

HOUSE BILL No. 2172

By Committee on Water

1-28

1 AN ACT concerning water; relating to the division of water resources of  
2 the department of agriculture; modifying multi-year flex accounts, base  
3 average usage calculation and fees; permitting alternative base average  
4 usage calculation and prorated terms; amending K.S.A. 82a-736 and  
5 repealing the existing section.

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

8 Section 1. K.S.A. 82a-736 is hereby amended to read as follows: 82a-  
9 736. (a) It is hereby recognized that an opportunity exists to improve water  
10 management by enabling multi-year flexibility in the use of water  
11 authorized to be diverted under a groundwater water right, provided; that  
12 such flexibility neither impairs existing water rights, nor increases the total  
13 amount of water diverted, so that such flexibility has no long-term  
14 negative effect on the source of supply. It is therefore declared necessary  
15 and advisable to permit the establishment of multi-year flex accounts for  
16 groundwater water rights, together with commensurate protections for  
17 existing water rights and their source of supply.

18 (b) As used in this section:

19 (1) *"Alternative base average usage" means an allocation based on*  
20 *net irrigation requirements calculated pursuant to subsection (c)(1)(D)(ii)*  
21 *that may be used in place of the base average usage.*

22 (2) "Base water right" means a water right under which an applicant  
23 applies to the chief engineer to establish a multi-year flex account and  
24 where all of the following conditions exist:

25 (A) The authorized source of supply is groundwater; and

26 (B) the water right ~~has is not been~~ *currently* the subject of a *multi-*  
27 *year allocation due to a change approval to implement the provisions of*  
28 *K.A.R. 5-5-9(a)(2), K.A.R. 5-5-11(b)(2) or K.A.R. 5-5-11(b)(3), in effect*  
29 *upon the effective date of this act that allows an expansion of the*  
30 *authorized place of use.*

31 ~~(2)(3)~~ (3) "Multi-year flex account" means a term permit ~~which~~ *that*  
32 *suspends a base water right during its term, except when the term permit*  
33 *may be no longer exercised because of an order of the chief engineer, and*  
34 *is subject to the terms and conditions as provided in subsection (e).*

1       ~~(3)~~(4) "Base average usage" means: (A) The average amount of water  
2 actually diverted for ~~a~~ *the authorized* beneficial use under the base water  
3 right during calendar years 2000 through 2009, excluding:

4       (i) Any amount diverted in any such year that exceeded the ~~maximum~~  
5 ~~annual quantity of water~~ amount authorized by the base water right; ~~or~~  
6       (ii) *any amount applied to an unauthorized place of use; and*  
7       (iii) *diversions in calendar years when water was diverted under a*  
8 *multi-year allocation with an expansion of the authorized place of use due*  
9 *to a change approval;*

10       (B) *if water use records are inadequate to accurately determine*  
11 *actual water use or upon demonstration of good cause by the applicant,*  
12 *the chief engineer may calculate the base average usage with less than all*  
13 *10 calendar years during 2000 and 2009* ~~if it is determined that approval~~  
14 ~~of such a multi-year flex account would be in the public interest. In no~~  
15 ~~case shall the base average usage be calculated with less than five~~  
16 ~~calendar years during 2000 and 2009; or~~

17       (C) if the holder of the base water right shows to the satisfaction of  
18 the chief engineer that water conservation reduced water use under the  
19 base water right during calendar years 2000 through 2009, then the *base*  
20 *average amount of water actually diverted for a beneficial use under the*  
21 *base water right during usage shall be calculated with the five calendar*  
22 *years immediately before the calendar year when water conservation*  
23 *began, excluding any amount used in any such year that exceeded the*  
24 *amount authorized by the base water right.*

25       (4)(5) "Chief engineer" means the chief engineer of the division of  
26 water resources of the department of agriculture.

