

Approved: Carl Dean Holmes  
Date 4/29/94

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 9:00 a.m. on March 7, 1994 in Room 423-S of the Capitol.

All members were present except:

- Representative Gatlin - Excused
- Representative Charlton - Excused
- Representative Lawrence - Excused
- Representative Hendrix - Excused
- Representative Grotewiel - Excused

Committee staff present:

- Raney Gilliland, Legislative Research Department
- Dennis Hodgins, Legislative Research Department
- Mary Torrence, Revisor of Statutes
- Shirley Wilds, Committee Secretary

Conferees appearing before the committee:

- Lee Rolfs, KS State Board of Agriculture,  
Division of Water Resources

Others attending: See attached list

**Hearing on Rules and Regulations; Board of Agriculture, Division of Water Resources:**

Chairperson Holmes opened the meeting announcing the presence of Vice Chairperson Melvin Neufeld of the Rules and Regulations Committee at this meeting.

By way of explanation prior to testimony from Lee Rolfs, Chairperson Holmes said that once a bill is passed by the Legislature, the state agency(s), through Rules and Regulations, determines the appropriate application of the measure. When those rules and regulations are presented to the Rules and Regulations Committee, the Committee cannot undue the adopted rules and regulations. Recommendations can be made and the onus is then upon the state agency to either accept or reject any suggested changes. If the agency should reject any proposed recommendations the Rules and Regulations Committee (or other committee) can introduce a bill to undue a regulation (s) through statutory authority.

**The Honorable Melvin Neufeld.** As Vice Chairperson of the House Rules and Regulations Committee, Representative Neufeld expanded on Chairperson Holmes' explanation. He told the Committee it is important to remember that the Supreme Court has set out very clear definitions on administrative vs legislative authority. The Supreme Court has instructed the Legislature not to interfere with administrative decisions made by the Administrations. What the Legislature and Rules and Regs Committee are to be aware of is whether an agency is within the statutory authority and within the legislative intent.

Representative Neufeld said Chairperson Holmes of this Committee and Chairperson Shore of the Agriculture Committee will most likely spend time studying the policy questions.

**Lee Rolfs:** Mr. Rolfs began his testimony informing the Committee the Board will accept written comments up to the time of the public hearing to be conducted March 17, 1994. Mr. Rolfs emphasized the Board, having not yet had a public hearing, has not received public input and/or reaction, nor have any of the proposed changes been adopted. (See Attachment #1)

Mr. Rolfs offered a brief synopsis of proposed regulations and their economic impact. (Extra copies of the regulations and their economic impact statements may be obtained from the Division of Water Resources).

Amended regulations proposed are:

- 5-1-1: Amending definition of "battery of wells; household purposes; industrial use; irrigation use; municipal use; and stockwatering use." Also added, definitions of "primary well; safe-yield; standby well; term permit; and water use correspondent."
- 5-1-2: This new regulation sets standards for a "standby well."
- 5-3-4a: This amendment slightly broadens criteria for hearings on a new application to appropriate water.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 423-S Statehouse, at 9:00 a.m..m. on March 7, 1994.

- 5-3-5c: A new regulation requiring that whenever a flow meter has been required, the owner report the beginning and ending meter readings on the annual water user report. Further, it requires meters to be maintained properly and allows the Chief Engineer to require the owner to pay the expense of testing the meter for accuracy, no more than once in any calendar year. Also, the owner will be required to notify the Chief Engineer whenever a meter is replaced.

- 5-4-4: Sets well spacing requirements for all areas that were previously not set by regulation or intensive groundwater use control area orders. Unless it causes water users' applications to be denied or modified, this regulation is not expected to result in significant fiscal impact to governmental entities or to water users.

- 5-7-1: This regulation is being amended to add additional circumstances, which shall be considered due and sufficient cause under the abandonment statute. In addition, it clarifies that once a verified report of the chief engineer is made a matter of record at an abandonment hearing, the water right owner shall have the burden of showing that there have not been three or more successive years of non-use, without due and sufficient cause.

- 5-7-3: The hearing procedure for abandonment hearings was revoked because the act has been placed under the Kansas Administrative Procedures Act by statute.

