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## Cochran v. State Dept. of Agric., Div. of Water Res., 249 P.3d 434 (Kan. 2011)

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reasonable time to see a measurable effect may extend for days, months, or even years; therefore, the lack of evidence of an increase after curtailment was not dispositive.

The junior users next asserted that the Director abused his discretion when he relied on the Ground Water Model utilized to study the viability and necessity of curtailing withdrawals from the Aquifer. The hearing officer testified that he relied on the model because it was the best available science and it contained an acceptable level of reliability. The record showed that the margin of error was about ten percent and the court found that no other evidence existed to contravene this finding. After applying the Idaho abuse of discretion standard, the court held the director did not err in relying on the Ground Water Model.

The court further held that the junior users were denied due process of law when they were denied a hearing prior to the initial determination by the hearing order; however, because the parties did receive a hearing before the issuance of the Final Order this was a harmless error.

Finally, the court addressed the surface users' sole issue on appeal, whether the District court erred in failing to order the Director to curtail more water from the groundwater users. Essentially, the court upheld the finding of the Director to not curtail the flows of those within the ten percent margin of error by applying the same abuse of discretion standard used earlier to justify curtailment at all.

Accordingly, the Idaho Supreme Court affirmed the finding of the District Court, and all parties prevailed in part on appeal.

*Richard Neiley*

## KANSAS

**Cochran v. State Dept. of Agric., Div. of Water Res., 249 P.3d 434 (Kan. 2011)** (holding that the Cochrans had sufficient standing, under both statutory and traditional standing analyses, to seek administrative review of the Chief Engineer's decision to grant water appropriation permits to the City of Wichita when the City's permits would potentially impair the Cochrans' senior water rights).

Pursuant to an "Integrated Local Water Supply Plan," the City of Wichita ("City") sought to divert groundwater from both the Equus Beds Aquifer and Arkansas River bank storage water, from an area known as the Bently Well Field. The City therefore applied to the Chief Engineer of the Division of Water Resources for the requisite permits. The Chief Engineer approved the City's permit applications and issued an order granting the permits. The Cochrans ("appellants"), who owned water rights with points of diversion close to the points of diversion the Chief Engineer approved for the City, expressed concern that the City's diversion would negatively impact their water rights.

Appellants sent a letter to the Kansas Department of Agriculture requesting a hearing on the Chief Engineer's issuance of the permits. The Department of Agriculture entered an initial order denying appellants'

request on the grounds that appellants lacked standing to request a hearing because only the permit applicant itself may request a hearing on the disposition of its own application.

Appellants filed a petition for judicial review of the Chief Engineer's decision in Sedgwick County District Court ("district court"), requesting that the district court (i) enter an injunction against the Chief Engineer; (ii) modify or set aside the Chief Engineer's decision; and (iii) grant other equitable claims for relief. The district court agreed to hear limited arguments regarding appellants' standing and ultimately decided under existing Kansas case law that appellants had standing to bring their claim. The City then filed an interlocutory appeal, challenging the appellants' standing, with the Kansas Supreme Court.

The Court first examined whether appellants had standing to seek review under the Kansas Water Appropriation Act ("KWAA") and/or the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions ("KJRA"). The KWAA, which established the prior appropriation system in Kansas, contains standing requirements that limit standing for administrative review of decisions pertaining to water permits to the permit applicant itself. Accordingly, appellants did not have standing under the KWAA to challenge a permit application by the City.

The KJRA, however, grants standing for judicial review of an agency action to anyone who was a party to the agency proceedings that resulted in the agency permitting action. Because appellants owned water rights and participated in the process by which the Chief Engineer analyzed the City's permit application, appellants met the standard for standing under the KJRA.

The Court next examined which Act the district court should have followed when ruling on whether appellants had standing to bring a claim. The Court concluded that, because the KJRA was enacted *after* the KWAA, the Court had to assume that the legislature enacted the KJRA with full knowledge of the KWAA and all the provisions therein. The Court accordingly held that the legislature intended to adopt a broader definition of standing under the KJRA, so the KJRA was the relevant statute for determining whether appellants had standing.

Last, the Court examined the "traditional" definition of standing, which requires a party to demonstrate that (i) it has suffered a cognizable injury; and (ii) there is a causal connection between the injury and the challenged conduct. Appellants indeed alleged a potential injury to their property and that this injury would be caused by the City's use of its water permits. The Court thus held that appellants met the criteria for standing to seek judicial review under both the statutory and traditional requirements of standing.

Accordingly, the Court affirmed the district court's holding that appellants had standing to challenge the Chief Engineer's issuance of the permits and remanded the case for further proceedings consistent with this opinion.

*Patrick Peluso*