KANSAS WATER APPROPRIATION ACT
K.S.A. 82a-701 through 82a-738, K.S.A. 82a-761 through 82a-773, K.S.A. 82a-954, and K.S.A. 42-303, 42-313, and 42-314
2004

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

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

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

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

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

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

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

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

disposal, or by inheritance. (**History:** L. 1945, ch. 390, § 1; L. 1957, ch. 539, § 1; L. 1977, ch. 356, § 3; L. 2004, ch. 101, § 141; July 1.)

K.S.A. 82a-702. Dedication of use of water. All water within the state of Kansas is hereby dedicated to the use of the people of the state, subject to the control and regulation of the state in the manner herein prescribed. (**History:** L. 1945, ch. 395, § 2; June 28.)

K.S.A. 82a-703. Water may be appropriated subject to vested rights. Except as provided in K.S.A. 82a-703a and subject to vested rights, all waters within the state may be appropriated for beneficial use as herein provided. Nothing contained in this act shall impair the vested right of any person except for nonuse. (**History:** L. 1945, ch. 390, § 3; L. 1980, ch. 332, § 1; July 1.)

K.S.A. 82a-703a. Minimum streamflows; duties of chief engineer. Whenever the legislature enacts legislation establishing a minimum desirable streamflow for any watercourse in this state, the chief engineer shall withhold from appropriation that amount of water deemed necessary to establish and maintain for the identified watercourse the desired minimum streamflow. (**History:** L. 1980, ch. 332, § 2; L. 1984, ch. 379, § 21; L. 1985, ch. 338, § 1; July 1.)

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

(b) All vested rights, water appropriation rights and applications for permits to appropriate water having a priority date on or before April 12, 1984, shall not be subject to any minimum desirable streamflow requirements established pursuant to law. (**History:** L. 1984, ch. 377, § 1; L. 1987, ch. 402, § 2; July 1.)

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

Table--Minimum Desirable Streamflows (cfs)

Watercourse	Month											
	J	F	M	A(a)	M(a)	J(a)	J	A	S	O	N	D
Marais des Cygnes												
Ottawa	15	15	15	15(40)	20(50)	25(50)	25	25	20	15	15	15
LaCygne	20	20	20	20(50)	20(150)	25(150)	25	25	20	20	20	20
Neosho												
Americus	5	5	5	5(20)	5(30)	5(30)	5	5	5	5	5	5
Iola	40	40	40	40(60)	40(200)	40(200)	40	40	40	40	40	40
Parsons	50	50	50	50(100)	50(300)	50(300)	50	50	50	50	50	50
Cottonwood												
Florence	10	10	10	10(30)	10(60)	10(60)	10	10	10	10	10	10
Plymouth	20	20	20	20(60)	20(150)	20(150)	20	20	20	20	20	20
Little Arkansas												
Alta Mills	8	8	8	8	8	8	8	8	8	8	8	8
Valley Center	20	20	20	20	20	20	20	20	20	20	20	20
Arkansas River												
Kinsley(b)	2	2	3	3	5	5	3	1	1	1	2	2
Great Bend(b)	3	3	3	3	10	10	5	3	2	2	2	3
Hutchinson	80	80	100	100	100	100	80	80	60	60	60	80
Rattlesnake Creek												
Macksville(b)	5	5	10	10	10	10	5	1	1	1	5	5
Zenith	15	15	15	15	15	15	5	3	3	3	10	15
North Fork Ninnescah Above Cheney	40	50	50	50	40	30	10	5	5	10	40	40
South Fork Ninnescah												
Pratt	10	10	10	8	8	8	5	5	5	5	10	10
Murdock	80	90	90	90	90	50	30	30	30	50	80	80
Ninnescah												
Peck	100	100	100	100	100	70	30	30	30	50	100	100
Saline												
Russell	5	5	15	15	15	12	2	2	2	5	5	5
Smoky Hill												
Ellsworth(c)	20	20	25	30	35	45	35	15	15	15	20	20
Medicine Lodge												
Kiowa	50	55	60	60	40	30	6	1	1	4	40	50
Chikaskia												
Corbin	30	45	50	45	40	30	16	5	5	8	30	30
Big Blue												
Marysville	100	100	125	150	150(d)	150(d)	80	90	65	80	80	80
Little Blue												
Barnes	100	100	125	150	150(d)	150(d)	75	80	60	80	80	80
Republican												
Concordia(e)	100	125	150	150	150	150	150	150	80	65	80	100
Clay Center	125	150	200	250	250	250	200	200	100	90	100	125
Mill Creek												
Paxico	8	8	8	25	30	35	10	5	5	2	5	8
Delaware												
Muscotah	10	10	20	20	20	20	5	3	3	2	10	10
Walnut River												
Winfield	30	35	40	65	100	100	30	25	20	20	20	30
Whitewater River												
Towanda	10	15	15	20	25	25	10	5	5	5	6	10
Spring River												
Baxter Springs(f)	175	200	250	300	450	350	200	160	120	120	150	175
Chapman Creek												
Chapman	10	15	15	15	15	15	10	10	10	10	10	10
Solomon River												
Niles	40	50	60	60	90	90	50	50	40	40	40	40

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

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

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

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

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

(f) Flows measured at Quapah, Oklahoma; may need review if a new station is established. (**History:** L. 1985, ch. 338, § 2; L. 1987, ch. 402, § 1; L. 1989, ch. 309, § 1; April 13.)

K.S.A. 82a-704. (**History:** L. 1945, ch. 390, § 4; L. 1957, ch. 539, § 6; Repealed, L. 1978, ch. 434, § 4; July 1.)

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

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

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

contestant thereto whose address is known to the chief engineer, and upon the publication of an abstract of such order once each week for three (3) consecutive weeks in a newspaper of general circulation in the county wherein the vested right is claimed to exist.

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

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

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

(f) No vested right for the beneficial use of water, other than for domestic use, shall be deemed to exist from and after July l, 1980, unless the same has been determined to exist pursuant to the provisions of this act or pursuant to the provisions of K.S.A. 82a-704. (**History:** L. 1978, ch. 434, § 1; July 1.)

K.S.A. 82a-704b. Same; notice. The chief engineer shall provide notice throughout the state of the provisions of this act by means assuring the widest dissemination thereof as practicable. (**History:** L. 1978, ch. 434, § 2; July 1.)

K.S.A. 82a-704c. Same; supplemental to Kansas water appropriation act. The provisions of K.S.A. 82a-704a shall be a part of and supplemental to the Kansas water appropriation act. (**History:** L. 1978, ch. 434, § 3; July 1.)

K.S.A. 82a-705. Acquisition of appropriation right to use water other than domestic; approval. No person shall have the power or authority to acquire an appropriation right to the use of water for other than domestic use without first obtaining the approval of the chief engineer, and no water rights of any kind may be acquired hereafter solely by adverse use, adverse possession, or by estoppel. (**History:** L. 1945, ch. 390, § 5; L. 1957, ch. 539, § 7; June 29.)

K.S.A. 82a-705a. Domestic use after June 28, 1945; information to chief engineer. The use of water for domestic purposes instituted subsequently to June 28, 1945, to the extent that it is beneficial, shall constitute an appropriation right. The chief engineer, however, may require any person using water for any purpose to furnish information with regard to such use thereof. (**History:** L. 1957, ch. 539, § 2; June 29.)

K.S.A. 82a-706. Duties of chief engineer as to beneficial use and rights of priority of appropriation. The chief engineer shall enforce and administer the laws of this state pertaining to the beneficial use of water and shall control, conserve, regulate, allot and aid in the distribution of the water resources of the state for the benefits and beneficial uses of all of its inhabitants in accordance with the rights of priority of appropriation. (**History:** L. 1945, ch. 390, § 6; L. 1957, ch. 539, § 8; June 29.)

