

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 P.M. on February 16, 2006 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas
Brad Thompson, Bridgman Oil
Jeff Turnbull, Turnbull Oil
Leslie Kaufman, Kansas Cooperative Council
Gary Blackburn, Director, Bureau of Environmental Remediation
Tom Sloan, Representative, District 45
Tracy Streeter, Director, Kansas Water Authority
Woody Moses, Kansas Aggregate Producers Assoc
Constantine Cotsoradis, Assistant Secretary-Agriculture

Others attending:

See attached list.

Chairperson Freeborn announced the agenda for next Tuesday, February 21 meeting: possible action on **HCR5030 - Congress and President urged to allow offshore drilling for natural gas, HB2556-Farm and ranch land protection program; grants; open space preservation fee, HB2875 - Concerning inspection fees for work constructed for appropriation of water for beneficial use and a hearing and possible action on HB2867 - Concerning dam safety.**

Chairperson Freeborn started final action:

HB2710 - Creates the water transition assistance program. All committee members have been given a document from Sean Miller, Kansas Water Congress answering questions raised by the Committee (See attachment 1). Representative Sloan moved to introduce a balloon (See attachment 2) Representative Powers seconded, motion carries. Discussion on the balloon followed. Representative Sloan moved to adopt the balloon, motion carried. Representative Burgess moved to add wording to the bill "not to exceed \$1.5M on expenditures annually for duration of the program. Representative Olson seconded. Discussion followed. Motion carries. Representative Svaty moved to remove the new part e, line 28, Representative Flora seconded. Discussion on the removal followed. Representative Svaty withdrew the motion. Representative Schwartz proposed a conceptual amendment to list the prairie dog area as one of the two areas on this bill. Representative George seconded, discussion followed, Representative Schwartz withdrew amendment. Representative Schwartz proposed a conceptual amendment to add language notwithstanding any other provision of the bill, one of the two areas shall be Prairie Dog Area. Representative George seconded. Discussion followed. Motion carried. Representative Knox proposed a conceptual amendment to add wording on page 2 line 21 that grants available in "not more than" 2 areas", add the not more than. Representative Hawk seconded, discussion followed. Motion carried. Representative Luckert stated that this bill is bad policy, problem will take care of itself, this is spending money unnecessarily. Representative Sloan moved to recommend **HB2710**, as amended, favorable for passage, Representative Svaty seconded. Motion carries. Representative Lukert requested to be recorded in the minutes as a no vote. Representative Sloan will carry.

Chairperson Freeborn opened the hearing on **HB2756 - Kansas storage tank act, reimbursement for upgrades and closures.**

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas, proponent, testified, (See attachment 3). A proposed balloon is part of Mr. Palace's attachment.

CONTINUATION SHEET

MINUTES OF THE House Environment Committee at 3:30 P.M. on February 16, 2006 in Room 231-N of the Capitol.

Brad Thompson, Bridgman Oil, proponent, testified, (See attachment 4).

Jeff Turnbull, Turnbull Oil, proponent, testified (See attachment 5).

Leslie Kaufman, Kansas Cooperative Council, proponent, testified (See attachment 6).

Mary Jane Stankiewicz, Association of Ethanol Processors, proponent submitted written testimony, all Committee members were given a copy (See attachment 7).

Gary Blackburn, Director, Bureau of Environmental Remediation, neutral, testified, (See attachment 8).

Questions and discussion followed.

Chairperson Freeborn closed the hearing on **HB2756**.

Chairperson Freeborn opened final action for **HB2756**.

Representative Burgess moved to adopt balloon which was presented by Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas. Representative Schwartz seconded, motion carries.

Representative Knox proposed an amendment to include biofuels in the definition of petroleum products. Representative Johnson seconded, motion carried.

Representative Johnson moved to recommend **HB2756**, as amended favorable for passage, with technical corrections. Representative Schwartz, motion carries. Representative Burgess will carry the bill.

Chairperson Freeborn opened the hearing on **HCR6008 - Resolution urging the United States Army Corps of Engineers to approve a plan by the state of Kansas for the reservoirs of Kansas.**

Tom Sloan, Representative 45th district, proponent, testified a balloon was given to each committee member and is part of the attachment (See attachment 9).

Tracy Streeter, Director of Kansas Water Authority, proponent, testified (See attachment 10).

Written testimony only from Kent Weatherby, Kansas Water Assurance District #1, a copy was given to each Committee member (See attachment 11).

Questions and discussion followed the testimony.

Chairperson Freeborn closed the hearing on **HCR6008**.

Chairperson Freeborn opened final action for **HCR6008**.

