

## MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Ralph Ostmeyer at 8:30 a.m. on February 3, 2011, in Room 159-S of the Capitol.

All members were present except the following:

Senator Terry Bruce, Excused

Committee staff present:

Tamera Lawrence, Office of the Revisor of Statutes

Jason Thompson, Office of the Revisor of Statutes

Heather O'Hara, Kansas Legislative Research Department

Laura Younker, Kansas Legislative Research Department

Dana Wethington, Committee Assistant

Conferees appearing before the Committee:

Susan Stover, L.G., Chairperson, Water Bank Evaluation Team

Dave Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture

Others attending:

See attached list.

Susan Stover, Kansas Water Office, gave an overview of the *Central Kansas Water Bank Association Five Year Review and Recommendations*. The Report is required to be delivered to the Senate Committee on Natural Resources. From the Report, she stated that as directed by Statute, after five years of operation the Water Bank is to be evaluated and recommendation given to the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources, whether the Bank's charter should be renewed, and make any other recommendations relevant to water banking in Kansas. (Attachment 1)

John Janssen, Board President of the Central Kansas Water Bank and member of the Water Bank Evaluation Team, could not attend due to bad weather, and submitted written information. (Attachment 2) Requesting support of continuing the Central Kansas Water Bank, Mr. Janssen's testimony included the vision upon creation of the Bank as four points: establishing a value of water in the basin, allow movement of water away from stream corridor and decline areas, be sensitive and responsive to water use issues and to utilize a business model for water utilization to save water. He summed up his testimony by stating that the CKWB is an opportunity to save water at nominal cost.

Ms. Stover said the Evaluation Team recommends the Water Bank be renewed. The Team includes six members appointed by the Chief Engineer: a water resource economist, two water resource engineers, an outside knowledgeable person, a knowledgeable public interest, and water law professor. Other members are a Kansas Geological Survey representative, GMD board member, Kansas Water Office representative plus three other members. She described Water Banking in Kansas as allowed by statutes provides a market for voluntary, temporary movement of deposits: water rights deposits, leases of deposited water and safe deposit accounts that allows 25% of unused allocated amount for owner's future use.

The Bank extends over the Big Bend Groundwater Management District #5. A deposit can occur anywhere in the Bank and a lease can occur in most areas of the Bank, with some restrictions. The Water Bank is a key conservation program in Rattle Snake Creek Management Program. Since its inception, the Bank has had three deposits, one lease that is in name only with no withdrawal, and 10 safe deposits.

In addition to the recommendations for renewal, the Team recommends changes that include classification in statute that Water Bank be chartered for initial period of not more than seven years, then following evaluation by outside entity and agreement by Chief Engineer, charter the Bank as a permanent corporation and to continue periodic external reviews. She said the Team's recommendation is to simplify the system, so that, among other reasons, it's easier for the potential user to see if it fits into the water use needs, and to reduce the heavy quantity deductions required on bank deposits and leases.

Kent Askren, Kansas Farm Bureau, a member of the Evaluation Team for Water Banking, spoke in support of the presentation as delivered by Ms. Stover. Dave Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, also made comments about the Review.

## CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 8:30 a.m. on February 3, 2011, in Room 159-S of the Capitol.

Discussion followed.

Chairman Ostmeyer acknowledged the distribution of the printed Report on Implementing Multi-year Flex Accounts written by Dave Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture. (Attachment 3) The Report includes K.S.A. 82a-736 current rules and regulations revised January 6, 2006. The law requires any groundwater water right holder to apply for a flex account by October 10 preceding the first year for which application is made. There are no active flex accounts and limited interest has been shown. The report states that Mr. Barfield is working with Groundwater Management Districts to identify how program can be more attractive to users.

Discussion followed.

Chairman Ostmeyer asked for bill introductions.

Dave Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, requested a bill be introduced that would amend the water rights conservation program. Senator Abrams made a motion to introduce; seconded by Senator Morris; motion passed.

Chairman Ostmeyer announced the next meeting is scheduled for February 10, 2011.

The meeting was adjourned at 9:07 a.m.

# SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

Feb 3, 2011

Name	Representing
Susan Stover	Ks Water Office
Kent Astren	KFB
Lebbie Kaufman	Ks Co-op Council
Earl Lewis	KWO
Nathan Lindsey	Kearney & Associates
DEREK HEIN	HEIN LAW FIRM
STEVE FROST	SOC
Steve Swaffar	KT3
Nathan Eberly	LKM
Kelli Maydew	KLIA
Galen E Biery	KRWDD H1 CNRWDD H3
Paul Johnson	Kansas Rural Center
Ron Carles	KSPF
Sean Miller	CAPITAL STRATEGIES
Dave Barfield	KOA DWR

Please Use Black Ink.



**Senate Natural Resources Committee  
Testimony on the Central Kansas Water Bank Evaluation  
Susan Stover, Kansas Water Office  
February 3, 2011**

Chairman Ostmeyer and members of the Committee, I am Susan Stover with the Kansas Water Office. I served as chairperson of the team that evaluated the Central Kansas Water Bank. As directed by Statute (K.S.A. 82a-767), after five years of operation, the Water Bank was evaluated on its operations and policies, whether the bank is achieving its goals and objectives, and the bank's impact on the hydrologic units within the bank boundaries. We are to recommend to the Chief Engineer, Kansas Department of Agriculture, Division of Water Resources, whether the Bank's charter should be renewed, and make any other recommendations relevant to water banking in Kansas. The Report is to be delivered to, among others, the Senate Committee on Natural Resources. This is an update on that report and our recommendations.

The evaluation team recommends the Central Kansas Water Bank's charter be renewed. We also make recommendations to improve the Bank's operations, to encourage more participation. There is one recommendation that would require legislative action. On the attached sheets in 10 slides is a summary of this Water Bank, our findings and our recommendations. The full report is posted at: [www.kwo.org](http://www.kwo.org).

