

Lower Smoky Hill Water Supply Access Program
K.S.A. 82a-2301 through 82a-2324
October 2011

82a-2301. Lower Smoky Hill Water Supply Access Program; definitions. As used in K.S.A. 2012 Supp. 82a-2301 through 82a-2324, and amendments thereto, unless the context otherwise requires:

(a) "Access water" means water stored in water supply access storage of a reservoir under a water reservation right and provided as supplemental water to eligible water right holders.

(b) "Chief engineer" means the chief engineer of the Kansas department of agriculture, division of water resources.

(c) "District" means the lower smoky hill water supply access district.

(d) "Eligible water right holder" means a person holding a water right or permit, pursuant to K.S.A. 82a-701 et seq., and amendments thereto, to appropriate surface water from the program area for municipal, industrial, irrigation or recreation purposes as determined by the Kansas water office. Eligible water right holders for irrigation purposes shall be limited to the lower smoky hill river special irrigation district.

(e) "Landowner" means a person who is the record owner of any real estate within the boundaries of the district or who has an interest therein as contract purchaser of 40 or more contiguous acres in the district not within the corporate limits of any municipality. Owners of oil leases, gas leases, mineral rights, easements, or mortgages shall not be considered landowners by reason of such ownership.

(f) "Member" means an eligible water right holder who participates in and is subject to the rules and regulations of a water supply access district.

(g) "Person" means any natural person, private corporation, municipality or other public corporation.

(h) "Program" means the lower smoky hill water supply access program.

(i) "Program area" means the area of the smoky hill river below the kanopolis reservoir dam to the confluence of the smoky hill and saline rivers.

(j) "Special irrigation district" means the lower smoky hill water supply special irrigation district.

(k) "Water supply access storage" means water held by the Kansas water office in kanopolis reservoir under contract with the United States army corps of engineers and so designated by the Kansas water office as water supply access storage for the purposes of the lower smoky hill water supply access program. **(History: L. 2011, ch. 89, § 1; July 1.)**

82a-2302. Same. Program established; powers of Kansas Water Office. There is hereby established the lower smoky hill water supply access program within the Kansas water office. The Kansas water office, with approval of the Kansas water authority, may negotiate and enter into contracts for water supply access storage to be used for the purposes of this act. The water office may designate all or any portion of such water so held in the kanopolis reservoir to water supply access storage to meet the needs of the district. **(History: L. 2011, ch. 89, § 2; July 1.)**

82a-2303. Same; access fund. (a) There is hereby established in the state treasury the lower smoky hill water supply access fund which shall be administered by the Kansas water office. All expenditures from the lower smoky hill water supply access fund shall be for the purposes of this

act. All expenditures from the lower smoky hill water supply access fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of the Kansas water office or the director's designee. All moneys received for the purposes of this act shall be deposited in the state treasury in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and shall be credited to the lower smoky hill water supply access fund. The director of the Kansas water office may accept or receive moneys from the district into the lower smoky hill water supply access fund. **(History:** L. 2011, ch. 89, § 3; July 1.)

82a-2304. Same; authorization of district; member; incorporating governing body. (a)

There is hereby authorized the lower smoky hill water supply access district.

(b) Upon receipt of an application for membership within the district, the director of the Kansas water office may determine the need to create an incorporating governing body for the district, and upon such determination, shall certify to the secretary of state and the members of the district that such district is eligible for formation and should be incorporated. The notice of certification should fix a date, time and place for an organizational meeting of such district.

(c) The members of the district shall meet on the date and time set by such director to form the incorporating governing body of such district.

(d) The incorporating governing body, if created, shall consist of five directors. Eligible water rights holders, or their representatives, who apply for membership, shall be the incorporating entities and shall determine the articles of incorporation. Such articles of incorporation shall provide the board of directors of the lower smoky hill water supply access district so formed, shall have an odd number of directors and shall include a provision that no less than one representative of the lower smoky hill special irrigation district serve as a member of the lower smoky hill water supply access district board, if such special irrigation district is formed under the provisions of this act. Upon incorporation of the district, such incorporating governing body shall dissolve and shall be replaced by the governing body as determined by the articles of incorporation and bylaws of the district.

