

**KANSAS WATER APPROPRIATION ACT**  
**K.S.A. 82a-701 through 82a-722, 82a-724 through 82a-734a,**  
**82a-736, 82a-737,**  
**82a-741 through 82a-745**

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**K.S.A. 82a-701. Definitions.** When used in this act, unless the context indicates otherwise, the following words shall have the following meanings:

(a) "Person" shall mean and include a natural person, a partnership, an organization, a corporation, a municipality and any agency of the state or federal government.

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

(c) "Domestic uses" means the use of water by any person or by a family unit or household for household purposes, or for the watering of livestock, poultry, farm and domestic animals used in operating a farm, and for the irrigation of lands not exceeding a total of two acres in area for the growing of gardens, orchards and lawns.

(d) "Vested right" means the right of a person under a common law or statutory claim to continue the use of water having actually been applied to any beneficial use, including domestic use, on or before June 28, 1945, to the extent of the maximum quantity and rate of diversion for the beneficial use made thereof, and shall include the right to take and use water for beneficial purposes where a person is engaged in the construction of works for the actual application of water to a beneficial use on June 28, 1945, provided such works shall be completed and water is actually applied for such use within a reasonable time thereafter by such person, such person's heirs, successors or assigns. Such a right does not include, however, those common law claims under which a person has not applied water to any beneficial use within the periods of time set out in this subsection.

(e) "Appropriator" means and includes a person who has an appropriation right that has been perfected in conformity with article 7 of chapter 82a of the Kansas Statutes Annotated and amendments thereto.

(f) "Appropriation right" is a right, acquired under the provisions of article 7 of chapter 82a of the Kansas Statutes Annotated and amendments thereto, to divert from a definite water supply a specific quantity of water at a specific rate of diversion, provided such water is available in excess of the requirements of all vested rights that relate to such supply and all appropriation rights of earlier date that relate to such supply, and to apply such water to a specific beneficial use or uses in preference to all appropriations right of later date.

(g) "Water right" means any vested right or appropriation right under which a person may lawfully divert and use water. It is a real property right appurtenant to and severable from the land on or in connection with which the water is used and such water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other disposal, or by inheritance.

**History:** L. 1945, ch. 390, § 1; L. 1957, ch. 539, § 1; L. 1977, ch. 356, § 3; L. 2004, ch. 101, § 141; July 1; L. 2009, ch. 65, § 1; July 1.

**K.S.A. 82a-702. Dedication of use of water.** All water within the state of Kansas is hereby dedicated to the use of the people of the state, subject to the control and regulation of the state in the manner herein prescribed.

**History:** L. 1945, ch. 390, § 2; June 28.

**K.S.A. 82a-703. Water may be appropriated subject to vested rights.** Except as provided in K.S.A. 82a-703a and subject to vested rights, all waters within the state may be appropriated for

beneficial use as herein provided. Nothing contained in this act shall impair the vested right of any person except for nonuse.

**History:** L. 1945, ch. 390, § 3; L. 1980, ch. 332, § 1; July 1.

**K.S.A. 82a-703a. Minimum streamflows; duties of chief engineer.** Whenever the legislature enacts legislation establishing a minimum desirable streamflow for any watercourse in this state, the chief engineer shall withhold from appropriation that amount of water deemed necessary to establish and maintain for the identified watercourse the desired minimum streamflow.

**History:** L. 1980, ch. 332, § 2; L. 1984, ch. 379, § 21; L. 1985, ch. 338, § 1; July 1.

**K.S.A. 82a-703b. Minimum desirable streamflows; condition of appropriation right, applicability.** (a) In addition to any other limitation or condition prescribed by law or rule and regulation of the chief engineer, it shall be an express condition of each and every appropriation right, except for use of water for domestic purposes, applied for after April 12, 1984, that such right shall be subject to any minimum desirable streamflow requirements identified and established pursuant to law on or before July 1, 1990, for the source of water supply to which such right applies.

(b) All vested rights, water appropriation rights and applications for permits to appropriate water having a priority date on or before April 12, 1984, shall not be subject to any minimum desirable streamflow requirements established pursuant to law.

**History:** L. 1984, ch. 377, § 1; L. 1987, ch. 402, § 2; July 1.

**K.S.A. 82a-703c. Minimum streamflows established.** In accordance with the provisions of K.S.A. 82a-703a, and amendments thereto, the legislature hereby establishes the following minimum desirable streamflows:

Table--Minimum Desirable Streamflows (cfs)

Watercourse	Month											
	J	F	M	A(a)	M(a)	J(a)	J	A	S	O	N	D
Marais des Cygnes												
Ottawa	15	15	15	15(40)	20(50)	25(50)	25	25	20	15	15	15
LaCygne	20	20	20	20(50)	20(150)	25(150)	25	25	20	20	20	20
Neosho												
Americus	5	5	5	5(20)	5(30)	5(30)	5	5	5	5	5	5
Iola	40	40	40	40(60)	40(200)	40(200)	40	40	40	40	40	40
Parsons	50	50	50	50(100)	50(300)	50(300)	50	50	50	50	50	50
Cottonwood												
Florence	10	10	10	10(30)	10(60)	10(60)	10	10	10	10	10	10
Plymouth	20	20	20	20(60)	20(150)	20(150)	20	20	20	20	20	20
Little Arkansas												
Alta Mills	8	8	8	8	8	8	8	8	8	8	8	8
Valley Center	20	20	20	20	20	20	20	20	20	20	20	20
Arkansas River												
Kinsley(b)	2	2	3	3	5	5	3	1	1	1	2	2
Great Bend(b)	3	3	3	3	10	10	5	3	2	2	2	3
Hutchinson	80	80	100	100	100	100	80	80	60	60	60	80
Rattlesnake Creek												
Macksville(b)	5	5	10	10	10	10	5	1	1	1	5	5
Zenith	15	15	15	15	15	15	5	3	3	3	10	15
North Fork Ninescah												
Above												
Cheney	40	50	50	50	40	30	10	5	5	10	40	40
South Fork Ninescah												

Pratt	10	10	10	8	8	8	5	5	5	5	10	10
Murdock	80	90	90	90	90	50	30	30	30	50	80	80
Ninnescah												
Peck	100	100	100	100	100	70	30	30	30	50	100	100
Saline												
Russell	5	5	15	15	15	12	2	2	2	5	5	5
Smoky Hill												
Ellsworth(c)	20	20	25	30	35	45	35	15	15	15	20	20
Medicine Lodge												
Kiowa	50	55	60	60	40	30	6	1	1	4	40	50
Chikaskia												
Corbin	30	45	50	45	40	30	16	5	5	8	30	30
Big Blue												
Marysville	100	100	125	150	150(d)	150(d)	80	90	65	80	80	80
Little Blue												
Barnes	100	100	125	150	150(d)	150(d)	75	80	60	80	80	80
Republican												
Concordia(e)	100	125	150	150	150	150	150	150	80	65	80	100
Clay Center	125	150	200	250	250	250	200	200	100	90	100	125
Mill Creek												
Paxico	8	8	8	25	30	35	10	5	5	2	5	8
Delaware												
Muscotah	10	10	20	20	20	20	5	3	3	2	10	10
Walnut River												
Winfield	30	35	40	65	100	100	30	25	20	20	20	30
Whitewater River												
Towanda	10	15	15	20	25	25	10	5	5	5	6	10
Spring River												
Baxter Springs(f)	175	200	250	300	450	350	200	160	120	120	150	175
Chapman Creek												
Chapman	10	15	15	15	15	15	10	10	10	10	10	10
Solomon River												
Niles	40	50	60	60	90	90	50	50	40	40	40	40

(a) Spawning flows to be managed if reservoirs in flood pool; otherwise use lower flows.

(b) Subject to subsequent assessment of lagged effects of extensive groundwater appropriations in regional aquifer.

(c) Subject to subsequent assessment of lagged effects of upstream depletions.

(d) Subject to the stateline flows contained in the Blue River Compact.

(e) Subject to subsequent assessment of Harlan County reservoir operations, development of compact stateline flows and lagged effects of upstream depletions.

(f) Flows measured at Quapah, Oklahoma; may need review if a new station is established.

**History:** L. 1985, ch. 338, § 2; L. 1987, ch. 402, § 1; L. 1989, ch. 309, § 1; April 13.

**K.S.A. 82a-704a. Determination of vested rights; procedure; duties of chief engineer.** (a)

All persons claiming a vested right for the beneficial use of water, other than for domestic use, which has not been determined pursuant to K.S.A. 82a-704, shall file by July 1, 1980, with the chief engineer a verified claim for such vested right. The chief engineer shall not accept any such claim after said date. Such verified claim shall be upon forms provided therefor by the chief engineer and shall set forth:

- (1) The name and post-office address of the claimant;
- (2) the source to which the claim relates;
- (3) the amount of water claimed;
- (4) the location of the works for the diversion and use of the claimed water;
- (5) the dates of the beneficial use made; and
- (6) any additional information the chief engineer may require.

(b) Upon receipt of a verified claim for a vested right for the beneficial use of water, the chief engineer shall investigate the same and shall conduct a hearing thereon. Such hearing shall be noticed by restricted mail to the claimant and to other known interested persons within a five (5) mile radius of the point of diversion of such claimed vested right at least thirty (30) days prior to the date set for the hearing. Notice shall also be given by publication in a newspaper of general circulation in the county wherein the vested right is claimed to exist at least once each week for three (3) consecutive weeks prior to the hearing. Such published notice shall contain the date and place of hearing and a general description of the area affected by the claimed vested right and shall be directed to all persons interested and concerned. At the hearing, the chief engineer shall take evidence of all persons interested and concerned and the same shall be considered in the determination of the existence of a vested right for beneficial use of water. As soon as possible thereafter the chief engineer shall make an order determining the existence or nonexistence of the claimed vested right and shall notify the claimant and contestants thereof as to the contents of such order. Service of such notice shall be deemed complete upon depositing such notice in the post office as restricted mail addressed to the vested right claimant and any contestant thereto whose address is known to the chief engineer, and upon the publication of an abstract of such order once each week for three (3) consecutive weeks in a newspaper of general circulation in the county wherein the vested right is claimed to exist.

