

Approved: 4-1-99  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 4, 1999 in Room 423-S of the Capitol.

All members were present except: Rep. Sharon Schwartz - excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Clint Riley, Attorney, KS Dept. Wildlife and Parks, 900 SW Jackson Ste 502, Topeka, KS 66612-1220  
Mike Beam, Kansas Livestock Association, 6031 SW 37<sup>th</sup>, Topeka, KS 66614  
Bill Fuller, KS Farm Bureau, 2627 KFB Plaza, PO Box 3500, Manhattan, KS 66502  
Al LeDoux, Director, KS Water Office, 109 SW 9<sup>th</sup>, Ste 300, Topeka, KS 66612-1249  
Tracy Streeter, Executive Director, State Conservation Commission, Mills Bldg., 109 SW 9<sup>th</sup>, Ste 500, Topeka, KS 66612-1299  
Kent Lamb, Chairman, KS Water Authority, RR 1, Box 69, Macksville, KS 67557  
Secretary Allie Devine, KS Department of Agriculture, 901 S Kansas Ave., 1<sup>st</sup> Floor, Topeka, KS 66612-1280  
Jacob W. Roenbaugh, Water PACK, 306-A N Main Street, St. John, KS 67576  
Sam Crissman, Groundwater Management District #5, 125 S Main, PO Box 7, Stafford, KS 67578  
David Pope, Chief Engineer, Division of Water Resources, KS Dept. Agriculture 901 S Kansas Ave., 2<sup>nd</sup> Floor, Topeka, KS 66612-1283  
Leland E. Rolfs, Staff Attorney, Division of Water Resources, KS Dept. Agriculture, 901 S Kansas Ave., 2<sup>nd</sup> Floor, Topeka, KS 66612-1283

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She announced that minutes of the February 4, 9, 11, and 16 meetings had been distributed for committee members to review. She reviewed the agenda for next week. David Pope, Chief Engineer, Water Resources Division, Dept. of Agriculture, will have an information overview of water issues and concerns in preparation for hearings on **SB287** and **HB2518**, on March 9. There will be a hearing on **SB132** on March 11.

The Chairperson opened hearing on **SB70**:

**SB70:** **An act concerning big game permits; amending K.S.A. 1998 Supp. 32-937 and repealing the existing section.**

Mike Beam, Kansas Livestock Association was welcomed to the committee. He appeared in support of the bill. This bill amends the definition of "tenant" to assure any qualified person, regardless of their address, is able to obtain a big game (deer) "hunt -on-your-own-land" permit. The only change in the law proposed by this legislation is found in line 17 of page one. (See attachment 1)

Bill Fuller, KS Farm Bureau, was welcomed. He testified in support of the bill and suggests this bill will not result in the issuance of a large number of additional permits. KS Farm Bureau believes this bill provides

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 423-S Statehouse, at 3:30 p.m. on March 4, 1999.

equity between landowners and tenants. (See attachment 2)

Clint Riley, Attorney, KS Department Wildlife and Parks, appeared in support of the bill. Under current law, the definition of "tenant", as it applies to big game permits, is restricted to Kansas residents. This bill would eliminate this restriction, so that nonresidents who otherwise meet the criteria may be included in the definition. (See attachment 3)

The Chairperson closed the hearing on **SB70**.

Chairperson Freeborn welcomed Al LeDoux, Director, Kansas Water Office to the committee. He introduced participants appearing today to brief the committee on Water Rights Purchasing. (See attachment 4)

Tracy Streeter, Executive Director, State Conservation Commission, provided a briefing on the Water Rights Purchase Program. (See attachment 5) He gave a brief synopsis of the program; Authority; Concept; Limitations; and Current Status. If the Big Bend Groundwater Management District #5 application is funded and the program is proven to be successful, additional funding requests for the Rattlesnake Creek Sub-basin are anticipated. It is also anticipated that the process to be established to identify and purchase water rights in the Rattlesnake will serve as the prototype for any future conservation efforts proposing the purchase of water rights.

Kent Lamb, Chairman, Kansas Water Authority, appeared in support of the bill. In the 1999 Annual Report to the Legislature, the next to the last paragraph includes the supportive position of the Kansas Water Authority on the Rattlesnake Creek Project and the implementation of the Water Rights Purchase Program. Such programs are essential to the success of the sub-basin management plan. (See attachment 6)

Secretary Allie Devine, KS Department of Agriculture, appeared before the committee to add a few comments to what had already been discussed concerning the Water Rights Purchasing project. The Department is generally supportive of the ideas. They feel a little time is needed to work through the normal funding channels to make sure it is what people want and what will work. Secretary Devine suggested this project could be a good pilot project for the state.

Jacob W. Roenbaugh, Water Protection Association of Central Kansas (Water PACK), presented a brief history of the Quivira Partnership and the resulting Rattlesnake Creek Sub-basin management plan. Their objective in presenting this information today is to encourage the legislature to engage in an interim study of water issues specifically pertaining to water banking and the water rights purchase program. (See attachment 7) He also distributed a map showing Rattlesnake Creek Sub-basin Draft Management Areas, (See attachment 8) and a copy of the Rattlesnake Creek Basin/Quivira Partnership Agreement. (See attachment 9) Mr. Roenbaugh read a letter from Elliott N. Sutta, Regional Director, United States Department of the Interior, to the partners of the Quivira Partnership. (See attachment 10)

Sam Crissman, Big Bend Groundwater Management District #5, addressed the committee in support of the program. The District is committed to resolving the issues in the Rattlesnake Creek Basin and requests the committee seriously consider an interim study to obtain important facts and information in the application and importance of the Water Rights Purchase and Water Banking Programs prior to full legislative review. (See attachment 11)

David Pope, Chief Engineer, Division of Water Resources, KS Department of Agriculture, addressed the committee in support of the project.

A letter written to Sharon Falk, Groundwater Management District #5, from Cheryl Williss, Chief, Water Resources Division, United States Department of the Interior was submitted for the committee to review. (See attachment 12)

Lee Rolfs, Staff Attorney, KS Department of Agriculture, briefed the committee on a Summary of the Task

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 423-S Statehouse, at 3:30 p.m. on March 4, 1999.

Force's Report on Water Banking. (See attachment 13) The Task Force found that Water Banking can be a viable management tool which will allow water users several options not currently available, and that it will create an incentive for conservation, while putting water to its most economic and beneficial use. A draft copy of the full report on Water Banking was distributed for the committee to review. (See attachment 14) Questions and discussion followed.

Sharon Falk, Manager, Big Bend Groundwater Management District #5, was in attendance, and answered questions concerning funding of water rights.

Chairperson Joann Freeborn thanked Al LeDoux and participants for their presentation, and other guests for their attention and participation.

The meeting adjourned at 5:20 p.m.

The next meeting is scheduled for March 9, 1999.

# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 4, 1999

NAME	REPRESENTING
<i>Alice A. Duvine</i>	<i>Ks Dept. of Agriculture</i>
<i>Kevin R Schult</i>	<i>GMD #5</i>
<i>Sam Gissman Jr</i>	<i>GMD #5</i>
<i>Sharon Falk</i>	<i>GMD #5</i>
<i>Al LeDoux</i>	<i>KWO</i>
<i>Kent Lamb</i>	<i>KWA</i>
<i>Tracy Stuth</i>	<i>SCC</i>
<i>Clint Riley</i>	<i>KDWP</i>
<i>Dave Pope</i>	<i>KDA</i>
<i>Blake Henning</i>	<i>SCC</i>
<i>Leland E. Rupp</i>	<i>KDA</i>
<i>Bill Fuller</i>	<i>Kansas Farm Bureau</i>
<i>Dave Wind</i>	<i>Farm</i>
<i>Ann Dukes</i>	<i>DFB</i>
<i>LEONARD WENSTROM</i>	<i>WATER PACK</i>
<i>JW Roenbaugh</i>	<i>Water PACK</i>
<i>Charles Benjamin</i>	<i>KNRC/KS Sierra Club</i>





*Since 1894*

To: The House Environment Committee  
Representative Joann Freeborn, Committee Chair

From: Mike Beam, Executive Secretary, Cow-Calf/Stocker Executive Secretary

Subj: Senate Bill 70

Date: March 4, 1999

Thank you for the opportunity to speak in favor of SB 70. The Senate Energy and Natural Resources Committee introduced this bill at our request. I also would like to publicly thank the Kansas Department of Wildlife and Parks staff for their cooperation in suggesting these changes to the deer hunting statutes to address a concern we identified last summer.

