

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 A.M. on March 3, 2005 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Gina Poertner, Committee Secretary

Conferees appearing before the committee:

J. Michael Hayden, Kansas Department of Wildlife and Parks
David Pope, Chief Engineer, Division of Water Resources
Tracy Streeter, Director, Kansas Water Office

Others attending:

See attached list.

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. A memo from Amy Thornton, Assistant Legal Counsel, Kansas Department of Wildlife and Parks, regarding State Park No. 24 was distributed to the committee.

Continued testimony from J. Michael Hayden, Kansas Department of Wildlife and Parks, was presented on **SB 228**. He stated that while this legislation is well intentioned, it is not necessary. These issues can be negotiated with the Water Office.

Chairman McGinn recognized Tracy Streeter, Director of the Kansas Water Office (Attachment 1). Mr. Streeter stood in opposition to the bill stating that the State of Kansas is obligated under the Memorandum of Understanding with the federal government to operate Cedar Bluff Reservoir for particular purposes, and that a change to a water right cannot negatively impact other water right holders.

Senator Lee asked if the artificial recharge pool is not transferring. Mr. Streeter said it was not. Senator Lee further asked if this would change the City of Russell's water right, to which Mr. Streeter said it would not.

Senator Huelskamp asked what portion of the downstream water right holder is held by the government as opposed to private holdings. David Pope stated that most are privately owned. Senator Huelskamp then asked for an explanation as to the Attorney General's meetings, if they were announced or if not, why they were hidden. Mr. Streeter stated that the Technical Advisory Committee is not atypical of government business. The meetings were not secret, they just were not published in the Kansas Register. However, updates were provided. Senator Huelskamp followed this by asking if nongovernmental entities were invited. Mr. Streeter stated that they were not specifically invited. They try to get people who represent stakeholders.

Senator Taddiken asked about the agreement signed between Hays and Russell, as to which pool this addressed. Mr. Streeter stated it was the artificial recharge pool. Senator Taddiken asked about selling water rights. Mr. Streeter stated that in order to sell it, Cedar Bluffs would have to be put in a marketing program, which is the joint use pool.

Senator Ostmeyer asked if Geoff Withington was invited, to which Mr. Streeter stated that he was on the e-mail list. Senator Ostmeyer said that Mr. Withington seemed to be left out of the loop, and assurance that people in Trego county will be included was needed.

Senator Lee stated that she attended the meeting and Mr. Withington stated his appreciation of being involved in meetings and being invited since this is the biggest issue in this area. Senator Ostmeyer stated that Mr. Withington did make that remark, however, his frustration came later in the process.

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 A.M. on March 3, 2005 in Room 423-S of the Capitol.

The Chair recognized David Pope, Chief Engineer of the Division of Water Resources to present testimony (Attachment 2). Mr. Pope opposed the bill, stating that it sets a dangerous precedent. Passage of this bill would be detrimental to the Water Appropriations Act and would cause an unlawful taking of water rights.

Senator Ostmeyer asked how many acre-feet of water is lost through evaporation. Mr. Pope stated that 8 acre-feet per day are lost (4 cubic feet per second). Senator Ostmeyer also asked if waterholders called for more water, if this would then shut off. Mr. Pope said it depends on factual circumstances.

Senator Taddiken asked if Hays and Russell agreed to settle for less than total release of the artificial recharge pool. Mr. Pope stated that they have to speak for themselves in terms of what they are satisfied with, and they have not given up their right to seek enforcement of their water rights in the event that they are impaired. He understood the two-way agreement to state that the artificial recharge pool takes care of that part, but he did not think that they are in the position to ask for more water to be released. Senator Taddiken then asked if they would have legal standing to say that more water has to be released from the recharge pool. Mr. Pope stated that only to the extent that there is inflow to the lake that was being diverted junior to their rights, and they were simultaneously being impaired.

Chairman McGinn announced that the Friday meeting would begin at 8:45 a.m. due to the change in the Senate floor schedule.

Written testimony was submitted by LaVene R. Brenden, Chairman of the Kansas Society of Professional Engineers (Attachment 3).

Senator Lee asked if it makes any difference who has control of that water, whether it's the Water Office or Kansas Department of Wildlife and Parks unless the water law is changed. Mr. Pope stated that on recharge, he thought that was correct.

