

SENATE BILL No. 412

By Committee on Agriculture

2-9

1 AN ACT concerning water; relating to appropriation of water for sand and
2 gravel projects; amending K.S.A. 2011 Supp. 82a-734 and repealing
3 the existing section.
4

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

6 Section 1. K.S.A. 2011 Supp. 82a-734 is hereby amended to read as
7 follows: 82a-734. (a) An operator ~~will~~ shall notify the chief engineer of the
8 location and area extent of any existing or proposed sand and gravel pit to
9 be excavated, expanded or operated by the operator.

10 (b) The net evaporation of water exposed as the result of the opening
11 or operation of sand and gravel pits shall be construed to be a beneficial
12 use or diversion of water for the purposes of the Kansas water
13 appropriation act, K.S.A. 82a-701 *et seq.*, and amendments thereto, if the
14 sand and gravel pit is opened or operated in a township where the average
15 annual potential net evaporation is greater than 18 inches per year, as
16 determined by the chief engineer.

17 ~~(c) If the chief engineer determines that an existing or proposed sand~~
18 ~~and gravel pit operation is a beneficial use of water, the operator shall~~
19 ~~apply to the chief engineer for a permit to appropriate water in accordance~~
20 ~~with the Kansas water appropriation act or otherwise acquire ownership or~~
21 ~~control of sufficient water rights, or by other methods pursuant to rules and~~
22 ~~regulations adopted by the chief engineer, or both, to offset net evaporation~~
23 ~~for the operation.~~

24 ~~(d) (1) The period of time allowed to complete construction of~~
25 ~~diversion works pursuant to an approved application to appropriate water~~
26 ~~for the purpose of net evaporation from a sand and gravel pit operation~~
27 ~~shall be reasonable and consistent with the proposed use, but not less than~~
28 ~~five years. The chief engineer may allow extension of such period by not~~
29 ~~to exceed two five-year extensions if it can be shown that the operation~~
30 ~~requires the additional time for the operator to satisfy the operator's market~~
31 ~~demand in the area. The two five-year extensions may be granted at the~~
32 ~~same time, to run consecutively, if the applicant submits to the chief~~
33 ~~engineer a written development plan.~~

34 ~~(2) The period of time allowed to perfect an approved application to~~
35 ~~appropriate water for the purpose of net evaporation from a sand and~~
36 ~~gravel pit operation shall be not less than 20 years and, for good cause~~

1 shown, the chief engineer may allow one or more 10-year extensions of
2 such period. The chief engineer shall consider the time needed until
3 exhaustion of proven reserves, closure in accordance with the surface land
4 reclamation and mining act, K.S.A. 49-601 et seq., and amendments
5 thereto, and the availability of water for the proposed use, but in no case
6 shall allow longer than 60 years for perfection.

7 (3) Nothing herein shall require an extension of time to construct
8 diversion works or to perfect a water right if there is demonstrable
9 impairment of a use under an existing water right from the same source of
10 supply, as determined pursuant to K.S.A. 82a-711, and amendments
11 thereto.

12 (4) Upon examination of the diversion works for sand and gravel
13 operations, the chief engineer or the chief engineer's duly authorized
14 representative shall, within 90 days of the examination, notify the
15 applicant if there was a failure to construct the diversion works at the
16 authorized location or any deficiency of the terms and conditions of the
17 permit. This notice will provide steps necessary to gain compliance with
18 state law. If the chief engineer fails to examine the diversion works within
19 two years of the notice of completion for any sand and gravel operation
20 diversion works, the applicant shall not be required to forfeit priority date
21 as a result of failure to construct a diversion works at the authorized
22 location or any deficiency of the terms and conditions of the permit.

23 (c) (1) *There is hereby created a general project permit for the use of*
24 *water in sand and gravel pits. Such permit shall be administered by the*
25 *chief engineer.*

26 (2) *An application for a project permit shall be made on forms*
27 *provided by the chief engineer. Any application for a project permit shall*
28 *be accompanied by a filing fee of \$500 and any request for modification*
29 *shall be accompanied by a fee of \$250. Such fees shall cover all costs*
30 *associated with the issuance of the project permit and are in lieu of any*
31 *fees which might be required pursuant to K.S.A. 82a-701 et seq., and*
32 *amendments thereto.*

33 (3) *The applicant for a project permit shall have a valid mining*
34 *license pursuant to K.S.A. 49-601 et seq., and amendments thereto.*

35 (4) *The permit shall include authorization of the net average annual*
36 *groundwater evaporation, all nonconsumptive uses of water at the project*
37 *site, including hydraulic dredging, wash water wells and all consumptive*
38 *uses of water in the project.*

39 (5) *The project permit shall not be subject to safe yield or*
40 *administration of minimum desirable stream flow standards. Use water*
41 *returning to the same source of supply shall not be subject to metering*
42 *requirements. The operator shall make every effort to offset the use of*
43 *water.*

1 (6) *The permit shall run for the life of the project. An operator shall*
2 *notify the chief engineer upon the termination or closure of such project.*

3 (7) *The chief engineer shall expeditiously approve any application if*
4 *the operator demonstrates that the net average annual evaporation will*
5 *not unreasonably or prejudicially affect the public interest. The chief*
6 *engineer shall deny such application only if such project will*
7 *unreasonably or prejudicially affect the public interest.*

8 (8) *If the permit is denied, the chief engineer shall set forth all*
9 *pertinent reasons for such denial. The applicant may appeal such denial in*
10 *accordance with the Kansas judicial review act.*

11 (9) *Any sand and gravel project having secured a hydraulic dredging*
12 *permit or a certificate of appropriation or a water right as of June 30,*
13 *2012, shall be deemed to have a project permit for the purposes of this*
14 *section.*

15 ~~(d)~~ (d) *Evaporation from sand and gravel pits, as calculated by the*
16 *chief engineer, will be reported as an industrial use to the director of*
17 *taxation for the purpose of assessing the water protection fee pursuant to*
18 *K.S.A. 82a-954, and amendments thereto.*

19 ~~(e)~~ (e) *This section shall be part of and supplemental to the Kansas*
20 *water appropriations act.*

21 Sec. 2. K.S.A. 2011 Supp. 82a-734 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after its
23 publication in the statute book.