

# **KANSAS: STATE WATER LAW AND CURRENT ISSUES<sup>1</sup>**

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## **KANSAS WATER LAW**

Current water law in Kansas is based on the prior appropriation doctrine which is summarized by the maximum of "first in time, first in right". This is the underlying principal of the 1945 Water Appropriation Act, which is the major water policy document of Kansas. All water in the state belongs to the state, but is dedicated to the use of the people, subject to the state's control and regulation. The state has a system by which individuals and groups, both public and private, can be granted permission to use water for defined beneficial purposes. Once a permit to appropriate water is granted, a period of time is allowed by the state to develop the water right. After this developmental period is passed, the state certifies the water right. This establishes the total amount of water right, the rate and place of point of diversion, the type of water use, and the place of use. The date of the initial application determines the date of priority of an appropriation right. The water right is a right to use the water; it does not establish ownership of the water. However, a water right in Kansas is a real property right which may be bought or sold and/or severed from the land on which it was originally established.

A water right can be maintained indefinitely, but only if all the terms and conditions are followed. A major condition is the requirement to file a yearly water use report. The water also must be put to beneficial use. If beneficial use of the water does not occur for three successive years without due and sufficient cause, the water right is considered abandoned. The definition of due and sufficient cause for non-use are broad and include such measures as water conservation, adequate rainfall for crop production and improved management practices. During the period of time between the initial approval of the application and the issuance of the final water right certificate, the water use reports are reviewed as part of the certification process. In many instances, the certified water right is issued for less than the original application request. The certification process and the abandonment clause lead many to believe Kansas water rights must be used or they will be lost.

Major state agencies in Kansas with water responsibilities include the Board of Agriculture, Department of Health and Environment (enforcement), The Water Authority, The Water Office (planning), Kansas Geological Survey, and Water

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Resources Research Institution (research). Federal agencies with influence include: The Bureau of Reclamation, Corp of Engineers, Soil Conservation Service, The U.S. Geological Survey. Groundwater Management Districts, Irrigation Districts, Watershed Districts, County Conservation Districts, and Rural Water Districts provide local influence on water policy and enforcement.

Five GMD's exist in Kansas and cover the major irrigated areas in western and south central Kansas. Individuals seeking water rights or changes in water right use must comply with the rules and regulations of the district, in addition to the rules of Kansas. The policies of a GMD, while approved by the state, are the policies developed and adopted by a locally elected board of directors.

## **CURRENT WATER ISSUES**

### **Water Transfer Act**

The Water Transfer Act provides regulatory control for water transfers in excess of 1000 acre foot per year that are moved more than ten miles from the point of diversion. The act provides for a public hearing process conducted by a panel consisting of top officials from the Division of Water Resources, Kansas Water Office and the Kansas Department of Health and Environment. Currently two major urban areas are in the process of preparing water transfer requests.

### **Minimum Desirable Streamflows**

Minimum desirable streamflows have been established on several river systems in Kansas to preserve baseflow for in-stream uses of water quality maintenance, fish, recreation, domestic use, and others. Recent administration of streams have resulted in the shut down of junior water right holders.

### **Intensive Groundwater Control Areas**

The State Board of Agriculture, Division of Water Resources, and GMDs where they exist, have authority over water use. However, if critical issues develop, a process exists to allow establishment IGCA and essentially by request. Three IGCA's have been established in Kansas. The most recent IGCA was established in response to competing uses of water in Wet Walnut River Valley. Major uses are the Cheyenne Bottoms Wildlife Preserve and irrigation, and some municipal use. After public hearings, about 80% of the junior water right holders had their water

allocations reduced to approximately two-thirds of their original amount. The allocation is based on a multi-year appropriation rather than the traditional annual appropriation.

### **SURFACE WATER QUALITY**

Recent establishment of new water quality standards by EPA for various agricultural chemicals have a major impact on municipal water supplies in Kansas, particularly in northeast Kansas. Atrazine usage is especially under scrutiny. This also becomes a multi-state issue as some of the watersheds in the northeast region are shared with Nebraska.

### **IN-STATE WATER COMPACTS**

Kansas has entered into several compacts with neighboring states regarding the administration and/or regulation of shared water systems. However, interpretation and/or administration is sometimes disputed. Currently Kansas and Colorado are engaged in a lawsuit regarding the Ark River Compact. Water shortages and quality issues are also straining compacts dealing with the Republican and Missouri Systems.

### **WATER METERING REQUIREMENTS**

Water metering has been promoted as a management tool for a number of years. New and/or change requests for existing water rights, metering has been required for a number of years. However, recently several GMD have established mandatory metering requirements for all water right holders within their jurisdiction to be phased in over the next few years.