

MINUTES OF THE STATE CONSERVATION COMMISSION

1. The State Conservation Commission meeting was called to order by Rod Vorhees, Chairman and Area V Commissioner at 12:44 p.m., Monday, March 27, 2023 at the Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, KS.

2. **ATTENDANCE:**

Elected Commissioners:

Ted Nighswonger, Area I Commissioner
Jed Fleske, Area II Commissioner
John Wunder, Area IV Commissioner
Rod Vorhees, Area V Commissioner

Ex-Officio & Appointed Members:

Eric Allness, Acting State Conservationist, Natural Resources Conservation Service
Terry Medley, P.E., Water Structures Program Manager, Division of Water Resources, Kansas Department of Agriculture
Peter Tomlinson, Ph.D., Associate Professor, Extension Specialist for Environmental Quality Agronomy Department, Kansas State University
Susan Metzger, Associate Director, College of Agriculture, K-State Research and Extension, Director Kansas Center for Agricultural Resources and the Environment (KCARE) and the Kansas Water Resources Institute (KWRI)

Division of Conservation, Kansas Department of Agriculture Staff:

Andrew Lyon, Executive Director
Steve Frost, Assistant Director, Administrative Manager
Dave Jones, Water Quality Program Manager
Kristin Kloft, Riparian & Wetland Program Manager
Marsha Setzkorn-Meyer, Conservation District Program Coordinator
Cathy Thompson, Program Consultant
Christy Koelzer, Administrative Specialist

Guests:

Dan Meyerhoff, Executive Director, KACD

SCC MEETING MINUTES

March 27, 2023

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Rhonda Coffman, Leadership & Field Services Coordinator, KACD
Allen Roth, Area I KACD Director
Bevin Law, Area IV KACD Director
Amanda Scott, President, KACD-EO
Gaye Benfer, Assistant State Conservationist for Programs, NRCS
Dean Krehbiel, State Resource Conservationist, NRCS
Monty Breneman, Assistant State Conservationist for Field Operations, Hays, NRCS
Kris Ethridge, Assistant State Conservationist for Field Operations, Hutchinson, NRCS
Justin Kneisel, Assistant State Conservationist for Field Operations, Emporia, NRCS
Tracy Freeman, Acting Assistant State Conservationist for Field Operations, Manhattan, NRCS

3. NEW BUSINESS:

a. SCC Action on CREP Application – Frost

- i. Steve Frost informed the commissioners on the current rental rates for the CREP program (Attachment A), provided an overview of the purpose of the program and approved contract totals (Attachment B), and explained the need for a CREP Eligibility Status Review (Attachment C). A landowner in Finney County would like to enroll in the CREP program but doesn't meet the criteria due to enrollment as a DWR Water Conservation Area. Prior to the WCA, the landowner would have met the CREP enrollment criteria. Neither the statute or the federal memorandum of understanding has a waiver or review criteria. In lieu of the WCA, DOC would recommend a waiver to allow enrollment in CREP. If a waiver is approved, DOC would seek to address the statute for a defined waiver or exemption process.

A motion was made by Ted Nighswonger to recommend the landowner be provided a waiver of the state water use eligibility criteria regarding Water Right File Numbers 5871 and 28621 D1 for enrollment in the CREP project. The motion was seconded by Peter Tomlinson. Motion carried.

4. ADJOURNMENT:

A motion was made by Ted Nighswonger to adjourn the meeting. The motion was seconded by Jed Fleske. Motion carried.

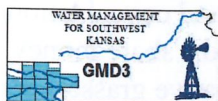
The meeting was adjourned at 1:07 p.m.



Andrew Lyon
Executive Director

Attachment A
Arkansas River CREP Partners:

Working partners include FSA, KDA, NRCS, Southwest Kansas GMD No. 3, Big Bend GMD No. 5, Pheasants Forever, KGS, KDHE, KWO, KDWP, Kansas State University, Ducks Unlimited, the Nature Conservancy and the Kansas Alliance for Wetlands and Streams.



