

Water . . .



. . . ITS APPROPRIATION
FOR BENEFICIAL USE

KANSAS STATE BOARD OF AGRICULTURE
1955

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WATER

... ITS APPROPRIATION
FOR BENEFICIAL USE

Report of the
KANSAS STATE BOARD OF AGRICULTURE

ROY FREELAND, *Secretary*

Containing Laws of Kansas Relating to
Water Appropriation

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On the Cover

Interest in irrigation is at an all-time high in Kansas, applications for permission to appropriate such waters having increased seven-fold between the bienniums of 1951-52 and 1953-54. Use of water for irrigation is making vast changes in Kansas agriculture.

Photo by J. E. Schrock, Division of Water Resources

Water Appropriation in Kansas

In 1917, the Kansas legislature created the Kansas Water Commission as the first state administrative agency authorized to concern itself with questions of water development and the appropriation of water. Two years later, the legislature created a state agency designated as the Division of Irrigation within the State Board of Agriculture and under the control of a state Irrigation Commissioner to deal primarily with the gathering and tabulating of information relating to the water supplies of the state and the use of water on farm crops.

The 1927 legislature consolidated the Kansas Water Commission and Division of Irrigation and created the Division of Water Resources within the State Board of Agriculture. The authority, powers and duties previously assigned to these agencies were conferred upon the Division of Water Resources, and later legislatures have conferred additional duties upon it and its chief engineer.

Chapter 390 of the Laws of 1945 (Art. 7, Ch. 82a, G. S. 1949) which applies to both surface and ground water, establishes a water code for Kansas and provides for a system for the appropriation of water for beneficial uses in accordance with the doctrine of appropriation under the rule of priority of right. It dedicates to the use of the people of the state all water within the state of Kansas, subject to the control and regulation of the state in the manner therein prescribed, and sets up an administrative procedure for the initiation and perfection of water rights. The act follows closely the legislation recommended by the governor's water committee.*

* The Appropriation of Water for Beneficial Purposes. A report to the Governor on Historic, Physical and Legal Aspects of the Problem in Kansas, submitted to the Honorable Andrew F. Schoeppel, Governor of Kansas, December, 1944.

The Water Appropriation Act

82a-701. Definitions. When used in this act the following words shall have the following respective meanings:

(a) "Person" shall mean and include a natural person, a partnership, an organization, a corporation, a municipality and any agency of the federal government.

(b) "Chief engineer" means the chief engineer of the division of water resources of the Kansas state board of agriculture.

(c) "Domestic uses" means the use of water for household purposes, the watering of livestock, poultry, farm and domestic animals and the irrigation of gardens and lawns.

(d) "Vested right" means the right to continue the use of water having actually been applied to any beneficial use at the time of the passage of this act or within three years prior thereto to the extent of the existing beneficial use made thereof, and shall include the right to take and use water for beneficial purposes where a person is engaged in the construction of works for the actual application of water to a beneficial use at the time of the passage of this act, provided such works shall be completed and water is actually applied for such use within a reasonable time thereafter.

(e) "Appropriator" means and includes a person who obtains a permit from the chief engineer authorizing him to divert and apply an allotted quantity of water for a designated beneficial use and who makes actual use of the water for such purpose.

(f) "Appropriation" means and includes an amount of water authorized and allotted by the chief engineer for a designated beneficial purpose within specific limits as to quantity and rate of diversion and withdrawal. [L. 1945, ch. 390, § 1; June 28.]

82a-702. Dedication of use of water. All water within the state of Kansas is hereby dedicated to the use of the people of the state, subject to the control and regulation of the state in the manner herein prescribed. [L. 1945, ch. 390, § 2; June 28.]

82a-703. Water may be appropriated subject to vested rights. Subject to vested rights, all waters within the state may be appropriated for beneficial use as herein provided. Nothing in this act contained shall impair the vested right of any person except for nonuse. [L. 1945, ch. 390, § 3; June 28.]

82a-704. Order establishing rights of persons making beneficial use of waters as of June 28, 1945; notice; time for appeals to district court. As soon as practicable after the passage of this act, the chief engineer or his authorized representatives shall proceed with the necessary steps to gather data and other information as may be essential to the proper understanding and determination of the vested rights of all parties using water for beneficial purposes other than domestic. Such observations and measurements shall be reduced to writing and made a matter of record in his office.

The chief engineer shall then make an order determining and establishing the rights of all persons making beneficial use of water on the effective date of this act and the then extent of their uses and shall notify all such water users as to the contents of such order. Service of such notice shall be deemed com-

plete upon depositing such notice in the post office as registered mail addressed to such water user at his last known post-office address. The order of determination of the chief engineer shall be in full force and effect from the date of its entry in the records of his office unless and until its operation shall be stayed by an appeal therefrom by such user to the district court of the county in which the point of diversion of such use is located. All such appeals from the order of the chief engineer must be filed within sixty days after posting and mailing of the notice of such order of determination. [L. 1945, ch. 390, § 4; June 28.]

82a-705. Permit to acquire an appropriation right to water. No person shall have the power or authority to acquire an appropriation right to water without first obtaining the approval of the chief engineer: *Provided, however*, That this section shall not apply to persons using water for domestic uses. [L. 1945, ch. 390, § 5; June 28.]

