

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairperson Robert Tyson at 8:30 a.m. on March 12, 2001 in Room 423-S of the Capitol.

All members were present except: Senator Derek Schmidt - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Judy Krase, Committee Secretary

Conferees appearing before the committee:

Don Peterson, Water Protection Association of Central Kansas
(Water PACK)
Mike Beam, Kansas Livestock Association
Gordon Schmidt, Water PACK
Al LeDoux, Secretary, Kansas Water Authority
Director, Kansas Water Office

Others attending: See attached list

Senator Tyson opened the meeting with the continuation of the hearing on **HB 2047**.

The first conferee and proponent of the bill was Don Peterson (Attachment 1). Discussion and questions followed his testimony. Also, it was noted by Mr. Peterson that the water banking program is totally voluntary and has incentives built into it to encourage people to use it.

The question was asked if there can be more than one water bank in an area, and if so, can they have combined management. Staff of Legislative Research said the bill provides that there would only be one groundwater bank prior to July 1, 2002 and after that date there is authorization for one additional bank and that it could be a surface water bank, or a combination surface water and groundwater bank. In order for there to be more than two in the state, the legislation would have to be changed.

The second conferee and proponent was Mike Beam (Attachment 2).

Rex Buchanan, Kansas Geological Survey, said the KGS feels comfortable taking on the task to convene a team to evaluate the operation of the water bank.

Gordon Schmidt, board member of Water PACK, commented that the key to him is the coalition that is working on water banking concepts; the first coalition he has seen of environmental groups, recreation groups, the Division of Water Resources and irrigators actually working together. He said this banking bill is a crucial part in keeping the coalition together to proactively solve some of the problems in the Rattlesnake Basin.

The third conferee and neutral on the bill was Al LeDoux who represented both the Kansas Water Authority (Attachment 3) and the Kansas Water Office (Attachment 4). With Mr LeDoux was Brownie Wilson who walked the Committee through the Flexible Water Right Examples in Attachment 4.

Written testimony was submitted by Sharon Falk, Big Bend Groundwater Management District No. 5 (Attachment 5) and by Leslie Kaufman, Kansas Farm Bureau (Attachment 6). Both were proponents of **HB 2047**.

Senator Tyson appointed a subcommittee consisting of Senators Taddiken (subcommittee chairman), Downey and Huelskamp to study proposed amendments to **HB 2047**.

The meeting adjourned at 9:30.

The next meeting is scheduled for March 15 at 8:30 a.m. in Room 423-S.

TESTIMONY TO
SENATE NATURAL RESOURCES COMMITTEE
ON HOUSE BILL 2047
March 12, 2001
From Water Pack
Presented By Donald K. Peterson

Mr. Chairman and members of the committee, I am Donald K. Peterson, representing Water Pack and thank you for the privilege of appearing before you again this morning.

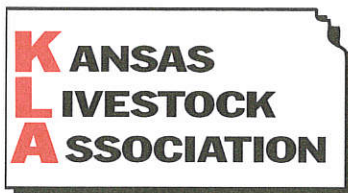
As previously stated the Kansas Water Authority, Kansas Water Office, the Division of Water Resources and Water Pack believe the present wording in (5) page 3 under the safe deposit box account in HB 2047 could lead to increasing the consumptive use of water. Water Pack makes the following suggestions to prevent that from happening:

1. That only one water right or file number be allocated to a single safe deposit account and the water in the safe deposit box account be applied to or used only by that file number.
2. Each water bank shall be responsible for demonstrating that their safe deposit box function will not result in an increase in the amount of net consumptive use in each hydrologic unit on a long term rolling average.

This wording comes from the Report of the Water Banking Task Force drafted June 1998 and appears on pages 8 and 9 of that draft copy.

Water Pack strongly believes that the structure of the safe deposit box account as structured in the Rattlesnake Creek Partnership Agreement conforms to the above guidelines. It is the opinion of Water Pack that the safe deposit box account will be a significant factor in reducing the net consumptive use in the Rattlesnake Basin.