K.S.A. 82a-706a. Rules, regulations and standards. The chief engineer shall adopt, amend, promulgate, and enforce such reasonable rules, regulations, and standards necessary for the discharge of his or her duties and for the achievement of the purposes of this act pertaining to the control, conservation, regulation, allotment, and distribution of the water resources of the state. (**History:** L. 1957, ch. 539, § 9; L. 1977, ch. 356, § 4; January 1, 1978.)

K.S.A. 82a-706b. Diversion of water prohibited, when; unlawful acts; enforcement by chief engineer. It shall be unlawful for any person to prevent, by diversion or otherwise, any waters of this state from moving to a person having a prior right to use the same, or for any person without an agreement with the state of Kansas to divert or take any water that has been released from storage under authority of the state of Kansas or that has been released from storage pursuant to an agreement between the state and federal government. Upon making a determination of an unlawful diversion the chief engineer or his or her authorized agents, shall direct that the headgates, valves, or other controlling works of any ditch, canal, conduit, pipe, well, or structure be opened, closed, adjusted, or regulated as may be necessary to secure water to the person having the prior right to its use, or to secure water for the purpose for which it was released from storage under authority of the state of Kansas or pursuant to an agreement between the state and federal government. The chief engineer, or his or her authorized agents, shall deliver a copy of such a directive to the persons involved either personally or by mail or by attaching a copy thereof to such headgates, valves, or other controlling works to which it applies and such directive shall be legal notice to all persons involved in the diversion and distribution of the water of the ditch, canal, conduit, pipe, well, or structure. For the purpose of making investigations of diversions and delivering directives as provided herein and determining compliance therewith, the chief engineer or his or her authorized agents shall have the right of access and entry upon private property. (**History:** L. 1957, ch. 539, § 10; L. 1965, ch. 557, § 1; June 30.)

K.S.A. 82a-706c. Meters, gages and other measuring devices; waste and quality checks. The chief engineer shall have full authority to require any water user to install meters, gages, or other measuring devices, which devices he or she or his or her agents may read at any time, and to require any water user to report the reading of such meters, gages, or other measuring devices at reasonable intervals. He or she shall have full authority to make, and to require any water user to make, periodic water waste and water quality checks and to require the user making such checks to report the findings thereof. (**History:** L. 1957, ch. 539, § 11: June 29.)

K.S.A. 82a-706d. Duties of attorney general. Upon request of the chief engineer the attorney general shall bring suit in the name of the state of Kansas, in courts of competent jurisdiction to enjoin the unlawful appropriation, diversion, use of the waters of the state, and waste or loss thereof. (**History:** L. 1957, ch. 539, § 12; June 29.)

K.S.A. 82a-706e. State field offices and commissioners. The chief engineer, subject to the approval of the secretary of agriculture, may establish field offices within this state to secure the best protection to all claimants of water therein and the most economical supervision thereof. Subject to the approval of the secretary of agriculture, the chief engineer may appoint a water commissioner for each field office so established, in accordance with the Kansas civil service laws, who shall be the agent of the chief engineer in supervising the distribution of waters within the area served by such field office, according to the rights and priorities of all parties concerned, and who shall perform such other duties as the chief engineer may direct. (**History:** L. 1957, ch. 539, § 13; L. 2004, ch. 101, § 142; July 1.)

K.S.A. 82a-707. Principles governing appropriations; priorities. (a) Surface or ground waters 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) Where uses of water for different purposes conflict such uses shall conform to the following order of preference: Domestic, municipal, irrigation, industrial, recreational and water power uses. However, the date of priority of an appropriation right, 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 that attach to it. The holder of a water right for an inferior beneficial use of water shall not be deprived of the use of the water either temporarily or permanently as long as such holder is making proper use of it under the terms and conditions of such holder's water right and the laws of this state, other than through condemnation.

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

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

(e) Appropriation rights in excess of the reasonable needs of the appropriators shall not be allowed. (**History:** L. 1917, ch. 172, § 6; R.S. 1923, 24-903; L. 1945, ch. 390, § 7; L. 1957, ch. 539, § 14; L. 1988, ch. 396, § 3; July 1.)

K.S.A. 82a-708. (**History:** L. 1945, ch. 390, § 8; Repealed, L. 1957, ch. 539, § 26; June 29.)

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

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

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

Commencing July 1, 2002, and ending June 30, 2010, the application fee shall be fixed by this section for the appropriate category of acre feet in accordance with the following:

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

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

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

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

Commencing July 1, 2002 and ending June 30, 2010, the application fee shall be fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

Storage-Acre Feet	Fee
0 to 250	$200
More than 250	$200 + $20 for each additional 250 storage-acre feet or any part thereof

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

(d) Each application for a term permit pursuant to K.S.A. 2004 Supp. 82a-736, and amendments thereto, shall be accompanied by an application fee established by rules and regulations of the chief engineer in an amount not to exceed $400 for the five-year period covered by the permit.

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

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

(g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto. (**History:** L. 1957, ch. 539, § 3; L. 1973, ch. 414, § 1; L. 1982, ch. 4, § 17; L. 1985, ch. 339, § 1; L. 1989, ch. 310, § 1; L. 2001, ch. 160, § 17; L. 2002, ch. 181, § 21; L. 2004, ch.85, § 16; July 1.)

K.S.A. 82a-708b. Application for change in place of use, point of diversion or use; fee; review of action on application. (a) Any owner of a water right may change the place of use, the point of diversion or the use made of the water, without losing priority of right, provided such owner shall: (1) Apply in writing to the chief engineer for approval of any proposed change; (2) demonstrate to the chief engineer that any proposed change is reasonable and will

not impair existing rights; (3) demonstrate to the chief engineer that any proposed change relates to the same local source of supply as that to which the water right relates; and (4) receive the approval of the chief engineer with respect to any proposed change. The chief engineer shall approve or reject the application for change in accordance with the provisions and procedures prescribed for processing original applications for permission to appropriate water. If the chief engineer disapproves the application for change, the rights, priorities and duties of the applicant shall remain unchanged. Any person aggrieved by an order or decision by the chief engineer relating to an application for change may petition for review thereof in accordance with the provisions of K.S.A. 2004 Supp. 82a-1901 and amendments thereto.

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

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

Commencing July 2, 2002, and ending June 30, 2010, the application fee shall be set forth in the schedule below:

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

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application, the application fee is subject to refund upon request. Any application submitted which requests two of the types of changes set forth above shall be accompanied by a fee of $150, or commencing July 1, 2002, and ending June 30, 2010, a fee of not to exceed $300. Any application which requests three types of changes shall be accompanied by a fee of $250, or commencing July 1, 2002, and ending June 30, 2010, a fee of not to exceed $500.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto. (**History:** L. 1957, ch. 539, § 4; L. 1982, ch. 4, § 18; L. 1985, ch. 339, § 2; L. 1990, ch. 361, § 1; L. 1999, ch. 130, § 4; L. 2002, ch. 181, § 22; L. 2004, ch.85, § 17; July 1.)

K.S.A. 82a-709. Same; contents; time of filing. No person may acquire an appropriation right to the use of waters of the state for other than domestic purposes without making an application to the chief engineer for a permit to make such appropriation. However, any person using water for domestic purposes subsequent to June 28, 1945, and any person intending to use water hereafter for domestic purposes may make application to the chief

engineer for a permit the same as any other person. The application shall set forth (a) the name and post-office address of the applicant;

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

(c) the maximum rate at which water is to be diverted or used and the total annual quantity of water sought;

(d) the location of the works or proposed works for the diversion and use of the water;

(e) the estimated time for the completion of any proposed works;

(f) the time of the first actual application of the water to the beneficial use involved, if there was such, and the estimated time for the first actual application of the water for the beneficial use proposed;

(g) if for irrigation use, a description of the land to be irrigated by designating the number of irrigable acres in each forty (40) acre tract or fractional portion thereof;

(h) if for municipal water supply, it shall give the present population to be served and estimated future requirements of the city;

(i) any additional factors which may be required by the chief engineer.

