

Proposed

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

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**KRIS W. KOBACH
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A public hearing will be conducted at 10:00 a.m. Monday, May 22, 2017, 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

Stafford Field Office, 300 S. Main Street, Stafford

Stockton Field Office, 820 S. Walnut, Stockton

Topeka Field Office, 6531 SE Forbes Ave., Suite B, Topeka

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

K.A.R. 5-14-10 - The proposed amendment sets forth a clear implementation of the civil penalties and suspensions applied for violations of the Kansas Water Appropriation Act. The amendment also deletes provisions related to overpumping violations, as these provisions have been moved into a separate regulation.

K.A.R. 5-14-12 - This new regulation sets forth a clear implementation of civil penalties and suspensions applied for exceeding the authorized quantity limitation on a permit or water right (i.e. overpumping violations). This regulation also defines how long a permit must be operated in compliance with its terms and permits before any civil penalty is expired from the permit or water right file. Among other implications, the expiration of a penalty from the water right file will affect the severity of any subsequent civil penalties levied for noncompliance with water right terms and conditions.

Economic Impact Statement:

The regulations will apply to existing and future water rights that are not in compliance with the Kansas Water Appropriation Act and applicable regulations. Kansas water rights are based on allowable appropriation and safe yield. Exceeding the authorized quantity, tampering with a meter, falsifying water use, and many other violations of statutes, regulations, and conditions of a water right, can adversely impact the water resource and could harm other Kansans' property rights. In addition, being out of compliance by using more than the authorized quantity of water or using water at a greater rate than a water user's permit allows, could result in a water user gaining an unfair economic advantage over his or her neighbors who faithfully operate in compliance. These regulations are intended to revise and clarify enforcement practices in order to prevent these problems.

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This regulation is not mandated by federal law.

The proposed amendment and new regulations may result in a small positive fiscal impact to the department following implementation due to raised civil penalty amounts. It is anticipated that water users will adjust their practices appropriately such that the division will see no long-term fiscal impact, just greater levels of compliance.

The proposed amendments and new regulation will result in no fiscal impact to other government agencies. It may have a negative fiscal impact on private businesses and individuals if civil penalties are imposed for noncompliance. The expiration of civil penalties for staying in compliance could have a very positive fiscal impact to private business and individuals by allowing the water right to be back in good standing.

No other methods were considered by the state.

Some improvements to groundwater resource conditions, both quality and quantity, could be achieved through the adoption of this regulation change as water right holders achieve greater compliance with the terms and conditions of their water rights.

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 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 to ronda.hutton@ks.gov.

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

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

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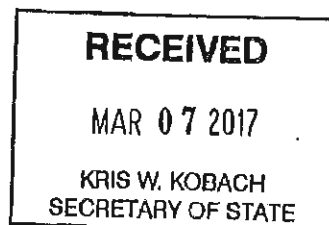
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K.A.R. 5-14-10. Civil penalties; ~~suspension or modification of water rights~~ for violations other than exceeding the authorized quantity of water. (a) Penalty order. In addition to any other authorized enforcement procedures, if the chief engineer finds that any of the violations specified in K.S.A. 82a-737, and amendments thereto, have occurred, a written order shall may be issued by the chief engineer stating the following: pursuant to K.S.A. 82a-737(e), and amendments thereto.

- (1) ~~The nature of the violation;~~
- (2) ~~the factual basis for the violation;~~
- (3) ~~the civil penalty, suspension, modification of a water right or use of water, or any combination of these to be imposed; and~~
- (4) ~~the appropriate procedure for review pursuant to K.S.A. 82a-1901, and amendments thereto.~~

(b) ~~The categories of offenses specified in subsections (c), (d), and (e) shall be applied when assessing the civil penalty for each violation.~~ Civil penalties.

