



109 SW 9th Street, 4th Floor  
Topeka, Kansas 66612-1280

Phone: (785) 296-3556  
Fax: (785) 296-8389  
Email: ksag@kda.ks.gov  
www.ksda.gov

Dale A. Rodman, Secretary

Sam Brownback, Governor

**Testimony on H.B. 2517  
and the 2012 Annual Report of the Water Right Transition Assistance Pilot Project Program  
to  
The Senate Agriculture Committee**

**By Steve Frost  
Water Conservation Programs Manager  
Kansas Department of Agriculture  
Division of Conservation**

**March 6, 2012**

Chairman Taddiken and members of the committee, I am Steve Frost, Water Conservation Programs manager for the Kansas Department of Agriculture's Division of Conservation. Thank you for allowing us an opportunity to provide testimony on House Bill 2517 regarding the Water Right Transition Assistance Pilot Project Program (WTAP). Today I would also like to briefly review the executive summary version of the 2012 WTAP Annual Legislative Report, which highlights the implementation results and performance progress of the pilot project to date. This program has been officially operational for five years.

The legislation before you proposes to convert the pilot project status of an existing program to a permanent one. WTAP was authorized by the Kansas Legislature in 2006 as a five-year pilot project. The purposes of this unique, innovative program are to 1) reduce the Historic Consumptive Water Use (HCWU) in targeted, high-priority areas of Kansas by issuing financial grants for the voluntary, permanent dismissal of privately held water rights; and 2) evaluate the results of the pilot project and develop a viable model for the beneficial implementation of a long term water right retirement program which seeks to leverage state dollars with matching funds from other private and public sources.

**WTAP is now nearing the end of its five-year "pilot" phase status, which expires on June 30, 2012. The results of the program to date have demonstrated that landowners can be reasonably incentivized to voluntarily dismiss water rights in critical areas which are in need of water conservation and water use reductions.**

The pilot project currently has three critical hydrologic targets which have been designated by the Chief Engineer to be in need of stream recovery and/or aquifer restoration — Prairie Dog Creek, Rattlesnake Creek, and six High Priority areas in the Upper Republican Basin. The maximum bid price for HCWU retirement is currently \$2,000 per acre-foot, an amount which was reviewed and approved by the WTAP Steering Committee in 2008. Enrollment application sign-up opportunities have taken place in the fall seasons of 2007, 2008, 2010 and 2011. It was not possible to conduct an enrollment in 2009 because of budget limitations.

The program experienced low sign-up response in the first year (2007) — only one application was approved — and the program rules were immediately changed to allow for a simpler, more streamlined process. In the second year (2008), the program experienced a robust enrollment, as 41 applications were submitted. Available funds allowed only 14 of those to be approved for a total cost of \$2,075,172 at an average bid price of \$1,301 per acre-foot of HCWU retired.

In the third enrollment period (2010), applications for four water rights representing 348 acre-feet of HCWU were approved for a total cost of \$270,629 on bid rates averaging \$1,200 per acre-foot (because of the

mutual utility of compatible federal, state, and local programs). In the fourth and last enrollment period (2011), applications for three water rights representing 296 acre-feet of HCWU were approved for a total cost of \$517,253 on bid rates averaging \$1,730 per acre-foot.

As a result of the 22 enrollments to date, a total of \$2,946,082 has been expended to permanently retire of 6,169 acre-feet of annual water appropriation rights and 2,220 acre-feet of HCWU in these regions at an average cost of \$1,753 per acre-foot.

Limited WTAP funds are being highly leveraged with other federal and local dollars to provide high-quality retirements in critical areas at the lowest possible prices to the state. These cooperative activities enhanced the program's efficiencies by minimizing costs and extending state investments to more potential applicants.

A total of \$840,986 of federal (\$653,479) and local (\$187,507) dollars have been matched to WTAP applications in the Northwest Kansas Groundwater Management District No. 4, and \$28,513 of local dollars have been matched to WTAP applications in the Big Bend Groundwater Management District No. 5 — a total match of \$869,500.

