

Department of Agriculture, Division of Water Resources
Notice of Hearing on Proposed
Administrative Regulation, Statewide

A public hearing will be conducted at 10:00 a.m. Thursday, October 27, 2016, in the 1st floor meeting room of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of proposed regulations.

Individuals wishing to participate by teleconference may go to the Garden City Field Office, 2508 Johns Street, Garden City, on the date and time of the public hearing.

The public hearing originally scheduled for October 11, 2016, notice of which was published in the August 4, 2016, issue of the Kansas Register, has been cancelled.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, 66502, or by e-mail at ronda.hutton@ks.gov. 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 request that each participant limit any oral presentation to five minutes. These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and their economic impact follows:

K.A.R. 5-21-3 – The proposed amendments to the regulation will modify the well spacing in the Dakota aquifer in the Western Kansas Groundwater Management District No. 1 (GMD 1) from one half of a mile to four (4) miles. This regulation was requested by GMD 1, and will be filed for adoption by the Chief Engineer of the Division of Water Resources.

Economic Impact Statement:

The proposed amendment will limit well spacing to ensure the spacing is appropriate so Dakota wells do not impact one another. The four (4) mile spacing will help ensure impairment from a junior Dakota well does not occur. Spacing alone cannot guarantee impairment will not occur, but a four (4) mile spacing requirement will go a long way toward helping to prevent impairment.

This regulation is not mandated by federal law.

The proposed amendment will result in no fiscal impact to the department.

The proposed amendments will result in no fiscal impact to GMD 1. The amendment will have a positive fiscal impact to existing water right holders in the areas of concern resulting from the additional protection against impairment by new development.

No other methods were considered by the state.

Improved groundwater resource conditions, both quality and quantity, could be achieved through the adoption of this regulation change.

K.A.R. 5-3-6a – The proposed amendment to K.A.R. 5-3-6a clarifies the agency's authority

to seal a water flowmeter to ensure the meter installation is not removed or altered without the agency's permission. The Kansas Department of Agriculture, Division of Water Resources (KDA) and the Groundwater Management Districts test meters to determine if they are performing properly and, after testing, the agency or the district will seal the meters to ensure the integrity of the test. To enforce compliance with water use permits, it is crucial to know if and when a tested meter is removed or altered. Accurate meters are critical to ensuring the integrity of water use records statewide.

Economic Impact Statement:

The regulation will apply to new and existing meter installations. It is important to have the ability to seal meters to maintain the integrity of water use data. Sealing water flowmeter installations will discourage water users from diverting without meters, turning meters in reverse or removing meters to tamper with the readings. Currently, the water users are required to contact KDA when a meter is removed. Many users do not because it is easily overlooked. The seal will remind users to contact us in addition to maintaining the water use record.

This regulation is not mandated by federal law.

The proposed amendment will result in a positive fiscal impact to the agency, as it will allow the agency to extend field staff work by saving time in inspecting meter installations, as meters previously tested and sealed can be considered still accurate. The agency will not have to re-test or re-inspect meter installations once the meters are tested and sealed.

The proposed amendments will result in a positive fiscal impact to the groundwater management districts for the same reasons stated above for the agency. There will be no fiscal impact to other government agencies. It may have a negative fiscal impact on private businesses and individuals if civil penalties are imposed for removing the seal without permission.

No other methods were considered by the state.

The proposed amendment will have no environmental impact.

Any individual with a disability may request accommodations in order to participate in the public hearing and may request the proposed regulations and impact statements in an accessible format. Requests for accommodations should be made at least five working days in advance of the hearing by contacting Ronda Hutton at (785) 564-6715 or fax (785) 564-6777. Handicapped parking is located on the west side of the building located at 1320 Research Park Drive, Manhattan, and the west entrance to the building is accessible to individuals with disabilities.