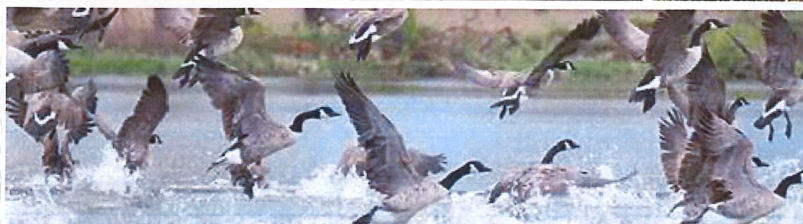
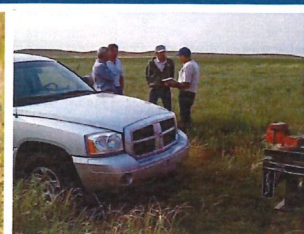
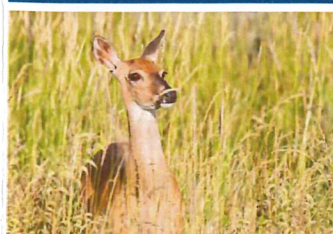
Farm Service Agencies (FSA)

Barton	620-792-5329
Edwards	620-659-3142
Finney	620-275-0211
Ford	620-227-3731
Gray	620-855-3515
Hamilton	620-384-6955
Kearny	620-355-7911
Kiowa	620-723-2311
Pawnee	620-285-2821
Pratt	620-672-7449
Stafford	620-549-3321
Reno	620-669-8161
Rice	620-257-5184

Upper Arkansas River CREP

(Conservation Reserve Enhancement Program)

Water and Soil Conservation in Rattlesnake Creek and the Upper Arkansas River



Sign Up Today
at your local USDA
Farm Service Agency office



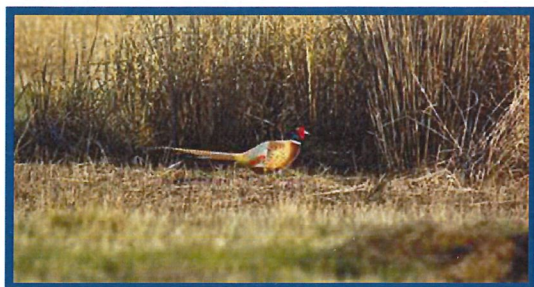
Eligibility Criteria

Both federal and state eligibility criteria must be met to enroll your land in CREP. This partial list of criteria will help to screen your eligibility in advance. Your local FSA office has a database to help screen your preliminary eligibility on these criteria.

1. At least one-half acre foot of water per acre was applied three of the most recent five years.
2. At least 50 percent of the maximum annual quantity authorized to be diverted under the water right has been used in any three years within the most recent five years.
3. Water rights must be in good standing with the State of Kansas.
4. Wells must have a tested flow rate of 1.8 gallons per minute for each irrigated acre proposed for enrollment.

Benefits to Farmers

- Federal annual irrigated rental and maintenance payments for 14 to 15 years.
- Federal annual rental payment on dryland cropland that's part of a whole field enrollment.
- State upfront payment equal to the USDA per-acre annual rental payment x 2.025.
- Up to 50 percent cost share on seeding.
- Land can be leased for hunting.
- With site-specific approval, CRP contracts for haying and grazing — and emergency haying and grazing — can be facilitated in CREP enrollments.



A pheasant calls this CREP area his home.

As you decide whether CREP enrollment fits your business plan, you'll be working with the USDA Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS), and the Kansas Department of Agriculture (KDA).

1. First step is to determine your water right eligibility. Producers whose land is accepted into the voluntary program for enhanced CRP irrigated rental rates will permanently retire the associated irrigation water rights. Call or email Steve Frost with KDA's Division of Conservation to receive a preliminary determination on applicable water rights and an estimate on the state up-front signing incentive payment : 785-564-6622 or Steve.Frost@ks.gov.

2. Next step is to contact your local FSA office. Eligible producers will receive information about available CRP practices and a preliminary estimate of total federal rental and cost-share payments. Producers can initiate a CRP offer for processing to enrollment. NRCS will later meet with an applicant to provide a conservation plan of operations on water rights that meet a physical suitability assessment.

3. When a CREP offer has been initiated with FSA, producers will be contacted to complete the state incentive payment application and related water right forms. Approved CREP offers will receive the state up-front incentive payment immediately upon actual CRP enrollment and irrigation water right retirement. Federal payments will be made every October for the 14-15 year life of the CRP contract.

