

HOUSE BILL No. 2634

AN ACT concerning water; relating to groundwater management districts; providing an additional corrective control provision for the chief engineer to consider when issuing orders of designations for local enhanced management areas and intensive groundwater use control areas; amending K.S.A. 82a-1038 and 82a-1041 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 82a-1038 is hereby amended to read as follows: 82a-1038. (a) In any case where the chief engineer finds that any one or more of the circumstances set forth in K.S.A. 82a-1036, and amendments thereto, exist and that the public interest requires that any one or more corrective controls be adopted, the chief engineer shall designate, by order, the area in question, or any part thereof, as an intensive groundwater use control area.

(b) The order of the chief engineer shall define specifically the boundaries of the intensive groundwater use control area and shall indicate the circumstances upon which the findings of the chief engineer are made. The order of the chief engineer may include any one or more of the following corrective control provisions:

(1) A provision closing the intensive groundwater use control area to any further appropriation of groundwater in which event the chief engineer shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such area;

(2) a provision determining the permissible total withdrawal of groundwater in the intensive groundwater use control area each day, month or year, and, insofar as may be reasonably done, the chief engineer shall apportion such permissible total withdrawal among the valid groundwater right holders in such area in accordance with the relative dates of priority of such rights;

(3) a provision reducing the permissible withdrawal of groundwater by any one or more appropriators thereof, or by wells in the intensive groundwater use control area;

(4) a provision requiring and specifying a system of rotation of groundwater use in the intensive groundwater use control area;

(5) *a provision allowing flexibility in the use of water rights, including, but not limited to, multi-year allocations and use in excess of a water right's annual authorized quantity in any given year so long as the overall use of water is reduced during the term of the intensive groundwater use control area management plan; and*

(6) any one or more other provisions making such additional requirements as are necessary to protect the public interest.

The chief engineer is hereby authorized to delegate the enforcement of any corrective control provisions ordered for an intensive groundwater use control area to *any* groundwater management district ~~number 4~~ or to any city, if such district or city is located within or partially within the boundaries of such area.

(c) Except as provided by subsection (d), the order of designation of an intensive groundwater use control area shall be in full force and effect from the date of its entry in the records of the chief engineer's office unless and until its operation shall be stayed by an appeal from an order entered on review of the chief engineer's order pursuant to K.S.A. 82a-1901, and amendments thereto, in accordance with the provisions of the Kansas judicial review act. The chief engineer upon request shall deliver a copy of such order to any interested person who is affected by such order, and shall file a copy of the same with the register of deeds of any county within which such designated control area lies.

(d) If the holder of a groundwater right within the area designated as an intensive groundwater use control area applies for review of the order of designation pursuant to K.S.A. 82a-1901, and amendments

thereto, the provisions of the order with respect to the inclusion of the holder's right within the area may be stayed in accordance with the Kansas administrative procedure act.

Sec. 2. K.S.A. 82a-1041 is hereby amended to read as follows: 82a-1041. (a) Whenever a groundwater management district recommends the approval of a local enhanced management plan within the district to address any of the conditions set forth in K.S.A. 82a-1036(a) through (d), and amendments thereto, the chief engineer shall review the local enhanced management plan submitted by the groundwater management district. The chief engineer's review shall be limited to whether the plan:

- (1) Proposes clear geographic boundaries;
- (2) pertains to an area wholly within the groundwater management district;
- (3) proposes goals and corrective control provisions as provided in subsection (f) adequate to meet the stated goals;
- (4) gives due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures;
- (5) includes a compliance monitoring and enforcement element; and
- (6) is consistent with state law.

If, based on such review, the chief engineer finds that the local enhanced management plan is acceptable for consideration, the chief engineer shall initiate, as soon as practicable thereafter, proceedings to designate a local enhanced management area.

(b) In any case where proceedings to designate a local enhanced management area are initiated, the chief engineer shall conduct an initial public hearing on the question of designating such an area as a local enhanced management area according to the local enhanced management plan. The initial public hearing shall resolve the following findings of fact *whether*:

- (1) ~~Whether~~ One or more of the circumstances specified in K.S.A. 82a-1036(a) through (d), and amendments thereto, exist;
- (2) ~~whether~~ the public interest of K.S.A. 82a-1020, and amendments thereto, requires that one or more corrective control provisions be adopted; and
- (3) ~~whether~~ the geographic boundaries are reasonable.

The chief engineer shall conduct a subsequent hearing or hearings only if the initial public hearing is favorable on all three issues of fact and the expansion of geographic boundaries is not recommended. At least 30 days prior to the date set for any hearing, written notice of such hearing shall be given to every person holding a water right of record within the area in question and by one publication in any newspaper of general circulation within the area in question. The notice shall state the question and shall denote the time and place of the hearing. At every such hearing, documentary and oral evidence shall be taken and a complete record of the same shall be kept.

