

## **KCKA Outdoor Code, adopted April 26, 1975**

**As a Kansas Canoe & Kayak Association Member, I profess to the following Code of Conduct:**

** I am dedicated to the conservation of streams and rivers and to the protection of natural scenic land and water resources**

** I respect riparian landowner rights and will abide by the following rules:**

- o I will secure or seek permission before entering private land with wheeled vehicles**
- o I will not chase or harass livestock, leave gates open, cut fences, or in anyway vandalize private property**
- o I will gain access to streams and rivers at public road bridges or will use private access with permission only**

** I will carry out and/or properly dispose of all my litter including litter left behind by others when possible**

** I will respect all fishing and hunting laws and will not discharge firearms except where**

**permitted by law and then only in a safe manner**

** All camp fires will be properly attended and thoroughly extinguished after use**

---

## *Kansas Canoe & Kayak Association (KCKA) - A Brief History*

last revised: 

### **A Brief History- Part 1**

Early in 70's, climate was right for a new recreational canoeing organization in Kansas. Under Governor Robert Docking, the Kansas Park & Resources Authority (KPRA) was preparing an Outdoor Recreation Plan for Kansas that included canoe trails. The plan was required by the U.S. Bureau of Outdoor Recreation if federal funds were to be granted for Kansas recreational development. Much of the initial data and research came for the section on canoe trails came from Jim Nighswonger's 1970 Masters thesis in Landscape Architecture at Kansas State University. Several statewide newspapers began to carry articles examining the ramifications of canoeing in Kansas. The public, the Kansas landowners, the Kansas Farm Bureau, and the Kansas Legislature was fast becoming aware of canoeing in Kansas.

Dating back into the 1960's, many Kansans were beginning to take an interest in canoeing Kansas streams. Legal access to various streams were always the beginning point...and often the stopping point. Inquiries from individuals, tourists, small businesses, and interested Kansas canoeists into the 1970's began to filter through the system. People were asking questions about "legal access" and "navigability" of Kansas streams. Opinions came from various Kansas Legislators, the Kansas Attorney General(Vern Miller) Lt. Gov. David Owen, future Governors and other political figures. No one could agree on anything. One thing was sure. Over its long history, the Kansas Supreme Court

had never been presented with the precise issue of "legal access" and "navigability" of Kansas streams.

Don Charvat's "Kansas Canoe Trails Guide", was being written and was soon to be published. Don was an active, charter member of KCA. His guide included information on 17 rivers in Kansas and covered over 450 miles of canoeable water. Legislation under many different venues continued to be introduced in the Kansas legislature to allow various rivers in Kansas to become Scenic rivers or "test" recreational rivers, similar to the National Wild & Scenic rivers program. They were most often shot down in committee and rarely made an appearance to the full Kansas Legislature. The Kansas Water Office tried to introduce a recreational section in the Kansas Water Law years later. That section was cut entirely. A number of politically strong groups, such as the Kansas Farm Bureau and the Kansas Livestock Association, were beginning to flex their strong political influence.

It was apparent, among ardent Kansas canoeists, that a statewide organization was needed to help counter some of the anti-canoe recreation forces in Kansas. There was beginning to be a sizable grass roots canoeing interest in Kansas. In 1975, part of that group would form the Kansas Canoe Association.

["Kansas Canoe Trails Guide" by Don Charvat, 1st Edition, 1976. Don was a charter KCKA member and lived in Belle Plaine, KS at the time with his wife and son. He was an avid paddler, mostly in SE Kansas, but did travel all over Kansas. He published the book himself. It was all type written and the maps were fairly primitive. The Guide covers about 450 miles on 17 different rivers in SE Kansas and a few short sections of some rivers in North Central Kansas like the Republican, Little Blue, and Kansas River. Not a complete guide by a long shot, but a start and it was the first guide book on Kansas Rivers. You actually ordered the book directly from Don. Sold for \$4.50. by T. J. Hittle]

## **Kansas Canoe & Kayak Association (KCKA)**

Kansas Canoe Association (KCA), now known as the Kansas Canoe & Kayak Association (KCKA) Constitution officially adopted April 26, 1975

## **A Brief History- Part 2**

In 1974, Jim Nighswonger, a Landscape Architect and Extension Forester at Kansas State University organized some "interest meetings" to see if a new statewide canoeing organization could fly on its own. Included in the charter group of KCA members were some of Jim Nighswonger's and Richard Williams' informal canoeing group, the Canoe Rats.

