Since relative scarcity of water and unreliability of rains were among the few constants of the Kansas land, irrigation pumping plants, such as this one in Finney County (1911–1925) became a significant feature of the waterscape.
The state of Kansas lies astride the ninety-eighth meridian, a line frequently used to demarcate east from west, wet from dry, and subhumid from semiarid. Like many other states along this imaginary line, Kansas developed institutions and adaptations in response to the wide variety of environmental and hydrological conditions that existed within its single jurisdiction. At statehood Kansas adopted the riparian water law doctrine and, for the next eighty-five years while the states to the north, south, and west modified or abandoned the riparian doctrine, Kansas did little. Pressure to change the water law became overwhelming, however, and in 1945, with the support of the governor and water law experts, the legislature altered the law, adopting a prior appropriation principle similar to that administered in most other western states.

The history of water law development in Kansas or any other state is an important, albeit somewhat esoteric, field of study. Under a riparian system, the right to use water was attached to the

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land and was a part of the property rights. Everyone with land along a waterway could make use of the stream as long as the use was reasonable and did not materially affect the quality or quantity of water in the river flowing to their downstream neighbors. Groundwater, in contrast, was understood as an absolute property right. The alternative water law doctrine, prior appropriation, allowed holders of water rights to withdraw water and apply it wherever they chose. Under prior appropriation, water could be claimed for use on a first-come basis. This right was assured regardless of the user’s location on the waterway. Users who came later were assigned junior rights in the order in which they arrived and put the water to use. Thus, in years of drought, the person with the senior-most right would receive a full allotment before the holder of a junior right would receive a drop.

The Kansas journey from riparian to prior appropriation water law resulted from the changing needs of its citizens and the profound differences in geography from east to west. In the early years of Kansas settlement when most people lived in the eastern half of the state, riparian water law served the state well. Ample watered eastern Kansas did not possess the arid conditions that spawned prior appropriation. Rivers flowed year-round, and sufficient rain fell in the eastern region of the state, offering little impetus to change the existing law. Whereas other states experienced more uniform precipitation and water demands, Kansas contended with great variety. As the population of the western portion of the state grew, the state laws and institutions were forced to contend with the statewide differences. Since riparian law also did not adapt well to the changes in technology and agricultural methodology, the doctrine eventually constrained people more than it facilitated orderly development of resources. Kansas remained an apparent water law anomaly for a time because its physical environment was anomalous, and the relationship between the disparate regions of the state and their needs had not been fully determined.

Increasingly during the early twentieth century, policy and lawmakers believed the existing legal framework for controlling and parceling water resources resulted in wasted water and lost economic opportunity. The solution to this problem, argued the state’s chief engineer and other water experts, was a new water law that improved citizens’ abilities to capitalize on the physical environment. Many Kansas lawmakers and concerned individuals sought reform from the very beginning, but not until 1945 did significant demand exist to change the water rights doctrine. The legal change that came about through the 1945 Water Appropriation Act affected the state’s ecology and economy and reflected how Kansans viewed themselves and their environment.

When Kansans met in 1859 to create a state constitution, they did not provide an explicit water law. Because the convention did not address water law, the practical result was that upon admission to the Union in 1861 Kansas embraced the common law or riparian doctrine of water rights. This doctrine served the needs of the people then in the state, but eventually it proved to be a poor environmental fit given the economic aspirations of various settlers. The law became a poor fit because both technology and circumstances changed. Over time, for example, the need to keep water in the streams to turn mills decreased and pressure to withdraw water and apply it to fields increased. The relative scarcity of

2. James Willard Hurst, Law and the Conditions of Freedom (Madison: University of Wisconsin Press, 1949). 6. Hurst argues that the purpose of law is to “promote the release of individual creative energy and to mobi-
water and the unreliability of rains were the few constants of the Kansas land and waterscape. As the potential benefits of irrigation became apparent to many Kansans, the inability of riparian doctrine to encourage or allow irrigation also became clear.

