

**Report on Implementing Multi-Year Flex Accounts (K.S.A. 82a-736) to
House Committee on Agriculture and
Senate Committee on Agriculture and Natural Resources**

**By David W. Barfield, Chief Engineer
Kansas Department of Agriculture, Division of Water Resources
January 29, 2020**

Introduction and Background

In May 2001, K.S.A. 82a-736 became law, implementing a voluntary program to provide water right holders with more flexibility in managing their appropriated groundwater use. In accordance with that law, the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources (KDA–DWR) is required to submit a written report on the law’s implementation to the standing committees by February 1 of each year.

Multi-year flex accounts (MYFAs) allow water right holders to obtain term permits that replace their base water rights for five years. This term permit allows the water right holder to exceed their annual authorized quantity of water in a year but restricts the total amount that can be pumped over the five-year period. The program is voluntary and does not permanently change the water right. At the end of the five-year period, if the water right is not enrolled in a new MYFA, the original conditions of the water right are restored.

As conceived in 2001, MYFAs were intended to provide yearly flexibility to water right holders, but the five-year quantity was set at historic water use, with a 10 percent reduction to promote conservation. The program saw very little use, despite amendments made in 2005 and 2011 to encourage participation. Based on stakeholder comments, KDA–DWR developed another set of recommended improvements to the MYFA program, which were adopted by the 2012 legislature. The 2012 amendments removed the 10 percent conservation requirement. As amended, the MYFA program provides multi-year flexibility without increasing long-term use, allowing for five-year flex accounts based on one of the following:

- Average historic water use, without the 10 percent conservation requirement;
- Net irrigation requirement for the county times the maximum authorized acres irrigated **times 110%**; or
- An alternative rule developed by a Groundwater Management District (GMD), which must not allow for an increase in long-term use.

Water right holders can choose one of the three options above. However, in no case can a MYFA quantity exceed five times the authorized quantity of the base water right.

Implementation under the 2012 Statutory Amendments

Following the 2012 amendments, the MYFA program has been implemented as depicted in Table 1.

Table 1. MYFA enrollment from 2012 to the present¹. The attached map depicts the locations of the points of diversion associated with active MYFA applications. Note that the 2020 application year is still in progress.

| Permitting Year | Use Made of Water | | | Total MYFAs |
|-----------------|-------------------|----------------|-----------------|-------------|
| | Irrigation | Recreation | Stockwater | |
| 2012 | 738 | 1 ² | - | 738 |
| 2013 | 54 | - | 1 | 55 |
| 2014 | 45 | - | - | 45 |
| 2015 | 24 | - | - | 24 |
| 2016 | 24 | - | - | 24 |
| 2017 | 250 | - | - | 250 |
| 2018 | 102 | - | 16 ³ | 107 |
| 2019 | 18 | - | - | 24 |
| 2020 | 5 ⁴ | - | - | 54 |

Of the 738 MYFAs that began in 2012, 239 (32%) have been renewed.

The statute allows GMDs to propose an alternative method for determining the MYFA authorized within their boundaries, provided that the proposed method does not increase

¹ Pre-2018 permitting counts are based on the application being received before October 1 of the given year and subsequently approved. MYFAs applied for after October 1 had a start date of the following year, except for the first MYFA application which was received early in 2011 and was grouped with the 2012 start dates. For 2018 forward, the file naming structure changed so that the first four digits of the MYFA water right denote the start year.

² One of the files applied for in 2012 had two uses made of water on it (irrigation and recreation).

³ Nine of the 2018 MYFAs had two uses made of water on them (irrigation and stockwater). Many of the 2018 stockwater MYFAs are on dual irrigation/stockwater use permits with the stock portion of the quantity not having been fully used in 2018. These applications allowed for the unused quantity for these rights to be banked and carried forward to support ongoing expansion of operations, maximizing the water available for use and getting the most out of the flexibility of the MYFA tool. Stockwater MYFAs are uncommon and typically only utilized by large operations with both irrigation and stockwater permits to work with.

⁴ The five 2020 MYFAs are pending review and have not yet been approved.

the long-term average use of the groundwater right. Big Bend GMD No. 5 developed an alternative method to incentivize end-gun removal by offering a more generous MYFA quantity if end-guns are removed for the five-year period. This proposal was implemented via a new rule and regulation adopted by the Chief Engineer on behalf of GMD No. 5 in 2016. To date, four MYFAs have been approved using the GMD No. 5 rules, and one is pending approval.

Post-2012 Legislative Refinements

The 2015 Legislature adopted KDA-developed refinements to K.S.A. 82a-736 allowing the carryover of unused quantity to a new, subsequent MYFA and allowing for small changes in an irrigation place of use while enrolled in a MYFA. The 2016 Legislature adopted a technical amendment to the statute recommended by KDA. In 2018, legislation was passed to extend the application filing date in the MYFA statute from October 1 to December 31.