Such application shall be filed and approved before the commencement of any work in connection with the construction, enlargement or extension of any works for the diversion, storage, and use of water. (**History:** L. 1945, ch. 390, § 9; L. 1957, ch. 539, § 15; L. 1977, ch. 356, § 5; January 1, 1978.)

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

All maps, plats, plans and drawings shall conform to prescribed uniform standard as to materials, size, coloring and scale, and shall show: (a) The source from which the proposed appropriation is to be taken, (b) all proposed dams, dikes, reservoirs, canals, pipe lines, power houses and other structures for the purpose of storing, conveying or using water for the purpose

approved and their positions or courses in connection with the boundary lines and corners of the lands which they occupy. Land listed for irrigation shall be shown in government subdivisions or fractions thereof. Default in the refiling of any application within the time limit specified shall constitute a forfeiture of priority date and the dismissal of the application. (**History:** L. 1945, ch. 390, § 10; June 28.)

K.S.A. 82a-711. Permits to appropriate water; standards for approval of use; review of action on application. (a) If a proposed use neither impairs a use under an existing water right nor prejudicially and unreasonably affects the public interest, the chief engineer shall approve all applications for such use made in good faith in proper form which contemplate the utilization of water for beneficial purpose, within reasonable limitations except that the chief engineer shall not approve any application submitted for the proposed use of fresh water in any case where other waters are available for such proposed use and the use thereof is technologically and economically feasible. Otherwise, the chief engineer shall make an order rejecting such application or requiring its modification to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water.

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

(1) Established minimum desirable streamflow requirements;

(2) the area, safe yield and recharge rate of the appropriate water supply;

(3) the priority of existing claims of all persons to use the water of the appropriate water supply;

(4) the amount of each claim to use water from the appropriate water supply; and

(5) all other matters pertaining to such question.

(c) With regard to whether a proposed use will impair a use under an existing water right, impairment shall include the unreasonable raising or lowering of the static water level or the unreasonable increase or decrease of the streamflow or the unreasonable deterioration of the water quality at the water user's point of diversion beyond a reasonable economic limit. Any person aggrieved by any order or decision by the chief engineer relating to that person's application for a permit to appropriate water may petition for review thereof in accordance with the provisions of K.S.A. 2004 Supp. 82a-1901 and amendments thereto. (**History:** L. 1945, ch. 390, § 11; L. 1957, ch. 539, § 16; L. 1977, ch. 356, § 6; L. 1980, ch. 332, § 3; L. 1986, ch. 392, § 3; L. 1991, ch. 292, § 3; L. 1999, ch. 130, § 5; July 1.)

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

diversions under such proposed later appropriations may cause the water level to be raised or lowered at the point of diversion of a prior appropriator, so long as the rights of holders of existing water rights can be satisfied under such express conditions. (**History:** L. 1957, ch. 539, § 17; June 29.)

K.S.A. 82a-712. Same; notice of approval or disapproval of application; approval constitutes permit. The chief engineer shall notify the applicant of the approval or disapproval of the application. Upon approving the application the chief engineer shall authorize the applicant to proceed with the construction of the proposed diversion works and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect his or her proposed appropriation. The chief engineer may approve an application for a smaller amount of water than requested and he or she may approve an application upon such terms, conditions, and limitations as he or she shall deem necessary for the protection of the public interest. The approval of the application by the chief engineer, subject to the terms and conditions thereof, upon issuance, constitutes a permit to proceed with construction of diversion or other authorized works and with the diversion and use of water in accordance with the terms and conditions of his or her permit and no common-law claimant without a vested right, or other person without a vested right, a prior appropriation right, or an earlier permit shall prevent, restrain, or enjoin an applicant from proceeding in accordance with the terms and conditions of his or her permit or from diminishing the water supply. (**History:** L. 1945, ch. 390, § 12; L. 1957, ch. 539, § 18; June 29.)

K.S.A. 82a-713. Same; limiting time for perfection of appropriation; extension. The chief engineer shall limit the time for the perfecting of an appropriation to a reasonable period within which the proposed works can be completed by expeditious procedure, and he or she shall for good cause shown by the applicant allow an extension of time. (**History:** L. 1945, ch. 390, § 13; June 28.)

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

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

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

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

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

(3) not later than five years after the date the applicant notifies the chief engineer of the completion of construction of the works and the actual application of water to the proposed beneficial use within the time allowed, in all other cases.

If the chief engineer fails to issue a certificate within the time provided by this subsection, the applicant may request review, pursuant to K.S.A. 2004 Supp. 82a-1901, and amendments thereto, of the chief engineer's failure to act.

(d) Except for works constructed to appropriate water for domestic use, each notification to the chief engineer under subsection (a) shall be accompanied by a field inspection fee of $200, or commencing July 1, 2002, and ending June 30, 2010, a fee of $400. Failure to pay the field inspection fee, after reasonable notice by the chief engineer of such failure, shall result in the permit to appropriate water being revoked, forfeiture of the priority date and revocation of any appropriation right that may exist.

(e) A request for an extension of time to: (1) Complete the diversion works; or (2) perfect the water right, shall be accompanied by a fee of $50, or commencing July 1, 2002, and ending June 30, 2010, a fee of $100.

(f) A request to reinstate a water right or a permit to appropriate water which has been dismissed shall be filed with the chief engineer within 60 days of the date dismissed and shall be accompanied by a fee of $100, or commencing July 1, 2002, and ending June 30, 2010, a fee of $200.

(g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto. (**History:** L. 1945, ch. 390, § 14; L. 1957, ch. 539, § 20; L. 1985, ch. 339, § 3; L. 1990, ch. 362, § 1; L. 1999, ch. 130, § 6; L. 2002, ch. 181, § 23; L. 2004, ch.165, § 2; May 27.)

K.S.A. 82a-715. Same; validation of certain applications. All applications for the appropriation of water to beneficial use as filed with the chief engineer, subsequent to May 5, 1941, and all processing, proceedings and certificates pertaining thereto are validated to same extent as if filed after the effective date of this act, but with priorities as of the dates of filing of applications. All subsequent processing of such applications as are still pending and undetermined shall be further considered and processed as provided in this act. (**History:** L. 1945, ch. 390, § 15; June 28.)

K.S.A. 82a-716. Common-law claimants; action for compensation; injunctions. If any appropriation, or the construction and operation of authorized diversion works results in an injury to any common-law claimant, such person shall be entitled to due compensation in a suitable action at law against the appropriator for damages proved for any property taken. Any person with a valid water right or permit to divert and use water may restrain or enjoin in any court of competent jurisdiction a subsequent diversion by a common-law claimant without vested rights without first condemning those common-law rights. An appropriator shall have the right to injunctive relief to protect his or her prior right of beneficial use as against use by an appropriator with a later priority of right. (**History:** L. 1945, ch. 390, § 16; L. 1957, ch. 539, § 21; June 29.)

K.S.A. 82a-717. (**History:** L. 1945, ch. 390, § 17; Repealed, L. 1957, ch. 539, § 26; June 29.).

