c) If the financial assistance recipient fails to maintain the practice according to contract provisions, the recipient may be declared ineligible for future financial assistance funds. The financial assistance recipient may be required to repay financial assistance funds received on the following pro rata basis if the amount is more than \$100.00 and the recipient has constructed or installed the practice within the following time limits:

(1) Five or fewer years: 100%;

(2) more than five years but six or fewer years: 80%;

(3) more than six years but seven or fewer years: 60%;

(4) more than seven years but eight or fewer years: 40%;

(5) more than eight years but nine or fewer years: 20%; and

(6) more than nine years but 10 or fewer years: 10%.

(d) Each recipient of state financial assistance for any pollution control practice shall be responsible for proper operation and maintenance and, if needed, modification of the facility or any other actions to ensure satisfactory operation and continued pollution control, at the recipient's expense.

(e) Each financial assistance recipient shall obtain a written agreement to transfer the maintenance responsibilities specified in the event of new ownership of the property where the practice was installed.

(f) If a recipient of financial assistance is determined by the commission to be in noncompliance with the requirements of the contract for financial assistance, upon notice by the district, the recipient shall bring the property into compliance within the time specified by the commission, or the repayment provisions of the application contract outlined in subsection (c) above shall apply. (g) The provisions of the financial assistance application contract shall not apply to a recipient of financial assistance if the recipient's failure to comply is due to any of the following:

(1) Natural disasters;

(2) faulty design or construction, as determined by the commission; or

(3) any other situation beyond the control of the financial recipient. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

K.A.R. 11-1-12 Special projects. (a) Funds may be withheld by the commission from the annual appropriation, and funds released by the districts may be reserved by the commission for the purpose of cost-sharing or contributing to special projects that the commission considers necessary and of high priority for the abatement of soil erosion and water pollution, and for conservation of water resources.

(b) (1) Authority shall rest with the commission to fund special projects for the purpose of testing, development, implementation, and demonstration of new cost-share practices appropriate for future soil and water conservation and water quality needs.

(2) Special projects may be funded by the commission from annual appropriations if the projects are determined to be essential to increasing the effectiveness and efficiency of the cost-share program.

(c) Special projects shall be conducted for a specified period of time and in a limited area as determined by the

commission. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

K.A.R. 11-1-13 Irrigation funding procedures. (a) Eligible applicants shall include the following:

- (1) Landowners; and
- (2) tenants or operators granted authority by landowners through power of attorney.

(b) If cost-share funds are utilized to convert nonirrigated land, which is also known as land with no water right, an equal amount of previously irrigated land shall be taken out of irrigated production, unless an exception is granted by the commission.

(c) Before project approval, the applicant shall provide the district with verification of the following:

- (1) The allowable pump rate;
- (2) the location and the amount of the land authorized for irrigation; and
- (3) a valid water right in good standing.

(d) Each approved applicant for irrigation practice financial assistance shall review and sign a conservation plan of operations (CPO) and an irrigation development plan prepared by the natural resources conservation service. Failure to implement the requirements of the CPO due to neglect by the irrigator may result in payback of cost-share funds by the recipient according to the guidelines specified in K.A.R. 11-1-11.

(e) Each application for financial assistance for irrigation practices shall meet eligibility requirements based on the estimated cost of potential water savings. Potential water savings shall be determined using table KS6-1 of the natural resource conservation service's "irrigation guide," as in effect January 2002 and hereby adopted by reference. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

K.A.R. 11-1-14 Petition for reconsideration. (a) A landowner who has been denied cost-share funding may request a reconsideration of a district decision by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 2-1904; implementing K.S.A. 2-1915; effective Aug. 23, 2002.)

WATERSHED DAM CONSTRUCTION PROGRAM

K.A.R. 11-3-1. Definitions. (a) "Appurtenant works" means the following:

- (1) The primary spillway;
- (2) other conduits through a dam;
- (3) valves;
- (4) the auxiliary spillway;
- (5) the service spillway;
- (6) the stilling basin;
- (7) any constructed outlet channel;
- (8) all dikes and berms designed and constructed to protect a dam;
- (9) drains; and
- (10) all other features constructed to protect or operate a dam.

(b) "Breach" means a gap or an opening in an embankment or auxiliary spillway that results in the complete loss of reservoir storage.

(c) "Breach analysis" means an analysis performed by a licensed professional engineer to determine the areas that would be inundated if a dam failed.

(d) "Chief engineer" means the chief engineer, division of water resources, department of agriculture.

(e) "Commission" means the state conservation commission.

(f) "Decommissioning" means the removal of a dam, the appurtenant works, and the embankment.

(g) "Detention dam" means a single-purpose dam designed for the temporary storage of floodwaters and for the controlled release of those floodwaters.

(h) "District" means a watershed district, drainage district, or any other special-purpose district that has been organized and incorporated according to appropriate statutes and has the power to levy taxes and the power of eminent domain.

(i) "Embankment" means a dam's principal barrier made of earth or rock fill or a combination of earth and rock fill.

(j) "General plan" means a preliminary engineering report describing the characteristics of the project area, and

the nature and methods of dealing with the soil and water problems within the project area. The general plan shall include maps, descriptions, and other data as necessary for the location, identification, and establishment of the scope of the work to be undertaken and any other relevant data and information that the chief engineer may require.

(k) "Grade stabilization dam" means a structure designed to control the erosion of a watercourse.

(l) "Hazard" means any situation that creates the potential for adverse consequences that may include loss of life, property damage, and any other adverse impact.

(m) "Inundation area" means the area below a dam that would be inundated with water as determined by conducting a breach analysis.

(n) "Operation and maintenance" means the actions or upkeep, or both, necessary for a dam to continue to function properly, including the following:

(1) Woody vegetation control;

(2) grass seeding;

(3) burrowing animal control;

(4) the repair of minor erosion, cracks, animal burrows, and minor settling;

(5) the care of pipes, piezometers, drains, valves, gates, and other mechanical devices;

(6) the replenishment and proper placement of riprap;

(7) the removal of debris from spillways; and

(8) any other actions necessary for upkeep.

(o) "Permit" means the formal document issued by the chief engineer or other issuing agency to the district authorizing the construction or rehabilitation of a project.

(p) "Project" means the construction or rehabilitation of a detention dam or grade stabilization dam.

(q) "Rehabilitation" means any work, except work required due to inadequate operation and maintenance, to extend the service life of a dam and to meet the applicable safety and performance standards.

(r) "Structure condition report worksheet" means a current physical assessment of a rehabilitation project on a form prescribed by the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

K.A.R. 11-3-2. Application for construction. (a) Any organized watershed district, drainage district, or other special-purpose district interested in state assistance may apply for state cost-share assistance funds appropriated for the construction of detention dams and grade stabilization dams. Each application for state assistance shall be submitted on a form supplied by the commission. All applications shall be due at the commission office on or before April 1 to be included in the evaluation process for possible funding during the next fiscal year.

(b) Each district submitting an application shall employ or acquire the services of a person knowledgeable of watershed dam construction administrative procedures, who shall be known as the contracting officer for the proposed site.

(c) Each recipient of state cost-share assistance for construction shall submit an inundation area map before the final payment is made. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

K.A.R. 11-3-3. Permit to construct or rehabilitate. Before the allocation of funds to any project and before any district advertises for bids, the district shall submit the following to the commission:

(a) A copy of the permit to construct or rehabilitate, as issued by the chief engineer; and

(b) an updated general plan. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

K.A.R. 11-3-4. Allocation of funds. (a) An evaluation of applications shall be made by the commission to determine the priority ranking for all proposed projects. In addition, an amount that is contingent on appropriations shall be determined for projects in each district and other dams as authorized by the legislature.

(b) The maximum cost-share level for construction or rehabilitation costs, including engineering and inspection costs, shall be 80 percent. The maximum annual assistance per structure or district shall be \$120,000, except when uncommitted funds are available after all eligible structures have been funded. These uncommitted funds may be used to provide additional cost-sharing above the maximum limit. Assistance funds shall not be used for easements or administrative costs, except on rehabilitation projects if the commission determines that easements within the inundation area are the most cost-effective alternative.

(c) The standard bidding procedures of the department of administration shall be used in the bidding process for approved applications for state assistance.

(d) Adequate accounting and fiscal records shall be maintained by the district to reflect the receipts and expenditures of all funds of the project.

(e) The district shall submit project documents and relevant information as required by the commission.

(f) The district shall construct or cause the project to be constructed to final completion in accordance with the plans and specifications approved by the chief engineer. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

K.A.R. 11-3-5. Contract. (a) Each contract shall be a fund-obligating document and shall include the contractual provisions required by the commission and the state.

(b) Any contract not completed by the end of the fiscal year in which appropriation was made may be extended upon written request. (Authorized by K.S.A. 2-1904, K.S.A. 2004 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2004 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

K.A.R. 11-3-6. Partial payments. Partial payments of appropriated funds shall be made to the district no more often than once each month. Each partial payment shall be requested on a form furnished by the commission. All partial payments shall be documented by construction or rehabilitation progress reports. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

K.A.R. 11-3-7. Notification of completion. (a) The district shall notify the commission and the chief engineer when the district's approved project is complete and ready for final inspection.

(b) The notification to the commission shall include the following:

- (1) The date of completion of the project; and
- (2) an itemized list of all costs of the following:

- (A) Construction or rehabilitation; and
- (B) engineering inspections and geological investigations.

(c) The district shall submit a request for final payment of state funds for the project on a form provided by the commission, after the issuance of the certificate of completion by the chief engineer. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

K.A.R. 11-3-8. Alterations to project plan. Each alteration of or change order regarding any original construction or rehabilitation plan shall require the prior approval of the chief engineer and notification to the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

K.A.R. 11-3-9. Supplemental application procedures. Each supplemental request of funds for costs of construction or rehabilitation and engineering costs exceeding the approved funding shall be submitted on a form supplied by the commission. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended March 24, 2006.)

K.A.R. 11-3-10. Inspection. The district shall conduct an annual operation and maintenance inspection of each completed new or rehabilitated state-funded structure and shall file an inspection report on a form provided by the commission. The district shall submit a copy of the inspection report to the commission and chief engineer. The district shall implement corrective maintenance or repair when needed. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended March 24, 2006.)

K.A.R. 11-3-11. Application for rehabilitation. (a) Any organized watershed district, drainage district, other special-purpose district, or other dam owner as authorized by the legislature that is interested in state assistance may apply for state cost-share assistance funds appropriated for the rehabilitation of detention dams and grade stabilization dams. Each application for state assistance shall be submitted on a form supplied by the commission.

