

# Administrative Hearings and The Kansas Water Appropriation Act

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# DWR Hearings

- Pending New Applications
- Approvals/Denials of New Applications or Change Applications
- Failure to timely issue a Certificate
- Civil Enforcement
- Intensive Groundwater Use Control Areas
- Abandonment
- Water Transfer Applications

# General Hearing Procedures

- Hearing may be conducted by the CE or a designee.
- Notice must be served to owners/applicants at least 15 days prior to hearing and may also be published in newspaper of general circulation.
- Only those parties named in the notice and their legal representation may participate, but anyone can attend.
- Discovery before hearing.
- Pleadings, objections and motions may be filed.
- Ex parte communication is prohibited.
- Hearings must be electronically recorded.

# Final Decision Process

- If the Chief Engineer is not the hearing officer, the designee must submit a recommendation to the Chief Engineer.
- Once the hearing is closed, no further evidence may be submitted.
- Chief Engineer issues an order.
- Order may be appealed to Secretary of Agriculture.

## K.A.R. 5-3-4a

# Hearing Before Issuance of an Order

- A hearing may be held by the Chief Engineer before issuance of an order if one of the following conditions is met:
  - The Chief Engineer finds it to be in the public interest to hold a hearing.
  - A hearing has been requested by a person who shows to the satisfaction of the Chief Engineer that approval of the application could cause impairment of senior water rights or permits.
  - The Chief Engineer desires public input on the matter.
- An informal conference instead of a hearing may be held by the Chief Engineer, if all of the parties agree.

# Prior to Final Action

- The applicant shall bear the burden of proving, by a preponderance of the evidence, that the application should be approved.

# Approval/Denial of Application

- Any person aggrieved by an order of the Chief Engineer may request review by the Secretary of Agriculture, and upon exhaustion of administrative remedies, may appeal to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

# Certification

- Certificate of Appropriation is a final order which may only be appealed in district court.
  - Appeal must be filed within 30 days of issuance.
  - Prior to issuance, the owner receives a draft and given an opportunity to supply more information.
  - We will not reconsider any aspect of a certificate after appeal period has expired.
- If the Chief Engineer fails to issue a certificate within the time provided by this subsection, the applicant may request review, pursuant to K.S.A. 2005 Supp. 82a-1901, and amendments thereto, of the Chief Engineer's failure to act.