- 5-7-4: This regulation sets forth the procedure for enrollment in the Water Rights Conservation Program. It will allow water right owners wishing to conserve water in areas of the state that are closed to new appropriation or in other areas where the Chief Engineer deems it to be in the public interest to sign up their waters rights in the program, to not use those water rights for the period of enrollment, and be guaranteed the water rights will not be lost for abandonment during that period. Water users who enroll in the program will see significant savings in costs of operation and possible hearing costs.

- 5-11-1 and 5-11-2: These two regulations set forth a procedure whereby an Assurance District member no longer receiving significant benefits from the District may be removed as a member. A water user who is removed from a District will be relieved of the financial obligation incurred.

None of the above regulations are expected to result in significant fiscal impact to governmental entities or to water users, with one possible exception (see Regulation 5-4-4).

The above proposed regulations are reported in their entirety in Attachment #1.

Chairperson Holmes told the Committee that any time new legislation is passed, and a bill reads "subject to rules and regulations," the process allows the agency to put in rules and regulations they deem necessary.

Vice Chairperson Neufeld of the Rules and Regulations Committee told Mr. Rolfs that the regulations he presented today are very good (and include some things that are already being done). He did offer that he was of the opinion there are two statutory questions: 1) In the Definitions Regulation, 5-1-1, (m) "household purposes," there are no means to authorize casinos; and 2) in Regulation 5-3-5c, wherein meter certification is required, since there is no definition of a certified tester, the section referring to testing of the water meters should be deleted. He suggests that the Legislature introduce a bill next year to statutorily address this issue.

A lengthy discussion ensued, with Committee members afforded the opportunity to address several questions and share concepts and ideas with Mr. Rolf.

Chairperson Holmes extended his appreciation to Mr. Rolf for his generous time in coming before the Committee and to Committee members for making the time to attend an additional meeting in their regular full schedules.

The next meeting is scheduled for March 7, 1994.



STATE OF KANSAS

DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE

NOTICE OF HEARING ON PROPOSED ADMINISTRATIVE REGULATIONS

A public hearing will be conducted at 9:00 a.m., Thursday, March 17, 1994, in the Kansas State Historical Society Auditorium, 120 West 10th Street, Topeka, Kansas, to consider the adoption of proposed changes in four existing rules and regulations of the Division of Water Resources and the adoption of six new regulations.

This 30-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 Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, 901 S. Kansas Avenue, Second Floor, Topeka, Kansas 66612-1283. 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 each participant to limit any oral presentation to five minutes.

These new and amended regulations are proposed for adoption on a permanent basis. A summary of proposed regulations and their economic impact follows:

**5-1-1. Definitions** - Amends definition of "battery of wells", "household purposes", "industrial use", "irrigation use", "municipal use", and "stockwatering use". Definitions of "primary well", "safe-yield", "standby well", "term permit" and "water use correspondent" have been added. This regulation is not expected to result in a significant fiscal impact to governmental entities or to water users.

**5-1-2. Standby well** - This new regulation sets standards for a "standby well". This regulation is not expected to result in a significant fiscal impact to governmental entities or to water users.

**5-3-4a. Hearing prior to approval of application** - The amendment primarily deleted a reference to a hearing procedure that was changed by statute. The amendment slightly broadens criteria for hearings on a new application to appropriate water. This regulation is not expected to result in a significant fiscal impact to governmental entities or to water users.

**5-3-5e. Meters and other measuring devices** - This new regulation requires that whenever a flow meter has been required, that the owner report the beginning and ending meter readings on the annual water user report. It further requires meters to be maintained properly and allows the Chief Engineer to require the owner to pay the expense of testing the meter for accuracy no more than once in any one calendar year. The owner will also be required to notify the Chief Engineer whenever a meter is replaced. The option of the Chief Engineer requiring the owner to test the accuracy of the meter on a periodic basis will have the effect of allowing additional spot testing of meter accuracy to be done.

*Energy & Natural Resources*  
*Attachment #1*  
*3/7/94*

It is estimated that each meter test paid for by the owner will cost approximately \$85 to \$225, depending on what type of test is necessary to check the accuracy of a meter in a particular installation.

**5-4-4. Well spacing** - This new regulation sets well spacing requirements for all areas that were previously not set by regulation or intensive groundwater use control area orders. This regulation currently implements existing policy except for the lower cretaceous aquifer. In the confined lower cretaceous aquifer, the proposed spacing between wells will be four miles unless the applicant can demonstrate to the satisfaction of the Chief Engineer that a lesser spacing will be adequate to prevent impairment. This regulation is not expected to result in a significant fiscal impact to governmental entities or to water users, unless it causes water users' applications to be denied or modified. Engineering work to justify a closer well spacing could be a significant cost to the applicant.

