

2021 Kansas Statutes

82a-717a. Diversions by common-law claimants and others; complaints, investigations and orders. (a) No common-law claimant without a vested right, or other person without a vested right, a prior appropriation right, or an earlier permit shall divert or threaten to divert water if such diversion or threatened diversion impairs or would impair any vested right, appropriation right, or right under a permit to appropriate water. But any common-law claimant with a vested right, or other person with a vested right, a prior appropriation right, or an earlier permit may divert water in accordance with any such right or permit although such diversion or use thereunder conflicts with the diversion, use, proposed diversion, or proposed use made or proposed by a common-law claimant who does not have a vested right, or other person who does not have a vested right, a prior appropriation right or an earlier permit.

(b) (1) Any common-law claimant with a vested right, or other person with a vested right, a prior appropriation right, or an earlier permit may, in accordance with this subsection, obtain an order from the chief engineer that limits, curtails or prevents any diversion or proposed diversion that impairs or would impair such right in the event that any such diversion or proposed diversion is made or is threatened to be made by any common-law claimant, or other person who does not have a vested right, a prior appropriation right, or an earlier permit.

(2) Any common-law claimant with a vested right, or other person with a vested right, a prior appropriation right, or an earlier permit who claims impairment of such right by any other person without a prior right to the same water shall submit a complaint to the chief engineer in accordance with rules and regulations of the chief engineer.

(A) Within two weeks of receiving a complaint of impairment, the chief engineer shall initiate an investigation of such complaint and provide notice of such investigation to the complainant and the allegedly impairing party or parties. As part of the investigation, the chief engineer shall provide an opportunity for the parties to submit any relevant information, including submission of an engineering study that meets standards designated by the chief engineer through rules and regulations.

(B) Following the investigation, the chief engineer may issue an order, consistent with K.S.A. 82a-706b, and amendments thereto, and rules and regulations of the chief engineer, that limits, curtails or prevents the diversion and use of water by any person without a prior right to the same water or that otherwise disposes of the complaint.

(C) The chief engineer shall complete any investigation initiated pursuant to this subsection within 12 months of the date the complaint was submitted to the chief engineer, provided that the chief engineer may extend the investigation for good cause by notifying the parties in writing of the amount of time needed to complete the investigation.

(3) Concurrent with submission of a complaint under paragraph (2), or during the pendency of the chief engineer's investigation pursuant to the complaint, the complainant may petition the chief engineer to issue a temporary order, to be effective until a final order is issued under paragraph (2)(B), that limits, curtails or prevents the diversion and use of water by any person without a prior right to the same water upon a finding by the chief engineer that a substantial likelihood exists that impairment is occurring or will occur and that an order limiting, curtailing or preventing diversion and use of water by any person without a prior right to the same water would not be adverse to the public interest.

(4) Any order issued by the chief engineer pursuant to this subsection is subject to review in accordance with the Kansas judicial review act.

History: L. 1957, ch. 539, § 19; L. 2017, ch. 55, § 2; July 1.