

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 17, 2004 in Room 231-N of the Capitol.

All members were present except:

Representative Bill Light- excused  
Representative Dan Thimesch- excused  
Representative Tom Sloan- excused

Committee staff present:

Emalene Correll Legislative Research Department  
Raney Gilliland Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Ken Grotewiel, Assistant Director, Kansas Water Office, 901 SW Kansas, Topeka, KS 66612-1249  
Scott Carlson, Assistant Director, State Conservation Commission, 109 SW 9<sup>th</sup> Street, Suite 500, Topeka, KS 66612-1215  
Steve M. Swaffar, Director, Natural Resources, Kansas Farm Bureau, 2627 KFB Plaza, Manhattan, KS 66503-8155  
Tom Bogner, Landowner, SW Kansas  
Don Paxon, Landowner, NW Kansas  
Patrick Lehman, Northwest Groundwater Management District #4, PO Box 3510, Lawrence, KS 66046  
Mary Jane Stankiewicz, Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association, 816 SW Tyler, Topeka, KS 66612  
Leslie Kaufman, Director, Governmental Relations, Kansas Cooperative Council, 816 SW Tyler Ste. 300, Topeka, KS 66612

Others attending:

See Attached List.

Chairperson Joann Freeborn called the meeting to order. She announced that the committee will not be meeting Thursday, February 19. The next meeting will be scheduled for Tuesday, February 24. **HB2480** - Membership of Kansas Water Authority, will not have final action today.

The Chairperson opened hearing on **HB2620**.

**HB2620: Irrigation transition assistance loan program for water right owners converting to non-irrigation land use.**

Raney Gilliland, Legislative Research Department, reviewed the bill and distributed "Disposition of Money Recovered by Kansas from Colorado as the Result of Water Litigation". (See attachment 1)

Ken Grotewiel, Assistant Director, Kansas Water Office, was welcomed to the committee. He presented testimony in support of the bill which he believes creates a state program to provide irrigation transition assistance grants to irrigators who convert to non-irrigated land use. The proposed legislation is one part of an on going effort to implement the State's policy in the Kansas Water Plan on the management of the Ogallala Aquifer. (See attachment 2)

Scott Carlson, Assistant Director, State Conservation Commission, testified in support of the bill. This bill is the result of recommendations from two ad-hoc committees of the Kansas Water Authority charged with providing options for extending the life of the Ogallala Aquifer. A recommendation of these

CONTINUATION SHEET

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE at 3:30 p.m. on February 17, 2004 in Room 231-N of the Capitol.

committees was to purchase water rights for retirement. Federal legislation was developed to secure federal funding for the eight states comprising the High Plains Aquifer (Ogallala). Although the Kansas Water Authority Committees focused on the Ogallala, this bill addresses the entire High Plains Aquifer which encompasses the Great Bend Prairie Aquifer and the Equus Beds as well as the Ogallala. (See attachment 3) A map is included showing Priority Areas for Water Right Purchase Program.

Steve Swaffar, Director, Natural Resources, Kansas Farm Bureau, testified in support of the bill with suggested amendments. Kansas Farm Bureau policy supports voluntary, incentive based programs for groundwater rights retirement, similar to the one proposed by **HB2620**. Since there has been limited participation and financial support for existing water rights retirement programs, Farm Bureau supports this new approach if it achieves better results. However, there are some parts of the bill that they feel need to be addressed to make the program effective and useful. (See attachment 4)

Tom Bogner, SW Kansas farmer, was welcomed and offered comments in support of the bill. (No written testimony)

Dan Paxson, from NW Kansas, offered comments in support of the bill and the importance of water to Western Kansas, which is in an extreme drought. (No written testimony)

Pat Lehman, Kansas Groundwater Management District #4, was welcomed. He testified on behalf GMD#4 in support of the bill. What they like about the bill is: (1) is a stand-alone bill if federal actions do not materialize; (2) has multiple avenues of state, federal and local support; (3) addresses the issue of tenet protections; (4) will retire water rights to the "public domain" rather than placing them into the "custodial care of the state"; (5) appropriately addresses the status of the subject wells; (6) recognizes that reduced consumptive use of groundwater is needed in order to reduce water table decline rates; (7) is proposing to pay a reasonable economic value for the water; and (8) allows up to three years of water use in order to transition to the dryland acres if necessary; and (9) is consistent enough with the GMD#4 groundwater conservation foundation that was recently formed by the board of directors of GMD#4, to be workable. In the interest of making the bill even more usable by prospective water right applicants and more efficient and effective, offered suggestions for the committee to consider. (See attachment 5) Committee questions and discussion followed.

