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**Testimony regarding
 Multi-year Flex Accounts (K.S.A. 82a-736)
 to
 Special Committee on Agriculture and Natural Resources**

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Conserving and providing flexibility tools related to our state's water resources and the on-going effort to improve water stewardship are priorities at the Kansas Department of Agriculture. In May 2001, K.S.A. 82a-736 became law, implementing a voluntary program to provide water right holders more flexibility in the management of their appropriated groundwater.

Multi-year flex accounts (MYFAs) allow water right holders to obtain a term permit that replaces their water right for five years. This term permit allows the holder of the water right to exceed their annual authorized quantity but restricts the total volume that can be pumped over the five-year period. The program is voluntary and does not permanently change the water right, which is a private property right. At the end of the five-year period covered by the term permit, the water right may be enrolled into a new MYFA or the original water right conditions restored.

As conceived in 2001, the MYFAs provided the flexibility to water right holders but the five-year quantity was based on historic water use reduced by 10 percent (conservation). As a result, the program saw very low participation. Producers felt the program penalized them for being conservative. Legislative changes to the program in 2005 and again in 2011 did not change this thinking.

Since 2001, KDA has actively worked to promote the use of MYFAs and to seek improvements to the program to encourage participation as we see this as an important tool in the state's long-term water management and conservation strategy.

In response to the 2011 drought emergency, DWR developed the emergency drought term permit to allow for additional authorization to use water in 2011 to save the crops while not increasing overall water use. In this one-time program for severe drought areas, term permits allowed water users to borrow from the 2012 allocation to complete irrigation of the 2011 crops. By the end of 2011, DWR accepted more than 2,200 drought term permit applications.

As drought conditions persisted through 2011 and into 2012, water users asked for improved tools to manage their water supply over a span of multiple years. Based on historic MYFA enrollment, however, it was clear at that time that water users were unwilling to voluntarily reduce use by 10 percent from historic average water use.

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Based on significant interaction with many stakeholders and with support from Governor Brownback, KDA-DWR developed recommendations to improve the multi-year flex account program, which were passed by the 2012 legislature. The amendments removed the 10 percent conservation requirement. Instead, the amendments provide multi-year flexibility without increasing long-term use. The amendments allow for five-year flex accounts based on the larger of the following:

- Average historic usage of the water right, without the current 10 percent conservation requirement;
- Net irrigation requirement for the individual county times the maximum acres irrigated; or
- A GMD developed alternative, adopted as rules, which do not allow for an increase in long-term use.

Water users can choose among the options above. However, in no case can a MYFA quantity exceed five times the authorized quantity of the base right. The 2012 bill provided a one-time option for those with 2011 drought emergency term permits to switch to a MYFA without a reduction due to 2011 overuse.

KDA has adopted rules and regulations to ensure consistency with the amendments to K.S.A. 82a-736.

There were 745 MYFAs filed in 2012 (shown on the attached map). We have completed the processing of the large workload. We have approximately 60 MYFA applications received for 2013. This program is well liked by the participants.

We are in the second year of the first MYFAs operating. We have one year of water use. The overall average reported use for 2012 was 24% of the MYFA's five-year quantity. It is no surprise that the average use is greater than 20% due to the severity of the drought conditions in 2012.

We have received a proposal from Big Bend GMD No. 5 for an alternative means to quantify a MYFA for those producers that agree to remove an end gun within the district. Their proposal is to allow for a MYFA quantity of 90% of authorized water right times five. This is under review to determine if it meets the statutory requirement to not increase long term use. We support the GMD's desire to remove end guns as they are an inefficient method of irrigation plus they can be a public nuisance when they water a road. However, water use records in GMD 5 show the average use is closer to 70% of the authorized quantity. Therefore the 90% request may increase long term use. We are committed to working with GMD 5.

The changes made to the MYFA program in 2012 were a significant step forward, encouraging more flexibility and conservation through water law in Kansas. The legislature provided a good MYFA program to allow the increased use for the drought years by borrowing water from future years. Our producers need this tool.

There are a number of ideas surfacing on how to improve the program further. We believe more experience with the program is advised before making further changes.

Attachments:

- Map showing locations of 2012 MYFA applications
- MYFA Fact Sheet

Multi-Year Flex Account

Multi-Year Flex Account (MYFA) Program

- The 2012 Legislature modified the state's MYFA program as part of a series of changes to Kansas water law to conserve the state's water supply and extend the life of the Ogallala Aquifer. The changes in 2012 lifted some restrictions from the previous flex account law and added greater flexibility to manage water use.
- A MYFA allows water right holders to obtain a term permit that replaces their water right for five years. This term permit allows the water right holder to exceed their annual authorized quantity but restricts the total amount that can be pumped over the 5-year period.
- The program is voluntary and does not permanently change the water right. At the end of the 5-year period, if the water right is not enrolled in a new MYFA, the original water right conditions are restored.
- MYFA Allocations - the total water use authorized by the MYFA will generally be the larger of the following:
 - Five times the average use of the water right from 2000-2009, or
 - Five times the county's net irrigation requirement for corn times the acres irrigated times 110 percent.

