Abstract

The Spring 1981 issue of the Journal of the Kansas Bar Association contained Eva Neufeld's article "The Kansas Water Appropriation Statutes and Their Effect Upon the Oil and Gas Industry in Kansas" (the 1981 Article). We are updating the 1981 Article because in the intervening 30 years great changes have occurred in Kansas law and in oil and gas recovery methods, particularly in coalbed methane (CBM) production and fracking. The 1981 Article focused on the Kansas Water Appropriation Act (KWAA) administered by the chief engineer of the Division of Water Resources (DWR) of the Kansas Department of Agriculture (KDA). The 1981 Article cited other non-KWAA statutes, including sections dealing with the Kansas Corporation Commission (KCC), civil procedure, and taxation. Over the last 30 years, the Kansas legislature has made numerous additions and amendments to the KWAA and other relevant statutes, and we analyze the effect of these changes on the oil and gas industry.

The 1981 Article began with a brief history of the KWAA and the KWAA's initial impact on oil and gas production. The 1981 Article then covered (1) water use in the initial drilling operation, (2) water as a by-product of oil and gas production, and (3) water use in secondary or enhanced oil and gas recovery. The final three sections dealt with the question of attachment of water rights to land in Oklahoma, Colorado, and Kansas; discussed policy issues and made suggestions; and advised on obtaining a water appropriation permit. This article updates and supplements the 1981 Article, but does not replace it; so, the articles should be read together. We use the same 1981 Article format and subtitles, but in some cases add sub-subsections, and we do not discuss Oklahoma and Colorado law. Like the 1981 Article, this article focuses primarily, but not exclusively, on water allocation. Several developments in legislation, administrative regulations, and methods of oil and gas recovery necessitate mentioning several water quality concerns as they relate to allocation, but we do not discuss water quality concerns in detail. This article summarizes changes in the KWAA and the other related statutes and in DWR since 1981, and it ties them to recent advancements in oil and gas recovery methods. We deal with attachment of water rights, but only in Kansas and not in Colorado or Oklahoma. The section describing policy issues and making suggestions is reviewed as to current applicability. The final section on obtaining a water appropriation permit is updated and expanded.