

JUL 18 2019

SCOTT SCHWAB  
SECRETARY OF STATE

Proposed

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

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

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

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

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

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 The GMD1 Board of Directors has requested their specific rule be repealed so that the new statewide rule may be applied within GMD1.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

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

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

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This regulation is not mandated by federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

These regulations are not mandated by federal law.

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

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

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

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

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

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

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

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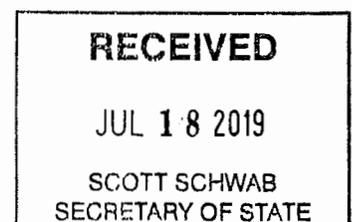
could continue to move forward with their plans for augmentation. The GMD5 Board passed a resolution requesting that these regulations be adopted by the Chief Engineer. Numerous public meetings on solving the impairment of Quivira National Wildlife Refuge have been held over the last two years and these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

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

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

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

David W. Barfield  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture



**5-21-7.** (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028, as amended by L. 2002, Ch. 137, § 5; implementing K.S.A. 82a-1028, as amended by L. 2002; Ch. 137, § 5 and K.S.A. 2001 Supp. 82a-1903, as amended by L. 2002, Ch. 137, § 7; effective Jan. 24, 2003; revoked P-\_\_\_\_\_.)

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5-25-2. Well spacing. (a) With the exception of those wells described in subsection (b), the minimum spacing of all wells described in an application to appropriate water for beneficial use, other than those wells for domestic use, shall be 1,320 feet from the following:

(1) All other non-domestic wells and proposed non-domestic wells that carry an earlier priority; and

(2) baseflow nodes.

Non-domestic wells shall be 660 feet from all existing domestic wells, except those domestic wells owned by the applicant.

(b)(1) Each replacement well drilled within ~~400~~ 300 feet of the originally authorized point of diversion shall be exempt from the well spacing requirement of subsection (a).

(2) Each non-domestic well that proposes the withdrawal of groundwater from the Dakota aquifer or any bedrock aquifer shall be one mile from all other wells withdrawing groundwater from the same formation, including domestic wells, except those domestic wells owned by the applicant.

(3) Each new well that enables the establishment of augmentation in the Rattlesnake creek subbasin pursuant to K.S.A. 82a-706b, and amendments thereto, in relation to other wells that enable or provide augmentation shall be exempt from the well spacing requirement of subsection (a). (Authorized by K.S.A. 82a-706a and K.S.A. ~~2002~~ 2018 Supp. 82a-1028; implementing K.S.A. 82a-706a and K.S.A. ~~2002~~ 2018 Supp. 82a-1028; effective May 1, 1980; amended April 19, 1996; amended Oct. 31, 2003; amended P-\_\_\_\_\_.)

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**5-25-4. Sustainable yield.** (a) Except as ~~set forth~~ specified in subsections (b) and (c), ~~the district has been determined to be appropriated to the sustainable yield level, and therefore the entire district shall be closed to further new surface water and groundwater appropriations filed on or after December 17, 1998.~~

(b) The following types of applications shall be exempt from the closure of the district to new appropriations of water described in subsection (a):

- (1) Domestic use;
- (2) temporary permits;
- (3) applications for a change in the point of diversion for which the diversion works have been completed under the original approved application;
- (4) standby wells used for emergency purposes only;
- (5) permits to appropriate 15 acre-feet of water or less per year that are exempt pursuant to K.A.R. 5-25-15;
- (6) term permit applications of one year or less and those term applications meeting the requirements of K.A.R. 5-25-13;
- (7) permits to appropriate water from a bedrock aquifer;
- (8) permits to appropriate water from the Dakota aquifer if the applicant can show either of the following:
  - (A) No Pleistocene aquifer exists within 5,280 feet of the proposed well location; or
  - (B) there is a significant difference in hydraulic head between the Pleistocene aquifer and the Dakota aquifer; ~~and~~

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(9) an application that proposes to use water in a manner so that there is no significant consumptive use of the local source of supply either in quantity or availability of water for use by other appropriators;

(10) any application that will enable or provide augmentation in the Rattlesnake creek subbasin pursuant to K.S.A. 82a-706b and amendments thereto, except that no application shall be approved if the application would impair an existing use. The proposed well location shall meet the spacing requirements of K.A.R. 5-25-2; and

(11) any application filed pursuant to K.A.R. 5-25-22.

