

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:04 a.m. on January 19, 2000 in Room 254-E of the Capitol.

All members were present except: Senators Pugh and Tyson are were excused.

Committee staff present:

Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Jerry Blain, Chairperson, The Water Banking Task Force
Richard Wenstrom, Water Pak, Kinsley, KS.
Kent Weatherby, Kansas River Water Assurance District
Sharon Falk, Manager, GWMD #5, Stafford, KS

Others attending:

See attached list.

SB 388 - Enacting the Kansas Water Banking Act.

Chairperson Corbin opened the hearing on the bill and called on Jerry Blain to review the findings of the Water Banking Task Force.

Jerry Blain said the Water Rights Banking was identified in 1995 in the State Water Plan as a potential tool to reduce water consumption. The Water Banking Task Force began meeting in 1996. The Task Force had representatives from all of the major water user groups in the state. Their mission was to review the concept of water banking, and to develop a water banking plan that would work in Kansas. The Task Force Report was accepted by the Kansas Water Authority, who recommended that Water Banking legislation be submitted to the legislature. At the bottom of page 2 and the top of page 3 of his testimony he list five sections of the bill were some of the wording needed clarifying. Also included with his testimony is a copy of the Water Banking Task Force Report (Attachment 1). Mr. Blain responded to questions regarding deposits and withdrawal of water from the water banks.

Richard Wenstrom, farmer from Kinsley, KS., supported the bill. He thought that water banking would be an incentive for farmers who irrigate to conserve water and deposit the unused portion in their individual safety deposit boxes (Attachment 2). He said a water management plan for the Rattlesnake Creek Subbasin had been approved by David Pope and water banking is a vital part of the plan. The management plan could be made available to the committee if they wished. Water banking is designed to provide an incentive for each irrigator to conserve water. Replying to a question, Mr. Wenstrom said the main idea of water banking is to have less water consumed and the charters for the water banks should take this into consideration.

Kent Weatherby, Kansas River Water Assurance District, supported the bill. He served as a member of the task force. He said as a member of that task force he believes if this legislation is enacted it would provide a valuable tool in the management of the surface and ground water resources of the state. Also, if enacted the Kansas River Water Assurance District plans to apply for a charter to operate a bank (Attachment 3).

Sharon Falk, GMD#5, Stafford, KS. supported the bill as water users in their basin want to use the process, because they believe it would conserve water, provided flexibility and allow for movement of water within the district. She passed a map around for committee members to see were the Rattlesnake Creek Subbasin was located. No written testimony was provided. Chairperson Corbin ask her to provide written testimony for the record and she agreed to do so at a later date. Also, a copy of the Big Bend GWMD#5 newsletter was distributed to committee members, it is on file on Legislative Research.

The hearing was continued until the next meeting which will be January 20th. The meeting adjourned at 8:55 a.m.

SENATE ENERGY & NATURAL RESOURCES
 COMMITTEE GUEST LIST

Please Sign in
 Black Ink

DATE: 1-19-2000

NAME	REPRESENTING
Jerry Blain	City of Wichita
Kent Weatherby	Kansas River Water Assn Dist.
Chris Pulist	SELF FARMER
Margaret East	KWO
Sharon Falk	GMD #5
Al LeDoux	KWO
Leslie Kaufman	Ks Farm Bureau
Mary Jane Stattelman	KFA
Kenn Elbert	Kansas Dairy Association
Tom Bruno	Allen & Assoc.
Bill Fuller	Kansas Farm Bureau
D.J. Slight	Gaming Office
Don Abraham	Western Resources
Wagner Wagner Kitchen	Western Resources
John F. Rwin	"
Woody Maus	Ks. Aggregate Producers Assn
Brenda Smith	KFB
Jon McVie	Water PACK
Danell Wood	Water Pack

Testimony on Water Banking Legislation
Senate Bill No. 388

Jerry Blain, Superintendent of Water Production, City of Wichita
Water Banking Task Force Member

Water Rights Banking was identified in 1995 in the State Water Plan as a potential tool to reduce water consumption. The Water Banking Task Force began meeting in 1996. The Task Force had representatives from all of the major water user groups in the state, including agricultural users, municipal users, Groundwater Management Districts, Assurance Districts, Water PACK, and groundwater control areas. The mission of the Task Force was to review the concept of water banking, and to develop a water banking plan that would work in Kansas.

