

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 2, 2000 in Room 231-N of the Capitol.

All members were present except: Rep. Melvin Minor - excused
Rep. Henry Helgersen - excused

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Mary Torrence, Revisor of Statute's Office
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Richard Wenstrom, RR 1 Box 107, Kinsley, KS 67547
Roger K. Weatherby, KS River Water Assurance District #1,
129 E. 2nd St., P.O. Box 944, Tonganoxie, KS 66086-0944
Senator Tim Huelskamp
Bill Fuller, Associate Director, Public Policy Division, KS
Farm Bureau, 2627 KFB Plaza, Manhattan, KS 66505
Mike Beam, Kansas Livestock Association, 6031 SW 37th
Street, Topeka, KS 66614-5129
Ron Appletoft, Water District #1, Johnson County, 5930
Beverly, Mission, KS 66202
Margaret Fast, Kansas Water Office, 901 S. Kansas, Topeka,
KS 66612-1249
David Pope, Chief Engineer, Division Water Resources,
Kansas Dept. Agriculture, 109 SW 9th Street, 2nd Floor,
Topeka, KS 66612-1283

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She announced that a copy of Deer Related Accidents for Clay County, Kansas, had been distributed for committee members to review. This was submitted by Mark Germann of Clay County. (See attachment 1)

The Chairperson announced she is extending the time in which the sub-committee for deer issues can meet. They will give a report to the full committee when they are ready, however, there are time limits which need to be met.

Raney Gilliland, Legislative Research Department, distributed a Report of the Water Banking Task Force, and briefed the committee on the report. (See attachment 2) 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. Questions and discussion followed.

Chairperson Freeborn welcomed David Pope, Chief Engineer, Division Water Resources, Department of Agriculture, to the committee. Mr. Pope's testimony dealt with the water banking plan, whether it will meet its goals of providing water while still conserving resources, and the responsibilities and resources water

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banking would require of the Division of Water Resources. **SB388** would require KDA/DWR to take the following additional duties: (1) Establish rules and regulations. (2) Evaluate and approve each proposed bank charter. (3) Review the proposals to ensure the bank would actually save 10% or more in total groundwater consumed. (4) Review the boundaries of each proposed bank. (5) Issue Term Permits for leases, including terms and conditions of the agreements. (6) After five years, convene a review team to evaluate the operation of each bank that has been established in order to determine whether the Charter should be extended. The Chairperson had asked he address issues related to multiple hydrological areas. Section 2(a) allows a bank boundary to encompass more than one hydrological unit. Section 3 (b) (1) requires that any leased water be used within the bank boundary and in the same hydrological unit from which the water is deposited. Both of these provisions are needed. **SB388** deals with a complex issue which should require careful consideration. (See attachment 3) Questions and discussion followed.

Chairperson Freeborn opened public hearing on **SB388**.

SB388: An act enacting the Kansas water banking act.

The Chairperson welcomed Senator Tim Huelskamp to the committee. Senator Huelskamp, Chairman of the Sub-Committee on SB388, addressed the committee in support of the bill, which had been passed out of his committee. He stated there are two principle goals in the bill. One of those is conservation and the other is flexibility, in the usage of water. Water is a limited and valuable resource. He feels with this bill we are able to help conserve and retain some of that water. We are also able to create a better market for water which we are able to move around and get a better economic return on. He feels the Chief Engineer did an excellent job of describing some of the changes that were made to the bill, in the Senate, and feels they were pretty consistent with the recommendations made by the Task Force. The Task Force did indicate this really is an untried concept and that Kansas will be the first state to have this type of water banking available if this bill would go through. He mentioned he does understand the concerns from the Division regarding the fiscal note. (No written testimony)

Chairperson Freeborn pointed out that on the last page of the supplemental note, with the bill from the Senate, there is an explanation of the fiscal note. The Chief Engineer added there would be on going additional expenses that may not be indicated in the supplemental note. Questions for Senator Huelskamp and discussion followed.

Richard Wenstrom, Kinsley, Kansas, was welcomed to the committee. He appeared in support of the bill, on behalf of the 550 farmer-irrigator members of the Water Protection Association of Central Kansas (Water PACK). He believes water banking is a conservation tool through the Safe Deposit Box feature, coupled with the Conservation Element. Water banking is an incentive-driven concept, all transactions are voluntary, and the incentives are designed to attract participants. Water banking can be a tool for water management assistance in a hydrologic area with the boundaries of the water bank. A water bank is self-funded, a margin on all sales from the water bank provides operating capital to fund the bank. Included in his testimony was a text on water banking as listed in the Rattlesnake Creek Sub-basin Management Plan, an example of how the Safe Deposit Box can be used, and one showing an example of water rights deposits and leases out from a water bank. (See attachment 4)

Roger K. Weatherby, Attorney at law, member of the Water Rights Banking Task Force, was welcomed to the committee. He appeared in support of the bill as amended by the Senate. It was the goal of the task force to describe the creation of a market place where water rights and water could be marketed outside the current method established by existing bureaucratic programs. He believes the bill improves on the original submittal. If enacted it will provide a valuable tool in the management of the surface and ground water resources of the state. The Kansas River Water Assurance District plans to apply for a charter to operate a combination surface/ground water bank once this legislation is enacted. (See attachment 5)