On January 18, 1975, a total of forty-eight canoe enthusiasts met in Manhattan, KS and officially formed the Kansas Canoe Association. A partial list included Jim Nighswonger (Manhattan), Jake Hartmetz (Wichita), Richard Williams (Manhattan), Dean Wilson (Manhattan), Kenny Miles (Burlingame), Guy & Kay Ellis (Topeka), Herb Wenger (Topeka), Dan Stoops, Dorothy Moore, Steve Craig, Janet Burch, Bill Loucks, David Loucks, John Sayler, Wayne Lebsack, Dian Carr, Betty Sue Cross, Harold, Spiker, Dave Redmon, Bob Day, Gene Ernst, Larry & Delia Marcellus, Don Charvat, Jake Hartmetz, Marianna Remple, Neil Schanker, Hank Deutsch, Lee Railsback, Rick Mossman, Bob Kirk, W.A. Hatcher, and others. A number of those were instrumental in the early years. Several charter members eventually held positions as President of the Kansas Canoe & Kayak Association (KCKA).

Articles continued to be published in various Kansas newspapers regarding legal access to Kansas Streams. In 1974, Rep. Donn Everett (R-Manhattan) introduced a bill authorizing the Kansas Forestry, Fish and Game Commission to promulgate rules and regulations concerning recreational canoeing upon the streams of Kansas. It never passed.

The spirits were high early in 1975 when the Kansas Canoe Association was born. Along with adoption of the KCKA Constitution, adopted on April 26, 1975, an Outdoor Code was also adopted. Nearly sixty individuals were present at the charter meeting. It included a code of ethics that was oriented towards developing and fostering good Kansas landowner relations.

The Code began "As a Kansas Canoe & Kayak Association member, I profess to the following Code of Conduct.

- *I will, at all times, display respect for the land and water, treating the same as a valuable and finite natural resource.*

- *I am dedicated to the conservation of streams and rivers and to the protection of natural scenic land and water resources.*
- *I respect riparian landowner rights and will abide by the following rules:*
- *I will secure or seek permission before entering private land with wheeled vehicles.*
- *I will not chase or harass livestock, leave gates open, cut fences, or in any way vandalize private property.*
- *I will gain access to streams and rivers at public road bridges or will use private access with permission only.*
- *I will carry out and/or properly dispose of all my litter including litter left behind by others when possible.*
- *I will respect all fishing and hunting laws and will not discharge firearms except where permitted by law and then only in a safe manner.*
- *All camp fires will be properly attended and thoroughly extinguished after use.*

The Kansas Park & Resources Authority (KPRA) eventually published Kansas Canoe Routes, a collection of one page flyers that mapped various canoeable streams. KCKA provided the basic stream route research, provided the necessary information, and did rough drafts on the maps. KPRA made revisions and printed the documents. Over the years, as canoeing in Kansas became more of a political hot button, KPRA quit publishing the flyers, claiming funding problems. A number of politically strong groups, such as the Kansas Farm Bureau and the Kansas Livestock Association, were again exerting their political influence. After the KPRA and the Kansas Fish and Game merged to become the Kansas Department of Wildlife & Parks (KDWP) under Gov. Mike Haden, the brochures simply faded away. A few interested businesses, such as the Pathfinder, Manhattan, KS. still Xeroxes a few of the popular brochures for their customers.

