

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 13, 2001 in Room 231-N of the Capitol.

All members were present except: Representative Bruce Larkin - excused
Representative Jeff Peterson - excused

Committee staff present: Emalene Correll, Kansas Legislative Research Department
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, Water Protection Association of Central Kansas, Rt 1 Box 107, Kinsley, KS 67124
Mike Beam, KS Livestock Association, 6031 SW 37th Street, Topeka, KS 66614
David Pope, Chief Engineer, Div. of Water Resources, KS Dept. of Agriculture, 109 SW 9th Street, 2nd Floor, Topeka, KS 66612-1283
Sharon Falk, Groundwater Management District #5, 125 S. Main, Stafford, KS 67578
Bill Fuller, Associate Director, Public Policy Division, KS Farm Bureau, 2627 KFB Plaza, Manhattan, KS 66505-8508
Kent Lamb, Chairman, Kansas Water Authority, RR1, Box 69, Macksville, KS 67557
Karl Muedener, Director, Bureau of Water, KS Department Health and Environment, Forbes, Bldg. 740, Topeka, KS 66620-0001
Earl Lewis, Kansas Water Office, 901 S. Kansas Avenue, Topeka, KS 66612-1249
Diana Edmiston, Senior Assistant General Counsel, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She welcomed a group from 2001 Tomorrow's Agri-Business Leaders' Class visiting the committee today. They are co-sponsored by the Kansas Grain and Feed Association and the Kansas Fertilizer and Chemical Association. She announced that **HB2198, HCR5008, HB2317, and HB2133** may have possible final action today. She opened the hearing on **HB2047**.

HB2047: An act concerning water rights; relating to water banking; enacting the Kansas water banking act.

The Chairperson welcomed Richard Wenstrom, Water Protection Association of Central Kansas, to the committee. He testified as a farmer-irrigator member of the Water PACK in support of the bill. Water PACK very much wants to use the water banking concept as one of their elements of water use reduction in the Rattlesnake Creek Sub-basin and will be available to the committee on an as-needed basis as a resource. (See attachment 1)

Mike Beam, Kansas Livestock Association, was welcomed. He presented testimony on behalf KLA in support of the bill. The KLA actively supported water-banking legislation last year and are hopeful a workable bill will pass this year. As the Water Banking Task Force report 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

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on February 13, 2001.

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. (See attachment 2)

David Pope, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, was welcomed to the committee. He appeared on behalf of Secretary of Agriculture Jamie Clover-Adams to provide testimony in support of the bill. Managing and regulating water use in Kansas currently rests with the chief engineer, but KDA is amenable to exploring new management practices like those proposed in water banking. Water banking allows a water user who chooses not to use all or part of a water right to deposit it into a water bank so other water users can lease it. One very important provision of the bill requires the bank charter to ensure that operating the bank will result in at least a 10 percent reduction in total groundwater consumption. One of the challenges for the operation and oversight of water banking will be to ensure this actually happens. (See attachment 3)

Sharon Falk, Groundwater Management #5, was welcomed. She testified before the committee in support of the bill. The Groundwater District is seeking to establish a groundwater banking system within the Rattlesnake Creek Basin of south central Kansas. It is only one of many programs that has been selected to reduce total water use within that area. Their intent is to offer incentives to decrease water use in sensitive areas, and provide flexibility for the water users while conserving the water resources. (See attachment 4)

Bill Fuller, Kansas Farm Bureau, was welcomed to the committee. He appeared on behalf of Farm Bureau in support of the bill. Kansas Farm Bureau 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 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. (See attachment 5)

Written only testimony, in support of the bill, was submitted by Mike Brzon, Chairman, Lower Republican Water Association. (See attachment 6)

Chairperson Freeborn welcomed Kent Lamb, Chairman, Kansas Water Authority, to the committee. Mr. Lamb addressed the committee on a neutral basis to the bill. At the Kansas Water Authority meeting on January 18, 2001, the KWA adopted a position on water rights banking. The KWA supports the development and implementation of pilot water banks in the State of Kansas. They do have four qualifications of that support, that may need to be considered as amendments to the bill. Those are: (1) Banks should be established on a pilot basis. (2) The safe deposit account provision should be removed. (3) DWR should have a comprehensive water right enforcement program for all water rights within the entire hydrologic unit of the bank, with significant penalties. (4) Evaluation of the pilot banks should be based on the entire hydrologic unit. (See attachment 7) Questions and discussion followed.

There were no opponents to the bill. The Chairperson closed the hearing on **HB2047** and appointed a Sub-Committee to do further study. The Sub-Committee members are; Representative Joann Freeborn, Chairperson; Representative Becky Hutchins; and Representative Dennis McKinney.

The Chairperson opened the hearing on **HB2198**.

HB2198: An act concerning the Kansas water pollution control revolving fund.

