

HOUSE BILL No. 2696

By Committee on Water

Requested by Representative Vaughn

2-6

1 AN ACT concerning water; relating to the Kansas water appropriation act;
2 allowing a groundwater management district the opportunity to provide
3 a written comment rather than a recommendation to the chief engineer
4 for a proposed water conservation area and management plan;
5 amending K.S.A. 82a-745 and repealing the existing section.
6

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

8 Section 1. K.S.A. 82a-745 is hereby amended to read as follows: 82a-
9 745. (a) Any water right owner or a group of water right owners in a
10 designated area may enter into a consent agreement and order with the
11 chief engineer to establish a water conservation area. The water right
12 owner or group of water right owners shall submit a management plan to
13 the chief engineer. Such management plan shall be the basis of the consent
14 agreement and order designating a water conservation area and shall:

- 15 (1) Include clear geographic boundaries;
 - 16 (2) include the written consent of all participating water right owners
17 within the geographic boundaries described in paragraph (1) to enter into
18 the consent agreement and order;
 - 19 (3) include a finding or findings that one or more of the
20 circumstances specified in K.S.A. 82a-1036(a) through (d), and
21 amendments thereto, exist, or include a finding or findings that the area
22 within the geographic boundaries described in paragraph (1) has been
23 closed to new appropriations by rule, regulation or order of the chief
24 engineer;
 - 25 (4) include provisions regarding the proposed duration of the water
26 conservation area and any process by which water right owners may
27 request to be added or removed from the water conservation area;
 - 28 (5) include goals and one or more of the corrective control provisions
29 provided in subsection (b);
 - 30 (6) give due consideration to water users who have previously
31 implemented reductions in water use resulting in voluntary conservation
32 measures;
 - 33 (7) include compliance monitoring and enforcement; and
 - 34 (8) be consistent with state law.
- 35 (b) A consent agreement and order of designation of a water

1 conservation area pursuant to this section shall define the boundaries of the
2 water conservation area and may include any of the following corrective
3 control provisions:

4 (1) Closing the water conservation area to any further appropriation
5 of groundwater. In ~~which~~ *such* event, the chief engineer shall thereafter
6 refuse to accept any application for a permit to appropriate groundwater
7 located within such area;

8 (2) determining the permissible total withdrawal of groundwater in
9 the water conservation area each day, month or year, and apportioning
10 such permissible total withdrawal among the valid groundwater right
11 holders in such area in accordance with the relative dates of priority of
12 such rights;

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

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

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

19 The chief engineer shall be responsible for the monitoring and
20 enforcement of any corrective control provisions ordered for a water
21 conservation area.

22 (c) The order of designation shall be in full force and effect from the
23 date of its entry in the records of the chief engineer's office. The chief
24 engineer upon request shall deliver a copy of such order to any interested
25 person who is affected by such order and shall file a copy of the same with
26 the register of deeds of any county ~~within which~~ *where* any part of the
27 water conservation area lies.

28 (d) If any corrective control provisions of a water conservation area
29 conflict with rules and regulations of a groundwater management district
30 or requirements of a local enhanced management plan or intensive
31 groundwater use control area that result in greater overall conservation of
32 water resources within which a participating water right is situated, the
33 chief engineer is authorized to amend the provisions of the water
34 conservation area to conform to any rules and regulations or requirements
35 that result in greater conservation of water resources, as determined by the
36 chief engineer.

37 (e) To provide flexibility in the management of water resources, as
38 part of the consent agreement and order of designation, the chief engineer
39 may authorize a management plan that allots water authorized by existing
40 water rights, subject to the following limitations:

41 (1) The management plan shall be limited to the term of the water
42 conservation area;

43 (2) the management plan may allow, in any given calendar year, the

1 water use of an individual water right or rights to exceed the annual
2 authorized quantity of the individual water right or rights participating in
3 the management plan, ~~provided~~ *except* that the water use shall not exceed
4 the total annual authorized aggregate quantity and rate of all the water
5 rights participating in the management plan in any given calendar year;

6 (3) the authority granted through the management plan shall
7 supersede the participating water rights during the term of the water
8 conservation area or until the management plan is suspended by the chief
9 engineer in accordance with this subsection; and

10 (4) for purposes of determining priority, the management plan shall
11 be assigned the priority date of its effectuation.