(b) Each applicant shall submit a letter of intent to the commission by July 1 for a specific rehabilitation project to be considered for funding in the next fiscal year. The letter of intent shall include the following:

- (1) A preliminary rehabilitation design;
- (2) a preliminary cost estimate for the rehabilitation;
- (3) a cost estimate for a breach analysis;
- (4) the hazard classification; and
- (5) the structure condition report worksheet. The chief engineer shall be notified upon commission receipt of all rehabilitation applications.

(c) At the beginning of each fiscal year, each applicant shall be notified of the applicant's priority ranking by the

commission. Each applicant with a priority ranking high enough to be selected for possible funding shall complete the detailed design, total cost, and financial assistance funding requirements using forms prescribed by the commission.

(d) The components eligible for financial assistance for the dam and appurtenant works, inundation area delineation, or inundation area easements shall include the following:

- (1) The engineering fees;
- (2) the construction or repair of embankments;
- (3) excavation;
- (4) metal, concrete, and other components;
- (5) breach of a dam;
- (6) establishment of permanent vegetation;
- (7) fencing;
- (8) riprap or filter material;
- (9) decommissioning;
- (10) upgrade of a spillway;
- (11) acquisition of inundation area easements;
- (12) inundation area mapping; and
- (13) any other components that the commission deems necessary.

(e) Each request for financial assistance for any rehabilitation required because of deficient operation and maintenance shall receive the lowest priority for funding. (Authorized by K.S.A. 2- 1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2- 1915 and L. 2005, ch. 206, sec. 75; effective March 24, 2006.)

K.A.R. 11-3-12. Application for financial assistance for inundation area mapping. (a) Any organized watershed district, drainage district, other special-purpose district, or other dam owner authorized by the legislature may apply for state financial assistance for inundation area mapping. Each application shall be submitted on a form prescribed by the commission. (b) Each application for financial assistance for inundation area mapping within a district shall include the following: (1) The identification of each person whose services will be employed to complete the map; (2) an acknowledgement that the services specified in paragraph (b) (1) will be conducted by a licensed professional engineer; and (3) a summary of how the district will use the inundation area map to encourage the prevention of future inundation area development. (c) Prioritization for funding shall include consideration of the following factors: (1) The applicant's plan for using the dam inundation map to encourage prevention of future inundation area development; (2) the amount of funding provided by the district for each inundation area mapping application; (3) any application that includes a strategic inundation area mapping plan. The plan shall include the district's prioritized mapping completion timelines to address inundation area mapping for all dams in the district; and (4) other relevant criteria identified by the commission that mitigate hazards associated with watershed dams. (Authorized by K.S.A. 2-1904, K.S.A. 2005 Supp. 2-1915, and L. 2005, ch. 206, sec. 75; implementing K.S.A. 2005 Supp. 2-1915 and L. 2005, ch. 206, sec. 75; effective March 24, 2006.)

MULTIPURPOSE SMALL LAKES PROGRAM

K.A.R. 11-4-1. Definitions. (a) "Authorized representative" means the individual designated by the sponsor to be responsible for all correspondence. The authorized representative shall be the point of contact for the proposed project.

(b) "Bathymetric survey" means a survey recording the water depth of a reservoir at various points.

(c) "Commission" means the state conservation commission.

(d) "Cost-share limit" means the limitation of state funds as established by statute for class I, class II, and class III projects.

(e) "Land treatment" means a structure or conservation practice that shall constitute a viable method of erosion abatement or sediment and pollution control.

(f) "Phase I letter of interest" means an initial written request from a sponsor for a determination of whether a proposed project is eligible for funding.

(g) "Phase II letter of intent" means a letter providing the necessary information for establishing the funds required for a proposed project. Project plans, budgets, and schedules shall be developed in sufficient detail to support the funding request. An approved general plan, which shall be submitted with the letter of intent, shall supply detailed information to allow comparison with other projects. The signed letter of intent and supporting documentation shall be reviewed by the state water-related agencies. An order of priority for the proposed projects shall be established from the information provided in the letter of intent and recommendations from the reviewing agencies.

(h) "Phase III application" means the application for the appropriated funds for a project. This term shall include construction documents including technical specifications, contract documents, bidding plans and procedures, and documentation showing that all required permits, titles, or options on the necessary lands and easements have been

obtained.

(i) "Program" means the multipurpose small lakes program.

(j) "Project" means construction or renovation of a multipurpose small lake structure by the sponsor, including acquisition of land rights and installation of land treatment structures, dams, and recreation facilities.

(k) "Renovation," as defined in K.S.A. 82a- 1603 and amendments thereto, shall include the act of restoring an existing structure to safe and efficient functioning for the original purpose or for a new purpose.

(l) "Renovation plan" means a plan that outlines the scope of work of the project and shall include the following:

(1) A benefit and cost analysis;

(2) documentation of how the renovation will return the structure to its original purpose or a new purpose; and

(3) basic construction and hydrologic data for planning purposes. (Authorized by and implementing K.S.A. 2005 Supp. 82a-1602; effective, T- 86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

K.A.R. 11-4-2. Phase I letter of interest. (a) Each prospective sponsor of new construction shall submit a phase I letter of interest to the commission to determine if the proposed project will qualify for the program. The letter of interest shall be submitted on a form furnished by the commission.

(b) In the phase I letter of interest for renovation of an existing lake, the sponsor shall provide the commission with evidence that the proposed project meets the following initial eligibility requirements:

(1) The lake shall currently provide local public water supply benefits or be reasonably expected to do so in the future.

(2) The dam impounding the lake shall not be considered hydrologically inadequate or unsafe by the chief engineer.

(c) The phase I letter of interest shall be reviewed by the commission, and the sponsor shall be notified in writing if the proposed project qualifies for funding or does not qualify. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a- 1607; implementing K.S.A. 82a-1607; effective, T- 86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

K.A.R. 11-4-3. Phase II letter of intent. (a) (1) Any sponsor may submit a phase II letter of intent following receipt of a letter from the commission acknowledging that the proposed project is eligible for possible funding. The letter of intent, submitted on a form furnished by the commission, shall include an approved general plan, if applicable.

(2) Each proposed project involving community development block grant funds shall include a copy of an application for these funds. If the grant conditions change or new grants are awarded anytime after submittal of the proposal, the sponsor shall forward the most current version to the commission.

(3) The sponsor shall include an agricultural impact statement and resources inventory when five acres or more of prime agricultural land is taken under the power of eminent domain, if applicable.

(b) In addition to meeting the requirements specified in subsection (a), the sponsor of a renovation project shall submit a renovation plan with the letter of intent.

(c) The consideration of renovation projects shall be based on the following criteria:

(1) The water supply status of the lake;

(2) the back-up water supply source;

(3) any prior use of multipurpose small lake program funds;

(4) the population served by the lake;

(5) the age of the lake;

(6) the loss of storage capacity due to sedimentation;

(7) the location of the lake relative to a total maximum daily load area;

(8) the current and potential recreational uses of the lake;

(9) the availability of bathymetric surveys and studies of the lake;

(10) the sedimentation rate; and

(11) a plan for prevention of future sedimentation.

(d) The original of the phase II letter of intent, plus one copy for each reviewing agency, shall be submitted to the commission no later than June 1 to be considered in the budget request for the next fiscal year. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

K.A.R. 11-4-4. Review process. (a) The agencies reviewing each phase II letter of intent shall include the following:

(1) Kansas department of health and environment;

(2) division of water resources, Kansas department of agriculture;

(3) Kansas department of wildlife and parks;

(4) Kansas biological survey at the university of Kansas;

(5) Kansas state historical society; and

(6) Kansas water office.

(b) Each agency's review comments shall be considered by the commission in the priority ranking process. The proposed projects not recommended for funding shall be returned to the sponsor with the reasons for rejection. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

K.A.R. 11-4-5. Funding. Each project recommended for funding through the review process and approved by the commission shall be included as a line item in the commission's budget request. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

K.A.R. 11-4-6. Phase III application. (a) After funds have been appropriated by the legislature for a project, the sponsor shall submit to the commission a phase III application. The application shall be submitted on a form furnished by the commission.

(b) The sponsor shall be responsible for securing all required permits before a state contract may be authorized. A copy of each required permit shall be furnished to the commission before any construction or renovation reimbursements are made.

(c) In addition to meeting the other requirements of this regulation, the sponsor of each renovation project shall submit a pre-excavation bathymetric survey estimating the volume of sediment to be excavated and a plan to address the safe handling and disposing of contaminants.

(d) The contractor selection committee shall include a representative of the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

K.A.R. 11-4-7. State contract. (a) Each contract between the commission and the sponsor shall include the contractual provisions required by the commission and the state.

(b) Any contracts not completed by the end of the fiscal year in which appropriation was made may be extended by the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

K.A.R. 11-4-8. Procedures. (a) Each engineering plan submitted to the chief engineer shall reflect economical design and shall conform to or exceed the construction requirements of the chief engineer.

(b) Each sponsor shall have acquired fee simple title or any other estate or interest in the site of the project, including all necessary easements and rights-of-ways, to ensure undisturbed use and possession for the purpose of construction, operation, and maintenance for the life of the project.

(c) Standard bid procedures of the department of administration shall be used in the bidding process for construction projects.

(d) Standard bid procedures of the department of administration and the bid procedures of the commission shall be used in the bidding process for renovation projects.

(e) The sponsor shall maintain adequate accounting and fiscal records to reflect the receipt and expenditure of all funds on the project.

(f) The sponsor shall submit relevant documents and information as required by the commission.

(g) The sponsor shall ensure that a bid bond and a performance bond are secured by the contractor.

(h) The sponsor shall complete the project in accordance with the application, plans, specifications, and any modifications approved by the chief engineer. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

K.A.R. 11-4-9. Partial payments. Partial payments of appropriated state funds shall be made by the commission to the sponsor no more often than once each month. Each partial payment shall be requested by the sponsor on a form furnished by the commission. All claims shall be documented by the sponsor as directed by the commission.

(b) Each partial payment request shall include a project progress report. Partial payments shall be made in proportion to the work completed on the project.

(c) Until final certification is made by the chief engineer, 10 percent of the total project costshare shall be retained by the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

K.A.R. 11-4-10. Notification of completion. (a) The sponsor of a construction project shall notify the commission and the chief engineer when the project is completed and ready for final certification by the chief engineer. The notification of completion shall be submitted on a form supplied by the commission and shall include

the following:

(1) The date of completion of the project;
(2) an itemized list of all costs of construction, engineering, surveys, geological investigations, inspections, and land acquisition; and

(3) a request for final payment of funds for the project.

(b) The sponsor of a renovation project shall notify the commission when the project is completed. The notification of completion shall be submitted on a form supplied by the commission and shall include the following information:

(1) The date of completion of the project;

(2) an itemized list of all costs of restoration, engineering, surveys, geological investigations, inspections, and land acquisition costs;

(3) a final bathymetric survey and a determination of the final excavated volume; and

(4) a request for final payment.

