

**Testimony in Support of HB 2691 to
The House Water and Environment Committee
By Susan Metzger
Kansas Department of Agriculture
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Chairman Sloan and members of the committee, I am Susan Metzger, deputy secretary of Kansas Department of Agriculture (KDA). I appreciate the opportunity to provide testimony in support of HB 2691.

Multiyear Flex Accounts

- Most water right holders may apply for a multiyear flex account (MFYA) by which they obtain a 5-year term permit that temporarily replaces an existing (or base) water right. This term permit allows the water right holder to exceed their annual authorized quantity in any year, but restricts total pumping over the 5-year period.
- Currently, an application must be filed on or before October 1 of the first year of the MYFA term for which the application is being made. HB 2691 would extend the filing deadline to December 31 and would better accommodate water right owners who are actively harvesting and farming during the fall.
- The 2015 legislature changed the MYFA statute to allow a water right holder to carry over one year's worth of their total MYFA quantity into a subsequent MYFA if the water right is enrolled in a new MYFA during the year that their existing MYFA expires. This provision encourages conservation by at least partially removing the "use it or lose it" incentive to pump any unused quantity during the last year of the MYFA. This notion of "pushing wet water down the road" promotes saving water for an un-rainy day.
- This program is voluntary and does not change the underlying base water right. At the end of the 5-year period, if not extended by a new MYFA application, the operation of the water right returns back to the original water right conditions.

Change Notification

- Water right owners may request changes to their water right's point of diversion (location of a well, pumpsite, dam, etc.), place of use (authorized location where water is used) or use made of water (irrigation, industrial, municipal, etc.). Applications for changes are evaluated by the KDA Division of Water Resources (DWR) and must receive prior approval by the chief engineer.
- Legislation was passed last session that requires notices to be sent to nearby water right owners when a new application, a change application or impairment claims are filed. As a result, KDA-DWR posts all applications for new water rights and changes to existing water rights on our website for public review.
- When an applicant is requesting to move their point of diversion, KDA-DWR – in conjunction with the groundwater management districts (GMDs) – provides written notice to all ground water right owners with a point of diversion within one-half mile and surface water landowners within one-half mile. The chief engineer can choose to provide notice to areas greater than one-half mile if deemed necessary.

- HB 2691 clarifies that notice would be provided for changes in a point of diversion greater than 300 feet from the current authorized locations. Changes less than 300 feet are deemed by KDA-DWR to be within the same local source of supply and that notification is not necessary.

Recommended Amendment

- On February 8, 2018, KDA met with representatives from several GMDs and discussed the intent of this bill. Some attendees expressed concerns that in limited situations changes in a point of diversion less than 300 feet from the current authorized location may warrant neighbor notification. While uncommon, such instances may include moving closer to a domestic well. In addition, it was noted that the bill text suggests that notification will occur after a final decision of the chief engineer. The intent is for notification to occur prior to a final decision so that potential impacts may be considered in the evaluation of the application. For this reason, KDA is recommending the following amendments if the committee chooses to work HB 2691.

(b) The division, in conjunction with the groundwater management district within which such water right is situated, shall notify all water right owners with a point of diversion within ½ mile, except when such notices relate to surface water, the division shall instead notify all landowners within ½ mile, or further if deemed necessary by a rule or regulation of the chief engineer, of a determination by the chief engineer, [comma added] ~~regarding~~ a water right pending request or application pursuant to:

(c) Notice of any water right change application pursuant to K.S.A. 82a-708b for moves of 300 feet or less may be provided as set forth in subsection (b) if determined necessary by the chief engineer in order to protect an existing point of diversion, including domestic wells. If a groundwater management district determines that such notice is necessary to protect an existing point of diversion, including domestic wells, and the chief engineer has not provided notice pursuant to this subsection, then the groundwater management district shall provide notice to the affected owner and a copy of such notice shall be provided to the chief engineer.

Thank you for the opportunity to speak with you today. I will stand for questions at the appropriate time.