(c)(1) For each application for a change in the point of diversion, if the diversion works have not been completed, the application shall be exempt from the closure to new appropriations ~~set forth~~ specified in subsection (a). However, the proposed appropriation, when added to the vested rights, prior appropriation rights, earlier priority applications, term permits for more than a year, and all baseflow node allocations within a two-mile-radius circle whose center is the location of the proposed well, shall not exceed 1,500 acre-feet. It shall be assumed for purposes of analysis that all prior applications, permits, certificates, and vested rights are being fully exercised and that all limitation clauses listed on permits and certificates are in force.

(2) If part of the area within the two-mile-radius circle around the proposed well location is outside the district boundaries, the 1,500 acre-feet quantity of water ~~referred to above~~ specified in paragraph (c)(1) shall be reduced proportionately by the percentage of the circle lying outside of the district boundaries. Only the baseflow node allocations, vested rights, prior appropriations, earlier priority applications, and term permits for more than one year ~~ascribed~~ assigned to wells within the portion of the circle within the district shall be considered.

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(3) If all of the wells authorized under a vested right or an application are not included inside the circumference of the circle, then a reasonable quantity shall be allocated to each well based upon the best available information.

(4) Each analysis for an application for a change in the point of diversion ~~referred to~~ specified in subsection (c) shall include all applications with a priority earlier than the priority established by the filing of the application for change. (Authorized by K.S.A. 82a-706a and K.S.A. ~~2002~~ 2018 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. ~~2002~~ 2018 Supp. 82a-708b, and K.S.A. ~~2002~~ 2018 Supp. 82a-1028; effective May 1, 1980; amended May 1, 1981; amended, T-86-4, March 22, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 19, 1996; amended March 16, 2001; amended Oct. 31, 2003; amended P-\_\_\_\_\_.)

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**K.A.R. 5-25-22. Movement of water rights affecting streamflow at Rattlesnake**

**creek.** (a) To improve streamflow at the zenith gage on Rattlesnake creek, otherwise known as United States geological survey gage #07142575, each vested or certified water right located within zone D of the division of water resources' map titled "Rattlesnake creek streamflow response regions," dated February 14, 2018, hereby adopted by reference, and subsequently referred to in this regulation as "response map," shall be eligible to offset new appropriations of water located within the district if all of the following conditions are met:

(1) The source of water supply for the currently authorized well is located within zone D of the response map.

(2) The rate and quantity of the existing water right are the maximum rate and quantity available for the new application. The rate and quantity of a new application for irrigation use shall be determined under K.A.R. 5-5-11. A new application may change the use made of water. However, the new application shall not allow for an increase in the net consumptive use greater than the existing water right under K.A.R. 5-5-3.

(3) The water right has reported use between January 1, 2003 and December 31, 2012, and the reported use is equal to or greater than 50 percent of the authorized use in at least two years. Each water right enrolled in a state or federal conservation program during this period that required the voluntary cessation of water use shall be eligible for movement under this regulation if all other requirements are met and the applicant demonstrates the existing water right's ability to pump at least 50 percent of authorized use during any year.

(4) The new location will reduce the impact at the zenith gage by 30 percent or more compared to the current location of the well as determined by the response map. The new

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location is in an area with less than 40 percent impact at the zenith gage as determined by the response map.

(5) The average saturated thickness in the two-mile-radius circle in which the proposed well will be located is greater than 40 feet as shown on the saturated thickness map in K.A.R. 5-25-19. However, additional site-specific information, including data from more recently drilled wells or test holes, may be submitted to demonstrate that the average saturated thickness is greater than 40 feet.

(6) The water level within the two-mile-radius circle surrounding the proposed well location has not declined more than five percent from the predevelopment water level as shown in the relevant Kansas geological survey bulletins, including bulletin numbers 65, 80, 88, 120, 205, and 206. Any applicant may submit additional site-specific information, including data from more recently drilled wells or test holes, to demonstrate that the area has not declined more than five percent from the predevelopment water level.