82a-706. Duties of chief engineer as to rights of priority of appropriation. The chief engineer is hereby authorized and empowered, and it is hereby made the duty of such officer, to control, conserve, regulate and allot the water resources of the state for the benefits and beneficial uses of all of its inhabitants in accordance with the rights of priority of appropriation. [L. 1945, ch. 390, § 6; June 28.]

82a-707. Principles governing appropriations. (a) Surface or ground waters of the state may be appropriated as herein provided. Such appropriation shall not constitute absolute ownership of such water, but shall remain subject to the principle of beneficial use. (b) Where appropriations of water for different purposes conflict they shall take precedence in the following order, namely: Domestic, municipal, irrigation, industrial, recreational and water power uses. (c) As between appropriators, the first in time is the first in right. The priority of the appropriation shall date from the time of the filing of the application therefor in the office of the chief engineer. (d) Appropriation in excess of the reasonable needs of the appropriators shall not be allowed. [G. S. 1935, § 24-903; L. 1945, ch. 390, § 7; June 28.]

82a-708. Determination of priorities of right of applicants for permits; appeals. The chief engineer shall determine the priorities of right to the use of the waters of the state, as to all persons who have since May 5, 1941, and who shall hereafter make application for a permit or certificate to divert, appropriate and use water. An appeal may be taken from any decision or order of the chief engineer to the district court in the county of his official residence or in the county in which the point of diversion is located. All such appeals must be filed within thirty days after date of such decision or order. [L. 1945, ch. 390, § 8; June 28.]

82a-709. Applications for permits; contents. Every person intending to acquire an appropriation right to any of the waters of the state for beneficial use other than domestic may do so only by making an application to the chief engineer for a permit to make such appropriation. The application shall set forth (a) the name and post-office address of the applicant, (b) the source from which said appropriation shall be made, (c) the amount of water sought, (d) the location of the proposed works for the diversion and use of the water, (e) the estimated time for the completion of the works, (f) the estimated time for the first actual application of the water for the beneficial use proposed, (g) if

for irrigation use, a description of the land to be irrigated by designating the number of irrigable acres in each forty-acre tract or fractional portion thereof, (h) if for municipal water supply, it shall give the present population to be served and estimated future requirements of the city; (i) any additional factors which may be required by the chief engineer.

Such application may be filed before commencing the construction, enlargement or extension of any works for the diversion and use of water and before or after performing any work in connection with the same. [L. 1945, ch. 390, § 9; June 28.]

82a-710. Same; return for correction or completion; maps, plats, plans, and drawings; default in refileing. Upon receipt of the application it shall be the duty of the chief engineer to endorse thereon the date of its receipt and assign a number to the same. If upon examination the application is found to be defective, inadequate or insufficient to enable such official to determine the nature and amount of the proposed appropriation, it shall be returned for correction or completion or for other required information. No application shall lose its priority of filing on account of such defects, provided acceptable data, proofs, maps, plats, plans and drawings are filed in the office of the chief engineer within thirty days following the date of the posting of the return of such application or such further time not exceeding one year as may be given by the chief engineer.

All maps, plats, plans and drawings shall conform to prescribed uniform standard as to materials, size, coloring and scale, and shall show: (a) The source from which the proposed appropriation is to be taken, (b) all proposed dams, dikes, reservoirs, canals, pipe lines, power houses and other structures for the purpose of storing, conveying or using water for the purpose approved and their positions or courses in connection with the boundary lines and corners of the lands which they occupy. Land listed for irrigation shall be shown in government subdivisions or fractions thereof. Default in the refileing of any application within the time limit specified shall constitute a forfeiture of priority date and the dismissal of the application. [L. 1945, ch. 390, § 10; June 28.]

82a-711. Same; duties of chief engineer. It shall be the duty of the chief engineer to approve all applications made in proper form which contemplate the utilization of water for beneficial purpose, within reasonable limitations, provided the proposed use does not conflict with an existing use, and provided the proposed use does not prejudicially and unreasonably affect the public interest. If it is determined that the proposed use of the water sought to be appropriated would impair vested rights, prior appropriations or be detrimental to the public interest, it shall be the duty of the chief engineer to enter an order rejecting such application or requiring its modification to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water. [L. 1945, ch. 390, § 11; June 28.]

82a-712. Same; notice of approval or disapproval; injunctions. Upon approval of the application the chief engineer shall notify the applicant to that effect and authorize him to proceed with the construction of the proposed diversion works and to take all steps required to apply the water to the approved and proposed beneficial use and otherwise perfect his proposed appropriation. An application may be approved for a less amount of water than that requested

and it may be approved upon terms, conditions and limitations deemed necessary for the protection of the public interest. An applicant shall be entitled to proceed with construction of diversion works and with the diversion and use of water in accordance with the approval and limitations prescribed by the chief engineer and shall not be restrained or enjoined from proceeding with the construction of diversion or other authorized work or from the diminution of water supply, by any common-law claimant: *Provided*, That common-law users with determined vested rights as herein defined, may enjoin diversions which impair such uses.

