

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:09 a.m. on January 20, 2000 in 245-N of the Capitol.

All members were present except: Senators: Pugh, Tyson and Vratil who 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:

Doug Wareham, Kansas Fertilizer and Chemical Association and Kansas Grain and Feed Association
Mary Jane Stattelman, Department of Agriculture
Mike Beam, Kansas Livestock Association
Bill Fuller, Kansas Farm Bureau
Charles Benjamin, Kansas Natural Resource Council and Sierra Club-Kansas Chapter

Others attending:

See attached list.

Chairperson Corbin called on Doug Wareham to explain a request for a bill introduction. The bill would set up an agricultural and specialty chemical remediation and response program to provide financial and technical assistance to agribusiness entities who choose to voluntarily address contaminated sites or are forced by EPA or KDHE to investigate or remediate a particular site (Attachment 1). Senator Morris moved to accept the conceptual request and the bill be drafted and introduced. The motion was seconded by Senator Biggs. Motion carried.

The minutes of January 10 and 13 were presented for approval. Senator Stephens moved the minutes be adopted. Senator Huelskamp seconded, and the motion carried.

SB -388 - Enacting the Kansas Water Banking Act

The hearing was continued. Chairperson Corbin announced that a fiscal note had been distributed. Mary Jane Stattelman was called on to represent the Department of Agriculture.

Ms. Stattelman said the department was testifying from a neutral position. She said it is the belief of the department that if the legislation is passed the process should proceed with caution. Her testimony listed the additional duties that would be required of KDA if the legislation is passed. In closing, she stated that caution will need to be taken to insure that consumption is not increased and that no ones water rights are impaired (Attachment 2). Other staff from the Department of Agriculture in attendance were: Tom Huntsinger, Mark Rude, and Bob Lytle. Mr. Huntsinger responded to several questions regarding consumptive use and historical use.

Mike Beam, Kansas Livestock Association, supported the bill. Since the issue has had considerable study by the Water Banking Task Force, Division of Water Resources, and the Water Office, it is the opinion of their association that the concept would inject flexibility for water usage and enhances water conservation. Therefore, their association respectfully asks the committee to give it favorable consideration (Attachment 3). Mr. Beam responded to questions on water conservation.

Bill Fuller, Kansas Farm Bureau, supported the opportunity for the holder of water rights to participate in water banking. However, they believe there are a number of issues that must be addressed and several questions that must be answered, and those questions appear on page 2 and 3 of his testimony (Attachment 4).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

Charles Benjamin, Executive Director, Kansas Natural Resource Council and Kansas Sierra Club, supported the bill with some friendly suggestions being adopted. These amendments are included in his testimony, and he suggested the most important one was on Page 1, Line 31, Section 2(i) of the bill the term "unused water" is inaccurate. He suggested the following amendment: Substitute "unused portion of an authorized annual quantity from a bankable water right" (Attachment 5).

The hearing was closed.

Chairperson Corbin announced the agenda for next week. He reminded the committee that starting with the next meeting on January 25th we would be meeting in room 245-N. The meeting adjourned at 8:47 a.m.

SENATE ENERGY & NATURAL RESOURCES
COMMITTEE GUEST LIST

Please Sign in
Black Ink

DATE: JAN. 20, ²⁰⁰⁰~~1999~~

NAME	REPRESENTING
CORA Schlotzer	KS LEAG. OF WOMEN VOTERS
Jennifer Honas	Steve Montgomery
Tom Tunnel	KANS GRAIN & FEED - FERT & CHEM ASSN
Joe Lieber	KS Co-op Council
Margaret Fast	KS Water office
Sharon Falk	GMD #5
STEVEN FROST	SW KS GMD
ROBERT LITTLE	DWR
EDWARD ROWE	LEAGUE OF WOMEN VOTERS/KS
Leslie Kautman	KFB
STEE KEARNEY	SW KS IRRIGATORS
Tom Bruno	Allen & Assoc
Kent Weatherby	Kansas River Water Assur Dist.
Nam Feltman	Western Resources
John Irwin	Western Resources
John C. Bottenbee	Western Resource
Mark E. Rusk	KISA DWR, GARDEN CITY
Thomas L. Huntzinger	Ks Dept of Ag, Div of Water Res.
E. R. "Reddy" Moses	Ks. Agg Prod. Assn