27       ~~(5)~~(6) "Flex account acreage" means the maximum number of acres  
28 lawfully irrigated during a calendar year ~~when no term, condition or~~  
29 ~~limitation of the base water right has been violated, except for any acres~~  
30 *irrigated under a multi-year allocation that allowed for an expansion of*  
31 *the authorized place of use due to a change approval and either any of the*  
32 *following conditions is are met:*

33       (A) The calendar year is 2000 through 2009; ~~or~~

34       (B) if water conservation reduced water use under the base water  
35 right during calendar years 2000 through 2009, the calendar year is a year  
36 within the five calendar years immediately prior to the calendar year when  
37 water conservation began; *or*

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

40       ~~(6)~~(7) "Net irrigation requirement" means the net irrigation  
41 requirement for 50% chance rainfall of the county that corresponds with  
42 the location of the authorized place of use of the base water right as  
43 provided in K.A.R. 5-5-12, on the effective date of this act.

1 (c) (1) Any holder of a base water right that has not been deposited or  
2 placed in a safe deposit account in a chartered water bank may establish a  
3 multi-year flex account where the holder may deposit, in advance, the  
4 authorized quantity of water from such water right for any five consecutive  
5 calendar years, *except when the chief engineer determines a shorter period*  
6 *is in the public interest*, **necessary for compliance with a local enhanced**  
7 **management area or {an} intensive-use groundwater {use control}**  
8 **area and the corrective controls in the area do not prohibit the use of**  
9 **multi-year flex accounts, and** subject to all of the following:

10 (A) The water right must be vested or shall have been issued a  
11 certificate of appropriation;

12 (B) the withdrawal of water pursuant to the water right shall be  
13 properly and adequately metered;

14 (C) the water right is not deemed abandoned and is in compliance  
15 with the terms and conditions of its certificate of appropriation, all  
16 applicable provisions of law and orders of the chief engineer;

17 (D) the amount of water deposited in the multi-year flex account shall  
18 not exceed the greatest of the following:

19 (i) 500% of the base average usage;

20 (ii) 500% of the product of the annual net irrigation requirement  
21 multiplied by the flex account acreage, multiplied by 110%, but not greater  
22 than five times the maximum annual quantity authorized by the base water  
23 right;

24 (iii) if the authorized place of use is located wholly within the  
25 boundaries of a groundwater management district, an amount that shall not  
26 increase the long-term average use of the groundwater right as specified by  
27 rule or regulation promulgated pursuant to K.S.A. 82a-1028(o), and  
28 amendments thereto; or

29 (iv) pursuant to subparagraph ~~(E)~~ (F), the amount computed in (i), (ii)  
30 or (iii) plus any deposited water remaining in a multi-year flex account up  
31 to 100% of the base average usage *or alternative base average usage*;

32 (E) *if the multi-year flex account is approved for less than five*  
33 *calendar years, the amount of water deposited in the multi-year flex*  
34 *account shall be prorated based on the number of calendar years*  
35 *approved and otherwise calculated as required by subsection (c)(1)(D)(i),*  
36 *(ii) or (iii); and*

37 (F) any deposited water remaining in a multi-year flex account up to  
38 100% of the base average usage *or alternative base average usage* may be  
39 added to the deposit amount calculated in subparagraph (D) if the base  
40 water right is enrolled in another multi-year flex account during the  
41 calendar year in which the existing multi-year flex account expires. The  
42 total amount of water deposited in any multi-year flex account shall not  
43 exceed 500% of the authorized quantity of the base water right; ~~and~~

1       ~~(F) notwithstanding any other provisions of this subsection, except~~  
2 ~~when the base water right is suspended due to the issuance of a two-year~~  
3 ~~term permit in a designated drought emergency area for 2011 and 2012,~~  
4 ~~the quantity of water deposited into a multi-year flex account shall be~~  
5 ~~reduced by the quantity of water used in excess of the maximum annual~~  
6 ~~quantity of the base water right during 2011 if the application for a multi-~~  
7 ~~year flex account is filed with the chief engineer on or before July 15,~~  
8 ~~2012.~~

9       (2) The provisions of K.A.R. 5-5-11 are limited to changes in annual  
10 authorized quantity and shall not apply to this subsection.

11       (d) The chief engineer shall implement a program providing for the  
12 issuance of term permits to holders of groundwater water rights who have  
13 established flex accounts in accordance with this section. Such term  
14 permits shall authorize the use of water in a flex account at any time  
15 during the ~~five~~ consecutive calendar years for which the application for the  
16 term permit authorizing a multi-year flex account is made, without annual  
17 limits on such use.