We have learned a great deal from the test project in our five years of experience. Although the basic framework of the existing statute is sound, we have suggested some fundamental changes from the pilot phase statute, which intend to accomplish these improvements. These changes are as follows:

- Extend the HCWU analysis period from “most recent six years” (with four out of six years being used for the analysis) to the last 10 years of actual water use (to incorporate rights which have recently been in EQIP or DWR's Water Right Conservation Program (or other due and sufficient causes).)
- Provide an alternative HCWU formula for owners who have low use because they have been conserving — recent flow rate test times a theoretical pumping period not to exceed a nominal 50 percent Net Irrigation Requirement (N.I.R.) for the specific county of the water right application.
- Promote more partial water right retirements to promote the concept of “limited irrigation” as being the most cost-effective, economic sustaining activity being recommended by industry and education research experts.

The legislation allows partial retirements of quantity without a concurrent “drying-up” of associated place of use because our economists are telling us to let the farmer utilize his entire acreage base and make innovative adjustments to management of the quantity. Our adjustment comes in the reduction of the water right.

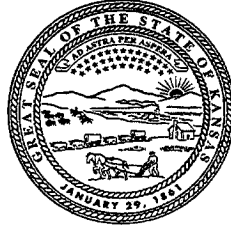
You may review more information about the WTAP program, including the pilot authorizing statute and annual legislative reports, on the DOC's website at

<http://www.ksda.gov/doc/?cid=1941>

Again, we appreciate your consideration of this important water management tool. When combined with other tools such as LEMA's, Water Banking, Flex Appropriations, and amendments to the philosophy of “Use It or Lose It”, the Water Right Transition Assistance Program will be a valuable program for producers and landowners as we endeavor to conserve and extend the Ogallala Aquifer.

Thank you, and please let me know of any concerns, comments, or recommendations you may have. And of course, at your discretion, I would be glad to stand for any questions.

# State of Kansas



## Kansas Department of Agriculture Division of Conservation

---

### Water Right Transition Assistance Pilot Project Program

---



NRCS Photo

## FY 2012 Legislative Report

Executive Summary

January 10, 2012

## **Executive Summary**

The Water Right Transition Assistance Pilot Project Program (WTAP) is nearing the end of its five year "pilot" phase status which expires on June 30, 2012. The results of the program to date have demonstrated that landowners can be reasonably incentivized to voluntarily dismiss water rights in critical areas which are in need of water conservation and water use reductions.

WTAP was authorized by the Kansas Legislature in 2006 as a five year pilot project. The purposes of this unique, innovative program are to 1) reduce the HCWU in targeted, high priority areas of Kansas by issuing financial grants for the voluntary, permanent dismissal of privately held water rights; and 2) evaluate the results of the pilot project and to develop a viable model for the beneficial implementation of a long term water right retirement program which seeks to leverage state dollars with matching funds from other private and public sources.

The project currently has three critical hydrologic targets which have been designated by the Chief Engineer to be in need of stream recovery and / or aquifer restoration – Prairie Dog Creek, Rattlesnake Creek, and six High Priority areas in the Upper Republican Basin. Enrollment sign-ups have been held in the fall seasons of 2007, 2008, 2010 and 2011. It was not possible to conduct an enrollment in 2009 due to budget limitations. The maximum bid price for Historic Consumptive Water Use (HCWU) retirement is currently \$2,000 per acre-foot, an amount which was approved by the WTAP Steering Committee in 2008.

The program experienced a very light sign-up in the first year (2007) - only one application was approved - and the program rules were immediately changed to effectuate a simpler, more streamlined process. In the second year (2008), the program experienced a robust enrollment with 41 applications being submitted. Available funds allowed only 14 of those to be approved for a total cost of \$2,075,172 at an average bid price of \$1,301 per acre-foot of HCWU retired.