K.S.A. 82a-717a. Diversions by common-law claimants and others; injunctions. No common-law claimant without a vested right, or other person without a vested right, a prior appropriation right, or an earlier permit shall divert or threaten to divert water if such diversion or threatened diversion impairs or would impair any vested right, appropriation right, or right under a permit to appropriate water. But any common-law claimant with a vested right, or other person with a vested right, a prior appropriation right, or an earlier permit may divert water in accordance with any such right or permit although such diversion or use thereunder conflicts with the diversion, use, proposed diversion, or proposed use made or proposed by a common-law claimant who does not have a vested right, or other person who does not have a vested right, a prior appropriation right or an earlier permit. Moreover, any common-law claimant with a vested right, or other person with a vested right, a prior appropriation right, or an earlier permit may restrain or enjoin in any court of competent jurisdiction any diversion or proposed diversion that impairs or would impair such right in the event that any such diversion or proposed diversion is made or is threatened to be made by any common-law claimant, or other person who does not have a vested right, a prior appropriation right, or an earlier permit. (**History:** L. 1957, ch. 539, § 19; June 29.)

K.S.A. 82a-718. Abandonment of water rights; notices; hearing; review of action; exceptions. (a) All appropriations of water must be for some beneficial purpose. Every water right of every kind shall be deemed abandoned and shall terminate when without due and sufficient cause no lawful, beneficial use is henceforth made of water under such right for five successive years. Before any water right shall be declared abandoned and terminated the chief

engineer shall conduct a hearing thereon. Notice shall be served on the user at least 30 days before the date of the hearing. The determination of the chief engineer pursuant to this section shall be subject to review in accordance with the provisions of K.S.A. 2004 Supp. 82a-1901, and amendments thereto.

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

(b) When no lawful, beneficial use of water under a water right has been reported for three successive years, the chief engineer shall notify the user, by certified mail, return receipt requested, that: (1) No lawful, beneficial use of the water has been reported for three successive years; (2) if no lawful, beneficial use is made of the water for five successive years, the right may be terminated; and (3) the right will not be terminated if the user shows that for one or more of the five consecutive years the beneficial use of the water was prevented or made unnecessary by circumstances that are due and sufficient cause for nonuse, which circumstances shall be included in the notice.

(c) The provisions of subsection (a) shall not apply to a water right that has not been declared abandoned and terminated before the effective date of this act if the five years of successive nonuse occurred exclusively and entirely before January 1, 1990. However, the provisions of subsection (a) shall apply if the period of five successive years of nonuse began before January 1, 1990, and continued after that date. (**History:** L. 1945, ch. 390, § 19; L. 1957, ch. 539, § 23; L. 1988, ch. 356, § 350; L. 1999, ch. 122, § 1; L. 1999, ch. 149, § 13; July 1.)

K.S.A. 82a-719. Distribution of water according to decree of court. Whenever the rights for the use of waters of the state shall have been adjudicated by any court, the division of water resources with the aid of its chief engineer and other officers and employees, shall aid in the distribution of such water according to such decree and shall distribute the water among the several ditches or water users pursuant to the decree; and shall have the power to open, close or adjust the headgates and regulate the controlling works of any ditch or structure, or cause the same to be opened, closed, adjusted and regulated so as to make a distribution of the water in conformity with the decree. (**History:** L. 1933, ch. 206, § 2; L. 1945, ch. 390, § 20; June 28.)

K.S.A. 82a-720. Same; certified copies of decrees. The clerk of any court of this state in which a decree shall be made fixing the rights pertaining to ditches or water users to water, shall within ten days after such decree shall have been entered, forward to the chief engineer of the division of water resources, by registered mail, a certified copy of such decree. (**History:** L. 1933, ch. 206, § 4; L. 1945, ch. 390, § 21; June 28.)

K.S.A. 82a-721. Construction of act. This act shall be construed liberally to effectuate the purposes hereof, and the enumeration of specific powers in this act shall not operate to restrict the meaning of any general grant of power contained in this act or to exclude other powers comprehended in such general grant. (**History:** L. 1945, ch. 390, § 23; June 28.)

K.S.A. 82a-721a. Same; damages to land. Nothing in this act shall be construed as limiting any right of an owner of an estate or interest in or concerning land to recover damage for any injury done to his or her land or to any water rights appurtenant thereto. (**History:** L. 1957, ch. 539, § 22; June 29.)

K.S.A. 82a-722. Invalidity of part. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered, and it shall be presumed that the legislature would have enacted this law with the section, subsection or clause held to be invalid, omitted. (**History:** L. 1945, ch. 390, § 24; June 29.)

K.S.A. 82a-723. (**History:** L. 1955, ch. 449, § 1; Repealed, L. 1957, ch. 539, § 26; June 29.)

K.S.A. 82a-724. Review of administrative actions. Any order pursuant to K.S.A. 2004 Supp. 82a-1901 and amendments thereto upon review of any action of the chief engineer pursuant to K.S.A. 82a-704a, 82a-708b, 82a-711 or 82a-718, and amendments thereto, is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. (**History:** L. 1957, ch. 539, § 24; L. 1978, ch. 435, § 1; L. 1986, ch. 318, § 143; L. 1999, ch. 130, § 8; July 1.)

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

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

determination of rights to water within, or partially within, the state, the division or its chief engineer may accept a reference of such suit as master or referee for the court. (**History:** L. 1957, ch. 539, § 25; June 29.)

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

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

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

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

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

(c) In order to make the finding required by subsection (b)(2), the chief engineer shall rely on a determination by the attorney general of the other state of whether the proposed use would be prohibited in that state. (**History:** L. 1976, ch. 435, § 1; L. 1984, ch. 380, § 1; L. 2000, ch. 98, § 1; July 1.)

K.S.A. 82a-727. Temporary permits to appropriate water; extension; fee; rules and regulations. (a) Subject to existing water rights and the principle of beneficial use, the chief engineer may grant upon application made therefor temporary permits and extensions thereof to appropriate water in any case where the public interest in such water will not be unreasonably or prejudicially affected, except that the chief engineer shall not grant any such permit to appropriate fresh water in any case where other waters are available for the proposed use and the use thereof is technologically and economically feasible. No such temporary permit or any extension thereof shall be granted for a period of time in excess of six months. Each application submitted for a temporary permit or extension thereof shall be accompanied by an application fee of $100, or commencing July 1, 2002, and ending June 30, 2010, a fee of $200.

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

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

(d) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto. (**History:** L. 1977, ch. 356, § 1; L. 1982, ch. 4, § 19; L. 1985, ch. 339, § 4; L. 2002, ch. 181, § 24; L. 2004, ch.85, § 19; July 1.)

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

(b) (1) The violation of any provision of this section by any person is a class C misdemeanor. (2) Each day that any such violation occurs after notice of the original violation is given by the chief engineer to any such violator by restricted mail shall constitute a separate offense. (**History:** L. 1977, ch. 356, § 2; L. 1981, ch. 397, § 2; July 1.)

K.S.A. 82a-729. Act supplemental to article 7 of chapter 82a of the Kansas Statutes Annotated. The provisions of K.S.A. 82a-727 and 82a-728 shall be a part of and supplemental to the provisions of article 7 of chapter 82a of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto. (**History:** L. 1977, ch. 356, § 7; January 1, 1978.)

K.S.A. 82a-730. Citation of act. K.S.A. 82a-701 to 82a-726, inclusive, and acts amendatory thereof and supplemental thereto shall be called and may be cited as the Kansas water appropriation act. (**History:** L. 1977, ch. 356, § 8; L. 1984, ch. 380, § 2; July 1.)

K.S.A. 82a-731. Water appropriation certification fund created; expenditures therefrom. There is hereby created in the state treasury the water appropriation certification fund. The chief engineer of the division of water resources of the Kansas department of agriculture shall remit all moneys received under K.S.A. 82a-708a, 82a-708b and 82a-727, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water appropriation certification fund.