The expanding population west of the ninety-eighth meridian was another important change. Increasingly, as people settled the western portions of the state they encountered conditions that required irrigation for successful farming. Irrigation companies along the Arkansas River in Colorado demonstrated that farming could be successful when supported by prior appropriation law. Nevertheless, the progression from riparian to prior appropriation in Kansas required more time and the efforts of countless people and entire governmental agencies.

The question of groundwater regulation eventually would play a major role in formulating Kansas water law, but most early water contests involved surface water. Not until the mid-twentieth century did technology exist to efficiently tap the Ogallala and other deep aquifers; combined with increasing demands for water, this technology caused groundwater to take center stage in the legal battle. When groundwater emerged as the most important and fought-over commodity, it was governed on the basis of the legal traditions and precedents built in the state over decades of surface water cases.

The first significant court case to deal with water law was Shamleffer {quote}v Council Grove Peerless Milling Company{quote} in 1877. The Peerless Milling Company dug a channel diverting the waters of the Neosho River to its mill through the land owned by W.F. Shamleffer without his consent. This case set a precedent for virtually all future Kansas water law decisions in that it powerfully affirmed riparian doctrine. Justice David J. Brewer, who was one of the state's best-known jurists, serving on the United States Supreme Court from 1889 to 1910, spoke for the Kansas Supreme Court in Shamleffer. Brewer wrote that "every man through whose land a stream of water runs is entitled to the flow of that stream without diminution or alteration." In the same decision Justice Brewer reaffirmed the principle that the rights to water "is annexed to the soil, use does not create it, and disuse cannot destroy or suspend it."

Four years later in the City of Emporia et al. v Soden, the court answered questions left unaddressed in Shamleffer. The Emporia v Soden decision spoke to both

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surface and groundwater rights. Like many other western water law cases, this one built upon complicated actions occurring over several years. First a riparian owner built a dam to supply a mill with power. The dam then created a pond but did not divert the flow of the river. In 1861 the mill’s builder purchased “right of flowage” from an upper landowner—essentially an appropriative act unendorsed by state law. No challenges arose to this arrangement until the City of Emporia bought land adjoining the pond in 1881 and dug a well to collect percolated water from the pond and supply the city with water. The city also installed two pipes, one from the well to the city and another directly into the pond.

At times the stream did not contain enough water to work the mill machinery, and mill owner William T. Soden sued the city asking the court for an injunction; Soden claimed the city’s direct pumping of the pond illegally depleted the flow. The supreme court of Kansas supplied an injunction, and the City of Emporia appealed. The issue before the supreme court was the legality of permanently reducing the flow in a river. Had it wanted to embrace prior appropriation, the court could have used the mill’s senior use right as sufficient reason to supply the injunction. Instead it chose a different reasoning. In Emporia v Soden the court held that, although a riparian owner may take water for domestic purposes and water livestock without worry of depriving lower users, individual citizens of a city were not riparian owners. Soden therefore was due an undiminished flow of the river.

Speaking on the subject of groundwater, the court asserted the common law doctrine by saying the water was the “property of the owner of the surface and he could use it all, or any part, and was not to be held accountable to his neighbor and his neighbor could not stop him from using all the water that he could appropriate.” This statement affirmed that groundwater use was an absolute property right and not subject to interference by neighbors or the state.

8. Ibid. “Right of flowage” is the term used in the decision.
The most vexing problem when considering Kansas water law is the tremendous hydrologic variability across the state, which is a primary reason Kansas was the last western state to adopt prior appropriation doctrine. The eastern extreme, unlike the western, has several significant perennial rivers whose flow is dependable. Eastern Kansas receives more than double the precipitation of western Kansas and has a longer growing season. In eastern Kansas dryland farming techniques work well, while the same techniques in western Kansas pose a significantly higher risk.

Irrigated agriculture offered an effective alternative to dryland farming, and during the late nineteenth century farmers gradually adopted this option. While groundwater could be used for irrigation, the pumping technology and energy demands prior to the mid-twentieth century required that any large-scale irrigation utilize surface flows. Irrigation also entailed greater capital costs and encouraged the development of ironclad water rights, such as those guaranteed by prior appropriation. A prolonged discussion in the state regarding how best to regulate water use and water rights resulted from the realities of the differing Kansas geography.

