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## CONSERVATION DISTRICTS

**74-5,126. Powers, duties and functions of conservation commission transferred to department of agriculture; appointment of executive director.** (a) On the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto, the division of conservation is hereby established within the Kansas department of agriculture. The division of conservation shall be a continuation of the state conservation commission and the executive director of conservation shall be a continuation of the executive director of the state conservation commission. The division shall be administered under the supervision of the secretary of agriculture by the executive director of the division of conservation, who shall be the chief administrative officer of the division. The executive director of the division of conservation shall be jointly appointed by the secretary of agriculture and the state conservation commission and shall serve at the pleasure of the secretary and the state conservation commission. The executive director of the division of conservation shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of agriculture, with the approval of the governor.

(b) All of the powers, duties and functions of the existing state conservation commission and the existing executive director of the state conservation commission are hereby transferred to and imposed upon the conservation division of the Kansas department of agriculture and the executive director of the conservation division, respectively.

**History:** Executive Reorganization Order No. 40, § 15; L. 2011, ch. 135, § 15; July 1.

**74-5,127. Department of agriculture successor to conservation commission; application of documentary references and designations; rules and regulations, orders and directives of secretary continued in effect until superseded.** (a) The conservation division of the department of agriculture shall be the successor in every way to the powers, duties and functions of the state conservation commission and the executive director of the state conservation commission in which the same were vested prior to the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto. Every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of agriculture shall be deemed to have the same force and effect as if performed by the state conservation commission and the executive director of the state conservation commission in which such powers, duties and functions were vested prior to the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto.

(b) Whenever the state conservation commission or the executive director of the state conservation commission, or words of like effect, are referred to or designated by a statute, contract, memorandum of understanding, plan, grant, waiver or other document, such reference or designation shall be deemed to apply to the conservation division within the department of agriculture or the executive director of the conservation division under the secretary of agriculture.

(c) All rules and regulations, orders and directives of the state conservation commission or the executive director of the state conservation commission that are in effect on the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the conservation division of the Kansas department of agriculture until revised, amended, revoked or nullified pursuant to law by the secretary of agriculture.

**History:** Executive Reorganization Order No. 40, § 16; L. 2011, ch. 135, § 16; July 1.

**74-5,128. Conservation commission continued.** The state conservation commission established by K.S.A. 2-1904, and amendments thereto, is hereby continued in existence within the conservation division within the department of agriculture with respect to the powers, duties and functions of the state conservation commission that are transferred under K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto. Persons who are members of the board shall continue to hold such offices under the conditions and limitations in effect on the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto.

**History:** Executive Reorganization Order No. 40, § 17; L. 2011, ch. 135, § 17; July 1.

**74-5,129. Department of agriculture successor to conservation commission.** The Kansas department of agriculture shall succeed to all property, property rights and records of the state conservation commission and the executive director of the state conservation commission.

**History:** Executive Reorganization Order No. 40, § 18; L. 2011, ch. 135, § 18; July 1.

**74-5,130. Funds and liabilities transferred from conservation commission to department of agriculture.** (a) On the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto, the balances of all funds or accounts thereof appropriated or reappropriated for the state conservation commission are hereby transferred within the state treasury to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) Subject to acts of the legislature, all fees and grant funds dedicated to conservation programs shall remain dedicated to conservation programs on and after the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto.

**History:** Executive Reorganization Order No. 40, § 19; L. 2011, ch. 135, § 19; July 1.

**74-5,131. Transfer of officers and employees; rights and benefits preserved.** (a) (1) The executive director of the conservation commission shall become the executive director of the conservation division of the Kansas department of agriculture on the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto. All other officers and employees of the state conservation commission who, immediately prior to such date, were engaged in the performance of powers, duties and functions for the state conservation commission and who are, in the opinion of the secretary of agriculture in consultation with the executive director, necessary to perform the powers, duties and functions of the state conservation commission that are transferred under K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto, shall become officers and employees of the department of agriculture and are hereby transferred to the Kansas department of agriculture on the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto.

(2) The secretary of agriculture in consultation with the executive director shall determine such officers and employees as are necessary to enable the secretary to carry out the duties of the division of conservation.

(3) All classified employees transferred under this subsection (a) shall retain their status as classified employees. Thereafter, the secretary of agriculture may convert vacant classified positions to positions in the unclassified service under the Kansas civil service act.

(b) Officers and employees of the state conservation commission transferred by K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto, shall retain all retirement benefits and leave balances and rights that had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto, shall affect the classified status of any transferred person employed by the state conservation commission prior to the date of transfer.

(c) Liability for accrued compensation or salaries of each officer and employee who is transferred to the Kansas department of agriculture under K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto, shall be assumed and paid by the Kansas department of agriculture on the effective date of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto.

**History:** Executive Reorganization Order No. 40, § 20; L. 2011, ch. 135, § 20; July 1.

**74-5,132. Rights preserved in legal actions and proceedings.** (a) No suit, action, or other proceeding, judicial or administrative, that is lawfully commenced or that could have been lawfully commenced, by or against any state agency or program mentioned in K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action that is commenced or that could have been commenced by the state shall abate by the taking effect of K.S.A. 2013 Supp. 74-5,112 through 74-5,132, and amendments thereto.

**History:** Executive Reorganization Order No. 40, § 21; L. 2011, ch. 135, § 21; July 1.

**74-5,132a. Powers, duties and functions of division of conservation; employment of administrative office, technical experts and other employees; assignment of personnel from state agency of institution of learning upon request of the division.** In addition to the powers and duties conferred in K.S.A. 2013 Supp. 74-5,126, and amendments thereto, the Kansas department of agriculture division of conservation shall have all the powers, duties and functions delegated pursuant to K.S.A. 2013 Supp. 74-5,126, and amendments thereto. It shall also employ an administrative officer and such technical experts as it may require and shall determine their qualifications and duties. Such officer and experts shall be in the unclassified service of the Kansas civil services act and shall receive annual salaries fixed by the division and approved by the state finance council. All other agents and employees, permanent or temporary, required by the division of conservation, shall be within the classified services of the Kansas civil service act. The division may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to one or more agents or employees, such powers and duties as it deems proper. It shall be supplied with suitable office accommodations at the state capital, and shall be furnished with the necessary supplies and equipment. Upon request of the division, for the purpose of carrying out any of its functions, the supervision officer of any state agency or of any state institution of learning, insofar as may be possible under available appropriations and having due regard to the needs of the agency to which the request is directed, shall assign or detail to the division members of the staff or personnel of such agency or institution of learning and make such special reports, surveys or studies as the division may request.

**History:** L. 2012, ch. 140, sec. 122; July 1.

**2-1901. Title to act; "soil conservation district" defined.** This act may be known and cited as the conservation districts law. All soil conservation districts now formed and hereafter formed shall be conservation districts, and wherever in the name of such districts the words, "soil conservation district" appears the same is hereby changed to "conservation district." Whenever in the statutes of this state the term "soil conservation district" shall appear, the reference shall be deemed to be "conservation district."

**History:** L. 1937, ch. 5, § 1; L. 1972, ch. 5, § 1; July 1.

**Attorney General's Opinion:**

- Authority of conservation district to engage in commercial activity. 82-191.

**2-1902. Legislative determination.** It is hereby declared, as a matter of legislative determination:

A. *The condition.* That the farm and grazing lands of the state of Kansas are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon said person's lands causes a washing and blowing of soil and water from said person's lands onto other lands and makes the conservation of soil, control of erosion, prevention of floods and management, control and protection of water and water quality on such other lands difficult or impossible.

B. *The consequences.* That the consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water, which causes destruction of food and cover for wild life; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensified periods of drought, and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power; municipal water supply, irrigation developments, farming, and grazing.

C. *The appropriate corrective methods.* That to conserve soil resources and control and prevent soil erosion and reduce flood damages and to provide for the conservation, development, utilization and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and structural works of improvement be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such

as the construction of terraces, terrace outlets, check-dams, dikes, ponds, ditches, detention dams, grade stabilization structures, channel improvements, floodways, water resource developments and the like; the utilization of strip cropping; lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing soil-holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. *Declaration of policy.* It is hereby declared to be the policy of the legislature to provide for the conservation, use and development of the soil and water resources of this state, and for the control and prevention of soil erosion, flood damages and injury to the quality of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wild life, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

**History:** L. 1937, ch. 5, § 2; L. 1955, ch. 7, § 1; L. 1979, ch. 6, § 1; July 1.

**Attorney General's Opinion:**

- Authority of conservation district to engage in commercial activity. 82-191.
- Conservation district personnel are covered by Kansas tort claims act. 87-31.
- Soil erosion caused by wind; authority of board of county commissioners and soil conservation districts. 96-80.

**2-1903. Definitions.** As used in this act: (1) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this act.

(3) "Commission" or "state conservation commission" means the conservation program policy board created in K.S.A. 2-1904, and amendments thereto.

(4) "State" means the state of Kansas.

(5) "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporation or otherwise, of the government of this state.

(6) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(7) "Government" or "governmental" includes the government of this state, the government of the United States and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.

(8) "Division" or "division of conservation" means the agency established in K.S.A. 2013 Supp. 74-5,126, and amendments thereto.

**History:** L. 1937, ch. 5, § 3; L. 1972, ch. 5, § 2; L. 1994, ch. 45, § 1; Jan. 1, 1995; L. 2012, ch. 140, sec. 123; July 1.

**2-1904. State conservation commission; members; terms; records; seal; powers and duties; rules and regulations; compensation and expenses; employees; office and supplies.** (a) There is hereby established, to serve as a conservation program policy board of the state and to perform the functions conferred upon it in this act, the state conservation commission. The state conservation commission shall succeed to all the powers, duties and property of the state soil conservation committee. The commission shall consist of nine members as follows:

(1) The director of the cooperative extension service and the director of the state agricultural experiment station located at Manhattan, Kansas, or such persons' designees shall serve, *ex officio*, as members of the commission.

(2) The commission shall request the secretary of agriculture of United States of America to appoint one person and the secretary of the Kansas department of agriculture to appoint one person, each of whom shall be residents of the state of Kansas to serve as members of the commission. These members shall hold office for four years and until a successor is appointed and qualifies, with terms commencing on the second Monday in January beginning in 1973.

(3) Five members of the state commission shall be elected by the conservation district supervisors at a time and place to be designated by the state conservation commission. The method of electing such members to be conducted as follows: The state is to be divided into five separate areas. Area No. I to include the following counties: Cheyenne, Rawlins, Decatur, Norton, Phillips, Smith, Osborne, Rooks, Graham, Sheridan, Thomas, Sherman, Wallace, Logan, Gove, Trego, Ellis and Russell. Area No. II to include: Greeley, Wichita, Scott, Lane, Ness, Rush, Pawnee, Hodgeman, Finney, Kearny, Hamilton, Edwards, Ford, Gray, Haskell, Grant, Stanton, Morton, Stevens, Seward, Meade, Clark, Comanche and Kiowa. Area No. III to include: Jewell, Republic, Mitchell, Cloud, Lincoln, Ottawa, Ellsworth, Saline, Rice, McPherson, Reno, Harvey, Kingman, Sedgwick, Sumner, Harper, Barber, Pratt, Barton and Stafford. Area No. IV to include: Washington, Marshall, Nemaha, Brown, Doniphan, Clay, Riley,

Pottawatomie, Jackson, Atchison, Jefferson, Leavenworth, Wyandotte, Johnson, Douglas, Shawnee, Wabaunsee, Geary, Dickinson, Morris, Osage, Franklin and Miami. Area No. V to include: Marion, Chase, Lyon, Coffey, Anderson, Linn, Bourbon, Allen, Woodson, Greenwood, Butler, Elk, Wilson, Neosho, Crawford, Cowley, Chautauqua, Montgomery, Labette and Cherokee. Areas II and IV will elect in even number years and Areas I, III and V shall elect in odd number years for two year terms. The elected commission members from Areas I, III and V shall take office on January 1, of the even number years. The remaining two elected members of the state commission from Areas II and IV shall take office on January 1, of the odd number years. The method of election is to be by area caucus of the district supervisors of each of the five separate areas of Kansas. The commission shall give each district notice of the time and place of such annual election meeting by letter if a member is to be elected to the commission from that area that year. The selection of a successor to fill an unexpired term shall be by appointment by the commission. The successor who is appointed to fill the unexpired term shall be a resident of the same area as that of the predecessor.

(b) The commission shall keep a record of its official actions, shall adopt a seal which seal shall be judicially noticed, and may perform such acts, hold such public hearings and adopt rules and regulations necessary for the execution of its functions under this act.

(c) In addition to the powers and duties conferred in this section, the state conservation commission shall have the powers and duties not delegated to the Kansas department of agriculture division of conservation pursuant to K.S.A. 2013 Supp. 74-5,126, and amendments thereto.

(d) The commission shall designate its chairperson and, from time to time, may change such designation. A majority of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Members of the state conservation commission attending meetings of such commission or attending a subcommittee meeting thereof authorized by such commission shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. The commission shall provide for keeping of a full and accurate record of all proceedings and of all resolutions, regulations and orders issued or adopted.

(e) The state conservation together with the Kansas department of agriculture division of conservation shall make conservation program policy decisions, including modification of current conservation programs, creation of new conservation programs and budget recommendations.

(f) The Kansas department of agriculture division of conservation in consultation with the state conservation commission shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

(2) to keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experience of all other districts organized hereunder and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) to coordinate the programs of the several conservation districts organized hereunder;

(4) to secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state, in the work of such districts and to contract with or to accept donations, grants, gifts and contributions in money, services or otherwise from the United States or any of its agencies or from the state or any of its agencies in order to carry out the purposes of this act;

(5) to disseminate information throughout the state concerning the activities and programs of the conservation districts organized hereunder and to encourage the formation of such districts in areas where their organization is desirable;

(6) to cooperate with and give assistance to watershed districts and other special purpose districts in the state of Kansas for the purpose of cooperating with the United States through the secretary of agriculture in the furtherance of conservation pursuant to the provisions of the watershed protection and flood prevention act, as amended;

(7) to cooperate in and carry out, in accordance with state policies, activities and programs to conserve and develop the water resources of the state and maintain and improve the quality of such water resources;

(8) to enlist the cooperation and collaboration of state, federal, regional, interstate, local, public and private agencies with the conservation districts; and

(9) to facilitate arrangements under which conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of natural resources.

**History:** L. 1937, ch. 5, § 4; L. 1951, ch. 11, § 1; L. 1959, ch. 5, § 1; L. 1972, ch. 5, § 3; L. 1974, ch. 348, § 3; L. 1979, ch. 6, § 2; L. 1989, ch. 5, § 1; L. 1992, ch. 116, § 23; L. 2001, ch. 86, § 3; April 12; L. 2012, ch. 140, sec. 124; July 1.

**Attorney General's Opinions:**

- Conservation districts; employees; authority to pay expenses. 85-33.
- Conservation district personnel are covered by Kansas tort claims act. 87-31.

**2-1907. Supervisors; qualifications; terms; meetings; vacancies; chairperson; quorum; expenses; employees; powers and duties; bonds for employees; records; removal of supervisor.** The governing body of the district shall consist of five supervisors who are qualified electors residing within the district. The supervisors who are first elected shall serve for terms of one, two and three years according to the following plan: The two persons receiving the highest number of votes in the election shall hold office for three years; the two persons receiving the next highest number of votes shall hold such office for a term of two years and the remaining supervisor shall hold office for a term of one year. In the event of a tie vote, such terms shall be decided by lot. Nothing in this section shall be construed as affecting the length of the term of supervisors holding office on January 1, 1995. Successors to such persons shall be elected for terms of three years. An annual meeting of all qualified electors of the district shall be held in the month of January or February. Notice of the time and place of such meeting shall be given by such supervisors by publishing a notice in the official county paper once each week for two consecutive weeks prior to the week in which such meeting is to be held. At such meeting the supervisors shall make full and due report of their activities and financial affairs since the last annual meeting and shall conduct an election by secret ballot of all the qualified electors of the district there present for the election of supervisors whose terms have expired. Whenever a vacancy occurs in the membership of the governing body the remaining supervisors of the district shall appoint a qualified elector of the district to fill the office for the unexpired term. The supervisors shall designate a chairperson and may from time to time change such designation. A supervisor shall hold office until a successor has been elected or appointed and has qualified. A majority of the supervisors shall constitute a quorum and the concurrence of a majority of the supervisors in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for services, but may be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of duties. The supervisors may employ a secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the county attorney of the county in which a major portion of the district lies, or the attorney general for such legal services as they may require. The supervisors may delegate to their chairperson, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Kansas department of agriculture division of conservation, upon request, copies of such rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this act. The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts and receipts and disbursements. Any supervisor may be removed by the state conservation commission upon notice and hearing in accordance with the provisions of the Kansas administrative procedure act, for neglect of duty or malfeasance in office, but for no other reason. The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

**History:** L. 1937, ch. 5, § 7; L. 1949, ch. 5, § 1; L. 1951, ch. 11, § 3; L. 1972, ch. 5, § 4; L. 1976, ch. 7, § 3; L. 1988, ch. 356, § 29; L. 1989, ch. 5, § 2; L. 1994, ch. 45, § 4; Jan. 1, 1995; L. 2012, ch. 140, sec. 125; July 1.

**Attorney General's Opinions:**

- Conservation districts; employees; authority to pay expenses. 85-33.
- Conservation district personnel are covered by Kansas tort claims act. 87-31.
- Soil erosion caused by wind; authority of board of county commissioners and soil conservation districts. 96-80.

**2-1907b. Finance of operation of conservation district; moneys from county general fund; tax levies; use of moneys.** The board of county commissioners, upon request of the board of supervisors of the conservation district, may pay to the district moneys from the county general fund for the supervisors to carry out their duties under this act. In addition to moneys from the county general fund, the board of county commissioners may levy an annual tax against the taxable tangible property within the district, not to exceed 2 mills or \$55,000 whichever is less, to provide additional moneys for the operation of the conservation district.

The levy shall be sufficient to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, which levy may be in addition to all other tax levies authorized by law and not subject to or within any tax levy limit or aggregate tax levy limit prescribed by law. Funds appropriated or allocated under the provisions of this section and K.S.A. 2-1907c, and amendments thereto, shall be used to carry out the activities and functions of the district including cost of travel and expenses of supervisors and employees of the district, educational materials, conservation awards, annual meeting expenses, excluding meals, and membership dues to conservation related organizations. Such funds shall not be used for prizes, or incentives for achievements or attendance at meetings or for travel or expenses for anyone other than supervisors and employees of the district.

**History:** L. 1953, ch. 6, § 1; L. 1959, ch. 5, § 2; L. 1963, ch. 7, § 1; L. 1969, ch. 8, § 1; L. 1972, ch. 5, § 5; L. 1976, ch. 7, § 4; L. 1979, ch. 7, § 1; L. 1979, ch. 8, § 1; L. 1981, ch. 9, § 1; L. 1985, ch. 11, § 1; L. 1987, ch. 9, § 1; L. 1989, ch. 5, § 3; L. 1994, ch. 45, § 2; July 1.

**Attorney General's Opinions:**

- Discretion of county to provide funds for conservation district. 82-184.
- Authority of conservation district to engage in commercial activity. 82-191.
- Conservation districts; employees, authority to pay expenses. 85-33.
- Conservation district personnel are covered by Kansas tort claims act. 87-31.
- Conservation districts; powers; lease-purchase agreements. 92-121.
- County commissioners cannot buy equipment with county general funds to give to soil conservation district to lease to private individuals. 95-152.

**2-1907c. Same; amount of moneys provided by county, certification to state; state financial assistance; budget request, limitation; disbursement and distribution.** On or before September 1 of each year, each conservation district shall submit to the Kansas department of agriculture division of conservation a certification of the amount of money to be furnished by the county commissioners for conservation district activities for the ensuing calendar year. Such amount shall be the same as authorized for such purposes in each approved county budget. For the purpose of providing state financial assistance to conservation districts, the Kansas department of agriculture division of conservation in the regular budget request, as a line item for the forthcoming fiscal year, shall submit a special request for an amount equal to the sum of the allocations of each county to each conservation district, but in no event to exceed the sum of \$25,000 per district. This \$25,000 limitation shall be applicable for fiscal year 2008, and thereafter, subject to appropriations therefor. The Kansas department of agriculture division of conservation as soon as practicable after July 1 of the following year shall disburse such moneys as may be appropriated by the state for this purpose to each conservation district to match funds allocated by the commissioners of each county. Distribution shall be prorated in proportion to county allocations in the event that appropriations are insufficient for complete matching of funds. Municipal accounting procedures shall be used in the distribution of and in the expenditure of all funds.

**History:** L. 1963, ch. 7, § 2; L. 1969, ch. 8, § 2; L. 1972, ch. 5, § 6; L. 1979, ch. 7, § 2; L. 1994, ch. 45, § 3; L. 2007, ch. 84, § 1; L. 2012, ch. 140, § 126; July 1.

**Attorney General's Opinions:**

- Authority of conservation district to engage in commercial activity. 82-191.
- Conservation districts; employees; authority to pay expenses. 85-33.
- Conservation district personnel are covered by Kansas tort claims act. 87-31.

**2-1908. Conservation districts; powers.** A conservation district organized under the provisions of K.S.A. 2-1901 et seq., and amendments thereto, shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(a) To conduct surveys, investigations, and research relating to the character of soil erosion, flood damage and the preventive and control measures needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures. In order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(b) to conduct demonstrational projects within the district on lands, owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; and to demonstrate by example, the means, methods, and measures by which water and water resources may be conserved, developed, used and disposed of to alleviate drought, to maintain and improve water quality and to reduce flooding and impaired drainage;

(c) to carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of K.S.A. 2-1902, and amendments thereto, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction

thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(d) to cooperate, or enter into agreements with, and within the limitations of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control flood prevention and water management operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(e) to obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interest therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this act;

(f) to make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

(g) to develop comprehensive plans for the conservation of soil and water resources and for the control and prevention of soil erosion, flood damages, impaired drainage, the effects of drouth within the district and the maintenance and improvement of water quality, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(h) to take over, by purchase, lease, or otherwise, and to administer, any soil-conservation, erosion-control, or erosion-prevention, flood prevention or water management project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, erosion-control, or erosion-prevention, flood prevention or water management project within its boundaries; to act for the district or as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, maintenance, or administration of any soil-conservation, erosion-control, or erosion-prevention, flood prevention, or water management project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and from persons, firms, corporations or associations, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(i) to sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this act, to carry into effect its purposes and powers;

(j) as a condition to the extending of any benefits under this act, to or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;

(k) no provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state;

(l) the supervisors of any district shall not contract debts or obligations in the name of the district beyond the current appropriation made available to the district by the committee or federal grants or other financial sources;

(m) to accept and expend funds donated to the district for purposes of providing at least 20% cost-share for the purchase of an eligible water right from the holder of the water right under the provisions of K.S.A. 2-1915, and amendments thereto; and

(n) to control and eradicate sericea lespedeza within the district in any county that the secretary of agriculture has designated as a sericea lespedeza disaster area.



**History:** L. 1937, ch. 5, § 8; L. 1955, ch. 7, § 2; L. 1979, ch. 6, § 3; L. 1988, ch. 396, § 1; L. 2002, ch. 37, § 2; L. 2004, ch. 96, § 3; July 1.

**Attorney General's Opinions:**

- Authority of conservation district to engage in commercial activity. 82-191.
- Conservation district personnel are covered by Kansas tort claims act. 87-31.
- Conservation districts; powers; lease-purchase agreements. 92-121.
- Conservation district is subject to cash-basis law; lease purchase agreements, authority. 96-2.
- Soil erosion caused by wind; authority of board of county commissioners and soil conservation districts. 96-80.

**2-1913. Cooperation with another district.** The supervisors of any two or more districts organized under the provisions of this act may cooperate with one another in the exercise of any or all powers conferred in this act.

**History:** L. 1937, ch. 5, § 13; April 10.

**2-1914. Publicly owned lands.** Agencies of this state [which] shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to K.S.A. 2-1909 shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands.

**History:** L. 1937, ch. 5, § 14; April 10.

**Attorney General's Opinions:**

- Soil erosion caused by wind; authority of board of county commissioners and soil conservation districts. 96-80.

**2-1915. Conservation structures and practices, grants; riparian and wetland protection programs; return of water right, cost-share grants; water quality buffers, grants, valuation of land.** (a) Appropriations may be made for grants out of funds in the treasury of this state for terraces, terrace outlets, check dams, dikes, ponds, ditches, critical area planting, grassed waterways, tailwater recovery irrigation systems, precision land forming, range seeding, detention and grade stabilization structures and other enduring water conservation practices installed on public lands and on privately owned lands and, the control and eradication of sericea lespedeza as provided in subsection (n) of K.S.A. 2-1908, and amendments thereto, on public lands and on privately owned lands. Except as provided by the multipurpose small lakes program act, any such grant shall not exceed 80% of the total cost of any such practice.

(b) A program for protection of riparian and wetland areas shall be developed by the Kansas department of agriculture division of conservation and implemented by the conservation districts. The conservation districts shall prepare district programs to address resource management concerns of water quality, erosion and sediment control and wildlife habitat as part of the conservation district long-range and annual work plans. Preparation and implementation of conservation district programs shall be accomplished with assistance from appropriate state and federal agencies involved in resource management.

(c) Subject to the provisions of K.S.A. 2-1919, and amendments thereto, any holder of a water right, as defined by subsection (g) of K.S.A. 82a-701, and amendments thereto, who is willing to voluntarily return all or a part of the water right to the state shall be eligible for a grant not to exceed 80% of the total cost of the purchase price for such water right. The Kansas department of agriculture division of conservation shall administer this cost-share program with funds appropriated by the legislature for such purpose. The chief engineer shall certify to the Kansas department of agriculture division of conservation that any water right for which application for cost-share is received under this section is eligible in accordance with the criteria established in K.S.A. 2-1919, and amendments thereto.

(d) (1) Subject to appropriation acts therefor, the Kansas department of agriculture division of conservation shall develop the Kansas water quality buffer initiative for the purpose of restoring riparian areas using best management practices. The executive director of the Kansas department of agriculture division of conservation shall ensure that the initiative is complementary to the federal conservation reserve program.

(2) There is hereby created in the state treasury the Kansas water quality buffer initiative fund. All expenditures from such 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 executive director of the Kansas department of agriculture division of conservation or the executive director's designee. Money credited to the fund shall be used for the purpose of making grants to install water quality best management practices pursuant to the initiative.

(3) The county or district appraiser shall identify and map riparian buffers consisting of at least one contiguous acre per parcel of real property located in the appraiser's county. Notwithstanding any other provisions of law, riparian buffers shall be valued by the county or district appraiser as tame grass land, native grass land or waste land, as appropriate. As used in this subsection (3), "riparian buffer" means an area of stream-side vegetation that:

(A) Consists of tame or native grass and may include forbs and woody plants;

(B) is located along a perennial or intermittent stream, including the stream bank and adjoining floodplain; and

(C) is a minimum of 66 feet wide and a maximum of 180 feet wide.

(e) The Kansas department of agriculture division of conservation with the approval of the state conservation commission shall adopt rules and regulations to administer such grant and protection programs.

(f) Any district is authorized to make use of any assistance whatsoever given by the United States, or any agency thereof, or derived from any other source, for the planning and installation of such practices. The Kansas department of agriculture division of conservation may enter into agreements with other state and federal agencies to implement the Kansas water quality buffer initiative.

**History:** L. 1937, ch. 5, § 15; L. 1976, ch. 7, § 5; L. 1979, ch. 9, § 1; L. 1985, ch. 342, § 9; L. 1986, ch. 7, § 1; L. 1987, ch. 10, § 1; L. 1988, ch. 396, § 2; L. 1989, ch. 308, § 1; L. 1998, ch. 143, § 46; L. 2001, ch. 64, § 1; L. 2002, ch. 37, § 3; L. 2004, ch. 96, § 4; L. 2012, ch. 140, § 127; July 1.

**Attorney General's Opinion:**

- County authority to impose local environmental standards or separation distances for confined animal feeding facilities which are more strict than state law. 1998-41.