Chairperson Freeborn welcomed Rod Geisler, Section Chief for Municipal Programs Section, Bureau of Water, KDHE, to the committee. He introduced Karl Muedener, Director, Bureau of Water, KDHE. He addressed the committee in support of the bill, which revises the legislation establishing the Kansas Water Pollution Control Revolving Fund (fund). The fund was established in 1989 to allow Kansas to receive Federal grants from EPA, and then provide low interest loans for wastewater treatment and water pollution control projects. The program is working well, having provided 165 loans to local governments for over \$397 million (as of September 28, 2000) Congress has now created two new federal grant programs, required to be administered by the same state agencies that administer the State Water Pollution Control Revolving Fund.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
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These are the Rural Hardship Assistance Grants program, which received a one-time appropriation of \$651,400 for Kansas, and the Wet Weather Water Quality program which can provide about \$7 million per year. This bill will amend existing state legislation to allow Kansas to utilize the new grant programs and allow KDHE to administer these in conjunction with the ongoing Kansas Water Pollution Control Revolving Fund. (See attachment 8)

There were no opponents to the bill. The Chairperson closed the hearing on **HB2198** and asked if the committee wished to take action.

Rep. Ted Powers made a motion the bill be passed favorably and placed on the consent calendar. Rep. Tom Sloan seconded the motion. Motion carried. Rep. Vaughn Flora will carry the bill on the House Floor if it is taken off the consent calendar.

Chairperson Freeborn opened the hearing on **HCR5008**.

HCR5008: A concurrent resolution urging the Congress of the United States to provide funding to the United States Army Corps of Engineers to study reallocation of storage space from the flood control pool to the conservation pool in John Redmond Lake in Coffey County, Kansas.

The Chairperson welcomed Earl Lewis, Environmental Scientist, Kansas Water Office, to the committee. He provided testimony in support of the resolution which will provide support to allow the Corps of Engineers to receive the necessary funding to complete the reallocation study and implement the permanent pool raise. This resolution will help to provide the State's position on the importance of water supply storage in Kansas and bring the issue of siltation in federal lakes in Kansas to the attention of the United States Congress. (See attachment 9) Questions and discussion followed.

There were no opponents to the resolution. The Chairperson closed the hearing on **HCR5008** and asked if the committee wished to take action.

Rep. Tom Sloan made a motion the resolution be passed favorably and placed on the consent calendar. Rep. Dan Johnson seconded the motion. Motion carried. Rep. Ray Merrick will carry the resolution on the House Floor if it is taken off the consent calendar.

Chairperson Freeborn opened the hearing on **HB2317**.

HB2317: An act concerning oil and gas; relating to pollution from certain lease facilities and conditions.

The Chairperson welcomed Diana Edminston, Senior Assistant General Counsel, Kansas Corporation Commission. She appeared before the committee in support of the bill. The KCC believes this bill would fill two regulatory gaps. (1) First, it would confirm that a party who is responsible for an abandoned oil and gas well is also responsible for the other remaining lease conditions, which may also cause pollution. (2) Second, it would confirm that the state abandoned oil and gas well fund can be used to cleanup and remediate other lease conditions, even if not directly connected to a specific abandoned well. (See attachment 10) Questions and discussion followed.

There were no opponents to the bill. The committee had unanswered questions and did not take final action.

The Chairperson closed the hearing on **HB2317**. She reviewed the agenda for Thursday, February 15.

The meeting adjourned at 5:50 p.m. The next meeting is scheduled for Thursday, February 15, 2001.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 13, 2001

NAME	REPRESENTING
Aron Edmiston	KCC
Ron Appletoft	WATER DIST No 1 of Jo Co.
Red Neuber	KONE BOW
Jon McClure	Water F&CK
Richard J. Wenstrom	WATER PARK
MIKE SCHAFFTER	KFCA
Dee Duto	KGFA
Jim Norton	KFLA
David Helfrich	KGFA
Seroy Twyman	KFCA
Frank Shutt	KFCA
Kent Lamb	KWA
Braune Wilson	KWO
Earl Lewis	KWO
Kalena Reed	KDA
Tim Kubbe	KGFA
Doc Wareham	KCFR/KFCA
Johnny Schalen	KFCA
Barney	KGFA

Testimony Before the House Environment Committee – House Bill 2047
Tuesday, February 13, 2001

My name is Richard Wenstrom and I am here today as a farmer-irrigator member of the Water Protection Association of Central Kansas (Water PACK). Water PACK was one of four organizations (Division of Water Resources, US Fish & Wildlife Service, Groundwater Management District # 5) who have worked together for the last seven years to develop and implement a management plan for the area along the Rattlesnake Creek in central Kansas. That plan has been finalized and approved by the Chief Engineer in January 2000. Implementation of the plan, which is intended to address the long term sustainability of the water resources, both surface and groundwater, has begun in August of 2000.