This bill does not address the deer population issue this committee has wrestled with a few weeks ago. Senate Bill 70 simply amends the definition of "tenant" to assure any qualified person, regardless of their address, is able to obtain a big game (deer) "hunt-on-your-own-land" (HOYOL) permit. The only change in the law proposed by this legislation is found in line 17 of page one. Please note the bill strikes the reference to resident as a qualification for being a tenant.

The definition of tenant is rather restrictive and is clearly aimed at limiting HOYOL permits to landowners or tenants who have a direct financial participation in a farm or ranch that exceeds 80 acres. We are not proposing to loosen this requirement. We believe it is inappropriate, however, to prohibit nonresidents from obtaining HOYOL permits if they meet all other requirements in the tenant definition found in lines 17-27 on page 1 of the bill.

Let me give the committee a specific example of a person who will benefit from the passage of SB 70. A family trust is the lawful owner of a ranch in south central Kansas. Several family members are stockholders of a corporation that is heir to this trust. The ranch has been owned by this family for 50 years. One of the family members lives in Oklahoma but is an active participant in the management of this ranch. He travels to the ranch weekly and is involved in business planning and decisions on a daily basis. Today, because he resides in Oklahoma, he is unable to obtain a HOYOL permit to hunt deer on a Kansas ranch that is owned by him and his family. SB 70 would correct this situation.

I doubt if this change would cause a significant increase in the number of HOYOL permit requests. This amendment to the law appears necessary to allow everyone with a financial interest in a Kansas farm or ranch to enjoy hunting deer on their own operation.

Thank you for considering this legislation. I will attempt to respond to any questions or comments.



# PUBLIC POLICY STATEMENT

## HOUSE COMMITTEE ON THE ENVIRONMENT

**RE: SB 70 – Authorizing big game permits for nonresident tenants.**

**March 4, 1999  
Topeka, Kansas**

**Prepared by:  
Bill R. Fuller, Associate Director  
Public Affairs Division  
Kansas Farm Bureau**

Chair Freeborn and members of the House Environment Committee, we appreciate this opportunity to testify in support of SB 70. I am Bill Fuller and serve as Associate Director of the Public Affairs Division at Kansas Farm Bureau.

A number of years ago, Kansas Farm Bureau, along with other agricultural and landowner interests, was invited to work with the Kansas Department of Wildlife and Parks to develop acceptable language concerning landowner permits. The cooperative effort was successful. A number of safeguards were included in the legislation to limit landowner permits to individuals actually engaged in production agriculture:

- ◆ *Landowner/tenants must be actively engaged in producing agricultural commodities or livestock;*
- ◆ *A minimum operation of 80 acres of Kansas farm or ranch land; and,*
- ◆ *Permits are limited to only the unit or units where the landowner's land or the land tenants operates is located.*

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3-4-99  
Attachment 2*

A number of issues concerning deer were debated at the 80<sup>th</sup> Annual Meeting of Kansas Farm Bureau on November 20-22, 1998. The 435 Voting Delegates representing all 105 county Farm Bureaus adopted a resolution relating to landowner/tenant deer permits. Some provisions of the policy include:

- ◆ ***“Each farmer, whether landowner or tenant, who requests a big game permit on his own land or land on which he is a tenant or operator should be guaranteed a permit at no cost.”***
- ◆ ***“Owners of Kansas land who live in another state should be able to receive a permit to hunt all big game on their Kansas land.”***
- ◆ ***“We support the transfer of landowner permits to family members without the imposition of a transfer fee.”*** (This provision is a part of HB 2480 that did not clear the House last week)

We point out that KFB policy, for the first time this year, refers to big game permits. While the focus is still on the growing Kansas deer herd, some of our farm and ranch members are reporting significant crop damage from turkey. We encourage the agency and the legislature to take measures to assist landowners in the areas where problems are occurring today in order to avoid wide-range property damage in the future.

SB 70 deletes the residency requirement for the “tenant” when issuing deer permits. KFB policy uses a number of terms interchangeably: farmer, landowner, owner, tenant and operator. Rather than the specific term that is used, we suggest that keys to eligibility have been the requirements that the individuals own land in Kansas and are actively engaged in agricultural production. We do not believe there has ever been any intention to treat landowners different than tenants when issuing deer permits.

We encourage the House Committee on the Environment to approve SB 70 and advance the proposal to the full House. We suggest the bill will not result in the issuance of a large number of additional permits. Rather, we believe SB 70 provides equity between landowners and tenants. When issuing deer permits, we should not overlook the fact that farmers and ranchers provide the habitat, supply the feed and assume the financial burden from wildlife damage.

Thank you! We will respond to any questions you may have.



STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary  
900 SW Jackson, Suite 502  
Topeka, KS 66612-1233  
785/296-2281 FAX 785/296-6953



**SENATE BILL NO. 70**

**Testimony Provided to  
House Committee on Environment  
March 4, 1999**

Under current law, the definition of "tenant" as it applies to big game permits is restricted to Kansas residents. Senate Bill No. 70 would eliminate this restriction, so that nonresidents who otherwise meet the listed criteria may be included in the definition.

To qualify as a tenant under this definition, in summary, an individual must be actively engaged in the agricultural operation of at least 80 acres of farm or ranch land, and must either have a substantial financial investment in the production on that land, or serve as the bona fide eligible manager of that land. By qualifying as a tenant under this definition, an individual becomes eligible for a hunt-on-your-own-land permit. In other words, this definition allows an individual who has responsibilities similar to that of a landowner, but who is not listed as the actual landowner on the deed or title to the land, to receive the same benefit as a landowner regarding big game permits.

Currently, nonresident landowners may qualify for a nonresident landowner hunt-on-your-own-land permit. However, a nonresident who is not listed as the legal owner of the land, but who would otherwise qualify as a "tenant," would not qualify for a hunt-on-your-own-land permit under either definition, according to the current law.

As a practical matter, the department does not anticipate that amending the definition of tenant would affect a great number of people, because the overwhelming majority of individuals who would qualify as tenants are likely to be Kansas residents. Nonetheless, if an individual does have primary responsibility for the agricultural operations on land in Kansas, and would otherwise meet the definition of tenant under current law, the department would agree that it is appropriate for the person to be eligible to receive a hunt-on-your-own-land permit regardless of the person's actual residency status. The department believes the amendment proposed in SB 70 is the most simple and direct means of accomplishing the required change.

