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**Testimony on HB 2517
and the 2012 Annual Report of the
Water Right Transition Assistance Pilot Project Program
to
The House Agriculture and Natural Resources Committee**

**By Steve Frost
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Division of Conservation**

February 1, 2012

Chairman Powell 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 H.B. 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-ups have been held in the fall seasons of 2007, 2008, 2010 and 2011. It was not possible to conduct an enrollment in 2009 because of budget limitations.

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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.