

KANSAS DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES
NOTICE OF HEARING
ON PROPOSED ADMINISTRATIVE REGULATIONS

A public hearing will be conducted on Wednesday, December 11, 2002 at 1:00 p.m. CST. It will be held at Wheat Lands Hotel & Conference Center, 1311 East Fulton Street, Garden City, Kansas, to consider the adoption of new regulations recommended by the Southwest Kansas Groundwater Management District Board No. 3 to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture. The proposals are summarized as follows:

K.A.R. 5-23-4. Allowable annual appropriation; high plains aquifer. Revoke

K.A.R. 5-23-4a. Criteria for closing townships to new appropriations. Revoke

K.A.R. 5-23-4b. Township closures. Revoke

K.A.R. 5-23-5. Applications and water use limitations. Revoke

K.A.R. 5-23-6. Water measuring devices. Each diversion works for a non-temporary, non-domestic well shall be equipped with a water flow meter that meets or exceeds the standards of the Chief Engineer. It is the responsibility of the owner to ensure that meters and installations meet the standards of the Chief Engineer.

K.A.R. 5-23-16. Well construction requirements due to high chloride. Each application for a well located in certain areas of Meade and Seward Counties where high chloride concentrations exist, must provide a driller's log, electric log, and a laboratory sample analysis. Wells shall be drilled only into that portion of the saturated thickness where the chloride concentrations are less than 250 milligrams per liter.

K.A.R. 5-23-17. Water appropriation limits. This regulation will close the District to further new appropriations except for domestic, temporary and term permits. An exemption is also allowed for quantities up to 15 acre-feet per year provided the combined quantity of exemptions within a radius of ½ mile surrounding the proposed diversion does not exceed 15 acre-feet, and other basic requirements are met.

This 60-day notice of the public hearing shall constitute a public comment period of the purpose of receiving written public comments on the proposed rules and regulations. Any interested parties may submit written comments prior to the hearing to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, Attention: Annita Meyer, 109 SW 9th Street, Second Floor, Topeka, Kansas 66612. 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 limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Annita Meyer at (785) 296-4621.

Copies of the regulations and the economic impact statement may be obtained by contacting the Department of Agriculture.

**DIVISION OF WATER RESOURCES
KANSAS DEPARTMENT OF AGRICULTURE
GMD No. 3 Economic Impact Statement
Amended and New K.A.R. 5-23-6; 5-23-16; and 5-23-17
Revoked K.A.R. 5-23-4; 5-23-4a; 5-23-4b; and 5-23-5**

I. Summary of Proposed Regulations, Including Their Purposes.

K.A.R. 5-23-6 - Each diversion works for a non-temporary, non-domestic well shall be equipped with a water flowmeter that meets or exceeds the standards of the Chief Engineer. It is the responsibility of the owner to ensure that meters and installations meet the standards of the Chief Engineer.

K.A.R. 5-23-16 - Each application for a well located in certain areas of Meade and Seward Counties where high chloride concentrations exist, must provide a driller's log, electric log, and a laboratory sample analysis. Wells shall be drilled only into that portion of the saturated thickness where the chloride concentrations are less than 250 milligrams per liter.

K.A.R. 5-23-17 - All areas of the District will be closed to further appropriations except for domestic, temporary and term permits. An exemption is also allowed for quantities up to 15 acre-feet per year provided the combined quantity of exemptions within a radius of ½ mile surrounding the proposed diversion does not exceed 15 acre-feet, and other basic requirements are met.

K.A.R. 5-23-4; 5-23-4a; 5-23-4b; and 5-23-5 - Revoked.

II. Reason or Reasons the Proposed Regulations are Required, Including Whether or not the Regulations are Mandated by Federal Law.

These regulations are not mandated by federal law and, therefore, exceed the requirements of federal law.

III. Anticipated Economic Impact upon the Kansas Department of Agriculture.

K.A.R. 5-23-6 - No additional economic impact is anticipated on the Department. This water flowmeter requirement will continue the District's existing metering policy.

K.A.R. 5-23-16 - No economic impact is anticipated as this regulatory requirement has been in effect.

