

HOUSE BILL No. 2171

By Committee on Agriculture and Natural Resources

1-30

1 AN ACT concerning water; relating to agreed local management areas.

2

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

4 Section 1. (a) Whenever the board of county commissioners of any
5 county recommends an agreed local management plan, or whenever a
6 petition signed by not less than 25% of the eligible water right holders
7 within the geographic boundaries of a proposed agreed local management
8 area is submitted to the board of county commissioners in support of the
9 petitioners' agreed local management plan, the board of county
10 commissioners shall submit the plan to the chief engineer for review
11 within 60 days.

12 (b) Upon receipt of the agreed local management plan, the chief
13 engineer shall conduct an initial review to assess whether such plan:

14 (1) Addresses one or more of the following conditions within the
15 proposed geographic area:

16 (A) Water levels are declining or have declined excessively;

17 (B) the diversion of water equals or exceeds the resupply and
18 recharge;

19 (C) preventable waste of water is occurring or may occur;

20 (D) unreasonable deterioration of the quality of water is occurring or
21 may occur; or

22 (E) other conditions exist which require regulation in the public
23 interest;

24 (2) proposes clear geographic boundaries;

25 (3) proposes clear goals to reduce water use or to improve water
26 management;

27 (4) proposes corrective control provisions adequate to meet the stated
28 goals;

29 (5) includes monitoring and enforcement provisions adequate to meet
30 the stated goals;

31 (6) provides funding sufficient to cover the costs incurred by the
32 division of water resources to effect the plan; and

33 (7) is consistent with state law.

34 (c) Based on the initial review conducted pursuant to subsection (b),
35 the chief engineer shall issue an initial determination:

36 (1) Accepting the agreed local management plan for further

1 consideration under the provisions of this section;

2 (2) requiring revisions to the plan that, if performed, would make
3 such plan acceptable for further consideration under the provisions of this
4 section; or

5 (3) returning the plan to the board of county commissioners as
6 unacceptable for further consideration by such board.

7 (d) If the chief engineer's initial determination pursuant to subsection
8 (c) is to accept the agreed local management plan for further
9 consideration, the chief engineer shall notify:

10 (1) The board of county commissioners, which shall initiate, as soon
11 as practicable thereafter, proceedings to designate an agreed local
12 management area; and

13 (2) the appropriate groundwater management district if the proposed
14 geographic boundaries of the agreed local management area include real
15 property within the boundaries of such groundwater management district.

16 (e) Upon notification pursuant to subsection (d), the board of county
17 commissioners shall conduct an initial public hearing on the question of
18 designating an agreed local management area. The board of county
19 commissioners may designate a hearing officer for such purposes. The
20 initial public hearing shall resolve whether:

21 (1) One or more of the conditions specified in subsection (b)(1) exist;

22 (2) the public interest requires that one or more corrective control
23 provisions be adopted;

24 (3) the geographic boundaries are reasonable; and

25 (4) the agreed local management plan requires a fee or an assessment
26 adequate to cover the costs necessary to effect the plan.

27 (f) If the issues set forth in paragraphs (e)(1) through (4) are all
28 resolved in the affirmative, the board of county commissioners shall issue
29 a written recommendation in support of the proposed agreed local
30 management plan and forward its findings and the hearing record to the
31 chief engineer. The chief engineer shall review such findings and record
32 and may:

33 (1) Accept the findings and record for further consideration and
34 hearing pursuant to this section; or

35 (2) return the findings and record to the board of county
36 commissioners and request additional information or clarification.

37 (g) If the proposed geographic boundaries of the agreed local
38 management area include real property within the boundaries of a
39 groundwater management district, the chief engineer shall provide the
40 findings and record of the initial public hearing conducted pursuant to
41 subsection (e) to the groundwater management district. The groundwater
42 management district may provide additional information and comments to
43 the chief engineer within 30 days of the receipt of the findings and record.

1 The information and comments shall be included in the hearing record
2 pursuant to subsection (h).

3 (h) Upon receipt of the recommendation set forth in subsection (f),
4 the chief engineer shall conduct at least one public hearing on the
5 proposed agreed local management plan.

6 (1) At least 30 days prior to the date set for any hearing, written
7 notice of such hearing shall be given:

8 (A) To every person holding a water right of record within the
9 proposed geographic boundaries described in such plan; and

10 (B) by one publication in any newspaper of general circulation within
11 the proposed geographic boundaries described in such plan.

12 (2) The hearing notice shall state the plan to be reviewed and denote
13 the time and place of such hearing.

14 (3) At any such hearing, evidence shall be taken and a record of the
15 hearing shall be kept. The record may be kept in the form of a sound
16 recording or other means, as determined by the chief engineer.

17 (4) The chief engineer shall allow at least five days after the public
18 hearing for the submission of additional testimony.

19 (5) The hearing record shall include the complete record from
20 proceedings held pursuant to subsection (e) and the chief engineer may
21 request additional information relating to the issues considered in those
22 proceedings.

23 (i) Within 120 days after the conclusion of the final public hearing
24 conducted pursuant to subsection (h), the chief engineer shall issue an
25 order of decision:

26 (1) Accepting the agreed local management plan as sufficient to
27 satisfy the elements in subsection (b);

28 (2) rejecting the agreed local management plan as insufficient to
29 address the elements set forth in subsection (b);

30 (3) returning the agreed local management plan to the board of
31 county commissioners, giving reasons for the return and providing the
32 opportunity to resubmit a revised agreed local management plan for public
33 hearing within 90 days of the return of the plan; or

34 (4) returning the agreed local management area plan to the board of
35 county commissioners and proposing modifications to the plan, based on
36 testimony at the hearing or hearings that will improve the administration of
37 the plan, but will not impose reductions in water diversions that exceed
38 those contained in the plan. If the board of county commissioners approves
39 of the modifications proposed by the chief engineer, the board shall notify
40 the chief engineer within 90 days of receipt of return of the plan. Upon
41 receipt of the board's approval of the modifications, the chief engineer
42 shall accept the modified agreed local management plan. If the board of
43 county commissioners does not approve of the modifications proposed by

1 the chief engineer, the proposed agreed local management plan shall not be
2 accepted.