(1) Any civil penalty assessed in any order issued under this regulation may be no greater than the civil penalties specified in subsection (m) for each applicable violation. Each ~~Any~~ day on which the violation continues to occur may constitute a separate offense. If an order is issued, the chief engineer may include all known violations of this regulation or K.A.R. 5-14-12, or both, and all penalties pertaining to a given water right in the order. The order may include violations of this regulation or K.A.R. 5-14-12, or both, applicable to multiple water rights. Separate penalties may be assessed for each violation cited in a single order.



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(2) The monetary penalties and suspension terms specified in subsection (m) may be reduced due to one or more of the following factors:

(A) The absence of any prior penalty assessed under the Kansas water appropriation act, or implementing regulations, during the five calendar years preceding the calendar year in which the most recent violation occurred and if that calendar year is not determinable, then preceding the calendar year in which the order is issued for the most recent violation;

(B) the absence of intentional noncompliance or gross negligence; or

(C) prompt cessation or correction of the violation upon discovery or notification by the chief engineer or an authorized representative or by personnel from a groundwater management district.

~~(c)(1) Each category 1 offense shall result in a civil penalty of \$100.~~

~~(2) Category 1 offenses shall include the following:~~

~~(A) A threat to divert water without authorization from the chief engineer;~~

~~(B) irrigating an unauthorized place of use that is 10 acres or less;~~

~~(C) diversion of water at a rate in excess of the authorized rate of diversion, but less than 115 percent of the authorized rate of diversion;~~

~~(D) operating and maintaining a water flowmeter or other water measuring device required by the chief engineer that is out of compliance as specified by K.A.R. 5-1-9; and~~

~~(E) failing to file a required monthly report.~~

~~(d)(1) Each category 2 offense shall result in a civil penalty of \$500.~~

~~(2) Category 2 offenses shall include the following:~~

~~(A) Diverting water from an unauthorized point of diversion of water;~~

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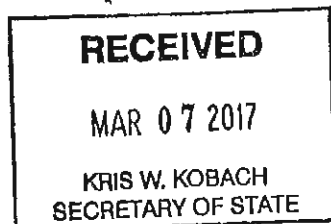
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- ~~(B) irrigating an unauthorized place of use that is more than 10 acres;~~
- ~~(C) failure to properly implement a conservation plan required by the chief engineer;~~
- ~~(D) committing a waste of water;~~
- ~~(E) diversion of water at a rate that equals or exceeds 115 percent of the authorized rate of diversion;~~
- ~~(F) failure to install a water flowmeter or other acceptable water measuring device;~~
- ~~(G) failure to promptly provide complete and accurate water use or other data, information, or records requested by the chief engineer, except the annual water use reports required by K.S.A. 82a 732, and amendments thereto;~~
- ~~(H) diversion of water in excess of the authorized quantity of water;~~
- ~~(I) applying water to an unauthorized type of beneficial use; and~~
- ~~(J) violating any condition of a water right or approval of application not specifically listed as a category 1, category 2, or category 3 violation.~~
- ~~(c)(1) Each category 3 offense shall result in a civil penalty of \$1,000.~~
- ~~(2) Category 3 offenses shall include the following:~~
 - ~~(A) Tampering with a water flowmeter or other acceptable water measuring device;~~
 - ~~(B) causing a water flowmeter or other acceptable water measuring device to show an incorrect reading by any method, including any of the following:~~
 - ~~(i) Altering the propeller;~~
 - ~~(ii) reversing the water flowmeter; or~~
 - ~~(iii) running the water flowmeter in reverse by any means;~~



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~~(C) failing to timely install or removing a required water flowmeter or other acceptable water measuring device;~~

~~(D) falsifying water use or other data required by the chief engineer;~~

~~(E) denying authorized personnel of the chief engineer access as required by K.S.A. 82a-706b, and amendments thereto;~~

~~(F) violating a cease and desist order issued by the chief engineer;~~

~~(G) violating an order of the chief engineer issued pursuant to K.S.A. 82a-706b and amendments thereto;~~

~~(H) violating any order of the chief engineer issued pursuant to K.S.A. 82a-1038, and amendments thereto, relating to an intensive groundwater use control area; and~~