(c) Any claimant of a vested right or person contesting the same who considers himself or herself aggrieved by the order of determination of a vested right may appeal to the district court in the manner prescribed by K.S.A. 82a-724.

(d) The order of determination of a vested right of the chief engineer shall be in full force and effect from the date of its entry in the records of his or her office unless and until its operation shall be stayed by an appeal therefrom by the claimant thereof or a contestant thereto in accordance with the provisions of K.S.A. 82a-724 except that no such determination shall be deemed an adjudication of the relation between any vested right holders with respect to the operation or exercise of their vested rights.

(e) The chief engineer shall file a copy of any order of determination of the existence of a vested right with the register of deeds of the county wherein the land is located to which such vested right is appurtenant. The register of deeds shall record the same as other instruments affecting real estate.

(f) No vested right for the beneficial use of water, other than for domestic use, shall be deemed to exist from and after July 1, 1980, unless the same has been determined to exist pursuant to the provisions of this act or pursuant to the provisions of K.S.A. 82a-704.

**History:** L. 1978, ch. 434, § 1; July 1.

**K.S.A. 82a-704b. Same; notice.** The chief engineer shall provide notice throughout the state of the provisions of this act by means assuring the widest dissemination thereof as practicable.

**History:** L. 1978, ch. 434, § 2; July 1.

**K.S.A. 82a-704c. Same; supplemental to Kansas water appropriation act.** The provisions of K.S.A. 82a-704a shall be a part of and supplemental to the Kansas water appropriation act.

**History:** L. 1978, ch. 434, § 3; July 1.

**K.S.A. 82a-705. Acquisition of a new appropriation right to use water other than domestic; approval.** No person shall have the power or authority to acquire a new appropriation right to

the use of water for other than domestic use without first obtaining the approval of the chief engineer, and no water rights of any kind may be acquired hereafter solely by adverse use, adverse possession, or by estoppel.

**History:** L. 1945, ch. 390, § 5; L. 1957, ch. 539, § 7; June 29; L. 2009, ch. 65, § 2; July 1.

**K.S.A. 82a-705a. Domestic use after June 28, 1945; information to chief engineer.** The use of water for domestic purposes instituted subsequently to June 28, 1945, to the extent that it is beneficial, shall constitute an appropriation right. The chief engineer, however, may require any person using water for any purpose to furnish information with regard to such use thereof.

**History:** L. 1957, ch. 539, § 2; June 29.

**K.S.A. 82a-706. Duties of chief engineer as to beneficial use and rights of priority of appropriation.** The chief engineer shall enforce and administer the laws of this state pertaining to the beneficial use of water and shall control, conserve, regulate, allot and aid in the distribution of the water resources of the state for the benefits and beneficial uses of all of its inhabitants in accordance with the rights of priority of appropriation.

**History:** L. 1945, ch. 390, § 6; L. 1957, ch. 539, § 8; June 29.

**K.S.A. 82a-706a. Rules, regulations and standards.** The chief engineer shall adopt, amend, promulgate, and enforce such reasonable rules, regulations, and standards necessary for the discharge of his or her duties and for the achievement of the purposes of this act pertaining to the control, conservation, regulation, allotment, and distribution of the water resources of the state.

**History:** L. 1957, ch. 539, § 9; L. 1977, ch. 356, § 4; January 1, 1978.

**K.S.A. 82a-706b. Diversion of water prohibited, when; unlawful acts; enforcement and augmentation by chief engineer.** (a) It shall be unlawful for any person to prevent, by diversion or otherwise, any waters of this state from moving to a person having a prior right to use the same, or for any person without an agreement with the state of Kansas to divert or take any water that has been released from storage under authority of water reservation rights held by the state of Kansas. Upon making a determination of an unlawful diversion the chief engineer or the chief engineer's authorized agents, shall, as may be necessary to secure water to the person having the prior right to its use, or to secure water for the purpose for which it was released from storage under authority of the state of Kansas or water reservation rights held by the state of Kansas: (1) Direct that the headgates, valves, or other controlling works of any ditch, canal, conduit, pipe, well or structure be opened, closed, adjusted or regulated; or (2) within the rattlesnake creek subbasin located in hydrologic unit code 11030009, allow augmentation for the replacement in time, location and quantity of the unlawful diversion, if such replacement is available and offered voluntarily. (b) The chief engineer, or the chief engineer's authorized agents, shall deliver a copy of such a directive to the persons involved either personally or by mail or by attaching a copy to such headgates, valves, or other controlling works to which it applies and such directive shall be legal notice to all persons involved in the diversion and distribution of the water of the ditch, canal, conduit, pipe, well or structure. For the purpose of making investigations of diversions and delivering directives as provided herein and determining compliance therewith, the chief engineer or the chief engineer's authorized agents shall have the right of access and entry upon private property.



**History:** L. 1957, ch. 539, § 10; L. 1965, ch. 557, § 1; June 30; L. 2015, ch. 60, § 1; July 1.

**K.S.A. 82a-706c. Meters, gages and other measuring devices; waste and quality checks.**

The chief engineer shall have full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time, and to require any water user to report the reading of such meters, gages, or other measuring devices at reasonable intervals. He or she shall have full authority to make, and to require any water user to make, periodic water waste and water quality checks and to require the user making such checks to report the findings thereof.

**History:** L. 1957, ch. 539, § 11; June 29.

**K.S.A. 82a-706d. Duties of attorney general.** Upon request of the chief engineer the attorney general shall bring suit in the name of the state of Kansas, in courts of competent jurisdiction to enjoin the unlawful appropriation, diversion, use of the waters of the state, and waste or loss thereof.

**History:** L. 1957, ch. 539, § 12; June 29.

**K.S.A. 82a-706e. State field offices and commissioners.** The chief engineer, subject to the approval of the secretary of agriculture, may establish field offices within this state to secure the best protection to all claimants of water therein and the most economical supervision thereof. Subject to the approval of the secretary of agriculture, the chief engineer may appoint a water commissioner for each field office so established, in accordance with the Kansas civil service laws, who shall be the agent of the chief engineer in supervising the distribution of waters within the area served by such field office, according to the rights and priorities of all parties concerned, and who shall perform such other duties as the chief engineer may direct.

**History:** L. 1957, ch. 539, § 13; L. 2004, ch. 101, § 142; July 1.

**K.S.A. 82a-707. Principles governing appropriations; priorities.** (a) Surface or groundwaters of the state may be appropriated as herein provided. Such appropriation shall not constitute ownership of such water, and appropriation rights shall remain subject to the principle of beneficial use.

(b) The date of priority of every water right of every kind, and not the purpose of use, determines the right to divert and use water at any time when the supply is not sufficient to satisfy all water rights. Where lawful uses of water have the same date of priority, such uses shall have priority in the following order of preference: Domestic, municipal, irrigation, industrial, recreational and water power uses. The holder of a water right for an inferior beneficial use of water shall not be deprived of the use of the water either temporarily or permanently as long as such holder is making proper use of it under the terms and conditions of such holder's water right and the laws of this state, other than through condemnation.

(c) As between persons with appropriation rights, the first in time is the first in right. The priority of the appropriation right to use water for any beneficial purpose except domestic purposes shall date from the time of the filing of the application therefor in the office of the chief engineer. The priority of the appropriation right to use water for domestic purposes shall date from the time of the filing of the application therefor in the office of the chief engineer or from the time the user makes actual use of water for domestic purposes, whichever is earlier.

(d) Any water right returned to the state under the provisions of K.S.A. 2-1915, and amendments thereto, shall be placed in the custodial care of the state. While in the custodial care of the state, the priority of the water right shall remain in effect and water available under the terms and conditions of the water right shall not be considered available for further appropriation. Any surface water right held in the custodial care of the state shall neither directly benefit nor impair any other surface water right within the stream reach designated for recovery. Any water right donated to the state shall be placed in the custodial care of the state or retired at the discretion of the chief engineer.

(e) Appropriation rights in excess of the reasonable needs of the appropriators shall not be allowed.

**History:** L. 1917, ch. 172, § 6; R.S. 1923, 24-903; L. 1945, ch. 390, § 7; L. 1957, ch. 539, § 14; L. 1988, ch. 396, § 3; July 1; L. 2009, ch. 65, § 3; July 1.

**K.S.A. 82a-708a. Applications for permits to appropriate water; fee.** (a) Any person may apply for a permit to appropriate water to a beneficial use, notwithstanding that the application pertains to the use of water by another, or upon or in connection with the lands of another. Any rights to the beneficial use of water perfected under such application shall attach to the lands on or in connection with which the water is used and shall remain subject to the control of the owners of the lands as in other cases provided by law.

(b) Except as otherwise provided in subsections (d), (e) and (f), each application for a permit to appropriate water, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of acre feet in accordance with the following:

Acre Feet	Fee
0 to 100 .....	\$200
101 to 320 .....	\$300
More than.....	\$300 + \$20
	for each additional 100 acre feet or any part thereof

On and after July 1, 2028, the application fee shall be fixed by this section for the appropriate category of acre feet in accordance with the following:

Acre Feet	Fee
0 to 100 .....	\$100
101 to 320 .....	\$150
More than 320.....	\$150 + \$10
	for each additional 100 acre feet or any part thereof

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of receipt of a complete application, the application fee is subject to refund upon request.