Again I would like to express the appreciation of Water Pack for allowing me to appear before you this morning. If you have any questions I will be glad to answer them.



Since 1894

To: The Senate Natural Resources Committee
Senator Robert Tyson, Chairman

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

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

Date: March 9, 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. (Page 4, lines 30-32)
- Ensure there will not be an increase in depletion of water. (Page 5, lines 22-26)
- State groundwater consumed will result in a savings of 10% or more in the area. (Page 4, lines 33-39)
- Restrict the water usage to within the bank's boundary and within the same hydrologic unit. (Page 2, lines 26-28)
- Subject water usage to all the provisions of Kansas's water appropriation laws and regulations. (Page 2, lines 29-31)
- Limit the life of a bank's charter to seven years, with provisions to extend charter. (Page 5, lines 38-41)

Senate Natural Resources Committee

Date *3-12-01*

Attachment # *2*

While we support this legislation, we have concerns that the Kansas Geological Survey (KGS) is designated in Section 7 to head up the evaluation team to review a of a banks activities and made recommendations for or against an extension of a bank's charter. Attached is a copy of the KGS mission statement displayed on their web page. Please note they claim their mission "is to conduct geological studies and research and to collect, correlate, preserve, and disseminate information leading to a better understanding of the geology of Kansas ..." Perhaps it would be more appropriate to assign the administration duties of the evaluation team to another agency.

In closing, we appreciate the Committee's 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!



About the Kansas Geological Survey

The mission of the Kansas Geological Survey, operated by The University of Kansas in connection with its research and service program, is to conduct geological studies and research and to collect, correlate, preserve, and disseminate information leading to a better understanding of the geology of Kansas, with special emphasis on natural resources of economic value, water quality and quantity, and geologic hazards.

The Kansas Geological Survey continues to study the state's resources and prepare publications on its findings. Providing research and service to Kansas since 1889, the Survey publishes information on Kansas geology in books and maps, both technical and educational. The topics of these publications include computer science, engineering geology, geochemistry, geohydrology, paleontology, mineral economics, and stratigraphy. The Survey also produces computer programs and data bases derived from geologic investigations.

Progressively, the Survey has increased its research programs and facilities. The main office in Lawrence employs over 80 researchers and support-staff members and 70 student assistants. A second publications sales office and the Well Sample Library, storing over 131,000 rotary-cutting samples from Kansas wells, are located in west Wichita.

The State Geologist and Director of the Kansas Geological Survey is Lee Allison.

Kansas Geological Survey, University of Kansas, 1930 Constant Ave., Lawrence, KS 66047-3726
phone 785-864-3965, fax 785-864-5317, Lawrence Core Library 785-864-4909
Updated March 2000.

Comments to webadmin@kgs.ukans.edu

The URL for this page is [HTTP://www.kgs.ukans.edu/General/about.html](http://www.kgs.ukans.edu/General/about.html)

KANSAS WATER AUTHORITY

901 South Kansas Avenue, Topeka, KS 66612-1249 (785) 296-3185



Kent Lamb, Chairman

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

TESTIMONY TO SENATE NATURAL RESOURCES COMMITTEE ON HOUSE BILL 2047

March 9, 2001

From the Kansas Water Authority
Presented By Al LeDoux, Secretary

Mr. Chairman and members of the committee, I am Al LeDoux, director of the Kansas Water Office. By statute, I serve as secretary of the Kansas Water Authority. Kent Lamb chairman of the Kansas Water Authority, testified on this bill in the House, but was unable to be here this morning. At Mr. Lamb's request, this testimony is presented on behalf of the Kansas Water Authority.

At the Kansas Water Authority meeting on January 18, 2001, the Kansas Water Authority 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 with 4 qualifications. Those are:

- Banks should be established on a pilot basis.
- The safe deposit account provision should be removed.
- Division of Water Resources 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 Kansas Water Authority support for the development of water rights banks.

Pilot Banks

Banks should be established on a pilot basis. HB 2047 as amended by the House provides for one groundwater bank prior to July 1, 2002 and one additional bank on or after July 1, 2002. (Page 5, lines 27-37). The Kansas Water Authority supports a phased approach that approaches the development of water right banks on a pilot basis.

