

**Testimony in Support of Senate Bill 58
to the House Committee on Water
by Lane Letourneau, Water Appropriation Program Manager
Kansas Department of Agriculture
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Chairman Minnix and members of the committee, my name is Lane Letourneau. I am the water appropriation program manager for the Kansas Department of Agriculture's Division of Water Resources. Thank you for the opportunity to present testimony in support of Senate Bill 58, which requests modifications to the state's multi-year flex account (MYFA) term permit statute.

KDA is the agency that issues water right permits, including those for MYFAs. A MYFA is a term permit issued for a water right that essentially eliminates the water right's annual quantity limitation during the term of the MYFA and instead authorizes a multi-year allocation to be managed over the entirety of the MYFA's term. In this way, a MYFA provides irrigators with the flexibility to use less water during a wet year and carry unused water over into the subsequent year, when more water use may be necessary if conditions are dry. Because of this, the MYFA has been a powerful tool for Kansas irrigators.

Through many years of processing MYFA applications, KDA has identified several shortcomings in the existing statute that we believe will be remedied by these proposed changes. Broadly, the most significant changes proposed by this bill would modify the calculations that determine a MYFA's multi-year quantity allocation in two important ways. First, allocation calculations would no longer rely on past average water use. Relying on past average use to assign future allocations has created a culture of "use it or lose it," wherein irrigators are incentivized to divert more water than necessary to successfully grow a crop in order to keep their average use high and which does not promote conservation. Second, the proposed changes will eliminate the possibility for the same acres to essentially be counted twice in determining the quantity allocation, which has the potential to increase net consumptive water use and again does not promote conservation.

These changes will also greatly simplify the allocation calculations overall and will decrease the amount of time needed to both file and process MYFA applications. For example, in severe drought years, KDA has received in excess of 700 MYFA applications, and, under the existing statute, processing one MYFA application takes at least 30 days and up to 60 days. We estimate these revisions will reduce processing time to one to two days. KDA feels these changes are very positive modifications to the MYFA statute. KDA is also committed to amending our MYFA regulations to conform them to these statutory amendments and to further improve the function of MYFAs. Working drafts of those regulation amendments are attached for your convenience.

Thank you again for the opportunity to provide testimony in support of SB 58. I will stand for questions at the appropriate time.

K.A.R. 5-16-1. Definitions. The terms and definitions in this regulation shall apply to this article and to K.S.A. 82a-736, and amendments thereto, unless the context clearly requires otherwise:

(a) "Subdivision or subdivisions of the place of use for the base water right" means one or more portions of the authorized place of use under the base water right that are identifiable and completely circumscribed by the boundaries of place of use for the base water right.

(b) "Water conservation" means conservation by means of actual physical changes in a water distribution system or management practices that improve water use efficiency, which shall include one or more of the following:

(1) Conversion from flood irrigation to center pivot irrigation with a nozzle package designed to improve water use efficiency;

(2) conversion to subsurface drip irrigation;

(3) removal of an end gun, resulting in a significant reduction in the number of irrigated acres; or

(4) enrollment of the base water right in the water right conservation program, the conservation reserve program, or any other multiyear water conservation program approved by the chief engineer. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended Jan. 6, 2006; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011; amended June 21, 2013; revoked P- _____.)

K.A.R. 5-16-3. Establishing a Complete multiyear flex account application. (a) A multiyear flex account shall be established by filing an application for a multiyear flex account and a term permit on a form prescribed by the chief engineer. Each application shall meet the following requirements:

(1) Except as specified in subsection (e), a separate application shall be filed for each water right and each point of diversion for which the owner desires to establish a multiyear flex account. Each application shall be accompanied by the appropriate filing fee;

(2) be date-stamped showing the date the application was filed with the chief engineer, or his or her authorized representative;

(3) indicate the five consecutive calendar years that are to be designated as the multiyear flex account period; and

(4) indicate whether the multiyear flex account period will commence with the year in which the application is made if filed before October 1, or with the next calendar year after the calendar year in which the application is filed. (b4) Before any application to establish a multiyear flex account and a term permit will be

accepted for filing, the application shall be signed by at least one owner of the water right, or an authorized agent of an owner of the water right, who verifies on oath or affirmation that all water right owners agree to establish the multi-year flex account under the terms proposed by the application.

(c) Before the multiyear flex account can be established or the term permit approved, all of the water rights owners, or an authorized agent of the owners, shall verify upon oath or affirmation that the statements contained in the application are true and complete.

