

Approved: Carl Dean Holmes 2-8-95
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on January 20, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Richard Alldritt - Excused
Representative Joann Flower - Excused
Representative Joann Freeborn - Excused
Representative Doug Lawrence - Excused
Representative Steve Lloyd - Excused
Representative Laura McClure - Excused
Representative Dennis McKinney - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Wayland J. Anderson, Division of Water Resources

Others attending: See attached list

Explaining the format as one for a scheduled briefing only, with no hearing or debate, Chairperson Holmes welcomed all freshman legislators and others present to the meeting. He then introduced Wayland J. Anderson to the meeting.

Briefing:
Division of Water Resources

Wayland J. Anderson. Mr. Anderson introduced Lee Rolfs, Senior Legal Counsel for the Division of Water Resources, and invited Committee members to feel free to ask him any questions at the conclusion of his presentation.

Mr. Anderson presented an overview of the Kansas State Department of Water Resources. He prefaced his remarks by explaining that the Division of Water Resources is not to be confused with the Kansas Water Office; Kansas Water Authority; or Kansas Department of Health and Environment. He advised that the Division of Water Resources has nearly 100 full-time, temporary and intermittent staff. (See Attachment #1.)

In reviewing the responsibilities of the Division of Water Resources, Mr. Anderson said there are three primary areas: 1) Water Structures; 2) Interstate Water Matters; and 3) Water Rights.

The budget for FY1995 for the Division of Water Resources was \$6,107,237; said funds are primarily State General Funds and, User Fees and State Water Plan Funds. (See accompanying "pie chart" indicating relative comparison of how funds are utilized.)

Mr. Anderson summarized by reporting that the Division regulates the construction of dams, levees and stream channels modifications from structural, public safety, and environmental perspectives. Additionally, the Division is the primary agency responsible for regulating water use from a quantity of availability standpoint.

Mr. Anderson furnished Committee members with a *Kansas Handbook of Water Rights* which is available from the Division of Water Resources office.

Upon completion of the briefing, the meeting adjourned at 11:50 a.m.

The next meeting is scheduled for January 23, 1995.

KANSAS STATE DEPARTMENT OF AGRICULTURE
DIVISION OF WATER RESOURCES

Wayland J. Anderson, P.E.
Assistant Chief Engineer

OVERVIEW OF
DIVISION RESPONSIBILITIES

Presented to the House Committee on Energy and Natural Resources

January 20, 1995

1/20/95
Energy & Natural Res.
Attachment # 1

Chairman Holmes and members of the committee, thank you for this opportunity to appear and provide an overview of the Division of Water Resources.

The Division of Water Resources is a division of the Kansas Department of Agriculture. The Chief Engineer of the Division of Water Resources is responsible for administering 28 state laws including 4 interstate river compacts, and several other assigned programs, such as the National Flood Insurance Program. All of these duties relate to the management, distribution and regulation of the water resources of the State of Kansas.

The Division of Water Resources is not to be confused with the Kansas Water Office, which primarily does water planning; the Kansas Water Authority, which develops water policy; or the Kansas Department of Health and Environment, whose water related functions deal primarily with the safety of public water supplies, preventing pollution and other water quality issues.

The Division of Water Resources has nearly 100 full time, temporary, and intermittent employees. The Division of Water Resources headquarters is located at 901 S. Kansas Avenue, a block east of the capitol building. The Division also has four field offices located in: South Topeka, Stafford, Stockton, and Garden City, with a regional office in Chanute.

The Division's responsibilities can be divided into three primary areas: I) Water Structures, II) Interstate Water Matters and III) Water Rights.

I. WATER STRUCTURES

First, in the area of Water Structures, the Division of Water Resources' jurisdiction and authority is provided primarily by two acts. The first is the Stream Obstruction Act, K.S.A. 82a-301 et seq., which requires anyone desiring to construct: a dam, an obstruction in a stream or to change the course, cross-section, or current of any stream to obtain a permit from the Chief Engineer. While the Act originally did not grant enforcement authority to the Chief Engineer, the Act was amended in 1978 to provide for the exclusive regulation of the construction, operation and maintenance of dams or other water obstructions to the extent required for the protection of public safety under the jurisdiction of the Division of Water Resources of the State Board of Agriculture and the Chief Engineer.

What this means is that anyone desiring to build a dam which impounds more than 30 acre feet of water, as measured at the top of the dam, or who desires to significantly alter a stream channel by placing an obstruction in it or relocating it, must receive the prior permit of the Chief Engineer. The Division of Water Resources reviews and approves the plans for these projects and inspects the construction of these projects primarily to ensure public safety, protect the property interests of others who might be affected by the projects and assure that the project is environmentally sound.

For instance, the Division of Water Resources reviews plans for dams and field inspects certain aspects of the construction of dams to ensure that they are properly designed and constructed so that they will not fail and pose a hazard to the public safety. Proposed modifications to stream channels are evaluated to determine whether the project would unreasonably increase the velocity of the stream channel flow or otherwise cause undue impact on upstream or downstream neighbors.

The Division of Water Resources also regulates the construction of levees along streams in the State of Kansas. This is done under the authority of K.S.A. 24-126. Any plans for proposed levees are reviewed by the Division of Water Resources to ensure that the levees: will be properly constructed, meet statutory and regulatory guidelines, will not impose unreasonable effects on other landowners and that the public safety is protected.