One troubling and contentious issue stemmed from the fact that altering the water law meant extinguishing some property rights to enumerate and establish prior appropriative rights. Legislators and judges were hesitant to alter property rights and had to be convinced of the necessity of doing so. Ultimately the legislature was persuaded when it became apparent that only prior appropriation would increase the ability of the state’s residents to harvest and use the natural resources.

Sentiment backing this change grew because the water in rivers and streams was insufficient to satisfy everyone’s needs. Moreover, almost any use at all beyond the permissible domestic uses caused a material depletion downstream. Kansas farmers interested in irrigation were all the more frustrated with riparian law because they were in a geographical position to know about the success of corporate irrigation projects along the Arkansas River in Colorado. These irrigation companies were founded on the assumption of acquired and acquirable water rights. In response to internal pressures for water law change, the 1886 Kansas irrigation statutes provided a mechanism by which “the right to use running water flowing in a stream or river could be acquired by appropriation for irrigation purposes . . . and the one first in time should be first in right.” On this point of law the legislature was clear, but it went further and “authorized the diversion from natural beds, basins, channels of natural waters west of the 99th meridian, first for irrigation subject to domestic uses and second for other industrial purposes.” For the first time Kansas established water rights for irrigation in accordance with the doctrine of prior appropriation. These rights could be bought and sold independently of the property. The Kansas statutes now seemingly embraced the doctrine of prior appropriation and allowed for a significant change, but the judicial interpretation of this act ultimately undermined its effectiveness.

he firmest, most direct assault, and thus endorsement of the riparian doctrine, came in 1905 when the state supreme court rendered its decision in Clark v Allaman. The plaintiff, Lizzie Allaman, was an irrigator with the senior right in the western portion of the state who also happened to be downstream of H. A. Clark. A dispute that led to the suit arose during the dry years of 1900–1901. The district court of Wallace County awarded Allaman damages and the superior

11. Appropriation of Water for Beneficial Purposes, 44. The governor’s committee headed by George Knapp clearly believed that the riparian doctrine discouraged financial investment as the investor had no clear title to a given volume of water.

12. For a full discussion of the irrigation efforts along the Arkansas River during this time, see Sherow, Watering the Valley.
right to the majority of the flow in Rose Creek, which flowed into the Smoky Hill River. The supreme court of Kansas reversed the lower court's decision and dismissed its use of prior appropriation reasoning. Speaking for the court in *Clark v Allaman*, Justice Rousseau A. Burch wrote that riparian doctrine, not appropriation doctrine, pertained in Kansas. The court required that water use for irrigation purposes be reasonable and take into account users downstream. Significantly the court noted that both doctrines may exist in the same jurisdiction in Kansas, but the law would recognize only those rights acquired by appropriation and in accordance with the irrigation statutes of 1886. In essence the court ruled that while the legislature could introduce the doctrine of prior appropriation into the state's legal mix, riparian doctrine would continue to dominate. 16

Had the court been more accommodating of appropriation doctrine, the state could have moved in the direction of a California type of mixed water doctrine. This course of action would have significantly altered Kansas water law and would have aligned Court cases fueled the demand for change voiced by many Kansas citizens. Both cases pitted Kansas against Colorado in an argument over water in the Arkansas River. Instigated in 1901, *Kansas v Colorado* finally was decided and reported in 1907. The intervening years were devoted to gathering information for the court. These years also corresponded to the consideration of *Clark v Allaman* (1905), which had a curious effect on the national case. The attorneys for Kansas in the federal case argued that Kansas irrigators should have rights to a guaranteed flow in the Arkansas because the state used riparian doctrine, and that should guarantee upstream Colorado use not interfere with the supply of water delivered to Kansas. The state supreme court supported this reasoning by ruling that prior appropriation did not exist in Kansas before 1886 and then remained secondary to riparian doctrine. The hope of the Kansas attorneys that *Clark v Allaman* would strengthen their argument came to naught, however, when the national court handed down its decision.

