

Conservation Use Bill Summary

Kansas Department of Agriculture, February 2, 2010

1. What does the bill do?

- a. Recognizes conservation as a distinct beneficial use of water, statewide, with no time limit.
- b. Because conservation use is a beneficial use, a conservation use water right that is properly maintained is not subject to abandonment actions.
- c. While a water right's use is designated as conservation, the diversion of water is prohibited. Like other water rights, it does not guarantee the future availability of water supplies.
- d. Substantially improves upon WRCP in three ways:
 - i. Gives legal status to conservation, providing protections not available under the WRCP or the Kansas water banking act, K.S.A. 82a-761 *et seq.*
 - ii. Allows flexibility. The owner can choose how long to keep his water right in conservation use. He's not tied into a term contract, as in WRCP.
 - iii. Pays its own way through the change fee process.

2. If enacted, how will a conservation use water right work in practice?

- a. Because it is limited to vested and certified rights, the attributes of a conservation right are known and established up front.
- b. When a right (such as an irrigation right) is changed to a conservation use right, diversion will be prohibited, but the water right, properly maintained, will be protected from abandonment.
- c. Under rules yet to be developed, it is expected that:
 - i. Annual water use reports will be required;
 - ii. Diversion works such as the pump, gear head, and power source will not have to be maintained, but water level measuring devices will be required; and
 - iii. The change to conservation use will not be subject to consumptive use rules.
- d. When a conservation use right is changed to a different right:
 - i. Per existing law, changes cannot impair existing rights.
 - ii. It is expected that the consumptive use rules regarding change in use made of water will be applied to the former, diverting use, and as otherwise appropriate under law.
- e. How will a conservation use water right affect other rights?
 - i. It may benefit them, by reducing groundwater drawdown and improving streamflows.
 - ii. Owners of rights have the same protections under the common law as before.
- f. Further details will be worked out in rules and regulations, in cooperation with stakeholders.

3. Has this idea worked elsewhere?

- a. This bill is unique to Kansas, and its protections of water rights as property rights.
- b. Other than Oklahoma and South Dakota, every prior appropriation state in the west has eliminated the diversion requirement where diversion, as here, is not necessary.
- c. Where the law has allowed water rights owners to change their rights to conservation use without turning them over to the state, those owners have pursued conservation.
- d. Where the law has required that water rights be surrendered to the state for conservation purposes, that requirement has proven to be a disincentive, as in Washington, Oregon, and Colorado.