K.A.R. 5-23-17 - Processing about 140 applications per year will not be necessary for a saving in applications processing of about \$83,000. The fees of about \$300 per permit applications for a total of \$43,200 would not be collected. The net savings would be \$39,800 per year.

IV. Anticipated Financial Impact upon Other Governmental Agencies and upon Private Business or Individuals.

K.A.R. 5-23-6 - This has been a policy of the Southwest Kansas Groundwater Management District No. 3, so no additional significant economic impact is expected.

K.A.R. 5-23-16 - This requirement was previously a part of K.A.R. 5-23-4 that is being revoked, and it is not expected to cause any additional significant financial impact.

K.A.R. 5-23-17 - The Southwest Kansas Groundwater Management District No. 3 does not anticipate any financial impact to the District. The fiscal impact on those persons who will no longer be able to get a new permit cannot be reasonably estimated.

V. Anticipated Economic Impact, Functions or Responsibilities of Cities, Counties or School Districts.

K.A.R. 5-23-6 - This regulation continues an existing policy of the Southwest Kansas Groundwater Management District No. 3 and it is not expected to cause an significant additional financial impact.

K.A.R. 5-23-16 - This has been part of K.A.R. 5-23-4 and it is not expected to cause any additional fiscal impact.

K.A.R. 5-23-17 - The Southwest Kansas Groundwater Management District No. 3 does not anticipate any financial impact due to the adoption of this regulation on the District. It is not known if there are any cities, counties or school districts that will be unable to get a new permit in the future and, therefore, the financial impact cannot be estimated.

VI. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection.

No other methods were considered and rejected.

K.A.R. 5_23_4. (Authorized by K.S.A. 82a-706a and 82a_1028(o); implementing K.S.A. 82a_1028(n); effective May 1, 1981; amended May 1, 1986; amended Aug. 28, 1989; amended Sept. 22, 2000; revoked P-_____.)

K.A.R. 5-23-4a. (Authorized by K.S.A. 82a-706a and 82a-1028(o); implementing K.S.A. 82a-1028(n); effective Sept. 30, 1991; amended Sept. 22, 2000; revoked P-_____.)

K.A.R. 5-23-4b. (Authorized by K.S.A. 82a-706a and K.S.A. 82a-1028(o); implementing K.S.A. 82a-1028(n); effective Sept. 22, 2000: revoked P-_____.)

K.A.R. 5_23_5. (Authorized by K.S.A. 1980 Supp. 82a_1028(o); implementing K.S.A. 1980 Supp. 82a_1028(n); effective May 1, 1981; revoked P-_____.)

K.A.R. 5_23_6. Measuring Water-measuring devices. ~~Whenever the board requires that a meter, gauge, or other measuring device be installed on the~~ The diversion works for a each nontemporary, nondomestic well, located within the boundaries of the district shall be equipped with a water flowmeter that meets or exceeds the regulatory standards adopted by the chief engineer.

~~(a) It shall be the responsibility of The owner or user to~~ shall perform the following:

~~(a) (1) Insure~~ Ensure that the ~~meter, gauge, or measuring device~~ water flowmeter is installed according to specifications adopted by the chief engineer; ~~and~~

~~(b) (2) maintain the meter~~ water flowmeter, gauge, or measuring device to insure in proper working condition whenever the diversion ~~works are in use~~ of water for nondomestic use can reasonably be expected to occur; and

(3) promptly initiate action to repair or replace any water flow meter that is out of compliance, and correct any problems with the installation of a water flowmeter.

(b) The owner shall notify the district, on a form prescribed by the district, within 30 days after any of the following:

(1) A new water flowmeter is installed.

(2) A water flowmeter is repaired and reinstalled.

(3) A water flowmeter is repaired without removing the water flowmeter.

(4) An improper water flowmeter installation has been corrected.

(c) An extension of time to install a water flowmeter may be granted by the district for a reasonable period of time if just cause is shown to the district. Each appeal shall be filed with the board at least 10 days before a regularly scheduled board meeting. Just cause may include any of the following:

(1) A contract has been signed by the owner and the seller to sell or install the water flowmeter, but the seller cannot complete the sale or installation before diversion of water will take place.

(2) Weather conditions prevent the water flowmeter from being installed before the diversion of water.

(3) Legal proceedings prevent the owner from installing the water flowmeter.