In *Kansas v Colorado* the Supreme Court concluded that Colorado did not owe a specific amount of water to Kansas. Justice Brewer, formerly of the Kansas Supreme Court, wrote the opinion of the
court that dealt with the two different water doctrines by ignoring them and formulating a “rule of equity” that examined the amount of water used and its impact. The court concluded that in essence the current division of the Arkansas was equitable but left open the possibility for future economic damage and a return to court.17 Again in 1943 Kansas asked the federal Supreme Court to require that Colorado deliver a specified amount of water in the Arkansas River. As was the case in the first decision, the U.S. Supreme Court provided no relief for Kansas in Colorado v Kansas (1943), and Kansas irrigators continued to watch and grow increasingly frustrated.18

For forty years prior to the passage of the 1945 Water Appropriation Act, the realities of the arid High Plains continued to shape the actions and thoughts of people dealing with water rights. The question of water rights affected almost everyone in the state, and the prior appropriation doctrine was one method that could provide dependable supplies of water for some citizens. The court realized the prior appropriation doctrine had some support and said as much in 1915.19

In Feldhut v Brummitt, the state supreme court explicitly declined the request to adopt prior appropriation doctrine. In doing so the court recognized three distinct regions in the state each with different needs. “In eastern Kansas the Idaho or arid states’ doctrine [prior appropriation] would be entirely inappropria-
tate; in central Kansas it would be of doubtful propriety; in the extreme parts of western Kansas it might do very well.”20 But the court had no power to divide the state, according to the justices, despite the state’s obvious and different needs. Kansas and its citizens would have to continue to make riparian doctrine work. The court’s enumeration of the different hydrologic conditions demonstrates the pressure in Kansas to recognize western aridity and to adjust the laws to fit those conditions.

Throughout the first four decades of the twentieth century, the Kansas Supreme Court decided cases using the riparian doctrine; however, subtle shifts in the application of that doctrine were discernible. In 1915, 1916, 1935, 1936, and 1938 the supreme court reaf-

20. Ibid., 129.
firmed the primacy of riparian rights in Kansas. The only departure with this school of judicial thought occurred in 1917 when the court allowed the Atchison, Topeka and Santa Fe Railway to make “reasonable use” of water at the expense of another riparian landowner. This idea of reasonable use replaced the staunch rule of law evident in Emporia v. Soden and Clark v. Allaman, prohibiting the diminishment of flow in a river.

By the second decade of the twentieth century many Kansans became increasingly aware that Kansas alone among the seventeen western states lacked an effective method to appropriate water rights; it also was alone in its lack of administrative control over water use and allocation. Kansas, however, appeared as an anomaly for only those Kansans looking west. Those who looked east saw riparian doctrine working effectively and adequately. Indeed some Kansans had long felt that the adoption of irrigation and prior appropriation was an admission of deficiencies. As early as 1881, for example, the Topeka Daily Capital argued: “there is no need at this late day of creating prejudice against the state by the supposition that without irrigation her land is incapable of cultivation...at present the state is well enough off and sure of crops as any other state.”

The Kansas legislature did not accept this philosophy—least not as the twentieth century unfolded. It recognized the importance of water to the state’s prosperity and took action, while others used and fought over this most valuable natural resource. In 1917 the legislature set up an administrative agency within the Kansas State Board of Agriculture to control the allocation and use of water in the state. The legislature reinvented this agency several times, and in 1927 it became the Division of Water Resources, headed by a chief engineer.

21. Wallace v. City of Winfield, 96 Kan 35 (1915); Wallace v. City of Winfield, 98 Kan 651 (1916); Durkee v. the Board of County Commissioners of the County of Bourbon, 142 Kan 690 (1935); Frizell v. Blindey, 144 Kan 84 (1936); Smith v. Miller, 147 Kan 40 (1938).