The meeting was adjourned at 9:30 a.m.

SENATE NATURAL RESOURCES COMMITTEE

Guest Roster

3/3/05

Name	Representing
Joe Furd	KWO
Tracy Streeter	KWO
David L Pope	KVA
Kot May	HEM Loan Fund
Mike Hyslow	KDWP
Leslie Kaufman	Ks Coop Council
Mary Jane Stankiewicz	KGFA
Chris Tynes	KDWP
Kent Weatherby	KS River Water Assur. Dist.
Wayn Maiche	KDOL
BRAD HARRELSON	KFB

Testimony on Cedar Bluff Reservoir preservation and control of water releases

Presented to
The Senate Natural Resources Committee
Senate Bill 228

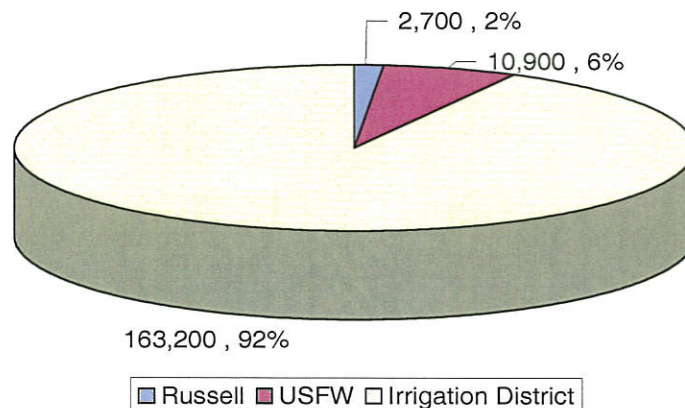
Tracy Streeter, Director
Kansas Water Office
February 22, 2005

Senator McGinn and members of the Committee, I am Tracy Streeter, Director of the Kansas Water Office. I appear this morning in opposition to Senate Bill 228 as it pertains to the transfer and the restriction of the release of water from the Cedar Bluff Reservoir Artificial Recharge Pool.

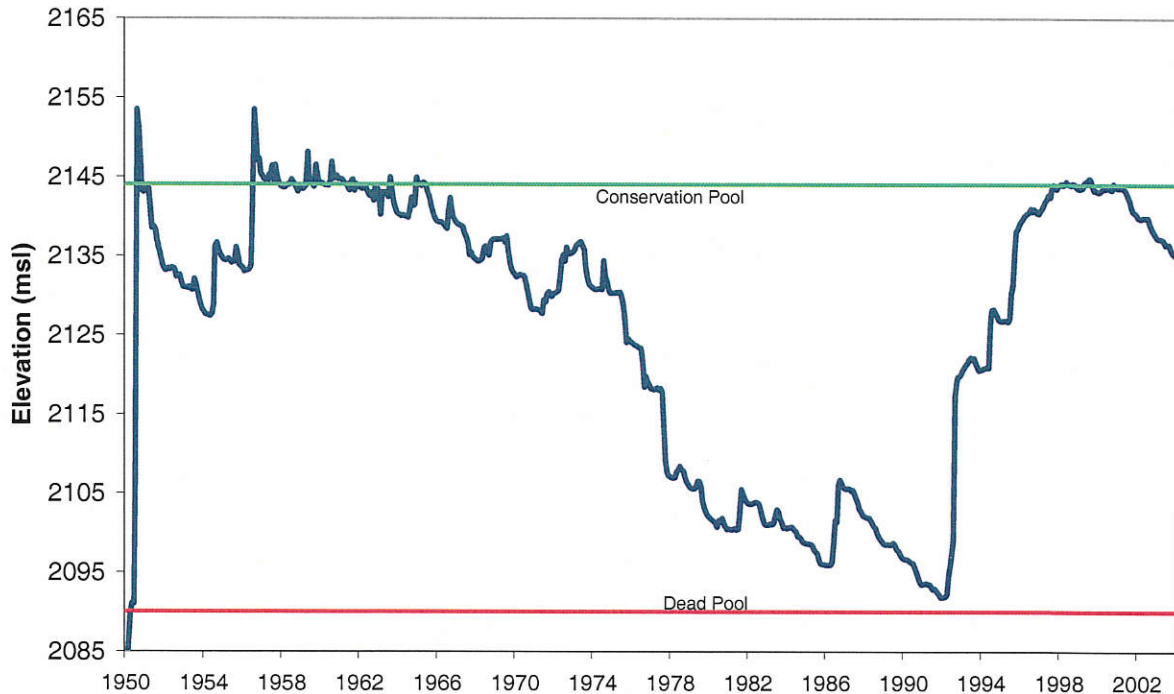
SB 228 proposes to transfer the ownership and management of the Artificial Recharge Pool and Joint Use Pool from the Kansas Water Office (KWO) to the Kansas Department of Wildlife and Parks (KDWP). The bill would also prohibit releases from the reservoir for all uses except for flood storage, city of Russell and KDWP facilities below the dam.

