

# WATER APPROPRIATION ACT

Fact Sheet No. 25

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Kansas Water Office

## Background

The Kansas Water Appropriation Act, enacted in 1945, provides a basic framework of water law in Kansas which allows water users the right to use water in accordance with the principal of the prior appropriation doctrine. The Division of Water Resources (DWR), which was established in 1927 by the Kansas Legislature, is the division of the State Department of Agriculture charged with the administration and enforcement of the Kansas Water Appropriation Act. The Chief Engineer, Division of Water Resources, is charged by the Act to enforce and administer the laws of the state pertaining to the beneficial use of water and shall control, conserve, regulate, allot and aid in the distribution of the water resources in the state for the benefits and beneficial uses of all of its inhabitants in accordance with the rights of priority of appropriation.

## Purpose

The Kansas Appropriation Act provides that all the water within the State of Kansas is dedicated to the use of the people of the state and that no one may acquire a water right for any purpose other than domestic use, without complying with the provisions of the act.

## Overview

The Kansas Water Appropriation Act operates on the principal of prior appropriation or "first in time is first in right." This means the date upon which a permit is applied for establishes that person's priority to continue the use of water, and in times of shortage, use of a water right may be curtailed, starting with the most junior right first. Since 1978, it has been illegal to use water for any purpose, other than domestic use, without either holding a vested right or receiving a permit to appropriate water from the Division of Water Resources. This applies when the water being used is groundwater, surface water or whether the water is being used from private or public property.

The Kansas Water Appropriation Act provided for the establishment of vested rights to continue

the use of water having actually been applied to any beneficial use, including domestic use, on or before June 28, 1945, to the extent of the maximum quantity and rate of diversion made thereof. Except as otherwise provided by the provisions of the act and subject to vested rights, all water within the state may be appropriated for beneficial use. As between persons with appropriation rights, the first in time is the first in right. The priority of the appropriation right to the use of water for any beneficial purpose, except domestic purposes, shall date from the time of filing of the application in the office of the Chief Engineer. A priority of the appropriation right for domestic purposes shall date from the time of filing of the application or from the time the user makes actual use of water for domestic purposes, whichever is earlier.

An application for a permit to appropriate water is approved in accordance with the provisions of the act if the proposed use will not impair a use under an existing right or prejudicially and unreasonably affect the public interest and provided that the proposed use is reasonable for the intended use. In addition, the Chief Engineer shall not approve any application for the proposed use of fresh water where other waters are available for the proposed use and the use is technologically and economically feasible. If a permit is issued for the proposed use, a water right may be perfected by completion of the diversion works and the application of water to the proposed beneficial use in accordance with the terms, conditions and limitations of the approval of the application.

To date, over 2,000 vested rights have been determined. A vested right is the right to continue the beneficial use of water begun prior to June 28, 1945. Subsequent to 1945, over 44,000 applications for appropriation permits have been filed with the Division of Water Resources.

## Additional Information

Further information on this subject may be obtained from: Chief Engineer-Director, Division of Water Resources, State Department of Agriculture, (Suite 202, 109 S.W. 9<sup>th</sup> Street, Topeka, Kansas 66612. (785) 296-3717.)

FLOW CHART – APPROPRIATION OF WATER  
(per K.S.A. 82a-701 et seq.)

