

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 46

As Amended by House Committee of the Whole

Brief*

SB 46, as amended, would make changes to 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 would make changes to law as it relates to water conservation areas (WCAs).

Definitions

The bill would add the definition of "impairment" to existing law dealing with appropriation of water for beneficial use. "Impairment" would mean the unreasonable raising or lowering of the static water level, or the unreasonable increase or decrease of the stream-flow, or the unreasonable deterioration of the water quality at the water user's point of diversion beyond a reasonable economic limit.

Administrative Remedy for Water Right Impairment

The bill would require 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.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Additionally, the bill would amend 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 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 would be 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 would be allowed to 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 would be allowed to 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 would require the KDA to post all complete applications and orders issued by the DWR regarding WCAs on its official website. The bill would also require 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 would require the following be included in the management plan of a WCA, in addition to what is already required by current 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 of the DWR.

The bill would clarify that one or more of the corrective control provisions provided in current law would need to be included in the management plan.

Flexibility in Water Authorized

The bill would allow 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 would be subject to the following limitations:

- The management plan would be limited to the WCA term;
- The management plan could 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 would supersede 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 would be assigned the priority date of its effectiveness.

The bill would provide 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 would prohibit a management plan authorized under a WCA from impairing any water right. If an impairment occurs, the Chief Engineer, following a complaint and investigation, would be authorized to suspend operation of the WCA. In this event, each participating water right could be operated 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 could terminate the WCA or modify the WCA, subject to consent of the participating water right owners.

WCA Boundary Notification

The Chief Engineer would be 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 would include a reference to an electronic publication of the management plan and any relevant technical analysis.

Perfecting Water Rights; GMDs

The bill would prohibit a water right from being perfected pursuant to a WCA. In addition, nothing in Section 2 of the bill

would be construed as limiting or affecting any duty or power of a GMD granted to a district by the Kansas Groundwater Management District Act.

Background

SB 46

SB 46 would make changes to law relating to WCAs. The bill was introduced by the Senate Committee on Agriculture and Natural Resources at the request of a representative of the KDA. In the Senate Committee hearing, representatives of the KDA, Southwest Kansas Groundwater Management District No. 3, Kansas Farm Bureau (KFB), Kansas Livestock Association (KLA), and Kansas Water Office (KWO) testified in favor of the bill. Representatives of the Kansas Corn Growers Association (KCGA) and Western Kansas Groundwater Management District No. 1 provided written-only testimony in favor of the bill. Proponents stated stakeholders met with state officials during the 2016 Interim and discussed the changes to WCAs proposed in the bill. No other testimony was provided.

The Senate Committee amended the bill to require notification of an electronic publication by the Chief Engineer of WCA boundaries; require the Chief Engineer to adopt rules and regulations to effectuate and administer the provisions in the bill (to return the language to current law); and ensure the bill language would not be construed as limiting or affecting any GMD powers or duties granted by the Kansas Groundwater Management District Act.

In the House Committee on Agriculture hearing, representatives of the KDA and the KLA testified in favor of the bill, stating passage could lead to more WCAs and allow users more flexibility. Representatives of the KWO, KCGA, and KFB provided written-only testimony in favor of the bill. No other testimony was provided.

The House Committee amended the bill to clarify language regarding goals and corrective control provisions for the management plan and inserted the contents of SB 48, as amended by the Senate Committee.

The House Committee of the Whole amended the bill by adding the definition of “impairment” to the definition section of the appropriation of water for beneficial use law. [The language for the definition comes from KSA 82a-711(c).]

According to the fiscal note prepared by the Division of the Budget on SB 46, as introduced, KDA states enactment of the bill would have no fiscal effect.

SB 48

SB 48 would make changes to the administrative process available to a water right holder. The bill was introduced by the Senate Committee on Agriculture and Natural Resources at the request of a spokesperson from the KDA. In the Senate Committee hearing, representatives of the KDA, KCGA, KFB, KLA, KWO, and Groundwater Management District No. 3 testified in favor of the bill. The Southwest Kansas Irrigation Association (SWKIA) provided written-only testimony in support of the bill. Proponents generally stated the bill would create a consistent administrative process that would be utilized before court action and create a consistent application for what constitutes a water impairment. Additionally, proponents stated the bill is a result of stakeholder working groups formed after the 2016 Session.

No opponent or neutral testimony was provided.

The Senate Committee amended the bill to clarify the Chief Engineer would be required to initiate an investigation within two weeks of receiving a complaint and provide notice of the investigation to the involved parties. Additionally, the

term “prevent” was added to “limit” and “curtail” when describing the type of order obtained from the Chief Engineer.

In the House Committee on Agriculture hearing, representatives of the KDA, KFB, and KLA testified in favor of the bill. Representatives of the KWO, KCGA, Southwest Kansas Groundwater Management District No. 3, and SWKIA provided written-only testimony in favor of the bill. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget on SB 48, as introduced, enactment of the bill would have no fiscal effect on the KDA.