

Approved: 2-1-99
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Steve Morris at 10:00 a.m. on January 28, 1999 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
 Bruce Kinzie, Revisor of Statutes
 Nancy Kippes, Committee Secretary

Conferees appearing before the committee:

David L. Pope, Chief Engineer-Director, Division of Water Resources, Kansas Department of Agriculture

Others attending: (See Attached)

Senator Clark made a motion to approve the minutes of the January 27, 1999 meeting as submitted. Senator Biggs seconded. Motion carried.

David L. Pope, Chief Engineer-Director, Division of Water Resources, Kansas Department of Agriculture, presented an overview briefing on the Administration of Kansas Water Law (Attachment 1). He stated the three major categories of water resources activities were Water Appropriations, Water Structures and Water Management Services.

Under the category of Water Appropriations, discussion centered around the "use it or lose it" policy, which relates directly to the abandonment section of the testimony. Mr. Pope listed ten specific circumstances that are considered due and sufficient cause for non use. It was agreed that better dissemination of this information was needed. In response to a request made by Senator Huelskamp, Mr. Pope stated he would attempt to provide a list of waivers and exemptions that have been granted during the past decade.

The overview of the Division of Water Resources by David Pope was continued to Monday, February 1, 1999.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 1-28-99

NAME	REPRESENTING
Mary Sue Stattelman	KS Dept. of Agriculture
Alicia Durwin	KS Dept. of Agriculture
Ms Burns	KLA
James & Helen	"
Dr. Z. Z.	"
Julie Z.	"
Kyle Fulton	KLA
Bill Smith	KLA
John Lohy	KIA
Brooks Wick	KLA
Dee Estrella	KLA
Dorian Murray	KLA
Frank Harper	KLA
Jocky Donohue	KLA
John Kleystenber	KLA
Michael Braun	KLA
Jonathan Berges	KLA
Max Wehrman	KLA
Off. Bell	KLA

ADMINISTRATION OF KANSAS WATER LAW

Material Provided for Legislative Hearing

Organizational Structure
Appropriation of Water for Beneficial Use
 General Concepts
 Kansas Water Appropriation Act
 Water Appropriation Process
Special Water Issues and Concerns
 Certification
 Subbasin Water Resources Management Program
 Abandonment
Water Structures

by

David L. Pope
Chief Engineer-Director
Division of Water Resources
Kansas Department of Agriculture

January 28, 1999

Senate Agriculture
1-28-99
Attachment 1

KANSAS DEPARTMENT OF AGRICULTURE

Division of Water Resources

Organizational Changes

The Division of Water Resources was established in 1927 with authorizations in 28 Kansas Laws including:

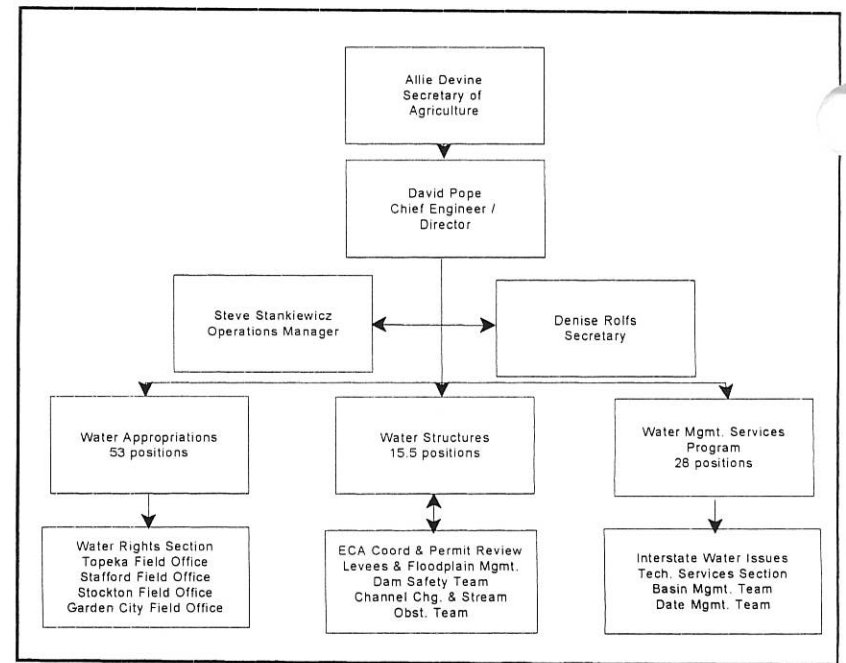
- the Water Appropriation Act
- statutes concerning structures that span or alter streams
- Interstate Water Compacts

Division activities reflect the character of water resources in the State--

arid in the west dominated by groundwater supplies

abundant rainfall in the east with more surface water supplies

Kansas is a downstream state in three of the four interstate river compacts in the state.



The Division of Water Resources activities are divided into three Programs

Water Appropriations - Tom Huntzinger,
Prog. Mgr.

All water in the state is dedicated for use by the people of Kansas on the basis of **prior appropriation**, "first in time, first in right."

Since 1978 it has been illegal to use water for any purpose other than domestic use without a permit or other authorization by the Division of Water Resources which:

- processes permits
- approves changes
- certifies water rights
- regulates the use of water

Water Commissioners in the Field Offices

administer water rights in times of shortage based on the date of the water rights, distributing the available water to satisfy owners of the earliest water rights first.

Water Structures - Sam Sunderraj,
Prog. Mgr.

The Stream Obstructions Act requires a permit from the Division of Water Resources to:

- construct a dam or stream obstruction
- change course, cross section, or the current of a stream or river.

The Division also regulates dam operations and maintenance to insure public safety.

The Environmental Coordination Act designates the Division of Water Resources to coordinate with other agencies to minimize adverse environmental impacts of water control structures.

Provides flood plain management assistance to communities.

Water Management Services - Jim Bagley,
(Acting Prog. Mgr.)

Addresses water management concerns such as--

- ground water declines
- surface water depletions
- hydrological analysis
- data management

Represents Kansas on 4 Interstate River Compacts

- Arkansas River (Colo.)
- Arkansas River (Okla.)
- Republican River (Neb., Colo.)
- Big Blue River (Neb.)