24. Kansas Laws (1917), ch. 172; ibid. (1919), ch. 218; ibid. (1927), ch. 293; ibid. (1933), ch. 271, sec. 7. The 1917 act created the Kansas Water Commission. In 1919 the legislature created the Division of Irrigation within the Kansas State Board of Agriculture headed by an appointed commissioner. In 1927 the legislature created the Water Commission, and the Division of Irrigation was abolished and replaced with the Division of Water Resources within the State Board of Agriculture. Finally in 1933 the act was amended to allow the employment of a chief engineer.
George Selick Knapp (1884–1965), a mechanical and agricultural engineer who was serving as the state’s irrigation commissioner, was the obvious choice for the new post. A lifetime champion of irrigation, Knapp claimed in 1938 that Kansas has “the potentialities of being . . . the most fertile agricultural spot in the world.” Knapp, like many other influential Kansans, saw great possibility for “improvement” in the Kansas landscape. The capacity to produce a bountiful “Eden” was possible through the correct application and uses of technology, planning, and resources. First and most important in Knapp’s opinion, however, the utilitarian prior appropriation doctrine had to transform Kansas water policies away from the obstructive riparian doctrine.25

By 1945, eighteen years into Knapp’s reign as chief engineer, dissatisfaction with the common law and administrative control of water in Kansas had crystallized with the decision in State of Kansas ex rel. Peterson v Kansas State Board of Agriculture et al.26 Most important, this case ultimately led to a profound change in the law. The case resulted from the City of Wichita’s 1943 application to the Division of Water Resources for a permit to appropriate groundwaters for domestic and industrial use from the equus beds in Harvey County. In accordance with his interpretation of state law, Chief Engineer Knapp posted notice of a hearing regarding the application.

Bernard Peterson, county attorney for Harvey County, and J.G. Somers, Newton city attorney, filed a suit of original jurisdiction in the state supreme court challenging Knapp’s right to hold such a hearing. Officials from Newton and Harvey County correctly foresaw the tremendous drain on the equus beds that the City of Wichita could make. These people wanted to prevent the loss of an important and valuable commodity that underlay their county and lands. Furthermore the loss of local control that the actions of Knapp and the state represented concerned Peterson, Somers, and others. Potentially the state action could deprive the county and city of water and economic returns as well as burden the population with the need to seek permission to dig wells on landowners’ private property.

For their part Knapp, the Division of Water Resources, and the board of agriculture believed their authority to hold such a hearing and oversee the appropriation of groundwater came from laws passed in 1933 and 1935.27 Harvey County and the City of Newton countered and argued, “neither the Kansas State Board of Agriculture nor the Division of Water Resources, nor George Knapp has any authority . . . to regulate, allocate, distribute, grant or withhold per-

mission to take water by means of wells.”

Lead attorney Peterson insisted that the right to use groundwater was solely the domain of property owners; he had good reason to hope that the justices would agree with him.

Peterson v Board of Agriculture “tested and challenged the authority of the defendants to allocate, distribute or otherwise interfere with the beneficial use of subterranean waters.” In essence the plaintiff asked the court to test and rule on the meaning of the 1917, 1919, 1927, and 1933 statutes and the 1935 amendments that had created and empowered the office of chief engineer and the Division of Water Resources. The question before the justices in this case was a question of law, as the facts of the case were undisputed. Simply stated: did the legislature intend to give Knapp and the Division of Water Resources the power to approve or deny the appropriation of groundwater?

Speaking for an unanimous court, Justice W.W. Harvey stayed close to the question of law when he wrote, “we have no statute which authorizes the Division of Water Resources to regulate, allocate or otherwise interfere with the use and consumption of underground waters.”

Citing the overwhelming case law, the court found no explicit statute authorizing the defendants to interfere with the consumption of groundwater. The opinion of the court made it clear that the right to use groundwater was to remain a property right without exception. The judges affirmed the common law and its understanding that groundwater belonged exclusively to the property owner who could use the water as he or she saw fit, without governmental interference.

Knapp, the Division of Water Resources, and the board of agriculture believed the legal situation had to be changed if Kansas was to avoid economic waste, ruin, and chaos. Thus, they wasted no time in responding to the court’s decision in Peterson v Board of Agriculture. Knapp consulted with state attorneys, water authorities, and experts outside the state regarding the appropriate response and, with Secretary of Agriculture J.C. Mohler, decided to ask the governor to appoint a committee to make recommendations for legislative change.