3 (j) Whenever the chief engineer issues an order of decision accepting
4 the agreed local management plan pursuant to subsection (i), the chief
5 engineer, within a reasonable time, shall issue an order of designation that
6 designates the area in question as an agreed local management area.

7 (1) The order of designation shall define the boundaries of the agreed
8 local management area, and shall follow, insofar as may be reasonably
9 done, the geographic boundaries recommended in the agreed local
10 management plan.

11 (2) The order of designation may include one or more of the
12 following corrective controls set forth in the agreed local management area
13 plan:

14 (A) Closing the area to any further appropriation of water;

15 (B) determining the permissible total diversion of water in the area
16 each day, month or year, and, insofar as is reasonable, the chief engineer
17 shall apportion such permissible total diversion among the valid water
18 right holders in such area in accordance with the relative dates of priority
19 of such rights;

20 (C) reducing the permissible diversion of water in the area by one or
21 more appropriators thereof;

22 (D) requiring and specifying a system of rotation of water use in the
23 area; or

24 (E) any other provisions or additional requirements as are necessary
25 to protect the public interest.

26 (k) To fund the agreed local management plan, the board of county
27 commissioners may assess an annual charge against every person who
28 holds a permit to appropriate water and is included within the geographic
29 boundaries of the agreed local management area. The charges shall be
30 certified to the county clerk and collected the same as other taxes in
31 accordance with K.S.A. 79-1801, and amendments thereto, and the amount
32 thereof shall attach to the real property involved as a lien in accordance
33 with K.S.A. 79-1804, and amendments thereto. All moneys so collected
34 shall be remitted by the county treasurer to the state treasurer in
35 accordance with the provisions of K.S.A. 75-4215, and amendments
36 thereto. Upon receipt of each such remittance, the state treasurer shall
37 deposit the entire amount in the state treasury to the credit of the agreed
38 local management area fund which fund is hereby created in the state
39 treasury and shall be administered by the secretary of agriculture. All
40 amounts credited to the agreed local management area fund shall be
41 credited to a separate account which shall be established within such fund
42 for each county with a designated agreed local management area based
43 upon such county's remittance to the state treasurer. All expenditures from

1 the agreed local management area fund shall be for the operation and
2 administration of designated agreed local management areas. All
3 expenditures from the agreed local management area fund shall be made in
4 accordance with appropriation acts upon warrants of the director of
5 accounts and reports issued pursuant to vouchers approved by the
6 secretary of agriculture. The board of county commissioners may also
7 obtain funding from other sources, including, but not limited to, grants and
8 other support from local, state or federal programs.

9 (l) The chief engineer is hereby authorized to delegate all or part of
10 the monitoring and enforcement of any corrective controls ordered for an
11 agreed local management area to the board of county commissioners in the
12 county in which such area is located. In the event of such delegation, the
13 funds raised pursuant to subsection (k) shall be apportioned between the
14 division of water resources and the county accordingly. The board of
15 county commissioners may contract with another governmental entity to
16 effect the monitoring provisions of the agreed local management plan.

17 (m) If the geographic boundaries of a proposed agreed local
18 management area either lie in more than one county or include real
19 property within the boundaries of a groundwater management district, the
20 boards of county commissioners of such counties or such county and such
21 groundwater management district may enter into an interlocal agreement,
22 pursuant to the interlocal cooperation act, K.S.A. 12-2901 et seq., and
23 amendments thereto, to effect the provisions of this section. The interlocal
24 agreement may include other persons, as the board of county
25 commissioners may deem prudent. The interlocal agreement may specify a
26 person or group to undertake any or all duties required of the board of
27 county commissioners.

28 (n) Except as provided in subsection (j), the order of designation of
29 an agreed local management area shall be in full force and effect from the
30 date of its entry in the records of the chief engineer's office unless and
31 until its operation shall be stayed by an appeal from an order entered in
32 accordance with the provisions of the Kansas judicial review act. The chief
33 engineer upon request shall deliver a copy of such order to any interested
34 person who is affected by such order and shall file a copy of the same with
35 the register of deeds of any county within which any part of the agreed
36 local management area lies. The order of designation shall be final agency
37 action as defined by K.S.A. 77-607(b), and amendments thereto.

38 (o) Unless otherwise stated in the order of designation, the chief
39 engineer shall conduct a public hearing to review the designation of an
40 agreed local management area within seven years after the order of
41 designation is final. A subsequent review of the designation shall occur
42 within 10 years after the previous public review hearing or more
43 frequently as jointly determined by the board of county commissioners and

1 the chief engineer. Upon the request of a petition signed by at least 10% of
2 the affected water users in an agreed local management area, a public
3 review hearing to review the designation shall be conducted by the board
4 of county commissioners and the chief engineer. This requested public
5 review hearing shall not be conducted more frequently than every five
6 years. All reviews performed pursuant to this subsection shall require the
7 participation of the board of county commissioners.

8 (p) In performing the duties pursuant to this section, the chief
9 engineer may coordinate and cooperate with other local, state and federal
10 agencies.

11 (q) The chief engineer shall adopt rules and regulations to effect and
12 administer the provisions of this section.

13 (r) The provisions of this section shall be part of and supplemental to
14 the provisions of the Kansas water appropriation act.

15 Sec. 2. This act shall take effect and be in force from and after its
16 publication in the statute book.