

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Vice Chairman Mike Burgess at 3:30 P.M. on February 17, 2005 in Room 231-N of the Capitol.

All members were present except:

Representative Joann Freeborn- excused
Representative Tom Hawk- excused

Committee staff present:

Raney Gilliland, Legislative Research Department
Emalene Correll, Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Pam Shaffer, Committee Secretary

Conferees appearing before the committee:

Greg Foley, State Conservation Committee
David Pope, Chief Engineer, Dept of Water Resources
Richard Wenstrom, Water Protection Association
Susan Stover, Environmental Scientist, Kansas Water Office
Mike Beam, Kansas Livestock Association
Steve Swaffar, Kansas Farm Bureau
Pat Lehman, Ground Water Management District #4
Mary Jane Stankiewicz, Kansas Grain and Feed, and Kansas Agribusiness Retailers
Leslie Kaufman, Kansas Coop Council
John McCannon, KCC., Conservation Division, Legal

Others attending:

See attached list.

Vice Chair Burgess called the meeting to order.

Vice Chair Burgess asked that all guests please sign the guest log. Next Tuesday, February 22 there will be possible action on bills previously heard.

Vice Chair Burgess asked committee members to look over the committee minutes for February 1 and February 3, he will ask for a motion before the meeting is over today to approve the minutes.

Every committee member has a handout from Senator Ostmeyer answering a question from Rep. Johnson from the committee meeting on February 15. (See attachment 1)

Representative Olson made a motion to approve the minutes for February 1 and February 3, seconded by Representative Flora, motion carried.

Vice Chair Burgess opened the hearing on **HB 2400 - Establishes the irrigation transition assistance program.**

Greg Foley, State Conservation Commission, testified in favor of **HB 2400**, the mission of the proposed program is to reduce the consumptive use of water in over appropriated areas of the state. Transition grants provided to irrigators that result in dismissal of water rights is simply one tool, in a box of many, which could enable the state to better manage aquifer stabilization and stream recovery in priority areas. This program can make a difference. (See attachment 2)

Committee questions and discussion followed.

David Pope, Chief Engineer, Department of Water Resources, testified in favor of **HB 2400**, the Irrigation Transition Assistance Program (ITAP) will allow targeting high priority areas for reduced water use to achieve maximum results with limited public funds. The Rattlesnake Creek and Middle Arkansas subbasins already have water management strategies in place to implement the program and others will be developed in the

CONTINUATION SHEET

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future. (See attachment 3)

Committee questions and discussion followed.

Richard Wenstrom, Water Protection Association, testified in favor of **HB 2400**, Water Protection Association of Central Kansas (PACK) is actively promoting strip-till and irrigation scheduling with local producers to reduce water use. Of the seven program, three require legislative action and/or funding. One of these three is Water Rights Purchase. A map is attached showing the Priority Areas for Water Rights Purchase in the Rattlesnake Creek Basin. We ask that you pass **HB 2400** to facilitate the water rights purchase that we need to permanently reduce water use. The Rattlesnake Creek Basin would make an ideal pilot project for ITAP. (See attachment 4)

Committee questions and discussion followed.

Susan Stover, Environment Scientist, Kansas Water Office, testified in favor of **HB 2400**, the proposed legislation is consistent with the State's policy in the Kansas Water Plan on the management of the High Plains aquifer. The policy on the Ogallala portion of the High Plains aquifer is to conserve and extend the life of the aquifer; areas of the High Plains aquifer outside of the Ogallala are to achieve sustainable yield management by the year 2015. To help achieve these goals, the Kansas Water Plan recommends that a menu of options be provided, with emphasis on voluntary, incentive based programs. It specifically recommends state incentives for water right retirement. (See attachment 5)

Vice Chair Burgess announced that in order to keep things moving, all questions would be held until all the end of all proponents testifying.

Mike Beam, Senior Vice President, Kansas Livestock Association, testified in favor of **HB 2400**, I merely want to state to this committee that (1) ITAP is not a new concept (2) there are safeguards in place to assure the program is targeted and make the best use of limited state resources, and (3) the program has been "blessed" by many groups and organizations with an interest in the future of ground water use in central and western Kansas. (See attachment 6)

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau, testified in favor of **HB 2400** modifies the existing state statute for the water rights purchase program under the authority of the State Conservation Commission. We are in favor of allowing this program to move forward and allowing some funding through the State Water Plan to test this program. (See attachment 7)

Patrick Lehman, Board of Directors Groundwater Management District #4, testified in favor of **HB 2400**, transitioning acres out of irrigated production in specifically targeted areas is the most direct and effective way to slow the groundwater decline rates we have all been working towards. ITAP will play an important part in this effort. (See attachment 8)

Southwest Kansas Groundwater Management District passed out written testimony in favor of **HB 2400** to all committee members. (See attachment 9)

Committee questions and discussion followed for the proponents.

Mary Jane Stankiewicz, the Kansas Grain and Feed Association, and the Kansas Agribusiness Retailers Association testified in opposition of **HB 2400**, this same committee had hearings and voted down **HB 2620** last year when an irrigation transition program bill came before the committee. Then when it appeared that federal funding for this program was on the horizon, the legislative body was talked into putting a proviso into the State Conservation Commission's budget to allow the receipt of these funds for a pilot program. However, the receipt of federal funds has never occurred and so what was created in a rush is now being asked to be enacted on a permanent basis and instead of having a pilot program, you are being asked to have a statewide program. (See attachment 10)

Leslie Kaufman, Kansas Coop Council, testified in opposition of **HB 2400**, keeping land in agricultural

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production is extremely important to the agribusiness economy in Kansas. We firmly believe that a voluntary ITAP program can be developed that achieves the goal of reducing stress on water sources while still maintaining active production agriculture on the associated lands. The proposed regulations that **HB 2400** will draw-in do not, in our opinion achieve that balance. (See attachment 11)

Committee questions and discussion followed.

Vice Chair Burgess opened the hearing on **HB 2390** - Allows the Kansas Corporation Commission to increase financial assurance responsibilities for operators drilling wells after 1996.

John McCannon, KCC, Conservation Legal Division, testified in favor of **HB 2390**, with respect to changes proposed in this legislation, the Commission has ordered the Oil and Gas Advisory Committee to study and evaluate the financial assurance structure and make recommendations to the Commission in one year regarding the adequacy and sufficiency of the scheme to provide for the eventual plugging of orphaned wells drilled or reworked after 1996. (See attachment 12)

Committee questions and discussion followed.

Vice Chair Burgess adjourned the meeting at 5:46PM. The next scheduled meeting is February 22.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 02-17

NAME	REPRESENTING
Steve Swaffar	Ks Farm Bureau
Tom Day	KCC
John McCannon	KCC
Greg A. Foley	JCC
Scott Carlson	JCC
Dave Brown	KWA, KW@
Jesse Kaufman	Ks Coop Council
Maryann Stariewicz	KGFA/ KARA
Kent Weatherby	Kans. River Water Assur. Dist.
Pat Rehman	GMD-#4
Don M. Rezac	KACD
David Markler	Rep. Powell
Tracy Smith	KWO
CU Cotsora dis	KDA
Black Heim	SCC
Susan Stover	KWO
DAN KERR	Pinegar-Smith + Assoc.
Mike Beam	Ks, LVSTK Assn

Andy Shaw
 Chris Wilson
 Ken Peterson
 David Pope

SWKIA
 SW Kansas GMD#3
 Ks Petroleum Council
 WDA

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 02-17

NAME	REPRESENTING
Kent Askren	Ks Farm Bureau
Charles Benjamin	KS Sierra Club

STATE OF KANSAS



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SENATE CHAMBER

COMMITTEE ASSIGNMENTS
VICE-CHAIR: NATURAL RESOURCES
MEMBER: AGRICULTURE
EDUCATION
FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ADMINISTRATIVE
RULES AND REGULATIONS

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I am submitting this response for subsequent distribution to committee members of The House Committee on the Environment, since I was unable to answer Rep. Johnson's question at the time.

He asked me, "who was going to pay the owners of the water rights whose rights would be taken by H.B. #2393." The question confused me at the time because I didn't know what water rights he was referring to. The simple answer is that no one's water rights are to be taken, and therefore no one needs to be compensated.

The proposed bill orders the Kansas Water Office to transfer its 5400 acre feet of water storage in Cedar Bluff Reservoir plus its one-half (1/2) interest in the joint-use pool to the Kansas Department of Wildlife and Parks to manage. No private rights are being taken and the State of Kansas still owns all the water through only one State agency and not two.

Secretary Hayden's concern about Kansas Department of Wildlife and Parks not being able to pay the maintenance costs for the transferred water without jacking up hunting and fishing license fees was not well thought out. Those maintenance fees to the FEDs are already built into Kansas Water Office budget and would simply upon transfer of the water, be transferred from Kansas Water Office budget to Kansas Department of Wildlife and Parks budget.

I truly believe that if either Rep. Johnson or his constituents from Hays really thought that this Bill was going to affect their water rights, at least someone from Hays would have appeared on Tuesday or presented testimony telling the committee about their fears. I didn't see or hear from one.

Yet, ten (10) people, including myself and Rep. Larry Powell, from Ford County, Finney County, Gove County, Ness County and Trego County took the time to tell the committee how their lives and region would be affected if Kansas Water Office was allowed to release water from the lake at the call of Hays.

I apologize for not being able to respond at the hearing and hope this will clear things up. I would hope this committee would come up with some kind of solution, if you feel this bill goes to far. I just want to assure these folks that their lake will be protected.

Thank you,

A handwritten signature in cursive script that reads "Ralph Ostmeyer". The ink is dark and the signature is fluid and legible.