For construction of dams, levees and stream alteration projects, the Division of Water Resources also serves as the coordinator for the Environmental Coordination Act, K.S.A. 82a-325 *et seq.*, which allows key state agencies to review all proposed projects and submit comments to help eliminate or minimize significant adverse impacts on the environment. The Division then reviews these comments from state agencies and, if necessary, conditions the permits to ensure that the project is environmentally sound.

II. INTERSTATE WATER COMPACTS

The second major area of the Division of Water Resources' activity relates to interstate water compacts and other interstate water activities.

By statute, the Chief Engineer serves as Kansas' representative on four interstate river compacts pertaining to the apportionment of waters and rivers which flow through Kansas and another state. These compacts are as follows: the Republican River Compact (Colorado, Kansas and Nebraska), K.S.A. 82a-518; the Arkansas River Compact (Kansas and Colorado), K.S.A. 82a-520; the Arkansas River Compact (Kansas and Oklahoma), K.S.A. 82a-528; and the Big Blue River Compact (Kansas and Nebraska), K.S.A. 82a-529.

The Chief Engineer also serves as the State of Kansas' representative to the Missouri River Basin Association, which consists of eight states with area in the Missouri River Basin and various Indian tribes and federal agencies. The Missouri River is the largest non-compacted river in the United States. There are many issues being raised in the basin. There are many competing interests for water in the Basin, such as recreation, hydro-power, water supply and navigation. Indian water rights and the protection of endangered species are also major issues. Currently, the most important issue is the Corps of Engineers' proposal to revise the Master Water Control Manual, which determines how the mainstem reservoirs and the rivers are operated.

The duties relating to the interstate compacts range from routine meetings and administrative duties to extensive involvement in the Kansas v. Colorado litigation in the United States Supreme Court. The Division of Water Resources' staff provide considerable technical and legal support to the case, including input of local knowledge and testimony. After 143 days of trial over a two and a half year period, the trial phase (the presentation of evidence) has been completed. In July 1994, the Special Master, the person appointed by the court to hear the trial, filed his report and recommendation with the United States Supreme Court, which will ultimately decide the matter. Oral arguments before the court will likely be held in late March 1995. A decision in this phase of the trial, the liability phase, will hopefully be made by early summer 1995. Thus far, Kansas appears to have won the major issue in the case.

Another compact which has had received lots of attention last year is the Republican River Compact. Issues range from the operation of Harlan County Reservoir in Nebraska to use of water by Nebraska in excess of its compact allocations, primarily due to unregulated post compact well pumping. Since the annual compact meeting last summer, a special compact work session was held to address Kansas' concerns about Nebraska's use of water in excess of its allocations. Another special work session will be held January 19, 1995 in Denver, Colorado.

III. WATER RIGHTS

The third major area of involvement of the Division of Water Resources is in the area of water rights administration. Since January 1, 1978, it has been illegal in the State of Kansas for anyone, other than a domestic user and certain other minor exceptions, to appropriate water without a permit. This means that anyone using water in the State of Kansas for municipal, industrial, irrigation or other non-domestic purposes, must apply for and obtain a permit to use water for that purpose, whether it is groundwater or surface water, or on public or private land. To use water for non-domestic purposes without a water right or permit is a Class C misdemeanor.

The Division of Water Resources has determined over 2,200 vested rights to the use of water. Nearly 42,000 applications to appropriate water have been filed since June 28, 1945, the date the Kansas Water Appropriation Act became effective. The Kansas Water Appropriation Act is the basic legal framework under which the Division of Water Resources processes, approves, certifies and regulates the use of water within the State of Kansas.

During the past two years, the Division of Water Resources, with legislative input and resources, has initiated efforts to address the "backlog" of new applications and changes. These combined efforts have resulted in dramatic improvements in two areas, 1) the number of applications currently under review and, 2) the amount of time to finalize an application.

1. The number of new applications under review has been reduced from 794 on December 31, 1993 to 672 on December 31, 1994, a reduction of 122 pending applications during the year.