**5-7-1. Due and sufficient cause for non-use** - This regulation is being amended to add additional circumstances which shall be considered due and sufficient cause under the abandonment statute, K.S.A. 82a-718. The additional circumstances added include: enrollment in certain multi-year federal or state conservation programs; enrollment in the water right conservation program; placement of the point of diversion in a standby status; physical problems with the point of diversion, distribution system, place of use or the operator; and conditions beyond the control of the owner which prevent access to the authorized place of use or point of diversion as long as the owner is taking reasonable affirmative action to gain access, and use of an alternate source of supply. The regulation also clarifies that once a verified report of the chief engineer is made a matter of record at an abandonment hearing which establishes non-use of a water right for three or more successive years, the water right owner shall have the burden of showing that there have not been three or more successive years of non-use without due and sufficient cause. This regulation is not expected to result in a significant fiscal impact to governmental entities or to water users. Perhaps the number of abandonment hearings will be decreased because of the additional reasons constituting due and sufficient cause.

**5-7-3. Hearing** - The hearing procedure for abandonment hearings was revoked because the act has been placed under the Kansas Administrative Procedures Act by statute. This regulation is not expected to result in a significant fiscal impact to governmental entities or to water users.

**5-7-4. Water rights conservation program** - This new regulation sets forth the procedure for enrollment in the Water Rights Conservation Program. Successful enrollment in the plan for a period of five to ten years shall guarantee that as long as the contract is not broken, that all of the years for which a water right is duly enrolled in the water rights conservation program shall constitute due and sufficient cause in any abandonment proceeding. This regulation will allow water right owners who wish to conserve water in areas of the state that are closed to new appropriation or in other areas where the Chief Engineer deems it to be in the public interest, to sign up their water rights in the program, to not use those water rights for the period of enrollment, and be guaranteed the water rights will not be lost for abandonment during that period. This regulation is not expected to result in a significant fiscal impact to

governmental entities. Water users who enroll in the program will see significant savings in costs of operation and possible hearing costs.

**5-11-1 and 5-11-2. Definitions, determination of significant benefits in an Assurance District** - These regulations set forth a procedure whereby an Assurance District member who is no longer receiving significant benefits from the District may be removed as a member. These regulations are not expected to result in a significant fiscal impact to governmental entities. A water user which is removed from a District will be relieved of the financial obligation incurred as a result of membership.

Copies of the regulations and their economic impact statements may be obtained from the Division of Water Resources, Kansas State Board of Agriculture, 901 S. Kansas Avenue, Second Floor, Topeka, Kansas 66612-1283, (913-296-4623).

5-1-1. Definitions. As used in these rules and regulations, the Kansas water appropriation act, and by the division of water resources in the administration of the Kansas water appropriation act, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section:

(a) "Application" means the formal document submitted on the prescribed form furnished by the division for a permit to appropriate water for beneficial use and filed in the office of the chief engineer as provided by K.S.A. 82a-708a and 709.

(b) "Approval of application" means a permit to proceed with construction of diversion works and the diversion and use of water in accordance with the terms and conditions set forth in the permit. Approval of application does not constitute any permit which may be required by other state laws.

(c) "Artificial recharge" means the use of water to artificially replenish the water supply in an aquifer.

(d) "Authorized representative" means any staff employee designated by the chief engineer to perform duties and functions ~~in the chief engineer's behalf~~ on behalf of the chief engineer.

(e) "Battery of wells" means two or more wells connected to a common pump by a manifold, or not more than four wells in the same local source of supply within a 300 foot radius circle which are being operated by pumps not to exceed a total maximum rate of 200 diversion of 800 gallons per minute ~~per well~~ and which supply water to a common distribution system.

(f) "Beneficial uses of water" are domestic, stockwatering, municipal, irrigation, industrial, recreational, water power, artificial recharge, hydraulic dredging and contamination remediation.

(g) "Diversion" means the act of bringing water under control by means of a well, pump, dam or other device for delivery and distribution for the proposed use.