END TO DATE

---

### **A Brief History- Part 3**

**The State of River Access in Kansas**

by T. J. Hittle / (785) 539-7772

“Decriminalize Canoeing in Kansas”. Many have seen the blue bumper sticker that features that slogan. It appears on many cars, vans, trucks, and canoes all over Kansas and is available from the Kansas Canoe Association. That single slogan, now a nationwide scandal, attracts a LOT of attention. It generates questions from paddlers and tourists from California to Maine. It was the brainchild of a paddler from Wichita, KS when asked what Kansans could do to help get the message out of the pathetic lack of public access to rivers in Kansas.

The problem of having only three public rivers in Kansas with virtually no public river access to them has plagued Kansans for many years. Kansas has the highest percentage of privately owned land in the entire USA. Our State Constitution was written to reinforce this private land ownership in the strongest possible way. Until 1990, it was assumed by most Kansans that, with the surface waters in Kansas being publicly owned, and as long as you were floating on publicly owned water, you were not trespassing. All that changed in 1990.

In 1988, a protracted lawsuit began in SE Kansas on Shoal Creek. The Kansas Wildlife Federation (KWF) handled the vast majority of the legal fees and other expenses associated with the test case brought forward by Chris Meek, then the Cherokee County Attorney. The case was the result of a feud between Holly Haven Canoe Outfitters and landowner, Jasper Hayes, regarding an electric fence that Hayes had placed across Shoal creek to prevent canoeists from crossing his property while floating on public waters. KWF really took some heat on this issue, as did the Kansas Canoe Association and others, who acted as “friends of the court”. I would be remiss without crediting KWF with the moral and financial backbone that took this case forward.

Chris Meek was eventually defeated as County Attorney, much due to the bad press generated by the test case. He continued the case (Meek vs Hays) however, without pay, to the Kansas Supreme Court. Several large Kansas farm organizations poured considerable money in legal fees and other behind the scene efforts into seeing the case defeated and Chris Meek financially ruined. The end result was the interpretation that we have in Kansas now regarding riparian landowner rights and Kansas streams. The State Supreme Court determined that as long as a riparian landowner owns the land to the midpoint of any stream (other than the three historically navigable, aka public, streams, the Kansas,

the Arkansas, and the Missouri Rivers) then they also control the use on that water. Essentially, this meant that if you were floating on any stream other than the Kansas, Arkansas, or Missouri Rivers, you were trespassing unless you had permission from all the adjoining landowners along the way. Although there remains a very few streams with their headwaters located small sections of public lands on large lake systems, a review of the typical list of riparian land owners along most private lands bordering Kansas streams quickly show how ridiculous an undertaking of obtaining multiple permissions would be.

The good news is that if you can bushwhack your way down to a public river, without trespassing in the process, you may legally enjoy a float on the public waters of the Kansas, the Arkansas, and the Missouri Rivers. The public land extends to the “average high water mark”, as defined by the US Army Corps of Engineers. Essentially all islands within the river channel are public and the vast majority of sand and gravel bars along the three public rivers. There are a number of sections to float on the Kansas River and paddlers can find river maps and access information the KANSAS PADDLER Home Page at [www.kansas.net/~tjhittle](http://www.kansas.net/~tjhittle)

The Supreme Court further stated that only the Kansas legislature could make changes that would allow access on rivers and streams in Kansas. Interestingly enough, the electric fence was never re-erected by Mr. Hayes and canoeists continue to float Shoal Creek (although illegally), much like I have floated rivers and streams in Kansas for the past 23 years and nearly 8,000 river miles. Most paddlers use public bridge right-of-ways, State, Federal, and City public properties, and other more nebulous means of access as we descend through tall weeds, poison ivy, and dangerous steep muddy banks to access our rivers and streams in Kansas.

The Kansas legislature has also taken the State Supreme Court decision to an extreme by ignoring the well documented potentials of tourism on the three public rivers. At every turn since the 1990 decision, they have acted to kill nearly every legislative attempt at achieving river access on the three public rivers in Kansas. This is despite an overwhelming interest by their constituents demanding river access. A few large cities have circumvented this process. They have individually been building their own river accesses, such as those few found in the Lawrence, Topeka, Kansas City, and Wichita areas. But, by and large, there is virtually no good river access to a great many river

sections to any of the “three navigable” rivers in Kansas. This is essentially the equivalent of having hundreds of miles of public parks with no entrances to them....pure hypocrisy.