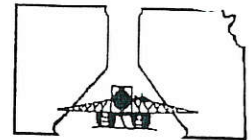
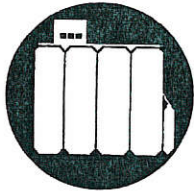
SENATE ENERGY & NATURAL RESOURCES
COMMITTEE GUEST LIST

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DATE: JAN 20, 2000

NAME	REPRESENTING
Al LeDoux	KWO & KWA
Bill Fuller	Kansas Farm Bureau
Dag Wareham	Ks. Grain & Feed Assn / Ks. Fert & Chem Assn.
Morton Hawver	Hawver's Capitol Report
Charles Benjamin	

Doug Wareham



BILL INTRODUCTION REQUEST
FOR THE

AGRICULTURAL AND SPECIALTY CHEMICAL REMEDIATION
AND RESPONSE PROGRAM

**An agribusiness industry supported remediation
fund/program to provide financial and technical assistance to
agribusiness entities who choose to voluntarily address contaminated sites
or are forced by EPA or KDHE to investigate or
remediate a particular site.**

PRESENTED TO THE

SENATE ENERGY & NATURAL RESOURCES
COMMITTEE

SENATOR DAVID CORBIN, CHAIR

JANUARY 20, 2000

KGFA & KFCA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTREGAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 – 785-234-0461 - 1

Senate Energy & Natural Resources

Attachment: 1

Date: 1-20-2000 1-1

Agricultural and Specialty Chemical Remediation and Response Program

Why is a program needed?

- During the past two years alone, 24 agribusiness related sites have been enrolled in KDHE's Voluntary Cleanup and Property Redevelopment Program. An additional 32 ag sites are currently enrolled in the KDHE's State Cooperative Program. KDHE Officials have indicated the number of agricultural sites that will require remediation is expected to grow as KDHE investigations of public and private wells across the state continue.
- EPA has indicated that some commercial grain storage facilities must voluntarily investigate their sites for soil or groundwater contamination from carbon tetrachloride or those facilities will be investigated by EPA's Superfund Investigation Team. These investigations, voluntary or otherwise, could lead to costly remediation.

How will the program be funded?

- Pesticide Registration – Increasing the Pesticide Registration Fee from \$130 to \$190 (\$60 increase) would generate an additional \$441,840 based on the 7,364 pesticide products (not including disinfectants) currently registered with the Kansas Department of Agriculture.
- Commercial Grain Assessment - A \$.0005 per bushel assessment on commercially licensed grain storage facilities would generate \$430,000 annually based on the currently level of 860 million bushels of licensed storage capacity in Kansas. This assessment shall be collected annually from licensed grain warehouses by KDA. Assessment collection shall take place on state licensed facilities at the normal time of license renewal and on federally licensed facilities on August 31st.
- Pesticide Dealer Registration – An increase in the Pesticide Dealer Registration fee from \$20 to \$100 (\$80 increase) would generate an additional \$140,000 in revenue based on the 1750 pesticide dealers currently registered by the Kansas Department of Agriculture.
- Fertilizer Product Registration Fees – An increase in the Fertilizer Product Registration Fee from \$5 to \$25 (\$20 increase) would generate \$71,900 based on 3,595 products currently registered with Kansas Department of Agriculture.
- Custom Fertilizer Blenders License – An increase in the Custom Fertilizer Blenders License Fee from \$25 to \$125 (\$100 increase) would generate \$41,500 in revenue based on the 415 fertilizer blenders currently licensed by the Kansas Department of Agriculture.

Total Estimated Annual Revenue: \$1,125,240

Who would be eligible to receive assistance from the proposed program?

- Eligible persons would include a responsible party or an owner of real property, including but not limited to agricultural and/or specialty chemical retailers, grain and feed processors and agricultural producers.

What organizations support the establishment of a clean-fund for agricultural sites?