Represents Kansas in the Missouri River Basin Association

APPROPRIATION OF WATER FOR BENEFICIAL USE IN KANSAS

GENERAL CONCEPTS

Water in Kansas is a public resource "... dedicated to the use of the people of the state, subject to the control and regulation of the state..." (K.S.A. 82a-702)

Water Appropriation is-- setting water aside for a specific purpose or use (K.S.A. 82a-707)

"...appropriation shall not constitute ownership of such water, and appropriation rights shall remain subject to the principle of beneficial use..." Therefore this natural resource is made available to use by the people for beneficial purposes as specifically defined by the state.

Prior appropriation doctrine-- first in time, first in right (K.S.A. 82a - 701f and 707c)

Water supplies of the state are distributed to individual users based on the doctrine of prior appropriation which defines each users right to its use, relative to a priority system based on the earliest priority in time. The priority date is established based upon the time the application is filed in the office of the Chief Engineer. A water right with a prior date earlier than another is a senior water right and a later priority date is a junior water right. When water supplies are limited water is made available, without waste, to the most senior water rights up to the limits of the water right before water is made available to a junior water right.

Kansas state law requires the Chief Engineer to administer and enforce water law (K.S.A. 82a-706)

The Chief Engineer as Director of the Division of Water Resources, Kansas Department of Agriculture administers and enforces the law pertaining to beneficial use of water and to control, conserve and regulate its use and distribution. The Chief Engineers authorities serve to protect water rights from any unlawful use of water or changes in use that would decrease the availability of water. Field offices have been established and water commissioners appointed to serve as his agent in water administration and enforcement--they are located in Topeka, Stafford, Stockton, and Garden City.

Rules, regulations and standards (K.S.A. 82a-706a)

The Chief Engineer has the authority to adopt rules, regulations and standards needed to administer or enforce the statutes and to aid in the discharge of his or her duties. Formal rules and regulations were adopted initially in 1978, with several subsequent amendments and additions. Administrative procedures are written as instructions to staff on administration of the rules and regulations.

Groundwater Management Districts (K.S.A. 82a-1020)

Groundwater Management Districts were authorized in 1972. Their purpose is to preserve basic water use doctrine and to determine their destiny with respect to the use of the groundwater insofar as it does not conflict with the basic laws and policies of the state. The Districts operate with elected Boards of Directors that must be landowners or water users within the District. They levy special water use charges and land assessments to fund District activities, develop a water management plan, and adopt rules and regulations. The Chief Engineer determines whether proposed policies and regulations are compatible with the basic laws and policies of the state.

APPROPRIATION OF WATER FOR BENEFICIAL USE IN KANSAS

KANSAS WATER APPROPRIATIONS ACT (K.S.A. 82a Article 7)

Vested Rights -- water uses prior to the "Appropriations Act" (K.S.A. 82a-704a)

Kansas Water Appropriation Act was passed in 1945 with many amendments since then. All verifiable diversions of water for beneficial use prior to June 28, 1945 are called vested rights. All vested rights were determined (quantified) by the Chief Engineer for all who claimed beneficial use of water by July 1, 1980 and could provide records or other verifiable proof of the maximum diversions prior to 1945. These early water uses now quantified as vested rights are senior to all appropriated rights acquired for uses established after the "Appropriations Act" was passed in 1945. All vested rights, the most senior in the state, are considered equal in priority, unless adjudicated through the court system.

Appropriated Rights --water use requires approval by the Chief Engineer (K.S.A. 82a-705a)

The "Appropriations Act" provides a statutory process for obtaining a right to divert water for beneficial use. This process establishes the priority date and other aspects of water use that specifically define the water right. Steps include an application, a permit to divert water, construct diversion works, a requirement to demonstrate beneficial use by which a water right is established. Prior to January 1, 1978 a permit was not required to divert water for any purpose. However, water users were required to file an application and obtain a permit in order to acquire a water right. Water users without a permit or a water right were not entitled to protection by the state from impairment of their right to use water. Since January 1, 1978 it has been unlawful to divert water without a vested or appropriated right, with minor exceptions.

Specific types of beneficial use recognized by the Division of Water Resources are: (KAR 5-1-1)

domestic, stockwatering, municipal, irrigation, industrial, recreational, water power, artificial recharge, hydraulic dredging and contamination remediation.

Domestic use does not need a permit (K.S.A. 82a - 705)

Water used for household and farmstead purposes is termed a domestic use and not required to obtain a permit or water right, although a domestic user may do so to document their use. However a domestic user does acquire a right to use water to the extent of actual use for beneficial purposes. Domestic rights can be vested (pre 1945). Appropriation rights for domestic purposes have a priority date based upon the first use of water or the date an application is filed, whichever is first. In order to protect domestic rights from impairment, either a permitted use is required or some acceptable form of documentation upon which the division can rely to determine priority date and amount of use.

APPROPRIATION OF WATER FOR BENEFICIAL USE IN KANSAS

WATER APPROPRIATION PROCESS (K.S.A. 82a-708a, K.S.A. 82a-711, 712, 713, 714)

A series of steps are necessary to obtain a water right. The steps listed are those a person would follow in acquiring a water right from the Division of Water Resources. Criteria for approval are used and constraints are put on permits and the final water right, as protection to existing water rights and to ensure the new use is reasonable. These criteria and constraints appear as terms, limitations and conditions on the permit and the water right.

Process for Obtaining a Water Right

Steps	Water User	Division of Water Resources (DWR)	Typical Time Frame
1 Apply	Application for permit to divert water for beneficial use Receipt acknowledged by DWR	Assign priority date when received	Up to 2 weeks
2 Permit	Permitted to divert water	Review application and apply approval criteria. Permit approved or rejected by Chief Engineer*	90 days, unless complex
3 Construct	Construct diversion works as defined on permit Notify DWR upon completion of diversion (notice and proof)	Inspect and verify completion of diversion works (compliance check)	User given the remainder of current year plus one more year to complete After receipt of notice and proof
4 Perfect	Develop (perfect) the water right--demonstrating beneficial use by diverting water within the terms of the permit, keeping records and filing annual water use reports.	Verify diversion rate (pump test), and place of use (field inspection) at the end of perfection period	Municipal uses have up to 20 years; all others 5 years. Users can request extension, must justify need Variable
5 Certify	Draft Certificate received with opportunity to appeal to the Chief Engineer	Review water use record, pump test results, field inspection and other data. Chief Engineer quantifies the terms, conditions, and limitations of the water right and issues a draft certificate Chief Engineer considers users appeals and issues final Certificate of Appropriation	Variable 30 days Variable
6 Record	Water right filed with Register of Deeds as real property	The State recognizes the water right as final property right	At time of final issue

*Remaining steps not applicable if the application cannot be approved.