All expenditures from the water appropriation certification fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person designated by the secretary. (**History:** L. 1982, ch. 4, § 21; L. 2001, ch. 5, § 471; L. 2004, ch. 101 § 143; July 1.)

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

(b) Any person failing to file a water use report or other documents required under the provisions of subsection (a) shall be subject to a civil penalty in an amount not to exceed $250. The chief engineer upon a finding that the owner of a water right or permit to appropriate water for beneficial use has failed to file such a report may impose a civil penalty as provided in this section. Any person filing a document knowing it to contain any false information as to a material matter shall be guilty of a class C misdemeanor. All fines collected by the chief engineer pursuant to this subsection shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto. (**History:** L. 1988, ch. 395, § 1; L. 1991, ch. 292, § 4; L. 2004, ch. 101 § 144; July 1.)

K.S.A. 82a-733. Conservation plans and practices. (a) The chief engineer may require an applicant for a permit to appropriate water for beneficial use or the owner of a water right or permit to appropriate water for beneficial use to adopt and implement conservation plans and practices. The chief engineer shall not mandate the adoption and implementation of conservation plans and practices except pursuant to a finding that such plans and practices will assure public benefit and promote public interest. In selecting the applications, water rights or permits for which conservation plans and practices are required to be adopted and implemented, the chief engineer shall give priority to: (1) Water users that share a common source of supply that could be insufficient during times of drought; (2) water users whose use is significantly higher than their peers from the same geographical area with comparable circumstances; and (3) water users who apply for any state administered grant, loan or cost-share moneys for water-related projects. Prior to requiring the adoption and implementation of conservation plans and practices, the chief engineer shall assess the availability of technical assistance and inform the owner of a water right or permit to appropriate water for beneficial use or the applicant for such a permit who is required to adopt and implement a conservation plan and practices of the available sources of technical assistance to prepare the conservation plan.

(b) The chief engineer shall allow the owner of a water right or permit to appropriate water for beneficial use or the applicant for such a permit a minimum of 60 days to prepare a required conservation plan. The time allowed to prepare the required conservation plan may be extended by the chief engineer for good cause shown by the applicant. The chief engineer shall provide the owner of the water right or permit to appropriate water for beneficial use or the applicant for such a permit a reasonable time to implement the conservation plan and, for good

cause shown, such as the need to apply extensive land treatment practices, the chief engineer may extend the time for implementation for a period of up to five years.

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

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

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

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

(g) Any conservation plans and practices required pursuant to this section with regard to any groundwater right or permit to appropriate groundwater from within the boundaries of a groundwater management district shall be subject to approval by both the chief engineer and the board of directors of the groundwater management district unless such plans and practices are incorporated in the groundwater management district's management program which has been approved by the chief engineer pursuant to K.S.A. 82a-1029 and amendments thereto.

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

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

(j) This section shall be part of and supplemental to the Kansas water appropriation act. (**History:** L. 1991, ch. 292, § 5; July 1.)

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

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

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

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

(2) The period of time allowed to perfect an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be not less than 20 years and, for good cause shown, the chief engineer may allow one or more 10-year extensions of such period. The chief engineer shall consider the time needed until exhaustion of proven reserves, closure in accordance with the surface land reclamation and mining act, K.S.A. 49-601 et seq., and amendments thereto, and the availability of water for the proposed use, but in no case shall allow longer than 60 years for perfection.

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

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

(f) This section shall be part of and supplemental to the Kansas Water appropriations act. (**History:** L. 1995, ch. 72, § 1; L. 2004, ch. 100, § 1; July 1.)

K.S.A. 82a-735. Sunflower ammunition plant water rights. (a) The state of Kansas shall have the sole authority to enter into negotiations, agreements and contracts with the federal government regarding water rights, file number 37 and file number 38, appurtenant to federal property located in Johnson county. The Kansas water office, on behalf of the state, shall enter into such negotiations, agreements and contracts when the Kansas water office deems it necessary for the achievement of policies of the state relative to the water resources of the state. Such negotiations, agreements and contracts shall be for the purpose of:

(1) The return of such water rights to the state, in which case the rights shall be terminated and their priority forfeited; or

(2) the acquisition of such water rights by the state.

(b) Any agreement or contract entered into pursuant to this section shall be binding on the state only upon adoption by the legislature of a concurrent resolution approving such agreement or contract.

(c) If water rights are acquired by the state pursuant to this section:

(1) The Kansas water office, on behalf of the state, shall accept and hold such water rights in trust;

(2) the Kansas water office shall have no authority to assign, transfer or otherwise dispose of such water rights;

(3) all contractual agreements associated with such water rights shall remain in effect and the provisions of K.S.A. 82a-718 and amendments thereto shall not apply to such water rights while held by the Kansas water office; and

(4) the Kansas water office shall make all annual payments associated with such acquired water rights to any water assurance district under the provisions of the water assurance program act until such time as such water rights are transferred to another person or entity.

(d) Changes to any water rights acquired by the state pursuant to this section shall be in accordance with the Kansas water appropriation act, including the provisions of K.S.A. 82a-708b and amendments thereto. (**History:** L. 1999, ch. 122, § 2; July 1.)

K.S.A. 82a-736. Multi-year flex accounts. (a) As used in this section:

(1) "Base average usage" means: (A) The average amount of water actually used for a beneficial use under a groundwater water right during calendar years 1992 through 2002, excluding any amount used in any such year in excess of the amount authorized by such water right; or (B) if the holder of a groundwater water right shows to the satisfaction of the chief engineer that the holder has implemented significant water conservation measures during calendar years 1992 through 2002, the average amount of water actually used for a beneficial use

under such right during the five calendar years immediately before the calendar year when such measures were implemented, excluding any amount used in any such year in excess of the amount authorized by such water right.

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

(b) Any holder of a groundwater water right which has not been deposited or placed in a safe deposit account in a chartered water bank may establish a flex account where the holder may deposit, in advance, water from such water right for any five consecutive calendar years, subject to the following:

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

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

(3) the water right shall not have been abandoned and shall be in good standing, based on past water usage and compliance with the terms of the holder's permit and all applicable provisions of law and orders of the chief engineer; and

(4) the amount of water that shall be deposited in the account shall not exceed 90% of the amount of the holder's base average usage times five.

(c) The chief engineer shall implement a program providing for the issuance of term permits to holders of groundwater water rights who have established flex accounts in accordance with this section. Such term permits shall authorize the use of water in a flex account at any time during the five consecutive calendar years for which the application for the term permit is made, without annual limits on such use. Application for any such term permit shall be filed not later than October 10, of the year preceding the first year for which the application is made.

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

(1) A separate term permit shall be required for each point of diversion.

(2) The quantity of water authorized for diversion shall be limited to the amount deposited pursuant to subsection (b)(4).

(3) The authorized place of use for the term permit shall not be greater than that authorized by the existing groundwater right.

(4) The chief engineer may establish, by rules and regulations, criteria for such term permits when the water right authorizes multiple points of diversion or multiple water rights authorize a single point of diversion or overlapping places of use.

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

(e) All costs of administration of this section shall be paid from fees for term permits provided for by this section. Any appropriation or transfer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be repaid to the fund from which such appropriation or transfer is made. At the time of repayment, the secretary of

agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.

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

(g) This section shall be part of and supplemental to the Kansas water appropriation act. (**History:** L. 2001, ch. 160, § 16; L. 2005, ch. 142, § 3; July 1.)

K.S.A. 82a-737. Civil enforcement of act. (a) As used in this section: (1) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(2) "Secretary" means the secretary of agriculture.

