

As Amended by Senate Committee

Session of 2017

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~~

1 *accordance with this subsection, obtain an order from the chief engineer*
2 *that limits-~~or~~, curtails **or prevents** any diversion or proposed diversion that*
3 *impairs or would impair such right in the event that any such diversion or*
4 *proposed diversion is made or is threatened to be made by any common-*
5 *law 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 *(A) Within two weeks of receiving a complaint of impairment, the*
13 *chief engineer shall—~~investigate~~ **initiate an investigation of** such*
14 *complaint; and **provide notice of such investigation to the complainant***
15 *and the allegedly impairing party or parties. As part of the investigation,*
16 ***the chief engineer** shall provide an opportunity for the parties to submit*
17 *any relevant information, including submission of an engineering study*
18 *that meets standards designated by the chief engineer through rules and*
19 *regulations.*

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

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

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

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

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

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

- 1 publication in the statute book.