Construction of Cedar Bluff Reservoir was completed in 1951 with the original purposes of flood control, irrigation, fish, wildlife, municipal supply and recreation. Ninety-two percent of the original storage was allocated for the operation of the Cedar Bluff Irrigation District located downstream of the dam. For the period 1963 – 1978, the Irrigation District utilized this storage to irrigate approximately 6,800 acres. Due to lack of inflow the reservoir did not contain sufficient storage to sustain the district beyond 1978.

Original Sub-Pool Allocations



Cedar Bluff Reservoir Historic Reservoir Elevation



In 1984, the state was contacted by the Irrigation District regarding the possible purchase of its water rights and storage. In 1987, a Memorandum of Understanding (MOU) was signed between the U.S. Fish and Wildlife Service, the Cedar Bluff Irrigation District and the State of Kansas to transfer the District's water rights to the State. The general purpose of the agreement was to relieve the Irrigation District of debt and provide increased recreation opportunities for western Kansas in Cedar Bluff Reservoir.

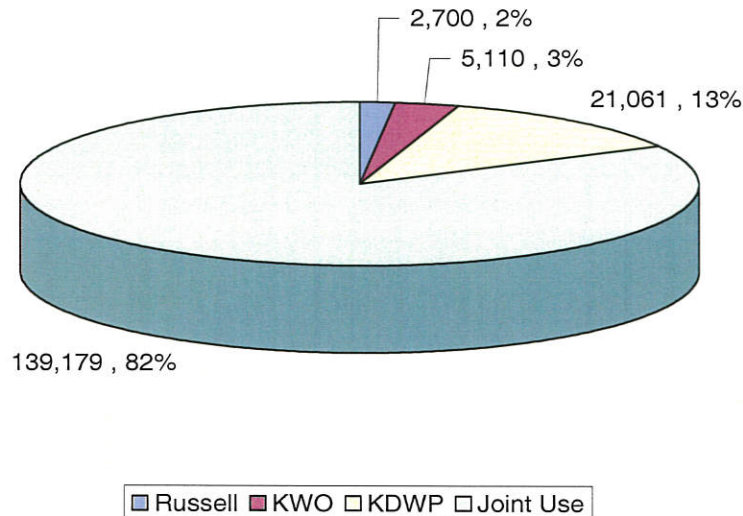
The MOU established new conservation pool allocations as well as pool purposes.

Joint Use Pool – Primary purpose is lake recreation. This pool is also authorized for artificial recharge, municipal and fish, wildlife and recreation.

Fish and Wildlife Pool – Support operation of the fish hatchery / goose rearing facility below Cedar Bluff Lake. This pool is limited to 375 acre-feet of release based on Smoky Hill IGUCA. The unused portion of this pool remains for in lake recreation.

Artificial Recharge Pool - Intended to replace irrigation return flows, maintain other downstream water rights dependent on the overall system hydrology.

Current Cedar Bluff Sub-Pools



In 1989, a contract was signed between the parties to implement the MOU. In 1992, Congress approved the reformulation of storage in Cedar Bluff Reservoir. NOTE: The storage allocation of 5,110 for the KWO in the above illustration refers to the Artificial Recharge Pool. SB 228 refers to 5,400 acre-feet for this pool. The reduction is a result of adjustments made to the allocation due to sediment deposition in the reservoir as reflected in the Accounting Procedures adopted for the Reservoir.