**2-1916. Petition for discontinuance of district; hearings; election; publication of result; certificate of dissolution.** At any time after five (5) years after the organization of a district under the provisions of this act, ten percent (10%) of the occupiers of land lying within the boundaries of such district may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within sixty (60) days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the \_\_\_\_\_ (name of the soil conservation district to be here inserted)" and "against terminating the existence of the \_\_\_\_\_ (name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an \* mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted. The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in K.S.A. 2-1902: *Provided, however,* That the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the state soil conservation committee of certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such

properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his or her office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of K.S.A. 2-1911, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions. The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this act, more often than once in five (5) years.

**History:** L. 1937, ch. 5, § 16; L. 1959, ch. 5, § 3; June 30.

**2-1917. Invalidity of part.** If any provisions of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

**History:** L. 1937, ch. 5, § 17; April 10.

**2-1918. Inconsistent laws.** Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

**History:** L. 1937, ch. 5, § 18; April 10.

**2-1919. Cost-share limitations; purchase of surface water right outside the state.** (a) Except as provided by subsection (b), any application for cost-share for the purchase of the water right under the provisions of K.S.A. 2-1915, and amendments thereto, shall be subject to the following limitations:

(1) The water right is an active vested or certified water appropriation right that has not been abandoned under the provisions of K.S.A. 82a-718, and amendments thereto;

(2) (A) in the case of a water right for diverting groundwater, such water right is in an area where the rate of withdrawal of groundwater equals or exceeds the rate of recharge and the chief engineer has closed the area to further appropriations and designated the area as being in need of aquifer restoration;

(B) in the case of a water right for diverting groundwater or surface water, such water right is within a stream reach where the chief engineer has closed the stream reach to further appropriations and designated the stream reach as being in need of stream recovery;

(3) a local entity has provided an assurance that it will pay at least 20% of the purchase price negotiated by the entity and the holder of the water right; and

(4) the holder of the water right agrees to return the water right to the custodial care of the state.

(b) In the case of a purchase of a surface water right from outside the state, such purchase shall be considered and evaluated by the chief engineer on the basis of the potential of the water right to provide stream recovery within a designated stream reach.

**History:** L. 1988, ch. 396, § 4; July 1.

**2-1920. Conservation district capital outlay fund; use of moneys.** (a) There is hereby authorized to be established in every conservation district of the state a fund which shall be called the capital outlay fund. The fund shall consist of any moneys deposited therein from funds received according to provisions of the conservation district law.

(b) Any moneys in the capital outlay fund of the conservation district may be used for the purpose of acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing and equipping of buildings necessary for district operations, including architectural expenses incidental thereto and the acquisition of building sites and the acquisition of other equipment to carry out the activities and functions of the district.

(c) The conservation district board of supervisors is hereby authorized to invest any portion of the capital outlay fund, which is not currently needed in investments authorized by K.S.A. 12-1675, and amendments thereto. All interest received on any such investment shall be credited to the capital outlay fund.

**History:** L. 1989, ch. 5, § 4; July 1.

## **WATER RIGHT TRANSITION ASSISTANCE PROGRAM**

**2-1930. Program established; administration; funding; contracts with landowners; grants, availability, priority.** (a) As used in this section:

- (1) "Division" means the Kansas department of agriculture division of conservation;
- (2) "historic consumptive water use" means an amount of use of a water right as calculated pursuant to subsection (k); and
- (3) "program" means the water right transition assistance program.

(b) There is hereby established the water right transition assistance program. The program shall be administered by the Kansas department of agriculture division of conservation. The Kansas department of agriculture division of water resources and recognized local governing agencies, including groundwater management districts, shall cooperate in program implementation. The program shall be administered for the purpose of reducing historic consumptive water use in the target or high priority areas of the state by issuing water right transition grants based on competitive bids for privately held water rights.

(c) (1) The division may receive and expend funds from the federal or state government, or private source for the purpose of carrying out the provisions of this section. The division shall carry over unexpended funds from one fiscal year to the next.

(2) The maximum amount paid by the division shall not exceed a base rate per acre-foot of historic consumptive water use made available under the water right to be dismissed or permanently reduced. The state conservation commission shall establish an annual base rate after considering recommendations from the chief engineer and the groundwater management districts regarding market conditions.

(d) The division may enter into water right transition assistance program contracts with landowners that will result in the permanent reduction of part or all of a landowner's historic consumptive water use by action of the chief engineer as provided for in subsection (f).

(e) All applications for permanent irrigation water right retirements shall be considered for funding. Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the local groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program.

(f) Applications for permanent water right retirement shall be prioritized for payment based on the following criteria:

- (1) The applicant's bid price;
- (2) the timing and extent of the impact of the application on aquifer restoration or stream recovery;
- (3) the impact on local water management strategies designated by the board of each groundwater management district or by the chief engineer for each target area; and
- (4) where rights with similar hydrologic impacts are considered, priority should be given to the senior right as determined under the Kansas water appropriation act.

(g) Water rights enrolled in the program for permanent retirement shall require the written consent of all landowners and authorized agents to voluntarily request permanent reduction or permanent dismissal and forfeiture of priority of the enrolled water right. Upon enrollment of the water right into the program, the chief engineer of the Kansas department of agriculture division of water resources shall concurrently permanently reduce or permanently dismiss and terminate the water right in accordance with the terms of the contract.

(h) (1) The division shall make water right transition grants available only in areas that have been designated as:

(A) Target areas by the groundwater management districts and the chief engineer of the Kansas department of agriculture division of water resources; or

(B) target areas outside the groundwater management districts by the chief engineer of the Kansas department of agriculture division of water resources.

(2) Each target area shall be in a groundwater aquifer, aquifer sub-unit, surface water basin, subbasin or stream reach that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five years or less and small-use exemptions for 15 acre-feet or less, if the use, permit or exemption does not conflict with this program.

(3) The designation of each target area shall include the identification of a historic consumptive water use retirement goal. When such goal is reached, the target area will be delisted.

(4) The designation of each target area shall include the identification of sub-regions which are to be prioritized for retirements among competing bids.

(i) Contracts accepted under the program shall result in a net reduction in historic consumptive water use in the target area. Except as provided for in subsections (l) and (m), once a water right transition assistance program grant has been provided, the land authorized to be irrigated by the water right or water rights associated with that grant shall not be irrigated permanently. Water right transition assistance program contracts shall be subject to such terms, conditions and limitations as may be necessary to ensure that such reduction in historic consumptive water use occurs and can be adequately monitored and enforced.

(j) Only vested or certified water rights which are in good standing shall be eligible for water right retirement grants.

(k) (1) The historic consumptive water use of a water right shall be determined by either:

(A) Calculating the average amount of water consumed by crops as a result of the lawful beneficial use of water during the 10 preceding calendar years of actual irrigation and multiplying the average reported water use for the 10 selected years by a factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drip irrigation systems, but not to exceed the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12; or

(B) calculating the available pumping capacity of a water right by multiplying a flow rate test for each point of diversion applied to be retired under the water right by a theoretical pumping duration of 100 days multiplied by an efficiency factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drop irrigation systems, but not to exceed the authorized quantity of the water right or the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12. Flow rate tests must have been conducted not less than one year prior to the application date and certified as acceptable by the local groundwater management district or the chief engineer; or

(2) The applicant may also submit an engineering study that determines the average historic consumptive water use as an alternative method if it is demonstrated to be more accurate for the water right or water rights involved.

(l) Enrollment of an entire water right or a portion of a water right where land associated with the quantity is being permanently reduced from the water right in the program shall not subsequently prohibit irrigation of the land that, prior to enrollment, was authorized by the water right or water rights if irrigation can be lawfully allowed by another water right or permit pursuant to the rules and regulations and consideration of any future changes to other water rights that may be proposed to be transferred to such land.

(m) If more than one water right overlaps the place of use authorized by the water right proposed to be enrolled in the program, then all overlapping water rights shall be enrolled in the program or the landowners shall take the necessary lawful steps to eliminate the overlap with the water right to be enrolled. The burden shall be on the landowner to provide sufficient information to substantiate that the proposed use of water by the resulting exercise of all water rights involved will result in the net reduction amount of historic consumptive water use by the water right or water rights to be enrolled. The division may require such documentation to be provided by someone with special knowledge or experience related to water rights and such operations.

(n) The division shall adopt rules and regulations as necessary for the administration of this section. When adopting such rules and regulations the division shall consider cropping, system design, metered water use and all other pertinent information that will permit a verifiable reduction in historic consumptive water use and permit alternative crop or other use of the land so that the landowner's economic opportunities are taken into account.

(o) The division shall hold a meeting in each target area designated after July 1, 2012, prior to entering into any water right transition assistance program contract for the permanent retirement of part or all of landowner water rights in such target area. Such meetings shall inform the public of the possible economic and hydrologic impacts of the program. The division shall provide notice of such meetings through publication in local newspapers of record and in the Kansas register.

(p) The provisions of this section shall expire on July 1, 2022.

**History:** L. 2006, ch. 174, § 1; L. 2012, ch. 105, § 1; July 1.

**2-1931. Penalty for violation of act or contract.** (a) 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 right transition assistance program act or any rule and regulation adopted thereunder; and

(2) any violation of term, condition or limitation defined and or imposed within the contractual agreement between the Kansas department of agriculture division of conservation and the water right owner.

(b) Any participant who violates any section of a water right transition assistance program contract shall be subject to either one or both of the following:

(1) A civil penalty of not less than \$100 nor more than \$1,000 per violation. Each day shall constitute a separate violation for purposes of this section; and

(2) repayment of the grant amount in its entirety plus a penalty at 6% of the full grant amount.

(c) Any penalties or reimbursements received under this act shall be reappropriated for use in the water right transition assistance program.

(d) The provisions of this section shall expire on July 1, 2022.

**History:** L. 2006, ch. 174, § 2; L. 2012, ch. 105, § 2; July 1.

## KANSAS WATERSHED DISTRICT ACT WATERSHED DISTRICTS

### **Cross References to Related Sections:**

Agreements with cities, see 12-635, 12-638.

**12-635. Authorization of improvements within or without city limits; eminent domain; federal cooperation; agreements with watershed or drainage districts.** The governing body of any city of the state of Kansas in, near or through which flows a natural watercourse, the overflow from which, in the event of high water, is liable to cause injury to any bridge, street, alley or public or private property may, in order to prevent said injury, acquire by eminent domain in the manner prescribed by K.S.A. 26-501 to 26-516, inclusive, and amendments thereto, gift or purchase, within said city limits or within ten (10) miles therefrom, the land and easements necessary:

- (a) To construct drains, canals and artificial watercourses,
- (b) to widen and straighten existing drains and watercourses,
- (c) to construct the necessary levees and embankments,
- (d) to change and raise the grade of streets and alleys and the approaches to bridges, and raise said bridges, or construct bridges where necessary,
- (e) to widen existing drains, channels and canals, and acquire the necessary outlets therefor beyond the limits of the city, or
- (f) to cause any and all other necessary work, construction and improvements to be made to protect said city and public and private property therein located from floods and damage by overflow of said natural and artificial watercourses.

The governing body of any city proceeding under this act is hereby authorized:

(a) To enter into contracts or agreements with the United States army corps of engineers or any other agency or agencies of the federal government that may be necessary in order to cooperate with the federal government and its agencies; and such contract or agreement shall provide that the city will maintain, repair and operate the flood control works;

(b) to enter into contracts or agreements to furnish all of the necessary lands, rights-of-way and easements without cost to the federal government;

(c) to enter into contracts or agreements relieving the federal government from any liability and damage to persons or property resulting from construction of the flood control works or resulting after the completion thereof;

(d) to enter into contracts or agreements with watershed or drainage districts that may be necessary in order to cooperate with such watershed or drainage districts in matters relating to flood control and drainage. No provision of this act shall be construed to affect the power of drainage districts now organized under the provisions of chapter 24, of the Kansas Statutes Annotated, and amendments thereto.

**History:** L. 1917, ch. 87, § 1; R.S. 1923, § 12-635; L. 1925, ch. 95, § 1; L. 1929, ch. 107, § 1; L. 1937, ch. 114, § 1; L. 1943, ch. 86, § 1; L. 1947, ch. 109, § 1; L. 1953, ch. 61, § 1; L. 1963, ch. 234, § 21; L. 1978, ch. 57, § 1; March 28.

**12-638. Same; eminent domain proceedings; advertising for bids.** Upon the approval of the engineer's report by the governing body of the city and the division of water resources, the governing body of the city, if property is to be condemned, shall proceed to exercise the power of eminent domain in accordance with K.S.A. 26-501 through 26-516, and amendments thereto, and shall have the right to advertise for bids and enter into a contract for the improvements. Whenever a contract or agreement has been entered into by the United States army corps of engineers or any other federal agency or agencies and the city, or by a watershed or drainage district and the city, or the federal agency or agencies or a watershed or drainage district is willing to enter into the contract with the governing body of the city, for the construction of flood control improvements, the governing body of the city shall not be required to advertise for bids for the construction of the flood control works.

**History:** L. 1917, ch. 87, § 4; R.S. 1923, § 12-638; L. 1947, ch. 109, § 2; L. 1953, ch. 61, § 2; L. 1963, ch. 234, § 22; L. 1978, ch. 57, § 2; L. 1995, ch. 116, § 3; July 1.

### **Governmental Ethics Commission Opinions:**

- Watershed districts; contracting officers; duties; qualifications; restrictions; definitions; watershed district is not a state agency but is a governmental subdivision. 94-29.

### **Attorney General's Opinions:**

- Formation of watershed districts; elections; qualified voters. 94-36.
- Use of district funds to administer and cost-share water quality projects. 98-52.

## FORMATION OF WATERSHED DISTRICTS

**24-1201. Title of act.** This act shall be known as the watershed district act.

**History:** L. 1953, ch. 477, § 1; June 30.

**Attorney General's Opinions:**

- Assignment of liability for damages caused by works of improvement. 86-158.
- Watershed district act; proposed districts; qualified voters. 88-51.
- KOMA-applicability or rural water districts. 88-97.
- Watershed districts; judicial actions affecting conservation easements; modification or termination by court. 93-76.

Formation of watershed districts; authority of secretary of state. 93-85.

**24-1201a. Declaration of public necessity for creation of districts; power; benefits.** It is recognized that serious problems of water management resulting from erosion, floodwater or sediment damages or instability of natural water supplies are arising in the watersheds of the rivers and streams of the state of Kansas; that for the purpose of alleviating such damages and furthering the conservation, development, utilization and disposal of water and thereby preserving and protecting the state's land and water resources, it is legislatively determined that it is necessary and advisable to establish watershed districts with the power to construct, operate and maintain works of improvement needed to carry out such purposes; that there is hereby declared the public necessity for the creation of such districts in watersheds including lands that are subject to erosion, floodwater or sediment damages or that would be benefited by the construction of works of improvement for the conservation, development, utilization and disposal of water; and that it is further declared that the formation of such districts will inure to the general benefit of all of the taxable, tangible property included therein.

**History:** L. 1961, ch. 193, § 2; July 1.

**Attorney General's Opinions:**

- Assignment of liability for damages caused by works of improvement. 86-158.
- Use of watershed district funds. 87-85. (See 87-99.)
- Sale or transfer of watershed district property to a governmental entity for recreational purposes is permissible. 87-122.

**24-1202. Definitions.** The following terms when used in this act shall be construed to have the meaning ascribed to them in this section:

- "Person" shall mean any person, firm, partnership, association or corporation;
- "publication" shall mean the publication in a newspaper or newspapers admitted to the United States mail as second-class matter, of general circulation within the watershed district;
- "land" shall mean real property as that term is defined by the laws of the state of Kansas, and shall include any road, highway, bridge, street or other right-of-way;
- "chief engineer" shall mean the chief engineer of the division of water resources of the Kansas department of agriculture;
- "board" shall mean the board of directors of a watershed district;
- "district" shall mean an area comprising a watershed or two or more adjoining watersheds exclusive of lands within other organized watershed districts for which organization is proposed or which has been organized under the provisions of article 12 of chapter 24 of the Kansas Statutes Annotated, and amendments thereto. The district shall not include the territorial limits of any incorporated city unless the petition circulated and filed as provided for in article 12 of chapter 24 of the Kansas Statutes Annotated, and amendments thereto, shall clearly indicate that the territory of such a city is to be included in such watershed district;
- "specific project" means any project outlined and proposed by the directors and may constitute all or part of a general plan;
- "watershed" shall mean all of the area within the state draining toward a selected point on any watercourse, stream, lake or depression;
- "subwatershed" shall mean a division of the district as nearly equal in size to other divisions of the district as feasible and including as nearly as practicable one or more tributaries to the main stream which drains from the district;
- "qualified voter" shall mean any qualified elector of the district and any person 18 years of age or over owning land within the district, although not a resident therein;
- "landowner" shall mean the record owner of the fee in any real estate in the district or the fee in the surface rights of any real estate in the district, but the owners of an oil and gas lease, mineral rights or interest, easements or mortgages as such shall not be considered landowners, and school districts, cemetery associations and municipal corporations shall not be considered landowners;

(l) "steering committee" shall be the group of qualified voters, not less than the number to be chosen for the board of directors, who shall serve as the governing body of the proposed watershed district until the first board of directors is elected;

(m) "general plan" shall mean a preliminary engineering report describing the characteristics of the district, the nature and methods of dealing with the soil and water problems within the district, and the projects proposed to be undertaken by the district. It shall include maps, descriptions and such other data as may be necessary for the location, identification and establishment of the character of the work to be undertaken and such other data and information as the chief engineer may require.

**History:** L. 1953, ch. 477, § 2; L. 1955, ch. 201, § 1; L. 1959, ch. 172, § 1; L. 1961, ch. 193, § 1; L. 1972, ch. 124, § 4; L. 2004, ch. 101, § 73; July 1.

**Attorney General's Opinions:**

- Watershed district act; proposed districts; qualified voters. 88-51.

**24-1203. Establishment of district by petition.** Except as otherwise provided by K.S.A. 24-1203a, before any watershed district shall be organized, a petition shall be filed in the office of the secretary of state, signed by not less than 20% of the landowners and representing 25% of the acreage within said proposed district as shown by a verified enumeration of said landowners taken by a landowner of said proposed district to be selected by the first 10 signers of the petition. A verified copy of such enumeration shall be attached to and filed with the petition in the office of the secretary of state. For purposes of determining ownership, the county clerk of the county in which any part of the watershed is described, upon demand, shall furnish the record of the ownership of the lands within the county from the tax rolls of the county, and such record of ownership shall be satisfactory evidence of title.

**History:** L. 1953, ch. 477, § 3; L. 1955, ch. 201, § 2; L. 1959, ch. 172, § 2; L. 1995, ch. 210, § 5; May 4.

**24-1203a. Establishment of district initiated by board of county commissioners.** (a) In lieu of the procedures provided by K.S.A. 24-1203, 24-1204 and 24-1205, and amendments thereto, the board of county commissioners of any county may adopt a resolution proposing the establishment of one or more watershed districts within the county and appointing the steering committee of each proposed district if:

(1) The lands within each proposed district comprise substantially a watershed or two or more adjoining watersheds, as determined by the chief engineer; and

(2) in the preceding five-year period, the governor has issued a proclamation declaring a state of disaster emergency in the county due to flooding.

(b) The resolution shall contain the information required for a petition under K.S.A. 12-1204, and amendments thereto, and shall have appended and incorporated by reference a map showing the lands to be included in each proposed district and the subwatersheds therein, prepared in consultation with the chief engineer.

Upon adoption of such resolution, the county commission shall transmit a certified copy of the resolution to the chief engineer.

(c) All costs of projects and works of a watershed district established under this section shall be paid by a general levy against all taxable tangible property located within the district.

(d) This section shall be part of and supplemental to the watershed district act.

**History:** L. 1995, ch. 210, § 4; May 4.

**24-1204. Contents of petition; form.** The petition required by K.S.A. 24-1203, and amendments thereto, shall set forth:

(1) The proposed name of the district, which name shall end with the words "watershed district number \_\_\_\_\_." If the district is located in two or more counties the name of the district shall end with the words "watershed joint district No. \_\_\_\_\_." 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 thereby.

(2) A description of the lands to be included within the proposed district, separated as to subwatersheds, if any, and identified by section numbers and fractions thereof, and other platted areas as appropriate.

(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 and not more than 15, together with the names and addresses of the persons who will constitute the original steering committee.

(5) Any other matter deemed essential.

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

A map showing the lands to be included in the district and subwatersheds therein, prepared in consultation with the chief engineer, shall be attached to the petition as an exhibit and incorporated therein by reference. The petition shall be in substantially the following form:



BEFORE THE SECRETARY OF STATE OF THE STATE OF KANSAS

In the Matter of \_\_\_\_\_ Watershed (Joint) District Number \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ counties, Kansas.

PETITION

Come now the undersigned persons and state that they are landowners within the proposed boundaries of the aforementioned watershed 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 \_\_\_\_\_ members; that the names of persons who will serve on the original steering committee, of which the first named shall be acting chairman, 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 voters.

That attached hereto, marked Exhibit A and made a part hereof as fully as if set forth herein, is a map showing the lands proposed to be included in the district and subwatersheds therein:

That the lands proposed to be included in the district and subwatersheds therein are described as follows:

(Description of lands by subwatersheds.)

That the lands proposed to be included in the district and subwatersheds therein do not embrace the territorial limits of any incorporated city, or any part thereof, except those specifically described in the petition.

Wherefore, the undersigned, individually and collectively, pray that a watershed 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. 1953, ch. 477, § 4; L. 1955, ch. 201, § 3; L. 1957, ch. 226, § 1; L. 1959, ch. 172, § 3; L. 1961, ch. 193, § 4; L. 1987, ch. 122, § 1; L. 2004, ch. 101, § 74; July 1.

**24-1205. Petition, circulation; inclusion of city or part thereof within proposed boundaries, identification; filing and determination of sufficiency of petition.** A counterpart of the petition, setting forth the text of the petition in full, shall be circulated within the proposed boundaries of the district: *Provided*, That when an incorporated city, or any part thereof, included as a part of the lands within the proposed boundaries of the district and not excluded by reference therein, the naming of the city, and [class] thereof, and a statement as to what part or all of the lands within said city are to be included within the proposed boundaries of said district, shall be sufficient identification within said petition, and approval of said watershed district formation shall be by election duly called by the governing body of said city for such purpose of approval or disapproval by the qualified voters of the area in said city sought to be included in said watershed district, and if approved by vote, the mayor of said city shall be directed to sign said petition as representative of said land within said city limits and for the total of said lands encompassed therein and if disapproved by the qualified voters therein, the city, or part thereof, shall be excluded from the 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 him 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. In the making of such findings, the secretary of state shall consider the signature of the mayor of any city which has approved said petition as herein provided as the signature of one landowner and shall include the stated acreage within said city as being represented by said signature in computing the acreage within the district. The secretary of state shall endorse his 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 chairman of the steering committee of his findings.

**History:** L. 1953, ch. 477, § 5; L. 1955, ch. 201, § 4; L. 1957, ch. 226, § 2; L. 1959, ch. 172, § 4; L. 1961, ch. 193, § 5; July 1.

**24-1206. Sufficient petition transmitted to chief engineer; investigation, report and approval or disapproval; approval required, when; transmittal of approval to secretary of state and to chairperson of steering committee.** (a) If the secretary of state finds the petition to be sufficient as to form and the number and

qualifications of the petitioners, the secretary of state shall prepare a certified copy of the petition and transmit it to the chief engineer within five days after the secretary of state's determination of sufficiency.

(b) Upon receipt of a certified copy of a petition transmitted pursuant to subsection (a) or a certified copy of a resolution transmitted pursuant to K.S.A. 24-1203a, the chief engineer shall institute an investigation of each proposed district, its territory and purposes and, within 90 days after receipt of such copy shall transmit a written report of the chief engineer's findings on the petition or resolution, together with the chief engineer's written approval or disapproval of the petition or resolution, to the secretary of state and the acting chairperson of the steering committee named in the petition or resolution.

(c) The chief engineer shall approve the petition or resolution if the chief engineer finds and discloses by the chief engineer's report that:

(1) The lands proposed to be included in each district comprise substantially a watershed or two or more adjoining watersheds;

(2) each proposed district would not include lands in any existing watershed district;

(3) the statement of purposes contained in the petition or resolution conforms with the intents and purposes of this act;

(4) the lands within each proposed district or part thereof, are subject to erosion, floodwater or sediment damage or would be benefited by the construction of works for the conservation, development, utilization or disposal of water;

(5) the boundary of each proposed district is defined, as far as practicable, so as to include all quarter-quarter sections of which more than 1/2 of each is within the watershed;

(6) the downstream limit of each proposed district is established with due regard to the location of highways and railroads and the location and character of existing works of improvement, the boundaries of any organized levee, drainage, irrigation and watershed districts, and the physical characteristics of and the probable relative effect of the operation of the proposed district upon any flood plane area common to both the stream or watercourse and any other stream or watercourse; and

(7) the map attached to the petition or resolution and the description of lands proposed to be included in each district are adequate and correct, except the chief engineer, in the chief engineer's report, may make any minor corrections with respect to the map or the description of lands proposed to be included in the district to make such map and description of lands conform to the map previously prepared in consultation with the chief engineer and such corrections shall thereupon become a part of the petition or resolution and be deemed effective without a recirculation of the corrected petition among the landowners or amendment of the resolution.

(d) If the chief engineer approves the petition or resolution, the chief engineer shall transmit a certified copy of the chief engineer's report to the secretary of state and to the chairperson of the steering committee of the district.

**History:** L. 1953, ch. 477, § 6; L. 1957, ch. 226, § 3; L. 1959, ch. 172, § 5; L. 1961, ch. 193, § 6; L. 1995, ch. 210, § 6; May 4.

**24-1207. Meeting of steering committee; notice; election of board of directors; officers; election on organization of district; voting places and election procedures; certification of results to secretary of state; certificate of incorporation, issuance and recordation, when; actions attacking incorporation, limitations.** (a) Within 10 days after receipt of a certified copy of the chief engineer's report approving the petition or resolution, or the petition or resolution as amended or revised by the chief engineer, 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 at least five days in advance of the time so fixed, unless such notice is duly waived. The committee shall meet at the time and place fixed in the notice for the purpose of electing from their number a board of directors consistent with the number set out in the petition, and this board of directors, after being duly elected, shall elect from their number a president, vice-president, secretary and treasurer, except that in a district having only three directors, the board shall elect one person to hold the offices of secretary and treasurer. The board, by resolution, shall provide for the calling of an election of the qualified voters of the district for the purpose of submitting the question of whether the district should be organized and created in accordance with the petition or resolution, or the petition or resolution as amended or revised by the chief engineer.

(b) The board shall designate one or more centrally located voting places within the proposed district, but if the territory of the proposed district lies in more than one county, at least one voting place shall be designated within each county of the proposed district, and shall name and appoint three judges and two clerks for each voting place designated, which judges and clerks shall take an oath to faithfully perform their duties as judges and clerks, respectively, and shall each receive compensation of \$8 per day for their services. The board shall cause a notice of the special election to be published for three consecutive weeks in a newspaper of general circulation within the proposed district, the first publication to be not less than 21 days prior to such election. If the proposed district lies in more than one county, a similar notice shall be published in a newspaper of general circulation in each of the counties in which a part of the proposed district is located. The notice shall set forth the time and place or places of holding the election and the proposition to be voted on, shall contain a copy of the petition or resolution, or the amended or revised petition or resolution (omitting the map attached thereto as an exhibit) and shall be signed by the president and attested by the secretary of the board. Any qualified voter shall be entitled to vote at such election.

The vote at such election shall be by ballot, and such ballot shall comply with the usual requirements for an official ballot for public office insofar as such requirements are applicable thereto. Upon such ballot shall be printed the proposition submitted, preceded by the words, "Shall the following be adopted?" and followed by the words "To vote in favor of the proposition make a cross \* mark in the square after the word 'Yes'" "To vote against the proposition make a cross \* mark in the square after the word 'No.'"

(c) Returns from the election shall be made to the board of directors who shall canvass the votes cast at the election on the second Friday following the date of the election. The board shall immediately certify the results of the election to the secretary of state. If a majority of those voting on the proposition voted in favor of the organization and creation of the district upon the petition or resolution, or amended or revised petition or resolution, the secretary of state shall thereupon issue to the board of directors 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 a majority of those voting on the proposition voted against the organization and creation of the district, the secretary of state shall endorse that fact on the face of the petition or resolution and the proceedings shall be closed. No action attacking the legal incorporation of any watershed 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 watershed district be interposed as a defense to any action brought after such time.

