

## MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:37 a.m. on January 29, 2010, in Room 144-S of the Capitol.

All members were present.

## Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes  
Raney Gilliland, Kansas Legislative Research Department  
Corey Carnahan, Kansas Legislative Research Department  
Stanley Rasmussen, Senate Fellow, U.S. Army  
Grace Greene, Committee Assistant

## Conferees appearing before the Committee:

Senator Holland, Kansas Senate  
Jim Rankin, Foulston Siefkin LLP

## Others attending:

See attached list.

Chairman McGinn brought the minutes of January 21 and January 22, 2010 to the Committee for approval. Senator Teichman motioned to approve the minutes. Senator Abrams seconded the motion. The motion carried.

Chairman McGinn asked for bill introductions. Senator Holland (Attachment 1) requested the introduction of a resolution regarding the payment of a full membership in a rural water district when purchasing a property in foreclosure. Senator Taddiken motioned to approve the bill introduction. Senator Francisco seconded the motion. The motion carried.

Jim Rankin, Foulston Siefkin LLP (Attachment 2) provided an informational presentation on non-spring sporting knives. Mr. Rankin addressed the Committee on a bill to clarify and amend the Kansas Criminal Code on weapons. Mr. Rankin stated that the similar revisions were done to the federal legislation on switchblades, and in Texas and California.

Mr. Rankin stated that the Kansas statute does not prohibit these knives currently, however, there has been confusion with individual police officers and tickets have been issued. The mentioned sporting knives are tools and should not be prohibited and the proposed amendment would clarify the possession and use of the non-prohibited knives.

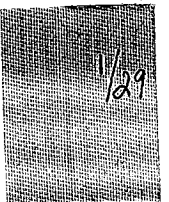
Mr. Rankin referred to several photographs of the sporting knives and stated the primarily physical and utilitarian differences between the sporting knives and lethal knives, include that the sporting knives are a one hand opened knife, with a thumb knob on the blade to open it, opposed to on the handle, such as on a switchblade or gravity knife. Secondly, Mr. Rankin stated the primary difference between sporting knives and switchblade knives is the bias. The switchblade knives have a "bias toward open," meaning that the switchblade knives are under extreme spring pressure, so when the blade comes out it is with much force, thus is a much more dangerous weapon that should be prohibited. The sporting knives have a "bias toward close," meaning that the knife will remain closed until it is opened by hand.

Mr. Rankin took questions from the Committee.

Mr. Rankin requested that Randall Walker provide information on the topic.

Randall Walker, a retired educator, farmer and an outdoors man, addressed the Committee on the sporting knives. Mr. Walker discussed the usefulness from his experience in daily work, farming, fishing, hunting, and construction. Mr. Walker stated he would advocate the introduction of legislation to amend the law to clarify that the sporting knife would be legal.

Senator McGinn asked the members of the Committee if they would like the bill to be introduced.



CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 8:30 a.m. on January 29, 2010, in Room 144-S of the Capitol.

Mr. Rankin requested the Committee introduce a bill concerning the definition of weapons. Senator Morris made a motion to introduce the bill. Senator Teichman seconded the motion. The motion carried.

Senator McGinn asked the Committee to discuss SB 380. Senator Abrams motioned to move SB 380 out of Committee. Senator Teichman seconded the motion. The motion carried.

The following provided written testimony:

Richard E. Koerth, Assistant Secretary for Administration, Wildlife and Parks, (Attachment 3)

David W. Barfield, Chief Engineer, Kansas Department of Agriculture, Division of Water Resources, (Attachment 4)

The next meeting is scheduled for February 4, 2010.

The meeting was adjourned at 9:04 a.m.

# SENATE NATURAL RESOURCES COMMITTEE

## Guest Roster

1-29-2010

(Date)

Randy Walker	
Juin Rankin KAIUSA	
Mr. <del>Clark</del> KUHE	
Terry Taverner KDHE	
Jessie Kaufman	Ks Co-op Council
Mark <del>Lee</del> KMA	ICMUSA
Ken Seaber	KAITA
Dick Koerth	KDWP
Chris Tymeson	KDWP
Mark Stock	KDWP
Ed Klupp	KARP/KPOO/KSA
John Donley	Ks Cust. Ass'n
Jim <del>Maag</del>	KAI-USA