APPROPRIATION OF WATER FOR BENEFICIAL USE IN KANSAS

Criteria and Constraints on Obtaining a Water Right

1. Important items to be submitted with the application are: a) identity of the applicant b) source of water to be used c) maximum rate and annual quantities which water is diverted d) location of the diversion works and the place water will be used e) description of type of beneficial use, and information to establish the reasonable need for the water such as past, present, and projected population if it is municipal use.

2. Water availability in the area surrounding the location of the permit is determined by comparing the amount of water supply available for the year as defined by rules and regulations with the maximum quantity of water already appropriated. This concept applies to surface and groundwater and varies throughout the state.

When the maximum quantity of water appropriated is less than the average amount of water supply replenished in the area for the year, no water is taken from long term storage. Therefore additional water may be available for appropriation in this area.

The area is fully appropriated or over appropriated when the maximum quantity of water appropriated is equal to or more than the average amount of water supply available for appropriation. Water management policies of the past have resulted in full or over appropriation in some areas of Kansas where water has historically been taken from long term aquifer storage in excess of the rate of replenishment.

Safe yield rules limit water availability for new appropriations to the amount of water supply that is replenished-- full appropriation. Regulations describe it as the long term sustainable (average) yield of the water supply. When the appropriations exceed this limit the area is closed to further appropriation.

Allowable depletion rules allow appropriations to exceed the amount of water supply that is replenished with constraints on the rate at which the water in long term storage will deplete over time. When appropriations cause the rate of depletion of long term storage to exceed the regulatory limits, the area is closed to further appropriation.

Water management policies for new appropriations have reflected local input to help determine the public interest. Rules currently in place have closed many areas to further appropriation, particularly in western Kansas.

Groundwater Management Districts set policies within their boundaries and implement them through rules and regulations recommended to the Chief Engineer. Many areas are over appropriated resulting from early development prior to allowable constraints, even though policies now in place may limit new appropriation to a safe yield.

Groundwater Management District No. 1 has recently proposed a safe yield policy-- a change from the past and current allowable depletion policy.

Groundwater Management Districts No. 2 and No. 5 have safe yield policies.

Groundwater Management District No. 3 has an allowable depletion policy that limits the rate of depletion to 40% of aquifer storage within 25 years.

Groundwater Management District No. 4 currently has a safe yield policy but had an allowable depletion policy until 1991.

Some areas are designated as intensive groundwater use control areas (IGUCA) with special controls unique to them. These areas of the state have been identified either at the request of a Groundwater Management Districts or by the Division of Water Resources to address problems related to water supply that require special protection and regulation.

In all other areas, management policies are set by the state and rules and regulations of the Chief Engineer

apply. These areas are under safe yield rules. Some areas of the state were fully appropriated at the time safe yield was imposed; these areas were closed to further appropriations.

Impairment of other water rights in the area is a major consideration in the approval of a proposed permit. Vested and senior water rights are protected from economic and operational damage by junior water rights. Spacing of wells in an aquifer or diversion points in a stream must be spaced a sufficient distance apart to not interfere with one another. Reasonable decreases in stream flow or drop in groundwater level are expected. However, the rate of diversion of junior water rights must be within limits that will not decrease the rate of diversion of senior rights in the area to the extent that economic or operational damages occur to senior water rights. Rules apply to spacing in all areas.

(K.S.A. 5-4-4) Well Spacing - the spacing between wells shall be sufficient to prevent direct impairment between wells located in a common source of supply or hydraulically connected sources of supply and to protect the public interest. The following guidelines shall be used to determine the spacing required between wells permitted by the Chief Engineer in a common source of supply, unless it is determined by the Chief Engineer in any specific instance that the spacing guidelines set forth in this regulation are insufficient to prevent direct impairment or are not necessary to prevent direct impairment.

MINIMUM SPACING BETWEEN PROPOSED WELLS AND NON-DOMESTIC PERMITTED WELLS	AQUIFER SOURCE
4 miles	confined Dakota
½ mile	unconfined Dakota
1,320 feet	any others
MINIMUM DISTANCE CONSTRAINTS BETWEEN PROPOSED WELLS AND DOMESTIC WELLS**	AQUIFER SOURCE
½ mile	confined Dakota
1,320 feet	unconfined Dakota
660 feet	any others

**Exception is if the domestic well owner has given permission to reduce the spacing interval. Changes in the point of diversion must meet the above requirements or not decrease distances to other wells more than 300 feet.

3. Construction of the diversion works is the initial demonstration of intent to divert water for beneficial use. Extensions on the time to complete diversion works is often granted when reasonable justification for delay is provided. However, repeated extensions are questioned more intensely after the second request.

4. The time to perfect (develop) the water right is one of the most important times in the permit process. The demonstration of ability to use water beneficially during this period provides the factual basis for the terms, conditions and limitations of the certification, within the limits of those stated on the permit. If the user fails to demonstrate beneficial use to the full extent of the permit during this time, the water right has not been fully developed and will be certified for a lesser amount. However the user can request an extension of time to perfect if justification can be shown that the user did not have a valid opportunity to fully demonstrate beneficial use. Examples would be wet years when crops did not need much irrigation or the water supply was abnormally limited.

5. Users have an opportunity to provide information and review the terms, conditions, and limitations of the water right and discuss them with the Chief Engineer. Terms, conditions, and limitations of a water right are: a) rate of diversion, b) maximum authorized quantity, c) place of use, and d) type of use. After the certificate is issued (and any factual appeal is resolved), the terms, conditions and limitations are final— changes may be made only with approval of the Chief Engineer.

6. The water right is recorded with the county similar to other real estate. It is a real property right that can be used separate from the land, purchased or sold, transfer ownership, inherited, and leased. However any modification in the location or purpose of use requires approval of the change to the water right.