(c) Final disbursement of the funds due from appropriated state funds shall be made after receipt of final certification from the chief engineer. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

K.A.R. 11-4-11. Modifications to construction or renovation plan. Each modification of the original construction or renovation plan shall require the prior approval of the chief engineer and notification to the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

K.A.R. 11-4-12. Amendment to costs of project. (a) The sponsor shall notify the commission of all increases in costs and of all proposed additions to, deletions from, and modifications of the project.

(b) The sponsor may submit an amendment to the application for state funds to the commission for costs of construction, engineering, and land rights above the approved application funding. The amendment shall be submitted on a form furnished by the commission and shall include any documentation required by the commission.

(c) After review by the commission, each approved amendment for increased funding shall be designated as either of the following:

(1) Funded from appropriations made available for necessary amendments; or (2) included as a line item request in the commission budget.

(d) Each amendment that is not approved shall be returned to the sponsor with each reason for rejection. The sponsor may appeal the nonapproved amendment in writing by requesting a hearing with the commission. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 2005 Supp. 82a-1604, 82a-1605, and 82a-1606 and K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended Sept. 22, 2006.)

K.A.R. 11-4-13. Maintenance. The sponsor shall provide maintenance of the completed structure throughout its designed life or useful life, whichever is longer. The sponsor shall implement corrective maintenance or repair when needed. (Authorized by K.S.A. 2005 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

K.A.R. 11-4-14. Annual inspection. The sponsor shall ensure that an annual operation and maintenance inspection of the completed structure is made. The inspection shall be made by a person experienced in dam operation and maintenance. The sponsor shall submit a copy of the operation and maintenance inspection report, on a form provided by the commission, to the commission and chief engineer. (Authorized by and implementing K.S.A. 2005 Supp. 82a-1602; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987; amended Sept. 22, 2006.)

K.A.R. 11-4-15. Eligible components of renovation projects. The eligible components of a renovation project shall include the following:

(a) Engineering;

(b) repair of embankments;

(c) construction of silt basins;

(d) mobilization and demobilization of equipment;

(e) excavation;

(f) removal of sediment from a reservoir;

(g) metal, concrete, and associated materials;

(h) inundation mapping; and

(i) land rights. (Authorized by K.S.A. 2005 Supp. 82a-1602; implementing K.S.A. 2005 Supp. 82a-1603(m), 82a-

1604, 82a-1605, and 82a-1606; effective Sept. 22, 2006.)

K.A.R. 11-4-16. Testing and disposal of sediment from reservoir. The testing of sediment by the sponsor may be required by the commission before or during excavation, or both. The sponsor shall be required to have one or more sufficient sediment storage basins for the disposal of excavated material. (Authorized by K.S.A. 2005 WATER SUPPLY RESTORATION PROGRAM 11-6-4 533 Supp. 82a-1602 and K.S.A. 82a-1607; implementing K.S.A. 82a-1607; effective Sept. 22, 2006.)

WATER SUPPLY RESTORATION PROGRAM

K.A.R. 11-6-1. Definitions. (a) "Commission" means the state conservation commission.

(b) "Land treatment" means structures or conservation practices that constitute viable methods of erosion abatement or sediment and pollution control.

(c) "Letter of interest" means an initial written request from a sponsor for a determination of whether a proposed project is eligible for funding.

(d) "Letter of intent" means a letter providing the necessary information for establishing the funds required for a proposed project. Project plans and specifications, budgets, and schedules shall be developed in sufficient detail to support the funding request. The signed letter of intent and supporting documentation shall be reviewed by the environmental review agencies specified in K.A.R. 11-6-6.

(e) "Project" means the restoration of a water supply structure by a sponsor, including land treatment.

(f) "Public water supply" means a water supply that has beneficial municipal use.

(g) "Restoration" means the act of returning an existing water supply structure to safe and efficient functioning, including the installation or repair of erosion control measures and land treatment.

(h) "Restoration plan" means a document providing sufficient details to support the letter of intent.

(i) "Sponsor" means any of the following:

(1) A political subdivision of the state that has the power of taxation and the right to eminent domain;

(2) a public wholesale water supply district; or

(3) a rural water district.

(j) "Total maximum daily load" means the maximum amount of a pollutant that a body of water can receive without violating water quality standards.

(k) "Watershed protection" means land treatment that reduces sediment load and abates erosion.

(l) "Water supply structure" means a structure that impounds a public water supply. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

K.A.R. 11-6-2. Eligible components of projects. The eligible components of a project shall include the following:

(a) Engineering, including project design, plans, and specifications;

(b) repairs of the structure and its appurtenant works;

(c) mobilization and demobilization of equipment;

(d) dredge and sediment disposal facilities; and

(e) watershed protection and restoration. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

K.A.R. 11-6-3. Letter of interest. (a) Each prospective sponsor shall submit a letter of interest to the commission to determine if the proposed project is eligible for consideration for funding. The letter of interest shall be submitted on a form furnished by the commission.

(b) In the letter of interest, the sponsor shall provide the commission with evidence that the proposed project meets the following initial eligibility requirements:

(1) The structure shall currently provide local public water supply benefits or be reasonably expected to do so in the future.

(2) The sponsor shall demonstrate that existing or planned infrastructure and practices are capable of preserving the improvements and address watershed protection.

(c) The letter of interest shall be reviewed by the commission and the Kansas water office. The sponsor shall be notified in writing whether the proposed project is eligible for consideration for funding. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

K.A.R. 11-6-4. Letter of intent. (a) Any sponsor may submit a letter of intent following receipt of a letter from the commission acknowledging that the proposed project is eligible for consideration for funding. The letter of intent, submitted on a form furnished by the commission, shall include a restoration plan as specified in K.A.R. 11-6-5.

(b) The sponsor shall submit the original of the letter of intent, plus one copy for each environmental review agency specified in K.A.R. 11-6-6, to the commission no later than June 1 to be considered in the budget request for the next state fiscal year. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

K.A.R. 11-6-5. Restoration plan. (a) Each restoration plan shall consist of the following:

- (1) Restoration scope;
- (2) design plans and specifications;
- (3) watershed protection plan, if applicable;
- (4) cost estimates;
- (5) project schedule; and
- (6) any other relevant documents that pertain to renovation, protection, or restoration of the water supply structure, as determined by the commission.

(b) Each modification of the original restoration plan shall require the prior notification and approval of the commission. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

K.A.R. 11-6-6. Review process. (a) Each letter of intent shall be reviewed by the environmental review agencies listed in K.S.A. 82a-326(b) and amendments thereto.

(b) Prioritization of projects shall be based on the following:

- (1) The current use of the water;
- (2) the population served;
- (3) the age of the structure;
- (4) any loss of storage capacity due to sedimentation or deficiencies, or both;
- (5) any documented efforts to provide watershed protection;
- (6) the status of operation and maintenance;
- (7) the current and potential recreational uses of the lake;
- (8) specification of whether the watershed has a high total maximum daily load;
- (9) any prior use of multipurpose small lake program funds;
- (10) the percentage of sponsor funding for the project; and
- (11) the proposed location of the project with respect to federal reservoirs that provide water supply.

(c) Each agency's review comments shall be considered by the commission in the final priority-ranking process. Each sponsor shall be notified in writing if that sponsor's proposed project is approved for funding. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

NON-POINT SOURCE POLLUTION CONTROL

K.A.R. 11-7-1. Definitions. (a) "Animal unit" means a defined unit of measurement to determine the applicability of state and federal regulations and pollution potential of a confined feeding facility as defined by K.S.A. 65-171d, and amendments thereto.

(b) "Applicant" means a landowner or legal agent applying for financial assistance to construct or apply pollution control practices.

(c) "Commission" means the state conservation commission.

(d) "Confined feeding facility" is as defined in K.S.A. 65-171d (c)(2), and amendments thereto, exclusive of swine.

(e) "Critical or targeted water resources" means water resources that have been identified as exceptional and vulnerable.

(f) "District" means a conservation district that is a political subdivision of state government with its own governing body of five elected supervisors created under K.S.A. 2-1901 et seq., and amendments thereto, as a special purpose district to develop and carry out soil and water conservation programs within its political boundaries.

(g) "Exceptional value water resources" means any of the following:

- (1) A public water supply impoundment and associated tributary watershed;
- (2) a recharge area or groundwater capture zone of a public water supply well field;
- (3) a sole source aquifer;
- (4) a flowing stream and tributary watershed above a public water supply diversion;
- (5) a flowing stream and tributary watershed that sustains or supports habitats of threatened or endangered species;
- (6) a flowing stream and tributary watershed above the highest valued fishery resources;
- (7) a flowing stream and tributary watershed above reaches having any habitat of aquatic species in need of conservation; or
- (8) a flowing stream and tributary watershed above highly valued recreation areas.

(h) "Financial assistance" means financial incentives offered to eligible applicants on a cost-sharing basis to implement approved pollution control practices.

(i) "KDHE" means the Kansas department of health and environment.

(j) "Non-point source (NPS)" means any activity that is not required to have a national pollutant discharge system permit and that results in the release of pollutants to waters of the state. This release may result from

precipitation runoff, aerial drift and deposition from the air, or release of sub- surface brine or other contaminated groundwaters to surface waters of the state.

(k) "On-site wastewater system" means a system composed of a septic tank disposal field, a wastewater pond, or an alternative treatment system designed to treat wastewater from a single-family residence or business installed in compliance with state regulations and county ordinances to prevent surface and groundwater contamination by disease-causing organisms, organic matter, chemicals, and nutrients.

(l) "Plan" means a locally developed, long- range comprehensive plan for the non-point source pollution control in a watershed, hydro-logic unit, or county.

(m) "Pollution" means either of the following:

(1) Any contamination or other alteration of the physical, chemical, or biological properties of any waters of the state that will or is likely to create a nuisance or render these waters harmful, detrimental, or injurious to public health, safety, or welfare; to the plant, animal, or aquatic life of the state; or to other designated beneficial uses; or

(2) any discharge that will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(n) "Practice" means a land treatment or management practice constructed or implemented to effect pollution control.

(o) "Project work plan" means a detailed plan for a proposed project that is identified in the approved local non-point source pollution management plan.

(p) "State contract" means a contract between the commission and the district to prescribe the annually allocated amount of technical assistance and information and education funds and to prescribe expenditure guidelines for those funds.

(q) "State non-point source pollution management plan" means a process to identify measures to control pollutants discharged from non-point source pollution sources and shall also mean state and local programs for controlling non-point source pollution.

(r) "Total maximum daily load" means state identification and prioritization of pollutants and specific water bodies with pollutant loadings allocated for specific water bodies and corresponding pollutant reduction goals developed and strategies implemented.

(s) "Vulnerable water resources" means water resources that have a high probability of being contaminated.