(c) Except as otherwise provided in subsections (d), (e) and (f), each application for a permit to appropriate water for storage, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of storageacre feet in accordance with the following:

Storage-Acre Feet	Fee
0 to 250 .....	\$200
More than 250.....	\$200 + \$20

for each additional 250  
storage-acre feet or any part thereof

On and after July 1, 2028, the application fee shall be fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

Storage-Acre Feet	Fee
0 to 250.....	\$100
More than 250.....	\$100 + \$10 for each additional 250 storage-acre feet or any part thereof

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of receipt of a complete application, the application fee is subject to refund upon request.

(d) Each application for a term permit pursuant to K.S.A. 2016 Supp. 82a-736, and amendments thereto, shall be accompanied by an application fee established by rules and regulations of the chief engineer in an amount not to exceed \$400 for the five-year period covered by the permit.

(e) For any application for a permit to appropriate water, except applications for permits for domestic use, that proposes to appropriate by both direct flow and storage, the fee charged shall be the fee under subsection (b) or subsection (c), whichever is larger, but not both fees.

(f) Each application for a permit to appropriate water for water power or dewatering purposes shall be accompanied by an application fee of \$100 plus \$200 for each 100 cubic feet per second, or part thereof, of the diversion rate requested in the application for the proposed project.

(g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

**History:** L. 1957, ch. 539, § 3; L. 1973, ch. 414, § 1; L. 1982, ch. 4, § 17; L. 1985, ch. 339, § 1; L. 1989, ch. 310, § 1; L. 2001, ch. 160, § 17; L. 2002, ch. 181, § 21; L. 2004, ch.85, § 16; July 1; L.2009, ch. 51, § 2; L. 2014, ch. 133, § 9; July 1; L. 2017, ch. 86, § 13; July 1; L. 2022, ch. 9, § 9; July 1.

**K.S.A. 82a-708b. Application for change in place of use, point of diversion or use; fee; review of action on application.** (a) (1) Any owner of a water right may change the place of use, the point of diversion or the use made of the water, without losing priority of right, provided such owner shall:

- (A) Apply in writing to the chief engineer for approval of any proposed change;
- (B) demonstrate to the chief engineer that any proposed change is reasonable and will not impair existing rights;
- (C) demonstrate to the chief engineer that any proposed change relates to the same local source of supply as that to which the water right relates; and
- (D) receive the approval of the chief engineer with respect to any proposed change. The chief engineer shall approve or reject the application for change in accordance with the provisions and procedures prescribed for processing original applications for permission to appropriate water. If the chief engineer disapproves the application for change, the rights, priorities and duties of the applicant shall remain unchanged. Any person aggrieved by an order or decision by the chief engineer relating to an application for change may petition for review

thereof in accordance with the provisions of K.S.A. 2016 Supp. 82a-1901, and amendments thereto.

(b) Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

(1)	Application to change a point of diversion 300 feet or less.....	\$100
(2)	Application to change a point of diversion more than 300 feet.....	200
(3)	Application to change the place of use.....	200
(4)	Application to change the use made of the water.....	300

On and after July 1, 2028, the application fee shall be set forth in the schedule below:

(1)	Application to change a point of diversion 300 feet or less.....	\$ 50
(2)	Application to change a point of diversion more than 300 feet.....	100
(3)	Application to change the place of use.....	100
(4)	Application to change the use made of the water.....	150

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of receipt of a complete application, the application fee is subject to refund upon request.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

**History:** L. 1957, ch. 539, § 4; L. 1982, ch. 4, § 18; L. 1985, ch. 339, § 2; L. 1990, ch. 361, § 1; L. 1999, ch. 130, § 4; L. 2002, ch. 181, § 22; L. 2004, ch.85, § 17; L.2009, ch. 51, § 3; L. 2014, ch. 133, § 10; July 1; L. 2017, ch. 86, § 14; July 1; L. 2022, ch. 9, § 10; July 1.

**K.S.A. 82a-708c. Application for term permits to appropriate water; fee.** (a) A term permit is a permit to appropriate water for a limited specified period of time in excess of six months. At the end of the specified time, or any authorized extension approved by the chief engineer, the permit shall be automatically dismissed, and any priority it may have had shall be forfeited. No water right shall be perfected pursuant to a term permit.

(b) Each application for a term permit to appropriate water shall be made on a form prescribed by the chief engineer and shall be accompanied by an application fee fixed by this section for the appropriate category of acre feet in accordance with the following:

Acre Feet	
Fee 0 to 100 .....	\$200
101 to 320 .....	\$300
More than 320 .....	\$300 + \$20
for each additional 100 acre feet or any part thereof	

On and after July 1, 2028, the application fee shall be set forth in the schedule below:

Acre Feet Fee 0 to 100 .....	\$100
101 to 320 .....	\$100
More than 320 .....	\$150 + \$10
for each additional 100 acre feet or any part thereof	

The chief engineer shall render a decision on such term permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of receipt of a complete application, the application fee is subject to refund upon request.

(c) Each application for a term permit to appropriate water for storage, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

Storage-Acre Feet	Fee
0 to 250 .....	\$200
More than 250 .....	\$200 + \$20

for each additional 250 acre feet or any part thereof

On and after July 1, 2028, the application fee shall be set forth in the schedule below:

Storage-Acre Feet Fee 0 to 250 .....	\$100
More than 250 .....	\$100 + \$10

for each additional 250 acre feet or any part thereof

The chief engineer shall render a decision on such term permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of receipt of a complete application, the application fee is subject to refund upon request.

(d) Each application for a term permit pursuant to K.S.A. 2015 Supp. 82a-736, and amendments thereto, shall be accompanied by an application fee established by rules and regulations adopted by the chief engineer in an amount not to exceed \$400 for the five-year period covered by the permit.

(e) Notwithstanding the provisions of K.S.A. 82a-714, and amendments thereto, the applicant is not required to file a notice of completion of diversion works nor pay a field inspection fee. The chief engineer shall not conduct a field inspection of the diversion works required by statute for purposes of certification nor issue a certificate of appropriation for a term permit.

(f) A request to extend the term of a term permit in accordance with the rules and regulations adopted by the chief engineer shall be accompanied by the same filing fee applicable to other requests for extensions of time as set forth in K.S.A. 82a-714, and amendments thereto.

(g) An application to change the place of use, point of diversion, use made of water, or any combination thereof, pursuant to K.S.A. 82a-708b, and amendments thereto, shall not be approved for a term permit, except as provided in K.S.A. 82a-736, and amendments thereto.

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

**History:** L. 2009, ch. 51, § 2; L. 2014, ch. 133, § 11; July 1; L. 2015, ch. 60, § 2; July 1; L. 2016, ch. 23, § 1; July 1; L. 2017, ch. 86, § 15; July 1; L. 2022, ch. 9, § 11; July 1.

**K.S.A. 82a-709. Same; contents; time of filing.** No person may acquire a new appropriation right to the use of waters of the state for other than domestic purposes without making an application to the chief engineer for a permit to make such appropriation. However, any person using water for domestic purposes subsequent to June 28, 1945, and any person intending to use water hereafter for domestic purposes may make application to the chief engineer for a permit the same as any other person. The application shall set forth (a) the name and post-office address of the applicant;

(b) the source from which said appropriation shall be made;

- (c) the maximum rate at which water is to be diverted or used and the total annual quantity of water sought;
- (d) the location of the works or proposed works for the diversion and use of the water;
- (e) the estimated time for the completion of any proposed works;
- (f) the time of the first actual application of the water to the beneficial use involved, if there was such, and the estimated time for the first actual application of the water for the beneficial use proposed;
- (g) sworn statement or evidence of legal access to or control of the point of diversion from the landowner, or the landowner's authorized representative;
- (h) if for irrigation use, a description of the land to be irrigated by designating the number of irrigable acres in each forty (40) acre tract or fractional portion thereof;
- (i) if for municipal water supply, it shall give the present population to be served and estimated future requirements of the city;
- (j) any additional factors which may be required by the chief engineer.

Such application shall be filed and approved before the commencement of any work in connection with the construction, enlargement or extension of any works for the diversion, storage, and use of water.

**History:** L. 1945, ch. 390, § 9; L. 1957, ch. 539, § 15; L. 1977, ch. 356, § 5; January 1, 1978; L. 2009, ch. 65, § 4; July 1.

**K.S.A. 82a-710. Same; return for correction or completion; maps, plats, plans and drawings; default in refiling.** Upon receipt of the application it shall be the duty of the chief engineer to endorse thereon the date of its receipt and assign a number to the same. If upon examination the application is found to be defective, inadequate or insufficient to enable such official to determine the nature and amount of the proposed appropriation, it shall be returned for correction or completion or for other required information. No application shall lose its priority of filing on account of such defects, provided acceptable data, proofs, maps, plats, plans and drawings are filed in the office of the chief engineer within thirty days following the date of the posting of the return of such application or such further time not exceeding one year as may be given by the chief engineer.

All maps, plats, plans and drawings shall conform to prescribed uniform standard as to materials, size, coloring and scale, and shall show: (a) The source from which the proposed appropriation is to be taken,

(b) all proposed dams, dikes, reservoirs, canals, pipe lines, power houses and other structures for the purpose of storing, conveying or using water for the purpose approved and their positions or courses in connection with the boundary lines and corners of the lands which they occupy. Land listed for irrigation shall be shown in government subdivisions or fractions thereof. Default in the refiling of any application within the time limit specified shall constitute a forfeiture of priority date and the dismissal of the application.

**History:** L. 1945, ch. 390, § 10; June 28.

**K.S.A. 82a-711. Permits to appropriate water; standards for approval of use; review of action on application.** (a) If a proposed use neither impairs a use under an existing water right nor prejudicially and unreasonably affects the public interest, the chief engineer shall approve all applications for such use made in good faith in proper form which contemplate the utilization of water for beneficial purpose, within reasonable limitations except that the chief engineer shall

not approve any application submitted for the proposed use of fresh water in any case where other waters are available for such proposed use and the use thereof is technologically and economically feasible. Otherwise, the chief engineer shall make an order rejecting such application or requiring its modification to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water.