APPROPRIATION OF WATER FOR BENEFICIAL USE IN KANSAS

WATER APPROPRIATION PROCESS (continued)

Water use reporting (K.S.A. 82a-732)

Beneficial use of water within the terms, limitations, and conditions of a permit or water right is a fundamental principle of water administration. These constraints on permits and water rights ensure that the protections provided by the State are not compromised by the unexpected use of additional quantities of water, particularly in areas where water supplies are limited or the possibility of impairment is great. Water use reporting provides documentation of the quantity of water being used in the state. The owner of a water right or permit, except for domestic use, must file an annual water use report with the Division of Water Resources by March 1 each year. Records of annual water use are maintained by the Division of Water Resources for each vested and appropriation right.

Changes to Existing Water Rights (K.S.A. 82a-708b)

The Certificate to Appropriate Water defines the final terms, conditions, and limitations of a water right. However changes may be made to the point of diversion, place of use, or the type of use if the proposed change relates to the same local source of supply and will not impair other water rights. It is the users responsibility to demonstrate to the Chief Engineer that such change will be within the same of supply and that it will not impair others. Change requests are processed in a similar manner to original applications for a water right, but the water right maintains the same priority date.

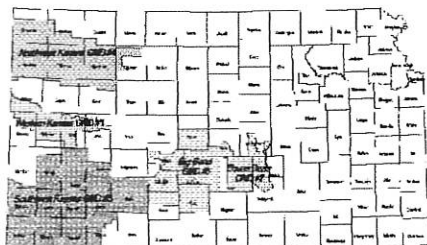
Spacing and amount of consumptive use are key criteria in assessing the potential for impairment resulting from a proposed change. Consumptive use is prevented from increasing substantially so the "net" effect of the change does not cause an additional demand on the source of supply.

Water Conservation (K.S.A. 82a-733 and KAR 5-7-4)

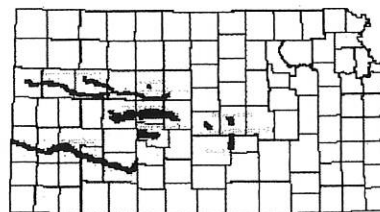
Conservation plans and implementation of conservation practices may be required for approval of an application for a permit. The plans are intended to assure public benefit under circumstances of :

1) drought, 2) water use that is higher than peers, and 3) when state supported loans, grants, or cost share are involved. Groundwater Management Districts and the Chief Engineer approve conservation plans from within the Groundwater Management District Boundaries.

Water users who prefer not to divert water in a closed area may enroll in the water rights conservation program. The user agrees to suspend water use authorized by the water right for the duration of the agreement. These water rights are protected from loss of the right for non-use.



Groundwater Management Districts provide local water management leadership



Intensive groundwater use control areas (IGUCA) have been identified to have special vulnerabilities that require special protections.

SPECIAL ISSUES AND CONCERNS

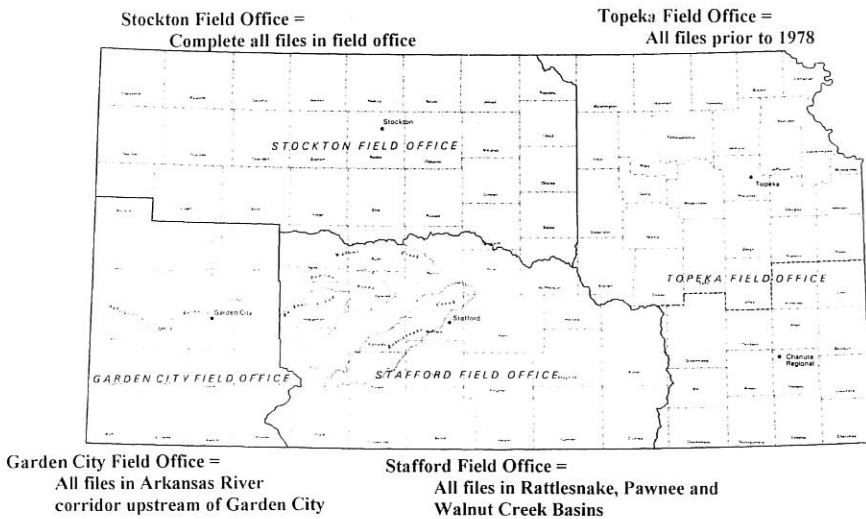
CERTIFICATION (“Project Zeroed Out”)

There are about 31,000 water right files with permits that have not been certified. Out of that number there remain about 6,000 permitted water rights needing a certificate of appropriation that gives the water right holder final authorization to divert water for beneficial use. Some of these permits have been in use for 20 and 30 years and the Division of Water Resources will be working closely with the owners and tenants to review these water rights files, particularly for the old permits that need certified.

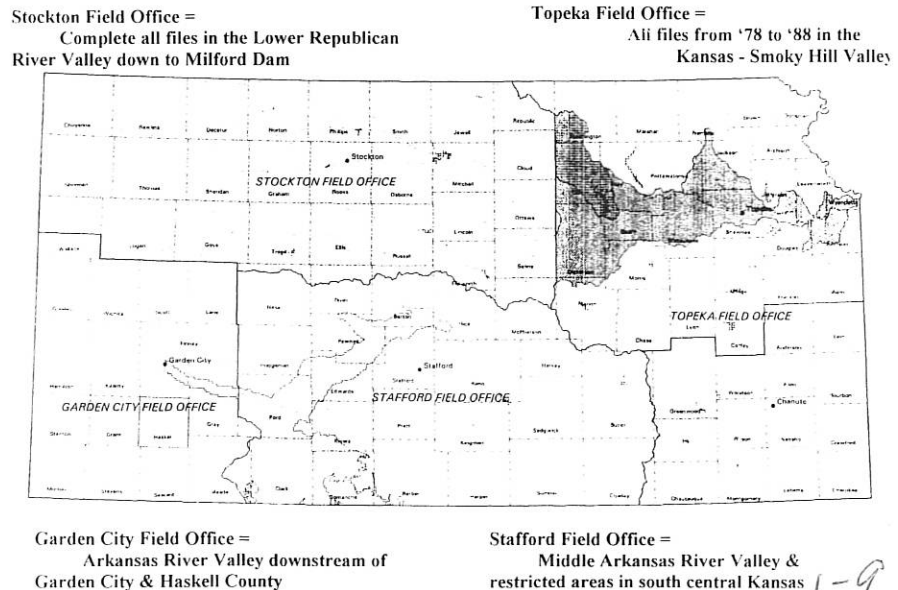
Water right certification sets forth the final amount of a water right. Files for all permits need to be reviewed to ensure that all pertinent information is updated. Some of these permitted water rights will require an appointment with owners for a field inspection to determine appropriate locations of wells, pumping plant characteristics, and crop land areas.