Factors that contribute to vulnerability shall include the following:

(1) Infiltration recharge;

(2) vadose zone characteristics;

(3) depth to water table;

(4) topography;

(5) soil characteristics;

(6) pollutant source concentration;

(7) pollutant characteristics;

(8) groundwater;

(9) surface water;

(10) precipitation;

(11) runoff;

(12) land cover; and

(13) proximity of the pollution to a stream or lake. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999).

K.A.R. 11-7-2. Local non-point source pollution management plan. (a) The conservation district responsibility, with assistance from sponsors or cosponsors, shall be to coordinate the development and submission of a comprehensive local non-point source pollution management plan. Local, state and federal agencies and the private sector shall be invited to assist in the development of the management plan.

(b) The management plan submitted to the commission shall include the following:

(1) Pollution reduction goals;

(2) a description and the location of the area included in the plan;

(3) a description of problems and potential problems;

(4) a description of proposed solutions, evaluation, and monitoring;

(5) estimated costs;

(6) the source of funding;

(7) an implementation schedule; and

(8) a list of participants in the development of the plan.

(c) An administrative review by the commission and a technical review by the following state and federal natural resource agencies shall be completed with recommendations consolidated by the KDHE:

(1) KDHE;

(2) United States natural resources conservation service;

(3) Kansas biological survey;

- (4) Kansas corporation commission;
- (5) Kansas geological survey;
- (6) Kansas water office;
- (7) Kansas forest service;
- (8) Kansas department of wildlife and parks;
- (9) Kansas department of agriculture;
- (10) Kansas state university cooperative extension service; and
- (11) United States environmental protection agency.

(d) The reviewer's recommendations shall be included in the plan as an amendment and incorporated into project work plans.

(e) The conservation district shall be notified in writing when the local non-point source pollution management plan is approved. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-3. Project work plan. (a) The conservation district shall coordinate the development and submission of a project work plan to request funds for a new or significantly modified existing project work plan to implement all or part of an approved management plan, or to report the implementation of a non-point source pollution control project that does not require additional state assistance.

(b) The project work plan submitted to the commission shall include the following:

- (1) A description of the water quality problem;
- (2) a description of the project area;
- (3) a priority designation;
- (4) the goals and objectives of the project;
- (5) evaluation procedures;
- (6) schedules and milestones;
- (7) a budget; and
- (8) a list of all participating organizations.

(c) Approval of a project work plan requesting state funds shall include the following:

- (1) An implementation schedule;
- (2) local initiatives;
- (3) utilization of existing state and federal programs; and
- (4) administration of the project to assure successful completion and consistency with the approved and amended local non-point source pollution management plan.

(d) Approved project work plans requesting funding from the non-point source pollution control fund shall be considered by the commission, if funds are available.

(e) Financial requests for new and existing project work plans shall be submitted to the commission using forms prescribed by the commission.

(f) Project work plans shall address at least one of the following water resources included in the state non-point source pollution management plan and assessment report:

- (1) Critical or targeted water resources;
- (2) exceptional value water resources; or
- (3) vulnerable water resources. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-4. Project work plan amendment. (a) An amendment to the project work plan may be submitted to the commission for review.

(b) An amendment that involves a funding increase and is approved shall be funded from available non-point source pollution control funds.

(c) An amendment that involves a funding increase and is not approved shall be returned with the reason for disapproval. Appeal may be made in writing within 15 days after the notice of disapproval. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-5. Allocation of non-point source pollution control funding. (a) When funds are available, any district with an approved local non-point source management plan shall annually request from the commission NPS funding for new and existing project work plans to implement specific elements of the plan and to request contract funds by April 1, using forms prescribed by the commission.

(b) Annual district allocations shall be made by the commission in accordance with the following criteria:

- (1) The amount of geographic inclusion in a state water plan priority area;
- (2) the identified areas or drainage addressing the protection of public water supply areas;
- (3) other locally identified priority areas;
- (4) the total maximum daily load project areas; and
- (5) any other criteria determined by the commission to meet the resource goals and objectives of the state.

(Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-6. Contract funds. (a) The state contract shall provide for the distribution of non-point source pollution technical assistance, information, and education or nonfinancial assistance funds.

(b) A one-time advance of the annual allocation of either technical assistance or information and education funds, or both, shall be paid to each district by the commission after July 1, upon receipt of the signed contract.

(c) The amount allocated shall be a supplement to each district's uncommitted balance retained on June 30, to equal the current fiscal year allocation.

(d) Uncommitted funds held by each district on June 30 shall remain in each district account and shall be deducted from the next fiscal year's annual advance if the contract is extended.

(e) If the contract is not extended or if uncommitted funds exceed the next fiscal year's allocation, the uncommitted funds shall be returned to the commission by the district within 10 days after the expiration of the contract or receipt of the next fiscal year's allocation.

(f) The district may employ a water quality coordinator to provide technical assistance. This coordinator shall be an employee of the district and shall be supervised by that district's board of supervisors or its designee.

(g) The technical assistance allocation shall be used solely for salaries, wages, and benefits as prescribed by the commission for the employment of any conservation district employee or employees, based on staff hours directly related to the implementation of the program, with funds accounted for on forms prescribed by the commission.

(h) The information and education allocation shall be used to fund activities that support implementation of the district non-point source pollution management plan and project work plans and shall be accounted for on forms prescribed by the commission and submitted to the commission by the requested date.

(i) Any district purchase, using state contract funds, of equipment exceeding \$500.00 in value shall be the property of the commission for five years or the life of the equipment, whichever is less, and shall require advance purchase approval of the commission. After five years, the equipment shall become the property of the conservation district.

(j) Transfers of either technical assistance or information and education funds to a district's financial assistance account may be allowed for reasons determined to be valid by the commission.

(k) Supplemental allocations to districts may be made by the commission for information and education projects.

(l) Each district shall follow the operations fund guidelines in K.S.A. 2-1907b, and amendments thereto, in its expenditure of state contract funds. (Authorized by and implementing K.S.A. 2-1915, 2-1904 and 82a-951; effective May 21, 1990; amended Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-7. Conservation district program. Each participating conservation district board of supervisors shall develop and submit to the commission for approval, using commission-prescribed forms, the district's fiscal year financial assistance program under the following provisions:

(a) The district may develop the program after receiving the state program forms from the commission.

(b) The district shall select the non-point source pollution control practices from those identified in the project work plans that will best address pollution prevention and improvement.

(c) The district shall implement its adopted program policies upon approval by the commission.

(d) The financial assistance applicant shall follow the minimum standards of design, construction, operation, and maintenance as outlined in K.A.R. 11-7-12, 11-7-13, and 11-7-14.

(e) Financial assistance levels set by the conservation district shall not exceed 70% for private ownership and 50% for public entities and shall not change during the fiscal year unless a specific allowance is granted by the commission.

(f) The maximum amount of financial assistance allowed for each practice shall not exceed \$10,000. However, the maximum amount of financial assistance allowed shall be \$1,000 for abandoned water well plugging and \$20,000 for livestock waste systems. The amounts specified in this subsection shall apply, unless exempted for reasons prescribed by the commission.

(g) Each district shall develop financial assistance prioritization criteria following commission guidelines and requirements in the funding of financial assistance contracts.

(h) Amendments to the district program shall be submitted, in writing, by the district to the commission and may be approved following commission-prescribed guidelines.

(i) Approval shall be obtained from the state historical preservation office before any expenditure of state funds on practices that impact national or state historic sites or other cultural resource areas. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective May 21, 1990; amended Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-8. Financial assistance contract. (a) Each request for a financial assistance payment submitted by the district shall be recommended for approval by the conservation district board of supervisors or its designee and duly recorded in the minutes of the regularly scheduled board meeting.

(b) The district shall review and recommend approval of requests for payment from the non-point source pollution control fund on forms prescribed by the commission.

(c) Financial assistance requests shall be consistent with each district's current fiscal year program as approved by the commission, and all commission guidelines and procedures shall be followed in the submittal of financial requests.

(d) The actual cost or county average cost, whichever is smaller, shall be used as a basis for determining financial assistance earned.

(e)(1) The applicant shall not begin construction until written approval of the submitted request is given by the commission to the district, unless the commission determines that an exception is warranted.

(2) If the applicant requests immediate approval, verbal approval may be given by the commission if either of the following conditions is met:

(A) The practice has been designed and surveyed, and the contractor or installer is at the site and ready to proceed with practice construction on the same day that the request is made.

(B) The commission will not receive the financial assistance request form before an uncommitted funds cancellation deadline.

(f) Partial payments shall not be awarded to an applicant approved for financial assistance, unless specifically granted by the commission, until the project is certified as complete and includes all components installed according to the design and installation requirements of the commission.

(g) Each contract shall be assigned by the commission an expiration date of 60 days following the date the contract is approved by the commission if the conservation district does not assign the expiration date.

(h) Districts may grant an extension of any length of time during the contract period but not beyond June 30.

(i) Contract cancellation and amendments of an approved contract shall be recommended by the district and duly recorded in the regularly scheduled board of supervisors' meeting. If a cancellation or amendment is approved by the commission, the district shall retain one copy and forward one copy to the applicant or legal agent.

(j) The commission-prescribed maintenance agreement shall be signed by the applicant, who shall be the landowner or legal agent, with the original copy attached to the request for financial assistance submitted to the commission for approval. (Authorized by K.S.A. 1998 Supp. 2-1915 and K.S.A. 75-5657; implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-9. Final payment. Final disbursement of funds due on the contract shall be made upon submission of request for payment on forms prescribed by the commission. Certification that the project is complete and that it meets all the requirements of the contract shall be required before payment of funds. (Authorized by K.S.A. 82a-903; implementing K.S.A. 82a-951; effective May 21, 1990.)

K.A.R. 11-7-10. Cancellation of funds. (a) A status report of all active NPS contracts and each district's uncommitted balance shall be prepared by the commission on or after June 1 and shall be provided to each district.

(b) Cost-share funds uncommitted and not under contract at the close of business on June 30 shall be canceled.

(c) Cost-share funds under contract for practices on which construction has not begun by June 30 shall be canceled.

(d) Cost-share funds under contract for practices on which construction has not begun by June 30, due to inclement weather or other factors beyond the control of the applicant, shall be individually evaluated by the commission and may be encumbered and continued for one year.

(e) Cost-share funds under contract for practices on which construction has begun but has not been completed by June 30 may be encumbered and continued for one year.

(f) Encumbered contracts not completed within the year of encumbrance may be canceled by the commission.

(g) Any contract may be extended by the commission beyond previously outlined guidelines if the contract is determined by the commission to be highly significant in pollution reduction and if other factors exist that are beyond the control of the applicant. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

K.A.R. 11-7-11. Maintenance contract. (a) Each applicant for financial assistance shall sign form SCC/NPS-3 entitled "non-point source pollution control program application/contract for financial assistance."