(b) In ascertaining whether a proposed use will prejudicially and unreasonably affect the public interest, the chief engineer shall take into consideration:

- (1) Established minimum desirable streamflow requirements;
- (2) the area, safe yield and recharge rate of the appropriate water supply;
- (3) the priority of existing claims of all persons to use the water of the appropriate water supply;
- (4) the amount of each claim to use water from the appropriate water supply; and
- (5) all other matters pertaining to such question.

(c) With regard to whether a proposed use will impair a use under an existing water right, impairment shall include the unreasonable raising or lowering of the static water level or the unreasonable increase or decrease of the streamflow or the unreasonable deterioration of the water quality at the water user's point of diversion beyond a reasonable economic limit. Any person aggrieved by any order or decision by the chief engineer relating to that person's application for a permit to appropriate water may petition for review thereof in accordance with the provisions of K.S.A. 2005 Supp. 82a-1901 and amendments thereto.

**History:** L. 1945, ch. 390, § 11; L. 1957, ch. 539, § 16; L. 1977, ch. 356, § 6; L. 1980, ch. 332, § 3; L. 1986, ch. 392, § 3; L. 1991, ch. 292, § 3; L. 1999, ch. 130, § 5; July 1.

**K.S.A. 82a-711a. Same; express conditions of appropriations.** It shall be an express condition of each appropriation of surface or ground water that the right of the appropriator shall relate to a specific quantity of water and that such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion: PROVIDED, That in determining such reasonable raising or lowering of the static water level in a particular area, the chief engineer shall consider the economics of diverting or pumping water for the water uses involved; and nothing herein shall be construed to prevent the granting of permits to applicants later in time on the ground that the diversions under such proposed later appropriations may cause the water level to be raised or lowered at the point of diversion of a prior appropriator, so long as the rights of holders of existing water rights can be satisfied under such express conditions.

**History:** L. 1957, ch. 539, § 17; June 29.

**K.S.A. 82a-712. Same; notice of approval or disapproval of application; approval constitutes permit.** The chief engineer shall notify the applicant of the approval or disapproval of the application. Upon approving the application the chief engineer shall authorize the applicant to proceed with the construction of the proposed diversion works and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect his or her proposed appropriation. The chief engineer may approve an application for a smaller amount of water than requested and he or she may approve an application upon such terms, conditions, and limitations as he or she shall deem necessary for the protection of the public interest. The approval of the application by the chief engineer, subject to

the terms and conditions thereof, upon issuance, constitutes a permit to proceed with construction of diversion or other authorized works and with the diversion and use of water in accordance with the terms and conditions of his or her permit and no common-law claimant without a vested right, or other person without a vested right, a prior appropriation right, or an earlier permit shall prevent, restrain, or enjoin an applicant from proceeding in accordance with the terms and conditions of his or her permit or from diminishing the water supply.

**History:** L. 1945, ch. 390, § 12; L. 1957, ch. 539, § 18; June 29.

**K.S.A. 82a-713. Same; limiting time for perfection of appropriation; extension.** The chief engineer shall limit the time for the perfecting of an appropriation to a reasonable period within which the proposed works can be completed by expeditious procedure, and he or she shall for good cause shown by the applicant allow an extension of time.

**History:** L. 1945, ch. 390, § 13; June 28.

**K.S.A. 82a-714. Same; completion of works; extension of time; certificate of appropriation; fees.** (a) Upon the completion of the construction of the works and the actual application of water to the proposed beneficial use within the time allowed, the applicant shall notify the chief engineer to that effect. The chief engineer or the chief engineer's duly authorized representative shall then examine and inspect the appropriation diversion works and, if it is determined that the appropriation diversion works have been completed and the appropriation right perfected in conformity with the approved application and plans, the chief engineer shall issue a certificate of appropriation in duplicate. The original of such certificate shall be sent to the owner and shall be recorded with the register of deeds in the county or counties wherein the point of diversion is located, as are other instruments affecting real estate, and the duplicate shall be made a matter of record in the office of the chief engineer.

(b) Not later than 60 days before the expiration of the time allowed in the permit to complete the construction of the appropriation diversion works or the time allowed in the permit to actually apply water to the proposed beneficial use, the chief engineer shall notify the permit holder by certified mail that any request for extension of such time must be filed with the chief engineer before the expiration of the time allowed in the permit.

(c) Unless the applicant requests an extension or the certificate has not been issued due to the applicant's failure to comply with reasonable requests for information or to allow the opportunity to examine and inspect the appropriation diversion works, as necessary for certification, the chief engineer shall certify an appropriation:

(1) Before July 1, 2004, if the time allowed in the permit to perfect the water right expired before July 1, 1999, except in those cases in which abandonment proceedings pursuant to K.S.A. 82a-718, and amendments thereto, are pending on July 1, 2004;

(2) before July 1, 2006, in such cases in which an abandonment proceeding was pending pursuant to K.S.A. 82a-718, and amendments thereto, on July 1, 2004; or

(3) not later than five years after the date the applicant notifies the chief engineer of the completion of construction of the works and the actual application of water to the proposed beneficial use within the time allowed, in all other cases. If the chief engineer fails to issue a certificate within the time provided by this subsection, the applicant may request review, pursuant to K.S.A. 2016 Supp. 82a-1901, and amendments thereto, of the chief engineer's failure to act.



(d) Except for works constructed to appropriate water for domestic use, each notification to the chief engineer under subsection (a) shall be accompanied by a field inspection fee of \$400, or on and after July 1, 2028, a fee of \$200, except that for applications filed on or after July 1, 2009, for works constructed for sediment control use and for evaporation from a groundwater pit for industrial use shall be accompanied by a field inspection fee of \$200. Failure to pay the field inspection fee, after reasonable notice by the chief engineer of such failure, shall result in the permit to appropriate water being revoked, forfeiture of the priority date and revocation of any appropriation right that may exist.

(e) A request for an extension of time to: (1) Complete the diversion works; or (2) perfect the water right, shall be accompanied by a fee of \$50, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$100.

(f) A request to reinstate a water right or a permit to appropriate water that has been dismissed shall be filed with the chief engineer within 60 days of the date dismissed and shall be accompanied by a fee of \$100, or commencing July 1, 2002, and ending June 30, 2028, a fee of \$200.

(g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

**History:** L. 1945, ch. 390, § 14; L. 1957, ch. 539, § 20; L. 1985, ch. 339, § 3; L. 1990, ch. 362, § 1; L. 1999, ch. 130, § 6; L. 2002, ch. 181, § 23; L. 2004, ch.165, § 2; May 27; L.2009, ch. 51, § 4; L. 2014, ch. 133, § 12; July 1; L. 2017, ch. 86, § 16; July 1; L. 2022, ch. 9, § 12; July 1.

**K.S.A. 82a-715. Same; validation of certain applications.** All applications for the appropriation of water to beneficial use as filed with the chief engineer, subsequent to May 5, 1941, and all processing, proceedings and certificates pertaining thereto are validated to same extent as if filed after the effective date of this act, but with priorities as of the dates of filing of applications. All subsequent processing of such applications as are still pending and undetermined shall be further considered and processed as provided in this act.

**History:** L. 1945, ch. 390, § 15; June 28.

**K.S.A. 82a-716. Common-law claimants; action for compensation; injunctions.** If any appropriation, or the construction and operation of authorized diversion works results in an injury to any common-law claimant, such person shall be entitled to due compensation in a suitable action at law against the appropriator for damages proved for any property taken. Any person with a valid water right or permit to divert and use water may, after first exhausting the remedies available under K.S.A. 82a-717a, and amendments thereto, restrain or enjoin in any court of competent jurisdiction a subsequent diversion by a common-law claimant without vested rights without first condemning those common-law rights. After first exhausting the remedies available under K.S.A. 82a-717a, and amendments thereto, an appropriator shall have the right to injunctive relief to protect his or her prior right of beneficial use as against use by an appropriator with a later priority of right.

**History:** L. 1945, ch. 390, § 16; L. 1957, ch. 539, § 21; June 29; L. 2017, ch. 55, § 1; July 1.

**K.S.A. 82a-717a. Diversions by common-law claimants and others; injunctions.** (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; June 29; L. 2017, ch. 55, § 2; July 1.

**K.S.A. 82a-718. Abandonment of water rights; notices; hearing; review of action;**

**exceptions.** (a) All appropriations of water must be for some beneficial purpose. Every water

right of every kind shall be deemed abandoned and shall terminate when without due and sufficient cause no lawful, beneficial use is henceforth made of water under such right for five successive years. Before any water right shall be declared abandoned and terminated the chief engineer shall conduct a hearing thereon. Notice shall be served on the user at least 30 days before the date of the hearing. The determination of the chief engineer pursuant to this section shall be subject to review in accordance with the provisions of K.S.A. 2009 Supp. 82a-1901, and amendments thereto.

The verified report of the chief engineer or such engineer's authorized representative shall be prima facie evidence of the abandonment and termination of any water right.

(b) Except as provided in subsection (3), when no lawful, beneficial use of water under a water right has been reported for three successive years, the chief engineer shall notify the user, by certified mail, return receipt requested, that:

(1) No lawful, beneficial use of the water has been reported for three successive years;

(2) if no lawful, beneficial use is made of the water for five successive years, the right may be terminated; and

(3) the right will not be terminated if the user shows that for one or more of the five consecutive years the beneficial use of the water was prevented or made unnecessary by circumstances that are due and sufficient cause for nonuse, which circumstances shall be included in the notice.

(c) The provisions of subsection (a) shall not apply to a water right that has not been declared abandoned and terminated before the effective date of this act if the five years of successive nonuse occurred exclusively and entirely before January 1, 1990. However, the provisions of subsection (a) shall apply if the period of five successive years of nonuse began before January 1, 1990, and continued after that date.