~~(I) violating a minimum desirable streamflow order issued by the chief engineer pursuant to K.A.R. 5-15-1 through 5-15-3.~~

~~(f) The civil penalties specified in paragraph (c)(1) may be increased if the chief engineer finds that aggravating circumstances exist. The civil penalties specified in paragraph (d)(1) may be increased or decreased if the chief engineer finds that aggravating or extenuating circumstances exist. The civil penalties specified in paragraph (e)(1) may be decreased if the chief engineer finds that extenuating circumstances exist. Extenuating circumstances and aggravating circumstances shall include the following:~~

~~(1) Prior violations;~~

~~(2) intentional noncompliance or gross negligence; and~~

~~(3) failure to correct the violation upon discovery or notification by the chief engineer.~~

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~~(g) In addition to the assessment of a civil penalty or any other penalty provided for by law, any water right may be modified or suspended by the chief engineer upon the issuance of a written order finding a violation as established in subsection (a). Except as otherwise specified by regulation, violation of either a multiyear annual allocation or a condition limiting the net acres that may be irrigated in any one calendar year pursuant to an approval to allow annual rotation of the authorized place of use for irrigation shall result in the following:~~

~~(1) A two-year suspension of all or any portion of the annual water use authorized by the water right, any term permit, and any water right upon which the multiyear allocation or rotation was based;~~

~~(2) a subsequent restriction of the authorized place of use to the base acreage at a location specifically set forth in the change approval; and~~

~~(3) after any suspension has expired, a reversion to all conditions in effect on the water right before approval of the change application authorizing the multiyear allocation or rotation.~~

~~In all other cases, the term of the suspension or modification shall be determined by the chief engineer based upon the circumstances specified in subsection (f).~~

~~(h)(1) If multiple water rights or permits authorize the use of water from a single point of diversion, the water shall be considered to be used in the order of priority with the earliest priority first.~~

~~(2) If the water used exceeds the total quantity of water authorized by the water rights and permits described in paragraph (h)(1) that authorize water use from that point of diversion, all water rights and permits under which the water was lawfully diverted shall be deemed to be violated unless this presumption is rebutted by one or more of the water right owners.~~

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(4) Lower-tier miscellaneous. Any of the following actions or inactions may constitute a lower-tier miscellaneous violation:

(1) Operating and maintaining a water flowmeter or other water-measuring device required by the chief engineer that is out of compliance as specified in K.A.R. 5-1-9, unless the violation is a meter manipulation;

(2) failure to properly implement a conservation plan required by the chief engineer;

(3) committing a waste of water; and

(4) violating an order of the chief engineer or a term, condition, or limitation of a water right, approval of application, term permit or temporary permit, or any regulation not otherwise specifically listed as a violation in this regulation.

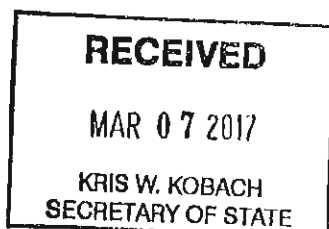
(d) Failure to provide information. Any of the following actions or inactions may constitute a failure to provide information:

(1) Failure to file a required monthly report; and

(2) failure to provide complete and accurate water use or other data, information, or records requested by the chief engineer or authorized representative, except the annual water use reports required by K.S.A. 82a-732 and amendments thereto, within the following time frames:

(A) For information regarding water use during administration of a water right, within 24 hours of the chief engineer's or authorized representative's request; and

(B) for all other information, within 15 days of the request made by the chief engineer or authorized representative or within any other time frame prescribed by the chief engineer or authorized representative when the request is made.



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(e) Unauthorized diversion or threat to divert. Any of the following actions may constitute an unauthorized diversion or threat to divert:

(1) A threat to divert water without authorization from the chief engineer;

(2) irrigating an unauthorized place of use;

(3) diverting water at a rate in excess of the authorized rate of diversion;

(4) diverting water from an unauthorized point of diversion of water; and

(5) applying water to an unauthorized type of beneficial use.