**Please use black ink only!!**

## SENATE BILL NO. \_\_\_\_\_

By Committee on Natural Resources

AN ACT concerning water; relating to rural water districts; amending K.S.A. 82a-617 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 82a-617 is hereby amended to read as follows: 82a-617. (a) Immediately following the granting of incorporation by the board of county commissioners, and at the time and place set out in the notice of hearing, the owners of land within any such district shall select from their number a board of directors. The number of members on ~~said~~ the board, not to exceed nine (9), shall be determined by majority vote of those owners of land present:--Provided, on the condition that any original director who shall fail to subscribe to one (1) or more benefit units and pay the established unit fee for each unit to which ~~he-or-she~~ the director subscribes within ~~thirty--(30)~~ 30 days after entry in the minutes of the board of a declaration of availability of such benefit units for subscription, shall forfeit ~~his-or-her~~ the director's office.

(b) Within seven (7) days after the election of the original board, proposed bylaws shall be submitted for adoption at a meeting of owners of land located within the district, notice of which shall be given to each such landowner as provided in K.S.A. 82a-615, and amendments thereto. Those owners of land located within the district present at such special meeting may adopt and amend any of such proposed bylaws and may propose and adopt additional or other bylaws. Such bylaws may be amended at any

annual or special meeting of the participating members of the district.

(c) When land to which a water benefit unit is attached is the subject of an action for judicial foreclosure and sale, any benefit unit attached to that land shall not be forfeited, or if forfeited, such benefit unit shall be reinstated upon the following conditions:

(1) In the previous 24 months prior to the date of foreclosure, the benefit unit has received a payment of any water use charge or other monthly charge payable to the rural water district; and

(2) the foreclosing creditor, its assignee, or the purchaser of the property to which the benefit unit is attached, pays all charges associated with such unit including charges for water purchased, monthly minimum fees, monthly debt service fees or similar charges, late payment fees and any reasonable disconnect and reconnect fees properly charged to such benefit units.

Sec. 2. K.S.A. 82a-617 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

**PROPOSED FORM**

SESSION OF 2010

SUPPLEMENTAL NOTE ON SENATE BILL NO. \_\_\_\_\_

*As Recommended by Senate Committee  
on Natural Resources*

**Brief**

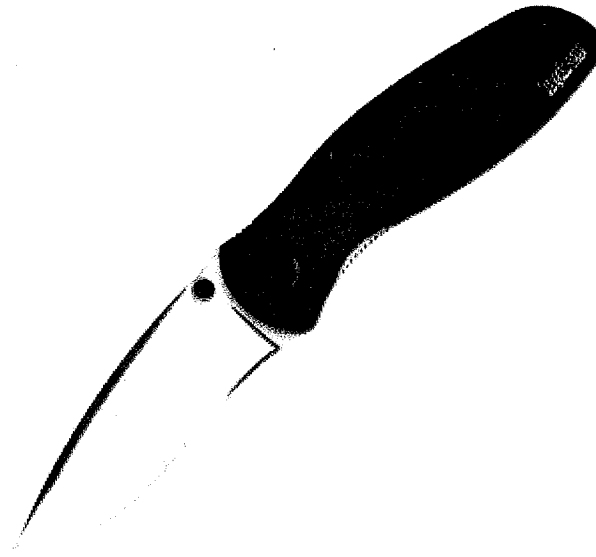
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**Background**

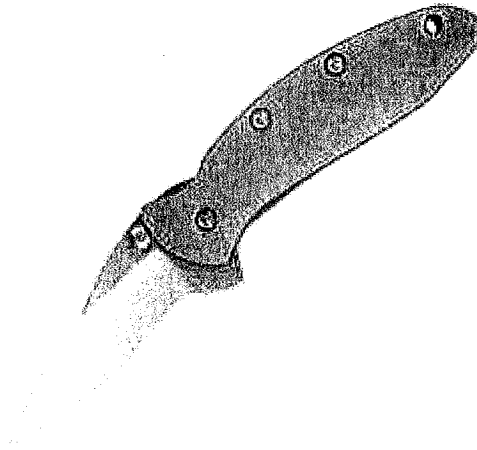
The knives described in the proposed exception to the definition of an illegal switchblade/gravity knife are commonly referred to as one-handed opening knives or assisted opening knives and are manufactured by several large knife manufacturers. The knives covered by the proposed exception serve an important utility as hand tools. Such knives are used by firefighters, EMT personnel, hunters, fishermen, contractors and others. Many consumers require a cutting tool that is quickly accessible with one hand. The knives described in the proposed exception serve this purpose. The statute should, therefore, be clarified to remove such knives from the definition of a prohibited weapon.