Written only testimony in support of the bill was submitted by Hank Hansen, Executive Director, Southwest Kansas Groundwater Management District #3. On January 14, 2004 the Southwest Kansas Groundwater Management District Board of Directors voted in support of the concept of the Irrigation Transition Program being promoted by the Kansas Water Office and the State Conservation Commission. During that same Board meeting the GMD3 directors posed a number of concerns about the program. GMD3 also hosted a meeting on January 8, 2004, that was called by US Senator Sam Brownback's staff, Amy Metzinger and Dennis Mesa. Cliff Mayo, Tom Bogner, Amy Metzinger and numerous GMD3 directors and staff were present. The purpose of the meeting was to obtain stakeholder input on the Irrigation Transition Program. (See attachment 6)

Mary Jane Stankiewicz, KS Grain & Feed Association and KS agribusiness Retailers Association, was welcomed. She testified in opposition to the bill and while they are extremely interested in the continued viability of western Kansas and understand the importance of water for the future of all Kansans, think that there are a number of unanswered questions and concerns that need to be addressed prior to the passage of this bill. If the State of Kansas is going to commit significant money and time to this project and landowners are going to terminate their water rights then we need to ensure that the program is well thought out and achieves the desired results. (See attachment 7)

Leslie Kaufman, Director, Governmental Relations, Kansas Cooperative Council, was welcomed to the committee. She testified in opposition to the bill and shared some of the concerns the Kansas Cooperative Council has with the bill. The Council includes 186 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans. The bill establishes the irrigation transition program. Although the Council appreciates the importance of water conservation, has some serious questions and concerns with the framework for this particular program and how it will be implemented. (See attachment

CONTINUATION SHEET

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE at 3:30 p.m. on February 17, 2004 in Room 231-N of the Capitol.

8) Committee questions and discussion followed.

Chairperson Freeborn closed the hearing on **HB2620**.

The meeting adjourned at 5:20 p.m. The next meeting is scheduled for Tuesday, February 24, 2004.

HOUSE ENVIRONMENT COMMITTEE

DATE February 17, 2004

NAME	REPRESENTING
Steve Swaffar	KFB
Dale Hambley	KDA
Dave Bruner	KWA KWC
<del>Mark Heim</del>	SCC
New Range	KDA
Amy Thornton	KDWP
<del>Steve Adams</del>	KDWP
Tom Smith	SLL
Susan Stover	KWO
Tina Alder	KDA
Richard Jones	KACD
Don M. Ryan	KACD
Kent Astren	KFB
Leslie Kaufman	Ks Co-op Council
Mary Jane Stankiewicz	KGFA/ KARA
Pat Lehman	GMD #4
Mike Beam	Ks LVSTR. Assn.
Lorraine Wood	
Ron Hein	Hein Law Firm, Chartered

**DISPOSITION OF MONEY RECOVERED BY KANSAS  
FROM COLORADO AS THE RESULT OF WATER LITIGATION**

KSA 82a-1801, enacted in 1996, designates three funds into which any money Kansas receives as the result of water litigation against Colorado will be credited and prescribes how the money will be spent.

**Money from Colorado Equal to Money Spent  
for Colorado Water Litigation (\$18.7 million)\***



Interstate Water Litigation Fund Under Jurisdiction of Attorney General (Interest on Fund Credited to State General Fund)
---

Expenditures from Fund:

- \$112,500 to pay back ditch companies (associations of farmers) and individuals who funded early litigation;
- Balance to pay for:
  - water litigation or preparation for future water litigation with another state, the federal government, or an Indian nation;
  - monitoring or enforcing compliance with interstate water compact or settlement relating to water; and
  - ongoing expenses connected with Colorado litigation and expenses of Kansas agencies to monitor and enforce any settlement or order of the U.S. Supreme Court in the case. (The latter is a provision in 2003 SB6.)

**All Money Received from Colorado in Excess of \$18.7 Million\***



<p><b>One-Third</b></p> <p>State Water Plan Fund for Water Conservation Projects</p>	<p><b>Two-Thirds</b></p> <p>Water Conservation Projects Fund for Projects in Upper Arkansas River Basin Affected by Arkansas River Compact</p>
--	--

\* The amount of money appropriated from the State General Fund for Colorado water litigation for fiscal years 1984 through 2004 is \$18,553,087. In addition, \$112,500 has been contributed by ditch companies and individuals. The amount will increase as future appropriations are made.

**Note:** The 1996 Legislature created the Interstate Water Litigation Fund for five years and provided that it would be abolished July 1, 2001, unless the Attorney General certified that Kansas was engaged in on-going water litigation or in preparation for litigation. If no litigation existed or was pending on July 1, 2001, balances in the Fund would have been credited to the State General Fund. Because Kansas was involved in water litigation on that date, as certified by the Attorney General, the Fund is ongoing. Money in the Fund can only be used for statutory purposes of the Fund, subject to appropriation, and any balances will remain in the Fund. Interest on money in the Fund will be credited to the State General Fund.

*House Environment  
2-17-04  
Attachment 1*

**Irrigation Transition Assistance Grant Program  
for water right owners converting to non-irrigation land use  
to  
The House Environment Committee**

**HB 2620**

**by Ken Grotewiel  
Assistant Director  
Kansas Water Office  
February 17, 2004**

Madam Chair and members of the Committee. I am Ken Grotewiel, Assistant Director of the Kansas Water Office. I am pleased to appear in support of HB 2620 that creates a state program to provide irrigation transition assistance grants to irrigators who convert to non-irrigated land use.

The proposed legislation is one part of an on-going effort to implement the State's policy in the Kansas Water Plan on the management of the Ogallala aquifer. In November 2001, the Kansas Water Authority unanimously adopted the Ogallala Aquifer Management Advisory Committee report "Discussions and Recommendations for Long-Term Management of the Ogallala Aquifer in Kansas". One of its recommendations was to create a program with the necessary funding to reduce the number of authorized water rights.