12 (f) In addition to a management plan under subsection (e), as a part of
13 the consent agreement and order of designation, the chief engineer may
14 include the use of multi-year flex accounts as authorized by K.S.A. 82a-
15 736, and amendments thereto.

16 (g) No management plan authorized under a water conservation area
17 shall be allowed to impair any water right. At any time during the term of a
18 water conservation area, if the chief engineer determines that impairment
19 may be occurring, following a complaint and preliminary investigation
20 into relevant physical facts, the chief engineer may suspend operation of
21 the water conservation area. In the event of such suspension, each
22 participating water right may be operated in accordance with ~~its~~ *the*
23 permitted terms and conditions *of such water right* as in effect prior to
24 operation of the water conservation area. Upon conclusion of an
25 investigation by the chief engineer and a finding of impairment, the chief
26 engineer may terminate the water conservation area; or ~~may~~ modify the
27 water conservation area subject to consent of the participating water right
28 owners; to alleviate any impairment.

29 (h) Prior to execution of a proposed water conservation area consent
30 agreement and order of designation pursuant to this section, the chief
31 engineer shall notify in writing the groundwater management district
32 within which any participating water right is situated. Such groundwater
33 management district shall be given an opportunity to provide a written
34 ~~recommendation~~ *comment* regarding the proposed water conservation area
35 and management plan within 45 days of notification by the chief engineer.
36 The ~~review~~ *comment* period may be extended by up to 30 days upon
37 approval by the chief engineer. Subject to subsection (d), any participating
38 water right in a water conservation area shall continue to be subject to all
39 applicable rules and regulations and management plans of the groundwater
40 management district in which the water right is situated.

41 (i) The chief engineer shall provide notification, as specified in
42 K.S.A. 82a-1906, and amendments thereto, to all water right owners with a
43 point of diversion within $\frac{1}{2}$ a mile, or farther if deemed necessary by a

1 rule and regulation of the chief engineer, of the boundaries of a water
2 conservation area. Notification shall include a reference to an electronic
3 publication of the management plan and any relevant technical analysis.

4 (j) The consent agreement and order of designation shall provide for
5 periodic review of the consent agreement and order, ~~which~~. *Such periodic*
6 *review* may be initiated by the chief engineer or upon request of the water
7 right owners in the water conservation area. The consent agreement and
8 order shall specify the frequency of such periodic review, ~~but~~ *except that*
9 a review shall be conducted at least once every 10 years.

10 (k) (1) The chief engineer may, with the consent of all participating
11 water right owners, amend a consent agreement and order of designation
12 in order to:

13 (A) Modify corrective control provisions or the boundaries of the
14 designated area;

15 (B) add or remove water rights upon request of such water right
16 owners;

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

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

20 (2) Any amendments to a consent agreement and order of
21 designation, except amendments that remove a water right upon request of
22 the owner so long as the consent of all participating water right owners is
23 not required pursuant to the management plan, shall be consented to by all
24 participating water right owners within the designated area and the chief
25 engineer and ~~shall~~ be based upon a revised management plan submitted by
26 the participating water right owners.

27 (l) No water right shall be perfected pursuant to a water conservation
28 area.

29 (m) Notwithstanding K.S.A. 82a-1039, and amendments thereto,
30 nothing in this section shall be construed as limiting or affecting any duty
31 or power of a groundwater management district granted to such district by
32 the Kansas groundwater management district act.

33 (n) The chief engineer shall adopt rules and regulations to effectuate
34 and administer the provisions of this section.

35 (o) The provisions of this section shall be *a* part of and supplemental
36 to the Kansas water appropriation act.

37 Sec. 2. K.S.A. 82a-745 is hereby repealed.

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