

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 A.M. on January 28, 2005 in Room 423-S of the Capitol.

All members were present except:

Mark Taddiken- excused  
Tim Huelskamp- excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department  
Emalene Correll, Kansas Legislative Research Department  
Lisa Montgomery, Revisor of Statutes Office  
Gina Poertner, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. Leland Rolfs, Staff Attorney for the Kansas Department of Agriculture was recognized to present an overview on water rights law in Kansas. He discussed water resources and the key elements of the Kansas Water Appropriation Act. Included in Mr. Rolfs' report was information regarding attaining water rights, restrictions, regulations, and enforcement (Attachment 1).

Senator McGinn asked if there anyone was interested in making changes in the law pertaining to domestic wells. Mr. Rolfs replied that the vast majority of people are satisfied with the way it is but that certain areas of the state that are seeing problems. There is an interest by cities of getting more involved in regulation.

Senator Teichman asked if there is a charge for obtaining water rights to which Mr. Rolfs stated that there is an application fee. This fee is variable, dependent upon the annual quantity of water applied for.

Senator Ostmeyer asked if we treated water the same as mineral rights. Mr. Rolfs stated that the Water Appropriation Act changed that. There is no absolute ownership. Sen. Ostmeyer followed this by asking about the authority of the Chief Engineer. It was reported that there is no power outside of Rules and Regulations.

Senator Lee asked if any entity could lose water rights due to chronic overuse or misuse. Mr. Rolfs stated that civil penalties can be assessed, but it is unusual that water rights can be lost. Another question by Sen. Lee concerned conversion of irrigation rights. Mr. Pope explained average use and modifications. She then asked about stipulations of the sale of water rights. Mr. Rolfs stated that water rights can be sold to anyone, and that the Division of Water Resources only becomes involved when a change of type of use or point of diversion occurs.

Sen. Teichman asked if an intensive groundwater use control area (IGUCA) can be applied in the Circle K Ranch instance. Mr. Pope stated it cannot, however, shortages are being addressed.

Mr. Rolfs was asked by the Chair to address over-appropriated areas, and information was given.

Senator McGinn asked if there were any bill introductions. Seeing none, the meeting was adjourned.

# SENATE NATURAL RESOURCES COMMITTEE

Guest Roster  
January 28, 2005

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Name	Representing
Leland E. Rolfs	KDA
Steve Swatter	KFB
Kent Askren	KFB
Rachel Rolfs	
Ron Seeber	Hein Law Firm
Andy Shaw	SWKIA
Mary Jane Stankiewicz	KGF/ KARA
Josh Kaufman	Ks Coop Council
Brent Hahn	KS Livestock Assoc.
Chris Tymeson	KDWP



# KANSAS

DEPARTMENT OF AGRICULTURE  
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Basic Kansas Water Rights Law  
to  
the Senate Natural Resources Committee**

**by Leland E. Rolfs  
Staff Attorney  
Kansas Department of Agriculture**

**January 28, 2005**

Madam Chairperson and members of the committee, thank you for the opportunity to provide you a basic overview of water rights law in Kansas.

**What water resources are there in Kansas?**

Kansas is divided by the 6th Principal Meridian, which basically runs north and south through Wichita. This manmade line was viewed by early explorers and settlers to indicate the beginning of the "Great American Desert," where rainfall was not sufficient to provide for settlers' needs.

The area west of 6th Principal Meridian relies primarily on the High Plains Aquifer (the Ogallala) for its water supply. In Kansas, there are approximately 325 million acre-feet of water stored in the High Plains Aquifer. An acre-foot is an acre of ground covered with water to the depth of one foot, or 325,851 gallons.

East of the 6th Principal Meridian, Kansas relies primarily on surface water in streams and rivers, their alluviums and lakes for water supply.

