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Water Appropriation Program Manager

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

“All appropriations of water must be for some beneficial purpose. Every water right of every kind shall be deemed abandoned and shall terminate when without due and sufficient cause no lawful, beneficial use is henceforth made of water under such right for five successive years.”



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

- When no lawful, beneficial use of water under a water right has been reported for three successive years, the chief engineer shall notify the user, by certified mail, return receipt requested, that:
 - No lawful, beneficial use of the water has been reported for three successive years;
 - If no lawful, beneficial use is made of the water for five successive years, the right may be terminated; and
 - The right will not be terminated if the user shows that for one or more of the five consecutive years the beneficial use of the water was prevented or made unnecessary by circumstances that are due and sufficient cause for nonuse, which circumstances shall be included in the notice.

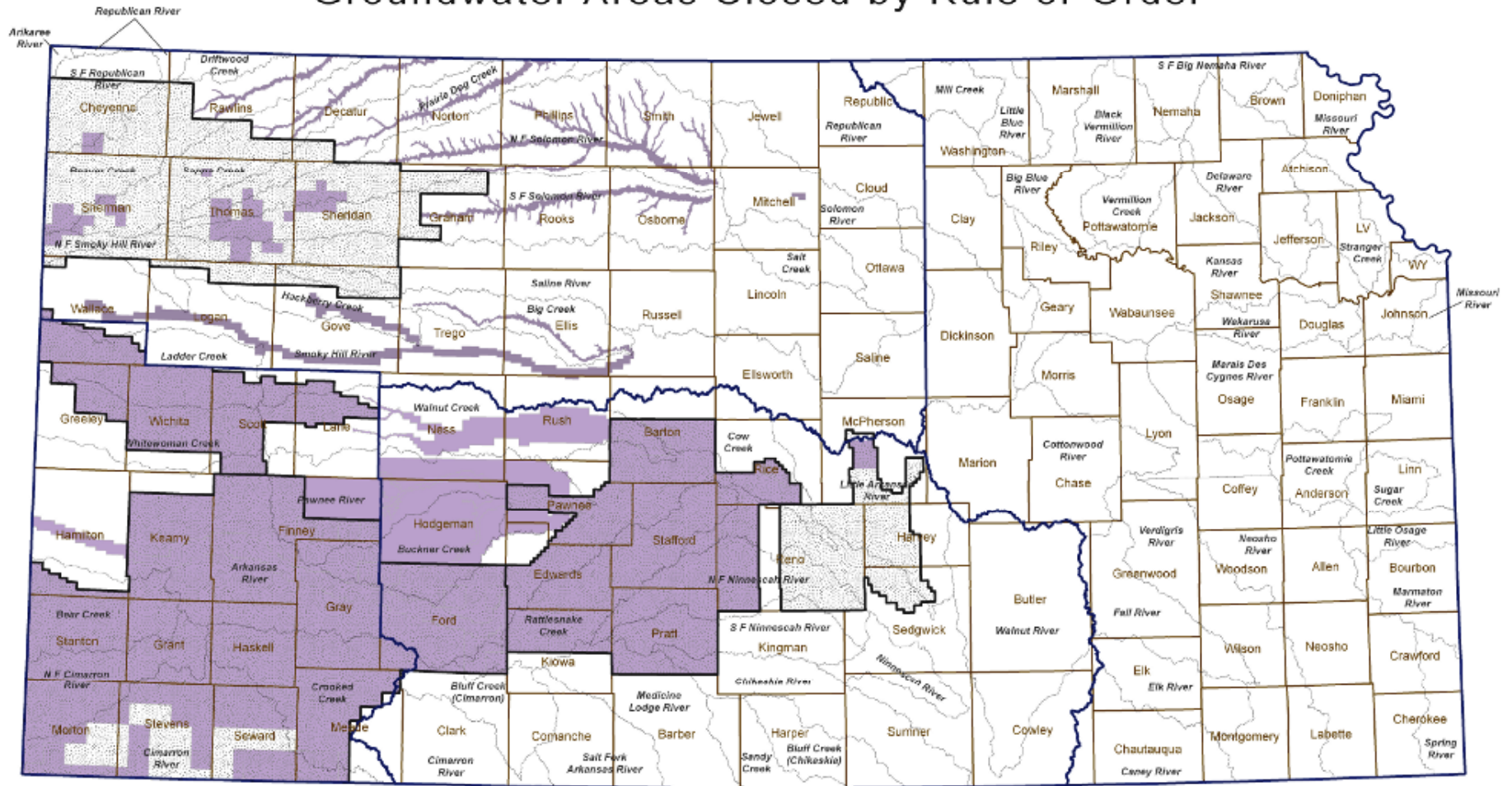


K.S.A. 82a-718 (d) – S.B. 316

- Notwithstanding the provisions of subsection (a), a groundwater right, which has as its local supply an aquifer area that has been closed to new appropriations by rule, regulation or order of the chief engineer and where means of diversion are available to put water to a beneficial use within a reasonable time, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.