(f) Denial of access. It may be a violation for any person to deny access to authorized agents of the chief engineer as required by K.S.A. 82a-706b, and amendments thereto.

(g) Lack of water flowmeter. It may be a violation for any person to fail to timely install, or to remove and fail to replace, a required water flowmeter or other acceptable water-measuring device.

(h) Noncompliance with a substantial order. Any of the following actions may constitute a violation of a substantial order of the chief engineer:

(1) Violating a cease-and-desist order issued by the chief engineer;

(2) violating an order of the chief engineer issued pursuant to K.S.A. 82a-706b, and amendments thereto;

(3) violating any order of the chief engineer issued pursuant to K.S.A. 82a-1038, K.S.A. 82a-1041, or K.S.A. 82a-745, and amendments thereto, or any associated term permit, relating to an intensive groundwater use control area, local enhanced management area, or water conservation area; and

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(4) violating a minimum desirable streamflow order issued by the chief engineer pursuant to K.A.R. 5-15-1 through 5-15-3.

(i) Meter manipulation.

(1) Any of the following actions may constitute meter manipulation:

(A) Causing a water flowmeter or other acceptable water-measuring device to show an incorrect or inaccurate reading by any method, including any of the following:

(i) Tampering with the meter in any way;

(ii) physically altering the meter reading or the propeller;

(iii) operating the water flowmeter in reverse orientation or running the water flowmeter in reverse by any means; or

(iv) altering a water flowmeter from its factory specifications in a manner that causes the meter to underreport actual water use; and

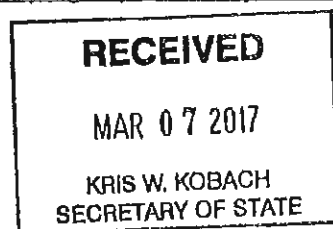
(B) removing a seal placed on a pump, diversion device, or water flowmeter without the written permission of the chief engineer or the chief engineer's authorized representative.

(2) If a penalty is assessed for meter manipulation under this regulation and more than one water right is serviced by a single meter, then a single penalty may be assessed for all water rights serviced by that meter.

(j) Falsification. Any of the following actions may constitute falsification:

(1) Providing false water use data, including providing inaccurate information during a perfection period or after a water right has been certified, that underreports or overreports water use; and

(2) falsifying any other required data or information.



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(k) Noncompliance with a special condition of change application approval.

(1) Any of the following actions may constitute a violation of a special condition of a change application approval:

(A) Violating any of the terms and conditions of a multiyear allocation; and

(B) violating a term or condition limiting the net acres that may be irrigated in any one calendar year pursuant to an approval to allow annual rotation of the authorized place of use for irrigation.

(2) The suspension specified in subsection (m) may apply to all or any portion of the annual water use authorized by the water right, any term permit, and any water right upon which a multiyear allocation or rotation was based. Additionally, a subsequent restriction of the authorized place of use to the base acreage at a location specified in the change approval may be applied. After any suspension has expired, the water right may revert to all conditions in effect on the water right before approval of the change application that authorized the multiyear allocation or rotation.

(l) Penalties for water rights in a term permit. If falsification or meter manipulation occurs during the term of a multiyear flex account term permit or other term permit during which the base water right is suspended, the chief engineer may revoke the term permit, and the base water right may be suspended for what would have been the remainder of the term permit. In addition to the suspension, a penalty corresponding to the falsification or meter manipulation violation cited may be imposed. Any additional reduction or suspension may run consecutively with the suspension for what would have been the remainder of the term permit.