Bill Fuller, Kansas Farm Bureau, was welcomed to the committee. He appeared on behalf of Kansas Farm Bureau and supports the concept of water banking. While their support can be based upon the water conservation component alone, they also recognize that water banking can be a viable water management tool

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that will allow water users several options not currently available. Kansas Farm Bureau has always insisted that a water right is a property right. Therefore, believe the holder of the water right has the right to place that water right in a water bank, or even sell that water right. While they support creating opportunities for the holders of water rights to participate in water banking, believe there are a number of issues that must be addressed and several questions that must be answered. (See attachment 6)

Mike Beam, Kansas Livestock Association, was welcomed to the committee. He appeared on behalf of KLA in support of the bill and believes a water bank will be most valuable in areas of the state that are over appropriated or closed to new appropriations. A bank will establish a network to match those who wish not to use their full annual appropriation with entities (irrigators, livestock operations, industrial users, municipalities, etc.) willing to lease their appropriation right. This added flexibility should cause a limited water resource to be put to the most economical use. The water-banking concept also imposes an added conservation incentive. Current water appropriation law and regulations encourage water users to pump their full appropriation to preserve their water right. The safety deposit accounts actually allow a water user to store unused water for future use. This option provides an incentive to store water for a subsequent year while assuring less overall water usage. (See attachment 7)

Ron Appletoft, Water District #1 of Johnson County, was welcomed to the committee. He appeared in opposition to the bill on behalf the Water District. This bill would enact the Kansas water banking act. He believes Water banking is a new concept with many unknown consequences. The Water District has therefore taken a cautious approach to the bill. The Water District took a neutral stand on the original language of the bill, however, some recent amendments cause them concern. It appears the language added to section 4 and the language removed from section 3 and 5 could have negative impact on the state water appropriation system. These amendments appear to be inconsistent with the task force report, which was the basis for this bill. The Water District therefore suggests that these amendments be reversed to clarify the intent of the bill. (See attachment 8)

Margaret Fast, Kansas Water Office, was welcomed to the committee. She appeared on behalf the Kansas Water Office and the Kansas Water Authority in a neutral position to the bill. The Kansas Water Authority has a significant interest in the concept of water banking, having approved a water right banking subsection of the Kansas Water Plan in 1995. The goal of the Kansas Water Plan related to water right banking is to achieve economic growth while protecting water resources through improved conservation and management practices. The Kansas Water Office tracked discussion of this bill through the Senate, but did not present testimony. Changes in the bill raise several issues which she discussed, conservation, seed money, and uncertainty. (See attachment 9) Questions and discussion followed.

Chairperson Freeborn closed the hearing on **SB388**. She appointed a sub-committee to discuss **SB388**. Members will include; Chairperson Freeborn, chair; Rep. Becky Hutchins; Rep. Tom Sloan; Rep. Vaughn Flora; and Rep. Dennis McKinney. The regular committee meeting is scheduled for Tuesday, March 7.

The meeting adjourned at 5:45 p.m. The next meeting is scheduled for Tuesday, March 7, 2000.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 2, 2000

NAME	REPRESENTING
Kent Weatherby	Kansas River Water Assurance District
Ron Appletoft	Water Dist. No 1 of Jo. Co.
Nina Atencio	John Bottenberg & Assoc.
Cynthia Smith	KCPPL
David C. Pope	KDA
Low Bruno	MGA
Leslie Kaufman	Ks Farm Bureau
Wendy Morris	KAAA
Craig Swartz	WRI
ROBERT LITTLE	DIV. WATER RES.
Larry Rosenow	Water Dist No. 1 Jo Co
Ken Peterson	KCS Petroleum Council
Charles Benjamin	KNRC / Sierra Club
Mike Begm	Ks LUSTK Assn.
Margaret Faust	Ks Water Office
Steve Maechtle	Water Pack
RICHARD WENSTROM	WATER PACK
Bill Fuller	Kansas Farm Bureau
Wendy Morris	KAAA

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 2000

NAME	REPRESENTING
Carole Jordan	KDA
Matt Bunker	Huck Kamp
Senator Huber	
Valerie Adams	GUEST RSNQ

**DEER RELATED ACCIDENTS
Clay County, Kansas**

January 1 - April 10, 1999.....27 Deer....22 Other

May 6 - November 24, 1999.....55 Deer....40 Other

November 24 - December 11, 1999.....48 Deer....12 Other

January 1 - February 18, 2000.....21 Deer.....5 Other

Total Accidents (14 Month Period).....151 Deer....79 Other

Submitted by Mark Germann of Clay County, Kansas

Handwritten signature: Mark Germann

*House Environment
3-2-00
ATTACHMENT 1*

REPORT OF THE WATER BANKING TASK FORCE
June 1999

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

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Attachment 2*

water banking, both successfully and unsuccessfully. After great deliberation, the Task Force submits the following recommendation and report concerning water banking in Kansas.

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.

"Bankable Water Right" means a water right that has been determined to be in good standing based primarily upon past water usage, and has been issued a certificate of appropriation.

"Bulletin Board" means a service or function of a water bank through which potential water

banking customers can obtain the current status of all the bank's specific services, including deposits, leases, and sales of water.

"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, and can also provide personal safe deposit box accounts.

"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 certified, bankable water right, or a portion of a certified, 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 rights. 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
- free market forces

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 primarily upon past water use. Additionally, each water bank will establish in its charter a method for determining the bankable portion of a water right. It is recommended that this method include consideration of the net consumptive use, the net irrigation requirement, and the regional average of water right usage. 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. Additionally, this agreement will describe a penalty for the unauthorized use of water which was deposited into a water bank.

