

Water Impairment and Water Conservation Areas; SB 46

SB 46 amends law pertaining to a water right holder's options for remedy of a water impairment and the administrative procedure available to a water right holder. Additionally, the bill amends the law as it relates to water conservation areas (WCAs).

Administrative Remedy for Water Right Impairment

The bill requires any person with a valid water right or permit to divert and use water to first exhaust the administrative remedies available to the person before seeking a court-ordered injunction to stop the impairment of the person's water right by the activity of another entity without prior right to the same water.

Additionally, the bill amends the law pertaining to administrative remedies available to allow claimants to submit complaints to the Chief Engineer of the Division of Water Resources (DWR), Kansas Department of Agriculture (KDA), indicating their water rights are being impaired by an entity without prior right to the same water, and to require the Chief Engineer to handle complaints in the following manner:

- Initiate an investigation within two weeks of a complaint and notify the parties so they may have an opportunity to submit relevant information; and
- Complete an investigation within 12 months of the date the complaint was received. The Chief Engineer is authorized to extend the investigation for good cause by notifying the parties in writing of the amount of time needed to complete the investigation.

Following the investigation, the Chief Engineer may issue an order that limits, curtails, or prevents the diversion of water by any person without a prior right to the same water that otherwise disposes of the complaint.

Finally, the complainant may petition the Chief Engineer to issue a temporary order, to be in effect until a final order is issued, to limit, curtail, or prevent the diversion and use of water by any person without a prior right to the same water as the complainant if the Chief Engineer finds limiting, curtailing, or preventing diversion and the use of water would not be adverse to public interest.

Posting Applications and Orders; Notice

The bill requires the KDA to post all completed applications and orders issued by the DWR regarding WCAs on its official website. The bill also requires the DWR, in conjunction with the groundwater management district (GMD) within which a water right is situated, to notify appropriate water right owners of a water right pending request or application relating to WCAs.

Management Plan to Establish a WCA

The bill requires the following be included in the management plan of a WCA, in addition to what is already required by the law: a finding or findings that the area within the geographic boundaries listed in the water management plan has been closed to new appropriations by rule, regulation, or order of the Chief Engineer.

The bill clarifies that one or more of the corrective control provisions provided in the law must be included in the management plan.

Flexibility in Water Authorized

The bill allows the Chief Engineer to authorize a management plan that allots water authorized by existing water rights in order to provide flexibility in the management of water resources. This is subject to the following limitations:

- The management plan be limited to the WCA term;
- The management plan allow, in any given calendar year, the water use of an individual water right or rights to exceed the annual authorized quantity of the individual water right or rights participating in the management plan, provided the water use would not exceed the total annual authorized aggregate quantity and rate of all the water rights participating in the management plan in any given year;
- The authority granted through the management plan supersedes the participating water rights during the term of the WCA or until the management plan is suspended by the Chief Engineer; and
- For purposes of determining priority, the management plan be assigned the priority date of its effectiveness.

The bill provides that, as a part of the consent agreement and order of designation, the Chief Engineer could include use of multi-year flex accounts.

Water Right Impairment

The bill prohibits a management plan authorized under a WCA from impairing any water right. If an impairment occurs, the Chief Engineer, following a complaint and investigation, is authorized to suspend operation of the WCA. In this event, each participating water right may operate in accordance with its permitted terms and conditions as in effect prior to the operation of the WCA. Upon conclusion of the Chief Engineer's investigation and finding of impairment, the Chief Engineer may terminate the WCA or modify the WCA, subject to consent of the participating water right owners.

WCA Boundary Notification

The Chief Engineer is required to provide notification to all water right owners with a point of diversion within half a mile, or farther if necessary, of the boundaries of a WCA. Notification includes a reference to an electronic publication of the management plan and any relevant technical analysis.

Perfecting Water Rights; GMDs

The bill prohibits a water right from being perfected pursuant to a WCA. In addition, nothing in the provisions of the bill regarding the establishment of WCAs will be construed as limiting or affecting any duty or power of a GMD granted to a district by the Kansas Groundwater Management District Act.