In order to reduce water use in the subbasin, and obtain this sustainability, seven management strategies have been adopted in this management plan, as follows:

1. Water Rights Purchase Program
2. **Water Banking**
3. Five Year Water Right Program
4. Conservation Practices & Irrigation Management
5. Voluntary Removal of End Guns on Center Pivot Irrigation Machines
6. Enhanced Compliance & Enforcement Activities
7. Water Appropriation Transfers

We have done extensive study of this subbasin area and are ready to finalize and present a water bank charter to the Chief Engineer at the earliest possible date, pending the outcome of this legislation. We seek to use the water banking concept to:

- Conserve water through the incentives contained in the safe-deposit box feature coupled with the conservation element in the bill. We have developed specific targets and mechanisms for this that would apply to our subbasin.
- Attract participants to voluntarily become active in water banking through incentives
- Target conservation in sensitive and/or high decline areas through pricing mechanisms and incentives
- Achieve conservation in a manner that is self funding through a margin on all transactions. However, start up funding would be needed until such time as these margins can accumulate sufficiently.

This bill must allow pricing mechanisms to be developed in the bank charter to enable the bank to look at the amount of water use in the water rights deposited and react accordingly, and to reward those in sensitive or high decline areas to deposit their rights for use in less sensitive/high decline areas.

*House Environment
2-13-01
Attachment 1*

I have included two other pieces in my testimony today: one example of how we would envision water rights to be used, and one example of how we would accept deposits and lease water out from the bank.

Specifically on House Bill 2047, we would request that in Section 7, the Department of Agriculture, or the Division of Water Resources convene the team and provide a chairman, since water banking concepts in use are not research-oriented and have a definite economic side to consider. We have, in our subbasin, researched the surface and groundwater for the last seven years, and have set our water use targets. Section 13 should accordingly be changed in our view.

Water PACK very much wants to use the water banking concept as one of our elements of water use reduction in the Rattlesnake Creek Subbasin. To that end, Water PACK will be available to this committee on an as-needed basis as a resource.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard J. Wenstrom", with a long horizontal flourish extending to the right.

Richard J. Wenstrom

Testimony Before the House Environment Committee – House Bill 2047
Tuesday, February 13, 2001

**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 AF x .72 = 144 AF)

10 % conservation element applied (200 AF x 10 % = 20 AF)

Balance of water that could be leased out is therefore:

144 AF less the conservation component of 20 AF = 124 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 AF @ \$ 50.32/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 – HB 2047

Tuesday, February 13, 2001

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:

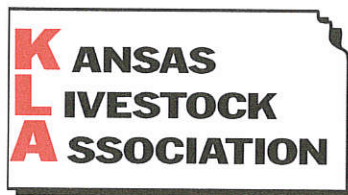
15.3 inches less 10.0 inches = 5.3 inches x factor of .25

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 term permits with the Division of Water Resources.



Since 1894

To: House Environment Committee
Representative Joann Freeborn, Chairman

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

Subject: Testimony in support of **HB 2047 – Kansas Water Banking Act**

Date: February 13, 2001

The Kansas Livestock Association (KLA) actively supported water-banking legislation last year and we are hopeful a workable bill will pass this year. I sincerely appreciate the Committee Chair's willingness to hold a hearing at a time that many other bills are competing for Committee attention and possible action. We whole-heartedly support the water-banking concept and we are excited about its ultimate goal of adding some flexibility for water users while providing a positive incentive for conservation.

As the Water Banking Task Force Report 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 administrating water use. It appears to me, however, there are several safeguards established in HB 2047 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's water appropriation laws and regulations.
- Limit the life of a bank's charter to seven years (with provisions to extend).

There are supporters of water banking that view this bill as too restrictive and burdensome for the start-up and efficient operation of new water banks. We share some of these concerns. I do not want these concerns to impede action by this Committee to keep the issue alive for this session. Again, we appreciate your willingness to consider HB 2047 and I offer to work with the committee to see that the bill progresses this year. It is not often, when addressing water policy, that we have an opportunity to pass legislation that offers flexibility for water usage *and* enhances water conservation. KLA respectfully asks this committee to give its favorable consideration to this legislation.

Thank you!

BILL GRAVES, GOVERNOR
Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
Topeka, Kansas 66612-1280
(785) 296-3558
FAX: (785) 296-8389

STATE OF KANSAS



Division of Water Resources
David L. Pope, Chief Engineer
109 SW 9th Street, 2nd Floor
Topeka, KS 66612-1283
(785) 296-3717 FAX (785) 296-1176

KANSAS DEPARTMENT OF AGRICULTURE

House Committee on Environment

February 13, 2001

Testimony Regarding House Bill No. 2047

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

Madam Chairperson and members of the committee. I am David L. Pope, chief engineer of the Kansas Department of Agriculture's division of water resources. I am here on behalf of Secretary of Agriculture Jamie Clover Adams to provide testimony regarding House Bill 2047. I will address whether the bill meets its intended goal of providing for more flexible water use while conserving resources. I will also describe the additional responsibilities it places on KDA and the resources it will require.

