As Amended by House Committee

Session of 2018

HOUSE BILL No. 2691

By Committee on Water and Environment

2-7

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

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

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

(b) As used in this section:

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

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

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

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

(3) "Base average usage" means: (A) The average amount of water actually diverted for a beneficial use under the base water right during calendar years 2000 through 2009, excluding any amount diverted in any such year that exceeded the maximum annual quantity of water authorized by the base water right; or (B) if the holder of the base water right shows to the satisfaction of the chief engineer that water conservation reduced water use under the base water right during calendar years 2000 through
2009, then the average amount of water actually diverted for a beneficial
use under the base water right during the five calendar years immediately
before the calendar year when water conservation began, excluding any
amount used in any such year that exceeded the amount authorized by the
base water right.

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

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

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

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

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

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

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

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

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

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

(i) 500% of the base average usage;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) An application for a multi-year flex account shall be filed with the
chief engineer on or before October 1
December 31 of the first year of the
multi-year flex account term for which the application is being made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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