

GMD1 Four County LEMA Memorandum of Appeals Methods

Section 1 – Defining Voluntary Conservation

Background and Consideration

Pursuant to K.S.A. 82a-1041, LEMA Plans submitted by GMDs are required to provide evidence so the Chief Engineer can conclude that the Plan “gives due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures;”

Draft Definition of “Voluntary Conservation”

In direct regards to the LEMA and implementation overseen by GMD1, voluntary conservation is defined as the following. The intentional act of utilizing less water than is available in an unconstrained supply under a set water right, not contingent on water year type. Per KSA 82a-1041, the LEMA plan must show it “gives due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures.” Therefore, the act of conservation must be a physical and purposeful change to on farm management outside of natural changes and or causes.

Section 2 – Examples and Criterion of Voluntary Conservation

The following examples and criterion are hypothetical scenarios that may be deemed as actionable conservation by the GMD Board of Directors, on a case by case basis.

Voluntary Conservation Criteria

Example Criteria for Approving Conservation	Yes/No*
Is this action of conservation voluntary?	Yes
Can the landowner reasonably prove conservation through records, data, other?	Yes
Was less water used regardless of water year?	Yes
Was more water available, but not utilized?	Yes
If a high water use crop (<i>corn</i>) was purposefully or permanently replaced with a low water use crop (<i>sorghum</i>), were the overall acres maintained?	Yes
Was the irrigation year cut short due to hail damage?	Yes
Was extra-ordinary efficiency technology implemented to promote water savings? (<i>ex. sub surface drip irrigation</i>)	Yes
Is the landowner currently enrolled in a WCA?	Yes

*These example answers indicate a potential response that would be indicative of conservation.

Possible Examples of Voluntary Conservation (in accordance with the known interpretation of due consideration)

- In 2015 John Smith implemented subsurface drip irrigation which resulted in less water being applied in 2015 (Normal WY) than in 2016 (Normal WY). John Smith is able to demonstrate this because he can provide reasonable data and a written explanation that proves this was a voluntary act, not reliant on supply availability.

- In 2017, John Smith switched from irrigating corn to irrigating grass for seed, a crop that uses significantly less water, without expanding his irrigated area. This resulted in a demonstrated decline in water used. Thus years 2017-2020 will be excluded from determining the basis of his allocation.
- In 2018, John Smith signed onto a Water Conservation Area, which committed him to a reduction of 10% from his historic use. Thus 2018-2020 will be excluded from determining the basis of his allocation.
- In 2016, John Smith decreased his irrigated acres to purposefully reduce water use. This action was not dependent on water availability, rather the conscious effort to conserve. Similar with moving to a crop rotation that used less water over the long haul.
- Typically John Smith uses approximately 60% of his land to grow corn and 40% of his land for sorghum. Over the last several years he has adjusted these figures and now uses almost 95% of his acreage to grow sorghum, a lower water use crop thus potentially resulting in overall decreased water use.¹

Section 3 – Examples and Criterion that are not Conservation

The following examples and criterion are hypothetical scenarios that may be deemed as not voluntary conservative action by the GMD Board of Directors, on a case by case basis.

Example Criteria for Non-Conservation	Yes/No**
Is this action of conservation voluntary?	No
Can the landowner reasonably prove conservation through records, data, other?	No
Was less water used regardless of water year?	No
Is it considered conservation if less water was used due to an inability to pump?	No
Is it considered conservation if less water used due to a wet water year?	No
Was water saved due to management practices that go beyond standard good practice?	No
Are the low water use years of a crop rotation, part of their normal operations?	No

**These example answers indicate a potential response that would not be indicative of conservation.

Examples of Non-Voluntary Conservation (In accordance with the known interpretation of due consideration)

- In 2014 John Smith utilized a well that had a capacity of approximately 200 gpm. In 2016 that same well is functioning at a capacity of 100 gpm. This reduced capacity and/or extended use period would not be considered an act of voluntary conservation.
- John Smith has utilized a pivot irrigation system and drop nozzles for several years. This would not be deemed voluntary conservation, as this is considered standard, good management.