As most of you recall, last year's Senate Bill 388 proposed a Water Banking Act. House Bill 2047 is very similar to the version of Senate Bill 388 that died last year in conference committee. Generally speaking, KDA supports the water banking concept, but we are concerned about having sufficient resources available to us to make it work as it is envisioned. We also need to ensure that it does not result in more water being used than without banking.

Managing and regulating water use in Kansas currently rests with the chief engineer, but KDA is amenable to exploring new management practices like those proposed in water banking. Water banking allows a water user who chooses not to use all or part of a water right to deposit it into a water bank so other water users can lease it. One very important provision of the bill requires the bank charter to ensure that operating the bank will result in at least a 10 percent reduction in total groundwater consumption. One of the challenges for the operation and oversight of water banking will be to ensure this actually happens.

The bank charter is one of the most critical aspects of water banking. It sets forth the conditions and limitations under which the bank must function to balance conservation goals with flexibility to market water use. Among other things, Section 5(b) of the bill states the chief engineer must ensure the charter is consistent with the provisions of the Water Appropriation Act and its associated regulations. Those using the bank should expect that the conditions, limitations and regulatory restrictions on the use of leased water will be similar, at least in some ways, to those currently applied through the Water Appropriation Act that prevent impairment of existing water rights.

If water banking is to work, current laws and regulations will need to be strictly enforced so a water user does not pump more than authorized and eliminate the need to lease water from the bank. We are implementing an enhanced program to deal with blatant, recurring overpumping, but our staff resources and legal authority are limited. Currently, if a water user does not comply with the conditions of a water right, we must rely on the courts for enforcement, which is a slow and expensive process. While Section 10 of the bill does provide for suspension of use for violations of the Water Banking Act, it does not address the enforcement needs for other water users who are not participating but are within the bank boundary. Therefore, a more comprehensive enforcement mechanism, such as provided by House Bill 2316, should be considered.

The bill calls for the division of water resources to help a bank determine whether a water right is bankable based on the status of the water right and its past use. It will require careful, individual evaluation so deposits of previously unused water are not accepted or that less water is leased. Otherwise, water consumption is likely to increase and the water conservation goal will not be met. We also anticipate being expected to provide quick turnaround on term permit applications so the leasing concept works efficiently for water users. Administering this act will be difficult in that it will require extreme care if we are to achieve flexibility, decrease groundwater consumption by at least 10 percent and ensure that other water rights are not impaired.

Most water rights were granted so users would be able to meet their maximum need during periods of heavy demand, such as during dry weather, with the caveat that use does not impair more senior rights. For a variety of reasons, most water users do not use all of the water

authorized every year. Weather variability influences use, as does the limited availability of water from the water source, physical limits of the diversion works, economic decisions, and improved conservation and water use efficiency. In fact, actual water use in any given area in an average year may be only one-half to three-fourths of the authorized amount. This is good from a conservation standpoint, and operating a water bank should not interfere with, or discourage, existing practical conservation methods.

As set forth in Section 5(b)(9), the bankable portion of a water right is based on a representative average water consumption for a group of users within a hydrologic unit, not on an individual user. This method of determining a bankable quantity is intended to prevent penalizing those who conserve water. However, it also has the inherent potential to increase consumption since it is likely that water rights most likely to be deposited will be those that have been underused. There are many water rights that have not been used for extended periods, yet they have not been abandoned.

To strengthen the water conservation and impairment protection aspects of the bill, we suggest adding the following language in Section 5, as a new number 10: *The charter ensures that the total amount of water leased each year from each hydrologic unit does not exceed 90 percent of the historic average annual amount collectively diverted by all deposited water rights or portions of water rights from such unit for a representative past period.*

The bill's provisions for safe deposit accounts, found primarily in Section 3(c), provide a beneficial mechanism for multiyear water management. However, this flexibility encourages increased consumption during abnormally dry years when the probability of impairment is greater. The use of safe deposit accounts may conflict with the fundamental requirement of decreased consumption and protection from impairment. Consequently, we suggest deleting the safe deposit account concept from the bill, or at least removing the mandatory inclusion of this feature by banks.

We also anticipate water right holders will want to deposit water in a bank from water rights in poor portions of aquifer systems where water availability is low. In contrast, water users in areas where additional water could be pumped will tend to increase use in that area with leased water, which could compound additional use or impairment in those areas. This issue will need to be addressed in the bank charters, or in the rules and regulations of the chief engineer.

