

K.A.R. 5-25-15. Exemptions for up to 15 acre-feet of groundwater. Except as specified in subsections (b) and (c), an application to appropriate groundwater for up to 15 acre-feet of water shall be approved if all of the conditions in subsection (a) are met.

(a)(1) The sum of the annual quantity of water requested by the new application and the total annual quantities authorized by prior approvals of applications because of an exemption pursuant to this regulation does not exceed 15 acre-feet in a one-mile-radius circle surrounding the proposed point of diversion.

(2) The application meets the spacing criteria set forth in K.A.R. 5-25-2.

(3) The approval of an application will not authorize an additional quantity of water from an existing non-domestic vested right, permit, or water right that would result in a total combined annual quantity of water authorized from the point of diversion in excess of 15 acre-feet.

(4) The applicant demonstrates that approval of up to 15 acre-feet of water will not impair existing water rights or permits to appropriate water for beneficial use and will not prejudicially and unreasonably affect the public interest.

(5) All requirements of K.S.A. 82a-709 and K.S.A. 82a-711, and amendments thereto, and K.A.R. 5-3-1 and K.A.R. 5-3-1b for processing a new application to appropriate water have been met.

(b) Exemptions to approve a new application to appropriate water in accordance with this regulation shall not be approved if the exemption would conflict with any provisions of an intensive groundwater use control area order issued by the chief engineer pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto.

(c) In addition to meeting the conditions in subsection (a), each application to appropriate groundwater for beneficial use shall meet the requirements of subsection (d) if the application includes a proposed point of diversion located within the boundaries of any of the following drainage basins as defined in K.A.R. 5-6-15:

(1) Rattlesnake Creek basin;

(2) Arkansas River basin;

(3) Walnut Creek basin;

(4) Pawnee River basin; and

(5) Buckner Creek basin.

(d) The following requirements shall apply to the applications described in subsection (c):

(1) The maximum annual quantity of water proposed in the application shall be 15 acre-feet or less.

(2) The proposed point of diversion shall meet the spacing criteria provided in K.A.R. 5-25-2.

(3) The authorized quantity of an existing water right shall be reduced, as provided in paragraph (d)(7), to offset the annual quantity requested in paragraph (d)(1), and the existing water right shall divert water from the same source of water supply that has a point of diversion located according to either of the following:

(A) Within 3.5 miles of the proposed point of diversion; or

(B) within a one-mile corridor of the major stream segment designated for stream restoration in the same basin of the proposed point of diversion.

(4) The point of diversion proposed through an offset shall not be closer to a stream than the point of diversion reduced pursuant to paragraph (a)(3) if the authorized well is within three miles of a stream.

(5) All issues relating to the possible abandonment of the offsetting water right shall be resolved by the chief engineer before determining the annual quantity of offset water that is available from the existing water right.

(6) The approval of the application shall not authorize an additional quantity of water to be used on a currently authorized nondomestic place of use.

(7) If the water right to be used as the offset for the new appropriation is a water right authorized for irrigation use, the authorized quantity of water needed to offset the new appropriation of not more than 15 acre-feet of water shall be calculated as follows:

(A) Step one.

(i) Multiply the net irrigation requirement for the 50 percent chance rainfall for the county of origin, as specified in K.A.R. 5-5-12, times the maximum number of acres legally irrigated in any one calendar year during the perfection period. For vested rights, the acreage used shall be the maximum acreage legally irrigated in any one calendar year before June 28, 1945.

(ii) The calculation made in paragraph (d)(7)(A)(i) shall result in the maximum annual quantity of water that could be changed to another type of beneficial use if the entire water right were changed pursuant to K.A.R. 5-5-9(a)(1).

(B) Step two.

(i) Divide the annual quantity of water desired to be changed to the new beneficial use by the maximum annual quantity of water that could be changed if the entire water right were changed to the new use.

(ii) The calculation made in paragraph (d)(7)(B)(i) shall result in the percentage of the entire reduced water right that will be changed to the new use. The remaining percentage of the offsetting water right may be retained by the owner of the irrigation water right.

(C) Step three.

(i) Multiply the remaining percentage calculated in paragraph (d)(7)(B)(ii) times the total currently authorized quantity. The resulting product shall be the annual quantity of water that may be retained by the owner of the irrigation water right.

(ii) The portion of the authorized annual quantity of water not retained by the irrigator as described in paragraph (d)(7)(C)(i) shall be permanently reduced from the authorized annual quantity of the offsetting water right and used to offset the new appropriation.

(8) If the water right to be used as the offset for the new appropriation is an existing water right authorized for non-irrigation use, the total net consumptive use of the offsetting water right after the change and the new appropriation shall not exceed the net consumptive use of the offsetting water right before the change.

(9) The place of use authorized by the offsetting water right for irrigation shall be reduced in proportion to the reduction in the maximum annual quantity of water as determined in paragraph (d)(7)(A)(ii). The directions specified in K.A.R. 5-5-11(b)(2)(B)(ii) shall be followed to determine the number of acres that may be retained.

(e) After the application has been approved pursuant to this regulation, no application to change that water right shall be approved if that approval would authorize the water use to be diverted from any other point of diversion authorized when the application is filed or to be used on any other place of use authorized when the application for change is filed.

(f) An application approved as an exemption under this regulation shall not be leased or placed in a water bank so that the approved water use can be diverted at another location. (Authorized by K.S.A. 82a-706a and K.S.A. 2009 Supp. 82a-1028; implementing K.S.A. 82a-706, K.S.A. 82a-706a, K.S.A. 2009 Supp. 82a-711, and K.S.A. 2009 Supp. 82a-1028; effective Oct. 31, 2003; amended May 21, 2010.)