Representative Sloan moved to adopt the balloon, seconded by Representative Johnson, motion carried.

Representative Sloan moved to recommend **HCR6008** as amended favorable for passage. Representative Svaty seconded, motion carried. Representative Hawk will carry the bill.

Chairperson Freeborn opened the hearing on **HB2875 - Concerning inspection fees for works constructed for appropriation of water for beneficial use.** Copy of fiscal note given to each committee member (See attachment 12).

Woody Moses, Kansas Aggregate Producers Association, proponent, testified (See attachment 13).

Constantine Cotsoradis, Assistant Secretary-Agriculture, opponent, testified (See attachment 14).

CONTINUATION SHEET

MINUTES OF THE House Environment Committee at 3:30 P.M. on February 16, 2006 in Room 231-N of the Capitol.

Questions and discussion followed.

Chairperson Freeborn adjourned the meeting at 5:50. The next scheduled meeting is Tuesday, February 21.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 02/16/06

NAME	REPRESENTING
Brad Thompson	Bridgman Oil & Inc / PMCA
Jeff Turnbull	Turnbull Oil, Inc / PMCA
Curt Wright	Taylor Oil Inc
Ed Haselwood	Tank Management Services
Gary Blackburn	KDHE
Randy Carlson	KDHE
Woody Moses	KAPA
Leslie Kaufman	Ks Coop Council
CV Cotsoradis	KDA
LANE LETOURNEAU	KDA
Tram Steinh	KWO
Earl Lewis	KWO
GREG FOLEY	JCC
Mary Jane Stankeiwicz	KARA
Natalie Busby	PMMAK
Jennifer Lynn	PSA
Kent Askren	Ks Farm Bureau
Steve Swartz	Ks Farm Bureau

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 2-16-06

NAME	REPRESENTING
Tom Palace	PMCA OF KS
Richard Wenstrom	WATER POKK
Kent Hawk	" "
Jon Bognier	Farmer-Rancher KWC
Sean Miller	KS WATER CONGRESS
Andy Shaw	SWKIFA
M. Beam	KS, LUSTK ASSN.

February 13, 2006

Chairman Joann Freeborn
House Environment Committee

Chairman Freeborn:

During the hearing on HB 2710 on February 7 there were several questions raised in relation to Section 1, subsections (g) and (h). After consulting with staff from the Kansas Department of Agriculture's Division of Water Resources (DWR) I am confident the existing language accomplishes the original intent of the bill. Due to the complexity of the existing Kansas water law and regulations, I have attempted to simplify the language and provide a hypothetical example of how each regulation would apply. I have included the relevant existing language of HB 2710 (italicized) with a brief explanation and the appropriate K.A.R. cite. In addition, I have attached an example map and a blank application that would be used to initiate a change in an existing water right.

HB 2710 – Water Right Transition Assistance Program (Water TAP)

Section 1. (g) Enrollment in the water right transition assistance program shall not subsequently prohibit irrigation of the land that, prior to enrollment, was authorized by the water right or water rights if irrigation can be lawfully allowed by another water right or permit pursuant to the rules and regulations and consideration of any future changes to other water rights that may be proposed to be transferred to such land.

The intent of subsection (g) is to allow a legal "change in place of use" for irrigation purposes. When a water right is enrolled in Water TAP (and subsequently retired), subsection (g) allows for a separate perfected water right to be transferred from its current place of use to the property where the now retired water right previously existed. K.A.R. 5-5-11 outlines the procedures and requirements for approval of a change in place of use for irrigation purposes. It is important to note that while subsection (g) allows the landowner to apply for the change in place of use it does not guarantee that the change will be approved. The application for change must be reviewed and approved by the Division of Water Resources before any change will be allowed.

Section 1. (g) Hypothetical:

Farmer Jones owns two quarter-sections (1 & 2) with a perfected water right on each. He decides to enroll '1' in the water right transition assistance program, is accepted and the water right is dismissed. After the dismissal Farmer Jones wants to transfer the water right from '2' to '1' so that he can resume irrigating the farmland on '1'. Farmer Jones would complete the application to change the place of use (see attached form) as allowed under K.A.R. 5-5-11. Assuming that the application is approved by the division of water resources, Farmer Jones would be allowed to irrigate the land on '1' once again with the water right that was transferred from '2.'

Section 1. (h) If more than one water right overlaps the place of use authorized by the water right proposed to be enrolled in the water right transition assistance program, then all overlapping water rights shall be enrolled in water right transition assistance program or the landowners shall take the necessary lawful steps to eliminate the overlap with the water right to be enrolled.