Conclusion

One eligibility requirement for MYFAs is that the water right must have been certified by December 31, 2009. In consultation with stakeholders, KDA has developed proposed amendments to the statute to allow for participation of water rights certified after that date.

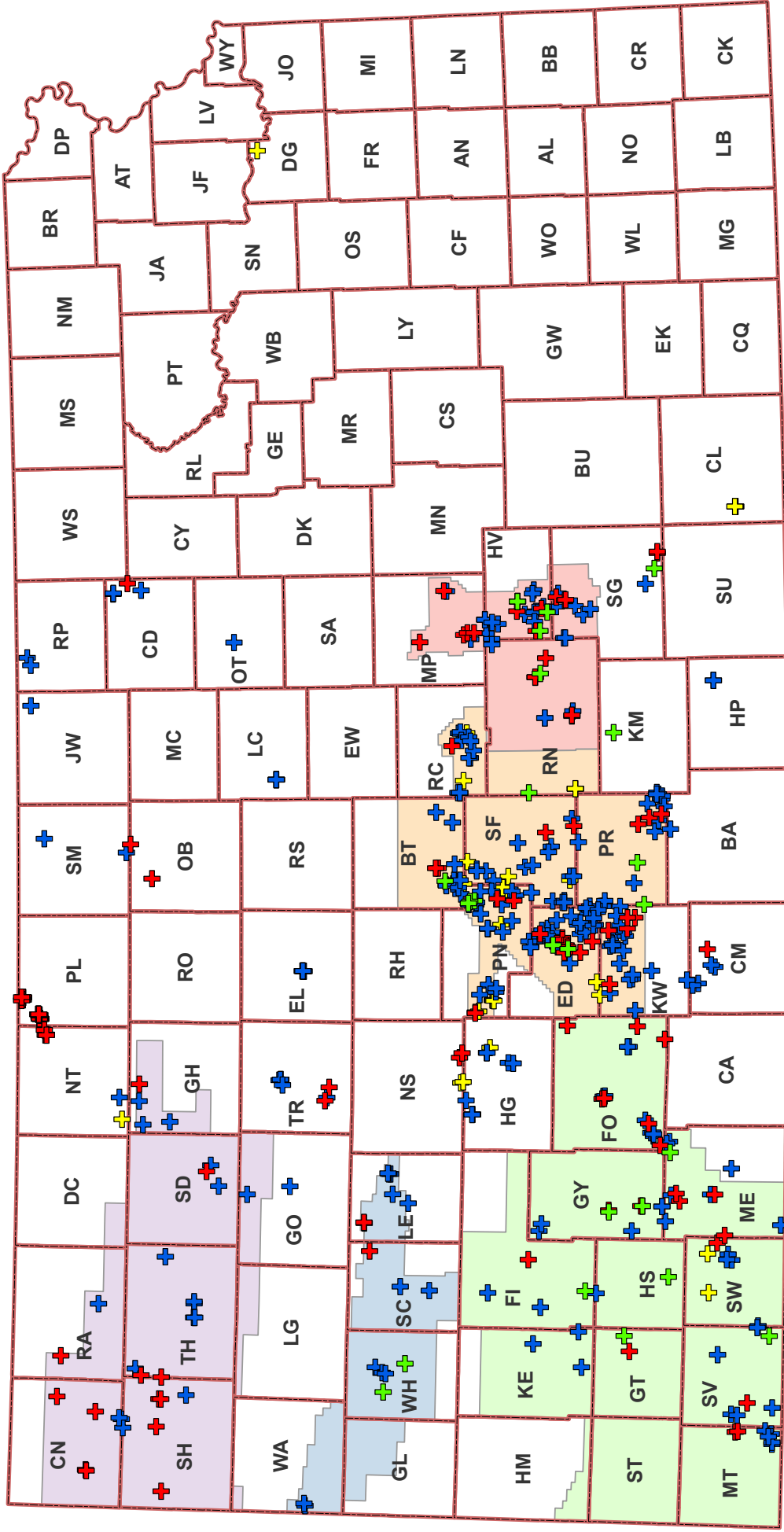
KDA–DWR conducted a review of water use of water rights enrolled in MYFAs, comparing use during the 2000–2009 period versus use when enrolled in a MYFA on a county basis. We found no evidence of expanded use.

Thus, we continue to conclude that the amended MYFA program is working well, providing water users with a valuable option to improve management of their water rights.

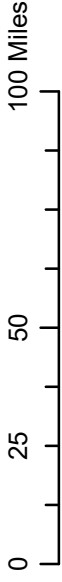
Attachment:

- Map showing active MYFA filings by year

Active Multi-Year Flex Accounts



- Western Kansas GMD No. 1
 - Equus Beds GMD No. 2
 - Southwest Kansas GMD No. 3
 - Northwest Kansas GMD No. 4
 - Big Bend GMD No. 5
- 2016 (24 permits)
 - 2017 (249 permits)
 - 2018 (107 permits)
 - 2019 (24 permits)



There are 5 2020 MYFAs pending review.

