

Article 11. IRRIGATION TRANSITION ASSISTANCE PROGRAM

11-11-1. Definitions. (a) "Program" means irrigation transition assistance program.

(b) "Commission" means the state conservation commission.

(c) "Chief engineer" means the chief engineer of the division of water resources, Kansas department of agriculture.

(d) "Director" means the executive director of the state conservation commission.

(e) "Dry land transition plan" means a plan describing how native grass, pasture, or other cover will be established on the land that was previously irrigated, particularly describing the amount and timing of any necessary irrigation to establish the cover. The plan shall not exceed three years.

(f) "Local entity" means a local subdivision of state government.

(g) "Eligible water right" shall mean a water right that meets all of the following criteria:

(1) certified by the chief engineer as being in an area designated by the chief engineer pursuant to K.S.A. 2-1919, and amendments thereto, and located in a priority area identified for program;

(2) when dismissed by the state, yields a positive impact on the aquifer or stream targeted for restoration or recovery pursuant to K.S.A. 2-1919; and amendments thereto,

(3) meets criteria established in K.S.A. 2-1915, and amendments thereto, and K.S.A.2-1919, and amendments thereto.

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It shall be evaluated for consumptive use during a representative past period based on an 85 percent efficiency.

(4) put to beneficial use in at least six out of the last ten years;
and
(5) the point of diversion is located within an eligible area, as defined in K.A.R. 11-11-2.

(h) "Fair market value" means the value of a water right that is represented by the price differential between irrigated cropland and non-irrigated cropland as observed by the marketplace.

(i) "Partial water right" means a portion of a water right that has been formally divided by the chief engineer based on the agreement of all of the owners of the water right or an order of a court. For a partial water right to be an eligible water right, it must be associated with a portion of the distribution system, a point of diversion, or a type of use that is being physically discontinued. In dividing the water right, the chief engineer shall determine the historic net consumptive use that was associated with each portion of the beneficial use. Conditions will be placed on the portion of the water right that is not enrolled in the irrigation transition program to limit the net consumptive use under that portion of the water right to the historic net consumptive use associated with that physical part of the operation. A water right may not be divided if there is no physical change in the operation, including discontinuing a point of diversion or a type of use, or a reduction in irrigated acres.

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(j) “Water right” means any vested right or appropriation right under which a person may lawfully divert and use water. It is a real property right appurtenant to and severable from the land on or in connection with which the water is used and such water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance (Authorized by K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; implementing K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; K.S.A. 2-1919; and L. 2004, ch. 123, sec, 133; effective P-_____.)

11-11-2. Eligible areas. (a) Eligible areas shall meet the criteria stated in number (1) or number (2) and if applicable number (3):

(1) Areas closed to further appropriations and designated as being in need of aquifer restoration by the chief engineer;

(2) areas within a stream reach where the chief engineer has closed the stream reach to further appropriations and designated the stream reach as being in need of stream recovery.

(3) groundwater management district priority subunits that have completed a local management plan and approved by the chief engineer and meets the criteria of number (1) or (2).

(Authorized by K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; implementing K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; K.S.A. 2-1919; and L. 2004, ch. 123, sec, 133; effective P-_____.)

11-11-3. Application. (a) Notification of the annual program shall be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties encompassing the eligible area and once in the Kansas register. The second publication shall occur at least 14 days before the close of the offer acceptance period.

(b) The program procedures and application forms shall be available at the commission office, and conservation district offices.

(c) The program annual application period shall be october 1 through december 1.

(d) The application shall be submitted on a form prescribed by the commission. The application shall include all of the following:

(1) the name, address, and telephone number of the applicant,

(2) identification of whether the applicant is the owner, or specification of the relationship of the applicant to the owner,

(3) the water right file number of the water right used to irrigate the land being transitioned to dry land,

(4) the location of the point of diversion,

(5) the authorized annual quantity of water associated with that water right, and

(6) if the land is going to be planted to cover, a dry land transition plan.

(e) A certified well flow rate test conducted no more than six months previous to application being made by a person approved by the chief engineer in a manner prescribed by the chief engineer, if the well is not equipped with an accurate water flowmeter.