The intent of subsection (h) is to require overlapping water interests to either resolve their overlapping interests or to require all overlapping rights to be enrolled in the Water TAP program. The steps to resolve the overlapping interests may vary greatly depending on the type of overlap (E.g., complete vs. incomplete), the authorized place of use for each water right and the quantity of water perfected for each water right. Depending on the type of resolution sought regarding the overlapping rights several options might be available. As in subsection (g), K.A.R. 5-5-11 would outline the appropriate procedure if a change in place of use is sought. However the owners might also seek to pursue a reduction in the existing water rights (E.g., limiting a right to a specific tract of land) to resolve the overlap. In this instance DWR Form 1-669 would be utilized. It is important to note that when dealing with overlapping water rights, the owners of all affected water rights must agree per K.A.R. 5-5-5 to any resolution, whether the enrollment in Water TAP or the specific action that ultimately eliminates the overlap. In addition, the application for change must be approved by the Division of Water Resources.

Section 1. (h) Hypothetical:

Farmer Smith owns two quarter-sections (1 & 2) with a perfected water right on each. The overlap exists because the water right on '1' may be utilized to irrigate '1' or '2' and similarly the water right on '2' may be utilized to irrigate '1' or '2.' In order to participate in Water TAP Farmer Smith must either enroll both water rights or eliminate the overlap and enroll a single water right in the program. In order to eliminate the overlap Farmer Smith would complete an application to change the place of use (see attached form) as allowed under K.A.R. 5-5-11. The application would change the place of use by limiting the wells on '1' and '2' to the irrigation of those respective tracts of land. After eliminating the overlap between '1' and '2' Farmer Smith could enroll the water right on '1' and retain the water right on '2.'

I realize that these hypotheticals are overly simplistic, but I hope that they clear up any confusion that may have existed regarding subsections (g) and (h). Thank you for the opportunity to clarify the language of HB 2710 and I would be happy to answer any additional questions.