**Water Bank Evaluation Team**

Susan Stover, KWO - Chairperson

\*Bill Golden, KSU – water resource economist

\*Jim Koelliker, KSU- water resource engineer

\*Dan Rogers, KSU – water resource engineer

\*Byron Warta, L. Ark BAC Chair – outside knowledgeable person

\*Kent Askren, Ks Farm Bureau- knowledgeable public interest

\*John Peck, KU – water law professor

Marios Sophocleous, KU –Ks Geological Survey rep

John Janssen, Kinsley producer – GMD 5 Board member

Richard Wenstrom, Kinsley – Bank User

Justin Vosburgh, Macksville – Bank User

Chris Gnau, KWO

Also: Wes Essmiller, Sharon Falk, Orrin Ferel

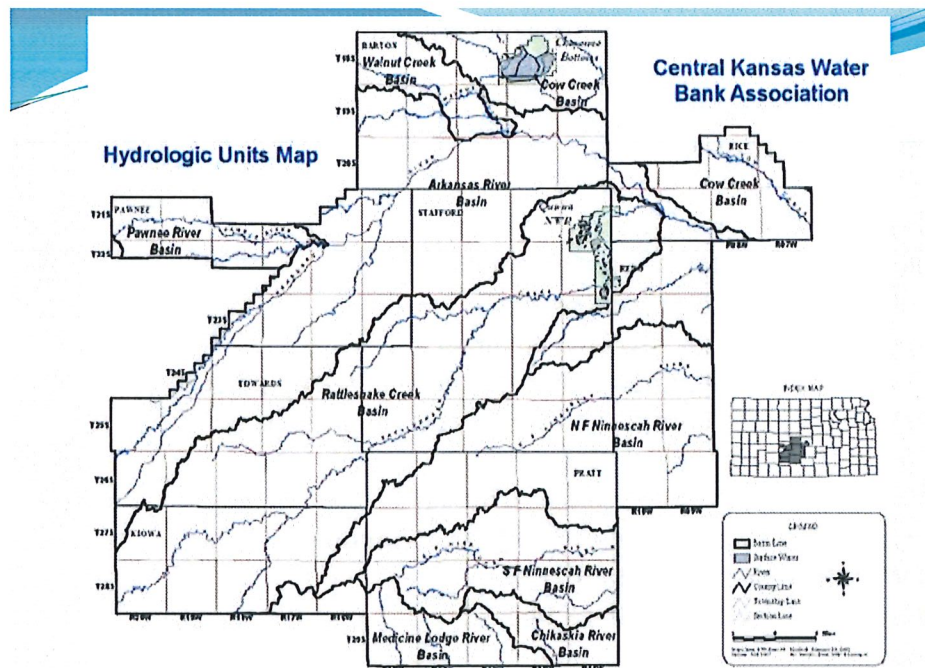
\* Appointed by Chief Engineer



## Water Banking In Kansas

1. *Statutes allow two banks to be formed.*
2. *The Water Bank provides a market for voluntary, temporary movement of water rights away from stressed areas to other areas of need, and provides 10% conservation.*
3. *Central Kansas Water Bank is a not-for-profit corporation that allows:*
  - a. *Water right deposits (restricted to historically consumed amount)*
  - b. *Leases of deposited water*
  - c. *Safe Deposit Accounts (25% of unused allocated amount for owner's future use)*

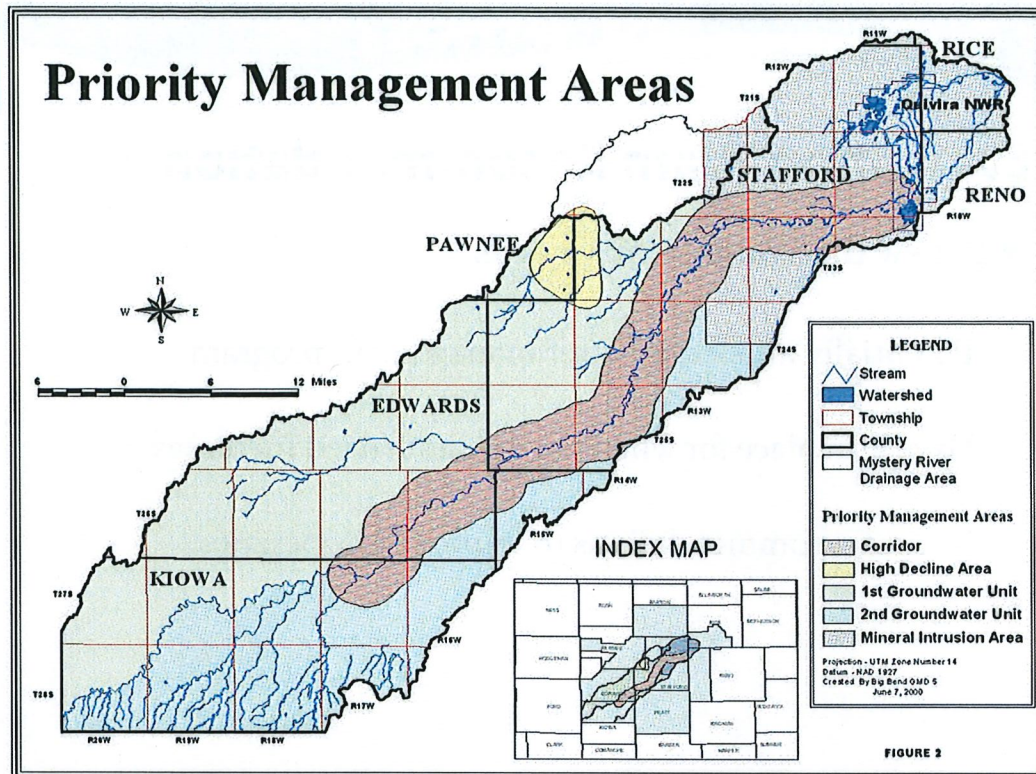
The Central Kansas Water Bank is the only one formed in Kansas, and it only allows groundwater deposits. This Bank formed as a mechanism to encourage water use to move away from stressed areas. There are three types of deposits that can occur. The water right depositor sets the price he would accept for leasing.



The Bank boundary extends over the entire Big Bend Groundwater Management District #5. A deposit can occur anywhere in the bank. A lease can occur in many areas of the bank, within the same hydrologic unit as the deposit. The hydrologic units are shown on this map. Areas restricted from leasing shown on slide 10.