If the application is refused, the chief engineer shall so notify the applicant, and it shall be unlawful for such applicant to take any steps toward the construction of the proposed diversion works or to divert or use any such water, so long as the refusal shall continue in force, if such proposed diversion or use affects an appropriation right. Any person who proceeds subsequent to the effective date of this act, to construct and maintain diversion works without the approval of the chief engineer being first obtained, or who initiates a diversion or use of water from any source for any purpose other than domestic, without such approval, or who proceeds other than as authorized by the approval of his application may be enjoined in any court of competent jurisdiction, when an appropriation right is being affected [L. 1945, ch. 390, § 12; June 28.]

82a-713. Same; limiting time for perfection of appropriation; extensions. The chief engineer shall limit the time for the perfecting of an appropriation to a reasonable period within which the proposed works can be completed by expeditious procedure, and he shall for good cause shown by the applicant allow an extension of time. [L. 1945, ch. 390, § 13; June 28.]

82a-714. Same; notice of completion of works; inspection; issuance of certificate of permit; recordation. Upon the completion of the construction of the works and the actual application of water to the proposed beneficial use within the time allowed, the applicant shall notify the chief engineer to that effect. The chief engineer or his duly authorized representative shall then examine and inspect the appropriation diversion works and, if it is determined that the appropriation diversion works have been completed and the appropriation right perfected, in conformity with the approved application and plans, the chief engineer shall issue a permit or certificate of appropriation in duplicate. The original of such certificate or permit shall be sent to the applicant and shall be recorded with the register of deeds in the county or counties wherein the point of diversion is located as other instruments affecting real estate, and the duplicate shall be made a matter of record in the office of the chief engineer. [L. 1945, ch. 390, § 14; June 28.]

82a-715. Same; validation of certain applications. All applications for the appropriation of water to beneficial use as filed with the chief engineer, subsequent to May 5, 1941, and all processing, proceedings and certificates pertaining thereto are validated to same extent as if filed after the effective date of this act, but with priorities as of the dates of filing of applications. All subsequent processing of such applications as are still pending and undetermined shall be further considered and processed as provided in this act. [L. 1945, ch. 390, § 15; June 28.]

82a-716. Common law claimants; action for compensation; injunctions by appropriators. If any appropriation, or the construction and operation of

authorized diversion works results in an injury to any common-law claimant, such person shall be entitled to due compensation in a suitable action at law against the appropriator for damages proved for any property taken. An appropriator who has acquired a valid right under this statute may prevent, by injunction, a subsequent diversion by a common-law claimant of private rights without being required to first condemn possible private rights. An appropriator shall have right to injunction relief to protect his prior right of beneficial use as against use by an appropriator with a later priority of right. [L. 1945, ch. 390, § 16; June 28.]

82a-717. Beneficial purpose; termination for nonuse. All appropriations of water must be for some beneficial purpose. The right of the appropriator and his successors to the use of water shall terminate when he ceases for three years or more, to use it for the beneficial purposes authorized in his permit or certificate. [L. 1945, ch. 390, § 17; June 28.]

42-308. User; forfeiture. Any right of appropriation shall exist and continue only by the exercise thereof in a lawful manner. The failure of the appropriator continuously to apply such water to lawful and beneficial uses, for a period of three years, without due and sufficient cause shown for such failure, shall constitute a forfeiture and surrender of such right. [G. S. 1935, § 42-308; L. 1945, ch. 390, § 18; June 28.]

82a-718. Forfeiture procedure; appeals. The chief engineer shall compile information concerning the condition, location and extent of every water use and water appropriation other than domestic uses. Before any water appropriation shall be declared forfeited and surrendered the appropriator shall be notified in writing to appear at a designated time and place and show cause why his water appropriation should not be declared forfeited.

Such notice shall contain the following information in addition to the time and place of hearing: (1) A description of the water appropriation in question, giving its number and date of priority; (2) the substantial location of the point of diversion; (3) the general description of the lands or places where such appropriated waters were used; (4) a statement that unless due and sufficient cause be shown the water appropriation will be forfeited and canceled. Such notice may be served by registered mail and shall be posted at least thirty days before the date of the hearing and shall be sent to the last known address of the appropriator or his successor.

The verified report of the chief engineer or his authorized representative shall be prima facie evidence of the forfeiture and surrender of any water appropriation. An appeal may be taken within sixty days from the date of any decision of the chief engineer declaring the forfeiture and cancellation of any water appropriation to the district court of the county in which the point of diversion for such appropriation is located. [L. 1945, ch. 390, § 19; June 28.]

82a-719. Distribution of water according to decree of court. Whenever the rights for the use of waters of the state shall have been adjudicated by any court, the division of water resources with the aid of its chief engineer and other officers and employees, shall aid in the distribution of such water according to such decree and shall distribute the water among the several ditches or water users pursuant to the decree; and shall have the power to open, close or adjust the headgates and regulate the controlling works of any ditch or structure, or cause the same to be opened, closed, adjusted and

regulated so as to make a distribution of the water in conformity with the decree. [G. S. 1935, § 74-509c; L. 1945, ch. 390, § 20; June 28.]

82a-720. Same; certified copies of decrees. The clerk of any court of this state in which a decree shall be made fixing the rights pertaining to ditches or water users to water, shall within ten days after such decree shall have been entered, forward to the chief engineer of the division of water resources, by registered mail, a certified copy of such decree. [G. S. 1935, § 74-509e; L. 1945, ch. 390, § 21; June 28.]

