

HOUSE BILL No. 2919

By Committee on Appropriations

3-5

10 AN ACT concerning appropriation of water for beneficial use; **[requir-**
11 **ing a study and recommendation regarding certain issues;]**
12 amending K.S.A. 82a-734 and repealing the existing section.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. ~~K.S.A. 82a-734 is hereby amended to read as follows. 82a-~~
16 ~~734. (a) As used in this section:~~

17 ~~—(1) “Direct impairment” means an unreasonable raising or lowering~~
18 ~~of the groundwater table, or an unreasonable raising or lowering of~~
19 ~~streamflow, in a manner which is directly attributable to the operation of~~
20 ~~sand and gravel pits.~~

21 ~~—(2) “Substantially adverse impact on the area” means exposing the~~
22 ~~groundwater table to evaporation that will cause a direct impairment to~~
23 ~~a groundwater or surface water right.~~

24 ~~—(b) An operator will notify the chief engineer of the division of water~~
25 ~~resources of the state board of agriculture of the location and area extent~~
26 ~~of any existing or proposed sand and gravel pit to be excavated, expanded~~
27 ~~or operated by the operator.~~

28 ~~—(b)(c) Unless the chief engineer determines that it has a substantially~~
29 ~~adverse impact on the area groundwater supply, the evaporation of water~~
30 ~~exposed as the result of the opening or operation of sand and gravel pits~~
31 ~~shall not be construed to be a beneficial use or diversion of water for the~~
32 ~~purposes of the Kansas water appropriation act, K.S.A. 82a-701 et seq.,~~
33 ~~and amendments thereto.~~

34 ~~—(d) If the evaporation of water exposed as the result of the opening~~
35 ~~or operation of sand and gravel pits shall be construed to be a beneficial~~
36 ~~use or diversion of water for the purposes of the Kansas water appropri-~~
37 ~~ation act, K.S.A. 82a-701 et seq., and amendments thereto, shall be~~
38 ~~deemed non-consumptive.~~

39 ~~—(e)(e) Evaporation from sand and gravel pits, as calculated by the~~
40 ~~chief engineer, will be reported as an industrial use to the director of~~
41 ~~taxation for the purpose of assessing the water protection fee pursuant to~~
42 ~~K.S.A. 92a-954 82a-954, and amendments thereto.~~

43 **[Section 1. K.S.A. 82a-734 is hereby amended to read as fol-**

1 **lows: 82a-734. (a) An operator will notify the chief engineer of the**
2 **division of water resources of the state board of agriculture of the lo-**
3 **cation and area extent of any existing or proposed sand and gravel**
4 **pit to be excavated, expanded or operated by the operator.**

5 [(b) Unless the chief engineer determines that it has a substantially
6 adverse impact on the area groundwater supply, **The net evaporation**
7 **of water exposed as the result of the opening or operation of sand**
8 **and gravel pits shall not be construed to be a beneficial use or**
9 **diversion of water for the purposes of the Kansas water appropri-**
10 **ation act, K.S.A. 82a-701 et seq., and amendments thereto, if the**
11 *sand and gravel pit is opened or operated in a township where the average*
12 *annual potential net evaporation is great than 18 inches per year, as*
13 *determined by the chief engineer.*

14 [(c) *If the chief engineer determines that an existing or proposed sand*
15 *and gravel pit operation is a beneficial use of water, the operator shall*
16 *apply to the chief engineer for a permit to appropriate water in accord-*
17 *ance with the Kansas water appropriation act or otherwise acquire own-*
18 *ership or control of sufficient water rights, or by other methods pursuant*
19 *to rules and regulations adopted by the chief engineer, or both, to offset*
20 *net evaporation for the operation.*

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

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

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

1 *thereto.*

2 [(e) **Evaporation from sand and gravel pits, as calculated by the**
3 **chief engineer, will be reported as an industrial use to the director**
4 **of taxation for the purpose of assessing the water protection fee**
5 **pursuant to K.S.A. ~~92a-954~~ 82a-954, and amendments thereto.**

6 [(f) *This section shall be part of and supplemental to the Kansas water*
7 *appropriations act.*

8 **[New Sec. 2. The chief engineer of the division of water re-**
9 **sources of the department of agriculture shall study and develop**
10 **recommendations regarding: (a) The use of water banking as it**
11 **pertains to sand and gravel pits; (b) calculation of the amount by**
12 **which the removal of trees and other vegetation at sand and gravel**
13 **pits offsets net evaporation from such pits, with special emphasis**
14 **on salt cedar (tamarisk); and (c) the pollution control and flood**
15 **control benefits of diverting water runoff into sand and gravel pits.**
16 **On or before January 20, 2005, the chief engineer shall submit a**
17 **report of the chief engineer's study and recommendations to the**
18 **house standing committee on environment and the senate standing**
19 **committee on natural resources.]**

20 ~~Sec. 3.~~ [3.] K.S.A. 82a-734 is hereby repealed.

21 ~~Sec. 4.~~ [4.] This act shall take effect and be in force from and after
22 its publication in the statute book.