(h) "Diversion works" means ~~all any well(s), pump(s), power unit(s), power source(s), dam(s) and all any other devices~~ necessary to bring water under control for delivery to a distribution system by which the water will be distributed to the proposed use and any other equipment required as a condition of the permit, such as a check valve, water level measurement tube, meter or other measuring device.

(i) "Division" means the division of water resources of the Kansas state board of agriculture.

(j) "Full irrigation" means the application of water to crops during the growing season. Full irrigation includes water for preirrigation.

(k) "Groundwater" means water below the surface of the earth.

(l) "Growing season" means the average frost-free period of the year.

(m) "Household purposes" means the use of water by a person for cooking, cleaning, washing, bathing, human consumption, rest room facilities or other uses normally associated with the operation of a household. Household purposes includes the use of one and one-half acre-feet of water or less per calendar year by an industrial user, restaurant, hotel, motel, casino, church, camp, correctional facility, educational institution or similar entity for household purposes.

(n) "Industrial use" means the use of water in connection with the manufacture, production, transport or storage of products, or the use of water in connection with providing commercial services, including water used in connection with steam electric power plants, greenhouses, fish farms, poultry operations that are not incidental to the operation of a traditional farmstead pursuant to K.S.A. 82a-701(c), secondary and tertiary oil recovery, air



conditioning, heat pumps, and, except for hydraulic dredging, all other uses of water associated with the removal of aggregate for commercial purposes including the evaporation caused by exposing the groundwater table or increasing the surface area of a stream, lake, pit or quarry by excavation or dredging.

(o) "Irrigation use" means the use of water for the growing of crops, the watering of gardens, orchards and lawns exceeding two acres in area, and the watering of golf courses—and, parks, cemeteries, athletic fields, race track grounds and similar facilities.

(p) "Municipal use" means the various uses made of water delivered through a common distribution system operated by:

- (1) a municipality;
- (2) a rural water district;
- (3) a water district;
- (4) a public wholesale water supply district;
- (5) any person or entity serving 10 or more hookups for residences or mobile homes; and
- (6) ~~or~~ any other similar entity distributing water to other water users for various purposes.

Municipal use shall also include use of water by restaurants, hotels, motels, casinos, churches, camps, correctional facilities, educational institutions and similar entities using water which does not qualify as a domestic use.

(q) "Off-season irrigation" means the application of water to land for the purpose of storing moisture in the soil for future use by a crop which will not be irrigated during the growing season.

(r) "Perfect" means the actions of a water user to bring an appropriation right into final form by the completion of diversion works and application of water to the proposed use in accordance with the approved application.

(s) "Point of diversion" means the point at which water is diverted or withdrawn from a source of water supply.

(t) "Preirrigation" means the application of water to the land for a crop prior to planting to assure adequate moisture for early plant growth.

(u) "Primary well" means a well for which a standby well is available.

~~(u)~~(v) "Prior right" means a vested right, an appropriation right with earlier priority or a permit with earlier priority to that of a subsequent appropriation right or permit.

~~(v)~~(w) "Recreational use" means a use of water in accordance with a water right which provides entertainment, enjoyment, ~~and relaxation, and fish and wildlife benefits.~~

(x) "Safe yield" means the long term sustainable yield of the source of supply including hydraulically connected surface water or groundwater.

(y) "Standby well" means a well which can withdraw water from the same source of supply as the primary well to be used only when water is temporarily unavailable from the primary well or wells authorized to be used on the same place of use because of mechanical failure, maintenance or power failure. A standby well may also be used for fire protection or a similar type of emergency.

~~(w)~~(z) "Static water level" means the depth of the top of the groundwater level below land surface which is not affected by recent pumpage.

~~(x)~~(aa) (1) "Stockwatering" means ~~the use of water for the watering of livestock and other uses of water directly related to:~~



(A) the operation of a feedlot with the capacity to confine 1,000 head or more of livestock cattle; or

(B) any other confined livestock operation or dairy that would divert 15 acre feet or more of water per calendar year.

(2) Stockwatering ~~Such use~~ shall not include the irrigation of feed grains or other crops.

(3) For the purposes of this subsection, a group of feedlots or other confined feeding operations shall be considered to be one feedlot or confined feeding operation if:

(A) there are common feeding or other physical facilities; and

(B) the group of facilities is under common management.

~~{y}~~(bb) "Surface water" means water in creeks, rivers or other watercourses, and in reservoirs, lakes and ponds.