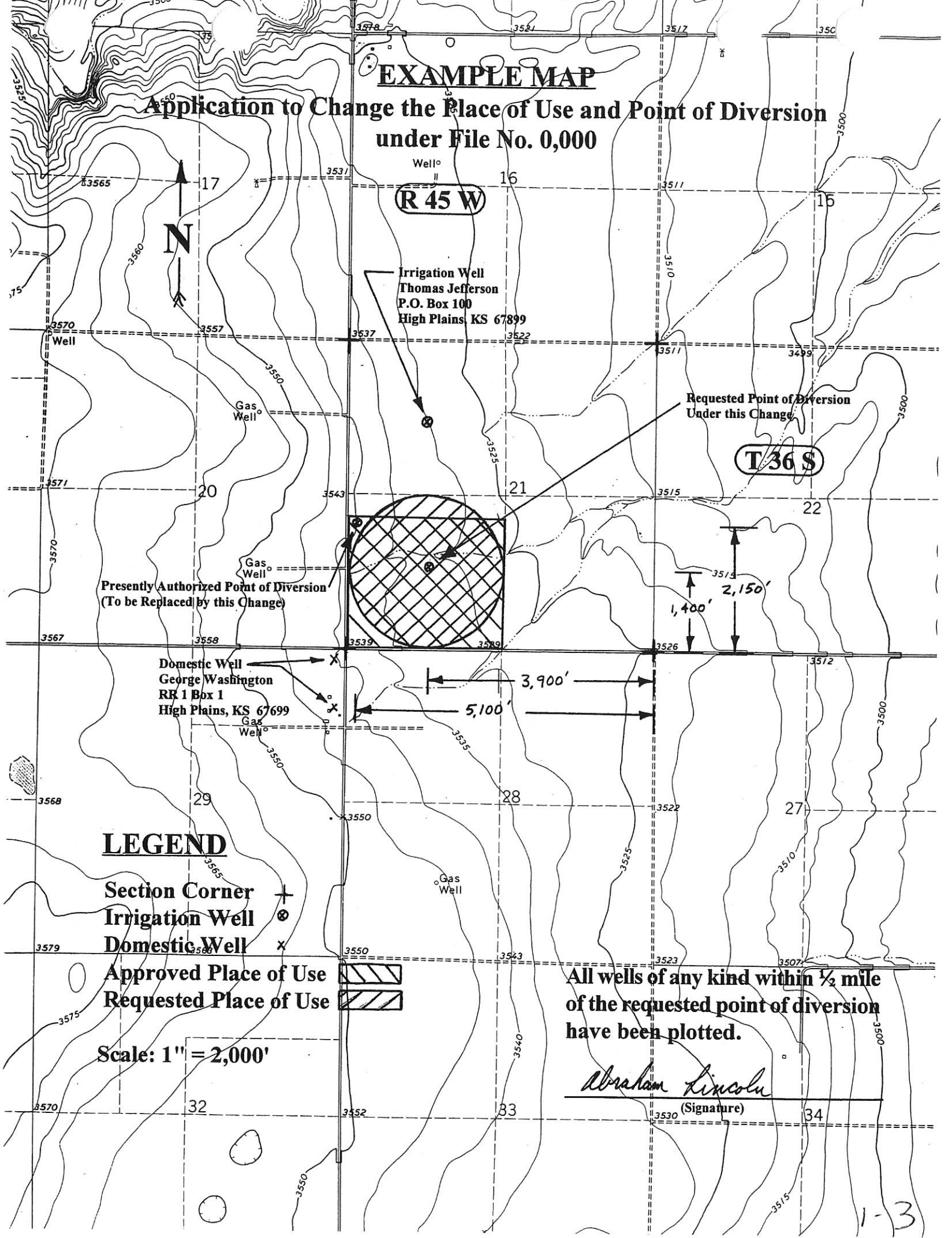
Sincerely,



Sean Miller
Kansas Water Congress
(785) 393-1517

EXAMPLE MAP

Application to Change the Place of Use and Point of Diversion under File No. 0,000



R 45 W

T 36 S

Irrigation Well
Thomas Jefferson
P.O. Box 100
High Plains, KS 67899

Requested Point of Diversion
Under this Change

Presently Authorized Point of Diversion
(To be Replaced by this Change)

Domestic Well
George Washington
RR 1 Box 1
High Plains, KS 67699

1,400'
2,150'

3,900'
5,100'

LEGEND

- Section Corner +
- Irrigation Well ⊕
- Domestic Well x

- Approved Place of Use [diagonal hatching]
- Requested Place of Use [cross-hatching]

Scale: 1" = 2,000'

All wells of any kind within 1/2 mile of the requested point of diversion have been plotted.

Abraham Lincoln
(Signature)

DIVISION OF WATER RESOURCES
KANSAS DEPARTMENT OF AGRICULTURE

**INSTRUCTIONS
FOR COMPLETING APPLICATIONS FOR APPROVAL TO
CHANGE THE PLACE OF USE, THE POINT OF DIVERSION, OR
THE USE MADE OF THE WATER UNDER AN EXISTING WATER RIGHT**

Following is a brief description of the information needed on the application for approval of the Chief Engineer to change the place of use, point of diversion, or the use made of water under an existing water right. When completing the application, please type or use black ink. Read all details on the application prior to filling out the form.

Identify the water right which is the subject of this application by supplying the file number in the proper area on the front page. Only one file number allowed per application.

1. The application must be made by the owners of all the land involved under both the present and proposed conditions. The names shall be those of actual titleholders of all the land. See the NOTE at the bottom of the back of the application.
2. Show the change or changes desired by placing a check mark in appropriate box or boxes.
3. If the water right is for irrigation use, give the name or names of the present landowner or owners, the mailing address or addresses, and the number of acres in each forty-acre tract that are presently included in the water right. A water conservation plan may be required.
4. The place of use where the water will be used must be shown by cross hatching the location of the property on the map. If the water right is for irrigation use, the place of use must be shown by giving a legal description showing the section, township, range and number of acres in each 40 acre tract. You should describe the area and crosshatch the location of the property on a map, of the scale indicated in the application. If an entity such as a city or rural water district is where water will be used, a description and explanation of all the places where the water goes will be needed, including other entities receiving water and the areas they supply, etc. A map of a larger scale showing the boundaries of the city and/or district must be provided. Immediate vicinity means within one-half (1/2) mile of the corporate limits of the entity. A water conservation plan may be required.
5. Give the legal description of the tract of land on which the well, pumping plant, or other diversion works are located. The description must include distances North and West from the Southeast corner of the section.
6. Give a brief description of the works for diversion of water and the completion date or proposed date. Show the locations on the map of the diversion works including meters or other measuring devices and pipeline to distribute the water.
7. Explain in detail the reason for the proposed change or changes. Describe past water table and streamflow trends for the source of supply and past water use history.
8. Furnish detailed information to show that the proposed change or changes relate or relates to the same local source of supply and will not impair existing water rights. A written explanation should accompany the test hole log, water level measurements, or other data to describe the situation.
9. A primary contact person should be shown on the front page as well as the water use correspondent. However, all owners must sign the application and all names and addresses must be clearly described.