74-510. Information and assistance to chief engineer. It is hereby made the duty of all departments of the state government and of the state university and state agricultural college and its branches and experiment stations to furnish information and assistance to such chief engineer upon his request therefor. [G. S. 1935, § 74-510; L. 1945, ch. 390, § 22; June 28.]

82a-721. Construction of act. This act shall be construed liberally to effectuate the purposes hereof, and the enumeration of specific powers in this act shall not operate to restrict the meaning of any general grant of power contained in this act or to exclude other powers comprehended in such general grant. [L. 1945, ch. 390, § 23; June 28.]

82a-722. Invalidity of part. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered, and it shall be presumed that the legislature would have enacted this law with the section, subsection or clause held to be invalid, omitted. [L. 1945, ch. 390, § 24; June 28.]

Procedure Under the Act

Every person intending to acquire an appropriation right to any of the waters of the state for beneficial use other than domestic use may do so only by making an application to the chief engineer of the division of water resources for a permit to make such appropriation. Application forms for this purpose may be obtained from the Division of Water Resources, State Board of Agriculture, Topeka.

A sample application to illustrate the nature of the information needed on the form will be found on page 20.

A brief description of the kind of information to be furnished in each part of the application is given in the following paragraphs. The number of each paragraph corresponds to a similarly numbered item in the application form.

(1) State name of watershed or drainage basin within which the proposed source is located.

(2) State total quantity of water desired in acre-feet per year and proposed maximum rate of diversion either in cubic feet per second, gallons per minute, or million gallons per day.

(3) State legal description of forty acre tract or tracts within which well or pump site is located.

(4) Give brief description of diverting and carrying works and estimated date of completion of such works.

(5) Needs to be filled out only if proposed works will result in an obstruction in a stream. (See sec. 82a-301 to 305, on pages 18 and 19.)

(6) Give estimated date by which it is expected that water will first be applied to the proposed beneficial use.

(7) Check proposed use.

(8) Municipal use only.

(9) Enter in appropriate space the actual number of acres of irrigable land in each 40 acre tract (each quarter-quarter section). Give legal description and name of owner of land proposed to be irrigated.

(10) The application should be accompanied by a sketch showing the location of the land to be irrigated and the location of the well or point of diversion. Figures 1 and 2 illustrate the nature of the information desired.

(11) Fill out only when the source is artesian water.

(12) Give number of wells and diameter and depth of each.

(13) Describe pump and power unit. If equipment has not been contracted for, give best information available.

(14) Show applicant's interest in application as owner, agent, tenant or otherwise.

The application should be signed before a notary public.

On a separate sheet state details as to any extraordinary circumstances not covered elsewhere in the application. Where water is proposed to be diverted from a well, describe the location of any other irrigation, municipal or industrial wells located near the proposed well.

Following are the steps which must be completed to obtain a certificate of appropriation:

(1) Upon receipt of the application, it will be given a priority number, and thereafter will be examined as speedily as possible to determine its sufficiency. If found defective, inadequate or insufficient the application will be returned for correction, but it will retain its priority of filing, provided acceptable data, proofs, maps, plans and drawings are filed within 30 days of the date of the return of the application or such further time, not exceeding one year, as may be given.

(2) If the application is in proper form and the proposed beneficial use will not conflict with an existing use and will not prejudicially and unreasonably affect the public interest, it will be approved subject to certain terms, conditions and limitations specified in the notice of approval. The approval will give a definite time limit within which the proposed works are to be completed and water actually applied to the proposed use. An extension of that time may be given for good cause shown by the applicant.

(3) When the construction of works is completed and the quantity of water proposed to be appropriated has been applied to the proposed use during a period of one calendar year, subsequent to approval of the application and within the time allowed, or any authorized extension of that time, the applicant shall notify the Chief Engineer to that effect. Failure to so notify the Chief Engineer within that time or to request an extension of time, if additional time is necessary, may result in forfeiture of priority.

(4) When the notice of completion of works and the actual application of water for the intended beneficial use has been received, the Chief Engineer or

his authorized representative will examine the completed project. The applicant should have sufficient records to enable him to furnish information as to the rate and quantity of water applied to use under his application. A record of the number of hours pumped is ordinarily sufficient if the capacity of the pumps under operating conditions has been or readily can be determined. The extent of the appropriation will be limited: First, to the rate and quantity for which the application was approved; and second, to the rate and quantity found to have actually been applied to the proposed use during one calendar year within the time allowed in the approval of the application, or any authorized extension of that time.

(5) If it is found that the appropriation diversion works have been completed and the appropriation right perfected in conformity with the approval of the application, a certificate of appropriation will be issued. The original of the certificate will be sent to the applicant and it is required that he record it with the register of deeds in the county wherein the point of diversion is located. When that is done the appropriation is completed.

A certificate of appropriation is intended to grant a continuous right to use of certain waters for a definite beneficial purpose and at a definite location, subject to any prior rights. It does not authorize any use of water at such times and in such manner as to interfere with prior rights of other users from the same source. The statute provides that the right of the appropriator shall terminate when he ceases for three years or more to use it for the beneficial purposes authorized in the certificate.

The 1945 Act does not require a permit to construct a well or other diversion works or to divert and use water from any source. It provides procedure whereby a prospective water user may acquire a water appropriation and establish the relative priority of his appropriation with respect to that of any other user from the same source. An appropriation or vested right may be enforced by injunction proceedings against diversions by a user with a later appropriation or with no appropriation if it can be shown that such use interferes substantially with the rights of the earlier appropriator.