One of the major components of the State's policy on the Ogallala-High Plains aquifer is that it should be managed as aquifer subunits, areas of the aquifer with similar aquifer characteristics. Management decisions can then be based on more local conditions. The three western Groundwater Management Districts and the Division of Water Resources will divide the aquifer into subunits, establish water use goals within subunits in decline, and prioritize the aquifer subunits. The policy also recommended that a menu of options be provided to extend and conserve the life of the aquifer, with emphasis on voluntary, incentive based programs.

The Irrigation Transition Grant program is a voluntary, incentive based program that reduces water use in high priority, water short areas. The grant allows the irrigator to recoup some of his/her irrigation investment costs, often an impediment to converting to dryland farming or grazing. The water right owner would request dismissal of his water right as a condition of the grant; thus the state would not have custodial care of the water right.

The areas in which an irrigator may apply for an irrigation transition grant would be identified by a western Groundwater Management District through its approved management program, by the Chief Engineer, or in an area identified by the Kansas Water Plan, such as the Rattlesnake Creek priority area.

I would like to thank you, Madam Chair, and members of the Committee for your time and attention today. I would be happy to stand for questions.

*House Environment  
2-17-04  
Attachment 2*



Tracy Streeter, Executive Director

**KANSAS**  
State Conservation Commission

Kathleen Sebelius, Governor

**House Environment Committee**  
**February 17, 2004**

**Testimony on HB 2620**  
**Scott Carlson, Assistant Director**

Chairperson Freeborn and members of the committee, thank you for the opportunity to provide testimony on House Bill 2620. This bill amends the Water Rights Purchase Program (WRPP) under K.S.A. 2-1919 and 2-1915. The WRPP is administered by the State Conservation Commission (SCC). The WRPP was created in 1988. No interest in the Program was expressed between 1988 and 2000. In 2000 the State Conservation Commission received an application from the Big Bend Groundwater Management District proposing the purchase of water rights totaling 10,416 acre feet in the Rattlesnake Creek sub-basin. A total of \$131,923 was appropriated to the Program in FY 2002 and FY 2003 from the State Water Plan Funds to implement the Rattlesnake Creek plan. One offer was received to sell a partial water right located in the sub-basin. The Commission did not offer to purchase this water right and all funds appropriated for the program were cut during the 2003 legislative session. The amendments regard the restructuring of the WRPP and renaming the program the "Irrigation Transition Assistance Program" (ITAP). This program provides irrigation transition assistance grants to water right owners converting from irrigated agriculture to dry land production.

This bill is the result of recommendations from two ad-hoc committees of the Kansas Water Authority charged with providing options for extending the life of the Ogallala Aquifer. A recommendation of these committees was to purchase water rights for retirement. Federal legislation was developed to secure federal funding for the eight states comprising the High Plains Aquifer. This federal legislation was not introduced and is still in the draft stage. There is a wide variation in state water laws and regulations across the eight states and the wording was very generic in the draft federal legislation. A decision was made to pursue a state program more vigorously to assist in outlining how a federal assistance program could work. As a result the WRPP has been amended to form HB 2620. Although the Kansas Water Authority Committees focused on the Ogallala, HB 2620 addresses the entire High Plains Aquifer which encompasses the Great Bend Prairie Aquifer and the Equus Beds as well as the Ogallala.

