

Kansas Administrative Regulations

Kansas Department of Agriculture—Division of Water Resources

Article 1.—Definitions

5-1-1. Definitions.

As used in these regulations and the Kansas water appropriation act and by the division of water resources in the administration of the Kansas water appropriation act unless the context clearly requires otherwise, each of the following terms shall have the meaning specified in this regulation:

(a) "Above-baseflow stage" means streamflow that is in response to a significant runoff event during which period the water level elevation of the stream is greater than the elevation of the adjacent water table.

(b) "Acceptable quality surface water" means surface water that will not degrade the quality of the groundwater source into which the surface water is discharged.

(c) "Application" means the formal document submitted on the form prescribed by the chief engineer for a permit to appropriate water for beneficial use and filed in the office of the chief engineer pursuant to K.S.A. 82a-708a and 82a-709, and amendments thereto.

(d) "Approval of application" means a permit to proceed with construction of diversion works and the diversion and use of water in accordance with the terms and conditions specified in the permit. Approval of application shall not constitute any permit that may be required by other state laws.

(e) "Aquifer storage" means the act of storing water in an aquifer by artificial recharge for subsequent diversion and beneficial use.

(f) "Aquifer storage and recovery system" means the physical infrastructure that meets the following conditions:

(1) Is constructed and operated for artificial recharge, storage, and recovery of source water; and

(2) consists of apparatus for diversion, treatment, recharge, storage, extraction, and distribution.

(g) "Artificial recharge" means the use of source water to artificially replenish the water supply in an aquifer.

(h) "Authorized representative" means any staff employee designated by the chief engineer to perform duties and functions on behalf of the chief engineer.

(i) "Bank storage" means water absorbed by and temporarily stored in the banks and bed of a stream during above-baseflow stage.

(j) "Bank storage well" means a well used to divert or withdraw water from bank storage.

(k) "Basin storage area" means the portion of the aquifer used for aquifer storage that has defined horizontal boundaries and is delimited by a maximum index level and a minimum index level.

(l) "Basin storage loss" means that portion of artificial recharge naturally flowing or discharging from the basin storage area.

(m) "Basin term permit" means a term permit to appropriate surface water from a stream within a specific drainage basin, or a portion of it, for a reasonable quantity of water, not to exceed a maximum of 100 acre-feet per calendar year, for use in either of the following:

- (1) Drilling oil and gas wells; or
- (2) construction projects within the specified basin.

(n) "Battery of wells" means two or more wells connected to a common pump by a manifold, or not more than four wells in the same local source of supply within a 300-foot-radius circle that are being operated by pumps not to exceed a total maximum rate of diversion of 800 gallons per minute and that supply water to a common distribution system.

(o) "Beneficial uses of water" are the following:

- (1) Domestic uses;
- (2) stockwatering;
- (3) municipal uses;
- (4) irrigation;

- (5) industrial uses;
- (6) recreational uses;
- (7) waterpower;
- (8) artificial recharge;
- (9) hydraulic dredging;
- (10) contamination remediation;
- (11) dewatering;
- (12) fire protection;
- (13) thermal exchange; and
- (14) sediment control in a reservoir.

(p) "Complete and accurate water use report" means a water use report that the water right owner has filed pursuant to K.S.A. 82a-732, and amendments thereto, that provided all of the information required on the form prescribed by the chief engineer, including the following:

- (1) The quantity of water diverted during the calendar year;
- (2) if the diversion of water was required to be metered during the calendar year for which the report is being filed, the information required by K.A.R. 5-3-5e;
- (3) if the water was used for irrigation purposes, the number of acres that were irrigated; and
- (4) if the water was diverted from a sand and gravel pit operation, the size of the surface area of the pit in acres at the end of the calendar year for which the report was filed.

(q) "Completed substantially as shown on aerial photograph, topographic map, or plat," as used to define the authorized point of diversion, means within 300 feet of the location as shown on the aerial photograph, topographic map, or plat accompanying the application.

(r) "Confined Dakota aquifer system" means that portion of the Dakota aquifer system overlain by a confining layer resulting in the aquifer normally being under greater than atmospheric pressure.

(s) "Conjunctive use" means the safe-yield management and operation of an aquifer in coordination with a surface water system to enhance the use of the total water supply availability in accordance with the provisions of the water appropriation act.