(4) The supply of natural gas to power the well has been cut off by the seller of the natural gas for reasons beyond the control of the owner of the water right.

(d) A water flowmeter shall not be required to be installed if any of the following criteria is met:

(1) A well is authorized to divert 15 acre-feet or less per calendar year.

(2) Two or more wells are authorized by the same water right or approval of application with one authorized annual quantity of water for all the wells, and all of the water diverted by all of the wells is measured by a single water flowmeter prior to its application to beneficial use.

(3) The well is enrolled in a multiyear federal conservation program or the water rights conservation program pursuant to K.A.R. 5-7-4.

(4) The well is registered as inactive with the Kansas department of health and environment.

(5) An affidavit is filed by the owner with the district stating that the well is not, and will not be, operated until a water flowmeter meeting the specifications of the chief engineer is properly installed. Thirty days before operating the well, the owner shall file a notice with the district indicating that a water flowmeter has been installed and indicate when the owner proposes to begin the diversion of water.

~~A representative of the district shall have the right to inspect the meter to determine whether it is properly installed, and to read the meter, gauge, or other measuring device whenever deemed necessary.~~

(Authorized by and implementing K.S.A. 82a_1028(ø), as amended by L. 2002, Ch. 137, § 5;
~~implementing K.S.A. 82a_1028(1)~~; effective May 1, 1981; amended May 1, 1985; amended P-
_____.)

K.A.R. 5_23_16. Well construction requirements due to high chloride concentrations. (a)

Each application for an approval of application for a nondomestic water well proposed to be located in the following areas shall be allowed to take water from only that portion of the saturated thickness containing less than 250 milligrams per liter (mg/l) of chlorides at the test holes or existing wells:

- (1) The west ½ of townships 33, 34, and 35 south, range 28 west;
- (2) the east ½ of township 33 south, range 29 west;
- (3) all of townships 34 and 35 south, ranges 29 and 30 west in Meade County, Kansas;

and

(4) all of townships 34 and 35 south, ranges 31 and 32 west and the east ½ of townships 34 and 35 south, range 33 west in Seward County, Kansas.

(b) Each application filed to request a well within any area described in subsection (a) shall include a driller's log, an electric log, and a laboratory analysis from a state-certified laboratory of the chloride concentrations in samples taken from whatever depths are necessary to determine the vertical location where the chloride concentrations exceed 250 mg/l. The samples shall be taken from a well located within a 300-foot radius of the proposed well. A state-certified laboratory analysis shall be used to determine the vertical location of the chloride concentrations exceeding 250 mg/l.

(c) Each well constructed in any area described in subsection (a) shall be constructed in a manner that prevents the movement of water containing 250 mg/l of chlorides beyond its naturally occurring condition. (Authorized by K.S.A. 82a-706a and 82a-1028, as amended by L. 2002, Ch. 137, § 5; implementing K.S.A. 82a_1028, as amended by L. 2002, Ch. 137, § 5; effective P-_____.)

K.A.R. 5-23-17. Water appropriation limits. (a) Except as set forth in subsection (b), an application to appropriate water from a confined or an unconfined aquifer located within the boundaries of the district outside the boundary of any intensive groundwater use control area filed on and after the effective date of this regulation shall not be approved.

(b) This regulation shall not apply to any of the following:

(1) A well for domestic use;

(2) a well authorized by a temporary permit;

(3) a well authorized by a term permit of fewer than five years; or

(4) an application to appropriate 15 acre-feet of water or less if all of the following conditions are met:

(A) The sum of the annual quantity requested by the proposed appropriation and the total quantities authorized by prior permits because of this exemption does not exceed 15 acre-feet in a circle with a radius of ½ mile surrounding the proposed point of diversion.

(B) Well spacing criteria have been met.

(C) Approval of the application will not authorize an additional quantity of water out of an existing well authorized by a nondomestic approval of application or water right that would result in a total combined annual quantity of water authorized from that well in excess of 15 acre-feet.

(D) All other criteria for approving a new application have been met. (Authorized by K.S.A. 82a-706a and 82a_1028, as amended by L. 2002, Ch. 137, § 5; implementing K.S.A. 82a_1028, as amended by L. 2002, Ch. 137, § 5; effective P-_____.)