~~{z}~~(cc) "Waste of water" means any act or omission which causes:

(1) Water to be diverted or withdrawn from a source of supply and not used or reapplied to a beneficial use on or in connection with land authorized as the place of use by a vested right, an appropriation right or an approved application for permit to appropriate water for beneficial use;

(2) The unreasonable deterioration of the quality of water in any source of supply thereby causing impairment of a person's right to the use of water;

(3) Water intended for irrigation use to escape and drain from the authorized place of use; or

(4) Water to be applied to an authorized beneficial use in excess of the needs for such use.

~~{aa}~~(dd) "Water power use" means the use of falling water for hydro-electric or hydro-mechanical power.

~~{bb}~~(ee) "Immediate vicinity" as used in specifying the place of use for a water right in which the water is authorized to be used for municipal purposes, means within 2,640 feet of the corporate limits of the municipality, rural water district or other entity.

~~{cc}~~(ff) "Completed substantially as shown on aerial photograph, topographic map or plat," as used to define the authorized point of diversion, means within 300 feet of the location as shown on the aerial photograph, topographic map or plat accompanying the application.

~~{dd}~~(gg) "Hydraulic dredging" means the removal of saturated aggregate from a stream channel, pit or quarry by means of hydraulic suction and the pumping of the aggregate and water mixture as a slurry to a location ~~on the shore~~ where at least 95% of the water returns directly to the source of supply.

~~{ee}~~(hh) "Contamination remediation" means the diversion of water by a state agency, or under a written agreement or order of an appropriate state agency, for the purpose of improving the water quality.

~~{ff}~~(ii) "Dewatering" means the removal of surface water or groundwater which would otherwise enter an excavation and interfere with construction or mining activities.

(jj) "Term permit" means a permit to appropriate water issued for a specified period of time. At the end of the specified time, or any authorized extension thereof, the permit shall be automatically dismissed and any priority it may have had shall be forfeited.

(kk) "Water use correspondent" means a person designated in writing on a form prescribed by the chief engineer by one of the owners of a water right to file

the water use reports required by K.S.A. 82a-732, as amended, on behalf of the owner or owners of that water right. (Authorized by and implementing K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended P-  
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5-1-2. **Standby well.** In order for a well to qualify as a standby well:

- (a) The well shall be maintained in operable condition and be capable of being hooked to a power source within a reasonable amount of time to allow the well to function effectively as a standby well.
- (b) Both the primary well or wells and the standby well or wells shall be required to be metered by order of the chief engineer or as a condition of the water right or permit.
- (c) The standby well shall be located close enough to the primary well so that both wells withdraw water from the same local source of supply.
- (d) The standby well shall be authorized to divert the same rate and quantity as the primary well or wells. A limitation clause shall be placed on any water right or permit authorizing a standby well or wells limiting the standby well to no more than the rate and quantity authorized for the primary well or wells. With the limitation clause or clauses in effect, the standby well or wells shall not be counted in any safe yield, allowable appropriation, depletion or similar type of analysis. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706; effective P-\_\_\_\_\_.)

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5-3-5e. Meters and other measuring devices; reporting readings; maintenance, testing, and replacement. (a) For the purpose of this regulation, "meter" shall mean the water flow meter or other measuring device. Whenever the installation of a meter is required by the chief engineer as a condition of a water right or permit, by written order of the chief engineer or by requirement of a groundwater management district, the water right owner shall report the beginning and ending reading of the meter each calendar year on the water use report required by K.S.A. 82a-732, as amended.

(b) If the meter was removed or did not function properly at any time during the calendar year, the owner shall also report on the water use report required by K.S.A. 82a-732, as amended:

- (1) that the meter was removed or did not function properly;
- (2) the dates the meter was removed or not functioning properly;
- (3) why that circumstance occurred;
- (4) the number of hours the diversion works were operated during that time;
- (5) the rate at which water was diverted during that time; and
- (6) an accurate estimate of the amount of any water that was pumped or diverted during the time the meter was removed or not functioning properly.

(c) The owner shall properly maintain any meter required by the chief engineer in a condition satisfactory to the chief engineer.

(1) If at any time the required meter fails to function properly for any reason, the owner shall promptly initiate action to complete repair or replacement of the meter or to correct any problems with the installation within 10 days of the failure.