Water banking is one concept that could provide more options for water users. However, it must be administered with great care if we are to achieve the 10 percent reduction in groundwater consumption, provide water users with as much flexibility as possible and ensure that existing rights are not impaired. The division of water resources will need to increase its workforce substantially to provide the careful administration this concept requires, as we will be adding the following responsibilities to our existing duties:

- establish water banking rules and regulations (section 9)
- evaluate and approve each proposed bank charter (section 5)
- review the charter's proposals to ensure the bank will actually reduce groundwater consumption by 10 percent or more
- assess whether it meets all other criteria set forth in the bill
- assist the bank with determinations as to the bankable portion of a water right proposed for deposit (section 4)
- review and issue term permits for leases, including terms and conditions of the agreements (section 3)
- carry out enforcement activities (section 10)
- annually review an accounting report of a water bank's transactions (section 6)
- based on the review team's recommendations, decide whether the charter should be extended (section 7)

Section 11 of the bill provides for funding by the banks for the cost of help and services provided by the division of water resources. Some administrative tasks associated with establishing banks will be hard to identify as services provided to a particular bank, and those services may even be provided before the banks are organized and able to generate income. These tasks may include developing rules and regulations, enforcing pumping restrictions, or other matters precipitated by bank operations that are not specifically identified as reimbursable services. Therefore, it is essential that some general funds, or another source of revenue, be provided to KDA if we are to administer the Water Banking Act independent of reimbursement from the banks.

The bill will also require enforcement at levels not previously achieved by the division of water resources. Enforcement efforts must not focus only on banking participants, but on all appropriators in the bank area.

Thank you for the opportunity to provide testimony on this very complex issue. I will be glad to answer any questions you may have.

BIG BEND GROUNDWATER MANAGEMENT DISTRICT NUMBER FIVE
125 SOUTH MAIN - STAFFORD KANSAS 67578
TEL: 620-234-5352

STATEMENT TO THE COMMITTEE ON ENVIRONMENT
REGARDING - HOUSE BILL 2047
SHARON FALK, MANAGER - FEBRUARY 13, 2001

Good afternoon Chairperson Freeborn and committee members. Thank you for the opportunity to appear before you today. As representative for the Big Bend Groundwater Management District, I would like to submit the following comments concerning House Bill 2047.

As many of you are aware, the Groundwater District is seeking to establish a groundwater banking system within the Rattlesnake Creek Basin of south central Kansas. It is only one of many programs that has been selected to reduce total water use within that area. Our intent is to offer incentives to decrease water use in sensitive areas, and provide flexibility for the water users while conserving the water resources. The Board of GMD #5 believes there will be enough safeguards built into the process to assure the reduction of water use through the enactment of this act, the development of rules and regulations and the approval of a bank charter.

I would also point out that water banking was recognized by the 21st Century Task Force, in their report to the Governor, as a potential program to address water resource issues in the State. This recognition points to the need for more innovative programs to manage the states water resources.

The District believes that issues regarding the proper use of the safety deposit boxes and other operations of the bank can be evaluated within each bank, based upon the desired results. The Rattlesnake Creek Basin Plan calls for some very stringent guidelines for use of the safety deposit box option in order to meet the objective of reduced water use.

Groundwater Management District #5 supports HB 2047. However, we would ask the committee to consider an amendment to section 7 (a) and direct the chief engineer, Division of Water Resources to convene the team to evaluate the operation of the bank. Program costs could be reduced dramatically, yet allow for an adequate review process. The opportunity for input and / or technical assistance through the research institutes are maintained through the membership of the evaluation team, as dictated in section 7 (a), (3), (A). We recognize the purpose in having various agency oversight but believe that other requirements established in this proposal adequately addresses this issue.

Section 7 (c) requires the team to submit a report to the Governor, various state agencies and the appropriate legislative committees, which would result in further evaluations. Section 12 and 13 of the bill calls for separate funds to be established. Again, overhead costs could be reduced if only one fund was created and maintained for one agency.

In closing, the District believes that water banking is a viable program and should be developed through proper legislation and regulations. The Board of Directors and the Partners in the Rattlesnake Creek Basin want to reduce total water use in the basin. We all understand the alternative if water conservation tools are not utilized.

Again, thank you for allowing me time to make these comments.

*House Environment
2-13-01
Attachment 4*



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON THE ENVIRONMENT

RE: HB 2047 – Enacts the Kansas Water Banking Act.

February 13, 2001

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 an 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
2-13-01
Attachment 5*

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 again by the 2001 Session of the Kansas Legislature, the 435 farm and ranch delegates representing the 105 county Farm Bureaus debated, expanded and adopted a "State Water Banking" resolution at the 82nd Annual Meeting of Kansas Farm Bureau in Wichita, November 17-18, 2000. The second paragraph of the policy statement is new for 2001:

"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.

Water placed in a water bank should stay within the boundaries of that specific water bank as defined at the time of deposit."

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 agricultural irrigator to compete with a growing municipality or a large industry?