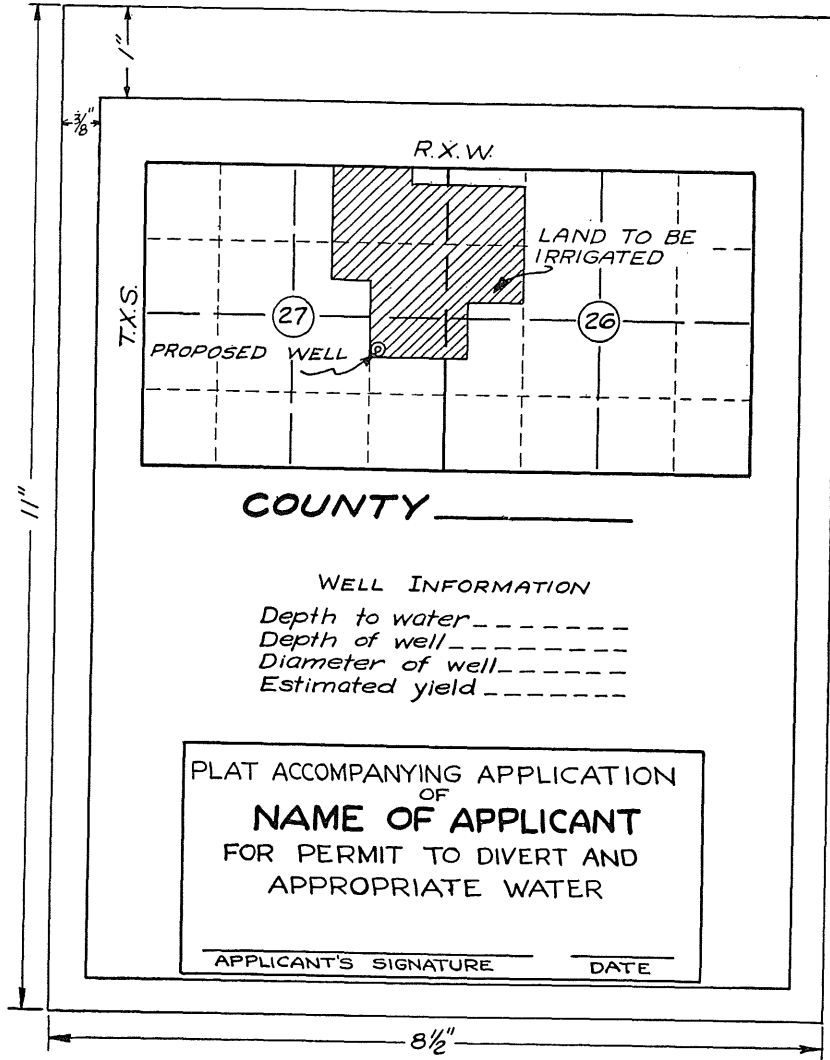


FIGURE 1

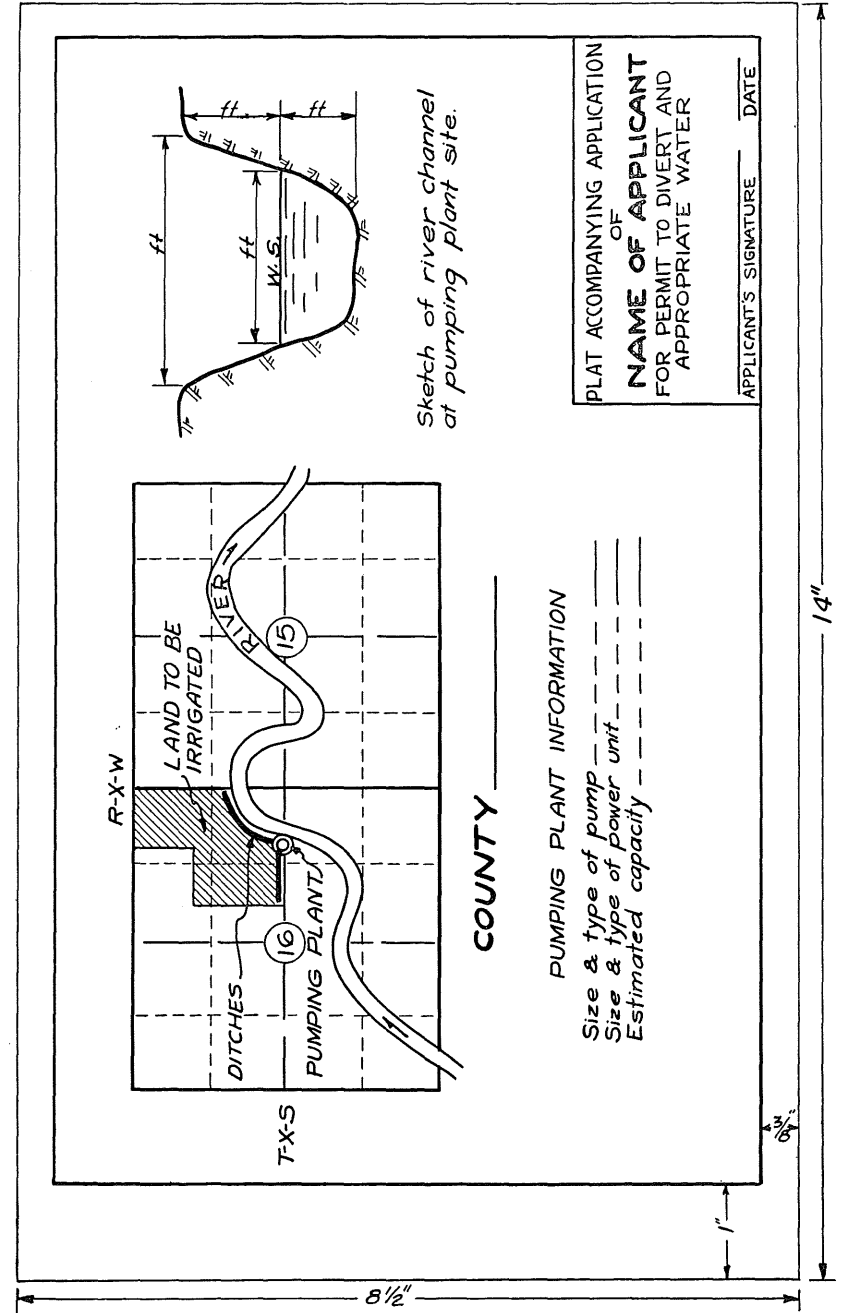


FIGURE 2

Other Pertinent Laws

12-809. Damming of river or condemnation of land and water for waterworks; petition to court; bond issue. That the governing body of any city shall have power and authority to dam any river not navigable, to condemn and appropriate in the name and for the use of the city any such land or lands located in or out of the corporate limits thereof, as may be necessary for the construction and operation of waterworks, and to condemn, appropriate and divert the water from such river, or so much thereof as may be deemed necessary for such purpose. Whenever the city council shall determine to condemn and appropriate any land or to condemn and divert any water for the purpose aforesaid, it shall cause a petition to be presented in the name of the city to the judge of the district court of the county in which such city is situated, setting forth the necessity of the appropriation of lands and the diverting of said water for the erection and operation of waterworks, and thereupon the necessary real estate shall be condemned as provided by law, and may be paid for by the issuance and sale of the bonds of such city as provided by law. Before any such bonds shall be issued the proposition shall be submitted to the voters of such city as provided by law. From and after such condemnation and appropriation and the payment therefor, the city shall be vested with the right to perpetually use the land, water, and the right to divert such water, condemned for the purpose of waterworks. [R. S. 1923, 12-809; Dec. 27.]

12-852. Flowage rights to waterworks system intake. All cities of the second and third class which have impounded water, or may hereafter do so, for its waterworks system and public water supply are hereby granted the right to have such water flow down any natural watercourse to its waterworks system intake. [L. 1937, ch. 123, § 1; March 25.]

12-853. Same; unlawful acts. It shall be unlawful for any person or persons to materially diminish, impound, retard or divert the augmented flow of water due to the use of said stream or streams by such cities in conveying its water to its water system intake as aforesaid. [L. 1937, ch. 123, § 2; March 25.]