Contact

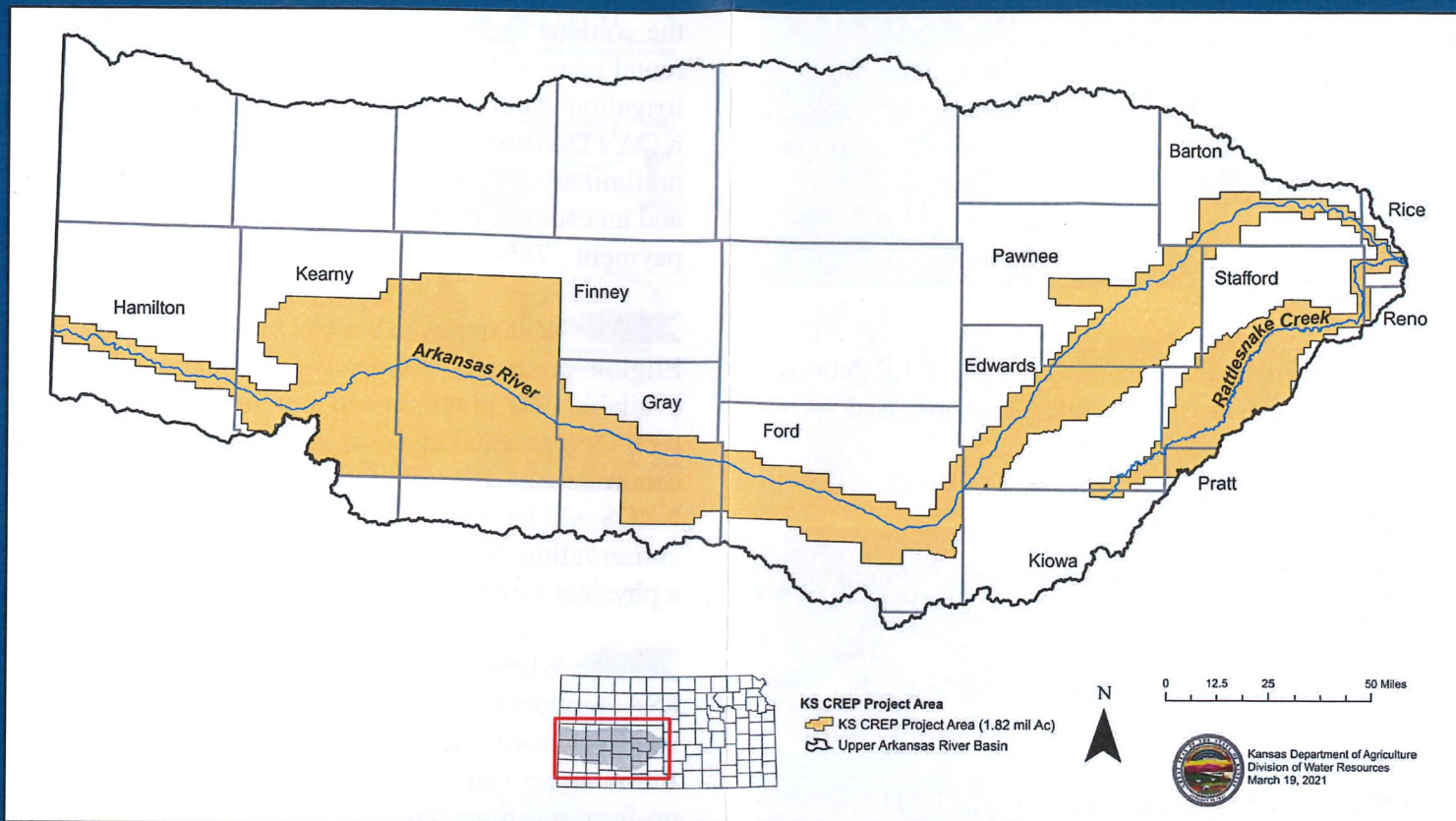
Steve Frost, CREP Coordinator, KDA
785-564-6622, Steve.Frost@ks.gov

Carla Wikoff, USDA-FSA
785-539-3531, Carla.Wikoff@usda.gov

Applicant Water Right Questions

KDA-DWR, Garden City	620-276-2901
KDA-DWR, Stafford	620-234-5311
GMD No. 3, Garden City	620-275-7147
GMD No. 5, Stafford	620-234-5352

Now Available: Increased Federal Rental Payments and State Incentives



County	CREP 2023 Irrigated Rental Rates (\$/AC)
Barton	174
Edwards	190
Finney	151
Ford	147
Gray	156
Hamilton	133
Kearny	152
Kiowa	181
Pawnee	177
Pratt	183
Reno	170
Rice	169
Stafford	177

Water and Soil Conservation in Rattlesnake Creek and the Upper Arkansas River

The Conservation Reserve Enhancement Program affords benefits to farmers for land and water conservation in 13 counties along Rattlesnake Creek and the Upper Arkansas River. Landowners who enroll in CREP will receive up to 15 years of federal rental payments and a state sign-up bonus to put irrigated acres into a conservation planting. The irrigation water rights associated with the enrolled land will be permanently retired. Enrollment is on a first-come, first-served basis, and individual county caps apply.

