

As Amended by House Committee

Session of 2017

HOUSE BILL No. 2100

By Committee on Agriculture

1-19

1 AN ACT concerning water; relating to water conservation areas; amending
2 K.S.A. 2016 Supp. 82a-745 and 82a-1906 and repealing the existing
3 sections.
4

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

6 Section 1. K.S.A. 2016 Supp. 82a-1906 is hereby amended to read as
7 follows: 82a-1906. (a) The division of water resources of the Kansas
8 department of agriculture shall post all complete applications and all
9 orders issued by the division pursuant to K.S.A. 82a-706b, 82a-708a and
10 82a-708b, and amendments thereto, *and K.S.A. 2016 Supp. 82a-745, and*
11 *amendments thereto*, on its official website.

12 (b) The division, in conjunction with the groundwater management
13 district within which such water right is situated, shall notify all water
14 right owners with a point of diversion within half a mile, or further if
15 deemed necessary by a rule and regulation of the chief engineer, of a water
16 right pending request or application pursuant to K.S.A. 82a-706b, 82a-
17 708a and 82a-708b, and amendments thereto, *and K.S.A. 2016 Supp. 82a-*
18 *745, and amendments thereto*, except for change applications requesting a
19 point of diversion move 300 feet or less from the currently authorized
20 location.

21 Sec. 2. K.S.A. 2016 Supp. 82a-745 is hereby amended to read as
22 follows: 82a-745. (a) Any water right owner or a group of water right
23 owners in a designated area may enter into a consent agreement and order
24 with the chief engineer to establish a water conservation area. The water
25 right owner or group of water right owners shall submit a management
26 plan to the chief engineer. Such management plan shall be the basis of the
27 consent agreement and order designating a water conservation area and
28 shall:

- 29 (1) Include clear geographic boundaries;
- 30 (2) include the written consent of all participating water right owners
31 within the geographic boundaries described in paragraph (1) to enter into
32 the consent agreement and order;
- 33 (3) include a finding or findings that one or more of the
34 circumstances specified in K.S.A. 82a-1036(a) through (d), and
35 amendments thereto, exist, *or include a finding or findings that the area*
36 *within the geographic boundaries described in paragraph (1) has been*

1 *closed to new appropriations by rule, regulation or order of the chief*
2 *engineer;*

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

6 (5) include goals and **one or more of the** corrective control
7 ~~provisions to address one or more of the circumstances specified in K.S.A.~~
8 ~~82a-1036(a) through (d), and amendments thereto, or include a finding or~~
9 ~~findings that the area within the geographic boundaries described in~~
10 ~~paragraph (1) has been closed to new appropriations by rule, regulation~~
11 ~~or order of the chief engineer~~ **provided in subsection (b);**

12 (6) give due consideration to water users who have previously
13 implemented reductions in water use resulting in voluntary conservation
14 measures;

15 (7) include compliance monitoring and enforcement; and

16 (8) be consistent with state law.

17 (b) A consent agreement and order of designation of a water
18 conservation area pursuant to this section shall define the boundaries of the
19 water conservation area and may include any of the following corrective
20 control provisions:

21 (1) Closing the water conservation area to any further appropriation
22 of groundwater. In which event, the chief engineer shall thereafter refuse
23 to accept any application for a permit to appropriate groundwater located
24 within such area;

25 (2) determining the permissible total withdrawal of groundwater in
26 the water conservation area each day, month or year, and apportioning
27 such permissible total withdrawal among the valid groundwater right
28 holders in such area in accordance with the relative dates of priority of
29 such rights;

30 (3) reducing the permissible withdrawal of groundwater by any one
31 or more appropriators thereof, or by wells in the water conservation area;

32 (4) requiring and specifying a system of rotation of groundwater use
33 in the water conservation area; and

34 (5) any other provisions necessary to effectuate agreed-upon water
35 conservation goals consistent with the public interest.

36 The chief engineer shall be responsible for the monitoring and
37 enforcement of any corrective control provisions ordered for a water
38 conservation area.

39 (c) The order of designation shall be in full force and effect from the
40 date of its entry in the records of the chief engineer's office. The chief
41 engineer upon request shall deliver a copy of such order to any interested
42 person who is affected by such order and shall file a copy of the same with
43 the register of deeds of any county within which any part of the water

1 conservation area lies.

2 (d) If any corrective control provisions of a water conservation area
3 conflict with rules and regulations of a groundwater management district
4 or requirements of a local enhanced management plan or intensive
5 groundwater use control area that result in greater overall conservation of
6 water resources within which a participating water right is situated, the
7 chief engineer is authorized to amend the provisions of the water
8 conservation area to conform to any rules and regulations or requirements
9 that result in greater conservation of water resources, as determined by the
10 chief engineer.