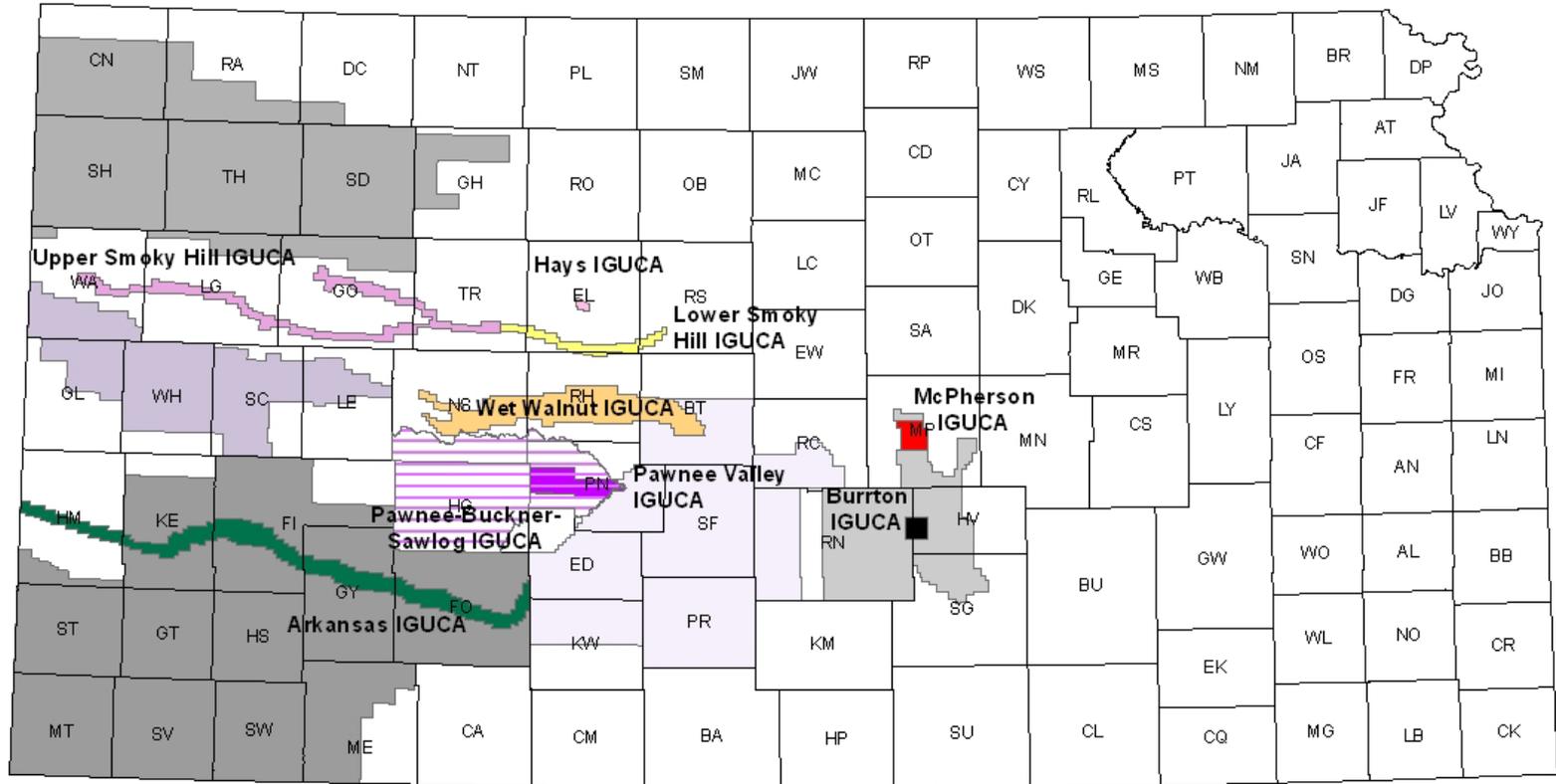
# K.S.A. 82a-718: Abandonment

- 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 (5) successive years.
- Before any water right shall be declared abandoned and terminated the chief engineer shall conduct a hearing thereon.
- Hearing notice shall include a copy of the verified report of the chief engineer or the Chief Engineer's representative.

# What is an IGUCA?

- Intensive Groundwater Use Control Area
- Water management tool that works in conjunction with the Kansas Water Appropriation Act
- Provides alternatives to strict administration of water rights by priority
- Allows for flexible solutions – with extensive public input through a public hearing process– to address water problems
- Chief engineer can amend an IGUCA in the public interest

# Intensive Groundwater Use Control Areas in Kansas



## GMD

-  Western Kansas GMD #1
-  Equus Beds GMD #2
-  Southwest Kansas GMD #3
-  Northwest Kansas GMD #4
-  Big Bend GMD #5

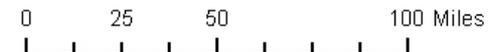
## IGUCA

-  Arkansas IGUCA
-  Burrton IGUCA
-  Hays IGUCA
-  Lower Smoky Hill IGUCA
-  Pawnee Valley IGUCA
-  Pawnee-Buckner-Sawlog IGUCA
-  Upper Smoky Hill IGUCA
-  Wet Walnut IGUCA

 McPherson IGUCA



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# IGUCA Proceedings Process

- Notification of all water right holders within area of concern.
- Hearing held to gather facts and allow public input.
  - Independent hearing officer must be appointed by Chief Engineer to determine whether conditions exist or public interest requires corrective control provisions
  - If so, hearing officer recommends boundaries.
- Chief Engineer conducts a separate public hearing to determine of corrective measures and order implementation.
  - Must be reheard at least every ten (10) years, thereafter.

# Civil Enforcement

- Violation of the Kansas Water Appropriation Act
- Violation of an IGUCA order
- Violation of any term, condition or limitation imposed by the Chief Engineer as authorized by law
- DWR bears the burden of proving, by a preponderance of the evidence, that a violation has occurred.

# Examples of Civil Enforcement

- Diversion of water from an unauthorized point of diversion
- Failure to limit the use of water to the authorized place of use
- Failure to submit or comply with the terms of conservation plans as required
- Failure to comply with the maximum annual quantity or rate of diversion authorized
- Failure to properly install, maintain or assure the accuracy of acceptable water measurement devices
- Failure to comply with orders related to minimum desirable stream flow, unlawful diversion, impairment of senior water rights or waste of water
- Failure to limit the use of water to an authorized type of use



K.A.R. 5-12-3

## Aquifer Storage and Recovery

- A hearing shall be held by the Chief Engineer in the general vicinity where an applicant proposes aquifer storage and recovery before approval of any such application for aquifer storage and recovery.

# Water Transfer Act

- The diversion and transportation of 2,000 acre feet/year or more for use outside a 35-mile radius from the source of water.
- Hearing officer shall be an independent person knowledgeable in water law.
- A hearing panel must be appointed, consisting of the Chief Engineer, the Director of the Kansas Water Office and the Secretary of Agriculture.
- Commenting Agencies: State natural resource and environmental agencies, including but not limited to KDHE, KWO, KWA, KDWP, KDA, DWR and GMD's.

# Diversions and Transportation of Water for Use in Another State

- Must comply with Kansas Water Appropriation Act and Water Transfer Act provisions.
- Must not allow water apportioned to Kansas by an interstate water compact to be used in another state.
- Chief Engineer must rely on a determination of the Attorney General of the other state on whether the proposed use would be prohibited in that state.



Questions?