

Arkansas Natural Resources Commission
Rules Implementing the Water Resource Conservation and
Development Incentive Act
Title 14
(Effective 2011)

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Arkansas Natural Resources Commission
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Subtitle I. General provisions

Section 1401.1 Purpose.

A. The State of Arkansas is blessed with abundant rainfall and other surface and underground water resources which, when managed conjunctively, can provide a continuous high-quality water supply to meet the foreseeable needs of the entire state.

B. Existing water use patterns are depleting ground water supplies at an unacceptable rate and alternative surface water supplies are not available in sufficient quantities without developing additional water storage to alleviate this ground water depletion problem.

C. The tax incentives provided under this program encourage water users to invest in: (1) the construction of impoundments to utilize available surface water and reduce our dependence on ground water; (2) the conversion from ground water use to surface water use when surface water is available; (3) the water conservation practice of land leveling to reduce agricultural irrigation water use; and (4) the installation of water meters to monitor ground water usage.

D. It is of utmost importance to Arkansas that within critical ground water areas, surface water be used when available.

Section 1401.2 Enabling and pertinent legislation.

A. Ark. Code Ann. § 26-51-1001 *et seq.*, the Water Resource Conservation and Development Incentives Act.

B. Ark. Code Ann. § 15-20-201 *et seq.*, the Arkansas Natural Resources Commission.

C. Ark. Code Ann. § 25-15-201 *et seq.*, the Arkansas Administrative Procedure Act.

Section 1401.3 Definitions.

Unless the context requires otherwise, the following definitions shall apply to all parts of this title:

A. "Acre-foot" means the volumetric measure equal to forty-three thousand five hundred sixty (43,560) cubic feet or approximately three hundred twenty-five thousand nine hundred (325,900) gallons.

B. "Act" means the Water Resource Conservation and Development Incentives Act.

C. "Application" means a written request for approval for tax credits, describing the project including a water conservation plan outlining the operation of the project and any additional requirements as the Commission may adopt by rule.

D. "Approved applicant" means an individual, fiduciary, partnership, limited liability company, or corporation that submits a written request for approval of a project

for tax credits in compliance with this subchapter and receives a Certificate of Tax Credit Approval for that project.

E. "Chief Engineer" means the Chief Engineer of the Commission.

F. "Commission" means the Arkansas Natural Resources Commission, established pursuant to Ark. Code Ann. §15-20-201 *et seq.*

G. "Critical ground water area" means those areas that are designated by the Commission pursuant to the Arkansas Groundwater Protection and Management Act, contained in Title 15, Chapter 22, Subchapter 9 of the Arkansas Code of 1987 Annotated.

H. "Department" means the Arkansas Department of Finance and Administration.

I. "Executive Director" means the Executive Director of the Arkansas Natural Resources Commission.

J. "Fee" means the payment made by a taxpayer to the Commission for processing the application pursuant to Section 1402.2 of these rules.

K. "Land leveling" means modifying the surface relief of a field to a planned grade to provide a more suitable surface for efficiently applying irrigation water without excessive erosion, loss of water quality, or damage to land by water logging.

L. "Local district" means the conservation district in which the project is located.

M. "Project" means:

1. The construction, installation or restoration of a water impoundment or water control structure of twenty (20) acre-feet or more designed for the purpose of storing water to be used for agricultural, commercial, or industrial purposes;
2. The conversion from ground water to surface water use by an agricultural, commercial, industrial or recreational water user;
3. Agricultural land leveling resulting in water savings due to the more efficient use of irrigation water for which tax credits are claimed; or
4. The purchase and installation of a water measuring or metering device ~~used~~ to determine the quantity of water used.

N. "Project cost" means the actual expenditure for a project less any reimbursement received by the taxpayer from cost-share programs.

O. "Taxpayer" means natural person, fiduciary, partnership, limited liability company, or corporation making application for a tax credit under this program.

P. "USDA-NRCS" means the United States Department of Agriculture National Resources Conservation Service or its successor.