11 (e) *To provide flexibility in the management of water resources*, as
12 part of the consent agreement and order of designation, the chief engineer
13 may authorize ~~single-year or multi-year term permits for water right~~
14 ~~owners to effectuate the water conservation area's conservation goals in~~
15 ~~accordance with the~~ a management plan that allots water authorized by
16 existing water rights, subject to the following limitations:

17 (1) *The management plan shall be limited to the term of the water*
18 *conservation area;*

19 (2) *the management plan may allow, in any given calendar year, the*
20 *water use of an individual water right or rights to exceed the annual*
21 *authorized quantity of the individual water right or rights participating in*
22 *the management plan, provided that the water use shall not exceed the*
23 *total annual authorized aggregate quantity and rate of all the water rights*
24 *participating in the management plan in any given calendar year;*

25 (3) *the authority granted through the management plan shall*
26 *supersede the participating water rights during the term of the water*
27 *conservation area or until the management plan is suspended by the chief*
28 *engineer in accordance with this subsection; and*

29 (4) *for purposes of determining priority, the management plan shall*
30 *be assigned the priority date of its effectuation.*

31 (f) **In addition to a management plan under subsection (e)**, as a
32 part of the consent agreement and order of designation, the chief engineer
33 may include the use of multi-year flex accounts as authorized by K.S.A.
34 2016 Supp. 82a-736, and amendments thereto.

35 (g) *No management plan authorized under a water conservation area*
36 *shall be allowed to impair any water right. At any time during the term of*
37 *a water conservation area, if the chief engineer determines that*
38 *impairment may be occurring, following a complaint and preliminary*
39 *investigation into relevant physical facts, the chief engineer may suspend*
40 *operation of the water conservation area. In the event of such suspension,*
41 *each participating water right may be operated in accordance with its*
42 *permitted terms and conditions as in effect prior to operation of the water*
43 *conservation area. Upon conclusion of an investigation by the chief*

1 *engineer and a finding of impairment, the chief engineer may terminate*
2 *the water conservation area, or may modify the water conservation area*
3 *subject to consent of the participating water right owners, to alleviate any*
4 *impairment.*

5 ~~(e)~~-(h) Prior to execution of a proposed water conservation area
6 consent agreement and order of designation pursuant to this section, the
7 chief engineer shall notify in writing the groundwater management district
8 within which any participating water right is situated. Such groundwater
9 management district shall be given an opportunity to provide a written
10 recommendation regarding the proposed water conservation area and
11 management plan within 45 days of notification by the chief engineer. The
12 review period may be extended by up to 30 days upon approval by the
13 chief engineer. Subject to subsection (d), any participating water right in a
14 water conservation area shall continue to be subject to all applicable rules
15 and regulations and management plans of the groundwater management
16 district in which the water right is situated.

17 (i) *The chief engineer shall provide notification, as specified in*
18 *K.S.A. 2016 Supp. 82a-1906, and amendments thereto, to all water right*
19 *owners with a point of diversion within 1/2 a mile, or farther if deemed*
20 *necessary by a rule and regulation of the chief engineer, of the boundaries*
21 *of a water conservation area. **Notification shall include a reference to an***
22 **electronic publication of the management plan and any relevant**
23 **technical analysis.**

24 ~~(f)~~-(j) The consent agreement and order of designation shall provide
25 for periodic review of the consent agreement and order, which may be
26 initiated by the chief engineer or upon request of the water right owners in
27 the water conservation area. The consent agreement and order shall specify
28 the frequency of such periodic review, but a review shall be conducted at
29 least once every 10 years.

30 ~~(g)~~-(k) (1) The chief engineer may, with the consent of all
31 participating water right owners, amend a consent agreement and order of
32 designation in order to:

33 (A) Modify corrective control provisions or the boundaries of the
34 designated area;

35 (B) add or remove water rights upon request of such water right
36 owners;

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

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

40 (2) Any amendments to a consent agreement and order of
41 designation, except amendments that remove a water right upon request of
42 the owner so long as the consent of all participating water right owners is
43 not required pursuant to the management plan, shall be consented to by all

1 participating water right owners within the designated area and the chief
2 engineer and shall be based upon a revised management plan submitted by
3 the participating water right owners.

4 *(l) No water right shall be perfected pursuant to a water*
5 *conservation area.*

6 ~~(h)~~**(m) Notwithstanding K.S.A. 82a-1039, and amendments**
7 **thereto, nothing in this section shall be construed as limiting or**
8 **affecting any duty or power of a groundwater management district**
9 **granted to such district by the Kansas groundwater management**
10 **district act.**

11 **(n)** The chief engineer ~~shall may~~ **shall** adopt rules and regulations to
12 effectuate and administer the provisions of this section.

13 ~~(i)~~**(o)** The provisions of this section shall be part of and
14 supplemental to the Kansas water appropriation act.

15 Sec. 3. K.S.A. 2016 Supp. 82a-745 and 82a-1906 are hereby
16 repealed.

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