

HOUSE BILL No. 2634

By Committee on Water

Requested by Sean Miller on behalf of Groundwater Management District 1 and
Groundwater Management District 4

1-30

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

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 82a-1038 is hereby amended to read as follows:
10 82a-1038. (a) In any case where the chief engineer finds that any one or
11 more of the circumstances set forth in K.S.A. 82a-1036, and amendments
12 thereto, exist and that the public interest requires that any one or more
13 corrective controls be adopted, the chief engineer shall designate, by order,
14 the area in question, or any part thereof, as an intensive groundwater use
15 control area.

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

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

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

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

34 (4) a provision requiring and specifying a system of rotation of

1 groundwater use in the intensive groundwater use control area;

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

7 ~~(5)~~(6) any one or more other provisions making such additional
8 requirements as are necessary to protect the public interest.

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

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

24 (d) If the holder of a groundwater right within the area designated as
25 an intensive groundwater use control area applies for review of the order
26 of designation pursuant to K.S.A. 82a-1901, and amendments thereto, the
27 provisions of the order with respect to the inclusion of the holder's right
28 within the area may be stayed in accordance with the Kansas
29 administrative procedure act.

30 Sec. 2. K.S.A. 82a-1041 is hereby amended to read as follows: 82a-
31 1041. (a) Whenever a groundwater management district recommends the
32 approval of a local enhanced management plan within the district to
33 address any of the conditions set forth in K.S.A. 82a-1036(a) through (d),
34 and amendments thereto, the chief engineer shall review the local
35 enhanced management plan submitted by the groundwater management
36 district. The chief engineer's review shall be limited to whether the plan:

37 (1) Proposes clear geographic boundaries;

38 (2) pertains to an area wholly within the groundwater management
39 district;

40 (3) proposes goals and corrective control provisions as provided in
41 subsection (f) adequate to meet the stated goals;

42 (4) gives due consideration to water users who already have
43 implemented reductions in water use resulting in voluntary conservation

1 measures;

2 (5) includes a compliance monitoring and enforcement element; and

3 (6) is consistent with state law.

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

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

14 (1) ~~Whether~~ One or more of the circumstances specified in K.S.A.
15 82a-1036(a) through (d), and amendments thereto, exist;

16 (2) ~~whether~~ the public interest of K.S.A. 82a-1020, and amendments
17 thereto, requires that one or more corrective control provisions be adopted;
18 and

19 (3) ~~whether~~ the geographic boundaries are reasonable.

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

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

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

37 (1) Accepting the local enhanced management plan as sufficient to
38 address any of the conditions set forth in K.S.A. 82a-1036(a) through (d),
39 and amendments thereto;

40 (2) rejecting the local enhanced management plan as insufficient to
41 address any of the conditions set forth in K.S.A. 82a-1036(a) through (d),
42 and amendments thereto;

43 (3) returning the local enhanced management plan to the groundwater

1 management district, giving reasons for the return and providing the
2 district with the opportunity to resubmit a revised plan for public hearing
3 within 90 days of the return of the deficient plan; or

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

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

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

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

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

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

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

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

1 *or*

2 (5)(6) any other provisions making such additional requirements as
3 are necessary to protect the public interest.

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

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

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

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

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

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

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

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

43 Sec. 4. This act shall take effect and be in force from and after its

- 1 publication in the statute book.