Section 1401.4 Limitations.

A. Prior to claiming any tax credits under this program, a taxpayer must obtain a Certificate of Tax Credit Approval from the Executive Director certifying to the Department that the taxpayer has complied with the procedure contained in Subtitle II of these rules.

B. A taxpayer shall not receive a tax credit for costs which are reimbursed from cost share or other programs.

C. Any tax credit or percentage of a tax credit issued to a taxpayer that is a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary shall be passed through to the partners, members, or owners, respectively, on a pro rata basis or pursuant to an executed agreement between or among

the partners, members, or owners documenting an alternative method for the distribution of the credit.

Section 1401.5 Record keeping.

A taxpayer claiming a credit under the program must maintain all financial records for thirteen (13) years after the tax year in which the certificate of completion is issued.

Section 1401.6 Appeals.

A. Except as otherwise provided herein, a taxpayer may appeal, pursuant to Title I, Subtitle V of the Commission's Rules, any decision or action of the Executive Director.

B. All decisions related to recapture of tax credits shall be appealed in accordance with the Department's established procedures as found in Arkansas Code Annotated §26-18-101 *et seq.*

Subtitle II. Application and approval procedure

Section 1402.1 Application for tax credit.

A. A taxpayer wishing to obtain a tax credit under this program must submit a written application on a form provided by the Executive Director and pay the required fee to the Commission.

B. The application form shall require the following information:

1. The names of all individuals or legal entities seeking credit for construction of the project identified in the application.
2. The percentage of ownership claimed by each individual or legal entity seeking credit, including the names of any legal entity's officers if applicable.
3. The social security number or Federal Employer Identification Number for each or individual or legal entity claiming credit.
4. The address, telephone, and fax numbers of any individual or legal entity seeking credit.
5. Name, address, telephone and fax numbers of a contact person capable of answering questions about the application.
6. Estimated project cost including a breakdown of costs by activity.
7. List other programs from which cost-share or tax credit assistance will be obtained. Include all those applied for, even if approval is still pending, and the amount of contribution anticipated from each.
8. Location of project site location (e.g., county, section, township, range, watershed, etc.) including driving directions to the site.
9. Detailed plans of project in sufficient detail as necessary.
10. Additional relevant information may be requested by the Executive Director as deemed necessary for a complete review of the proposed project.

Section 1402.2 Fees.

A. The taxpayer shall pay to the Commission a fee in an amount equal to three percent (3%) of the total tax credit approved by the Commission. The minimum fee shall be one hundred dollars (\$100.00) and the maximum fee shall be one thousand five hundred dollars (\$1,500.00).

B. The fee shall be paid to the Commission when an application for tax credit approval is filed. No Certificate of Tax Credit Approval shall be issued until the fee is paid.

C. If the actual project cost is less than the estimated project cost contained in the application, thereby resulting in less tax credit, any fee collected over the actual fee will be returned when the Certificate of Completion is issued.

D. If the actual project cost is more than the estimated project cost contained in the application, the taxpayer or taxpayers must pay any additional fee before the issuance of the Certificate of Completion. No Certificate of Completion shall be issued until the fee balance due has been paid. If the taxpayer fails to pay the fee balance, the Executive Director will cancel the Certificate of Tax Approval, barring the taxpayer from claiming any more additional credit, and the Department may seek to recover any and all tax credit previously claimed.

E. All fees collected shall be deposited in the Water Development Fund.

Section 1402.3 Issuance of Certificate of Tax Credit Approval by the Executive Director.

A. After reviewing the application, the Executive Director, if he determines that the project complies with the Act and this title of the Commission's regulations, ~~may~~ shall issue a Certificate of Tax Credit Approval based on estimated project costs to any taxpayer whose project meets program requirements.

B. The taxpayer must file the Certificate of Tax Credit Approval or the Certificate of Tax Credit Approval and Completion with his income tax return for the first year in which the taxpayer claims a tax credit under the program for the project for which the certificate is issued.