When demand for water exceeds the supply available it is important to clear up uncertainties about water rights. In areas that are fully appropriated water supply needs must be met from the existing water rights. Certification of these permits will assist in protecting the water rights against impairment, especially in times of shortage. A Certificate of Appropriation for Beneficial Use of Water can be very important when water rights relative to their authorized place of use are transferred or water rights are sold.

Phase I, Oct. '97 to Sept. '98



Phase II, Oct. '98 to Sept. '99



SPECIAL WATER ISSUES AND CONCERNS

ABANDONMENT (K.S.A. 82a-718)

Water is a life sustaining natural resource. Every Kansan is entitled to the opportunity to beneficially use the water resource to the limits of its availability. If water is not to be used as prescribed under the terms, conditions, and limitations of a water right the owner must show due and sufficient cause for non use so as not to deprive others that opportunity. Prior appropriation doctrine and related statutes define water held by the state as a public resource to be beneficially used by the people. This fact obligates the Chief Engineer to protect the water right owners opportunity to use the water beneficially. It is further provided in the statutes that if the water resource is not used beneficially for 3 consecutive years without due and sufficient cause the owner shall forfeit his right to its use in order to ensure others are not deprived of the opportunity to use it for their beneficial use.

The concept of beneficial use is considered so important that it is defined specifically in the statutes by type of use, some of which are non consumptive. However, it is also recognized that users may endure circumstances that would prevent them from reasonably maintaining beneficial use even after three years. Therefore, regulations set forth a number of acceptable reasons (due and sufficient cause) for not using water beneficially that will protect the water right against forfeiture.

Specific circumstances that are considered due and sufficient cause for non use (KAR 5-7-1)

- 1) Adequate moisture is provided by natural precipitation for production of crops normally requiring full or partial irrigation within the region of the state in which the place of use is located
- 2) A water right has been established or is in the process of being perfected for use of water from one or more preferred sources in which a supply is available currently but is likely to be depleted during periods of drought
- 3) water is not available from the source of water supply for the authorized use at times needed
- 4) water use is temporarily discontinued by the owner for a definite period of time to permit soil, moisture and water conservation, as documented by:
 - a) enrollment in a multi year federal or state conservation program
 - b) enrollment in the Division of Water Resources water right conservation program (KAR 5-7-4)
 - c) any other conservation method acceptable to the Chief Engineer in advance
- 5) management and conservation practices are being applied which require the use of less water than authorized
- 6) a well has been previously approved as a standby well
- 7) physical problems exist with the point of diversion, distribution system, place of use or operator; reasonable efforts must be taken to correct the problems
- 8) conditions exist beyond the control of the owner which prevent access to the place of use or point of diversion; reasonable efforts must be taken to gain access
- 9) an alternate source of water supply was not needed and was not used because the primary source was adequate
- 10) any other reason constituting due and sufficient cause as determined by the Chief Engineer

Every effort is made to provide a way to protect a water right if the circumstances for non use are legitimate. However, the Division of Water Resources is obligated to ensure that negligence or selfish interests are not depriving others of an opportunity for beneficial use of water.

The water right owner is statutorily entitled to a notice and hearing, before a final decision is made on abandonment. The Division is not proactively seeking abandoned water rights. However, water rights that are part of a property transaction, seeking a certificate of appropriation, or change application are examples of circumstances when the water right must be in good standing and not abandoned for the transaction to proceed.

Strategy for Addressing Blatant Recurring Overpumping

1. Identification of blatant and recurring overpumpers and compilation of facts from 1997 and 98 irrigation seasons.

DWR selects a given number of files whose water use reports reflect the most blatant exceedence of authorized quantities as determined from the 1997 water use reports.
DWR and GMD field personnel conduct field observations and read meters for 1998 irrigation season.
DWR and GMD staff compile available information and discuss water use with water right owners to verify water use reports for 1997 and 98 irrigation seasons.
DWR sends legal notice to overpumpers explaining requirements of compliance and enforcement.

2. Consultation and compliance planning during November 98-January 99.

Advisory panel (DWR, GMD, KWO, KSU Ext.) recommends a compliance strategy for each owner.
DWR, KWO and GMD provide consultation with water right owners to design and agree on a conservation plan that includes specific solutions for overpumping.
Owner signs an agreement to implement the conservation plan and its overpumping solutions.

3. Implementation of conservation plan and compliance process for 1999 irrigation season.

Require meter inspection and test by DWR before irrigation season starts
Require monthly water use reports by owner
GMD and DWR conduct unannounced compliance checks as needed

3a. Owner complies with authorized quantity and successfully implements compliance actions.

3b. Owner exceeds authorized quantity-- required to cease pumping immediately or immediate administrative action is taken for blatant and recurring overpumping which is a violation of the terms, conditions, and limitations of the permit

4. Compliance enforcement process during 2000 irrigation season.

4a. Owner continues to successfully implement compliance plans, monthly water use reports no longer required. Owner required to stay within authorized quantity.

4b. Require monthly water use reports by owner. If owner exceeds authorized quantity— required to cease pumping immediately or administrative action is taken for blatant and recurring overpumping which is a violation of the terms, conditions and limitations of the permit. Suspension of water right for the following season or other appropriate enforcement action will be considered.

5. Enforcement follow-up during 2001 irrigation season.

5a. No enforcement required if previous seasons use is in compliance.

5b. If water right is suspended no use is allowed.

5c. If not suspended, enforcement follow up as consequence of other appropriate enforcement actions required. Monthly water use report required by owner.

6. Continuation of enforcement follow-up during 2002 irrigation season.

6a. No enforcement required if use is in compliance from 4a above.

6b. Reinstated if suspended in 5b, annual water use report required. Must successfully implement compliance actions and stay within authorized quantity.

6c. If not suspended in 5c and authorized quantity was exceeded-- required to cease pumping immediately or suffer immediate dismissal. Water right is suspended for the following season.

7. Conclusion of enforcement and water right dismissal during 2003 irrigation season.

7a. No enforcement required if use is in compliance from 4a above.

7b. If authorized quantity is exceeded after reinstatement in 6b, water right is dismissed and well is permanently disabled.

7c. Water right suspended for this season as consequence of previous seasons failure to stay within authorized quantity.