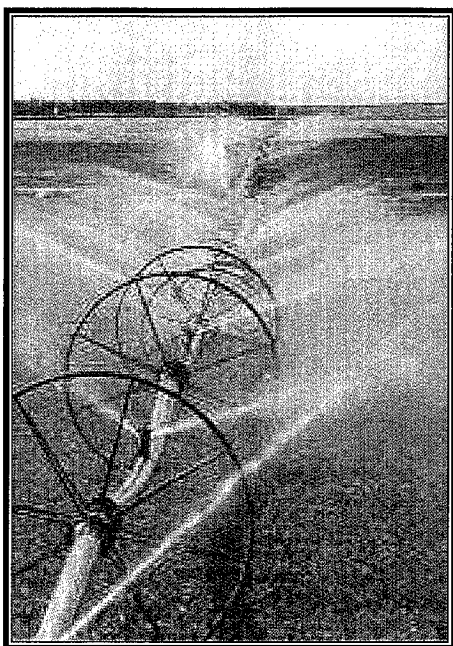
In the third enrollment period (2010), four applications representing 348 acre-feet of HCWU were approved for a total cost of \$270,629 on bid rates averaging \$1,200 per acre-foot (due to the mutual utility of compatible federal, state, and local programs). In the fourth and last enrollment period (2011), three applications representing 296 acre-feet of HCWU were approved for a total cost of \$517,253 on bid rates averaging \$1,730 per acre-foot.

Limited WTAP funds are being highly leveraged with other federal and local dollars to provide high quality retirements in critical areas at the lowest possible prices to the State. These cooperative activities enhanced the program's efficiencies by minimizing costs and extending State investments to more potential applicants.

\$840,986 of federal (\$653,479) and local (\$187,507) dollars have been matched to WTAP applications in the Northwest Kansas Groundwater Management District No. 4, and \$28,513 of local dollars have been matched to WTAP applications in the Big Bend Groundwater Management District No. 5 – a total match of \$869,500.

As a result of the 22 enrollments to date, a total of \$2,946,082 of State money has been expended to effectuate the permanent retirement of 6,169 acre-feet of annual water appropriation rights and 2,220 acre-feet of HCWU in these regions at an average cost of \$1753 per acre-foot.

**Application Evaluation:** Each WTAP application is analyzed for its conformity to the statutory and regulatory requirements of the program. The supporting information supplied with each application regarding water use information, cropping history, and owner fiduciary relationships are also analyzed for accuracy and compliance. Several other relevant hydrologic factors are also reviewed to make an overall comparison of an application's suitability and preference for approval and grant funding to protect the state's investment. After initial review by the Division of Conservation, the application is referred to the Chief Engineer for an analysis of the water right eligibility, a determination of the historic consumptive water use available for retirement under the proposed water right, and for a recommendation of the suitability of retiring the water right regarding the hydrologic impacts of its retirement. If the application is located within a groundwater management district, the application is forwarded to that appropriate office for their opportunity to review the application and to provide a recommendation regarding its ranking or favorability for approval.