(d) Notwithstanding the provisions of subsection (a), an eligible water right enrolled in and continually in compliance with the water rights conservation program, pursuant to section 25, and amendments thereto, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.

(e) Notwithstanding the provisions of subsection (a), a groundwater right, which has as its local supply an aquifer area that has been closed to new appropriations by rule, regulation or order of the chief engineer shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.

**History:** L. 1945, ch. 390, § 19; L. 1957, ch. 539, § 23; L. 1988, ch. 356, § 350; L. 1999, ch. 122, § 1; L. 1999, ch. 149, § 13; July 1; L. 2010, ch 59, § 1, L. 2011, ch. 89, § 26; July 1; L. 2012, ch. 6, § 1; July 1.

**K.S.A. 82a-719. Distribution of water according to decree of court.** Whenever the rights for the use of waters of the state shall have been adjudicated by any court, the division of water resources with the aid of its chief engineer and other officers and employees, shall aid in the distribution of such water according to such decree and shall distribute the water among the several ditches or water users pursuant to the decree; and shall have the power to open, close or adjust the headgates and regulate the controlling works of any ditch or structure, or cause the same to be opened, closed, adjusted and regulated so as to make a distribution of the water in conformity with the decree.

**History:** L. 1933, ch. 206, § 2; L. 1945, ch. 390, § 20; June 28.

**K.S.A. 82a-720. Same; certified copies of decrees.** The clerk of any court of this state in which a decree shall be made fixing the rights pertaining to ditches or water users to water, shall within ten days after such decree shall have been entered, forward to the chief engineer of the division of water resources, by registered mail, a certified copy of such decree.

**History:** L. 1933, ch. 206, § 4; L. 1945, ch. 390, § 21; June 28.

**K.S.A. 82a-721. Construction of act.** This act shall be construed liberally to effectuate the purposes hereof, and the enumeration of specific powers in this act shall not operate to restrict the meaning of any general grant of power contained in this act or to exclude other powers comprehended in such general grant.

**History:** L. 1945, ch. 390, § 23; June 28.

**K.S.A. 82a-721a. Same; damages to land.** Nothing in this act shall be construed as limiting any right of an owner of an estate or interest in or concerning land to recover damage for any injury done to his or her land or to any water rights appurtenant thereto.

**History:** L. 1957, ch. 539, § 22; June 29.

**K.S.A. 82a-722. Invalidity of part.** If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered, and it shall be presumed that the legislature would have enacted this law with the section, subsection or clause held to be invalid, omitted.

**History:** L. 1945, ch. 390, § 24; June 29.

**K.S.A. 82a-724. Review of administrative actions.** Any order pursuant to K.S.A. 2009 Supp. 82a-1901 and amendments thereto upon review of any action of the chief engineer pursuant to K.S.A. 82a-704a, 82a-708b, 82a-711 or 82a-718, and amendments thereto, is subject to review in accordance with the Kansas judicial review act.

**History:** L. 1957, ch. 539, § 24; L. 1978, ch. 435, § 1; L. 1986, ch. 318, § 143; L. 1999, ch. 130, § 8; July 1; L. 2010, ch 17, § 212, July 1.

**K.S.A. 82a-725. Same; reference to state division or its chief engineer; procedures; cases in federal courts.** In any suit to which the state is not a proper party brought in any court of competent jurisdiction in this state for determination of rights to water, the court may order a reference to the division of water resources or its chief engineer, as referee, for investigation of and report upon any or all of the physical facts involved and the division or its chief engineer shall thereupon make such an investigation and report as ordered by the court. The report shall set forth such findings of fact as may be required by the court's order of reference and may contain such opinions upon the facts as it deems proper in view of the issues submitted. Before filing its report, the division or its chief engineer shall mail notice of its report, together with a copy of it, to the parties or their attorneys of record.

Within thirty (30) days from the date of the mailing of the copy of the report, any party may file objections to it with the division of water resources or its chief engineer. After the division, or its chief engineer, has considered the objections, it shall file its report, as referee, with the clerk of the court and give notice by registered or certified mail of the filing of its report

to the parties or their attorneys. The court shall review the report upon exceptions thereto filed with the clerk of the court within thirty (30) days after date of mailing registered notice of the filing of the report. Except in its discretion or for good cause shown, the court shall not consider any exception to the report unless it appears that the excepting party presented the matter of the exception to the division or its chief engineer in the form of an objection. The report shall be evidence of the physical facts found therein, but the court shall hear such evidence as may be offered by any party to rebut the report or the evidence. If suit is brought in a federal court for determination of rights to water within, or partially within, the state, the division or its chief engineer may accept a reference of such suit as master or referee for the court.

**History:** L. 1957, ch. 539, § 25; June 29.

**K.S.A. 82a-726. Diversion and transportation of water for use in another state; approval by chief engineer; conditions.** (a) Any person intending to divert and transport water produced from a point or points of diversion located in this state for use in another state, shall make application to the chief engineer for a permit to appropriate water for beneficial use or file an application for change in point of diversion, place of use, type of use or any combination thereof. Subject to the provisions of subsection (b), the chief engineer shall approve such application upon such terms, conditions and limitations that the chief engineer shall deem necessary for the protection of public interest, including an express condition that if any such water is necessary to protect the public health and safety of the citizens of this state, such approved application may be suspended, modified or revoked by the chief engineer for such necessity.

(b) The chief engineer shall approve an application pursuant to this section only if the chief engineer finds that:

(1) The diversion and transportation of such water complies with the Kansas water appropriation act, the water transfer act and any other state law pertaining to such diversion, transportation and use of water;

(2) the statutes and common law of the state where such water will be used do not prohibit the use of water at the proposed place of use or for the proposed type of use, or both, if the water were to be diverted in that state; and

(3) the proposed diversion and transportation of water will not allow water apportioned to the state of Kansas by an interstate water compact to be used in another state.

(c) In order to make the finding required by subsection (b)(2), the chief engineer shall rely on a determination by the attorney general of the other state of whether the proposed use would be prohibited in that state.

**History:** L. 1976, ch. 435, § 1; L. 1984, ch. 380, § 1; L. 2000, ch. 98, § 1; July 1.

**K.S.A. 82a-727. Temporary permits to appropriate water; extension; fee; rules and regulations.** (a) Subject to existing water rights and the principle of beneficial use, the chief engineer may grant upon application made therefor temporary permits and extensions thereof to appropriate water in any case where the public interest in such water will not be unreasonably or prejudicially affected, except that the chief engineer shall not grant any such permit to appropriate fresh water in any case where other waters are available for the proposed use and the use thereof is technologically and economically feasible. No such temporary permit or any extension thereof shall be granted for a period of time in excess of six months. Each application submitted for a temporary permit or extension thereof shall be accompanied by an application fee of \$200, or on and after July 1, 2028, a fee of \$100.

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

(c) Nothing in this section shall be deemed to vest in the holder of any permit granted pursuant to provisions of this section any permanent right to appropriate water except as is provided by such permit.

(d) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

**History:** L. 1977, ch. 356, § 1; L. 1982, ch. 4, § 19; L. 1985, ch. 339, § 4; L. 2002, ch. 181, § 24; L. 2004, ch.85, § 19; July 1; L. 2009, ch. 51, § 5; L. 2014, ch. 133, § 13; July 1; L. 2017, ch. 86, § 17; July 1; L. 2022, ch. 9, § 13; July 1.

**K.S.A. 82a-728. Unlawful acts; penalties.** (a) Except for the appropriation of water for the purpose of domestic use, the production and return of salt water in connection with the operation of oil and gas wells in accordance with the written approval granted therefor by the Kansas corporation commission pursuant to K.S.A. 55-901, and amendments thereto, the withdrawal and use of water in accordance with provisions of K.S.A. 82a-1313, and amendments thereto, and the annual diversion and beneficial use of not more than 15 acre feet of surface water impounded in any reservoir having a total water volume of less than 15 acre feet, it shall be unlawful for any person to appropriate or threaten to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the provisions of chapter 7 of article 82a of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto or, for any person to violate any condition of a vested right, appropriation right or an approved application for a permit to appropriate water for beneficial use. As used in this subsection salt water shall mean water containing more than 5,000 milligrams per liter chlorides.

(b) (1) The violation of any provision of this section by any person is a class C misdemeanor.

(2) Each day that any such violation occurs after notice of the original violation is given by the chief engineer to any such violator by restricted mail shall constitute a separate offense.

**History:** L. 1977, ch. 356, § 2; L. 1981, ch. 397, § 2; July 1.

**K.S.A. 82a-729. Act supplemental to article 7 of chapter 82a of the Kansas Statutes Annotated.** The provisions of K.S.A. 82a-727 and 82a-728 shall be a part of and supplemental to the provisions of article 7 of chapter 82a of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

**History:** L. 1977, ch. 356, § 7; January 1, 1978.

**K.S.A. 82a-730. Citation of act.** K.S.A. 82a-701 to 82a-726, inclusive, and acts amendatory thereof and supplemental thereto shall be called and may be cited as the Kansas water appropriation act.

**History:** L. 1977, ch. 356, § 8; L. 1984, ch. 380, § 2; July 1.

**K.S.A. 82a-731. Water appropriation certification fund created; expenditures therefrom.** There is hereby created in the state treasury the water appropriation certification fund. The chief engineer of the division of water resources of the Kansas department of agriculture shall remit all moneys received under K.S.A. 82a-708a, 82a-708b and 82a-727, and amendments thereto, and section 25, and amendments thereto, to the state treasurer in accordance with the provisions of

K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water appropriation certification fund. All expenditures from the water appropriation certification fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person designated by the secretary.