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

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

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

(3) any violation of a term, condition or limitation imposed by the chief engineer as authorized by law, including, but not limited to: (A) Diversion of water from an unauthorized point of diversion; (B) failure to limit the use of water to the authorized place of use; (C) failure to submit or comply with the terms of conservation plans as required pursuant to K.S.A. 82a-733, and amendments thereto; (D) failure to comply with the maximum annual quantity or rate of diversion authorized; (E) failure to properly install, maintain or assure the accuracy of acceptable water measurement devices; (F) failure to comply with orders related to minimum desirable stream flow, unlawful diversion, impairment of senior water rights or waste of water; or (G) failure to limit the use of water to an authorized type of use.

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

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

(e) No civil penalty or suspension or modification of a water right or use of water shall be imposed pursuant to this section except on the written order of the chief engineer or duly authorized agent of the chief engineer. Such order shall state the nature of the violation, the

factual basis for the finding, the penalty to be imposed and the appropriate procedure for appeal of the order to the chief engineer or the secretary, as established by K.S.A. 2004 Supp. 82a-1901, and amendments thereto. Upon review, the order shall be affirmed, reversed or modified and the reasons therefor shall be specified.

(f) Any person aggrieved by an order of the chief engineer, or the chief engineer's duly authorized agent, pursuant to this section may request review by the secretary as provided by K.S.A. 2004 Supp. 82a-1901, and amendments thereto, and, upon exhaustion of administrative remedies, may appeal to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(g) The provisions of this section shall be part of and supplemental to the Kansas water appropriation act. (**History:** L. 2001, ch. 160, § 14; July 1.)

K.S.A. 82a-738. Studies and recommendations of chief engineer and state geological survey; report. The chief engineer of the division of water resources of the department of agriculture and the state geological survey shall study and develop recommendations regarding: (a) The use of water banking as it pertains to sand and gravel pits; (b) calculation of evapotranspiration and its effects on consumptive use from sand and gravel pits, with special emphasis on salt cedar (tamarisk); and (c) the pollution control and flood control impacts of diverting water runoff into sand and gravel pits. On or before January 20, 2006, the chief engineer and the state geological survey shall submit a report of the study and recommendations to the house standing committee on environment and the senate standing committee on natural resources. (**History:** L. 2004, ch. 100, § 2; July 1.)

K.S.A. 82a-761. Title; implementation. (a) K.S.A. 2004 Supp. 82a-761 through 82a-773, and amendments thereto, may be cited as the Kansas water banking act.

(b) Implementation of the provisions of the water banking act shall be subject to the availability of appropriations for that purpose. (**History:** L. 2001, ch. 160, § 1; July 1.)

K.S.A. 82a-762. Definitions. As used in this act:

(a) "Bank boundary" means the geographic area where a water bank operates and conducts the functions of a water bank and may encompass more than one hydrologic unit.

(b) "Bank charter" means a document that sets out the articles of incorporation and principal functions of a water bank.

(c) "Bankable water right" means a water right that has been determined pursuant to K.S.A. 2004 Supp. 82a-764, and amendments thereto, to be bankable.

(d) "Chief engineer" means the chief engineer of the division.

(e) "Conservation element" means the portion of a deposit that is taken out of use for the duration of the deposit and is not allowed to be withdrawn and used by subsequent users.

(f) "Deposit," other than as used in "safe deposit account," refers to the deposit of a water right, or portion of a water right, in a water bank for the purpose of having the bank lease water from such water right, or portion of a water right, to another person or entity.

(g) "Division" means the division of water resources of the Kansas department of agriculture.

(h) "Hydrologic unit" means a defined area from which water rights authorizing diversion of water from a source of supply may be deposited and from which water from the same source of supply may be leased, in accordance with the provisions of this act, without causing impairment of existing water rights or a significantly different hydrological effect to other users of water from the same source or hydraulically connected sources of supply.

(i) "Linked water rights" means two or more water rights that authorize common points of diversion or a common place of use, or both.

(j) "Safe deposit account" means a personal account held in a water bank where unused water from a bankable water right is placed for use in future years.

(k) "Term permit" means a permit to appropriate water for a specified period of time.

(l) "Water bank" means a private not-for-profit corporation that: (1) Leases water from water rights that have been deposited in the bank; and (2) provides safe deposit accounts. A water bank may be a groundwater bank or a surface water bank, or both. (**History:** L. 2001, ch. 160 § 2; July 1.)

K.S.A. 82a-763. Water bank authority; deposits and leases; safe deposit accounts; restrictions. (a) A water bank shall be authorized to enter into contracts with holders of water rights for deposit in the bank of all or a portion of any water right from a hydrologic unit within the bank boundary, subject to the following:

(1) The bank shall accept for deposit only a water right, or portion of a water right, that has been determined to be a bankable water right under K.S.A. 2004 Supp. 82a-764, and amendments thereto;

(2) a deposit of a groundwater right shall be for a period of not more than five years;

(3) a deposit shall be subject to such terms and conditions as provided by the contract between the bank and the depositor, including penalty provisions for breach of any contract conditions; and

(4) a deposit shall be subject to such terms and conditions, and such approval by the chief engineer, as provided by rules and regulations of the chief engineer.

(b) A water bank shall be authorized to lease water from any water right, or portion of a water right, that has been deposited in the bank, subject to the following:

(1) Any water leased must be used within the bank boundary and in the same hydrologic unit from which the water right authorizing diversion of the water is deposited;

(2) use of leased water shall be subject to all provisions of the Kansas water appropriation act, including but not limited to all requirements relating to term permits;

(3) a lease shall be subject to such terms and conditions as provided by the contract between the bank and the lessor, including penalty provisions for breach of any contract conditions;

(4) a lease shall be subject to such terms and conditions, and such approval by the chief engineer, as provided by rules and regulations of the chief engineer; and

(5) a water bank's decision of whether or not to lease water shall not be based on the proposed use of the water.

(c) A water bank shall provide safe deposit accounts where a holder of a water right may place unused water from the water right for future withdrawal, subject to the following:

(1) A water right holder shall place in a safe deposit account only water from a water right that has been determined to be a bankable water right under K.S.A. 2004 Supp. 82a-764 and amendments thereto;

(2) only water that was unused in the immediate past calendar year may be placed in a safe deposit account and the amount that shall be placed in such account shall be less than the total amount of unused water from the bankable water right in that year;

(3) only water from one water right shall be placed in a safe deposit account and water from a water right shall not be placed in more than one safe deposit account, except that water from linked water rights may be placed in a single safe deposit account;

(4) each calendar year that water remains in a safe deposit account, the amount of water held in the account shall decrease by a percentage established by the charter of the bank but in no case less than 10% annually of all amounts placed in the account;

(5) the total amount of water accumulated in a safe deposit account shall not exceed the maximum annual quantity authorized to be diverted under the water right or the aggregate maximum quantity authorized to be diverted under all linked water rights from which water is deposited in the account;

(6) use of water withdrawn from a safe deposit account shall be subject to all provisions of the Kansas water appropriation act, including but not limited to all requirements relating to term permits;

(7) a safe deposit account shall be subject to such terms and conditions as provided by the contract between the bank and the account holder, including penalty provisions for breach of any contract conditions;

(8) a safe deposit account shall be subject to such terms and conditions, and such approval by the chief engineer, as provided by rules and regulations of the chief engineer; and

(9) the operation of safe deposit accounts by the bank shall not result in an increase in the amount of net consumptive use of water in any hydrologic unit, computed on a long-term rolling average compared to a representative past period.

(d) A water bank may provide services to facilitate the sale or lease of water rights.

