

107TH CONGRESS  
1ST SESSION

# S. 1538

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

---

## IN THE SENATE OF THE UNITED STATES

OCTOBER 11, 2001

Mr. BINGAMAN (for himself, Mr. DOMENICI, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

---

## 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 twentieth 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 1997;

15          (5) the saturated thickness of the High Plains  
16          Aquifer has declined by over 50 percent in some  
17          areas. Furthermore, the percentage of the High  
18          Plains Aquifer which has a saturated thickness of  
19          100 feet or more declined from 54 percent to 51  
20          percent in the period from 1980 to 1997;

21          (6) the decreased water levels in the High  
22          Plains Aquifer coupled with higher pumping lift  
23          costs raise concerns about the long-term sustain-  
24          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 GROUNDWATER CONSERVATION AS-**  
2 **SISTANCE.**

3 (a) HIGH PLAINS AQUIFER GROUNDWATER CON-  
4 SERVATION INCENTIVES PROGRAM.—The Food Security  
5 Act of 1985 is amended by inserting after section 1240H  
6 the following new section:

7 **“SEC. 1240I. HIGH PLAINS AQUIFER GROUNDWATER CON-**  
8 **SERVATION INCENTIVES PROGRAM.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) HIGH PLAINS.—The term ‘High Plains’  
11 means the approximately 174,000 square miles of  
12 land surface overlying the High Plains Aquifer in  
13 the States of Colorado, Kansas, Nebraska, New  
14 Mexico, Oklahoma, South Dakota, Texas, and Wyo-  
15 ming.

16 “(2) HIGH PLAINS AQUIFER.—The term ‘High  
17 Plains Aquifer’ is the groundwater reserve depicted  
18 as Figure 1 in the United States Geological Survey  
19 Professional Paper 1400–B, titled Geohydrology of  
20 the High Plains Aquifer in Parts of Colorado, Kan-  
21 sas, Nebraska, New Mexico, Oklahoma, South Da-  
22 kota, Texas, and Wyoming.

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

1       “(b) IN GENERAL.—In each of the fiscal years 2002  
2 through 2011, the Secretary shall provide cost-share pay-  
3 ments, incentive payments, and technical assistance to  
4 producers who enter into contracts with the Secretary,  
5 through a High Plains Aquifer Groundwater Conservation  
6 Incentives Program in accordance with this section. The  
7 goal of the program shall be to achieve significant per acre  
8 savings of the groundwater resources of the High Plains  
9 Aquifer.

10       “(c) PARTICIPATION.—The Secretary shall ensure, to  
11 the maximum extent practicable, that producers on lands  
12 drawing water from the High Plains Aquifer throughout  
13 the High Plains region shall have an opportunity to par-  
14 ticipate in the program established under this section. The  
15 participation of producers in areas experiencing significant  
16 aquifer level declines shall be given a priority and that par-  
17 ticipation shall be limited to producers in areas for which  
18 a plan has been certified pursuant to subsection (1).

19       “(d) ELIGIBLE PRACTICES.—

20               “(1) STRUCTURAL PRACTICES.—A producer on  
21 lands drawing water from the High Plains Aquifer  
22 who implements an on-farm structural practice,  
23 which may include the improvement of irrigation  
24 systems and the purchase of new equipment, which  
25 the Secretary determines will result in a significant

1 and quantifiable per-acre savings of the groundwater  
2 resources of the High Plains Aquifer, shall be eligi-  
3 ble for cost-share payments, in accordance with this  
4 section.

5 “(2) LAND MANAGEMENT PRACTICES.—A pro-  
6 ducer on lands drawing water from the High Plains  
7 Aquifer who performs a land management practice,  
8 which may include the conversion of acreage from ir-  
9 rigated agricultural production to dryland produc-  
10 tion, the modification of cropping patterns from high  
11 water intensity crops to low water intensity crops, or  
12 the implementation of other groundwater conserva-  
13 tion measures, which the Secretary determines will  
14 result in a significant and quantifiable per-acre sav-  
15 ings of the groundwater resources of the High  
16 Plains Aquifer, shall be eligible for incentive pay-  
17 ments, in accordance with this section.

