

## Phasing Out the Water Rights Conservation Program

Budget cuts and unfunded spending mandates equal to 20 percent of the Kansas Department of Agriculture budget have contributed to a vacancy rate of 29 percent in the Division of Water Resources. As a result, the agency plans to discontinue its Water Rights Conservation Program effective December 31, 2009, so remaining staff can focus on statutorily defined responsibilities like processing new and change applications, and certifying water rights, which are important to the sustained vitality of Kansas' farms, ranches, industries and cities.

### Background

The Water Rights Conservation Program was initiated in 1992 primarily to protect water rights from being declared abandoned due to nonuse of water pursuant to K.S.A. 82a-718. The program required that the water right not be used during the five- to 10-year enrollment period.

Owners do not receive incentive payments from the state or federal government for enrolling water rights in the program. However, water rights that are enrolled receive higher priority to participate in USDA's Environmental Quality Incentives Program, which does provide incentive payments for discontinuing water use for a certain number of years in areas with declining water resources.

Other due and sufficient causes exist for nonuse of water rights, and they can be applied to many of the water rights currently enrolled in the Water Rights Conservation Program.

### WRCP Administrative Requirements

Since 2004, the Division of Water Resource has approved 650 new Water Rights Conservation Program contracts and processed 330 renewal requests, with an average of 172 water rights enrolled or renewed each year.

Staff spend considerable time and effort to ensure that the water rights meet requirements to enter the Water Rights Conservation Program, including being in good standing. In many cases, an application does not contain sufficient information to determine if the water right is eligible for the program, and it must be returned to the applicant with the deficiencies identified and explained. Staff then work with the applicant to bring the application into proper form.

A low estimate of the cost for staff time spent processing Water Rights Conservation Program applications is \$23,000. That is only for staff in the primary office in Topeka. It does not take into account the amount of time field staff contribute to the process. Unlike other water right applications, there is no fee associated with the Water Rights Conservation Program.

### Program Benefits

The Water Rights Conservation Program's contributions to water conservation are fairly small. Most water rights enrolled in the program are in areas with substantially depleted water supplies and significant decline in well yields. Therefore, rather than conserving water, the main benefit of the program has been to protect unused water rights from forfeiture. In hindsight, the program should have been called the "Water Rights Protection Program."

Some people who want the program to continue have cited the total authorized quantity of the water rights enrolled as an indicator of the water saved by the program. This is a gross exaggeration. Actual water use is always considerably less than the authorized quantity. And, in most instances, the wells enrolled in the program are no longer capable of pumping the amount of water they pumped when they were first drilled. Water that can no longer be pumped cannot be equated with water conserved.

A better estimate of the water conserved by this program would be the amount of water used before a water right is initially enrolled. Reported water use the year prior to the first enrollment of 650 water rights in the program totaled 8,700 acre-feet. By comparison, the authorized quantity of these water rights was about 180,000 acre-feet.

Even this measure of water savings is probably overestimated because many of the water rights enrolled in the program could be protected from forfeiture by other due and sufficient causes for nonuse. That means these water rights would probably not be exercised even if the Water Rights Conservation Program did not exist.

### **Funding**

During the 2009 legislative session, the agency requested some minor fee increases including a new, \$20-per-year application fee for each year a water right was to be enrolled in the Water Rights Conservation Program. The fee was to cover personnel costs associated with processing the applications. The fee was opposed by stakeholders and lobbying organizations, so it was not passed by the Legislature.

Our unsuccessful attempt to establish an application fee compounded the challenges already presented by the 20 percent funding reduction and 29 percent vacancy rate. We opted to phase out the Water Rights Conservation Program to allow remaining staff to focus on meeting our statutory obligations.

### **Alternatives**

The Water Rights Conservation Program provides one of several due and sufficient causes for nonuse of water. At least 10 others are specified in K.A.R. 5-7-1. We are also in the process of amending the regulation to add another due and sufficient cause and to make an existing one simpler to administer.

In many cases, water rights currently enrolled in the Water Rights Conservation Program will be covered by other due and sufficient causes for nonuse.

Most Water Rights Conservation Program contracts are in areas where groundwater resources are no longer

sufficient to support the water right's intended use. Even though it is no longer feasible to make use of the water right, owners want to retain their property right.

Eliminating the Water Rights Conservation Program will, in most cases, have little impact on areas closed to new water rights, since many of the rights would not be used even if the program did not exist. That is because the water rights are predominantly in areas where the aquifer no longer yields an adequate rate for irrigation.

Under the proposal to phase out the program, existing contracts will terminate when their terms expire. That means some water rights will continue to be in the program until 2019.

There is no requirement that water rights be put back into active service on termination of the program. Many will continue to be covered by other due and sufficient causes for nonuse when their contracts expire, so we do not expect many to be put back into use.

### **The Public Rule and Regulation Process**

The department is accepting public comment on its amendments to the Water Rights Conservation Program regulations to end it effective December 31, 2009.

Comment may be made in person at a public hearing at 1:30 p.m. Monday, November 30, 2009, in the fourth floor conference room of the Kansas Department of Agriculture, 109 SW 9th Street, Topeka.

Written comment be may submitted by U.S. mail to the

Secretary of Agriculture  
109 S.W. 9th, 4th Floor  
Topeka, 66612

or by e-mail to [leslie.garner@kda.ks.gov](mailto:leslie.garner@kda.ks.gov)

The full public notice, including the proposed amendments to K.A.R. 5-7-4 and an economic impact statement, and an online comment form are available online at [www.ksda.gov/dwr](http://www.ksda.gov/dwr).