(b) The applicant shall agree to maintain the practice according to recommended maintenance procedures adopted by the commission for 10 years or the life of the practice, whichever is greater.

(c) If the financial assistance recipient fails to maintain the practice according to contract provisions, the recipient may be declared ineligible for future financial assistance funds. The financial assistance recipient may be required to repay financial assistance funds received on the following pro-rata basis if the amount is more than \$100.00 and the recipient has constructed or installed the practice within the following time limits:

(1) Five or fewer years: 100%;

(2) more than five years but six or fewer years: 80%;

(3) more than six years but seven or fewer years: 60%;

- (4) more than seven years but eight or fewer years: 40%;
- (5) more than eight years but nine or fewer years: 20%; and
- (6) more than nine years but 10 or fewer years: 10%.

(d) The recipient of state financial assistance for any pollution control practice shall be responsible for proper operation and maintenance and, if needed, modification of the facility or other actions to ensure satisfactory operation and continued pollution control at the recipient's expense.

(e) The financial assistance recipient shall obtain a written agreement to transfer the maintenance responsibilities contained in the commission's "non-point source pollution control program application/contract for financial assistance" in the event of new ownership of the property where the practice was installed within the life span specified.

(f) When a recipient of financial assistance is determined by the commission to be in noncompliance with the requirements of the contract for financial assistance, upon notice by the district, the recipient shall bring the property into compliance within a time specified by the commission, or the repayment provisions of the application contract outlined in subsection (c) above shall apply.

(g) The provisions of the financial assistance application contract shall not apply to a recipient of financial assistance if the recipient's failure to comply is due to any of the following:

- (1) Natural disasters;
- (2) faulty design or construction as determined by the commission; or
- (3) any other situation beyond the control of the financial recipient. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective Dec. 27, 1999.)

K.A.R. 11-7-12. On-site wastewater system. (a) The minimum standards established by the KDHE for design and construction of on-site wastewater systems outlined in KDHE bulletin 4-2, as in effect in March 1997, and the "environmental health handbook," written by the KDHE, Kansas state university cooperative extension service, and Kansas association of sanitarians and as in effect on January 1, 1999, are hereby adopted by reference. These minimum standards shall be superseded only by local ordinances requiring more stringent standards of design and construction.

(b) The standard for on-site waste system operation and maintenance outlined in Kansas state university cooperative extension publications MF-947, dated August 1998, and MF-2290, dated October 1997, shall be followed for all state financially assisted on-site wastewater projects and are hereby adopted by reference.

(c) Each on-site wastewater system shall be designed, inspected, and certified as complete by a local official according to locally adopted sanitary or environmental codes approved by KDHE and state design and permitting standards, before any state financial assistance payment is made.

(d) Only existing systems determined to be failing by the local county official or a KDHE representative shall be eligible for state financial assistance.

(e) Each district shall establish and apply applicant prioritization based on non-point source pollution water quality benefit criteria for all state financially assisted on-site wastewater systems.

(f) An alternative on-site wastewater treatment system that is other than a conventional soil absorption field or pond and that is authorized by the local health official and the commission shall be eligible for financial assistance if the lowest cost treatment system cost-share calculation is used.

(g) State financial assistance for an applicant for an on-site wastewater system shall not be available if the local health official reports the applicant to the county attorney for enforcement action under locally adopted ordinances. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-13. Abandoned water well plugging. (a) Any individual plugging abandoned water wells to control non-point source pollution and receiving state financial assistance shall follow KDHE rules and regulations.

(b) Financial assistance for abandoned water well plugging shall not exceed \$1,000 for each well. However, an exception to the \$1,000 limit may be granted by the commission when circumstances warrant. The procedures and minimum standards for plugging abandoned wells outlined in Kansas state university cooperative extension publication "plugging abandoned wells," MF-935 (revised), as published January 1998 and hereby adopted by reference, shall be superseded only by more stringent local ordinances.

(c) All plugged abandoned wells shall be registered with the KDHE before financial assistance is paid. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-14. Livestock waste control systems. (a) Only minimum pollution control measures shall be eligible for financial assistance.

(b) Expansion costs of a livestock waste control system requiring a design that accommodates more animal units than currently exist shall not be eligible for financial assistance unless the commission determines that an exception is warranted.

(c) Applicants relocating a confined feeding facility and receiving financial assistance shall be required to

perform the following:

- (1) Clean and properly dispose of waste from the existing facility;
 - (2) remove interior fencing and feeding facilities to render the site incapable of the confined feeding of animals;
- and
- (3) plant vegetation at the abandoned facility that maximizes nutrient uptake as approved by the district.
 - (d) Financial assistance shall not be available for livestock waste control facilities over 999 animal units unless the commission determines that an exception is warranted.
 - (e) Sewage discharge from a home site shall not be deposited in a livestock waste facility of any type.
 - (f) A new livestock waste control facility that does not replace or modify an existing livestock waste control facility or confined feeding facility shall not be eligible for financial assistance.
 - (g) Partial payments shall not be available for livestock waste control systems, with the exception of grass seeding within the appropriate seeding dates.
 - (h) Only livestock waste systems approved by the KDHE and designed and certified as complete by a Kansas licensed professional engineer shall be eligible for state financial assistance. Exceptions may be granted by the commission for Kansas state university cooperative extension service designs approved by the KDHE for demonstration purposes.
 - (i) Confined animal feeding operators who incur court action for noncompliance with KDHE confined animal feeding operation regulations shall not be eligible for state financial assistance.
 - (j) The following minimum standards of design, construction, and operation of state financially assisted livestock waste management systems are hereby adopted by reference:
 - (1) "Animal and related waste control," K.A.R. 28-18-1 through 28-18-15 and K.A.R. 28-18a-1 through 28-18a-32, effective Jan. 15, 1999; and
 - (2) section IV of the "Kansas field office technical guide," as in effect on January 1, 2002, and the "agricultural waste management field hand- book," as in effect on January 1, 2002, published by the United States department of agriculture, natural resources conservation service, formerly known as the soil conservation service. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-15. Petition for reconsideration. (a) A landowner who has been denied cost-share funding may appeal an adverse decision of the district by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days after the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 2-1904; implementing K.S.A. 2-1915; effective Dec. 27, 1999; amended Aug. 23, 2002.)

K.A.R. 11-7-16. Special projects. (a) Funds may be withheld by the commission from the annual appropriation, and funds released by the districts may be reserved by the commission for the purpose of contributing to special projects that the commission considers necessary and important for the abatement of non-point source pollution.

(b) (1) Authority shall rest with the commission to fund special projects for the purpose of testing, development, implementation, and demonstration of new cost-share practices appropriate for water quality protection and restoration.

(2) Special projects may be funded by the commission from annual appropriations if the projects are determined to be necessary to increase the effectiveness and efficiency of the cost-share program.

(3) Special projects shall be conducted for a specified period of time and in a limited area as determined by the commission. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Aug. 23, 2002.)

SURFACE-MINING LAND CONSERVATION AND RECLAMATION ACT

K.A.R. 11-8-1. Definitions. In addition to the terms defined in K.S.A. 49-603, the following terms shall be defined as set out below. (a) "Site" means a tract or consolidated tracts of land which can be described by the operator as a single operating unit.

(b) "New site" means an area that has or will have affected land during the registration year but does not have affected land from any previous year.

(c) "Tons of material extracted" means tons of material sold through direct sales or tons of material consumed in the operation of a business, or both. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-603; effective June 19, 1995.)

K.A.R. 11-8-2. Mining license renewal. (a) Each operator licensed by the director under K.S.A. 49-605 shall renew the mining license annually until all sites registered by that person have been properly reclaimed or

transferred to another licensed operator. The mining license renewal fee, except for political subdivisions, shall be based on the annual tons of material extracted by the operator and shall be:

- (1) if less than 10,000 tons, \$25.00;
- (2) if between 10,000 tons and 99,999 tons, \$50.00;
- (3) if between 100,000 tons and 499,999 tons, \$100.00; and
- (4) if 500,000 tons or greater, \$150.00.

(b) The renewal application shall be signed by the operator or an authorized representative of the operator.

(c) Any operator who fails to renew the operator's mining license before the expiration date shall be required to apply for a new license and pay the \$300 initial license fee established under K.S.A. 49-605, and amendments thereto. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-605; effective June 19, 1995.)

K.A.R. 11-8-3. Initial site registration. (a) Each person, business, corporation, or political subdivision of the state of Kansas that engages in or intends to engage in operating a surface mine shall register the site with the director. In addition to the application requirements of K.S.A. 49-607 and amendments thereto, each application for site registration shall include the following:

(1) The name and license number of the operator;

(2) for each site that is active or inactive, the number of tons of material extracted and the number of acres of affected land created during the preceding year;

(3) the site registration fee, except for political subdivisions; and

(4) the signature of the operator.

(b)(1) The initial registration fee for each active site shall be \$45 per acre of land affected during the previous year and \$0.003 per ton of material extracted during the preceding year.

(2) The initial registration fee for each new site shall be \$45.

(3) The initial registration fee for each inactive site that is returning to active status shall be \$45.

(4) The minimum initial registration fee shall be \$45.

(5) The initial registration fee for each site active during the preceding year but being registered as inactive shall be as specified in paragraph (1) of this subsection.

(c) If more than one operator is extracting materials from a given site within the same time frame, then each operator shall register the site and distinguish each operator's scope of operation and responsibility. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607 and 49-623; effective June 19, 1995; amended Oct. 12, 2007.)

K.A.R. 11-8-4. Site registration renewal. (a) Each site registration shall be renewed annually. Each applicant for renewal of a site registration shall submit the renewal form to the director within 30 days before the expiration date of the registration.

(b) Each renewal form shall include the following, in addition to information required in K.S.A. 49-607 and amendments thereto:

(1) For each active site, the number of tons of material extracted and the number of acres of affected land created during the previous year; and

(2) the signature of the operator.

(c) (1) The minimum renewal fee shall be \$45.

(2) The annual site registration renewal fee for each active site shall be \$45 per acre of land affected during the previous year and \$0.003 per ton of material extracted during the previous year.

(3) The renewal fee for a site that was active during the previous year but is to be registered as an inactive site upon renewal shall be as specified in paragraph (2) of this subsection.

(4) The renewal fee for each site that is registered as an inactive site for more than one year shall be \$45 annually until additional acres are affected or material is extracted, or both, during the year preceding renewal.

(5) The renewal fee for each site undergoing reclamation shall be \$45 per year until the reclamation is approved and the site is released by the director. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607 and 49-623; effective June 19, 1995; amended Oct. 12, 2007.)