**History:** L. 1982, ch. 4, § 21; L. 2001, ch. 5, § 471; L. 2004, ch. 101 § 143; L. 2011, ch. 89, § 27; July 1.

**K.S.A. 82a-732. Annual water use report required; penalty for violations.** (a) The owner of a water right or permit to appropriate water for beneficial use, except for domestic use, shall file or cause to be filed an annual water use report for the previous calendar year on a form prescribed by the chief engineer of the division of water resources of the Kansas department of agriculture on or before March 1 following the end of the previous calendar year. The report shall completely and accurately set forth such water use information as requested by the chief engineer.

(b) Any owner of a water right or permit to appropriate water for beneficial use, except for domestic use, who fails to timely file a water use report or other documents required under the provisions of subsection (a) shall be subject to a civil penalty in an amount not to exceed \$1,000 per water right. In addition to assessing a civil penalty as provided in this section, in the event the owner of a water right or permit to appropriate water for beneficial use fails to file or cause to be filed an annual water use report by June 1 of the calendar year in which it is due, the chief engineer may issue an order indefinitely suspending all water use under such water right or permit to appropriate water for beneficial use until such time as the annual water use report has been submitted or the chief engineer has determined that water use has been otherwise sufficiently documented with the division. The chief engineer upon a finding that the owner of a water right or permit to appropriate water for beneficial use has failed to file or cause to be filed such a report may impose a civil penalty, suspend the water right indefinitely, or require use of telemetry for the purpose of documentation.

(c) Any person filing a document knowing it to contain any false information as to a material matter shall be guilty of a class C misdemeanor.

(d) All fines collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

(e) This section shall be part of and supplemental to the water appropriation act, K.S.A. 82a-701 et seq., and amendments thereto.

**History:** L. 1988, ch. 395, § 1; L. 1991, ch. 292, § 4; L. 2004, ch. 101 § 144; July 1; L. 2016, ch. 71, § 5; July 1.

**K.S.A. 82a-733. Conservation plans and practices.** (a) The chief engineer may require an applicant for a permit to appropriate water for beneficial use or the owner of a water right or permit to appropriate water for beneficial use to adopt and implement conservation plans and practices. The chief engineer shall not mandate the adoption and implementation of conservation plans and practices except pursuant to a finding that such plans and practices will assure public benefit and promote public interest. In selecting the applications, water rights or permits for which conservation plans and practices are required to be adopted and implemented, the chief engineer shall give priority to:

(1) Water users that share a common source of supply that could be insufficient during times of drought;

(2) water users whose use is significantly higher than their peers from the same geographical area with comparable circumstances; and

(3) water users who apply for any state administered grant, loan or cost-share moneys for water-related projects. Prior to requiring the adoption and implementation of conservation plans and practices, the chief engineer shall assess the availability of technical assistance and inform the owner of a water right or permit to appropriate water for beneficial use or the applicant for such a permit who is required to adopt and implement a conservation plan and practices of the available sources of technical assistance to prepare the conservation plan.

(b) The chief engineer shall allow the owner of a water right or permit to appropriate water for beneficial use or the applicant for such a permit a minimum of 60 days to prepare a required conservation plan. The time allowed to prepare the required conservation plan may be extended by the chief engineer for good cause shown by the applicant. The chief engineer shall provide the owner of the water right or permit to appropriate water for beneficial use or the applicant for such a permit a reasonable time to implement the conservation plan and, for good cause shown, such as the need to apply extensive land treatment practices, the chief engineer may extend the time for implementation for a period of up to five years.

(c) Plans and practices required pursuant to this section shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608 and amendments thereto. If requested by the owner of the water right or permit to appropriate water for beneficial use or the applicant for such a permit, the chief engineer, in consultation with the director of the Kansas water office, shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office. The Kansas water office shall provide, or arrange to provide, technical assistance for water users required to adopt and implement conservation plans and practices pursuant to this section.

(d) Before any state agency makes any loan or grant, or provides any cost-share funds, for any water-related projects to any person or entity, the state agency may require the person or entity to submit to, and have approved by, the chief engineer a water conservation plan consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608 and amendments thereto.

(e) As used in this section, "water-related projects" shall include, but not be limited to, the following: Interconnections between water supply systems; development of new water supply and delivery systems; improvements or repairs to an existing water supply system, sanitary sewer system or water treatment system, which would significantly increase the amount of water used; small lakes development, improvement or repair; and development of other small impoundments for public water supply or irrigation.

(f) The chief engineer may approve the conservation plans and practices required pursuant to the provisions of this section on such terms, conditions and limitations as deemed necessary to carry out the provisions of this section. The implementation of the conservation plan and practices as approved or any subsequent approved modification shall constitute a condition of the water right or permit to appropriate water for beneficial use.

(g) Any conservation plans and practices required pursuant to this section with regard to any groundwater right or permit to appropriate groundwater from within the boundaries of a groundwater management district shall be subject to approval by both the chief engineer and the



board of directors of the groundwater management district unless such plans and practices are incorporated in the groundwater management district's management program which has been approved by the chief engineer pursuant to K.S.A. 82a-1029 and amendments thereto.

(h) The chief engineer may delegate authority to implement and enforce any of the provisions of this section to a groundwater management district on such terms as may be appropriate and necessary to carry out the provisions of this section within the boundaries of such district.

(i) The chief engineer may delegate to any city which has conservation plans meeting state guidelines the authority to require domestic water users within such city to adopt and implement conservation plans and practices so that such city can require compliance from private domestic well owners within the city limits.

(j) This section shall be part of and supplemental to the Kansas water appropriation act.

**History:** L. 1991, ch. 292, § 5; July 1.

**K.S.A. 82a-734. Sand and gravel pits; beneficial use of water, when; permit; application; fee; perfection of appropriation; examination of diversion works; assessment of water protection fee.** (a) An operator shall notify the chief engineer of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

(b) The net evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall be construed to be a beneficial use or diversion of water for the purposes of the Kansas water appropriation act, K.S.A. 82a-701 *et seq.*, and amendments thereto, if the sand and gravel pit is opened or operated in a township where the average annual potential net evaporation is greater than 18 inches per year, as determined by the chief engineer.

(c) If the chief engineer determines that an existing or proposed sand and gravel pit operation is a beneficial use of water, the operator shall apply to the chief engineer for a permit to appropriate water in accordance with the Kansas water appropriation act or otherwise acquire ownership or control of sufficient water rights, or by other methods pursuant to rules and regulations adopted by the chief engineer, or both, to offset net evaporation for the operation. The chief engineer may reduce this required offset based on the estimated use of groundwater by the existing vegetation.

(d) (1) The permit shall authorize net evaporation as the primary use, and hydraulic dredging and sand washing as secondary uses of water if such secondary uses are located within the same source of supply and are associated with the operation. Any secondary uses shall use water in a manner in which there is no significant net consumptive use. The permit shall not be subject to the installation of a water flow meter or administration of minimum desirable stream flow. Where the average potential net evaporation is less than 18 inches per year as determined by the chief engineer, the chief engineer shall issue a single term permit for the life of the project, not to exceed 80 years, for such secondary uses.

(2) The secondary uses shall be granted for the proposed life of the project or until the exhaustion of sand and gravel reserves. At the end of the industrial project, the owner shall file an application authorized by K.S.A. 82a-708b, and amendments thereto, to change the primary use made of water to recreational use to authorize the net evaporation use caused by the exposed groundwater.

(3) If a permit is denied, the chief engineer shall set forth all reasons for such denial.

(4) Any applicant who is denied a project permit by a final order of the chief engineer under this section may appeal such order in the manner provided by the Kansas judicial review act.

(5) Any application for a project permit shall be accompanied by a filing fee of \$500 and any request for modification shall be accompanied by a fee of \$250. Applicants for a project permit under this section shall not be required to pay fees pursuant to K.S.A. 82a-708a and 82a-708c, and amendments thereto, as part of such application.

(e)(1) The initial period of time allowed to complete construction of diversion works pursuant to an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be reasonable and consistent with the proposed use. The chief engineer may allow extension of such period by not to exceed two 10-year extensions if it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two 10-year extensions may be granted at the same time, to run consecutively, if the applicant submits to the chief engineer a written development plan.

(2) The period of time allowed to perfect an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be not less than 20 years and, for good cause shown, the chief engineer may allow one or more 10-year extensions of such period. The chief engineer shall consider the time needed until exhaustion of proven reserves, closure in accordance with the surface land reclamation and mining act, K.S.A. 49-601 *et seq.*, and amendments thereto, and the availability of water for the proposed use, but in no case shall allow longer than 80 years for perfection.

(3) Nothing herein shall require an extension of time to construct diversion works or to perfect a water right if there is demonstrable impairment of a use under an existing water right from the same source of supply, as determined pursuant to K.S.A. 82a-711, and amendments thereto.

(4) Upon examination of the diversion works for sand and gravel operations, the chief engineer or the chief engineer's duly authorized representative shall, within 90 days of the examination, notify the applicant if there was a failure to construct the diversion works at the authorized location or any deficiency of the terms and conditions of the permit. This notice will provide steps necessary to gain compliance with state law. If the chief engineer fails to examine the diversion works within two years of the notice of completion for any sand and gravel operation diversion works, the applicant shall not be required to forfeit priority date as a result of failure to construct a diversion works at the authorized location or any deficiency of the terms and conditions of the permit.

(f) Net evaporation from sand and gravel pits, as calculated by the chief engineer, will be reported as an industrial use to the director of taxation for the purpose of assessing the water protection fee pursuant to K.S.A. 82a-954, and amendments thereto.

(g) This section shall be part of and supplemental to the Kansas water appropriations act.

**History:** L. 1995, ch. 72, § 1; L. 2004, ch. 100, § 1; July 1; L. 2012, ch. 133, § 2; July 1; L. 2013, ch. 111, § 3; July 1.