**History:** L. 1953, ch. 477, § 7; L. 1955, ch. 201, § 5; L. 1957, ch. 226, § 4; L. 1959, ch. 172, § 6; L. 1961, ch. 193, § 7; L. 1995, ch. 210, § 7; May 4.

**Attorney General's Opinions:**

- Formation of watershed districts; authority of secretary of state. 93-85.

**24-1208. Payment of costs and expenses when petition or resolution is disapproved by engineer or defeated by voters; tax levy.** If the organization of the proposed district is defeated at the special election or if the petition or resolution is disapproved by the chief engineer, the board of directors or steering committee named in the petition or resolution shall continue to function in a limited capacity for the purposes hereinafter set forth in this action. Such board or steering committee shall determine the amount of money necessary to pay all of the costs and expenses incurred in the preparation and filing of the petition or resolution and in the conduct of the special election and shall certify a statement of such amount to the county clerk of each county in which the proposed district was to be located. Such county clerks shall thereupon ascertain the total assessed valuation of all taxable tangible property in their respective counties within the proposed district and certify such valuation to the county clerk of the county in which the acting chairperson of the board or steering committee of the proposed district resides.

Such county clerk shall determine the levy necessary to be spread against the taxable tangible property in the entire proposed district in order to raise funds sufficient to pay the amount set forth in the statement and shall certify such levy to the county clerk of the other counties in which a portion of the proposed district is located. Each of the county clerks shall then cause such levy to be extended against the taxable tangible property lying within the boundaries of the proposed district and within the clerk's county. The county treasurers of the respective counties involved shall remit the funds raised by such levy in their counties to the county treasurer of the county in which the acting chairperson of the board or steering committee resides. Such treasurer shall hold such funds and shall honor warrants drawn upon such funds by the acting chairperson of the board or steering committee and countersigned by the acting secretary of the board or steering committee in payment of the costs and expenses incurred in the proposed organization of the district and shown on the aforementioned statement of expenses.

**History:** L. 1953, ch. 477, § 8; L. 1959, ch. 172, § 7; L. 1995, ch. 210, § 8; May 4.

**Attorney General's Opinions:**

- Watershed districts; judicial actions affecting conservation easements; modification or termination by court. 93-76.

## **GENERAL POWERS AND DUTIES OF DISTRICTS**

**24-1209. Corporate powers and duties.** Each watershed district incorporated under the provisions of this act shall be a body politic and corporate and shall have the power:

*First.* To adopt a seal.

*Second.* To sue and be sued by its corporate name.

*Third.* To purchase, hold, sell and convey land and personal property and to execute such contracts as may, by its board of directors, be deemed necessary or convenient to enable it to properly carry out the purpose for which organized.

*Fourth.* To construct, improve, maintain and operate works of improvement including such facilities and appurtenances as necessary for the conservation of soil, prevention of floods, disposal of water and the conservation, development and utilization of water for domestic, municipal, agricultural, industrial, recreational purposes and such other uses as may be authorized by the provisions of K.S.A. 82a-701 to 82a-725, inclusive, and any amendments thereto; and in any case where the construction, improvement or operation of such works causes the substantial displacement of a wildlife habitat and when required by the soil conservation service of the United States department of agriculture as a condition precedent to the release of federal funds for such works, to acquire land for the purpose of restoring such wildlife habitat. The power of eminent domain shall not be used for any such acquisition.

*Fifth.* To operate or lease any and all district properties and facilities associated with the use of water and to collect reasonable fees, rentals, tolls, and charges for the use of such facilities, said revenue to be placed in the maintenance fund of the district. Where the property is leased the lessee or anyone authorized to collect such fees, rentals, tolls and charges shall conform to a schedule approved by the board of directors of the district.

*Sixth.* To employ such professional services and other assistance as is, by its board of directors, deemed essential. Soil conservation engineering services may be used whenever available.

*Seventh.* To acquire personal property by gift or purchase.

*Eighth.* To acquire land and interests in land by gift, purchase, exchange or eminent domain; such power of eminent domain to be exercised within or without the boundaries of the district in like manner as provided by K.S.A. 26-501 to 26-516, inclusive, or any amendments thereto.

*Ninth.* To levy taxes and assessments, issue bonds and incur indebtedness within the limitations prescribed by this act.

*Tenth.* To cooperate and contract with persons, firms, associations, partnerships and private corporations, and with other watershed districts, drainage districts, and cities of all classes of this state, and with drainage districts, watershed districts, or other public corporations organized for similar purposes in any adjoining state and with other local, state and federal governmental agencies and to enter into co-operative contracts and agreements with any such districts, corporations or agencies.

*Eleventh.* (a) To take appropriate actions to extend and transfer the territory of the district, receive territory transferred from other districts, and dissolve all or a portion of the district as provided for in this act; (b) to merge with adjoining watershed districts, subject to approval of a majority of the qualified voters voting on the proposition in each of the districts proposing to merge.

*Twelfth.* To select a residence or home office for the watershed district, which shall be at a place in a county in which the watershed district or any part thereof is located and may be either within or without the watershed district as may be designated by the board of directors. The board shall thereupon designate the county in which said residence or home office is located as the official county for the filing of all official acts and levies. After an official county has been so designated, said county designation shall not be changed even though the residence or home office of said watershed district may be changed at a later date.

**History:** L. 1953, ch. 477, § 9; L. 1955, ch. 201, § 6; L. 1957, ch. 226, § 5; L. 1959, ch. 172, § 8; L. 1961, ch. 193, § 8; L. 1963, ch. 234, § 69; L. 1976, ch. 175, § 1; July 1.

#### **Attorney General's Opinions:**

- Retention of counsel for tax planning matters. 86-117.
- Assignment of liability for damages caused by works of improvement. 86-158.
- Use of watershed district funds. 87-85. (See 87-99.)
- Watershed district funds may be used to improve a road only if a direct and exclusive benefit to district and no other governmental entity is responsible for road. 87-99. (See 87-85.)
- Sale or transfer of watershed district property to a governmental entity for recreational purposes is permissible. 87-122.
- Watershed districts; taxation and bonded indebtedness; use of funds. 92-39.
- Use of district funds to administer and cost-share water quality projects. 98-52.

## **GOVERNING BODY**

**24-1210. Directors; number; terms; expenses.** All powers granted to watershed districts incorporated under the provisions of this act shall be exercised by a board of directors which shall be composed of any odd number and specified in the petition for creation of the district, of qualified voters of the district. Such board shall be composed of not less than three and not more than 15 qualified voters. Boards in existence on the effective date of this act consisting of more than 15 members shall determine the number of board members, which in no case shall exceed the current number of board members. At least one director shall be selected from each subwatershed located within the district. Each director shall serve for a term of three years, and until a successor is duly elected and qualified, except that one-third of the original directors designated in the petition for organization of the district shall serve for a

term of one year, one-third for a term of two years, one-third for a term of three years, from the date the certificate of incorporation is filed of record in the office of the register of deeds of each county in which territory of the district is located. Such directors shall serve without compensation, but shall be allowed actual and necessary expenses incurred in the performance of their official duties.

**History:** L. 1953, ch. 477, § 10; L. 1955, ch. 201, § 7; L. 1987, ch. 122, § 2; July 1.

**24-1211. Election of directors at annual meeting; report of financial condition, projects and activities; notice and conduct of elections; vacancies; changes in number of directors or date of annual meeting; notice; procedure.** 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 and also to render a report on the financial condition and activities of the district including the estimated construction date of all proposed projects to be initiated within the next five years and the board's determination as to whether each of these projects is still cost effective and in the current public interest. Notice of the annual meeting shall be given at least 10 days prior to the date thereof by one publication in a newspaper of general circulation in each of the counties of which said watershed district is a part. Elections shall be by ballot. Qualified voters in attendance shall be entitled to vote at any such meeting. The directors shall fill any vacancy occurring on the board prior to the expiration of the term of any director by electing a substitute director to serve for the unexpired term.

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 proposition of making such change or changes is given at the annual meeting immediately preceding the annual meeting at which such change or changes are considered. If the number of directors is proposed to be changed, the proposition shall be introduced in the same manner as other items of business and shall clearly show the changes in representation of subwatersheds, if any, and in the length of terms of the directors. It shall be the duty of the board of directors to include the proposition in the notice of the annual meeting at which such changes are being considered. If a majority of those voting are favorable, the election of directors shall be in conformance with the adopted proposal and all powers shall be exercised by the newly constituted board beginning immediately after the annual meeting. Copies of the minutes of the annual meeting and report on the financial condition and activities of the district shall be furnished to the Kansas department of agriculture division of conservation.

**History:** L. 1953, ch. 477, § 11; L. 1955, ch. 201, § 8; L. 1959, ch. 172, § 9; L. 1961, ch. 193, § 9; L. 1987, ch. 122, § 3; July 1; L. 2012, ch. 140, sec. 130; July 1.

**Attorney General's Opinions:**

- Use of absentee ballots or voter proxy in election of watershed district electors. 86-86.
- Watershed districts; annual reports; evaluation of projects; "public interest" defined. 88-20.

**24-1212. Open meetings of directors; notice; quorum.** Regular meetings of the board of directors shall be held no less than once each quarter on such day and place 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, and special meetings may be held at any time upon waiver of notice of such meeting by all directors or may be called by the president or any two directors at any time. Notice in writing, signed by the persons calling any special meeting, shall be mailed to each director at least two days prior to the time fixed for such special meeting. A majority of the directors shall constitute a quorum for the transaction of business and in the absence of any of the duly elected officers of the district a quorum at any meeting may select a director to act as such officer pro tem. Each meeting of the board, whether regular or special, shall be open to the public. Copies of the minutes of regular and special meetings shall be furnished to the Kansas department of agriculture division of conservation.

**History:** L. 1953, ch. 477, § 12; L. 1987, ch. 122, § 4; July 1; L. 2012, ch. 140, sec. 131; July 1.

**Attorney General's Opinion:**

- Watershed districts; meetings of directors. 85-161.

## **PROCEDURE FOR WATERSHED PROJECTS AND IMPROVEMENTS**

**24-1213. General plan, estimate of costs and information as to benefits; transmittal to chief engineer, when; open to public; report to directors.** Upon the incorporation of the watershed district the board shall cause work to be commenced on the preparation of a general plan of the district. In addition to the general plan there shall be prepared an estimate of costs as to installation, maintenance and operation of the proposed works and information as to the location and extent of areas that would be benefited by the proposed works. Upon completion of the general plan, estimates of costs and the information as to benefited areas, the board shall carefully examine and consider the same and if they approve the general plan, estimate of cost of proposed works and information on benefited areas, they shall transmit a complete copy thereof to the chief engineer and additional copies shall be

made available to him upon request. Copies of such plans, estimates and information, in the office of the chief engineer shall be open to inspection by the public at all reasonable times.

The chief engineer shall examine and study said general plans as to:

- (1) Feasibility.
- (2) Co-ordination of the plan with any general plan for the watershed of which the district might be a part.
- (3) The safety of the works and improvements proposed.
- (4) Conformity with the intents and purposes of this act. The chief engineer shall transmit a written report of the results of his study and investigation to the board of directors which shall include any changes or modifications which he deems necessary and which shall include a specific approval or disapproval of the general plan.

**History:** L. 1953, ch. 477, § 13; L. 1957, ch. 226, § 6; L. 1961, ch. 193, § 10; July 1.

**Attorney General's Opinions:**

- Use of district funds to administer and cost-share water quality projects. 98-52.

**24-1214. Financing proposed projects; methods; resolution as to costs; public hearing; notice, contents; appearances; written statement required; transmittal of written statements to chief engineer; adoption, modification or rejection of general plan or method of financing; official general plan and official method of financing; resubmissions, when.** Subject to the provisions of subsection (b) of K.S.A. 24-1203a, when the general plan is approved by the chief engineer the board, by resolution, shall propose that the cost to the district of all works contemplated in the plan be paid either by a general levy against all of the taxable tangible property located within the district, that such cost be paid by special assessment against lands within the district to be specially benefited by any of the proposed projects or that such cost be paid by both such general levy and special assessment, stating the portion proposed to be paid by each method. The board shall also set forth in the resolution any proposal to issue improvement bonds of the district to provide for the payment of all or any part of the cost to the district of proposed projects by installments instead of levying the entire tax or special assessment at one time.

The board shall thereupon fix a time and place either within or conveniently near the district for a public hearing upon the general plan and the resolution proposing a method of financing costs of the works contemplated in the plan. A notice of such hearing shall be given by one publication at least 20 days prior to the date fixed for the hearing, setting forth the time and place of hearing upon the plan and resolution, that a copy of the plan and resolution is available for public inspection in the office of the secretary of the district and that any electors or landowners desiring to be heard in the matter must file, in duplicate, with the secretary of the board at the secretary's office, at least five days before the date of the hearing, a written statement of their intent to appear at the hearing and the substance of the views they wish to express. Upon receipt of any such statements the secretary of the board shall immediately transmit one copy of the statements to the chief engineer. The chief engineer or the chief engineer's duly appointed representative may attend the hearing. At the hearing any elector or landowner who has duly filed a written statement shall be heard and may present information in support of the elector's or landowner's position in the matter. After hearing all such statements the board, by resolution, shall adopt as official or reject the general plan and adopt as official or reject the proposed method of financing costs of the works contemplated in the plan or determine that the general plan or the proposed method of financing or both should be modified and notify the chief engineer of the board's action. If it is determined that the general plan should be modified, any proposed changes approved by the board shall be incorporated in a modified general plan which shall be submitted to the chief engineer for further consideration.

The chief engineer shall review the modified plan and shall transmit a supplemental written report of the results of the chief engineer's study and investigation to the board, including the chief engineer's written approval or disapproval of the modified general plan. If the modified general plan is approved by the chief engineer, the board, by resolution, shall adopt the modified plan as the official general plan of the district and notify the chief engineer of the board's action. If it is determined that the proposed method of financing should be modified, the board shall give consideration to the the modified method of financing and, following adoption of the general plan or an approved modification thereof, the board, by further resolution setting forth such modified method of financing, shall adopt it as the official method of the district for financing costs of the works contemplated in the official general plan. If a board is unable to carry out a general plan because of disapproval of a bond issue at an election or because insufficient funds have been provided, they may reconsider the general plan or the method of financing, or both, and by following the procedure hereinbefore set forth, resubmit a general plan or method of financing, or both.

**History:** L. 1953, ch. 477, § 14; L. 1961, ch. 193, § 11; L. 1995, ch. 210, § 9; May 4.

**Attorney General's Opinions:**

- Watershed districts; structure maintenance fund; tax levies for no fund warrants and bonds. 92-116.
- Use of district funds to administer and cost-share water quality projects. 98-52.

**24-1214a. Districts adopting general plan prior to April 1, 1961; method of financing; procedure.**

Watershed districts which have adopted a general plan prior to April 1, 1961, but have not adopted by resolution a method of financing may follow the procedure set forth in sections 24-1213, and 24-1214 of the Kansas Statutes Annotated in the adoption of a resolution of financing and proceed forthwith to carry out the proposed works of improvements.

**History:** L. 1961, ch. 193, § 12; July 1.

**24-1215. Approval of bond issue by qualified voters of district required; notice; election procedures; tax levies for financing costs; resolution, publication; protest petition; election.** When any general plan and resolution of financing has been finally adopted by the board, in accordance with the procedure set forth in K.S.A. 24-1214 and said resolution provides that all or any part of the cost of the works of improvement is to be paid by the issuance of improvement bonds of the entire district, it shall be the duty of the board to submit the question of approval of said bond issue to an election of the qualified voters of the district. Notice of the time and place and the purpose for which such election is to be held shall be given by one publication at least twenty (20) days prior to the date fixed for such election. Except as hereinbefore provided, the said special election shall be held and conducted in the manner prescribed for conducting and holding elections by K.S.A. 24-1207.

If the resolution of financing provides that all or any part of the cost of the works of improvement is to be paid by the issuance of improvement bonds to be paid by special assessment against the lands especially benefited by such project the board of directors shall proceed to determine the particular lands within the district upon which special assessments are to be levied and it shall be the duty of the board to submit the question of approval of the bond issue to an election of the owners of said lands. Notice of the time and place and the purpose for which such election is to be held shall be given by one publication at least twenty (20) days prior to the date of such election. Except as hereinbefore provided the said election shall be held and conducted in the manner prescribed for conducting and holding elections by K.S.A. 24-1207: *Provided, however,* That if it is proposed to issue improvement bonds to be paid partially by the entire district and partially by lands especially benefited, it shall be the duty of the board of directors to submit each question of approval separately as hereinbefore set forth: *Provided further,* That if said resolution of financing proposes that all costs to the district shall be borne by a general tax levy and makes no provision for the issuance of bonds, and no election is thereupon held, it shall be the duty of the board to publish said resolution once in a newspaper of general circulation within the district and said resolution shall be in full force and effect thirty (30) days after said publication unless petitions signed by landowners of the district in a number in excess of twenty percent (20%) of the landowners as determined by the verified enumeration filed with the petition for organization are filed with the secretary of the board.

In the event such petitions are filed, it shall be the duty of the board to submit the question of adoption of said resolution to the qualified voters of the district. Notice of the time and place and the purpose for which such election is to be held shall be given by one publication at least twenty (20) days prior to the date for such election. Except as hereinbefore provided the said special election shall be held and conducted in the manner prescribed for conducting and holding elections by K.S.A. 24-1207.

**History:** L. 1953, ch. 477, § 15; L. 1955, ch. 201, § 9; L. 1957, ch. 266, § 7; L. 1959, ch. 172, § 10; L. 1961, ch. 193, § 13; July 1.

**24-1216. Order and procedure as to specific projects; surveys, plans, specifications and estimates of costs; filing with secretary of board; open to inspection; transmittal of approved plans to chief engineer, when; review of general plan; revisions of plan; report by chief engineer, requirements.** (a) Following the adoption of the general plan and adoption of the method of financing, the board of directors may determine the order in which specific projects contemplated by the general plan shall be undertaken and to cause accurate surveys of all work deemed necessary to be done and accurate estimates and calculations to be made by some competent engineer who shall prepare detailed construction plans and specifications therefor showing the location, amount, and character of work to be done and the estimated cost of right of way, construction, maintenance and operation, which plans, specifications, and estimates of costs shall be filed in the office of the secretary of the board and shall at all reasonable times be open to public inspection. The board shall carefully examine and consider the same and if they approve such plans, specifications and estimates of costs, they shall transmit a complete copy thereof to the chief engineer, who shall examine and study the plans and specifications as to conformance to the general plan and other applicable state laws on water use and control and transmit a written report of the results of his study and investigation to the board which report shall include any changes or modifications which he deems necessary and which shall include a specific approval or disapproval of the plans and specifications.

(b) Ten years following approval of the general plan and every five years thereafter, the board shall review the general plan to determine if projects proposed to be undertaken by the district in its original plan are still feasible and in current public interest. A report of the review shall be given at a public meeting called for that purpose. This review is not required of watershed districts that have completed all the projects in the general plans.

Any revisions or amendments to the general plan shall be submitted to the chief engineer in the manner provided by K.S.A. 24-1213 and amendments thereto.

**History:** L. 1953, ch. 477, § 16; L. 1955, ch. 201, § 10; L. 1958, ch. 12, § 6 (Special Session); L. 1959, ch. 172, § 11; L. 1961, ch. 193, § 14; L. 1987, ch. 122, § 5; July 1.

**24-1217. Computation of special assessments; appraisal and apportionment; resolution; limitations; hearing of complaints; notice; alterations; resolution fixing assessments; notice to landowners; bonds and levies, when.** If the resolution of financing provided for by K.S.A. 24-1216 [\*], and amendments thereto, provides that all or any part of the cost of the works contemplated is to be paid by special assessment against lands especially benefited by such project, the board shall appoint three appraisers who have no vested interests in the project and who shall recommend apportionment of the special assessment to the tracts of land subject to such special assessment. The appraisers shall have access to all available engineering reports and data pertaining to the works contemplated and may request such additional engineering data or counsel as found necessary to carry out their duties. The appraisers shall take an oath to fairly and impartially appraise the benefits accruing to each tract of land and shall recommend the apportionment of the assessment according to the relative benefits to be received by the several tracts of land subject to assessment, and shall make written reports of their findings to the board.

Upon receiving the report, the board shall prepare a resolution which shall contain a list of the tracts of land found to be especially benefited and the amount of assessment to be levied against each such tract. No such assessment against any tract of land shall exceed the estimated benefits to such land by such project. Such tracts of land shall be legally described and the names of the owners thereof shall be set forth beside the description of each tract so listed. After adopting such resolution, the board shall fix a time and place for hearing any complaint that may be made as to the benefit to any tract of land appraised as aforesaid, a notice of which hearing shall be given by the secretary by one publication at least 10 days prior to the date set for the hearing. The board, at the special hearing, may alter the benefit to any tract of land if, in its judgment, the same has been appraised too high or too low.

The board, immediately thereafter, shall pass a resolution fixing the benefit assessment as to each tract of ground and providing for the assessment thereof which assessment may be spread over a period of not to exceed 20 years and shall hold good for all installments. The board, immediately thereafter, shall cause a written notice to be mailed to the owner or owners of each tract of ground assessed of the amount of the assessment which notice shall state that if the amount is not paid in full within 30 days from the date of notice, bonds will be issued and that an assessment will be levied annually against such tract of ground for a period of not to exceed 20 years in an amount sufficient to pay the total assessment plus the interest due on the bonds.

No suit to set aside the assessment shall be brought after the expiration of 90 days from the date of the notice. The amount levied against each tract of ground to pay for the bonds falling due each year and the interest thereon shall be levied, certified to the proper county clerk and collected the same as other taxes.

**History:** L. 1953, ch. 477, § 17; L. 1955, ch. 201, § 11; L. 1957, ch. 226, § 8; L. 1959, ch. 172, § 12; L. 1961, ch. 193, § 15; L. 1987, ch. 122, § 6; July 1.

**24-1218. Right of entry upon lands in connection with work of district; damages.** The board of directors and its representatives and employees, including engineers and contractors and their employees, shall have the right and authority to enter upon private lands within or without the boundaries of the district for the purpose of conducting tests, surveys and other work incidental to the preparation of plans, maps, profiles and reports in connection with any work or proposed work of the district. The district shall be liable for any damages caused by such entry. Charges for damages shall be approved, modified, or rejected within 60 days following receipt of a documented accounting of such damages.

**History:** L. 1953, ch. 477, § 18; L. 1987, ch. 122, § 7; July 1.

## TAXATION AND BONDED INDEBTEDNESS

**24-1219. No-fund warrants for initial expenses; annual tax levies for general fund expenses; increased levies, procedure; tax levies for no-fund warrants and bonds; structure maintenance fund.** (a) The district board may issue no-fund warrants to pay for initial organizational, engineering, legal and administrative expenses of the district except that the amount so issued shall not exceed the product of two mills times the assessed valuation of the taxable tangible property within the district. Such warrants shall be issued, bear interest and be retired in accordance with the provisions of K.S.A. 79-2940, and amendments thereto, except that the approval of the state board of tax appeals shall not be required. Whenever warrants have been issued under this section, the board shall make a tax levy at the first tax levying period, after such warrants are issued, sufficient to pay such warrants and interest.

(b) Following incorporation of the district by the secretary of state, the board shall have authority to levy annually a tax of not to exceed two mills to create a general fund for the payment of engineering, legal, clerical, land and interests in land, installation maintenance, operation and other administrative expenses and such tax may be against all of the taxable, tangible property of the district. Whenever the board desires to increase the mill levy for such purposes above two mills, it may adopt a resolution declaring it necessary to increase such annual levy in an amount which together with the current levy shall not exceed a total of four mills. Any such resolution shall state the total amount of the tax to be



levied and shall be published once each week for two consecutive weeks in a newspaper of general circulation in the district. Whereupon such annual levy in an amount not to exceed the amount stated in the resolution may be made for the ensuing budget year and each successive budget year unless a petition requesting an election upon the proposition to increase the tax levy in excess of the current tax levy, signed by not less than 5% of the qualified electors in the district is filed with the county election officer within 60 days following the date of the last publication of the resolution. In the event a valid petition is filed, no such increased levy shall be made without such proposition having been submitted to and having been approved by a majority of the qualified electors voting at an election called and held thereon. All such elections shall be called and held in the manner prescribed for the calling and holding of elections upon the question of the issuance of bonds under the general bond law.

(c) There is hereby authorized to be established in the watershed districts of the state a fund which shall be called the structure maintenance fund. The fund shall consist of moneys deposited therein from funds received according to provisions of the watershed district law. The amount of funds that may be deposited annually shall be a maximum of .35% of the construction cost of the structure. Moneys in the structure maintenance fund may be used for the purpose of engineering, reconstruction and other required maintenance and other expenses relating to the maintenance of a structure. The watershed board of directors is hereby authorized to invest any portion of the structure maintenance fund, which is not currently needed, in investments authorized by K.S.A. 12-1675, and amendments thereto. All interest received on any such investment shall be credited to the structure maintenance fund.

(d) The district board shall have authority to levy a tax, after improvement bonds have been issued in accordance with K.S.A. 24-1214, 24-1215 and 24-1220, and amendments thereto, sufficient to pay such bonds and interest.

**History:** L. 1953, ch. 477, § 19; L. 1955, ch. 201, § 12; L. 1961, ch. 193, § 16; L. 1985, ch. 117, § 1; L. 1987, ch. 122, § 8; L. 1990, ch. 119, § 1; L. 2008, ch. 109, § 56; L. 2014, ch. 141, § 50; July 1.

#### **Attorney General's Opinions:**

- Use of watershed district funds. 87-85. (See 87-99.)
- Watershed district funds may be used to improve a road only if a direct and exclusive benefit to district and no other governmental entity is responsible for road. 87-99. (See 87-85.)
- No-fund warrants must make tax levy at first levying period after issuance sufficient to pay warrants and interest. 87-134.

KOMA-applicability or rural water districts. 88-97.

- Watershed districts; taxation and bonded indebtedness; use of funds. 92-39.
- Watershed districts; structure maintenance fund; tax levies for no fund warrants and bonds. 92-116.

**24-1220. Improvement bonds for works of improvement; terms; how payable; limitation on bonded indebtedness.** Whenever improvement bonds have been authorized for any works of improvement in accordance with the provisions of K.S.A. 24-1214 and 24-1215, the board shall proceed to issue improvement bonds of the district. Said bonds shall be issued to mature in not more than thirty (30) annual installments of approximately equal amounts each year over a period of not to exceed thirty (30) years. Said bonds shall bear interest at a rate not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, payable semi-annually or at such time as may be fixed by the terms of the resolution authorizing the issuance thereof.

Each bond shall specify the date of its separate maturity and shall be in such denominations as the district board shall determine, but at no time shall the aggregate bonded indebtedness of the district exceed ten percent (10%) of the assessed valuation of all of the taxable tangible property within the district as shown by the last finding of the proper board of equalization.

**History:** L. 1953, ch. 477, § 20; L. 1955, ch. 201, § 13; L. 1957, ch. 226, § 9; L. 1961, ch. 193, § 17; L. 1970, ch. 64, § 71; L. 1978, ch. 99, § 30; April 25.

**24-1221. Act supplemental to other laws.** This act shall be deemed to be supplemental to existing laws relating to drainage districts, flood control, irrigation, soil conservation and related matters.

**History:** L. 1953, ch. 477, § 21; June 30.

## **TRANSFER AND EXTENSION OF TERRITORY**

**24-1222. Chief engineer authorized to transfer territory from one district to another, when; petition.** The chief engineer of the division of water resources shall have power upon a proper petition being presented for that purpose to transfer territory from one watershed district, organized and incorporated under the provisions of article

12 of chapter 24 of the Kansas Statutes Annotated or any amendments thereto, to any other adjacent watershed district so organized and incorporated.