Submit To: CHIEF ENGINEER
Division of Water Resources
Kansas Department of Agriculture
109 SW 9th Street, Second Floor
Topeka, KS 66612-1283

**APPLICATION FOR APPROVAL TO
CHANGE THE PLACE OF USE, THE
POINT OF DIVERSION OR THE USE
MADE OF THE WATER UNDER AN
EXISTING WATER RIGHT**



STATE OF KANSAS

Filing Fee Must Accompany the Application
(Please refer to Fee Schedule on back side of application form.)

The application must be supplemented by either a topographic map or detailed plat. A U.S. Geological Survey Topographic Map, scale 1:24,000, is available through the Kansas Geological Survey, 1930 Constant Avenue, University of Kansas, Lawrence, Kansas 66047-3726. The following information must be shown on the map. If a change in the location of the point(s) of diversion is desired, show both the location of the presently authorized point(s) of diversion and the location of the proposed point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. Describe the current condition and future plans of any points of diversion which are no longer to be used. These locations should be shown by plotting the position accurately on the map and giving the distance and direction from a section corner or some permanent point. If the source of supply is groundwater, then please show the location of existing water wells of any kind within 1/2 mile of the proposed well or wells. Identify each well as to its use and furnish name and mailing address of the property owner or owners. If there are no wells within 1/2 mile, please advise us. If a change in the place of use is desired, show the proposed place of use by crosshatching on the map. Identify the center of the section, the section lines and the section corners and show the appropriate section, township, and range numbers on the map. Please be certain that the information shown on the map agrees with the information shown in the application.

To the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture:

1. Application is hereby made for approval of the Chief Engineer-Director to change the

- (Check one or more) Place of Use
 Point of Diversion
 Use Made of the Water

under the water right which is the subject of this application in accordance with the particulars hereinafter described

- (Check one only) Vested Right under File No. _____
 Appropriation Right under Application No. _____

2. Name and address of applicant: _____
_____ Phone Number: () - _____

Name and address of water use correspondent: _____
_____ Phone Number: () - _____

For Office Use Only: Code _____ Fee \$ _____ TR # _____ Receipt Date _____ Check # _____

3. The presently authorized place of use is:

Owner of Land — NAME: _____

ADDRESS: _____

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES		
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼			

Owner of Land — NAME: _____

ADDRESS: _____

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES			
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼				

(If there are more than two landowners, attach additional sheets as necessary.)

4. It is proposed that the place of use be changed to:

Owner of Land — NAME: _____

ADDRESS: _____

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES				
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼					

Owner of Land — NAME: _____

ADDRESS: _____

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES					
	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼						

(If there are more than two landowners, attach additional sheets as necessary.)

5. The presently authorized point(s) of diversion (is) (are) _____
(Give number)

_____ located as follows:
(wells, pumps, or other works for diversion of water)

One in the _____ quarter of the _____ quarter of the _____ quarter of Section _____,
Township _____, Range _____, in _____ County, Kansas, _____ feet North _____ feet West of
the Southeast corner of section, and

One in the _____ quarter of the _____ quarter of the _____ quarter of Section _____,
Township _____, Range _____, in _____ County, Kansas, _____ feet North _____ feet West of
the Southeast corner of section.

6. The proposed location of the point(s) of diversion (is) (are) _____
(Give number)

_____ located as follows:
(wells, pumps, or other works for diversion of water)

One in the _____ quarter of the _____ quarter of the _____ quarter of Section _____,
Township _____, Range _____, in _____ County, Kansas, _____ feet North _____ feet West of
the Southeast corner of section, and

One in the _____ quarter of the _____ quarter of the _____ quarter of Section _____,
Township _____, Range _____, in _____ County, Kansas, _____ feet North _____ feet West of
the Southeast corner of section.

7. The works for diversion of water at the proposed location will consist of _____

_____ (wells, pumps, etc.)

and proposed to be completed by _____
(Date)

8. The presently authorized use of water is for _____ purposes.

It is proposed that the use be changed to _____ purposes.

9. The change(s) proposed herein are desired for the following reasons (please be specific): _____

10. Furnish information to show:

- a. That the proposed change(s) will not impair existing water rights, and
- b. That the proposed change(s) relates to the same local source of supply as that to which the presently authorized water right relates. Attach statements, plats, geology reports, well logs, test hole logs, and other information as necessary with additional comments below:

Section 82a-728 of the Kansas Water Appropriation Act, provides

(a) Except for the appropriation of water for the purpose of domestic use, . . . it shall be unlawful for any person to appropriate or threaten to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the provisions of chapter 7 of article 82a of the Kansas Statutes Annotated [the Water Appropriation Act] and acts amendatory thereof or supplemental thereto or, for any person to violate any condition of a vested right, appropriation right or an approved application for a permit to appropriate water for beneficial use. . . (Emphasis added)

(b) (1) The violation of any provision of this section by any person is a class C misdemeanor. . .

