

111TH CONGRESS  
2D SESSION

# S. 3904

To further continued economic viability in the communities on the High Plains by promoting sustainable groundwater management of the Ogallala Aquifer.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. BROWNBACK introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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## A BILL

To further continued economic viability in the communities on the High Plains by promoting sustainable groundwater management of the Ogallala Aquifer.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “High Plains Ground-  
5 water Resource Conservation Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1           (1) a reliable source of groundwater is an es-  
2           sential element of the economy of the communities  
3           on the High Plains;

4           (2) the High Plains Aquifer consists largely of  
5           the Ogallala Aquifer with small components of other  
6           geologic units;

7           (3) the High Plains Aquifer experienced a dra-  
8           matic decline in water table levels in the latter half  
9           of the 20th century;

10          (4) the decline in water table levels is especially  
11          pronounced in the Southern Ogallala Aquifer, with  
12          areas in the States of Kansas, New Mexico, Okla-  
13          homa, and Texas experiencing declines of over 100  
14          feet from 1950 to 2007;

15          (5)(A) the saturated thickness of the High  
16          Plains Aquifer has declined by over 50 percent in  
17          some areas; and

18          (B) the percentage of the High Plains Aquifer  
19          that has a saturated thickness of 100 feet or more  
20          declined from 54 percent to 51 percent in the period  
21          from 1980 to 2007;

22          (6) the decreased water levels in the High  
23          Plains Aquifer coupled with higher pumping lift  
24          costs raise concerns about the long-term sustain-  
25          ability of irrigated agriculture in the High Plains;

1           (7) hydrological modeling by the United States  
2       Geological Survey indicates that in the context of  
3       sustained high groundwater use in the surrounding  
4       region, reductions in groundwater pumping at the  
5       single farm level or at a local level of up to 100  
6       square miles, have a very time-limited impact on  
7       conserving the level of the local water table, thus  
8       creating a disincentive for individual water users to  
9       invest in water conservation measures;

10          (8) incentives must be created for conservation  
11       of groundwater on a regional scale, in order to  
12       achieve an agricultural economy on the High Plains  
13       that is sustainable; and

14          (9) for water conservation incentives to func-  
15       tion, Federal, State, tribal, and local water policy-  
16       makers, and individual groundwater users must have  
17       access to reliable information concerning aquifer re-  
18       charge rates extraction rates, and water table levels  
19       at the local and regional levels on an ongoing basis.

20       (b) PURPOSE.—The purpose of this Act is to promote  
21       groundwater conservation on the High Plains in order to  
22       extend the useable life of the High Plains Aquifer.

1 **SEC. 3. HIGH PLAINS AQUIFER GROUNDWATER CONSERVA-**  
 2 **TION INCENTIVES PROGRAM.**

3 The Food Security Act of 1985 is amended by insert-  
 4 ing after section 1240R (16 U.S.C. 3839bb–5) the fol-  
 5 lowing:

6 **“SEC. 1240S. HIGH PLAINS AQUIFER GROUNDWATER CON-**  
 7 **SERVATION INCENTIVES PROGRAM.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) HIGH PLAINS.—The term ‘High Plains’  
 10 means the approximately 174,000 square miles of  
 11 land surface overlying the High Plains Aquifer in  
 12 the High Plains Aquifer States.

13 “(2) HIGH PLAINS AQUIFER.—The term ‘High  
 14 Plains Aquifer’ is the groundwater reserve depicted  
 15 as Figure 1 in the United States Geological Survey  
 16 Professional Paper 1400–B, entitled ‘Geohydrology  
 17 of the High Plains Aquifer in Parts of Colorado,  
 18 Kansas, Nebraska, New Mexico, Oklahoma, South  
 19 Dakota, Texas, and Wyoming’.

20 “(3) HIGH PLAINS AQUIFER STATES.—The  
 21 term ‘High Plains Aquifer States’ means the States  
 22 of Colorado, Kansas, Nebraska, New Mexico, Okla-  
 23 homa, South Dakota, Texas, and Wyoming.

24 “(4) PROGRAM.—The term ‘Program’ means  
 25 the High Plains Aquifer Groundwater Conservation  
 26 Incentives Program described in subsection (b)(1).

