

## HOUSE BILL No. 2477

By Committee on Water

Requested by Josh McGinn on behalf of the Kansas Department of Agriculture

1-20

1 AN ACT concerning water; relating to the Kansas department of  
2 agriculture; requiring the department to publish a map on the  
3 department's official website that shows the location of all applied-for  
4 diversions of water and requested changes of more than 300 feet;  
5 requiring any resulting orders to be posted on the department's official  
6 website; expanding the current individual notice requirement to apply  
7 to all landowners that are within half a mile of such applied for  
8 diversions or changes; removing the requirement for such individual  
9 notice to be made by the department in conjunction with the applicable  
10 groundwater management district; amending K.S.A. 82a-745 and 82a-  
11 1906 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 82a-745 is hereby amended to read as follows: 82a-  
15 745. (a) Any water right owner or a group of water right owners in a  
16 designated area may enter into a consent agreement and order with the  
17 chief engineer to establish a water conservation area. The water right  
18 owner or group of water right owners shall submit a management plan to  
19 the chief engineer. Such management plan shall be the basis of the consent  
20 agreement and order designating a water conservation area and shall:

21 (1) include clear geographic boundaries;  
22 (2) include the written consent of all participating water right owners  
23 within the geographic boundaries described in paragraph (1) to enter into  
24 the consent agreement and order;

25 (3) include a finding or findings that one or more of the  
26 circumstances specified in K.S.A. 82a-1036(a) through (d), and  
27 amendments thereto, exist, or include a finding or findings that the area  
28 within the geographic boundaries described in paragraph (1) has been  
29 closed to new appropriations by rule, regulation or order of the chief  
30 engineer;

31 (4) include provisions regarding the proposed duration of the water  
32 conservation area and any process by which water right owners may  
33 request to be added or removed from the water conservation area;

34 (5) include goals and one or more of the corrective control provisions  
35 provided in subsection (b);

- 1        (6) give due consideration to water users who have previously  
2 implemented reductions in water use resulting in voluntary conservation  
3 measures;
- 4        (7) include compliance monitoring and enforcement; and
- 5        (8) be consistent with state law.
- 6        (b) A consent agreement and order of designation of a water  
7 conservation area pursuant to this section shall define the boundaries of the  
8 water conservation area and may include any of the following corrective  
9 control provisions:
  - 10      (1) Closing the water conservation area to any further appropriation  
11 of groundwater. In which event, the chief engineer shall thereafter refuse  
12 to accept any application for a permit to appropriate groundwater located  
13 within such area;
  - 14      (2) determining the permissible total withdrawal of groundwater in  
15 the water conservation area each day, month or year, and apportioning  
16 such permissible total withdrawal among the valid groundwater right  
17 holders in such area in accordance with the relative dates of priority of  
18 such rights;
  - 19      (3) reducing the permissible withdrawal of groundwater by any one  
20 or more appropriators thereof, or by wells in the water conservation area;
  - 21      (4) requiring and specifying a system of rotation of groundwater use  
22 in the water conservation area; and
  - 23      (5) any other provisions necessary to effectuate agreed-upon water  
24 conservation goals consistent with the public interest.
- 25        The chief engineer shall be responsible for the monitoring and  
26 enforcement of any corrective control provisions ordered for a water  
27 conservation area.
- 28        (c) The order of designation shall be in full force and effect from the  
29 date of its entry in the records of the chief engineer's office. The chief  
30 engineer upon request shall deliver a copy of such order to any interested  
31 person who is affected by such order and shall file a copy of the same with  
32 the register of deeds of any county within which any part of the water  
33 conservation area lies.
- 34        (d) If any corrective control provisions of a water conservation area  
35 conflict with rules and regulations of a groundwater management district  
36 or requirements of a local enhanced management plan or intensive  
37 groundwater use control area that result in greater overall conservation of  
38 water resources within which a participating water right is situated, the  
39 chief engineer is authorized to amend the provisions of the water  
40 conservation area to conform to any rules and regulations or requirements  
41 that result in greater conservation of water resources, as determined by the  
42 chief engineer.
- 43        (e) To provide flexibility in the management of water resources, as

1 part of the consent agreement and order of designation, the chief engineer  
2 may authorize a management plan that allots water authorized by existing  
3 water rights, subject to the following limitations:

4 (1) The management plan shall be limited to the term of the water  
5 conservation area;

6 (2) the management plan may allow, in any given calendar year, the  
7 water use of an individual water right or rights to exceed the annual  
8 authorized quantity of the individual water right or rights participating in  
9 the management plan, provided that the water use shall not exceed the total  
10 annual authorized aggregate quantity and rate of all the water rights  
11 participating in the management plan in any given calendar year;

12 (3) the authority granted through the management plan shall  
13 supersede the participating water rights during the term of the water  
14 conservation area or until the management plan is suspended by the chief  
15 engineer in accordance with this subsection; and

16 (4) for purposes of determining priority, the management plan shall  
17 be assigned the priority date of its effectuation.

18 (f) In addition to a management plan under subsection (e), as a part of  
19 the consent agreement and order of designation, the chief engineer may  
20 include the use of multi-year flex accounts as authorized by K.S.A. 82a-  
21 736, and amendments thereto.