8. Conclusion of enforcement and water right dismissal during 2004 irrigation season.

8b. Water right reinstated, annual water use report required. Must stay within authorized quantity. If authorized quantity is exceeded after restatement in 7c, water right is dismissed and well is permanently disabled.

SPECIAL ISSUES AND CONCERNS

SUBBASIN WATER RESOURCES MANAGEMENT PROGRAM

The Division of Water Resources is charged with enforcing and administering Kansas laws pertaining to the beneficial use of water and to control, conserve, regulate, allot and aid in the distribution of the water resources of the state for the benefits and beneficial uses of all of its inhabitants.

The Division of Water Resources initiated a Subbasin Water Resources Management Program (Program) to develop comprehensive, long-term water management strategies to implement solutions to water problems within the framework of existing state law. It is a proactive program to address issues identified in the State Water Plan, in contrast to historic regulatory programs that have been reactive in nature.

This program utilizes a hydrologic basin approach to deal with groundwater declines, streamflow depletions and related water quality concerns in targeted basins. Community involvement is a crucial component in the philosophy of this program. It is designed to be holistic in nature so that the best available technical information and expertise is combined with a cooperative effort by local, state, federal government agencies and input from interested parties and citizens affected by the program. This is accomplished by creating basin teams of environmental scientists who can focus on one basin, become thoroughly familiar with the basin from a geologic and hydrologic perspective, establish a working relationship with interested parties, enhance water resources education efforts, identify water resources issues, develop strategies to address issues and then implement those strategies. The result of this program will be the development and implementation of a comprehensive water management strategy to address identified water issues in each targeted basin. Enforcement of water right conditions in each targeted basin will encourage the best possible use of the available water resources.

The methodology consists of 5 phases:

- Phase I Compile and review all existing data and information about a subbasin
- Phase II Collect and compile additional data
- Phase III Analyze data, including the development of an appropriate hydrologic computer model to be used as a tool, if necessary
- Phase IV Develop new, comprehensive, long term management strategies which address the water resources issues in the basin
- Phase V Implement the new management strategies

To date, the Program has established projects in four areas of the state:

- 1) Rattlesnake Creek Subbasin - began summer 1993 Current Status: Phase IV
- 2) Middle Arkansas River Subbasin - began winter 1997 Current Status: Phase II and III
- 3) Pawnee and Buckner Creek Subbasins - began summer 1994 Current Status: Phase III
- 4) Upper Arkansas River IGUCA - began December 1996 Current Status: Phases II and III
- 5) Solomon River Basin and Smoky Hill - Saline River Basin Planned for the future

SPECIAL WATER ISSUES AND CONCERNS

ABANDONMENT (K.S.A. 82a-718)

Water is a life sustaining natural resource. Every Kansan is entitled to the opportunity to beneficially use the water resource to the limits of its availability. If water is not to be used as prescribed under the terms, conditions, and limitations of a water right the owner must show due and sufficient cause for non use so as not to deprive others that opportunity. Prior appropriation doctrine and related statutes define water held by the state as a public resource to be beneficially used by the people. This fact obligates the Chief Engineer to protect the water right owners opportunity to use the water beneficially. It is further provided in the statutes that if the water resource is not used beneficially for 3 consecutive years without due and sufficient cause the owner shall forfeit his right to its use in order to ensure others are not deprived of the opportunity to use it for their beneficial use.

The concept of beneficial use is considered so important that it is defined in the statutes by type of use, some of which are non consumptive. However, it is also recognized that users may endure circumstances that would prevent them from reasonably maintaining beneficial use even after three years. Therefore, regulations set forth a number of acceptable reasons (due and sufficient cause) for not using water that will protect the water right against forfeiture.

Specific circumstances that are considered due and sufficient cause for non use: (KAR 5-7-1)

- 1) Adequate moisture is provided by natural precipitation for production of crops normally requiring full or partial irrigation within the region of the state in which the place of use is located
- 2) A water right has been established or is in the process of being perfected for use of water from one or more preferred sources in which a supply is available currently but is likely to be depleted during periods of drought
- 3) water is not available from the source of water supply for the authorized use at times needed
- 4) water use is temporarily discontinued by the owner for a definite period of time to permit soil, moisture and water conservation, as documented by:
 - a) enrollment in a multi year federal or state conservation program
 - b) enrollment in the Division of Water Resources water right conservation program (KAR 5-7-4)
 - c) any other conservation method acceptable to the Chief Engineer in advance
- 5) management and conservation practices are being applied which require the use of less water than authorized
- 6) a well has been previously approved as a standby well
- 7) physical problems exist with the point of diversion, distribution system, place of use or operator; reasonable efforts must be taken to correct the problems
- 8) conditions exist beyond the control of the owner which prevent access to the place of use or point of diversion; reasonable efforts must be taken to gain access
- 9) an alternate source of water supply was not needed and was not used because the primary source was adequate
- 10) any other reason constituting due and sufficient cause as determined by the Chief Engineer

Every effort is made to provide a way to protect a water right if the circumstances for non use are legitimate. However, the Division of Water Resources is obligated to ensure that negligence or selfish interests are not depriving others of an opportunity for beneficial use of water.

The water right owner is statutorily entitled to a notice and hearing to allow full consideration of all evidence, before a final decision is made on abandonment. The Division is not proactively seeking abandoned water rights. However, water rights that are part of a property transaction, seeking a certificate of appropriation, or change application are examples of circumstances when the water right must be in good standing and not abandoned for the transition proceed.

SUMMARY REPORT OF WATER BANKING IN KANSAS

Water Banking in Kansas was identified in the 1995 Kansas State Water Plan as a concept to be studied. The State Water Plan identified the Division of Water Resources (DWR) as the agency to begin the study. As a result, a Water Banking Task Force was formed in February of 1996, composed of members who represent municipal and agricultural interests, the Kansas Water Office (KWO), Groundwater Management Districts (GMD), Basin Advisory Committees, and Assurance Districts. Additionally, a sub-committee of members with surface water concerns was formed.

After numerous meetings and deliberation, a draft Report of the Water Banking Task Force was compiled in October of 1998. An attachment of recommendations specific to surface water banking will be made a part of the final Report and submitted to the Secretary of Agriculture and the Chief Engineer, Division of Water Resources.

The Task Force found that water banking can be a viable management tool which will allow water users several options not currently available, and that it will create an incentive for conservation, while putting water to its most economic and beneficial use.