Senator Ralph Ostmeyer

House Environment Committee
February 17, 2005
Attachment 1



Greg A. Foley, Executive Director

KANSAS
State Conservation Commission

Kathleen Sebelius, Governor

**Testimony on the HB 2400 concerning Irrigation Transition Assistance
Program**

to

The House Committee on Environment

**by Greg A. Foley
Executive Director
State Conservation Commission**

February 17, 2005

Chairperson Freeborn and members of the Subcommittee, thank you for the opportunity to provide an overview of HB 2400 and information pertaining to how the Irrigation Transition Assistance Program would function.

Irrigation Transition Assistance Program

The Irrigation Transition Assistance Program (ITAP) was originated from ideas and input from western Kansas irrigators that were concerned about the future of irrigated agriculture in areas of significant decline. Several Kansans started this effort and brainstorming with our Congressional delegation. Senator Brownback and staff have been championing this effort in Washington, D.C., and did achieve earmark language for the Natural Resource Conservation Service to support this effort. The Committee urged NRCS to give consideration to the use of ground and surface water funding for projects in Kansas that will conserve this aquifer. The 2004 Kansas Legislature took action that directed the SCC to develop and adopt Kansas Administrative Regulations under existing agency authority to receive and disburse irrigation assistance grant funds providing an incentive for water right holders to transition from irrigated to dry land production or permanent vegetation. These regulations were adopted by the SCC on February 14, 2005. The SCC has submitted the adopted rules and regulations to the Secretary of State and will have the final rule published in the Kansas Register.

The amount of \$1,310,000 is requested as part of the State Water Plan Projects Initiative for FY 2006 for the implementation of ITAP. Of the total request, \$400,000 would be targeted to the Rattlesnake Sub-basin to assist Groundwater Management District #5 in meeting the water reduction goals of their management plan as approved by the Chief Engineer, DWR. The balance will be targeted to high-priority sub-units as designated by the Chief Engineer or GMD's. One benefit of a voluntary program is the encouragement it provides to prioritize the areas of greatest need and greatest ability to reach planned water management goals.

Mills Building, 109 SW 9th Street, Suite 500, Topeka, KS 66606
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House Environment Committee
February 17, 2005
Attachment 2

How does the SCC propose to implement the ITAP?

The SCC adopted seven new administrative regulations that address the following:

1. Definitions.
2. Eligible areas.
3. Application and review.
4. Payment.
5. Transition to dry land.
6. Dismissal of water right.
7. Petition for reconsideration.

Attached to this testimony is a copy of the adopted regulations. I would like to highlight some areas that clarify the function of the program.

Much of the terminology found in the regulations is consistent with language from Kansas Department of Agriculture's Division of Water Resources water law and administrative regulations.

Who could participate in ITAP?

- A. For an application to be eligible it must reside within the high plains aquifer (Attachment B).
- B. The subject water right must be in an area closed to further appropriations and designated as being in need of aquifer restoration by the Chief Engineer. In addition, the eligible area shall also meet one of the following criteria:
 - i. A groundwater management district (GMD) board has designated the area as a priority subunit in its local management plan, and has been approved by the Chief Engineer, or
 - ii. Outside a GMD, the Chief Engineer has designated the area as a priority subunit.
- C. Only privately owned water rights shall be eligible for the ITAP program.

When and where would I apply to participate in the ITAP?

- A. Sign-up period would be from October 1 through December 15.
- B. Notification of the sign-up would occur in a newspaper of general circulation for two consecutive weeks prior to the sign-up opening.
- C. Program procedures and application forms will be available through the SCC and conservation district offices at the county seat of eligible counties.
- D. Notification of approval or denial would occur by January 15.
- E. No greater than 10 percent of the counties irrigated acres shall be eligible for the duration of this program

How will the payment be determined?

An approved application will be based on the following:

- A. The applicant's bid price.
- B. The priority date of the water right.
- C. The amount of monetary contribution from a local entity.
- D. Maximum payment thresholds will be determined by the SCC utilizing an empirical model that establishes county average values. With county averages in mind and variability in land values, the regulations do allow the SCC to exceed the average maximum not more than 20 percent.
- E. Participating water rights that receive payment will be permanently dismissed and the priority date will be forfeited.

When is a dry land transition plan required?

In the event that the irrigated cropland is transitioning to permanent vegetation, a dry land transition plan would be required. The Chief Engineer will review such plan and determine if the plan is acceptable and potentially allow conditioned irrigation for up to three growing seasons to establish cover in sensitive areas.

What does House Bill 2400 propose?

I met with Chairperson Freeborn to discuss interim committee issues surrounding irrigation transition and as a result the SCC requested that HB 2400 be introduced. HB 2400 is a simple bill that takes the language from the legislative proviso of Fiscal Year 2005 and injected it into the applicable SCC statutes. It does modify the language that pertained to the development and adoption of rules and regulations and includes provisions that allow the SCC to utilize the currently adopted regulations mandated by the 2004 Legislature.

In conclusion, the mission of the proposed program is to reduce the consumptive use of water in over-appropriated areas of the state. Transition grants provided to irrigators that result in dismissal of water rights is simply one tool, in a box of many, which could enable the state to better manage aquifer stabilization and stream recovery in priority areas. This program can make a difference.

Madam Chair, I would like to thank you for the opportunity to have this bill introduced and heard because it is such an important component as a tool in the water management toolbox. I will stand for questions at the pleasure of the committee.

Article 11. IRRIGATION TRANSITION ASSISTANCE PROGRAM

11-11-1. **Definitions.** (a) "Active vested or certified water right" means a vested or currently certified water right that was put to lawful beneficial use in at least six out of the last 10 calendar years, including any water use that occurred before certification.

(b) "Chief engineer" means the chief engineer of the division of water resources, Kansas department of agriculture.

(c) "Commission" means the state conservation commission.

(d) "Consumptive use" means the gross diversions minus the following:

(1) The waste of water, as defined in K.A.R. 5-1-1; and

(2) the return flows to the source of water supply in the following ways:

(A) Through surface water runoff that is not waste; and

(B) by deep percolation.

(e) "Dry land transition plan" means a plan submitted by an applicant describing how permanent vegetation, including warm season grasses and cool season grasses, will be established on land that was previously irrigated, specifically describing the amount and timing of any irrigation that will be necessary to establish this cover. The plan shall not exceed three calendar years.

(f) "Eligible water right" means a water right that meets all of the following criteria:

(1) The water right is an active vested or certified water right that has not been abandoned.

(2) The water right has been certified by the chief engineer as being in an area that is in need of aquifer restoration or stream recovery and is closed to new

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appropriations of water pursuant to K.S.A. 2-1919 (a) (2) and amendments thereto, except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program.

(3) The state's dismissal of the water right would have a net reduction in consumptive use of the aquifer or stream designated for restoration or recovery pursuant to K.S.A. 2-1919, and amendments thereto.

(4) The point of diversion is located within an eligible area, as specified in K.A.R. 11-11-2.

(g) "Fair market value" means the value of a water right that is the difference between the price of irrigated cropland and the price of nonirrigated cropland, as observed by the marketplace.

(h) "Local entity" means any political subdivision chartered to address water conservation.

(i) "Partial water right" means a portion of a water right that has been formally divided by the chief engineer based on the agreement of all of the owners of the water right or an order of a court. For a partial water right to be deemed an eligible water right, the partial water right shall be associated with a portion of the distribution system, a point of diversion, or a type of use that is being physically discontinued. In dividing the water right, the chief engineer shall determine the historic net consumptive use that was associated with each portion of the beneficial use. Conditions shall be placed on the portion of the water right that is not enrolled in the irrigation transition assistance

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program to limit the net consumptive use under that portion of the water right to the historic net consumptive use associated with that physical part of the operation. A partial water right shall not be deemed an eligible water right if there is no physical change in the operation, including discontinuing a point of diversion, discontinuing a type of use, and reducing the number of irrigated acres.

(j) "Program" means the irrigation transition assistance program.

(k) "Water right" means any vested right or appropriation right under which a person may lawfully divert and use water. A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used. The water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance. (Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2003 Supp. 2-1915, as amended by L. 2004, ch. 96, sec. 4, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective P-_____.)

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11-11-2. Eligible areas. (a) Each eligible area shall be within the high plains aquifer and shall meet either of the following criteria:

(1) The area meets the following conditions:

(A) Is closed to further appropriations except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program; and

(B) is designated as being in need of aquifer restoration by the chief engineer.

(2) The area meets the following conditions:

(A) Is within a stream reach that the chief engineer has closed to further appropriations except for domestic use, temporary permits, term permits for five or fewer years, and small use exemptions for 15 acre-feet or less, if the use, permit, or exemption does not conflict with this program; and

(B) is designated as being in need of stream recovery.

(b) Each eligible area shall also meet one of the following criteria:

(1) The board of the groundwater management district has designated the area as a priority subunit in its local management plan, and this designation has been approved by the chief engineer.

(2) Outside a groundwater management district, the chief engineer has designated the area as a priority subunit.

(c) Only privately owned water rights shall be eligible for this program.

(Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2004 Supp. 2-1915, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective P-_____.)

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11-11-3. Application and review. (a) The application period for the program shall be October 1 through December 15.

(b) Notification of the program shall be published as follows:

(1) Once each week, for the two consecutive weeks immediately before the application period, in a newspaper of general circulation in each of the counties encompassing the targeted areas or area, as determined by the commission; and

(2) once in the Kansas register.

(c) The program procedures and application forms shall be available at the commission office and at conservation district offices.

(d) Each application shall be submitted on a form supplied by the commission.

