

SENATE BILL No. 270

By Committee on Agriculture and Natural Resources

1-15

1 AN ACT concerning water; relating to the division of water resources of
2 the Kansas department of agriculture; multi-year flex accounts;
3 amending K.S.A. 82a-736 and repealing the existing section.
4

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

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

16 (b) As used in this section:

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

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

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

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

28 (3) "Base average usage" means:

29 (A) The average amount of water actually diverted for a beneficial
30 use under the base water right during calendar years 2000 through 2009,
31 excluding any amount diverted in any such year that exceeded the
32 maximum annual quantity of water authorized by the base water right *or*
33 *any amount applied to an unauthorized place of use;* ~~or~~

34 (B) if the holder of the base water right shows to the satisfaction of
35 the chief engineer that water conservation reduced water use under the
36 base water right during calendar years 2000 through 2009, then the

1 average amount of water actually diverted for a beneficial use under the
2 base water right during the five calendar years immediately before the
3 calendar year when water conservation began, excluding any amount used
4 in any such year that exceeded the amount authorized by the base water
5 right *or any amount applied to an unauthorized place of use; or*

6 *(C) at the discretion of the chief engineer, the net irrigation*
7 *requirement for the base water right, if such right was certified after*
8 *December 31, 1999.*

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

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

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

16 (B) if water conservation reduced water use under the base water
17 right during calendar years 2000 through 2009, the calendar year is a year
18 within the five calendar years immediately prior to the calendar year when
19 water conservation began; *or*

20 *(C) if the base water right was not certified prior to December 31,*
21 *1999, the flex account acreage shall be the maximum number of legally*
22 *irrigated acres to which water was beneficially applied in any single*
23 *calendar year during the perfection period.*

24 (6) "Net irrigation requirement" means the net irrigation requirement
25 for 50% chance rainfall of the county that corresponds with the location of
26 the authorized place of use of the base water right as provided in K.A.R. 5-
27 5-12, on the effective date of this act.

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

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

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

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

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

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

43 (ii) 500% of the product of the annual net irrigation requirement

1 multiplied by the flex account acreage, multiplied by 110%, but not greater
2 than five times the maximum annual quantity authorized by the base water
3 right;

4 (iii) *if the base water right is eligible to use the net irrigation*
5 *requirement as a substitute for base average usage pursuant to subsection*
6 *(b)(3)(C), then the amount of water deposited in the multi-year flex*
7 *account shall not exceed 500% of the product of the annual net irrigation*
8 *requirement multiplied by the flex account acreage, multiplied by 110%,*
9 *but not greater than five times the maximum annual quantity authorized by*
10 *the base water right;*

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

16 ~~(iv)~~(v) pursuant to subparagraph (E), the amount computed in *clause*
17 (i), (ii)~~, (iii)~~ or (iv) plus any deposited water remaining in a multi-year
18 flex account up to 100% of the base average usage; *and*

19 (E) any deposited water remaining in a multi-year flex account up to
20 100% of the base average usage may be added to the deposit amount
21 calculated in subparagraph (D) if the base water right is enrolled in another
22 multi-year flex account during the calendar year in which the existing
23 multi-year flex account expires. The total amount of water deposited in
24 any multi-year flex account shall not exceed 500% of the authorized
25 quantity of the base water right; ~~and~~

26 ~~(F) notwithstanding any other provisions of this subsection, except~~
27 ~~when the base water right is suspended due to the issuance of a two-year~~
28 ~~term permit in a designated drought emergency area for 2011 and 2012,~~
29 ~~the quantity of water deposited into a multi-year flex account shall be~~
30 ~~reduced by the quantity of water used in excess of the maximum annual~~
31 ~~quantity of the base water right during 2011 if the application for a multi-~~
32 ~~year flex account is filed with the chief engineer on or before July 15,~~
33 ~~2012.~~

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

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

43 (e) Term permits provided for by this section shall be subject to the

1 following:

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

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

6 (3) The rate of diversion for each point of diversion authorized under
7 the term permit shall not exceed the rate of diversion for each point of
8 diversion authorized under the base water right.

9 (4) The authorized place of use shall be the place of use or a
10 subdivision of the place of use for the base water right. Any approval of an
11 application to change the place of use of the base water right shall
12 automatically result in a change to the place of use for the term permit.

13 (5) The point of diversion authorized by the term permit shall be
14 specified by referencing one point of diversion authorized by the base
15 water right at the time the multi-year flex account term permit application
16 is filed with the chief engineer or at the time any approvals changing such
17 referenced point of diversion of the base water right are approved during
18 the multi-year flex account period. For a base water right with multiple
19 points of diversion, each point of diversion authorized by a term permit
20 shall receive a specific assignment of a maximum authorized quantity of
21 water, assigned proportionately to the authorized annual quantities of the
22 respective points of diversion under the base water right.

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

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

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

33 (g) All costs of administration of this section shall be paid from fees
34 for term permits provided for by this section. Any appropriation or transfer
35 from any fund other than the water appropriation certification fund for the
36 purpose of paying such costs shall be repaid to the fund from which such
37 appropriation or transfer is made. At the time of repayment, the secretary
38 of agriculture shall certify to the director of accounts and reports the
39 amount to be repaid and the fund to be repaid. Upon receipt of such
40 certification, the director of accounts and reports shall promptly transfer
41 the amount certified to the specified fund.

42 (h) The fee for a multi-year flex account term permit shall be the
43 same as specified for other term permits in K.S.A. 82a-708c, and

1 amendments thereto, except as follows:

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

7 ~~(2) if water use under the authority of the base water right exceeded~~
8 ~~the maximum annual quantity authorized by the base water right during~~
9 ~~2011 and the holder of the base water right files an application for~~
10 ~~approval of a multi-year flex account term permit on or before July 15,~~
11 ~~2012, then the application fee shall be \$600.~~

12 (i) The chief engineer shall have full authority pursuant to K.S.A.
13 82a-706c, and amendments thereto, to require any additional measuring
14 devices and any additional reporting of water use for term permits issued
15 pursuant to this section. Failure to comply with any measuring or reporting
16 requirement may result in a penalty, up to and including the revocation of
17 the term permit and the suspension of the base water right for the duration
18 of the term permit period.

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

23 (k) This section shall be a part of and supplemental to the Kansas
24 water appropriation act.

25 Sec. 2. K.S.A. 82a-736 is hereby repealed.

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