(e) The directors of the incorporating governing body shall elect an incorporating chairperson. The chairperson, on behalf of the incorporating governing body, shall attest to all documents necessary for incorporation of the district by the secretary of state and for the business of the district. The secretary of state shall issue a certificate of incorporation for the district, which shall be filed of record in the office of the register of deeds of each county in which all or a portion of the district lies.

(f) Upon recordation of such certificate of incorporation, the district shall be authorized to function in accordance with the provision of this act and its certificate of incorporation. No action attacking the legal incorporation of any district organized under this section shall be maintained unless filed within 30 days after the issuance of such certificate of incorporation for such district by the secretary of state, nor shall the alleged illegality of the incorporation of any such district be interposed as a defense to any action brought after such time. **(History:** L. 2011, ch. 89, § 4; July 1.)

82a-2305. Same; membership eligibility. (a) A prospective member may join the district if the prospective member:

(1) Applies to the Kansas water office for water supply access storage, for the purposes of this act; and

(2) has or applies for a water right eligible for membership under this act.

(b) Prospective members may be approved for membership by the director of the Kansas water office, after consultation with the chief engineer, if the director finds that:

(1) The proposed membership is in the public interest or has a public benefit sufficient for membership;

(2) there is adequate water supply access storage to meet the additional demand; and

(3) such other issues as may be determined by such director have been resolved. **(History:** L. 2011, ch. 89, § 5; July 1.)

82a-2306. Same; board of directors. All powers granted to the district shall be exercised by the board of directors. A majority of the directors shall constitute a quorum for the transaction of business. A majority of those directors present and voting shall determine all actions taken by the governing body. **(History:** L. 2011, ch. 89, § 6; July 1.)

82a-2307. Same; election of directors. After the initial meeting to elect the governing body, an annual meeting shall be held to elect such directors whose terms shall expire, to render a report on the financial condition and activities of the district and to adopt a budget in the manner provided by K.S.A. 79-2925 *et seq.*, and amendments thereto. Notice of the annual meeting shall be given to all members of the district by first class mail, postage prepaid, at least 10 days prior to the date of the annual meeting. **(History:** L. 2011, ch. 89, § 7; July 1.)

82a-2308. Same; board of directors; meetings. (a) Regular meetings of the board of directors shall be held no less than quarterly at a place, day and time established by the board of directors. Notice of such meetings shall be given to all members of the district by first class mail, postage prepaid, at least five days prior to the date of such meetings.

(b) Special meetings may be held at any time on the call of the chairperson of the district governing body. Notice shall be provided to each director at least one day prior to the time fixed for such special meeting. The notice of any special meeting may be accomplished by any means calculated to provide adequate notice to each director. **(History:** L. 2011, ch. 89, § 8; July 1.)

82a-2309. Same; powers of district. The district incorporated under the provisions of this act shall be a body politic and corporate and shall have the power to:

(a) Adopt a seal;

(b) sue and be sued by its corporate name;

(c) purchase, hold, sell and convey land and personal property and to execute such contracts as the board of directors deems necessary or convenient to enable it to carry out the purpose for which it was organized;

(d) employ such professional, technical and clerical services and other assistance as deemed necessary by the board of directors;

(e) acquire personal property by gift or purchase;

(f) impose charges as provided by this act;

(g) select a residence or home office for the district, which shall be at a place in a county in which the district or any part thereof is located and may be either within or without the program area as may be designated by the board of directors; and

(h) take any other action necessary to achieve the purposes of the district. **(History:** L. 2011, ch. 89, § 9; July 1.)

82a-2310. Same; charges against district members. (a) The district shall impose charges against each member for the purposes of the district.