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(f) Upon receipt of application the application, it will be reviewed for completeness by the commission. After it is complete the commission will provide it to the chief engineer to determine if it is an eligible water right.

(g) Upon completion of the review by the chief engineer, the chief engineer shall certify to the commission whether it is an eligible water right. The commission will then prioritize the applications for payment based on criteria, including:

(1) hydrological parameters,

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

(3) the impact on local management strategies and priority areas defined by the state; and

(4) the extent of contribution by a local entity

(h) The commission shall notify all applicants of approval or disapproval of program application no later than January 15 of each program year.

(i) All applications shall be approved contingent on the applicant providing official documentation to the commission that the water right has been dismissed by the chief engineer and its priority forfeited.

(j) The commission shall not be involved in negotiations between owners and leasees regarding program participation.

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(k) No more than ten percent of a county's irrigated acres are eligible to contract under the program each year calculated from the beginning of the first program year.

(l) There shall be no contribution requirement for a local entity; however, contributions by a local entity may increase the prioritization score of an application.

(m) There shall be no contribution required by the state if the application funding source is federal.

(n) The commission shall reject any irrigation transition application that does not meet the requirements of these regulations. (Authorized by K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; implementing K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; K.S.A. 2-1919; and L. 2004, ch. 123, sec, 133; effective P-_____.)

11-11-4. Payment. (a) Application approval and payment amounts will be based on the applicant's bid price, an empirical economic model to determine fair market value, and the water rights impact on aquifer restoration or stream recovery.

(b) The maximum amount paid by the commission for a water right authorized for irrigation shall be fair market value per-acre difference between irrigated cropland and dryland cropland.

(c) An irrigation transition assistance grant agreement shall be signed by the water right seller before payment is made by the commission.

(d) Payment shall not be awarded until the water right owner provides the commission with the required documentation that the water right has been permanently dismissed by the chief engineer, or conditionally dismissed if eligible for a transition period where limited irrigation is allowed by the chief engineer.

(e) Payment may be made in ten equal annual installments or in one lump sum at commission discretion.

(Authorized by K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; implementing K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; K.S.A. 2-1919; and L. 2004, ch. 123, sec, 133; effective P-_____.)

11-11-5. Transition to dryland. If the land that will no longer be irrigated is to be converted to native grass, pasture, or other cover, the chief engineer may condition the dismissal of the water right to allow limited irrigation of the land for up to three years to establish the cover. (Authorized by K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; implementing K.S.A. 2-1915, as amended by L. 2004, ch. 96, sec. 4; K.S.A. 2-1919; and L. 2004, ch. 123, sec, 133; effective P-_____.)

11-11-6. Dismissal of water right. (a) Each water right for which payment is received from the program shall be permanently dismissed by the chief engineer and its priority forfeited.

(b) The chief engineer shall not appropriate or reappropriate any additional water in an eligible area.

(c) The well associated with the water right being dismissed shall be either capped, plugged or retrofitted to domestic use within one month of applicant receiving the first annual installment. (Authorized by K.S.A. 1915, as amended by L. 2004, ch. 96, sec. 4; implementing K.S.A. 1915, as amended by L. 2004, ch. 96, sec. 4; K.S.A. 2-1919; and L. 2004, ch. 123, sec, 133; effective P-_____.)

11-11-7. Petition for reconsideration. (a) A water right holder or local entity may appeal any decision of the commission by filing a petition for reconsideration.

(b) The petition for reconsideration shall be submitted in writing to the commission within 30 days of the decision by the commission and shall state why the decision of the commission should be reviewed and why the decision should be modified or reversed.

(c) The petition for reconsideration shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The final decision shall state the reason or reasons for this determination. (Authorized by K.S.A. 1915, as amended by L. 2004, ch. 96, sec. 4; implementing K.S.A. 1915, as amended by L. 2004, ch. 96, sec. 4; K.S.A. 2-1919; and L. 2004, ch. 123, sec, 133; effective P-_____.)