*House Environment  
3-4-99  
Attachment 3*

STATE OF KANSAS



Bill Graves, Governor

KANSAS WATER OFFICE  
Al LeDoux  
Director

Suite 300  
109 SW Ninth  
Topeka, Kansas 66612-1249

785-296-3185  
FAX 785-296-0878  
TTY 785-296-6604

**HOUSE ENVIRONMENT COMMITTEE  
BRIEFING ON WATER RIGHTS PURCHASING**

March 4, 1999

- I. Introductions of Participants ..... Al LeDoux
  - A. State Conservation Commission ..... Executive Director, Tracy Streeter  
 History of Water Rights Purchasing/Review of Current Statute
  - B. Kansas Water Authority ..... Chairman Kent Lamb  
 Authority's Recommendation on Water Rights Purchasing Issue
  - C. Kansas Department of Agriculture ..... Secretary Allie Devine  
 Department of Agriculture Perspective
  - D. Quivira Partnership
    - 1. Water Pack ..... Mr. Bill Roenbaugh  
 Outline of partnership & review of Rattlesnake Creek Management Plan
    - 2. Groundwater Management District #5 ..... Mr. Sam Crissman
    - 3. Division of Water Resources ..... Chief Engineer, David Pope
    - 4. United States Fish & Wildlife Service  
 (Letter from Ms. Cheryl Williss - Chief of Water Resource Division)
- II. Re-cap of issue and suggested committee participation ..... Al LeDoux
- III. Water Banking ..... DWR Staff Attorney, Lee Rolfs  
 (If time allows)

*House Environment  
3-4-99  
Attachment 4*





# State Conservation Commission

109 SW 9<sup>th</sup> Street  
Suite 500, Mills Building  
Topeka, KS 66612-1299

Telephone: (785) 296-3600 • Fax (785) 296-6172



## MEMORANDUM

March 4, 1999

**TO:** House Environment Committee  
**FROM:** Tracy Streeter, Executive Director  
**SUBJECT:** Water Rights Purchase Program

Madam Chairperson and members of the committee, thank you for the opportunity to appear today to provide a briefing on the Water Rights Purchase Program. Following is a brief synopsis of the program:

### Authority

The program was created by the 1988 Legislature by amending K.S.A. 2-1915, 2-1919 and 82a-707. These amendments contain provisions for the State Conservation Commission to administer the program with the Chief Engineer, Division of Water Resources carrying out certain technical responsibilities.

### Concept

As the name implies, the program provides a mechanism for the state to purchase from a willing seller, all or a portion of a water right. The state may provide up to 80 percent of the negotiated purchase price with a local entity providing an assurance to pay at least 20 percent of the purchase price. After the purchase is complete, the water right is placed in the custodial care of the state and will not be considered for further appropriation.

### Limitations

To be eligible, the seller must possess either an active vested or certified water appropriation right which has not been abandoned. In addition, the location of the water right must be in an area which the Chief Engineer has closed to further appropriation and designated as being in need of either stream flow recovery or aquifer restoration and, the rate of groundwater withdrawal in the area equals or exceeds rate of recharge.

### Current Status

Rules and regulations to operate the program are in the initial draft stage and will likely undergo a review and edit by the participating agencies and potential applicants prior to submittal for formal review and approval.

*House Environment  
3-4-99  
Attachment 5*

**KANSAS WATER AUTHORITY**

Suite 300, 109 S.W. 9th Street, Topeka, KS 66612-1249 (913) 296-3185

*Kent Lamb, Chairman*

RR 1, Box 69, Macksville, KS 67557 (316) 348-2315



House Environment Committee  
Chairperson Rep. Joann Freeborn  
State Capitol Building  
300 SW 10th St. Rm. 155E  
Topeka, Ks. 66612

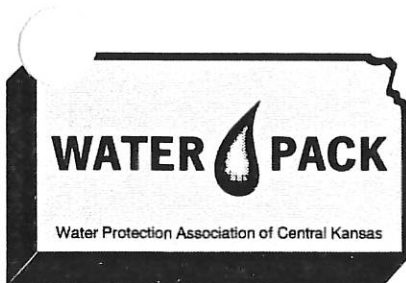
March 15, 1999

Briefing on Water Rights Purchasing of March 4, 1999

Subject: Comments of Kent Lamb

In the 1999 Annual Report to the Legislature, the next to the last paragraph includes the supportive position of the Kansas Water Authority on the Rattlesnake Creek Project and the implementation of the Water Rights Purchase Program. Such programs are essential to the success of the sub-basin management plan.

I wish to clarify for you the request of the Big Bend Ground Water Management District No. 5 for funding of the Water Rights Purchase Program. The KWA did not include that request in their recommendations for funding in FY 2000 because it felt that the request was premature in that the basin management plan was not completed and the Legislature should be provided an opportunity to study and determine if and how the purchase program will be implemented. We are prepared to assist you in any manner that would be helpful to you in the application of the Water Rights Purchase Program.



March 4, 1999

**TO:** House Environment Committee

**FROM:** Jacob W. Roenbaugh, Writing for Water PACK

**SUBJECT:** Quivira Partnership as related to Water Banking and the Water Rights Purchase Program

Madame Chairman and members of the committee, thank you for the opportunity to present to you a brief history of the Quivira Partnership and the resulting Rattlesnake Creek Subbasin Management Plan. Our objective in presenting this information to you today is to encourage the legislature to engage in an interim study of water issues specifically pertaining to water banking and the water rights purchase program.

### **History**

After the conclusion of the IGUCA hearings addressing water supplies for the Cheyenne bottoms Wildlife Area, and a report by the Kansas Geological Survey suggesting that groundwater pumping was contributing to reduced flows into Quivira National Wildlife Refuge, QNWR, WaterPACK approached the current Quivira Partners and asked them to participate in a joint study of the basin and its water resource issues.

The premise that Water Pack used in approaching each of the partners was: Given the same good scientific data, we would all independently come to the same conclusions. This approach was very much in contrast to the independent and adversarial approach taken by all parties in the Wet Walnut IGUCA hearings.

In 1994 WaterPACK, USFWS, GMD#5, and the State of Kansas, represented by the Division of Water Resources, signed a formal partnership agreement to study the water resources of the Rattlesnake Creek Basin and jointly address the issues of stream flow into the QNWR. The agreement and a statement of issues and objectives is attached as part of this testimony.

Beginning in 1994 the partnership started meeting on a monthly basis. Within a year the DWR subbasin management program was integrated into the partnership effort. The partnership's first task was to establish the issues to be addressed and then begin the task of identifying water management alternatives in the basin. In conjunction with identifying water management alternatives in the basin as part of the partnership, each of the Quivira partners engaged in their own independent part of the process. The USFWS began a \$1.3 million study to determine on-refuge management alternatives that would reduce their dependence on timely flows from the

Rattlesnake Creek. The GMD continued mineral intrusion studies and stream-aquifer tests. WaterPACK began an Irrigation and Water Management Demonstration Project with Kansas State University. DWR invested in development of a model called SwatMod to test management alternatives.

The results of hundreds and hundreds of days of effort by scientists, water users, water administrators, hydrologists, and biologists has resulted in a draft water management plan for the Rattlesnake Creek Basin.

### **Rattlesnake Creek Management Plan Overview**

The philosophy of this management plan is to provide primarily incentive-based alternatives within each targeted area and within the basin in general to provide economic alternatives to strict regulation as a method of management.

The RSCMP breaks the basin into three management areas. (See map.)

1. A stream corridor effecting both timing and total flows into the QNWR.
2. An area of the basin North of the RSC that effects overall long term flows into the RSC and includes an area of sensitive high decline areas.
3. An area of mineral intrusion on the eastern boundary of the basin that is effecting water quality in that area.

The partnership has established new target water use levels for each of these management areas. The new target use levels should be obtained in a 12 year period of the plan. In each of the management areas there are a similar set of water management alternatives. Each alternative has an associated credit for water use reduction.

In the corridor there are five water management alternatives.






