

SENATE BILL No. 205

By Committee on Agriculture and Natural Resources

2-8

Proposed Amendment for SB 205
Senate Committee on Education
February 17, 2023
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Office of Revisor of Statutes

1 AN ACT concerning water; relating to water rights; authorizing certain
2 water rights in a water bank to participate in multi-year flex accounts
3 on a temporary basis; amending K.S.A. 82a-764 and repealing the
4 existing ~~section~~ and K.S.A. 2022 Supp. 82a-736
5

and K.S.A. 2022 Supp. 82a-736
sections

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

7 New Section 1. (a) Notwithstanding any prohibition or restriction on
8 the establishment of multi-year flex accounts due to participation of a base
9 water right in a water bank established pursuant to the Kansas water
10 banking act, K.S.A. 82a-761 et seq, and amendments thereto, the chief
11 engineer shall approve a complete application for the establishment of a
12 multi-year flex account pursuant to K.S.A. 82a-736, and amendments
13 thereto, that was submitted to the chief engineer on or before December
14 31, 2022, if such right otherwise meets the requirements of K.S.A. 82a-
15 736, and amendments thereto, and could have been approved if not for the
16 relevant base water right's participation in a water bank.

17 (b) This section shall expire on December 31, 2023.

18 New Sec. 2. (a) For purposes of K.S.A. 82a-736, and amendments
19 thereto, a water right or any portion of a water right that has been
20 deposited, enrolled or placed in a safe deposit account associated with a
21 water bank established pursuant to the Kansas water banking act, K.S.A.
22 82a-761 et seq, and amendments thereto, shall not be eligible to be
23 enrolled in a multi-year flex account that begins during a calendar year in
24 which water from such water right or portion of a water right was
25 withdrawn from a safe deposit account. Water from a water right that has
26 been deposited, enrolled or placed in a safe deposit account associated
27 with a water bank established pursuant to the Kansas water banking act,
28 K.S.A. 82a-761 et seq., and amendments thereto, shall not be withdrawn
29 from a safe deposit account while such water right is enrolled in a multi-
30 year flex account.

31 (b) A water right shall be considered enrolled in a multi-year flex
32 account until the end of the calendar year in which the multi-year flex
33 account permit expires, even if the allocation under the multi-year flex
34 account is exhausted prior to the expiration of the multi-year flex account
35 permit.

36 Sec. 3. K.S.A. 82a-764 is hereby amended to read as follows: 82a-

1 764. Before a water right or portion of a water right shall be accepted for
 2 deposit in a water bank or water from a water right shall be placed in a
 3 safe deposit account, the bank, with the assistance of the division, shall
 4 determine whether the water right is bankable; ~~as follows: A water right~~
 5 ~~is bankable if the right:~~

6 (a) ~~The right~~— Is vested or has been issued a certificate of
 7 appropriation; ~~and~~

8 (b) ~~the right~~— has not been abandoned and is in good standing, based
 9 on past water usage and compliance with the terms of the holder's permit
 10 and all applicable provisions of law and orders of the chief engineer; ~~and~~

11 (c) ~~is not currently enrolled in an active multi-year flex account~~
 12 ~~pursuant to K.S.A. 82a-736, and amendments thereto. If the allocation~~
 13 ~~under the multi-year flex account is exhausted prior to the end of a~~
 14 ~~calendar year, the water right shall be considered enrolled in a multi-year~~
 15 ~~flex account until the end of the calendar year in which the multi-year flex~~
 16 ~~account permit expires.~~

Insert Attachment A
 and K.S.A. 2022 Supp. 82a-736 are

17 Sec. 4. K.S.A. 82a-764 is hereby repealed.
 18 Sec. 5. This act shall take effect and be in force from and after its
 19 publication in the Kansas register.

And by renumbering sections accordingly

Attachment A

Sec. 2. K.S.A. 2022 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) "Alternative base average usage" means an allocation based on net irrigation requirements calculated pursuant to subsection (c)(1)(D)(ii) that may be used in place of the base average usage.

(2) "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 is not currently the subject of a multi-year allocation due to a change approval that allows an expansion of the authorized place of use.

(3) "Multi-year flex account" means a term permit that 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).

(4) "Base average usage" means: (A) The average amount of water actually diverted for the authorized beneficial use under the base water right during calendar years 2000 through 2009, excluding:

(i) Any amount diverted in any such year that exceeded the amount authorized by the base water right;

(ii) any amount applied to an unauthorized place of use; and

(iii) diversions in calendar years when water was diverted under a multi-year allocation with an expansion of the authorized place of use due to a change approval;

(B) if water use records are inadequate to accurately determine actual water use or upon demonstration of good cause by the applicant, the chief engineer may calculate the base average usage with less than all 10 calendar years during 2000 and 2009. In no case shall the base average usage be calculated with less than five calendar years during 2000 and 2009; or

(C) 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 base average usage shall be calculated with the five calendar years immediately before the calendar year when water conservation began.

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

(6) "Flex account acreage" means the maximum number of acres lawfully irrigated during a calendar year, except for any acres irrigated under a multi-year allocation that allowed for an expansion of the authorized place of use due to a change approval and any of the following conditions are met:

(A) The calendar year is 2000 through 2009;

(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; or

(C) if an application to appropriate water was approved after December 31, 2004, the calendar year is any during the perfection period.

(7) "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) Except as provided in sections 1 and 2, and amendments thereto, 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, except when the chief engineer determines a shorter period is necessary for compliance with a local enhanced management area or an intensive groundwater use control area and the corrective controls in the area do not prohibit the use of multi-year flex accounts, and 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 (F), 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 or alternative base average usage;
 - (E) If the multi-year flex account is approved for less than five calendar years, the amount of water deposited in the multi-year flex account shall be prorated based on the number of calendar years approved and otherwise calculated as required by subsection (c)(1)(D)(i), (ii) or (iii); and
 - (F) any deposited water remaining in a multi-year flex account up to 100% of the base average usage or alternative 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.
- (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 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 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 where 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.
- (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.