1 “(b) PROGRAM.—

2 “(1) IN GENERAL.—For each of fiscal years  
3 2011 through 2020, the Secretary shall offer to  
4 enter into contracts with producers in the High  
5 Plains Aquifer States through a High Plains Aquifer  
6 Groundwater Conservation Incentives Program in  
7 accordance with this section.

8 “(2) GOAL.—The goal of the Program shall be  
9 to achieve significant per-acre savings of the ground-  
10 water resources of the High Plains Aquifer.

11 “(c) PARTICIPATION.—

12 “(1) IN GENERAL.—The Secretary shall ensure,  
13 to the maximum extent practicable, that producers  
14 on land drawing water from the High Plains Aquifer  
15 throughout the High Plains region shall have an op-  
16 portunity to participate in the Program.

17 “(2) PRIORITY.—The participation of producers  
18 in areas experiencing significant aquifer level de-  
19 clines shall be given a priority.

20 “(d) TRANSFER OF WATER RIGHTS.—A producer on  
21 land drawing water from the High Plains Aquifer who  
22 agrees, beginning on the date on which the producer en-  
23 ters into a contract under this section with the Secretary,  
24 not to irrigate all or part of the land and to transfer the  
25 water rights of the producer for the nonirrigated land to

1 the applicable High Plains Aquifer State shall be eligible  
 2 for incentive payments in accordance with this section.

3 “(e) PAYMENTS.—

4 “(1) IN GENERAL.—In exchange for an agree-  
 5 ment not to irrigate all or part of land described in  
 6 subsection (d), the Secretary shall make 1 or more  
 7 incentive payments to a producer (as determined  
 8 under paragraph (2)) in an amount equal to the dif-  
 9 ference between, as determined by the Secretary—

10 “(A) the average amount of payments that  
 11 the producer received under title I of the Food,  
 12 Conservation, and Energy Act of 2008 (7  
 13 U.S.C. 8701 et seq.) on the land when irri-  
 14 gating the land, as determined using the aver-  
 15 age amount of payments received by the pro-  
 16 ducer for the 10 most recent crop years pre-  
 17 ceeding the date of the Program contract; and

18 “(B) the amount of payments that the pro-  
 19 ducer would be expected to receive under title  
 20 I of that Act on the land after conversion to  
 21 dryland production for those 10 most recent  
 22 crop years.

23 “(2) FORM.—In exchange for an agreement de-  
 24 scribed in subsection (d), a producer may elect to re-  
 25 ceive—

1           “(A) 1 lump-sum incentive payment for  
 2           the entire term of the agreement in the amount  
 3           determined under paragraph (1); or

4           “(B) annual incentive payments for each  
 5           year of the agreement that total, in the aggre-  
 6           gate, the amount determined under paragraph  
 7           (1).

8           “(f) MODIFICATIONS OR TERMINATION OF CON-  
 9           TRACTS.—

10           “(1) VOLUNTARY MODIFICATION OR TERMI-  
 11           NATION.—The Secretary may modify or terminate a  
 12           contract entered into with a producer under this sec-  
 13           tion if—

14           “(A) the producer agrees to the modifica-  
 15           tion or termination;

16           “(B) the Secretary determines that the  
 17           modification or termination is in the public in-  
 18           terest.

19           “(2) INVOLUNTARY TERMINATION.—The Sec-  
 20           retary may terminate a contract under this section  
 21           if the Secretary determines that the producer vio-  
 22           lated the contract.

23           “(g) DUTIES OF PRODUCERS.—To receive incentive  
 24           payments described in subsection (e), a producer shall  
 25           agree—

1           “(1) to transfer water rights under subsection  
2       (d);

3           “(2) to implement required practices as agreed  
4       to in the contract with the Secretary; and

5           “(3) to comply with such additional conditions  
6       as the Secretary determines are necessary to carry  
7       out this section.

8       “(h) LIMITATION OF PAYMENTS.—The total amount  
9   of payments paid to any 1 producer under this section may  
10 not exceed \$50,000.

11       “(i) STATE ADMINISTRATION.—On application by a  
12 High Plains Aquifer State, and approval by the Secretary,  
13 the Secretary may provide funding on an annual basis to  
14 the State to carry out, in lieu of the Secretary, the activi-  
15 ties described in this section.

16       “(j) FUNDING.—Of the funds of the Commodity  
17 Credit Corporation, the Secretary shall use to carry out  
18 this section such sums as are necessary.”.

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