(2) If the owner cannot restore the meter to satisfactory operation within 10 days, the owner shall contact the appropriate water commissioner, or other authorized representative of the chief engineer, and request a reasonable extension of time which may be granted for good cause.

(d) (1) If the chief engineer has reason to believe a meter is not functioning properly, the owner of a meter may be required by the chief engineer to have the meter tested for accuracy at the owner's expense by a person or entity approved by the chief engineer.

(2) The owner shall provide a copy of the test, certified by the tester, to the chief engineer. A water right owner shall not be required by the chief engineer to pay the expense of testing any particular meter more than once in any one calendar year.

(e) Whenever a required meter is replaced, the owner shall notify the chief engineer on a form prescribed by the chief engineer. The form shall be filed with the chief engineer within 30 days after the replacement of the meter is complete. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-732; effective P-\_\_\_\_\_).

**5-4-4. Well Spacing.** (a) The spacing between wells shall be sufficient to prevent direct impairment between wells located in a common source of supply or hydraulically connected sources of supply and to protect the public interest. Except as set forth in subsection (b), the following guidelines shall be used to determine the spacing required between wells permitted by the chief engineer in a common source of supply, unless it is determined by the chief engineer in any specific instance that the spacing guidelines set forth in this regulation are insufficient to prevent direct impairment or are not necessary to prevent direct impairment.

(b) Whenever an applicant proposes to divert water from a source of supply in a location where there is a significant hydraulic connection between the proposed source of supply and another source or sources of supply, the chief engineer shall determine the spacing necessary to prevent impairment and to protect the public interest on a case by case basis.

(c) Except as set forth in subsection (e) below, each well that is described in an application for a permit to appropriate water for beneficial use or for a term permit, excluding any domestic or temporary well, shall meet the minimum spacing requirements set out in paragraphs (1) and (2) below.

(1) The minimum distance from the well which is the subject of the application to all other senior authorized non-domestic and non-temporary wells in the same aquifer or a hydraulically connected aquifer shall be:

(A) four miles between wells whose common source of supply is the confined lower cretaceous aquifer;

(B) one-half mile between wells whose common source of supply is the unconfined lower cretaceous aquifer; and

(C) 1320 feet for wells whose common source of supply is any other aquifer.

(2) In addition to meeting the minimum spacing requirements of paragraph (1) above, the minimum distance from the well which is the subject of the application to all domestic wells, except where the domestic well owner has given the applicant written permission to reduce the spacing interval, shall be:

(A) one-half mile for wells whose common source of supply is the confined lower cretaceous aquifer;

(B) 1320 feet for wells whose common source of supply is the unconfined lower cretaceous aquifer; and

(C) 660 feet for wells whose common source of supply is any other aquifer.

(d) Except as provided in subsection (e), the location of a well or wells on an application to change the point of diversion under an existing water right shall either:

(1) meet the spacing requirements in paragraphs (c)(1) and (c)(2) above; or

(2) not decrease the distance to other wells or authorized well locations by more than 300 feet.

(e) This regulation shall not apply if the chief engineer has adopted another regulation, or issued an order pursuant to K.S.A. 82a-1036 et seq., specifying a different well spacing for the source of supply in which the proposed point of diversion is located.

(f) In the case of a battery of wells, the distance shall be measured from the geographic center of the points of diversion comprising the battery.

(g) If the proposed point of diversion does not meet the well spacing requirements in this regulation, the applicant shall be notified by the chief engineer in writing prior to dismissal that the requirements have not been met. The applicant shall then have 15 days to request time in which to submit additional information. Upon written request, the applicant shall be given a specified reasonable amount of time by the chief engineer to submit an engineering or similar type of hydrologic analysis to show that the spacing can

be decreased without impairing existing rights or prejudicially and unreasonably affecting the public interest. The burden shall be on the applicant to make such a showing to the satisfaction of the chief engineer.

(h) For the purpose of this regulation, "lower cretaceous well" means a well or proposed well that is screened in whole or in part in the lower cretaceous aquifer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-711; effective P-\_\_\_\_\_.)



