

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 ~~(h)(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.