22 (g) No management plan authorized under a water conservation area  
23 shall be allowed to impair any water right. At any time during the term of a  
24 water conservation area, if the chief engineer determines that impairment  
25 may be occurring, following a complaint and preliminary investigation  
26 into relevant physical facts, the chief engineer may suspend operation of  
27 the water conservation area. In the event of such suspension, each  
28 participating water right may be operated in accordance with its permitted  
29 terms and conditions as in effect prior to operation of the water  
30 conservation area. Upon conclusion of an investigation by the chief  
31 engineer and a finding of impairment, the chief engineer may terminate the  
32 water conservation area, or may modify the water conservation area  
33 subject to consent of the participating water right owners, to alleviate any  
34 impairment.

35 (h) Prior to execution of a proposed water conservation area consent  
36 agreement and order of designation pursuant to this section, the chief  
37 engineer shall notify in writing the groundwater management district  
38 within which any participating water right is situated. Such groundwater  
39 management district shall be given an opportunity to provide a written  
40 recommendation regarding the proposed water conservation area and  
41 management plan within 45 days of notification by the chief engineer. The  
42 review period may be extended by up to 30 days upon approval by the  
43 chief engineer. Subject to subsection (d), any participating water right in a

1 water conservation area shall continue to be subject to all applicable rules  
2 and regulations and management plans of the groundwater management  
3 district in which the water right is situated.

4 (i) ~~The chief engineer shall provide notification, as specified in  
5 K.S.A. 82a-1906, and amendments thereto, to all water right owners with a  
6 point of diversion within  $\frac{1}{2}$  a mile, or farther if deemed necessary by a  
7 rule and regulation of the chief engineer, of the boundaries of a water  
8 conservation area. Notification shall include a reference to an electronic  
9 publication of the management plan and any relevant technical analysis.~~

10 (j) The consent agreement and order of designation shall provide for  
11 periodic review of the consent agreement and order, which may be  
12 initiated by the chief engineer or upon request of the water right owners in  
13 the water conservation area. The consent agreement and order shall specify  
14 the frequency of such periodic review, but a review shall be conducted at  
15 least once every 10 years.

16 (k)(j) (1) The chief engineer may, with the consent of all participating  
17 water right owners, amend a consent agreement and order of designation  
18 in order to:

19 (A) Modify corrective control provisions or the boundaries of the  
20 designated area;

21 (B) add or remove water rights upon request of such water right  
22 owners;

23 (C) terminate a water conservation area upon the request of the water  
24 right owners in the designated area; or

25 (D) make other changes the water right owners may request.

26 (2) Any amendments to a consent agreement and order of  
27 designation, except amendments that remove a water right upon request of  
28 the owner so long as the consent of all participating water right owners is  
29 not required pursuant to the management plan, shall be consented to by all  
30 participating water right owners within the designated area and the chief  
31 engineer and shall be based upon a revised management plan submitted by  
32 the participating water right owners.

33 (k) No water right shall be perfected pursuant to a water  
34 conservation area.

35 (m)(l) Notwithstanding K.S.A. 82a-1039, and amendments thereto,  
36 nothing in this section shall be construed as limiting or affecting any duty  
37 or power of a groundwater management district granted to such district by  
38 the Kansas groundwater management district act.

39 (n)(m) The chief engineer shall adopt rules and regulations to  
40 effectuate and administer the provisions of this section.

41 (o)(n) The provisions of this section shall be *a* part of and  
42 supplemental to the Kansas water appropriation act.

43 Sec. 2. K.S.A. 82a-1906 is hereby amended to read as follows: 82a-

1 1906. (a) The division of water resources of the Kansas department of  
2 agriculture shall post all complete applications and all orders issued by the  
3 division pursuant to K.S.A. 82a-706b, 82a-708a and 82a-708b, and  
4 amendments thereto, and K.S.A. 82a-745, and amendments thereto,  
5 publish a map on its the department's official website showing the  
6 location of, and any other pertinent information related to, all diversions  
7 of water sought by all applications filed with the division:

8 (1) Pursuant to K.S.A. 82a-711, and amendments thereto; and  
9 (2) that request a change in the point of diversion of a water right of  
10 more than 300 feet pursuant to K.S.A. 82a-708b, and amendments thereto.

11 (b) The division shall post all orders on the department's official  
12 website that:

13 (1) Are issued pursuant to K.S.A. 82a-711, and amendments thereto;  
14 and

15 (2) allow a change in the point of diversion of a water right of more  
16 than 300 feet issued pursuant to K.S.A. 82a-708b, and amendments  
17 thereto.

18 (c) The division, in conjunction with the groundwater management  
19 district within which such water right is situated, shall notify all water  
20 right owners with a point of diversion landowners within half a mile, or  
21 further if deemed necessary by a rule and regulation of the chief engineer,  
22 of a water right pending request or application pursuant to K.S.A. 82a-  
23 706b, 82a-708a and 82a-708b, and amendments thereto, and K.S.A. 82a-  
24 745, and amendments thereto, except for change applications requesting a  
25 point of diversion move 300 feet or less from the currently authorized  
26 location all applications filed with the division:

27 (1) Pursuant to K.S.A. 82a-711, and amendments thereto; and  
28 (2) that seek a change in the point of diversion of a water right of  
29 more than 300 feet pursuant to K.S.A. 82a-708b, and amendments thereto.

30 Sec. 3. K.S.A. 82a-745 and 82a-1906 are hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its  
32 publication in the statute book.