The application shall include all of the following:

(1) The name, address, and telephone number of the owner of the water right;

(2) the water right file number of the water right used to irrigate the land being transitioned to dry land and the priority date of the water right;

(3) the location of the point of diversion;

(4) documentation of the annual water usage, in acre-feet, for the previous 10 years;

(5) the authorized annual quantity of water associated with the water right;

(6) the bid price expressed on a per-acre basis, which shall include the number of acres in the water right;

(7) if the land is going to be planted to permanent cover, a dry land transition plan;

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(8) documentation that verifies historical crop information for the previous 10 years; and

(9) documentation of the normal rate of diversion during the normal irrigation season. If the documentation is not based on data from an accurate water flowmeter, the results of a certified well flow rate test conducted no more than six months before the application date by a person or entity approved by the chief engineer and in a manner prescribed by the chief engineer shall be used for this documentation.

(e) (1) Upon the commission's receipt of each application, it shall be reviewed for completeness by the commission. If the application is not complete, the missing information shall be provided by the applicant to the commission not later than December 15.

(2) After the application is determined to be complete, the application shall be provided by the commission to the chief engineer to determine the eligibility of the water right.

(f) Upon completion of the review by the chief engineer, the following certifications shall be requested by the commission from the chief engineer:

(1) A statement indicating whether the water right is an eligible water right;

(2) the consumptive use associated with each water right or portion of a water right for a representative past period, which shall be the 10 calendar years before the effective date of these regulations; and

(3) the potential impact of dismissing the water right on aquifer restoration

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or stream recovery.

(g) The applications shall be prioritized for payment by the commission based on criteria that include the following:

(1) The timing and extent of the impact of the application on aquifer restoration or stream recovery;

(2) the impact on local water management strategies and priority areas designated by the state;

(3) the extent of contribution by a local entity; and

(4) the priority date of the water right.

(h) Each applicant shall be notified by the commission of the approval or the disapproval of the program application no later than January 15 of the year following the date on which the application is filed.

(i) Each application meeting the requirements of these regulations may be approved contingent upon funding and the applicant's providing official documentation to the commission that the water right has been dismissed by the chief engineer and its priority has been forfeited.

(j) The negotiations between owners and lessees regarding program participation shall not involve the commission.

(k) No more than 10 percent of a county's irrigated acres shall be eligible for the duration of this program.

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(l) There shall be no contribution requirement for a local entity. However, contributions by a local entity may increase the priority of an application.

(m) There shall be no contribution required by the state if the application funding source is federal.

(n) Each program application that does not meet the requirements of these regulations shall be rejected by the commission. (Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2003 Supp. 2-1915, as amended by L. 2004, ch. 96, sec. 4, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective P-_____.)

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11-11-4. Payment. (a) The application approval and payment amounts shall be based on the following:

- (1) The applicant's bid price;
- (2) the priority date of the water right;
- (3) the amount of monetary contributions from a local entity or the applicant, or both; and
- (4) the water right's impact on aquifer restoration or stream recovery.

(b) The maximum amount paid by the commission for a water right authorized for irrigation shall not exceed the fair market value by more than 20 percent, based on the commission's empirical model.

(c) Each water right owner shall sign an irrigation transition assistance grant agreement before payment is made by the commission. Each grant agreement shall include the following provisions:

- (1) The price to be paid by the commission to the water right owner for the transition of the irrigated land to nonirrigated land and the terms of payment;
- (2) the date on which the agreement will become effective;
- (3) a provision requiring the water right to be dismissed and its priority forfeited;
- (4) the terms of any conditional approval by the chief engineer to continue irrigation on a limited basis to establish permanent vegetation, for a period not to exceed three years;

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(5) a provision that the approval is conditional on documentation being provided to the commission by the owner of the water right, indicating that the chief engineer has dismissed the water right and ordered its priority forfeited;

(6) the file number of the water right to be retired;

(7) if the point of diversion is located within a groundwater management district, a provision that any remaining water user charges assessed by the district before the water right is dismissed will remain the sole responsibility of the owner of the water right; and

(8) a provision requiring that the land to be transitioned to dry land will not be irrigated under any other water right from any water source. The grantee shall agree that each water right that has the land to be transitioned to dry land as an authorized place of use will be divided and the consumptive use for the land to be transitioned to dry land determined by the chief engineer at the request of the commission. The grantee shall agree to dismiss the portion of each water right that was formerly used to irrigate the land transitioned to dry land.

(d) Payment shall be made in equal annual installments, not to exceed 10, or in one lump sum payment. If annual payments are selected, the payments shall be made by March 1 in each year following the year in which the first payment is made. The following factors shall be considered by the commission when determining which payment schedule to use:

(1) The number of eligible applicants; and

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(2) the amount of program funds for that year.

(e) If there is a standing crop at the time of application approval, payment shall not be made until after the last time that the crop is irrigated. (Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2003 Supp. 2-1915, as amended by L. 2004, ch. 96, sec. 4, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective P-
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11-11-5. Transition to dry land. (a) If land that will no longer be irrigated is to be planted, under this program, to permanent vegetation including warm or cool season grasses, the chief engineer shall be requested by the commission to condition the dismissal of the associated water right to allow limited irrigation of the land for up to three years to establish this cover.

(b) The applicant shall submit a dry land transition plan to the commission if land is to be planted to warm or cool season grasses or other permanent vegetation. A dry land transition plan shall not be required for dry land cropping. A dry land transition plan may be disapproved by the commission, and modifications to any dry land transition plan may be required by the commission. (Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2003 Supp. 2-1915, as amended by L. 2004, ch. 96, sec. 4, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective P-_____.)

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11-11-6. Dismissal of water right. (a) Each water right for which payment is received from the program shall be dismissed by the chief engineer, and the priority of the water right shall have been forfeited.

(b) The chief engineer shall be requested by the commission not to appropriate or reappropriate any additional water in an eligible area if payments have been made for the program in that eligible area, except for the following, if the use, permit, or exemption does not conflict with this program:

- (1) Domestic use;
- (2) temporary permits;
- (3) term permits for five or fewer years; and
- (4) small use exemptions for 15 acre-feet or less.

(c) (1) Each well associated with the water right being dismissed shall be plugged or capped according to Kansas department of health and environment standards or physically retrofitted to domestic use. The appropriate documentation shall be provided to the commission before the applicant receives the first payment. The requirements specified in this paragraph shall be waived if a conditional water right is approved by the chief engineer under a dry land transition plan.

(2) If operating under a dry land transition plan, the grantee shall plug, cap, or physically retrofit the well to domestic use within two months of the last time that the crop is irrigated as approved under a dry land transition plan.

(d) If a partial water right is dismissed on one common well, plugging, capping or physically retrofitting the well to domestic use shall not be required. (Authorized by

ATTORNEY GENERAL

FEB 08 2005

APPROVED BY 

DEPT. OF ADMINISTRATION

FEB 08 2005

APPROVED BY _____

2-16

L. 2004, ch. 123, sec. 133; implementing K.S.A. 2003 Supp. 2-1915, as amended by L.
2004, ch. 96, sec. 4, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective P-_____.)

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

JAN 21 2005

JAN 18 2005

APPROVED BY *W*

APPROVED BY FDL

2-17

11-11-7. Petition for reconsideration. (a) Any water right owner may appeal any decision of the commission by filing a petition for reconsideration.

(b) Each petition for reconsideration shall be submitted in writing to the commission within 30 days of the commission's decision and shall state why the commission's decision should be reviewed and why the decision should be modified or reversed.

(c) The petition for reconsideration shall be reviewed by the commission during the next scheduled commission meeting. Whether the decision should be affirmed, modified, or reversed shall be determined by the commission. The commission's final decision shall state each reason for this determination.

(d) The decision of the commission shall be final if no petition for reconsideration of that commission decision has been received by the commission after 30 days from the date on which the decision was made. (Authorized by L. 2004, ch. 123, sec. 133; implementing K.S.A. 2003 Supp. 2-1915, as amended by L. 2004, ch. 96, sec. 4, K.S.A. 2-1919, and L. 2004, ch. 123, sec. 133; effective P-_____.)