**K.S.A. 82a-734a. Sand and gravel pits, land-based; prohibition on certain rules and regulations, conditions.** Any rules and regulations adopted by the secretary of health and environment pursuant to K.S.A. [65-171d](#), and amendments thereto, shall not apply to land-based

sand and gravel pits or aggregate mining operations utilizing washwater ponds if the only water or wastewater directed to the dredge pit or washwater pond consists of the following:

- (a) Dredge return flows;
- (b) flows generated from aggregate classification; or
- (c) flows from washing aggregate, if water used in such flows is returned to the dredge pit or washwater pond.

**History:** L. 2013, ch. 111, § 2; July 1.

**K.S.A. 82a-736. Multi-year flex accounts; term permits.** (a) It is hereby recognized that an opportunity exists to improve water management by enabling multi-year flexibility in the use of water authorized to be diverted under a groundwater water right, provided, that such flexibility neither impairs existing water rights, nor increases the total amount of water diverted, so that such flexibility has no long-term negative effect on the source of supply. It is therefore declared necessary and advisable to permit the establishment of multiyear flex accounts for groundwater water rights, together with commensurate protections for existing water rights and their source of supply.

(b) As used in this section:

(1) "Alternative base average usage" means an allocation based on net irrigation requirements calculated pursuant to subsection (c)(1) (D)(ii) that may be used in place of the base average usage.

(2) "Base water right" means a water right under which an applicant applies to the chief engineer to establish a multi-year flex account and where all of the following conditions exist:

(A) The authorized source of supply is groundwater; and

(B) the water right is not currently the subject of a multiyear allocation due to a change approval that allows an expansion of the authorized place of use.

(3) "Multi-year flex account" means a term permit that suspends a base water right during its term, except when the term permit may be no longer exercised because of an order of the chief engineer, and is subject to the terms and conditions as provided in subsection (e).

(4) "Base average usage" means: (A) The average amount of water actually diverted for the authorized beneficial use under the base water right during calendar years 2000 through 2009, excluding:

(i) Any amount diverted in any such year that exceeded the amount authorized by the base water right;

(ii) any amount applied to an unauthorized place of use; and

(iii) diversions in calendar years when water was diverted under a multi-year allocation with an expansion of the authorized place of use due to a change approval;

(B) if water use records are inadequate to accurately determine actual water use or upon demonstration of good cause by the applicant, the chief engineer may calculate the base average usage with less than all 10 calendar years during 2000 and 2009. In no case shall the base average usage be calculated with less than five calendar years during 2000 and 2009; or

(C) if the holder of the base water right shows to the satisfaction of the chief engineer that water conservation reduced water use under the base water right during calendar years 2000 through 2009, then the base average usage shall be calculated with the five calendar years immediately before the calendar year when water conservation began.

(5) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(6) "Flex account acreage" means the maximum number of acres lawfully irrigated during a calendar year, except for any acres irrigated under a multi-year allocation that allowed for an

expansion of the authorized place of use due to a change approval and any of the following conditions are met:

(A) The calendar year is 2000 through 2009;

(B) if water conservation reduced water use under the base water right during calendar years 2000 through 2009, the calendar year is a year within the five calendar years immediately prior to the calendar year when water conservation began; or

(C) if an application to appropriate water was approved after December 31, 2004, the calendar year is any during the perfection period.

(7) "Net irrigation requirement" means the net irrigation requirement for 50% chance rainfall of the county that corresponds with the location of the authorized place of use of the base water right as provided in K.A.R. 5-5-12, on the effective date of this act.

(c)(1) Except as provided in sections 1 and 2, and amendments thereto, any holder of a base water right that has not been deposited or placed in a safe deposit account in a chartered water bank may establish a multi-year flex account where the holder may deposit, in advance, the authorized quantity of water from such water right for any five consecutive calendar years, except when the chief engineer determines a shorter period is necessary for compliance with a local enhanced management area or an intensive groundwater use control area and the corrective controls in the area do not prohibit the use of multi-year flex accounts, and subject to all of the following:

(A) The water right must be vested or shall have been issued a certificate of appropriation;

(B) the withdrawal of water pursuant to the water right shall be properly and adequately metered;

(C) the water right is not deemed abandoned and is in compliance with the terms and conditions of its certificate of appropriation, all applicable provisions of law and orders of the chief engineer;

(D) the amount of water deposited in the multi-year flex account shall not exceed the greatest of the following:

(i) 500% of the base average usage;

(ii) 500% of the product of the annual net irrigation requirement multiplied by the flex account acreage, multiplied by 110%, but not greater than five times the maximum annual quantity authorized by the base water right;

(iii) if the authorized place of use is located wholly within the boundaries of a groundwater management district, an amount that shall not increase the long-term average use of the groundwater right as specified by rule or regulation promulgated pursuant to K.S.A. 82a1028(o), and amendments thereto; or

(iv) pursuant to subparagraph (F), the amount computed in (i), (ii) or (iii) plus any deposited water remaining in a multi-year flex account up to 100% of the base average usage or alternative base average usage;

(E) if the multi-year flex account is approved for less than five calendar years, the amount of water deposited in the multi-year flex account shall be prorated based on the number of calendar years approved and otherwise calculated as required by subsection (c)(1)(D) (i), (ii) or (iii); and

(F) any deposited water remaining in a multi-year flex account up to 100% of the base average usage or alternative base average usage may be added to the deposit amount calculated in subparagraph (D) if the base water right is enrolled in another multi-year flex account during the calendar year in which the existing multi-year flex account expires. The total amount of water deposited in any multi-year flex account shall not exceed 500% of the authorized quantity of the base water right;

(2) The provisions of K.A.R. 5-5-11 are limited to changes in annual authorized quantity and shall not apply to this subsection.

(d) The chief engineer shall implement a program providing for the issuance of term permits to holders of groundwater water rights who have established flex accounts in accordance with this section. Such term permits shall authorize the use of water in a flex account at any time during the consecutive calendar years for which the application for the term permit authorizing a multi-year flex account is made, without annual limits on such use.

(e) Term permits provided for by this section shall be subject to the following:

(1) A separate term permit shall be required for each point of diversion authorized by the base water right.

(2) The quantity of water authorized for diversion shall be limited to the amount deposited pursuant to subsection (c)(1)(D).

(3) The rate of diversion for each point of diversion authorized under the term permit shall not exceed the rate of diversion for each point of diversion authorized under the base water right.

(4) The authorized place of use shall be the place of use or a subdivision of the place of use for the base water right. Any approval of an application to change the place of use of the base water right shall automatically result in a change to the place of use for the term permit.

(5) The point of diversion authorized by the term permit shall be specified by referencing one point of diversion authorized by the base water right at the time the multi-year flex account term permit application is filed with the chief engineer or at the time any approvals changing such referenced point of diversion of the base water right are approved during the multi-year flex account period. For a base water right with multiple points of diversion, each point of diversion authorized by a term permit shall receive a specific assignment of a maximum authorized quantity of water, assigned proportionately to the authorized annual quantities of the respective points of diversion under the base water right.

(6) The chief engineer may establish, by rules and regulations, criteria for such term permits.

(7) Except as explicitly provided for by this section, such term permits shall be subject to all provisions of the Kansas water appropriation act, and rules and regulations adopted under such act, and nothing in this section shall authorize impairment of any vested right or prior appropriation right by the exercise of such term permit.

(f) An application for a multi-year flex account shall be filed with the chief engineer on or before December 31 of the first year of the multi-year flex account term for which the application is being made.

(g) All costs of administration of this section shall be paid from fees for term permits provided for by this section. Any appropriation or transfer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be repaid to the fund from where such appropriation or transfer is made. At the time of repayment, the secretary of agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.

(h) The fee for a multi-year flex account term permit shall be the same as specified for other term permits in K.S.A. 82a-708c, and amendments thereto.

(i) The chief engineer shall have full authority pursuant to K.S.A. 82a-706c, and amendments thereto, to require any additional measuring devices and any additional reporting of water use for term permits issued pursuant to this section. Failure to comply with any measuring or reporting requirement may result in a penalty, up to and including the revocation of the term permit and the suspension of the base water right for the duration of the term permit period.

(j) The chief engineer shall submit a written report on the implementation of this section to the house standing committee on agriculture and natural resources and the senate standing committee on natural resources on or before February 1 of each year.

(k) This section shall be part of and supplemental to the Kansas water appropriation act.

**History:** L. 2001, ch. 160, § 16; L. 2005, ch. 142, § 3; L. 2011, ch. 89, § 28; L. 2012, ch. 7, § 1; L. 2015, ch. 60, § 3; L. 2016, ch. 23 § 2; L. 2018, ch. 21, § 1; July 1; as amended by 2021 HB 2172, sec. 1; effective July 1, 2021; L. 2023, ch. 76, § 3; May 4.

**New Section 1.** (a) Notwithstanding any prohibition or restriction on the establishment of multi-year flex accounts due to participation of a base water right in a water bank established pursuant to the Kansas water banking act, K.S.A. 82a-761 et seq., and amendments thereto, the chief engineer shall approve a complete application for the establishment of a multi-year flex account pursuant to K.S.A. 82a-736, and amendments thereto, that was submitted to the chief engineer on or before December 31, 2022, if such right otherwise meets the requirements of K.S.A. 82a736, and amendments thereto, and could have been approved if not for the relevant base water right’s participation in a water bank. (b) This section shall expire on December 31, 2023.

**History:** L. 2023, ch. 76, § New Sec. 1; May 4.

**New Section 2.** (a) For purposes of K.S.A. 82a-736 and 82a-764, and amendments thereto, a water right or any portion of a water right that has been deposited, enrolled or placed in a safe deposit account associated with a water bank established pursuant to the Kansas water banking act, K.S.A. 82a-761 et seq., and amendments thereto, shall not be eligible to be enrolled in a multi-year flex account that begins during a calendar year in which water from such water right or portion of a water right was withdrawn from a safe deposit account. Water from a water right that has been deposited, enrolled or placed in a safe deposit account associated with a water bank established pursuant to the Kansas water banking act, K.S.A. 82a-761 et seq., and amendments thereto, shall not be withdrawn from a safe deposit account while such water right is enrolled in a multiyear flex account. (b) A water right shall be considered enrolled in a multi-year flex account until the end of the calendar year in which the multi-year flex account permit expires, even if the allocation under the multi-year flex account is exhausted prior to the expiration of the multi-year flex account permit.