The proposed change to the statute parallels the language codified by Congress, the State of Texas, and other states. See e.g. 15 U.S.C. 1241; 1244, Texas Penal Code Section 46.01 (11), and California Penal Code Section 653k. The language in the proposed exception clarifies the definition of a switchblade to permit law-abiding citizens to use these functional tools without fear of violating the criminal law.

A mechanism in the knife that creates a bias toward closure ensures that hand pressure must be exerted to the blade to open the knife. A flick of the wrist or other outward thrust will not open a knife described by the proposed language but would open a gravity or a "butterfly" knife, which are still prohibited by the statute. Further, unlike a switchblade, where the knife when closed, is under spring pressure (i.e. bias towards open), the knives described in the proposed exception have a bias towards closure which must be overcome to open the knife. Therefore, such knives are not switchblades, and the proposed exception would not legalize switchblades as the bias in a switchblade is towards open, not closed.

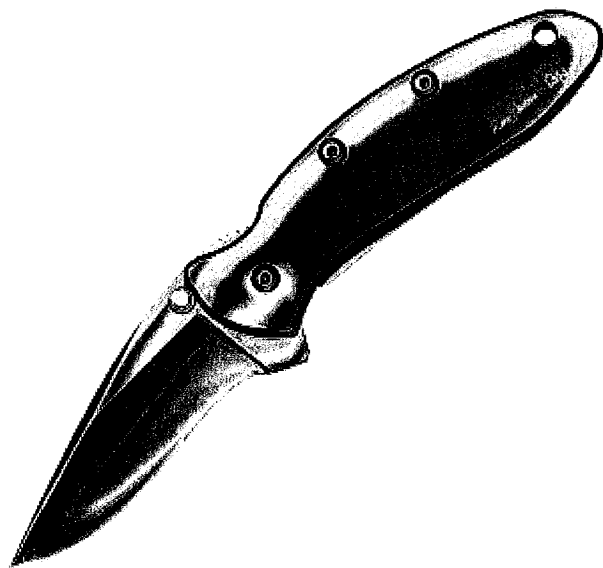


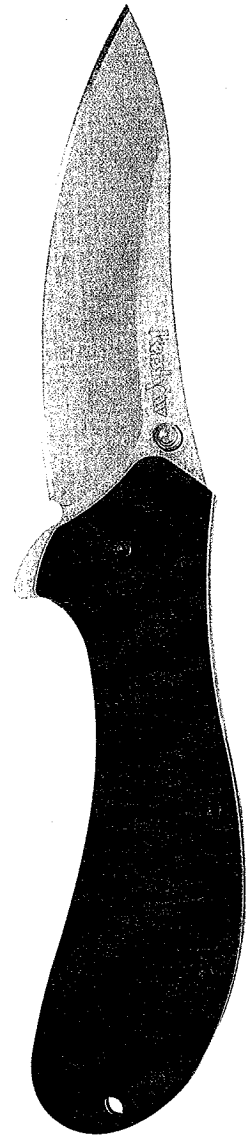
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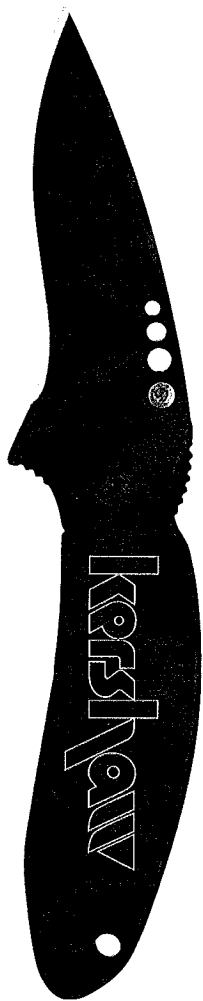


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Responses to Senate Committee on Natural Resources after Committee Hearing on Senate Bill  
No. 380

By

Richard E. Koerth  
Assistant Secretary for Administration  
Kansas Department of Wildlife and Parks  
January 29, 2010

At the Committee hearing yesterday regarding Senate Bill No. 380 pertaining to the establishment of cabin rental fees additional information was requested from the Kansas Department of Wildlife and Parks (KDWP) regarding the collecting of state sales tax and local transient guest tax on the rental of Department cabins. KDWP appreciates the concerns raised by Committee members and will address those concerns in the following comments.

