

HOUSE BILL No. 2691

By Committee on Water and Environment

2-7

1 AN ACT concerning water; relating to the division of water resources of
2 the department of agriculture; relating to notification requirements for
3 multi-year flex accounts and water right applications; amending K.S.A.
4 2017 Supp. 82a-736 and 82a-1906 and repealing the existing sections.

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

7 Section 1. K.S.A. 2017 Supp. 82a-736 is hereby amended to read as
8 follows: 82a-736. (a) It is hereby recognized that an opportunity exists to
9 improve water management by enabling multi-year flexibility in the use of
10 water authorized to be diverted under a groundwater water right, provided,
11 that such flexibility neither impairs existing water rights, nor increases the
12 total amount of water diverted, so that such flexibility has no long-term
13 negative effect on the source of supply. It is therefore declared necessary
14 and advisable to permit the establishment of multi-year flex accounts for
15 groundwater water rights, together with commensurate protections for
16 existing water rights and their source of supply.

17 (b) As used in this section:

18 (1) "Base water right" means a water right under which an applicant
19 applies to the chief engineer to establish a multi-year flex account and
20 where all of the following conditions exist:

21 (A) The authorized source of supply is groundwater; and

22 (B) the water right has not been the subject of a change approval to
23 implement the provisions of K.A.R. 5-5-9(a)(2), K.A.R. 5-5-11(b)(2) or
24 K.A.R. 5-5-11(b)(3), in effect upon the effective date of this act.

25 (2) "Multi-year flex account" means a term permit which suspends a
26 base water right during its term, except when the term permit may be no
27 longer exercised because of an order of the chief engineer, and is subject to
28 the terms and conditions as provided in subsection (e).

29 (3) "Base average usage" means: (A) The average amount of water
30 actually diverted for a beneficial use under the base water right during
31 calendar years 2000 through 2009, excluding any amount diverted in any
32 such year that exceeded the maximum annual quantity of water authorized
33 by the base water right; or (B) if the holder of the base water right shows
34 to the satisfaction of the chief engineer that water conservation reduced
35 water use under the base water right during calendar years 2000 through
36 2009, then the average amount of water actually diverted for a beneficial

1 use under the base water right during the five calendar years immediately
2 before the calendar year when water conservation began, excluding any
3 amount used in any such year that exceeded the amount authorized by the
4 base water right.

5 (4) "Chief engineer" means the chief engineer of the division of water
6 resources of the department of agriculture.

7 (5) "Flex account acreage" means the maximum number of acres
8 lawfully irrigated during a calendar year when no term, condition or
9 limitation of the base water right has been violated and either of the
10 following conditions is met:

11 (A) The calendar year is 2000 through 2009; or

12 (B) if water conservation reduced water use under the base water
13 right during calendar years 2000 through 2009, the calendar year is a year
14 within the five calendar years immediately prior to the calendar year when
15 water conservation began.

16 (6) "Net irrigation requirement" means the net irrigation requirement
17 for 50% chance rainfall of the county that corresponds with the location of
18 the authorized place of use of the base water right as provided in K.A.R. 5-
19 5-12, on the effective date of this act.

20 (c) (1) Any holder of a base water right that has not been deposited or
21 placed in a safe deposit account in a chartered water bank may establish a
22 multi-year flex account where the holder may deposit, in advance, the
23 authorized quantity of water from such water right for any five consecutive
24 calendar years, subject to all of the following:

25 (A) The water right must be vested or shall have been issued a
26 certificate of appropriation;

27 (B) the withdrawal of water pursuant to the water right shall be
28 properly and adequately metered;

29 (C) the water right is not deemed abandoned and is in compliance
30 with the terms and conditions of its certificate of appropriation, all
31 applicable provisions of law and orders of the chief engineer;

32 (D) the amount of water deposited in the multi-year flex account shall
33 not exceed the greatest of the following:

34 (i) 500% of the base average usage;

35 (ii) 500% of the product of the annual net irrigation requirement
36 multiplied by the flex account acreage, multiplied by 110%, but not greater
37 than five times the maximum annual quantity authorized by the base water
38 right;

39 (iii) if the authorized place of use is located wholly within the
40 boundaries of a groundwater management district, an amount that shall not
41 increase the long-term average use of the groundwater right as specified by
42 rule or regulation promulgated pursuant to K.S.A. 82a-1028(o), and
43 amendments thereto; or

1 (iv) pursuant to subparagraph (E), the amount computed in (i), (ii) or
2 (iii) plus any deposited water remaining in a multi-year flex account up to
3 100% of the base average usage;

4 (E) any deposited water remaining in a multi-year flex account up to
5 100% of the base average usage may be added to the deposit amount
6 calculated in subparagraph (D) if the base water right is enrolled in another
7 multi-year flex account during the calendar year in which the existing
8 multi-year flex account expires. The total amount of water deposited in
9 any multi-year flex account shall not exceed 500% of the authorized
10 quantity of the base water right; and

11 (F) notwithstanding any other provisions of this subsection, except
12 when the base water right is suspended due to the issuance of a two-year
13 term permit in a designated drought emergency area for 2011 and 2012,
14 the quantity of water deposited into a multi-year flex account shall be
15 reduced by the quantity of water used in excess of the maximum annual
16 quantity of the base water right during 2011 if the application for a multi-
17 year flex account is filed with the chief engineer on or before July 15,
18 2012.

19 (2) The provisions of K.A.R. 5-5-11 are limited to changes in annual
20 authorized quantity and shall not apply to this subsection.