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

JAN 21 2005

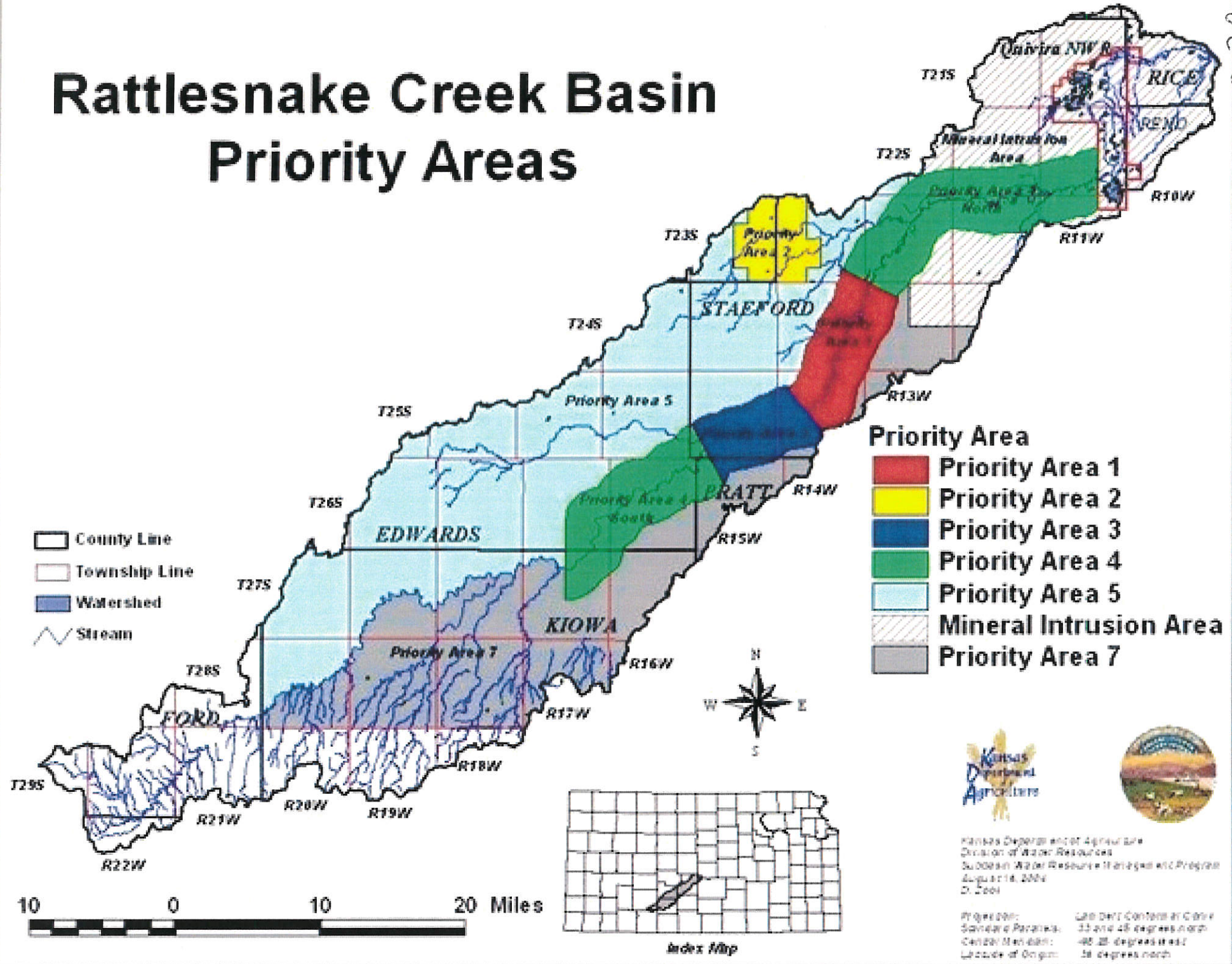
JAN 18 2005

APPROVED BY *[Signature]*

APPROVED BY FDL

2-18

Rattlesnake Creek Basin Priority Areas



Kansas Department of Agriculture
Division of Water Resources
Sustainable Water Resource Management and Program
August 18, 2004
D. 2004

Projection: UTM
Spheroid: Paramere
Central Meridian: 98.25 degrees west
Latitude of Origin: 38 degrees north

D.R. 2004



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2400
To
The House Committee on Environment
By
David L. Pope, P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

February 17, 2005

Good afternoon Chairperson Freeborn and members of the committee. I am David Pope, chief engineer of the Kansas Department of Agriculture's division of water resources. I am here to testify in support of HB 2400.

This bill amends the existing water rights purchase statute and creates the proposed Irrigation Transition Assistance Program. The chief engineer's duties to designate areas in need of aquifer restoration or stream recovery remain the same under this program. However, the amendment in section 2 (a) (4) requires that water rights returned to the custodial care of the state through participation in the Irrigation Transition Assistance Program be permanently dismissed. This new provision makes it clear what will happen to these water rights. Given the need for long-term reductions in water use, water right dismissal is appropriate.

The division of water resources administers the Kansas Water Appropriation Act and maintains the state's official records regarding water rights and water use, both of which will be important to this process. We are prepared to help the State Conservation Commission make this program work. We will provide appropriate water right information so this program is an effective tool to help address long-term water shortages in designated areas.

We have been working with local groundwater management districts and other stakeholders to help them develop strategies and enhanced water management programs as long-term solutions. While a variety of options are being implemented and considered, there appears to be strong local interest in voluntary, incentive-based programs to reduce water use.

Water management strategies have been developed in the Rattlesnake Creek basin and middle reach of the Arkansas River from just east of Dodge City to about Great Bend in GMD No. 5. In both areas, high-priority areas have been established. The amount that water use needs to be reduced in the Rattlesnake Creek basin has been determined and there are estimates for the

middle Arkansas River area. A hydrological computer model is being developed in that area to help determine the reductions needed and to evaluate management options. I have attached maps of these regions and they show the priority areas.

The effect of groundwater use on streamflow and senior downstream surface water rights is one of the important issues in this area of the state. There also are water level declines that will lead to long-term water shortages if action is not taken. Both the Rattlesnake Creek and Middle Arkansas subbasins are areas that need to achieve the State Water Plan goal of sustainable yield management by 2015.

We also are involved in implementing the Ogallala Aquifer management section of the State Water Plan to extend the life of the aquifer. The plan calls for managing the Ogallala Aquifer on a hydrological unit basis because of wide differences in water use, groundwater depletion and the aquifer's remaining usable life. With state assistance, the groundwater management districts are identifying hydrological units, priority areas and water use goals, which will allow this program to help with the transition from irrigated to dryland agriculture in selected areas.

The Irrigation Transition Assistance Program will allow targeting high-priority areas for reduced water use to achieve maximum results with limited public funds. The Rattlesnake Creek and Middle Arkansas subbasins already have water management strategies in place to implement the program and others will be developed in the future.

Our goal is to reduce water use in water-short areas using a voluntary, incentive-based program like the Irrigation Transition Assistance Program. It will have less of an economic impact on an area than regulatory actions that we may be required to take to reduce water use.

I would be happy to answer questions at the appropriate time. Thank you.

PRIORITY AREAS FOR WATER RIGHT PURCHASE PROGRAM

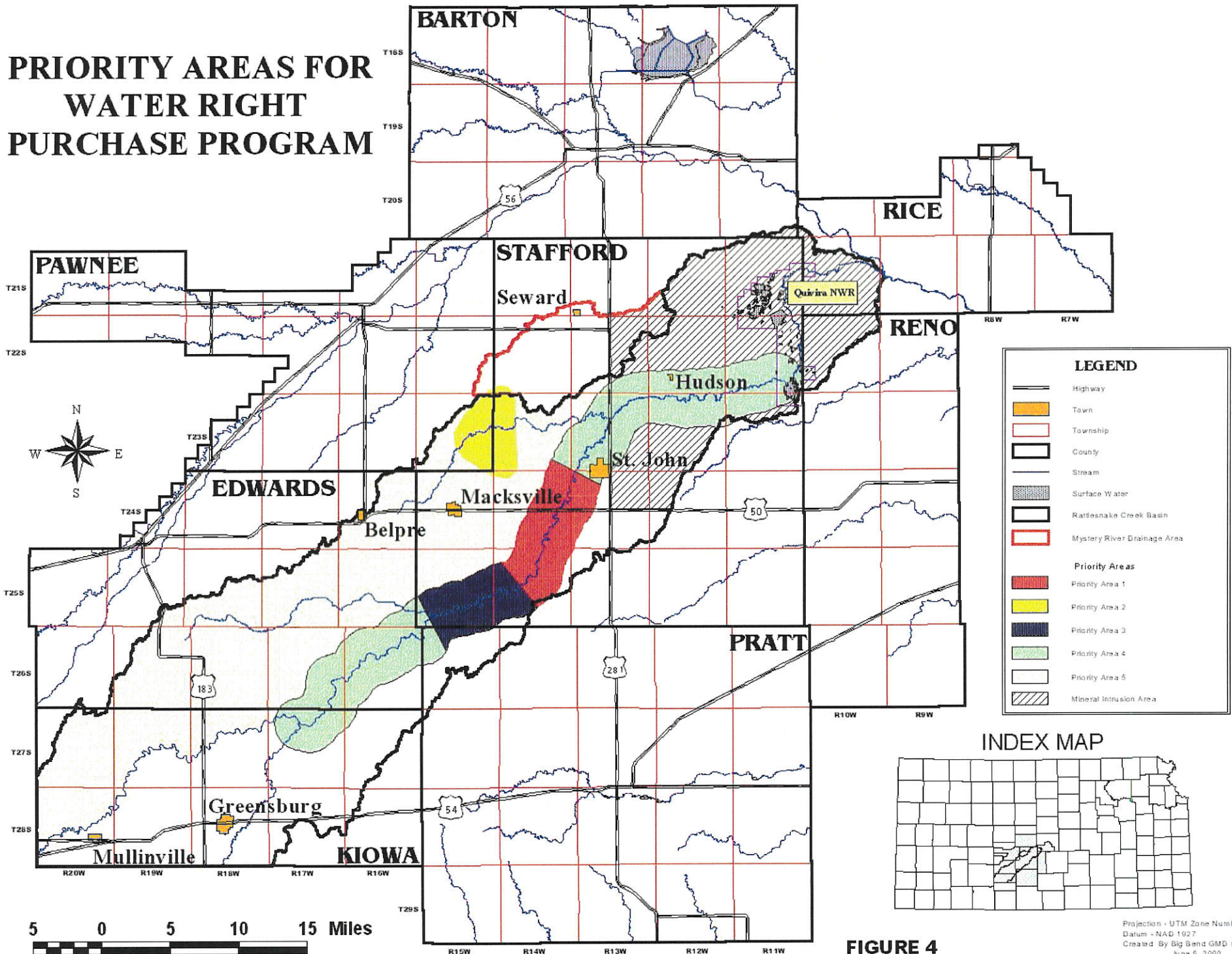
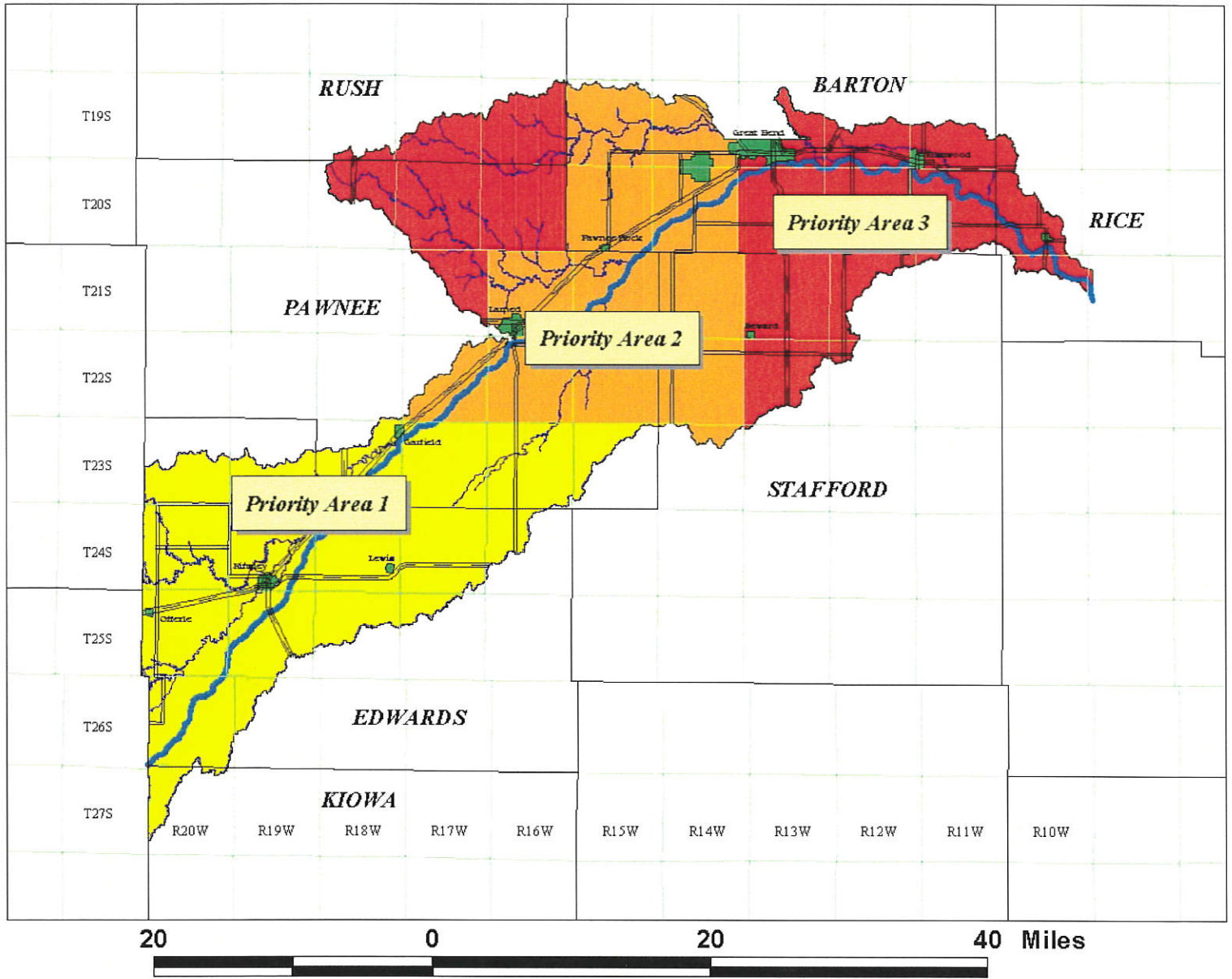


