KANSAS FARM BUREAU
The Voice of Agriculture

Water Conservation Areas

September 2015

With the passage of SB 156 during the 2015 Kansas Legislative session, Water Conservation Areas (WCA) became an option for individuals or groups considering implementation of voluntary, self-determined water management plans to help conserve water.

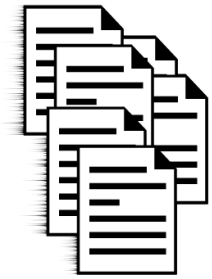
KFB policy supports voluntary, incentive-based programs that encourage groundwater conservation and help extend the life of our valuable water resources.

For additional information please visit www.agriculture.ks.gov/wca

What is a WCA?

Water Conservation Areas originate from ***management plans*** voluntarily developed by an individual or group of water right holders to address any of the following *circumstances*:

a) Groundwater levels are declining or have declined excessively
b) The rate of groundwater withdrawal equals or exceeds the rate of recharge
c) A preventable waste of water is occurring or may occur
d) An unreasonable deterioration of water quality is occurring or may occur



The management plan (*blueprint*) is the basis for a ***consent agreement and order*** (*implementation*) from the Chief Engineer designating a WCA and it must:

1) Define clear geographic boundaries
2) Include written consent of all participating water right holders
3) Include a finding(s) that one or more of the four circumstances described above exist
4) Include the proposed duration of the WCA and any process by which water right owners may request to be added or removed
5) Include goals/corrective controls to address the circumstances
6) Give due consideration to previously implemented conservation measures resulting in reduced use
7) Include compliance monitoring/enforcement; and
8) Be consistent with state law

Within these parameters, a management plan can look like ***whatever the participants envision*** to address the circumstances. If reductions are needed to accomplish the goals, the degree of those reductions, duration and exit strategies are determined in advance in the management plan.

Corrective Controls options to implement a WCA

1) No new water appropriation permits will be issued within the boundaries of the WCA
2) Determine and apportion permissible withdrawal of groundwater among water right holders relative to dates of priority
3) Reduce permissible groundwater withdrawal of groundwater by any one or more appropriators
4) Require and specify a system of rotational use; and
5) Any other provisions necessary to apply agreed-upon water conservation goals consistent with the public interest

The Chief Engineer is responsible for the monitoring and enforcement of corrective controls.

Water Use Flexibility…

Through the issuance of ***single-year or multi-year term permits***, the chief engineer may allow water that is authorized by water right(s) to be ***utilized with greater flexibility***. The base water right(s) would be temporarily suspended and term permits used to implement the management plan to help realize the WCA conservation goals. Wells may receive approval to pump at greater than authorized annual quantities through the ***"stacking" of water rights*** implemented with term permits, if the overall management plan objective conserves water and is consistent with state law.

What might a WCA look like?

The WCA should reflect and be designed to accomplish ***your water goals*** that are compliant with state law. Provided those statutory guidelines are satisfied, authors are free to design the WCA to address their local needs.

Past conservation efforts should be summarized for the chief engineer so that "due consideration" can be given to water management goals for the consent agreement and order of designation. This is your opportunity to be ***creative in getting more value from less water*** without negatively impacting others.

The primary tenets of water law that must be respected in WCA development, or any type of water right adaptation, are protection of the right to use water with respect to its date of priority, local source of supply and historic consumptive use. Deviating from any of these tenets may cause infringement upon someone else's right to use water.

Establishing goals will take some effort. Aquifer characteristics are often inconsistent; they have irregularities in makeup which impact water movement. The geographic boundaries of the WCA could encompass an entire source of supply (which could be quite large) or be as small as a single water right.

After goals are identified, WCA authors must determine how to ***achieve those goals through corrective controls*** (reductions). Reductions in usage can be accomplished in numerous ways, not just water right priority, since participation is voluntary.

Participants should clearly define the duration of the WCA along with how water rights may be added or removed as part of the management plan.

Subject to Review…

A periodic review of the consent agreement and order must occur ***at least once every 10 years***. The review can be initiated by either the chief engineer or WCA water right owners.

Making WCA Changes…

The corrective controls, boundaries, water rights inclusion, WCA termination and "other" types of changes can occur with unanimous consent of the participating water right owners. Be sure when drafting your management plan to spell out in advance ***how or if water rights may be removed from the WCA***.

Does a WCA Provide Protections?

A WCA primarily provides two things: a ***conservation component and enhanced water use flexibility***. It does not circumvent Kansas water laws dealing with impairments nor does a WCA insulate its participants from greater conservation requirements imposed through Groundwater Management District rules, an Intensive Groundwater Use Control Area or a Local Enhanced Management Area.

House in Order?

Thoroughly ***review or seek help in reviewing your water rights*** before initiating a WCA. Water rights have many conditions, some more evident than others, so be sure you understand what your water right(s) authorize before initiating a management plan. Due to the intense management and greater flexibility offered by WCA, expect a higher level of compliance scrutiny. Meters must be regularly monitored and maintained; wells and water application must be as prescribed by your water rights/term permits.

WCA's and existing state water law…

In Kansas a water right is a ***real property right***. This property right is defined either by a Vested Right Order of Determination or a Certificate of Appropriation issued by the Chief Engineer.

The occurrence of impairment claims will likely increase as finite water supplies diminish or when renewable supplies become short during times of drought. It is unlawful for any person to prevent water from moving to a person having a prior right to the use of that water.

Water Rights have specific conditions attached to them such as a source of water supply, point of diversion, place of use, use made of water, annual quantity and rate of diversion. Additionally, a certified water right will have a ***date of priority*** providing assurance that such priority establishes the right to divert water when the supply is not sufficient for all users. Vested rights are water rights established prior to 1945 that were claimed by 1980 and subsequently determined by the chief engineer. They are the most senior water rights in Kansas and there is no priority amongst vested rights. The right to use water in Kansas hinges on these principles alone and not the type of beneficial use.

The privilege to use water in Kansas is not an inalienable right. Except for domestic use, nearly all other types of water use first require a permit to appropriate from the Chief Engineer. Such right to appropriate ***does not constitute ownership of the water***.

The water resources in Kansas are extremely diverse but our water law applies uniformly across the state. The longstanding Kansas Water Appropriation Act was enacted 70 years ago, in 1945.

Our state's water challenges demand we be attentive to current needs while developing a vision for the future. WCA provides an option to address those water challenges. If conditions warrant, WCA can be used across the state, though the most glaring resource need at present is the Ogallala Aquifer. The use of this massive aquifer drives an enormous local and state economy. The problem is, it is fossil water, meaning recharge rates average under 1 inch per year[1] while typically more than a foot is annually extracted. Rapid, mandatory water use reductions would severely harm our economy and give neighboring states a competitive advantage. Ogallala water moves very slowly, generally trending west to east a few tens of feet per year[2]. Generally the best solutions are voluntary and originate locally; Water Conservation Areas satisfy both of those attributes.

Water Conservation Areas are one way to voluntarily conserve water for tomorrow while striving for greater efficiency/profitability today through enhanced water use flexibility.

[1] KGS Public Information Circular 18 The High Plains Aquifer by Buchanan, Wilson, Buddemeier and Butler
[2] KGS Public Information Circular 18 The High Plains Aquifer by Buchanan, Wilson, Buddemeier and Butler