The Kansas Department of Revenue was requested by the Geary County Convention and Visitors Bureau to determine if KDWP was required to collect a transient guest tax on the fees collected for the use of lodging cabins at Milford State Park. In an opinion dated June 15, 2004, the Department of Revenue replied that since KDWP is a state agency and not a person as defined within the Transient Guest Tax act the Department is not subject to the provisions of the act. The Office of the Kansas Attorney General in an earlier letter date May 24, 2004 had deferred the question to the Department of Revenue for their opinion.

In relation to the sales tax issue, the provisions of KSA 79-3602(z) define person as a political subdivision of the state and the provisions of KSA 79-3602(aa) define political subdivision as any agency of the state with authority to levy taxes on any personal property. KDWP does not have authority to levy taxes on personal property and is therefore not political subdivision as defined by the act. Further, even if KDWP is considered a political subdivision of the state, KSA 79-3603(m) exempts from sales tax any fees and charges by any political subdivision for participation in sports, games and other recreational activities.

KDWP does not consider itself to be in direct competition with private entities by providing public cabins for use. The Department is required to provide outdoor recreational opportunities of which public cabins are one of many options. KDWP cabins are primarily located on state parks and wildlife areas which are in remote areas with no other facilities close by. In addition, the Department requires certain fees which are not comparable to fees charged by private lodging vendors. KDWP charges a vehicle access fee and a reservation fee prior to the use of the cabin.

**Written Report on Implementing Flex Accounts (K.S.A. 82a-736)  
to  
the Senate Committee on Natural Resources**

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

**January 29, 2010**

K.S.A. 82a-736 became law May 9, 2001, and it requires the chief engineer of the Kansas Department of Agriculture's Division of Water Resources to implement a program that provides for issuing term permits to water right holders to allow them to establish flex accounts for groundwater use. There also is a provision that requires the chief engineer to submit a written report on the law's implementation to your standing committees by February 1 each year.

K.S.A. 2004 Supp. 82a-736 was amended by the Legislature in 2005. The amendments changed the base average use period from 1996 through 2000 to 1992 through 2002. They also provide for the amount deposited into the flex account not to exceed 90 percent of the base average use multiplied by five, as opposed to being exactly 90 percent of the base average use multiplied by five.

Attached are a copy of the rules and regulations promulgated in 2002, and the revisions to those rules that became effective January 6, 2006, to implement the program within the amended statutory criteria. The criteria allow eligible, participating water right holders to use, within a five-year period, an amount of groundwater that is no more than 90 percent of their actual base average use times five and as long as it does not impair other existing water rights.

The law requires that any groundwater water right holder who wants to establish a flex account and exercise its use through a term permit must file the term permit application no later than October 10 of the year preceding the first year for which application is made.

In 2008, water right holders were reminded of the flex account provision through a news release to media outlets statewide. As of October 10, 2009, no applications for term permits had been filed with the chief engineer for 2010, nor have we received any applications to date for participation in the program beginning in 2011.

In our day-to-day interaction with water right holders, we make sure that those individuals who we believe could benefit the most from this option know that it exists. We also make our flex account literature available to the public when we have a table or booth at water-related events. Information about flex accounts also is available on our website at <http://www.ksda.gov/appropriation/?cid/297>.

Currently there are no active flex accounts: Two were filed in 2002 for the period from 2003 through 2007, so they have since expired. Three were filed in 2003, one of which was dismissed prior to approval because it proposed to deposit only a portion of a water right, which does not comply with K.A.R. 5-16-6(f). Two flex accounts were approved in 2003 for the period from 2004 through 2008. They, too, have expired.

Due to the limited interest shown in this program, no additional staff was hired to process applications. All applications have been handled by existing staff in the water appropriation program. The \$400 filing fee was paid for the five permit applications we received in 2002 and 2003.

We believe flex accounts can play an important role in water management, particularly in areas where voluntary measures are adopted. Flex accounts have built-in flexibility in terms of setting the base average use factor -- the factor multiplied by the base average use that is multiplied by five to determine the amount of the flex account -- to anything not exceeding 90 percent. Therefore, a flex account can be used to save at least 10 percent or more of the base average use for a water right while giving the water right holder flexibility to use the water for beneficial purposes over a five-year period without the annual limits on the quantity.

During a year with below-average precipitation, an irrigator may use a flex account to meet the higher water demand of his crop. Likewise, in years with above-average precipitation, the irrigator would use less water. Over a typical five-year period, there will be wetter and drier years, and flex accounts can help water users balance these highs and lows while avoiding civil penalties for overpumping the authorized quantity in a single year.