**History:** L. 1958, ch. 12, § 1 (Special Session); May 8.

**24-1223. Same; contents of petition.** The petition for transfer of territory from one watershed district to another shall be addressed to the chief engineer of the division of water resources and shall: (a) Describe the territory to be transferred by section numbers and fractions thereof, and other platted areas as appropriate; (b) state from what watershed district and to what watershed district such transfer is sought; (c) show that the proposed transfer has been recommended by each of the watershed districts affected by resolution duly adopted by the board of directors of each district; and (d) state that the proposed transfer of territory will result in more efficient operation of both districts and will be conducive to the public convenience and welfare. Such petition shall contain a prayer that the territory described therein be transferred from one watershed district named therein to another watershed district named therein.

**History:** L. 1958, ch. 12, § 2 (Special Session); May 8.

**24-1224. Same; presentment of petition to chief engineer; notice and hearing.** Whenever a petition in conformity to K.S.A. 24-1223 signed by the board of directors of both of the affected watershed districts shall be presented to the chief engineer of the division of water resources, it shall be the duty of the chief engineer forthwith to fix a time for the hearing of such petition and to give notice thereof which shall be published by the affected watershed districts at their expense at least five (5) days before the date fixed for the hearing in one or more newspapers published and of general circulation in the county or counties in which the affected watershed districts are located.

**History:** L. 1958, ch. 12, § 3 (Special Session); May 8.

**24-1225. Same; findings, decisions and declarations of chief engineer.** At the time set for the hearing of the petition, as provided in K.S.A. 24-1224, it shall be the duty of the chief engineer to first ascertain and determine whether notice has been given of the time of hearing, as required by this act, and, if it shall be determined that such notice has been given, to make a declaration and finding of this fact; and thereupon he shall hear all persons in favor of, or opposed to, the granting of the prayer of said petition, and he shall hear all other evidence that he may deem necessary for the purpose of ascertaining whether the statements in said petition are true; and, if upon such hearing it shall be found that such petition is in conformity to the requirements of this act and that the allegations thereof are true, then the chief engineer shall make a finding and decision to that effect and shall thereupon declare the territories described in the petition to be detached from the one watershed district, naming it, and to be attached to the other watershed district, naming it, and shall fix the date that such transfer shall become effective; and if the chief engineer upon such hearing finds that such petition is not in conformity to this act, or that the statements in such petition are not true, or that said transfer should not be made, then he shall make a finding and decision to that effect and reject that petition. Such affirmative decision and order of the chief engineer may provide for the transfer of all or part of the territory described in the petition but shall not include any territory not so described.

**History:** L. 1958, ch. 12, § 4 (Special Session); May 8.

**24-1226. Same; liability for outstanding bonded indebtedness.** The balance of bonded indebtedness including temporary notes outstanding shall remain a charge upon the territory transferred under the provisions of this act in accordance with the applicable provisions of K.S.A. 10-119, and any amendments thereto. The territory so transferred shall not be liable for any bonded debt including temporary notes and no-fund warrants existing at the time of such transfer of the district of which it shall become a part.

**History:** L. 1958, ch. 12, § 5 (Special Session); May 8.

**24-1227. Extension of territory of district; petition, contents; approval of chief engineer.** The secretary of state, with the approval of the chief engineer of the division of water resources, shall have power, upon proper petition being presented for that purpose to extend the territory of any watershed district organized and incorporated under the provision of article 12 of chapter 24 of the Kansas Statutes Annotated or any amendments thereto. The petition to extend the territory of any watershed district shall be addressed to the secretary of state, and shall: (a) Describe the territory to be annexed by section numbers and fractions thereof, and other platted areas as appropriate, except as provided for in K.S.A. 24-1205, as amended for the inclusion of incorporated cities; (b) state to what watershed district annexation is sought; (c) have a map attached thereto as an exhibit, and incorporated therein by reference, showing said watershed district and the lands proposed to be annexed; and (d) show that the proposed extension of territory has been recommended by the watershed district concerned by resolution duly adopted by its board.

The petition shall be circulated, signed, filed and transmitted in the manner prescribed for the original organization of a watershed district in K.S.A. 24-1203, 24-1205, 24-1206, and 24-1207, or any amendments thereto, and similar action shall be taken as prescribed in said section 24-1206, in so far as same is applicable.

**History:** L. 1961, ch. 193, § 18; July 1.

## COMPLETE OR PARTIAL DISSOLUTION

**24-1228. Dissolution of district, when; resolution; petition; election; certificate of dissolution.** Whenever a watershed district has been organized and incorporated under the provisions of article 12 of chapter 24 of the Kansas Statutes Annotated, and amendments thereto, for more than eight years and has not adopted a general plan of work and projects to be undertaken by the district, constructed or contracted to construct any works of improvement or incurred any continuing obligations for maintenance of any works of improvement, or when such a district has been organized and incorporated under such provisions for more than four years and has not made substantial progress toward a general plan of work and projects to be undertaken by the district, the board of such district may, by resolution adopted by a 2/3 vote of all members of such board present and voting, but in no event less than a majority of all members of such board at a special meeting of such board called for that purpose, and notice of which special meeting shall specify the purpose for which the meeting is to be called, provide for the calling of an election of the qualified voters of such district for the purpose of determining whether such district shall be dissolved; and the board shall provide for the calling of such an election if written petitions therefor signed by 20% of the landowners of such district, as shown by a verified enumeration of such landowners by a landowner of such district, are filed with the secretary of such board. Notwithstanding any provision of this section, the Middle Creek joint watershed district No. 50 may be dissolved in the same manner and procedure as provided herein.

The election to determine whether the district shall be dissolved shall be held and conducted in the same manner as provided by K.S.A. 24-1207, and amendments thereto, insofar as such provisions can be made applicable. If a majority of those voting on the proposition voted in favor of dissolution of the district, the board shall immediately certify the results of such election to the secretary of state, and the secretary of state shall thereupon issue and deliver to the secretary of such board a certificate of dissolution.

**History:** L. 1961, ch. 193, § 19; L. 1982, ch. 153, § 1; L. 2000, ch. 115, § 3; July 1.

**24-1229. Dissolution of portion of district; petition, contents; powers and duties of chief engineer; notice and hearing; evidence; findings, filing; certificate of dissolution; recordation; removal of director upon dissolution, effect.** The chief engineer of the division of water resources shall have power upon proper petition being presented for that purpose to dissolve a portion of a watershed district organized and incorporated under the provisions of article 12, chapter 24 of the Kansas Statutes Annotated, or any amendments thereto. The petition for dissolution of a portion of a watershed district shall be addressed to the chief engineer of the division of water resources and shall:

- (1) Describe the territory to be dissolved by section numbers and fractions thereof and other platted areas as appropriate;
- (2) contain a prayer that the territory described therein be dissolved from the watershed district, naming it;
- (3) show that the dissolution is being sought by either a majority of the board of the watershed district or a majority of the landowners in the territory to be dissolved. Whenever a petition in conformity with this section is received by the chief engineer it shall be his duty forthwith to fix a time for the hearing of such petition and to give notice thereof which shall be published by the affected watershed district at their expense at least five (5) days before the date fixed for the hearing. It shall be the duty of the petitioners to show satisfactory evidence in support of the requested dissolution.

If after such hearing the chief engineer finds that the exclusion of territory described in the petition would leave within the district an area in conformance with the findings considered for the organization of a district as prescribed in K.S.A. 24-1206 and that the exclusion of the territory described in the petition will not substantially impair the effectiveness of a general plan of the district which has been approved by the chief engineer, he shall transmit a written report of his findings on the petition, together with his written approval or disapproval of the petition, to the secretary of state and the secretary of the board. Upon receipt of such report and approval of the petition the secretary of state shall thereupon issue and deliver to the secretary of the board a certificate of dissolution as to the lands which are to be excluded from the district fixing the effective date of such dissolution. A certified copy of the certificate of dissolution shall be recorded in the office of the register of deeds of each county in which any portion of the district is located: *Provided*, That, if the dissolution of a portion of the territory of a watershed district removes one or more directors from the constituted board, the remaining board of directors shall exercise the powers granted by this act until such time as changes in the board are proposed and effected in a manner prescribed by K.S.A. 24-1211.

**History:** L. 1961, ch. 193, § 20; July 1.

**24-1230. Notification of directors upon dissolution or partial dissolution of district; duties of secretary, treasurer and directors; effective date of dissolution; recordation of certificate of dissolution.** Upon receipt from the secretary of state of the certificate of dissolution of the watershed district or portion thereof under the provisions of this act, the secretary of the board of directors of said watershed district shall notify the directors of the watershed district of such certification.

The directors shall immediately pay all obligations of said district or portion thereof, including all costs incurred by the district, the chief engineer and secretary of state in regard to the dissolution proceedings, and the treasurer shall thereupon distribute all moneys in his hands belonging to the district or portion thereof in the manner prescribed by this act, and immediately after making such distribution, the treasurer shall notify the secretary of such distribution. Upon receipt of such notification, the secretary of the district shall have the certificate of dissolution published once in a newspaper of general circulation, located in the county wherein the registered office of said watershed district is located, and proof of such publication shall be filed in the office of the secretary of state. The effective date of the dissolution, unless otherwise provided, shall be the date on which the proof of publication is filed in the office of the secretary of state, but in no event shall the date of dissolution be a date prior to the date of publication of the certificate of dissolution. A certified copy of said certificate of dissolution of said district or portion thereof shall also be recorded in the office of the register of deeds of each county in which any portion of the dissolved district is located.

**History:** L. 1961, ch. 193, § 21; July 1.

**24-1231. Disposition of funds of totally or partially disorganized district; duties of treasurer.** Any funds of a watershed district which is totally disorganized and dissolved under the provisions of this act shall be apportioned and paid to the townships or cities located within or partly within the watershed district in the proportion which the assessed valuation of property in said watershed district located within the township or city bears to the total assessed valuation of the watershed district, based on equalized assessed valuations for the preceding year. Any funds of any watershed district which is partially disorganized and dissolved by the provisions of this act shall be apportioned and paid to the township or cities located within or partly within the dissolved portion of said watershed district and retained by the remaining portion of said watershed district in the proportions which the assessed valuation of property in the dissolved portion of said watershed district located within the township or city and the assessed value of property in the undissolved portion of said watershed district bear to the total assessed valuation of the watershed district based on equalized assessed valuations for the preceding year. The watershed district treasurer, upon notification of receipt of a certificate of dissolution, shall immediately pay the amounts due each township or city or part thereof located within the district or the dissolved portion of said district to the treasurer of the township or to the city treasurer, as such township or city may be entitled to receive.

**History:** L. 1961, ch. 193, § 22; July 1.

**24-1232. Minutes and records of totally dissolved district filed with county clerk.** The secretary of any watershed district totally disorganized and dissolved under the provisions of this act shall file all minutes and records of said district with the county clerk of the county wherein the registered office of said watershed district is located.

**History:** L. 1961, ch. 193, § 23; July 1.

## VALIDATION OF DISTRICTS CREATED PRIOR TO JULY, 1961

**24-1233. Districts established prior to July 1, 1961; confirmation and validation; procedure.** Whenever any watershed district has heretofore been created and established under the watershed district act and all amendments thereto, the chief engineer shall fix a time for a hearing upon the question of whether the lands within the district so created and established, or a part thereof, are subject to erosion, floodwater or sediment damage or would be benefited by the construction of works for the conservation, development, utilization or disposal of water, and shall give notice thereof at the expense of the district for three consecutive weeks in a newspaper or newspapers of general circulation within the district, the last publication to be at least five days before the day fixed for the hearing.

Such notice need not describe the boundaries of the district as previously created and established but shall state the name or general location thereof and shall state that a hearing will be held by the chief engineer on whether or not the lands within the district so created and established, or a part thereof, are subject to erosion, floodwater or sediment damage or would be benefited by the construction of works for the conservation, development, utilization or disposal of water, shall state the day and hour of the hearing, and that all persons may appear before the chief engineer at such hearing and be heard. If, after such hearing, the chief engineer determines that the lands within the district so created and established, or a part thereof, are subject to erosion, floodwater or sediment damage or would be benefited by the construction of works for the conservation, development, utilization or disposal of water, the public necessity of such district is hereby declared, and the creation and establishment of such district shall be and is hereby ratified, validated and confirmed.

**History:** L. 1961, ch. 193, § 3; July 1.

## **INTERMITTENT CLOSING OF ROADS SUBJECT TO FLOODING**

**24-1234. Intermittent closing of roads within watershed district; county roads; permit application; authority and duties of board of county commissioners; publication and notice.** (a) Upon application of the board of directors of any watershed district, the board of county commissioners of any county is hereby authorized to permit the intermittent closing of any county road located within the boundaries of such watershed district whenever in its judgment it is necessary to do so and when the road will be intermittently subject to inundation by flood waters retained by an approved watershed retention structure.

(b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the board of county commissioners by the watershed district. The application shall specify the road involved and shall request that a permit be granted to the district to allow the intermittent closing of the road.

(c) Upon receipt of such an application, the board of county commissioners shall give notice of the proposed action by publication once each week for two (2) consecutive weeks in a newspaper of general circulation in the county, and such notice shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition to such publication, the board of county commissioners shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notice to the offices of such public utilities or common carriers located within the county, or if no office is located within said county, then to the office of such utilities or common carriers located nearest to said county. Not sooner than three (3) days after the last publication and not sooner than fourteen (14) days after the mailing of such notice, such board may issue its permit with respect to such road.

**History:** L. 1974, ch. 270, § 1; March 8.

**24-1235. Same; township roads; permit application; authority and duties of board of township trustees; publication and notice.** (a) Upon application of the board of directors of any watershed district, the board of trustees of any township is hereby authorized to permit the intermittent closing of any township road located within the boundaries of such watershed district whenever in its judgment it is necessary to do so and when the road will be intermittently subject to inundation by flood waters retained by an approved watershed retention structure.

(b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the board of trustees of the township involved by the watershed district. The application shall specify the road involved and shall request that a permit be granted to the district to allow the intermittent closing of the road.

(c) Upon receipt of such an application, the board of trustees shall give notice of the proposed action by publication once each week for two (2) consecutive weeks in a newspaper of general circulation in the county, and such notice shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition to such publication, the board of trustees shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notice to the offices of such public utilities or common carriers located within the county, or if no office is located within said county, then to the office of such utilities or common carriers located nearest to said county. Not sooner than three (3) days after the last publication and not sooner than fourteen (14) days after the mailing of such notice, such board may issue its permit with respect to such road.

**History:** L. 1974, ch. 270, § 2, March 8.

**24-1236. Same; county bridge and township road, 24-1234 applies; approval by board of township trustees.** If a proposed intermittent closing involves both a county bridge and a township road, then application shall be made to the board of county commissioners, and K.S.A. 24-1234 but not K.S.A. 24-1235 shall apply thereto. The board of county commissioners shall not issue a permit under this section, until it has received a written approval thereof by the board of township trustees involved.

**History:** L. 1974, ch. 270, § 3; March 8.

**24-1237. Same; costs of publication and notice; permit to require road markers.** All costs in connection with the publication and the notice shall be paid by the watershed district. In event the county or township board issues a permit allowing the intermittent closing of the road, then the permit shall contain a provision that the watershed district will cause suitable markers to be installed on the road to advise of the intermittent closing of the road.

**History:** L. 1974, ch. 270, § 4; March 8.

## SURFACE-MINING LAND CONSERVATION AND RECLAMATION ACT

**49-601. Surface-mining land conservation and reclamation; citation of act.** This act shall be known and may be cited as the surface-mining land conservation and reclamation act.

**History:** L. 1994, ch. 197, § 1; July 1.

**49-602. Same; policy statement.** It is the policy of this state to provide for the reclamation and conservation of land affected by surface mining and thereby to preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health, safety and general welfare of the citizens of this state.

**History:** L. 1994, ch. 197, § 2; July 1.

**49-603. Same; definitions.** As used in this act:

(a) "Director" means the executive director of the Kansas department of agriculture division of conservation or a designee.

(b) "Affected land" means the area of land from which overburden has been removed or upon which overburden has been deposited, or both, but shall not include crushing areas, stockpile areas or roads.

(c) "Commission" means the state conservation commission.

(d) "Mine" means any underground or surface mine developed and operated for the purpose of extracting rocks, minerals and industrial materials, other than coal, oil and gas. Mine does not include borrow areas created for construction purposes.

(e) "Operator" means any person who engages in surface mining or operation of an underground mine or mines.

(f) "Overburden" means all of the earth and other materials which lie above the natural deposits of material being mined or to be mined.

(g) "Peak" means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(h) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining.

(i) "Ridge" means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(j) (1) "Surface mining" means the mining of material, except for coal, oil and gas, for sale or for processing or for consumption in the regular operation of a business by removing the overburden lying above natural deposits and mining directly from the natural deposits exposed, or by mining directly from deposits lying exposed in their natural state, or the surface effects of underground mining. Surface mining shall include dredge operations lying outside the high banks of streams and rivers.

(2) Removal of overburden and mining of limited amounts of any materials shall not be considered surface mining when done only for the purpose and to the extent necessary to determine the location, quantity or quality of the natural deposit, if the materials removed during exploratory excavation or mining are not sold, processed for sale or consumed in the regular operation of a business.

(k) "Topsoil" means the natural medium located at the land surface with favorable characteristics for growth of vegetation, which is normally the A or B, or both, soil horizon layers of the four soil horizons.

(l) "Active site" means a site where surface mining is being conducted.

(m) "Inactive site" means a site where surface mining is not being conducted but where overburden has been disturbed in the past for the purpose of conducting surface mining and an operator anticipates conducting further surface mining operations in the future.

(n) "Materials" means natural deposits of gypsum, clay, stone, sandstone, sand, shale, silt, gravel, volcanic ash or any other minerals of commercial value found on or in the earth with the exception of coal, oil and gas and those located within cut and fill portions of road rights-of-way.

(o) "Reclamation" means the reconditioning of the area of land affected by surface mining to a usable condition for agricultural, recreational or other use.

(p) "Stockpile" means the finished products of the mining of gypsum, clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash or other minerals and removal from its natural position and deposited elsewhere for future use in the normal operation as a business.

(q) "Underground mining" means the extraction of rocks, minerals and industrial materials, other than coal, oil and gas, from the earth by developing entries or shafts from the surface to the seam or deposit before recovering the product by underground extraction methods.

(r) "Person" means any individual, firm, partnership, corporation, government or other entity.

(s) "Division" or "Kansas department of agriculture division of conservation" means the agency established by K.S.A. 2013 Supp. 74-5,126, and amendments thereto.

**History:** L. 1994, ch. 197, § 3; L. 2012, ch. 140, § 132; July 1.

**49-604. Same; application of act.** K.S.A. 49-602 through 49-624 shall not apply to:

(a) Affected land mined prior to the effective date of this act and shall apply only to those areas of land affected after the effective date of this act;

(b) in any way affect or control the stockpiling, method of stockpiling or mining from stockpiles of gypsum, clay, shale, stone, sandstone, sand, silt, gravel, volcanic ash or other minerals which are consumed in the regular operation of the business;

(c) operations which involve the removal of sand and gravel from within streams and are subject to the provisions of K.S.A. 82a-301 through 82a-305a, and amendments thereto; or

(d) operations of an operator whose affected lands do not exceed an aggregate of 2 acres.

**History:** L. 1994, ch. 197, § 4; July 1.

**49-605. Same; license required; application and fees; duration of license; validity, when.** (a) No person shall engage in surface mining or operation of an underground mine or mines, as defined by this act without first obtaining a license from the director.

(b) Licenses shall be issued upon application submitted on a form provided by the director and shall be accompanied by a fee of \$300. Each applicant shall be required to furnish on the form information necessary to identify the applicant. Licenses shall expire one year from the date of issuance and shall be renewed by the director upon application submitted within 30 days prior to the expiration date and accompanied by the renewal fee established by the director under K.S.A. 49-623.

(c) A license to mine is only valid when approved by the commission and acknowledged by a certificate which has been signed by the director and lists the operator and the assigned license number.

**History:** L. 1994, ch. 197, § 5; July 1.

**49-606. Same; denial, suspension or revocation of license; proceedings.** (a) The director, with the approval of the commission, may deny issuance or renewal of a license for repeated or willful violation of the provisions of this act or for failure to comply with any provision of a reclamation plan.

(b) The director, with the approval of the commission, may suspend or revoke a license for repeated or willful violation of any of the provisions of this act or for failure to comply with any provision of a reclamation plan. Proceedings for the suspension or revocation of a license pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act by the director or a presiding officer from the office of administrative hearings.

**History:** L. 1994, ch. 197, § 6; L. 2004, ch. 145, § 16; July 1, 2008.

**49-607. Same; registration of mining site, when; application, contents; fees; signing of site; unlawful acts.** (a) At least 30 calendar days before commencement of mining or removal of overburden at a surface mining site not previously registered, an operator engaged in surface mining in this state shall register the site with the director. Application for registration shall be made upon a form provided by the director. All site registrations shall expire one year from the date of issuance. Application for renewal of registration shall be on a form provided by the director. The application shall include:

(1) A description of the tract or tracts of land where the site is located and the estimated number of acres at the site to be affected by surface mining;

(2) if the application is for original registration, a reclamation plan detailing the postmining land use, how the final reclamation will be achieved and illustrating the proposed final topography;

(3) if the application is for renewal and changes have been made in the reclamation plan last filed, an updated reclamation plan;

(4) if the application is for renewal and no changes have been made in the reclamation plan last filed, a statement of that fact;

(5) the description shall include the section, township, range and county in which the land is located and shall otherwise describe the land with sufficient certainty to determine the location and to distinguish the land to be registered from other lands;

(6) a statement explaining the authority of the applicant's legal right to operate a mine on the land; and

(7) proof of compliance with all applicable zoning codes or rules and regulations and all applicable local, state and federal permits, except those contingent upon registration under the provisions of this act.

(b) The application shall be accompanied by the application fee and the registration or renewal fee established by the director under K.S.A. 49-623.

(c) A mine site registered pursuant to this section or K.S.A. 49-616 shall have, at the primary entrance to the mine site, a clearly visible sign which sets forth the name, business address and phone number of the operator. Failure to post and maintain a sign as required by this subsection, within 30 days after notice from the director, invalidates the registration.

(d) A person who falsifies information required to be submitted under this section shall be guilty of a class A nonperson misdemeanor.

**History:** L. 1994, ch. 197, § 7; July 1.

**49-608. Same; bond or security to accompany registration application; registration of site and authority to operate mine.** The application for registration shall be accompanied by a bond or security conforming to the requirements of K.S.A. 49-615 and 49-616. After ascertaining that the applicant is licensed under K.S.A. 49-605 and is not in violation of this act with respect to any site previously registered with the director, the director shall register the mine site and shall issue the applicant written authorization to operate a mine.

**History:** L. 1994, ch. 197, § 8; July 1.

**49-609. Same; amendment or cancellation of registration, applications; procedures and requirements.**

(a) An operator may at any time apply for amendment or cancellation of registration of any site. The application for amendment or cancellation of registration shall be submitted by the operator on a form provided by the director and shall identify as required under K.S.A. 49-607 the tract or tracts of land to be added to or removed from registration.

(b) If the application is for an increase in the area of a registered site, the application shall be processed in the same manner as an application for original registration.

(c) If the application is to cancel registration of any or all of the unmined part of a site, the director, after ascertaining that no overburden has been disturbed or deposited on the land, shall order release of the bond or the security posted on the land being removed from registration and cancel or amend the operator's written authorization to conduct surface mining on the site.

(d) Land where overburden has been disturbed or deposited shall substantially meet the criteria established by the reclamation plan submitted with the registration application before the land shall be removed from registration or released from bond or security under this section.

**History:** L. 1994, ch. 197, § 9; July 1.

**49-610. Same; transfer of site control responsibility; application.** (a) If control of an active site or the right to conduct any future mining at an inactive site is acquired by an operator other than the operator holding authorization to conduct surface mining on the site, the new operator, within 15 days, shall apply for registration of the site in the new operator's name. The application shall be made and processed as provided under K.S.A. 49-607 and 49-608. The former operator's bond or security shall not be released until the new operator's bond or security has been accepted by the director.

(b) The director may establish procedures for transferring the responsibility for reclamation of a mine site to a state agency or political subdivision which intends to use the site for other purposes. The director, with agreement from the receiving agency or subdivision to complete adequate reclamation, may approve the transfer of responsibility, release the bond or security, and terminate or amend the operator's authorization to conduct surface mining on the site.

**History:** L. 1994, ch. 197, § 10; July 1.

**49-611. Same; conduct and activities required after completion of mining operations; release of bond or security.** (a) An operator authorized under this act to operate a mine, after completion of mining operations and within the time specified in K.S.A. 49-613, shall:

(1) Grade affected lands except for impoundments and pit floors to slopes no steeper than one foot vertical rise for each three feet of horizontal distance. Where the original topography of the affected land was steeper than one foot of vertical rise for each three feet of horizontal distance, the affected lands may be graded to blend with the surrounding terrain. The grading of high banks of sand pits and highwalls may be modified or exempted by the director.

(2) Provide for the vegetation of the affected lands, except for impoundments, pit floors, and highwalls, as approved by the director before the release of the bond as provided in K.S.A. 49-616.

(b) Notwithstanding subsection (a), overburden piles where disposition has not occurred or will not occur for a period of 12 months shall be stabilized.

(c) Topsoil that is a part of overburden shall not be buried or destroyed in the process of mining.

(d) The director, with concurrence of the commission, may grant a variance from the requirements of subsections (a) and (b).

(e) A bond or security posted under this act to assure reclamation of affected lands shall not be released until all reclamation work required by this section has been performed in accordance with the provisions of this act, except when a replacement bond or security is posted by a new operator or responsibility is transferred under K.S.A. 49-610.

**History:** L. 1994, ch. 197, § 11; July 1.

**49-612. Same; periodic reports, contents; report after completion of mining operation.** (a) An operator shall file with the director a periodic report for each site under registration. The report shall make reference to the most recent registration of the mine site and shall show:

(1) The location and extent of all surface land area on the mine site affected by mining during the period covered by the report.



(2) The extent to which removal of mineral products from all or any part of the affected land has been completed.

(b) A report shall also be filed within 90 days after completion of all surface mining operations at the site regardless of the date of the last preceding report. Forms for the filing of periodic reports required by this section shall be provided by the director.

**History:** L. 1994, ch. 197, § 12; July 1.

**49-613. Same; reclamation of affected lands, when; extensions; inspections; approval; release of bond or security.** (a) An operator shall reclaim affected lands within a period not to exceed three years after the filing of the report required under subsection (b) of K.S.A. 49-612 indicating the mining of any part of a site has been completed.

(b) For certain postmining land uses, such as a sanitary land fill, the director, with the approval of the commission, may allow an extended reclamation period.

(c) An operator, upon completion of any reclamation work required by K.S.A. 49-611, shall apply to the director in writing for approval of the work. The director, within a reasonable time as determined by the commission, shall inspect the completed reclamation work. Upon determination by the director that the operator has satisfactorily completed all required reclamation work on the land included in the application, the commission shall release the bond or security on the reclaimed land, shall remove the land from registration, and shall terminate or amend as necessary the operator's authorization to conduct surface mining on the site.

(d) Periodic inspections may be conducted by the director or the director's designee, to ensure that the operator is following the reclamation plan.

**History:** L. 1994, ch. 197, § 13; July 1.

**49-614. Same; extension of time for reclamation of affected lands.** The time for completion of reclamation work may be extended upon presentation by the operator of evidence satisfactory to the director that reclamation of affected land cannot be completed within the time specified by K.S.A. 49-613 without unreasonably impeding removal of material products from other parts of an active site or future removal of material products from an inactive site.

**History:** L. 1994, ch. 197, § 14; July 1.

**49-615. Same; bonds or other security; requirements; exceptions.** (a) A bond filed with the director by an operator pursuant to this act shall be in a form prescribed by the director, payable to the state of Kansas, and conditioned upon faithful performance by the operator of all requirements of this act and all rules and regulations adopted by the director pursuant to this act. The bond shall be signed by the operator as principal and by a corporate surety licensed to do business in Kansas as surety. In lieu of a bond, the operator may deposit cash, certificates of deposit or government securities with the director on the same conditions as prescribed by this section for filing of bonds.

(b) The amount of the bond or other security required to be filed with each application for registration of a surface mining site, or to increase the area of affected land previously registered as required under K.S.A. 49-609, shall be a minimum of \$250 per acre and shall not exceed a maximum of \$1,500 per acre.