Groundwater Areas Closed by Rule or Order



Kansas Department of Agriculture
Administrative Services, GIS
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Legend

- DWR Field Office Boundaries
- Closed Areas *
- GMD Boundaries
- County Boundaries
- DWR Basins



* Western Kansas Groundwater Management District No. 1 has requested rules and regulations to close the Ogallala and Niobrara formations within the district to new appropriation of water. A moratorium is in place while the rules and regulations are in the process of being adopted.

Due and sufficient cause for nonuse

Each of the following circumstances shall be considered "due and sufficient cause," as used in K.S.A. 82a-718, and amendments thereto:

- Adequate moisture from natural precipitation exists for the production of grain, forage, or specialty crops, as determined by the moisture requirements of the specific crop.
- A 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.
- Water is not available from the source of water supply for the authorized use at times needed.



Due and sufficient cause for nonuse

- Water use is temporarily discontinued by the owner for a definite period of time to permit soil, moisture, and water conservation, as documented by any of the following:
 - Furnishing to the chief engineer a copy of a contract showing that land that has been lawfully irrigated with a water right that has not been abandoned is enrolled in a multiyear federal or state conservation program that has been approved by the chief engineer.
 - Enrolling the water right in the water right conservation program in accordance with K.A.R. 5-7-4.
 - Any other method acceptable to the chief engineer that can be adequately documented by the owner before the nonuse takes place.



Due and sufficient cause for nonuse

- Management and conservation practices are being applied that require the use of less water than authorized. If a conservation plan has been required by the chief engineer, the management and conservation practices used shall be consistent with the conservation plan approved by the chief engineer to qualify under this subsection.
- The chief engineer has previously approved the placement of the point of diversion in a standby status in accordance with K.A.R. 5-1-2.
- Physical problems exist with the point of diversion, distribution system, place of use, or the operator. This circumstance shall constitute due and sufficient cause only for a period of time reasonable to correct the problem.



Due and sufficient cause for nonuse

- Conditions exist beyond the control of the owner that prevent access to the authorized place of use or point of diversion, as long as the owner is taking reasonable affirmative action to gain access.
- An alternate source of water supply was not needed and was not used because the primary source of supply was adequate to supply the needs of the water right owner.
- The chief engineer determines that a manifest injustice would result if the water right were deemed abandoned under the circumstances of the case.
- The water right is located in an area of the state that is closed to new appropriations of water by regulation or order of the chief engineer but is not closed by a safetyfield analysis.



Due and sufficient cause for nonuse

In addition to circumstances considered due and sufficient cause pursuant to subsection (a), both of the following requirements shall also be met to constitute due and sufficient cause for nonuse of water:

- The reason purporting to constitute due and sufficient cause shall have in fact prevented, or made unnecessary, the authorized beneficial use of water.
- Except for the temporarily discontinued use of water as provided by paragraph (a)(4) and for physical problems with the point of diversion or distribution system as provided by paragraph (a)(7), the owner shall maintain the diversion works in a functional condition.



Due and sufficient cause for nonuse

- Each year of nonuse for which the chief engineer finds that due and sufficient cause exists shall be considered to interrupt the successive years of nonuse for which due and sufficient cause does not exist.

New WRCP Law – S.B. 124

- The chief engineer may administer a ***water rights conservation program***. An eligible water right in good standing may be enrolled in the program, subject to the approval of the chief engineer.
- A water right may be enrolled in the program for a period that shall not exceed 10 years. A water right enrolled in the program may be reenrolled within two years of the expiration date of the previous enrollment period, subject to the approval of the chief engineer.



New WRCP Law – S.B. 124

- Each application for enrollment in the program and each application for renewal of enrollment shall include a non-refundable fee not to exceed \$300.
- All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.
- The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section.



