

Changing agricultural status could affect water rights

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Irrigated Taos County properties that have had their agricultural status revoked could be at risk of losing their water rights as well.

In the last year, the county assessor's office has determined hundreds of properties in and around Taos previously classified as agricultural are no longer being put to use. The revocation of ag status is causing a huge spike in property taxes for some landowners, but there are growing fears that it could cause water rights to be lost thanks to a state water law based on the "use it or lose it" principle.

For many property owners, the best defense against higher taxes or lost water rights is simple: irrigate. But as longtime parciantes get older, ditch infrastructure keeps failing, and newcomers have moved in with no interest in irrigating — it's getting harder to actually get water on the land.

The New Mexico Water Code says if a water right is not exercised (i.e. a property with acequia water rights doesn't get irrigated) for four consecutive years, the right may be forfeited. The law requires that property owners be given notice a year before the right is forfeited, and until now, the State Engineer has sent such notices only a handful of times. However, unused water rights can also be "abandoned," meaning the State Engineer may determine the right hasn't been exercised and is no longer valid. Abandonment of water rights is fairly common, and often occurs when a water rights owner wants to sell or transfer the right, and the state determines it is no longer valid. This could potentially apply to properties that have been left fallow for an extended period of time, depending on the interpretation of a court.

For property tax purposes, agricultural classifications are broken into three categories: irrigated agricultural, dry-land agricultural and grazing. To be classified as irrigated land and enjoy the tax discount, property owners must first prove they have a valid water right attached to the property. The property owner must also prove they are irrigating the land and growing some kind of crop (including hay), allowing livestock to graze, or watering an orchard.

The actual number of properties that have lost irrigated status at the assessor's office in the last year was not immediately available. But staff there say, in many cases, it's clear the property has not been irrigated for years. To prove it, they take photos of fields overgrown with brush and swarming with prairie dogs, and ditches in disrepair.

County assessor Darlene Vigil is confident her office is making careful assessments and is reclassifying lands based on solid evidence. The fear among acequia users is that such evidence could give the State Engineer a basis to revoke water rights as well.

It's unclear exactly how the State Engineer determines whether a water right has been forfeited or abandoned, or what proof is used to justify such action. It's also unclear at this point whether the State Engineer has the resources or interest in cracking down on non-users who individually own relatively small amounts of water rights.

The State Engineer's office declined to comment on the record about whether the assessor's reclassification of irrigated land could affect water rights. But Taos-area water experts agree people should be concerned.

Palemón Martínez, president of the Taos Valley Acequia Association, told the Taos County Commission Feb. 4 the threat of watching acequia water rights disappear because of nonuse is real, especially because of the growing number of properties being left fallow.

"There are abandoned lands and we're concerned with that," Martínez said. "We don't want those water rights to be lost. The land and the water go together."

Critics of the assessor's reclassification have argued a prolonged drought has prevented many acequia users from irrigating because there is simply not enough wet water in the stream system to satisfy the paper rights. The assessor says her hands are tied because there is no provision in state property tax law related to drought. However, forfeiture and abandonment in water law don't apply if acequias simply don't have the water for everyone to irrigate.

Changing ag status is also playing into broader fears that acequias in Northern New Mexico are in the crosshairs of urban centers along the R'o Grande looking to beef up their water rights portfolios.

"We have maybe 3 million people downstream, all of whom want the water rights on our irrigated fields," said Ron Gardiner at a meeting on regional water planning Monday (March 31). "Our plan is to use our water prudently, while the rest of the [R'o Grande] basin is trying to get our water from us."

The 2008 Taos Regional Water Plan estimates there are 43,500 acres of irrigated land in Taos County that hold some kind of water right. Based on aerial images, the plan also estimated that in 2002 (a drought year), just 27,616 were actually being irrigated. The difference could be seen as unused — and perhaps marketable — water.

At the same time, the plan found that irrigation made up more than 90 percent of the county's total water use in 2000, including water used for public water systems, mining and loss through evaporation.

Gardiner argued smart planning — identifying infrastructure needs and accurately describing the importance of water to rural communities — is key to keeping water rights from flushing to cities downstream.

Peter Vigil with the Taos County Soil and Water Conservation District said that, in his opinion, the bulls eye on the acequias is only getting bigger. "If you need water rights for development in a state that's already over-appropriated, you go after the weak first — the ones with aging infrastructure, lost ag status, lack of participation," Vigil said. "It's ripe for the taking."

"The state of New Mexico has always had a predatory relationship with acequias," Vigil added. "Now you have something that might make it easier for them to continue preying on acequias."

Despite wariness of lawmakers, there are some existing statutory protections meant to keep acequia water rights tied to irrigated lands.

First, state law gives acequia commissions the ability to approve or deny the transfer of surface water rights from a property irrigated by the ditch. However, the commission must adopt the language of the state law into their bylaws, and many acequias in Taos County have yet to do so.

Second, a law passed in 2003 allows acequia water rights holders to “bank” rights that are temporarily not being used.

Banking water rights does not change ownership status and does not prevent the owner from exercising the right. Instead, it simply creates a paper trail showing the owner intends to use the right at some point, theoretically protecting them from loss because of non-use.