- 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 either a contract between the bank and the depositor, or at the time a buy/sell or lease transaction is consummated. 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 for a term permit 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 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 certified 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.
- Unused water from a lease agreement can be placed into a safe deposit box for the corresponding term permit, but must be used within the time period authorized by the lease agreement
- 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: A third function of a water bank is that of a bulletin board service. People interested in utilizing the services offered by a water bank may determine the current status of water availability for leasing, current prices for deposits of water, or the availability of sales of water rights. Water Banks will provide this bulletin board at their place of business, and will undoubtedly have an internet site that will be easily accessed by the water using community.

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: All Water Banks 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. Water banks located in IGUCA's, or transactions influenced by assurance water storage will not be subject to a conservation element.

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 1st 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 charter, 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.

REPORT OF THE SURFACE WATER BANKING SUBCOMMITTEE

INTRODUCTION

The previous Report of the Water Banking Task Force deals almost exclusively with water banking as it relates to groundwater. It became apparent as the Task Force began meeting that the majority of discussion centered on groundwater, and that the Task Force was represented primarily by groundwater interests. Further, it was recognized that there are several elements in surface water banking that could differ substantially from the concepts and goals of water banking as described in the State Water Plan.

As a result, it was decided that a Surface Water Banking Subcommittee should be formed to address water banking issues that relate to surface water. It should be clear, however, that the majority of the Report of the Task Force applies to surface water banking as well, particularly the organizational and chartering procedures. This Report of the Surface Water Banking Subcommittee identifies the major differences between surface water banking and groundwater banking.

MAJOR DIFFERENCES IN SURFACE WATER BANKING

The major difference between surface water banking and groundwater banking lies in the inherent difference between the two sources of supply. Surface water can be seen, its supply can vary dramatically in a short period of time, and aside from water supply space in reservoirs, it can not be stored for future use. Groundwater, on the other hand, is almost exactly the opposite. The Surface Water Banking Subcommittee has identified seven (7) main differences in surface water banking. They are listed below:

1. The length of deposits and lease contracts
2. Deposit of traditional water rights and storage rights
3. The priority of a deposited water right is important
4. Approval of leases of surface water are conditioned to streamflow requirements
5. Conservation is not as important a goal
6. Net consumptive use could increase
7. The evaluation and criteria for pilot surface water banks

LENGTH OF DEPOSITS AND LEASES

With groundwater banking, the Task Force feels that it is appropriate to limit the length of the term of a deposit or lease agreement to a maximum of five (5) years. The rationale for that length of time is based primarily on avoiding a situation where impairment or unreasonable lowering of the water table occurs. Additionally, as noted earlier, the effects of groundwater pumping can not be readily seen and are much slower in occurrence, but are much more permanent.

Surface water deposits and lease agreements can be for a much longer duration, if they are reviewed periodically to ensure there is no negative impact. Since the effects of surface water pumping on the hydrologic system can be determined almost instantaneously, irreversible damage to the system or hydrologic unit can be avoided much more easily. These longer term lease contracts will be conditioned with minimum streamflow requirements being met before the use of water can be made under the authority of the term permit that accompanies any lease contract.

DEPOSIT OF WATER RIGHTS HELD BY ASSURANCE DISTRICT MEMBERS

Assurance Districts and the members of those districts have contracted for storage space in several Federal reservoirs in Kansas. (See definitions for explanation of terms used in this discussion) These municipal and industrial use members of Assurance Districts have their water rights satisfied by the water in storage when natural flow conditions are not sufficient. Each member pays for this stored assurance water based upon the amount of their water rights and the amount they actually use.

When an assurance district member stops using water, or if it substantially reduces the amount of water that it uses, that can have a serious impact on the ability of the district to meet its financial obligation for the purchased storage space. A surface water bank would be able to retain or deposit the water rights no longer being exercised, or that portion that has been eliminated from use, which were formerly held by a member of the District. The Assurance District would act as the depositor, and receive the financial compensation if the water is subsequently leased through the bank.

The length of the term of deposit or lease of water rights or portion of water rights formerly held by assurance district members could potentially run for the duration of the contract that the assurance districts have entered into with the State of Kansas and the Federal Government for the storage space. They should, however, be periodically evaluated for any negative impact on other users, or upon the river system as a whole. It is recommended that this review take place when the 5-year review of the Operations Agreement is being renegotiated.

PRIORITY OF WATER RIGHTS IS IMPORTANT

Unlike groundwater banking where water that is deposited into a water bank loses its identity and priority during the time of the deposit, the Surface Water Banking Subcommittee recommends that surface water rights that are deposited retain their priority. That way, potential parties who wish to lease water will find those deposited water rights more attractive because of the senior priority that they carry. The Subcommittee realizes that one of the complications with surface water banking and retention of priority is moving water rights upstream or downstream, and the impact that movement can have on other rights.

APPROVAL AND CONDITIONS OF LEASES

Surface water banking will be very similar to that which is described in the Report of the

Task Force in terms of review and approval of term permits to use leased water. However, the approval of surface water term permits for non-storage rights will be subject to applicable minimum streamflow requirements, and water reservation right priorities.