It is recommended by the Task Force that up to five (5) Pilot Water Banks should be allowed to form. These Pilot Banks will be allowed to operate for a period of up to seven years, after which time they will be evaluated to determine if they are achieving the goals of water banking as described in the State Water Plan and those goals specific to individual pilot banks.

The Task Force identified four (4) main water bank functions. These include deposits of water into a water bank, leases of water from a water bank, the establishment of personal safe deposit box accounts for water right holders, and a bulletin board service to facilitate permanent sales of water rights. Depositors will receive financial compensation for depositing water into a water bank, while those who wish to lease water will pay the bank for the right to use water for the term of a lease agreement. A portion of the water placed into a water bank will be retained by the bank for the length of the deposit to create a conservation savings. Water right holders may place a portion of unused water from their own water rights into a safe deposit box for subsequent personal use.

Beginning in December, the Report of the Water Banking Task Force has been distributed to interested parties in Kansas. There have been several meetings held with GMB Boards, Basin Advisory Committees, Assurance Districts, and other interested groups. The Task Force is now collecting public input and will finalize the Report before submitting it to the Secretary of Agriculture and the Chief Engineer for their consideration. Public comments should be received by March 1, 1999.

If water banking is supported by The Department of Agriculture and the Division of Water Resources, proposed legislation will be drafted which would create a Water Banking Act for debate in the 2000 Legislative Session.

Water Structures Program

Obstructions in Streams Act: - (KSA 82a-301 to 305a) Regulates man-made water projects that would change or diminish the course, current, or cross section of a stream or water course in the state. Compliance and enforcement with this program are carried through the permitting process and inspections.

Permits are issued for construction or modification of:

- Bridges
- Culverts
- Low water crossings
- Low head Dams
- Dams over 30 acre-feet
- Pipeline crossings
- Changes in channels of streams
- Boat ramps
- Sandplants in/near streams

Kansas Levee Law: - (KSA 24-126)

Permits are issued for construction of:

- Levees
- Fills in Floodplains

Environmental Coordination Act: - (KSA 82a-325 to 327)

All water development projects permitted by the department are coordinated with 7 state agencies to consider the environmental effects of the plan/project before approval.

Floodplain Management:

- Designated National Floodplain Insurance Program (NFIP) Coordinating Agency by Gubernatorial Executive Order
- By agreement with the Federal Emergency Management Agency (FEMA), assist FEMA in carrying out the NFIP program in participating communities in KS.
- Assist in floodplain management studies/mapping as part of the NFIP program and as part of the State Water Plan.

Watershed District Act: - (KSA 24-1201 to 1237)

- Coordinate approval of Formation of Districts with Secretary of State
- Approve General Plan (preliminary engineering report)
- Approve modifications to General Plan

DAMS:

Hazard Classifications:

- class "c" - failure of dam has potential for extensive loss of life etc.
- class "b" - failure of dam has potential for loss of few lives etc.
- class "a" - failure of dam has no potential for loss of life etc.
- In 1997, a total of 34 dams were rated "unsafe" by the department
- In 1976 the National Dam Safety Program Act was passed with monies authorized for assistance to states
- Starting in 1998, Federal Funds have been appropriated and allocated to states based on a state's program and number of regulated dams - Kansas is to receive \$75,139

Water Structures Program

ACTIVITIES

FLOODPLAIN MANAGEMENT:

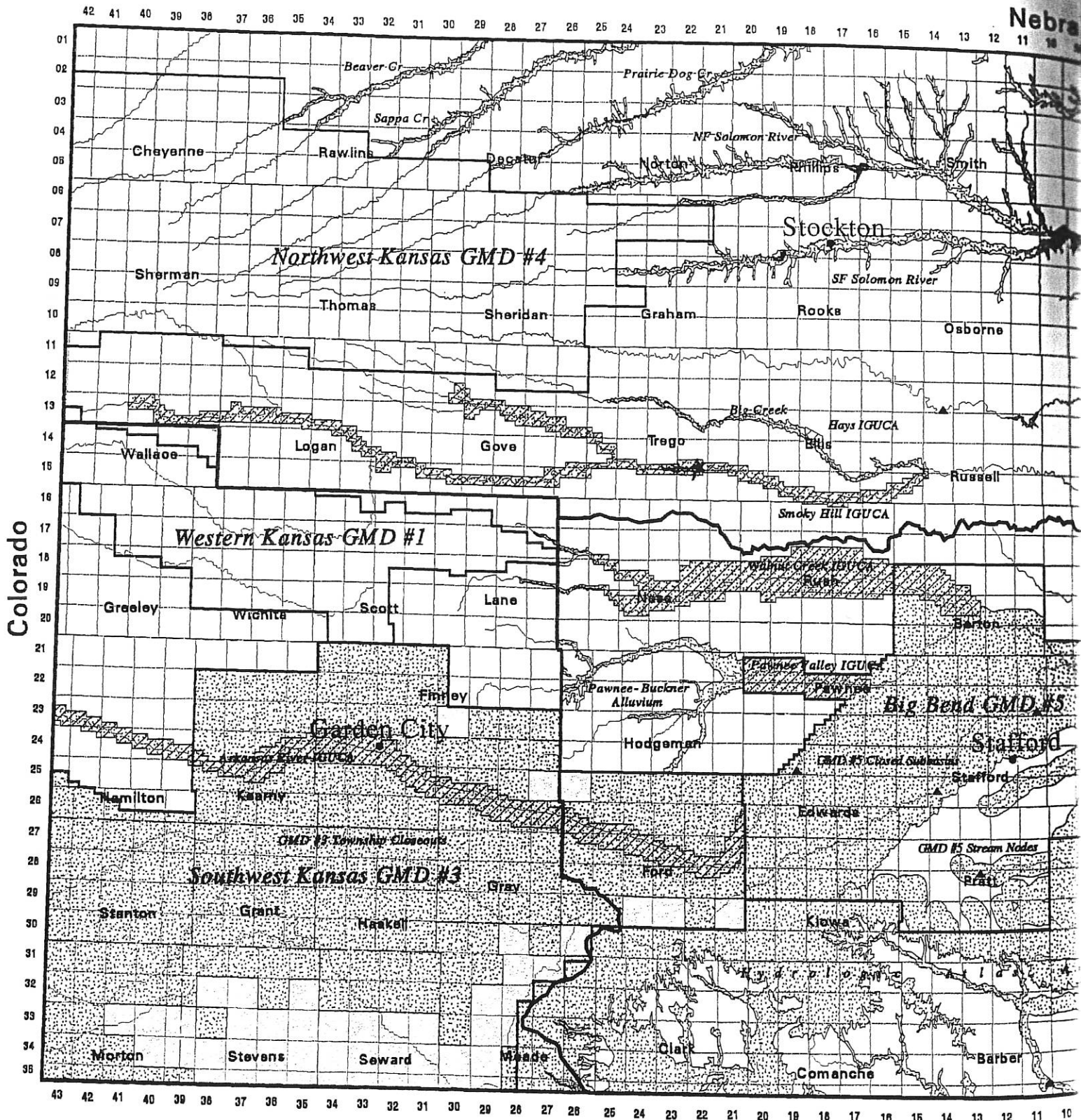
- Focus is on community technical assistance
- Focus is on updating floodplain maps
- Focus is on floodplain studies that study entire watersheds
- Pilot projects to remap floodplains - Wellington, Hoisington, Stranger Creek and Santa Fe Lake