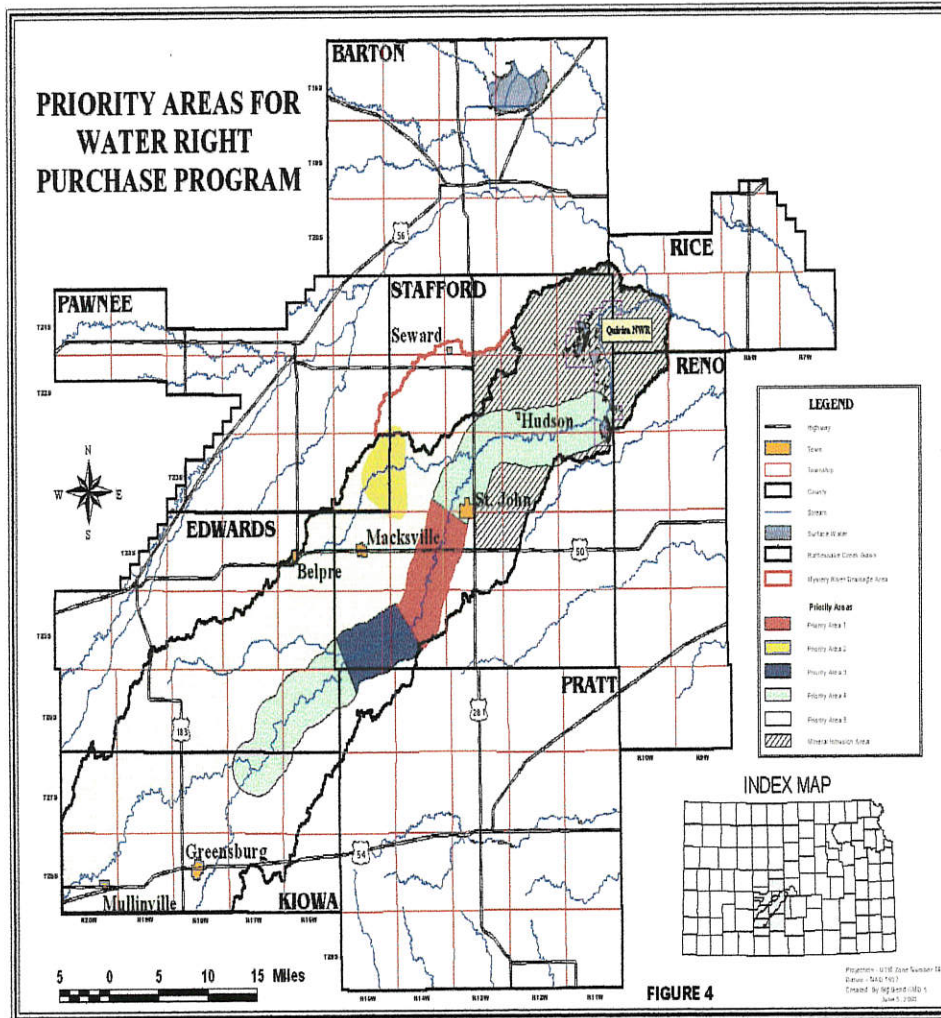


# Irrigation Transition Assistance Program (ITAP) – HB 2620

## Example of Impact in the Rattlesnake Creek Sub-basin

2/17/04

3-3



### Four Mile Corridor data:

- 244 wells using 195 AF/year/well (130 acre pivot)
- 10 year avg. use = 31,818 AF/year
- Water use savings needed to reach goal = 3,920 AF

### ITAP Requirement to meet goal:

- 20 wells X 195 AF = 3,900 AF saved

### ITAP Cost for Transitioning 20 Water Rights to Dry land:

- 20 X \$100,000\* = \$2 million  
(\*assumes \$800/acre appraised difference)

### Cost Comparison:

- SCC Cost-share for Irrigation efficiency practices in the Rattlesnake Sub-basin = \$340/AF (potential AF savings)
- ITAP = \$512/AF





## **Kansas Farm Bureau**

2627 KFB Plaza, Manhattan, Kansas 66503-8155 • 785.587.6000 • Fax 785.587.6914 • www.kfb.org  
800 SW Jackson St., Ste. #1008, Topeka, Kansas 66612 • 785.234.4535 • 785.234.0278

### **PUBLIC POLICY STATEMENT**

#### **House Environment Committee**

#### **RE: HB 2620 Concerning Voluntary Irrigation Transition Program**

**February 17, 2004  
Topeka, Kansas**

**Presented by:  
Steve M. Swaffar, Director  
Natural Resources**

---

Chairperson Freeborn and members of the committee, thank you for this opportunity to provide testimony on HB 2620. I am Steve Swaffar, Director of Natural Resources for the Kansas Farm Bureau (KFB). We testify today in qualified support for HB 2620. Farm Bureau conceptually supports the premise behind HB 2620, but believes there are flaws in this version of the bill that I will detail in my testimony.

The topic of groundwater depletion and conservation has been discussed and debated considerably in the last few years, particularly regarding the Ogallala aquifer. Farmers and ranchers, and the economy of western Kansas, depend on the use of groundwater supplies for irrigation of crops, livestock watering and public water supplies. With the dependence of western Kansas' economy on the ability to obtain and utilize groundwater from the aquifer, the decisions made here in Topeka and at the national level about the management of groundwater impact the livelihoods and futures of our members. We believe these citizens should have a role in those decisions and the ability to determine their own futures. Voluntary, incentive-based buyout programs can enable the citizens of western Kansas to help decide their futures. Heavy-handed mandates and further regulatory efforts will minimize the role western Kansans have in determining their own fate.

HB 2620 proposes such a voluntary, incentive-based program for the retirement of water rights in areas above the High Plains aquifer or areas otherwise closed to further appropriation of groundwater. The payments for the program would be based on the difference of appraised values for irrigated land and similar non-irrigated land. Although HB 2620 brings this method as a proposal, there could be at least two other ways this type of program could be administered: 1) using a bid in system similar to the Conservation Reserve Program or 2) a simple price per acre-foot of water. KFB has

*House Environment  
2-17-04  
Attachment 4*

discussed both of these possibilities with the agencies and each would have their merits. Far from perfect, but for simplicity sake, this program requires the least amount of administrative effort by the SCC and provides the most objective method to establish monetary value for water rights.

KFB policy supports voluntary, incentive-based programs for groundwater rights retirement, similar to the one proposed by HB 2620. Since there has been limited participation and financial support for existing water rights retirement programs, we support this new approach if it achieves better results. However, there are some parts of HB 2620 that we feel need to be addressed to make the program effective and useful.