Term permits for water leased from a bank that was formerly a part of an assurance district will be conditioned as follows: Leases from assurance district water will be limited to diversion when natural flows are sufficient to meet the demands of all water rights downstream, when sufficient water is in assurance storage to meet the demands of the lease, or when assurance district water is being released from assurance district storage.

CONSERVATION IS NOT AS AN IMPORTANT A GOAL

Because of the inherent differences discussed briefly in the introduction, there are often times when conservation is not as critical a goal of surface water banking as that of groundwater banking. This is especially true when the surface water system is open to further appropriation. Conservation in river basins that are closed to appropriation should be a consideration, and provided for in the charter of any bank that operates in such a hydrologic unit.

INCREASE IN NET CONSUMPTIVE USE

Because surface water banking offers the opportunity for water that otherwise may not be put to beneficial use to be used, it is likely that at times the net consumptive use could increase. This is particularly possible when stored assurance district water that is not needed by the district is leased. As stated earlier, this lease of water will only be allowed when the hydrologic system can support it. An increase in consumptive use will never be allowed which would result in the impairment of prior rights, or have a negative impact on the river basin.

EVALUATION OF PILOT SURFACE WATER BANKS

The Subcommittee recommends that the criteria for evaluating the effectiveness of pilot water banks in achieving the goals of water banking are different than that of groundwater in three (3) major areas. First, conservation should not be a primary factor in determining the effectiveness of surface water banking. Secondly, net consumptive use can increase in surface water banking when hydrologically supported. And finally, the nature of surface water banking makes the degree of early participation by water users less important to warrant re-chartering of a surface water bank.

STATE OF KANSAS

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KANSAS DEPARTMENT OF AGRICULTURE

TESTIMONY BEFORE THE HOUSE COMMITTEE ON ENVIRONMENT
REGARDING SENATE BILL NO. 388

March 2, 2000

by

David L. Pope
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

Madam Chairperson and members of the Committee. Thank you for the opportunity to provide testimony regarding Senate Bill No. 388. My name is David L. Pope, and I appear on behalf of Secretary of Agriculture Jamie Clover Adams and myself as Chief Engineer of the Division of Water Resources.

As you have already been informed, Senate Bill No. 388 came out of a task force of individuals who were looking for another way to obtain water even in closed areas and still achieve conservation by ensuring that the net consumption does not increase. While it is the Chief Engineer's responsibility to manage and regulate water use in Kansas, we also acknowledge there is a desire to explore creative and more flexible usage of water by water right owners.

My testimony today will deal with the water banking plan, whether it will meet its goals of providing water while still conserving resources, and the responsibilities and resources water banking would require of the Division of Water Resources. Senate Bill No. 388 would require KDA/DWR to take on the following additional duties:

- establish rules and regulations.
- evaluate and approve each proposed bank charter.
- review the proposals to ensure the bank would actually save 10% or more in total groundwater consumed.
- review the boundaries of each proposed bank.
- issue Term Permits for leases, including terms and conditions of the agreements.
- After five years, convene a review team to evaluate the operation of each bank that has been established in order to determine whether the Charter should be extended.

*House Environment
3-2-00
Attachment 3*

Current laws regarding over pumping will need to be strictly enforced if this concept is to work. While we are currently beginning the implementation of an enhanced program to deal with blatant and re-occurring over pumping, both our staff resources and legal authority are limited. Currently, if a water user does not comply with administrative orders, we must rely on the courts for enforcement. This is a slow process. Furthermore, the Division of Water Resources will need to assess each current water right prior to the deposit to ensure it is currently in good standing, and has been historically used. Without these individual evaluations, there likely will be an increase in water consumption when they are leased and the conservation goal of the water banking concept will not be met. We also envision that the agency will need to provide a quick turnaround for the Term Permit applications if the leasing concept is to work effectively.

I want to emphasize that the administration of this act will be complex. The Charter, bank operations and our regulatory roles will all have to be carefully administered on a continual basis to balance the benefits of flexibility with the conservation goal to ensure that groundwater consumption is reduced by at least 10% and other water rights are not impaired.

Most water rights were granted to allow users to meet their maximum need during periods of heavy demand, such as dry weather, but with the caveat that the use would not impair more senior rights. Most water users do not use all of the water authorized every year for a variety of valid reasons. These may include the limited availability of water from the water source, physical limits of the diversion works, economic decisions and improved conservation and water use efficiency. Actual water use in any given area on an average year may be only one-half to three-fourths of the authorized amount. That is good from a conservation standpoint, and the operations of a water bank should not provide a mechanism to interfere with these existing practical conservation methods.

This means that developing provisions that allow water to be "banked" for future use will be a challenge, because there will be a tendency for water currently not being used to be put to use. The Senate Committee Amendment in Section 4(a)(2) will require the maximum authorized amount of the water right to be determined as the bankable portion of the water right. Consequently, to achieve the goal of reducing groundwater consumption by 10% or more, it will be necessary for substantially less water to be leased, than was deposited.

The Chairperson has asked that I address issues related to multiple hydrological areas. Section 2(a) allows a bank boundary to encompass more than one hydrological unit. Section 3 (b)(1) requires that any leased water be used within the bank boundary and in the same hydrological unit from which the water is deposited. Both of these provisions are needed. It is appropriate to limit where water can be leased, (i.e. withdrawn) so that the use of water does not come from a different source than the deposit, so it will not have a different hydrologic effect. This should prevent over use of a given source and help prevent the impairment of other water rights as a result of the transaction.

I do not necessarily see why a bank could not include more than one hydrological unit due to the practical need to cover a larger area to make the bank viable. However, the hydrologic units should probably be contiguous or have some general hydrological relationship.

I was also asked to address the issue of workload and impact of this proposal in relation to our other duties. As you can see from our fiscal note, we anticipate that in the first year an additional Environmental Scientist III would be needed to assist in the creation of these water banks. If there is interest in this concept and banks are formed, the following year, we would need an additional Environmental Scientist II and Office Assistant III. We currently do not have existing FTE's to perform these duties. While we have estimated the cost of salaries and travel associated with these individuals, we would be planning to utilize Section 4 which allows us to charge for the cost of performing some of these duties. We would plan to put our rate schedule in rules and regulations so that everyone is aware of our charges. Implementation of this proposal will require considerable time and effort, especially during the start-up phase.

Senate Bill No. 388 deals with a complex issue which should require careful consideration. I would be happy to answer any questions.

**Testimony Before the House Environment Committee – Senate Bill 388
Thursday, March 2, 2000**

Thank you for the opportunity to appear before this Committee today. I am Richard Wenstrom, and I am a farmer from south of Kinsley, Kansas. I am appearing on behalf of the 550 farmer-irrigator members of the Water Protection Association of Central Kansas (Water PACK).

Benefits of this water banking bill to hydrologic units within the state of Kansas, and specifically to us as irrigators would be:

- **Water Banking is a conservation tool.....through the Safe Deposit Box feature, coupled with the Conservation Element, water users have an incentive to reduce pumping and the conservation element assures that consumptive use won't increase on water deposited into the water bank.**
- **Water Banking is an incentive-driven concept.....all transactions are voluntary, and the incentives are designed to attract participants.**
- **Water Banking can be a tool for water management assistance in a hydrologic area within the boundaries of the water bank. Prices and conservation elements can be designed to target conservation in sensitive or high decline areas.**
- **A Water Bank is self-funded....a margin on all sales from the water bank provides operating capital to fund the bank. However, a new bank will need start-up funding to be used until profits from operations are available in sufficient quantity.**

I have included in testimony today three other pieces; one text on Water Banking as listed in the Rattlesnake Creek Subbasin Management Plan, one example of how the Safe Deposit Box can be used, and one showing an example of water rights deposits and leases out from a water bank.

**Richard Wenstrom (316) 659-3210
Water PACK Office (316) 549-3331**

*House Environment
3-2-00
Attachment 4*

Testimony Before the House Environment Committee – Senate Bill 388
Thursday, March 2, 2000

Example of How a Rattlesnake Creek Water Bank would Buy Water Right Deposits
& Lease these Deposits Out to other Water Users

Assume that a water user comes to the bank with a 200 AF water right to deposit, and the water right is in good standing. The bank offers \$ 25/AF for a one year lease and the right holder accepts. A contract to that effect is drawn and the bank pays the right holder \$ 5,000. Right holder may not pump from this well for one year.

Now the bank must account for the conservation element as per the charter for this particular bank. For the Rattlesnake Creek bank, the elements would be as follows:

Ave. water use factor of 72 % would be applied ($200 \text{ AF} \times .72 = 144 \text{ AF}$)

10 % conservation element applied ($200 \text{ AF} \times 10 \% = 20 \text{ AF}$)

Balance of water that could be leased out is therefore:

144 AF less the conservation component of $20 \text{ AF} = 124 \text{ AF}$

Now the bank has paid out \$ 5,000 and can only lease out 124 AF.

$\$ 5,000 / 124 \text{ AF} = \$ 40.32 / \text{AF}$

The bank must have some margin to be self-sufficient. Let's assume this would be \$10/AF for the bank. Therefore, total cost of this water to be leased out would be:

$124 \text{ AF} @ \$ 50.32 / \text{AF}$

This water would be available to any water user within the Rattlesnake Creek subbasin, for any type of use, for \$ 50.32/AF. Any user or users would have to file for a term permit to obtain all or a part of this water from the bank.

This is an example based on just one water right being deposited. We feel that quite often the bank will have demand for water at a certain price, and would then work this example backwards to see what could be offered for deposits. If the price is not acceptable to water right holders, the bank would have to renegotiate.

Suppose an irrigator comes in and needs just one more inch on his 128 acre center pivot field. This would be 128 Acre-inches, or 10.67 Acre-Feet. At \$ 50.32/Acre-foot, the irrigator could obtain this water from the bank for \$ 536.91.

Testimony Before the House Environment Committee – S.B. 388
Thursday, March 2, 2000

Safe Deposit Box Feature - (As would be used by Rattlesnake Creek Subbasin)

Assume a water right in good standing that has 195 Acre-Feet, or 18 inches applied on a 130 acre field

Assume that in a dry year the entire 18 inches is utilized

Upper limit for Safe Deposit Box = $18 \times .85 = 15.3$ inches

Suppose the water user, in a particular year, uses only 10 inches

The amount of water that could be put into the Safe Deposit Box is:

15.3 inches less 10.0 inches = 5.3 inches x factor of $.25$

1.32 inches of water could be placed into the Safe Deposit Box

Each year, 10% (0.13 inches the first year) would be taken out of the Safe Deposit Box.

At the end of the first year, if no water was utilized from the Safe Deposit Box, 1.19 inches of water would remain (1.32 less 0.13)

User would have to go through the Rattlesnake Creek Water Bank to utilize his Safe Deposit Box Water, and apply for the appropriate permits.

Testimony Before the House Environment Committee - Senate Bill 388
Thursday, March 2, 2000

My name is Richard Wenstrom, and I am a farmer from south of Kinsley, Kansas. I am appearing before you this afternoon, in support of Senate Bill 388, as a member of the Water Protection Association of Central Kansas (Water PACK). Water PACK is a private, non-profit corporation of agricultural producers and related agribusinesses organized to work on agricultural issues in south central Kansas. The area of the state that we are active in is a 13 county area bounded by the cities of Great Bend, McPherson, Wichita, Pratt, Greensburg, Kinsley, and Larned. Currently we have about 550 members.

Water Banking as described in this bill is very important to our members. Before I give you some examples, let me briefly describe to you the impact of irrigation in the area where our members live:

- 758,000 acres of irrigated production; 310,000 in irrigated corn
- \$ 280,000,000 in gross income from all irrigated crops each year
- \$ 367,800,000 in livestock production over and above crops
- \$ 160,000,000 in inputs for irrigated crop production purchased each year
- \$ 3.8 million in property taxes paid over and above what would be paid by dryland
- Enormous potential for value added industry in this stable production area.

The Rattlesnake Creek Subbasin, a 1,300 square mile area located wholly within the area served by our organization and within GMD # 5, has been the subject of study and planning for the last six years as a part of the Division of Water Resources Subbasin Management Program. This work has been conducted by a Partnership, consisting of Water PACK, Big Bend Groundwater Management District # 5, the Division of Water Resources, and the US Fish & Wildlife Service (Quivira National Wildlife Refuge). A management plan has been developed, and was approved by the Chief Engineer in early January. (This management plan will be made available to the Committee if you wish). The partners have developed this plan to ensure "adequate good quality water for all users, profitable agriculture, abundant wildlife and habitat, and an acceptable standard of living for all subbasin residents".

Water Banking is a vital part of this Rattlesnake Creek Subbasin Management Plan, "to provide incentive for water conservation and redistribution of water use within the subbasin". The plan makes specific recommendations, within the context of Senate Bill 388, about what should be contained in the charter for a water bank to be located in the general area.

Kansas State University, in a project at the request of Water PACK, has worked very hard the last several years to demonstrate water conservation techniques with irrigators in our 13 county area. The technology for water conservation is coming rapidly to the agricultural market, such as radio telemetry controls, use of climatic data from local

stations, irrigation scheduling using computers and the like. However, even with these demonstrations and technology, participation by area irrigators is still lagging. Water banking will give irrigators the incentive, through the safe deposit box feature, to conserve water each and every year from every well, in order to deposit unused water in their individual safe deposit boxes. Each irrigator realizes that the less water that is pumped, the more that can be deposited.

Finally, water banking will help solve the problems that value added industry face when coming into an area needing water, since these users could buy or lease water from the water bank instead of trying to induce farmers to sell water.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard J. Wenstrom". The signature is stylized with a large, sweeping flourish at the end.

Richard J. Wenstrom

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February 29, 2000

Chairperson Freeborn and Members of the Environment Committee:

I am appearing before you in two capacities, as a member of the Water Rights Banking Task Force, which drafted the report leading to the introduction of SB 388, and as the representative of The Kansas River Water Assurance District (KRWAD).

KRWAD supports SB 388 as amended by the Senate. It was the goal of the task force to describe the creation of a market place where water rights and water could be marketed outside the current method established by existing bureaucratic programs. We believe the bill before you improves on the original submittal. If enacted it will provide a valuable tool in the management of the surface and ground water resources of the state.

The market place created by this bill will be subject to regulation by the Division of Water Resources. However the balance between regulation and the market place is critical if this initiative is not to become simply another bureaucratic program. That would frustrate the original concept and likely result in the failure of any bank created. The key to the success of the initiative is in the process of issuing a charter from DWR and in the issuance of term permits with appropriate safeguards relating to transactions which the bank will broker.

For that reason it is the hope of KRWAD that the oversight provided by DWR would be limited to what is absolutely necessary for the blending of this market with the permits and certificates issued under the Prior Appropriation Doctrine. In this way a free market place can be established and the cost of administering the program within DWR can be kept to a minimum. This bill provides for the passing of DWR costs on to the participants in the market place and in that way the fiscal impacts to the State's budget can be nullified. We believe that passing those costs on to participants in the bank is an appropriate bank cost.

The Kansas River Water Assurance District plans to apply for a charter to operate a combination surface/ground water bank once this legislation enacted.

Sincerely,



House Environment
3-2-00
Attachment 5



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON THE ENVIRONMENT

RE: SB 388 – Enacting the Kansas Water Banking Act.

**March 2, 2000
Topeka, Kansas**

**Presented by:
Bill R. Fuller, Associate Director
Public Policy Division
Kansas Farm Bureau**

Chairperson Freeborn and members of the House Environment Committee, we certainly appreciate this opportunity to present this statement on behalf of the farm and ranch members of the 105 county Farm Bureaus in Kansas. My name is Bill Fuller. I serve as the Associate Director of the Public Policy Division for Kansas Farm Bureau.