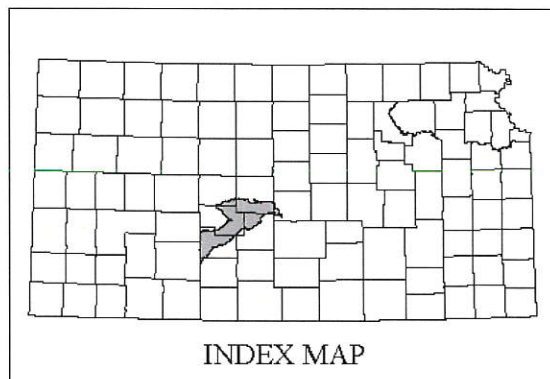
FIGURE 4

Middle Arkansas River Sub-basin Priority Areas



Legend

- Highway
- County Line
- Township Line
- City or Town
- River or Stream



Kansas Department of Agriculture
Division of Water Resources
Subbasin Water Resource Management Program
August 12, 2003
David Zook

Projection: Lambert Conformal Conic
Standard Parallels: 33 and 45 degrees North
Central Meridian: -98.25 degrees West
Latitude of Origin: 36 degrees North

Testimony Before the House Environment Committee

Thursday, February 17, 2005 - 3:30 p.m.

Madam Chairman & Committee Members:

Thank you for the opportunity to testify to you this afternoon. My name is Richard Wenstrom; I am the owner operator of an irrigated farming operation south of Kinsley, Kansas. Today I am here as a member of the Water Protection Association of Central Kansas (Water PACK), on behalf of the Board of Directors, as a proponent of House Bill 2400 relating to the irrigation transition assistance program (ITAP).

So why would an owner of an irrigated farming operation appear here today on behalf of a non-profit private organization made up of some 400 similar irrigated producers in central Kansas?? After all, this bill is designed to take irrigated land out of irrigated production permanently.

In this 3,000 square mile area, there is some remarkable irrigated production of crops like corn, alfalfa, soybeans, milo, and wheat. To give you some idea, total dollars of irrigated production each year from these 330,000 irrigated acres is about \$ 148,500,000. If we consider livestock production in this area, the money doubles to about \$ 250,000,000. Total irrigated crop inputs purchased from local vendors is about \$ 66,000,000 each year. Production units are primarily family owned farming units in small, rural communities.

The area where I live and farm is in the Rattlesnake Creek Basin; adjacent to our farm to the north is the Middle Arkansas Basin. These basins extend from Kinsley to Great Bend, south to Hudson, St. John, and Greensburg, and both basins have been closed to further appropriations by the Chief Engineer, and have been declared in need of water management plans to stabilize groundwater levels and enhance stream flows. Our groundwater source is the Great Bend Prairie portion of the High Plains Aquifer.

The Rattlesnake Creek Management Plan, eight years in development, was signed by the Chief Engineer in 2000 and has thus been in effect for four years. Water PACK was one of four partners who developed this plan. Under the plan, targets were set for voluntary water use reduction and also enhanced stream flow in the Rattlesnake Creek by 2012. Failure to hit these targets will most likely result in an IGUCA imposed by the Chief Engineer. Regulation such as this will adversely affect our farms, communities, land values, tax bases, and rural economies. We are working hard to make the plan work and avoid this regulation.

To reach these targets, the management plan calls for seven management program strategies. Participation in these programs is voluntary. Water PACK is actively promoting strip-till and irrigation scheduling with local producers to reduce water use. Of the seven programs, three require legislative action and/or funding. One of these three is Water Rights Purchase. A map is attached showing the Priority Areas for Water Rights Purchase in the Rattlesnake Creek Basin. We ask that you pass House Bill 2400 to facilitate the water rights purchase that we need to permanently reduce water use. The Rattlesnake Creek Basin would make an ideal pilot project area for ITAP.

Thank you for your consideration of this testimony. We will stand for questions as needed.

Richard J. Wenstrom
Water Protection Association of Central Kansas

House Environment Committee
February 17, 2005
Attachment 4

**Testimony on Irrigation Transition Assistance Program
Presented to
The House Environment Committee
HB 2400
Susan Stover, Environmental Scientist
Kansas Water Office
February 17, 2005**

Representative Burgess and members of the Committee, I am Susan Stover, an Environmental Scientist with the Kansas Water Office. I am pleased to appear on behalf of the Kansas Water Office to support HB 2400 relating to the Irrigation Transition Assistance Program (ITAP).

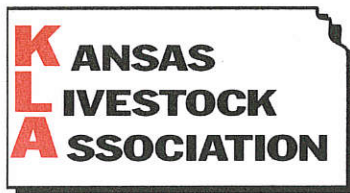
The proposed legislation is consistent with the State's policy in the *Kansas Water Plan* on the management of the High Plains aquifer. The policy on the Ogallala portion of the High Plains aquifer is to conserve and extend the life of the aquifer; areas of the High Plains aquifer outside of the Ogallala are to achieve sustainable yield management by the year 2015. To help achieve these goals, the *Kansas Water Plan* recommends that a menu of options be provided, with emphasis on voluntary, incentive based programs. It specifically recommends state incentives for water right retirement.

The Ogallala, an aquifer of great variability, is to be managed as aquifer subunits, areas with similar characteristics. Management plans can then be developed for specific subunits based on local conditions. The three western Groundwater Management Districts are in the process of defining the subunits in their districts, and the Division of Water Resources is doing the same for the fringe areas of the Ogallala. In the High Plains aquifer outside of the Ogallala, a management plan has been developed and approved for the Rattlesnake Creek subbasin, with priority areas referenced in the *Kansas Water Plan*. A voluntary plan has also been approved for the Middle Arkansas subbasin. Water right retirements are part of the strategies in both these plans.

The concept for an ITAP program developed through the state planning process. An early reference for an ITAP type program was in the report "Federal Actions Necessary for the Conservation and Environmental Preservation of the High Plains Aquifer" (October 27, 2000), from an ad hoc Kansas Water Authority committee chaired by Cliff Mayo, an irrigator in Finney County.