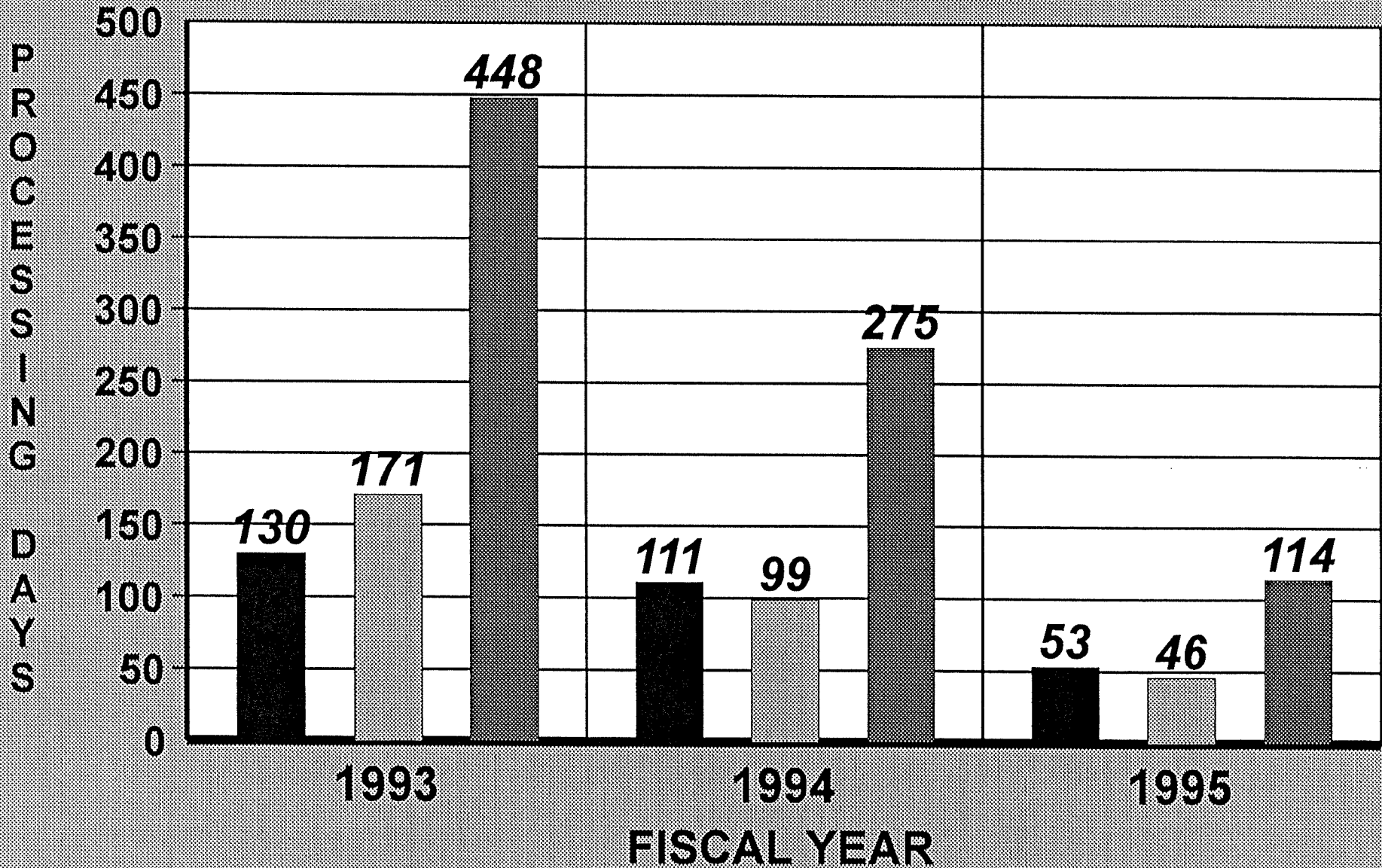
Similarly, the number of applications to change existing water rights have also been reduced from 651 on December 31, 1993 to 463 on December 31, 1994, a reduction of 188 change applications during the year.

2. In addition to reducing the number of applications under review, the Division has significantly reduced the amount of time required to begin initially reviewing an application, the amount of time to complete the review, and subsequently the total time an application is in the Division's possession from initial receipt to final action. The following charts show the relative number of days for applications, both new applications and change applications, for three fiscal years, FY 1993, FY 1994, and 1995.

In every case, the amount of time has been reduced by at least half, so that the Division is approaching 110 days on average to process and finalize new applications and changes.

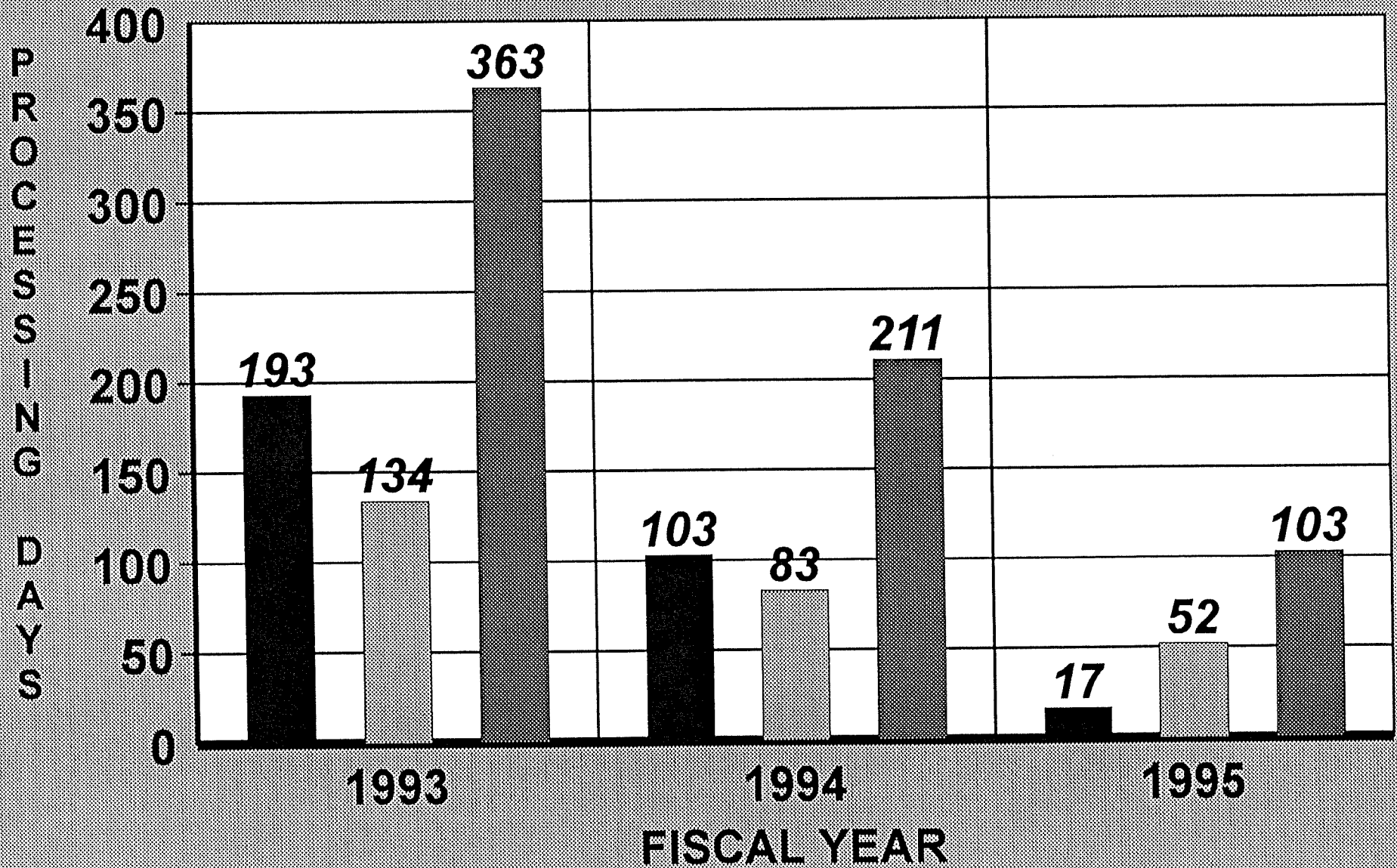
With the continued legislative support to provide funding for overtime by staff, and the two special project worker staff, for FY 1996, we expect to have the processing reduced to less than 100 days for both new applications and changes.