C. With respect to a project undertaken by a partnership, a subchapter S corporation, a limited liability company taxed as a partnership, or a fiduciary, the Certificate of Tax Credit Approval shall be issued to each individual partner, shareholder, member or owner based upon that person's percentage of ownership or pursuant to an executed agreement between or among the partners, members, or owners documenting an alternative method for the distribution of the credit.

Section 1402.4 Issuance of Certificate of Completion by the Executive Director.

A. Upon completion of the project, the taxpayer shall make a written request to the Executive Director for issuance of a Certificate of Completion. As part of the request, the taxpayer shall submit the amount of tax credit requested, a summary of reasonable detail stating the total cost of the project, and any other information requested by the Executive Director.

B. A final inspection shall be conducted by a representative of the Commission or the USDA-NRCS.

C. After a satisfactory review and inspection of the project the Executive Director shall issue a Certificate of Completion based on the taxpayer's reported and documented cost of the project. The entire project must be completed prior to the issuance of any Certificate of Completion.

D. The taxpayer must file the Certificate of Completion with the first tax return filed after issuance of the Certificate of Completion.

Subtitle III. Project design, construction, maintenance, and termination

Section 1403.1. Project design, construction, and maintenance requirements.

A. Plans, designs or specifications must be submitted to the Commission for approval and must meet the following criteria:

1. The plans, designs, and specifications shall meet or exceed minimum standards as established by the Chief Engineer;

2. The plans, designs, and specifications shall be developed by an agent of the USDA-NRCS or by a registered professional engineer, licensed in Arkansas; and

3. For agricultural projects, the project must be certified by the local district as being adopted as a part of a water conservation plan, or if the plan is prepared by someone other than an agent of the USDA-NRCS, then the plan must be certified by the local district as being in conformance with accepted soil and water conservation practices.

B. The design and construction must comply with all state or local codes, rules, regulations and laws as they may apply to construction, operation and maintenance.

C. The taxpayer shall allow representatives of the Commission and the USDA-NRCS to inspect the construction, operation or maintenance of facilities at any reasonable time.

D. All projects must be maintained for a minimum life of ten years after issuance of Certificate of Completion.

Section 1403.2 Project completion.

A. With the exception of a taxpayer applying for tax credit for installation of a water metering or measuring device, only project costs incurred after issuance of a Certificate of Tax Credit Approval shall be claimed for tax credit.

B. All projects must be completed within three years of the date of the Certificate of Tax Credit Approval.

C. If the taxpayer does not complete the project within the three year period, all credits claimed must be repaid to the Department, and the project will be disallowed as a project for tax credit purposes.

Section 1403.3 Project termination.

A. If the taxpayer terminates the project prior to expiration of the minimum project life, the taxpayer shall provide written notification to the Executive Director and the Department. In addition, the taxpayer shall file an amended tax return and repay the amount of tax credit claimed which was not allowable.

B. If the Executive Director determines that the taxpayer has terminated the project, he shall notify the Department.

C. Upon the termination of a project, the taxpayer shall not be allowed any further tax credits provided in this Act and the Department shall recapture the pro-rata share of any tax credits claimed under this Act for the period of termination.

D. The pro-rata share for recapture of the disallowed tax credits shall be determined by dividing the period of time from termination of the project until the expiration of the minimum life of the project by the required minimum life of the project times the tax credit claimed.

E. Under the Act, the Department may make necessary assessments to recapture disallowed tax credits for three years from the date of expiration of the minimum life of the project.

Subtitle IV. Tax credits

Section 1404.1 Water impoundments.

A. An approved applicant shall be allowed an income tax credit for a project primarily for an agricultural, commercial or industrial purpose that creates water storage of twenty (20) acre-feet or more by construction and installation or restoration of a water impoundment or water control structure.

B. An approved applicant shall be allowed a tax credit not to exceed the lesser of fifty percent (50%) of the project cost incurred or ninety thousand dollars (\$90,000).

C. The amount of the credit that may be used by an approved applicant for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000).

D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or nine thousand dollars (\$9,000).