K.A.R. 11-8-5. Annual report. (a) An annual report of mining operations for each registered site shall be submitted to the director within 30 days of the site registration expiration. The report, in addition to information required by K.S.A. 49-612(a), and amendments thereto, shall include:

(1) the site registration number;

(2) any proposed changes to the reclamation plan;

(3) any proposed changes to the bonding agreement; and

(4) an aerial photograph, survey map, engineered drawing or other representation approved by the director, of all land affected by mining during the period covered by the report.

(b) If mining operations will be completed within 90 days of the registration expiration date, the final completion report may be substituted for the annual report. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-612; effective June 19, 1995.)

K.A.R. 11-8-6. Reclamation plan. (a) A reclamation plan shall be completed for each registered site and submitted with the initial registration application. The plan shall include the following:

- (1) a legal description of where the site is located including the nearest quarter quarter section, township, range and county;
- (2) the total acreage of the site;
- (3) a general description of the material to be mined, including:
 - (A) the average depth of the mineral layer;
 - (B) the average depth of overburden; and
 - (C) the average depth of the topsoil;
- (4) the estimated life-span of the mine or the time period covered by the operator's long-term plan;
- (5) an aerial photograph, survey map, engineered drawing or other representation approved by the director describing the land to be mined first and how the mining will proceed across the site;
- (6) a description of the estimated total number of acres to be affected by mining, including the proportion to be reclaimed if different than the total affected acres;
- (7) an aerial photograph, survey map, engineered drawing or other representation approved by the director outlining the affected land, water bodies remaining after reclamation, stockpiles, crushing areas, roads and buildings;
- (8) a general description of the pre-mining and post-mining land-use;
- (9) a general description of the final grading and revegetation that will be completed and an estimated time-line for completion of those activities;
- (10) an illustration of the final topography;
- (11) a general description of the types of plants to be used in revegetation;
- (12) the approximate amount of topsoil and overburden, or if topsoil is not present the amount of overburden, to be stockpiled and used for reclamation of the site; and
- (13) the name, address, telephone number and signature of the person responsible for reclamation. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607; effective June 19, 1995.)

K.A.R. 11-8-7. Reclamation requirements. Reclamation of affected lands shall meet the following standards, in addition to the standards listed in K.S.A. 49-611, and amendments thereto. (a) Affected lands shall be graded to allowable slopes within six months after filing the final report for the site.

(b) In grading the affected lands, all mining- related waste products and machinery incompatible with the care and growth of vegetation shall be removed from the affected lands. Boulders and stones incompatible with the proposed post-mining use of the site shall be buried or removed from the site.

(c) Topsoil and overburden, or if topsoil was not present initially, then overburden only, shall be preserved in an amount specified in the reclamation plan on the site for reclamation of affected lands.

(d) Within one year following the conclusion of all earthwork, seeding of all areas in which vegetation is to be provided shall be completed to the extent permitted by weather and planting requirements.

(e) Erosion control methods shall be used where necessary to prevent rill and gully formation.

(f) Each operator shall allow the seeded vegetation at least one year to become established before filing a release request.

(g) A variance from the requirements of sub-sections (a), (d) and (f) of this regulation, may be granted by the director if the operator submits a written request at least 30 days before the initiation of affected reclamation activities. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-611; effective June 19, 1995.)

K.A.R. 11-8-8. Bond or other security. (a) Each applicant for registration of a surface mining site shall file a bond or other security with each application in the following amounts:

(1) \$400 per affected acre, for sand and gravel mining operations;

(2) \$600 per affected acre, for all other types of mining operations.

(b) Subject to the limitations of K.S.A. 49-615, and amendments thereto, the amount of bond required may be adjusted by the director based on the estimated cost to reclaim the affected land.

(c) Each surety bond shall be written on a form provided by the director.

(d) An attachment which lists the sites by registration number and legal description shall be included as part of the bond document. This attachment shall be signed by representatives of the surety and the operator and shall be notarized.

(e) Each certificate of deposit posted as a bond shall be made payable to the state of Kansas, state conservation commission. All interest earned shall be paid to the operator.

(f) All cash bonds accepted in lieu of a surety bond shall not draw interest. Each check shall be made payable to the state of Kansas, state conservation commission.

(g) The bond shall cover all affected land not previously reclaimed.

(h) The amount of bond or other security may be adjusted for annual variations in the amount of affected land by the director or by request from the operator, if approved by the director.

(i) No single certificate of deposit shall exceed the sum of \$100,000, nor shall any operator submit a certificate

of deposit totaling more than \$100,000 from a single bank or financial institution. The issuing bank or financial institution shall be insured by the federal deposit insurance corporation.

(j) The bank or financial institution issuing the certificate of deposit shall provide a letter that assigns the certificate of deposit to the commission. The letter shall accompany each certificate of deposit submitted as a bond.

(k) Before the commission requests the attorney general to institute proceedings for forfeiture of a bond, the bonding company shall be notified by the director that the operator is in violation of this act and forfeiture proceedings may be initiated. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-615; effective June 19, 1995; amended Sept. 27, 1996.)

BUFFER INITIATIVE

K.A.R. 11-9-1. Definitions. (a) "Buffer" is a strip or area of land maintained in permanent vegetation to help reduce potential pollution problems and achieve other conservation objectives. Buffers are appropriately installed along streams to enhance water quality.

(b) "Commission" means the state conservation commission (SCC).

(c) "Commissioners" means the commissioners of the state conservation commission.

(d) "Continuous sign-up" means that persons eligible for CRP may request to enroll certain acreage in the program at any time. The CRP practices available during continuous sign-up provide environmental benefits complementary to the initiative.

(e) "CRP" means the conservation reserve program administered by the USDA farm service agency (FSA) with technical responsibility assigned to the USDA natural resources conservation service (NRCS). The CRP may provide cost share assistance to establish vegetation on eligible land and provides annual rental payments on a per acre basis to maintain enrolled acres for a period up to 15 years.

(f) "Director" means the executive director of the state conservation commission.

(g) "District" means a conservation district.

(h) "Filter strip" means a strip or area of grass for removing sediment, organic matter, and other pollutants from runoff and wastewater.

(i) "FSA" means the farm service agency.

(j) "Initiative" means the Kansas water quality buffer initiative.

(k) "NRCS" means the natural resources conservation service.

(l) "Practices" means cultural or structural measures that are installed or constructed on land for the purpose of improving or maintaining water quality.

(m) "Program" means the Kansas water quality buffer initiative, which shall be implemented in a manner to enhance participation under the continuous sign-up provision of the conservation reserve program by providing state incentives to supplement federal payments for riparian forest buffers and filter strips.

(n) "Riparian forest buffer" means a strip or area of vegetation containing trees and grass for removing sediment, organic matter, and other pollutants from runoff and wastewater.

(o) "Unfarmable field" means the remaining portion of a field in which 51% or more of the total acreage has been enrolled in the continuous sign-up.

(p) "USDA" means the United States department of agriculture. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

K.A.R. 11-9-2. Eligible areas. All land within a TMDL high priority area or a designated priority area within the state of Kansas as determined by the commission shall be eligible for the initiative. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Feb. 5, 1999; amended Aug. 23, 2002.)

K.A.R. 11-9-3. Eligible applicants. Any individual, owner, or operator, excluding state units of government, who is eligible for CRP and owns land within the eligible area shall be eligible for the initiative. Applicants who are ineligible for CRP may be eligible under the initiative if all selection criteria are met. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

K.A.R. 11-9-4. Eligible practices. Practices that shall be eligible for incentive payments are filter strips and riparian forest buffers. Payments made through the buffer initiative shall be in addition to any CRP payments received by each applicant. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

K.A.R. 11-9-5. Annual payments; exception. (a) Payments shall be made on an annual basis coinciding with federal payments for the purpose of providing an incentive to enroll in the CRP for 10 to 15 years, except as specified in subsection (e).

(b) Incentive payments shall not exceed the following:

(1) 30% of the total federal payment, excluding the maintenance fee for the establishment of filter strips; or

(2) 50% of the total federal payment, excluding the maintenance fee for the establishment of riparian forest buffers.

(c) All acres determined to be in an unfarmable field shall be eligible for the state incentive if the applicant agrees to establish and maintain permanent vegetative cover for the duration of the continuous CRP contract.

(d) The total state and federal payment shall not exceed \$150.00 per acre unless an exception is granted by the commission.

(e) In lieu of the annual payments described in subsection (a), the director may make a single lump-sum payment for the remaining amount of any contract. Upon a participant's receipt of a lump-sum payment, the participant shall still be responsible for meeting the requirements of all other terms and practices contained in the contract. Any failure to meet these requirements may result in termination of the agreement and repayment of all or part of any incentive payments. (Authorized by and implementing K.S.A. 2020 Supp. 2-1915; effective Feb. 5, 1999; amended Aug. 23, 2002; amended April 16, 2021.)

K.A.R. 11-9-6. Contracts. Each contract shall be for no fewer than 10 years and no more than 15 years. Funding for contracts shall be subject to annual appropriations from the state legislature and may be canceled if the funding is not renewed after the first year. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

K.A.R. 11-9-7. Selection. Eligible applicants shall be approved for funding by the SCC and according to criteria developed by the director. These criteria may include the following:

(a) The amount of existing vegetation;

(b) the size of the area offered;

(c) the type of vegetation offered;

(d) the type of practice or practices offered; and

(e) the proximity either to an intermittent or perennial stream or to other areas conducive to overland flow and length of contract. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

K.A.R. 11-9-8. Haying and grazing. If authorized by the CRP, haying, grazing, or both may occur without penalty under the state contract. A non-CRP participant shall be allowed to hay or graze a filter strip without penalty after development of a grazing management plan developed in cooperation with the USDA-NRCS. No grazing shall be allowed on a riparian forest buffer. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

K.A.R. 11-9-9. Termination. If the federal CRP is terminated by the FSA for any contract violation or for any other reason, the state contract may also be canceled. A refund of incentive payments earned may be required at the commission's discretion. A refund of incentive payments may be required by the commission if there is a failure to follow and maintain the program objective. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

K.A.R. 11-9-10. Petition for reconsideration. (a) A landowner who has been denied cost-share funding may request a reconsideration of a district decision by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by and implementing K.S.A. 2-1915; effective Feb. 5, 1999; amended Aug. 23, 2002.)

WATER RIGHTS PURCHASE PROGRAM

K.A.R. 11-10-1. Definitions. (a) "Program" means water rights purchase program.

(b) "Commission" means the state conservation commission.

(c) "Director" means the executive director of the state conservation commission.

(d) "Local entity" means a local subdivision of state government.

(e) "Eligible water right" shall mean all of the following:

(1) A water right that has been certified as being in an area in need of aquifer restoration or stream recovery pursuant to K.S.A. 2-1919, and amendments thereto, and located in a priority area identified for water right purchase;

(2) a water right that, when placed in the custodial care of the state, yields a positive impact on the aquifer or stream targeted for restoration or recovery; and

(3) a water right meeting the criteria established in K.S.A. 2-1915, and amendments thereto.