12-854. Same; penalty for violating sec. 12-853. Any person or persons violating section 2 (12-853) hereof, upon conviction, shall be deemed guilty of a misdemeanor, and shall be fined in sum not exceeding five hundred dollars. [L. 1937, ch. 123, § 3; March 25.]

12-855. Rights of riparian owners. Nothing herein shall be construed as prohibiting riparian owners from the use of natural flowage of said streams or from the use of the water from said streams at any and all times for family and domestic farm stock purposes. [L. 1937, ch. 123, § 4; March 25.]

42-121. Water rights and shares in irrigation companies; transfer. That all water rights of every kind, or shares in irrigation companies, entitling the owners and holders thereof to the use of water for irrigation purposes, shall be appurtenant to the land upon which they are established, by the use of such water thereon, and shall pass with any and all conveyances of such land whether mentioned in the deeds of conveyance or not, unless the same is expressly excepted from the operation of such conveyance: *Provided, however,* That such water rights or shares may be the subject of separate transfers by deed executed and recorded as conveyances of real estate, which deed shall describe the land to which said water rights or shares were appurtenant and also

describe the land to which they are to become appurtenant, and subject to all laws relating to the registration and recording of conveyances affecting the title to real estate. [L. 1911, ch. 215, § 1; May 22; R. S. 1923, § 42-121.]

42-302. Extent of appropriation; residue of waters. The appropriation of water hereafter shall in every case be deemed and be taken to be accomplished and effectual only as to so much water as shall have been actually applied to beneficial uses within a reasonable time after the commencement of the works by means of which such appropriation is intended to be made, or afterwards where no appropriation has in the meantime been initiated by others, together with the reasonable amount necessary to supply losses by waste, seepage and evaporation; all the residue of the water within the capacity of the canal or other works shall be deemed to be derelict, and liable to appropriation by any subsequent appropriator. [L. 1891, ch. 133, art. 1, § 2; May 20; R. S. 1923, § 42-302.]