18 “(e) APPLICATION AND TERM.—A contract between  
19 a producer and the Secretary under this section may—

20 “(1) apply to one or more structural practices  
21 or one or more land management practices, or both;  
22 and

23 “(2) have a term of not less than three, nor  
24 more than ten, years as determined appropriate by

1 the Secretary, depending on the practice or practices  
2 that are the basis of the contract.

3 “(f) STRUCTURAL PRACTICES.—

4 “(1) OFFER SELECTION PROCESS.—The Sec-  
5 retary shall, to the maximum extent practicable, es-  
6 tablish a process for selecting applications for finan-  
7 cial assistance if there are numerous applications for  
8 assistance for structural practices that would provide  
9 substantially the same level of groundwater con-  
10 servation benefits. The process shall be based on—

11 “(A) a reasonable estimate of the projected  
12 cost of the proposals and other factors identi-  
13 fied by the Secretary for determining which ap-  
14 plications will result in the least cost to the pro-  
15 gram authorized by this section; and

16 “(B) the priorities established under this  
17 section and such other factors determined by  
18 the Secretary that maximize groundwater con-  
19 servation benefits per dollar expended.

20 “(2) CONCURRENCE OF OWNER.—If the pro-  
21 ducer making an offer to implement a structural  
22 practice is a tenant of the land involved in agricul-  
23 tural production, for the offer to be acceptable, the  
24 producer shall obtain the concurrent of the owner of  
25 the land with respect to the offer.

1       “(g) LAND MANAGEMENT PRACTICES.—The Sec-  
2 retary shall establish an application and evaluation proc-  
3 ess for awarding incentive payments to a producer in ex-  
4 change for the performance of one or more land manage-  
5 ment practices by the producer.

6       “(h) PAYMENTS.—

7           “(1) COST-SHARE PAYMENTS.—The Federal  
8 share of cost-share payments to a producer pro-  
9 posing to implement one or more structural practices  
10 shall be not more than 50 percent of the projected  
11 cost of the practice, as determined by the Secretary,  
12 taking into consideration any payment received by  
13 the producer from a State or local government.

14           “(2) INCENTIVE PAYMENTS.—The Secretary  
15 shall make incentive payments in an amount and at  
16 a rate determined by the Secretary to be necessary  
17 to encourage a producer to perform one or more  
18 land management practices.

19           “(3) NET SAVINGS.—Payment may be made to  
20 producers only if the Secretary determines that the  
21 structural practice or land management practice will  
22 result in a net savings on lands owned or operated  
23 by the producer of groundwater resources of the  
24 High Plains Aquifer.

1       “(i) MODIFICATIONS OR TERMINATION OF CON-  
2 TRACTS.—

3           “(1) VOLUNTARY MODIFICATION OR TERMI-  
4 NATION.—The Secretary may modify or terminate a  
5 contract entered into with a producer under this sec-  
6 tion if—

7           “(A) the producer agrees to the modifica-  
8 tion or termination;

9           “(B) the Secretary determines that the  
10 modification or termination is in the public in-  
11 terest.

12          “(2) INVOLUNTARY TERMINATION.—The Sec-  
13 retary may terminate a contract under this section  
14 if the Secretary determines that the producer vio-  
15 lated the contract.

16       “(j) DUTIES.—

17           “(1) DUTIES OR PRODUCERS.—To receive cost-  
18 share payments, incentive payments, or technical as-  
19 sistance under this section, a producer shall agree to  
20 implement the structural practice or land manage-  
21 ment practice as agreed to in the contract with the  
22 Secretary and to comply with such additional condi-  
23 tions as the Secretary determines are necessary to  
24 carry out the intent of this section.

1           “(2) DUTIES OF THE SECRETARY.—The Sec-  
2           retary shall provide cost-share payments or incentive  
3           payments for developing and implementing one or  
4           more structural practices or one or more land man-  
5           agement practices, as agreed to in the contract with  
6           the producer.