1. Water Rights Purchase program
  - A. Targets purchases towards sensitive areas of the basin
  - B. Provides relief for timing issue with QNWR
2. Water conservation
  - A. Reduced water use from technology adaptation, SCC & KSU
  - B. Reduced water use from management changes
3. Enhanced compliance and enforcement
  - A. Reduce over pumping through DWR and GMD programs
  - B. Increase incentives to adopt water management technology
4. Water Banking
  - A. Creates incentives to move water from sensitive to less sensitive areas
  - B. Provides incentives to move water to best use
  - C. Provides incentives for water conservation

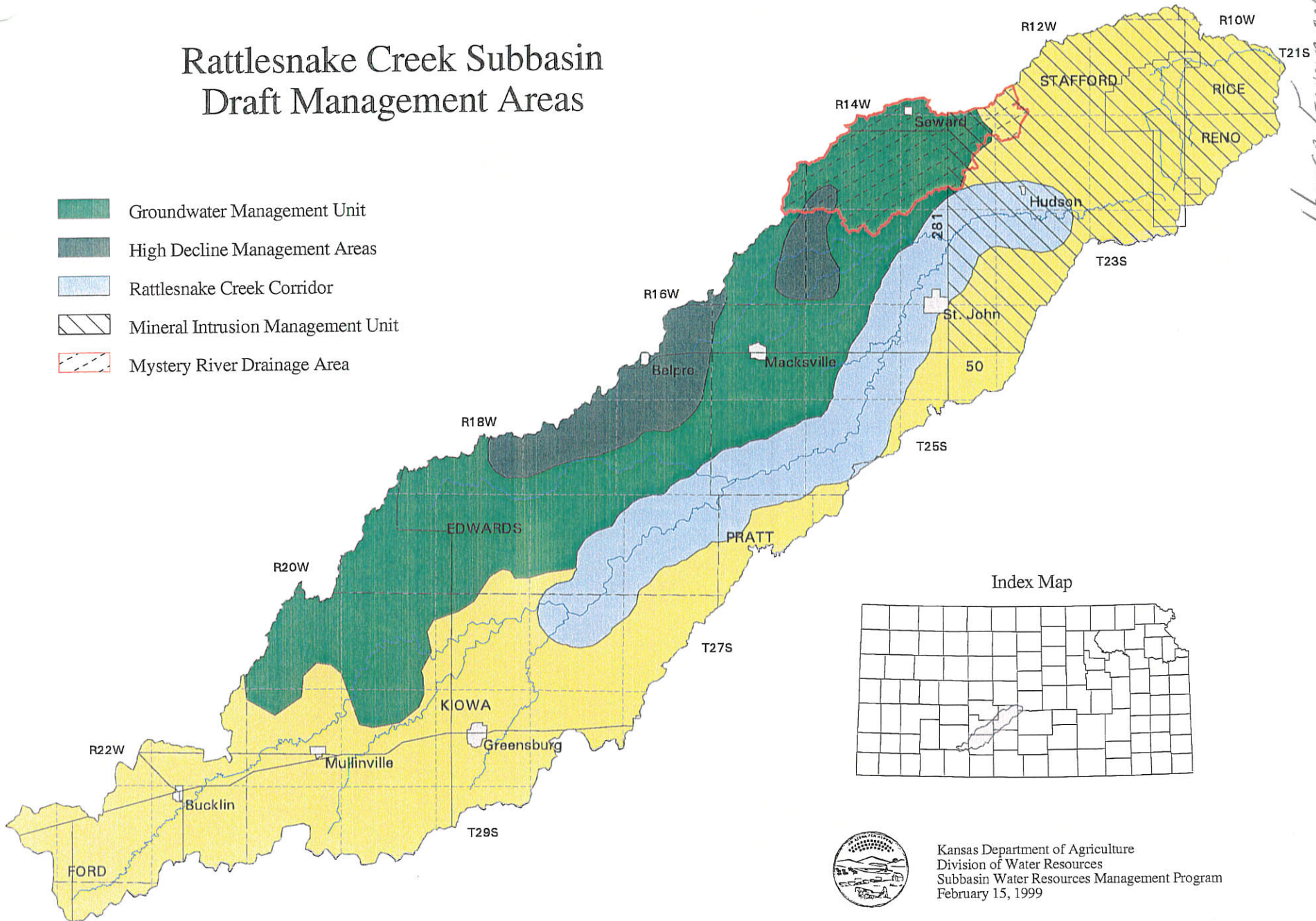
5. GMD's 5yr rolling average program
  - A. Provides alternatives for growers while reducing use with a conservation component.

This is a good management plan. But, it will not succeed without your help. We need continued support from the SCC, the Kansas Water Office, the Department of Agriculture and your committee. The Water Rights Purchase program and the Water Banking proposal will both require direct legislative action in the 2000 session. I would encourage you to study these specific issues in an interim committee before the 2000 session. As we have just stated, Water Banking and the Water Purchase Program are a critical part of this management plan. Thank you for the opportunity to bring these issues to this committee for your consideration.

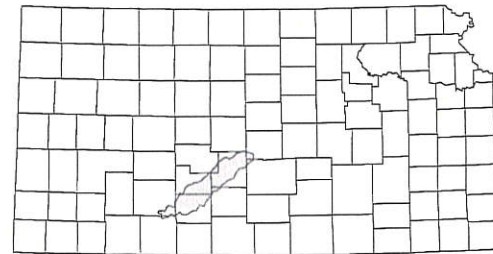


# Rattlesnake Creek Subbasin Draft Management Areas

-  Groundwater Management Unit
-  High Decline Management Areas
-  Rattlesnake Creek Corridor
-  Mineral Intrusion Management Unit
-  Mystery River Drainage Area



Index Map



Kansas Department of Agriculture  
Division of Water Resources  
Subbasin Water Resources Management Program  
February 15, 1999

*House Environment  
3-4-99  
Attachment 8*

## RATTLESNAKE CREEK BASIN/QUIVIRA PARTNERSHIP AGREEMENT

### GOALS OF PARTNERSHIP:

To work in a cooperative manner to develop and implement solutions to water resources problems within the Rattlesnake Creek basin; to use a community involvement approach to address issues in the Rattlesnake Creek basin; to provide a line of communication between the Division of Water Resources, Subbasin Water Resources Management Program, Basin Management Team, the residents and water users located in the targeted Rattlesnake Creek basin.

### STATEMENT OF ISSUES:

Fluctuations in the aquifer levels in the Rattlesnake Creek Basin result in flows that are inadequate in some years or portions of some years to allow objective level management of Quivira National Wildlife Refuge. Groundwater withdrawals, especially during drought conditions, reduce surface water flows. Irrigation demands for water often coincide with the demands for water at the refuge. The Partnership members desire, through management of available supplies, to assure adequate water for all users, to sustain profitable agriculture and abundant wildlife and habitat and to insure an acceptable standard of living for basin residents.

### PARTNERS OBJECTIVES:

U.S. Fish and Wildlife Service - Assure adequate quality and quantity of water for the management of Quivira National Wildlife Refuge.

Division of Water Resources - Manage groundwater and surface water of Rattlesnake Creek Basin within the framework of the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq., enacted June 28, 1945 as subsequently ammended.

Big Bend Groundwater Management District No. 5 - Preserve and manage sustained yield of water for all users within the Rattlesnake Creek Basin.

Water Protection Association of Central Kansas - Manage and encourage the conservation of water within the Rattlesnake Creek Basin to meet the needs of irrigated agriculture and other water users in the basin.

### JOINT PRINCIPLES:

1. The partners are committed to a cooperative approach and to acknowledge the interests of all residents within the basin.
2. Water conservation shall be a guiding principle for all partners.
3. The partners are committed to joint planning efforts, to minimize duplication of work and maximize use of available resources.

