

SENATE BILL No. 185

By Committee on Agriculture

2-3

9 AN ACT concerning water rights; relating to abandonment and termi-
10 nation; due and sufficient cause for nonuse; amending K.S.A. 2008
11 Supp. 82a-718 and repealing the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2008 Supp. 82a-718 is hereby amended to read as
15 follows: 82a-718. (a) All appropriations of water must be for some ben-
16 efiticial purpose. Every water right of every kind shall be deemed aban-
17 doned and shall terminate when without due and sufficient cause no
18 lawful, beneficial use is henceforth made of water under such right for
19 five successive years. Before any water right shall be declared abandoned
20 and terminated the chief engineer shall conduct a hearing thereon. Notice
21 shall be served on the user at least 30 days before the date of the hearing.
22 The determination of the chief engineer pursuant to this section shall be
23 subject to review in accordance with the provisions of K.S.A. 2008 Supp.
24 82a-1901, and amendments thereto.

25 The verified report of the chief engineer or such engineer's authorized
26 representative shall be prima facie evidence of the abandonment and
27 termination of any water right.

28 (b) When no lawful, beneficial use of water under a water right has
29 been reported for three successive years, the chief engineer shall notify
30 the user, by certified mail, return receipt requested, that: (1) No lawful,
31 beneficial use of the water has been reported for three successive years;
32 (2) if no lawful, beneficial use is made of the water for five successive
33 years, the right may be terminated; and (3) the right will not be termi-
34 nated if the user shows that for one or more of the five consecutive years
35 the beneficial use of the water was prevented or made unnecessary by
36 circumstances that are due and sufficient cause for nonuse, which cir-
37 cumstances shall be included in the notice.

38 (c) *For purposes of subsection (a), adequate moisture for crop pro-*
39 *duction as determined by the owner or operator of the land designated*
40 *for use of the water right shall be deemed due and sufficient cause for*
41 *nonuse.*

42 (d) *Any person whose water right was declared abandoned and ter-*
43 *minated prior to July 1, 2009, who supplied the chief engineer with data*

1 *regarding adequate moisture as justification for nonuse, may request a*
2 *reconsideration of such termination consistent with the provisions of sub-*
3 *section (c).*

4 (e) The provisions of subsection (a) shall not apply to a water right
5 that has not been declared abandoned and terminated before the effective
6 date of this act if the five years of successive nonuse occurred exclusively
7 and entirely before January 1, 1990. However, the provisions of subsec-
8 tion (a) shall apply if the period of five successive years of nonuse began
9 before January 1, 1990, and continued after that date.

10 Sec. 2. K.S.A. 2008 Supp. 82a-718 is hereby repealed.

11 Sec. 3. This act shall take effect and be in force from and after its
12 publication in the statute book.