- Kansas Fertilizer and Chemical Association
- Kansas Grain and Feed Association
- Kansas Cooperative Council
- Kansas Aerial Applicators Association
- Kansas Corn Growers Association
- Kansas Grain Sorghum Producers Association

For information contact Doug Wareham, Kansas Fertilizer & Chemical Association at (785) 234-0463

STATE OF KANSAS

BILL GRAVES, GOVERNOR
Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
Topeka, Kansas 66612-1280
(785) 296-3558
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KANSAS DEPARTMENT OF AGRICULTURE

SENATE ENERGY COMMITTEE

JANUARY 20, 2000

MARY JANE STATTELMAN

SB 388

Good morning, I appear before you on behalf of Jamie Clover Adams, the Kansas Department of Agriculture Secretary and David Pope, the Chief Engineer.

As you have already been informed, SB 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 the water use in Kansas, we also acknowledge there is a desire to explore creative and more flexible usage of water by water right owners.

SB 388 would require KDA to take on the following additional duties:

- establish rules and regulations
- evaluate and approve the proposed bank charters
- review the proposals to ensure the bank would save at least 10%
- review the boundaries of the proposed bank
- issue permits for leases including terms and conditions of the agreements
- review the operational performance of banks that have been established

Senate Energy & Natural Resources

Equal Opportunity in Employment and Services

Attachment: 2

Date: 1-20-2000

2-1

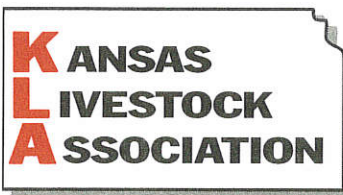
If the legislature envisioned that the chief engineer would be responsible for auditing these banks to determine whether water has been properly appropriated, this would be another function that should be added to our current duties.

One of the concerns that may need to be discussed and debated further is the fact that there is no incentive to lease water if the user is currently allowed to exceed the authorized quantities. Therefore, we will need to enforce our current laws regarding overpumping if this concept is to work. Furthermore, the division of water resources will need to assess current water rights prior to their deposit to ensure they are currently in good standing, and have been historically used; or there will be an increase in water consumption when they are leased. We also envision that the agency will need to provide a quick turnaround for the permit applications if the leasing concept is to work effectively.

As you can see from our fiscal note, we anticipate that the first year, we would need an additional Environmental Scientist III to assist in the creation of these water banks. If there is interest in this concept, the following year, we would need an additional Environmental Scientist II and an 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.

Water banks, will need to carefully determine whether water can be "banked" so that "unused water" from a water right does not result in additional water being available for lease and subsequent use so the benefits of flexibility offered to bank participants is balanced with the need to insure the consumption is not increased and other water rights are not impaired.

I or one of the other KDA employees will be glad to try and answer any question that you may have at this time.



Since 1894

To: Senate Energy and Natural Resources Committee
Senator David Corbin, Chairman

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

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

Date: January 19, 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 mentioned, 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 or sell 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 concerned about water conservation. 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!

Senate Energy & Natural Resources

Attachment: 3

Date: 1-20-2000



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

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

**January 20, 2000
Topeka, Kansas**

**Presented by:
Bill R. Fuller, Associate Director**

**Public Policy Division
Kansas Farm Bureau**

Chairman Corbin and members of the Senate Committee on Energy and Natural Resources, we thank you for 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 and 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 conservation will be achieved by reducing the amount of net consumptive use of water.

Senate Energy & Natural Resources

Attachment: 4

Date: 1-20-2000 4-1

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.

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 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 an opportunity for the holder 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:

- While considerable flexibility appears necessary, are too many issues being left out of the legislation that will need to be determined by and included in the charter?
- What entities will be authorized to develop the charters and will there be adequate public input and oversight?
- 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?
- Who is the water bank accountable to?
- Will the representation on water banks fairly represent all water right holders?
- If a water banks are created for surface water, what are the implications to 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 as stated by a proponent yesterday, would not that make it extremely difficult for an irrigator to compete with an urban area of large industry?
- If the bill were to be amended as suggested yesterday to allow water to be diverted for use outside of the boundaries of water banks, would that not encourage the construction of pipelines to move water long distances across the state or even out of the state?

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. What opinions and what insight could the Chief Engineer of the Division of Water Resources, the Director of the Kansas Water Office and the various respected water law experts at our universities provide in developing a sound, workable and fair water banking plan for Kansas?

We commend the leadership and work of the Water Banking Task Force and Legislative Interim Committee in developing and advancing SB 388. We appreciate 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 as soon as the questions are satisfactorily answered and provisions of the bill are thoroughly examined.