(e) A water bank shall not own, buy or sell water rights. (**History:** L. 2001, ch. 160, § 3; July 1.)

K.S.A. 82a-764. Bankable water right, determination of. Before a water right or portion of a water right shall be accepted for deposit in a water bank or water from a water right shall be placed in a safe deposit account, the bank, with the assistance of the division, shall determine whether the water right is bankable, as follows: (a) The right is vested or has been issued a certificate of appropriation; and (b) the right has not been abandoned and is in good standing, based on past water usage and compliance with the terms of the holder's permit and all applicable provisions of law and orders of the chief engineer. (**History:** L. 2001, ch. 160 § 4; July 1.)

K.S.A. 82a-765. Water bank charter; approval; requirements. (a) Before a water bank is authorized to operate in the state, the bank's charter must be approved by the chief engineer. Prior to approval, the body wishing to charter the bank shall submit to the chief engineer the proposed bank charter and any other information required by rules and regulations of the chief engineer to determine whether the bank shall be chartered to operate in the state.

(b) The chief engineer shall approve the charter of a water bank only if the chief engineer determines that:

(1) The charter ensures that the operations and policies of the bank will be consistent with the provisions of this act, the state water plan and all applicable statutes, rules and regulations, findings and orders of the chief engineer, groundwater management district policies and water assurance district operations plans;

(2) there is sufficient participation by water right holders and water users to make the operations of the bank practical and feasible;

(3) the governing body of the bank has at least five members and is reasonably representative of public and private interests in water within the bank boundary;

(4) the bank would not lease or accept for placement in a safe deposit account water from the same hydrologic unit as another chartered bank or accept for deposit a water right that authorizes diversion of water from the same hydrologic unit as another chartered water bank;

(5) the charter ensures that, for each calendar year, the aggregate amount of all bank deposits (determined by multiplying the amount of each water right deposited by the length of time of the deposit and then adding together the resulting amounts for all deposits) will equal or exceed the sum of the aggregate amount of water leased by the bank (determined by multiplying the amount of each lease by the length of time of the lease and then adding together the resulting amounts for all leases) plus the aggregate conservation element of all leases (determined by multiplying the conservation element of each lease by the length of the lease and then adding together the resulting amounts for all leases);

(6) the charter ensures that the operations of the bank will not result in impairment of existing water rights or an increase in depletion of severely depleted groundwater aquifers or stream courses;

(7) the charter ensures that the operations of the bank will result in a savings of 10% or more in the total amount of groundwater consumed for a representative past period pursuant to water rights deposited in the bank, excluding groundwater located in an intensive groundwater

use control area where corrective control provisions have reduced the allocation of groundwater to less than the quantity previously authorized by water rights in the area;

(8) the charter provides a procedure for resolution of complaints by bank participants and others impacted by the bank policies, practices and operations;

(9) the charter ensures that the determination of the portion of a water right that is bankable shall be subject to the following:

(A) The determination shall be primarily based on a representative period of average water consumption for the hydrologic unit from which water is authorized to be diverted under the water right; and

(B) the method of determination shall not penalize past implementation of water conservation practices;

(10) the charter ensures that the total amount of groundwater leased each year from each hydrologic unit does not exceed 90% of the historic average annual amount collectively diverted pursuant to all deposited water rights or portions of water rights from such unit for a representative past period; and

(11) the charter provides a procedure for the dissolution of the bank, specifically stating how the remaining deposits and safe deposit accounts will be distributed.

(c) Prior to July 1, 2002, not more than one water bank shall be chartered to operate in the state. Such water bank shall be a groundwater bank. On or after July 1, 2002, one additional water bank may be chartered to operate in the state. Such water bank shall be a surface water bank or a surface water and groundwater bank.

(d) A water bank shall be chartered for a period of not more than seven years, at which time the bank shall be subject to review in accordance with K.S.A. 2004 Supp. 82a-767, and amendments thereto, to determine whether the bank's charter shall be extended.

(e) Any amendment to the charter of a water bank must be approved by the chief engineer prior to adoption of the amendment. (**History: L:** 2001, ch. 160, § 5; July 1.)

K.S.A. 82a-766. Annual reports; water bank; water users. (a) On or before February 10 of each year, each water bank shall submit to the chief engineer a report containing the following:

(1) With regard to water rights or portions of water rights on deposit in the bank during the last year: (A) The total quantity of water authorized to be diverted annually pursuant to each such water right or portion of a water right; (B) the total quantity of water used, by purpose of use, and acres irrigated for the portion authorized to be used for irrigation, during the last year as a result of leases of such water rights or portions of water rights; and (C) the total quantity of water used, by purpose of use, and acres irrigated for the portion authorized for irrigation pursuant to such water rights or portions of water rights during the two years preceding the last year; and

(2) with regard to water in each safe deposit account in the bank: (A) An accounting of the total quantity of water placed in such accounts during the past year and a balance at year end; (B) the total quantity of water used during the past year, and acres irrigated if an irrigation water right, from the account; (C) the total quantity of water authorized to be diverted annually,

the quantity actually used and the acres irrigated, if an irrigation water right, during the past year pursuant to the water rights or linked water rights related to such account; and (D) the total quantity of water used and acres irrigated pursuant to such water rights during the two years preceding the last year.

(b) The chief engineer may require owners of water rights deposited in a water bank, owners of water rights that have placed water in safety deposit accounts in a water bank and persons leasing water from a water bank to file annual water use reports at a date earlier than that provided by K.S.A. 82a-732, and amendments thereto.

(c) The report required by this section shall be in the form prescribed by the chief engineer. (**History: L:** 2001, ch. 160, § 6; July 1.)

K.S.A. 82a-767. Evaluation of water bank; evaluation team; extension or lapse of charter. (a) Not later than five years after the establishment of a water bank, the director of the Kansas water office shall convene a team to evaluate the operation of the bank. The team shall consist of:

(1) The director of the Kansas water office, or the director's designee, who shall serve as chairperson of the team;

(2) the director of the Kansas geological survey, or the director's designee;

(3) two members who represent water right holders and water users who have used the bank's services, which members shall be selected by the governing body of the bank;

(4) members selected by the chief engineer as follows: (A) Two members engaged in teaching or research at institutions of postsecondary education in subjects involving water resources, including but not limited to water resources engineering and hydrology; (B) a member who is an economist with knowledge and experience in water resources; (C) one member having knowledge and experience in water law; and (D) two members having knowledge and experience in water policy issues and residing outside the bank boundary, who shall represent the public interest;

(5) one representative of each groundwater management district located in whole or in part within the bank boundary selected by the board of directors of such district; and

(6) one representative of each water assurance district located in whole or in part within the bank boundary selected by the board of directors of such district.

(b) The staff of the Kansas water office shall provide staff assistance to the evaluation team.

(c) Not more than one year after a team is convened pursuant to this section, the team shall submit a report of its evaluation and recommendations to the governor, the Kansas water office, the Kansas water authority, the secretary of agriculture, the chief engineer and the senate standing committee on natural resources and the house standing committee on environment, or the successors to such committees regarding:

(1) The operations and policies of the bank and whether they are consistent with the provisions of this act, the state water plan and all applicable statutes, rules and regulations,

findings and orders of the chief engineer, groundwater management district policies and water assurance district operations plans;

(2) whether the operations of the bank are achieving the goals and objectives of water banking as set out in the state water plan and whether changes could be made to further those goals and objectives;

(3) whether the charter of the bank should be extended;

(4) the terms under which the bank's charter should be allowed to lapse, if the team recommends that the charter not be extended;

(5) the bank's impact on the entire area of all hydrologic units any parts of which are encompassed in the bank's boundary; and

(6) any other matters that the team determines relevant to the future of water banking in the state.