STATUS AND PROCESSING TIME FOR NEW APPLICATIONS FOR PERMIT TO APPROPRIATE WATER



9-1

STATUS AND PROCESSING TIME FOR CHANGE APPLICATIONS



DAYS TO INITIAL REVIEW



DAYS OF PROCESSING



TOTAL TIME

1-7

In addition to the maintenance of a computer system which keeps track of the over 44,000 water right files in the State of Kansas, the Division of Water Resources is involved with many other activities concerning these water rights. These include: (1) administration of water rights during times of shortage to determine which water users have the right to use that water, (2) protection of minimum desirable streamflows on the 23 streams and rivers designated by the Legislature, and (3) working in partnership with the groundwater management districts by reviewing revised management plans, adoption of regulations or creation of intensive groundwater use control areas.

Beginning in 1988, the legislature passed K.S.A. 82a-732, which made the owner of a water right accountable for filing an annual water use report to the Chief Engineer not later than March 1 of each calendar year. Any person failing to file such a complete and accurate report by March 1 is subject to a civil penalty. Any person who files a report knowing it contains false information is guilty of a Class C misdemeanor. In 1988, the Division of Water Resources significantly increased its enforcement of the water use reporting requirement. This effort has paid off because for the last several years compliance with filing water use reports has exceeded 99%. Better water use information was needed by various agencies for research, planning and management.

At the present time, it is estimated that large portions of the State of Kansas are considered to be fully appropriated. In other words, no new permits to appropriate water are being issued in these areas. If someone desires to appropriate water in those areas, the only way a water right can be acquired is by obtaining one from someone who already has one. This may be done by gift, inheritance, purchase, lease or condemnation. Whenever a water right is acquired from another owner, an approval from the Division of Water Resources must be obtained if the new owner desires to change the authorized place of use, the authorized point of diversion, and/or the type of beneficial use. The Division of Water Resources is seeing a significant increase in the filing of change applications. In areas where new permits to appropriate water are still available, they are analyzed on a safe yield basis so that the water supply can be sustained indefinitely.

The Chief Engineer also serves as the chairman of the Water Transfer Hearing Panel which plays an important role in determining whether water transfers should take place in the State of Kansas. A "water transfer" is defined as the diversion and transportation of 2,000 acre feet of water or more per year more than 35 miles.