Section 2(b)(2) on page 4, lines 2 through 4 would require the owner *"to convert from irrigated agriculture to dryland agriculture, pasture or other non-irrigated use at the authorized place of use associated with such water right or rights."* In situations where there is only one water right associated with the place of use, this should not present a problem. However, there are instances where multiple water rights are associated with a common property. In cases where there are multiple rights, the bill would require the owner to collectively enroll all those rights in order to be eligible for the program. We believe the owner should have the ability to enroll on the merits of each individual water right and the determined value for each of those rights. The objective of the program should be to reduce water usage and not dictate future land use. Current language may discourage participation and limit the success of the program. We believe this same problem exists in the language on page 5 lines 8 and 9. We suggest this language be revised to specify the evaluation be based on each individual water right and use be specified as conversion to a non-irrigated use.

Section 2(b)(4), page 4, lines 17 through 22 identify areas where the program would be applicable. Specifically, areas the chief engineer identifies as needing stream recovery, aquifer stabilization or lake level maintenance, and areas identified by Groundwater Management Districts (GMDs) as high priority decline areas. It is our understanding this program is aimed at reducing groundwater usage in areas above the High Plains aquifer. We do not believe areas identified by the chief engineer as needing stream recovery or lake level maintenance are appropriate for that purpose. Although there may be a hydrologic connection between stream flows or lake levels and groundwater in some areas, restoration to streams and lakes is not the objective of this program. Additionally, high priority areas identified by GMDs may not be located above the High Plains aquifer; we fail to see how this will benefit declining groundwater levels. We respectfully request this language be removed from this section and the bill focus on groundwater and the specific aquifer it is designed to protect.

Section 2(b)(4)(d) page 4, lines 34 through 37 details the factors appraisers should consider to value between irrigated acres and equivalent non-irrigated acres. Specifically, the appraiser shall consider, *(1) the annual quantity of water that was legally and physically available for irrigation prior to application for the grant; (2) the actual annual quantity of water that will be conserved because it will no longer be used for irrigation.* Clearly the legal amount of water appropriated should factor into the

appraisal, however it is inappropriate for an appraiser to consider the physical amount of water available or the amount that will be conserved. Appraisers are not scientists and should not be in the geology business. I suspect most do not have adequate training to perform such an analysis. The value of a water right should not be diminished due to over-appropriation of the area. This could cause junior rights to be more highly valued than senior rights, which is contrary to the fundamental principle of first in time, first in right. Simply, appraisers should be given one job in this process: value land.

Section 2(b)(4)(f), page 5, lines 4 through 7, requires landowners to give a lessee an opportunity to participate in the irrigation transition assistance program. Verbal or written contracts between leasers and lessees are a business arrangement between those two parties. The State should not dictate how that business arrangement is managed or responsibilities of either of the two parties. This language could have unintended legal consequences and expenditures for the State. Although the courts may ultimately decide a dispute between a leaser and lessee as it relates to enrollment in this program, it is fundamentally wrong for the State to dictate who must allow whom to participate in these business arrangements. We request Section 2(b)(4)(f) be removed from the bill.

There is merit to this type of program and it may ease some of the decline on the High Plains Aquifer. However, a program of this type must be well thought out and should not discourage participation. HB 2620 is a good starting point, but clearly needs some work to make a more successful program. We welcome the opportunity to assist the committee and agencies to further refine the legislation. Thank you for this opportunity to provide testimony.

**Testimony to the  
House Environment Committee  
HB 2620  
Presented by Patrick T. Lehman  
For the Northwest Kansas Groundwater Management District #4  
February 17, 2004**

Thank you, Madame Chair and members of the committee. I am Pat Lehman and I represent the Northwest Kansas Groundwater Management District #4, headquartered in Colby, Kansas. I am testifying for the district in support of HB 2620

GMD #4 is excited about the prospect of this legislation. What we like about the bill is that it:

- 1) is a stand-alone bill if federal actions do not materialize;
- 2) has multiple avenues of state, federal and local support;
- 3) addresses the issue of tenet protections;
- 4) will retire water rights to the "public domain" rather than placing them into the "custodial care of the state";
- 5) appropriately addresses the status of the subject wells;
- 6) recognizes that reduced consumptive use of groundwater is needed in order to reduce water table decline rates;
- 7) is proposing to pay a reasonable economic value for the water; and
- 8) allows up to three years of water use in order to transition to the dryland acres if necessary.
- 9) is consistent enough with the GMD 4 groundwater conservation foundation that was recently formed by the board of directors of GMD #4, to be workable.

In the interest of making this bill even more usable by prospective water right applicants and more efficient and effective, we have suggestions for the committee to consider.

1) Sec. 2. (b) (3) (page 4, lines 5-6): Although permanent transitions of full water rights should certainly be preferred, we'd like to see a little more flexibility in the offerings so that more water right owners might participate. In our discussions with local producers, there also appears to be markets for non-permanent transitions (such as 10-year set asides at significantly reduced costs) and for permanent retirements of partial water rights. All three of these options will help in achieving state goals. We feel that with more offerings the program could have more public appeal, and thus more participation.

2) Sec. 2. (c) (page 4, lines 24-29): We would suggest eliminating the application filing fee. We understand that it is proposed in order to eliminate all but the most serious applicants. However, it can also eliminate some potential applicants as they contemplate losing \$500-\$1,000 if they are not approved. We feel the fee should be eliminated with sufficient effort being put into assessing all applications filed. We suspect the state may actually find some gems in a more open filing process.