For many years, the member-adopted policy of Kansas Farm Bureau has contained numerous provisions supporting and encouraging water conservation. We share with you a few examples that are contained in current Farm Bureau policy:

- *The State Water Plan should promote **conservation** of water by all users.*
- *The State Water Plan is a blueprint for planning, managing, **conserving** and utilizing the waters of the state.*
- *We support legislation that encourages groundwater **conservation** through conservation reserve incentives offered to landowners that convert to dry land farming and defer irrigation pumping during periods of commodity surplus.*

The report of the Water Banking Task Force suggests that water banking will create an incentive for conservation and the report further predicts that conservation will be achieved by reducing the net consumptive use of water.

Kansas Farm Bureau supports the concept of water banking. While our support can be based upon the water conservation component alone, we also recognize that water banking can be a viable water management tool that will allow water users several options not currently available.

*House Environment
3-2-00
Attachment 6*

Kansas Farm Bureau has always insisted that a water right is a property right. Therefore, we believe the holder of the water right has the right to place that water right in a water bank, or even sell that water right.

In anticipation of this issue being considered by the 2000 Session of the Kansas Legislature, the 442 farm and ranch delegates representing the 105 county Farm Bureaus debated and adopted water banking policy at the 81st Annual Meeting of Kansas Farm Bureau in Wichita, November 19-21, 1999:

"Any programs that purchase water rights or create water banks should be voluntary, provide financial incentives to landowners, contain a strong conservation component, protect the economic infrastructure of communities and preserve the property tax base for schools and local units of government".

While we support creating opportunities for the holders of water rights to participate in water banking, we believe there are a number of issues that must be addressed and several questions that must be answered. Examples include:

- Should more provisions concerning the organization of water banks be outlined in the legislation, rather than leaving so many details to be included in the charter?
- What entities will be authorized to develop water bank charters?
- If GMD's organize water banks, is the charter considered a policy of the GMD that needs to become a regulation under SB 287 that was approved by the 1999 legislature?
- Will water banks be subject to adequate public input and oversight?
- What are the assurances that all water right holders be fairly represented on water banks?
- If water banks are created for surface water, what are the implications to the current established minimum stream flow requirements and the stream flows that impact the TMDL's now being implemented in the state?
- If market forces determine the value of the leases for those wanting to obtain the right to use water, would not that make it extremely difficult for an irrigator to compete with a growing municipality or a large industry?

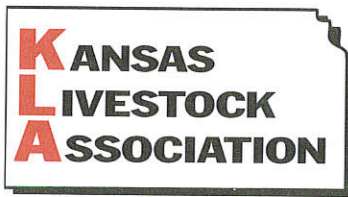
A subcommittee recommended and the full Senate Energy and Natural Resources Committee adopted numerous amendments to SB 388. We support the new language on page 3, lines 41-43 and continuing on page 4, line 1 that encourages conservation by not penalizing those who have been conserving water.

Another amendment on page 5, line 3 doubles the number of authorized water bank charters to 10. While we support the extensive involvement of the Chief Engineer in developing and administering water banks, we ask whether there are adequate resources to accomplish this significant task? With all of the unanswered questions at this time, it might be prudent to only authorize one pilot program. Those involved with the Rattlesnake Creek/Quivira Partnership seems to have developed the most thorough plan of action and possess the most comprehensive understanding of this complicated new water administration proposal.

There is no resource more important than water to all Kansans. For that reason we suggest it is appropriate to carefully study, examine and explore all aspects of this important water proposal.

We commend the Water Banking Task Force, Kansas Water Authority, Legislative Interim Committee and Senate Energy and Natural Resources Committee and Subcommittee in developing and advancing SB 388. We appreciate and support the aspects of the bill that provide for voluntary participation, an opportunity for financial incentives to landowners and the provisions that promote water conservation. We encourage passage of water banking legislation when the provisions of the amended bill are thoroughly examined, the many questions are satisfactorily answered and the impacts of the proposed legislation are fully understood.

Thank you!



Since 1894

To: House Environment Committee
Representative Joann Freeborn, Chairman

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

Subject: Testimony in support of **SB 388 – Kansas Water Banking Act**

Date: March 2, 2000

The Kansas Livestock Association (KLA) has adopted a policy position in support of enabling legislation to authorize “water banks” in Kansas. During our Water Committee deliberations it became clear that such a proposal is good for water users and a positive move for water conservation.

As the Water Banking Task Force has stated, a water bank will be most valuable in areas of the state that are over appropriated or closed to new appropriations. A bank will establish a network to match those who wish not to use their full annual appropriation with entities (irrigators, livestock operations, industrial users, municipalities, etc.) willing to lease their appropriation right. This added flexibility should cause a limited water resource to be put to the most economical use.

The water-banking concept also imposes an added conservation incentive. Current water appropriation law and regulations encourage water users to pump their full appropriation to preserve their water right. The safety deposit accounts (Section 3, subsection c) actually allow a water user to store unused water for future use. This option provides an incentive to store water for a subsequent year while assuring less overall water usage.

I realize there may be hesitation by some legislators and organizations with this proposal. It is a new approach to administering water use. It appears to me, however, there are several safeguards established in SB 388 that are worth mentioning. Sections 3 & 5 of the bill include provisions to:

- Protect existing water rights.
- Ensure there will not be an increase in depletion of water.
- State groundwater consumed will result in a savings of 10% or more in the area.
- Restrict the water usage to within the bank’s boundary and within the same hydrologic unit.
- Subject water usage to all the provisions of Kansas water appropriation laws and regulations.
- Limit the life of a bank’s charter to seven years (with provisions to extend).