5-7-1. NonuseDue and sufficient cause for non-use. (a) The following circumstances shall be considered "due and sufficient cause", as used in K.S.A. 82a-718, shall include the following:

(a)(1) Adequate moisture is provided by natural precipitation, for production of crops normally requiring full or partial irrigation within the region of the state in which the place of use is located;

(b)(2) a right has been established or is in the process of being perfected for use of water from one or more preferred sources in which a supply is available currently but is likely to be depleted during periods of drought;

(c)(3) water is not available from the source of water supply for the authorized use at times needed;

(d)(4) Purpose for which water is used water use is temporarily discontinued by the owner for a definite period of time to permit soil, moisture and water conservation, as documented by:

(A) furnishing to the chief engineer a copy of a contract showing that land which has been lawfully irrigated with a water right which has not been abandoned is enrolled in a multi-year federal or state conservation program which has been approved by the chief engineer;

(B) enrolling the water right in the water right conservation program pursuant to K.A.R. 5-7-4; or

(C) any other method acceptable to the chief engineer which can be adequately documented by the owner in advance.

(e)(5) management and conservation practices are being applied which require the use of less water than authorized; and. If a conservation plan has been required by the chief engineer, the management and conservation practices used shall be consistent with the conservation plan approved by the chief engineer to qualify under this subsection;

(6) the chief engineer has previously approved the placement of the point of diversion in a standby status pursuant to K.A.R. 5-1-2;

(7) physical problems exist with the point of diversion, distribution system, place of use, or the operator. This circumstance shall constitute due and sufficient cause only for a period of time reasonable to correct the problem;

(8) conditions exist beyond the control of the owner which prevent access to the authorized place of use or point of diversion, as long as the owner is taking reasonable affirmative action to gain access;

(9) an alternate source of water supply was not needed and was not used because the primary source of supply was adequate to supply the needs of the water right owner. The owner shall maintain the diversion works on the alternate source of supply in a condition that will allow the owner to effectively use the alternate source of supply in a timely manner; and

(f)(10) any other reason constituting due and sufficient cause as determined by the chief engineer.

(b) In order to constitute due and sufficient cause for non-use of water, the reason purporting to constitute due and sufficient cause must have in fact prevented, or made unnecessary, the authorized beneficial use of water.

(c) Any year of non-use for which the chief engineer finds that due and sufficient cause exists, shall be considered to interrupt the successive years of non-use for which due and sufficient cause does not exist.

(d) Once a verified report of the chief engineer, or the chief engineer's authorized representative, is made a matter of record at a hearing held pursuant to K.S.A. 82a-718, which establishes non-use of a water right for three or more successive years, the water right owner shall have the burden of showing that there have not been three or more successive years of non-use without due and sufficient cause. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-718,

modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1986; amended P-  
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K.A.R. 5-7-3 (Authorized by K.S.A. 82a-706a; modified, L. 1978, Ch. 460, May 1, 1978; revoked P-\_\_\_\_\_.)

**5-7-4. Water rights conservation program.** (a) Enrollment in the water rights conservation program (WRCP) approved by the chief engineer, and continued compliance with the WRCP shall constitute due and sufficient cause for non-use pursuant to K.S.A. 82a-718 and K.A.R. 5-7-1.

(b) In order to qualify for enrollment in the WRCP, the following conditions shall be met.

(1) The point of diversion shall be located:

(A) in an area that is closed to new appropriations of water, except for temporary permits, term permits and domestic use; or

(B) in some other area designated by the chief engineer as an area where it would be in the public interest to allow water rights to be placed in the WRCP. In areas within the boundaries of a groundwater management district, the chief engineer shall take into consideration the recommendations of the board of the district.

(2) Each of the owners of the water right must agree to totally suspend all water use authorized by that water right for the duration of the contract.

(3) The owner or owners of the water right shall sign a contract with the chief engineer, or the chief engineer's authorized representative, prior to placing the water right into the WRCP. The contract shall be binding on all successors in interest to the water right owner.

(4) Only a water right, or a portion of a water right which has not previously been abandoned, may be placed into the WRCP.

(A) If at least three successive years of non-use have occurred prior to application for enrollment in the WRCP, the division of water resources (DWR) staff shall first determine whether that water right is subject to abandonment prior to entry into the program, including an analysis of any reasons given that might constitute due and sufficient cause for non-use.

(B) If, after review of the information, it appears that the right has been abandoned, the statutory procedures, including the right to a hearing, shall be followed to determine whether or not it has been abandoned.

(5) Only the portion of a water right which is in good standing at the time of application for enrollment can be entered into the WRCP.