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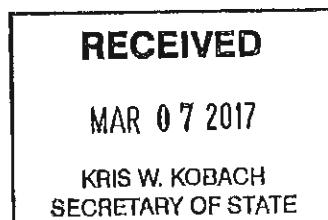
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(m) Penalty table. The following table may specify the maximum civil penalty and the maximum suspension term that may be assessed by the chief engineer for each violation of this regulation:

<u>Violation</u>	<u>Monetary penalty</u>	<u>Maximum number of days monetary penalty applied</u>	<u>Suspension of water use</u>
<u>Lower-tier miscellaneous</u>	<u>\$500 per day</u>	<u>20</u>	<u>One year</u>
<u>Failure to provide information</u>	<u>\$500 per day, for each day the violation exists</u>	<u>20</u>	<u>One year</u>
<u>Unauthorized diversion or threat to divert</u>	<u>\$500 per day</u>	<u>20</u>	<u>One year</u>
<u>Denial of access</u>	<u>\$1,000 per day</u>	<u>10</u>	<u>Three years</u>
<u>Lack of water flowmeter</u>	<u>\$1,000 per day</u>	<u>10</u>	<u>Three years</u>
<u>Noncompliance with a substantial order</u>	<u>\$1,000 per day</u>	<u>10</u>	<u>Five years</u>
<u>Meter manipulation</u>	<u>\$1,000 per day</u>	<u>10</u>	<u>Five years</u>
<u>Falsification</u>	<u>\$1,000 per instance of falsification</u>	<u>Not applicable</u>	<u>Five years</u>
<u>Noncompliance with a special condition of a change application approval</u>	<u>\$1,000 per day</u>	<u>10</u>	<u>Two years</u>

(n) Owner liability and effect of penalty on water right. Any civil penalty and any temporary reduction or suspension of the quantity of water authorized to be diverted under a water right in Kansas may be enforced against the owner or owners of the water right and may attach to and transfer with the water right to any subsequent heir, assignee, purchaser, or other subsequent holder of the water right.



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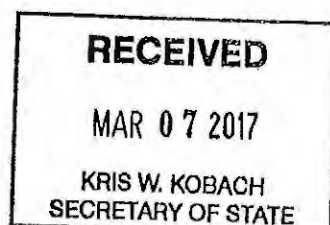
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(o) Appeal. Any person aggrieved by an order of the chief engineer may request a review pursuant to K.S.A. 82a-1901, and amendments thereto, and after exhaustion of administrative remedies, may appeal to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a, K.S.A. ~~2007~~ 2016 Supp. 82a-737, and K.S.A. ~~2007~~ 2016 Supp. 82a-1901; effective Oct. 24, 2003; amended Oct. 31, 2008; amended P-_____.)



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Amended

K.A.R. 5-14-12. Civil penalties for exceeding the authorized quantity of water.

(a) Penalty order. In addition to any other authorized enforcement procedures, if the chief engineer finds a diversion of water in excess of the authorized quantity, a written penalty order may be issued by the chief engineer pursuant to 82a-737(e), and amendments thereto.

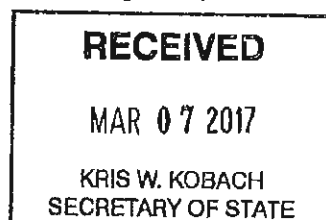
(b) Owner liability and effect of penalty on water right. Any civil penalty and any temporary reduction or suspension of the quantity of water authorized to be diverted under a water right in this state may be enforced against the owner or owners of the water right and shall attach to and transfer with the water right to any subsequent heir, assignee, purchaser, or other subsequent holder of the water right.

(c) Penalty categories. Any violation for diversion of water in excess of the authorized quantity may be subject to the penalties specified in one of the following categories, as listed in subsection (e): category 1, category 2, category 3, or category 4.

(1) A category 1 penalty may be assessed if no penalty for diversion of water in excess of the authorized quantity has been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(2) A category 2 penalty may be assessed if one prior penalty for diversion of water in excess of the authorized quantity has been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(3) A category 3 penalty may be assessed if two prior penalties for diversion of water in excess of the authorized quantity have been assessed against the water right for a violation that



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occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

(4) A category 4 penalty may be assessed if three or more prior penalties for diversion of water in excess of the authorized quantity have been assessed against the water right for a violation that occurred during the five calendar years preceding the calendar year in which the most recent violation occurred.