42-303. Right to conduct water along natural channels and withdraw same. Any person may conduct water into and along any of the natural streams or channels of the state, and may withdraw all such waters so by him turned into such channel at any point desired, without regard to prior appropriations of water from said stream, due allowance being made for evaporation and seepage. [L. 1891, ch. 133, art. 1, § 3; May 20; R. S. 1923, § 42-303.]

42-304. Change of natural channel so as to prevent inflow into ditch or conduit. In case the channel of any natural stream shall have become so cut down, lowered, turned aside or otherwise changed from any cause as to prevent any ditch or conduit for the diversion of water from receiving the proper inflow of water to which it may be entitled, the proprietors of such ditch or conduit may, within a reasonable time after such change, extend such ditch or conduit to such stream, or along the course thereof, or may erect a dam or embankment for turning water into the same; and the right of such proprietors to take water from such stream through such ditch or conduit as so extended to the same amount and during the same period as prior to such change, shall be of the same priority as before such extension: *Provided,* That no such extension shall be allowed in such manner as to interfere with the operation or enjoyment of any other ditch, conduit or other works for the diversion, conveyance or storage of water. [L. 1891, ch. 133, art. 1, § 4; May 20; R. S. 1923, § 42-304.]

42-310. Right to continuance of use of water procured from carrier by contract. Any person having by lease, purchase or agreement, written or oral, procured from any carrier water for the irrigation of lands or for other use whatsoever, and having actually applied such water to beneficial uses, shall thereafter in every year, upon payment of the reasonable rate therefor prescribed by the county commissioners (or if no such rate has been prescribed, then at a reasonable rate and price, not exceeding that at which such carrier has been wont to supply to others) be entitled to continue in the enjoyment of water from the works of such carrier to the same amount: *Provided,* That nothing herein contained shall be deemed to enlarge the effect of any grant, lease, or other agreement by any carrier, for the use by one person, during any limited period, of water to the use and enjoyment of which by lawful grant, lease or agreement of such carrier theretofore made, any other person is entitled, such person so entitled to the use of such waters not then having need or occasion therefor, nor to entitle any person to resume the use or enjoyment of water after having failed or refused to pay the reasonable rate lawfully de-

manded therefor by the carrier in any year, nor to require the carrier to supply water to persons persistently refusing to comply with the reasonable regulations prescribed by such carrier for the government of the distribution of water from its works. [L. 1891, ch. 133, art. 2, § 1; May 20; R. S. 1923, § 42-310.]

42-311. Right to take water for domestic uses. Any person may at any time take water from any natural stream or open ditch, conduit or reservoir at any public road crossing, or at any place upon his own lands, or upon the lands of others by license of the proprietor thereof, or without such license where such lands are unenclosed and uncultivated, for filling barrels or other vessels for his domestic uses. [L. 1891, ch. 133, art. 2, § 2; May 20; R. S. 1923, § 42-311.]

42-312. Such person responsible for injury or pollution. Every person resorting for the purposes aforesaid to any ditch, conduit or reservoir shall be responsible that no injury be done to the embankment thereof, or the fence enclosing the same, or other parts or appurtenances thereof, and that the waters thereof be not fouled or polluted by any animal by him driven thereto or watered therat. [L. 1891, ch. 133, art. 2, § 3; May 20; R. S. 1923, § 42-312.]

42-313. Right to collect and store water. Any person entitled to the use of water for the irrigation of lands or other purposes whatsoever may, at any time while so entitled to the use thereof, collect and store the same up for use presently thereafter; and the failure to apply or use such waters during the period of such collection and storage shall not be deemed or taken to impair his right in that behalf. [L. 1891, ch. 133, art. 2, § 4; May 20; R. S. 1923, § 42-313.]

82a-301. Permit of chief engineer to make dam or embankment or change watercourse. From and after the passage of this act, it shall be unlawful for any person or persons, partnership, association, corporation, county, city, town, or township to construct any dam or other water obstruction; or to make or construct, or permit to be made or constructed, any change therein or addition thereto; or to make, or permit to be made any change in or addition to any existing water obstruction; or in any manner to change or diminish the course, current, or cross section of any stream within this state without the consent or permit of the chief engineer of the division of water resources, in writing, previously obtained, upon written application to said chief engineer therefor: *Provided*, That jetties or revetments placed for the purpose of stabilizing a caving bank shall not be construed as obstructions to this act providing such jetties and revetments are properly placed. [L. 1929, ch. 203, § 1; May 28.]

82a-302. Maps, plans, profiles and specifications to accompany application. Each application for the consent or permit required by the first section of this act shall be accompanied by complete maps, plans, profiles, and specifications of such water obstruction, or of the said changes or additions proposed to be made, and such other data and information as the chief engineer, division of water resources, may require. [L. 1929, ch. 203, § 2; May 28.]

82a-303. Consent or permit from chief engineer; conditions. The chief engineer of the division of water resources shall have power to grant or withhold such consent or permit or may incorporate in and make a part of said consent or permit such conditions, regulations, and restrictions as may be deemed by him advisable. It shall be unlawful to construct or begin the construction of any such water obstruction, or to make or begin any change or addition aforesaid, except in accordance with the terms, conditions, regulations, and restrictions of such consent or permit, and such rules and regulations, with regard to

said obstructions, changes, or additions, as may be prescribed by the chief engineer of the division of water resources. [L. 1929, ch. 203, § 3; May 28.]