(c) Any political subdivision of the state of Kansas which engages or intends to engage in surface mining shall meet all requirements of this act except the subdivision shall not be required to post bond or security on registered land.

(d) The director may waive or reduce the amount of the bond or security required under this act to the extent that the director determines that the operator has sufficient bond or security on file with the city or county where the site or affected land is located.

**History:** L. 1994, ch. 197, § 15; July 1.

**49-616. Same; single bond for multiple sites.** Any operator who registers with the director two or more surface mining sites may elect, at the time the second or any subsequent site is registered, to post a single bond in lieu of separate bonds on each site. The amount of a single bond on two or more surface mining sites may be increased or decreased from time to time in accordance with K.S.A. 49-609, 49-613 and 49-615. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the director.

**History:** L. 1994, ch. 197, § 16; July 1.

**49-617. Same; cancellation of bonds by surety prohibited; substitute bond required, when.** No bond filed with the director by an operator pursuant to this act may be canceled by the surety without at least 90 days' notice to the director. If the license to do business in Kansas of any surety of a bond filed with the director is suspended or revoked, the operator, within 90 days after receiving notice thereof from the director, shall substitute for the surety a

corporate surety licensed to do business in Kansas. Upon failure of the operator to make substitution of surety as herein provided, the director shall have the right to suspend the operator's authorization to conduct surface mining on the site or sites covered by the bond until substitution has been made. The Kansas commissioner of insurance shall notify the director whenever the license of any surety to do business in Kansas is suspended or revoked.

**History:** L. 1994, ch. 197, § 17; July 1.

**49-618. Same; inspections by director of sites; notice of violations; corrective measures.** The director or the director's designee, when accompanied by the operator or operator's designee during regular business hours, may inspect any lands on which any operator is authorized to operate a mine for the purpose of determining whether the operator is or has been complying with the provisions of this act. The director shall give written notice to any operator who violates any of the provisions of this act or any rules and regulations adopted by the director pursuant to this act. If corrective measures approved by the director are not commenced within 90 days, the violation shall be referred to the commission. The operator shall be notified in writing of the referral.

**History:** L. 1994, ch. 197, § 18; July 1.

**49-619. Same; violation hearings, conduct; bond forfeiture proceedings; duties of attorney general.**

Upon receipt of the referral, the commission shall schedule a hearing on the violation by the operator within 30 days after the date of receipt. The commission, upon written request, shall afford the operator the right to appear before the commission at the hearing. The operator shall have the right to counsel, and may produce witnesses and present statements, documents and other information with respect to the alleged violation. If the commission determines that the operator is in violation of this act or of any rule and regulation adopted by the director pursuant to this act, the commission shall request the attorney general to institute bond forfeiture proceedings.

**History:** L. 1994, ch. 197, § 19; July 1.

**49-620. Same; bond forfeiture proceedings; satisfaction of operator obligation to reclaim affected lands; use of proceeds to reclaim affected lands.** The attorney general, upon request of the commission, shall institute proceedings for forfeiture of the bond posted by an operator to guarantee reclamation of a site where the operator is in violation of any of the provisions of this act or any rule and regulation adopted by the director pursuant to this act. Forfeiture of the operator's bond shall fully satisfy all obligations of the operator to reclaim affected land covered by the bond. The director shall have the power to reclaim, as required by K.S.A. 49-611, any surface mined land with respect to which a bond has been forfeited, using the proceeds of the forfeiture to pay for the necessary reclamation work.

**History:** L. 1994, ch. 197, § 20; July 1.

**49-621. Same; civil penalties; amount; procedures.** (a) The director, upon finding that the operator has failed to comply with any provision of this act, any provision of a reclamation plan or any condition of a license or site registration with which the operator is required to comply pursuant to this act, may impose upon the operator a civil penalty not exceeding \$1,000 for each day of noncompliance.

(b) All civil penalties assessed pursuant to this section shall be due and payable within 35 days after written notice of the imposition of a civil penalty has been served upon whom the penalty is being imposed, unless a longer period of time is granted by the director or unless the operator appeals the assessment as provided in this section.

(c) No civil penalty shall be imposed under this section except upon the written order of the director or the director's designee to the operator upon whom the penalty is to be imposed, stating the nature of the violation, the penalty imposed and the right of the operator upon whom the penalty is imposed to appeal to the director for a hearing on the matter. An operator upon whom a civil penalty has been imposed may appeal, within 15 days after service of the order imposing the civil penalty, to the director. If appealed, a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. The decision of the director shall be final unless review is sought under subsection (d).

(d) Any action of the director pursuant to this section is subject to review in accordance with the Kansas judicial review act.

**History:** L. 1994, ch. 197, § 21; L. 2010, ch. 17, § 96; July 1.

**49-622. Same; land reclamation fund established; deposits and expenditures.** (a) There is hereby created within the state treasury the land reclamation fund.

(b) The director shall remit all moneys collected from fees and civil penalties imposed pursuant to this act 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 land reclamation fund.

(c) All costs of administering the provisions of this act shall be paid from moneys credited or transferred to the land reclamation fund pursuant to this section. Expenditures from the 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 director.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the land reclamation fund interest earnings based on:

- (1) The average daily balance of moneys in the land reclamation fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

**History:** L. 1994, ch. 197, § 22; L. 1996, ch. 253, § 8; L. 2001, ch. 5, § 187; July 1.

**49-623. Same; rules and regulations; fee amount determination.** (a) The director, with the approval of the commission, shall adopt such rules and regulations as necessary to administer and enforce the provisions of this act.

(b) The commission shall determine annually the amount necessary to carry out and enforce the provisions of this act for the next ensuing fiscal year and shall recommend to the director such license renewal, registration application, registration and registration renewal fees as the commission determines necessary for that purpose. The director shall adopt such fees by rule and regulation.

(c) Fees for license renewal, registration and registration renewal shall be based on an operator's acres of affected land or the tonnage of materials extracted by the operator during the preceding license year, or a combination thereof.

(d) Political subdivisions of the state shall be exempt from all fees imposed under this act.

**History:** L. 1994, ch. 197, § 23; July 1.

**49-624. Same; legal services.** The commission may request from the attorney general such legal services as necessary to enforce and administer this act. The commission may employ such other attorneys as necessary for such purpose, but all expenses of employing such attorneys shall be paid from the land reclamation fund.

**History:** L. 1994, ch. 197, § 24; July 1.

## NON-POINT SOURCE POLLUTION CONTROL STATUTES

**75-5657. Environmental protection grant program; contracts; plans, approval; rules and regulations.** (a) On and after January 1, 1990, the state of Kansas shall provide state environmental protection grants to local health departments or other local entities for the purpose of developing and implementing environmental protection plans and programs. A local entity or the Kansas department of health and environment may enter into contracts to develop, implement or carry out any elements of the local environmental protection plan or program.

(b) The governing board of any local health department or other local entity desiring to receive a state environmental protection grant pursuant to this act shall indicate its intent to develop an environmental protection plan to implement the environmental protection strategy of the state water plan. An environmental protection plan should include, but not be limited to, the sanitary code, subdivision water and wastewater plan, solid waste management plan, hazardous waste management plan, public water supply protection plan and nonpoint source pollution control plan.

(c) A local health department or other local entity may request certification by the secretary that it has an approved environmental protection plan and is prepared to assume a program of permitting, inspection, compliance and enforcement of specified elements of the department's environmental protection plan. The secretary shall provide guidance on achieving environmental results for certification of local programs and audit annually each local program based on achievement of environmental results.

(d) The secretary of health and environment may adopt such rules and regulations as necessary for the administration of this section.

**History:** L. 1989, ch. 186, § 35; May 18.

## WATER RIGHTS STATUTE

**82a-220. Grant of streambank easements by director of Kansas water office; definitions; authority; notice; filing; rules and regulations.** (a) As used in this act:

(1) "Conservation project" means any project or activity that the director of the Kansas water office determines will assist in restoring, protecting, rehabilitating, improving, sustaining or maintaining the banks of the Arkansas, Kansas or Missouri rivers from the effects of erosion;

(2) "director" means the director of the Kansas water office; and

(3) "state property" means real property currently owned in full or in part by the state in the Arkansas, Kansas or Missouri rivers in Kansas, in and along the bed of the river to the ordinary high water mark on the banks of such rivers.

(b) (1) The director is hereby authorized to negotiate and grant easements on state property for construction and maintenance of conservation projects with cooperating landowners in such projects for the expected life of the

project and with such terms and conditions as the director, after consultation with the Kansas department of agriculture, the Kansas department of health and environment, the Kansas department of wildlife and parks, parks and tourism and the Kansas department of agriculture division of conservation, may deem appropriate.

(2) Notice of the easement shall be given to the county or counties in which the easement is proposed and to any municipality or other governmental entity that, in the opinion of the director, holds a riparian interest in the river and may have an interest in the project or results thereof. Those persons or entities receiving notice shall have a period, not to exceed 30 days, to provide comment on the proposed easement to the director.

(3) In the event such an easement is proposed to be granted on state property owned or managed by any other agency of the state, the director shall give notice of the proposed easement and project to that agency and shall jointly negotiate any easement so granted.

(4) A copy of all easements so entered shall be filed by the director with the office of the secretary of state and the office of the register of deeds for the county or counties in which the easement is located.

(c) The director shall adopt rules and regulations necessary to carry out the provisions of this act.

**History:** L. 2011, ch. 29, § 1; July 1; L. 2012, ch. 140, sec. 133; July 1.

**82a-326. Water projects environmental coordination act; definitions.** When used in this act:

(a) "Water development project" means any project or plan which requires a permit pursuant to K.S.A. 24-126, 24-1213, 82a-301 et seq., and amendments thereto, or the multipurpose small lakes program act;

(b) "environmental review agencies" means the:

- (1) Kansas department of wildlife, parks and tourism;
- (2) Kansas forest service;
- (3) state biological survey;
- (4) Kansas department of health and environment;
- (5) state historical society;
- (6) Kansas department of agriculture division of conservation; and
- (7) state corporation commission.

**History:** L. 1987, ch. 400, § 2; L. 1989, ch. 118, § 192; L. 1991, ch. 290, § 10; L. 1997, ch. 49, § 5; L. 2012, ch. 140, § 134; L. 2013, ch. 111, § 8; July 1.

**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; L. 2009, ch. 65, § 3; July 1.

**82a-903. Same; formulation of state water plan; cooperation of state water agencies; advice of general public.** In accordance with the policies and long-range goals and objectives established by the legislature, the office shall formulate on a continuing basis a comprehensive state water plan for the management, conservation and development of the water resources of the state. Such state water plan shall include sections corresponding with water planning areas as determined by the office. The Kansas water office and the Kansas water authority shall seek advice from the general public and from committees consisting of individuals with knowledge of and interest in water issues in the water planning areas. The plan shall set forth the recommendations of the office for the management, conservation and development of the water resources of the state, including the general location, character, and

extent of such existing and proposed projects, programs, and facilities as are necessary or desirable in the judgment of the office to accomplish such policies, goals and objectives. The plan shall specify standards for operation and management of such projects, programs, and facilities as are necessary or desirable. The plan shall be formulated and used for the general purpose of accomplishing the coordinated management, conservation and development of the water resources of the state. The division of water resources of the state board of agriculture, state geological survey, the division of environment of the department of health and environment, department of wildlife, parks and tourism, Kansas department of agriculture division of conservation and all other interested state agencies shall cooperate with the office in formulation of such plan.

**History:** L. 1963, ch. 514, § 3; L. 1975, ch. 462, § 129; L. 1981, ch. 398, § 3; L. 1984, ch. 379, § 2; L. 1985, ch. 340, § 1; L. 1989, ch. 118, § 193; July 1; L. 2012, ch. 140, sec. 135; July 1.

**82a-951. State water plan fund established; expenditures from fund; reports accounting for expenditures from fund.** (a) On and after July 1, 1989, there is hereby created, in the state treasury, the state water plan fund. All moneys in the state water plan fund shall be expended in accordance with appropriations acts for implementation of the state water plan formulated pursuant to K.S.A. 82a-903 *et seq.* and amendments thereto. Such moneys shall be used only for the establishment and implementation of water-related projects or programs, and related technical assistance, and shall not be used for:

(1) Replacing full time equivalent positions of any state agency; or

(2) recreational projects which do not meet one or more of the long-range goals, objectives and considerations set forth in the state water resource planning act.

(b) On or before December 1 of each year, the Kansas water authority shall submit to the governor and the legislature a report setting out:

(1) An account of all moneys expended from the state water plan fund during such fiscal year; and

(2) a five-year capital development plan for state water plan projects.

**History:** L. 1989, ch. 186, § 34; May 18.

## Multipurpose Small Lakes Program Statutes

**82a-1601. Citation of act.** This act shall be known and may be cited as the "multipurpose small lakes program act."

**History:** L. 1985, ch. 342, § 1; July 1.

**82a-1602. Multipurpose small lakes program established; duties of state conservation commission; rules and regulations.** In order to provide public water supply storage and water related recreational facilities in the state there is hereby established a multipurpose small lakes program. The program shall be administered by the Kansas department of agriculture division of conservation. Except as otherwise provided by this act, the Kansas department of agriculture division of conservation, with the approval of the state conservation commission shall adopt all rules and regulations necessary to implement the provisions of this act.

**History:** L. 1985, ch. 342, § 2; L. 2001, ch. 71, § 1; L. 2012, ch. 140, § 136; July 1.

**82a-1603. Definitions.** When used in this act:

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

(b) "Class I funded project" means a proposed new project or renovation of an existing project located within the boundaries of an organized watershed district which is receiving or is eligible to receive financial participation from the Kansas department of agriculture division of conservation for the flood control storage portion of the project.

(c) "Class II funded project" means a proposed new project or renovation of an existing project which is receiving or is eligible to receive financial participation from the federal government.

(d) "Class III funded project" means a proposed new project or renovation of an existing project located outside the boundaries of an organized watershed district which is not receiving or is not eligible to receive financial participation from the Kansas department of agriculture division of conservation or the federal government except as provided in K.S.A. 82a-1606, and amendments thereto.

(e) "Flood control storage" means storage space in reservoirs to hold flood waters.

(f) "Future use public water supply storage" means storage space which the Kansas water office determines will be needed within the next 20 years for use by public water supply users in an area but for which there is no current sponsor.

(g) "General plan" means a preliminary engineering report describing the characteristics of the project area, the nature and methods of dealing with the soil and water problems within the project area, and the projects

proposed to be undertaken by the sponsor within the project area. Such plan shall include maps, descriptions and other data as may be necessary for the location, identification and establishment of the character of the work to be undertaken; a cost-benefit analysis of alternatives to the project, including but not limited to, nonstructural flood control options and water conservation and reuse to reduce need for new water supply storage; and any other data and information as the chief engineer may require.

(h) "Land right" means real property as that term is defined by the laws of the state of Kansas and all rights thereto and interest therein and shall include any road, highway, bridge, street, easement or other right-of-way thereon.

(i) "Multipurpose small lake project" means a dam and lake containing:

(1) flood control storage; and

(2) either public water supply storage or recreation features or both.

(j) "Public water supply" means a water supply for municipal, industrial or domestic use.

(k) "Public water supply storage" means storage of water for municipal, industrial or domestic use.

(l) "Recreation feature" means water storage and related facilities for activities such as swimming, fishing, boating, camping or other related activities.

(m) "Renovation" means repair or restoration of an existing lake which contains water storage space for use as a public water supply and which has either recreational purposes or flood control purposes, or both.

(n) "Sponsor" means:

(1) Any political subdivision of the state which has the power of taxation and the right of eminent domain; (2) any public wholesale water supply district; or

(3) any rural water district.

(o) "Water user" means any city, rural water district, wholesale water district or any other political subdivision of the state which is in the business of furnishing municipal or industrial water to the public.

**History:** L. 1985, ch. 342, § 3; L. 1989, ch. 5, § 5; L. 1991, ch. 290, § 4; L. 2001, ch. 71, § 2; L. 2004, ch. 101, § 153; July 1; L. 2012, ch. 140, sec. 137; July 1.

**82a-1604. State participation in class I multipurpose small lake project; general plan required; duties of water office; duties of sponsor; costs; sale of water rights.** (a) The state may participate with a sponsor in the development, construction or renovation of a class I multipurpose small lake project if the sponsor has a general plan which has been submitted to and approved by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-1214, and amendments thereto. If the Kansas water office determines that additional public water supply storage shall be needed in that area of the state within 20 years from the time such project is to be completed and a water user is not available to finance public water supply storage, the state may include future use public water supply storage in the project. The Kansas water office shall apply for a water appropriation right sufficient to insure a dependable yield from the public water supply storage. The Kansas water office shall be exempt from all applicable fees imposed pursuant to K.S.A. 82a-701 *et seq.*, and amendments thereto, for such applications. The Kansas water office shall have authority to adopt rules and regulations relative to the inclusion of public water supply storage in proposed projects under this act and the disposition of state-owned water rights and associated public water supply storage space in such projects.

(b) The sponsor of such class I project shall be responsible for acquiring land rights and for the costs of operation and maintenance of such project. The state may provide up to 50% of the engineering and construction costs and up to 50% of the costs of land rights associated with recreation features. Subject to the provisions of subsections (a) and (c), the state may pay up to 100% of the engineering and construction costs of flood control and public water supply storage. All other costs of such project, including land, construction, operation and maintenance shall be paid by the sponsor.

(c) The state shall not participate in the costs of public water supply storage in a renovation project unless the Kansas water office determines that renovation is the most cost effective alternative for such storage. The state shall be authorized to pay only up to 50% of the engineering and construction costs of public water supply storage in such a renovation project.

(d) The Kansas water office may recover the state's costs incurred in providing public water supply storage in such class I project, and interest on such costs, by selling such storage and the associated water rights. Interest on such costs shall be computed at a rate per annum which is equal to the greater of: (1) The average rate of interest earned the past calendar year on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board, less 5%; or (2) four percent.

**History:** L. 1985, ch. 342, § 4; L. 1991, ch. 290, § 5; L. 2001, ch. 71, § 3; July 1.

**82a-1605. State participation in class II multipurpose small lake project; general plan required; duties of water office; duties of sponsor; costs; sale of water rights.** (a) The state may participate with a sponsor in the development, construction or renovation of a class II multipurpose small lake project if the sponsor has a general plan which has been submitted to and approved by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-1214, and amendments thereto. If the Kansas water office determines that additional public water supply storage shall be needed in that area of the state within 20 years from the time such

project is to be completed and a water user is not available to finance public water supply storage, the state may include future use public water supply storage in the project. The Kansas water office shall apply for a water appropriation right sufficient to insure a dependable yield from public water supply storage. The Kansas water office shall be exempt from all applicable fees imposed pursuant to K.S.A. 82a-701 *et seq.*, and amendments thereto, for such applications. The Kansas water office shall have authority to adopt rules and regulations relative to the inclusion of public water supply storage in proposed projects under this act and the disposition of state-owned water rights and associated public water supply storage space in such projects.

(b) In a class II project, the state may assume initial financial obligations for public water supply storage in watersheds by entering into long-term contracts with the federal government. In order to provide security to the federal government, the state may grant assignments of water rights, either appropriation rights or water reservation rights; assignments of rights under existing or prospective water purchase contracts; assignments, mortgages or other transfers of interests in real property held by the state and devoted to the specific small lake project for which security is sought; or may provide other security that is permissible under state law and acceptable by the federal government. Instead of contracting to repay costs under long-term contracts, the state may pay all of the required costs of the public water supply storage in a lump sum.

(c) The sponsor of such class II project shall be responsible for acquiring land rights and for the costs of operation and maintenance of such project. The state or federal government may provide up to 50% of the engineering and construction costs and up to 50% of the costs of land rights associated with recreation features. Subject to the provisions of subsection (d), the state may pay up to 100% of the engineering and construction costs of flood control and public water supply storage. All other costs of such project, including land, construction, operation and maintenance shall be paid by the sponsor.

(d) The state shall not participate in the costs of public water supply storage in a renovation project unless the Kansas water office determines that renovation is the most cost effective alternative for such storage. The state shall be authorized to pay only up to 50% of the engineering and construction costs of public water supply storage in such a renovation project.

(e) The Kansas water office may recover the state's costs incurred in providing public water supply storage in such class II project, and interest on such costs, by selling such storage and the associated water rights. Interest on such costs shall be computed at a rate per annum which is equal to the greater of: (1) The average rate of interest earned the past calendar year on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board, less 5%; or (2) four percent.

**History:** L. 1985, ch. 342, § 5; L. 1991, ch. 290, § 6; L. 2001, ch. 71, § 4; July 1.

**82a-1606. State participation in class III multipurpose small lake project; general plan required; duties of water office; duties of sponsor; costs; sale of water rights.** (a) The state may participate with a sponsor in the development, construction or renovation of a class III multipurpose small lake project if the sponsor has a general plan which has been submitted to and approved by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-1214, and amendments thereto. If public water supply storage is included in the project, the sponsor of such class III project shall pay for 100% of the costs associated with the public water supply storage portion of such project unless the Kansas water office determines that additional public water supply storage shall be needed in that area of the state within 20 years from the time such project is to be completed and a sponsor is not available to finance 100% of the costs associated with the public water supply storage, the state may participate in the future use public water supply storage costs of the project. If the state participates in the public water supply storage costs, the Kansas water office shall apply for a water appropriation right sufficient to insure a dependable yield from public water supply storage. The Kansas water office shall be exempt from all applicable fees imposed pursuant to K.S.A. 82a-701 *et seq.*, and amendments thereto, for such applications. The Kansas water office shall have authority to adopt rules and regulations relative to the inclusion of public water supply storage in proposed projects under this act and the disposition of state-owned water rights and associated public water supply storage space in such projects.

(b) The sponsor of such class III project shall be responsible for acquiring land rights and for the costs of operation and maintenance of the project. The state may provide up to 50% of the engineering and construction costs and up to 50% of the costs of land rights associated with recreation features. Subject to the provisions of subsection (c), the state may pay up to 100% of the engineering and construction costs of flood control storage and public water supply storage. All other costs of such project, including land, construction, operation and maintenance, shall be paid by the sponsor.

(c) The state shall not participate in the costs of public water supply storage in a renovation project unless the Kansas water office determines that renovation is the most cost effective alternative for such storage. The state shall be authorized to pay only up to 50% of the engineering and construction costs of public water supply storage in such a renovation project.

(d) The Kansas water office may recover the state's costs incurred in providing public water supply storage in such class III project, and interest on such costs, by selling such storage and the associated water rights. Interest on such costs shall be computed at a rate per annum which is equal to the greater of: (1) The average rate of interest earned the past calendar year on repurchase agreements of less than 30 days' duration entered

into by the pooled money investment board, less 5%; or (2) four percent.

**History:** L. 1985, ch. 342, § 6; L. 1991, ch. 290, § 7; L. 2001, ch. 71, § 5; July 1.

**82a-1607. Application for participation in program; review and approval by state conservation commission; appropriation of funds.** Sponsors shall apply to the state conservation commission for participation in the multipurpose small lakes program. The review and approval process of the Kansas department of agriculture division of conservation shall be established by rules and regulations which shall be consistent with the state water plan. Following review, the Kansas department of agriculture division of conservation with the approval of the state conservation commission shall request appropriations for specific projects from the legislature. Any funds appropriated to carry out the provisions of this act shall be administered by the Kansas department of agriculture division of conservation.

**History:** L. 1985, ch. 342, § 7; L. 2012, ch. 140, sec 138; July 1.

**82a-1608. Local nonpoint source management plan required; water conservation plan.** (a) If state financial participation is approved for a multipurpose small lake project, the Kansas department of agriculture division of conservation shall require a local nonpoint source management plan for the watersheds draining into the proposed lake. Such plan shall be submitted to and approved by the Kansas department of agriculture division of conservation before any state funds may be used for the proposed project.

(b) If public water supply storage is included in such a project, the sponsor shall have a water conservation plan which has been submitted to and approved by the chief engineer.

(c) Any funding provided by the state shall include money necessary to pay for cost-sharing expenses incurred for nonpoint source management pursuant to the plan required by subsection (a).

**History:** L. 1985, ch. 342, § 8; L. 1991, ch. 290, § 8; July 1; L. 2012, ch. 140, sec. 139; July 1.

**82a-1609. Cost-benefit analysis of alternatives required prior to request for appropriation; state agency and public review and comment; duties of state conservation commissioner.** (a) Before the Kansas department of agriculture division of conservation requests any appropriation for any multipurpose small lake project, the chief engineer shall review the cost-benefit analysis of alternatives to the project and shall:

(1) Submit the general plan to the appropriate state environmental review agencies pursuant to K.S.A. 82a-325, 82a-326 and 82a-327, and amendments thereto, for review and comment as provided by those sections; and

(2) publish notice of the review in the Kansas register, make the general plan available to the public and receive public comments on the proposed project for a period of 30 days following publication of the notice.

(b) If, in the review, a reasonable, less expensive alternative to the proposed project is identified and the Kansas department of agriculture division of conservation nevertheless requests an appropriation for the proposed project, the division shall submit its reasons for proceeding with participation in the project, together with substantiating documentation, with the budget estimate and program statement for such project.

(c) This section shall be part of and supplemental to the multipurpose small lakes program act.

**History:** L. 1991, ch. 290, § 9; L. 2012, ch. 140, sec. 140; July 1.

## BENEFIT AREA STATUTE

**82a-1702. Same; state financial assistance, conditions.** (a) The state shall provide financial assistance to certain public corporations for part of the costs or reimbursement of part of the costs of installation of water development projects, which derive general benefits to the state as a whole, or to a section thereof beyond the boundaries of such public corporation.

(b) Any public corporation shall be eligible for state financial assistance for a part of the costs it becomes actually and legally obligated to pay for all lands, easements, and rights-of-way for the water development projects in the event the state conservation commission shall find that:

(1) such public corporation has made application for approval of such financial assistance with the Kansas department of agriculture division of conservation in such form and manner as the Kansas department of agriculture division of conservation may require, which application each public corporation is hereby authorized to make;

(2) such works will confer general flood control benefits beyond the boundaries of such public corporation in excess of 20% of the total flood control benefits of the works;

(3) such works are consistent with the state water plan;

(4) such public corporation will need such financial assistance for actual expenditures within the fiscal year next following; and

(5) the legislature has appropriated funds for the payment of such sum. The payment authorized hereunder shall be limited to an amount equal to the total costs the public corporation shall become actually and legally obligated to spend for lands, easements, and rights-of-way for such water resource development works, multiplied by the ratio



that the flood control benefits conferred beyond the boundaries of the public corporation bear to the total flood control benefits of the project. Such findings shall each be made at and in such manner as is provided by procedural rules and regulations which shall be adopted by the Kansas department of agriculture division of conservation with the approval of the state conservation commission.

(c) Any public corporation receiving financial assistance under this section shall apply those sums toward the satisfaction of the legal obligations for the specific lands, easements, and rights-of-way for which it receives them or toward the reimbursement of those accounts from which those legal obligations were satisfied, in whole or in part, and it shall return to the state any sums that are not in fact so applied. In ascertaining costs of lands, easements, and rights-of-way under this section, the Kansas department of agriculture division of conservation shall not consider any costs which relate to land treatment measures nor any costs for which federal aid for construction costs is granted pursuant to the watershed protection and flood prevention acts or pursuant to any other federal acts.

**History:** L. 1996, ch. 17, § 3; L. 2012, ch. 140, sec. 141; July 1.

**82a-1703. Same; application for financial assistance; state conservation commission, duties.** The governing body of each public corporation eligible for state financial assistance under the provisions of this act shall make application for state payment each year to the Kansas department of agriculture division of conservation in such form and manner as the Kansas department of agriculture division of conservation may prescribe by its rules and regulations. Each year the Kansas department of agriculture division of conservation shall determine what persons are eligible to receive financial assistance from the state, and the amounts thereof, pursuant to this act. In the event the Kansas department of agriculture division of conservation shall determine that any such application, including the amounts thereof, is proper and in compliance with this act and is supported by a resolution as provided in K.S.A. 82a-1704, and amendments thereto, the Kansas department of agriculture division of conservation may submit a request therefor as a part of its annual budget requests and estimates. Each such request shall be separately stated and identified. The budget item for each project shall contain the name of the project, the name of the public corporation to which the item relates, the county or counties in which such public corporation is located, the identification of the agreement or resolution supporting the request, and the amount of state payment requested therefor.