*House Environment  
2-17-04  
Attachment 5*

3) Sec 2. (g) (2) (page 5, lines 9-10): In order to reduce program costs and increase program efficiency, we suggest that irrigation transition plans be required only for those applications where soil or soil cover issues are really relevant. Requiring such plans on all applications when most will not have significant soil issues seems unnecessary.

4) Sec. 2. (i) (page 5, lines 30-36): Eliminating (i) in its entirety would not materially change the intent of this bill in the short- to mid-term, as all these areas are, and will remain, closed to all new appropriations except for domestic, temporary and some term permits. It would, however, allow for the possibility of new appropriations at some future time—ONLY if and when supported strongly enough by the "public interest." With (i) included, regardless of how strong the public interest may become, ANY new appropriations in these areas are impossible. We're simply not sure we should be saying "NEVER" in cases involving water.

We offer these suggestions for your consideration, that in our opinion would make the bill better. Let me reiterate the Northwest Kansas Groundwater Management District # 4 supports HB 2620 and we ask the committee to pass the bill favorably.

Thank you, Madame Chair. I will be glad to answer any questions the committee may have.

February 17, 2004

To: Members of the House Environment Committee,  
Representative Joann Freeborn, Chair

From: Hank Hansen, Executive Director  
Southwest Kansas Groundwater Management District 3

Re: HB 2620

On January 14, 2004 the Southwest Kansas Groundwater Management District Board of Directors voted in support of the concept of the Irrigation Transition Program being promoted by the KS Water Office and the State Conservation Commission. During that same Board meeting the GMD3 directors posed the following concerns about the program:

1. Consideration should be given to the impact on local county tax revenues as land values decrease when converted from irrigation to dry land.
2. If GMD3 is required to dramatically increase water usage tax in order to provide local cost-share funding for this program, then it might be plausible to have the district issue the checks to the participating landowners in an effort to demonstrate the correlation between the tax increase and the program benefits.
3. The local GMD should participate in setting land appraisal standards.
4. In times of drought, 3 years might not be enough time to make the transition from irrigated land to dry land. Irrigation privileges may need to be extended beyond the 3-years currently stipulated.
5. A minimum base value should be applied district wide since the cost of irrigation equipment is relatively consistent in lieu of the land's appraised value.
6. A maximum payment limitation should be avoided since operations in Southwest Kansas often exceed the size expectations anticipated by the USDA. We have fewer farmers per square mile, but each square mile is just as costly to farm as the next.

GMD3 also hosted a meeting on January 8, 2004, that was called by US Senator Sam Brownback's staff, Amy Metzinger and Dennis Mesa. Cliff Mayo, Tom Bogner, Amy Metzinger and numerous GMD3 directors and staff were present. The purpose of the meeting was to obtain stakeholder input on the Irrigation Transition Program. The following items were mentioned:

1. It was recommended that the income from this incentive be taxed at a lower rate similar to the current federal capitol gains tax rate. Has this issue been addressed or is there a plan to address it? The basic question is: "What are the income tax implications?"

*House Environment  
2-17-04  
Attachment 6*

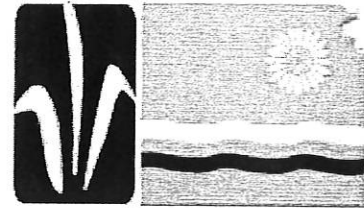
2. Has this been structured to avoid detrimentally affecting the tenant? The tenant should not be expected to forfeit their investment in the irrigation operation that isn't shared by the water right owner. The current language in the draft caused the group to believe there will be cause for tenants to file lawsuits unless it contains stipulations protecting the tenants. A considerable number of farm tenants and/or banks carry huge debts on irrigation pumps, sprinkler systems, drip systems, special farm implements, and employees or other contractual arrangements that are at risk if the landowner can abandon irrigation without regard for the well-being of the tenant.

3. Both the state and the federal government have a general lack of funds for existing essential programs, which has brought up the question: How will either the state or the Feds find support and funding for this new initiative?

4. It was suggested by Amy Metzinger that other states, such as Texas, simply don't support any Federal legislation that will affect their water, which includes Senate Bill S.212 and this Irrigation Transition Program.

5. Current economic factors seem to have a greater impact on reducing irrigation than this initiative. And yet, the rate of the aquifer's decline continues. This single issue makes this program very difficult to gain public support.

6. The concept of using a land appraisal to determine the reimbursement for terminating irrigation seems very appropriate and has merit.



STATEMENT OF THE  
KANSAS GRAIN & FEED ASSOCIATION  
AND  
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION

SUBMITTED TO THE  
HOUSE ENVIRONMENT COMMITTEE  
REGARDING HOUSE BILL 2620

FEBRUARY 17, 2004

SUBMITTED BY  
MARY JANE STANKIEWICZ

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



Dear Chairperson Freeborn and members of the House Environment Committee, I am Mary Jane Stankiewicz and I appear on behalf of the members of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). KGFA represents approximately 98% of all the commercially licensed grain storage in the state of Kansas and KARA represents nearly 750 agribusiness firms and retailers that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers.