(1) The total of such charges shall be sufficient to enable the district to pay the Kansas water office the full annual amortized cost incurred by the Kansas water office for the operation, administration and enforcement of the program, including, but not limited to, the costs of acquiring the water supply access storage from the federal government by purchase or trade and the cost of operation and maintenance of such water supply access storage.

(2) The district may also impose charges against each member of the district in an amount sufficient to cover district operating costs.

(3) The district shall impose any charges necessary for the payment of the principal of and interest on revenue bonds issued by the Kansas water office pursuant to K.S.A. 82a-1360 et seq., and amendments thereto.

(4) The district shall determine the amount of the charges for each member and shall remit all moneys collected to the Kansas water office for deposit in the lower smoky hill water supply access fund created pursuant to this act. Charges to be paid by such members may vary and shall be based on the principle of having each member pay for the pro rata quantity authorized to each member by the district. In determining the charge, the board of directors of the district shall adopt guidelines for such members.

(b) The director of the Kansas water office shall request releases of water supply access water by the federal government from the kanopolis reservoir under such agreements with the federal government that govern operations of such reservoir. The chairperson of the governing body of the district or designee shall communicate with the Kansas water office regarding any member's need for such releases by the district.

(c) The director and the chief engineer each shall adopt any rules and regulations necessary to carry out the purposes and procedures of this act. The director and the chief engineer shall consider the advice of the Kansas water authority and stakeholders in the program area, in the preparation of any rules and regulations adopted pursuant to this subsection.

(d) Any holder of an eligible water right aggrieved by a decision of the Kansas water office under this act by being excluded as a member in the program may appeal to the district court under K.S.A. 82a-724, and amendments thereto.

(e) Payments required under a contract between the district and the Kansas water office shall be for storage capacity contracted in a federal reservoir.

(f) Nothing in this act shall be deemed to authorize any suit against the state or any agency of the state or person employed by the state on or under a claim for implied contract, negligence or any other tort. The director of the Kansas water office may sue to enforce any claim arising out of a contract. Payment of the charges shall be a condition imposed on every member and the director is authorized to declare the suspension of any use of water supply access water where a payment is not made.

(g) Rights of members to receive access water may not be transferred without the approval of the Kansas water office. (**History:** L. 2011, ch. 89, § 10; July 1.)

82a-2311. Same; negotiations of contracts. If any member of the district requests an opportunity to renegotiate any existing contracts for the purchase of water supply, as described in K.S.A. 82a-1301 et seq., and amendments thereto, the Kansas water authority and the Kansas

water office shall conduct such negotiations on a timely basis and on the provisions for which negotiations are requested. **(History:** L. 2011, ch. 89, § 11; July 1.)

82a-2312. Same; releases of water. (a) The chief engineer shall protect releases of water from the kanopolis reservoir for water supply access storage as may be necessary to effectuate the purposes of the releases made pursuant to this act and for the benefit of the district members for whom such releases are made.

(b) The Kansas water office shall communicate to the chief engineer the date and quantity of such release, the district member or members for whom such release is made and such other information as the chief engineer may request to insure protection of the release. **(History:** L. 2011, ch. 89, § 12; July 1.)

82a-2313. Same; conservation plans. Each member of the district shall adopt conservation plans and practices for such member. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office as provided in K.S.A. 74-2608, and amendments thereto. Prior to entering into a contract the district and the director of the Kansas water office, in consultation with the chief engineer, shall determine whether such plans and practices are consistent with the guidelines for conservation plans and practices adopted by the Kansas water office. **(History:** L. 2011, ch. 89, § 13; July 1.)

82a-2314. Same; bonds. (a) The Kansas water office is hereby authorized to issue and sell revenue bonds for the purpose of paying all or part of the cost of acquiring a site or sites, constructing, reconstructing, improving and expanding projects within the program area or to finance the purchase of storage in the reservoir using procedures established for issuing such bonds as described in K.S.A. 82a-1360 et seq., and amendments thereto.