KGS Photo

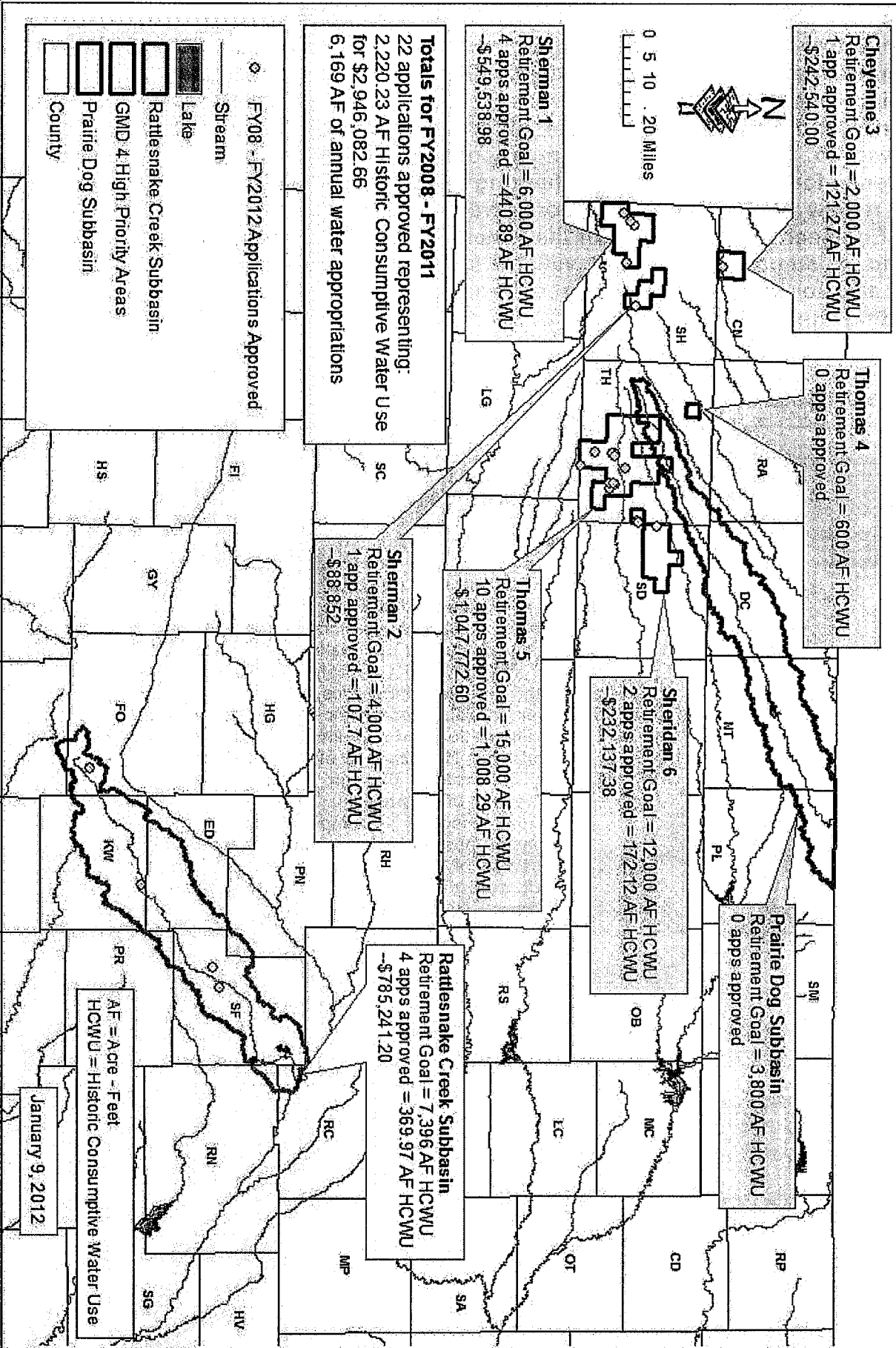
**Potential Economic / Resource Impacts:** The WTAP program is intended to produce a greater long-term stability to water resources which are currently supporting local economies based on over-allocated, over-developed, and distressed water resources – or which have some other compelling issue which is in the State's overriding interest to address. Local citizens will benefit from the stabilization of these water resources which contribute to community sustainability and the quality of life. These water resources and all water rights associated with them, including public water supplies, industries, municipalities, recreation and other valuable economic uses, will eventually require administration and curtailment of water rights in periods of shortages. The expense of significant regulatory activities can be avoided through continued implementation and refinement of the program. The WTAP program is developed on the absolute assumption that grant recipients are impacted positively if receiving financial assistance for the transition of irrigated crop land to dry crop land or grass land, and therefore, neighboring communities are also effected positively in the long run.