What is CREP?

CREP is a targeted, enhanced Conservation Reserve Program (CRP), a federal program administered by USDA's Farm Service Agency (FSA). CRP was designed to prevent soil erosion, but also provides water quality and wildlife habitat benefits. CREP allows the focus to be on a state resource concern: in this case, water conservation.

What are the water and soil benefits?

Reducing irrigation demands on the stream-aquifer system will reduce aquifer declines. It will also reduce the spread of saline river water into the aquifer and help restore

stream and riparian health. Most acres enrolled have highly erodible, sandy soils.

This program provides cash payments for land transition. Temporary irrigation is permitted to establish a suitable land cover. Among the approved practices eligible for cost share money are the establishment of permanent native grasses, permanent wildlife habitats, shallow water areas for wildlife, filter strips, wetland restoration and prairie strips.

Why this targeted area?

The program places priority on critical management acreage where the retirement of irrigated land and associated water rights will protect highly erodible soils and have the greatest water conservation benefit for landowners and the state of Kansas.

Are there wildlife benefits?

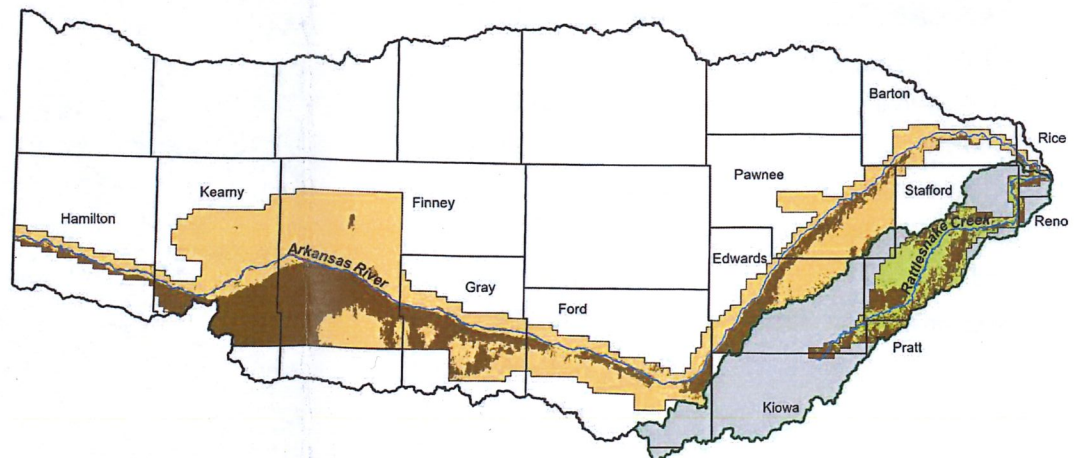
The conservation practices to be implemented open a host of opportunities for wildlife and landowner revenue related to hunting, recreation and other forms of agritourism.

Kansas CREP: Areas with Highly Erodible Soils

Highly erodible soils have a wind erodibility index ≥ 134 .

A new CRP practice became available in 2023.

CP43 (prairie strips) allows dryland farming in between strips of conservation cover on soil types with a wind erodibility index (WEI) of less than 134. These types are represented in the orange



**UPPER ARKANSAS RIVER
CONSERVATION RESERVE ENHANCEMENT PROGRAM
PERFORMANCE REPORT**

BY THE

STATE OF KANSAS

October 1, 2021 – September 30, 2022



2022 highlights include increased outreach to the Rattlesnake Creek expansion area.



Executive Summary

The Conservation Reserve Enhancement Program (CREP) in Kansas is a federal and state partnership created for enhancing water conservation efforts along the Upper Arkansas River (UAR) corridor from Hamilton County to Rice County. **The UAR CREP has been officially approved and operating for 15 years;** this annual report provides a synopsis of the implementation activities and progress to date.