(d) Unless otherwise provided by law, the chief engineer, in accordance with the recommendations of the team, may extend the charter of the bank for an additional period not to exceed seven years or may allow the bank charter to lapse under the terms recommended by the team. (**History:** L. 2001, ch. 160, § 7; July 1.)

K.S.A. 82a-768. Application of law relating to abandonment of water right. Depositing a water right in a water bank or placement of water in a safe deposit account in a water bank shall constitute due and sufficient cause pursuant to K.S.A. 82a-718, and amendments thereto, for failure to use water for a lawful, beneficial use for the term of the deposit or the placement. (**History:** L. 2001, ch. 160, § 8; July.)

K.S.A. 82a-769. Rules and regulations. The chief engineer may adopt rules and regulations to administer and enforce the provisions of this act. (**History:** L. 2001, ch. 160, § 9; July 1.)

K.S.A. 82a-770. Enforcement of act. (a) In addition to any other provision of this act or the Kansas water appropriation act, and subject to the provisions of subsection (b), the chief engineer may suspend the use of water under a term permit, an approved application for a permit to appropriate water for beneficial use, an appropriation right or a vested right, acquired pursuant to the provisions of the Kansas water appropriation act, for the failure to comply with the provisions of this act. The suspension may be for a defined period in a subsequent calendar year or years but does not include or prevent the enforcement of the terms, conditions and limitations of a water right or permit during the current year of use.

(b) The chief engineer shall suspend the use of water under a permit or water right pursuant to subsection (a) only upon notice and hearing in accordance with the provisions of the Kansas administrative procedure act.

(c) Orders of the chief engineer issued pursuant to this section are subject to review in accordance with the provisions of K.S.A. 2004 Supp. 82a-1901, and amendments thereto. (**History:** L. 2001, ch. 160, § 10; July 1.)

K.S.A. 82a-771. Payment of certain costs of water bank. Each water bank shall pay all costs incurred by the division and by the Kansas water office for assistance and services provided pursuant to this act, including, but not limited to, costs for personnel necessary to provide such assistance and services. (**History:** L. 2001, ch. 160, § 11; July 1.)

K.S.A. 82a-772. Water resources cost fund. (a) There is hereby created in the state treasury the water resources cost fund. The chief engineer shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the division to reimburse costs as required by K.S.A. 2004 Supp. 82a-771, and amendments thereto. Upon receipt, the state treasurer shall deposit the entire amount in the state treasury and credit it to the water resources cost fund.

(b) Moneys in the water resources cost fund shall be expended only for the division's costs of providing assistance and services as provided by this act.

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

(1) The average daily balance of moneys in the water resources cost fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(d) All expenditures from the water resources cost 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 chief engineer for the purposes set forth in this section. (**History:** L. 2001, ch. 160, § 12; July 1.)

K.S.A. 82a-773. Water office cost fund. (a) There is hereby created in the state treasury the water office cost fund. The director of the Kansas water office shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the water office to reimburse costs as required by K.S.A. 2004 Supp. 82a-771, and amendments thereto. Upon receipt, the state treasurer shall deposit the entire amount in the state treasury and credit it to the water office cost fund.

(b) Moneys in the water office cost fund shall be expended only for the Kansas water office's costs of providing assistance and services as provided by this act.

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

(1) The average daily balance of moneys in the water office cost fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(d) All expenditures from the water office cost 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 of the Kansas water office for the purposes set forth in this section. (**History:** L. 2001, ch. 160, § 13; July 1.)

K.S.A. 82A-954. Water protection fee imposed; payment, by whom, when; collection by director of taxation; disposition of fees. (a) On and after July 1, 1989, there is hereby imposed a water protection fee at the rat of:

(1) Three cents per 1,000 gallons of water sold at retail by a public water supply system and delivered through mains, lines or pipes;

(2) subject to the provisions of subsection (c), three cents per 1,000 gallons of water appropriated for industrial use pursuant to a permit granted in accordance with the Kansas water appropriation act; and

(3) three cents per 1,000 gallons of water appropriated for stockwatering pursuant to a permit granted in accordance with the Kansas water appropriation act.

(b) As used in this section, "industrial use" and "stockwatering" have the meanings provided by rules and regulations of the chief engineer of the division or water resources of the Kansas department of agriculture and the determination of gallons used shall be based upon figures supplied to the secretary of revenue by the division or water resources.

(c) The fees imposed by subsections (a)92) and (3) shall be based on the actual amount used for industrial use or stockwatering during the preceding calendar year as reported to the chief engineer of the division of water resources of the Kansas department of agriculture in accordance with the provisions of K.S.A. 82a-732, and amendments thereto, except that: (1) The amount of surface water used for flow through cooling purposes for electric power generating plants shall be based on an average consumptive factor as determined by the division of water resources; and (2) no such fee shall be imposed on the amount of water used for commercial fish farming. If no water use report is filed for such year, the fee shall be based on the amount authorized for industrial use or stockwatering in such year.

(d) The fee imposed by subsection (a)(1) shall be paid quarterly by the public water supplier and shall be transmitted to the department of revenue not later than 45 days following the end of each quarter. The public water supplier may collect the fee directly from each consumer to which water is sold at retail or may pay the amount owed to the department from moneys in its operating or other fund available for that purpose. The fees imposed by subsections (a)(2) and (3) shall be paid by the owner of the permit. If any retailer or permit owner fails to pay the fee required to be collected and paid under this section, there shall be added, to the unpaid balance of the fee, penalty and interest as prescribed under K.S.A. 79-3615, and amendments thereto, for the late payment of sales tax.

(e) The director of taxation shall administer, enforce and collect the fees imposed by this section. All laws and rules and regulations of the secretary relating to the administration, enforcement and collection of the retailers' sales tax shall apply to such fee insofar as they can

be made applicable, and the secretary shall adopt such additional rules and regulations as necessary for the efficient and effective administration, enforcement and collection thereof.

(f) The director of taxation shall remit all moneys collected from fees imposed pursuant to this section 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 state water plan fund created by K.S.A. 82a-951, and amendments thereto.

(g) An owner of an industrial use permit who has a contract with the state for withdrawal and use of water pursuant to K.S.A. 82a-1301 *et seq*., and amendments thereto, shall be exempt from the fee imposed by subsection (a)(2) on any water for which the permit owner is required to pay charges under such contract. (**History:** L. 1989, ch. 186 § 26; L. 2001, ch. 5 § 473; L. 2004, ch. 101, § 147; July 1.)

K.S.A. 42-303. Right to conduct water along natural channels and withdraw same. Any person may conduct water into and along any of the natural streams or channels of the state, and may withdraw all such waters so by him turned into such channel at any point desired, without regard to prior appropriations of water from said stream, due allowance being made for evaporation and seepage. (**History:** L. 1891, ch. 133, art. 1, §3; May 20; R.S. 1923, 42-303.)

K.S.A. 42-313. Right to collect and store water. Any person entitled to use water for beneficial purposes may collect and store the same and all natural flows for use thereafter, so long as such collection, storage, use and times of use thereafter are consistent with reasonable storage and conservation practices; and the failure to apply or use such waters during the period of such collection and storage shall not be deemed or taken to impair his right in that behalf; *Provided*, Such collection and storage of all natural flows shall be subject to vested rights and prior appropriation rights. (**History:** L. 1891, ch. 133, art. 2, § 4; R.S. 1923, 42-313; L. 1957, ch. 539, § 5; June 29.)

K.S.A. 42-314. (**History:** L. 1891, ch. 133, art. 2, § 4; R.S. 1923, 42-313; Repealed, L. 1957, ch. 539, § 26; June 29.)