

**82a-1502. Approval of transfers, conditions.** (a) No person shall make a water transfer in this state unless and until the transfer is approved pursuant to the provisions of this act. No water transfer shall be approved which would reduce the amount of water required to meet the present or any reasonably foreseeable future beneficial use of water by present or future users in the area from which the water is to be taken for transfer unless: (1) The panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer; (2) the chief engineer recommends to the panel and the panel concurs that an emergency exists which affects the public health, safety or welfare; or (3) the governor has declared that an emergency exists which affects the public health, safety or welfare. Whenever an emergency exists, a water transfer may be approved by the panel on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval shall be subject to the terms, conditions and limitations specified by the panel.

(b) No water transfer shall be approved under the provisions of this act: (1) If such transfer would impair water reservation rights, vested rights, appropriation rights or prior applications for permits to appropriate water; and (2) unless the presiding officer determines that the applicant has adopted and implemented conservation plans and practices that (A) are consistent with the guidelines developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto, (B) have been in effect for not less than 12 consecutive months immediately prior to the filing of the application on which the hearing is being held and (C) if the transfer is for use by a public water supply system, include the implementation of a rate structure which encourages the efficient use of water that is determined by the presiding officer to be effective and if designed, implemented and maintained properly, will result in wise use and responsible conservation and management of water used by the system.

(c) To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the presiding officer shall consider all matters pertaining thereto, including specifically:

(1) Any current beneficial use being made of the water proposed to be diverted, including minimum desirable streamflow requirements;

(2) any reasonably foreseeable future beneficial use of the water;

(3) the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;

(4) alternative sources of water available to the applicant and present or future users for any beneficial use;

(5) whether the applicant has taken all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant;

(6) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion, which plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer;

(7) the effectiveness of conservation plans and practices adopted and implemented by the applicant and any other entities to be supplied water by the applicant;

(8) the conservation plans and practices adopted and implemented by any persons protesting or potentially affected by the proposed transfer, which plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto; and

(9) any applicable management program, standards, policies and rules and regulations of a groundwater management district.

**History:** L. 1983, ch. 341, § 2; L. 1993, ch. 219, § 3; L. 2004, ch. 145, § 47; July 1, 2005.