MYFA Application Process

- MYFA applications must be received by the KDA Division of Water Resources on or before October 1 of the first year of the MYFA term for which the application is being made. These deadlines are set in statute and cannot be waived. Additionally, separate applications must be received for each point of diversion authorized by the water right before the deadline.
- The new MYFA application form and additional information is available on the KDA Division of Water Resources website, at its field offices and at the offices of the state's five Groundwater Management Districts. Assistance with completing the application will also be available at each of these locations.

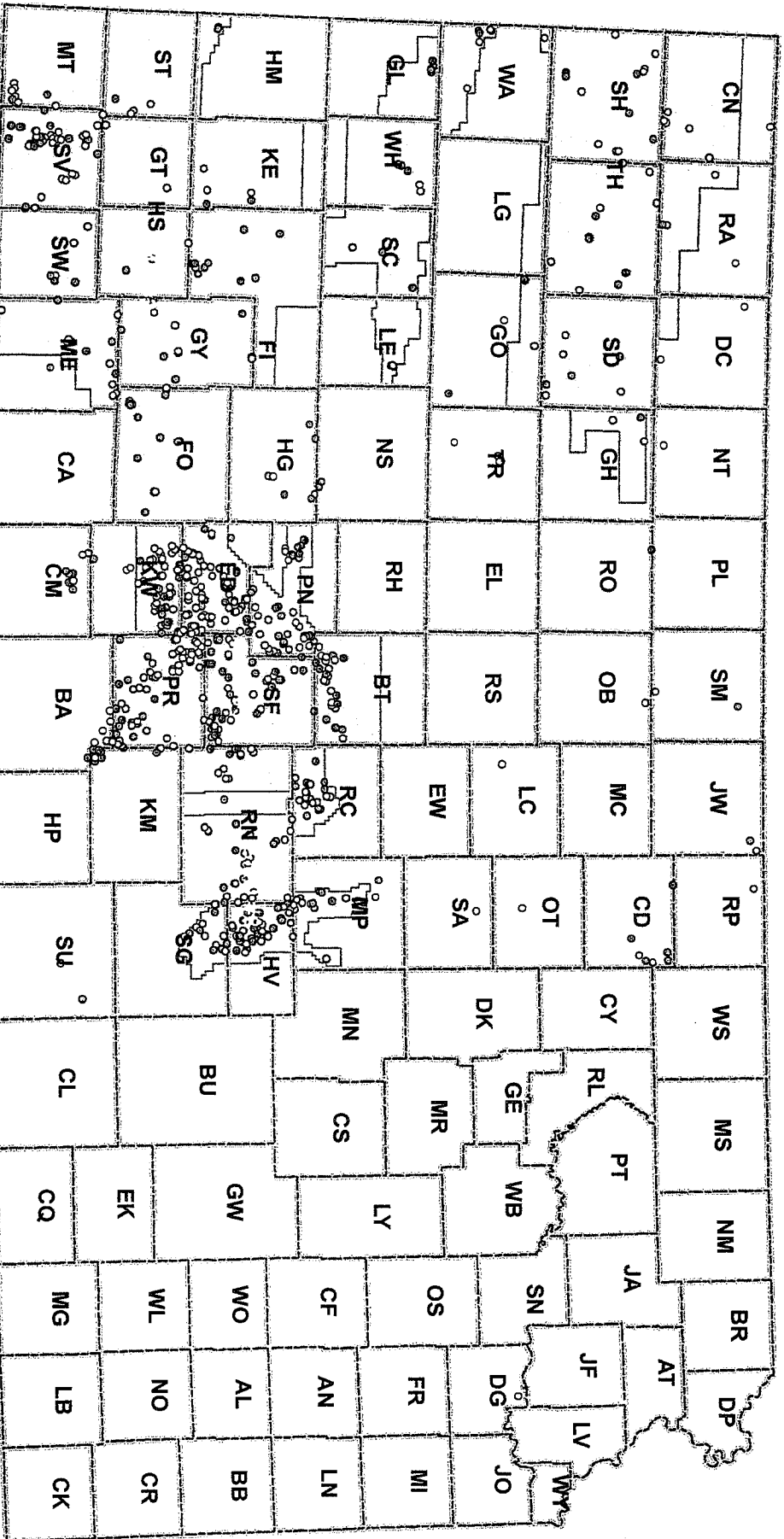
MYFA Program in 2012 and Beyond

- While participation in the MYFA program had low levels prior to 2012, changes made by the Kansas legislature resulted in more than 750 applications for MYFAs as of Dec. 31, 2012.
- In an effort to further enhance this important tool to promote more flexibility and conservation through water law in Kansas, KDA has proposed allowing unused portions of a MYFA to be carried forward to a new five-year MYFA.
- This revision to the MYFA program will further improve this tool for water users in Kansas and will move us further down the road from the old "use it or lose it" mindset.



2012 Multi-Year Flex Accounts - First Year Water Usage

745 Active 2012 Multi-Year Flex Accounts



Percentage of Authorized Quantity Used in 2012

- 0% - 20% 212 Files
- 20% - 30% 431 Files
- 30% - 82% 102 Files

Overall Average Use 24% **GMD 1 Average Use 20%**
GMD 2 Average Use 25% **GMD 3 Average Use 22%**
GMD 4 Average Use 24% **GMD 5 Average Use 24%**
Non-GMD Average Use 23%