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3-4-99  
Attachment 9*

4. The Partnership shall recognize the different obligations, duties, responsibilities and roles that each partner has outside the Partnership.

**PARTNERS' ROLES WITHIN THE PARTNERSHIP:**

1. Partnership meetings shall provide a forum for all partners to share any data, studies or information concerning the issues stated above. Each partner shall be committed to sharing with all other partners knowledge of planned or on-going studies, research, or investigations regarding any of the issues stated above.

2. The partners will develop action plans which are agreed upon by all partners in order to achieve the Partnership goals.

Acting

Deputy

*Robert D. ...*  
Regional Director  
U.S. Fish and Wildlife Service

6/23/94  
date

*Kevin R. Schuff*  
Pres., Board of Directors,  
Big Bend #5 Groundwater  
Management District

6-9-94  
date

*Kent L. Moore*  
Pres., Board of Directors,  
Water Protection Association  
of Central Kansas

6-6-94  
date

*David W. ...*  
Chief Engineer, Kansas  
Division of Water  
Resources

June 6, 1994  
date



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Mountain-Prairie Region

IN REPLY REFER TO:

BA/WTR  
MAILSTOP 60189

MAILING ADDRESS:  
Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80225-0486

STREET LOCATION:  
134 Union Blvd.  
Lakewood, Colorado 80228-1807

MAR 03 1999

David Pope, Chief Engineer  
Division of Water Resources  
901 S. Kansas Avenue  
Topeka, KS 66612

Richard Antonio, Executive Director  
Water Protection Association of  
Central Kansas  
306 N. Main St. #A  
St. John, KS 67576

John Janssen, President  
Big Bend Groundwater  
Management District #5  
P.O. Box 7  
Stafford, KS 67578

Dear Partners:

When the Fish and Wildlife Service signed the Quivira Partnership agreement in 1994, we were very optimistic that this cooperative process would lead to changes in water management in the Rattlesnake Creek basin that would benefit both agriculture and wildlife. The Service is encouraged by the progress that has been made and remains committed to the Partnership.

> However, recent meetings have left us concerned that some individuals no longer share that same commitment to the process or long-term goals.

We have emphasized in all of the Partnership meetings that existing base flows in Rattlesnake Creek are insufficient to meet the management needs of Quivira Refuge and generally are far less than the amount needed to satisfy the Refuge's senior water right. Studies by Kansas Geological Survey attributed the decline in base flows to groundwater pumping in excess of recharge. The adversarial Intensive Groundwater Use Control Area (IGUCA) proceedings for the Cheyenne Bottoms Wildlife Area convinced us that there had to be a better way to solve water problems and we enthusiastically accepted the invitation of WaterPACK to explore our options. I believe all of us would agree that the participants have learned a lot and made significant progress in the almost 5 years of the Partnership's existence.

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David Pope, Richard Antonio, John Janssen

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You are aware that the engineering study recently completed by Burns and McDonald of Kansas City eliminated a variety of structural and non-structural alternatives for increasing water management flexibility as not cost-effective; with the exception of drilling 15 wells to pump 25 cfs for 6 months ( total of 2,500 acre-feet) to augment Rattlesnake Creek flows. However, the Service cannot support drilling more wells in an overappropriated aquifer as a long-term solution to increasing the quantity and reliability of the Refuge water supply, nor as an alternative to restoring natural streamflow upstream of the Refuge. The draft basin management plan identifies actions which should result in decreased water use, recovery of aquifer levels and increased base flow. I reiterate the Service's commitment to this process and will make whatever efforts are needed on our part to reach a final agreement on a basin management plan.

We appreciate the support which the Partnership has provided to Quivira Refuge. You have all recognized that it is a very special place. It is a major stopover point for migratory birds traveling the Central flyway. It contains designated critical habitat for interior least terns and whooping cranes, both classified as endangered species under the Endangered Species Act. Other listed species which occur on the Refuge are piping plovers and peregrine falcons. Bald and golden eagles winter there from November until March. Several State-listed species also inhabit the Refuge. Of course, the Refuge provides substantial economic benefit to the local area. A 1997 study concluded that the total final demand associated with visitor spending was \$1,046,900 in fiscal year 1995 and the demand also generated 24 jobs (both full- and part-time). It is obviously important for a variety of reasons for Quivira to be able to fulfill its resource objectives.

As a unit of the National Wildlife Refuge System, Quivira is operated for the conservation, management and restoration of fish, wildlife and plant resources and their habitats for the benefit of present and future generations of Americans. In passing the National Wildlife Refuge System Improvement Act of 1997 (P.L. 105-57), Congress directed the Secretary of the Interior to "ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans" and "assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge." It is clear that the Secretary has an affirmative duty to use whatever means are needed to fulfill this Congressional directive. I should point out that this Act was supported by a broad, nonpartisan coalition which shared the concerns of many Americans that the preservation of wildlife in general, and of the Refuge system in particular, is an important national concern.

The Service is sincere in its support for a voluntary, creative and flexible process that reduces water consumption in a manner that is minimally disruptive to other water users. However, we have spent 5 years involving months of work and travel and significant expense to reach the point we are currently at. We need to be able to see continued progress and definite end dates for achieving the goals outlined in the draft management plan that we can report to our constituents and Fish and Wildlife Service management if we are to continue to participate in this process. We believe that the management plan must be finalized shortly so that it can be implemented

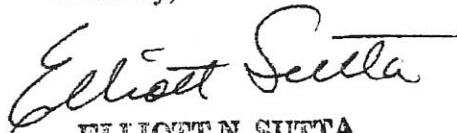


David Pope, Richard Antonio, John Janssen

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before the basin is challenged by the additional problems associated with drought conditions and we are forced to resort to alternative processes for protecting the rights of the Service and the goals and objectives of the Refuge.

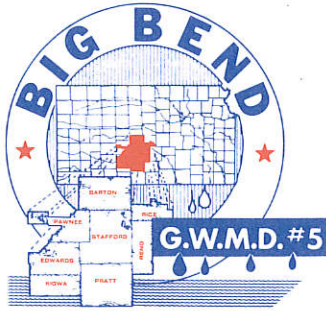
Sincerely,



**ELLIOTT N. SUTTA**

Regional Director

cc: Deb Zarta-Gier  
Kansas Division of Water Resources



# Big Bend Groundwater Management District No. 5

125 South Main • P.O. Box 7 • Stafford, Kansas 67578 • Phone 316-234-5352

BRIEFING  
TO THE HOUSE ENVIRONMENT COMMITTEE  
CONCERNING  
WATER RIGHTS PURCHASE AND WATER BANKING PROGRAMS  
BY  
SHARON FALK, MANAGER  
BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. FIVE

On behalf of the Board of Directors, Big Bend Groundwater Management District No. Five, I would like to thank Chairperson Lloyd and committee members for the opportunity to visit with you today about a very important program ongoing in Kansas.

The Groundwater Management District encompasses 2.5 million acres in all or part of eight counties located in south central Kansas and represents the water users in this area. The District conducts research and develops policy promoting the wise use of the resource.

The District, along with the Division of Water Resources, Water Pack, and the United States Fish and Wildlife Service, have formed a partnership to address water resource issues in the Rattlesnake Creek Basin. The Rattlesnake Creek Basin is located in the Groundwater Management District.

The Partnership has been working diligently for four years to develop a management program that is now being reviewed by the public. This program will require participation from all water users in the basin in respect to the conservation and efficient use of the water resources.

Two programs being considered in the Rattlesnake Creek Basin are the Water Rights Purchase Program and the Water Banking Proposal. They are part of a five program package designed to reduce water use.