LEVEES:






- Coordinating with the Attorney General's office to implement the levee law as it pertains to unapproved levees.
- Studying the impact of levees on upstream and downstream areas with the Corps of Engineers and the Kansas Water Office - Upper Black Vermillion, Stranger Creek

ENVIRONMENTAL COORDINATION:

- Working with statutorily designated agencies to get environmental comments
- Refining process to use e-mail and internet to facilitate efficient processing
- Including relevant comments in approval to ensure consideration of environmental issues in water development projects

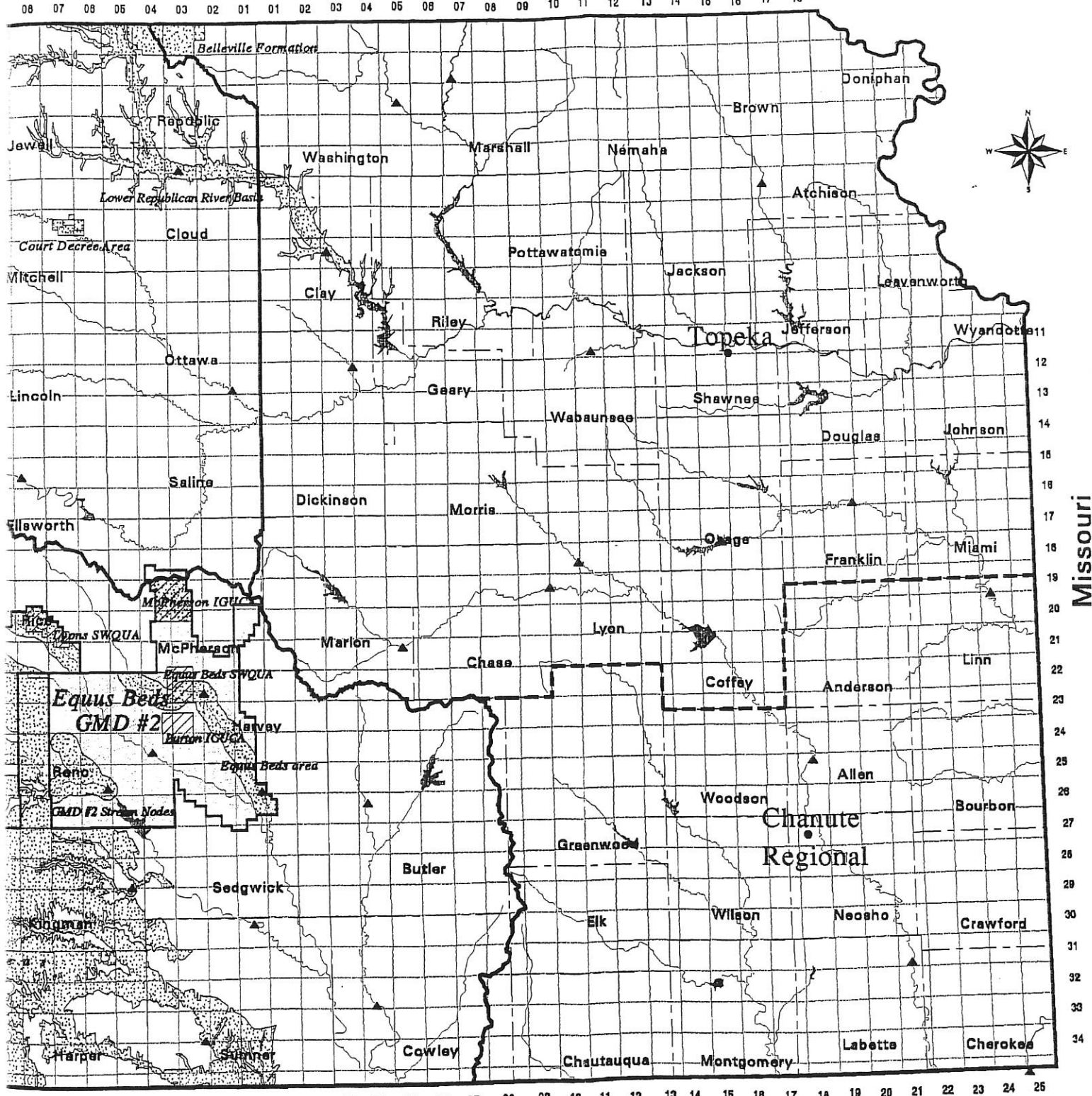


Kansas Department of Agriculture
 Division of Water Resources
 Technical Service Section and the
 Subbasin Water Resources Management Program

-  GMD #4 #1 & #5
-  GMD #3 & #2
-  IGUCA or SWQUA
-  Closed Area, generally excluding temporary and other small uses in some cases. See policy for details.
-  Area subject to Special Restrictions. See policy for requirements.

Restricted Areas

aska



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- Closed Streams, generally excluding temporary and other small uses in some cases. See policy for details
- Restricted Streams, specific restrictions for streams and alluvium given in policy.
- Open Streams, surface water generally available. Includes Missouri River.

- County
- Field Office Boundary
- Chanute Regional Boundary
- Field Office
- text Name of affected area
- ▲ MDS Gaging Station

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.

January 10, 1997

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