CREP is an “enhanced” version of the Conservation Reserve Program (CRP) in which the Farm Service Agency (FSA) of the U.S. Department of Agriculture (USDA) and the State of Kansas have mutually agreed to address specialized natural resource concerns. The Natural Resources Conservation Service (NRCS) is USDA’s provider of field technical services to producers who are implementing CREP contracts. The Kansas Department of Agriculture (KDA) Division of Conservation (DOC) is the primary coordinator of the program in concert with numerous other state, local and private partners including KDA’s Division of Water Resources; Kansas Water Office; Kansas Department of Wildlife and Parks; Kansas Department of Health and Environment; Kansas Geological Survey; Kansas State University; Groundwater Management District Nos. 3 and 5; Ducks Unlimited; Pheasants Forever; and Kansas Alliance for Wetlands and Streams.

The UAR CREP is a voluntary, incentive-based program allowing producers to enroll eligible irrigated acres in targeted areas for 14- to 15-year contracts with FSA, permanently retire the associated state water rights on the enrolled acres, and establish an approved land cover (typically a native grass) on the same acreage. The producer receives an annual rental payment, and additional cost share opportunities for specific conservation practices from FSA, plus an upfront incentive payment from DOC.

Groundwater is the dominant source of water for all uses in the basin, and aquifer declines are a serious concern. **Therefore, water conservation is the main management objective in the UAR CREP.** The program also provides other resource benefits including soil conservation, water quality protection, wildlife habitat enhancement and energy savings. The majority of irrigated acres enrolled have been on highly erodible sandhills soils that are unsuitable for dryland farming.

One of the most significant merits of the program to date has been establishing cover on these highly erodible lands. The extremely fragile, windblown soils of the sandhills will be very difficult to re-vegetate after irrigation is no longer possible and crop production ceases due to groundwater declines. The CREP program has provided these producers a viable option, incentive and financial opportunity for starting prairie grass stands and other conservation covers while limited irrigation water is still available.

As of September 30, 2022, a total of 138 state CREP contracts on 23,430 acres have been approved by the State of Kansas. **These contracts have resulted in the permanent retirement of 47,643 acre-feet of annual water appropriation on 169 water rights from 212 wells.** The contracts represent a total of \$1,669,373 in one-time state sign-up payments to producers over the past 15 years.

The State of Kansas has again met its financial commitment to provide at least 20% of the program costs through a combination of direct payments, technical assistance and in-kind contributions with at least 10% coming from direct cash match as approved in the USDA Memorandum of Agreement (MOA). Since 2007, a total of \$16,789,576 of direct and indirect expenditures and in-kind costs from state, local and private partners have been made in support of the project to match an estimated total of \$53,820,266 in federal program costs.

Annual Progress: FSA Administrator Zach Ducheneaux conducted a Western Kansas field tour in 2022 which included a stop at a UAR CREP enrollment in Finney County on June 6. He was very complimentary about the purposes and results of the project to date, as expressed in a national FSA news release, stating **“I am thrilled to be able to visit the site of the Upper Arkansas River CREP and better understand the conservation achievements that will be made possible through this innovative agreement,”** said Ducheneaux. **“The State of Kansas has been a phenomenal partner in reopening and bolstering this agreement and demonstrating what is possible through dynamic partnerships that support voluntary, producer-led conservation on working lands. I appreciate the long history associated with this CREP and look forward supporting the new, expanded opportunities that are now available for agricultural producers who choose to participate.”**