The KWO and KDWP have discussed and look favorable upon transferring the Joint Use Pool entirely to KDWP. This would result in 95 percent of the total reservoir storage being devoted to fish, wildlife and recreation uses. The chief concern of devoting the entire Joint Use Pool to these purposes is the effect on the state's financial obligation for operations and maintenance (O & M) costs. Currently, the KWO pays approximately 45 percent of the O & M costs. KDWP has indicated that the agency could assume full financial responsibility for Cedar Bluff O & M costs in FY 2009.

The KWO opposes the transfer of the Artificial Recharge Pool to KDWP and the proposed restrictions on the release of water from this Pool for the following reasons:

1. The state of Kansas is obligated under the Memorandum of Understanding, contractual agreement with the federal government and action of the United States Congress to operate Cedar Bluff Reservoir storage for the purposes stated.
2. As a result of the reformulation of the storage in the Reservoir, the Irrigation District was disbanded and ceased to operate. The Irrigation District had released water from the Reservoir for the years 1963 through 1978, applied that water to irrigated cropland below the dam and returned

unused water to the Smoky Hill River. A number of water rights were developed based on the return flows from the irrigation district operations.

3. K.S.A. 82a-708b requires that a change to a water right cannot negatively impact other water right holders. In order to insure there was no negative impact to other water right holders downstream of the Reservoir, the Artificial Recharge Pool was created to make targeted releases and support downstream flow and groundwater levels.
4. If passed, SB 228 would cause the state of Kansas to be in direct conflict with:
 - a. A Memorandum of Understanding and contractual agreement with the federal government and Congressional authorization of the reallocation of Cedar Bluff Reservoir storage.
 - b. The Kansas Water Appropriation Act relative to the impacts on other water right holders.

I would like to thank you, Senator McGinn and members of the Committee for the opportunity to share the position of the Kansas Water Office. I will stand for questions at the appropriate time.



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 228
To
The Senate Committee on Natural Resources
By
David L. Pope, P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

March 3, 2005

Madam Chairperson and members of the committee, I am David L. Pope, chief engineer of the Kansas Department of Agriculture's division of water resources. I appear today as an opponent to SB 228.

This bill sets a dangerous precedent.

I recognize the recreational value of Cedar Bluff Reservoir. In fact, most of the water stored there is authorized for recreation and it is used for that purpose. However, the Cedar Bluff project also was authorized by Congress for other purposes, such as artificial recharge. The water rights established under state law also authorize other purposes, and there is a legitimate need for other purposes, such as the artificial recharge that appears to be the primary concern of this bill.

If this bill passes, it will encourage other special interests who may not own a water right to ask for legislation that benefits them personally even when it could prevent the exercise or protection of existing water rights according to the basic principles of the Water Appropriation Act.

This bill compromises the integrity of the Kansas Water Appropriation Act.

Under Kansas law, water rights are granted based on the concept "first in time is the first in right." Priority in time determines water right seniority, so an earlier right is senior to rights issued after it.

Whenever there is a water shortage and an existing water right is impaired because of use by junior rights, the chief engineer is required to administer water rights to prevent the impairment. SB 228 may prevent this if inflow from above the lake cannot be bypassed through

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Senate Natural Resources
3/3/05
Attachment 2

the lake. While it technically is not a release of water from storage, the water still would need to be physically released from the lake.

If the senior right being impaired is located below the lake, administration of junior rights below the lake may not be enough to provide the water to which the senior right is entitled. If water rights being shut off below the lake are senior to junior rights above the lake, the senior rights can lawfully request administration above the lake. While we would not require water lawfully stored in the lake to be released for such an operation, water that could otherwise be stored may also be required to be bypassed through the lake to be used by downstream senior water rights.

The chief engineer is required to administer and protect water rights.

In 1987 the state purchased storage space in Cedar Bluff Reservoir from the Cedar Bluff Irrigation District. The state changed the use of its water right from irrigation to recreation, as well as to artificial recharge. When the state bought the storage space, it did not buy the right to close the gate at the dam.

The Congressional reformulation of the Cedar Bluff Reservoir Project to recreation also included an artificial recharge pool so there would not be an adverse impact to the area below the lake.