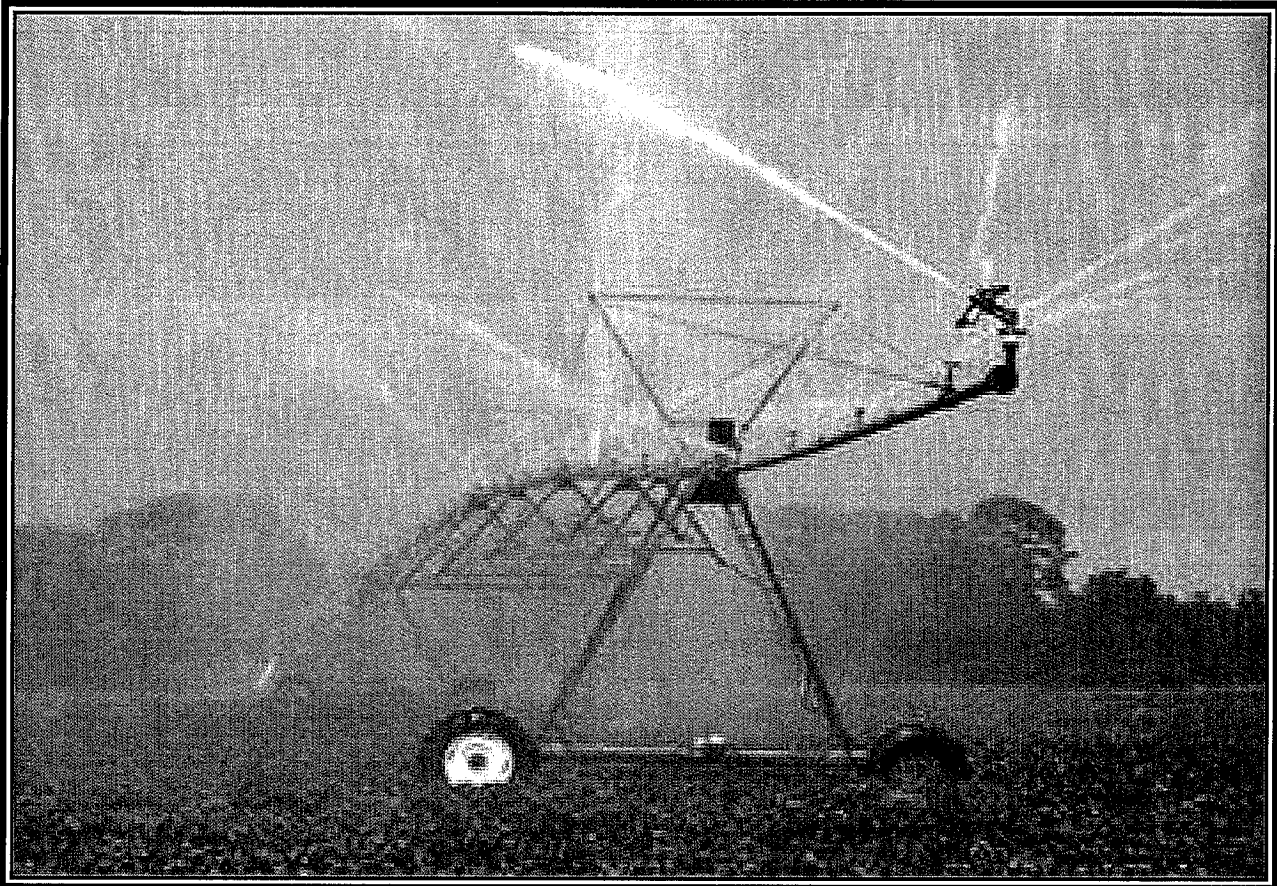
### Target Area Summary

Target Area	Target HCWU Reduction (AF)	# Apps Approved	Appropriation Reduced (AF)	HCWU Reduced (AF)	Total Cost
Rattlesnake	7,396	4	1,027	369.9700	\$785,241.20
Prairie Dog	3,800	0	-	-	-
SH-1	6,000	4	1,293	440.8860	\$549,538.98
SH-2	4,000	1	279	107.7000	\$88,852.50
CN-3	2,000	1	320	121.2700	\$242,540.00
TH-4	600	0	-	-	-
TH-5	15,000	10	2,682	1008.2860	\$1,047,772.60
SD-6	12,000	2	568	172.1225	\$232,137.38
<b>Total</b>	<b>50,796</b>	<b>22</b>	<b>6,169</b>	<b>2,220.2345</b>	<b>\$2,946,082.66</b>

# Water Transition Assistance Program

## FY2008 - FY2012 Applications Approved by Target Area





KSU Photo

**Program Strategy:** The goal of WTAP is to strategically reduce the demand on distressed aquifers and streams, and assist in returning the overall level of water appropriation (demand) back into conformity with water resources (supply). The retirement of some water rights in overdeveloped hydrologic systems, and thereby the cessation of some water diversions, will ultimately provide a measure of recovery to regional water resources and help to re-establish the long-term stabilization of water budgets.

The state's priority for the contractual dismissal of water rights is given to the most senior rights which provide the greatest consumptive use reductions and the greatest direct hydrologic impacts at the lowest reasonable, affordable price via a competitive bid process. The main objective of each contracted water right retirement is to decrease the "historic consumptive water use" which requires a very prescribed analysis of the most recent six years of use.

