

House Substitute for Substitute SENATE BILL No. 148

By Committee on Agriculture and Natural Resources

3-16

1 AN ACT concerning water; relating to division of a water right; relating to
2 project permits for sand and gravel operations; amending K.S.A. 2011
3 Supp. 82a-734 and repealing the existing section.

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

6 New Section 1. (a) Any owner of a water right that is not deemed
7 abandoned may divide that water right into two or more distinct water
8 rights without losing priority, if such owner:

9 (1) Notifies the chief engineer in writing of the proposed division
10 with the written consent of all persons having an ownership interest in the
11 water right;

12 (2) designates the relative priority of the divided water rights;

13 (3) demonstrates to the chief engineer that the division is reasonable
14 and will not increase consumptive use; and

15 (4) demonstrates to the chief engineer that the request does not
16 violate the provisions of the Kansas water appropriation act.

17 (b) Acceptance of the request to divide a water right pursuant to this
18 section shall not authorize any change in the place of use, point of
19 diversion or use made of water, as provided in K.S.A. 82a-708b, and
20 amendments thereto.

21 (c) If the chief engineer finds the request complies with subsections
22 (a) and (b), the chief engineer shall issue an order dividing the water right
23 and describing the terms and conditions of each water right. If the chief
24 engineer finds the request does not comply with subsections (a) and (b),
25 the request shall be returned and no action taken.

26 (d) In the event of a judicial determination of ownership interests
27 resulting in a partition of a water right that is not deemed abandoned, the
28 chief engineer shall issue an order dividing such water right in a manner
29 consistent with the terms of the judicial determination to the extent it does
30 not violate the provisions of the Kansas water appropriation act.

31 (e) Each request to divide a water right, pursuant to this section, shall
32 be made on a form prescribed by the chief engineer and shall be
33 accompanied by a fee of \$300.

34 (f) All fees collected by the chief engineer pursuant to this section
35 shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and
36 amendments thereto.

1 (g) This section shall be part of and supplemental to the Kansas water
2 appropriation act.

3 Sec. 2. K.S.A. 2011 Supp. 82a-734 is hereby amended to read as
4 follows: 82a-734. (a) An operator ~~will~~ shall notify the chief engineer of the
5 location and area extent of any existing or proposed sand and gravel pit to
6 be excavated, expanded or operated by the operator.

7 (b) The net evaporation of water exposed as the result of the opening
8 or operation of sand and gravel pits shall be construed to be a beneficial
9 use or diversion of water for the purposes of the Kansas water
10 appropriation act, K.S.A. 82a-701 *et seq.*, and amendments thereto, if the
11 sand and gravel pit is opened or operated in a township where the average
12 annual potential net evaporation is greater than 18 inches per year, as
13 determined by the chief engineer.

14 (c) If the chief engineer determines that an existing or proposed sand
15 and gravel pit operation is a beneficial use of water, the operator shall
16 apply to the chief engineer for a permit to appropriate water in accordance
17 with the Kansas water appropriation act or otherwise acquire ownership or
18 control of sufficient water rights, or by other methods pursuant to rules and
19 regulations adopted by the chief engineer, or both, to offset net evaporation
20 for the operation.

21 (d)(1) *The permit shall authorize net evaporation as the primary use,*
22 *and hydraulic dredging and sand washing as secondary uses of water if*
23 *such secondary uses are located within the same source of supply and are*
24 *associated with the operation. Any secondary uses shall use water in a*
25 *manner in which there is no significant net consumptive use. The permit*
26 *shall not be subject to the installation of a water flow meter or*
27 *administration of minimum desirable stream flow.*

28 (2) *The secondary uses shall be granted for the proposed life of the*
29 *project or until the exhaustion of reserves. At the end of the industrial*
30 *project, the owner shall file an application authorized by 82a-708b to*
31 *change the primary use made of water to recreational use to authorize the*
32 *net evaporation use caused by the exposed groundwater.*

33 (3) *The chief engineer may approve a permit in a closed area or waive*
34 *safe-yield in an area that is over-appropriated if the applicant*
35 *demonstrates to the satisfaction of the chief engineer that the operation is*
36 *required in the proposed area and further demonstrates an off-set water*
37 *right cannot reasonably be obtained within 3.5 miles of the operation*
38 *location.*

39 (4) *Any applicant who is denied a project permit by a final order of the*
40 *chief engineer under this section may appeal such order in the manner*
41 *provided by the Kansas judicial review act.*

42 (5) *Any application for a project permit shall be accompanied by a*
43 *filing fee of \$500 and any request for modification shall be accompanied*

1 *by a fee of \$250. Applicants for a project permit under this section shall*
2 *not be required to pay fees pursuant to K.S.A. 82a-708a and K.S.A. 82a-*
3 *708c, and amendments thereto, as part of such application.*

4 *(e) (1) The initial period of time allowed to complete construction of*
5 *diversion works pursuant to an approved application to appropriate water*
6 *for the purpose of net evaporation from a sand and gravel pit operation*
7 *shall be reasonable and consistent with the proposed use, but not less than*
8 *five years. The chief engineer may allow extension of such period by not*
9 *to exceed two ~~five-year~~ 10-year extensions if it can be shown that the*
10 *operation requires the additional time for the operator to satisfy the*
11 *operator's market demand in the area. The two ~~five-year~~ 10-year*
12 *extensions may be granted at the same time, to run consecutively, if the*
13 *applicant submits to the chief engineer a written development plan.*

14 *(2) The period of time allowed to perfect an approved application to*
15 *appropriate water for the purpose of net evaporation from a sand and*
16 *gravel pit operation shall be not less than 20 years and, for good cause*
17 *shown, the chief engineer may allow one or more 10-year extensions of*
18 *such period. The chief engineer shall consider the time needed until*
19 *exhaustion of proven reserves, closure in accordance with the surface land*
20 *reclamation and mining act, K.S.A. 49-601 et seq., and amendments*
21 *thereto, and the availability of water for the proposed use, but in no case*
22 *shall allow longer than ~~60~~ 80 years for perfection.*

23 *(3) Nothing herein shall require an extension of time to construct*
24 *diversion works or to perfect a water right if there is demonstrable*
25 *impairment of a use under an existing water right from the same source of*
26 *supply, as determined pursuant to K.S.A. 82a-711, and amendments*
27 *thereto.*

28 *(4) Upon examination of the diversion works for sand and gravel*
29 *operations, the chief engineer or the chief engineer's duly authorized*
30 *representative shall, within 90 days of the examination, notify the*
31 *applicant if there was a failure to construct the diversion works at the*
32 *authorized location or any deficiency of the terms and conditions of the*
33 *permit. This notice will provide steps necessary to gain compliance with*
34 *state law. If the chief engineer fails to examine the diversion works within*
35 *two years of the notice of completion for any sand and gravel operation*
36 *diversion works, the applicant shall not be required to forfeit priority date*
37 *as a result of failure to construct a diversion works at the authorized*
38 *location or any deficiency of the terms and conditions of the permit.*

39 *(~~e~~) (f) Net evaporation from sand and gravel pits, as calculated by the*
40 *chief engineer, will be reported as an industrial use to the director of*
41 *taxation for the purpose of assessing the water protection fee pursuant to*
42 *K.S.A. 82a-954, and amendments thereto.*

43 *(~~f~~) (g) This section shall be part of and supplemental to the Kansas*

1 water appropriations act.

2 Sec. 3. K.S.A. 2011 Supp. 82a-734 is hereby repealed.

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

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