

As Amended by House Committee

Session of 2018

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,~~ **application**  
4 **deadlines**; amending K.S.A. 2017 Supp. 82a-736 ~~and 82a-1906~~ and  
5 repealing the existing ~~sections~~ **section**.

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

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

18 (b) As used in this section:

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

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

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

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

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

1 2009, then the average amount of water actually diverted for a beneficial  
2 use under the base water right during the five calendar years immediately  
3 before the calendar year when water conservation began, excluding any  
4 amount used in any such year that exceeded the amount authorized by the  
5 base water right.

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

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

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

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

17 (6) "Net irrigation requirement" means the net irrigation requirement  
18 for 50% chance rainfall of the county that corresponds with the location of  
19 the authorized place of use of the base water right as provided in K.A.R. 5-  
20 5-12, on the effective date of this act.

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

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

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

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

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

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

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

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

1 amendments thereto; or

2 (iv) pursuant to subparagraph (E), the amount computed in (i), (ii) or  
3 (iii) plus any deposited water remaining in a multi-year flex account up to  
4 100% of the base average usage;

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

12 (F) notwithstanding any other provisions of this subsection, except  
13 when the base water right is suspended due to the issuance of a two-year  
14 term permit in a designated drought emergency area for 2011 and 2012,  
15 the quantity of water deposited into a multi-year flex account shall be  
16 reduced by the quantity of water used in excess of the maximum annual  
17 quantity of the base water right during 2011 if the application for a multi-  
18 year flex account is filed with the chief engineer on or before July 15,  
19 2012.

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

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

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

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

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

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

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

42 (5) The point of diversion authorized by the term permit shall be  
43 specified by referencing one point of diversion authorized by the base

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

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

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

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

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

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

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

36 (2) if water use under the authority of the base water right exceeded  
37 the maximum annual quantity authorized by the base water right during  
38 2011 and the holder of the base water right files an application for  
39 approval of a multi-year flex account term permit on or before July 15,  
40 2012, then the application fee shall be \$600.

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

1 pursuant to this section. Failure to comply with any measuring or reporting  
2 requirement may result in a penalty, up to and including the revocation of  
3 the term permit and the suspension of the base water right for the duration  
4 of the term permit period.

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

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

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

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

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

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

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

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

33 ~~Sec.-3. 2. K.S.A. 2017 Supp. 82a-736 and 82a-1906 are is hereby~~  
34 ~~repealed.~~

35 ~~Sec.-4. 3. This act shall take effect and be in force from and after its~~  
36 ~~publication in the statute book.~~