**History:** L. 1996, ch. 17, § 4; L. 2012, ch. 140, sec. 142; July 1.

**82a-1704. Same; resolution of governing body seeking financial assistance.** In order that any public corporation eligible for state payments under the provisions of this act may receive payment from the state, the governing body of the public corporation shall adopt and transmit to the Kansas department of agriculture division of conservation an appropriate resolution requesting the Kansas department of agriculture division of conservation to approve payment to the requesting body of a sum or sums to be named within the limits of and for the purposes defined in this act. The resolution shall show the total cost allocated to the requesting body for providing the lands, easements, and rights-of-way for the works of improvement of the requesting body and shall pledge that all money received from the state under authority of this act will be applied solely to the purposes specified in this act.

**History:** L. 1996, ch. 17, § 5; L. 2012, ch. 140, sec. 143; July 1.

**82a-2007. Additional employee authorized for state conservation commission.** Subject to appropriations, there shall be an additional employee at the Kansas department of agriculture division of conservation to work on total maximum daily load compliance and to coordinate with the department and other appropriate federal and state agencies to further implement voluntary incentive based conservation programs to protect water quality.

**History:** L. 2001, ch. 100, § 7; L. 2012, ch. 140, sec. 144; July 1.

**82a-2101. Imposition of fee; election to opt out or in; disposition of revenues.** (a) On and after January 1, 2002, there is hereby imposed a clean drinking water fee at the rate of \$.03 per 1,000 gallons of water sold at retail by a public water supply system and delivered through mains, lines or pipes. Such fee shall be paid, administered, enforced and collected in the manner provided for the fee imposed by subsection (a)(1) of K.S.A. 82a-954, and amendments thereto. The price to the consumer of water sold at retail by any such system shall not include the amount of such fee.

(b) (1) A public water supply system may elect to opt out of the fee imposed by this section by notifying, before October 1, 2001, the Kansas water office and the department of revenue of the election to opt out. Except as provided by subsection (b)(2), such election shall be irrevocable. Such public water supply system shall continue to pay all applicable sales tax on direct and indirect purchases of tangible personal property and services purchased by such system.

(2) On and after January 1, 2005, any public water supply system which elected to opt out of the fee imposed by subsection (a) may elect to collect such fee as provided by subsection (a) and direct and indirect purchases of tangible personal property and services by such system shall be exempt from sales tax as provided by K.S.A. 79-3606, and amendments thereto. Such election shall be irrevocable.

(c) The director of taxation shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received or collected from the fee imposed pursuant to this section. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it as follows:

(1) 5/106 of such amount shall be credited to the state highway fund and the remainder to the state general fund; and

(2) on and after July 1, 2007, 5/106 of such amount shall be credited to the state highway fund and the remaining amount shall be credited to the state water plan fund created by K.S.A. 82a-951, and amendments thereto, for use as follows:

(A) Not less than 15% shall be used to provide on-site technical assistance for public water supply systems, as defined in K.S.A. 65-162a, and amendments thereto, to aid such systems in conforming to responsible management practices and complying with regulations of the United States environmental protection agency and rules and regulations of the department of health and environment; and

(B) the remainder shall be used to renovate and protect lakes which are used directly as a source of water for such public water supply systems, so long as where appropriate, watershed restoration and protection practices are planned or in place.

(d) The Kansas department of agriculture division of conservation shall promulgate rules and regulations in coordination with the Kansas water office establishing the project application evaluation criteria for the use of such moneys under subsection (c)(2)(B).

**History:** L. 2001, ch. 199, § 4; L. 2004, ch. 171, § 11; L. 2005, ch. 142, § 4; Apr. 21; L. 2012, ch. 140, sec. 145; July 1.

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## ADMINISTRATIVE RULES AND REGULATIONS

### WATER RESOURCES COST-SHARE PROGRAM

**K.A.R. 11-1-6 Definitions.** (a) "Applicant" means a landowner or legal agent applying for financial assistance to construct or apply conservation or pollution control practices.

(b) "Commission" means the state conservation commission.

(c) "District" means a conservation district that is a political subdivision of the state government with its own governing body of five elected supervisors created under K.S.A. 2-1901 et seq., and amendments thereto, as a special purpose district to develop and carry out soil and water conservation programs within its political boundaries.

(d) "Financial assistance" means financial incentives offered to eligible applicants on a cost-sharing basis to implement approved soil and water conservation and pollution control practices.

(e) "Landowner" means a private or public owner of land or group of persons owning land within the district or, if excepted by the commission, an adjacent district.

(f) "Practice" means a land treatment or management practice constructed or implemented to effect soil erosion control, pollution control, water conservation, and water supply.

(g) "Total maximum daily load" and "TMDL" mean state identification and prioritization of pollutants and specific water bodies with pollutant loadings allocated for specific water bodies and corresponding pollutant-reduction goals developed and strategies implemented.

(h) "Water resources cost-share program" and "WRCSP" mean a state-financed cost-share program providing financial assistance to landowners for the installation of conservation and water quality practices for the restoration and protection of Kansas water resources. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

**K.A.R. 11-1-7 Allocation of water resources cost-share program funding.** (a) Appropriation for the water resources cost-share program may be used for financial assistance to construct conservation and water quality practices or to contract for technical expertise, with specific allocations for each recommended annually by the commission and approved by the governor and legislature.

(b) The allocation of WRCSP funds shall be made by the commission on or after July 1 to districts or other entities receiving funds.

(c) Appropriated funds for cost-share assistance shall be allocated to districts under three accounts:

(1) The district needs allocation (DNA) shall represent a portion of the total WRCSP appropriation and shall be allocated to all districts. The total amount of the appropriation dedicated to the DNA shall be recommended by the commission and shall be subject to approval by the governor and legislature. The DNA may be used for eligible conservation and water quality improvement practices as determined by the conservation districts. The approved DNA shall be allocated to districts based on the following criteria:

(A) Non-federal rural acres: one point for each 100,000 acres, with a maximum point total of eight;

(B) water quality: ranging from one point for districts in low sedimentation areas up to eight points for districts in high sedimentation areas; and

(C) water quantity: ranging from one point for districts in areas of high rainfall and significant surface water storage up to eight points for districts in areas of low rainfall, limited surface water storage, and depleting

groundwater supplies.

(2) The water quality (WQ) or total maximum daily load (TMDL) allocation shall represent a portion of the balance of the appropriation remaining after the DNA is deducted. WQ or TMDL funds may be allocated by the commission to districts if the following requirements are met:

(A) The WQ allocation shall be used only in targeted areas identified by the state water plan and commission for eligible practices that address sedimentation, nutrient and pesticide runoff, and bacteria from livestock waste.

(B) The TMDL allocation shall be utilized in the identified watersheds for only those practices that address the impairment for which the TMDL was established.

(3) The annual irrigation initiative allocation (IIA) shall be made by the commission in accordance with the following criteria:

(A) The amount remaining after the DNA and WQ allocation are deducted;

(B) commission-developed targeting criteria based on irrigation water use in areas of major groundwater decline;

(C) state water plan priority areas;

(D) other priority areas with declining ground- water supplies as identified by the governor, legislature, agencies, groundwater management and conservation districts; and

(E) any other criteria determined by the commission to meet the water resource goals and objectives of the state. (Authorized by and implementing K.S.A. 2-1915; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

**K.A.R. 11-1-8 Conservation district program.** Each participating district board of supervisors shall develop and submit to the commission for approval, upon commission-prescribed forms, the district's fiscal year financial assistance program under the following provisions: (a) The district shall develop the program after receiving the state program forms and a list of eligible practices from the commission.

(b) Each participating district shall develop annual financial assistance prioritization criteria following commission guidelines, upon which the district shall base its considerations for cost-sharing.

(c) In the installation of any eligible practices, the landowner shall be solely responsible for assuring compliance with any applicable federal, state, or local laws, ordinances, and regulations. The landowner also shall be solely responsible for obtaining all permits, licenses, or other instruments of permission required before the installation of the proposed practice.

(d) Unless a special allowance is granted by the commission, the minimum standards of design, construction, operation, and maintenance specified in section IV of the "Kansas field office technical guide," as adopted by reference in K.A.R. 11-7-14 and the other standards adopted by the commission in K.A.R. 11-7-14 shall be the basis for determining the need and practicability of the proposed practice. Specifications for additional soil and water conservation and water quality pollution control practices not set forth in section IV of the "Kansas field office technical guide," and modifications to those included in the technical guide may be considered and authorized by the commission at the request of the district. Practice descriptions and specification information shall be on file in the district office.

(e) A responsible technician or a qualified representative of the district, as determined by the district board of supervisors, shall inspect the work in progress to determine that all specifications are met. Following each installation, the district shall certify to the commission that the practice was properly installed.

(f) Financial assistance levels set by the district shall not exceed 70% of the actual cost or the countywide average cost, whichever is less, and shall not change during the fiscal year unless a specific allowance is granted by the commission.

(g) The maximum amount of financial assistance allowed for each practice, except \$20,000 for livestock waste systems and irrigation systems, shall be \$10,000 unless exempted by the commission.

(h) Each district shall submit to the commission, in writing, all amendments to the district program for commission approval or disapproval. The only permissible amendments shall be the following:

(1) Changes in district representatives authorized to sign cost-share forms;

(2) the addition of conservation practices within the current year; and

(3) county average costs under exceptional circumstances. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective, T-88-18, July 1, 1987; effective May 1, 1988; amended Aug. 23, 2002.)

**K.A.R. 11-1-9 Financial assistance contract.** (a) Each request for a financial assistance payment shall be submitted to the district on forms prescribed by the commission. All requests submitted on commission-prescribed forms shall be considered for approval or disapproval by the district board of supervisors or its designee and duly recorded in the minutes of the regularly scheduled board meeting.

(b) Financial assistance requests shall be consistent with each district's current fiscal year program as approved by the commission, and all commission requirements and procedures shall be followed in the submittal of financial requests.

(c) The actual cost or county average cost, whichever is less, shall be used as a basis for determining financial assistance earned.

(d) (1) The applicant shall not begin construction until written approval of the submitted request is given by the commission to the district, unless the commission determines that an exception is warranted.

(2) If the applicant requests immediate approval, verbal approval may be given by the commission if either of the following conditions is met:

(A) The practice has been designed and surveyed, and the contractor or installer is at the site and ready to proceed with practice construction on the same day that the request is made.

(B) The commission will not receive the financial assistance request form before an uncommitted funds cancellation deadline.

(e) Partial payments shall not be awarded to an applicant approved for financial assistance, unless specifically granted by the commission, until the project is certified as complete and includes all components installed according to the design and installation requirements of the commission.

(f) Each contract shall be assigned by the commission an expiration date of 60 days following the date the contract is approved by the commission if the conservation district does not assign the expiration date.

(g) Districts may grant an extension of any length of time during the contract period but not beyond June 30.

(h) Contract cancellation and amendments of an approved contract shall be considered by the district for approval or disapproval and shall be duly recorded in the regularly scheduled board of supervisors' meeting minutes. If a cancellation or amendment is approved by the commission, the district shall retain one copy and forward one copy to the applicant or legal agent.

(i) Each applicant implementing a livestock waste control system funded from the water resources cost-share program shall ensure that the system meets the requirements specified in K.A.R. 11-7-14.

(j) The district shall submit the original of each completed and signed contract, on a commission-approved form, to the commission for approval or disapproval. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

**K.A.R. 11-1-10 Cancellation of funds.** (a) A status report of all active contracts and each district's uncommitted balance shall be prepared by the commission on or after June 1 and shall be provided to each district.

(b) Cost-share funds uncommitted and not under contract at the close of business on June 30 shall become void.

(c) Cost-share funds under contract for practices on which construction has not begun by June 30 shall be individually evaluated by the commission and may be encumbered and continued for one or more years or may become void.

(d) Cost-share funds under contract for practices on which construction has not begun by June 30, due to inclement weather or other factors beyond the control of the applicant, shall be individually evaluated by the commission and may be encumbered and continued for one or more years.

(e) Cost-share funds under contract for practices on which construction has begun but has not been completed by June 30 may be encumbered and continued for one year.

(f) Encumbered contracts not completed within the year of encumbrance may expire and become void, if not extended by the commission.

(g) Any contract may be extended by the commission if the contract is determined by the commission to be highly significant in pollution reduction. (Authorized by and implementing K.S.A. 2-1915; effective Aug. 23, 2002.)

**K.A.R. 11-1-11 Contract between the landowner and the state conservation commission.** (a) Each applicant for financial assistance shall sign a contract on the form or forms approved by the commission.

(b) The applicant shall agree to maintain the practice according to maintenance procedures prescribed by the commission for 10 years or the life of the practice, whichever is greater.

(c) If the financial assistance recipient fails to maintain the practice according to contract provisions, the recipient may be declared ineligible for future financial assistance funds. The financial assistance recipient may be required to repay financial assistance funds received on the following pro rata basis if the amount is more than \$100.00 and the recipient has constructed or installed the practice within the following time limits:

(1) Five or fewer years: 100%;

(2) more than five years but six or fewer years: 80%;

(3) more than six years but seven or fewer years: 60%;

(4) more than seven years but eight or fewer years: 40%;

(5) more than eight years but nine or fewer years: 20%; and

(6) more than nine years but 10 or fewer years: 10%.

(d) Each recipient of state financial assistance for any pollution control practice shall be responsible for proper operation and maintenance and, if needed, modification of the facility or any other actions to ensure satisfactory operation and continued pollution control, at the recipient's expense.

(e) Each financial assistance recipient shall obtain a written agreement to transfer the maintenance responsibilities specified in the event of new ownership of the property where the practice was installed.

(f) If a recipient of financial assistance is determined by the commission to be in noncompliance with the requirements of the contract for financial assistance, upon notice by the district, the recipient shall bring the property into compliance within the time specified by the commission, or the repayment provisions of the application contract outlined in subsection (c) above shall apply. (g) The provisions of the financial assistance application contract shall not apply to a recipient of financial assistance if the recipient's failure to comply is due to any of the following:

- (1) Natural disasters;
- (2) faulty design or construction, as determined by the commission; or
- (3) any other situation beyond the control of the financial recipient. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

**K.A.R. 11-1-12 Special projects.** (a) Funds may be withheld by the commission from the annual appropriation, and funds released by the districts may be reserved by the commission for the purpose of cost-sharing or contributing to special projects that the commission considers necessary and of high priority for the abatement of soil erosion and water pollution, and for conservation of water resources.

(b) (1) Authority shall rest with the commission to fund special projects for the purpose of testing, development, implementation, and demonstration of new cost-share practices appropriate for future soil and water conservation and water quality needs.

(2) Special projects may be funded by the commission from annual appropriations if the projects are determined to be essential to increasing the effectiveness and efficiency of the cost-share program.

(c) Special projects shall be conducted for a specified period of time and in a limited area as determined by the commission. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

**K.A.R. 11-1-13 Irrigation funding procedures.** (a) Eligible applicants shall include the following:

- (1) Landowners; and
- (2) tenants or operators granted authority by landowners through power of attorney.

(b) If cost-share funds are utilized to convert nonirrigated land, which is also known as land with no water right, an equal amount of previously irrigated land shall be taken out of irrigated production, unless an exception is granted by the commission.

(c) Before project approval, the applicant shall provide the district with verification of the following:

- (1) The allowable pump rate;
- (2) the location and the amount of the land authorized for irrigation; and
- (3) a valid water right in good standing.

(d) Each approved applicant for irrigation practice financial assistance shall review and sign a conservation plan of operations (CPO) and an irrigation development plan prepared by the natural resources conservation service. Failure to implement the requirements of the CPO due to neglect by the irrigator may result in payback of cost-share funds by the recipient according to the guidelines specified in K.A.R. 11-1-11.

(e) Each application for financial assistance for irrigation practices shall meet eligibility requirements based on the estimated cost of potential water savings. Potential water savings shall be determined using table KS6-1 of the natural resource conservation service's "irrigation guide," as in effect January 2002 and hereby adopted by reference. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Aug. 23, 2002.)

**K.A.R. 11-1-14 Petition for reconsideration.** (a) A landowner who has been denied cost-share funding may request a reconsideration of a district decision by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 2-1904; implementing K.S.A. 2-1915; effective Aug. 23, 2002.)

## **WATERSHED DAM CONSTRUCTION PROGRAM**

**K.A.R. 11-3-1 Definitions.** (a) "Chief engineer" means the chief engineer, division of water resources, state board of agriculture.

(b) "Commission" means the state conservation commission.

(c) "Detention dam" means a single purpose dam designed for temporary storage of floodwaters and for its

controlled release.

(d) "District" means a watershed district, drainage district or any other special purpose district that has been organized and incorporated according to appropriate statutes and has power to levy taxes and power of eminent domain.

(e) "General plan" means a preliminary engineering report describing the characteristics of the project area, and the nature and methods of dealing with the soil and water problems within the project area. The plan shall include maps, descriptions and other data as necessary for the location, identification and establishment of the character of the work to be undertaken and any other data and information as the chief engineer may require.

(f) "Grade stabilization dam" means a structure designed to control the erosion of a water course.

(g) "Permit" means the formal document issued by the chief engineer or other issuing agency to the district authorizing the construction of the project.

(h) "Project" means the construction of a new detention or grade stabilization dam. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; implementing K.S.A. 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-3-2 Application.** (a) Any organized watershed district, drainage district or other special purpose district, interested in state assistance, may apply for state cost-share assistance funds appropriated for construction of detention and grade stabilization dams. Applications for state assistance shall be on forms supplied by the commission. Applications shall be due at the commission office by April first to be included in the evaluation process for possible funding during the next fiscal year.

(b) The district submitting the application shall employ or acquire the services of a person knowledgeable of watershed dam construction administrative procedures, who shall be known as the contracting officer for the proposed site. The contracting officer shall attend a pre-allocation seminar before the application will be considered for state assistance. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1986, Ch. 7; implementing K.S.A. 2-1915, as amended by L. 1986, Ch. 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-3-3 Permit to construct.** A copy of the permit to construct, issued by the chief engineer, shall be submitted to the commission before the allocation of funds to the project and before the district advertises for bids. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; implementing K.S.A. 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-3-4 Allocation of funds.** (a) An evaluation team consisting of designees from state and federal water related agencies shall evaluate applications and recommend a priority order for funding. In addition, an amount will be recommended for construction of detention dams in drainage or other special purpose districts.

(b) The maximum cost-share level for construction costs including engineering and inspection shall be 80 percent. The maximum annual assistance per structure or district shall be \$90,000, except when uncommitted funds are available after all eligible structures have been funded. In which case, the funds may be used to provide additional cost-sharing above the maximum limit. Assistance funds shall not be used for land rights or administrative costs.

(c) Bid standard procedures of the department of administration shall be used in the bidding process for approved applications for state assistance.

(d) Adequate accounting and fiscal records shall be maintained by the district to reflect the receipts and expenditures of all funds of the project.

(e) The district shall submit project documents and information as required by the commission.

(f) The district shall construct or cause the project to be constructed to final completion in accordance with the plans and specifications or modifications approved by the chief engineer. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1986, Ch. 7; implementing K.S.A. 2-1915, as amended by L. 1986, Ch. 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-3-5 Contract.** (a) The contract shall become a fund-obligating document and shall include contractual provisions required by the commission and the state.

(b) Contracts not completed by the end of the fiscal year in which appropriation was made shall be extended by written notice. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1986, Ch. 7; implementing K.S.A. 2-1915, as amended by L. 1986, Ch. 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-3-6 Partial payments.** Partial payments of appropriated funds shall be made to the district no more often than once each month. The partial payment shall be requested on forms furnished by the commission. All partial payments shall be documented by the district as directed by the commission. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; implementing K.S.A. 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-3-7 Notification of completion.** (a) The district shall notify the commission and chief engineer when the project is complete and ready for final inspection.

(b) The notification to the commission shall include:

- (1) The date of completion of the project;
- (2) An itemized list of all costs of construction, engineering, geological investigations and inspections; and
- (3) A request for final payment of state funds for the project on forms provided by the commission. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; implementing K.S.A. 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-3-8 Modifications to construction plan.** Modification of or change orders regarding the original construction plans shall require the prior approval of the chief engineer and notification to the commission. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; implementing K.S.A. 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-3-9 Supplemental application procedures.** A supplemental request of funds for costs of construction and engineering exceeding the approved funding shall be submitted on forms supplied by the commission. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1986, Ch. 7; implementing K.S.A. 2-1915, as amended by L. 1986, Ch. 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-3-10 Annual inspection.** An annual inspection of the completed structure shall be made and an inspection report shall be filed on forms provided by the commission. A copy of the inspection report shall be distributed to the commission and chief engineer. Corrective maintenance or repair shall be implemented by the district when needed. (Authorized by K.S.A. 2-1904, 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; implementing K.S.A. 2-1915, as amended by L. 1985, Ch. 342, Sec. 9; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

## MULTIPURPOSE SMALL LAKES PROGRAM

**K.A.R. 11-4-1 Definitions.** (a) "Authorized representative" means the individual designated by the sponsor to be responsible for all correspondence. The authorized representative shall be the point of contact for the proposed project.

(b) "Commission" means the state conservation commission.

(c) "Cost-share limit" means the limitation of state funds as established by statute for class I, class II, and class III projects.

(d) "Land treatment" means a structure or conservation practice which shall constitute a viable method of erosion abatement and sediment and pollution control.

(e) "Phase I letter of interest" means an initial written request from a sponsor for a determination as to whether a proposed project is eligible for the multipurpose small lakes program.

(f) "Phase II letter of intent" means a letter providing the necessary information for establishing the funds required for the proposed project. Project plans, budgets and schedules shall be developed in sufficient detail to support the funding request. An approved general plan, submitted with the letter of intent, shall supply detailed information to allow comparison with other projects. The signed letter of intent and supporting documentation shall be reviewed by the state water related agencies. An order of priority for the proposed projects shall be established from the information provided in the letter of intent and recommendations from the reviewing agencies.

(g) "Phase III application" means the application for the appropriated funds for the project. This phase shall include preparation of construction documents including technical specifications, contract documents, bidding plans and procedures, and documentation showing that required permits, titles or options on the necessary lands and easements have been obtained.

(h) "Program" means the multipurpose small lakes program.

(i) "Project" means proposed construction or renovation of a multipurpose small lake by the sponsor including acquisition of land rights, installation of land treatment structures, dams and recreation facilities.

(j) "Renovation" means the act of restoring an existing structure to safe and efficient functioning for the original purpose or a new purpose. (Authorized by and implementing K.S.A. 1985 Supp. 82a-1602; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-4-2 Letter of interest.** (a) Each prospective sponsor shall submit a phase I letter of interest to the commission to determine if the proposed project will qualify for the program. The letter of interest shall be submitted on a form furnished by the commission.

(b) The letter of interest shall be reviewed by the commission and the sponsor shall be notified in writing of the status of the proposed project. A copy of the letter of interest shall be furnished by the commission to the reviewing agencies. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 7; effective, T 86-43,

Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-4-3 Letter of intent.** (a) The phase II letter of intent may be submitted by the sponsor following receipt of a letter from the commission that the proposed project is eligible for possible funding. The letter of intent, submitted on forms furnished by the commission, shall include an approved general plan. Proposed projects involving community development block grant funds shall include an application for these funds. The sponsor shall include an agricultural impact statement and resources inventory when five acres or more of prime agricultural land is taken under the power of eminent domain.

(b) The original letter of intent, plus one copy for each reviewing agency, shall be submitted to the commission no later than June first to be considered in the next fiscal year budget request. (Authorized by K.S.A. 1985 Supp. 82a-1602; implementing K.S.A. 1985 Supp. 82a-1602 and 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-4-4 Review process.** (a) Agencies reviewing the letter of intent shall include:

- (1) Department of health and environment;
- (2) Department of economic development;
- (3) Division of water resources, state board of agriculture;
- (4) Fish and game commission;
- (5) Historical society;
- (6) Park and resource authority; and
- (7) Water office;

(b) The review comments shall be considered in the priority ranking process. The projects not recommended for funding shall be returned to the sponsor with reasons for rejection. (Authorized by K.S.A. 1985 Supp. 82a-1602; implementing K.S.A. 1985 Supp. 82a-1602 and 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-4-5 Funding.** Each project recommended for funding through the review process and approved by the commission shall be included as a line item in the commission's budget request. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-4-6 Application.** (a) After funds have been appropriated by the legislature for the project, the sponsor shall submit to the commission the phase III application for funds to construct the project. The application shall be on forms furnished by the commission.

(b) The sponsor shall be responsible for securing all required permits before a state contract can be authorized. A copy of each permit shall be furnished to the commission. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-4-7 State contract.** (a) The contract between the state and the sponsor shall become a fund-obligating document and shall include contractual provisions required by the state.

(b) Contracts not completed by the end of the fiscal year in which appropriation was made shall be extended by written notice. (Authorized by K.S.A. 1985 Supp. 82a-1602; implementing K.S.A. 1985 Supp. 82a-1602 and 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-4-8 Procedures.** (a) Each engineering plan submitted to the chief engineer shall consider economical design and construction and shall conform to or exceed the construction requirements of the chief engineer.

(b) Each sponsor shall have acquired fee simple title or such other estate or interest in the site of the project, including necessary easements and right-of-ways, to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the life of the project.

(c) Bid standard procedures of the department of administration or applicable agency shall be used in the bidding process.

(d) The sponsor shall maintain adequate accounting and fiscal records to reflect the receipt and expenditure of all funds on the project.

(e) The sponsor shall submit documents and information as required by the commission.

(f) The sponsor shall construct the project or cause it to be constructed to final completion in accordance with the application and the plans and specifications or modifications approved by the chief engineer. (Authorized by K.S.A. 1985 Supp. 82a-1602; implementing K.S.A. 1985 Supp. 82a-1602 and 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-4-9 Partial payments.** Partial payments of appropriated state funds shall be made by the commission to the sponsor no more often than once each month. The partial payment shall be requested by the sponsor on forms furnished by the commission. All claims shall be documented by the sponsor as directed by the commission. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 7; effective, T-86-43, Dec. 18,



1985; effective May 1, 1986.)

**K.A.R. 11-4-10 Notification of completion.** (a) The sponsor shall notify the commission and the chief engineer when the project is complete and ready for final certification by the chief engineer. The notification of completion shall be on forms supplied by the commission and shall include:

- (1) The date of completion of the project;
  - (2) an itemized list of eligible construction, engineering, geological investigations, inspections and land acquisition costs; and
  - (3) a request for final payment of funds for the project.
- (b) Final disbursement of the funds due from appropriated state funds shall be made after receipt of certification of completion of the work from the chief engineer. (Authorized by K.S.A. 1985 Supp. 82a-1602; implementing K.S.A. 1985 Supp. 82a-1602 and 82a-1607; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-4-11 Modifications to construction plan.** Modification of or change orders regarding the original construction plan shall require the prior approval of the chief engineer and notification to the commission. When the sponsor is being assisted in contract administration by an agency other than the commission, the procedures established by the agency shall be used. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-4-12 Amendment to costs of project.** (a) The sponsor shall notify the commission of all increases in costs, and of all proposed additions, deletions and modifications of the project.

(b) An amendment to the application for state funds may be submitted to the commission for costs of construction, engineering and landrights above the approved application funding. The amendment shall be submitted on forms furnished by the commission and shall be fully documented. The amendment to the application shall be submitted as authorized by the commission.

(c) After review by the commission, an approved amendment for increased funding shall be either:

- (1) Funded from appropriations made available for necessary amendments; or
- (2) Included as a line item request in the commission budget.

(d) Amendments to project costs not approved shall be returned to the sponsor with reasons for rejection. The sponsor may appeal the non-approved amendment in writing and by requesting a hearing with the commission. (Authorized by L. 1985, Ch. 342, Sec. 2; implementing L. 1985, Ch. 342, Sec. 2 and 7; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986.)