(f) "Active water right" means a water right for which water has been lawfully applied to the authorized beneficial use. This water right shall have been used within a specified time period during the calendar years 1996 through 2000 or any succeeding consecutive five-year time period. Active water rights that have been placed in the water rights conservation program in accordance with K.A.R. 5-7-4 or active water rights appurtenant to land placed in the conservation reserve program in accordance with K.A.R. 5-7-4a shall also be considered to be active water rights while in the program.

(g) "Partial water right" means a portion of a water right that has been split up by a division agreement by the owner. The total quantity of the divided water rights shall not be greater than 70 percent of the original appropriated quantity that was divided. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

K.A.R. 11-10-2. Application. (a) A local entity may apply for assistance to purchase water rights by submitting the form prescribed by the commission.

(b) Applications shall be submitted to the commission by July 1 to be considered for the next state fiscal year's budget cycle. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

K.A.R. 11-10-3. Priority areas. Applications shall address only priority areas identified for the program by the Kansas water plan or Kansas water authority. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

K.A.R. 11-10-4. Procedures. (a) Each local entity shall designate a period in which to accept offers from eligible water right holders.

(b) The minimum period to accept offers shall be two weeks.

(c) The local entity shall notify all water right holders located in the priority area of the local entity's intent to purchase water rights and of the procedures to be followed in making an offer.

(d) This notification of intent to purchase water rights shall be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties encompassing the priority area. Both publications shall occur prior to the close of the offer acceptance period.

(e) Each water right holder wanting to make an offer shall submit the offer to the local entity in a sealed envelope, which shall be opened by the local entity at the close of the offer acceptance period.

(f) The local entity shall determine the water right or rights that the entity wishes to purchase by ranking each water right according to at least one of the following:

(1) The water right having the most beneficial impact on stream recovery or aquifer restoration within the identified priority area; or

(2) the lowest offer per acre-foot of water contained on the water right.

(g) The local entity shall submit, for commission review, the water right or rights proposed for purchase on forms provided by the commission.

(h) Upon favorable review by the commission, the local entity shall submit to the commission the water right or rights selected for purchase on forms prescribed by the commission.

(i) The local entity or the commission shall have the right to reject any water right purchase offer. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

K.A.R. 11-10-5. Payment. (a) After the water right holder agrees to the purchase terms established by the local entity and the commission, payment shall be made by the commission to the local entity for the purchase of the eligible water rights.

(b) The terms of the water right purchase shall be identified on forms provided by the commission.

(c) The maximum amount paid by the commission for a water right authorized for irrigation shall be calculated as follows:

(1) The average per-acre difference between irrigated cropland and dryland cropland values shall be determined by the director for the county in which the water right is located, for the three years preceding the year in which the water right is to be purchased. This determination shall be made based on information available from the Kansas department of revenue, Kansas agricultural statistics, county appraisers, and any other sources of data that the director considers appropriate.

(2) The value determined in paragraph (c) (1) above shall be divided by the appropriate county value contained in K.A.R. 5-3-24.

(3) The value determined in paragraph (c) (2) above shall be multiplied by the authorized acre-foot quantity.

(4) The value determined in paragraph (c) (3) above shall be multiplied by 80 percent.

(d) The maximum payment for water rights authorized for beneficial uses other than irrigation shall be determined by the director. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

K.A.R. 11-10-6. Petition for reconsideration. (a) A water right holder or local entity may appeal any decision of the commission by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the commission should be reviewed and why the decision should be modified or reversed.

(c) The petition for reconsideration shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

WATER RIGHT TRANSITION ASSISTANCE PROJECT PROGRAM

K.A.R. 11-12-1. Definitions. (a) "Active vested or certified water right" means a vested water right or currently certified appropriation water right that was put to lawful beneficial use in at least six out of the last 10 calendar years of actual irrigation, including any water use that occurred before certification.

(b) "Chief engineer" means chief engineer of the division of water resources, Kansas department of agriculture.

(c) "Closed to new appropriations" and "closed to further appropriations" mean that the chief engineer has issued a formal findings and order or has adopted a regulation and that either the formal findings and order or the regulation prevents the approval of new applications to appropriate water except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(d) "Commission" means state conservation commission, which serves as the division's conservation program policy board created by K.S.A. 2-1904, and amendments thereto, within the department of agriculture.

(e) "Consumptive use" means the gross diversions minus the following:

(1) The waste of water, as defined in K.A.R. 5-1-1; and

(2) the return flows to the source of water supply in the following ways:

(A) Through surface water runoff that is not waste; and

(B) by deep percolation.

(f) "Division" means division of conservation, Kansas department of agriculture.

(g) "Dry land transition plan" means a plan submitted by an applicant describing how the use of dry land crops or permanent vegetation, including warm season grasses and cool season grasses, or both uses, will be established on land that was previously irrigated. If permanent vegetation will be established on land that was previously irrigated, the plan shall meet the following requirements:

(1) Specifically describe the amount and timing of any irrigation that will be necessary to establish this cover; and

(2) not exceed three calendar years.

(h) "Eligible water right" means a water right that meets all of the following criteria:

(1) The water right is an active vested or certified water right that has not been abandoned and is privately owned.

(2) The water right has been verified by the chief engineer as being in a target area that is in need of aquifer restoration or stream recovery and is closed to new appropriations of water by the chief engineer, except those for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(3) The state's dismissal of the water right would have a net reduction in consumptive water use of the aquifer or stream designated for restoration or recovery by the chief engineer.

(4) The point of diversion is located within a target area.

(i) "Groundwater management district" and "GMD" mean any district created by K.S.A. 82a-1020 et seq., and amendments thereto.

(j) "High-priority area" means a geographic area that meets the following conditions:

(1) Is designated by one of the following:

(A) A groundwater management district and the chief engineer, if the area is within the boundaries of a groundwater management district; or

(B) the chief engineer, if the area is outside the boundaries of a groundwater management district; and

(2) is located within a target area that has been delineated for the purpose of ranking any applications being received for grant funding approval in the water right transition assistance program.

(k) "Historic consumptive water use retirement goal" means the total quantity of historic consumptive water use necessary to be retired to meet the goal of the water right transition assistance program in each target area. The identification of a historic consumptive water use retirement goal in each target area provides a reference point for evaluating the program objectives of the water right transition assistance program. The attainment of a historic consumptive water use retirement goal in a particular target area indicates that no more water right transition assistance program funds should be expended in that target area without a requantification of the historic

consumptive water use retirement goal.

(l) "Local entity" means any political subdivision chartered to address water conservation.

(m) "Partial water right" means a portion of a water right that will be formally and permanently reduced from a water right by the chief engineer upon approval of an application for enrollment based on the agreement of all of the owners of the water right. Before enrollment of the partial water right, the chief engineer shall determine the net historic consumptive water use that was associated with each portion of the beneficial use of the water right being considered. At the time of enrollment of the partial water right, the owner shall reduce the quantity remaining under the portion of the water right not being enrolled in the water right transition assistance program and any overlapping water rights to the net consumptive use requirement associated with the remainder of the operation.

(n) "Secretary" means secretary of agriculture or designee of the secretary.

(o) "Water right" means any vested right or appropriation right under which a person may lawfully divert and use water. A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. The water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance.

(p) "WTAP" and "program" mean water right transition assistance program. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

K.A.R. 11-12-2. Eligible areas. (a) Each eligible area shall ~~also~~ meet one of the following criteria:

(1) The board of the GMD has designated the area as a target area, and this designation has been approved by the chief engineer. Each eligible area within a GMD shall require a formal action by the board of a GMD requesting the chief engineer to approve the designation of a target area. The request shall include documentation on the criteria used by the GMD to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the historic consumptive water use retirement goal for each proposed target area and the designation of any high-priority areas within the target area.

(2) Outside a GMD, the chief engineer has designated the area as a target area. Each eligible area outside a GMD shall require documentation of the criteria used by the chief engineer to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the historic consumptive water use retirement goal for each proposed target area and the designation of any high-priority areas within the target area.

(b) The chief engineer shall notify the division of all approved target areas and high-priority areas before January 1 of each grant funding cycle and shall provide technical data that will assist the division in considering the ranking of the areas relative to any previously designated target areas or high-priority areas.

(c) The ranking of target areas and high-priority areas relative to any previously designated target areas and high-priority areas shall be determined by the secretary, after review of the input from the division. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

K.A.R. 11-12-3. Application and review. (a) The application periods for the program shall be October 1 through November 15 and February 15 through March 31.

(b) Notification of the program shall be published in the Kansas register before each application period.

(c) The program procedures and application forms shall be available at the division office and at conservation district offices.

(d) Each application shall be submitted on a form supplied by the division. The application shall include all of the following:

(1) The name, address, telephone number, and tax identification number of the owner of the water right;

(2) the water right file number and the priority date of the water right;

(3) the location of the point of diversion;

(4) documentation of the annual water usage, in acre-feet, for the previous 10 years of actual irrigation;

(5) the authorized annual quantity of water associated with the water right;

(6) the bid price expressed on a "per acre-foot of historic consumptive water use" basis;

(7) if the land is going to be planted to permanent cover, a dry land transition plan;

(8) documentation that verifies historical crop information for the previous 10 years of actual irrigation;

(9) documentation of the normal rate of diversion during the normal irrigation season. If the documentation is not based on data from an accurate water flowmeter, the results of a certified well flow rate test conducted no more than six months before the application date by a person or entity approved by the chief engineer and in a manner prescribed by the chief engineer shall be used for this documentation;

(10) the total amount of historic consumptive water use available for permanent retirement or permanent reduction under the water right as determined from the calculation method specified in K.S.A. 2-1930, and amendments thereto; and

(11) the total amount of historic consumptive water use being proposed for permanent retirement of a water right or permanent reduction of a water right and specification of whether only a partial water right is being submitted for permanent retirement in the application.

(e)(1) Upon the division's receipt of each application, it shall be reviewed for completeness by the division. If the

application is not complete, the missing information shall be provided by the applicant to the division within 30 calendar days of the division's written request.

(2) After the application is determined to be complete, the application shall be provided by the division to the chief engineer to determine the eligibility of the water right.

(f) Upon completion of the review by the chief engineer, the following certifications shall be requested by the division from the chief engineer:

(1) A statement indicating whether the water right is an eligible water right;

(2) the historic consumptive water use associated with each water right or portion of a water right;

(3) the potential impact of dismissing or permanently reducing the water right on aquifer restoration or stream recovery; and

(4) any other additional documentation necessary to quantify or qualify the water use reports.

(g) Comments and recommendations from the appropriate GMD shall be requested by the division regarding WTAP applications in any target area within that GMD. The chief engineer and the appropriate GMD shall be notified by the division regarding approval or disapproval of any WTAP applications in any target area within that GMD.