A class C misdemeanor is punishable by a fine, only after notification by the Chief Engineer, not to exceed \$500 and/or a term of confinement not to exceed one month in the county jail. Each day that the violation occurs constitutes a separate offense.

I declare that I am a landowner as identified herein, or that I represent a landowner as identified herein and am authorized to make this application in his or her behalf, and declare further that the statements contained herein are true, correct, and complete.

Dated at _____, Kansas, this _____ day of _____, 20_____.

_____	_____
(Applicant)	(Spouse)
_____	_____
(Applicant(s) Social Security Identification Number)	(and/or Applicant(s) Taxpayer I.D. No.)
_____	_____
(Applicant)	(Spouse)
_____	_____
(Applicant)	(Spouse)
_____	_____
(Applicant)	(Spouse)

State of Kansas }
County of _____ } SS

I hereby certify that the foregoing application was signed in my presence and sworn to before me this _____ day of _____, 20_____

Notary Public

My Commission Expires _____.

NOTE: The application must be signed by each person and his or her spouse, if married, whose name appears as an applicant and all other owners of land covered by the water right. Please indicate if there is no spouse. If land is being purchased under contract, the seller must sign as landowner until such time as the contract is completed.

In the event that all applicants cannot appear before one notary public, they may as necessary sign separate copies of the application before any notary public conveniently available to them. All copies signed in this manner shall be considered to be valid parts of the application.

If the request is signed on behalf of any Owner by someone with legal authority to do so (for example, an agent, one who has power of attorney, or an executor, executrix, conservator), it will be necessary to attach proper documents showing such authority.

FEE SCHEDULE effective July 1, 2002

Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

- (1) Application to change a point of diversion 300 feet or less\$100
- (2) Application to change a point of diversion more than 300 feet200
- (3) Application to change the place of use200
- (4) Application to change the use made of the water300

Any application submitted which requests two of the types of changes set forth above shall be accompanied by a fee of \$300. Any application which requests three types of changes shall be accompanied by a fee of \$500.

Make check payable to **Kansas Department of Agriculture.**

HOUSE BILL No. 2710

By Committee on Environment

1-25

House Environment Committee
February 16, 2006
Attachment 2

9 AN ACT concerning water; creating the water right transition assistance
10 program.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) There is hereby established the water right transition
14 assistance program. The program shall be administered by the state con-
15 servation commission. The Kansas department of agriculture, division of
16 water resources and recognized local governing agencies, including
17 groundwater management districts, shall cooperate in program imple-
18 mentation. The program shall be administered for the purpose of reduc-
19 ing consumptive use in the target or high priority areas of the state by
20 issuing water right transition grants for privately held water rights.

pilot project

21 (b) The state conservation commission may receive and expend funds
22 from the federal or state government, or private source for the purpose
23 of carrying out the provisions of this section.

The state conservation commission may retire permanently part or all of landowner historic consumptive use water rights. The state conservation commission and the participating groundwater management districts shall carry over unexpended funds from one fiscal year to the next.
(d)

24 (c) ~~All applications for permanent water right retirements shall be~~
25 ~~considered for funding as a first priority. If allocated funds are not com-~~
26 ~~pletely used for permanent retirement grants, then the remaining funds~~
27 ~~may be used for set aside agreements of not less than four calendar years.~~

28 (d) Water rights enrolled in the water right transition assistance pro-
29 gram for permanent retirement shall require the written consent of all
30 landowners and authorized agents to voluntarily request dismissal and
31 forfeiture of priority of the enrolled water right. Upon enrollment of the
32 water right into the water right transition assistance program, the chief
33 engineer of the Kansas department of agriculture division of water re-
34 sources shall concurrently dismiss and terminate the water right in ac-
35 cordance with the terms of the contract.