CREP Program Implementation Summaries

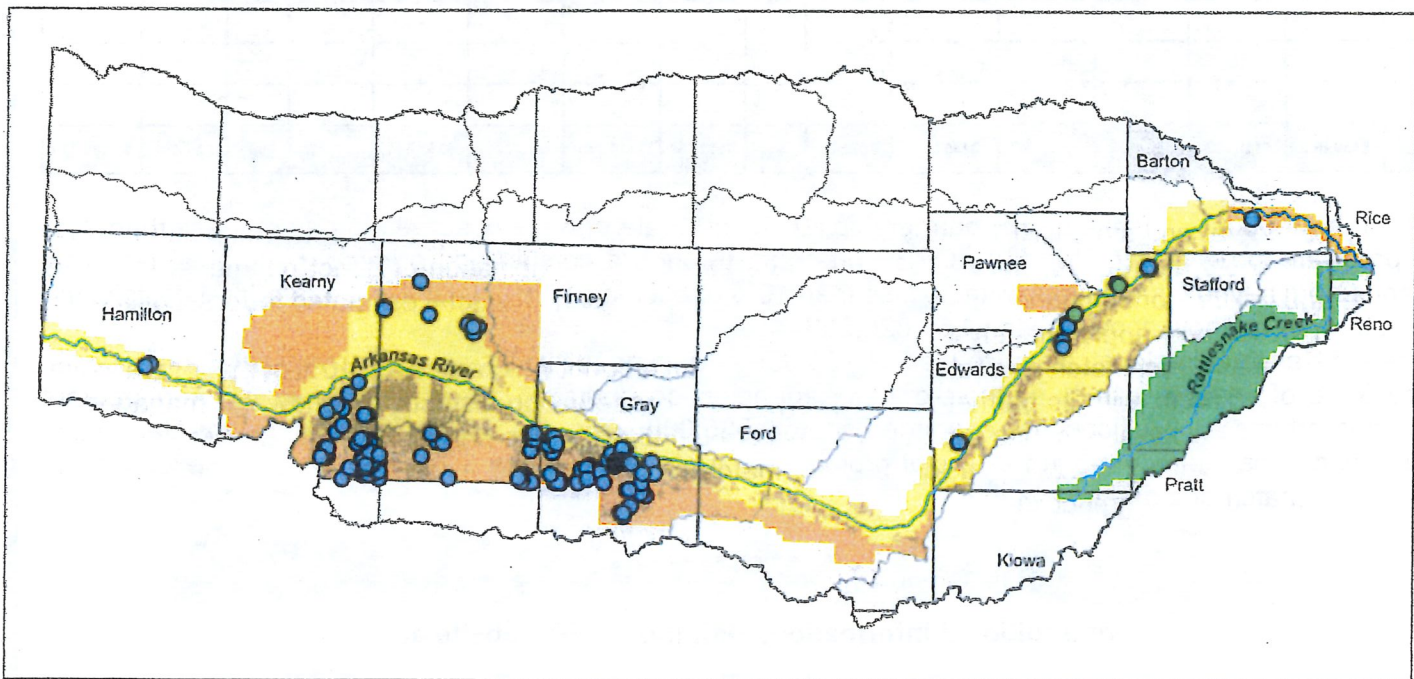
Approved Contract Totals as of September 30, 2022

County	BT	ED	FI	FO	GY	HM	KE	KW	PN	PR	RI	RN	SF	TOTAL
Acres	107.7	127.5	5,700.7	0	7,296.9	242.9	9,078.9	0	876.2	0	0	0	0	23,430.4

- 23,430.4 acres have been approved for enrollment — no acres were added in FY2022.
- 211 wells have been retired on 23,354.8 irrigated acres from 169 water rights.
- 47,643 acre-feet of annual water appropriation rights have been permanently retired.
- 138 state contracts are approved for a total of \$1,669,373 in sign-up incentives cost-share.
- 99% are CP2 practice code (native grasses) — and 91% are Tier 1 / Tier 1 unsuitable soils.

The total project limit is currently 40,000 acres with an individual county cap of 10,000 acres.

Kansas CREP Retired Water Rights



- 2021 Retired Water Rights
- Previously Retired Water Rights
- HUC-8 Watersheds
- Upper Arkansas River Basin
- KS CREP Project Area**
- Tier 1
- Tier 1 Soils Unsuitable for Dryland Agriculture
- Tier 2
- Rattlesnake Creek Expansion (Oct 1, 2021)



0 12.5 25 50 Miles



Kansas Department of Agriculture
Division of Water Resources
December 22, 2021

Summary of Program Expenditures

As of Sept. 30, 2022, a total of \$1,669,373 has been expended by DOC for the State Upfront Payments (SUPs) in 138 separate state contracts to producers who have been approved and enrolled in the CREP program, as shown below. Participating producers received a total of \$3,039,395 in rental payments and cost-share assistance from FSA during the 2022 program year.