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 may 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 appreciate and support the aspects of HB 2047 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 bill are thoroughly examined, the many questions are satisfactorily answered and the impacts of the proposed legislation are fully understood.

Thank you!

Lower Republican Water Association

Working Together for the Preservation and Conservation of Water
RR 1, Box 42 • Courtland, Kansas 66939 • (785) 335-2524

February 13, 2001

Representative Sharon Schwartz
Fax: 785-368-6365

To: Kansas House Environment Committee Members
Re: Howe Bill 2047

Madam Chairperson and Fellow Committee Members:

This testimony is being presented on behalf of the Lower Republican Water Association;

Presently, we feel that our group cannot take a position in favor of House Bill 2047. The bill is vague and short on specifics.

Following are several items that need clarification and explanation before we would take a firm position on the bill.

Page 2, Sec. 3, Subsection A, Item 4; lines 19-21, What are the specific terms and conditions as provided by rules and regulations of the chief engineer that could be applied under this bill?

Page 2, Sec. 3, Subsection B, Item 4; line 34, What are the specific terms and conditions as provided by rules and regulations of the chief engineer.

Page 3, Item 4; line 10-13, This section seems to penalize those who bank water and are trying to be good stewards. This seems to conflict with lines 3 and 4 on page 5.

Page 3, Item 8; lines 26-28, Again, What terms and conditions could affect this as provided by rules and regulations of the chief engineer.

Page 5, Item C; lines 5-10, This section needs to be further explained. Exactly what does this section mean?

Page 7, Section 9: Specify what rules and regulations the chief engineer may adopt to enforce the provisions of this act.

Page 8, Section 11: We realize that there will be costs associated with this. Will the water bank be given tax authority to levy funds to cover administrative costs? Will all permit holders in a water bank area be assessed or just those depositing in the water bank?

In summary, until our questions are addressed, the Lower Republican Water Association cannot endorse this bill. We have contacted several persons in Topeka and no one can give us answers to the points we raised. Hopefully, someone can enlighten us with specifics. Once further explanation is given, we would reconsider our position on this.

Respectfully Submitted,

Mike Brzon
Chairman-Lower Republican Water Association



Kent Lamb, Chairman

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

**TESTIMONY TO
HOUSE ENVIRONMENT COMMITTEE
ON HOUSE BILL 2047
February 13, 2001
By Kent Lamb, Chairman
Kansas Water Authority**

At the Kansas Water Authority meeting on January 18, 2001, the KWA adopted a position on water rights banking. The Kansas Water Authority supports the development and implementation of pilot water banks in the State of Kansas. We do have 4 qualifications of that support, that may need to be considered as amendments to HB 2047. Those are:

- Banks should be established on a pilot basis.
- The safe deposit account provision should be removed.
- DWR should have a comprehensive water right enforcement program for all water rights within the entire hydrologic unit of the bank, with significant penalties.
- Evaluation of the pilot banks should be based on the entire hydrologic unit.

I'll elaborate briefly on the considerations for the KWA support for the development of water rights banks.

Pilot Banks

Banks should be established on a pilot basis. HB 2047 establishes a phase in for up to 5 pilot banks prior to July 1, 2004. (Pg 5 lines 20-27). The KWA supports this portion.

Safe Deposit Accounts

We would request an amendment that involves the removal of the provision for a "safe deposit account". (Pg 2, sec 3(c)). It is felt the use of a safe deposit box provides the legal framework for water rights to use water in excess of their annual authorized quantities. The water saved in the safe deposit box would likely be utilized during drought conditions when the available water resources are already stressed.

The proposed water banking act's provision for a safe deposit account sets a cap on the total amount of water accumulated to not exceed the maximum amount authorized under the water right or linked water rights. This means that an individual with a water right authorized for 150 acre-feet of irrigation water use for 100 acres of land, may be able to utilize the safe deposit account provision over a period of years to ultimately achieve the legal authority to apply just under 300 acre-feet of water to the 100 acres of land. The use of the additional authorized water would almost assuredly be utilized

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during periods of drought and would have the potential to further stress an aquifer or stream that may already be severely depleted at that time.

Comprehensive water right enforcement program

The next consideration is that the KDA-DWR would have to develop, implement and maintain a comprehensive water right enforcement program for all water rights within the entire hydrologic unit(s) for the duration of the life of the pilot water bank(s) and the penalties associated with overpumping would need to be a significant deterrent. Water right enforcement is critical in the operation of a water right bank for both the participants in the bank and those who do not. There would be little incentive to lease available water from a bank if there were no or very light penalties associated with overpumping. In addition, water conservation efforts would be hampered if irrigators deposit water in the water bank and then proceed to independently use all or a portion of the amount of water that they had deposited. The KDA-DWR would also need to ensure that all points of diversion have water meters, that the meters be maintained in operational condition and all water meters would be checked for accuracy at specified time intervals. In addition KDA-DWR staff would need to read, or arrange to read, all of the water meters on a monthly or more frequent basis.