State Supreme Courts of most other states, such as Nebraska, Missouri, Oklahoma, Colorado, do not interpret their own State Constitution in the same manner. In fact, on the very same Republican River that flows from Nebraska into Kansas, paddlers will find a series of well developed river accesses, that is until they reach the Kansas border. Kansas remains one the only states in the USA that has no state system of public accesses. This, in spite of the many studies, some performed by State of Kansas agencies, which document the tourism potentials of river based tourism in Kansas. The 1996 Kansas River Recreational Study, a five-state agency 2-year study, commissioned by the Kansas legislature, confirmed the need for public access. The study also documented the tourism dollars that will result from a system of public accesses and that will benefit the many businesses and governmental bodies statewide.

What we have in just the Kansas and Arkansas Rivers alone is a public river trail system that extends statewide, near thousands of potential users across Kansas, with virtually no access to it. It just doesn't make much sense to have these two great public rivers with enjoyable potential recreational experiences in our back yard, with no way to access them.

Certainly, public river access will benefit all Kansans and is really a statewide issue with its potential to help keep Kansas' recreational tourism dollars in-state, instead of spending them in Nebraska, Missouri, Oklahoma, Arkansas, and Colorado, as is the case now. A number of natural resource and recreational organizations in Kansas and on a Federal level are working to change the lack of river access. Your membership and voice in any of those organizations would make a real difference. Please join and help in the efforts to improve river access in Kansas. Our neighboring states long ago have seen the wisdom and recognized the benefits of a system of public river accesses, but this is the sad state of river access in Kansas.

END

---

## **Summary:**

Many Kansas streams are non-navigable. Navigable streams must be able to be used to transport the local products (usually agricultural and not silvicultural products such as logs). This has caused the test in Kansas to be even stricter than the log float test. The public may use a stream up to the ordinary high water mark; no law discusses whether land above this mark can be used for portage.

## **State Test of Kansas Water Law & Navigability**

<http://www.americanwhitewater.org/access/navigability/reports/KS.htm>

Kansas has followed Colorado 's lead in limiting the waters that are open to the public. The test of navigability in Kansas is the "navigable in fact test;" therefore, it is basically the same as the federal commerce test. "Whether a river is navigable in fact is to be determined by inquiring whether it is used, or is susceptible of being used, in its natural and ordinary condition as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."

In a case involving the Neosho River, the Neosho was determined to be non-navigable despite the operation of ferryboats, floating of logs, and use by motor boats for pleasure, because the river contains shallow riffles which boats need to be dragged across. Additionally, the river had never been used to transport agricultural products. Similarly, Shoal Creek was declared non-navigable despite use by a canoe rental company that ran float trips on the creek and use by another company for plant collections. This ruling was because the creek had shallow riffles that even a canoe needed to be dragged across and the creek had not been used for valuable floatage in transportation to market of the products of the country through which it runs.

## **Extent of Public Rights in Navigable & Non-navigable Rivers**

The public has the right to use navigable streams for recreational purposes, including boating, up to the ordinary high water mark. Kansas's courts have not used the statute, which dedicates "All water

within the state of Kansas . . . to the use of the people of the state . . . ,” in support of a right to use water for recreational purposes. This is contrary to some other jurisdictions with similar statutes. In fact, the statutory definition of criminal trespass includes entering on non-navigable water

The state owns the beds of navigable rivers, and the riparian owner’s land extends to the bank of the stream, which is the ordinary high water mark. Owners of the bed have the exclusive right of control of everything above the streambed, which also lends support to the idea that where the streambed is privately owned, the public cannot use the surface.

Kansas’s law has not dealt with the issue of portage and other incidents of navigation on navigable streams.

## **Miscellaneous**

In Kansas , the Arkansas , the Kansas , and the Missouri Rivers have been declared navigable, and the Neosho , the Delaware , and the Smoky Hill Rivers have been declared non-navigable.