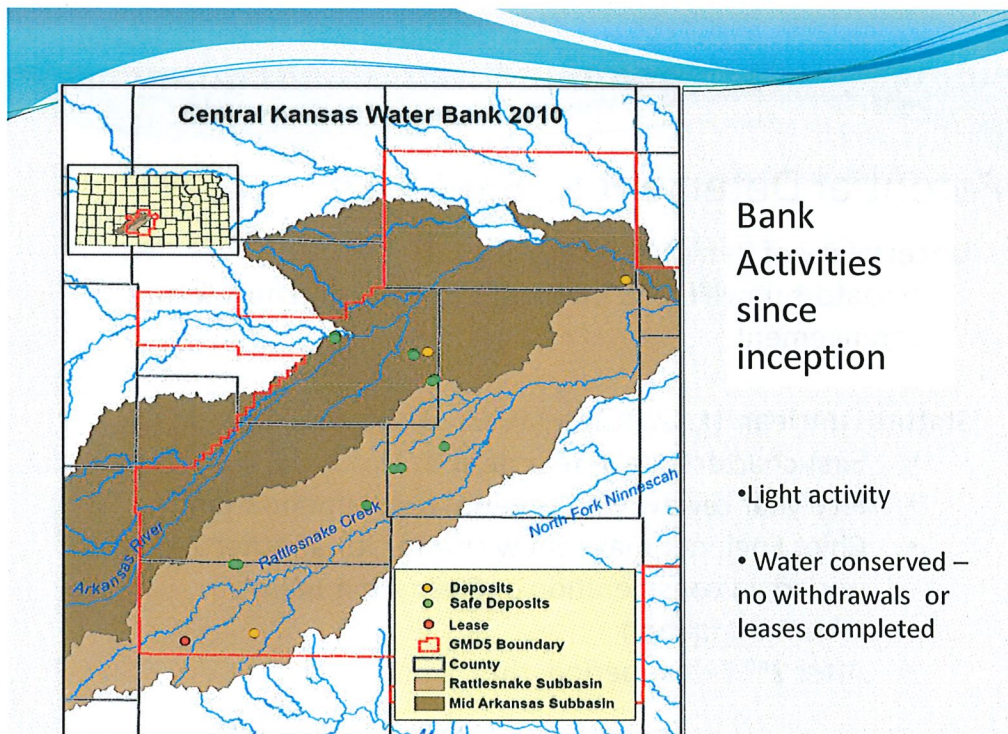


Slide 3.



The Water Bank is a key conservation program in the Rattlesnake Creek Management Program. When proposed, it was estimated that 15% of the water rights in the region would participate in Bank.

Slide 4.



Bank Activities since inception

- Light activity
- Water conserved – no withdrawals or leases completed

The Central Kansas Water Bank has been open for business since November, 2005. The activity has been minimal. The evaluation team sees some changes to the bank that could help it be more attractive to participation.

## Evaluation Team Recommendation

- Renew the Water Bank Charter

Potentially important water management program

Have it in place for when the demand/need increases

Several recommendations to improve its operation

The Team strongly recommends the Bank's Charter be renewed. There are some changes recommended that may help participation.

## Potential Deterrent to Bank Use

### **Uncertainty of Bank's Permanency**

Irrigators unwilling to invest in a potentially short term arrangement.

Statutes unclear: (K.S.A. 82a-765(d); 82a-767(a) and 767(d))

- First charter for a 7-Year period
- Five year review with renewal recommendation
- Chief Engineer may renew charter for another 7 year period, in consideration of Evaluation Team's recommendation
- After 2<sup>nd</sup> 7-year period, then what?

Bank's Charter indicates intent to be permanent after first 7-year period



## Recommendation

- Clarify in statute that a water bank shall be chartered for an initial period of not more than seven years.
- If the five year review recommends the charter be renewed, and the Chief Engineer agrees ...
- Then charter the bank as a permanent corporation.
- Continue periodic external reviews after it is a permanent bank.

