

**SENATE BILL No. 48**

By Committee on Agriculture and Natural Resources

1-20

1 AN ACT concerning water; relating to the diversion of water; chief  
2 engineer; remedies for the impairment of a valid water right or permit  
3 to divert and use water; amending K.S.A. 82a-716 and 82a-717a and  
4 repealing the existing sections.  
5

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

7 Section 1. K.S.A. 82a-716 is hereby amended to read as follows: 82a-  
8 716. If any appropriation, or the construction and operation of authorized  
9 diversion works results in an injury to any common-law claimant, such  
10 person shall be entitled to due compensation in a suitable action at law  
11 against the appropriator for damages proved for any property taken. Any  
12 person with a valid water right or permit to divert and use water may, *after*  
13 *first exhausting the remedies available under K.S.A. 82a-717a, and*  
14 *amendments thereto*, restrain or enjoin in any court of competent  
15 jurisdiction a subsequent diversion by a common-law claimant without  
16 vested rights without first condemning those common-law rights. *After*  
17 *first exhausting the remedies available under K.S.A. 82a-717a, and*  
18 *amendments thereto*, an appropriator shall have the right to injunctive  
19 relief to protect his or her prior right of beneficial use as against use by an  
20 appropriator with a later priority of right.

21 Sec. 2. K.S.A. 82a-717a is hereby amended to read as follows: 82a-  
22 717a. (a) No common-law claimant without a vested right, or other person  
23 without a vested right, a prior appropriation right, or an earlier permit shall  
24 divert or threaten to divert water if such diversion or threatened diversion  
25 impairs or would impair any vested right, appropriation right, or right  
26 under a permit to appropriate water. But any common-law claimant with a  
27 vested right, or other person with a vested right, a prior appropriation right,  
28 or an earlier permit may divert water in accordance with any such right or  
29 permit although such diversion or use thereunder conflicts with the  
30 diversion, use, proposed diversion, or proposed use made or proposed by a  
31 common-law claimant who does not have a vested right, or other person  
32 who does not have a vested right, a prior appropriation right or an earlier  
33 permit.

34 (b) (1) ~~Moreover, Any common-law claimant with a vested right, or~~  
35 ~~other person with a vested right, a prior appropriation right, or an earlier~~  
36 ~~permit may restrain or enjoin in any court of competent jurisdiction, in~~

Proposed Amendments for SB 48  
Senate Committee on Agriculture  
and Natural Resources  
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Office of Revisor of Statutes  
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1 accordance with this subsection, obtain an order from the chief engineer  
 2 that limits or ~~prevents~~ any diversion or proposed diversion that impairs or  
 3 would impair such right in the event that any such diversion or proposed  
 4 diversion is made or is threatened to be made by any common-law  
 5 claimant, or other person who does not have a vested right, a prior  
 6 appropriation right, or an earlier permit.

7 (2) Any common-law claimant with a vested right, or other person  
 8 with a vested right, a prior appropriation right, or an earlier permit who  
 9 claims impairment of such right by any other person without a prior right  
 10 to the same water shall submit a complaint to the chief engineer in  
 11 accordance with rules and regulations of the chief engineer.

12 (4) Within two weeks of receiving a complaint of impairment, the  
 13 chief engineer shall ~~investigate~~ such complaint ~~and~~ ~~As part of the~~  
 14 investigation, shall provide an opportunity for the parties to submit any  
 15 relevant information, including submission of an engineering study that  
 16 meets standards designated by the chief engineer through rules and  
 17 regulations.

18 (B) Following the investigation, the chief engineer may issue an  
 19 order, consistent with K.S.A. 82a-706b, and amendments thereto, and rules  
 20 and regulations of the chief engineer, that limits or ~~enables~~ the diversion  
 21 and use of water by any person without a prior right to the same water or  
 22 that otherwise disposes of the complaint.

23 (C) The chief engineer shall complete any investigation initiated  
 24 pursuant to this subsection within 12 months of the date the complaint was  
 25 submitted to the chief engineer; provided that the chief engineer may  
 26 extend the investigation for good cause by notifying the parties in writing  
 27 of the amount of time needed to complete the investigation.

28 (3) Concurrent with submission of a complaint under paragraph (2),  
 29 or during the pendency of the chief engineer's investigation pursuant to  
 30 the complaint, the complainant may petition the chief engineer to issue a  
 31 temporary order, to be effective until a final order is issued under  
 32 paragraph (2)(B), that limits or ~~enables~~ the diversion and use of water by  
 33 any person without a prior right to the same water upon a finding by the  
 34 chief engineer that a substantial likelihood exists that impairment is  
 35 occurring or will occur and that an order limiting or ~~enabling~~ diversion  
 36 and use of water by any person without a prior right to the same water  
 37 would not be adverse to the public interest.

38 (4) Any order issued by the chief engineer pursuant to this subsection  
 39 is subject to review in accordance with the Kansas judicial review act.

40 Sec. 3. K.S.A. 82a-716 and 82a-717a are hereby repealed.

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

prevents

initiate an investigation of

, the chief engineer

prevents

prevents

preventing

and provide notice of such investigation to the complainant and the allegedly impairing party or parties.