

As Amended by House Committee

Session of 2021

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) "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).*

35 (3)(4) "Base average usage" means: (A) The average amount of water
36 actually diverted for ~~a~~ *the authorized* beneficial use under the base water

1 right during calendar years 2000 through 2009, excluding:

2 (i) Any amount diverted in any such year that exceeded the ~~maximum~~
3 ~~annual quantity of water amount~~ authorized by the base water right; ~~or~~

4 (ii) *any amount applied to an unauthorized place of use; and*

5 (iii) *diversions in calendar years when water was diverted under a*
6 *multi-year allocation with an expansion of the authorized place of use due*
7 *to a change approval;*

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

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

23 (4)(5) "Chief engineer" means the chief engineer of the division of
24 water resources of the department of agriculture.

25 (5)(6) "Flex account acreage" means the maximum number of acres
26 lawfully irrigated during a calendar year ~~when no term, condition or~~
27 ~~limitation of the base water right has been violated, except for any acres~~
28 *irrigated under a multi-year allocation that allowed for an expansion of*
29 *the authorized place of use due to a change approval and either any of the*
30 *following conditions is are met:*

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

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

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

38 (6)(7) "Net irrigation requirement" means the net irrigation
39 requirement for 50% chance rainfall of the county that corresponds with
40 the location of the authorized place of use of the base water right as
41 provided in K.A.R. 5-5-12, on the effective date of this act.

42 (c) (1) Any holder of a base water right that has not been deposited or
43 placed in a safe deposit account in a chartered water bank may establish a

1 multi-year flex account where the holder may deposit, in advance, the
2 authorized quantity of water from such water right for any five consecutive
3 calendar years, *except when the chief engineer determines a shorter period*
4 *is in the public interest*, **necessary for compliance with a local enhanced**
5 **management area or intensive use groundwater area and the**
6 **corrective controls in the area do not prohibit the use of multi-year**
7 **flex accounts, and** subject to all of the following:

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

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

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

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

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

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

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

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

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

35 (F) any deposited water remaining in a multi-year flex account up to
36 100% of the base average usage *or alternative base average usage* may be
37 added to the deposit amount calculated in subparagraph (D) if the base
38 water right is enrolled in another multi-year flex account during the
39 calendar year in which the existing multi-year flex account expires. The
40 total amount of water deposited in any multi-year flex account shall not
41 exceed 500% of the authorized quantity of the base water right; ~~and~~

42 ~~(F) notwithstanding any other provisions of this subsection, except~~
43 ~~when the base water right is suspended due to the issuance of a two-year~~

1 ~~term permit in a designated drought emergency area for 2011 and 2012,~~
2 ~~the quantity of water deposited into a multi-year flex account shall be~~
3 ~~reduced by the quantity of water used in excess of the maximum annual~~
4 ~~quantity of the base water right during 2011 if the application for a multi-~~
5 ~~year flex account is filed with the chief engineer on or before July 15,~~
6 ~~2012.~~

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

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

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

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

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

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

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

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

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

41 (7) Except as explicitly provided for by this section, such term
42 permits shall be subject to all provisions of the Kansas water appropriation
43 act, and rules and regulations adopted under such act, and nothing in this

1 section shall authorize impairment of any vested right or prior
2 appropriation right by the exercise of such term permit.

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

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

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

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

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

28 (i) The chief engineer shall have full authority pursuant to K.S.A.
29 82a-706c, and amendments thereto, to require any additional measuring
30 devices and any additional reporting of water use for term permits issued
31 pursuant to this section. Failure to comply with any measuring or reporting
32 requirement may result in a penalty, up to and including the revocation of
33 the term permit and the suspension of the base water right for the duration
34 of the term permit period.

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

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

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

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