21 (d) The chief engineer shall implement a program providing for the
22 issuance of term permits to holders of groundwater water rights who have
23 established flex accounts in accordance with this section. Such term
24 permits shall authorize the use of water in a flex account at any time
25 during the five consecutive calendar years for which the application for the
26 term permit authorizing a multi-year flex account is made, without annual
27 limits on such use.

28 (e) Term permits provided for by this section shall be subject to the
29 following:

30 (1) A separate term permit shall be required for each point of
31 diversion authorized by the base water right.

32 (2) The quantity of water authorized for diversion shall be limited to
33 the amount deposited pursuant to subsection (c)(1)(D).

34 (3) The rate of diversion for each point of diversion authorized under
35 the term permit shall not exceed the rate of diversion for each point of
36 diversion authorized under the base water right.

37 (4) The authorized place of use shall be the place of use or a
38 subdivision of the place of use for the base water right. Any approval of an
39 application to change the place of use of the base water right shall
40 automatically result in a change to the place of use for the term permit.

41 (5) The point of diversion authorized by the term permit shall be
42 specified by referencing one point of diversion authorized by the base
43 water right at the time the multi-year flex account term permit application

1 is filed with the chief engineer or at the time any approvals changing such
2 referenced point of diversion of the base water right are approved during
3 the multi-year flex account period. For a base water right with multiple
4 points of diversion, each point of diversion authorized by a term permit
5 shall receive a specific assignment of a maximum authorized quantity of
6 water, assigned proportionately to the authorized annual quantities of the
7 respective points of diversion under the base water right.

8 (6) The chief engineer may establish, by rules and regulations, criteria
9 for such term permits.

10 (7) Except as explicitly provided for by this section, such term
11 permits shall be subject to all provisions of the Kansas water appropriation
12 act, and rules and regulations adopted under such act, and nothing in this
13 section shall authorize impairment of any vested right or prior
14 appropriation right by the exercise of such term permit.

15 (f) An application for a multi-year flex account shall be filed with the
16 chief engineer on or before ~~October~~ *December 31* of the first year of the
17 multi-year flex account term for which the application is being made.

18 (g) All costs of administration of this section shall be paid from fees
19 for term permits provided for by this section. Any appropriation or transfer
20 from any fund other than the water appropriation certification fund for the
21 purpose of paying such costs shall be repaid to the fund from which such
22 appropriation or transfer is made. At the time of repayment, the secretary
23 of agriculture shall certify to the director of accounts and reports the
24 amount to be repaid and the fund to be repaid. Upon receipt of such
25 certification, the director of accounts and reports shall promptly transfer
26 the amount certified to the specified fund.

27 (h) The fee for a multi-year flex account term permit shall be the
28 same as specified for other term permits in K.S.A. 82a-708c, and
29 amendments thereto, except as follows:

30 (1) If the base water right is currently suspended due to the issuance
31 of a two-year term permit in a designated drought emergency area for 2011
32 and 2012, then a holder of such term permit shall be subject to a \$200
33 application fee for a multi-year flex account term permit if the application
34 is filed on or before July 15, 2012; or

35 (2) if water use under the authority of the base water right exceeded
36 the maximum annual quantity authorized by the base water right during
37 2011 and the holder of the base water right files an application for
38 approval of a multi-year flex account term permit on or before July 15,
39 2012, then the application fee shall be \$600.

40 (i) The chief engineer shall have full authority pursuant to K.S.A.
41 82a-706c, and amendments thereto, to require any additional measuring
42 devices and any additional reporting of water use for term permits issued
43 pursuant to this section. Failure to comply with any measuring or reporting

1 requirement may result in a penalty, up to and including the revocation of
2 the term permit and the suspension of the base water right for the duration
3 of the term permit period.

4 (j) The chief engineer shall submit a written report on the
5 implementation of this section to the house standing committee on
6 agriculture and natural resources and the senate standing committee on
7 natural resources on or before February 1 of each year.

8 (k) This section shall be part of and supplemental to the Kansas water
9 appropriation act.

10 Sec. 2. K.S.A. 2017 Supp. 82a-1906 is hereby amended to read as
11 follows: 82a-1906. (a) The division of water resources of the Kansas
12 department of agriculture shall post all complete applications and all
13 orders issued by the division pursuant to K.S.A. 82a-706b, 82a-708a and
14 82a-708b, and amendments thereto, and K.S.A. 2017 Supp. 82a-745, and
15 amendments thereto, on its official website.

16 (b) The division, in conjunction with the groundwater management
17 district within which such water right is situated, shall notify all water
18 right owners with a point of diversion within ~~half a~~ $\frac{1}{2}$ mile, *except when*
19 *such notice relates to surface water, the division shall instead notify all*
20 *landowners within $\frac{1}{2}$ mile, or further if deemed necessary by a rule and*
21 *regulation of the chief engineer, of a determination by the chief engineer*
22 *regarding a water right pending request or application pursuant to:*

23 (1) K.S.A. 82a-706b, and amendments thereto, for groundwater
24 impairment actions;

25 (2) K.S.A. 82a-708a, and amendments thereto; ~~and~~

26 (3) K.S.A. 82a-708b, and amendments thereto, for change
27 applications requesting a point of diversion change of more than 300 feet
28 from the current authorized location; and

29 (4) K.S.A. 2017 Supp. 82a-745, and amendments thereto, ~~except for~~
30 ~~change applications requesting a point of diversion move 300 feet or less~~
31 ~~from the currently authorized location.~~

32 Sec. 3. K.S.A. 2017 Supp. 82a-736 and 82a-1906 are hereby
33 repealed.

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