E. Any unused credit may be carried over for a maximum of nine consecutive taxable years following the taxable year in which the credit originated.

Section 1404.2 Surface water conversion outside critical areas.

A. An approved applicant shall be allowed an income tax credit for a project reducing ground water use by substitution of surface water for industrial, commercial, agricultural or recreational purposes located outside critical ground water areas.

B. An approved applicant shall be allowed a tax credit not to exceed the lesser of ten percent (10%) of the project cost incurred or twenty seven thousand dollars (\$27,000).

C. The amount of the credit that may be used by an approved applicant for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000).

D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or nine thousand dollars (\$9,000).

E. Any unused tax credit may be carried over for a maximum of two consecutive taxable years following the taxable year in which the credit originated.

Section 1404.3 Surface water conversion for agricultural or recreational purposes within critical areas.

A. An approved applicant shall be allowed an income tax credit for a project with an agricultural or recreational purpose within a critical ground water area that reduces ground water use by substitution of surface water.

B. For agricultural or recreational projects, an approved applicant shall be allowed a tax credit not to exceed the lesser of fifty percent (50%) of the project cost incurred or twenty seven thousand dollars (\$27,000).

C. The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000).

D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity or nine thousand dollars (\$9,000).

E. Any unused tax credit may be carried over for a maximum of two (2) consecutive taxable years following the taxable year in which the credit originated.

Section 1404.4 Surface water conversion for commercial or industrial purposes within critical areas.

A. An approved applicant shall be allowed an income tax credit for a project with a commercial or industrial purpose within a critical ground water area that reduces ground water use by substitution of surface water.

B. For industrial or commercial projects, an approved applicant shall be allowed a tax credit not to exceed the lesser of fifty percent (50%) of the project cost incurred or one million dollars (\$1,000,000).

C. The amount of tax credit allowed to each approved applicant per project that may be used for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or two hundred thousand dollars (\$200,000).

D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity or two hundred thousand dollars (\$200,000).

E. Any unused tax credit may be carried over for a maximum of four (4) consecutive taxable years following the taxable year in which the credit originated.

Section 1404.5 Land leveling for water conservation.

A. An approved applicant shall be allowed an income tax credit for an agricultural land leveling project that conserves irrigation water.

B. An approved applicant shall be allowed a tax credit not to exceed the lesser of ten percent (10%) of the project cost incurred or twenty seven thousand dollars (\$27,000).

C. The amount of tax credit that may be used by an approved applicant for a taxable year shall not exceed the lesser of the amount of individual or corporate income tax otherwise due or nine thousand dollars (\$9,000).

D. If the approved applicant is a pass-through entity such as a partnership, a limited liability company taxed as a partnership, a subchapter S corporation, or a fiduciary, the amount of tax credit that may be used for a taxable year shall not exceed the lesser of the aggregate amount of individual or corporate income tax otherwise due by all members of the pass-through entity; or nine thousand dollars (\$9,000).

E. Any unused tax credit may be carried over for a maximum of two consecutive taxable years following the taxable year in which the credit originated.

Section 1404.6 Installation of a water measuring or metering device.

A. The installation of a water measuring or metering device entitles a well owner to an income tax credit for conversion from ground to surface water use. The amount of tax credit available depends on whether the meter is installed within or outside a critical ground water area.

B. A well owner must submit an "Application for Water Meter Tax Credit" to the Commission. Proof of purchase price of the device and of the installation cost if installed by a person other than the taxpayer must be included with the completed application.

C. All meters installed within the same tax year may be listed in one credit application.

D. Credit for installation of meters does not require pre-approval by the Commission or local conservation District. Upon approval of an application, a Certificate of Tax Credit Approval and Completion will be issued by the Commission.

Section 1404.7 Deduction for project costs above tax credit.

A. A taxpayer qualifying for the tax credits provided under this program is entitled to a deduction in an amount equal to the project cost less the total amount of credits to which the taxpayer is entitled.

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B. The deduction must be taken during the year in which the project costs were incurred.