(c) The subject matter of the hearing or hearings set forth in subsection (b) shall be limited to the local enhanced management plan that the chief engineer previously reviewed pursuant to subsection (a) and set for hearing.

(d) Within 120 days of the conclusion of the final public hearing set forth in subsections (b) and (c), the chief engineer shall issue an order of decision:

- (1) Accepting the local enhanced management plan as sufficient to address any of the conditions set forth in K.S.A. 82a-1036(a) through (d), and amendments thereto;
- (2) rejecting the local enhanced management plan as insufficient to address any of the conditions set forth in K.S.A. 82a-1036(a) through (d), and amendments thereto;
- (3) returning the local enhanced management plan to the groundwater management district, giving reasons for the return and providing the district with the opportunity to resubmit a revised plan for

public hearing within 90 days of the return of the deficient plan; or

(4) returning the local enhanced management plan to the groundwater management district and proposing modifications to the plan, based on testimony at the hearing or hearings, that will improve the administration of the plan, but will not impose reductions in groundwater withdrawals that exceed those contained in the plan. If the groundwater management district approves of the modifications proposed by the chief engineer, the district shall notify the chief engineer within 90 days of receipt of return of the plan. Upon receipt of the groundwater management district's approval of the modifications, the chief engineer shall accept the modified local management plan. If the groundwater management district does not approve of the modifications proposed by the chief engineer, the local management plan shall not be accepted.

(e) In any case where the chief engineer issues an order of decision accepting the local enhanced management plan pursuant to subsection (d), the chief engineer, within a reasonable time, shall issue an order of designation that designates the area in question as a local enhanced management area.

(f) The order of designation shall define the boundaries of the local enhanced management area and shall indicate the circumstances upon which the findings of the chief engineer are made. The order of designation may include any of the following corrective control provisions set forth in the local enhanced management plan:

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

(2) determining the permissible total withdrawal of groundwater in the local enhanced management area each day, month or year, and, insofar as may be reasonably done, the chief engineer shall apportion such permissible total withdrawal among the valid groundwater right holders in such area in accordance with the relative dates of priority of such rights;

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

(4) requiring and specifying a system of rotation of groundwater use in the local enhanced management area; ~~or~~

(5) *allowing flexibility in the use of water rights, including, but not limited to, multi-year allocations and use in excess of a water right's annual authorized quantity in any given year so long as the overall use of water is reduced during the term of the local enhanced management plan; or*

~~(5)~~(6) any other provisions making such additional requirements as are necessary to protect the public interest.

The chief engineer is hereby authorized to delegate the enforcement of any corrective control provisions ordered for a local enhanced management area to the groundwater management district in which that area is located, upon written request by the district.

(g) The order of designation shall follow, insofar as may be reasonably done, the geographical boundaries recommended by the local enhanced management plan.

(h) Except as provided in subsection (f), the order of designation of a local enhanced management area shall be in full force and effect from the date of its entry in the records of the chief engineer's office unless and until its operation shall be stayed by an appeal from an order entered on review of the chief engineer's order pursuant to K.S.A. 82a-1901, and amendments thereto, and in accordance with the provisions of the Kansas judicial review act. The chief engineer upon request shall deliver a copy of such order to any interested person who is affected by such order and shall file a copy of the same with the register of deeds of any county within which any part of the local enhanced management area lies.

(i) If the holder of a groundwater right within the local enhanced management area applies for review of the order of designation pursuant to K.S.A. 82a-1901, and amendments thereto, the provisions of the order with respect to the inclusion of the holder's water right within the area may be stayed in accordance with the Kansas administrative procedure act.

(j) Unless otherwise specified in the proposed enhanced management plan and included in the order of designation, a public hearing to review the designation of a local enhanced management area shall be conducted by the chief engineer within seven years after the order of designation is final. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer. Upon the request of a petition signed by at least 10% of the affected water users in a local enhanced management area, a public review hearing to review the designation shall be conducted by the chief engineer. This requested public review hearing shall not be conducted more frequently than every four years.

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

(l) The provisions of this section shall be a part of and supplemental to the provisions of K.S.A. 82a-1020 through K.S.A. 82a-1040 article 10 of chapter 82a of the Kansas Statutes Annotated, and amendments thereto.

Sec. 3. K.S.A. 82a-1038 and 82a-1041 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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*Speaker of the House.*

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*Chief Clerk of the House.*

Passed the SENATE

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*President of the Senate.*

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*Secretary of the Senate.*

APPROVED

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*Governor.*