(7) The new location will meet the safe-yield analysis based on a two-mile-radius circle with a recharge rate of 2.25 inches and 75 percent available for appropriation pursuant to K.A.R. 5-3-11 or a safe-yield analysis utilizing modeling as completed by the applicant or district.

(8) No other well has previously been authorized by the chief engineer to be relocated within a one-mile radius of the proposed well location under this regulation, or the applicant demonstrates that the proposed well will not impair existing water rights.

(9) All other statutory and regulatory requirements for approval of a new appropriation of water for a beneficial use that do not conflict with this regulation are met.

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(b) Any new application may request the movement of the entire existing water right to a new location, the movement of an entire existing water right to multiple locations, or the movement of a partial amount of the existing water right to a new location.

(1) Upon approval of any application under this regulation and the completion of diversion works and the application of water to a beneficial use at each new location, the dismissal of the entire existing water right shall be required except for the portion, if any, remaining in the original location. If the location of a new application is determined to be unfeasible after filing an application, the applicant may submit a new application for another location if diversion works have not been completed and water has not been applied to a beneficial use at the previously proposed location.

(2) If any portion of the existing water right remains in the original location, then the water right owner shall file an application to divide the water right proportionally based on the quantity that will remain and the quantity that will be dismissed to offset each new appropriation before submitting a new application to appropriate water in the district.

(3) For any quantity of the existing water right that remains in the original location, the place of use shall be reduced to the number of acres that can reasonably be irrigated under K.A.R. 5-3-24. This reduction shall be calculated by dividing the remaining quantity of water by the county value according to K.A.R. 5-3-24 to establish the number of acres that can reasonably be irrigated.

(4) A separate application shall be required for each different location that a portion of the existing water right is proposed to offset.

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(c) Upon the establishment of a new appropriation under this regulation, the quantity of water dismissed to offset the new appropriation shall not be available for reappropriation in the previous or original location of the water right. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; effective P-\_\_\_\_\_.)

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# Rattlesnake Creek Streamflow Response Regions

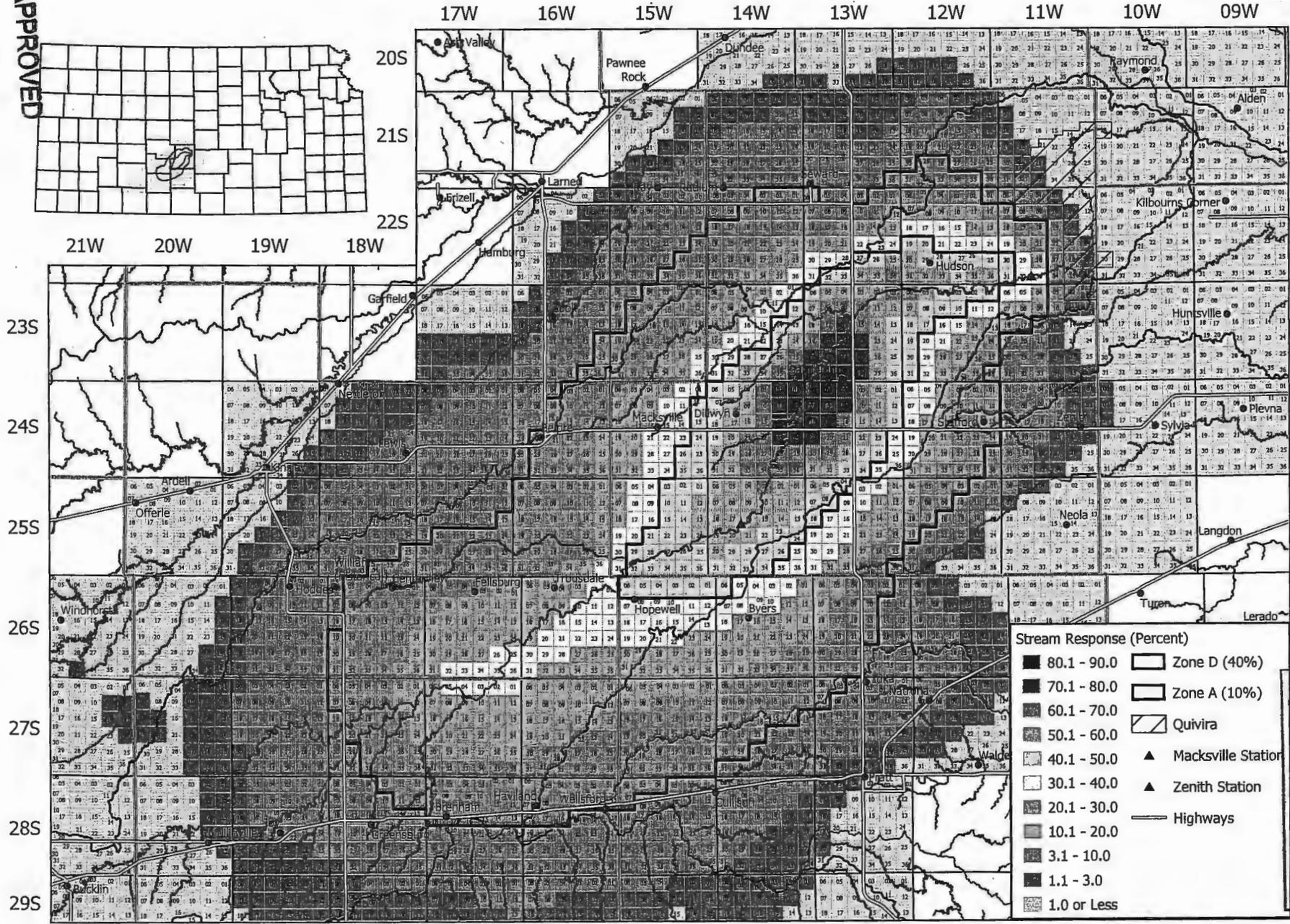
1998 - 2007 average streamflow response (pct) at Zenith gage as calculated using the GMD No. 5 model.