To illustrate the diversity of renewable surface water supplies in Kansas, the average annual rainfall in southwest Kansas is about 16 inches. It increases to more than 40 inches in southeast Kansas. About 118.7 million acre-feet of precipitation falls on Kansas each year, which generates only about 11.3 million acre-feet of runoff. Runoff from rainfall is not evenly distributed around the state. It varies from about 0.1 of an inch in southwest Kansas to 10 inches in southeast Kansas. This 100-fold difference in runoff dramatically illustrates the variability of our surface water supply. Overall, the state has a good supply of water. Unfortunately, it isn't always located where the demand for it exists.

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*Senate Natural Resources*

*Attachment 1*

## What is the history of Kansas water law?

When Kansas became a state, the Kansas Constitution said nothing about water rights. The common law adopted the Riparian Doctrine for surface water (water in streams, rivers and lakes) and the Absolute Ownership Rule for groundwater.

The Riparian Doctrine is now in use in most of the eastern United States, the area where **surface water** is plentiful. Under the Riparian Doctrine, owners of land contiguous to a river, stream, or lake have the right to reasonable use of water on land contiguous to the stream, river, or lake.

The Absolute Ownership Rule allows a landowner to use all of the **groundwater** under their land regardless of its effect on others.

In 1933, the Kansas Legislature arguably gave authority to the chief engineer of the Division of Water Resources, of what was then the Kansas State Board of Agriculture, to issue permits to use groundwater. The Kansas Supreme Court disagreed. As a result, Gov. Andrew F. Schoepel convened a task force to recommend how water should be regulated in Kansas.

The task force's recommendations resulted in the Kansas Water Appropriation Act, which became effective June 28, 1945 (K.S.A. 82a-701, et seq). The act has been amended many times, but one significant amendment occurred in 1978, when it became unlawful to divert water without a water right or permit. The constitutionality of the act has been challenged and upheld several times by the Kansas Supreme Court.

## What are the key elements of the Kansas Water Appropriation Act?

- The right to use water is based on a "first in time is first in right" priority system. The purpose of the act was to protect people who were investing money to use water. That protection benefitted the people making the investment and the economy of the state in general.
- All water within Kansas is dedicated to the use of the people of Kansas.
- The chief engineer is the state official charged with administering the act.
- Both groundwater and surface water can be appropriated under the prior appropriation system, and there is a single priority system for groundwater and surface water. No two water rights have the same priority.
- A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. A water right or permit gives the right to divert and use water.
- A vested right is based on actual water use on or before June 28, 1945. About 2,000 vested rights were determined. The Legislature set a July 1, 1980, cutoff for filing a

claim for a vested right. All claims for vested rights have been processed and no more vested rights will be determined.

- An appropriation right is a water right that was developed from a permit to appropriate water issued after June 28, 1945.
- A domestic right is the use of water for household purposes, for watering livestock, poultry, farm and domestic animals used in operating a farm, and for irrigating not more than two acres of lawn, gardens and orchards. No permit is necessary for domestic use. In fact, a water right is automatically granted for beginning a domestic use of water.

### **Who needs a water right or permit?**

Anyone who uses water for any purpose other than domestic use, and up to 15 acre-feet of water from a pond with a capacity of less than 15 acre-feet, must have a permit or water right to divert and use water.

### **How do you get a water right?**

An application for a permit to appropriate water must be filed with the chief engineer. After the application is complete, and the applicant has paid the filing fee, the chief engineer determines if the proposed use will impair an existing use or prejudicially and unreasonably affect the public interest. Other criteria for approving a new application must also be met (such as well spacing).

The statutes set forth criteria for determining if an application is in the public interest, including established minimum desirable streamflow requirements and the safe yield of the area. The statutes also set forth criteria to determine whether impairment to an existing water right will occur, including whether the permit will cause unreasonable raising or lowering of the static water level, an unreasonable decrease in streamflow, or an unreasonable degradation of water quality within an economic limit.

If all statutory and regulatory criteria are met, the chief engineer is required to approve the application and issue a permit. Currently, about one-half of the state is closed to new appropriations. The remainder of the state is under safe yield criteria for approving new applications.