KGFA and KARA members work, live and understand the water issues in the western section of Kansas. That is why I appear before you to share some of their concerns with this bill. While we appear as an opponent, it is not that we oppose something being done to address the water shortage problem, it is rather we question whether this bill and program will truly do much to correct the problem.

Here are some of the concerns that we have with this bill:

- Lack of Priority: Since the bill is voluntary, there is no way to ensure that the water rights that are retired will actually be the ones that could do the most good to restore water to the high plains aquifer. This program is built on the first come-first serve theory in these areas. While this system may be the easiest way to administer the program, there is no certainty that the water rights that are paid for by the state are the ones that will provide the most benefit to the aquifer. Plus, the bill is not restricted just to retiring water rights in the high plains aquifer as outlined in the next bullet point.
- Minimum Desirable Stream Flow and Lake Levels: Section (2)(b)(4)(B)i (page 4, lines 7-22) appears to allow the retirement of water rights that are not in the high plains aquifer as long as the point of diversion is in a high priority decline area. The criteria in (4)(B) is different than the criteria listed in (4)(A) which specifically mentions water withdrawn from the high plains aquifer. Another difference is the fact that subsection (4)(B) focuses on areas that in need of stream recovery, lake level or aquifer stabilization. This seems to be targeting minimum desirable stream flows which can occur in areas of the state that are not part of the high plains aquifer. We question why these water rights are mentioned when we have been informed the main thrust of this bill is to assist with the water right problem involving the high plains aquifer.
- Role of the Chief Engineer: Section 2 (b)(4) appears to allow the retirement of water rights if the point of diversion is identified by the groundwater management district and approved by the chief engineer or identified in the state water plan. We support the role of the chief engineer and think that having these points of diversions listed in the state water plan does not provide adequate review and protection unless the chief engineer approves the listing of these points of diversion.
- Economic Impact: There has been no economic study done regarding this specific area and topic that can conclusively show what will be the

economic effect of retiring water rights in this region. We are concerned about the effect on the local tax base when this land is appraised at dryland value instead of irrigated acreage. Plus, if the land is not producing any crops, then the money that is generated from that operation will also cease.

- No Maximum Acreage: We would recommend the bill have a maximum number of acres that can be retired in each county so that the local economy's base is not devastated.
- Tenant Issues: The bill (Section 2(f) on page 5, lines 4-7) states that if the ground is leased at the time the owner applies to retire the water right, the landowner shall give the lessee an opportunity to participate in the irrigation transition program. What does this mean? Will the tenant get a portion of the grant money (i.e. 1/3 to the tenant and 2/3 to the landowner)? How will it work if the tenant is a cash renter? What is the penalty if the landowner does not give the tenant the opportunity to participate? There are a significant number of acres that are farmed by tenants and this number is predicted to increase as the average age of Kansas farmers creeps ever closer to the retirement age, therefore, the tenant issue must be addressed.
- Appraiser Criteria: Section 2 (d) on page 4, lines 30-40, outlines that the water rights shall be paid based on what an independent, disinterested appraiser. Who will establish the appraisal criteria and make the determination regarding who is an independent and disinterested appraiser? When we had previous meetings, there was a concern that there may not be a sufficient pool of appraisers that understand the water and hydrological side of appraising, but instead are knowledgeable about dryland v. irrigated land.
- Use of Water for 3 years: Section 2(h) on page 4, lines 20-29 state that even after the water right has been accepted as eligible for retirement, the chief engineer can allow full pumping for up to 3 years. The bill only states that the chief engineer may reduce the water right, not that it "shall" be reduced. In theory the person could use all of the allotted water and get paid under the grant program for 3 years and have no impact on the aquifer for that time period. If someone is getting paid for the retirement of the water right isn't that the "transition" mechanism? We do not think it is right to get paid and allow full usage of the water during these 3 years. Since these are voluntarily retired water rights the person would have had an opportunity to understand the program and plan accordingly.
- Stacking of Payments: Neither the state law nor the federal bill proposed by Senator Brownback prevent the stacking of various federal and state programs (i.e. CRP, water right transition payment, etc.) While this may need to be addressed at the federal level, we wanted to bring this to your attention.
- Conflict in the Bill regarding Refund of Application Fee: It appears there is a conflict between Section 2(c) and Section 3. In section 2, the bill states that if the owner enters into a contract with the state then the application

fee is refunded. In section 3, the authorizing language states that the money in the fee fund can only be used if the applicant does not enter into a contract. We think the latter version seems to make more sense, since none of us are aware of another program that you get your application fee back once you get your license, permit etc.

- Existing Authority: We have existing statutory authority to deal with over appropriation. The drafters of the western water law envisioned a time when there would not be enough water to satisfy all the water right holders and thus developed the well-known first-in-time, first-in-right law which authorizes the chief engineer to restrict or deny the use of water by the junior water right holders so that the senior water right holders get the water they have been appropriated. Why aren't we using the current authority that is given to the chief engineer? The water rights holders in this state are very astute and understand how their water rights compare to the rest in the region, therefore, they are aware of the system of senior water rights versus junior water rights and the potential implications of being a junior water right holder.
- Premature: Since there is no clear funding mechanism, but rather various options that may or may not pan out, we suggest this bill is premature and should be held until there is a concrete and known source of funding. Once a funding source and amount is known then a better and well-defined program could be tailored to fit the budget.