The task force completed its report in June of 1999, and that report describes the fundamentals of water banking and the opportunities that it could offer water users, as well as how water banks can be used to optimize water usage in Kansas. After a draft of the report had been completed, presentations on water banking were made at numerous water related meetings and conferences around the state, including Basin Advisory Meetings, Groundwater Management District Board Meetings, Assurance District Meetings, and several others held by special interest groups. We found a strong majority of support for allowing pilot water banks to operate in Kansas. The Task Force Report was accepted by the Kansas Water Authority, who recommended that Water Banking legislation be submitted to the legislature.

Water Banks will not be the answer to all of the problems that have created by the over appropriation of water in Kansas. However, it can be an effective tool to help decrease water use in areas that are over appropriated, and to let water be used by those who can get the most benefit from its use.

The functions of a water bank would be to accept deposits of water rights, lease out water from those deposits, and to allow "Safe Deposit Boxes" for individual water rights.

Only viable water rights, or portions of water rights, can be deposited in the bank. The bank would only want water rights that are actually being used to be deposited. The Bank would then withhold a portion of the groundwater right as a conservation component. That would be at least 10% of the deposited water right.

The Bank would then lease water back to other users. The advantage of water banking over the existing system is that it would allow a lot more flexibility than the current appropriations system allows. Market forces would determine the value of the leases. Therefore, in dry years the value of water would obviously be much higher than in wet years.

Some examples of users that may want to lease water would be:

1. An irrigator who has used up their full water appropriation, but needs more water to have a successful crop. They would be able to go to their water bank, and for a cost, acquire more water.
2. An industry or a municipality that needs more water, but all of the water rights in the area have been appropriated. Through the water bank they will be able, at a cost, to acquire water to meet their needs.
3. An irrigator who may want to plant a crop that requires more water than his water right would allow him to grow. Through the water bank he would be able to assure that he will be able to

grow his crop of choice.

However, to be able to lease water, banks must first be able to have water rights deposited. That will occur because of the payments received by those depositing the water rights. Those payments will encourage those who use water less efficiently to deposit their water rights into the bank, and then allow those who can get more value from that water to use that water.

However the bank's charter will have to assure that when water is leased that it meets several criteria, including:

1. There will be a net decrease in water usage from the aquifer
2. It cannot impair other water users.
3. It still meets the requirements a Groundwater Management District if the lease is in a district.

The Safe Deposit Box works a little differently than deposits and leases. With a safe deposit box a water user can have multiyear management of their water right. If they are able to conserve water, they can deposit a portion of the water that they saved into a safe deposit account, and then have the ability to use some of that water in a future year. Current water law does not allow this type of water management for individual water rights.

The Bank Charter for each water bank will be different, but the Charter will be the form to describe the goals of the bank and how the bank plans to manage its transactions to assure that those goals are met.

The Task Force has recommended that up to five pilot banks be created, and at least one of them should be a surface water bank. Managing a surface water source is different than managing a groundwater source, but a water bank can still serve many purposes for surface water. The Task Force recommends that the pilot banks be operated for up to five years and then at the end of that period that a committee be formed to review the function of the bank, and determine if it should continue in operation.

A key component in the success of water banks will be the strict enforcement of water allocations. If a water user can over pump their water right, and not suffer any consequences, there is no need to participate in a water bank, so the Division of Water Resources will have to have a role in monitoring and enforcing water usage.

I believe that the Senate Bill 388 meets most of the needs to establish water banks in Kansas. However I would offer the following changes to wording in the bill:

- X Section 1, (h), a hydrologic unit should be defined as an area of hydrologically connected sources, not hydraulically connected sources

Section 3, (b) 1 states that the lease must be used within the bank boundary. I think that should be written so that the point of diversion needs to be within the bank boundary, but the actual place of use does not have to be within the bank boundary. As an example, the City of Wichita has many water supply wells in the Equus Beds, but the city itself is not located in the Equus Beds.

