

RULES AND REGULATIONS

KANSAS WATER APPROPRIATION ACT

(Excerpted)
November 2019

K.A.R. 5-25-22. Movement of water rights affecting streamflow at Rattlesnake Creek.

(a) To improve streamflow at zenith gage on Rattlesnake creek, otherwise known as United States geological survey gage #07142575, each vested or certified water right located within zone D of the division of water resources; map titled “Rattlesnake creek streamflow response regions,” dated February 14, 2018, hereby adopted by reference, and subsequently referred to in this regulation as “response map,” shall be eligible to offset new appropriations of water located within the district if all of the following conditions are met:

(1) The source of water supply for the currently authorized well is located within zone D of the response map.

(2) The rate and quantity of the existing water right are the maximum rate and quantity available for the new application. The rate and quantity of a new application for irrigation use shall be determined under K.A.R. 5-5-11. A new application may change the use made of water. However, the new application shall not allow for an increase in the net consumptive use greater than the existing water right under K.A.R. 5-5-3.

(3) The water right has reported use between January 1, 2003 and December 31, 2012, and the reported use is equal to or greater than 50 percent of the authorized use in at least two years. Each water right enrolled in a state or federal conservation program during this period that required the voluntary cessation of water use shall be eligible for movement under this regulation if all other requirements are met and the applicant demonstrates the existing water right’s ability to pump at least 50 percent of authorized use during any year.

(4) The new location will reduce the impact at the zenith gage by 30 percent or more compared to the current location of the well as determined by the response map. The new location is in an area with less than 40 percent impact at the zenith gage as determined by the response map.

(5) The average saturated thickness in the two-mile-radius circle in which the proposed well will be located is greater than 40 feet as shown on the saturated thickness map in K.A.R. 5-25-19. However, additional site-specific information, including data from more recently drilled wells or test holes, may be submitted to demonstrate that the average saturated thickness is greater than 40 feet.

(6) The water level within the two-mile-radius circle surrounding the proposed well location has not declined more than five percent from the predevelopment water level as shown in the relevant Kansas geological survey bulletins, including bulletin numbers 65, 80, 88, 120, 205, and 206. Any applicant may submit additional site-specific information, including data from more recently drilled wells or test holes, to demonstrate that the area has not declined more than five percent from the predevelopment water level.

(7) The new location will meet the safe-yield analysis based on a two-mile-radius circle with a recharge rate of 2.25 inches and 75 percent available for appropriation pursuant to K.A.R. 5-3-11 or a safe-yield analysis utilizing modeling as completed by the applicant or district.

(8) No other well has previously been authorized by the chief engineer to be relocated within a one-mile radius of the proposed well location under this regulation, or the applicant demonstrates that the proposed well will not impair existing water rights.

(9) All other statutory and regulatory requirements for approval of a new appropriation of water for a beneficial use that do not conflict with this regulation are met.

(b) Any new application may request the movement of the entire existing water right to a new location, the movement of an entire existing water right to multiple locations, or the movement of a partial amount of the existing water right to a new location.

(1) Upon approval of any application under this regulation and the completion of diversion works and the application of water to a beneficial use at each new location, the dismissal of the entire existing water right shall be required except for the portion, if any, remaining in the original location. If the location of a new application is determined to be unfeasible after filing an application, the applicant may submit a new application for another location if diversion works have not been completed and water has not been applied to a beneficial use at the previously proposed location.

(2) If any portion of the existing water right remains in the original location, then the water right owner shall file an application to divide the water right proportionally based on the quantity that will remain and the quantity that will be dismissed to offset each new appropriation before submitting a new application to appropriate water in the district.

(3) For any quantity of the existing water right that remains in the original location, the place of use shall be reduced to the number of acres that can reasonably be irrigated under K.A.R. 5-3-24. This reduction shall be calculated by dividing the remaining quantity of water by the county value according to K.A.R. 5-3-24 to establish the number of acres that can reasonably be irrigated.

(4) A separate application shall be required for each different location that a portion of the existing water right is proposed to offset

(c) Upon the establishment of a new appropriation under this regulation, the quantity of water dismissed to offset the new appropriation shall not be available for reappropriation in the previous or original location of the water right. (Authorized by K.S.A. 82a-706a and K.S.A. 2018 Supp. 82a-1028; effective Nov. 15, 2019.)