Safe Deposit Accounts

The safe deposit account provision should be removed. The Kansas Water Authority position is that a safe deposit account provides the legal framework to use water in excess of the annual

Senate Natural Resources Committee

Date 3-12-01

Attachment # 3

authorized quantity. 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 Kansas Water Authority recommends that the bill be amended to remove the provision for a "safe deposit account". (Pg 2, line 40-43 – PG 3 lines 1-29).

Comprehensive water right enforcement program

The next consideration is that the Kansas Department of Agriculture/Division of Water Resources 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 choose to participate. There would be little incentive to lease available water from a bank if there were no or very light penalties associated with overpumping.

The Kansas Water Office testified in the House on HB 2316. This bill authorizes civil penalties for failure to comply with the Appropriations Act. This is consistent with the position of the Kansas Water Authority on enforcement as a qualification of support for water right banking.

Evaluation

The final consideration in the Kansas Water Authority support of water right banking 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 is not clear that the evaluation of the operation of the bank should be compared to water use in the entire hydrologic area. The 1995 *Kansas Water Plan* Subsection recommended that the evaluation be of the hydrologic unit.

Thank you for the opportunity to present the Kansas Water Authority position to you.

STATE OF KANSAS

KANSAS WATER OFFICE

Al LeDoux
Director



Bill Graves, Governor

901 S. Kansas Avenue
Topeka, Kansas 66612-1249

785-296-3185
FAX 785-296-0878

TESTIMONY TO
SENATE NATURAL RESOURCES COMMITTEE
ON HOUSE BILL 2047
March 9, 2001
By Al LeDoux, Director, Kansas Water Office

Mr. Chairman and members of the committee, having presented the Kansas Water Authority testimony, I would like to address the committee in my capacity as the Director of the Kansas Water Office, as well. I will expand on the Kansas Water Authority testimony and offer a perspective on HB 2047 in view of a couple of other bills working their way through the process this year. My comments will address:

- Consistency with the *Kansas Water Plan*,
- The safe deposit account provision, and
- Water right enforcement program for all water rights within the entire hydrologic unit of the bank, with significant penalties.

Consistency with the *Kansas Water Plan*

With the exception of the Safe Deposit Account, we believe that a pilot water right bank as proposed in HB 2047 would be consistent with the objectives of the *Kansas Water Plan*. I have attached those objectives to my testimony.

Safe Deposit Accounts

As you have already heard, the Kansas Water Authority position is that a safe deposit account provides the legal framework to use water in excess of the annual authorized quantity.

I have attached a comparison of use based on a hypothetical water right under the safe deposit box as included in HB 2047, as proposed in the Rattlesnake Creek Management Plan, and under the provisions of the flex account as proposed in SB 237, which has passed the Senate and was heard in the House Committee on Tuesday. Under this hypothetical water right, the authorized allocation over 5 years is 500 acre feet and the owner is presumed to use 400 acre feet over the 5 years.

Example 2 is the projected water use that could be made using the safe deposit account provision of HB 2047. Compare this with Example 1, which is a hypothetical flex account based on SB 237. The flexibility that users are searching for could be accomplished with this flex account while still

Senate Natural Resources Committee

Date 3-12-01

Attachment # 4

meeting the objective of the Kansas Water Plan to conserve water through a beneficial reduction in use.

We understand that both approaches have the potential to lead to an increase in water use in a particular year. The potential for conservation over a 5-year period is greatest, however, under SB 237. I will add that we did not testify on SB 237, though I have discussed the bill with Senator Huelskamp. I mention this in this testimony on HB 2047 because of the possibility of SB 237 providing the flexibility that is desired by the safe deposit account, which we cannot support.

Comprehensive water right enforcement program

Consistent with the Kansas Water Authority testimony, we believe that 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 choose to participate. The Kansas Water Office testified in the House on HB 2316. This bill authorizes civil penalties for failure to comply with the Appropriations Act. That bill, added to the existing authority of the Chief Engineer, would provide an additional means to ensure compliance with the water Appropriation Act. We will again support this bill in the Senate if there is a hearing and hope that you will consider it as a companion to HB 2047.