COUNTY	State Upfront Payments														
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	COUNTY TOTAL
Barton										\$9,991					\$9,991
Edwards										\$9,894					\$9,894
Finney	\$8,022	\$33,756	\$2,677		\$78,251			\$34,124	\$45,299	\$10,864	\$224,822				\$437,815
Ford															
Gray	\$156,954	\$44,856	\$75,618	\$15,320	\$64,419	\$37,677		\$59,540							\$454,384
Hamilton									\$23,561						\$23,561
Kearny	\$260,632	\$37,510	\$15,620		\$94,241			\$20,005	\$49,286		\$172,252	\$12,289			\$661,835
Kiowa															
Pawnee	\$14,291				\$8,103							\$24,638		\$24,861	\$71,893
Pratt															
Reno															
Rice															
Stafford															
TOTAL	\$439,899	\$116,122	\$93,915	\$15,320	\$245,014	\$37,677	\$0	\$113,669	\$118,146	\$30,749	\$397,074	\$36,927	\$0	\$24,861	\$1,669,373

As part of the federal and state CREP partnership MOA, the State of Kansas agreed to pay not less than 20% of the program costs, as required for a CREP program, through a combination of direct payments, technical assistance and in-kind contributions with no less than 10% direct match. The total estimated federal costs of the program to date are now approximately \$53,820,266.

The State of Kansas direct match now totals \$11,704,089 — an amount which exceeds 10% of the federal costs. And the State of Kansas, with its partners of other agencies, conservation districts, groundwater management districts and private associations, has expended a total of \$5,085,487 in the project for technical assistance and in-kind services as indirect match for a total project match of \$16,789,576 — an amount which exceeds the required 20% match of federal costs.

* * * * *

For additional information, visit the CREP website at

www.agriculture.ks.gov/CREP

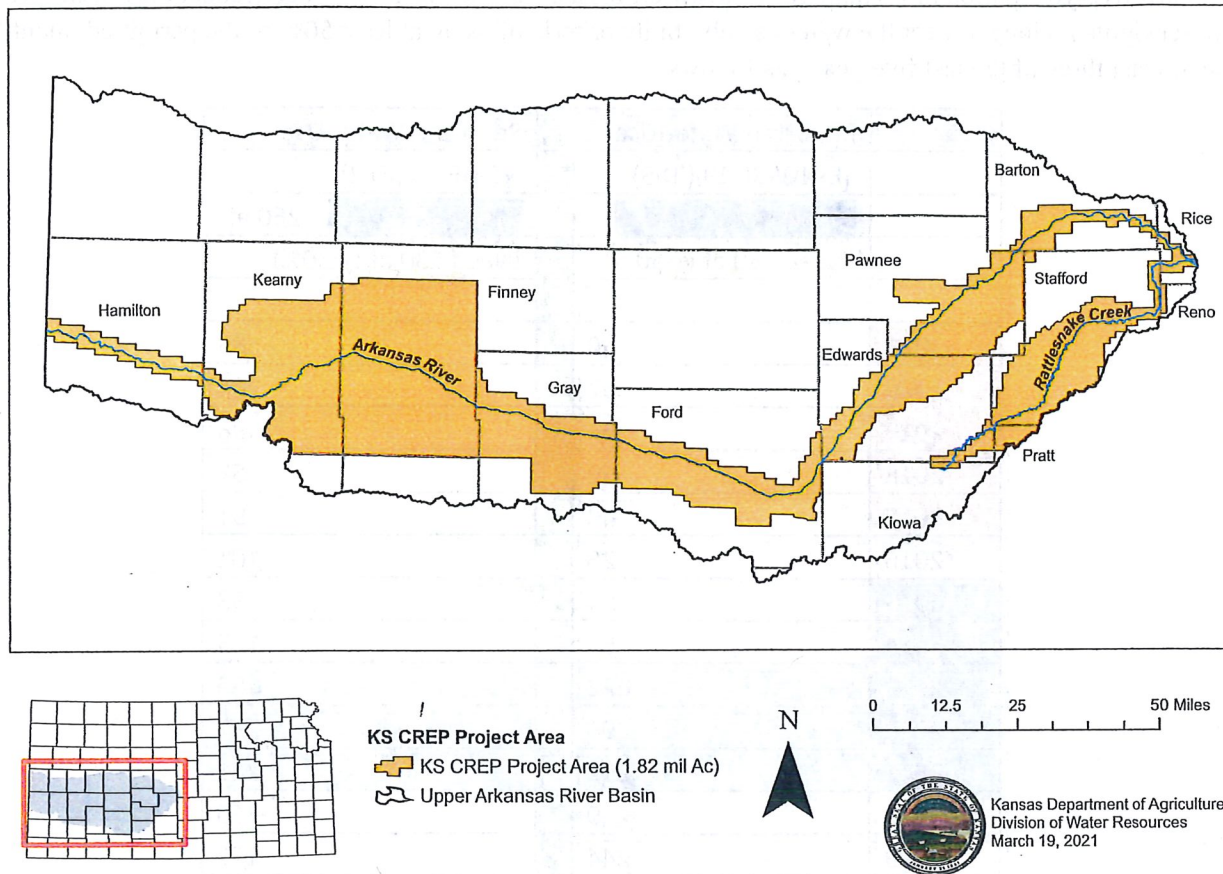
or contact

Steve Frost, CREP Coordinator
 Kansas Department of Agriculture, Division of Conservation
 1320 Research Park Dr. Manhattan, KS 66502 785-564-6622