We continue to promote flex accounts as a viable option for groundwater users who have variable demands from year to year, particularly in areas in need of water management strategies.

As I wrote last year, due to the limited interest in this program so far, I raised the issue in a meeting with managers of the state's groundwater management districts. We agreed to work together to identify how the program can be made more attractive to water right holders in hopes of increasing the utility of this management tool while achieving its water conservation function. No progress was made on the task this past year. I hope to present findings from that work next legislative session.

**Division of Water Resources**  
**Flex Account Rules and Regulations**  
**K.A.R. 5-16-1 through 5-16-7**

**K.A.R. 5-16-1. Definitions.** As used in this article of regulations, in the Kansas water appropriation act, and by the chief engineer in the administration of the Kansas water appropriation act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings ascribed to them in this regulation. (a) "Base amount" and "BA" mean the quantity of water deposited into a flex account.

(b) "Base average usage factor" and "BAUF" mean the percentage of the "base average usage," as this term is defined in K.S.A. 82a-736 and amendments thereto, that is multiplied by five as a part of the calculations set out by K.A.R. 5-16-5 to determine the quantity of water that may be deposited into a flex account. The BAUF shall not exceed the maximum of 90% established by K.S.A. 82a-736 and amendments thereto.

(c) "Base water right" means a vested or certified water right or rights for which the owner applies to the chief engineer to establish a flex account pursuant to K.S.A. 82a-736, and amendments thereto.

(d) "BAU" means the "base average usage" as defined in K.S.A. 82a-736, and amendments thereto.

(e) "Good standing," only as that term is used in K.S.A. 82a-736, and amendments thereto, in reference to base water rights, means a base water right that meets the following conditions:

- (1) Has been lawfully exercised within the 11-year time period specified in K.A.R. 5-16-5;
- (2) has had all required water use reports filed and any civil fines assessed for failure to timely file a complete and accurate water use report paid; and
- (3) has had no period of nonuse with a duration of five or more consecutive years since January 1, 1990, except for enrollment in the water right conservation program according to K.A.R. 5-7-4, enrollment in the federal conservation reserve program, or enrollment in another multiyear federal or state conservation program.

(f) "Significant water conservation measures" means actual physical changes in a water distribution system or management practices that improve water use efficiency, including the following:

- (1) Conversion from flood irrigation to center pivot irrigation with a nozzle package designed to improve water use efficiency;
- (2) irrigation scheduling;
- (3) conversion to subsurface drip irrigation; and
- (4) removal of an end gun, resulting in a significant reduction in the number of irrigated acres. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2004 Supp. 82a-736, as amended by L. 2005, Ch. 142, § 3; effective Oct. 11, 2002; amended Jan. 6, 2006.)

**K.A.R. 5-16-2. Fee to establish flex account and apply for term permit.** The filing fee for establishing a flex account and applying for a five-year term permit to exercise the flex account shall be \$400. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2001 Supp. 82a-708a(d), as amended by L. 2002, Ch. 181, § 21; effective Oct. 11, 2002.)

**K.A.R. 5-16-3. Establishing a flex account.** (a) A flex account shall be established by filing an application for a flex account and a term permit on a form prescribed by the chief engineer. The five-year period shall begin on January 1 of the next calendar year for which the application has been timely filed, unless expressly authorized by the chief engineer to begin the following January 1. The application shall also show the location of all wells located within one-half mile of the proposed point of diversion, and the names, addresses, and telephone numbers of the owners of those wells. Except as set forth in subsection (e), a separate application shall be filed for each water right and each point of diversion for which the owner desires to establish a flex account. Each application shall be accompanied by the filing fee specified in K.A.R. 5-16-2.

(b) Before any application to establish a flex account and a term permit will be accepted for filing, the application shall be signed by at least one owner of the water right, or a duly authorized agent of an owner of the water right.

(c) Before the flex account can be established or the term permit approved, all of the water rights owners, or a duly authorized agent of the owners, shall verify upon oath or affirmation that the statements contained in the application are true and complete.

(d) If one or more owners refuse to sign the application or if a written request is filed by one or more of the owners to withdraw their signatures from the application before the application is approved, the application shall be dismissed.

(e) A single application to establish a flex account and apply for a term permit may be filed in the following situations:

(1) Multiple water rights authorize the diversion of water from a single point of diversion that diverts water to an identical place of use for a single type of use.

(2) Multiple points of diversion are authorized by the chief engineer to divert water through a single water flowmeter before going to an identical place of use.