Both of these programs are somewhat new to Kansas. The water banking concept was further developed by a special task force and should be considered by the legislature as a viable tool in the redistribution of water in sensitive areas. The Water Purchase program is currently in the statute books, but has never been explored as a method to remove water rights in water short areas. Both programs have the potential to ward off future conflicts concerning water issues.

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The District has made application with the State Conservation Commission to use the Purchase Program and have committed to the local funding portion of the program. Current guidelines of the Conservation Commission focus on hydrologic and environmental conditions to prioritize funding. The Rattlesnake Creek Basin meets the majority of those requirements.

We are the first group in the State of Kansas to seriously consider the Water Purchase Program. We believe the Rattlesnake Creek Project could serve as a pilot for the of rest of the State in the application of this program. In this situation, The State of Kansas, as a whole, will benefit from this program being implemented, due to the environmental rewards. Funding of this program may also be instrumental in eliminating further costs normally associated with resolving water right issues.

The District is committed to resolving the issues in the Rattlesnake Creek Basin and request this committee seriously consider an interim study to obtain important facts and information in the application and importance of the Water Rights Purchase and Water Banking Programs prior to full legislative review.

Thank you for the opportunity to visit with you today regarding this very important issue.



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Mountain-Prairie Region



*BA WTR  
KS30.00.10  
Mail Stop 60189*

MAILING ADDRESS:  
Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80225

STREET LOCATION:  
134 Union Blvd.  
Lakewood, Colorado 80228

Ms. Sharon Falk  
Groundwater Management District #5  
125 South Main  
P.O. Box 7  
Stafford, Kansas 67578

Dear Ms. Falk:

This letter transmits the U.S. Fish and Wildlife Service's support of the Water Rights Buyback and Water Banking components that will be included in the Rattlesnake Creek Management Proposal. The Service supports the efforts by the Quivira Partnership to develop a workable incentive-based program, and believes that with adequate funding and cooperation, this approach will help resolve the water supply problems of the basin.

The Water Rights Buyback and Water Banking programs are both necessary if the water reduction goals developed by the Partnership are to be met. The Water Banking program will enable water users to have flexibility in water use and management of their farming operations, while still providing a means for water conservation. The Water Buyback program will provide a means for permanently retiring water rights, and will be targeted toward areas where the greatest benefits will be received. The successful implementation of these programs will help ensure that administrative procedures will be unnecessary or minimal, so that disruption of the agricultural economy is avoided and the hydrologic health of the basin is maintained in a positive way.

Please give me a call if you have any questions at (303)236-5322, X232.

Sincerely,

Cheryl Williss, Chief  
Water Resources Division

Enclosure

cc: Refuge Manager, Quivira NWR

WATER RESOURCES  
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# SUMMARY OF THE TASK FORCE'S REPORT

ON

## WATER BANKING

by

Leland E. Rolfs

Staff Attorney

Kansas Department of Agriculture

March 4, 1999

Water Banking in Kansas was identified in 1995 by the Kansas Water Office and the Kansas Water Authority in the Kansas State Water Plan as a concept to be studied.

The State Water Plan identified the Kansas Department of Agriculture, Division of Water Resources (DWR) as the agency to begin the study.

As a result a Water Banking Task Force was formed in February of 1996, composed of members who represent municipal and agricultural interests, the Kansas Water Office (KWO), Groundwater Management Districts (GMD), Basin Advisory Committees, and Assurance Districts.

A "Water Bank" is envisioned by the Task Force to be a local, private, non-profit corporation with a charter approved by the Chief Engineer, DWR, that leases water from water rights which have been deposited and also facilitates sales of water rights.

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The purpose of a water bank is to provide water users, particularly those located in areas of the state where no new permits are available, to utilize the water bank to obtain the right to use water, while at the same time providing the incentive for, and achieving water conservation by, reducing the amount of net consumptive use of water in the area.

After numerous Task Force meetings, a draft Report of the Water Banking Task Force was completed in October of 1998.

The Task Force found that water banking can be a viable management tool which will allow water users several options not currently available, and that it will create an incentive for conservation, while putting water to its most economic and beneficial use.

It is recommended by the Task Force that up to five Pilot Water Banks should be allowed to form. These Pilot Banks will be allowed to operate for a period of up to seven years, after which time they will be evaluated to determine if they are achieving the goals and objectives of water banking as described in the State Water Plan which are: 1) utilizing water to achieve economic growth, and 2) promoting water conservation. The goals of water banking identified by the Task Force include: a) no increase in consumptive use, b) that the banks stay in balance, both financially and in terms of water, c) no impairment of other water rights, d) at least a 10% savings in water use, and e) that banks be practical and financially feasible.

The Task Force identified four main water bank functions.

1) Deposits of water into a water bank (Only viable water rights may be deposited. The maximum length of deposit will be 1 to 5 years for ground water. The bank sets the price paid for deposits. Depositing a right protects the right from abandonment during the term of deposit).

2) Leases of water from a water bank (Leased water must be used within bank boundaries. The bank decides if water is available to lease. DWR issues a term permit to allow the withdrawal of leased water and requires users to report annual water use on term permits.)

3) The establishment of personal safe deposit box accounts for water right holders to place a portion of unused water from their own water rights for subsequent personal use. (Only viable rights may be deposited. Only one right may be deposited in each safe deposit box. A negative interest rate of 10% or more per year will apply. Water will be used under a term permit. Deposits will be limited to face amount of water right. Net consumptive use can not go up.)

4) A bulletin board service to facilitate permanent sales of water rights.

Depositors will receive financial compensation for depositing water into a water bank. Those who lease water from the bank will pay the bank for the right to use water for the term of a lease agreement.

A portion of the water deposited into a water bank will be retained by the bank for the length of the

deposit to create a water conservation savings (a minimum of 10%).

Division of Water Resources' duties: enforcement of all water rights, review of proposed leases and deposits, and conducting an annual audit of the water banks.

Kansas Water Office duties: technical and financial assistance

In December 1998 the Report of the Water Banking Task Force was distributed to interested parties in Kansas. Since then there have been about 15 meetings held with GMD Boards, Basin Advisory Committees, Assurance Districts, and other interested groups to collect public input on the draft report. Public comments should be complete by early March 1999.

The Task Force hopes to finalize the Report in March 1999.

If a decision is made to implement the Task Force's recommendations, legislation will be necessary to create a Water Banking Act. The Task Force's goal is that draft legislation would be presented to the 2000 Legislature.

**REPORT OF THE WATER BANKING TASK FORCE**  
**October 1998**

**INTRODUCTION**

Water banking and its potential use in Kansas was identified in the 1995 State Water Plan as a concept to be studied. The State Water Plan describes water banking as a tool for meeting the goals of the State Water Resource Planning Act pertaining to the efficient, economic distribution of the water supplies of the state, and the protection of the public interest by conserving the water resources of the state in a technologically and economically feasible manner.

The Water Plan identified the Department of Agriculture, Division of Water Resources (DWR), as the appropriate agency to initiate work on water banking. As a result, DWR formed a Task Force composed of members who represent agricultural interests, municipalities, Water Assurance Districts, Groundwater Management Districts, and the Kansas Water Office. Staff from the Division of Water Resources provided support and coordination. This Task Force was formed in early 1996 to investigate, define and evaluate the concept of water banking in Kansas, and was comprised of the following members:

<u>Name</u>	<u>Representing</u>
Jerry Blain	City of Wichita, Lower Arkansas Basin Advisory Committee
Wayne Bossert	Groundwater Management Districts, Upper Republican Basin Advisory Committee
Roger Mohr	Walnut Creek Basin Association
Bill Roenbaugh	Water Protection Association of Central Kansas
Tom Stiles	Kansas Water Office
Kent Weatherby	Assurance Districts and the Kansas Lower Republican Basin Advisory Committee

Since the formation of the Task Force, the group has met on a regular basis. During this time, a great deal of information was reviewed, including materials from other states that have attempted water banking, both successfully and unsuccessfully. After great deliberation, the Task Force submits the following recommendation and report concerning water banking in Kansas.