www.agriculture.ks.gov/conservation

CREP Eligibility Status Review : WRFNs 5871 & 28621 D1

Kansas Conservation Reserve Enhancement Program (CREP)



Issue: A landowner wishes to enroll two quarter sections in southern Finney County along with the appurtenant irrigation water rights in the Upper Arkansas River Conservation Reserve Enhancement Program (CREP). The water rights do not currently meet a state water use eligibility criteria as established in both the USDA Memorandum of Agreement and the CREP state enabling statute, K.S.A. 2-1933. Neither of these guiding documents provides a process for exemptions or waivers to requirements for processing of offers to enrollment in the program. The subject criteria is stated below, as follows:

At least fifty (50) percent of the maximum annual quantity authorized to be diverted under the water right appropriation under the Kansas Water Appropriation Act, K.S.A. 82a-701 et. seq. must have been reported used in any three years within the most recent five-year period preceding the date the cropland is offered for enrollment in CRP through this CREP, for which irrigation water use reports are approved and made available by Kansas, as determined by Kansas.

Background: In a package consisting of six wells and seven water rights, Water Right File Numbers 5871 and 28621 D1 were both included in a Water Conservation Area (WCA) in 2016. In a WCA, an owner voluntarily agrees to substantially reduce the allowable annual permitted quantity of water in exchange for certain flexibilities afforded by the Division of Water Resources which provide enhanced management options between water rights and wells including multi-year allocations, grouping of allocations and carryover of unused allocations. The owner has agreed to the following reductions:

2016 – 2018 : reduce the overall allocation in the WCA from 2268 af to 1511 af on a six-well overlap;

2019 – 2022 : reduce the overall allocation in the WCA from 2860 af to 1500 af on an eight-well overlap;

2023 – 2025 : reduce the overall allocation in the WCA from 2860 af to 1333 af on an eight-well overlap;

Since 2016, the overall total water use in this WCA has been reduced by approximately 25%, even in spite of severe drought conditions. The specific water use reduction for WRFNs 5871 and 28621 D1 is in the last five-year period more than 50%. However, because of the recent voluntary reductions, these two water rights no longer meet the water use eligibility criteria of using at least 50% of the permitted quantity in at least three of the last five years, as follows :

Year	Reported Water Use	Reported Water Use
	SE-NW-SE 19 (ID 5)	NC-NE 19 (ID 2)
	WRFN 5871 – 260 af	WRFN 28621 D1 – 260 af
	(Need 130 af @ 50%)	(Need 130 af @ 50%)
2021	50	85
2020	67	104
2019	67	96
2018	59	58
2017	48	91
*2016	26	101
2015	54	98
2014	52	125
2013	132	189
2012	200	237
2011	212	241
2010	220	210
2009	244	177
2008	259	109

If enrolled in CREP, the owner will receive a 15-year CRP contract with FSA at an irrigated rental rate (of approximately \$151 per acre in Finney County), and permanently retire WRFNs 5871 and 28621 D1.

Since there is no waiver or exemption procedure provided in either the MOA or state statute, DOC staff is requesting a review and recommendation from the State Conservation Commission which can be provided to the landowner's FSA County Committee for consideration and possible forwarding to the national FSA office for review.

DOC Analysis: This a unique situation which was not anticipated in the rule making process for the CREP program. Without an alternative consideration, it appears that voluntarily enrollment in the WCA for water conservation purposes will actually be penalizing the owner in his opportunity to take advantage of sponsored financial incentives and water conservation opportunities afforded to other landowners in otherwise similar conditions.

This undertaking could potentially set a review precedent for other situations involving WCAs and/or other unforeseen circumstances. Since the USDA MOA and the state statute practically mirror each other in regard to the state required eligibility criteria, it could also help to document the need to modify both documents to include a recognized procedure for reviewing enrollment offers which merit waivers or exemptions.

SCC Recommendation: