

WATER ASSURANCE PROGRAM ACT AND REGULATIONS
K.S.A. 82a-1330 through 82a-1348
K.A.R. 5-11-1 and 5-11-2
2004

K.S.A. 82a-1330. Water assurance program; citation of act. This act shall be known as and may be cited as the water assurance program act. (**History:** L. 1986, ch. 391, § 1; July 1.)

K.S.A. 82a-1331. Same; definitions. As used in this act, unless the context otherwise requires: (a) "Assurance storage" means that part of the conservation storage water supply capacity of any reservoir devoted to the storage water for the water assurance program;

(b) "assurance water" means water stored in assurance storage of a reservoir under a water reservation right and provided as supplemental water to eligible water right holders;

(c) "water assurance district" means an organization of eligible water right holders;

(d) "assurance reservoir" means any reservoir containing assurance storage;

(e) "eligible water right holder" means any entity holding a water right or permit, pursuant to K.S.A. 82a-701 et seq., and amendments thereto, to appropriate water from a stream or water from the alluvium of the stream downstream from an assurance reservoir for municipal or industrial purposes as determined by the chief engineer pursuant to K.S.A. 82a-1333; and

(f) "member" means an eligible water right holder who, because of a determination of benefit by the chief engineer, is required to participate in and is subject to the rules of a water assurance district. An eligible water right holder who withdraws water from the alluvium of a stream supplemented by an assurance reservoir shall be a member if the chief engineer determines there is a significant benefit to such holder from supplementing the stream by assurance reservoir releases. (**History:** L. 1986, ch. 391, § 2; July 1.)

K.S.A. 82a-1332. Same; negotiation by Kansas water office for water assurance storage in federal reservoirs. The Kansas water office, with advice from basin advisory committees, eligible water right holders and the chief engineer and with approval of the Kansas water authority, may negotiate and enter into contracts for assurance storage from federal reservoirs to be used for water assurance. (**History:** L. 1986, ch. 391, § 3; July 1.)

K.S.A. 82a-1333. Same; prerequisites to organization of water assurance district; duties of chief engineer. Before a water assurance district is organized, and upon the request of the Kansas water office, the chief engineer shall determine the eligible water rights of the proposed district. In determining whether a water right may benefit, the chief engineer shall consider the following factors: (a) The annual quantity and rate of diversion authorized by the water right and the frequency and the distribution of such use with time;

(b) the consumptive use, location and source of the water right; and

(c) such other factors as may be necessary to fully determine and understand the degree of such benefits. (**History:** L. 1986, ch. 391, § 4; July 1.)

K.S.A. 82a-1334. Same; participation mandatory in program, when. If a water assurance district is organized, participation in the water assurance program shall be mandatory for each eligible water right holder below an assurance reservoir if the chief engineer determines

that such holder may be benefited by releases of assurance water from an assurance reservoir. (History: L. 1986, ch. 391, § 5; July 1.)

K.S.A. 82a-1335. Same; procedure for organization of water assurance district; petition requirements. (a) Before any water assurance district is organized, a petition shall be filed in the office of the secretary of state, signed by the eligible water right holders of water rights totaling more than 20% of the combined quantities of all eligible water rights within the proposed district as shown by a verified enumeration of the eligible water right holders and the total combined quantities of all eligible water rights taken by the chief engineer. A verified copy of the enumeration shall be attached to and filed with the petition in the office of the secretary of state.

(b) Every petition filed pursuant to subsection (a) shall state:

(1) The name of the proposed district, which name shall end with the words "water assurance district number _____." It shall be the duty of the secretary of state to assign a number to each such district in the order in which petitions for their organization are received by the secretary's office;

(2) a list of the water rights, by file number as recorded in the office of the chief engineer, to be included within the proposed district;

(3) a statement of the purposes for which the district is to be organized;

(4) a statement of the number of persons that will constitute the board of directors of the district, which shall be an uneven number of not less than three nor more than nine, together with the names and addresses of the persons who will constitute the original steering committee;

(5) any other matter deemed essential; and

(6) a prayer for the organization of the district as a nonprofit corporation.

The petition shall be in substantially the following form:

BEFORE THE SECRETARY OF STATE
OF THE STATE OF KANSAS

In the Matter of _____ Water Assurance District Number ____, _____ and _____ counties, Kansas.

PETITION

Come now the undersigned persons, or authorized representatives, and state that they are eligible water right holders within the proposed boundaries of the aforementioned water assurance district, hereinafter more fully described, and that each signer states that the signer's respective post office address is set forth beside the signer's name. That the purposes for which this district is organized are (state purposes). That a steering committee for the organization of the district is hereby fixed and constituted with five members; that the names of persons who will serve on the original steering committee, of which the first named shall be acting chairperson, and their respective addresses are as follows:

(List names and addresses.)

The governing body of the district shall be constituted in a board of directors composed of (number) qualified members.

Wherefore, the undersigned, individually and collectively, pray that a water assurance district be organized in the manner provided by law, for the purposes set forth herein, and that the secretary of state and the chief engineer of the division of water resources of the Kansas department of agriculture proceed diligently in the performance of their duties so that the organization of this proposed district may be completed and approved at the earliest possible time.

Submitted to the secretary of state this _____ day of _____, _____. (**History:** L. 1986, ch. 391, § 6; L. 2004, ch. 101, § 151; July 1.)

K.S.A. 82a-1336. Same; petition requirements for organization of water assurance districts; duties of secretary of state. A copy of the petition, required by K.S.A. 82a-1335, setting forth the text of the petition in full, shall be circulated among the eligible water right holders of the proposed district. A duplicate original or a photographic copy of the original petition, with copies of all signature sheets attached thereto, shall be furnished to the county clerk of each county wherein lies a part of the proposed district. All counterparts shall be filed with the secretary of state at the same time and shall be received and treated by the secretary as a single petition. The secretary of state shall determine the sufficiency or insufficiency of the petition on the basis of the information as to the number and qualification of signers as shown by the verified enumeration filed with the petition. The secretary of state shall endorse the findings and the date thereof on the face of the petition, and shall notify in writing, the person designated in the petition as the acting chairperson of the steering committee of the findings. (**History:** L. 1986, ch. 391, § 7; July 1.)

K.S.A. 82a-1337. Same; duties of secretary of state relating to petitions; approval of chief engineer required, findings. If the secretary of state finds the petition, as required by K.S.A. 82a-1335, to be sufficient as to form and the number and qualifications of the petitioners, the secretary shall prepare a certified copy of the petition and transmit the same to the chief engineer within five days from the date of such finding. Upon receipt of such certified copy, the chief engineer shall institute an investigation of the proposed district, its territory and purposes, and within 90 days after receipt of the copy shall transmit a written report of the findings on the petition, together with the chief engineer's written approval or disapproval of the petition, to the secretary of state and the acting chairperson of the steering committee named in the petition.

The chief engineer shall approve such petition if the chief engineer finds:

(a) that the proposed district would not include water rights in any existing water assurance district; and

(b) that the statement of purposes contained in the petition conforms with the intents and purposes of this act.

If the chief engineer approves such petition, the chief engineer shall transmit a certified copy of the report containing all findings to the secretary of state and to the chairperson of the steering committee of the district. (**History:** L. 1986, ch. 391, § 8; July 1.)

K.S.A. 82a-1338. Same; formation of water assurance district; election required, procedure; certificate of incorporation. Within 10 days after receipt of a certified copy of the chief engineer's report approving the petition, as required by K.S.A. 82a-1335, or the petition as amended, the chairperson of the steering committee of the proposed district shall call a meeting of the committee by mailing a written notice fixing the time and place of such meeting to each member of the committee. The committee shall meet at the time and place fixed in the notice for the purpose of adopting a resolution giving notice of an election at which all eligible water right holders shall be entitled to vote on the question of whether the district should be formed in accordance with the petition as approved by the chief engineer. A copy of such resolution shall be mailed to all eligible water right holders within the proposed district not less than 21 days prior to such election. The resolution shall state when and where the election shall be held and

the proposition to be voted on. It shall contain a copy of the petition as approved by the chief engineer (omitting the map attached as an exhibit) and shall be signed by the chairperson and attested by the secretary of the steering committee. The steering committee shall conduct the election, canvass the vote, and certify the results to the secretary of state. If eligible water right holders representing more than 50% of the combined quantities of the eligible water rights within the proposed district vote in favor of the organization and creation of the district, the secretary of state shall issue to the steering committee a certificate of incorporation for the district, which shall be filed of record in the office of the register of deeds of each county in which all or a portion of the district lies. Upon such recordation of the certificate of incorporation, the district shall be authorized to function in accordance with the provision of this act and its certificate of incorporation. If eligible water right holders representing more than 50% of the combined quantities of the eligible water rights within the proposed district vote against the organization and creation of the district, the secretary of state shall endorse that fact on the face of the petition and the proceedings shall be closed. No action attacking the legal incorporation of any water assurance district organized under this section shall be maintained unless filed within 90 days after the issuance of the certificate of incorporation for such district by the secretary of state, nor shall the alleged illegality of the incorporation of any such district be interposed as a defense to any action brought after such time. (**History:** L. 1986, ch. 391, § 9; July 1.)

K.S.A. 82a-1339. Same; payment of costs and expenses when chief engineer disapproves organization of water assurance district. If the organization of the proposed water assurance district is defeated at the election or if the petition, as required by K.S.A. 82a-1335, is disapproved by the chief engineer, the steering committee named in the petition shall determine the amount of money necessary to pay all of the costs and expenses incurred in the preparation and filing of the petition and in the conduct of the election and the steering committee shall assume the obligation for the payment of such costs and expenses but no cost shall be assessed by any state agency. (**History:** L. 1986, ch. 391, § 10; July 1.)

K.S.A. 82a-1340. Same; exercise of district powers by board of directors; composition and terms of board of directors. All powers granted to water assurance districts incorporated under the provisions of this act shall be exercised by a board of directors which shall be composed of any odd number of directors and specified in the petition for creation of the district. The board shall be composed of not less than three nor more than nine representatives of the district members. Each director shall serve for a term of three years, and until a successor is elected and qualified, except that as nearly as possible 1/3 of the original directors designated in the petition for organization of the district shall serve for a term of one year, 1/3 for a term of two years, 1/3 for a term of three years. (**History:** L. 1986, ch. 391, § 11; July 1.)

K.S.A. 82a-1341. Same; organization of district board of directors; conduct of business; filling of vacancies. Within not more than 90 days after the recording of the certificate of incorporation, a meeting open to all members of the district shall be held by the steering committee for the election of the initial board of directors of the district. A notice of the meeting shall be mailed to all members by the steering committee at least 10 days prior to the date thereof. Each member in the district shall be entitled to vote for as many candidates as the number of directors that are to be elected, but may not cast more than one vote for any one candidate. The candidates receiving the greatest number of votes cast shall respectively be

declared elected. The board of directors, after being duly elected, shall elect from its number a president, vice-president, secretary and a treasurer. In districts having only three directors, the board shall elect one director to hold the offices of secretary and treasurer. A majority of the directors shall constitute a quorum for the transaction of business and a majority of those voting shall determine all actions taken by the board. In the absence of any of the duly elected officers, those directors present at any meeting may select a director to act as an officer pro tem. The elected board shall fill any vacancy occurring on the board prior to the expiration of the term of any director by selecting a replacement from among the members of the district to serve for the unexpired term. **(History: L. 1986, ch. 391, § 12; July 1.)**

K.S.A. 82a-1342. Same; district meetings, purpose. In not less than 12 months nor more than 13 months after the recording of the certificates of incorporation, and annually thereafter, a meeting shall be held for the election of directors whose terms expire, to render a report on the financial condition and activities of the district and to adopt a budget in the manner provided by K.S.A. 79-2925 et seq., and amendments thereto. Notice of the annual meeting shall be given at least 10 days prior to the date thereof to all members in the district.

The number of directors of a district or the date of the annual meeting, or both, may be changed at an annual meeting if notice of the proposed changes is included in the notice for the annual meeting at which such changes are to be considered. **(History: L. 1986, ch. 391, § 13; July 1.)**

K.S.A. 82a-1343. Same; meetings of district board of directors; notice. Regular meetings of the board of directors shall be held quarterly at the office of the corporation on such day as is selected by the board of directors. Notice of such meeting shall be mailed to each director at least five days prior to the date thereof. Special meetings may be held at any time on the call of the president of the board. Notice shall be mailed to each director at least two days prior to the time fixed for such special meeting. **(History: L. 1986, ch. 391, § 14; July 1.)**

K.S.A. 82a-1344. Same; powers of districts. Each water assurance district incorporated under the provisions of this act shall be a body politic and corporate and shall have the power to:

- (a) Adopt a seal;
- (b) sue and be sued by its corporate name;
- (c) purchase, hold, sell and convey land and personal property and to execute such contracts as the board of directors, deems necessary or convenient to enable it to carry out the purpose for which organized;
- (d) employ such professional, technical and clerical services and other assistance as deemed necessary by the board of directors;
- (e) acquire personal property by gift or purchase;
- (f) impose charges as provided by this act;
- (g) select a residence or home office for the water assurance district, which shall be at a place in a county in which the district or any part thereof is located and may be either within or without the district as may be designated by the board of directors; and
- (h) take any other action necessary to achieve the purposes of the state water assurance program. **(History: L. 1986, ch. 391, § 15; July 1.)**

K.S.A. 82a-1345. Same; charges imposed against district members, amount; releases of water from reservoirs; duties of chief engineer and Kansas water office; rules and regulations; rights of water right holders. (a) The water assurance district shall impose a charge against each member of the water assurance district. The total of such charges shall be sufficient to enable the district to pay the state the full annual amortized cost to the state of acquiring the assurance storage from the federal government by purchase or trade, the cost of operation and maintenance of the assurance storage, the cost of state administration and enforcement of the assurance program. The water assurance district also may impose a charge against each member of the district in an amount sufficient to cover district operating costs. The water assurance district shall impose any charges necessary for the payment of the principal of and interest on revenue bonds issued by the Kansas water office pursuant to the provisions of Chapter 394 of the Laws of 1986. The water assurance district shall determine the amount of the charge for each member and shall remit moneys collected to the Kansas water office for deposit in the fund created pursuant to K.S.A. 82a-1364. Charges to be paid by members of a water assurance district may vary and shall be based on the principle of having each member pay for the pro rata quantity authorized to each member from the assurance program. In determining the charge, the governing body of the district shall adopt rules which establish guidelines for prospective members.