(d) If one or more owners refuse to sign the application or if a written request is filed by one or more of the owners to withdraw their signatures from the application before the application is approved, the application shall be dismissed.

(e) A single application to establish a multiyear flex account and apply for a term permit shall be filed in the following situations:

(1) Multiple water rights authorize the diversion of water from a single point of diversion that diverts water to an identical place of use;

(2) Multiple points of diversion are authorized by the chief engineer to divert water

through a single water flowmeter before going to an identical place of use.

(f) ~~The multiyear flex account shall not be established and the term permit to exercise the multiyear flex account shall not be valid until both have been approved by the chief engineer.~~ (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011; amended June 21, 2013; amended P- _____.)

K.A.R. 5-16-4. Conditions on the term permit. (a) The place of use authorized by a term permit shall be identical to the place or places of use authorized by the base water right or rights or a subdivision or subdivisions of the place of use for the base water right.

(b) ~~The types of use authorized by a term permit shall be limited to the types of use authorized by the base water right or rights.~~

(c) ~~The rate of diversion authorized by a term permit shall not exceed the maximum instantaneous rate of diversion authorized by the base water right or rights.~~ (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013; amended P- _____.)

K.A.R. 5-16-6. Metering and water use reporting requirements for Multiyear Multi-year flex accounts and term permits. (a) ~~The duration of the multiyear flex account and term permit shall be five consecutive calendar years.~~

(b) ~~If water use records for a base water right are inadequate to accurately determine actual water use during any calendar year in the period used to determine the base average usage, then the actual water use for that calendar year shall be deemed to be zero.~~

(c) ~~There shall be no carryover of unused quantities of water from one multiyear flex account or term permit to another multiyear flex account or term permit.~~

(d) ~~No multiyear flex account shall be allowed if the multiyear flex account is inconsistent with the provisions of any intensive groundwater use control area created pursuant to K.S.A. 82a-1036 through K.S.A. 82a-1040, and amendments thereto, or any local enhanced management area created pursuant to K.S.A. 82a-1041, and amendments thereto.~~

~~(e-a) Each point of diversion for which a multi-year flex account has been authorized shall be equipped with a water flowmeter that~~ Water flowmeters shall be required under all multiyear flex account term permits and shall meet all of the following requirements:

(1) ~~A water flowmeter meeting the requirements of the chief engineer shall be installed on each point of diversion authorized by the base water right.~~

(2) ~~Each water flowmeter and the measuring chamber shall be is sealed to the diversion works in a manner to ensure that the flowmeter and the measuring chamber can not cannot be removed and reinstalled, and the water flowmeter's register cannot be manipulated, without breaking the seal.~~

(3) ~~Each water flowmeter register shall be sealed in a manner to ensure that the register be manipulated without breaking the seal.~~

(4b) Each replacement of a water flowmeter during the duration of a multiyear flex account shall be equipped with an anti-reverse-flow mechanism.

(f) ~~Only an entire water right, or a portion of a water right that has been formally divided, may be deposited in a multiyear flex account. Nothing in this subsection shall prevent a multi-year flex account term permit from authorizing a subdivision of the place of use for the base water right as the place of use for the multiyear flex account.~~

(gc) All water diverted pursuant to a term permit and the base water rights associated with the term permit shall be counted against the quantity of water deposited in the multiyear flex

account. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013; amended P- _____.)

K.A.R. 5-16-7. Conditions under which a base water right may be exercised. (a) Each term permit approved by the chief engineer pursuant to K.S.A. 82a-736, and amendments thereto, shall include the condition that if the term permit can no longer be exercised because of an order issued by the chief engineer, including an intensive groundwater use control area order, a minimum desirable streamflow order, or an order to administer water rights to prevent impairment, then any base water right may be exercised ~~to the extent provided~~ that all of the following conditions are met:

~~(a1)~~ The base water right is in priority, including priority with respect to any established minimum desirable streamflow-;

~~(b2)~~ ~~The~~ the annual quantity of water authorized by the base water right has not been diverted during that calendar year-;

~~(c3)~~ ~~The~~ the five-year quantity authorized by the term permit has not been completely used-; and

~~(d4)~~ ~~The~~ the use of water under the base water right does not impair water rights senior to the base water right. (Authorized by K.S.A. 82a-706a; implementing K.S.A. 2012 Supp. 82a-736; effective Oct. 11, 2002; amended June 21, 2013; amended P- _____.)