

HOUSE BILL No. 2245

By Committee on Federal and State Affairs

2-5

1 AN ACT concerning water; relating to the water appropriation act;
2 groundwater; procedure; amending K.S.A. 82a-717a and 82a-725 and
3 repealing the existing sections.
4

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

6 Section 1. K.S.A. 82a-717a is hereby amended to read as follows:
7 82a-717a. (a) No common-law claimant without a vested right, or other
8 person without a vested right, a prior appropriation right, or an earlier
9 permit shall divert or threaten to divert water if such diversion or
10 threatened diversion impairs or would impair any vested right,
11 appropriation right, or right under a permit to appropriate water. But any
12 common-law claimant with a vested right, or other person with a vested
13 right, a prior appropriation right, or an earlier permit may divert water in
14 accordance with any such right or permit although such diversion or use
15 thereunder conflicts with the diversion, use, proposed diversion, or
16 proposed use made or proposed by a common-law claimant who does not
17 have a vested right, or other person who does not have a vested right, a
18 prior appropriation right or an earlier permit. Moreover, any common-law
19 claimant with a vested right, or other person with a vested right, a prior
20 appropriation right, or an earlier permit may restrain or enjoin in any court
21 of competent jurisdiction any diversion or proposed diversion that impairs
22 or would impair such right in the event that any such diversion or proposed
23 diversion is made or is threatened to be made by any common-law
24 claimant, or other person who does not have a vested right, a prior
25 appropriation right, or an earlier permit.

26 (b) *In cases involving groundwater, no party shall receive a*
27 *temporary injunction when the later in time water right is being exercised*
28 *within the requirements of the division of water resources of the Kansas*
29 *department of agriculture approved water right. For purposes of this*
30 *section, within the requirements of the division of water resources of the*
31 *Kansas department of agriculture shall mean that the party is operating*
32 *the water right:*

- 33 (1) *At an approved point of diversion;*
- 34 (2) *for an approved use;*
- 35 (3) *within the maximum flow rate; and*
- 36 (4) *within the approved quantity.*

1 *A party seeking a temporary injunction shall bear the burden of proof*
2 *to show that the party to be enjoined has violated the provisions of this*
3 *subsection.*

4 *(c) In cases involving groundwater, no party shall receive a*
5 *permanent injunction until such party proves, through the expert testimony*
6 *and report of a licensed well driller, professional engineer or licensed*
7 *geologist that:*

8 *(1) The well and pump system is operating properly and fully*
9 *penetrates the aquifer; and*

10 *(2) the party has exhausted all reasonable economic means to satisfy*
11 *the party's water right prior to seeking injunctive relief.*

12 *(d) In cases involving groundwater, no party shall receive a*
13 *permanent injunction where the primary cause of the impairment is an*
14 *overall lowering of the static water level. For purposes of this section, it*
15 *shall be presumed, in accordance with K.S.A. 60-413 and 60-414, and*
16 *amendments thereto, that the primary cause of the impairment is an*
17 *overall lowering of the static water level when the static water level has*
18 *fallen more than 50 feet since the first-in-time water right was perfected.*

19 *(e) Nothing in subsection (d) shall prohibit the division of water*
20 *resources of the Kansas department of agriculture from administering the*
21 *water rights in Kansas.*

22 *(f) For purposes of this section, "impairs" or "impairment" means the*
23 *unreasonable raising or lowering of the static water level, the*
24 *unreasonable increase or decrease of the streamflow, or the unreasonable*
25 *deterioration of the water quality at the water user's point of diversion,*
26 *beyond a reasonable economic limit.*

27 *Sec. 2. K.S.A. 82a-725 is hereby amended to read as follows: 82a-*
28 *725. (a) In any suit to which the state is not a proper party brought in any*
29 *court of competent jurisdiction in this state for determination of rights to*
30 *water, the court may order a reference to the division of water resources or*
31 *its chief engineer, as referee, for investigation of and report upon any or all*
32 *of the physical facts involved and the division or its chief engineer shall*
33 *thereupon make such an investigation and report as ordered by the court.*
34 *The court shall make detailed findings and orders regarding the authority*
35 *of the chief engineer, which shall include the provisions in subsection (b).*
36 *The report shall set forth such findings of fact as may be required by, in*
37 *numbered paragraph form and shall comply with the court's order of*
38 *reference and may contain such opinions upon the facts as it deems proper*
39 *in view of the issues submitted. In cases involving groundwater lying in*
40 *the confines of a groundwater management district, the chief engineer*
41 *shall consult with and receive the approval of such groundwater*
42 *management district regarding both the findings and opinions set forth in*
43 *the report. Before filing its report with the court, the division or its chief*

1 engineer shall mail notice of its report together with a copy of it, to the
2 parties or their attorneys of record.

3 Within ~~thirty (30)~~ days from the date of the mailing of the copy of the
4 report, any party may file objections to it with the division of water
5 resources or its chief engineer. ~~After~~ The division, or its chief engineer, ~~has~~
6 ~~considered~~ *shall consider and expressly rule upon* the objections, ~~it~~. *The*
7 *division of water resources of the Kansas department of agriculture shall*
8 *file its report, as referee, with the clerk of the court and give notice by*
9 *registered or certified mail of the filing of its report to the parties or their*
10 *attorneys. The court shall review the report upon exceptions thereto filed*
11 *with the clerk of the court within ~~thirty (30)~~ days after date of mailing*
12 *registered notice of the filing of the report. Except in its discretion or for*
13 *good cause shown, the court shall not consider any exception to the report*
14 *unless it appears that the excepting party presented the matter of the*
15 *exception to the division or its chief engineer in the form of an objection.*
16 ~~The report shall be~~ *After a hearing to determine the admissibility of the*
17 *report, pursuant to the rules of evidence, the report may be received in*
18 *evidence of the physical facts found therein, but the court shall hear such*
19 *evidence as may be offered by any party to rebut the report or the*
20 *evidence. If suit is brought in a federal court for determination of rights to*
21 *water within, or partially within, the state, the division or its chief engineer*
22 *may accept a reference of such suit as master or referee for the court.*

23 *(b) In cases involving groundwater, all appointments as referee and*
24 *all reports of the division or the chief engineer shall comply with K.S.A.*
25 *82a-717a, and amendments thereto. The report or testimony of persons*
26 *making the report is not admissible in evidence without proper foundation*
27 *testimony to admit an expert witness report or testimony pursuant to the*
28 *rules of evidence. The report of the division or the chief engineer shall not*
29 *alter or amend existing findings, conclusions or final orders of the division*
30 *or the chief engineer. When making a report, nothing in this section shall*
31 *permit the division, the chief engineer or the court to alter, amend, change*
32 *or modify any existing water right or appropriation right.*

33 Sec. 3. K.S.A. 82a-717a and 82a-725 are hereby repealed.

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