Thank you!

Testimony in Support of SB 388
Senate Energy and Natural Resource Committee
January 20, 2000

Charles M. Benjamin, Ph.D., J.D.
Executive Director
Kansas Natural Resource Council
Kansas Sierra Club
P.O. Box 1642
Lawrence, KS 66044-8642
785-841-5902

This bill is a good idea because water law as it is currently written, encourages a policy of "use it or lose it." Up until last year if you did not use your water right after three years, without due and sufficient cause, you could lose your water right through abandonment. KSA 82a-718. Last year the legislature changed that to a five-year period. There are exceptions but they are always fuel for argument. Thus people are encouraged to use water when they don't need to. It is our hope that this bill will encourage people to use only that amount of water they need, thus encouraging conservation, while protecting the rest of their water right from loss due to abandonment. This is a very meaningful, far-reaching program. It is a wise idea. Right now conservation is risky for the water user. This bill takes the risk out of conservation. It may also be financially beneficial to water right holders if their leases are leases of money. Theoretically this money is going to the person who put that water right in the bank. This encourages prudent economic use. Water supplies are not just locked up, thus allowing for flexibility in economic development. In sum, this bill will help the irrigator on one side of the fence who doesn't need everything he is authorized to use and the person across the fence who doesn't have enough.

Since we want to encourage water conservation, prudent financial management and flexibility in economic development we feel it is crucial that this bill be properly worded so that it doesn't solve one problem only to create other problems. To that end we offer the following suggestions:

Senate Energy & Natural Resources

Attachment: 5

Date: 1-20-2000 5-1

Page 1, Line 31, Section 2(i)

Problem: The term “unused water” is inaccurate.

Suggestion: Substitute “unused portion of an authorized annual quantity from a bankable water right.”

Explanation: The use of the term “unused water” seems to make a promise to depositors that water will physically be there. That kind of promise cannot and should not be made. You don’t want anyone to think that this bill promises that there will physically be water available later. You could have a water right and have no water in the ground. You don’t want anyone bringing claims against the state later saying “I thought I put water in this bank and there is no water there.” That is not what this bill is intended to address. Second it is just not accurate to refer to unused water going into a safe deposit account. Nobody is going to be pumping water into a tank and have it be there many years down the road. What is being banked is a part of a license, or permit or right to use water, assuming water is available.

Page 3, Line 20, Section 4(a)(2)

Problem: The phrase “has not been abandoned” can be problematic.

Suggestion: Substitute “is not subject to abandonment proceedings”

Explanation: If you have a water right that is headed for abandonment hearings you don’t want to put it in a bank.

Page 3, Line 39 & 40, Section 5(b)(2)

Problem: One of the criteria for a water bank is “sufficient participation”

Suggestion: Substitute “sufficient indication of future participation”

Explanation: How can you have sufficient participation prior to chartering the bank?

Page 4, Line 2-11, Section 5(b)(5):

Problem: The current wording attempts to spell out how much the bank has to keep during any calendar year. However, it is very complicated with one sentence and three parentheticals in the middle.

Suggestion: Make sure that everyone involved in this arrangement, including the chief engineer, agrees that this is workable. If the chief engineer has any concerns than you should have concerns

Page 4, Lines 13-14, Section 5(b)(6)

Problem: Phrase “severely depleted aquifers or stream courses.”

Suggestion: Add “as defined by the chief engineer.”

Explanation: Prevent arguements as to what is severely depleted.

Page 4, Lines 22-23, Section 5(c)

Problem: “Not more than five water banks shall be chartered to operate in the state”

Suggestion: Delete this phrase.

Explanation: If this is such a good idea why limit it? Limiting the number of water banks might pose equal protection problems.

Page 5, Line 2, Section 6(a)(8)

Problem: The phrase “the foregoing members.”

Suggestion: Specify whether individually, unanimously or a simple majority.

Page 5, Lines 24-27, Section 6(c)

Problem: The chief engineer is bound by the recommendations by this team of people to extend the charter.

Suggestion: Change “shall” to “may”

Explanation: Is it wise to take all discretion from the chief engineer? What if there is an abuse of power or management of the water bank? Removing the discretion of the chief engineer removes the checks and balances.