

Lower Smoky Hill Water Supply Access Program; Water Rights Conservation Program; Multi-Year Flex Accounts; Arkansas River Gaging Fund

SB 124 would combine various provisions regarding water which are detailed below.

Lower Smoky Hill Water Supply Access Program

The bill creates the Lower Smoky Hill Water Supply Access Program within the Kansas Water Office. The agency, with the approval of the Kansas Water Authority, has the authority to negotiate and enter into contracts for water supply access storage to be used for the purposes outlined in the bill. The agency also may designate all or any portion of the water held in Kanopolis Reservoir to water supply access storage to meet the needs of the Lower Smoky Hill Water Supply Access District.

The bill also creates the Lower Smoky Hill Water Supply Access District, the Lower Smoky Hill Water Supply Access Program, the Lower Smoky Hill Special Irrigation District, and the Lower Smoky Hill Water Supply Access Fund.

Definitions

Among the definitions which are established by the bill are the following:

- “Access water” means water stored in water supply access storage of a reservoir under a water reservation right and provided as supplemental water to eligible water right holders;
- “District” means the Lower Smoky Hill Water Supply Access District;
- “Eligible water right holder” means a person holding a right or permit to appropriate surface water from the program area for municipal, industrial, irrigation (limited to the Lower Smoky Hill River Special Irrigation District), or recreational purposes;
- “Landowner” means a person who is the record owner of any real estate within the boundaries of the Access District or who has an interest as a contract purchaser of 40 or more contiguous acres in the district not within the corporate limits of any municipality, excluding owners of oil leases, gas leases, mineral rights, easements, and mortgages;
- “Program” means the Lower Smoky Hill Water Supply Access Program;

- “Program area” means the area of the Smoky Hill River below the Kanopolis Reservoir Dam to the confluence of the Smoky Hill and Saline rivers;
- “Special Irrigation District” means the Lower Smoky Hill Special Irrigation District; and
- “Water supply access storage” means water held by the Kansas Water Office in Kanopolis Reservoir under contract with the U.S. Army Corps of Engineers and designated by the Kansas Water Office as water supply access storage for the purposes of the Lower Smoky Hill Water Supply Access Program.

Lower Smoky Hill Water Supply Access Fund

The bill creates the Lower Smoky Hill Water Supply Access Fund within the State Treasury, which will be administered by the Kansas Water Office. All expenditures from the Fund will be required to be used for purposes of the Lower Smoky Hill Water Supply Access Program and made in accordance with appropriations acts.

Lower Smoky Hill Water Supply Access District

The bill creates the Lower Smoky Hill Water Supply Access District and authorizes the establishment of an incorporating governing body. Prospective members of the Access District may join if they apply to the Kansas Water Office. Prospective members may be able to join if they apply for water supply access storage and currently have, or will apply for, a water right which makes them eligible for membership under this act. The Director of the Kansas Water Office, in consultation with the Chief Engineer, will approve prospective members under certain conditions.

The Access District will have authority to impose charges against members of the Access District to pay the Kansas Water Office the full annual amortized cost incurred for the operation, administration, and enforcement of the program. In addition, the Access District will have authority to impose additional charges for repayment of bonds used for certain projects or to finance the purchase of water storage in Kanopolis Reservoir and to cover district operating costs.

All moneys will be remitted to the Kansas Water Office for deposit in the Lower Smoky Hill Water Supply Access Fund.

The bill authorizes the Director of the Kansas Water Office to request releases of water supply access water by the federal government from the Kanopolis Reservoir and would communicate to the Chief Engineer the date and quantity of requests for releases.

Each member of the Access District will adopt conservation plans and practices, which must be consistent with the guidelines maintained by the Kansas Water Office.

If the Access District is not formed by December 31, 2020, the provisions of the act that pertain to the Access District will expire.

Lower Smoky Hill Special Irrigation District

The bill authorizes the creation of the Lower Smoky Hill Special Irrigation District for the purpose of participating in the Lower Smoky Hill Water Supply Access District. The Special Irrigation District will be a single member of the Lower Smoky Hill Water Supply Access District.