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## RECOMMENDATION

Water banking can be a viable water management tool which will allow water users several options not currently available. The Task Force believes that water banking will create an incentive for conservation and will result in water being put to its most economic and beneficial use. Therefore, the Task Force recommends that up to five pilot water banks be chartered in the State of Kansas, with at least one of them being a surface water bank. These pilot banks will operate for five to seven years, at which time they will be evaluated for meeting the purpose of water banking as described below.

## PURPOSE OF WATER BANKING

The purpose of water banking is to provide water users, particularly those located in areas of the state which are over appropriated or closed to new appropriation, the opportunity to utilize functions of a water bank to obtain the right to use water, while at the same time creating an incentive for and achieving conservation by reducing the amount of net consumptive use of water.

## DEFINITIONS:

**“Bank Board”** means the governing body of a water bank.

**“Bank Boundary”** means the exclusive geographic area in which a water bank operates and conducts its water banking functions. A bank boundary may encompass one or more hydrologic units

**“Bank Charter”** means a document approved by the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, creating a water bank as a private non-profit corporation, and which sets forth the principal functions and organization of the water bank.

**“Bankable Portion of a Water Right”** means a part of a water right that is eligible for deposit in a water bank because of its past water use.

**“Bankable Water Right”** means a water right that has been determined to be in good standing based primarily upon past water usage, is past its perfection period, and is eligible for deposit in a water bank.

**"Bulletin Board"** means a service or function of a water bank where the bank acts as a facilitator to buyers and sellers of water rights and water allocations.

**"Conservation Element"** means the portion of a deposited bankable water right, or bankable portion of a water right, that is not allowed to be withdrawn and used by subsequent users, but, instead, is taken out of use for the duration of the deposit contract to achieve conservation of water in the area.

**"Deposit"** means to enroll a bankable water right, or portion of a water right, in a water bank under the terms and conditions agreed to by the depositor and the water bank.

**"Hydrologic Unit"** means the defined area of hydraulically connected sources of water supply.

**"Negative Interest"** means the rate of decline of the amount of water that remains in a safe deposit box account each year after it is deposited.

**"Net Consumptive Use"** means the portion of the authorized quantity of the water right which is actually used or consumed by the use made of the water and does not return to the local source of supply.

**"Pilot Bank"** means one of up to five originally chartered water banks that is allowed to operate in one or more hydrologic units which do not overlap with any other bank's boundary for five to seven years, and that is subsequently reviewed to determine if it is achieving the goals of water banking, as defined in the 1995 Kansas Water Plan.

**"Safe Deposit Box"** means a personal account held by an individual in a water bank where unused water from a water right owned by the individual can be deposited, a portion of which may be used in subsequent years, as authorized by the terms and conditions of a term permit issued by the Division of Water Resources.

**"Term Permit"** means a permit to appropriate water for beneficial use issued by the Chief Engineer, as defined in K.A.R. 5-1-1(jj), for a term equal to the length of a coinciding lease agreement.

**"Water Bank"** means a local, private, non-profit corporation with a charter approved by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that leases or sells water from water rights which have been deposited and facilitates sales of water rights through a bulletin board function.



**“Withdrawal”** means a potential water user enters in a lease agreement with a water bank to use water under the terms and for the duration of the lease.

## **ENABLING LEGISLATION**

From the beginning, the Task Force agreed that, in order to implement water banking in Kansas, a new and separate piece of legislation would be needed. The Task Force believes that enacting a Water Banking Act will help to keep the laws governing water rights in Kansas clear and non-conflicting. A draft of the water banking Act legislation will be presented separately from this report. The Water Banking Act will describe the method for incorporation, chartering and establishing the governing body of water banks in Kansas. The Act shall provide that the governing body of a water bank must reasonably represent important local interests in water, both public and private. Local water management entities, including groundwater management districts, assurance districts and basin advisory committees, must have the opportunity to be represented on the Board. It is anticipated that a proposed Water Banking Act will be presented to the 2000 Legislature.

## **EVALUATION OF WATER RIGHT BANKING**

The Task Force recommends that up to five pilot water banks, with at least one of them being a surface water bank, be chartered in Kansas, as provided by the Water Banking Act. These banks will be allowed to operate for a period of five to seven years. After that time, they will be reviewed to determine if they are achieving the goals of water banking, as described in the 1995 State Water Plan, and are subsequently re-chartered. Goals of particular importance include:

1. The operations of a pilot water bank will not result in an increase in consumptive water use within its boundary. (Surface water banking transactions involving stored assurance water may result in temporary increases in consumptive use.)
2. The aggregate amount of water rights deposited in Water Bank and the length of those deposits must be equal to, or exceed, the total amount of water leased, the length of those lease agreements and the water conservation element, so that the bank is not leasing water that has not been deposited.
3. The operation of a pilot water bank cannot result in impairment of existing water rights or an increase in depletion of severely depleted groundwater aquifers or stream courses.

4. A pilot water bank's policies and operations should result in a 10 percent, or greater, savings in the total amount of water which is consumed, based on the amount of bankable water deposited in the bank.
5. A pilot water bank should have enough participation from water right holders and water users to make it practical and financially feasible.

The five-to-seven-year review of the operations of pilot water banks to determine if they are achieving the goals and objectives of water banking shall be conducted by a team comprised of, but not limited to, the following:

1. The Kansas Water Office
2. The Division of Water Resources, Kansas Department of Agriculture
3. The governing body or board of the pilot water bank
4. Representatives from any Groundwater Management Districts that are located within the pilot bank's boundaries
5. Representatives from any Assurance Districts which are located within the pilot bank's boundaries
6. A representative group of water right holders and users who have been clientele to the pilot bank
7. A representative from the Water Banking Task Force most familiar with the operations of the pilot bank to be reviewed.

### **SPECIFIC BANK FUNCTIONS**

Water Banking will provide three main bank functions for water users. **First**, water banking will allow for deposits of water rights and leases of water. Water right holders can deposit all, or a portion, of their water right in a water bank in exchange for financial compensation. Other individuals who wish to use water, who may not have a water right, or may not have a sufficient right, can lease water from a water bank. **Second**, water banks will have a function that allows individuals to place an unused portion of a water right in a safe deposit box for subsequent use. **Third**, a water bank will act as a clearing house to facilitate the sale and purchase of water rights under existing policies and procedures.

**Deposits:** An individual may deposit a bankable water right, or a portion of a bankable water right, in a water bank for a term ranging from one to five years for groundwater, and a longer, yet reasonable, time for surface water. Longer term surface water deposits will be reviewed periodically to ensure that there is no negative impact upon the hydrologic unit(s) from which it was deposited. In return, the depositor will receive from the bank payment for the water deposited. The bank will establish the price which is given to depositors of water. Factors influencing the price depositors will receive include:

- current climatic conditions
- length of time of the deposit
- time of year when the deposit is made
- location of the authorized point of diversion of the water right which is deposited
- priority of a surface water right
- any other consideration made by the bank or the depositor

Before a water right, or a portion of a water right, is accepted for deposit, several steps and determinations must be made. These include:

- A determination of the validity of the water right will be made by the bank with the assistance of the Division of Water Resources based upon past water use. Each potential depositor must submit to the water bank an affidavit which includes: the file number of the water right to be deposited, the portion of the water right to be deposited, the proposed duration of the deposit, and the actual approved water usage under the authority of that right for the past five years.
- Any prospective depositor of water in a water bank will be required to sign an agreement drafted by the bank which details any additional limitations that will be placed upon the depositor's use of the water right(s) proposed for deposit.
- The governing body of the bank, with a solicited opinion from the Division of Water Resources, will then make a decision on the proposed deposit. The bank, in a timely manner, may deny the proposed deposit, accept the proposal, or make a counter offer to the depositor of less than the proposed amount.