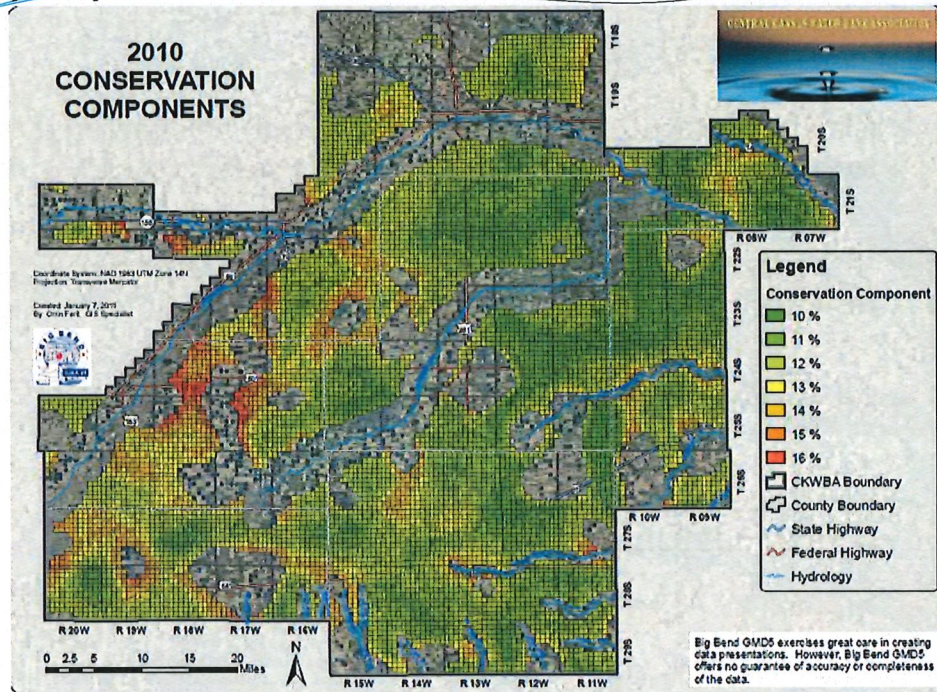
## Other Potential Deterrents to Bank Use

- **Complexity of Program**
- **Heavy Reductions Taken on Quantity**
  - Only historically used quantity (1987-1996) can be deposited
  - A "Consumptive Use Factor" reduces the water deposit 15%
  - A "Conservation Component" further reduces the water deposit by 5% to 12%
  - A "Conservation Component" applied to leases further reduces by another 5% to 12%
  - Uses 3 tables to determine how much water quantity reduction would be taken between a deposit and lease (tables 3, 4 and 5 in report, pg 8 & 9)

Evaluation team recommended simplifying system so easier for potential user to see if fits into his/her water use needs, and reduce the heavy quantity reductions required on bank deposits and leases.



## Simplify



Put the entire conservation component on the lease side of the transaction; don't take any on the deposit side. Build in the criteria for determining where can lease and how much conservation required, so can be viewed as a map. Reduce the top level of conservation to 16%, down from the current 24%.

## Simplify

Remove the Consumptive Use Factor (CUF) on irrigation deposits that are leased for irrigation use.

Encourage partial irrigation water right deposits that are leased for irrigation use.

Deposits must occur for the Bank benefits to be realized. Simplify the regulations; let the bank be responsible to meet requirements and goals.

Wednesday, February 02, 2011

To: Members of the Kansas Senate Natural Resources Committee

Fr: John Janssen, Board President (CKWB)



Re: Central Kansas Water Bank (CKWB) - review & renewal process

- The CKWB is a product of the Rattlesnake Creek Basin Partnership.
- The bank was intended to be another voluntary method to save water.
- The local water users involved in the formation of the bank envisioned it would:
  1. Establish a value of water in the basin;
  2. Allow movement water away from the stream corridor and decline areas;
  3. Be sensitive and responsive to water use issues;
  4. Utilize a business model for water utilization to save water.
- The legislation which enabled banking is somewhat restrictive.
- Rules and regulations adopted by Division of Water Resources are more restrictive.
- The “**currency**” of the CKWB is water.
- Water is deposited in the bank.
- Water is loaned out by the bank.
- The “**profit**” of the CKWB is water saved through the conservation component.
- More water banked and loaned out results in greater “profit” or water savings.
- Required water savings during the first seven years resulted in limited transactions.
- Limited transactions resulted in little “profit” or water savings.
- The CKWB review committee was quick to recognize the issues restricting the bank.
- The CKWB review committee has thoughtfully offered ideas to improve “profits”.
- The CKWB review committee has been a ray of hope to a struggling venture.
- Implementation of the committee’s suggestions should improve “profits”.
- The CKWB model is counter to the “use it or lose it” nature of Kansas water law.
- **The CKWB is an opportunity to save water at nominal cost.**
- **Please support continuation of the Central Kansas Water Bank.**