The Special Irrigation District will be formed upon petition by eligible irrigation water right holders to the Director of the Kansas Water Office. All members of the Special Irrigation District will be able to use water supply access storage under the rules and by-laws of the Lower Smoky Hill Water Supply Access District and the Special Irrigation District.

The bill creates a governing board of the Special Irrigation District. The governing board will have the authority to purchase, allocate, determine, and charge fees and assessments for, and allow the use of, water supply access storage; contract for property; contract with employees and consultants; and buy, sell, lease, rent, and purchase water supply access storage.

In addition, the bill authorizes the governing board of the Special Irrigation District to designate at least one representative to serve as a member of the Lower Smoky Hill Water Supply Access District Board of Directors; provides for a fee structure sufficient to pay for water supply access storage and any additional costs as determined by the Special Irrigation District and set a fee schedule for all members of the Special Irrigation District; and creates an agreement to be entered into with each person who desires to become a member of the Special Irrigation District.

If the Special Irrigation District is not formed by December 31, 2020, the provisions of the act that pertain to the Special Irrigation District will expire.

Rules and Regulations

The bill authorizes the Director of the Kansas Water Office and the Chief Engineer to adopt any rules and regulations necessary to carry out the purposes and procedures of the act. In addition, the bill directs the Director and the Chief Engineer to consider the advice of the Kansas Water Authority and stakeholders in the program area when preparing any

rules and regulations. The bill also authorizes the Kansas Water Office to adopt rules and regulations to implement the Lower Smoky Hill Water Supply Access Program.

Water Rights Conservation Program

The bill establishes the Water Rights Conservation Program, which will be administered by the Chief Engineer of the Division of Water Resources within the Kansas Department of Agriculture.

The Program allows an eligible water right in good standing to be enrolled in the Program, with the approval of the Chief Engineer, for a period not exceeding ten years. The water right may be re-enrolled within two years of the expiration date of the previous enrollment period, subject to approval by the Chief Engineer.

Each application for enrollment and re-enrollment in the Program requires the payment of a non-refundable fee, which cannot exceed \$300. The fees collected from the application enrollments will be deposited in the Kansas Department of Agriculture's existing Water Appropriation Certification Fund.

In addition, the bill amends the law regarding abandonment of water rights. Enrollment in the Program and being continually in compliance with the Program will be considered as having due and sufficient cause for non-use of a water right and the water right will not be considered abandoned under state law.

The Chief Engineer will have the authority to adopt rules and regulations to effectuate and administer the Program.

Multi-Year Flex Accounts

The bill amends a section of water appropriations law dealing with multi-year flex accounts. Specifically, the bill modifies the years of data to be used to calculate the "base average usage" from 1992 through 2002 to 2000 through 2009. In addition, the bill stipulates that unless the term permit issued by the Division of Water Resources for participation in the multi-year flex account program is issued pursuant to an application filed before November 1 of the year prior to the first year of participation, then the quantity of water used during the year of application for the term permit is deducted from the amount of water deposited in the account authorized by the term permit.

Arkansas River Gaging Fund

The bill establishes the Arkansas River Gaging Fund in the State Treasury. The Fund will be administered by the Secretary of Agriculture and the first expenditures from the Fund

will be used for the operation and maintenance of the gages along the Arkansas River to manage the River under the Arkansas River Compact. After moneys are expended for the operation and maintenance of the gages, the bill then authorizes up to \$20,000 in a fiscal year to be expended for the purposes of livestock market reporting. If there continues to be moneys available in the Fund, then up to \$5,000 in any fiscal year may be expended for the purpose of funding the bluestem pasture report.

The bill requires moneys received from royalties on the state's oil and gas leases in Hamilton, Kearny, Finney, Gray, and Ford counties to be credited to the Fund. Moneys received from royalties on lands under the control of the Secretary of Wildlife and Parks, as provided in KSA 32-854, continues to be credited to either the Wildlife Fee Fund or the Park Fee Fund, as determined by the Secretary, and will not be credited to the Fund.

In addition, when the Fund attains a balance of \$75,000 in any fiscal year, the Fund will no longer receive royalties from the state's oil and gas leases in the five counties mentioned in the bill. Instead, the royalties will be credited to the State General Fund for the remainder of the fiscal year.