82a-304. Application of secs. 82a-301 to 82a-305. The provisions of this act shall not prohibit the placing in any purely private stream of any dam not more than ten feet high and not impounding more than fifteen (15) acre feet of water. [L. 1929, ch. 203, § 4; L. 1933, ch. 330, § 1; June 5.]

82a-305. Violations of act; penalty; injunction. Any person, firm, association or corporation, or any officer of such corporation or of any county, city, or township, or other political subdivision, who shall violate any of the provisions of sections 82a-301 and 82a-303 of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one thousand dollars. In the event that any obstruction or structure is about to be constructed or created, or is constructed, created or maintained, or any change or diminution of the course, current, or flow of the river or stream or any change in the cross section of the bed or channel of any river or stream is created or caused to be created by any such person, firm, association or corporation, without the approval of plans by the chief engineer, then upon petition of the state of Kansas on relation of the attorney general, the construction or creation of any such obstruction or structure shall be enjoined by any court of competent jurisdiction and such court in its discretion may by mandatory injunction require the removal or modification of any such structure or obstruction. [L. 1929, ch. 203, § 5; L. 1945, ch. 389, § 1; June 28.]

Sections 82a-301 to 305, G. S. Kansas, 1949, makes it unlawful to construct certain dams or to change the course, current or cross section of streams without first obtaining a permit from the chief engineer of the division of water resources. This act is included for the information of those who may propose to construct a dam as a part of the works for diversion of water, or those who otherwise may be subject to the provisions of such act.

STATE OF KANSAS
 DIVISION OF WATER RESOURCES
 STATE BOARD OF AGRICULTURE
 TOPEKA

NUMBER _____
 TOWNSHIP _____
 COUNTY _____

**APPLICATION FOR PERMIT TO
 APPROPRIATE WATER FOR BENEFICIAL USE**

To the Chief Engineer of the Division of Water Resources, Kansas State Board of Agriculture:

Comes now the applicant John Doe whose post office address is R. F. D. #1, Garrison, Kansas

and makes application to the Chief Engineer of the Division of Water Resources, Kansas State Board of Agriculture, for a permit to appropriate and apply to beneficial uses, the waters of the State of Kansas, to be diverted and used from wells in the county of Riley state of Kansas to the extent and in accordance with the particulars hereinafter described:

1. The direct source of supply is groundwater from the drainage basin of the Big Blue River
(Name of stream, basin, or other source)

which is tributary to the Kansas River, tributary to the Missouri River

2. The quantity of water desired is in the amount of 195 acre feet per year, to be diverted at a maximum rate of 1350 gallons per minute
(Gallons per minute, cubic feet per second, or million gallons per day)

3. The location of the proposed works for diversion of water is in the NE quarter of the SE quarter of section 27, township 5, range 6, in Riley County, Kansas.

4. The diverting and carrying works will consist of one or more wells with deep well turbine pump, ditches and borders, and it is estimated that such works will be completed by May 1, 1956
(Date)

5. A permit for construction of works has not been obtained under provisions of 82a-301 to 305, G. S. Kansas, 1935.
(has or has not)

6. It is estimated that the first actual application of water for the beneficial use proposed will be July 1, 1956
(Date)

7. The water is intended to be appropriated by the applicant for:

- (a) municipal use ()
- (b) irrigation use (X)
- (c) industrial use ()
- (d) recreational use ()
- (e) water power use ()

(check intended use)

8. If for municipal water supply:

- (a) give present population to be served _____
- (b) give estimated future requirements of city _____

9. If for irrigation use list below or attach name and address of each landowner and the legal description of the lands to be irrigated by designating the actual number of acres to be irrigated in each forty acre tract or fractional portion thereof:

Owner of Land—NAME: John Doe
 ADDRESS: R. F. D. #1, Garrison, Kansas

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Total
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5	6	26					30	32			5								67
5	6	27	35	23	10	40	20												128

TOTAL 195

Owner of Land—NAME: _____
 ADDRESS: _____

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Total
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Owner of Land—NAME: _____
 ADDRESS: _____

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Total
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

10. The location of the land to be irrigated and of the proposed diversion works is shown on the accompanying plat.

11. If the flow to be utilized is artesian, describe the works to be used for the control and conservation of the supply when not in use _____

12. If ground water development, the works will consist of One or more wells
(Give number of wells, tunnels, etc.)
_____ located as shown on the accompanying map having a diameter of 16" inches and an estimated depth of 112 feet.

13. If pumps are to be used, give (a) size 8"
(b) type Deep well turbine
(c) capacity 1350 g.p.m.

Give size and type of motor or engine to be used 50 H. P. gasoline engine

14. The relation of the subscriber to this application is that of Owner
(Owner, agent or otherwise)
_____, and he is authorized to make this application in behalf of the interest affected.

John Doe
(Applicant)

STATE OF KANSAS }
COUNTY OF Riley } ss.


I hereby certify that the foregoing application was signed in my presence and sworn to before me this _____
1st day of March, 1956

(Seal)

Richard Roe
(Notary Public)

My commission expires January 3, 1959

Note:
1 cubic foot per second = 448.8 gallons per minute = 646,317 gallons per day = 1.98 acre feet per day.
1 million gallons per day = 1.547 cubic feet per second = 3.07 acre feet per day.
1 acre foot = 43,560 cubic feet = 325,851 gallons.

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