

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2172**

As Amended by House Committee of the Whole

**Brief\***

HB 2172, as amended, would amend the Kansas Water Appropriation Act by expanding 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 would create 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 would amend 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.

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would amend the definition of “base average usage” to 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 would also:

- Exclude 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;
- Provide that the Chief Engineer may calculate the base average usage with less than all 10 calendar years during 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
- Specify 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 would amend 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 would add a condition that if an application to appropriate water was approved after December 31, 2004, then the calendar year used for the calculation could be any year during the perfection period.

The bill would authorize, 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 (LEMA) or an intensive groundwater use control area (IGUCA) 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 would 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.

The bill would remove provisions relating to designated drought emergency areas for 2011 and 2012.

The bill would also make technical amendments.

## **Background**

The bill was introduced by the House Committee on Water at the request of a representative of the Kansas Department of Agriculture (KDA).

[*Note:* The bill, as introduced, contains provisions similar to those of 2020 SB 270, as recommended by the House Committee on Agriculture.]

### ***House Committee on Water***

In the House Committee hearing on February 9, 2021, a representative of the KDA testified as a **proponent** and indicated there are water users in Kansas that are qualified to participate in an MYFA, but are unable to participate because they do not have the required historical water usage from 2000 to 2009. The representative stated approximately 1,600 water right permits are not currently eligible for MYFAs because the water right was not perfected before 2009. He testified the bill would allow an additional calculation method for such water users under the new definition of alternative base average usage.

Representatives of the Kansas Corn Growers Association, Kansas Farm Bureau, and Kansas Groundwater Management Districts provided written-only proponent testimony. No other testimony was provided.

The House Committee amended the bill to remove the references to “public interest” regarding how the Chief Engineer might evaluate a potential MYFA in which a shorter period of time is necessary for compliance with a LEMA or IGUCA.

### ***House Committee of the Whole***

The House Committee of the Whole made technical amendments to the wording of intensive groundwater use control area.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KDA Division of Water Resources indicates enactment of the bill would not have a fiscal effect on agency expenditures or revenue.

Kansas Water Appropriation Act; multi-year flex account, water rights