(b) The district may negotiate to make annual payments over a period of not to exceed 20 years for any access storage water purchased under this act. **(History:** L. 2011, ch. 89, § 14; July 1.)

82a-2315. Same; expiration of provisions. If the district authorized pursuant to this act is not formed by December 31, 2020, the provisions of this act shall expire. **(History:** L. 2011, ch. 89, § 15; July 1.)

82a-2316. Same; lower smoky hill special irrigation district; authorization. There is hereby authorized the lower smoky hill special irrigation district for the purpose of participating in the lower smoky hill water supply access program. Such special irrigation district shall be a single member of the lower smoky hill water supply access district. **(History:** L. 2011, ch. 89, § 16; July 1.)

82a-2317. Same; special irrigation district; formation and petition. (a) The lower smoky hill special irrigation district shall be formed upon petition by eligible irrigation water right holders to the director of the Kansas water office, demonstrating a need for and requesting purchase of 500 acre feet or more for water supply access storage for the proposed special irrigation district. The petition shall provide contact information for each person signing, information on the land proposed for membership in the district, information necessary for

verification of the water rights held on the eligible land and the amount of water requested from Kanopolis reservoir water supply access storage by each person so signing. The Kansas water office may request additional information from each person signing such petition.

(b) The director of the Kansas water office, in consultation with the chief engineer, shall verify the ownership of subject land within the proposed special irrigation district for the lands noted in the petition, the water rights held for subject land by each person so signing and other matters the Kansas water office may deem necessary. Upon verification of the eligibility of those signing such petition the director of the Kansas water office shall set a date, time and place for the first meeting of such district for the purposes of electing a governing board for the special irrigation district. **(History:** L. 2011, ch. 89, § 17; July 1.)

82a-2318. Same; special irrigation district; membership. (a) Membership of the special irrigation district shall consist of all landowners holding eligible irrigation water rights participating in the petition as described in section 17, and amendments thereto. Additional interested eligible landowners with irrigation surface water rights within the program area may apply for membership in accordance with rules and procedures to be determined by the governing board as provided in section 19, and amendments thereto.

(b) All qualified applicants for membership in the special irrigation district shall become members and shall be able to use water supply access storage under the rules and by-laws of the lower smoky hill water access supply district and the special irrigation district. All members shall be liable to the district and the special irrigation district for costs, fees, assessments and charges. **(History:** L. 2011, ch. 89, § 18; July 1.)

82a-2319. Same. Special irrigation district; governing board; authorities; duties. (a) There shall be created a governing board of the special irrigation district. Such governing board shall have the authority to:

(1) Purchase, allocate, determine, charge fees and assessments for and allow the use, for the benefit of members of the special irrigation district, of water supply access storage;

(2) contract for real and personal, property;

(3) contract with employees and consultants; and

(4) buy, sell, lease, rent and purchase water supply access storage pursuant to the provisions of this act.

(b) The governing board of the special irrigation district shall:

(1) Designate one or more members, as described in the articles of incorporation of the lower smoky hill water supply access district, to serve on the governing board of the lower smoky hill water supply access district. Such member shall speak for the special irrigation district on matters before the directors of the lower smoky hill water supply access district;

(2) provide for a fee structure sufficient to pay for such water supply access storage and any additional costs as determined by the special irrigation district and set a fee schedule for all members of the special irrigation district; and

(3) create an agreement to be entered into with each person who desires to become a member of the special irrigation district, with the requirements for membership, duties, payment obligations, provisions for withdrawal or transfer of any single membership and any other matters as the governing board of the special irrigation district may deem necessary and prudent.

(c) In the event of extraordinary, special or emergency costs associated with membership in the district or special irrigation district, the governing board may assess additional costs to such

members at a rate to be determined by the board, in any year. Notice of such assessment shall be provided to members by first class mail, postage prepaid by the special irrigation district. **(History: L. 2011, ch. 89, § 19; July 1.)**

82a-2320. Same; special irrigation district; governing board; elections; meetings. (a) All powers granted to the special irrigation district under the provisions of this act shall be exercised by an elected governing board. Such governing board shall consist of an odd number of no less than three and no more than nine directors. Elections for board members by the members of the special irrigation district shall be held at a meeting held each calendar year.