Conservation Beneficial Use

- Distinct beneficial use of water
- Would allow maintenance of a water right for future use
- Diversion under a conservation use water right would be prohibited
- Any vested or certified water right which has not been deemed abandoned may be changed to a conservation use pursuant to K.S.A. 82a-708b, and amendments thereto, and any rules and regulations as promulgated by the chief engineer
- A conservation use water right may be changed pursuant to K.S.A.2009 Supp. 82a-708b, and amendments thereto, and any rules and regulations promulgated by the chief engineer



Some Numbers From 2010

- Reviewed 125 files with > 5 years of non-use.
- Prepared verified reports on 19 files.
- 17 files declared abandoned after hearing.
- 130 voluntary dismissals.

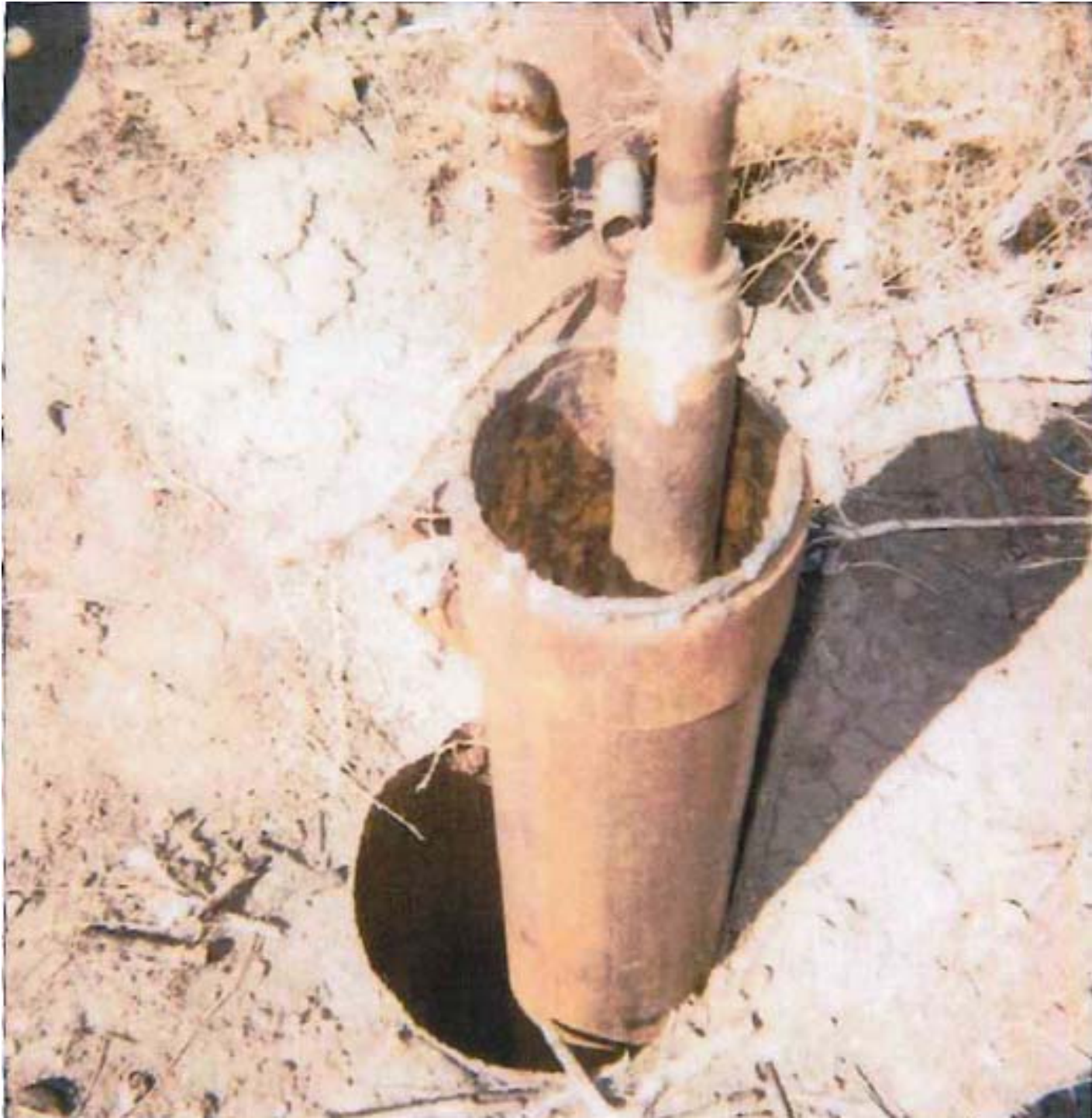




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Questions?