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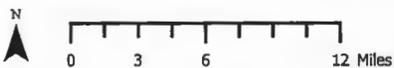


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"Streamflow response" represents the portion of the groundwater pumped that would have become streamflow.

Features on this map represent conditions as of the date of the map and are subject to change.



Kansas Department of Agriculture  
Division of Water Resources  
Modeling date: November 16, 2017  
Document date: February 14, 2018

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**Kansas Administrative Regulations  
Economic Impact Statement  
For the Kansas Division of the Budget**

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Division of the Budget

Kansas Department of Agriculture  
Agency

Ronda Hutton  
Agency Contact

(785) 564-6715  
Contact Phone Number

5-21-7  
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget  
900 SW Jackson, Room 504-N  
Topeka, KS 66612

**I. Brief description of the proposed rule(s) and regulation(s).**

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

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

This regulation is not mandated by the federal government.

**III. Agency analysis specifically addressing following:**

**A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;**

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

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**B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

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

**C. Businesses that would be directly affected by the proposed rule and regulation;**

All entities that own or purchase irrigation water rights, including farmers, ranchers, and any other water right owners that wish to change them from irrigation to other types of use.

**D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

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

**E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

The rule change itself will minimize impact. Other methods were considered but ultimately not adopted because they did not prevent the total quantity of water consumed from increasing.

**F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$0

**Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?**

YES  NO

**Give a detailed statement of the data and methodology used in estimating the above cost estimate.**

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

**Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0**

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million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES  NO

G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

All of these groups were provided copies of the proposed regulations and no comments were provided to the agency. It is not anticipated that this regulation will impose any function or responsibilities upon cities, counties, or school districts.

H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

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

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

None

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## KANSAS DEPARTMENT OF AGRICULTURE

## Outreach Plan

## K.A.R. 5-5-9, 5-5-10 Amended

An action item in the *Long-Term Vision for the Future of Water Supply in Kansas* calls upon the Kansas Department of Agriculture to evaluate current consumptive use regulations to ensure they are being applied properly. In 2016, the Department also met with more than 200 representatives of the agriculture industry to develop a growth strategy for agriculture in the state. Feedback received during the development of the Vision and the growth strategy indicate that current consumptive use regulations are cumbersome and unnecessarily punitive to the livestock industry. Based on the feedback received over more than two years of outreach, KDA proposes amendments to K.A.R. 5-5-9 and 5-5-10, amendments that reflect a simple, science-based methodology for converting from irrigation to stockwatering or any other beneficial use without increasing the net consumptive use.