- Deposits which are accepted will be financially compensated through a contract between the bank and the depositor. Single-year deposits will likely be given a one-time payment, while multiple-year deposits may involve periodic payments.
- Depositing a water right in a bank will be considered due and sufficient cause to prevent the water right from being abandoned during the time the water right is deposited in the bank.

**Leases:** Water rights which have been deposited in a water bank will be put in a holding account, from which quantities of water may then be leased. There are several steps and determinations which need to be made before the water can be leased.

- Prospective lessors must propose to use leased water within the boundaries of the water bank.
- An applicant to lease water will complete an application which will include: where the water is to be used, what the use of water will be, the amount of water desired, the location and method for the diversion of water, the rate at which water is diverted, and the proposed duration of the lease.
- The bank will then inventory its available water reserves to determine if water is available to lease to the applicant from that hydrologic unit. If it is determined that the bank has water available to lease, it will then notify the Division of Water Resources of the proposed lease agreement and indicate the amount of deposited water right(s) that are to be leased, and will forward a copy of the application for lease and the application for a term permit.
- The Division of Water Resources will review the proposed lease and the term permit application and make a decision of approval or denial. The bank will be notified by the Division of Water Resources if the proposed term permit could only be approved for an amount less than that requested. The term permit will be issued in the name of the applicant for the appropriate source of supply, quantity of water, rate of diversion, location of the point of diversion, place of use, and duration of the term permit authorizing the lease of water. Consideration of the duration of the term permit and the lease agreement will be as described for deposits.
- The Division of Water Resources requires an annual Water Use Report for all term permits.

Lease holders will report their use on the annual Water Use Report form for their term permit.

**Safe Deposit Box:** A safe deposit box is a water bank function that allows an individual to hold a personal account which is separate from the general accounting of deposited bankable water rights held in the bank. A water right holder can elect to place an unused bankable portion of his or her water right in their safe deposit box account and then use a portion of that water at a subsequent time when it is presumably more needed. Only water rights which are past their perfection period can be considered for this bank function. Before a water right holder may deposit water in, or use water from, a safe deposit box, several steps and determinations must be made:

- Only unused water from one water right may be deposited in each safe deposit box. Water cannot be accumulated in a single deposit box account from several water rights. Water that is authorized for use under a lease contract and a term permit cannot be deposited in a safe deposit box. Only water which was not used from the previous calendar year may be placed in a safe deposit box.
- Someone who wishes to place some of their unused water in a safe deposit box will complete an application with the water bank which will indicate how much water is to be put in the account and from which water right the deposit is being made. Each bank will establish in its charter the percentage of unused water from the previous year which may be placed into a safe deposit box. The amount of water that can be placed into a safe deposit box shall always be less than the unused portion from the previous year and cannot cause the net consumptive use under authority of that water right to increase.
- The application to deposit water will then be forwarded to the Division of Water Resources, where it will be either approved as proposed, denied, or an amount less than the amount requested may be recommended for deposit in the account.
- Water deposited in a safe deposit box will be subject to a negative interest rate of at least 10% for each calendar year it remains in the safe deposit box. Each bank's charter shall define this interest rate.
- When the holder of a safe deposit account wishes to use water from the account, an application for a term permit will be submitted to the bank. The bank will determine if the



safe deposit box has sufficient water to satisfy the proposed term permit, and if the same point(s) of diversion and place of use are proposed as authorized by the water right from which the water was deposited into the safe deposit box and, if so, will forward the application to the Division of Water Resources, who may issue a term permit that automatically terminates at the end of the calendar year.

- The water user will be responsible for indicating on the annual Water Use Report the amount of any water used from the water right's safe deposit account. Water Banks will track the water balances in individual safe deposit accounts.
- A safe deposit account cannot accumulate a total amount of water which exceeds the maximum annual quantity authorized to be diverted under the water right.
- Each water bank shall be responsible for demonstrating that their safe deposit account function will not result in an increase in the amount of net consumptive use in each hydrologic unit.

**Bulletin Board:** The third function of a water bank is that of a bulletin board by facilitating the purchase and sale of water rights. People who do not wish to deposit water rights, or lease water, or put water in a personal safe deposit account, can use the bank to locate a seller or a buyer for a water right. Customers who use this bank service will be subject to all bank policies, including a conservation element.

### **WATER BANKING OPERATION POLICIES**

In order to provide the banking services described above, and to ensure the state water plan goals of water banking are achieved, water banks, the Division of Water Resources, and the Kansas Water Office will recognize several established operation procedures and regulations. The policies of a water bank must be consistent and compatible with all existing Groundwater Management District Policies, any Intensive Groundwater Use Area's Orders, Assurance District Operations Plans, or any other such Findings, Orders or Policies of the Chief Engineer applicable within the bank's boundaries.

**Conservation Element:** Water Banks outside of IGUCA's or assurance water storage transactions

will have a minimum conservation element of 10 percent imposed on all water that is accepted for deposit, or which is leased or sold. Individual banks may establish conservation requirements that are greater than the minimum. For example, for a deposit of 100 acre-feet of bankable water rights, the water bank will only be able to lease 90 acre-feet of water. The banks will decide whether the depositor, the lessee, or both, incurs the 10 percent reduction in water available because of the conservation element and the corresponding economic implication.

**Bank Balance:** Water banks will maintain a balance between the amount of water right deposits and water leases both in terms of amount and length of deposits. For example, a bank could have one deposit of 500 acre-feet for one year. At the same time, it could have one two-year lease for 100 acre-feet and one three-year lease for 100 acre-feet. Banks will be given some degree of leeway, but their account balances should reside within 10 percent debts versus assets during the calendar year and balance, or be positive, at the end of each calendar year.

**Dissolving Banks:** A Pilot Bank which is not re-charted cannot receive additional deposits and will have a sunset period to allow all its current deposits and leases to run the course of their contracts, prior to final dissolution. This will keep depositors and lessees from incurring injury.

**Tracking Water and Water Rights:** Water Banks will be responsible for maintaining accurate accounting of the amount of water rights deposited and the water leased and the water deposited in a safe deposit. A yearly ledger will be submitted to the Division of Water Resources by each bank by March 1<sup>st</sup> of the following calendar year.

## THE DIVISION OF WATER RESOURCES

**Review of Proposed Deposits and Leases:** The Division of Water Resources will make timely decisions concerning the approval of deposits and leases, and the issuance of term permits. A decision concerning the deposit or the withdrawal of water from a safe deposit box account will be made within 15 working days.

**Enforcement:** A consistent, fair and equitable water use enforcement program on the part of the Division of Water Resources needs to be developed along with the water rights banking concept.

Together, enforcement and banking can improve accountability and water resources management in Kansas.

**Audit:** DWR will annually audit each bank. This audit will include a review of adherence with the bank's procedures, the Water Banking Act, and any rules and regulations. The audit shall also include a comparison of water deposited and water leased to ensure that the goals of water banking are being pursued and that the Water Banking Act is complied with.

### **THE KANSAS WATER OFFICE**

**Technical Assistance:** The Kansas Water Office may provide assistance to DWR to review proposed pilot banks to determine if a charter should be granted, will also assist in the ongoing review of pilot banks, and will assist with the final review of pilot banks to determine if they should be re-chartered.

**Financial Assistance:** The Kansas Water Office may provide financial backing for beginning pilot water banks through the State Water Fund.