

**Testimony in Support of SB 205  
to the Senate Committee on Agriculture and Natural Resources  
by Chief Engineer Earl Lewis  
Kansas Department of Agriculture  
February 16, 2023**

Good morning, Chairman Kerschen and members of the committee. My name is Earl Lewis, and I serve as the chief engineer for the Kansas Department of Agriculture's Division of Water Resources.

I appreciate the opportunity to testify in support of Senate Bill 205. This bill remedies a lack of clarity between two statutes related to water management tools, which has created issues that are currently affecting a group of water users in the south-central part of our state.

The Central Kansas Water Bank (CKWB) operates within the boundaries of Big Bend Groundwater Management District No. 5 (GMD 5) under the authority of the Kansas Water Banking Act, K.S.A. 82a-761 et seq. The CKWB provides a savings account option that allows water that was authorized to be used but was not used in one calendar year to be deposited into the bank for future use. When that savings account water is subsequently needed, it can be "withdrawn" from the bank by pumping it under the authority of a term permit.

Kansas law also provides a water management tool known as a multi-year flex account (MYFA), implemented pursuant to K.S.A. 82a-736. The MYFA is a flexibility-oriented tool that allows a water right to be enrolled into a five-year allocation wherein the water right's authorized annual quantity can be exceeded in a given year as long as the total allocation is not exceeded over the five-year term of the MYFA. This allows the water right to be managed over that five-year allocation period without increasing the consumptive use of groundwater under that right. MYFAs have proven to be a great drought tool, as they allow a water right holder to divert more water than would be allowed under their base water right in a single dry year while reducing use in years of average or greater than average precipitation.

The 2022 drought created a challenge for many of our water users. In order to meet the full water needs of their irrigated crops, water users who had utilized the CKWB's savings account option in prior years irrigated up to their authorized quantity and then also used the CKWB savings account water they had deposited in prior years. Some producers then used even more water to meet their irrigation needs, and their diversions ultimately exceeded their water right's authorized annual quantity and the quantity of water in their CKWB savings accounts combined. To address this issue, those users filed applications for MYFAs. A MYFA filed before the end of 2022 gives the applicant a five-year allocation for 2022-2026, thereby authorizing any over-pumping in 2022 so long as the five-year total allocation is not exceeded over the five-year period.

As DWR examined the two statutes authorizing water banks and MYFAs, we identified a lack of clarity regarding whether a MYFA could be filed the same year that CKWB water was utilized, and we asked for an Attorney General's opinion to address that question. While we waited for the Attorney General's office to issue their opinion, producers who had withdrawn water from the CKWB in 2022 continued to file applications for MYFAs in good faith, as we and they believed was allowed by law. In many of these cases, our field office staff assisted with completion of the MYFA application paperwork.

There were 670 MYFA applications filed with DWR in 2022, 250 of which are within the CKWB boundaries. We know of approximately 100 MYFA applications that were filed by water right owners who also withdrew water associated with the same water rights for which they sought a MYFA from a safe deposit account in the CKWB during 2022. We may identify even more water right owners in this situation as we work to coordinate the MYFA application list with those having accounts within the CKWB.

The Attorney General's opinion was issued after DWR received the aforementioned MYFA applications. It concluded, to paraphrase a bit, that water users cannot utilize a MYFA once the water right had been deposited in the water bank at any time. While we believe the statutory interpretation set forth in the Attorney General's opinion serves the purpose of preventing water users from increasing net consumptive use of water under their water rights, it has nonetheless left water users who used water bank water and sought MYFAs in 2022 in a difficult situation.

To address that issue, this bill provides a one-time authorization for these producers by allowing us to approve MYFA applications for water rights that operated within the CKWB in 2022. This will keep this group of water users in compliance with their water rights. We request this one-time authorization to process these applications will expire at the end of 2023.

The bill further clarifies that, going forward, a water right can participate in either the CKWB or a MYFA, but not both in the same calendar year. This helps to clarify the relevant statutes based on the Attorney General's opinion and further protects against increasing net consumptive use of water in this area of Kansas.

Thank you again for the opportunity to testify in support of SB 205. I'm happy to stand for questions at the appropriate time.

Thank you for your time.