

Multi-year Flex Accounts for Groundwater Water Rights; HB 2172

HB 2172 amends the Kansas Water Appropriation Act to expand the opportunity for the establishment of multi-year flex accounts (MYFAs) for groundwater water rights to water right holders who did not have water use between 2000 and 2009.

The bill creates the definition of “alternative base average usage” that may be used in place of the base average usage as:

An allocation based on net irrigation requirements calculated as 500 percent of the product of the annual net irrigation requirement multiplied by the flex account acreage, multiplied by 110 percent, but not greater than 5 times the maximum annual quantity authorized by the base water right.

The bill amends the definition of “base water right” to include the following conditions:

- Groundwater is the authorized source of water supply, and
- 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.

The bill amends the definition of “base average usage” to mean the average amount of water actually diverted for the authorized beneficial use under the base water right during calendar years 2000 through 2009. In addition, the bill also:

- Excludes from the definition of “base average usage” any amount of water applied to the unauthorized place of use from:
 - Any amount diverted in any year that exceeded the amount authorized by the base water right;
 - Any amount applied to an unauthorized place of use; and
 - 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;
- Provides the chief engineer of the Division of Water Resources of the Department of Agriculture (chief engineer) may calculate the base average usage with less than all ten calendar years of 2000 to 2009 if water usage records are inadequate to accurately determine actual water use or upon application of good cause by the applicant; and
- Specifies if the chief engineer is satisfied with the base water right holder’s showing that water conservation reduced water usage under the base water right during 2000 to 2009, then the base average usage must be calculated with the five calendar years immediately before when the water conservation began.

The bill amends the definition of “flex account acreage” to exclude any acres irrigated under a multi-year allocation that allowed for an expansion of the authorized place of use due to a change approval toward the maximum number of acres lawfully irrigated during a calendar year if certain conditions are met. The bill adds a condition that if an application to appropriate water was approved after December 31, 2004, then the calendar year used for the calculation can be any year during the perfection period.

The bill authorizes, if the base water right is eligible, the base water right holder to establish an MYFA in which the base water right holder may deposit the authorized quantity of water for five consecutive calendar years in advance, 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 MYFAs. If the MYFA is approved for less than five calendar years, the amount of water deposited in the MYFA will be prorated based on the number of calendar years approved or calculated as required by the bill on the amount of water deposited in the MYFA.