(t) "Contamination remediation" means the diversion of water by a state agency, or under a written agreement or order of an appropriate state agency, for the purpose of improving the water quality.

(u) "Dakota aquifer system" shall include the Dakota formation, the Kiowa formation, the Cheyenne sandstone, and, where hydraulically connected, the Morrison formation.

(v) "Dakota aquifer system well" means a well or proposed well screened in whole or in part in the Dakota aquifer system.

(w) "Dam" means any artificial barrier, together with all appurtenant works, that does or could impound water.

(x) "Dewatering" means the removal of surface water or groundwater to achieve either of the following:

(1) Facilitate the construction of a building, pipeline, or other facility; or

(2) protect a building, levee, mining activity, or other facility.

(y) "Direct diversion of surface water" means the diversion of surface water directly from a stream by means of a pump, headgate, siphon, or similar installation, for application to beneficial use without storing it behind a dam, levee, or similar type of structure.

(z) "Diversion" means the act of bringing water under control by means of a well, pump, dam, or other device for delivery and distribution for the proposed use.

(aa) "Diversion works" means any well, pump, power unit, power source, dam, and any other devices necessary to bring water under control for delivery to a distribution system by which the water will be distributed to the proposed use and any other equipment required as a condition of the permit, including a check valve, water level measurement tube, meter, or other measuring device.

(bb) "Division" means the division of water resources of the Kansas department of agriculture.

(cc) "Dry hydrant" means a permanent, unpressurized intake pipe used to remove water from a pond, stream, reservoir, or other surface water supply by means of suction or vacuum supplied by a fire truck or other portable pumping device.

(dd) "Field inspection" means that for the purpose of issuing a certificate of appropriation pursuant to K.S.A. 82a-714 and amendments thereto, the chief engineer conducts a test of the rate of diversion of the diversion works under the normal and maximum conditions that the diversion works actually applied water to beneficial use during the perfection period. The chief engineer also collects all other information necessary to prepare a certificate, including the following:

(1) A description of the location and size of the place where water was actually applied to beneficial use during the perfection period in accordance with the terms, conditions, and limitations of the approval of application;

(2) information on the quantity and rate of water that was applied to the authorized use during the perfection period; and

(3) the actual location of the point or points of diversion from which water was diverted in accordance with the terms, conditions, and limitations of the approval of application.

(ee) "Fire protection" means the use of water for fire protection by a fire department for public protection in general.

(ff) "Fish farming" means the controlled cultivation and harvest of aquatic animals.

(gg) "Flow-straightening vanes" means vanes, or any other devices installed at the upstream throat of a measuring chamber for the purpose of aligning all velocity components of flow parallel with the flow in the measuring chamber at the water flowmeter sensor location.

(hh) "Full irrigation" means the application of water to crops during the growing season. Full irrigation shall include water for preirrigation.

(ii) "Groundwater" means water below the surface of the earth.

(jj) "Growing season" means the average frost-free period of the year.

(kk) "Household purposes" means the use of water by a person for cooking, cleaning, washing, bathing, human consumption, rest room facilities, fire protection, and other uses normally associated with the operation of a household.

(1) "Fire protection" shall be considered to be use of water for "household purposes" if either of the following conditions is met:

(A) Water is available from a "dry hydrant" that has been installed on a pond located within 1,000 feet of the residence.

(B) Water can be pumped from a well located within 1,000 feet of the residence for fire protection.

(2) Household purposes shall also include the replacement of the potential net evaporation from a domestic pond of up to 1/2 acre in surface area if both of the following conditions are met:

(A) The pond is utilized for aesthetic purposes as an integral part of the landscaping of a house.

(B) Any portion of the pond is located within 300 feet of the closest edge of the house.

(3) The maximum reasonable annual quantity of groundwater that may be pumped into a pond to be withdrawn later for domestic fire protection shall not exceed 0.06 acre-feet plus the average annual potential net evaporation for a pond at that location in the state having a surface area of 0.2 of an acre.

(4) Household purposes shall also include the use of 1½ acre-feet of water or less per calendar year by an industrial user, restaurant, hotel, motel, church, camp, correctional facility, educational institution, or similar entity for household purposes.