Criminal trespass on private land or non-navigable water that is fenced or posted against trespass or where the owner has communicated to the trespasser is a class B non-person misdemeanor.

---

## **OTHER LINKS TO KANSAS WATER LAW - AS IT RELATES TO RIVERS AND STREAMS**

[KANSAS ATTORNEY GENERAL OPINION NO. 2000-51](#) - October 4, 2001 - RE: Waters and Watercourses--Navigable Waters--Arkansas River; Navigability; Ownership of Bed and Banks

[KANSAS ATTORNEY GENERAL OPINION NO. 1997-45 - May 6, 1997](#)

- RE: Waters and Watercourses--Navigable Waters--Acquisition by State of New Channel where Stream Altered

[KANSAS ATTORNEY GENERAL OPINION NO. 2000-53 - October 24,](#)

[2000](#) - RE: Public Health--Secretary of Health and Environment, Activities; Water Supply and Sewage--Prevention of Water Pollution; Permits; Exemptions; Reservoirs and Farm Ponds

---

## **CANOEING IN KANSAS - a 1995 interview from KTWU's Sunflower Journeys**

Cliff Long (A Past President, Kansas Canoe Association): The primary function of the canoe association is to paddle somewhere in something that isn't motorized. Currently, we're represented by rafts, canoes, kayaks.

Narrator: Some members of the Kansas Canoe Association came out to a stretch of Fall River southeast of Eureka to paddle a bit and talk with me about canoeing in Kansas....

Long: We've been through a dry year here, and there's very little that's floatable in the state right now. If you like getting out and paddling on a short section and back to where you start, it's great. It's really good weather for it right now. But it's too dry to make a trip from point A to point B in most places. That's why we've picked where we're at today.

Narrator: Bill Cather and his son Charlie brought their kayaks along and floated down this short stretch of the river with Cliff Long and Eddy Beard. Cather acknowledges that canoeing or kayaking on Kansas streams is somewhat limited....

Cather: You know, it's illegal to canoe on a lot of those streams, so you kind of have to be careful where you canoe. Of course, I guess I've probably canoed some places I shouldn't have, but I don't think I've done any damage.

John Peck (Professor of Law, University of Kansas): The Water Appropriations Act says that all water is hereby dedicated to the use of the public. But that doesn't mean that the public can have access for a public use of all the waters.

Narrator: A professor of law at the University of Kansas, John Peck explains the legal restraints on canoeing in Kansas streams....

Peck: The law as I understand it is that we distinguish between "navigable" and "non-navigable" streams in Kansas. And the determination of navigability status is made as of the date of statehood. We make the determination now, but the question is 'what was this particular river or stream as of the date of statehood?' And if a stream is navigable as of the date of statehood, the river bed belongs to the state. And that makes the stream itself or the river accessible to the public because the state also owns the bed.

We have three streams that have been deemed to be navigable -- the Missouri River, which forms a small boundary between Kansas and Missouri; the Kansas River, which starts at Junction City and flows through Manhattan, Topeka, Lawrence and Kansas City; and then the Arkansas River, which starts out in Colorado and flows into Kansas, through Great Bend, down through Wichita and then into Oklahoma. Those three rivers being navigable at statehood are open to the public for canoe purposes because the state owns the bed.

Long: Anything else that you get on in Kansas has to be within a federal impoundment, such as the upper part of Fall River Reservoir where we are now to be legal. The rest of it, the farmers own -- the land underneath the water ... they don't own the water, and therefore you're trespassing to get on and off the water.

Cather: Now right where we're sitting right here, this belongs to the people of the state of Kansas ... belongs to the Wildlife and Parks Department. But there aren't many stretches like this that have been saved like this.

Peck: Now, how is a stream found to be non-navigable or navigable? Well, it takes a lawsuit. And there are a number of lawsuits that have occurred in Kansas where specific streams have been the subject of the case -- the Republican River; there have been some other rivers; and then the most recent case is the one from southeast Kansas concerning, I believe, it's Shoal Creek in Cherokee County. The case was Meek vs Hays. And that's the most recent pronouncement on the subject.

