

Kansas Administrative Regulations

Kansas Department of Agriculture—Division of Water Resources

Article 10.—Water Appropriation

5-10-6. Procedure for determination of an active vested domestic water right.

The existence of an active domestic vested water right shall be determined by the chief engineer as follows:

(a) Information shall be filed with the chief engineer on a form prescribed by the chief engineer concerning the dates beneficial use of water was made, and the nature and extent of the active domestic vested right.

(b) Affidavits from at least three competent disinterested persons shall be filed by the claimant on a form prescribed by the chief engineer or other reliable substantiating evidence shall be submitted to the chief engineer by the claimant documenting the dates beneficial use of water was made, and the nature and extent of the active domestic vested right.

(c) Within a reasonable time, the staff of the division of water resources shall investigate the information submitted.

(d) Notice.

(1) Written notice of the claim shall be sent by the chief engineer to all water right owners of record in the office of the chief engineer with an authorized point of diversion within one-half mile of the claimed point of diversion.

(2) In addition, one notice in a newspaper with general circulation in the county in which the point of diversion is located shall be published by the chief engineer. Such published notice shall contain:

(A) the name of the claimant;

(B) the location of the claimed point of diversion; and

(C) a declaration that it is a claim for a domestic vested right.

(3) All notices shall be given at least 14 days prior to the close of the record.

(e) A copy of the chief engineer's draft order determining the active domestic vested water right and any comments received in response to the notices shall be furnished to the claimant by the chief engineer or the chief engineer's authorized representative.

(f) The claimant shall be given thirty days from the date the chief engineer mails the draft to the claimant in which to submit additional information, request a hearing concerning the determination, or both.

(g) If a hearing is requested by the claimant in a timely manner, or the chief engineer deems it to be in the public interest to do so, a hearing shall be held by the chief engineer, or the chief engineer's authorized representative, within a reasonable time.

(h) The chief engineer shall issue the order determining whether the claimed active vested domestic right exists and, if so, determining the nature and extent of that right.

(i) The order determining the active vested domestic right shall be made a matter of record in the office of the chief engineer. In addition, a copy of the order shall be furnished to the claimant by the chief engineer, with instructions that it shall be filed with the register of deeds in the county in which the point of diversion is located.

(j) All vested domestic water rights shall be assumed to have a priority of June 28, 1945 until they have been adjudicated by a court of competent jurisdiction. Vested domestic rights shall be administered in accordance with K.A.R. 5-10-5.

(Authorized by K.S.A. 82a-706a; implementing K.S.A. 82a-705a; effective Nov. 28, 1994.)

***** Authenticated Kansas Administrative Regulation *****