¹ Total acreage must stay the same in order for this example to be viable. Additionally, crop change to low water use crops due to reduced well capacity would not be considered conservation.

Section 4 – Draft Appeals Process

The following draft appeal processes summarize various avenues that the GMD 1 Board will use to give the required due consideration to past voluntary conservation in the appeal of LEMA allocations. For all appeal options, the appropriate reductions will be applied based off of previous discussions. Lastly, there is currently no deadline for submitting an appeal.

Base Appeal Approach	New Owner/Operator Control With 3 or More Years of Record	New Owner/Operator Control or Irrigation System Change With Less Than 3 Years of Record	No Historic Use Appeal Approach
<ul style="list-style-type: none"> • Appropriate for circumstances where there has <u>not</u> been a control/ownership change. • New owners/operators may utilize the Base Appeal Approach should they agree with and choose to use historical data provided by previous owner. • A minimum of three representative years of use data is required. • Years of demonstrated conservation will be excluded from averaging. • For example, if 2015 and 2016 had demonstrated conservation, then years 2011-2014 and 2017-2020 will be summed and divided by 8 to get the average water use to determine the required reduction. 	<ul style="list-style-type: none"> • Appropriate for circumstances where recent change of control/ownership <u>has</u> taken place with <u>3 or more</u> representative years of history This Appeal process requires written documentation proving such changes and must be deemed acceptable by the Board. (DWR/FSA Records) • Years of demonstrated conservation may be excluded from averaging. • Under new control, the new water use record may be used. • For example, the new ownership ownership/control was for the period 2017-2020, the water use in 2017-2020 will be summed and divided by 4 to determine the average for purposes of determining the required reduction and allocation. 	<ul style="list-style-type: none"> • Appropriate for circumstances where recent change of control/ownership <u>has</u> taken place with <u>less than 3</u> representative years of history. This Appeal process requires written documentation proving such changes and must be deemed acceptable by the Board. If a deficit in annual data is present NIR may be used to supplement data. FCL Reductions will apply to years of historic data and will not apply to NIR. • A current owner who exceeds three years of data, but can provide proof that a new irrigation system change directly resulted in less than three years of reflective operational water use data shall qualify. • Years of demonstrated conservation may be excluded from averaging. • Under new control, the new water use record may be used. • For example, if a new owner only has 2 years of data they may supplement NIR data for the 3rd year. 	<ul style="list-style-type: none"> • Appropriate for circumstances of non-use for 2011-2020 or for a new owner/operator Jan 1st 2021 through Feb. 22nd 2022. NIR would be used for new owner/operator only. FCL Reductions will apply to years of historic data and will not apply to NIR. • Where the appeal is for Jan 1st 2021 through Feb. 22nd 2022, an allocation of NIR will be given where clear boundaries of irrigation can be demonstrated such as an irrigated circle or buried drip tape or consistent flood acres. Other cases will be reviewed if the boundary is not clear or clean, then the next option would be a pump test multiplied by 150 days. • Where a Group that has had use, but also has an individual point of diversion with non-use and is appealed, a pump test to demonstrate the ability to pump is required to provide an allocation of the pump test times 150 days.

Footnotes:

- 1. For all methods the Board reserves the authority to re-evaluate these methods in a future or current LEMA Appeals process within their discretion and may address a special scenario in the current LEMA on a case by case basis.**
2. Where a non-use irrigation right is to be converted to a non-irrigation use, it will be processed according to DWR applicable regulations, which are not based on historic use.
3. Change of Owner/operator control/irrigation system change must have occurred prior to Feb. 22nd, 2022, to qualify for this appeal as indicated at the 2022 Annual Meeting or per Board discretion.
4. NIR Values Per County: Scott = 14.0", Greeley = 14.7", Lane = 13.7", Wallace = 14.3".
5. Appeal applicant must have ownership/control of a water right for a full calendar year.