(f) The flex account shall not be established, and the term permit to exercise the flex account shall not be valid until both have been approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

**K.A.R. 5-16-4. Conditions on the term permit.** (a) The place of use authorized by a term permit shall be identical to the place or places of use authorized by the base water right or rights.

(b) The type of use authorized by a term permit shall be limited to one of the types of use authorized by the base water right or rights.

(c) The rate of diversion authorized by a term permit shall not exceed the maximum instantaneous rate of diversion authorized by the base water right or rights. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)



**K.A.R. 5-16-5. Maximum annual quantity of water authorized by term permit.** (a) Except as set forth in subsections (b) through (e), the maximum quantity of water deposited in a flex account and authorized to be diverted in five consecutive calendar years under the authority of a term permit shall be determined in accordance with K.S.A. 82a-736, and amendments thereto, by means of these calculations:

- (1) Adding the total actual, legal annual water use of the base water right or rights for the period of calendar years 1992 through 2002;
- (2) dividing that total quantity of water by 11;
- (3) multiplying that quantity by the BAUF; and
- (4) multiplying that quantity by five.

(b) If significant water conservation measures were implemented under the base water rights at any time during the period of calendar years 1992 through 2002, the average annual quantity of water actually used may be calculated using the five consecutive calendar years immediately preceding the implementation of significant water conservation measures, but these five calendar years shall not begin before calendar year 1987. The five-year allocation under the term permit shall be determined by means of these calculations:

- (1) Adding the total actual, legal annual water use of the base water right or rights for the five consecutive calendar years;
- (2) dividing that total quantity of water by five;
- (3) multiplying that quantity by the BAUF; and
- (4) multiplying that quantity by five.

(c) If water use records for a base water right are inadequate to accurately determine actual water use during any calendar year during the period used to determine the base average usage, then that year shall be counted as having no water use.

(d) No flex account shall be allowed if the flex account is inconsistent with the provisions of any intensive groundwater use control area created pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto.

(e) If water was authorized to be diverted for less than the entire period used to determine the base average usage, the five-year allocation shall be determined by means of these calculations:

- (1) Adding the total actual, legal annual water use of the base water right or rights for the entire period used to determine the base average usage;
- (2) dividing the total quantity by the number of years, or parts thereof, that water was authorized to be diverted by the chief engineer;
- (3) multiplying that quantity by the BAUF; and
- (4) multiplying that quantity by five.

Water rights that authorized use of water for less than two calendar years during period used to determine the base average usage shall not be eligible for a flex account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2004 Supp. 82a-736, as amended by L. 2005, Ch. 142, § 3. 82a-736; effective Oct. 11, 2002; amended Jan. 6, 2006.)

**K.A.R. 5-16-6. Flex accounts and term permits.** (a) The duration of the flex account and term permit shall be five consecutive calendar years.

(b) There shall be no extension of a flex account or a term permit beyond the period of five consecutive calendar years originally authorized.

(c) There shall be no carryover of unused quantities of water from one flex account or term permit to another flex account or term permit.

(d) Only one flex account shall be in force for a point of diversion or a water right at any time.

(e) A water flowmeter meeting the requirements of the chief engineer shall be installed on each point of diversion authorized by the term permit. If an existing water flowmeter had been required on or after September 22, 2000 or if there is no existing water flowmeter, the water flowmeter shall meet the requirements of the chief engineer in effect at the time the term permit is approved. If a water flowmeter was installed before September 22, 2000, the water flowmeter shall meet the requirements of K.A.R. 5-1-6(b).

(f) Only an entire water right, or a portion of a water right that has been formally divided, may be deposited in a flex account.

(g) All water diverted pursuant to a term permit and the base water rights associated with the term permit shall be counted against the quantity of water deposited in the flex account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)

**K.A.R. 5-16-7. Conditions under which a base water right may be exercised.** Each term permit approved by the chief engineer according to this article shall include the condition that if the term permit can no longer be exercised because of an order issued by the chief engineer, including an intensive groundwater use control area order, a minimum desirable streamflow order, or an order to administer water rights to prevent impairment, then any base water right may be exercised to the extent that all of the following conditions are met:

(a) The base water right is in priority.

(b) The annual quantity of water authorized by the base water right has not been diverted during that calendar year.

(c) The five-year allocation authorized by the term permit has not been used.

(d) The use of water under the base water right does not impair water rights senior to the base water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-706a and K.S.A. 2001 Supp. 82a-736; effective Oct. 11, 2002.)