**Report on Implementing Multi-year Flex Accounts (K.S.A. 82a-736)  
to  
House Standing Committee on Agriculture and Natural Resources  
and  
Senate Standing Committee on Natural Resources**

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

**February 1, 2011**

K.S.A. 82a-736 became law May 9, 2001, and it requires the chief engineer of the Kansas Department of Agriculture's Division of Water Resources to implement a voluntary program to allow water right holders to establish flex accounts for groundwater use. The law also requires the chief engineer to submit a written report on the law's implementation to your standing committees by February 1 each year.

K.S.A. 82a-736 was amended by the Legislature in 2005 to change the base average use period from 1996 through 2000 to 1992 through 2002. The amendments also provided for the amount deposited into the flex account not to exceed 90 percent of the base average use multiplied by five, as opposed to being exactly 90 percent of the base average use multiplied by five.

Attached are the current rules and regulations related to K.S.A. 82a-736 originally promulgated in 2002, and revised January 6, 2006, to implement the program. The criteria allow eligible, participating water right holders to use, within a five-year period, an amount of groundwater that is no more than 90 percent of their actual base average use times five and as long as it does not impair other existing water rights.

The law requires that any groundwater water right holder who wants to establish a flex account and exercise its use do so through a application for a term permit filed no later than October 10 of the year preceding the first year for which application is made.

In 2010, water right holders were reminded of the flex account provision and filing deadline through an article in the August 10, 2010 edition of *DWR Currents*, our e-newsletter and an August 10, 2010 news release. As of October 10, 2010, no applications for term permits had been filed with the chief engineer for 2010, nor have we received any applications to date for participation in the program beginning in 2011.

Senate Natural Resources  
2-3-11  
Attachment 3



In our day-to-day interaction with water right holders, we make sure that those individuals who we believe could benefit the most from this option know that it exists. We also make our flex account literature available to the public when we have a table or booth at water-related events. Information about flex accounts also is available on our website at <http://www.ksda.gov/appropriation/?cid/297>.

Currently there are no active flex accounts as the limited number of previously filed accounts have expired and not been renewed. Due to the limited interest shown in this program, no additional staff was hired to process applications with applications handled by existing staff in the water appropriation program.

We believe flex accounts can play a role in water management of over-appropriated area, particularly in areas where voluntary measures are adopted. Flex accounts provide for water savings of at least 10 percent while giving the water right holder flexibility to use the water for beneficial purposes over a five-year period without the annual limits on the quantity. This would allow an irrigator, during a year with below-average precipitation, to meet the higher water demand of his/her crop. Likewise, in years with above-average precipitation, the irrigator would use less water. Over a typical five-year period, there will be wetter and drier years, and flex accounts can help water users balance these highs and lows while avoiding civil penalties for overpumping the authorized quantity in a single year.

We continue to promote flex accounts as a viable option for groundwater users who have variable demands from year to year, particularly in areas in need of water management strategies.

As I wrote last year, due to the limited interest in this program so far, I raised the issue in a meeting with managers of the state's groundwater management districts. We agreed to work together to identify how the program can be made more attractive to water right holders in hopes of increasing the utility of this management tool while achieving its water conservation function. No progress was made on the task this past year. I hope to present findings from that work next legislative session.

We continue to hear that water users are put off by the required 10% conservation element, calculated from historic use.

I am currently working with Northwest Kansas Groundwater Management District No. 4, which is seeking means to implement a similar program of multi-use allocations to conserve water in one of its high priority areas. Experience gained in developing GMD 4's program may provide insight into improvements to make this program more attractive.

Additionally, KDA has requested legislation this year to further amend the statutes and perhaps make the program more attractive to groundwater users.