Whenever a water right is changed from irrigation to any other type of use, state law requires that the chief engineer protect downstream water rights from impairment, material injury, or adverse effects, and the artificial recharge pool was designed to do that.

To protect downstream water rights, there are times when some water must be released from Cedar Bluff Reservoir. The artificial recharge pool essentially allows water releases to replace some of the return flows that existed when the irrigation district was in operation.

In some cases, intensive groundwater use control areas (IGUCA) are established to provide long-term regulation of groundwater. This was done along the Smoky Hill River valley above and below Cedar Bluff Reservoir because of water shortages and the hydrological relationship between surface water and groundwater use.

Attached is a map that shows the location of the reservoir, IGUCA and surface water and groundwater rights that primarily relate to this situation.

On their own, the proposed releases from the artificial recharge pool will have little impact on recreation.

The amount of water proposed to be released from the artificial recharge pool is insignificant compared to the size of the reservoir at the top of the conservation pool. Total conservation storage is, at its maximum, 172,452 acre-feet. The artificial recharge pool can contain a maximum of 5,110 acre-feet, after adjustment for sedimentation. Average annual net evaporation was just over 26,000 acre-feet a year from 1995 through 2004.

Releases are limited by how much water is stored in priority in the artificial recharge pool account, evaporation from the account and the amount needed to meet target flow criteria below the lake. As a result of evaporation, the artificial recharge pool held only 3,284 acre-feet on January 31, 2005, and the projected releases from this pool will have almost no noticeable effect on the lake level.

Losses in lake level are due primarily to evaporation.

Losses in the lake level during the last few years are due primarily to evaporation, not water releases. From January 1, 2001, through December 31, 2003, 1,170 acre-feet were released for the City of Russell's water right and 539 acre-feet were released for the goose rearing facility below the dam. No water was released from the artificial recharge pool. Releases accounted for less than 2 percent of the decrease in water quantity stored in the reservoir. During the same three year period, evaporation totaled 88,702 acre-feet.

This bill could cause an unlawful taking of water rights.

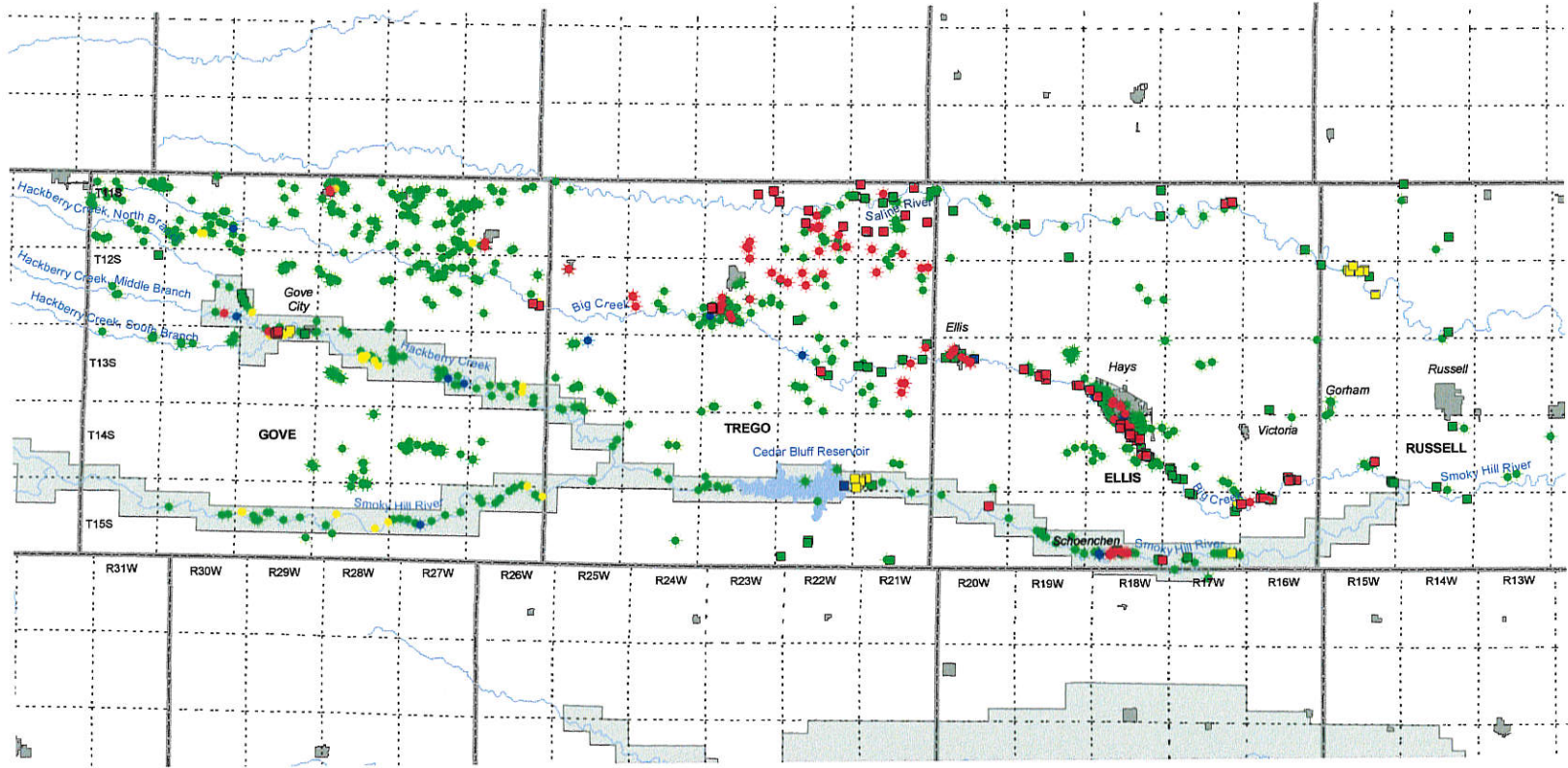
This bill would prohibit the exercise of existing water rights held by the Kansas Water Office by not allowing water to be released from Cedar Bluff Reservoir. Restricting water releases from the artificial recharge pool also will prevent water from going to other water right holders below the lake who are legally entitled to use it under state law. Those who are hurt or impaired would not have a remedy under state law.