Once again, while we are extremely interested in the continued viability of western Kansas and understand the importance of water for the future of all Kansans, we think that there are a number of unanswered questions and concerns that need to be addressed prior to the passage of this bill. If the state of Kansas is going to commit significant money and time to this project and landowners are going to terminate their water rights then we need to ensure that the program is well thought out and achieves the desired results.

While I have set out a number of questions and concerns there are some policy questions that we would encourage you to think about as you consider passage of this bill:

1. Is the bill needed or can existing statutes and regulations address the problem?
2. What mechanism is in place to ensure the bill actually extends the life of the high plains aquifer?
3. Do you feel it is wise and prudent to enact a bill prior to the establishment of a concrete funding mechanism?
4. Since the high plains aquifer covers 8 states, is this matter that should be dealt with on the federal level?

Thank you for your time and allowing me to present this information to you. I would be happy to stand for any questions you may have regarding this bill.



Leslie Kaufman, Director  
Governmental Relations  
Kansas Cooperative Council

**House Environment Committee**

**February 17, 2004**

**HB 2620 – Irrigation Transition Program.**

Chair Freeborn and members of the House Committee on the Environment, thank you for the opportunity to appear today and share some of the concerns the Kansas Cooperative Council has with HB 2620. I am Leslie Kaufman and I serve the Council as Governmental Relations Director. The Council includes 186 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans.

As you know, HB 2620 establishes the irrigation transition program. Although the Council appreciates the importance of water conservation, we have some serious questions and concerns with the framework for this particular program and how it will be implemented.

As we understand it, the bill allows an individual to voluntarily "surrender" his/her right in exchange for a grant covering the costs (or portion of the costs) of converting that ground to a non-irrigated use. In our reading of the bill, we do not see that the new use must remain agricultural. What qualifies as "other non-irrigated land use"? We do not know if there are any limits on what this new use could be. For example, since the bill allows for wells to be converted to domestic use, could the new use of the land be residential development? If so, is a policy of governmental enticement to pull agricultural acres out of production and convert precious ag ground into such a use good public policy for the state?

The bill allows for an application fee of \$500-\$1000 dollars. Section 2(c) provides that the fee can be refunded "if the owner of the water right enters into an irrigation transition contract with the state..." But, New Section 3 provides that "moneys in the fund shall only be

*House Environment  
2-17-04  
Attachment 8*

expended to pay the costs of the appraisal...or to refund the applicant's fee if the state is unable or chooses not to enter into an irrigation contract with the applicant". This contradiction may just be an editing oversight, but it begs questioning.

Section 2(b)(4) speaks to the possible funding sources for the grant program. We have identified in the bill where the application fees are channeled into a separate fund. We do not see where there is a similar fund for the actual grant dollars. Do those monies go into the general accounts of the State Conservation Commission? Should there be an identifiable fund for the grant dollars from this program?

Even in terms of establishing the revenue stream for the grant program, there are questions. The dollar amount the state will receive from *Kansas v. Colorado* is still uncertain. Previous legislation, passed a few years ago, outlined a plan for allocating these dollars. Some may see this new legislation as a retreat from past promises by the state. The ability to capture federal funding is also envisioned under the bill. Is there a guarantee that particular revenue stream will actually exist and if so, for how long? Who are the local entities that might be contributing to the program? If it is local governments or even groundwater management districts, their revenue source is largely property tax based.

Will local taxes increase to subsidize individual participation in the program? If that is the case, theoretically, local tax dollars could be used to take land out of production. Irrigated land is generally valued at a higher rate than other agricultural or waste land. So, there would be an expenditure of tax dollars to essentially reduce the value of land. That in turn, reduces the amount of revenue available to the local entity. It is also possible that the dollars generating through the local economy will be reduced when production is eliminated/reduced from that land.

Are the grant dollars going to be used for program administration as well as actual assistance to the right holder? If not, how will the State Conservation Commission off-set the

4,000 envisioned in the fiscal note to operate the irrigation transition program? Will dollars be shifted away from current SCC programs to accommodate this new program?

We have significant concerns about the overall economic impact this program could have on a given area. We are not aware of any solid study regarding the impact, in terms of lost revenue from potential production decreases and lower property valuations, on localities. We believe there is a possibility the impact could be significant.

With the unknown impact on local tax bases, governments and the local economy, we do not see how this proposal squares with the push to promote rural economic development activities. It seems quite conceivable, to us, that this bill could have impacts that directly contradict the goals of many of the rural economic development initiatives currently being discussed.

The irrigation transition program seems to be based on a noble concept -- reducing the stress on groundwater supplies -- but the unintended consequences of this particular proposal could have far reaching negative impacts on agri-business and rural economies. There could be other alternatives that would help reduce water usage that do not totally remove irrigation from the picture (or land from production). These could include grant programs for changing irrigation systems (flood to center pivot, center pivot to subsurface) or changing crop rotations to rely more heavily on crops that require less water. Although we believe the underlying intention of the bill to be admirable, there are too many unanswered questions to move forward, at this time, with the program.

Thank you.