Attachment: Implementing regulations, K.A.R. 5-16-1 to 5-16-7

**Division of Water Resources**  
**Flex Account Rules and Regulations**  
**K.A.R. 5-16-1 through 5-16-7**

**K.A.R. 5-16-1. Definitions.** As used in this article of regulations, in the Kansas water appropriation act, and by the chief engineer in the administration of the Kansas water appropriation act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation. (a) "Base amount" and "BA" mean the quantity of water deposited into a flex account.

(b) "Base average usage factor" and "BAUF" mean the percentage of the "base average usage," as this term is defined in K.S.A. 82a-736 and amendments thereto, that is multiplied by five as a part of the calculations set out by K.A.R. 5-16-5 to determine the quantity of water that may be deposited into a flex account. The BAUF shall not exceed the maximum of 90% established by K.S.A. 82a-736 and amendments thereto.

(c) "Base water right" means a vested or certified water right or rights for which the owner applies to the chief engineer to establish a flex account pursuant to K.S.A. 82a-736, and amendments thereto.

(d) "BAU" means the "base average usage" as defined in K.S.A. 82a-736, and amendments thereto.

(e) "Good standing," only as that term is used in K.S.A. 82a-736, and amendments thereto, in reference to base water rights, means a base water right that meets the following conditions:

- (1) Has been lawfully exercised within the 11-year time period specified in K.A.R. 5-16-5;
- (2) has had all required water use reports filed and any civil fines assessed for failure to timely file a complete and accurate water use report paid; and
- (3) has had no period of nonuse with a duration of five or more consecutive years since January 1, 1990, except for enrollment in the water right conservation program according to K.A.R. 5-7-4, enrollment in the federal conservation reserve program, or enrollment in another multiyear federal or state conservation program.

(f) "Significant water conservation measures" means actual physical changes in a water distribution system or management practices that improve water use efficiency, including the following:

- (1) Conversion from flood irrigation to center pivot irrigation with a nozzle package designed to improve water use efficiency;
- (2) irrigation scheduling;
- (3) conversion to subsurface drip irrigation; and
- (4) removal of an end gun, resulting in a significant reduction in the number of irrigated acres. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2004 Supp. 82a-736, as amended by L. 2005, Ch. 142, § 3; effective Oct. 11, 2002; amended Jan. 6, 2006.)

**K.A.R. 5-16-2. Fee to establish flex account and apply for term permit.** The filing fee for establishing a flex account and applying for a five-year term permit to exercise the flex account shall be \$400. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2001 Supp. 82a-708a(d), as amended by L. 2002, Ch. 181, § 21; effective Oct. 11, 2002.)

**K.A.R. 5-16-3. Establishing a flex account.** (a) A flex account shall be established by filing an application for a flex account and a term permit on a form prescribed by the chief engineer. The five-year period shall begin on January 1 of the next calendar year for which the application has been timely filed, unless expressly authorized by the chief engineer to begin the following January 1. The application shall also show the location of all wells located within one-half mile of the proposed point of diversion, and the names, addresses, and telephone numbers of the owners of those wells. Except as set forth in subsection (e), a separate application shall be filed for each water right and each point of diversion for which the owner desires to establish a flex account. Each application shall be accompanied by the filing fee specified in K.A.R. 5-16-2.

(b) Before any application to establish a flex account and a term permit will be accepted for filing, the application shall be signed by at least one owner of the water right, or a duly authorized agent of an owner of the water right.

(c) Before the flex account can be established or the term permit approved, all of the water rights owners, or a duly authorized agent of the owners, shall verify upon oath or affirmation that the statements contained in the application are true and complete.

(d) If one or more owners refuse to sign the application or if a written request is filed by one or more of the owners to withdraw their signatures from the application before the application is approved, the application shall be dismissed.

(e) A single application to establish a flex account and apply for a term permit may be filed in the following situations:

(1) Multiple water rights authorize the diversion of water from a single point of diversion that diverts water to an identical place of use for a single type of use.

(2) Multiple points of diversion are authorized by the chief engineer to divert water through a single water flowmeter before going to an identical place of use.

(f) The flex account shall not be established, and the term permit to exercise the flex account shall not be valid until both have been approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

**K.A.R. 5-16-4. Conditions on the term permit.** (a) The place of use authorized by a term permit shall be identical to the place or places of use authorized by the base water right or rights.