(II) "Hydraulic dredging" means the removal of saturated aggregate from a stream channel, pit, or quarry by means of hydraulic suction and the pumping of the aggregate and water mixture as a slurry to a location where at least 95 percent of the water returns directly to the source of supply.

(mm) "Immediate vicinity," as used in specifying the place of use for a water right in which the water is authorized to be used for municipal purposes, means within 2,640 feet of the corporate limits of the municipality, rural water district, or other entity.

(nn) "In compliance" means that a water flowmeter does not meet any of the criteria of K.A.R. 5-1-9 for being out of compliance.

(oo) "Index level" means elevations established spatially throughout a basin storage area to be used to represent the maximum volume of a basin storage area, and storage

available for recovery based upon accounting methodology, and conditions of the permit.

(pp) "Indirect use" means the total of the seepage loss and the average annual potential net evaporation loss from the surface of water originally impounded in a reservoir for beneficial use.

(qq) "Industrial use" means the use of water in connection with the manufacture, production, transport, or storage of products, or the use of water in connection with providing commercial services, including water used in connection with steam electric power plants, greenhouses, fish farms, poultry operations that are not incidental to the operation of a traditional farmstead pursuant to K.S.A. 82a-701(c) and amendments thereto, secondary and tertiary oil recovery, air conditioning, heat pumps, equipment cooling, and all uses of water associated with the removal of aggregate for commercial purposes except the following:

(1) The evaporation caused by exposing the groundwater table or increasing the surface area of a stream, lake, pit, or quarry by excavation or dredging, unless the evaporation has a substantially adverse impact on the area groundwater supply; and

(2) hydraulic dredging.

(rr) "Irrigation use" means the use of water for the following:

(1) The growing of crops;

(2) the watering of gardens, orchards, and lawns exceeding two acres in area; and

(3) the watering of golf courses, parks, cemeteries, athletic fields, racetrack grounds, and similar facilities.

(ss) "Maximum index level" means the maximum elevation for storage within a basin storage area or, if the basin storage area is subdivided, a smaller subdivided area.

(tt) "Measuring chamber" means a cylindrical chamber in which a water flowmeter is installed that is calibrated to match the measuring element of the water flowmeter and the nominal size of the pipe in which it is installed.

(uu) "Minimum index level" means 20 feet above the bedrock elevation or an alternatively proposed minimum elevation for storage within a basin storage area or, if the basin storage area is subdivided, a smaller subdivided area.

(vv) "Municipal use" means the various uses made of water delivered through a common distribution system operated by any of the following:

- (1) A municipality;
- (2) a rural water district;
- (3) a water district;
- (4) a public wholesale water supply district;
- (5) any person or entity serving 10 or more hookups for residences or mobile homes;

or

(6) any other similar entity distributing water to other water users for various purposes.

Municipal use shall also include the use of water by restaurants, hotels, motels, churches, camps, correctional facilities, educational institutions, and similar entities using water that does not qualify as a domestic use.

(ww) "Nonvolatile memory" means the ability of a water flowmeter to retain the values stored in the mechanical or electronic memory if all power, including backup battery power, is removed.

(xx) "Normal operating range" means the range of flow rates for which the water flowmeter will meet the accuracy requirements of K.A.R. 5-1-4 (a), as certified by the water flowmeter manufacturer.

(yy) "Off-season irrigation" means the application of water to land for the purpose of storing moisture in the soil for future use by a crop that will not be irrigated during the growing season.

(zz) "Operator," as used in the regulation of sand and gravel pits, means any person who engages in mining sand or gravel, or both.

(aaa) "Perennial stream" means a stream, or part of a stream, that normally flows during all of the calendar year, except during a drought.

(bbb) "Perfect" means the actions taken by a water user to develop an approval of application into a water right. These actions shall consist of the completion of the diversion works and the actual application of water to the authorized beneficial use in accordance with the terms, conditions, and limitations of the approval of application.

(ccc) "Point of diversion" means the point at which water is diverted or withdrawn from a source of water supply.

(ddd) "Point of diversion of a dewatering site" means the geographic center of the area from which water is temporarily removed to lower the static water level or streamflow to allow one construction project or one excavation to take place. Each one-quarter linear mile of construction trench, or part thereof, shall have at least one point of diversion.

