

Kansas Administrative Regulations

Kansas Department of Agriculture—Division of Water Resources

Article 5.—Change in the Place of Use, the Point of Diversion or the Use Made of Water Under an Existing Water Right

5-5-9. Approval of application for a change in the use made of water from irrigation to any other type of beneficial use of water.

(a) The approval of a change in the use made of water from irrigation to any other type of beneficial use of water shall not be approved if the change will cause the net consumptive use from the local source of water supply to be greater than the net consumptive use from the same local source of water supply by the original irrigation use based on the following requirements:

(1) The maximum annual quantity of water to be allowed by the approved change shall be the authorized quantity of the water right multiplied by the consumptive use percentage specified for the county within which the change is approved, as shown on the department's map titled "consumptive use percentages in Kansas, by county," dated August 3, 2017 and hereby adopted by reference.

(2) In determining whether the net consumptive use of water will be increased by the proposed change in the use made of water, the applicant shall be given credit by the chief engineer for any return flows from the proposed type of beneficial use of water that will return to the same local source of supply as the return flows from the originally authorized type of beneficial use of water, as substantiated by the applicant to the satisfaction of the chief engineer by an engineering report or similar type of hydrologic analysis.

(3) The authorized quantity to be changed to the new type of beneficial use of water shall never exceed the maximum annual quantity authorized by the water right.

(4) If a water right that overlaps the authorized place of use of one or more other water rights, either in whole or in part, is being changed to a different type of beneficial use of water, the total net consumptive use of all water rights after the change is

approved shall not exceed the total net consumptive use of all of the rights before the change is approved.

(5) The approval for a change in the use made of water shall also be limited by that quantity reasonable for the use proposed by the change in the use made of water in order to prevent waste pursuant to K.A.R. 5-1-1.

(b) Upon request of the applicant, the historic net consumptive use actually made during the perfection period, or before June 28, 1945 for vested rights, under the water right proposed to be changed shall be considered by the chief engineer. The burden shall be on the owner to document that historic net consumptive use with an engineering study, or equivalent documentation and analysis, and demonstrate to the satisfaction of the chief engineer that the analysis submitted by the applicant is a more accurate estimate of the historic net consumptive use than the net consumptive use calculated using the methodology specified in paragraph (a)(1).

(c) If the methods specified in subsection (a) produce an authorized annual quantity of water that could result in impairment of other water rights, the chief engineer shall make a site-specific net consumptive use analysis to determine the quantity of water that was actually beneficially consumed under the water right. If the water right is within a groundwater management district and the district has additional site-specific data available, the data may be submitted to the chief engineer for consideration. The quantity approved shall be limited to the quantity determined to be reasonable by the chief engineer's analysis.

(d) A term permit that would increase the consumptive use of the water right or would otherwise circumvent the limits specified in this regulation shall not be issued to any applicant.

(Authorized by K.S.A. 82a-706a; implementing K.S.A. 2016 Supp. 82a-708b; effective Nov. 28, 1994; amended Sept. 22, 2017.)

***** Authenticated Kansas Administrative Regulation *****