

CHAPTER 100

SENATE BILL No. 364

AN ACT concerning appropriation of water for beneficial use; providing for a study and recommendations regarding certain issues; amending K.S.A. 82a-734 and repealing the existing section.

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

Section 1. K.S.A. 82a-734 is hereby amended to read as follows: 82a-734. (a) An operator will notify the chief engineer ~~of the division of water resources of the state board of agriculture~~ 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) ~~Unless the chief engineer determines that it has a substantially adverse impact on the area groundwater supply,~~ The net evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall ~~not~~ 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. ~~92a-954~~ 82a-954, and amendments thereto.

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

New Sec. 2. 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.

Sec. 3. K.S.A. 82a-734 is hereby repealed.

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

Approved April 16, 2004.

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