This bill could cause an unlawful taking of water rights – which are real property rights – without just compensation. Water rights below the lake cannot be impaired by the change to the water rights as a result of the project reformulation. The water rights that might be taken include those of municipalities and irrigators. A taking could expose the state to significant financial liability for compensating water right owners for taking their water rights.

I ask that you report Senate Bill 228 unfavorably for the reasons I have stated.

Thank you for this opportunity to appear. I would be happy to answer any questions you might have.

CEDAR BLUFF RESERVOIR



Points of diversion with multiple priority dates are plotted by the earliest priority date.



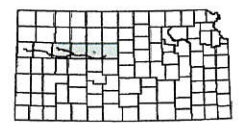
Kansas Department of Agriculture
 Division of Water Resources
 Technical Services Section
 February 15, 2005

Legend

- Streams
- Lakes
- County Boundaries
- Township Boundaries
- Cities
- IGUCA



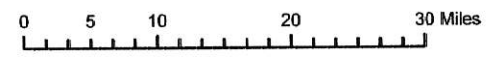
Index Map



Points of Diversion

Numbers represent water right file number. Lowest numbers are the most senior.

- Senior to 1248 (G)
- Junior to 1248, Senior to 5757 (G)
- Junior to 5757, Senior to 7627 (G)
- Junior to 7627 (G)
- Senior to 1248 (S)
- Junior to 1248, Senior to 5757 (S)
- Junior to 5757, Senior to 7627 (S)
- Junior to 7627 (S)



**Testimony Before the Senate Natural Resources Committee
On SB 228**

KANSAS SOCIETY OF PROFESSIONAL ENGINEERS

by

**LaVene R. Brenden, P.E.
Chairman, Environmental Resources Committee
February 22, 2005**

The Kansas Society of Professional Engineers opposes passage of SB 228 because of the potentially far reaching effects on Kansas Water Policy and Kansas Water Law.

Kansas Water Law is based upon the doctrine of first in time, first in right. The law defines several categories of beneficial uses for water but does not give one beneficial use precedence over another. This bill as currently written not only takes away a water right but also supplants it and all other beneficial uses by designating one use as higher priority. The state-wide implications of this proposed action are immense. We ask that you seriously reconsider this bill and not pass it.