(e) Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program.
(f)

36 (e) The state conservation commission shall make water right transi-
37 tion grants available only in areas that have been designated as target
38 or high priority areas by the groundwater management districts and the
39 chief engineer of the Kansas department of agriculture division of water
40 resources ~~or priority areas outside the groundwater management districts~~
41 ~~as designated by the chief engineer of the Kansas department of agricul-~~
42 ~~ture division of water resources.~~

And by relettering the remaining subsections accordingly.

two

43 (f) Contracts accepted under the water right transition assistance pro-

1 gram shall result in a net reduction in consumptive use equivalent to the
2 amount of historic consumptive use of the water right or rights enrolled
3 in the program based on the average historic consumptive water use.
4 Except as provided for in paragraphs (g) and (h), once a water right transi-
5 tion assistance program grant has been provided, the land authorized to
6 be irrigated by the water right or water rights associated with that grant
7 shall not be irrigated ~~(e) permanently~~ ~~(e) for the period of the agree-~~
8 ~~ment, whichever is applicable.~~ Water right transition assistance program
9 contracts shall be subject to such terms, conditions and limitations as may
10 be necessary to ensure that such reduction in consumptive use occurs
11 and can be adequately monitored and enforced.

12 "Historic consumptive water use" means the average amount of water
13 consumed by crops as a result of the lawful beneficial use of water for
14 irrigation during four of the six preceding calendar years, with the highest
15 and lowest years removed from the analysis. For purposes of this program,
16 historic consumptive water use will be determined by multiplying the
17 average reported water use for the four selected years by a factor of 0.85
18 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity ir-
19 rigation systems and 0.95 for subsurface drip irrigation systems, but not
20 to exceed the net irrigation requirements for the 50% chance rainfall for
21 the appropriate county as shown in K.A.R. 5-5-12. The applicant may also
22 submit an engineering study that determines the average historic con-
23 sumptive water use as an alternative method if it is demonstrated to be
24 more accurate for the water right or water rights involved.

25 (g) Enrollment in the water right transition assistance program shall
26 not subsequently prohibit irrigation of the land that, prior to enrollment,
27 was authorized by the water right or water rights if irrigation can be
28 lawfully allowed by another water right or permit pursuant to the rules
29 and regulations and consideration of any future changes to other water
30 rights that may be proposed to be transferred to such land.

31 (h) If more than one water right overlaps the place of use authorized
32 by the water right proposed to be enrolled in the water right transition
33 assistance program, then all overlapping water rights shall be enrolled in
34 water right transition assistance program or the landowners shall take the
35 necessary lawful steps to eliminate the overlap with the water right to be
36 enrolled. The burden shall be on the landowner to provide sufficient
37 information to substantiate that the proposed use of water by the resulting
38 exercise of all water rights involved will result in the net reduction amount
39 of historic consumptive water use by the water right or water rights to be
40 enrolled. The state conservation commission may require such documenta-
41 tion to be provided by someone with special knowledge or experience
42 related to water rights and such operations.

43 (i) The state conservation commission shall adopt rules and regula-

1 tions as necessary for the administration of this section.

2 (j) The water right transition assistance program shall expire five years
3 from the effective date of the fiscal year for which state moneys are ap-
4 propriated thereof and approval of program rules and regulations.

5 Water right transition assistance grants for water rights to remain
6 unused for the contract period shall constitute due and sufficient cause
7 for nonuse pursuant to K.S.A. §2a-718 and amendments thereto pursuant
8 to the determination of the chief engineer for the duration of the water
9 right transition assistance program contract.

10 Sec. 2. (a) Any person who commits any of the following may incur
11 a civil penalty as provided by this section:

12 (1) Any violation of the Kansas water right transition assistance pro-
13 gram act or any rule and regulation adopted thereunder; and

14 (2) any violation of term, condition or limitation defined and or im-
15 posed within the contractual agreement between the state conservation
16 commission and the water right owner.

17 (b) Any participant who violates any section of a water right transition
18 assistance program contract shall be subject to either one or both of the
19 following:

20 (1) A civil penalty of not less than \$100 nor more than \$1,000 per
21 violation. Each day shall constitute a separate violation for purposes of
22 this section; and

23 (2) repayment of the grant amount in its entirety plus a penalty at six
24 percent of the full grant amount.

25 (c) Any penalties or reimbursements received under this act shall be
26 reapportioned for use in the water right transition assistance program.

27 Sec. 3. This act shall take effect and be in force from and after its
28 publication in the statute book.

When adopting such rules and regulations the state conservation commission shall consider cropping, system design, metered water use and all other pertinent information that will permit a verifiable reduction in annual water consumptive use and permit alternative crop or other use of the land so that the landowner's economic opportunities are taken into account.

The state conservation commission shall report annually to the senate standing committee on natural resources and the house standing committee on environment on the results of economic impact studies conducted on the reduction of water consumption and the financial impact on the communities within the program areas. Such studies shall include comparative data for areas and communities outside the program areas.