To gain feedback and ideas for the proposed amendments, KDA attended and discussed the consumptive use regulations at board meetings of each of the Groundwater Management Districts, Kansas Livestock Association, Kansas Farm Bureau, Kansas Water Congress, Kansas Water Authority, Regional Advisory Committees, and other stakeholder organizations. In addition, KDA met individually with several dairy and livestock facilities to review the proposal. To conclude the outreach, KDA held a webinar on January 5, 2017 with multiple attendees from the organizations listed above attending.

The amendments proposed reflect the final proposal which was modified several times over the past two years in an attempt to address as much feedback as possible. The initial proposal was to remove the consumptive use factor entirely. While this proposal was simple, it did not ensure that an increase in the net consumptive use would not occur during a change. The second proposal was to establish a single-statewide consumptive use factor with 10% being the initial proposal. This proposal went further to address the no net increase in consumptive use issue, but concern was expressed that this approach did not recognize regional differences in return flows. With that feedback KDA developed a map with county-level consumptive use factors based on return flow methodology employed with the Northwest Kansas (Republican River Compact) model. This proposal achieved the simple, science based approach stakeholders requested. The GMDs suggested the data could be refined by using local models where available. The final map proposed for incorporation and reference in K.A.R. 5-5-9 and 5-5-10 is based on return flow data for the counties within GMDs 1, 3, 4 and 5. At the point of the submission of these regulation changes the model for GMD 2 was not complete. For counties in eastern Kansas with no model developed but with reported irrigation use, the Northwest Kansas model was used to develop the county-level consumptive use factor. A state-wide average factor was calculated using the Northwest Kansas model for counties with no reported irrigation use.

Some feedback suggested that recent historical use not authorized quantity should be used to apply the consumptive use calculation. KDA did not feel that this approach would result in the simple and transparent consumptive use calculation. We do acknowledge that in very limited situations the method set forth may be unrealistic for the local groundwater conditions and may be at risk of causing impairment. For that reason, we've included an amendment to 5-5-9 that would allow the GMDs to provide a more site-specific consumptive use analysis as a recommendation to the chief engineer.

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The following proposed amendments to K.A.R. 5-5-9 and 5-5-10 represent more than two years of active and robust outreach with a variety of stakeholders. KDA feels that the proposed amendments addresses most of the feedback received and provides a simple, science-based approach for calculating consumptive use.

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Proposed

**Kansas Administrative Regulations  
Economic Impact Statement  
For the Kansas Division of the Budget**

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APR 26 2019

Division of the Budget

Kansas Department of Agriculture  
Agency

Ronda Hutton  
Agency Contact

(785) 564-6715  
Contact Phone Number

K.A.R. 5-25-2; 5-25-4; 5-25-22  
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to: Division of the Budget  
900 SW Jackson, Room 504-N  
Topeka, KS 66612

**I. Brief description of the proposed rule(s) and regulation(s).**

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

K.A.R. 5-25-2 – This regulation is amended to allow augmentation wells to be drilled closer in proximity to one another than the standard allowance for new wells. GMD5 has proposed an augmentation wellfield made up of multiple low-volume wells, that they believe will meet standard spacing requirements. However, engineering work has not been completed on the project and this amendment is to ensure the project can continue if circumstances require closer spacing than is currently allowed.

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

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

**II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)**

These are not mandated by federal law.

**III. Agency analysis specifically addressing following:**

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**A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;**

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

**B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

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

**C. Businesses that would be directly affected by the proposed rule and regulation;**

Farmers, ranchers, feedlots, and other water right owners located within GMD5.

**D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

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

**E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

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

**F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$0

**Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?**

YES  NO

**Give a detailed statement of the data and methodology used in estimating the above cost estimate.**

None.

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Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES  NO

**G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

All of these groups were provided copies of the proposed regulations and no comments were provided to the agency. It is not anticipated that this regulation will impose any function or responsibilities upon cities, counties, or school districts.

**H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

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

**I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

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

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