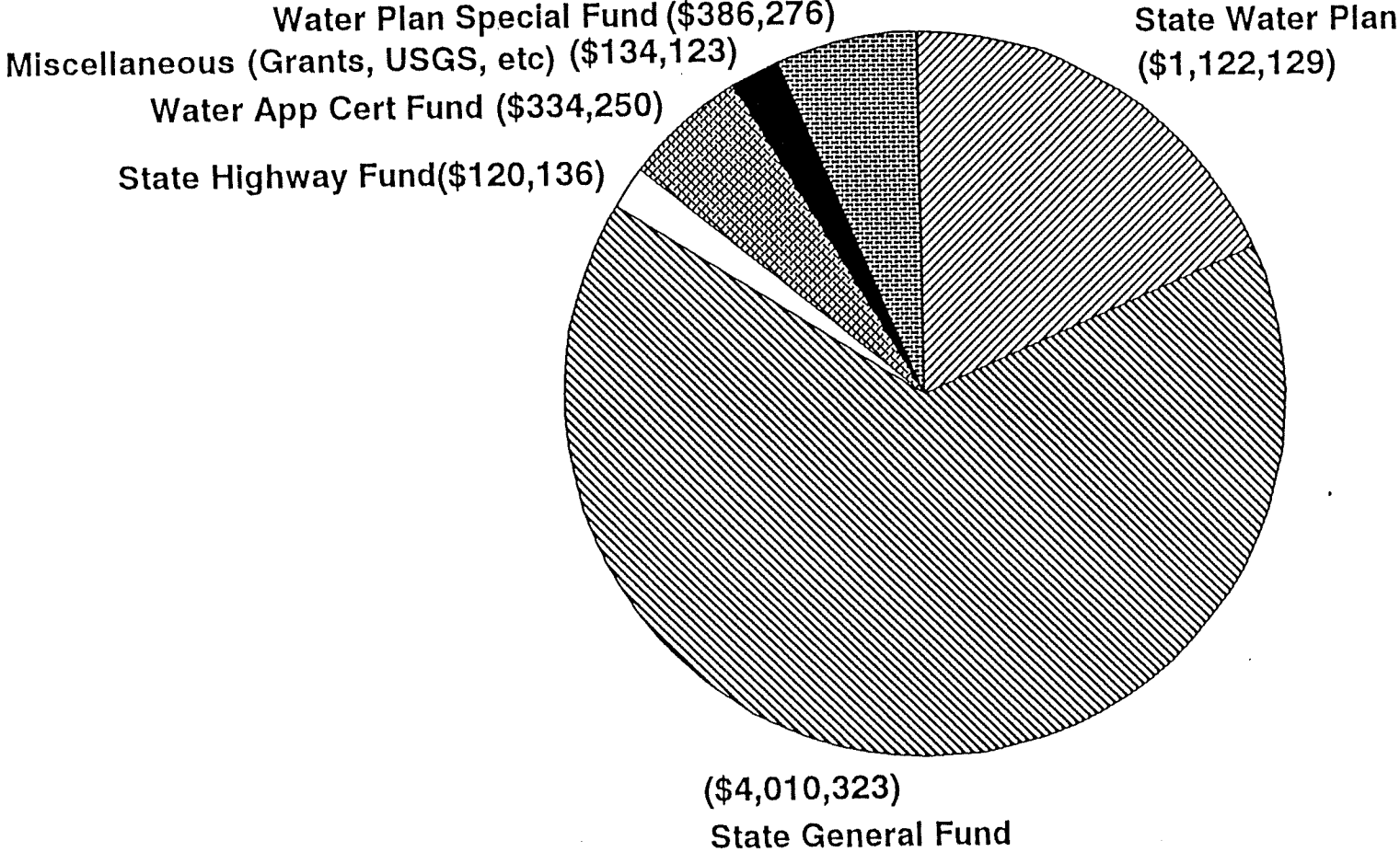
Budget for the Division

The Division of Water Resources' FY95 Budget was \$6,107,237. The sources of these funds are primarily State General Funds and, to a much lesser degree, User Fees and State Water Plan Funds. The accompanying "pie chart" shows the relative comparison.

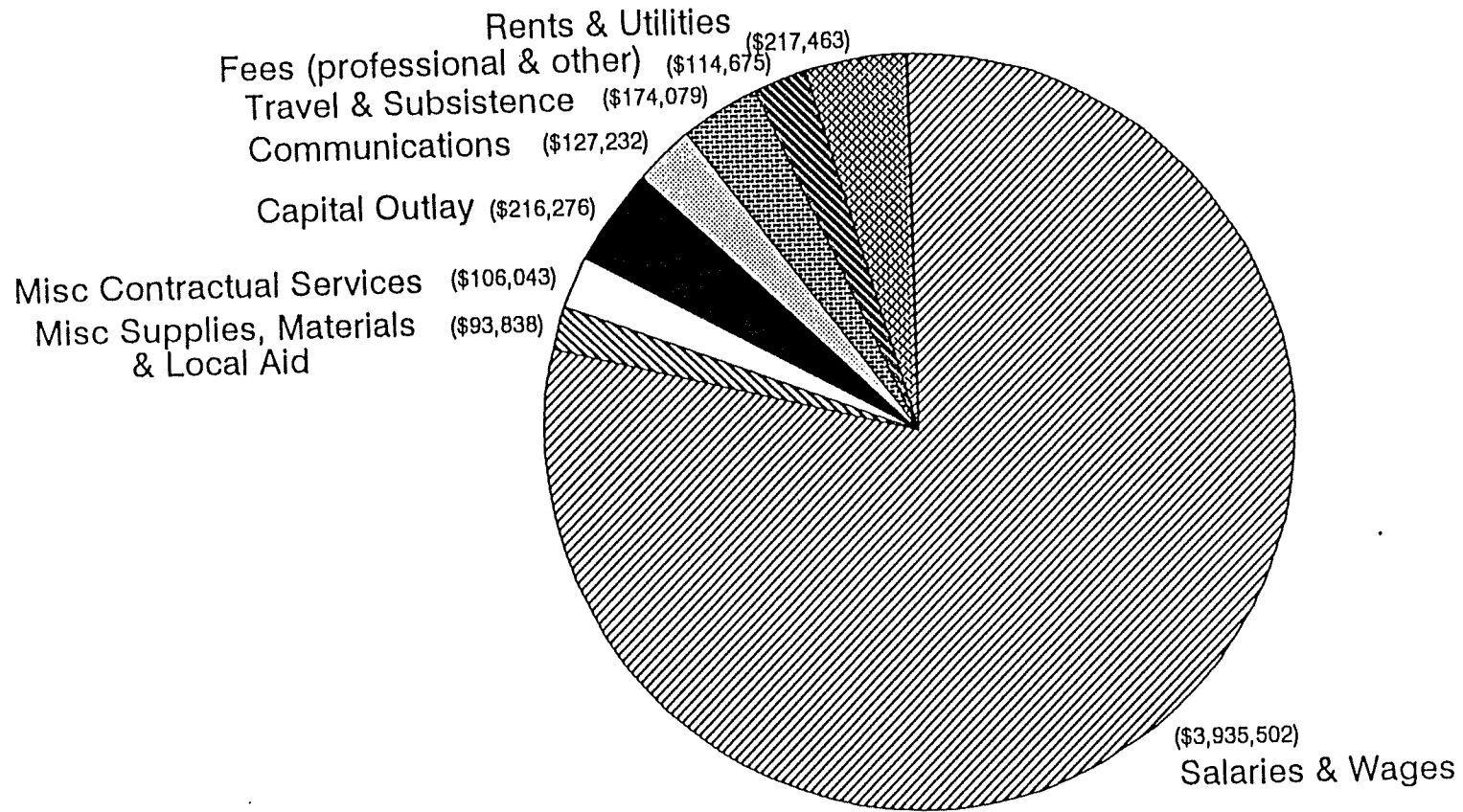
The Division utilizes these funds in a number of ways, primarily for salaries and wages for staff to carry out the responsibilities assigned to it by the Legislature and Governor's Office. Nearly \$4,000,000 are used to pay salaries and wages for staff. The remainder is used for a variety of needs ranging from paying rent to paying for contracts to conduct hydrologic investigations. Please see the second "pie chart" which shows the eight general areas of expenditures.