Sec 9 of HB 2047 does allow the chief engineer to adopt rules and regs to administer and enforce provisions of this Act and Sec 10 grants authority to suspend the use of water under a term permit. We believe the enforcement provisions need to go beyond this.

Evaluation

The final consideration is that the evaluation of the conservation component of a pilot water bank, located within an area with a depleted aquifer or streamflow, be based on the entire hydrologic unit(s) in the water bank and not just on the amount of water deposited in the pilot bank. Section 7 appears to be an evaluation of the deposits only. The 1995 *Kansas Water Plan* Subsection recommended that the evaluation be of the hydrologic unit.

Attachment
1995 *Kansas Water Plan* Subsection on Water Rights Banking

This position the KWA adopted was based on a review of several documents. This attachment summarizes one of those, the 1995 *Kansas Water Plan* Subsection on Water Rights Banking.

The objectives listed in the 1995 *Kansas Water Plan* Subsection on Water Rights Banking are to:

- Create a **forum** for holding and exchanging water rights within defined hydrologic rules and policies under the water appropriation act.
 - Encourage **water conservation**, reduction in demand on stressed aquifers, and a rebalancing of regional supply and demand through administrative and marketplace incentives.
 - Redirect portions of the historic consumptive use in defined hydrologic basins toward **supporting streamflow** on depleted streams within those basins.
- This Subsection of the *Kansas Water Plan* also outlines the criteria to be used to evaluate the success of a water bank.

The 1995 *Kansas Water Plan* Subsection of the KWP recommended that the Kansas Department of Agriculture, Division of Water Resource (KDA-DWR) establish a task force to develop its administrative authority for enabling the creation of water banks. A Water Banking Task Force was formed by the KDA-DWR to implement the recommendation in the Kansas Water Plan. The Task force released the Report of the Water Banking Task Force in June 1999.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

Testimony on House Bill 2198
to
House Environment Committee
Presented by Rodney Geisler, Chief-Municipal Programs Section, Bureau of Water

February 13, 2001

I am appearing before you today to support and discuss HB2198, which revises the legislation establishing the Kansas Water Pollution Control Revolving Fund (fund).

The fund was established in 1989 to allow Kansas to receive Federal grants from EPA, and then provide low interest loans for wastewater treatment and water pollution control projects. The program is working well, having provided 165 loans to local governments for over \$397 million (as of September 28, 2000).

Congress has now created two new federal grant programs, required to be administered by the same state agencies that administer the State Water Pollution Control Revolving Fund. These are the Rural Hardship Assistance Grants (RHAG) program, which received a one-time appropriation of \$651,400 for Kansas, and the Wet Weather Water Quality program which can provide about \$7 million per year.

The hardship grants can be used for small, rural, unsewered communities with an average income at poverty level and unemployment rates at least 1% above the national average. Several projects in Kansas qualify for this funding and indicate they want to proceed with a sewer project.

The Wet Weather Water Quality Act authorized a new grant program to provide grants for at least 55% of project costs to communities to resolve Combined Sewer Overflows and Sanitary Sewer Overflows. In Kansas, there are only 3 cities with combined sewers - Atchison, Topeka, and Kansas City. The expense to comply with federal law and regulations is large, and nationally this is a big issue. There is a Needs Survey conducted by EPA for wastewater and water quality issues which Kansas participates. The 1996 Needs Survey reports the combined sewer overflow needs are estimated to be \$531 million for Kansas, in these 3 communities only, and \$45 billion nationally. For sanitary sewer overflows, the estimates are \$126 million in Kansas and \$3.33 billion nationally. KDHE has identified approximately 50 communities with chronic sanitary sewer overflow problems.

more →

The HB 2198 will amend existing state legislation to allow Kansas to utilize the new grant programs and allow KDHE to administer these in conjunction with the ongoing Kansas Water Pollution Control Revolving Fund.

I thank you for the opportunity to appear before the House Environment Committee and will stand for questions the committee may have on this topic.

STATE OF KANSAS



Bill Graves, Governor

KANSAS WATER OFFICE
Al LeDoux
Director

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

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

TESTIMONY BEFORE THE HOUSE ENVIRONMENT COMMITTEE
February 13, 2001 at 3:30 p.m. in Room 231-N
House Concurrent Resolution 5008
Presented by Earl Lewis, Kansas Water Office

Madam chairwoman, I am here today to speak in support of House Concurrent Resolution 5008.

John Redmond Lake was built by the Corps of Engineers for flood control, water supply, water quality, and recreation purposes. The State of Kansas has signed contracts for water supply storage space in John Redmond Lake with the United States Army Corps of Engineers in both 1975 and 1996. The water supply storage space accounts for 76 percent of the conservation pool in John Redmond Lake.