(eee) "Point of diversion of a remediation site" means the geographic center of the area from which water is being removed to be treated or injected into a single disposal well.

(fff) "Point of diversion for storage of surface water in a reservoir created by a dam" means the point at which the longitudinal axis of the dam crosses the centerline of the stream impounded by the reservoir.

(ggg) "Potential annual runoff" means the mean annual runoff for the watershed of the reservoir.

(hhh) "Preirrigation" means the application of water to the land for a crop before planting to ensure adequate moisture for early plant growth.

(iii) "Primary well" means a well for which a standby well is available.

(jjj) "Prior right" means a vested right, an appropriation right with earlier priority, or a permit with earlier priority than that of a subsequent appropriation right or permit.

(kkk) "Proven reserves" means extractable sand and gravel deposits for which good estimates of the quantity and quality have been made by various means, including core drilling.

(lll) "Recharge" means the natural infiltration of surface water or rainfall into an aquifer from its catchment area.

(mmm) "Recharge credit" means the quantity of water that is stored in the basin storage area and that is available for subsequent appropriation for beneficial use by the operator of the aquifer storage and recovery system.

(nnn) "Recreation storage" means the storage and use of water within the reservoir for recreational use as defined in this regulation. Water stored for recreational use in a reservoir shall be considered to be an indirect use of water.

(ooo) "Recreational use" means a use of water in accordance with a water right that provides entertainment, enjoyment, relaxation, and fish and wildlife benefits.

(ppp) "Rediversion of water" means releasing or withdrawing water that had been previously impounded behind a dam, levee, or similar type of structure, by use of a pump, outlet tube, headgate, or similar type of device, and the application of the water directly to beneficial use.

(qqq) "Register" means an integral or remote device that displays the quantity of water passing the water flowmeter sensor and is part of the water flowmeter.

(rrr) "Remediation site" means the geographic area where contamination is being removed from groundwater.

(sss) "Reservoir" means the area upstream from a dam that contains, or will contain, impounded water.

(ttt) "Reservoir capacity" means the volume of water that can be stored below the lower of either of the following:

- (1) The elevation of the principal spillway tube; or
- (2) the lowest uncontrolled spillway in the reservoir.

(uuu) "Reservoir having a total water volume of less than 15 acre-feet," as used in K.S.A. 82a-728 and amendments thereto, means a reservoir having a capacity of 15 acre-feet or less as measured at the principal spillway tube or the lowest uncontrolled spillway, whichever is lower.

(vvv) "Safe yield" means the long-term sustainable yield of the source of supply, including hydraulically connected surface water or groundwater.

(www) "Sand and gravel pit operation" means a project that meets the following conditions:

- (1) Excavates overburden for mining sand or gravel, or both, exposing the underlying groundwater table to evaporation; and
- (2) has a perimeter equal to or greater than its depth.

(xxx) "Sediment control in a reservoir" means a beneficial use of water that meets both of the following criteria:

- (1) The water is stored in a reservoir that has no other authorized type of beneficial use, except domestic use.

(2) The water is stored only in the part of the reservoir designed and constructed for the storage of sediment.

(yyy) "Source water" means water used for artificial recharge that meets the following conditions:

- (1) Is available for appropriation for beneficial use;
- (2) is above base-flow stage in the stream;
- (3) is not needed to satisfy minimum desirable streamflow requirements; and
- (4) will not degrade the ambient groundwater quality in the basin storage area.

(zzz) "Specialty crop" means a crop other than a normal Kansas field crop. This term shall include turf grass, trees, vegetables, ornamentals, and other similar crops.

(aaaa) "Standby well" means a well that can withdraw water from the same source of supply as the primary well and that is used only when water is temporarily unavailable from the primary well or wells authorized to be used on the same place of use because of mechanical failure, maintenance, or power failure. A standby well may also be used for fire protection or a similar type of emergency.

(bbbb) "Static water level" means the depth below land surface at which the top of the groundwater is found when not affected by recent pumping.

(cccc)(1) "Stockwatering" means the watering of livestock and other uses of water directly related to either of the following:

(A) The operation of a feedlot with the capacity to confine 1,000 or more head of cattle; or

(B) any other confined livestock operation or dairy that would divert 15 or more acre-feet of water per calendar year.

(2) Stockwatering shall not include the irrigation of feed grains or other crops.

