

Division of Water Rights and Water Permits for Sand and Gravel Operations; House Sub. for Sub. for SB 148

House Sub. for Sub. for SB 148 addresses the division of water rights and the issue of the treatment of water permits for sand and gravel operations.

Division of Water Rights

The bill explicitly codifies the authority to divide water rights by stating that an owner of a water right that is not abandoned may divide the water right into two or more distinct water rights without losing priority. In order to divide the water right, the owner must:

- Notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture (Chief Engineer), in writing of the proposed division, with the written consent of all persons who have an ownership interest in the water right;
- Designate the relative priority of the divided water rights;
- Demonstrate to the Chief Engineer the division is reasonable and would not increase consumptive use; and
- Demonstrate to the Chief Engineer the request does not violate the Kansas Water Appropriation Act.

If the Chief Engineer finds the above four requirements are met, the Chief Engineer then must issue an order dividing the water right and describing the terms and conditions of each water right. Acceptance of the request to divide a water right would not authorize any change in the place of use, point of diversion, or the use made of the water. Upon a finding the four requirements are not met, the Chief Engineer would return the division request and take no action.

The bill provides that if a judicial determination should occur regarding ownership interests and the determination results in a partition of a water right not deemed abandoned, the Chief Engineer then must issue an order dividing the water right in accordance with the judicial determination, to the extent the determination does not violate the provisions of the Kansas Water Appropriation Act.

The bill states each division request submitted to the Chief Engineer will be assessed a \$300 fee. Funding from the fee is to be remitted to the State Treasurer.

Water Permits for Sand and Gravel Operations

The bill also addresses permits to appropriate water for sand and gravel operations by requiring that the permit authorize net evaporation as the primary use and hydraulic dredging and sand washing as a secondary use of water if the secondary uses of water are located within the same source of supply and are associated with the operation. Secondary uses would use water in a manner in which there is not significant net consumptive use. The secondary uses

would be granted for the proposed life of the project or the exhaustion of reserves. If a permit is denied, the Chief Engineer is required to set forth all reasons for the denial. Applicants who are denied a project permit by a final order of the Chief Engineer will be able to appeal the decision. The bill provides for a project application permit fee of \$500, with any request for modification to be accompanied by a \$250 fee.

The bill establishes the initial period of time allowed for completion of construction of diversion works to be reasonable and consistent with the proposed use. Additionally, it allows for the Chief Engineer to authorize two ten-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 bill also authorizes the Chief Engineer to reduce the required offset of net evaporation for the operation, as currently provided for in law, based on the estimated use of groundwater by the existing vegetation.