(c) (1) Before enrollment in the WRCP is approved by the chief engineer, a DWR field office representative shall make a partial field inspection if:

(A) the time to perfect the water right has expired;

(B) the right has not been field inspected by a DWR representative prior to enrollment; and

(C) the system can no longer be operated due to components such as the power unit, gear head, or delivery system being dismantled or removed.

(2) The DWR representative shall determine the acres irrigated, the type of system used, the hours pumped historically and other relevant history of the project. This information shall be made a matter of record in that water right file.

(d) (1) At the end of the time the water right is enrolled in the WRCP, the chief engineer shall give the applicant one year to restore the system to operating condition.

(2) If the owner does not notify the DWR that the system has been restored to the pre-WRCP enrollment operational status within one year, then the chief engineer shall allow the owner the opportunity for a hearing to show good cause why the permit should not be dismissed.

(e) Other obligations, responsibilities, and aspects of enrollment in the WRCP program shall include the following.

(1) Water rights shall originally be placed into the WRCP for a definite period of calendar years of not less than three or more than ten. The owner of the

water right may apply for renewal of the contract for a period not to exceed ten years. Applications for renewal shall be subject to the approval of the chief engineer. In determining whether to approve the renewal, the chief engineer shall take into account:

- (A) the hydrologic conditions in the vicinity of the point of diversion;
- (B) whether renewal would be in the public interest; and
- (C) any other relevant information.

(2) The water right owner or operator need not maintain the diversion works or delivery system during the period of the WRCP contract. If the pump is removed from a well, the well shall be properly capped or sealed during the contract.

(3) The chief engineer shall issue a certificate determining the extent to which a water right has been perfected prior to entering the water right into the WRCP if:

- (A) an applicant has a permit to appropriate water for beneficial use and has perfected all, or any portion, of the water right authorized by the permit;
- (B) the time in which to perfect the water right has expired, including any authorized extensions of time; and
- (C) a field inspection has been completed.

(4) If the time to perfect the water right, or any authorized extension thereof, has not expired, enrollment in the WRCP shall be considered as suspending the time to perfect. Upon expiration of the WRCP contract pertaining to this water right, the time to perfect shall again commence and the applicant shall be required to perfect the water right within the remainder of the time allowed to perfect, or any authorized extension of that time.

(5) Each year after authorized enrollment in the WRCP, the water use correspondent shall indicate on the water use report that no water was used because the water right was enrolled in the WRCP.

(6) If the owner breaches, or causes or allows a breach of the WRCP contract with the chief engineer, each year of non-use between the effective date the contract and the date of the breach shall be counted as years of non-use without due and sufficient cause for the purpose of determining whether the water right has been abandoned pursuant to the provisions of K.S.A. 82a-718. Before this penalty is imposed, the owner shall be given an opportunity to show that:

- (A) a breach of contract did not occur; or
- (B) a breach occurred, but was minor or has been cured and should not constitute grounds for imposing the penalty. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706; effective P-\_\_\_\_\_.)

## Article 11.--ASSURANCE DISTRICTS

**5-11-1. Definitions.** As used in these rules and regulations and the water assurance program act by the division of water resources in the administration of the water assurance program act, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section.

(a) "Board" means the board of directors of a water assurance district.

(b) "Chief engineer" means the chief engineer of the division of water resources of the Kansas state board of agriculture. (Authorized by K.S.A. 82a-1345(e); implementing K.S.A. 82a-1334; effective P-\_\_\_\_\_.)

**5-11-2. Determination of significant benefits.** (a) A water assurance district member may apply in writing to the board to be removed as a member of the district if that member is no longer receiving significant benefits from supplementing the stream by assurance reservoir releases because:

(1) the member no longer has a water right or permit; or

(2) the member's water right or permit has been reduced so that the member is no longer receiving significant benefits.

(b) The board shall forward the request to be removed as a member from the district to the chief engineer, who shall determine whether the member will be receiving significant benefits. The chief engineer shall forward the results of that determination to the board in writing within a reasonable time.

(1) If the chief engineer determines that the member will continue to receive significant benefits, the chief engineer shall notify the board and the member's application to be removed shall be dismissed by the board.

(2) If the chief engineer determines that the member will no longer be receiving significant benefits, the chief engineer shall notify the board and it shall be determined by the board whether the member will be removed from the district. (Authorized by K.S.A. 82a-1345(e); implementing K.S.A. 82a-1334; effective P-\_\_\_\_\_.)