Cather: And the Supreme Court essentially said that the river bottoms and so forth belong to the landowners on each side. And that's really what I was referring to.

Peck: The Kansas Supreme Court determined that that stream was non-navigable at the time of statehood. Therefore, the state does not own the bed, but rather the adjacent or so-called riparian owners own the riverbed. So the public has no right ... at least under current law in Kansas, to float down a non-navigable stream without permission from the adjacent landowners.

Long: Permission of each and every landowner along the way ... to be one hundred percent legal. In some areas, it's quite easy to get permission, and other areas it's impossible -- depending a lot on how heavy the demands are for recreational use of land; what the person's past experiences have been with people on the property -- things like that.

Cather: There's no way to contact all the landowners up and down a river like this. And it's really just a bad law. It oughta be changed.

Narrator: In the past, the Kansas Canoe Association has spearheaded efforts to change state laws in Kansas that prohibit public access to free-flowing streams, but they've run into strong opposition from groups defending private property rights.

Long: We're still interested in gaining access. We've never given it up. Each year at the legislature we try to get that through again. However, I don't see that it's going to go through in the near future. There are too many problems that farmers and ranchers are facing otherwise that they're going to let something like this go through.

Cather: If it was legal, I'm sure that there would be more people on the river. But I think that the younger generation now is much more imbued with environmental ideals and they're more inclined to get out and get away from the city that they live in and come to some little stretch of wilderness like this. There's kind of a nostalgia in our bones to return from this place. You know, this is what creation was like. And at one time, we all lived near to some place like this.

(copyright 1995, KTWU/Channel 11, Washburn University, Topeka, KS.)

---

## ***KCKA Presidents***

### **YEAR / NAME / CITY**

**1975 Jim Nighswonger, Manhattan, KS. - Charter President**

**1976 Herb Wenger, Topeka, KS.**

**1977 Melvin Baughman, Chanute, KS.**

**1978 Jake Hartmetz, Wichita, KS.**

**1979 Richard Williams, Manhattan, KS.**

**1980 Joe Bogle, Wichita, KS.**

**1981 Tom Kneil, Wichita, KS.**

**1982 T. J. Hittle, Manhattan, KS.**

**1983 Dean Wilson, Topeka, KS.**

**1984-1985 Jim Nighswonger, Manhattan, KS.**

**1986 - no president elected - KCKA Managed by the Board**

**1987-1988 Rex Replogle, Manhattan, KS.**

**1989 Sam Segraves, Lawrence, KS.**

**1990 Michael Gibbens, Tonganoxie, KS.**

1991 Howard Magathan, Emporia, KS.

1992 Mick O'Shea, Manhattan, KS.

1993 Dave Redmon, Manhattan, KS.

1994 Bob Harris, Hutchinson, KS.

1995 Cliff Long, Wichita, KS.

1996 Tom Covert, Topeka, KS

1997-1998 Dave Murphy, Shawnee, KS

1999-2000 Mike Calwell, Countryside, KS

2001 Mike Farmer, Emporia, KS

2002 - no president elected - KCKA Managed by the Board

2003-2004 - Jackie Rawlings, Manhattan, KS (1st Woman President)

2005-2006 - Jim Johnson, Wichita, KS

2007 - David Cobb, Wichita, KS

---

## **Kansas Canoe & Kayak Association Distinguished Service Award (DSA):**

(The DSA can be nominated by any KCKA member, but traditionally is nominated by the KCKA Internal Affairs Chair and is voted on by the KCKA Board. The DSA is awarded by the KCKA to recognize members and non-members for: "Outstanding Service")

Apologies to all that have been overlooked. Please drop the [Webmaster](#) a line for corrections and additions. A partial list includes:

---

Chris Meek

Jake Hartmetz

**Dean Wilson**

**Jim Nighswonger**

**Rex Replogle - 1990**

**T. J. Hittle - 1991**

**Cliff Long**

**Eddy Beard**

**Mick O'Shea**

**Bob Harris - 2004**

**R. J. Stephenson - 2004**

**Dave Murphy - 2005**