

# Kansas Water Transfer Act

## WHAT IS A WATER TRANSFER?

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A "water transfer" for purposes of the Kansas Water Transfer Act (K.S.A. 82a-1501 *et seq.*) is the diversion and transportation of water in a quantity of 2,000 acre feet or more per year for beneficial use at a point of use outside a 35-mile radius from the point of diversion for such water. Water transfers are approved upon application, which is reviewed by a water transfer hearing panel.

## WHO SERVES ON THE WATER TRANSFER HEARING PANEL?

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The water transfer hearing panel consists of the Chief Engineer of the Division of Water Resources, the Director of the Kansas Water Office, and the Secretary of Health and Environment (or the Director of the Division of Environment if designated by the Secretary). The panel shall request the appointment of a presiding officer from the Office of Administrative Hearings, knowledgeable in Kansas water law, to preside over the proceeding and issue an initial order approving or denying the water transfer, which is then reviewed and followed by a final order of the water transfer hearing panel.

## WHAT CRITERIA IS CONSIDERED FOR EVALUATING A WATER TRANSFER?

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The act provides for the following criteria that must be met in order for a water transfer to be approvable:

1. No water transfer shall be approved which would reduce the amount of water required to meet the present or reasonably foreseeable future beneficial use of water by present or future users in the area from which the water is to be taken, unless:
  - The panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state of not approving the transfer;
  - The chief engineer recommends to the panel and concurs that an emergency exists to the public health, safety, or welfare; or
  - The Governor has declared that an emergency exists which affects the public health, safety, or welfare.
2. No water transfer shall be approved if:
  - The transfer would impair water reservation rights, vested rights, appropriation rights, or prior applications for permits to appropriate water; and
  - Unless the presiding officer appointed by the hearing panel determines that the applicant has adopted and implemented conservation plans and practices that meet certain statutory criteria.
3. When determining whether the benefits of the state for approving an application outweigh the benefits to the state for denying an application, the presiding officer appointed by the panel will consider:
  - Any current beneficial use being made of the water to be diverted including minimum desirable streamflow requirements;
  - Any reasonably foreseeable future beneficial use;
  - The economic, environmental, public health and welfare, and other impacts of approving or denying the transfer;
  - Alternative sources of water available to the applicant and present or future users;
  - Whether applicant has taken appropriate measures to preserve the quality and remediate any contamination of water currently available to applicant;
  - Sufficiency of detailed plan to operate facilities and carry water from point of diversion so that all parties can understand the impacts of the transfer;

- Effectiveness of conservation plans and practices;
- Conservation plans and practices by parties in opposition of or who may be affected by the transfer; and
- Any applicable management program, standards, policies, and rules and regulations of a groundwater management district.

## **WHAT IS THE PROCEDURE FOR APPLICATION OF A WATER TRANSFER?**

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**Step 1:** Application for transfer is filed with the chief engineer, or the chief engineer (plus one other member of the panel) determine it is in the best interest of the state to conduct a water transfer hearing based on:

- an application for permit to appropriate water;
- an application to change an existing water right; or
- a proposed contract for the sale of water from the state's conservation storage water supply capacity.

**Step 2:** Panel requests a presiding officer be appointed by the Office of Administrative Hearings to preside over the proceedings pursuant to the Kansas Administrative Procedure Act.

**Step 3:** Hearing Officer gives notice of prehearing conference not more than 14 days after the panel is assigned that officer

- Given by mail to applicant, parties who have intervened, and commenting agencies
- Shall be published in the Kansas register and at least two newspapers in area of proposed point of diversion

**Step 4:** Presiding officer holds prehearing conference commencing 90-120 days after notice has been given and concluding not later than 45 days after it commences.

**Step 5:** Formal public hearing will be held not less than 90 and not more than 120 days after conclusion of prehearing conference, concluding not later than 120 days after commencement.

- Held in basin of origin
- If deemed necessary by hearing officer, public comment hearing shall be held in basin of use

**Step 6:** Hearing officer issues initial order approving or denying the transfer not later than 90 days after conclusion of formal public hearing

- Shall include findings of fact relating to each factor of benefit to state of approval or denial
- Hearing officer can order approval of a transfer of a smaller amount than requested

**Step 7:** Panel reviews initial order of hearing officer and enters final order not later than 90 days after entry of initial order

- Panel may extend the 90 day limit with written consent of all parties or for good cause.

**Step 8:** Record of any hearing or proceeding maintained and made available for public examination in office of the chief engineer.