(b) The director of the Kansas water office shall request releases of assurance water by the federal government under the agreements with the federal government that govern operations of reservoirs containing assurance storage.

(c) No member below a reservoir shall divert water from releases of assurance water unless the member has a conservation plan which has been approved in the manner provided by K.S.A. 82a-1348 and which is in effect at the time of the desired diversion.

(d) An entity which becomes a holder of a water right in a river basin after an assurance program is in place for that basin shall become a member if the chief engineer determines that sufficient additional water may be yielded from assurance reservoirs to benefit the potential new member.

(e) The director of the Kansas water office and the chief engineer each shall adopt any rules and regulations necessary to carry out the purposes and procedures of this act. The director and the chief engineer shall consider the advice of any existing assurance districts in the preparation of any rules and regulations adopted pursuant to this subsection.

(f) Any holder of a water right below a reservoir aggrieved by a decision of the chief engineer under this act by being either included or excluded as a member in the assurance program may appeal to the district court under K.S.A. 82a-724, and amendments thereto.

(g) Payments required under a contract between a water assurance district and the Kansas water office shall be for storage capacity contracted in federal reservoirs. Nothing in this act shall be deemed to authorize any suit against the state or any agency of the state or person employed by the state on an implied contract or for negligence or any other tort. The director of the Kansas water office may sue to enforce any claim arising out of a contract. Payment of the assessment shall be a condition imposed on every member and the chief engineer is authorized to declare the suspension of any use of assurance water where a payment is not made.

(h) Rights of members to receive assurance water may not be transferred separately from their water rights. (**History:** L. 1986, ch. 391, § 16; July 1.)

K.S.A. 82a-1346. Same; persons not prohibited from purchasing storage in federal reservoirs. Nothing in this act shall prohibit any person from contracting to purchase or otherwise obtaining from the federal government emergency water stored in federal reservoirs and under the control of the federal government under rules and regulations of any agency of the federal government. (**History:** L. 1986, ch. 391, § 17; July 1.)

K.S.A. 82a-1347. Same; renegotiation of existing water supply storage contracts. If any eligible water right holder in a water assurance district organized under the provisions of this act requests an opportunity to renegotiate any existing contracts for the purchase of water supply under the terms of K.S.A. 82a-1301 et seq., and amendments thereto, the Kansas water authority and the Kansas water office shall conduct such negotiations on a timely basis and on the provisions for which negotiations are requested. (**History:** L. 1986, ch. 391, § 18; July 1.)

K.S.A. 82a-1348. Same; conservation plans and practices required. Each member of a water assurance district shall adopt conservation plans and practices for such member. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto. Prior to entering into a contract with an assurance district, the director of the Kansas water office, in consultation with the chief engineer, shall determine whether such plans and practices are consistent with the guidelines for conservation plans and practices adopted by the Kansas water office. (**History:** L. 1986, ch. 392, § 7; July 1.)

KANSAS ADMINISTRATIVE REGULATIONS ASSURANCE DISTRICTS

K.A.R. 5-11-1. Definitions. As used in these rules and regulations and the water assurance program act by the division of water resources in the administration of the water assurance program act, unless the context clearly requires otherwise, the following words and phrases shall have the meaning ascribed to them in this section. (a) “Board” means the board of directors of a water assurance district.

(b) “Chief engineer” means the chief engineer of the division of water resources of the Kansas state board of agriculture. (Authorized by K.S.A. 82a-1345(e); implementing K.S.A. 82a-1334; effective May 31, 1994.)

K.A.R. 5-11-2. Determination of benefits. (a) A water assurance district member may apply in writing to the board to be removed as a member of the district if that member is no longer receiving benefits from supplementing the stream by assurance reservoir releases because:

- (1) the member no longer has a water right or permit; or
- (2) the member’s water right or permit has been reduced so that the member is no longer receiving benefits.

(b) The board shall forward the request to be removed as a member from the district to the chief engineer, who shall determine whether the member will be receiving benefits. The chief engineer shall forward the results of that determination to the board in writing within a reasonable time.

(1) If the chief engineer determines that the member will continue to receive benefits, the chief engineer shall notify the board and the member's application to be removed shall be dismissed by the board.

(2) If the chief engineer determines that the member will no longer be receiving benefits, the chief engineer shall notify the board and it shall be determined by the board whether the member will be removed from the district and the terms of removal. (Authorized by K.S.A. 82a-1345(e); implementing K.S.A. 82a-1334; effective May 31, 1994.)