The Ogallala Aquifer Management Advisory Committee, chaired by Tom Bogner, an irrigator in Ford County, made recommendations that included an ITAP type program ("Discussion and Recommendations for the long-term management of the Ogallala Aquifer in Kansas. October, 2001"). Since then, the ITAP program has been discussed in a series of meetings with staff from Senator Brownback's office, Groundwater Management Districts, the Basin Advisory Committees, farm groups and many others. This program has been envisioned and extensively discussed by farmers, agri-business people, and water resource managers. The State is currently working with Senator Brownback for a federal earmark to fund ITAP.

Thank you Mr. Vice-Chairman, and members of the committee for your time and attention. I would be happy to stand for questions.



Since 1894

TESTIMONY

To: The House Committee on Environment
Rep. Joann Freeborn, Chairperson

From: Mike Beam, Senior Vice President

Date: February 17, 2005

Subj: **House Bill 2400** -A bill creating an Irrigation Transition Assistance Program.

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,600 members on legislative and regulatory issues. KLA members are involved in many aspects of livestock production, including cow-calf/stocker enterprises, cattle feeding, seed stock production and diversified farming operations.

Kansas ranked second nationally with 6.65 million cattle on ranches and in feedyards as of January 1, 2004. The state's beef industry consumes 72% of the corn, 16% of the soybeans, and 60% of the hay grown in Kansas. At over \$5 billion, cattle sales typically generate nearly two-thirds of all annual agricultural receipts.

As you can read in the introductory paragraph of this testimony, the future of the Kansas livestock industry is dependant on a productive, viable, and sustainable grain and forage base. Groundwater is a significant resource for grain and forage production in many part of this state. We believe HB 2400 is an important legislative proposal. The bill is necessary to give the state the authority to administer a voluntary program intended to extend the life of the High Plains Aquifer. The Kansas Livestock Association (KLA) supports this bill.

The Irrigated Transition Assistance Program may be new to some members of this committee. Let me assure you, this is not a proposal hatched in the confines of an office or conference room of a state office building in Topeka.

- The idea of permanently retiring a limited number of water rights, and groundwater pumping, in priority areas was proposed by stakeholders in southwest Kansas several years ago. (Mayo report)
- The Kansas Water Authority has repeatedly identified and designated this program as an important tool to extend and conserve ground water for future generations.

House Environment Committee
February 17, 2005
Attachment 6

- The Kansas Natural Resources Legacy Alliance, in 2003, identified groundwater quantity as a key factor that could limit future economic and population growth. This group, after consultation from stakeholders at the local level, suggested the following strategy:

Develop and implement water management strategies to reduce water use in critical or high priority areas and provide for an economic transition from irrigated to dryland farming.

- In addition, this program has considerable local support by several Groundwater Management Districts. These entities are governed by local citizens committed to programs and initiatives that extend and/or sustain ground water use.

Please note this testimony does not address some of the technical issues and specific questions that may be posed by this committee or conferees at today's hearing. I merely want to state to this committee that (a) ITAP is not a new concept, (b) there are safeguards in place to assure the program is targeted and makes the best use of limited state resources, and (c) the program has been "blessed" by many groups and organizations with an interest in the future of ground water use in central and western Kansas.

This is the year, we believe, the Kansas Legislature should pass legislation giving the State Conservation Commission authority to administer the program. We urge your favorable consideration of HB 2400.

Thank you.

Kansas Farm Bureau
POLICY STATEMENT

House Environment Committee

RE: HB 2400, An act concerning water, relating to the irrigation transition assistance program

February 17, 2005
Submitted by:
Steve M. Swaffar
Director of Natural Resources

Chairman Freeborn and members of the committee, thank you for this opportunity to provide testimony today in support of HB 2400. I am Steve Swaffar, Director of Natural Resources for the Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations. Kansas Farm Bureau policy has and continues to support the concept of a voluntary, incentive-based program to purchase water rights from willing sellers, to reduce demand on aquifers in over-appropriated areas. HB 2400 authorizes such a program. HB 2400 modifies the existing state statute for the water rights purchase program under the authority of the State Conservation Commission (SCC). We are in favor of allowing this program to move forward and allowing some funding through the State Water Plan to test this program.

KFB has been an active participant in the regulation development process since the Legislature directed the SCC to draft regulations in last year's Omnibus proviso. We have met with and provided comments to the SCC regarding our policies. Additionally, we have requested input from our members on this concept and have communicated those concerns and interests to SCC. Although HB 2400 gives few details regarding how ITAP will be implemented, the regulations currently being finalized by SCC do spell-out how the program is intended to be administered. The regulations do not address all of the concerns we have expressed to SCC, and clearly the program will not appeal to everyone. However, we believe the program should be given a test drive and the regulations revised to correct any flaws at the end of a trial period.

We would like to point some items in the bill that may need correction and items that raise some questions for us. Section 2(a)(3) and (4) requires a participant to return his/her water right to the custodial care of the state and then the Chief Engineer to permanently dismiss the water right. This seems to require an unneeded step in the

process. The Division of Water Resources currently has a form that allows a water right holder to voluntarily dismiss his/her water right called the "Voluntary Waiver of Hearing and Dismissal of Water Right." We suggest this form be used in lieu of returning the water right to the custodial care of the State. This will simplify the process and remove and unneeded step.

In Section 2(b), line 17, the bill would require the chief engineer to evaluate the potential of water rights to provide stream recovery on water rights purchased outside of the state. We are unclear as to why the Kansas ITAP program would consider purchasing water rights outside of the State. Although it's clear this language remains from the existing statute, we don't believe the intent of the program as conceptualized, was to purchase waters rights outside the state. We suggest this language be stricken from the bill.

In new Section 3 (b), line 26 it appears the word "commission" needs to be inserted after conservation. We would also like to point out that neither the bill nor the proposed regulations provides for a sunset provision, as recommended by the Special Interim Committee. We suggest this committee consider adding language to the bill that would sunset the program after three years and the SCC report back to this Committee on the success of the program prior to reauthorization of the program. I have provided with my testimony a copy of our suggested amendments to the bill and copy of the form I referenced earlier.

Thank you for this opportunity to provide testimony, we urge you to consider our suggested amendments and pass HB 2400 favorably.

1 the area to further appropriations and designated the area as being in
2 need of aquifer restoration; (B) in the case of a water right for diverting
3 groundwater or surface water, such water right is within a stream reach
4 where the chief engineer has closed the stream reach to further approp-
5 riations and designated the stream reach as being in need of stream
6 recovery;

7 (3) ~~a local entity has provided an assurance that it will pay at least
8 20% of the purchase price negotiated by the entity and the holder of the
9 water right; and~~

10 ~~(4) the holder of the water right participates in the cost share pro-
11 gram and agrees to return the water right to the custodial care of the
12 state; and~~

13 ~~(1) water rights returned to the custodial care of the state through
14 participation in the irrigation transition assistance program shall be per-
15 manently dismissed by the chief engineer of the division of water resources
16 of the Kansas Department of agriculture.~~

17 (b) ~~In the case of a purchase of a surface water right from outside
18 the state, such purchase shall be considered and evaluated by the chief
19 engineer on the basis of the potential of the water right to provide stream
20 recovery within a designated stream reach.~~

21 New Sec. 3. (a) There is hereby established the irrigation transition
22 assistance program. Such program shall be administered by the state con-
23 servation commission for the purposes of issuing irrigation transition
24 grants for privately owned lands, subject to the provisions set forth in
25 K.S.A. 2-1915 and 2-1919, and amendments thereto.

26 (b) The state conservation ~~may receive and expend from the federal~~
27 government, or any public or private source, for the purpose of carrying
28 out the provisions of this section.

29 (c) The state conservation commission shall adopt rules and regula-
30 tions as necessary for the administration of this section. All rules and
31 regulations in existence on March 1, 2005, shall continue to be effective
32 and shall be deemed to be duly adopted rules and regulations of the state
33 conservation commission until revised, amended, revoked or nullified
34 pursuant to law.

35 Sec. 4. K.S.A. 2-1919 and K.S.A. 2004 Supp. 2-1915 are hereby
36 repealed.

37 Sec. 5. This act shall take effect and be in force from and after its
38 publication in the statute book.

(3) upon notification of an approved application for an irrigation transition grant, an applicant shall submit to the chief engineer of the division of water resources of the Kansas Department of Agriculture a voluntary waiver of hearing and dismissal of water right form. Within thirty days of receiving the voluntary waiver, the chief engineer shall issue an order dismissing the water right.

delete section 2(b)

commission

(d) The irrigation transition program shall commence on June 30, 2005 and end on June 30, 2008. The state conservation commission shall report on or before January 20, 2008 to House committee on environment and the Senate committee on natural resources on the results of the irrigation transition program.

VOLUNTARY WAIVER OF HEARING & DISMISSAL OF WATER RIGHT

To: Kansas Department of Agriculture
Division of Water Resources (DWR)
109 SW Ninth Street 2nd Floor
Topeka, KS 66612-1283
Telephone: (785) 296-1054

Re: Appropriation of Water
Water Right
Vested Right
Term Permit
(Check Appropriate Box Above)
File No. _____

The undersigned owner(s) and/or authorized agent(s) of the above referenced water right, or permit, freely and voluntarily request that the file be dismissed and its priority forfeited. By signing this waiver, I am indicating my understanding and agreement that I am relinquishing all right, title and interest in said water right.

The signature(s) below represent all present owners (or an authorized agent) for the file number shown above (attach duplicate copies of this document as necessary).

