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LEGISLATURE *of* THE STATE *of* KANSAS  
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**MEMORANDUM**

To: Chairman Highland and members of the House Water Committee

From: Zach Fridell, Assistant Revisor of Statutes

Date: Feb. 9, 2021

Subject: House Bill 2172 - Modifying water usage calculations and fees for multi-year flex accounts and permitting alternative base average water use calculations and prorated terms.

The multi-year flex accounts (MYFA) program was established in 2001 and significantly amended in 2012 and 2015 to allow water rights holders more flexibility in how they use appropriated groundwater over a five-year period. It is a voluntary program and HB 2172 would change some of the definitions and terms of the program.

This bill would allow new "alternative base average usage" calculations for water holders wishing to enter into a MYFA, excludes acreage that was irrigated due to a change application from being used in the calculation of base water rights and allows shorter terms than the standard five years when, in the discretion of the chief engineer, it is in the public interest. It also removes fees the department of agriculture reports are not longer used and removes some language that refers to past specific drought years.

In section 1, subsection (a)(1), the bill defines "alternative base average usage" as an allocation calculated in subsection (c)(1)(D)(ii). That subsection is on page 3, line 15, and is defined as "500% of the product of the annual net irrigation requirement multiplied by the flex account acreage, multiplied by 110%, but not greater than five times the maximum annual quantity authorized by the base water right." The definition of "flex account acreage" is defined below, and the effect is that permits water rights that have no historical use between 2000 and 2009 to enter a MYFA.

Subsection (b)(4) on page 1, line 36, changes the definition of "base average usage" to include only the authorized beneficial usage. The definition continues on the following page to exclude "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."

On page 2, in subsection (b)(4)(B), the bill creates a way to calculate base average usage if records are inadequate to accurately determine actual water use or upon demonstration of good cause by the applicant. In such case the chief engineer may calculate the base average usage with fewer than the 10 years otherwise required, if it is determined that approval of such a MYFA would be in the public interest. In no case can fewer than five years between 2000 and 2009 be used in the calculation.

Subsequent subsection (b)(4)(C) relates to years when the rights holder used water conservation measures. In that case, the base average usage shall be calculated with the five calendar years before the water conservation was used. It has a conforming change in page 2, line 19 to allow both base average usage and alternative base average usage, and removes a clause excluding any such year that exceeded the amount authorized by the base water right.

In subsection (b)(6), the definition of "flex account acreage" adds an exception to not include any acres irrigated under a multi-year allocation that allowed for an expansion of the authorized place of use. It also changes the modifying verb for the following conditions from "either" to "any," and subsequently adds a condition (C) that if an application to appropriate water was approved after Dec. 31, 2004, the flex account acreage can be based on a year during the perfection period.

On page 3 in subsection (c)(1), there is a line added to allow the holder of a base water right to establish a MYFA for fewer than five years when the chief engineer determines a shorter period is in the public interest. A change related to the shorter terms comes further down page 3, in subsection (c)(1)(E), where the new language adds flexibility for MYFA approved for fewer than five years to have the amount of water deposited in the account prorated based on the number of years approved and otherwise calculated.

Stricken language in subsection (c)(1) relates to drought situations in 2011 and 2012 and a reduction in water rights during that time. A strike in subsection (d), on page 4, line 10, removes the "five" to allow the shorter MYFAs.

Finally on page 5, in subsection (h), two outdated fees from 2012 are removed to standardize fees according to K.S.A. 82a-708c. The bill would go into effect on July 1, 2021.