**K.A.R. 11-4-13 Maintenance.** The sponsor shall provide maintenance of the completed structure throughout its designed life or useful life, whichever is the longer. Corrective maintenance or repair shall be implemented by the sponsor when needed. (Authorized by and implementing K.S.A. 1985 Supp. 82a-1602; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

**K.A.R. 11-4-14 Annual inspection.** An annual inspection of the completed structure shall be made and an inspection report shall be filed on forms provided by the commission. The inspection shall be made by a person experienced in dam design and construction. A copy of the inspection report shall be distributed to the commission and chief engineer. (Authorized by and implementing K.S.A. 1985 Supp. 82a-1602; effective, T-86-43, Dec. 18, 1985; effective May 1, 1986; amended May 1, 1987.)

## **WATER SUPPLY RESTORATION PROGRAM**

**K.A.R. 11-6-1. Definitions.** (a) "Commission" means the state conservation commission.

(b) "Land treatment" means structures or conservation practices that constitute viable methods of erosion abatement or sediment and pollution control.

(c) "Letter of interest" means an initial written request from a sponsor for a determination of whether a proposed project is eligible for funding.

(d) "Letter of intent" means a letter providing the necessary information for establishing the funds required for a proposed project. Project plans and specifications, budgets, and schedules shall be developed in sufficient detail to support the funding request. The signed letter of intent and supporting documentation shall be reviewed by the environmental review agencies specified in K.A.R. 11-6-6.

(e) "Project" means the restoration of a water supply structure by a sponsor, including land treatment.

(f) "Public water supply" means a water supply that has beneficial municipal use.

(g) "Restoration" means the act of returning an existing water supply structure to safe and efficient functioning, including the installation or repair of erosion control measures and land treatment.

(h) "Restoration plan" means a document providing sufficient details to support the letter of intent.

- (i) "Sponsor" means any of the following:
  - (1) A political subdivision of the state that has the power of taxation and the right to eminent domain;
  - (2) a public wholesale water supply district; or
  - (3) a rural water district.
- (j) "Total maximum daily load" means the maximum amount of a pollutant that a body of water can receive without violating water quality standards.
- (k) "Watershed protection" means land treatment that reduces sediment load and abates erosion.
- (l) "Water supply structure" means a structure that impounds a public water supply. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

**K.A.R. 11-6-2. Eligible components of projects.** The eligible components of a project shall include the following:

- (a) Engineering, including project design, plans, and specifications;
- (b) repairs of the structure and its appurtenant works;
- (c) mobilization and demobilization of equipment;
- (d) dredge and sediment disposal facilities; and
- (e) watershed protection and restoration. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

**K.A.R. 11-6-3. Letter of interest.** (a) Each prospective sponsor shall submit a letter of interest to the commission to determine if the proposed project is eligible for consideration for funding. The letter of interest shall be submitted on a form furnished by the commission.

(b) In the letter of interest, the sponsor shall provide the commission with evidence that the proposed project meets the following initial eligibility requirements:

(1) The structure shall currently provide local public water supply benefits or be reasonably expected to do so in the future.

(2) The sponsor shall demonstrate that existing or planned infrastructure and practices are capable of preserving the improvements and address watershed protection.

(c) The letter of interest shall be reviewed by the commission and the Kansas water office. The sponsor shall be notified in writing whether the proposed project is eligible for consideration for funding. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

**K.A.R. 11-6-4. Letter of intent.** (a) Any sponsor may submit a letter of intent following receipt of a letter from the commission acknowledging that the proposed project is eligible for consideration for funding. The letter of intent, submitted on a form furnished by the commission, shall include a restoration plan as specified in K.A.R. 11-6-5.

(b) The sponsor shall submit the original of the letter of intent, plus one copy for each environmental review agency specified in K.A.R. 11-6-6, to the commission no later than June 1 to be considered in the budget request for the next state fiscal year. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

**K.A.R. 11-6-5. Restoration plan.** (a) Each restoration plan shall consist of the following:

- (1) Restoration scope;
- (2) design plans and specifications;
- (3) watershed protection plan, if applicable;
- (4) cost estimates;
- (5) project schedule; and
- (6) any other relevant documents that pertain to renovation, protection, or restoration of the water supply structure, as determined by the commission.

(b) Each modification of the original restoration plan shall require the prior notification and approval of the commission. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

**K.A.R. 11-6-6. Review process.** (a) Each letter of intent shall be reviewed by the environmental review agencies listed in K.S.A. 82a-326(b) and amendments thereto.

(b) Prioritization of projects shall be based on the following:

- (1) The current use of the water;
- (2) the population served;
- (3) the age of the structure;
- (4) any loss of storage capacity due to sedimentation or deficiencies, or both;
- (5) any documented efforts to provide watershed protection;
- (6) the status of operation and maintenance;
- (7) the current and potential recreational uses of the lake;
- (8) specification of whether the watershed has a high total maximum daily load;
- (9) any prior use of multipurpose small lake program funds;

- (10) the percentage of sponsor funding for the project; and
- (11) the proposed location of the project with respect to federal reservoirs that provide water supply.
- (c) Each agency's review comments shall be considered by the commission in the final priority-ranking process. Each sponsor shall be notified in writing if that sponsor's proposed project is approved for funding. (Authorized by and implementing K.S.A. 2007 Supp. 82a-2101; effective Nov. 14, 2008.)

## **NON-POINT SOURCE POLLUTION CONTROL**

**K.A.R. 11-7-1. Definitions.** (a) "Animal unit" means a defined unit of measurement to determine the applicability of state and federal regulations and pollution potential of a confined feeding facility as defined by K.S.A. 65-171d, and amendments thereto.

(b) "Applicant" means a landowner or legal agent applying for financial assistance to construct or apply pollution control practices.

(c) "Commission" means the state conservation commission.

(d) "Confined feeding facility" is as defined in K.S.A. 65-171d (c)(2), and amendments thereto, exclusive of swine.

(e) "Critical or targeted water resources" means water resources that have been identified as exceptional and vulnerable.

(f) "District" means a conservation district that is a political subdivision of state government with its own governing body of five elected supervisors created under K.S.A. 2-1901 et seq., and amendments thereto, as a special purpose district to develop and carry out soil and water conservation programs within its political boundaries.

(g) "Exceptional value water resources" means any of the following:

- (1) A public water supply impoundment and associated tributary watershed;
- (2) a recharge area or groundwater capture zone of a public water supply well field;
- (3) a sole source aquifer;
- (4) a flowing stream and tributary watershed above a public water supply diversion;
- (5) a flowing stream and tributary watershed that sustains or supports habitats of threatened or endangered species;

(6) a flowing stream and tributary watershed above the highest valued fishery resources;

(7) a flowing stream and tributary watershed above reaches having any habitat of aquatic species in need of conservation; or

(8) a flowing stream and tributary watershed above highly valued recreation areas.

(h) "Financial assistance" means financial incentives offered to eligible applicants on a cost-sharing basis to implement approved pollution control practices.

(i) "KDHE" means the Kansas department of health and environment.

(j) "Non-point source (NPS)" means any activity that is not required to have a national pollutant discharge system permit and that results in the release of pollutants to waters of the state. This release may result from precipitation runoff, aerial drift and deposition from the air, or release of sub-surface brine or other contaminated groundwaters to surface waters of the state.

(k) "On-site wastewater system" means a system composed of a septic tank disposal field, a wastewater pond, or an alternative treatment system designed to treat wastewater from a single-family residence or business installed in compliance with state regulations and county ordinances to prevent surface and groundwater contamination by disease-causing organisms, organic matter, chemicals, and nutrients.

(l) "Plan" means a locally developed, long-range comprehensive plan for the non-point source pollution control in a watershed, hydro-logic unit, or county.

(m) "Pollution" means either of the following:

(1) Any contamination or other alteration of the physical, chemical, or biological properties of any waters of the state that will or is likely to create a nuisance or render these waters harmful, detrimental, or injurious to public health, safety, or welfare; to the plant, animal, or aquatic life of the state; or to other designated beneficial uses; or

(2) any discharge that will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(n) "Practice" means a land treatment or management practice constructed or implemented to effect pollution control.

(o) "Project work plan" means a detailed plan for a proposed project that is identified in the approved local non-point source pollution management plan.

(p) "State contract" means a contract between the commission and the district to prescribe the annually allocated amount of technical assistance and information and education funds and to prescribe expenditure guidelines for those funds.

(q) "State non-point source pollution management plan" means a process to identify measures to control pollutants discharged from non-point source pollution sources and shall also mean state and local programs for

controlling non-point source pollution.

(r) "Total maximum daily load" means state identification and prioritization of pollutants and specific water bodies with pollutant loadings allocated for specific water bodies and corresponding pollutant reduction goals developed and strategies implemented.

(s) "Vulnerable water resources" means water resources that have a high probability of being contaminated. Factors that contribute to vulnerability shall include the following:

- (1) Infiltration recharge;
- (2) vadose zone characteristics;
- (3) depth to water table;
- (4) topography;
- (5) soil characteristics;
- (6) pollutant source concentration;
- (7) pollutant characteristics;
- (8) groundwater;
- (9) surface water;
- (10) precipitation;
- (11) runoff;
- (12) land cover; and

(13) proximity of the pollution to a stream or lake. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999).

**K.A.R. 11-7-2. Local non-point source pollution management plan.** (a) The conservation district responsibility, with assistance from sponsors or cosponsors, shall be to coordinate the development and submission of a comprehensive local non-point source pollution management plan. Local, state and federal agencies and the private sector shall be invited to assist in the development of the management plan.

(b) The management plan submitted to the commission shall include the following:

- (1) Pollution reduction goals;
- (2) a description and the location of the area included in the plan;
- (3) a description of problems and potential problems;
- (4) a description of proposed solutions, evaluation, and monitoring;
- (5) estimated costs;
- (6) the source of funding;
- (7) an implementation schedule; and
- (8) a list of participants in the development of the plan.

(c) An administrative review by the commission and a technical review by the following state and federal natural resource agencies shall be completed with recommendations consolidated by the KDHE:

- (1) KDHE;
- (2) United States natural resources conservation service;
- (3) Kansas biological survey;
- (4) Kansas corporation commission;
- (5) Kansas geological survey;
- (6) Kansas water office;
- (7) Kansas forest service;
- (8) Kansas department of wildlife and parks;
- (9) Kansas department of agriculture;
- (10) Kansas state university cooperative extension service; and
- (11) United States environmental protection agency.

(d) The reviewer's recommendations shall be included in the plan as an amendment and incorporated into project work plans.

(e) The conservation district shall be notified in writing when the local non-point source pollution management plan is approved. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

**K.A.R. 11-7-3. Project work plan.** (a) The conservation district shall coordinate the development and submission of a project work plan to request funds for a new or significantly modified existing project work plan to implement all or part of an approved management plan, or to report the implementation of a non-point source pollution control project that does not require additional state assistance.

(b) The project work plan submitted to the commission shall include the following:

- (1) A description of the water quality problem;
- (2) a description of the project area;
- (3) a priority designation;
- (4) the goals and objectives of the project;

- (5) evaluation procedures;
  - (6) schedules and milestones;
  - (7) a budget; and
  - (8) a list of all participating organizations.
- (c) Approval of a project work plan requesting state funds shall include the following:
- (1) An implementation schedule;
  - (2) local initiatives;
  - (3) utilization of existing state and federal programs; and
  - (4) administration of the project to assure successful completion and consistency with the approved and amended local non-point source pollution management plan.
- (d) Approved project work plans requesting funding from the non-point source pollution control fund shall be considered by the commission, if funds are available.
- (e) Financial requests for new and existing project work plans shall be submitted to the commission using forms prescribed by the commission.
- (f) Project work plans shall address at least one of the following water resources included in the state non-point source pollution management plan and assessment report:
- (1) Critical or targeted water resources;
  - (2) exceptional value water resources; or
  - (3) vulnerable water resources. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

**K.A.R. 11-7-4. Project work plan amendment.** (a) An amendment to the project work plan may be submitted to the commission for review.

(b) An amendment that involves a funding increase and is approved shall be funded from available non-point source pollution control funds.

(c) An amendment that involves a funding increase and is not approved shall be returned with the reason for disapproval. Appeal may be made in writing within 15 days after the notice of disapproval. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

**K.A.R. 11-7-5. Allocation of non-point source pollution control funding.** (a) When funds are available, any district with an approved local non-point source management plan shall annually request from the commission NPS funding for new and existing project work plans to implement specific elements of the plan and to request contract funds by April 1, using forms prescribed by the commission.

(b) Annual district allocations shall be made by the commission in accordance with the following criteria:

- (1) The amount of geographic inclusion in a state water plan priority area;
- (2) the identified areas or drainage addressing the protection of public water supply areas;
- (3) other locally identified priority areas;
- (4) the total maximum daily load project areas; and
- (5) any other criteria determined by the commission to meet the resource goals and objectives of the state.

(Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

**K.A.R. 11-7-6. Contract funds.** (a) The state contract shall provide for the distribution of non-point source pollution technical assistance, information, and education or nonfinancial assistance funds.

(b) A one-time advance of the annual allocation of either technical assistance or information and education funds, or both, shall be paid to each district by the commission after July 1, upon receipt of the signed contract.

(c) The amount allocated shall be a supplement to each district's uncommitted balance retained on June 30, to equal the current fiscal year allocation.

(d) Uncommitted funds held by each district on June 30 shall remain in each district account and shall be deducted from the next fiscal year's annual advance if the contract is extended.

(e) If the contract is not extended or if uncommitted funds exceed the next fiscal year's allocation, the uncommitted funds shall be returned to the commission by the district within 10 days after the expiration of the contract or receipt of the next fiscal year's allocation.

(f) The district may employ a water quality coordinator to provide technical assistance. This coordinator shall be an employee of the district and shall be supervised by that district's board of supervisors or its designee.

(g) The technical assistance allocation shall be used solely for salaries, wages, and benefits as prescribed by the commission for the employment of any conservation district employee or employees, based on staff hours directly related to the implementation of the program, with funds accounted for on forms prescribed by the commission.

(h) The information and education allocation shall be used to fund activities that support implementation of the district non-point source pollution management plan and project work plans and shall be accounted for on forms prescribed by the commission and submitted to the commission by the requested date.

(i) Any district purchase, using state contract funds, of equipment exceeding \$500.00 in value shall be the

property of the commission for five years or the life of the equipment, whichever is less, and shall require advance purchase approval of the commission. After five years, the equipment shall become the property of the conservation district.

(j) Transfers of either technical assistance or information and education funds to a district's financial assistance account may be allowed for reasons determined to be valid by the commission.

(k) Supplemental allocations to districts may be made by the commission for information and education projects.

(l) Each district shall follow the operations fund guidelines in K.S.A. 2-1907b, and amendments thereto, in its expenditure of state contract funds. (Authorized by and implementing K.S.A. 2-1915, 2-1904 and 82a-951; effective May 21, 1990; amended Dec. 27, 1999; amended Aug. 23, 2002.)

**K.A.R. 11-7-7. Conservation district program.** Each participating conservation district board of supervisors shall develop and submit to the commission for approval, using commission-prescribed forms, the district's fiscal year financial assistance program under the following provisions:

(a) The district may develop the program after receiving the state program forms from the commission.

(b) The district shall select the non-point source pollution control practices from those identified in the project work plans that will best address pollution prevention and improvement.

(c) The district shall implement its adopted program policies upon approval by the commission.

(d) The financial assistance applicant shall follow the minimum standards of design, construction, operation, and maintenance as outlined in K.A.R. 11-7-12, 11-7-13, and 11-7-14.

(e) Financial assistance levels set by the conservation district shall not exceed 70% for private ownership and 50% for public entities and shall not change during the fiscal year unless a specific allowance is granted by the commission.

(f) The maximum amount of financial assistance allowed for each practice shall not exceed \$10,000. However, the maximum amount of financial assistance allowed shall be \$1,000 for abandoned water well plugging and \$20,000 for livestock waste systems. The amounts specified in this subsection shall apply, unless exempted for reasons prescribed by the commission.

(g) Each district shall develop financial assistance prioritization criteria following commission guidelines and requirements in the funding of financial assistance contracts.

(h) Amendments to the district program shall be submitted, in writing, by the district to the commission and may be approved following commission-prescribed guidelines.

(i) Approval shall be obtained from the state historical preservation office before any expenditure of state funds on practices that impact national or state historic sites or other cultural resource areas. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective May 21, 1990; amended Dec. 27, 1999; amended Aug. 23, 2002.)

**K.A.R. 11-7-8. Financial assistance contract.** (a) Each request for a financial assistance payment submitted by the district shall be recommended for approval by the conservation district board of supervisors or its designee and duly recorded in the minutes of the regularly scheduled board meeting.

(b) The district shall review and recommend approval of requests for payment from the non-point source pollution control fund on forms prescribed by the commission.

(c) Financial assistance requests shall be consistent with each district's current fiscal year program as approved by the commission, and all commission guidelines and procedures shall be followed in the submittal of financial requests.

(d) The actual cost or county average cost, whichever is smaller, shall be used as a basis for determining financial assistance earned.

(e)(1) The applicant shall not begin construction until written approval of the submitted request is given by the commission to the district, unless the commission determines that an exception is warranted.

(2) If the applicant requests immediate approval, verbal approval may be given by the commission if either of the following conditions is met:

(A) The practice has been designed and surveyed, and the contractor or installer is at the site and ready to proceed with practice construction on the same day that the request is made.

(B) The commission will not receive the financial assistance request form before an uncommitted funds cancellation deadline.

(f) Partial payments shall not be awarded to an applicant approved for financial assistance, unless specifically granted by the commission, until the project is certified as complete and includes all components installed according to the design and installation requirements of the commission.

(g) Each contract shall be assigned by the commission an expiration date of 60 days following the date the contract is approved by the commission if the conservation district does not assign the expiration date.

(h) Districts may grant an extension of any length of time during the contract period but not beyond June 30.

(i) Contract cancellation and amendments of an approved contract shall be recommended by the district and duly recorded in the regularly scheduled board of supervisors' meeting. If a cancellation or amendment is approved

by the commission, the district shall retain one copy and forward one copy to the applicant or legal agent.

(j) The commission-prescribed maintenance agreement shall be signed by the applicant, who shall be the landowner or legal agent, with the original copy attached to the request for financial assistance submitted to the commission for approval. (Authorized by K.S.A. 1998 Supp. 2-1915 and K.S.A. 75-5657; implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

**K.A.R. 11-7-9. Final payment.** Final disbursement of funds due on the contract shall be made upon submission of request for payment on forms prescribed by the commission. Certification that the project is complete and that it meets all the requirements of the contract shall be required before payment of funds. (Authorized by K.S.A. 82a-903; implementing K.S.A. 82a-951; effective May 21, 1990.)

**K.A.R. 11-7-10. Cancellation of funds.** (a) A status report of all active NPS contracts and each district's uncommitted balance shall be prepared by the commission on or after June 1 and shall be provided to each district.

(b) Cost-share funds uncommitted and not under contract at the close of business on June 30 shall be canceled.

(c) Cost-share funds under contract for practices on which construction has not begun by June 30 shall be canceled.

(d) Cost-share funds under contract for practices on which construction has not begun by June 30, due to inclement weather or other factors beyond the control of the applicant, shall be individually evaluated by the commission and may be encumbered and continued for one year.

(e) Cost-share funds under contract for practices on which construction has begun but has not been completed by June 30 may be encumbered and continued for one year.

(f) Encumbered contracts not completed within the year of encumbrance may be canceled by the commission.

(g) Any contract may be extended by the commission beyond previously outlined guidelines if the contract is determined by the commission to be highly significant in pollution reduction and if other factors exist that are beyond the control of the applicant. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective May 21, 1990; amended Dec. 27, 1999.)

**K.A.R. 11-7-11. Maintenance contract.** (a) Each applicant for financial assistance shall sign form SCC/NPS-3 entitled "non-point source pollution control program application/contract for financial assistance."

(b) The applicant shall agree to maintain the practice according to recommended maintenance procedures adopted by the commission for 10 years or the life of the practice, whichever is greater.

(c) If the financial assistance recipient fails to maintain the practice according to contract provisions, the recipient may be declared ineligible for future financial assistance funds. The financial assistance recipient may be required to repay financial assistance funds received on the following pro-rata basis if the amount is more than \$100.00 and the recipient has constructed or installed the practice within the following time limits:

- (1) Five or fewer years: 100%;
- (2) more than five years but six or fewer years: 80%;
- (3) more than six years but seven or fewer years: 60%;
- (4) more than seven years but eight or fewer years: 40%;
- (5) more than eight years but nine or fewer years: 20%; and
- (6) more than nine years but 10 or fewer years: 10%.

(d) The recipient of state financial assistance for any pollution control practice shall be responsible for proper operation and maintenance and, if needed, modification of the facility or other actions to ensure satisfactory operation and continued pollution control at the recipient's expense.

(e) The financial assistance recipient shall obtain a written agreement to transfer the maintenance responsibilities contained in the commission's "non-point source pollution control program application/contract for financial assistance" in the event of new ownership of the property where the practice was installed within the life span specified.

(f) When a recipient of financial assistance is determined by the commission to be in noncompliance with the requirements of the contract for financial assistance, upon notice by the district, the recipient shall bring the property into compliance within a time specified by the commission, or the repayment provisions of the application contract outlined in subsection (c) above shall apply.

(g) The provisions of the financial assistance application contract shall not apply to a recipient of financial assistance if the recipient's failure to comply is due to any of the following:

- (1) Natural disasters;
- (2) faulty design or construction as determined by the commission; or
- (3) any other situation beyond the control of the financial recipient. (Authorized by and implementing K.S.A. 1998 Supp. 2-1915; effective Dec. 27, 1999.)

**K.A.R. 11-7-12. On-site wastewater system.** (a) The minimum standards established by the KDHE for design and construction of on-site wastewater systems outlined in KDHE bulletin 4-2, as in effect in March 1997, and the

``environmental health handbook," written by the KDHE, Kansas state university cooperative extension service, and Kansas association of sanitarians and as in effect on January 1, 1999, are hereby adopted by reference. These minimum standards shall be superseded only by local ordinances requiring more stringent standards of design and construction.

(b) The standard for on-site waste system operation and maintenance outlined in Kansas state university cooperative extension publications MF-947, dated August 1998, and MF-2290, dated October 1997, shall be followed for all state financially assisted on-site wastewater projects and are hereby adopted by reference.

(c) Each on-site wastewater system shall be designed, inspected, and certified as complete by a local official according to locally adopted sanitary or environmental codes approved by KDHE and state design and permitting standards, before any state financial assistance payment is made.

(d) Only existing systems determined to be failing by the local county official or a KDHE representative shall be eligible for state financial assistance.

(e) Each district shall establish and apply applicant prioritization based on non-point source pollution water quality benefit criteria for all state financially assisted on-site wastewater systems.

(f) An alternative on-site wastewater treatment system that is other than a conventional soil absorption field or pond and that is authorized by the local health official and the commission shall be eligible for financial assistance if the lowest cost treatment system cost-share calculation is used.

(g) State financial assistance for an applicant for an on-site wastewater system shall not be available if the local health official reports the applicant to the county attorney for enforcement action under locally adopted ordinances. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

**K.A.R. 11-7-13. Abandoned water well plugging.** (a) Any individual plugging abandoned water wells to control non-point source pollution and receiving state financial assistance shall follow KDHE rules and regulations.

(b) Financial assistance for abandoned water well plugging shall not exceed \$1,000 for each well. However, an exception to the \$1,000 limit may be granted by the commission when circumstances warrant. The procedures and minimum standards for plugging abandoned wells outlined in Kansas state university cooperative extension publication ``plugging abandoned wells," MF-935 (revised), as published January 1998 and hereby adopted by reference, shall be superseded only by more stringent local ordinances.

(c) All plugged abandoned wells shall be registered with the KDHE before financial assistance is paid. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

**K.A.R. 11-7-14. Livestock waste control systems.** (a) Only minimum pollution control measures shall be eligible for financial assistance.

(b) Expansion costs of a livestock waste control system requiring a design that accommodates more animal units than currently exist shall not be eligible for financial assistance unless the commission determines that an exception is warranted.

(c) Applicants relocating a confined feeding facility and receiving financial assistance shall be required to perform the following:

(1) Clean and properly dispose of waste from the existing facility;

(2) remove interior fencing and feeding facilities to render the site incapable of the confined feeding of animals; and

(3) plant vegetation at the abandoned facility that maximizes nutrient uptake as approved by the district.

(d) Financial assistance shall not be available for livestock waste control facilities over 999 animal units unless the commission determines that an exception is warranted.

(e) Sewage discharge from a home site shall not be deposited in a livestock waste facility of any type.

(f) A new livestock waste control facility that does not replace or modify an existing livestock waste control facility or confined feeding facility shall not be eligible for financial assistance.

(g) Partial payments shall not be available for livestock waste control systems, with the exception of grass seeding within the appropriate seeding dates.

(h) Only livestock waste systems approved by the KDHE and designed and certified as complete by a Kansas licensed professional engineer shall be eligible for state financial assistance. Exceptions may be granted by the commission for Kansas state university cooperative extension service designs approved by the KDHE for demonstration purposes.

(i) Confined animal feeding operators who incur court action for noncompliance with KDHE confined animal feeding operation regulations shall not be eligible for state financial assistance.

(j) The following minimum standards of design, construction, and operation of state financially assisted livestock waste management systems are hereby adopted by reference:

(1) ``Animal and related waste control," K.A.R. 28-18-1 through 28-18-15 and K.A.R. 28-18a-1 through 28-18a-32, effective Jan. 15, 1999; and

(2) section IV of the ``Kansas field office technical guide," as in effect on January 1, 2002, and the ``agricultural



waste management field hand- book," as in effect on January 1, 2002, published by the United States department of agriculture, natural resources conservation service, formerly known as the soil conservation service. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a-951; effective Dec. 27, 1999; amended Aug. 23, 2002.)

**K.A.R. 11-7-15. Petition for reconsideration.** (a) A landowner who has been denied cost-share funding may appeal an adverse decision of the district by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days after the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 2-1904; implementing K.S.A. 2-1915; effective Dec. 27, 1999; amended Aug. 23, 2002.)

**K.A.R. 11-7-16. Special projects.** (a) Funds may be withheld by the commission from the annual appropriation, and funds released by the districts may be reserved by the commission for the purpose of contributing to special projects that the commission considers necessary and important for the abatement of non-point source pollution.

(b) (1) Authority shall rest with the commission to fund special projects for the purpose of testing, development, implementation, and demonstration of new cost-share practices appropriate for water quality protection and restoration.

(2) Special projects may be funded by the commission from annual appropriations if the projects are determined to be necessary to increase the effectiveness and efficiency of the cost-share program.

(3) Special projects shall be conducted for a specified period of time and in a limited area as determined by the commission. (Authorized by and implementing K.S.A. 2-1904, 2-1915 and 82a- 951; effective Aug. 23, 2002.)

## **SURFACE-MINING LAND CONSERVATION AND RECLAMATION ACT**

**K.A.R. 11-8-1. Definitions.** In addition to the terms defined in K.S.A. 49-603, the following terms shall be defined as set out below. (a) "Site" means a tract or consolidated tracts of land which can be described by the operator as a single operating unit.

(b) "New site" means an area that has or will have affected land during the registration year but does not have affected land from any previous year.

(c) "Tons of material extracted" means tons of material sold through direct sales or tons of material consumed in the operation of a business, or both. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-603; effective June 19, 1995.)

**K.A.R. 11-8-2. Mining license renewal.** (a) Each operator licensed by the director under K.S.A. 49- 605 shall renew the mining license annually until all sites registered by that person have been properly reclaimed or transferred to another licensed operator. The mining license renewal fee, except for political subdivisions, shall be based on the annual tons of material extracted by the operator and shall be:

(1) if less than 10,000 tons, \$25.00;

(2) if between 10,000 tons and 99,999 tons, \$50.00;

(3) if between 100,000 tons and 499,999 tons, \$100.00; and

(4) if 500,000 tons or greater, \$150.00.

(b) The renewal application shall be signed by the operator or an authorized representative of the operator.

(c) Any operator who fails to renew the operator's mining license before the expiration date shall be required to apply for a new license and pay the \$300 initial license fee established under K.S.A. 49-605, and amendments thereto. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-605; effective June 19, 1995.)

