

January 17, 2012

The Honorable Mark Taddiken, Chairperson
Senate Committee on Agriculture
Statehouse, Room 223-E
Topeka, Kansas 66612

Dear Senator Taddiken:

SUBJECT: Fiscal Note for SB 272 by Senate Committee on Agriculture

In accordance with KSA 75-3715a, the following fiscal note concerning SB 272 is respectfully submitted to your committee.

SB 272 would establish new law regarding water rights. Any owner of a water right that is not considered abandoned, could divide that water right into two or more distinct water rights without losing priority of the right, as long as the owner:

1. Applies in writing to the Chief Engineer of the Division of Water Resources of the Department of Agriculture for approval of the proposed division with the written consent of all persons having an ownership interest in the water right;
2. Designates the relative priority of the divided water right;
3. Demonstrates to the Chief Engineer that the division is reasonable, will not increase consumptive use, and will not impair existing water rights; and,
4. Receives approval from the Chief Engineer regarding the requested division.

If a judicial determination of ownership interests results in a partition of a water right that is not considered abandoned, the Chief Engineer may divide the water right in a manner consistent with the terms of the judicial determination to the extent it does not violate the provisions of the Kansas Water Appropriation Act.

Any approval of an application to divide a water right would not authorize any change in the place of use, point of diversion, or use made of water. Any application to divide a water right would be made on a form prescribed by the Chief Engineer and be accompanied by an application fee of \$300. All fees collected by the Chief Engineer would be remitted to the State Treasurer. The Chief Engineer would adopt rules and regulations to administer new sections of the bill, and the new sections would be part of and supplemental to the Kansas Water Appropriation Act.

The bill would also establish water management practices that enable multi-year flexibility in the use of water authorized to be diverted under a groundwater water right, provided, that such flexibility neither impairs existing water rights, nor increases the total amount of water diverted. SB 272 also includes definitions of “base water right,” “base average usage,” “net irrigation requirement,” “multi-year flex account,” and “flex account acreage.”

The bill would specify that any holder of a base water right that has not been deposited or placed in a safe deposit account in a chartered water bank may establish a multi-year flex account where the holder may deposit, in advance, the authorized quantity of water from such water right for any five consecutive calendar years, subject to the following conditions:

1. The water right must be vested or have been issued a certificate of appropriation;
2. The withdrawal of water according to the water right must be properly and adequately metered;
3. The water right is not deemed abandoned and must be considered in compliance with the terms and conditions of its certificate of appropriation, all applicable provisions of law, and orders of the Chief Engineer; and,
4. The amount of water deposited in the multi-year flex account may not exceed the greatest of the following:
 - a. 500.0 percent of the base average usage;
 - b. The product of the net irrigation requirement multiplied by the flex account acreage, multiplied by 110.0 percent, but not greater than five times the maximum annual quantity authorized by the base water right; or
 - c. If the authorized place of use is located wholly within the boundaries of a groundwater management district, an amount that shall not increase the long-term average use of the groundwater right as specified by rule or regulation promulgated by the Chief Engineer.
5. Notwithstanding any other provisions of the bill, the quantity of water deposited in a multi-year flex account shall be reduced by the quantity of water used in excess of the maximum annual quantity of the base water right during 2011 if the application for a multi-year flex account is filed with the Chief Engineer on or before July 15, 2012. The provisions of KAR 5-5-11 are limited to changes in annual authorized quantity and may not apply to this subsection of the bill.
6. The Chief Engineer would be required to implement a program for the issuance of term permits to holders of groundwater water rights who have established flex accounts according to the bill. Term permits would be subject to the following:

- a. A separate term permit shall be required for each point of diversion authorized by the base water right;
 - b. The quantity of water authorized for diversion shall be limited to the amount deposited according to subsection (c)(1)(D) of the bill;
 - c. The rate of diversion for each point of diversion authorized under the term permit shall not exceed the rate of diversion for each of point of diversion authorized under the base water right;
 - d. The authorized place of use shall be the place of use or a subdivision of the place of use for the base water right;
 - e. The point of diversion authorized by the term permit shall be specified by referencing one point of diversion authorized by the base water right at the time the multi-year flex account term permit application is filed with the Chief Engineer or at the time any approvals changing such referenced point of diversion of the base water right are approved during the multi-year flex account period. For a base water right with multiple points of diversion, each point of diversion authorized by the term permit would receive a specific assignment of a maximum authorized quantity of water, assigned proportionately to the authorized annual quantities of the respective points of diversion under the base water right.
7. An application for a multi-year flex account must be filed with the Chief Engineer on or before October 1 of the first year of the multi-year flex account term for which the application is being made.
8. The fee for a multi-year flex account term permit would be the same as specified for other term permits with the following exceptions:
- a. If the base water right is currently suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012, then a holder of such term permit shall be subject to a \$200 application fee for a multi-year flex account term permit if the application is filed on or before July 15, 2012; or
 - b. If water use under the authority of the base water right exceeded the maximum annual quantity authorized by the base water right during 2011 and the holder of the base water right files an application for approval of a multi-year flex account term permit on or before July 15, 2012, then the application fee shall be \$600.

The Chief Engineer would have the authority to require any additional measuring devices and any additional reporting of water use for term permits issued. Failure to comply with any measuring or reporting requirement may result in a penalty, up to and including the revocation of the term permit and the suspension of the base water right for the duration of the term permit period.

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The Chief Engineer would be required to submit a written report on the implementation of the bill to the House Committee on Agriculture and Natural Resources and the Senate Committee on Natural Resources by February 1 of each year. The bill would be part of and supplemental to the Kansas Water Appropriation Act.

The Department of Agriculture indicates that passage of SB 272 would increase expenditures by \$900 for each application filed for participation in the program, and would result in \$400 in revenue for each application filed. The Department does not have an estimate of the number of participants in the program as a result of the bill, although it is thought that an increase in the number of applications would occur because of the change in calculation method in SB 272. The Department currently has a multi-flex account program; however, there have been no applications in recent years. Any fiscal effect associated with SB 272 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Mark Heim, Agriculture