Copies of the regulations and their economic impact statements may be obtained by contacting the Department of Agriculture, Ronda M. Hutton, 1320 Research Park Drive, Manhattan, KS 66502 or (785) 564-6715 or by accessing the department's Web site at agriculture.ks.gov. Comments may also be made through our website under the proposed regulation.

David W. Barfield
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

K.A.R. 5-21-3. Well spacing requirements. (a) Each well location described in an application for a permit to appropriate water for a beneficial use, other than domestic use, ~~which that~~ proposes the diversion or withdrawal of water from the Ogallala ~~formation~~ aquifer shall be spaced ~~a minimum of 2640~~ at least 2,640 feet from all other non-domestic wells constructed in into the Ogallala aquifer.

(b)(1) Each well location described in an application for a permit to appropriate water for a beneficial use, other than domestic use, ~~which that~~ proposes the diversion or withdrawal of water from the Dakota aquifer shall be spaced ~~a minimum of two thousand six hundred forty (2,640) feet~~ at least four miles from ~~any~~ all other ~~well~~ non-domestic wells constructed into the ~~same~~ Dakota aquifer.

(2) Each ~~Dakota~~ well in the Dakota aquifer shall be sealed off between the Dakota aquifer and any other aquifers in ~~such a manner as to prevent~~ that prevents migration of water to or from the Dakota aquifer and any other aquifers.

(c) Each well included in an application for a permit to appropriate water for a beneficial use, other than domestic use, ~~which that~~ proposes the diversion or withdrawal of water shall be a ~~minimum of~~ at least 1,320 feet away from a each domestic well constructed into the same aquifer unless the applicant has received written permission from the neighboring well owner or the applicant owns each domestic ~~wells are owned by the applicant~~ well.

(d) The location of a each well ~~or wells~~ on an application for approval to change the point of diversion under an existing water right shall be no more than 1,320 feet from the originally authorized point of diversion and shall meet one of the following requirements:

(1) Not decrease the distance to any other wells or authorized well locations by more than 300 feet; or

(2) meet the minimum well spacing requirements in this regulation.

(e) ~~A~~ Each new well shall be drilled in a the location substantially as shown on the approved application and the accompanying map, plat, or aerial photograph.

(f) Exceptions to this ~~well spacing~~ regulation may be granted on an individual basis by recommendation of the board in conjunction with the approval of the chief engineer. The applicant may be required by the board to submit information as it deems necessary in order to make the determination. (Authorized by and implementing K.S.A. 82a-706a and K.S.A. 2015 Supp. 82a-1028(⊖); effective May 1, 1979; amended May 23, 1994; amended P-

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**KANSAS DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES
ECONOMIC IMPACT STATEMENT
K.A.R. 5-21-3, Amended**

I. Summary of proposed regulation, including its purpose.

The proposed amendments to the regulation will modify the well spacing in the Dakota aquifer in Western Kansas Groundwater Management District No. 1 (GMD 1) from one half of a mile to four (4) miles. This regulation was requested by GMD 1, and will be filed for adoption by the Chief Engineer of the Division of Water Resources.

II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.

The proposed amendment will limit well spacing to ensure the spacing is appropriate so Dakota wells do not impact one another. The four (4) mile spacing will help to ensure impairment from a junior Dakota well does not occur. Spacing alone cannot guarantee impairment will not occur, but a four (4) mile spacing requirement will go a long way toward helping to prevent impairment.

This regulation is not mandated by federal law.

III. Anticipated economic impact upon the Kansas Department of Agriculture.

The proposed amendment will result no fiscal impact to the department.

IV. Anticipated financial impact upon other governmental agencies and upon private business or individuals.

The proposed amendments will result in no fiscal impact to GMD 1. The amendment will have a positive fiscal impact to existing water right holders in the areas of concern resulting from the additional protection against impairment by new development.

V. Less costly or intrusive methods that were considered, but rejected, and the reason for rejection.

No other methods were considered by the state.

VI. Environmental Impact.

Improved groundwater resource conditions, both quality and quantity, could be achieved through the adoption of this regulation change.