(b) At the initial election of the governing board, half of the board members of the special irrigation district, rounded down, shall be elected for a term of one year, and the remaining board members shall be elected for a term of two years. For each subsequent appointment, each board member shall be elected for a term of two years.

(c) The governing board of the special irrigation district, after being duly elected, shall elect from its number a president, vice-president, secretary, and treasurer. If the special irrigation district has three board members, such board shall elect one board member to hold the offices of both secretary and treasurer.

(d) Each member of the governing board of the special irrigation district shall continue in such position until a successor is elected and qualified. Members of such board shall have no term limits. Whenever the vacancy of a board member position occurs before the expiration of such board member's term, a successor shall be elected by such governing board to fill such vacancy for the unexpired term, except that such governing board may elect to call a special meeting of the membership for purposes of electing a board member to serve an unexpired term.

(e) The governing board of the special irrigation district shall meet no less than quarterly during any calendar year and shall meet upon call of the president as necessary to carry out its duties under this act.

(f) The governing board of the special irrigation district shall set an annual meeting for the district, and provide notice of the same to all members. At such annual meeting the membership may consider any matters such governing board may wish to present for consideration.

(g) A majority of the governing board of the special irrigation district shall constitute a quorum for the transaction of business. A majority of those board members present and voting shall determine all actions taken by such governing board. **(History: L. 2011, ch. 89, § 20; July 1.)**

82a-2321. Same; special irrigation district; members; charges and assessments. (a) The costs of the water supply access storage shall be paid from funds of the special irrigation district, and from any fees and assessments of members. In order to finance the operations of the special irrigation district, the governing board may assess an annual water use charge against every member. Such governing board shall base such charge upon the amount of water allocated for such member's use pursuant to that member's water right.

(b) Before any assessment is made or user charge imposed, the governing board shall submit the proposed budget for the ensuing year to the eligible voters of such district at a hearing to be held during the annual meeting. Following the hearing, the governing board shall, by resolution, adopt either the proposed budget or a modified budget and determine the amount of land assessment or user charge, or both, needed to support such budget.

(c) All dues, charges, fees and assessments against lands within the special irrigation district shall be certified to the proper county clerks and collected the same as other taxes in accordance with K.S.A. 79-1801, and amendments thereto, and the amount thereof shall attach to the real property involved as a lien in accordance with K.S.A. 79-1804, and amendments thereto. All moneys so collected shall be remitted by the county treasurer to the treasurer of the special district who shall deposit them to the credit of the general fund of the special irrigation district. The accounts of the special irrigation district shall be audited annually by a public accountant or certified public accountant. **(History:** L. 2011, ch. 89, § 21; July 1.)

82a-2322. Same; special irrigation district; fund; uses. A fund shall be created by the special irrigation district for payment of the costs of water supply access storage. Any moneys received by such special irrigation district for charges, fees, assessments and sales of water shall be credited to such fund. Such fund shall be used solely to pay the costs related to acquiring water supply access storage and the operation of the special irrigation district. **(History:** L. 2011, ch. 89, § 22; July 1.)

82a-2323. Same; special irrigation district; expiration of provision. If the special irrigation district authorized pursuant to this act is not formed by December 31, 2020, the provisions of K.S.A. 2012 Supp. 82a-2315 through 82a-2322, and amendments thereto, shall expire. **(History:** L. 2011, ch. 89, § 23; July 1.)

82a-2324. Same; rules and regulations. The Kansas water office shall adopt rules and regulations to implement the lower smoky hill water supply access program. **(History:** L. 2011, ch. 89, § 24; July 1.)

Kansas Water Office regulations:

K.A.R. 98-7-1

K.A.R. 98-7-2

K.A.R. 98-7-3

K.A.R. 98-7-4

K.A.R. 98-7-6