(h) Each applicant shall be notified by the division of the approval or the disapproval of the program application no later than 60 calendar days after the close of the application period in which the application is filed. If an application is not approved, the application, water right dismissal form, and all other related documents shall be considered void and shall be returned to the applicant.

(i) Any application meeting the requirements of this article may be approved contingent upon funding and the receipt of official documentation by the division that the water right has been dismissed by the chief engineer and its priority has been forfeited.

(j) The negotiations between owners and lessees regarding program participation shall not involve the commission or the division.

(k) No more than 10 percent of a county's irrigated acres shall be eligible for the duration of this program.

(l) Each program application that does not meet the requirements of these regulations shall be rejected by the division. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

K.A.R. 11-12-4. Payment. (a) Each water right owner shall sign a water right transition assistance grant agreement before payment is made by the division. Each grant agreement shall include the following provisions:

(1) The price to be paid by the division to the water right owner for the dismissal or permanent reduction of the subject water right and the terms of payment;

(2) the date on which the agreement will become effective;

(3) the file number of the water right to be retired or permanently reduced;

(4) one of the following statements:

(A) The approval is conditional on documentation being provided to the division indicating that the chief engineer has dismissed or permanently reduced the water right and ordered its priority to be forfeited; or

(B) the approval is conditional on documentation being provided to the division indicating any terms of the chief engineer to continue irrigation on a limited basis, not to exceed three years, for the purpose of establishing permanent vegetation. The documentation shall include the date on which the water right dismissal will become effective and its priority will be forfeited; and

(5) if the point of diversion is located within a GMD, a provision that any remaining water user charges assessed by the district before the water right is dismissed will remain the sole responsibility of the owner of the water right.

(b) Payment shall be made in equal annual installments, not to exceed 10, or, if approved by the division, in one lump sum payment. If annual payments are elected, the first payment shall be made within 60 calendar days after execution of the water right transition assistance grant. The subsequent payments shall be made within 60 calendar days after the beginning of each new state fiscal year. The following factors shall be considered by the division when determining which payment schedule to use:

(1) The number of eligible applicants; and

(2) the amount of program funds for that year.

(c) If there is a standing crop at the time of application approval, payment shall not be made until after irrigation from the subject water right has permanently ceased. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

K.A.R. 11-12-5. Transition to dry land. (a) If land that will no longer be irrigated is to be planted, under this program, to permanent vegetation including warm or cool season grasses, the chief engineer may be requested by the division to condition the dismissal of the associated water right to allow limited irrigation of the land for up to three years to establish this cover.

(b) The applicant shall submit a dry land transition plan to the division if land is to be planted to warm or cool season grasses or other permanent vegetation. A dry land transition plan may be disapproved by the executive director of the division and modifications to any dry land transition plan may be required by the executive director of

the division if the plan does not meet the requirements for soil erosion prevention practices in section IV of the "Kansas field office technical guide" as adopted by reference in K.A.R. 11-7-14. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended May 31, 2013.)

K.A.R. 11-12-6. Dismissal or permanent reduction of water right. (a) Each water right or partial water right for which payment is received from the program shall be dismissed or permanently reduced by the chief engineer, and the priority of the water right or that portion of the water right shall have been forfeited.

(b) A copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the division before the grantee receives the first payment. The requirements specified in this subsection shall be temporarily waived if a conditional water right is approved by the chief engineer under a dry land transition plan.

(c) For wells approved to continue operating under a dry land transition plan, a copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the division within 60 calendar days of the last time that the permanent vegetation is irrigated. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

K.A.R. 11-12-7. Petition for reconsideration. (a) Any water right owner may request reconsideration of any decision of the division by filing a petition for reconsideration.

(b) Each petition for reconsideration shall be submitted in writing to the division within 30 calendar days of the division's decision and shall state why the decision should be reviewed by the secretary and why the decision should be affirmed, modified, or reversed.

(c) The secretary's final decision shall state each reason for this determination.

(d) The decision of the division shall be considered the final agency action if no petition for reconsideration of that decision has been received by the division after 30 calendar days from the date on which the decision was made. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended May 31, 2013.)

ARTICLE 13. KANSAS SEDIMENT AND NUTRIENT REDUCTION INITIATIVE

K.A.R. 11-13-1. Definitions. Each of the following terms, as used in this article of the division of conservation's regulations, shall have the meaning specified in this regulation:

(a) "Bottomland timber establishment" means the trees planted in floodplains adjacent to perennial streams to provide wildlife habitat and other benefits.

(b) "CRP" means the conservation reserve program administered by the USDA farm service agency.

(c) "Director" means the executive director of the division of conservation, Kansas department of agriculture or the executive director's designee.

(d) "Farmable wetland or farmable wetland buffer" means land eligible for restoration by improving the land's hydrology and vegetation.

(e) "Filter strip" means a strip or area of grass for removing sediment, organic matter, and other pollutants from runoff and wastewater and for providing food and cover for wildlife.

(f) "FSA" means the farm service agency in the USDA.

(g) "Grassed waterway" means a designated strip of grass that is designed to convey runoff and gully erosion for the purpose of improving water quality and providing wildlife habitat.

(h) "Habitat buffers for upland birds" means a narrow band of native grasses, legumes, forbs, or shrubs, or any combination of these, to provide habitat for bobwhite quail, ring-necked pheasant, and other upland birds and to limit the amount of nutrients, sediment, pesticides, and other contaminants entering water bodies.

(i) "HUC 12 watershed" means a hydrological unit code consisting of a sequence of 12 numbers identifying a hydrological feature like a river, river reach, or lake or an area like a drainage basin.

(j) "Initiative" means the Kansas water quality buffer initiative and the application requirements for the program specified in this article of the division of conservation's regulations. This term is also known as the Kansas sediment and nutrient reduction initiative.

(k) "NRCS" means natural resources conservation service.

(l) "Practices" means the use of cultural techniques or structures installed or constructed on land for the purpose of improving or maintaining water quality.

(m) "Program-eligible area" means the Big Creek, Delaware, Little Arkansas, Lower Big Blue, Lower Kansas, Lower Little Blue, Lower Republican, Lower Smoky Hill, Neosho Headwaters, Upper Cottonwood, and Lower Cottonwood watersheds.

(n) "Program-eligible boundaries" means the boundaries based on HUC 12 watersheds that are above Tuttle Creek, Milford, Perry, John Redmond, and Clinton reservoirs and are identified as target areas for nutrient and sediment reduction in watershed restoration and protection strategy plans. The program-eligible boundaries shall contain two tiers for priority enrollment, which are called tier 1 areas and tier 2 areas.

(o) "Shallow water areas for wildlife" means wet areas that have been developed or restored and include 6-18 inches of water depth for wildlife.

(p) "Tier 1 areas" means those HUC 12 watersheds identified in watershed restoration and protection strategy plans as the highest priority target areas for nutrient and sediment reduction within program-eligible boundaries.

(q) "Tier 2 areas" means all areas within the program-eligible boundaries that are not tier 1 areas.

(r) "Unfarmable field" means the remaining portion of a field in which 51 percent or more of the total acreage has been enrolled in CRP.

(s) "USDA" means United States department of agriculture.

(t) "Wetland restoration" means the restoration of constructed wetlands for the purpose of intercepting tile runoff, reducing nutrient loss, improving water quality, and enhancing agricultural production practices.

(u) "WRAPS" means watershed restoration and protection strategy, which consists of a planning and management framework intended to engage stakeholders in a process to identify watershed restoration. The process documents stakeholder goals, strategies to achieve the goals, and the resources required to implement the strategies. (Authorized by and implementing K.S.A. 2017 Supp. 2-1915; effective June 1, 2018.)

K.A.R. 11-13-2. Initiative requirements for new applications; funds for existing contracts. On and after the effective date of this regulation, all new applications for the initiative shall be required to meet the requirements in this article of the division of conservation's regulations. These requirements shall be known as the Kansas sediment and nutrient reduction initiative, which consists of the new requirements for the Kansas water quality initiative. All persons with parcels currently enrolled in the initiative with contracts whose terms have not yet expired shall continue to be paid through funds made available under K.S.A. 2-1915, and amendments thereto, and any other available sources. (Authorized by and implementing K.S.A. 2017 Supp. 2-1915; effective June 1, 2018.)

K.A.R. 11-13-3. Selection of applicants for initiative. Funding may be distributed to initiative applicants for proposed projects that meet the eligibility requirements specified in K.S.A. 2-1915 and K.S.A. 2017 Supp. 2-1933, and amendments thereto, and the director's requirements as follows:

(a) Land shall lie within a tier 1 area or a tier 2 area of the initiative-eligible area and meet the basic eligibility criteria for CRP.

(b) To be eligible for tier 1 area payments, all of the land shall be within the tier 1 area. To be eligible for tier 2 area payments, all of the land shall be within the tier 2 area.

(c) Land that has an existing CRP contract or an approved offer with a CRP contract pending shall not be eligible for the initiative. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

K.A.R. 11-13-4. Haying and grazing. Any eligible initiative applicant that is authorized to hay or graze, or both, pursuant to an existing CRP contract may conduct these activities upon initiative-eligible land without penalty. (Authorized by K.S.A. 2016 Supp. 2-1915; implementing K.S.A. 2016 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

K.A.R. 11-13-5. Practices eligible for incentive payments. (a) Any of the following practices may be eligible for incentive payments:

(1) Grassed waterways;

(2) shallow water areas for wildlife;

(3) filter strips;

(4) riparian buffers;

(5) wetland restorations;

(6) improvements to farmable wetland or farmable wetland buffers by utilizing any of the practices listed in this regulation or any other conservation practice approved by the director;

(7) bottomland timber establishment; or

(8) habitat buffers for upland birds.

(b) Payments made through the initiative shall be in addition to any CRP payments. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)

K.A.R. 11-13-6. Incentive payments; refunds. (a) Incentive payments under the initiative shall be made on a onetime basis coinciding with enrollment in the CRP. Each incentive payment shall be an upfront payment on all eligible acres enrolled.

(b) Incentive payments shall not exceed the following:

(1) \$225.00 per acre in tier 1 areas; and

(2) \$162.50 per acre in tier 2 areas.

(c) Any acres determined to be in an unfarmable field may be eligible for the one-time incentive payment if the applicant agrees to establish and maintain permanent vegetative cover for the duration of the CRP contract.

(d) If a CRP contract is terminated by the FSA for any contract violation or for any other reason, a refund of the incentive payment shall be required.

(e) A refund of the incentive payment shall be required from any initiative participant who fails to meet the initiative requirements. (Authorized by K.S.A. 2017 Supp. 2-1915; implementing K.S.A. 2017 Supp. 2-1915 and 2-1933; effective June 1, 2018.)