On July 24, 1944, the board of agriculture met and considered the problem of water use in Kansas. According to the board and the Division of Water Resources, unused water existed in many places in the state and should be put to use, but the legal frame-

28. Plaintiffs Petition, September 7, 1943, Kansas ex rel. Bernard Peterson v Kansas State Board of Agriculture, case file 36,401, Records of the Kansas Supreme Court, Library and Archives Division, Kansas State Historical Society.
29. Supplementary document amending plaintiff's petition, ibid. The document is not notarized, but it is signed by a justice of the court in a script that is illegible pages unnumbered.
31. Syllabus by the court regarding Kansas ex rel. Bernard Peterson v Kansas State Board of Agriculture, June 10, 1944, Library and Archives Division, Kansas State Historical Society. The holdings also can be found in 158 Kan 603-14 (1944).
work to do this did not exist. Because the board agreed with the supreme court that a legislative change was required, it passed a resolution asking for the committee that Knapp thought was necessary.\(^{33}\)

The governor responded to the resolution in August and appointed the committee, designating Knapp its chairman.\(^{34}\) The committee met on September 11, 1944, and agreed to solicit information from experts in the field of water law and development from both in and outside the state. As a part of its second meeting the committee would collect this information to ensure the best possible recommendations for legal changes in Kansas. Knapp proposed three committee meetings to produce a final report with recommendations to the governor and legislature.\(^{35}\)

In the committee's second and most important meeting, the members solicited information from a variety of sources. Those in attendance included Spencer Baird and W.J. Burke of the Bureau of Reclamation; Wells Hutchins of the U.S. Department of Agriculture; Wardner Scott, state engineer of Nebraska; John Gray, president of the Kansas Reclamation Association; John Riddell, assistant attorney general of Nebraska; and G. Ward of the Federal Land Bank in Wichita. Also invited to attend was Dr. E.P. Aherns, Kansas director of the National Reclamation Association, and other prominent Kansans involved in water law or irrigation.\(^{36}\)

The committee considered the advice and suggestions from these experts and submitted its report to the governor on December 28, 1944. This report readily recognized that, of the seventeen western states, Kansas alone lacked a statutory measure to appropriate water. Other states adopted appropriative measures, the report concluded, because they "lead to maximum development and use."\(^{37}\) This reflected an important goal of the committee: to create a water law that would allow maximum development and use of resources in Kansas. Because game, air, and other resources were necessarily held in common and regulated by the state, the report argued, the state should do the same with water.\(^{38}\) The document further noted that water is a common resource by virtue of its migratory nature. Knapp and his colleagues believed water in Kansas existed either in rivers or as groundwater ultimately because of rainwater. If these waters remained unused, the committee believed they would be wasted by being allowed to flow out of the state, either through rivers or through the strata that confine groundwaters. According to the committee, riparian doctrine retarded development and the application of water for beneficial purposes. The committee argued that "unused water cannot wisely be held in perpetuity for a common-landowner who may never have use for it without resulting in under-development... permitting water to flow out of the state as an economic waste and loss of a valuable natural resource."\(^{39}\)

The report recommended adopting an appropriation system of water rights and establishing administrative control over appropriation. The writers of the report hoped these changes would ensure "protection of developments and financial investments in the works of the diligent person who perfects his use and realizes beneficial returns...as against such potentially present and almost valueless undeveloped

gave Buzick's plan due consideration as he sat on the committee, but the recommendation cannot be found in any form in the final report.

38. Ibid., 16, 52.
39. Ibid., 43-44; see also ibid., comments section, 52. The premise that water flowing out of the state to the ocean is waste is a powerful theme in this report.
equal rights to divert and use.” This scenario played out under appropriation law was preferable to riparian rights, which the committee believed contributed to undeveloped resources and waste.

The committee transmitted the report to Governor Andrew Schoeppel on December 28, 1944. On January 10, 1945, the governor delivered his message to the legislature, which included a discussion of Knapp’s committee investigation and recommendations on water. The governor described the problem with the current water rights system and promised to supply each legislative member with a copy of the report. Schoeppel then told members that he deemed the recommendation of the report “wise, expedient and necessary for consideration by this session of the Legislature,” and he asked that they “give consideration to this essential problem.”