Funding-Water Resources Summary

Fiscal Year 1995



Water Resources' Estimated Expenditures Fiscal Year 1995



SUMMARY

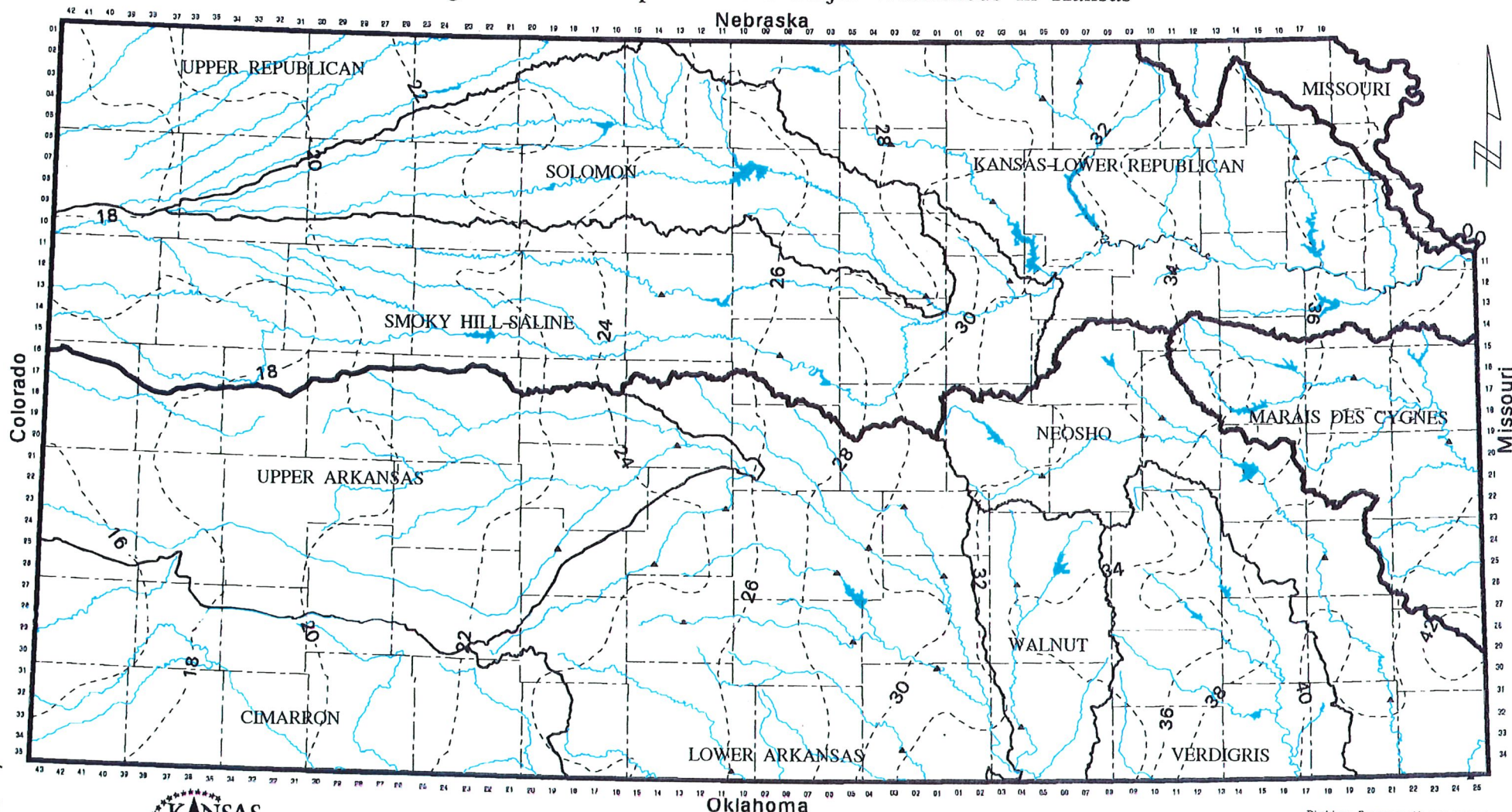
The Division of Water Resources regulates the construction of dams, levees and stream channels modifications from structural, public safety and environmental perspectives.