Section 3, (b) 2 and 4 state that all leases must be subject to all of the provisions of the Kansas Water Appropriations Act and all rules and regulations of the Chief Engineer. The reason that this bill is needed is because those laws and regulations will not permit the flexibility to do the things

that water banks want to do. Those sections should be re-written so that the portions of the law and regulations that are truly needed to let the water banks function properly are included, but those that would preclude the operation of the banks are overridden by this legislation.

Section 3 (c) 6, should be written so that any water used from a safety deposit account must be used under the same restrictions for place of use, use made of, and point of diversion as the original water right.

Section 5, (c) should be written to acknowledge that only pilot banks will be allowed at this time, and that the review method described in Section 6 should be for the pilot banks.

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

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.

Kent Lamb, Chairman
Kansas Water Authority
109 SW 9th Street
Suite 300
Topeka, KS 66612

RE: Report of the Water Banking
Task Force

Dear Mr. Lamb:

Enclosed you will find the Report of the Water Banking Task Force, which addresses the potential for water banking in Kansas. You will notice that an additional report of the Surface Water Subcommittee has been prepared which addresses issues specific to surface water.

The Task Force tried to keep the focus of the Report on the fundamentals of water banking and the opportunities that it could offer water users, as well as its resource management possibilities.

Presentations on water banking were made at numerous water related meetings and conferences around the state, including Basin Advisory Meetings, Groundwater Management District Board Meetings, Assurance District Meetings, and several others held by special interest groups. We found a strong majority of support for allowing pilot water banks to operate in Kansas.

The Task Force recommends that legislation be proposed which would create a Water Banking Act. The Act would define the procedure for a water bank becoming an incorporated entity, as well as the chartering process for a water bank to become a chartered organization. An individual bank's application for a charter will explain in detail the organization and operational policies of the water bank.

The Task Force further suggests that the legislation be drafted by legal staff in the Department of Agriculture most familiar with water rights and water banking, along with support from staff of the Division of Water Resources.

The Task Force would like to emphasize that it is recommending water banking only on a trial basis. That is why only "pilot water banks" are to operate for a period not to exceed seven years. At that time they would be reviewed to make sure that the goals of water banking are being achieved before they continue to operate.

Thank you for your consideration of this potential water resource management practice. We hope that you will find the Report relatively easy to understand. If you have any questions, please feel free to contact any member of the Task Force, or Bob Lytle of the Division of Water Resources.

Sincerely,

Jerry Blain, City of Wichita
Lower Arkansas Basin Committee

Bill Roenbaugh, Water Protection
Association of Central Kansas

Wayne Bossert
Groundwater Management Districts

Kent Weatherby, Assurance Districts
Kansas Lower Republican Basin Committee

Clark Duffy
Kansas Water Office

Roger Mohr
Walnut Creek Basin Association

RFL:pac
Enclosure
pc: Water Authority Members

Testimony Before the Senate Energy & Natural Resources Committee - Senate Bill 388
Wednesday, January 19, 2000

My name is Richard Wenstrom, and I am a farmer from south of Kinsley, Kansas. I am appearing before you this morning, 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 just last week. (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

Senate Energy & Natural Resources

Attachment: 2

Date: 1-19-2000

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 that extends to the right and then loops back down.

Richard J. Wenstrom

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January 18, 2000

Senator David Corbin, Chairman
And Members of the Energy and
Natural Resources 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.

We support SB 388. It is an accurate reflection of the recommendations of the task force. If enacted we believe it will provide a valuable tool in the management of the surface and ground water resources of the state.

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 bureaucratic programs. We believe we accomplished that goal. Of course, this market place will be subject to regulation by the Division of Water Resources. It is the hope of The Kansas River Water Assurance District that the oversight provided by DWR would be kept 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. The bill provides for the passing of DWR costs on to the participants in the market place. That is where such costs belong.

The Kansas River Water Assurance District plans to apply for a charter to operate a bank once this legislation enacted.

Once again, I wish to state that we support passage of this bill.

Sincerely,



Senate Energy & Natural Resources

Attachment: 3

Date: 1-19-2000