(b) The type of use authorized by a term permit shall be limited to one of the types of use authorized by the base water right or rights.

(c) The rate of diversion authorized by a term permit shall not exceed the maximum instantaneous rate of diversion authorized by the base water right or rights. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)



**K.A.R. 5-16-5. Maximum annual quantity of water authorized by term permit.** (a) Except as set forth in subsections (b) through (e), the maximum quantity of water deposited in a flex account and authorized to be diverted in five consecutive calendar years under the authority of a term permit shall be determined in accordance with K.S.A. 82a-736, and amendments thereto, by means of these calculations:

(1) Adding the total actual, legal annual water use of the base water right or rights for the period of calendar years 1992 through 2002;

(2) dividing that total quantity of water by 11;

(3) multiplying that quantity by the BAUF; and

(4) multiplying that quantity by five.

(b) If significant water conservation measures were implemented under the base water rights at any time during the period of calendar years 1992 through 2002, the average annual quantity of water actually used may be calculated using the five consecutive calendar years immediately preceding the implementation of significant water conservation measures, but these five calendar years shall not begin before calendar year 1987. The five-year allocation under the term permit shall be determined by means of these calculations:

(1) Adding the total actual, legal annual water use of the base water right or rights for the five consecutive calendar years;

(2) dividing that total quantity of water by five;

(3) multiplying that quantity by the BAUF; and

(4) multiplying that quantity by five.

(c) If water use records for a base water right are inadequate to accurately determine actual water use during any calendar year during the period used to determine the base average usage, then that year shall be counted as having no water use.

(d) No flex account shall be allowed if the flex account is inconsistent with the provisions of any intensive groundwater use control area created pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto.

(e) If water was authorized to be diverted for less than the entire period used to determine the base average usage, the five-year allocation shall be determined by means of these calculations:

(1) Adding the total actual, legal annual water use of the base water right or rights for the entire period used to determine the base average usage;

(2) dividing the total quantity by the number of years, or parts thereof, that water was authorized to be diverted by the chief engineer;

(3) multiplying that quantity by the BAUF; and

(4) multiplying that quantity by five.

Water rights that authorized use of water for less than two calendar years during period used to determine the base average usage shall not be eligible for a flex account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2004 Supp. 82a-736, as amended by L. 2005, Ch. 142, § 3. 82a-736; effective Oct. 11, 2002; amended Jan. 6, 2006.)

**K.A.R. 5-16-6. Flex accounts and term permits.** (a) The duration of the flex account and term permit shall be five consecutive calendar years.

(b) There shall be no extension of a flex account or a term permit beyond the period of five consecutive calendar years originally authorized.

(c) There shall be no carryover of unused quantities of water from one flex account or term permit to another flex account or term permit.

(d) Only one flex account shall be in force for a point of diversion or a water right at any time.

(e) A water flowmeter meeting the requirements of the chief engineer shall be installed on each point of diversion authorized by the term permit. If an existing water flowmeter had been required on or after September 22, 2000 or if there is no existing water flowmeter, the water flowmeter shall meet the requirements of the chief engineer in effect at the time the term permit is approved. If a water flowmeter was installed before September 22, 2000, the water flowmeter shall meet the requirements of K.A.R. 5-1-6(b).

(f) Only an entire water right, or a portion of a water right that has been formally divided, may be deposited in a flex account.

(g) All water diverted pursuant to a term permit and the base water rights associated with the term permit shall be counted against the quantity of water deposited in the flex account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

**K.A.R. 5-16-7. Conditions under which a base water right may be exercised.** Each term permit approved by the chief engineer according to this article shall include the condition that if the term permit can no longer be exercised because of an order issued by the chief engineer, including an intensive groundwater use control area order, a minimum desirable streamflow order, or an order to administer water rights to prevent impairment, then any base water right may be exercised to the extent that all of the following conditions are met:

(a) The base water right is in priority.

(b) The annual quantity of water authorized by the base water right has not been diverted during that calendar year.

(c) The five-year allocation authorized by the term permit has not been used.

(d) The use of water under the base water right does not impair water rights senior to the base water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)