The Chief Engineer serves as Kansas' representative on four interstate river compacts and plays a significant role in protecting those and other interstate stream flows.

Finally, the Division of Water Resources is the primary agency responsible for regulating water use from a quantity or availability standpoint.

During the past 15 years, the Division's role has shifted from one of development to one of education, conservation and management through vigorous enforcement. The complexity of review of all types of applications has increased dramatically, along with the workload. The Division of Water Resources has become more efficient and taken advantage of advances in technology to do the best job it can with the resources it has available. With the competition for the finite water supply in Kansas continuing to increase, we predict the difficulty and complexity of our work to continue to increase dramatically. The availability of water molded the settlement of this State, and its continued availability in quantity and quality will most definitely shape its future too.

Average Annual Precipitation and Major Watersheds in Kansas



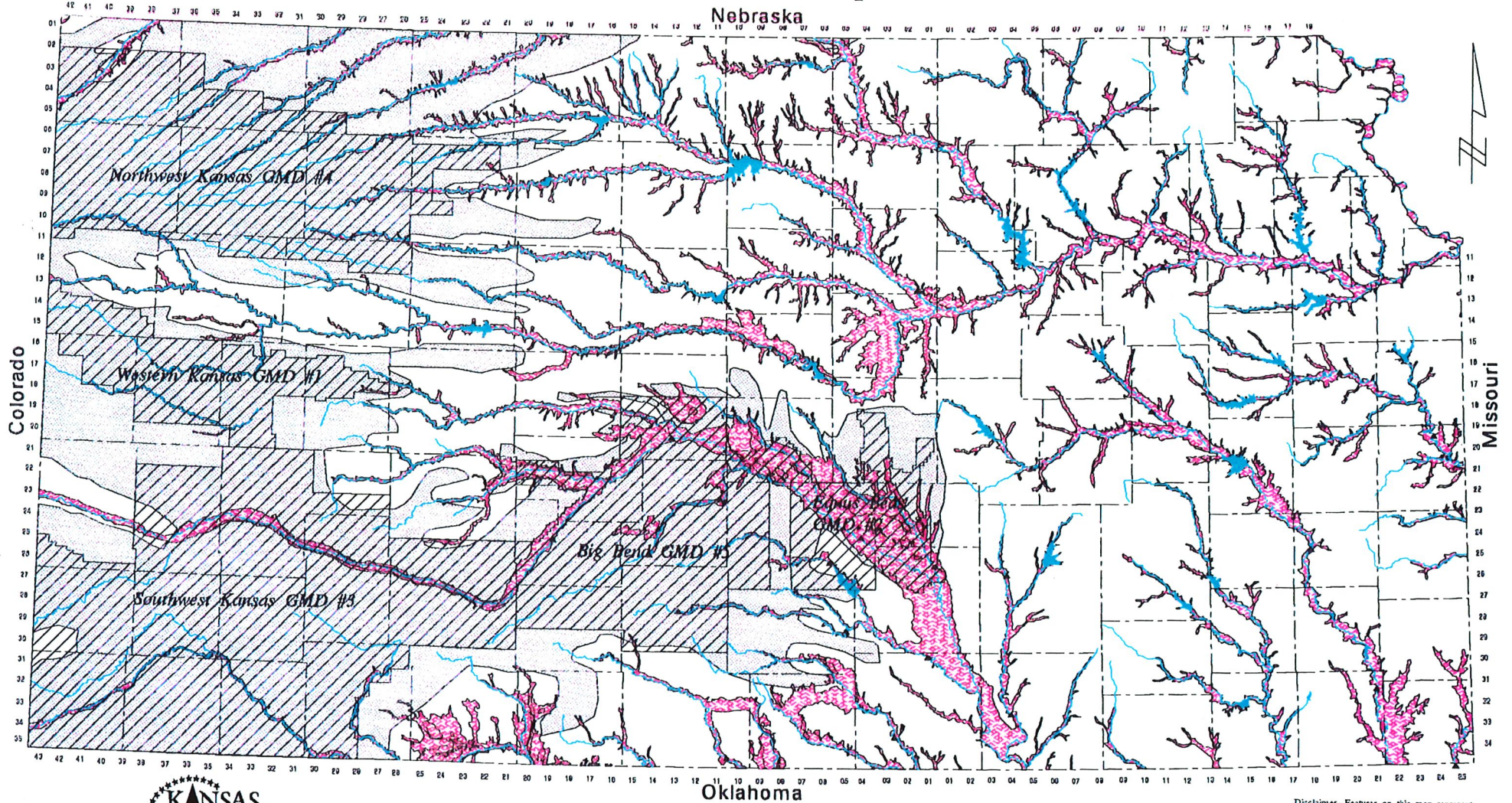
1-12



- Major Streams
- Average Precipitation
- Counties
- Basin Boundaries
- Major Reservoirs
- MDS Gaging Stations

Disclaimer- Features on this map represent conditions as of the date of map and are subject to change. The user is referred to specific policies, regulations, and/or orders of the Chief Engineer.

