

Kansas Farm Bureau
POLICY STATEMENT

House Agriculture and Natural Resources Committee

Re: HB 2051 an act concerning limited transfers, dams and multi-year flex accounts

February 7, 2013
Submitted by:

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Assistant Director of Natural Resources

Chairperson Schwartz and members of the committee, thank you for this opportunity to provide testimony on House Bill 2051 which you have before you today. I am Kent Askren, Assistant Director of Natural Resources for the Kansas Farm Bureau. HB 2051 proposes changes to several different statutes so we will offer qualified support for the bill.

In New Section 1 of the bill, the concept of limited transfer permits is unveiled and we support this concept. Limited transfer permits will allow our members the opportunity to lease portions of their water rights on a short term basis. Water right development in our state continues to mature making the right to use water an increasingly valuable privilege.

Just as importantly, limited transfer permits protect fully developed water supplies from becoming more heavily drawn upon since it is not really "new" water being appropriated but just a short term lease of a water right already on the books.

Section 2 of the bill increases the capacity for most dams from 50 to 75 acre-feet before they become jurisdictional. This modification will help to reduce the number of dams requiring permit or written consent from the Chief Engineer. Due to the large number of dams associated with the operation of farms and ranches, our members will appreciate this reduction in regulatory oversight and expense.

House Agriculture & Natural
Resources Committee

Date 2-07-2013

Attachment # 3

Our final comments on the bill will be in regards to multi-year flex accounts (MYFA). We support the proposals as presented in Section 5 of the bill which would motivate water users to conserve water. A portion of the water conserved could then be rolled over into a subsequent period of flexible water use.

As some of you will recall, the MYFA program was greatly improved last year by passage of SB 272. We supported that bill and had many discussions with the Chief Engineer about the merits of modifying the program from a water reduction to a water management program.

During these discussions we shared with the Chief Engineer our concept of making water use flexibility an option directly applicable to the base water right rather than a term permit issued on the merit of the base water right. The Chief Engineer was open to the concept but hesitant to implement until the program was given a trial run.

Currently, when a water right holder utilizes a MYFA, the base water right is suspended and a replacement term permit is utilized for the next 5 years. This costly, repetitious process could be avoided simply by allowing water right holders to voluntarily utilize water flexibility on their base water right at the owner's discretion.

Water use flexibility serves as a tool to help innovative producers create greater economic value out of every drop they pump and for producers facing drought when the only other options are to burn up a crop or overpump their water right. By alleviating overpumping occurrences, water use flexibility saves state resources that would otherwise be used on enforcement activities.

During interim last year the joint Energy/Environment committee heard former Senator Taddiken say that applying water flexibility with a term permit was not helpful in his part of the state because of minimum desirable streamflow administration. We believe if water use flexibility were allowed under permanent water rights, there would be no long-term negative effects on the source of supply; water right priority would be respected and instead of burning up irrigated crops we'd get value out of that precious investment.

We have prepared an amendment to HB 2051 that would allow the MYFA concept to be exercised by base water rights without having to file a term permit. To help safeguard against unforeseen consequences, we have proposed that those interested in more water use flexibility try out MYFA with a term permit and upon completion of the 5 year term; they would then be eligible to exercise the same water flexibility concepts of a MYFA on their base water right. We suggest adding our proposal to the bill on page 9, Section 5 (j), on line 42.

KFB stands ready to assist the Committee to better understand our proposal and would be happy to answer questions at any time.

Kansas Farm Bureau proposed amendment to HB 2051

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 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) Any holder of a groundwater base water right that has participated for the full five years in the multi-year flex account program that re-enrolls the same groundwater base water right in a succeeding, contiguous multi-year flex account will be credited, as an incentive, with water not used under the concluding multi-year flex account, during the succeeding multi-year flex account. The amount of conserved water credited shall not exceed 1/3 of the amount of water calculated pursuant to subsection (c)(1)(D).

(j) Any holder of a groundwater base water right that has participated for the full five years in the multi-year flex account program, and the water right remains in good standing, shall have the option to exercise multi-year flexibility for a period of five years on the base water right. Such base water right and the amount of water calculated in subsection (c)(1)(D) shall maintain the priority of the base water right.