**K.A.R. 11-8-3. Initial site registration.** (a) Each person, business, corporation, or political subdivision of the state of Kansas that engages in or intends to engage in operating a surface mine shall register the site with the director. In addition to the application requirements of K.S.A. 49-607 and amendments thereto, each application for site registration shall include the following:

(1) The name and license number of the operator;

(2) for each site that is active or inactive, the number of tons of material extracted and the number of acres of affected land created during the preceding year;

(3) the site registration fee, except for political subdivisions; and

(4) the signature of the operator.

(b)(1) The initial registration fee for each active site shall be \$45 per acre of land affected during the previous

year and \$0.003 per ton of material extracted during the preceding year.

(2) The initial registration fee for each new site shall be \$45.

(3) The initial registration fee for each inactive site that is returning to active status shall be \$45.

(4) The minimum initial registration fee shall be \$45.

(5) The initial registration fee for each site active during the preceding year but being registered as inactive shall be as specified in paragraph (1) of this subsection.

(c) If more than one operator is extracting materials from a given site within the same time frame, then each operator shall register the site and distinguish each operator's scope of operation and responsibility. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607 and 49-623; effective June 19, 1995; amended Oct. 12, 2007.)

**K.A.R. 11-8-4. Site registration renewal.** (a) Each site registration shall be renewed annually. Each applicant for renewal of a site registration shall submit the renewal form to the director within 30 days before the expiration date of the registration.

(b) Each renewal form shall include the following, in addition to information required in K.S.A. 49-607 and amendments thereto:

(1) For each active site, the number of tons of material extracted and the number of acres of affected land created during the previous year; and

(2) the signature of the operator.

(c) (1) The minimum renewal fee shall be \$45.

(2) The annual site registration renewal fee for each active site shall be \$45 per acre of land affected during the previous year and \$0.003 per ton of material extracted during the previous year.

(3) The renewal fee for a site that was active during the previous year but is to be registered as an inactive site upon renewal shall be as specified in paragraph (2) of this subsection.

(4) The renewal fee for each site that is registered as an inactive site for more than one year shall be \$45 annually until additional acres are affected or material is extracted, or both, during the year preceding renewal.

(5) The renewal fee for each site undergoing reclamation shall be \$45 per year until the reclamation is approved and the site is released by the director. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607 and 49-623; effective June 19, 1995; amended Oct. 12, 2007.)

**K.A.R. 11-8-5. Annual report.** (a) An annual report of mining operations for each registered site shall be submitted to the director within 30 days of the site registration expiration. The report, in addition to information required by K.S.A. 49-612(a), and amendments thereto, shall include:

(1) the site registration number;

(2) any proposed changes to the reclamation plan;

(3) any proposed changes to the bonding agreement; and

(4) an aerial photograph, survey map, engineered drawing or other representation approved by the director, of all land affected by mining during the period covered by the report.

(b) If mining operations will be completed within 90 days of the registration expiration date, the final completion report may be substituted for the annual report. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-612; effective June 19, 1995.)

**K.A.R. 11-8-6. Reclamation plan.** (a) A reclamation plan shall be completed for each registered site and submitted with the initial registration application. The plan shall include the following:

(1) a legal description of where the site is located including the nearest quarter quarter section, township, range and county;

(2) the total acreage of the site;

(3) a general description of the material to be mined, including:

(A) the average depth of the mineral layer;

(B) the average depth of overburden; and

(C) the average depth of the topsoil;

(4) the estimated life-span of the mine or the time period covered by the operator's long-term plan;

(5) an aerial photograph, survey map, engineered drawing or other representation approved by the director describing the land to be mined first and how the mining will proceed across the site;

(6) a description of the estimated total number of acres to be affected by mining, including the proportion to be reclaimed if different than the total affected acres;

(7) an aerial photograph, survey map, engineered drawing or other representation approved by the director outlining the affected land, water bodies remaining after reclamation, stockpiles, crushing areas, roads and buildings;

(8) a general description of the pre-mining and post-mining land-use;

(9) a general description of the final grading and revegetation that will be completed and an estimated time-line for completion of those activities;

(10) an illustration of the final topography;

(11) a general description of the types of plants to be used in revegetation;

(12) the approximate amount of topsoil and overburden, or if topsoil is not present the amount of overburden, to be stockpiled and used for reclamation of the site; and

(13) the name, address, telephone number and signature of the person responsible for reclamation. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-607; effective June 19, 1995.)

**K.A.R. 11-8-7. Reclamation requirements.** Reclamation of affected lands shall meet the following standards, in addition to the standards listed in K.S.A. 49-611, and amendments thereto. (a) Affected lands shall be graded to allowable slopes within six months after filing the final report for the site.

(b) In grading the affected lands, all mining-related waste products and machinery incompatible with the care and growth of vegetation shall be removed from the affected lands. Boulders and stones incompatible with the proposed post-mining use of the site shall be buried or removed from the site.

(c) Topsoil and overburden, or if topsoil was not present initially, then overburden only, shall be preserved in an amount specified in the reclamation plan on the site for reclamation of affected lands.

(d) Within one year following the conclusion of all earthwork, seeding of all areas in which vegetation is to be provided shall be completed to the extent permitted by weather and planting requirements.

(e) Erosion control methods shall be used where necessary to prevent rill and gully formation.

(f) Each operator shall allow the seeded vegetation at least one year to become established before filing a release request.

(g) A variance from the requirements of sub-sections (a), (d) and (f) of this regulation, may be granted by the director if the operator submits a written request at least 30 days before the initiation of affected reclamation activities. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-611; effective June 19, 1995.)

**K.A.R. 11-8-8. Bond or other security.** (a) Each applicant for registration of a surface mining site shall file a bond or other security with each application in the following amounts:

(1) \$400 per affected acre, for sand and gravel mining operations;

(2) \$600 per affected acre, for all other types of mining operations.

(b) Subject to the limitations of K.S.A. 49-615, and amendments thereto, the amount of bond required may be adjusted by the director based on the estimated cost to reclaim the affected land.

(c) Each surety bond shall be written on a form provided by the director.

(d) An attachment which lists the sites by registration number and legal description shall be included as part of the bond document. This attachment shall be signed by representatives of the surety and the operator and shall be notarized.

(e) Each certificate of deposit posted as a bond shall be made payable to the state of Kansas, state conservation commission. All interest earned shall be paid to the operator.

(f) All cash bonds accepted in lieu of a surety bond shall not draw interest. Each check shall be made payable to the state of Kansas, state conservation commission.

(g) The bond shall cover all affected land not previously reclaimed.

(h) The amount of bond or other security may be adjusted for annual variations in the amount of affected land by the director or by request from the operator, if approved by the director.

(i) No single certificate of deposit shall exceed the sum of \$100,000, nor shall any operator submit a certificate of deposit totaling more than \$100,000 from a single bank or financial institution. The issuing bank or financial institution shall be insured by the federal deposit insurance corporation.

(j) The bank or financial institution issuing the certificate of deposit shall provide a letter that assigns the certificate of deposit to the commission. The letter shall accompany each certificate of deposit submitted as a bond.

(k) Before the commission requests the attorney general to institute proceedings for forfeiture of a bond, the bonding company shall be notified by the director that the operator is in violation of this act and forfeiture proceedings may be initiated. (Authorized by K.S.A. 49-623; implementing K.S.A. 49-615; effective June 19, 1995; amended Sept. 27, 1996.)

## BUFFER INITIATIVE

**K.A.R. 11-9-1. Definitions.** (a) "Buffer" is a strip or area of land maintained in permanent vegetation to help reduce potential pollution problems and achieve other conservation objectives. Buffers are appropriately installed along streams to enhance water quality.

(b) "Commission" means the state conservation commission (SCC).

(c) "Commissioners" means the commissioners of the state conservation commission.

(d) "Continuous sign-up" means that persons eligible for CRP may request to enroll certain acreage in the program at any time. The CRP practices available during continuous sign-up provide environmental benefits complementary to the initiative.

(e) "CRP" means the conservation reserve program administered by the USDA farm service agency (FSA) with technical responsibility assigned to the USDA natural resources conservation service (NRCS). The CRP may provide

cost share assistance to establish vegetation on eligible land and provides annual rental payments on a per acre basis to maintain enrolled acres for a period up to 15 years.

(f) "Director" means the executive director of the state conservation commission.

(g) "District" means a conservation district.

(h) "Filter strip" means a strip or area of grass for removing sediment, organic matter, and other pollutants from runoff and wastewater.

(i) "FSA" means the farm service agency.

(j) "Initiative" means the Kansas water quality buffer initiative.

(k) "NRCS" means the natural resources conservation service.

(l) "Practices" means cultural or structural measures that are installed or constructed on land for the purpose of improving or maintaining water quality.

(m) "Program" means the Kansas water quality buffer initiative, which shall be implemented in a manner to enhance participation under the continuous sign-up provision of the conservation reserve program by providing state incentives to supplement federal payments for riparian forest buffers and filter strips.

(n) "Riparian forest buffer" means a strip or area of vegetation containing trees and grass for removing sediment, organic matter, and other pollutants from runoff and wastewater.

(o) "Unfarmable field" means the remaining portion of a field in which 51% or more of the total acreage has been enrolled in the continuous sign-up.

(p) "USDA" means the United States department of agriculture. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

**K.A.R. 11-9-2. Eligible areas.** All land within a TMDL high priority area or a designated priority area within the state of Kansas as determined by the commission shall be eligible for the initiative. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Feb. 5, 1999; amended Aug. 23, 2002.)

**K.A.R. 11-9-3. Eligible applicants.** Any individual, owner, or operator, excluding state units of government, who is eligible for CRP and owns land within the eligible area shall be eligible for the initiative. Applicants who are ineligible for CRP may be eligible under the initiative if all selection criteria are met. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

**K.A.R. 11-9-4. Eligible practices.** Practices that shall be eligible for incentive payments are filter strips and riparian forest buffers. Payments made through the buffer initiative shall be in addition to any CRP payments received by each applicant. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

**K.A.R. 11-9-5. Annual payments.** (a) Payments shall be made on an annual basis coinciding with federal payments for the purpose of providing an incentive to enroll in the CRP for 10 to 15 years.

(b) Incentive payments shall not exceed the following:

(1) 30% of the total federal payment, excluding the maintenance fee for the establishment of filter strips; or

(2) 50% of the total federal payment, excluding the maintenance fee for the establishment of riparian forest buffers.

(c) All acres determined to be in an unfarmable field shall be eligible for the state incentive if the applicant agrees to establish and maintain permanent vegetative cover for the duration of the continuous CRP contract.

(d) The total state and federal payment shall not exceed \$150.00 per acre unless an exception is granted by the commission. (Authorized by and implementing K.S.A. 2000 Supp. 2-1915, as amended by L. 2001, Ch. 64, Sec. 1; effective Feb. 5, 1999; amended Aug. 23, 2002.)

**K.A.R. 11-9-6. Contracts.** Each contract shall be for no fewer than 10 years and no more than 15 years. Funding for contracts shall be subject to annual appropriations from the state legislature and may be canceled if the funding is not renewed after the first year. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

**K.A.R. 11-9-7. Selection.** Eligible applicants shall be approved for funding by the SCC and according to criteria developed by the director. These criteria may include the following:

(a) The amount of existing vegetation;

(b) the size of the area offered;

(c) the type of vegetation offered;

(d) the type of practice or practices offered; and

(e) the proximity either to an intermittent or perennial stream or to other areas conducive to overland flow and length of contract. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

**K.A.R. 11-9-8. Haying and grazing.** If authorized by the CRP, haying, grazing, or both may occur without penalty under the state contract. A non-CRP participant shall be allowed to hay or graze a filter strip without penalty after development of a grazing management plan developed in cooperation with the USDA-NRCS. No grazing shall be allowed on a riparian forest buffer. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

**K.A.R. 11-9-9. Termination.** If the federal CRP is terminated by the FSA for any contract violation or for any other reason, the state contract may also be canceled. A refund of incentive payments earned may be required at the commission's discretion. A refund of incentive payments may be required by the commission if there is a failure to follow and maintain the program objective. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 1998, Ch. 143, Sec. 46; effective Feb. 5, 1999.)

**K.A.R. 11-9-10. Petition for reconsideration.** (a) A landowner who has been denied cost-share funding may request a reconsideration of a district decision by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the district should be reviewed and why the decision should be modified or reversed.

(c) The petition shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by and implementing K.S.A. 2-1915; effective Feb. 5, 1999; amended Aug. 23, 2002.)

## **WATER RIGHTS PURCHASE PROGRAM**

**K.A.R. 11-10-1. Definitions.** (a) "Program" means water rights purchase program.

(b) "Commission" means the state conservation commission.

(c) "Director" means the executive director of the state conservation commission.

(d) "Local entity" means a local subdivision of state government.

(e) "Eligible water right" shall mean all of the following:

(1) A water right that has been certified as being in an area in need of aquifer restoration or stream recovery pursuant to K.S.A. 2-1919, and amendments thereto, and located in a priority area identified for water right purchase;

(2) a water right that, when placed in the custodial care of the state, yields a positive impact on the aquifer or stream targeted for restoration or recovery; and

(3) a water right meeting the criteria established in K.S.A. 2-1915, and amendments thereto.

(f) "Active water right" means a water right for which water has been lawfully applied to the authorized beneficial use. This water right shall have been used within a specified time period during the calendar years 1996 through 2000 or any succeeding consecutive five-year time period. Active water rights that have been placed in the water rights conservation program in accordance with K.A.R. 5-7-4 or active water rights appurtenant to land placed in the conservation reserve program in accordance with K.A.R. 5-7-4a shall also be considered to be active water rights while in the program.

(g) "Partial water right" means a portion of a water right that has been split up by a division agreement by the owner. The total quantity of the divided water rights shall not be greater than 70 percent of the original appropriated quantity that was divided. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

**K.A.R. 11-10-2. Application.** (a) A local entity may apply for assistance to purchase water rights by submitting the form prescribed by the commission.

(b) Applications shall be submitted to the commission by July 1 to be considered for the next state fiscal year's budget cycle. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

**K.A.R. 11-10-3. Priority areas.** Applications shall address only priority areas identified for the program by the Kansas water plan or Kansas water authority. (Authorized by and implementing K.S.A. 2-1915, K.S.A. 2-1919; effective Aug. 23, 2002.)

**K.A.R. 11-10-4. Procedures.** (a) Each local entity shall designate a period in which to accept offers from eligible water right holders.

(b) The minimum period to accept offers shall be two weeks.

(c) The local entity shall notify all water right holders located in the priority area of the local entity's intent to purchase water rights and of the procedures to be followed in making an offer.

(d) This notification of intent to purchase water rights shall be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties encompassing the priority area. Both publications shall occur prior to the close of the offer acceptance period.

(e) Each water right holder wanting to make an offer shall submit the offer to the local entity in a sealed envelope, which shall be opened by the local entity at the close of the offer acceptance period.

(f) The local entity shall determine the water right or rights that the entity wishes to purchase by ranking each water right according to at least one of the following:

(1) The water right having the most beneficial impact on stream recovery or aquifer restoration within the identified priority area; or

(2) the lowest offer per acre-foot of water contained on the water right.

(g) The local entity shall submit, for commission review, the water right or rights proposed for purchase on forms provided by the commission.

(h) Upon favorable review by the commission, the local entity shall submit to the commission the water right or rights selected for purchase on forms prescribed by the commission.

(i) The local entity or the commission shall have the right to reject any water right purchase offer. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

**K.A.R. 11-10-5. Payment.** (a) After the water right holder agrees to the purchase terms established by the local entity and the commission, payment shall be made by the commission to the local entity for the purchase of the eligible water rights.

(b) The terms of the water right purchase shall be identified on forms provided by the commission.

(c) The maximum amount paid by the commission for a water right authorized for irrigation shall be calculated as follows:

(1) The average per-acre difference between irrigated cropland and dryland cropland values shall be determined by the director for the county in which the water right is located, for the three years preceding the year in which the water right is to be purchased. This determination shall be made based on information available from the Kansas department of revenue, Kansas agricultural statistics, county appraisers, and any other sources of data that the director considers appropriate.

(2) The value determined in paragraph (c) (1) above shall be divided by the appropriate county value contained in K.A.R. 5-3-24.

(3) The value determined in paragraph (c) (2) above shall be multiplied by the authorized acre-foot quantity.

(4) The value determined in paragraph (c) (3) above shall be multiplied by 80 percent.

(d) The maximum payment for water rights authorized for beneficial uses other than irrigation shall be determined by the director. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

**K.A.R. 11-10-6. Petition for reconsideration.** (a) A water right holder or local entity may appeal any decision of the commission by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision and shall state why the decision of the commission should be reviewed and why the decision should be modified or reversed.

(c) The petition for reconsideration shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by and implementing K.S.A. 2-1915, as amended by L. 2002, ch. 37, sec. 3, and K.S.A. 2-1919; effective Aug. 23, 2002.)

## Water Right Transition Assistance Project Program

**K.A.R. 11-12-1. Definitions.** (a) "Active vested or certified water right" means a vested water right or currently certified appropriation water right that was put to lawful beneficial use in at least six out of the last 10 calendar years of actual irrigation, including any water use that occurred before certification.

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

(c) "Closed to new appropriations" and "closed to further appropriations" mean that the chief engineer has issued a formal findings and order or has adopted a regulation and that either the formal findings and order or the regulation prevents the approval of new applications to appropriate water except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(d) "Commission" means state conservation commission, which serves as the division's conservation program policy board created by K.S.A. 2-1904, and amendments thereto, within the department of agriculture.

- (e) "Consumptive use" means the gross diversions minus the following:
- (1) The waste of water, as defined in K.A.R. 5-1-1; and
  - (2) the return flows to the source of water supply in the following ways:
    - (A) Through surface water runoff that is not waste; and
    - (B) by deep percolation.
- (f) "Division" means division of conservation, Kansas department of agriculture.
- (g) "Dry land transition plan" means a plan submitted by an applicant describing how the use of dry land crops or permanent vegetation, including warm season grasses and cool season grasses, or both uses, will be established on land that was previously irrigated. If permanent vegetation will be established on land that was previously irrigated, the plan shall meet the following requirements:
- (1) Specifically describe the amount and timing of any irrigation that will be necessary to establish this cover; and
  - (2) not exceed three calendar years.
- (h) "Eligible water right" means a water right that meets all of the following criteria:
- (1) The water right is an active vested or certified water right that has not been abandoned and is privately owned.
  - (2) The water right has been verified by the chief engineer as being in a target area that is in need of aquifer restoration or stream recovery and is closed to new appropriations of water by the chief engineer, except those for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.
  - (3) The state's dismissal of the water right would have a net reduction in consumptive water use of the aquifer or stream designated for restoration or recovery by the chief engineer.
  - (4) The point of diversion is located within a target area.
- (i) "Groundwater management district" and "GMD" mean any district created by K.S.A. 82a-1020 et seq., and amendments thereto.
- (j) "High-priority area" means a geographic area that meets the following conditions:
- (1) Is designated by one of the following:
    - (A) A groundwater management district and the chief engineer, if the area is within the boundaries of a groundwater management district; or
    - (B) the chief engineer, if the area is outside the boundaries of a groundwater management district; and
  - (2) is located within a target area that has been delineated for the purpose of ranking any applications being received for grant funding approval in the water right transition assistance program.
- (k) "Historic consumptive water use retirement goal" means the total quantity of historic consumptive water use necessary to be retired to meet the goal of the water right transition assistance program in each target area. The identification of a historic consumptive water use retirement goal in each target area provides a reference point for evaluating the program objectives of the water right transition assistance program. The attainment of a historic consumptive water use retirement goal in a particular target area indicates that no more water right transition assistance program funds should be expended in that target area without a requantification of the historic consumptive water use retirement goal.
- (l) "Local entity" means any political subdivision chartered to address water conservation.
- (m) "Partial water right" means a portion of a water right that will be formally and permanently reduced from a water right by the chief engineer upon approval of an application for enrollment based on the agreement of all of the owners of the water right. Before enrollment of the partial water right, the chief engineer shall determine the net historic consumptive water use that was associated with each portion of the beneficial use of the water right being considered. At the time of enrollment of the partial water right, the owner shall reduce the quantity remaining under the portion of the water right not being enrolled in the water right transition assistance program and any overlapping water rights to the net consumptive use requirement associated with the remainder of the operation.
- (n) "Secretary" means secretary of agriculture or designee of the secretary.
- (o) "Water right" means any vested right or appropriation right under which a person may lawfully divert and use water. A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. The water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance.
- (p) "WTAP" and "program" mean water right transition assistance program. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**K.A.R. 11-12-2. Eligible areas.** (a) Each eligible area shall ~~also~~ meet one of the following criteria:

- (1) The board of the GMD has designated the area as a target area, and this designation has been approved by the chief engineer. Each eligible area within a GMD shall require a formal action by the board of a GMD requesting the chief engineer to approve the designation of a target area. The request shall include documentation on the criteria used by the GMD to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the historic consumptive water use retirement goal for each proposed target area and the designation of any high-priority areas within the target area.

(2) Outside a GMD, the chief engineer has designated the area as a target area. Each eligible area outside a GMD shall require documentation of the criteria used by the chief engineer to identify the area that is in need of aquifer restoration or streamflow recovery, which shall include the historic consumptive water use retirement goal for each proposed target area and the designation of any high-priority areas within the target area.

(b) The chief engineer shall notify the division of all approved target areas and high-priority areas before January 1 of each grant funding cycle and shall provide technical data that will assist the division in considering the ranking of the areas relative to any previously designated target areas or high-priority areas.

(c) The ranking of target areas and high-priority areas relative to any previously designated target areas and high-priority areas shall be determined by the secretary, after review of the input from the division. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**K.A.R. 11-12-3. Application and review.** (a) The application periods for the program shall be October 1 through November 15 and February 15 through March 31.

(b) Notification of the program shall be published in the Kansas register before each application period.

(c) The program procedures and application forms shall be available at the division office and at conservation district offices.

(d) Each application shall be submitted on a form supplied by the division. The application shall include all of the following:

(1) The name, address, telephone number, and tax identification number of the owner of the water right;

(2) the water right file number and the priority date of the water right;

(3) the location of the point of diversion;

(4) documentation of the annual water usage, in acre-feet, for the previous 10 years of actual irrigation;

(5) the authorized annual quantity of water associated with the water right;

(6) the bid price expressed on a "per acre-foot of historic consumptive water use" basis;

(7) if the land is going to be planted to permanent cover, a dry land transition plan;

(8) documentation that verifies historical crop information for the previous 10 years of actual irrigation;

(9) documentation of the normal rate of diversion during the normal irrigation season. If the documentation is not based on data from an accurate water flowmeter, the results of a certified well flow rate test conducted no more than six months before the application date by a person or entity approved by the chief engineer and in a manner prescribed by the chief engineer shall be used for this documentation;

(10) the total amount of historic consumptive water use available for permanent retirement or permanent reduction under the water right as determined from the calculation method specified in K.S.A. 2-1930, and amendments thereto; and

(11) the total amount of historic consumptive water use being proposed for permanent retirement of a water right or permanent reduction of a water right and specification of whether only a partial water right is being submitted for permanent retirement in the application.

(e)(1) Upon the division's receipt of each application, it shall be reviewed for completeness by the division. If the application is not complete, the missing information shall be provided by the applicant to the division within 30 calendar days of the division's written request.

(2) After the application is determined to be complete, the application shall be provided by the division to the chief engineer to determine the eligibility of the water right.

(f) Upon completion of the review by the chief engineer, the following certifications shall be requested by the division from the chief engineer:

(1) A statement indicating whether the water right is an eligible water right;

(2) the historic consumptive water use associated with each water right or portion of a water right;

(3) the potential impact of dismissing or permanently reducing the water right on aquifer restoration or stream recovery; and

(4) any other additional documentation necessary to quantify or qualify the water use reports.

(g) Comments and recommendations from the appropriate GMD shall be requested by the division regarding WTAP applications in any target area within that GMD. The chief engineer and the appropriate GMD shall be notified by the division regarding approval or disapproval of any WTAP applications in any target area within that GMD.

(h) Each applicant shall be notified by the division of the approval or the disapproval of the program application no later than 60 calendar days after the close of the application period in which the application is filed. If an application is not approved, the application, water right dismissal form, and all other related documents shall be considered void and shall be returned to the applicant.

(i) Any application meeting the requirements of this article may be approved contingent upon funding and the receipt of official documentation by the division that the water right has been dismissed by the chief engineer and its priority has been forfeited.

(j) The negotiations between owners and lessees regarding program participation shall not involve the commission or the division.

(k) No more than 10 percent of a county's irrigated acres shall be eligible for the duration of this program.



(l) Each program application that does not meet the requirements of these regulations shall be rejected by the division. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**K.A.R. 11-12-4. Payment.** (a) Each water right owner shall sign a water right transition assistance grant agreement before payment is made by the division. Each grant agreement shall include the following provisions:

(1) The price to be paid by the division to the water right owner for the dismissal or permanent reduction of the subject water right and the terms of payment;

(2) the date on which the agreement will become effective;

(3) the file number of the water right to be retired or permanently reduced;

(4) one of the following statements:

(A) The approval is conditional on documentation being provided to the division indicating that the chief engineer has dismissed or permanently reduced the water right and ordered its priority to be forfeited; or

(B) the approval is conditional on documentation being provided to the division indicating any terms of the chief engineer to continue irrigation on a limited basis, not to exceed three years, for the purpose of establishing permanent vegetation. The documentation shall include the date on which the water right dismissal will become effective and its priority will be forfeited; and

(5) if the point of diversion is located within a GMD, a provision that any remaining water user charges assessed by the district before the water right is dismissed will remain the sole responsibility of the owner of the water right.

(b) Payment shall be made in equal annual installments, not to exceed 10, or, if approved by the division, in one lump sum payment. If annual payments are elected, the first payment shall be made within 60 calendar days after execution of the water right transition assistance grant. The subsequent payments shall be made within 60 calendar days after the beginning of each new state fiscal year. The following factors shall be considered by the division when determining which payment schedule to use:

(1) The number of eligible applicants; and

(2) the amount of program funds for that year.

(c) If there is a standing crop at the time of application approval, payment shall not be made until after irrigation from the subject water right has permanently ceased. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**K.A.R. 11-12-5. Transition to dry land.** (a) If land that will no longer be irrigated is to be planted, under this program, to permanent vegetation including warm or cool season grasses, the chief engineer may be requested by the division to condition the dismissal of the associated water right to allow limited irrigation of the land for up to three years to establish this cover.

(b) The applicant shall submit a dry land transition plan to the division if land is to be planted to warm or cool season grasses or other permanent vegetation. A dry land transition plan may be disapproved by the executive director of the division and modifications to any dry land transition plan may be required by the executive director of the division if the plan does not meet the requirements for soil erosion prevention practices in section IV of the "Kansas field office technical guide" as adopted by reference in K.A.R. 11-7-14. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended May 31, 2013.)

**K.A.R. 11-12-6. Dismissal or permanent reduction of water right.** (a) Each water right or partial water right for which payment is received from the program shall be dismissed or permanently reduced by the chief engineer, and the priority of the water right or that portion of the water right shall have been forfeited.

(b) A copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the division before the grantee receives the first payment. The requirements specified in this subsection shall be temporarily waived if a conditional water right is approved by the chief engineer under a dry land transition plan.

(c) For wells approved to continue operating under a dry land transition plan, a copy of the WWC-5 form that has been filed with the Kansas department of health and environment as a result of the well plugging or well capping, the written verification of a domestic well retrofitting, or the written authorization for a well to be placed on inactive status shall be provided to the division within 60 calendar days of the last time that the permanent vegetation is irrigated. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended Sept. 26, 2008; amended May 31, 2013.)

**K.A.R. 11-12-7. Petition for reconsideration.** (a) Any water right owner may request reconsideration of any decision of the division by filing a petition for reconsideration.

(b) Each petition for reconsideration shall be submitted in writing to the division within 30 calendar days of the division's decision and shall state why the decision should be reviewed by the secretary and why the decision should be affirmed, modified, or reversed.

(c) The secretary's final decision shall state each reason for this determination.

(d) The decision of the division shall be considered the final agency action if no petition for reconsideration of that decision has been received by the division after 30 calendar days from the date on which the decision was made. (Authorized by and implementing K.S.A. 2012 Supp. 2-1930 and 2-1930a; effective Aug. 3, 2007; amended May 31, 2013.)