The Kansas Water Office completed an analysis in 1997 that indicated the long-term yield of the reservoir would not support all of the current uses. Water service from this storage space has been placed under contract with the Cottonwood and Neosho River Basins Water Assurance District and with Kansas Gas and Electric for the Wolf Creek Nuclear Generating Station. A total of 18 cities and industries rely on the water contained in this storage space to supplement the natural flow of the basin.

During design of the lake, a portion of the storage in both the conservation and flood pools was set aside for sediment deposition. Recent surveys of the lake indicate the current rate of siltation is 725 acre-feet of loss per year. This rate is not much different than the original projection for the entire lake. However, this sediment is being deposited almost entirely in the conservation pool, which means the sediment allocation for the conservation pool is filling more quickly than originally estimated.

The Kansas Water Office has requested the Corps of Engineers to study the possibility of permanently raising the normal pool level by two feet to offset the increased rate of sediment entering the conservation pool. Provisions in both contracts with the federal government require that a redistribution of storage space be completed when a project purpose will be affected by unanticipated sediment distribution. A

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reallocation study is necessary to determine the appropriate level to raise the permanent pool and to comply with the National Environmental Policy Act.

The reallocation study is underway at this time. However, the Corps of Engineers has not been successful in getting all of the funding to finish the project. \$331,000 was made available for this study this federal fiscal year. The Corps of Engineers indicates that they will need another \$75,000 in the coming fiscal year. I believe that the completion of this study is necessary to insure the State of Kansas' ability to provide water to our customers as required by contract. If a raise of the permanent pool is not accomplished, the existing contracts will have to be cut back within 15 years.

House Concurrent Resolution 5008 will provide support to allow the Corps of Engineers to receive the necessary funding to complete the reallocation study and implement the permanent pool raise. This resolution will help to provide the State's position on the importance of water supply storage in Kansas and bring the issue of siltation in federal lakes in Kansas to the attention of the United States Congress.

I will be happy to answer any questions you have at this time.



Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

Testimony of Diana Edmiston
Senior Assistant General Counsel
State Corporation Commission of Kansas
Conservation Division
before the
House Committee on the Environment
February 13, 2001

Good afternoon. I am appearing here today in support of House Bill 2317, which covers responsibility for abandoned wells and "other lease conditions".

House Bill 2317 would fill two regulatory gaps:

First, it would confirm that a party who is responsible for an abandoned oil and gas well is also responsible for the other remaining lease conditions, which may also cause pollution.

Second, it would confirm that the state abandoned oil and gas well fund can be used to cleanup and remediate other lease conditions, even if not directly connected to a specific abandoned well.

K.S.A. 55-178 and 55-179 currently establish the procedure and duty of the Corporation Commission to (1) investigate abandoned wells; (2) determine whether there are one or more responsible parties for the well; and (3) determine when abandoned wells may be plugged with state funds.

K.S.A. 55-179(b) defines who shall be a responsible party for the abandoned well.

K.S.A. 55-192 specifies the permitted uses for the abandoned oil and gas well fund.

However, K.S.A. 55-179 specifically refers only to abandoned wells, and does not refer to other related lease conditions which may also cause pollution of the waters and soils of the state. Likewise, K.S.A. 55-192 currently refers only to

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“abandoned wells, and their well sites”, rather than all lease conditions. House Bill 2317 would confirm that other related lease conditions are part of the lease cleanup responsibility and that there is funding for cleanup of abandoned sites.

Another Kansas statute addresses certain other lease conditions, but not sufficiently:

K.S.A. 55-177 states that “structures and abutments” must be removed from the lease within 6 months after lease termination, unless the lease specifies a different time period for their removal. (Most oil and gas leases in Kansas give the lessee a year to remove its equipment, etc.) Although this statute appears to fill a gap in the lease concerning equipment removal, it does not by itself, clearly charge the Corporation Commission with any specific authority for lease remediation. It merely allows for the offending lessee to be referred for prosecution (of a misdemeanor, with a \$100 fine) if the structures and abutments have not been removed from the property within the prescribed time period.

To illustrate the types of “other lease conditions” covered by House Bill 2317, I’ve brought photos of certain conditions found in recent years on abandoned oil and gas leases. As you will see from the photos, these conditions are clearly oilfield related, and should be cleaned up and remediated, but are not directly connected to a particular well. Because these conditions are not directly connected with a well site, the Commission staff has had to look for other legal authority with which to convince the operator to clean up the site, or has had to find other funding for the cleanup.

In closing, I would urge you to pass House Bill 2317, to confirm the Commission’s authority to hold certain parties responsible for cleanup of all lease-related conditions, and to confirm that the Commission is permitted to cleanup and remediate abandoned lease conditions with funds from the abandoned oil and gas well fund.

Should the members of the Committee have any questions I would be glad to address them. Thank you.