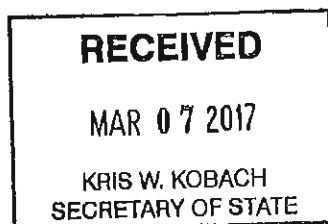
(d) Severity level of violation. Any violation may be assigned a severity level based upon the amount of water diverted in excess of the authorized quantity, according to the following:

(1) A water right that has exceeded its authorized quantity by less than an amount equal to the amount resulting from 24 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level A penalty.

(2) A water right that has exceeded its authorized quantity by an amount equal to at least the amount resulting from 24 hours of pumping but less than an amount equal to 72 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level B penalty.

(3) A water right that has exceeded its authorized quantity by an amount equal to at least the amount resulting from 72 hours of pumping at the maximum authorized rate may be assessed a maximum of a severity level C penalty.

(e) Penalty table. The following table may be used to determine the maximum civil penalty and the maximum reduction or modification of the water right that may apply to each violation, based on the penalty category and the severity level of the violation:



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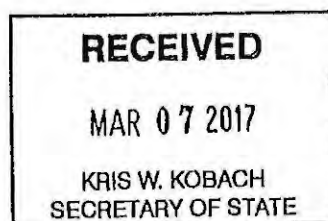
Penalty category	Severity level A	Severity level B	Severity level C
1	Written notice of non-compliance	\$1,000 per day and a reduction in quantity equal to two times the quantity overpumped, not to exceed the annual authorized quantity	\$1,000 per day and a reduction in quantity equal to three times the quantity overpumped, not to exceed the annual authorized quantity
2	\$1,000 per day and a reduction in quantity equal to two times the quantity overpumped, not to exceed the annual authorized quantity	\$1,000 per day and a one-year suspension	\$1,000 per day and three-year suspension
3	\$1,000 per day and a one-year suspension	\$1,000 per day and a three-year suspension	\$1,000 per day and a four-year suspension
4	\$1,000 per day and a three-year suspension	\$1,000 per day and a four-year suspension	\$1,000 per day and a five-year suspension

(f) Mitigating factors. The monetary penalties and suspension terms specified in subsection (e) may be reduced due to one or more of the following factors:

(1) The absence of any prior penalty assessed under the Kansas water appropriation act, or the implementing regulations, during the five calendar years preceding the calendar year in which the most recent violation occurred;

(2) the absence of intentional noncompliance or gross negligence; or

(3) prompt cessation or correction of the violation upon discovery or notification by the chief engineer or an authorized representative of the chief engineer or by personnel from a groundwater management district.



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(g) Notice of noncompliance. Any notice of noncompliance issued under this regulation may be considered a category 1 penalty for purposes of classifying any future violation.

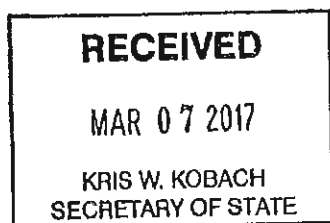
(h) Multiple water rights.

(1) If multiple water rights or permits authorize the use of water from a single point of diversion and if the water used exceeds the total quantity of water authorized by the water rights and permits, all water rights and permits under which the water was lawfully diverted may be deemed to be violated unless sufficient evidence to the contrary is offered by one or more of the water right owners.

(2) Any monetary penalty assessed under this regulation may be applied jointly and separately to the water rights, any temporary quantity reduction may be applied proportionally to each water right based on the authorized quantities for the water rights, and any suspension may be applied to all the water rights, unless it can be determined that the quantity available under a given water right was not exceeded.

(i) Penalties for water rights in a term permit. For each instance of diversion of water in excess of the total authorized quantity under a multiyear flex account term permit or other term permit during which the base water right is suspended, the chief engineer may revoke the term permit. For each revocation, a suspension may be applied to the base water right for what would have been the remainder of the term of the permit, in addition to any penalty assessed according to subsection (e). Any additional reduction or suspension may run consecutively with the suspension for what would have been the remainder of the term of the term permit.

(j) Expiration of penalty.