In conclusion, we want to applaud the efforts of the Water Banking Task Force, Division of Water Resources, and Water Office. It is obvious these individuals and agencies have studied the issues for several years and are recommending a concept that injects flexibility for water usage *and* enhances water conservation. KLA respectfully asks this committee to give its favorable consideration to this legislation.

Thank you!

WATER DISTRICT No. 1 OF JOHNSON COUNTY



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Testimony Presented on Behalf of WATER DISTRICT NO. 1 OF JOHNSON COUNTY Regarding Senate Bill 388

Presented at the House Committee on Environment
On March 2, 2000
By Ron Appletoft, Governmental Affairs Coordinator

Water District No. 1 is a political subdivision organized as a regional water utility under K.S.A. 19-3501 et seq. to serve the suburban region in and around Johnson County. It is governed by a seven (7) member elected Board and operates as a quasi-municipal corporation. We currently serve over 330,000 consumers.

Senate Bill 388 would enact the Kansas water banking act. Water banking is a new concept with many unknown consequences. The Water District has therefore taken a cautious approach to this bill. The Water District took a neutral stand on the original language of this bill, however, some recent amendments cause us concern.

The 1995 State Water Plan identified water banking and its potential use in Kansas as a concept to be studied. In 1996, the Division of Water Resources formed a task force to study the concept of water banking. The report of that task force was the basis for creating SB 388. The basic conclusions were:

- that water banking can be a viable water management tool.
- that water banking should not result in an increase in the amount of net consumptive use.
- that water banking could also be a conservation tool.

These objectives were recognized in the original language of SB 388.

The Water District has particular concerns about the following amendments to the original bill.

- In section 3 (b)(2) and 3 (c)(6), language has been removed that would require leased water and water withdrawn from a safe deposit account to be subject to all provisions of the Kansas water appropriation act relating to: changes in the place of use, the point of diversion and the use made of water.
- In section 4 (a), language has been added that states "Determination of the portion of a water right that is bankable shall be based on the maximum annual quantity authorized to be diverted under the water right and shall not take into account actual prior use of less than that amount".
- In section 5 (8), language has been removed that prohibits operation of a bank that results in an increase in consumptive use of water within the boundary of the bank.

It appears the language added to section 4 and the language removed from section 3 and 5 could have negative impact on the state water appropriation system. These amendments appear to be inconsistent with the task force report, which was the basis for this bill. The Water District therefore suggests that these amendments be reversed to clarify the intent of the bill.

*House Environment
3-2-00
Attachment 8*

STATE OF KANSAS



Bill Graves, Governor

KANSAS WATER OFFICE
Al LeDoux
Director

901 S. Kansas Ave.
Topeka, Kansas 66612-1249

**TESTIMONY TO
HOUSE ENVIRONMENT COMMITTEE
ON SENATE BILL 388**

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

Thursday, March 2, 2000

**By Margaret Fast, Unit Manager
Kansas Water Office**

I am testifying on behalf of the Kansas Water Office and the Kansas Water Authority. The Kansas Water Authority has a significant interest in the concept of water banking, having approved a water right banking subsection of the *Kansas Water Plan* in 1995. The goal of the *Kansas Water Plan* related to water right banking is to achieve economic growth while protecting water resources through improved conservation and management practices.

The Kansas Water Office tracked discussion of this bill through the Senate, but did not present testimony. Changes in SB 388 raise several issues we want to address. Our comments will focus on 3 areas: 1) conservation; 2) seed money; 3) uncertainty.

Conservation

Conservation is the most important goal of water right banking as envisioned in the *Kansas Water Plan*. Senate Bill 388 defines a bankable right based on the maximum annual quantity authorized. We understand the language was changed because of a perception the bill should not penalize a right holder who has been conserving. The charter must ensure that operations will result in a savings of 10% or more of the total amount of groundwater consumed. Kent Lamb, chairman of the Kansas Water Authority (who lives in the Rattlesnake Basin) suggests that bank determine a use figure based on a 10 year time period. He suggests the 10-year period of 1987-1996 would show an average use of 72% of the rights. This figure, minus 10% for conservation, would dictate what the bank can lease. That time period for the Rattlesnake area represents a time when the majority of rights were being metered, the acceleration of installation of conservation measures had not yet occurred, and the period covers episodes of high and low precipitation.

Seed Money

The bill does not address the need for or source of money to initiate the banks. The Kansas Water Office has been approached by supporters of the concept about the use of State Water Plan funds for seed money. Though we expressed concern about demand on an already heavily used source of funding, we agreed to work with them to identify alternative sources. The legislature should be aware that seed money could be a significant up front expense of this legislation.

*House Environment
3-2-00
Attachment 9*

Uncertainty

Senate Bill 388 is an experiment, no one knows if this concept will really work. House Substitute for Senate Bill 287, 1999 session, assigned to the Kansas Water Authority five issues to report on by January 8, 2001. One of those topics is "competing water needs." To address one aspect of this topic, the Kansas Water Office is studying the impact of the concept of water banking and water right purchase. Since the legislature mandated this study, it may want to delay implementation of water banking until the study is complete.

Finally, Senate Bill 388 provide for the establishment of pilot banks. The Senate raised the number from 5 to 10. If we don't know if this concept will work, why increase the number?

I thank you for the opportunity to present these thoughts and I will stand for questions.