The signature(s) below also indicate(s) a waiver of any right to a hearing or an appeal that I/we may have had regarding the dismissal and termination of the above referenced file. I/we recognize that if this closure request is submitted to the Division of Water Resources, it will terminate this water right and forfeit any priority associated with it forever.

Indicate here if you wish to retain the well(s) for domestic use (DWR water right not required):

_____ (Signature of Owner or Authorized Agent)	_____ (Signature of Spouse <u>or</u> Title of Authorized Agent)
_____ (Please print name here)	_____ (Please print name here)
_____ (Mailing Address)	_____ (Mailing Address)
_____ (City, State, Zip)	_____ (City, State, Zip)

ACKNOWLEDGMENT

State of Kansas }
County of _____ }

This instrument was acknowledged before me on this _____ day of _____, _____ by
(owners:) _____

(Seal)

Notary Public

My appointment expires:

**Testimony to the
House Environment Committee
HB 2400
Presented by Patrick T. Lehman
For the Northwest Kansas Groundwater Management District #4
February 17, 2005**

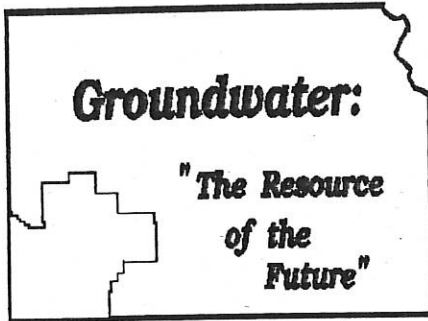
Thank you, Madame Chair and members of the committee. I am Pat Lehman and I represent the board of directors of the Northwest Kansas Groundwater Management District #4, headquartered in Colby, Kansas. I am testifying for the district in support of HB 2400

HB 2400 authorizes the continuation of ITAP via SCC regulations. It addresses 2 items - the elimination of the previous 20% local cost share requirement; and the disposition of the transitioned water rights back to the public domain rather than the custodial care of the state.

On January 20, 2005 the GMD 4 board voted to no longer allow small use exemptions (15 acre-feet) in any district high priority areas. With this action the most significant issue we have had with the developing ITAP program has been completely reconciled. We are now in full support of this program and ask the same of you.

The importance of providing and appropriately funding such an assistance program should not be underestimated. Transitioning acres out of irrigated production in specifically targeted areas is the most direct and effective way to slow the groundwater decline rates we have all been working towards. ITAP will play an important part in this effort. Our final job is to ensure that all developing transition programs (GMD 4 Foundation, NRCS ground and surface water EQIP program and Senator Brownback's efforts) are incentive-consistent with each other so they all work together cooperatively rather than competitively.

Thank you, Madame Chair. I ask the committee to support HB 2400 and pass it favorably. I will be glad to answer any questions the committee may have at the appropriate time.



**Southwest Kansas
Groundwater Management District**

*** * * * ***

(316) 275-7147

**409 Campus Drive, Suite 106
Garden City, Kansas 67846**

**RESOLUTION 2005-3
OF THE
SOUTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT**

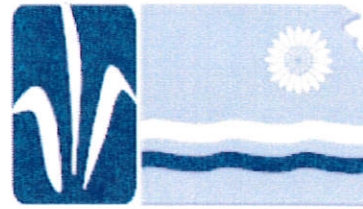
Be it resolved by the Board of Directors of the Southwest Kansas Groundwater Management District Number 3, that this governing body:

supports the development and implementation of the Irrigation Transition Assistance Program (ITAP) as a desirable and necessary voluntary program that can benefit the State of Kansas and in particular those areas of the High Plains Aquifer identified as having significant declines in groundwater supplies

and further

supports the concept of funding pilot programs at this time.

Adopted February 9, 2005



HOUSE ENVIRONMENT COMMITTEE

RE: HB 2400 – Relating to the Irrigation Transition Assistance Program

February 17, 2005

**Presented by:
Mary Jane Stankiewicz**

Good afternoon Vice Chairman Burgess and members of the House Environment Committee. I am Mary Jane Stankiewicz and I am testifying on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry.

KGFA and KARA have testified and participated in a number of hearings regarding this topic. We appreciate the willingness of the agencies involved to continue to work with our associations. I think we are all in agreement that water is in decline in parts of western Kansas. However, we begin to differ as to whether the irrigation transition assistance program is the right program to

address the issue. We have raised and will continue to raise the concern that any program of this type will have an impact on the local economy and the local tax base and that such economic impact needs to be considered. This is discounted by the proponents by their statement that something has to be done and that the lack of water will cause an economic impact on the region also. They are correct that the natural decline will have an impact on the region, but when we implement a program the state should have a desire to know the outcomes and the impact of the project.

While the bill is fairly simple there are a number of questions that I would raise for the committee's consideration because the issue of irrigation transition is far from simple and the dollar amount requested by the agency of \$1.3 million is far from a small amount.

1. Why doesn't the bill contain a sunset provision? The Special Committee on the Environment met on November 30, 2004 and passed a motion that the ITAP program would have a three year sunset provision. This is a new program with uncertain results and has raised enough eyebrows that we think a review of the program's progress is warranted. We strongly urge the committee to amend HB 2400 with a sunset clause. We have never supported a permanent program and still think there are too many unanswered questions to support a permanent program.
2. Why doesn't the bill contain a provision that prohibits the payment for publicly held water rights? Once again, this was one of the items that the Special Committee recommended in November and while the regulations speak to this topic, the bill does not address the issue. We think that the bill should be amended to include this prohibition.
3. Where are the details of the program? Do you know where the money will be spent? We have heard testimony that \$400,000 will go towards the Rattle Snake area, but there is no clear direction where the other \$900,000 will be spent. We do not think it is prudent or wise to authorize and appropriate nearly a million dollars without knowing where the money

will be spent. How can you determine if the agency acted appropriately or hit the mark when you do not tell them what is the target? Once again, there needs to be more detail in where the million dollars is going to be spent.

The proponents will tell you that \$1.3 million will not do much to impact the water resource problem and that a lot more money is really needed. For arguments sake, let's say that we agree with the proponents, then it is even more critical that the money is spent in a targeted area and not spread throughout the various groundwater management districts.

However, the agency is stating that the money will be used throughout various gmd's. This scattergun approach will decrease the odds of success and could turn into a situation where we are spending money with no return or benefit.

4. Are the local areas really ready for this program? The agency has talked about identifying priority areas, however, a couple of people in various groundwater management districts have said that they have not identified high priority areas and that the state is ahead of the local groundwater management districts. We have had a number of programs that have been unsuccessful because Topeka has gotten ahead of the general public. This seems to be one of the last types of programs that you would ever want Topeka to be the driving force behind the program. Before you commit an agency to take this significant undertaking it is critical to make sure the local areas are ready for the program and in this situation nearly all of the areas are not ready for the program.
5. Has anyone looked into how to prioritize the areas beyond just stating that they are high priority areas? What is meant by this question is that even if the groundwater management areas have identified a high priority area, that will only tell you where the water is the shortest but will not necessarily tell you where you have the best chance of extending the life of the water resource. The next step in triaging the priority areas must occur if there is to be any meaningful extension of the water resources.

6. Why is the local match part of the statute deleted when the ITAP regulations refer to the fact that the “applications shall be prioritized for payment by the commission based on criteria that include the following...the extent of contribution by a local entity” (Proposed K.A.R. 11-11-3(g)(3). First of all, we believe that local match dollars should not be considered and that the impact to the water resources should be the driving force of the priority scheme. If a program is implemented then buying the right water rights should drive the program, not what area has the biggest chest of money that can be devoted to this program. This is especially true when you think of the taxing authority that groundwater management districts currently have at their disposal. The water rights that are not in a well funded groundwater management area or are not in a groundwater management area at all will be at a significant disadvantage under this priority scheme. We also think it is rather disingenuous of the agency to say that they are not requiring local match dollars, but then are on the verge of implementing regulations that prioritize applications based on local match dollars.

One other thing to consider is that this same committee had hearings and voted down HB 2620 last year when an irrigation transition assistance program bill came before the committee. Then when it appeared that federal funding for this program was on the horizon, the legislative body was talked into putting a proviso into the State Conservation Commission’s budget to allow the receipt of these funds for a pilot program. However, the receipt of federal funds has never occurred and so what was created in a rush is now being asked to be enacted on a permanent basis and instead of having a pilot program you are being asked to have a statewide program.

Thus, we still believe there are things that need to be ironed out of this program before it is ready to be authorized and implemented. Therefore, we respectfully

request that you do not pass HB 2400 at this time. Thank you for your time and attention and I would be happy to stand for questions.



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House Committee on the Environment

February 17, 2005
Topeka, Kansas

RE: HB 2400 -- Irrigation Transition Assistance Program (ITAP).

Vice Chairman Burgess and members of the House Committee on the Environment, thank you for the opportunity to appear today and comment on behalf of the Kansas Cooperative Council (Council/KCC) regarding the proposal in HB 2400 statutorily establishing an Irrigation Transition Assistance Program (ITAP). I am Leslie Kaufman and I serve the Council as Government Relations Director. The Council includes more than 223 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans.

First of all, let me make it clear that the Council understands the importance of water conservation and the desire to extend the useful life of water sources, particularly portions of the High Plains aquifer. But, we have some serious questions and concerns with the proposals, to date, for establishing an ITAP. The Kansas Co-op Council raised concerns with the ITAP program outline contained in HB 2620 last session (2004) and we have also provided comments to the State Conservation Commission on proposed regulations for the ITAP pilot program authorized in the 2004 session. Several changes to the regulations have been made following the December formal hearing, but some of our concerns still remain.

