

Water Rights Under Siege: Defending Farm Assets Against Bureaucratic Overreach

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Overview

For generations, farmers and ranchers have viewed land and water as the lifeblood of their operations. Today, a water right is no longer just a tool for production - it has become a heavily targeted property asset. As the American West and High Plains navigate structural aridity, our historic legal frameworks face an unprecedented testing ground.

What commentators frequently label a "hyper-litigious gridlock" is a predictable crisis born of administrative overreach, regulatory delay, and the systematic erosion of stable property rights. From river basin allocations to hyper-local groundwater battles in Kansas, water law has evolved into a fundamental defense of private property against an encroaching administrative state.

Interstate Water Disputes: The Primacy of Compacts

Interstate water management operates under legally binding compacts approved by Congress. These frameworks are contracts between sovereign states. Resolving shortages requires strict adherence to the rule of law and textualist principles, not bureaucratic intervention.

The Colorado River basin. Negotiations over post-2026 operating guidelines represent a high-stakes test of contract enforcement. The Lower Basin (California, Arizona, and Nevada) advocates for a centralized regulatory model forcing proportional cuts based on total reservoir storage. Conversely, the Upper Basin (Colorado, Wyoming, Utah, and New Mexico) maintains a legally sound, textualist position: because their water depends strictly on annual snowpack, they cannot guarantee a fixed delivery baseline without destroying their own economies.

Under contract law, the Upper Basin cannot be forced to bear the primary burden of a structural deficit it did not create. If an agreement is not reached, a "Compact Call" - where the Lower Basin legally demands its full allocation - is the proper invocation of a contract, not a system failure.

The South Platte River basin. Friction between Colorado and Nebraska highlights the necessity of honoring interstate agreements. Nebraska has advanced plans for the Perkins County Canal to divert its non-irrigation season allocation, acting entirely within its sovereign rights under the 1923 South Platte River Compact. Colorado municipalities, worried about urban growth, have attempted to block the canal using local environmental permitting barriers. Using state regulations to obstruct a compact-approved infrastructure project represents an abusive deployment of bureaucracy to subvert explicit interstate obligations.



Intrastate Groundwater: Local Control vs. Centralized Mandates

Internal state conflicts over groundwater highlight a deep constitutional tension between local governance and centralized enforcement. Since 1945, the Kansas Water Appropriation Act (KWAA) has operated strictly on the foundational doctrine of prior appropriation: *first in time, first in right*.

To manage the Ogallala Aquifer, the state established Groundwater Management Districts (GMDs). Critics claim a conflict of interest exists because GMD boards are largely composed of local producers. However, this decentralized structure represents vital principles of subsidiarity and democratic accountability. Local stakeholders have the greatest economic incentive to preserve the aquifer. Displacing them with top-down mandates from the state Division of Water Resources (DWR) replaces localized expertise with rigid, centralized planning.

The Quivira National Wildlife Refuge Impairment Dispute

This conflict is crystallized within GMD 5. The Quivira National Wildlife Refuge holds a senior surface water right dating back to 1957. Because the shallow alluvial aquifer is hydrologically connected to surface waters, groundwater pumping by junior agricultural irrigators upstream can deplete the baseflow of Rattlesnake Creek during dry periods.

Following an impairment finding by the DWR, the U.S. Fish and Wildlife Service demanded its water. GMD 5 attempted to implement a Local Enhanced Management Area (LEMA) to establish a community-driven solution, but state officials rejected the proposed conservation measures as mathematically insufficient. This impasse exposes serious administrative flaws:

- **The Cost of Regulatory Delay:** The DWR's decades of delay in properly enforcing seniority created the current economic hazard, trapping local irrigators in regulatory uncertainty.
- **The Burden of Speculative Modeling:** State regulators increasingly rely on complex hydrological models to assert "hydraulic connectivity". Junior water right holders are entirely justified in filing appeals to block pumping restrictions when those restrictions are based on speculative simulations that fail to prove a direct, measurable impact from specific wells.

The R9 Ranch Showdown

The tension between regulatory authority and true property ownership has culminated in a major legal battle before the Kansas Supreme Court involving the cities of Hays and Russell, Edwards County, and local irrigators represented by the Water Protection Association of Central Kansas (WaterPACK). Decades ago, the City of Hays purchased the 7,000-acre R9 Ranch in Edwards County to convert the water rights from irrigation to municipal use. When state regulators finally approved the change, Edwards County retaliated by weaponizing local zoning laws to ban water pipelines from crossing county rights-of-way.



Arguments concluded before the Kansas Supreme Court on December 15, 2025, with an opinion expected during the summer of 2026. This case spotlights the integrity of vested rights: if a water right under the KWAA is a true property right, a legal purchaser must be allowed to transfer and use that asset.

Recognizing the danger of local protectionist boards using "backdoor" zoning regulations to nullify valid property rights, the Kansas Legislature passed House Bill 2433 in March of 2026. This law retroactively stripped counties of the power to require secondary permits or invent roadblocks to sabotage state-approved water transfers. The legislative victory underscores that local regulatory boards cannot unconstitutionally duplicate or usurp state water law.

The Constitutional Defense of Water

As agricultural producers face mandatory, state-imposed cuts under newly approved LEMAs or Intensive Groundwater Use Control Areas (IGUCAs), the legal arena is properly shifting to constitutional ground: the Takings Clause of the Fifth Amendment.

Administrative agencies frequently argue that water rights are mere regulatory privileges subject to the state's unbridled police power. This is a dangerous expansion of state authority. A water right under the KWAA is a vested property right. When the state mandates sweeping, across-the-board pumping reductions without strictly adhering to seniority order, it is effectively confiscating private property for a public ecological benefit. If federal or state entities wish to reclaim water to protect environmental habitats, the Constitution requires them to purchase those rights at fair market value rather than regulating them out of existence by administrative fiat.

The doctrine of prior appropriation and interstate compacts are fully capable of managing modern aridity, provided they are enforced strictly as written. Stability and economic survival for agriculture will depend on reinforcing the rule of law, honoring clear priority rights, and defending private property from regulatory takings.

Conclusion

The intersecting legal battles spanning from the Colorado River Basin to local Kansas fields prove one critical point: our traditional water law frameworks are not obsolete. The core problem is not a lack of water; it is a lack of fidelity to the rule of law. Systems like the doctrine of prior appropriation and interstate compacts are fully capable of managing modern aridity, but only if they are enforced strictly as written - not rewritten on the fly by administrative fiat. For agricultural producers, the days of treating water rights as mere regulatory permissions are over. A water right is a vested property right protected by the U.S. Constitution. Whether fighting a multi-state compact dispute, challenging speculative computer modeling in local impairment cases, or resisting "backdoor" county zoning roadblocks, the defense strategy should be to fiercely defend private property titles and demand just compensation whenever the administrative state attempts a regulatory taking. Protecting your water is no longer just about ensuring next year's crop; it is about defending the fundamental constitutional rights that secure the future of American agriculture.

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