The legislature took up the report, and on March 1, 1945, the Committee on State Affairs introduced its recommendations as House Bill 322. The second reading of the bill came the next day. On March 12, during the afternoon session wherein the committee of the

whole met, three minor amendments insignificantly altered the wording in the bill, and the next day the bill was put to a vote. Edwin F. Abels urged passage, arguing that “this bill attempts to lock the door before the horse is stolen.” Apparently Abels’s logic and reasoning carried the day, as the bill passed the house by a vote of seventy-five to sixteen, with thirty-three representatives absent or not voting. Of the sixteen nay voters, no discernible pattern or uniting factor emerges as to their places of residence or stated occupations, although eight lived on or west of the one-hundredth meridian. Farmers, stockmen, lawyers, lumbermen, and merchants voted against the bill, just as others in the same occupations voted for it.

Formally titled “An Act to Conserve, Protect, and Regulate the Use, Development, Diversion and Appropriation of Water for Beneficial and Public Purposes and to Prevent Waste and Unreasonable Use of Water,” the 1945 Water Appropriation Act (WAA) embraced the recommendations in the governor’s report almost in their entirety. The state not only supported the recommendations but also the report’s reasoning and objectives. Water was a commodity, and failure to use equaled waste. The law was clear on this point: “the right of the appropriator . . . to the use of water shall terminate when he ceases for three years or more to use it for . . . beneficial purposes.”

40. Ibid., 44.
Beneficial, consumptive use of the resource was something to be encouraged and rewarded.

The new law displaced the previous laws and judicial interpretations that had kept rivers and streams flowing in western Kansas; “beneficial use” had replaced “reasonable use.” The 1945 WAA encouraged the development of irrigation and investment and the fullest possible mining of Kansas resources. It also encouraged farmers to take water out of streams or away from riparian habitats for use on cash crops.

Once the legislature passed the 1945 WAA and the governor signed it, the Division of Water Resources started issuing permits. Kansans began applying for permits and creating water diversion and irrigation works at a pace the state had never known. With these permits and water allocations came physical and economic changes including increased economic prosperity.

George Knapp’s contemporaries and water development analysts, such as Wells Hutchins and Knapp’s replacement as chief engineer, Robert Smhrai, hailed the 1945 WAA.\textsuperscript{44} In addition to allowing the complete use of water, the law provided for a centralized authority, vested in the Kansas State Board of Agriculture and the Division of Water Resources, to control the state’s water. The control implied that water could be scientifically managed for the mutual benefit of all citizens and provide for the most efficient use of a scarce resource. With appropriative water rights, Kansas could move toward the nineteenth-century booster-inspired vision of a “garden”—a place that would produce wealth for all virtuous citizens.

\textbf{Without dispute, Knapp and the 1945 WAA helped to remake the Kansas landscape.} By adopting the doctrine of prior appropriation Kansas joined other western states in participating in the postwar irrigation boom. The new law has appropriated water across the state, not just in the western portion, and irrigation systems have become popular even in eastern Kansas. The law was changed when enough people, especially legal and water experts, believed it had to be. The “good” or “bad” resulting from the new law cannot, however, be simply calculated. The ensuing changes and consequences represented both effective and harmful adaptations to the climate, environment, and hydrologic conditions of the state.

The continued presence of humans living resourcefully on the Plains and the viable ecosystem that continues to exist there attest to the success of some of the Kansas legal and technological adaptations. People attempted to correct environmental conditions in Kansas by adopting irrigation and other methods that produced the desired results. However, the more permanent accounting of the trade-off of flowing streams for rippling wheat fields will be made in terms other than dollar profits, over decades or perhaps even centuries.

The WAA, although challenged and amended and challenged again in following years, assured that “beneficial use” remained the highest and best use of water. With the new water law doctrine the state moved in line with other western states, and created a new concise law without the confusions attendant with a mixed doctrine. The supreme court heard relatively few cases dealing with water rights after the law change beyond affirming the right of the legislature to pass the law and of the Division of Water Resources to administer it. Presumably this streamlining of the legal process leaves Kansans free to attend to the business at hand—developing the water resources of the state. However, the growing agitation to provide for instream flows and environmental health suggests that the law eventually may have to be modified to conform to the current goals, needs, and conditions of the state and its citizens.