High Plains and Alluvial Aquifers of Kansas

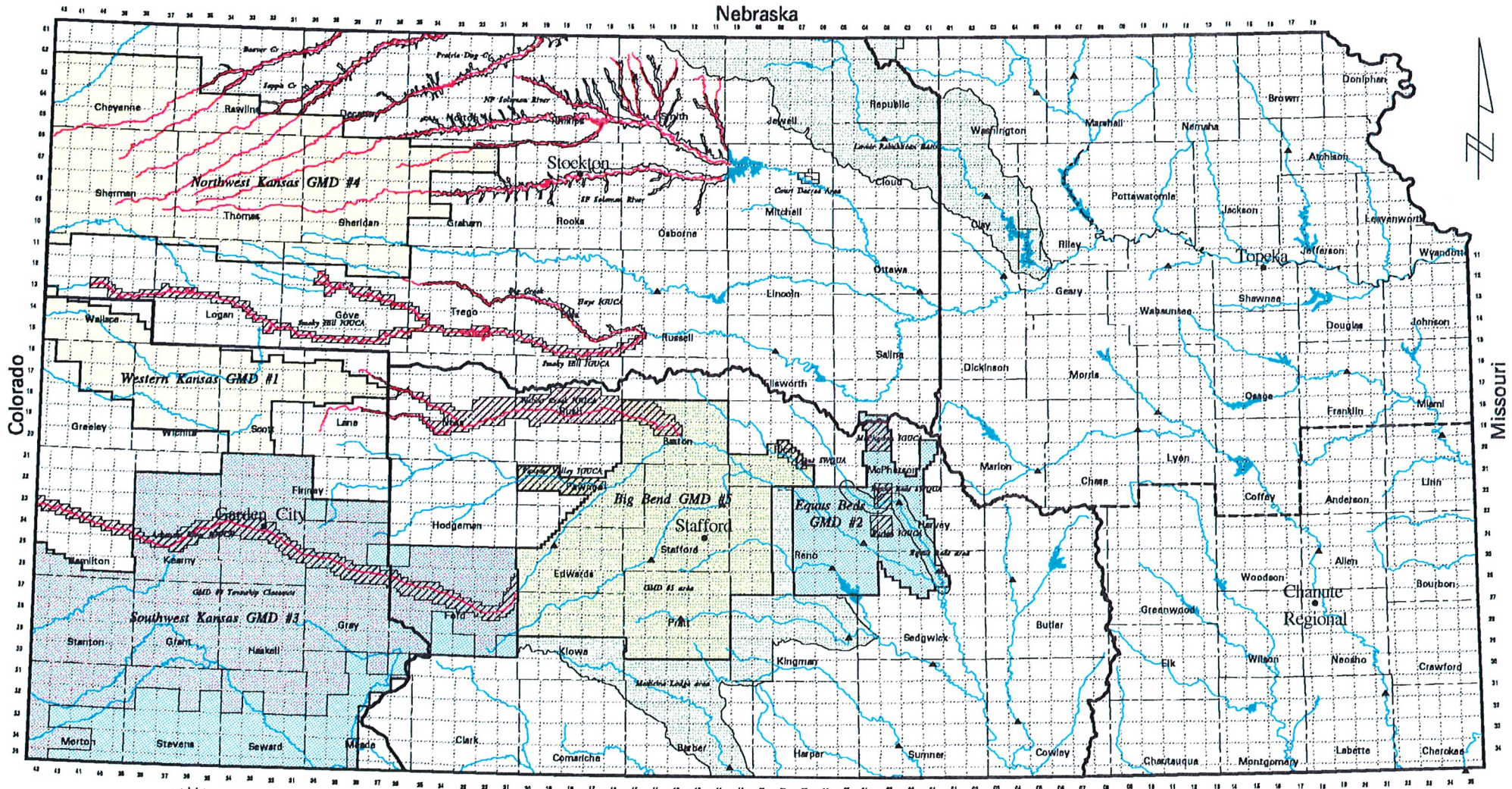


- High Plains Aquifer
- Alluvial Aquifers
- Groundwater Management Districts
- Major Streams
- Counties
- Major Reservoirs
- MDS Gaging Stations

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1-13

Closed and Restricted Areas



- GMD #1 & #5
- GMD #3 & #2
- IGACA or SWQIA

- Closed Area, generally excluding temporary and other small uses in some cases. See policy for details.
- Area subject to Special Restrictions. See policy for restrictions.

Oklahoma

- Closed Streams, generally excluding temporary and other small uses in some cases. See policy for details.
- Restricted Streams, specific restrictions for streams and abutment given in policy.

- County
- Field Office Boundary
- Chanute Regional Boundary

- Field Office
- Name of affected area
- MDS Gaging Station

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11-1