WTAP targets the retirement of agricultural irrigation water rights because they typically authorize the greatest appropriated quantities and because they are usually the most available (liquid) in the marketplace. Lands to which the dismissed water rights were appurtenant can be used for other purposes, but they can also continue to be dryland farmed or can be re-authorized for irrigation from another water right (subject to additional consumptive use analysis and approval by DWR). Landowners may also propose the dismissal of just partial water rights. These provisions help landowners retain viable options for future financial alternatives and economic decision-making.

## WTAP Enrollment Summary: FY2008 – FY2012

Enrollment Period	WRFNs Dismissed	Authorized AF Retired	HCWU - AF	Target Area	Bid Rate / AF HCWU	Total Cost of Retirement
FY2012	20831	319	93.3000	TH-5	\$1,190.71	\$111,093.24
FY2012	22017, 30528	263	81.8100	SD-6	\$2,000.00	\$163,620.00
FY2012	31673	320	121.2700	CN-3	\$2,000.00	\$242,540.00
<b>Sub-Total</b>		<b>902</b>	<b>296.3800</b>		<b>(\$1730 avg)</b>	<b>\$517,253.24</b>
FY2011	9133	305	124.2700	SH-1	\$515.15	\$64,017.69
FY2011	16630	305	90.3125	SD-6	\$758.67	\$68,517.38
FY2011	11776	293	78.7560	TH-5	\$890.83	\$70,158.20
FY2011	22361	239	55.3560	SH-1	\$1,227.25	\$67,936.09
<b>Sub-Total</b>		<b>1,142</b>	<b>348.6945</b>		<b>(\$847 avg)</b>	<b>\$270,629.36</b>
FY2009	20428	237	64.5600	TH-5	\$792.00	\$51,131.52
FY2009	17173	279	107.7000	SH-2	\$825.00	\$88,852.50
FY2009	20430	260	87.6000	TH-5	\$831.00	\$72,795.60
FY2009	21601	381	194.8000	TH-5	\$925.00	\$180,190.00
FY2009	20429	297	113.4000	TH-5	\$1,072.00	\$121,564.80
FY2009	30423	219	118.6600	TH-5	\$1,114.00	\$132,187.24
FY2009	24733	260	69.9600	TH-5	\$1,200.00	\$83,952.00
FY2009	20218	259	81.6400	TH-5	\$1,200.00	\$97,968.00
FY2009	22814	157	105.6100	TH-5	\$1,200.00	\$126,732.00
FY2009	16739	386	120.0600	SH-1	\$1,420.00	\$170,485.20
FY2009	33817	363	141.2000	SH-1	\$1,750.00	\$247,100.00
FY2009	22938	420	235.7000	Rattlesnake	\$1,895.00	\$446,652.50
FY2009	22007 (partial)	98	35.8600	Rattlesnake	\$1,995.00	\$71,540.70
FY2009	26875	284	92.0100	Rattlesnake	\$2,000.00	\$184,020.00
<b>Sub-Total</b>		<b>3,900</b>	<b>1568.7600</b>		<b>(\$1,301 avg)</b>	<b>\$2,075,172.06</b>
FY2008	22934	225	6.4000	Rattlesnake	*	\$83,028.00
<b>Sub-Total</b>		<b>225</b>	<b>6.4000</b>		*	<b>\$83,028.00</b>
<b>TOTAL</b>		<b>6,169</b>	<b>2,220.2345</b>		<b>(\$1,276 avg)</b>	<b>\$2,946,082.66</b>

\*the bidding criteria for the initial WTAP enrollment period was not based on a fixed rate of \$ / AF HCWU



**Enrollment Conditions:** Not more than 10% of a county's irrigated acres can be eligible for retirement under WTAP. Approval of partial water right retirements is allowed. The approval of "partial" water right retirements also requires additional consumptive use analysis and approval by the Kansas Division of Water Resources. Dryland farming is allowed after the water right is retired, and limited, temporary watering of up to three years is allowed to establish a permanent cover on the land being transitioned from irrigation, if necessary. All wells being retired must be properly capped, plugged, or reconditioned in accordance with KDHE.