Attachment 1
1995 Kansas Water Plan Subsection on Water Rights Banking

This attachment summarizes the objectives listed in the 1995 *Kansas Water Plan* Subsection on Water Rights Banking. They 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.

The 1995 *Kansas Water Plan* Subsection of the *Kansas Water Plan* 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.

Flexible Water Right Examples

Hypothetical Water Right

Annual Authorized Quantity: 100 AF

Reported Water Use	<u>1998</u>	<u>1999</u>	<u>2000</u>
	70 AF	90 AF	80 AF

Base Average Usage Over 3 Years = **80 AF**

Total 5 Year Authorized Allocations = **500 AF**

Projected 5 Year Average Use = **400 AF**

Example 1. SB 237

90% of base average usage times 5.

Total 5 Year Authorized Allocation = **360 AF**

Example 2. HB 2047- Safe Deposit Box

Any unused portion of a water right minus 10% annually.

	<u>1997</u>	<u>1998</u>	<u>1999</u>
Reported Water Use	70 AF	90 AF	80 AF
Unused Portion	30 AF	10 AF	20 AF
Minus 10%	27AF	9 AF	18 AF
Accumulative Deposit	27 AF	33 AF	48 AF

Projected 5 Year Average Use + Three Years of Safe Deposit Accumulation* = **438 AF**

Example 3. Rattlesnake Creek Management Plan- Safe Deposit Box

25% of the difference between approximately 85% of authorized quantity minus actual use (10% reduction annually).

85% of Authorized Quantity = 85 AF

	<u>1997</u>	<u>1998</u>	<u>1999</u>
Reported Water Use	70 AF	90 AF	80 AF
Difference from 85% Auth Qty	15 AF	0(-5)	5 AF
25% of Difference	4 AF	0 AF	1 AF
Accumulative Deposit	4 AF	3.6AF	4.24 AF

Projected 5 Year Average Use + Three Years of Safe Deposit Accumulation* = **403 AF**

* Assumes first three years of future use is the same as the 1997 and 1999 time period and that water was deposited into the safe deposit account.

BIG BEND GROUNDWATER MANAGEMENT DISTRICT NUMBER FIVE
125 SOUTH MAIN - STAFFORD KANSAS 67578
TELE: 620-234-5352 - FAX 620-234-6166

STATEMENT TO THE COMMITTEE ON NATURAL RESOURCES
REGARDING HOUSE BILL 2047
SHARON FALK, MANAGER MARCH 9, 2001

Good morning Chairman Tyson and committee members. Thank you for the opportunity to submit this testimony. As representative for the Big Bend Groundwater Management District, I would like to offer 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 have been selected to reduce total water use within this 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 or the Secretary of Agriculture 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 several 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 the opportunity to submit these comments.

Senate Natural Resources Committee

Date 3-12-01

Attachment # 5



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON NATURAL RESOURCES

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

March 9, 2001
Topeka, Kansas

Presented by:
Leslie Kaufman, Associate Director
Public Policy Division
Kansas Farm Bureau

Chairman Tyson and members of the Senate Natural Resources 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 Leslie Kaufman. I serve as the Associate Director of the Public Policy Division for Kansas Farm Bureau.

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

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

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

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

Senate Natural Resources Committee

Date 3-12-01

Attachment # 6

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

In anticipation of this issue being considered 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 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?

In its current form, HB 2047 authorizes the creation of only one groundwater bank prior to July 1, 2002. After July 1, 2002, another ground or surface water bank may be chartered. This slow approach to creating water banks may prove very beneficial. It will provide the opportunity to evaluate how a water bank works and identify if changes to the implementing legislation will be required. Additionally, the costs for such a program are not completely known. HB 2047's one-at-a-time process will provide important information on the fiscal impacts of the bill. This is a new venture for Kansas and one where a cautious approach is warranted, particularly when budgetary constraints are tight.

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!