(3) For the purposes of this subsection, a group of feedlots or other confined feeding operations shall be considered to be one feedlot or confined feeding operation if both of these conditions are met:

(A) There are common feeding or other physical facilities.

(B) The group of facilities is under common management.

(dddd) "Straight pipe" means a straight length of pipe free of all internal obstructions, including size changes, valves, cooling coils, injection ports, sand or foreign material, and any other condition that would cause a disturbance of the internal velocity profile in the pipe. Internal obstructions shall not include properly designed, constructed, and installed straightening vanes and inspection ports.

(eeee) "Stream channel aquifer" means unconsolidated water-bearing deposits in river valleys, flood plains, and terraces that are separate and distinct from any other aquifer and capable of yielding water in sufficient quantities for beneficial use.

(ffff) "Surface water" means water in creeks, rivers, or other watercourses and in reservoirs, lakes, and ponds.

(gggg) "Term permit" means a permit to appropriate water that is issued for a specified period of time and exceeds the criteria for a temporary permit specified in K.S.A. 82a-727, and amendments thereto, and K.A.R. 5-9-3 through K.A.R. 5-9-5. At the end of the specified time, or any authorized extension approved by the chief engineer, the term permit shall be automatically dismissed, and any priority it may have had shall be forfeited.

(hhhh) "The production and return of saltwater in connection with the operation of oil and gas wells in accordance with the written approval granted therefor by the Kansas corporation commission pursuant to K.S.A. 55-901, and amendments thereto" means only that saltwater actually produced during the primary production of oil and gas wells and shall not include the following:

- (1) Saltwater used in the drilling of an oil and gas well; and
- (2) saltwater injected into an enhanced recovery injection well, unless that saltwater was produced in the primary production of the oil and gas well, separated from the oil and gas, and then subsequently reinjected.

(iiii) "Thermal exchange" means the use of water for climate control in a nondomestic building and in a manner that is essentially nonconsumptive to the source of supply.

(jjjj) "Totalizer" means the mechanical or electronic portion of the register that displays the total quantity of water that has passed the water flowmeter sensor.

(kkkk) "Unconfined Dakota aquifer system" means that portion of the Dakota aquifer system not overlain by a confining layer in which the aquifer is in equilibrium with atmospheric pressure.

(llll) "Unconsolidated regional aquifer" means a body of mostly unconsolidated and heterogeneous water-bearing deposits that are hydraulically and geologically contiguous and are capable of yielding water in sufficient quantities for beneficial use.

(mmmm) "Waste of water" means any act or omission that causes any of the following:

(1) The diversion or withdrawal of water from a source of supply that is not used or reapplied to a beneficial use on or in connection with the place of use authorized by a vested right, an appropriation right, or an approval of application for a permit to appropriate water for beneficial use;

(2) the unreasonable deterioration of the quality of water in any source of supply, thereby causing impairment of a person's right to the use of water;

(3) the escaping and draining of water intended for irrigation use from the authorized place of use; or

(4) the application of water to an authorized beneficial use in excess of the needs for this use.

(nnnn) "Waterpower use" means the use of falling water for hydroelectric or hydromechanical power.

(oooo) "Water balance" means the method of determining the amount of water in storage in a basin storage area by accounting for inflow to, outflow from, and changes in storage in that basin storage area.

(pppp) "Water flowmeter" means the combination of a flow-sensing device, measuring chamber, integral or remote display device or register, and any connecting parts required to make a working assemblage to measure, record, and allow determination of flow rate and total quantity of water flowing past the water flowmeter sensor.

(qqqq) "Water storage device" means a reservoir, elevated water tank, pressurized water tank, including a bladder tank, or other container into which water is pumped and stored before beneficial use.

(rrrr) "Water use correspondent" means a person designated in writing, on a form prescribed by the chief engineer, by one of the owners of a water right to file the water use reports required by K.S.A. 82a-732 and amendments thereto, on behalf of the owner or owners of that water right.

(Authorized by and implementing K.S.A. 82a-706a; modified, L. 1978, ch. 460, May 1, 1978; amended May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended Dec. 3, 1990; amended May 31, 1994; amended Sept. 22, 2000; amended Oct. 24, 2003; amended Oct. 31, 2008; amended April 29, 2016.)

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