

2023 Kansas Statutes

2-1930. Water right transition assistance program established; definitions; administration; funding; contracts with landowners; grants, availability, priority; expiration. (a) As used in this section:

(1) "Division" means the division of conservation established within the Kansas department of agriculture in K.S.A. 74-5,126, and amendments thereto;

(2) "historic consumptive water use" means an amount of use of a water right as calculated pursuant to subsection (k); and

(3) "program" means the water right transition assistance program.

(b) There is hereby established the water right transition assistance program. The program shall be administered by the division. The Kansas department of agriculture division of water resources and recognized local governing agencies, including groundwater management districts, shall cooperate in program implementation. The program shall be administered for the purpose of reducing historic consumptive water use in the target or high priority areas of the state by issuing water right transition grants based on competitive bids for privately held water rights.

(c) (1) The division may receive and expend funds from the federal or state government or a private source for the purpose of carrying out the provisions of this section. The division shall carry over unexpended funds from one fiscal year to the next.

(2) The maximum amount paid by the division shall not exceed a base rate per acre-foot of historic consumptive water use made available under the water right to be dismissed or permanently reduced. The division, in consultation with the commission, shall establish an annual base rate after considering recommendations from the chief engineer and the groundwater management districts regarding market conditions.

(d) The division may enter into water right transition assistance program contracts with landowners that will result in the permanent reduction of part or all of a landowner's historic consumptive water use by action of the chief engineer as provided for in subsection (f).

(e) All applications for permanent irrigation water right retirements shall be considered for funding. Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the local groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program.

(f) Applications for permanent water right retirement shall be prioritized for payment based on the following criteria:

(1) The applicant's bid price;

(2) the timing and extent of the impact of the application on aquifer restoration or stream recovery;

(3) the impact on local water management strategies designated by the board of each groundwater management district or by the chief engineer for each target area; and

(4) where rights with similar hydrologic impacts are considered, priority should be given to the senior right as determined under the Kansas water appropriation act.

(g) Water rights enrolled in the program for permanent retirement shall require the written consent of all landowners and authorized agents to voluntarily request permanent reduction or permanent dismissal and forfeiture of priority of the enrolled water right. Upon enrollment of the water right into the program, the chief engineer of the Kansas department of agriculture division of water resources shall concurrently permanently reduce or permanently dismiss and terminate the water right in accordance with the terms of the contract.

(h) (1) The division shall make water right transition grants available only in areas that have been designated as:

(A) Target areas by the groundwater management districts and the chief engineer of the Kansas department of agriculture division of water resources; or

(B) target areas outside the groundwater management districts by the chief engineer of the Kansas department of agriculture division of water resources.

(2) Each target area shall be in a groundwater aquifer, aquifer sub-unit, surface

water basin, subbasin or stream reach that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five years or less and small-use exemptions for 15 acre-feet or less, if the use, permit or exemption does not conflict with this program.

(3) The designation of each target area shall include the identification of a historic consumptive water use retirement goal. When such goal is reached, the target area shall be delisted.

(4) The designation of each target area shall include the identification of sub-regions that are to be prioritized for retirements among competing bids.

(i) Contracts accepted under the program shall result in a net reduction in historic consumptive water use in the target area. Except as provided for in subsections (l) and (m), once a water right transition assistance program grant has been provided, the land authorized to be irrigated by the water right or water rights associated with that grant shall not be irrigated permanently. Water right transition assistance program contracts shall be subject to such terms, conditions and limitations as may be necessary to ensure that such reduction in historic consumptive water use occurs and can be adequately monitored and enforced.

(j) Only vested or certified water rights that are in good standing shall be eligible for water right retirement grants.

(k) (1) The historic consumptive water use of a water right shall be determined by either:

(A) Calculating the average amount of water consumed by crops as a result of the lawful beneficial use of water during the 10 preceding calendar years of actual irrigation and multiplying the average reported water use for the 10 selected years by a factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drip irrigation systems, but not to exceed the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12; or

(B) calculating the available pumping capacity of a water right by multiplying a flow rate test for each point of diversion applied to be retired under the water right by a theoretical pumping duration of 100 days multiplied by an efficiency factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drop irrigation systems, but not to exceed the authorized quantity of the water right or the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12. Flow rate tests must have been conducted not less than one year prior to the application date and certified as acceptable by the local groundwater management district or the chief engineer.

(2) The applicant may also submit an engineering study that determines the average historic consumptive water use as an alternative method if it is demonstrated to be more accurate for the water right or water rights involved.

(l) Enrollment of an entire water right or a portion of a water right where land associated with the quantity is being permanently reduced from the water right in the program shall not subsequently prohibit irrigation of the land that, prior to enrollment, was authorized by the water right or water rights if irrigation can be lawfully allowed by another water right or permit pursuant to the rules and regulations and consideration of any future changes to other water rights that may be proposed to be transferred to such land.

(m) If more than one water right overlaps the place of use authorized by the water right proposed to be enrolled in the program, then all overlapping water rights shall be enrolled in the program or the landowners shall take the necessary lawful steps to eliminate the overlap with the water right to be enrolled. The burden shall be on the landowner to provide sufficient information to substantiate that the proposed use of water by the resulting exercise of all water rights involved will result in the net reduction amount of historic consumptive water use by the water right or water rights to be enrolled. The division may require such documentation to be provided by someone with special knowledge or experience related to water rights and such operations.

(n) The division shall adopt rules and regulations as necessary for the administration of this section. When adopting such rules and regulations, the division shall consider cropping, system design, metered water use and all other pertinent information that

will permit a verifiable reduction in historic consumptive water use and permit alternative crop or other use of the land so that the landowner's economic opportunities are taken into account.

(o) The division shall hold a meeting in each target area designated after July 1, 2012, prior to entering into any water right transition assistance program contract for the permanent retirement of part or all of landowner water rights in such target area. Such meetings shall inform the public of the possible economic and hydrologic impacts of the program. The division shall provide notice of such meetings through publication in local newspapers of record and in the Kansas register.

(p) The provisions of this section shall expire on July 1, 2030.

History: L. 2006, ch. 174, § 1; L. 2012, ch. 105, § 1; L. 2021, ch. 74, § 10; L. 2022, ch. 9, § 2; July 1.