**History:** L. 2023, ch. 76, § New Sec. 2; May 4.

**K.S.A. 82a-737. Civil enforcement of act.** (a) As used in this section:

(1) “Chief engineer” means the chief engineer of the division of water resources of the department of agriculture.

(2) “Secretary” means the secretary of agriculture.

(b) Any person who commits any of the following may incur a civil penalty as provided by this section:

(1) Any violation of the Kansas water appropriation act, K.S.A. 82a- 701 et seq., and amendments thereto), or any rule and regulation adopted thereunder;

(2) any violation of an order issued pursuant to K.S.A. 82a-1038, and amendments thereto, relating to an intensive groundwater use control area; or

(3) any violation of a term, condition or limitation imposed by the chief engineer as authorized by law, including, but not limited to: (A) Diversion of water from an unauthorized point of diversion; (B) failure to limit the use of water to the authorized place of use; (C) failure

to submit or comply with the terms of conservation plans as required pursuant to K.S.A. 82a-733, and amendments thereto; (D) failure to comply with the maximum annual quantity or rate of diversion authorized; (E) failure to properly install, maintain or assure the accuracy of acceptable water measurement devices; (F) failure to comply with orders related to minimum desirable stream flow, unlawful diversion, impairment of senior water rights or waste of water; or (G) failure to limit the use of water to an authorized type of use.

(c) The amount of the civil penalty provided for by this section shall be not less than \$100 nor more than \$1,000 per violation. In the case of a continuing violation, each day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law.

(d) The chief engineer or the chief engineer's duly authorized agent, upon a finding that a person has committed a violation specified in subsection (b), may order the modification or suspension of the person's water right or use of water, in addition to any other penalty provided by law.

(e) No civil penalty or suspension or modification of a water right or use of water shall be imposed pursuant to this section except on the written order of the chief engineer or duly authorized agent of the chief engineer. Such order shall state the nature of the violation, the factual basis for the finding, the penalty to be imposed and the appropriate procedure for appeal of the order, as established by K.S.A. 2016 Supp. 82a-1901, and amendments thereto.

(f) Any person aggrieved by an order of the chief engineer, or the chief engineer's duly authorized agent, pursuant to this section may request a hearing or review as provided by K.S.A. 2016 Supp. 82a-1901, and amendments thereto, and, upon exhaustion of administrative remedies, may appeal to the district court in the manner provided by the Kansas judicial review act.

(g) The provisions of this section shall be part of and supplemental to the Kansas water appropriation act.

**History:** L. 2001, ch. 160, § 14; July 1; L. 2010, ch 17, § 213, July 1; L. 2017, ch. 23, § 4; July 1.

**K.S.A. 82a-741. Water conservation program; enrollment; application; fees;**

**administration; rules and regulations.** (a) The chief engineer may administer a water rights conservation program. An eligible water right in good standing may be enrolled in the program, subject to the approval of the chief engineer.

(b) A water right may be enrolled in the program for a period that shall not exceed 10 years. A water right enrolled in the program may be re-enrolled within two years of the expiration date of the previous enrollment period, subject to the approval of the chief engineer.

(c) Each application for enrollment in the program and each application for renewal of enrollment shall include a non-refundable fee not to exceed \$300.

(d) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

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

**History:** L. 2011, ch. 89, § 25, July 1.

**K.S.A. 82a-742. Division of water right; application; fee.** (a) Any owner of a water right that is not deemed abandoned may divide that water right into two or more distinct water rights without losing priority, if such owner:

- (1) Notifies the chief engineer in writing of the proposed division with the written consent of all persons having an ownership interest in the water right;
- (2) designates the relative priority of the divided water rights;
- (3) demonstrates to the chief engineer that the division is reasonable and will not increase consumptive use; and
- (4) demonstrates to the chief engineer that the request does not violate the provisions of the Kansas water appropriation act.

(b) Acceptance of the request to divide a water right pursuant to this section shall not authorize any change in the place of use, point of diversion or use made of water, as provided in K.S.A. 82a-708b, and amendments thereto.

(c) If the chief engineer finds the request complies with subsections (a) and (b), the chief engineer shall issue an order dividing the water right and describing the terms and conditions of each water right. If the chief engineer finds the request does not comply with subsections (a) and (b), the request shall be returned and no action taken.

(d) In the event of a judicial determination of ownership interests resulting in a partition of a water right that is not deemed abandoned, the chief engineer shall issue an order dividing such water right in a manner consistent with the terms of the judicial determination to the extent it does not violate the provisions of the Kansas water appropriation act.

(e) Each request to divide a water right, pursuant to this section, shall be made on a form prescribed by the chief engineer and shall be accompanied by a fee of \$300.

(f) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

(g) This section shall be part of and supplemental to the Kansas water appropriation act.

**History:** L. 2012, ch. 133, § 1, July 1.

**K.S.A. 82a-743. Limited transfer permits; term; fee; base water right; rules and regulations.**

(a) Subject to existing water rights and the principle of beneficial use, the chief engineer may grant, upon application made therefor, limited transfer permits to authorize the use of up to 4,000,000 gallons from an existing water right. The term of such limited transfer permit will be limited to a single calendar year. Each application submitted for a limited transfer permit shall be on a form prescribed by the chief engineer and accompanied by an application fee of \$200.

(b) (1) If the base water right is groundwater, the use of water can be transferred to another well within the same source of supply within two miles.

(2) If the base water right is surface water, the use can be transferred to another surface water use within the same surface water system.

(c) The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section. Such rules and regulations shall require that there is no increase in consumptive use enabled by the transfer permit, prescribe necessary recordkeeping and reporting requirements, prevent impairment of existing rights and address any other matter deemed necessary by the chief engineer to protect the public interest.



(d) Nothing in this section shall be deemed to vest in the holder of any permit granted pursuant to provisions of this section any permanent right to appropriate water except as is provided by such permit.

(e) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

(f) This section shall be part of and supplemental to the Kansas water appropriation act.

**History:** L. 2013, ch. 111, § 1, July 1.

**K.S.A. 82a-744. Water management and conservation measures; due consideration by chief engineer.**

(a) The chief engineer shall give due consideration to water management or conservation measures previously implemented by a water right holder when implementing any further limitations on a water right pursuant to any program established or implemented on and after July 1, 2015. The chief engineer shall take into account reductions in water use, changes in water management practices and other measures undertaken by such water right holder.

(b) This section shall be part of and supplemental to the Kansas water appropriation act.

**History:** L. 2015, ch. 60, § 5; July 1.

**K.S.A. 82a-745. Water conservation areas; establishment procedures; duties of chief engineer; notice; orders; consent agreement; review.**

(a) Any water right owner or a group of water right owners in a designated area may enter into a consent agreement and order with the chief engineer to establish a water conservation area. The water right owner or group of water right owners shall submit a management plan to the chief engineer. Such management plan shall be the basis of the consent agreement and order designating a water conservation area and shall:

(1) Include clear geographic boundaries;

(2) include the written consent of all participating water right owners within the geographic boundaries described in paragraph (1) to enter into the consent agreement and order;

(3) include a finding or findings that one or more of the circumstances specified in K.S.A. 82a-1036(a) through (d), and amendments thereto, exist, or include a finding or findings that the area within the geographic boundaries described in paragraph (1) has been closed to new appropriations by rule, regulation or order of the chief engineer;

(4) include provisions regarding the proposed duration of the water conservation area and any process by which water right owners may request to be added or removed from the water conservation area;

(5) include goals and one or more of the corrective control provisions provided in subsection (b);

(6) give due consideration to water users who have previously implemented reductions in water use resulting in voluntary conservation measures;

(7) include compliance monitoring and enforcement; and

(8) be consistent with state law.

(b) A consent agreement and order of designation of a water conservation area pursuant to this section shall define the boundaries of the water conservation area and may include any of the following corrective control provisions:

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

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

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

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

(5) any other provisions necessary to effectuate agreed-upon water conservation goals consistent with the public interest. The chief engineer shall be responsible for the monitoring and enforcement of any corrective control provisions ordered for a water conservation area.

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

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

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

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

(2) the management plan may 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 that the water use shall not exceed the total annual authorized aggregate quantity and rate of all the water rights participating in the management plan in any given calendar year;

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

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

(f) In addition to a management plan under subsection (e), as a part of the consent agreement and order of designation, the chief engineer may include the use of multi-year flex accounts as authorized by K.S.A. 2016 Supp. 82a-736, and amendments thereto.

(g) No management plan authorized under a water conservation area shall be allowed to impair any water right. At any time during the term of a water conservation area, if the chief engineer determines that impairment may be occurring, following a complaint and preliminary investigation into relevant physical facts, the chief engineer may suspend operation of the water conservation area. In the event of such suspension, each participating water right may be operated in accordance with its permitted terms and conditions as in effect prior to operation of

the water conservation area. Upon conclusion of an investigation by the chief engineer and a finding of impairment, the chief engineer may terminate the water conservation area, or may modify the water conservation area subject to consent of the participating water right owners, to alleviate any impairment.

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

(i) The chief engineer shall provide notification, as specified in K.S.A. 2016 Supp. 82a-1906, and amendments thereto, to all water right owners with a point of diversion within 1/2 a mile, or farther if deemed necessary by a rule and regulation of the chief engineer, of the boundaries of a water conservation area. Notification shall include a reference to an electronic publication of the management plan and any relevant technical analysis.

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

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

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

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

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

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

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

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

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

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

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

**History:** L. 2015, ch. 37, § 1; July 1; L. 2017, ch. 55: § 4; July 1.