7           “(k) LIMITATION OF PAYMENTS.—The total amount  
8           of cost-share payments paid to any one producer under  
9           this section may not exceed \$50,000 for any multi-year  
10          contract. The Secretary shall set a limitation on the  
11          amount of inventive payments paid to any one producer  
12          under this section at a level which, in the Secretary’s dis-  
13          cretion, will maximize the conservation of groundwater re-  
14          sources from the High Plains Aquifer.

15          “(l) HIGH PLAINS GROUNDWATER CONSERVATION  
16          PLANNING.—

17                 “(1) PLANNING ASSISTANCE.—The Secretary  
18                 shall provide financial and technical assistance, in-  
19                 cluding modeling and engineering design to States,  
20                 tribes, and counties, conservation districts, or other  
21                 political subdivisions recognized under State law, for  
22                 the development of comprehensive groundwater con-  
23                 servation plans within the High Plains. This assist-  
24                 ance shall be provided on a cost-share basis ensuring  
25                 that:

1           “(A) the Federal funding for the develop-  
2           ment of any given plan shall not exceed 50 per-  
3           cent of the total cost; and

4           “(B) the Federal funding for groundwater  
5           water conservation planning for any one county,  
6           conservation district, or similar political subdivi-  
7           sion recognized under State law shall not ex-  
8           ceed \$50,000.

9           “(2) STATE ADMINISTRATION.—Upon applica-  
10          tion by a High Plains Aquifer State, and approval  
11          by the Secretary, the Secretary may provide funding  
12          on an annual basis to the State to carry out, in lieu  
13          of the Secretary, the activities set forth in paragraph  
14          (1), including assistance to counties, conservation  
15          districts, or other political subdivisions recognized  
16          under the law of that State, for the development of  
17          the conservation plans described in paragraph (1).

18          “(3) CERTIFICATION.—The Secretary shall cre-  
19          ate a certification process for comprehensive ground-  
20          water conservation plans developed under this pro-  
21          gram, or developed independently by States, tribes,  
22          counties, conservation districts, or other political  
23          subdivisions recognized under State law. To be cer-  
24          tified, a plan must achieve significant per acre sav-

1       ings of groundwater from the High Plains Aquifer  
2       and must:

3               “(A) cover a sufficient geographic area to  
4               provide a benefit to the groundwater resource  
5               over at least a 20 year time period;

6               “(B) include a set of goals and objectives  
7               for groundwater conservation and a timetable  
8               for achieving the goals and objectives;

9               “(C) identify specific measures for achiev-  
10              ing the groundwater conservation goals and ob-  
11              jectives;

12              “(D) define a plan of action for achieving  
13              the groundwater conservation goals and objec-  
14              tives;

15              “(E) include a process for an annual eval-  
16              uation of the implementation of the plan of ac-  
17              tion; and

18              “(F) provide a process for modification of  
19              the plan if the conservation goals and objectives  
20              are not being met or for purposes of updating  
21              the plan.

22       “(m) FUNDING.—Of the funds of the Commodity  
23       Credit Corporation, the Corporation shall make available  
24       to carry out this subsection, \$75,000,000 in each of fiscal  
25       years 2002 through 2003, \$100,000,000 in each of fiscal

1 years 2004 through 2006 and \$125,000,000 in each of  
2 fiscal years 2007 through 2011.”.

3 (b) CONSERVATION RESERVE PROGRAM ENHANCE-  
4 MENT.—Lands eligible for the Conservation Reserve Pro-  
5 gram established under section 1231 of the Food Security  
6 Act of 1985 (16 U.S.C. 3831) which would result in sig-  
7 nificant per acre savings of groundwater resources of the  
8 High Plains Aquifer, as defined in section 1240I(a) of the  
9 Food Security Act of 1985, if removed from agricultural  
10 production shall be awarded 90 Conservation Reserve Pro-  
11 gram bid points, to be designated as groundwater con-  
12 servation points, in addition to any other ratings the lands  
13 may receive.

14 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

15 There is authorized to be appropriated such sums as  
16 may be necessary to carry out the provisions of this Act.

○