18       (e) Term permits provided for by this section shall be subject to the  
19 following:

20       (1) A separate term permit shall be required for each point of  
21 diversion authorized by the base water right.

22       (2) The quantity of water authorized for diversion shall be limited to  
23 the amount deposited pursuant to subsection (c)(1)(D).

24       (3) The rate of diversion for each point of diversion authorized under  
25 the term permit shall not exceed the rate of diversion for each point of  
26 diversion authorized under the base water right.

27       (4) The authorized place of use shall be the place of use or a  
28 subdivision of the place of use for the base water right. Any approval of an  
29 application to change the place of use of the base water right shall  
30 automatically result in a change to the place of use for the term permit.

31       (5) The point of diversion authorized by the term permit shall be  
32 specified by referencing one point of diversion authorized by the base  
33 water right at the time the multi-year flex account term permit application  
34 is filed with the chief engineer or at the time any approvals changing such  
35 referenced point of diversion of the base water right are approved during  
36 the multi-year flex account period. For a base water right with multiple  
37 points of diversion, each point of diversion authorized by a term permit  
38 shall receive a specific assignment of a maximum authorized quantity of  
39 water, assigned proportionately to the authorized annual quantities of the  
40 respective points of diversion under the base water right.

41       (6) The chief engineer may establish, by rules and regulations, criteria  
42 for such term permits.

43       (7) Except as explicitly provided for by this section, such term

1 permits shall be subject to all provisions of the Kansas water appropriation  
2 act, and rules and regulations adopted under such act, and nothing in this  
3 section shall authorize impairment of any vested right or prior  
4 appropriation right by the exercise of such term permit.

5 (f) An application for a multi-year flex account shall be filed with the  
6 chief engineer on or before December 31 of the first year of the multi-year  
7 flex account term for which the application is being made.

8 (g) All costs of administration of this section shall be paid from fees  
9 for term permits provided for by this section. Any appropriation or transfer  
10 from any fund other than the water appropriation certification fund for the  
11 purpose of paying such costs shall be repaid to the fund from ~~which~~ *where*  
12 such appropriation or transfer is made. At the time of repayment, the  
13 secretary of agriculture shall certify to the director of accounts and reports  
14 the amount to be repaid and the fund to be repaid. Upon receipt of such  
15 certification, the director of accounts and reports shall promptly transfer  
16 the amount certified to the specified fund.

17 (h) The fee for a multi-year flex account term permit shall be the  
18 same as specified for other term permits in K.S.A. 82a-708c, and  
19 amendments thereto, ~~except as follows:~~

20 ~~(1) If the base water right is currently suspended due to the issuance~~  
21 ~~of a two-year term permit in a designated drought emergency area for 2011~~  
22 ~~and 2012, then a holder of such term permit shall be subject to a \$200~~  
23 ~~application fee for a multi-year flex account term permit if the application~~  
24 ~~is filed on or before July 15, 2012; or~~

25 ~~(2) if water use under the authority of the base water right exceeded~~  
26 ~~the maximum annual quantity authorized by the base water right during~~  
27 ~~2011 and the holder of the base water right files an application for~~  
28 ~~approval of a multi-year flex account term permit on or before July 15,~~  
29 ~~2012, then the application fee shall be \$600.~~

30 (i) The chief engineer shall have full authority pursuant to K.S.A.  
31 82a-706c, and amendments thereto, to require any additional measuring  
32 devices and any additional reporting of water use for term permits issued  
33 pursuant to this section. Failure to comply with any measuring or reporting  
34 requirement may result in a penalty, up to and including the revocation of  
35 the term permit and the suspension of the base water right for the duration  
36 of the term permit period.

37 (j) The chief engineer shall submit a written report on the  
38 implementation of this section to the house standing committee on  
39 agriculture and natural resources and the senate standing committee on  
40 natural resources on or before February 1 of each year.

41 (k) This section shall be part of and supplemental to the Kansas water  
42 appropriation act.

43 Sec. 2. K.S.A. 82a-736 is hereby repealed.

1       Sec. 3. This act shall take effect and be in force from and after its  
2       publication in the statute book.