The Kansas Cooperative Council appreciates the State Conservation Commission's (SCC) willingness to dialogue with stakeholders during last session and this interim regarding the proposals. Additionally, we understand the interesting timing constraints the Commission was challenged with under the budget proviso passed in 2004. This proviso authorized the cre

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Attachment 11

ITAP pilot program and directed the SCC implement regulations by next month for the program. Thus, regulations will be enacted and, apart for further action by the legislature, will expire three and a half months later. In our opinion, the SCC has made a diligent effort to meet this deadline, but we wish there had been more time in which to work through issues that still remain with their proposed regulations.

The latest edition of the proposed regulations still concerns us. The bill before you will extend these regulations beyond the budget proviso they were created under. The framework of the ITAP is not spelled-out in statute, but will be based on these regulations. As such, we cannot support HB 2400, the bill before you now.

One seriously flawed provision in the regulations requires a reduction in the number of acres of irrigated land once associated with a water right that is retired. These acres could never be irrigated again from any other source. This completely ignores advances in irrigation technology, plant science and exit water law allowing changes in place of use and diversion.

Conditioning the use of the land in this manner is unreasonable. More than one association encouraged the State Conservation Commission to reconsider this position during the formal rule and regulation hearing in December. Although the section was worded differently in the revised version, the SCC still proposes to condition the land, prohibiting some acres from being irrigated from any source forever.

There is a proper procedure for changing the place of diversion and place of use for a water right. If a water right is retired under ITAP, apart from these regs, it would be perfectly legal to seek such a change on a different right and allow all that land to be irrigated again. Water is still being saved because the first right is no longer in use. As long as the water that is retired is not being used, (net consumptive use is decreased) it should not matter how the land is used. This program is supposed to be about saving water not state land use planning.

The current proposed regulations also allow for the retirement of a partial water right. If only part of a right is retired, the prohibition against future irrigation from any source is even more absurd.

When questioned about this situation, SCC staff informed me they had to condition the land because they did not have the person-power to “police” the partial rights and see if the water user was in compliance. They don’t need to. A system for “policing” water usage already exists.

Each year, appropriation permit holders must submit their annual water use report to the Division of Water Resources within the Kansas Dept. of Agriculture. DWR examines those against the authorized use associated with each permit. If there is over-pumping (based on the new amount now authorized following the partial retirement), DWR should be able to address it the same as they address over-pumping on any other appropriation permit.

Even after this fact was brought to the attention of SCC staff at the December hearing, they continue to pursue placing limitations on land. That is unnecessary, unreasonable and to us, unacceptable.

We are also concerned that the regulations, though technically compliant with the proviso, come just shy of countering legislative intent. The proviso language passed last year specifically prohibits the SCC from requiring local matching funds for acceptance into the ITAP program. Thus, we think the use of a local match to elevate an application’s priority is inappropriate. Under this line of thinking, a right that has significant hydrologic value if retired could be passed over for a less beneficial right if it was accompanied by a local match. So, could that essentially make money the drive under ITAP rather than hydrologic benefit? We think that is a possibility under the regulation. It may not be how the SCC chooses to implement the regulation, but we believe the wording could allow it.

I have described examples of problems with the proposed regulations. I will not take your time today to detail all the glitches in the current proposed regulations. To the Commissions credit, several issues that were raised at the December hearing have been addressed, but it is not enough to make the package palatable to the Council.

As many of you know, the Special Committee on the Environment examined issues surrounding the creation of an ITAP during the 2004 interim. They included a recommendation that any such program included a sunset provision. The bill before you now would make the ITAP

permanent. We believe any ITAP should only be initiated as a pilot/trial program and that a sunset is absolutely necessary.

The Council has raised concerns with the insufficient analysis regarding the potential impacts an ITAP could have. Of particular concern were the possible impacts such a program could have on local economies. The implementation of a pilot ITAP could provide the opportunity to evaluate the actual economic and hydrologic impacts such a program can have.

It is important to have data of this nature that spans several years. As such, we encourage any pilot program continue in a limited form for at least the next few years to facilitate this type of data gathering and evaluation. We think this is critical before an expanded transition program be considered. Extending the usefulness of the High Plains Aquifer is an important issue, but it must be done in a manner that does not wreck local economies, tax bases and communities. We believe that the real local impacts on the tax base and economy have been largely overlooked by ITAP proposals, to date. An economic analysis was included with the draft regulations, but we do not think it was broad enough.

Another area where we question the potential ITAP impacts concerns agricultural lending. What happens in terms of collateral value when a financial institution extends a loan on land that had water on it at the time of the loan, then after some time, the water is essentially removed. Is the lien holder notified of the change? Does that impact the collateralization of that land?

The Council has also been concerned that one of the actual impacts of an irrigation transition assistance program will be acreage coming out of agricultural production. Included in the Cooperative Council membership are 111 grain handling co-ops. This industry is dependent on Kansas grain crops to fill storage facilities. Many of our local grain cooperatives have been hard-hit by impacts of the drought conditions parts of our state have been dealing with, some for several seasons. Under any ITAP proposal, it is critical that preferences, whether conscious or unintended, not be provided to removing land from agricultural production in favor of idling the land under non-crop or non-forage vegetative cover.

Active and actual agricultural production, such as dry land farming, switching to less water intensive crops and cattle grazing, should not be discouraged by the design of any ITAP program. The growing success of the cotton industry in Kansas and the advances in developing more drought resistant crops are evidence that land can sustain active agriculture production with a lower water requirement. Arguably, we think the provisions of the proposed regulations prohibiting future irrigation ignore advances in irrigation technology, plant science, and cropping techniques. Combined with allowance for continued irrigation to establish a cover crop, we believe the regulations can arguably be seen as tilting the program in favor of establishing vegetative cover over cropping.

Keeping land in agricultural production is extremely important to the agribusiness economy in Kansas. We firmly believe that a voluntary ITAP program can be developed that achieves the goal of reducing stress on water sources while still maintaining active production agriculture on the associated lands. The proposed regulations that HB 2400 will draw-in do not, in our opinion, achieve that balance.

There may be a time when a balanced pilot program is developed and the Council will not have serious objections with it (other than losing production acreage). We are not there yet. We encourage the state to take a step back, refrain from passing HB 2400 and make sure all the major concerns are addressed before attempting to put an ITAP program on the ground. Again, we appreciate the opportunity to share these thoughts with you. Thank you.

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Testimony of John McCannon
Assistant General Counsel
State Corporation Commission of Kansas
Conservation Division
before the
House Committee on Environment
February 17, 2005

I would like to present Commission Staff comments on HB 2390 to the Committee.

This bill would amend K.S.A. 55-155 to increase the amount of annual financial assurance paid by oil and gas operators. The current financial assurance structure was modeled after the licensing system used by Texas in 1991, and became effective in Kansas in 1998. In 2001, the scheme was modified slightly; however, the fees and monetary figures did not change.

The financial assurance structure provides for two categories of oil and gas operators. The first consists of all operators that have been licensed for at least three years and have an acceptable record of compliance. In accordance with §(d)(3), these operators pay a nominal annual assurance fee, which is currently \$50. This amendment would increase the fee to \$100.

The second category consists of all operators who have held a license for less than three years, and all operators that do not have an acceptable record of compliance. This amendment would increase the face value of the blanket performance bond or letter of credit that each operator has the option of furnishing based on the number of wells he operates in §(d)(2); however, it would not change the value of the individual performance bond or letter of credit option based on the total aggregate depth of the wells in §(d)(1).

The majority of operators in this second category choose the nonrefundable fee or "cash bond" option in §(d)(4) as illustrated by Table 1, attached. This is essentially a cash bond that the operator pays the Commission in lieu of obtaining a bond or letter of credit. Currently that fee is 3%, but this amendment would increase it to 6%. This increase would bring the cash bond fee amount more in line with current commercial bond rates.

The amendment would remove the option of paying a cash bond fee in lieu of an individual bond based on the total aggregate depth of the wells. This change is suggested to prevent operators in this second category from paying an amount of financial assurance that is less than the fee that experienced operators with acceptable compliance records must pay.

Commission Staff believes these amendments are necessary because the recent increase in activity in the oil and gas industry is causing a sharp increase in the number of wells that may need to be plugged using these funds in the future. The increase in industry activity along with normal inflationary pressures over time will result in higher plugging costs per well, which will ultimately put an additional strain on the funds. The Well Plugging Assurance Fund that receives the monies from these fees currently carries a balance of approximately \$1.3 million dollars. The fund essentially provides an assurance for wells drilled after 1996 for which there are no specifically dedicated plugging bonds posted (i.e. Operators paying the nominal fee and operators paying the “cash bond fee”). The numbers of wells covered under this structure currently stands at approximately 15,000 wells, with those numbers increasing rapidly over the past two years.

In addition to the staff recommendation with respect to changes proposed in this legislation, the Commission has ordered the Oil and Gas Advisory Committee to study and evaluate the financial assurance structure and make recommendations to the Commission in one year regarding the adequacy and sufficiency of the scheme to provide for the eventual plugging of orphaned wells drilled or reworked after 1996.

Commission staff urges the passage of HB 2390 as presented.

Table 1 [Number of KCC Licenses posting assurance per type of assurance]

	1998	1999	2000	2001	2002	2003	2004
Nominal Assurance Fee	2078	2015	1935	1688	1670	1617	1666
Cash Bond	191	177	231	258	291	259	275
Surety Bond	36	41	39	25	38	41	29
CD/Letter of Credit	67	60	46	50	50	52	61
Total # of Licenses Posting Assurance	2372	2293	2251	2021	2049	1969	2031