### **What restrictions are there on a permit to appropriate water?**

Each permit will have a number of conditions:

- A time limit to construct the diversion works
- A time limit to perfect the water right by actually applying water to beneficial use.



- A priority date
- An authorized point of diversion
- An authorized place of use
- A maximum annual quantity of water that can be used
- A maximum instantaneous rate that water can be used
- A type of beneficial use
- The applicant must file a notice of completion of the diversion works.
- The applicant must file annual water use reports. Every year, we send about 13,500 water use reports to about 32,700 active water rights. Water use over the last 22 years has averaged 4,801,488 acre-feet (that includes both groundwater and surface water use). The highest water use of record, in 1988, was nearly 6 million acre-feet. The lowest water use of record was in 1993, a flood year, and was just over 3.5 million acre-feet.
- In 2002, 86 percent of the water was used to irrigate crops and 9 percent was for municipal uses. The other 5 percent was for the other 12 types of beneficial use, such as industrial, stock watering and recreation.
- When the time to perfect the water right has expired, including any authorized extensions of time, a field inspection will be made and a certificate of appropriation will be issued by the chief engineer for the maximum rate and quantity of water actually put to beneficial use in accordance with the terms of the permit.

### **Can a water right be changed?**

After a water right has been perfected, only certain attributes of a water right may be changed within certain limits:

- The authorized point of diversion
- The authorized place of use
- The type of beneficial use

These are accomplished by filing an application for a change in point of diversion and meeting certain statutory and regulatory criteria, such as not impairing any existing water rights and continuing to draw from the same supply. If all statutory and regulatory criteria are met, the chief engineer will approve the change.

## **Can a water right be lost?**

A water right can be lost if it is not used for five successive years without due and sufficient cause for nonuse. The acceptable reasons for due and sufficient cause are set by regulation and include:

- a crop has adequate moisture
- no water is available from the source of water supply
- the land is enrolled in the Conservation Reserve Program
- the water right is enrolled in the Water Right Conservation Plan

Before a water right can be declared abandoned by the chief engineer, the owner has a right to a hearing.

## **How are water rights enforced?**

The chief engineer is charged with enforcing the Kansas Water Appropriation Act and the regulations promulgated thereunder. The chief engineer has a variety of enforcement tools at his or her disposal, such as issuing orders, requesting criminal prosecution, assessing civil fines and suspending water use.

## **Are there any regulations concerning water use?**

The chief engineer has promulgated regulations implementing the Kansas Water Appropriation Act. The chief engineer also can adopt regulations that are effective only within a groundwater management district (there are five in Kansas). The chief engineer has adopted regulations on a variety of subjects, such as safe yield, spacing between wells, water flowmeter requirements, enforcement, water banking, minimum desirable streamflow and flex accounting.

## **What is an IGUCA?**

An IGUCA is an intensive groundwater use control area that can be designated by the chief engineer to address water problems in a specific area, such as excessively declining groundwater levels, the rate of withdrawal exceeds the rate of recharge, preventable waste or unreasonable deterioration of the water quality is occurring, or any other reason that regulation is required.

When an IGUCA is established, the law allows the chief engineer to use additional tools to address local water problems that may not be available under the act. These remedies include closing the area to new permits, apportioning the permissible withdrawal among the users, reducing the permissible withdrawal by one or more users, requiring rotation of water use, or anything else that will solve the problem.

There currently are 10 IGUCAs in Kansas.

**Are any permits needed to store water behind a dam?**

Farm ponds storing water for livestock on pasture automatically have a domestic water right. If the water in a lake is used for any purpose other than domestic use, and the pond has a capacity of more than 15 acre-feet, a permit or water right to store and/or use water must be obtained. If a dam is 25 or more feet in height, or impounds 50 or more acre-feet of water, a water structure permit to construct and maintain the dam is required to protect the public from flooding that could result from a dam failure.

**Conclusion**

Thank you for this opportunity to appear before you. I would be more than happy to answer to any questions you might have.