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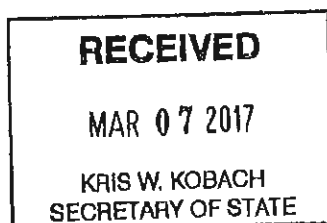
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(1) Any penalty assessed by the chief engineer for diversion of water in excess of the authorized quantity under this regulation may expire four calendar years after the end of the calendar year in which the penalty was assessed.

(2) Any penalty that has not expired may be counted as a prior penalty for purposes of determining the category level of any future penalty for diversion of water in excess of the authorized quantity.

(3) A penalty that has expired under paragraph (j)(1) shall not be considered in assessing a future penalty under this regulation or under K.A.R. 5-14-10.

(4) A penalty that has expired shall not be expunged from the record of a water right and, except as otherwise provided in this regulation, may be considered by the chief engineer for any purposes pursuant to the Kansas water appropriation act, K.S.A. 82a-701 et seq. and amendments thereto, and the implementing regulations. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2016 Supp. 82a-737; effective P-_____.)

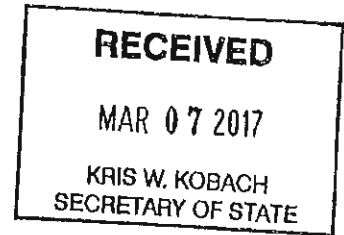


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Proposed

**KANSAS DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES
ECONOMIC IMPACT STATEMENT
K.A.R. 5-14-10 amended and K.A.R. 5-14-12 new**



I. Summary of proposed regulation, including its purpose.

The proposed amendment to K.A.R. 5-14-10 sets forth a clear implementation of the civil penalties and suspensions applied for violations of the Kansas Water Appropriation Act. The amendment also deletes provisions related to overpumping violations, as these provisions have been moved into a separate regulation.

New K.A.R. 5-14-12 sets forth a clear implementation of civil penalties and suspensions applied for exceeding the authorized quantity limitation on a permit or water right (i.e. overpumping violations). This regulation also defines how long a permit must be operated in compliance with its terms and permits before any civil penalty is expired from the permit or water right file. Among other implications, the expiration of a penalty from the water right file will affect the severity of any subsequent civil penalties levied for noncompliance with water right terms and conditions.

II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.

The regulations will apply to existing and future water rights that are not in compliance with the Kansas Water Appropriation Act and applicable regulations. Kansas water rights are based on allowable appropriation and safe yield. Exceeding the authorized quantity, tampering with a meter, falsifying water use, and many other violations of statutes, regulations, and conditions of a water right, can adversely impact the water resource and could harm other Kansans' property rights. In addition, being out of compliance by using more than the authorized quantity of water or using water at a greater rate than a water user's permit allows, could result in a water user gaining an unfair economic advantage over his or her neighbors who faithfully operate in compliance. These regulations are intended to revise and clarify enforcement practices in order to prevent these problems.

This regulation is not mandated by federal law.

III. Anticipated economic impact upon the Kansas Department of Agriculture.

The proposed amendment and new regulations may result in a small positive fiscal impact to the department following implementation due to raised civil penalty amounts. It is anticipated that water users will adjust their practices appropriately such that the division will see no long-term fiscal impact, just greater levels of compliance.

IV. Anticipated financial impact upon other governmental agencies and upon private business or individuals.

The proposed amendments and new regulation will result in no fiscal impact to other government agencies. It may have a negative fiscal impact on private businesses and individuals if civil penalties are imposed for noncompliance. The expiration of civil

penalties for staying in compliance could have a very positive fiscal impact to private business and individuals by allowing the water right to be back in good standing.

V. Less costly or intrusive methods that were considered, but rejected, and the reason for rejection.

No other methods were considered by the state.

VI. Environmental Impact.

Some improvements to groundwater resource conditions, both quality and quantity, could be achieved through the adoption of this regulation change as water right holders achieve greater compliance with the terms and conditions of their water rights.

RECEIVED

MAR 07 2017

**KRIS W. KOBACH
SECRETARY OF STATE**