(m)

(n)



Memo To: House Environment Committee
From: Thomas M. Palace
Date: February 16, 2006
Re: HB 2756

Madam Chairman and members of House Environment Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store owners throughout Kansas.

I appreciate the opportunity to appear before you today in support of HB 2756.

The Purpose of the Bill

On July 16, 2002, the Environmental Protection Agency (EPA) issued a new rule to revise the original Spill Prevention Control and Countermeasure (SPCC) regulations. The original SPCC regulations were promulgated by EPA in 1973, and since that time, petroleum facilities with aggregate aboveground storage capacity of 1,320 gallons have been required to have an SPCC in place. The SPCC plan is a document that aboveground tank owners are required to have at the storage facility.

I won't go into the complexities of this new regulation but what you need to know is that these new rules, mandated by EPA, probably will have the same impact on tank owners that were forced to comply with the 1988 underground storage tank act. This rule required that underground tanks be replaced or upgraded to the new standards by December 23, 1998. Many retailers could not justify or afford to upgrade their underground tanks, which caused small town gas stations to close their doors. HB 2756 attempts to assist aboveground tank owners and bulk plants to maintain their needed presence in the community as a fuel supplier.

What the Bill Does

HB 2756 will reimburse aboveground tank and bulk plant owners up to \$25,000 for expenses for installation, upgrade or permanent closure of their facilities.

Only aboveground storage tanks and bulk plants with a storage capacity of 1,320 gallons or more, but less than 1,000,000 gallons, used to dispense fuel for resale are eligible for reimbursement.

This bill establishes the Kansas essential fuels supply trust fund. Excess funds from the environmental assurance fee (\$.01) shall be paid into the Kansas essential fuels supply

Petroleum Marketers and Convenience Store Association of Kansas

115 SE 7th • Topeka, KS 66603
PO Box 678 • Topeka, KS 66601-0678
785-233-9655 • Fax: 785-354-4374

House Environment Committee
February 16, 2006
Attachment 3

trust fund only after the principle balance of underground and aboveground fund exceeds the required level.

This bill establishes the Kansas essential fuel supply trust fund compensation advisory board. It shall be a five member board and will include the fire marshal or designee, the director of the division of environment or designee, two representatives from the petroleum industry, at least one of which shall be a petroleum marketer and one from the equipment installation industry.

Funding

In 1992 the Kansas Legislature established the underground petroleum storage tank release trust fund. This fund is used to monitor and remediate contaminated sites in which petroleum products may have leaked out of underground storage tanks. A one-cent environmental assurance fee is assessed on each gallon of gas until such time that the underground fund has \$5 million and the aboveground fund has \$1.5 million. This fund is administered by the Kansas Department of Health and Environment.

HB 2756 establishes the Kansas essential fuels supply trust fund (KEFSTF). When the underground and above ground tank fund no longer requires the one-cent funding, the **excess funds** will be transferred to the Kansas essential fuels supply trust fund leaving the one-cent fee in place.

Who is eligible to access the KEFSTF?

- An aboveground storage tank or bulk plant is eligible for reimbursement if it is used for the storage of petroleum products for **resale**.
- Aboveground storage tanks facility must be registered with KDHE.
- Aboveground storage tanks contain petroleum products.
- Upgrade expenses must be incurred after August 1, 2001, and not later than October 30, 2007.
- KDHE will reimburse tank owners for 90% of the approved cost of the facility upgrade or permanent closure not to exceed \$25,000.

Fiscal Note

If we were to calculate all the eligible above ground tank facilities (approximately 700), and multiply that by \$25,000, the maximum reimbursement amount, the price tag would be approximately \$17.5 million. In reality it is very unlikely that each facility will require the maximum amount, and we estimate that the cost may be \$5-\$7 million. For instance, the cost to permanently close or dismantle a facility is approximately \$8,000-\$10,000. Depending on how extensive a tank facility needs to be upgraded to comply with the new regulations could range from \$5,000 and as high as \$100,000.

Madam Chairman, I do have two amendments that I would like to offer. On page two, line 8, I would like to add language that specifically states that eligible storage tanks or

bulk plants store fuel for **resale**. Without this language the fiscal note would be approximately \$74 million and that is not the intent of this legislation. Further, on page 2, line 16, I would like to insert the word products after petroleum. This change excludes crude oil.

In closing Madam Chairman, HB 2756 will be a big help to small distributors that have aboveground tanks and bulk plants to maintain their presence in rural America. As I mentioned before, the underground storage act (to replace underground tanks) of 1998 devastated many small towns when gas stations were forced to close because many small business owners could not afford to upgrade their tanks. The impact of that EPA rule was not only devastating to the small business owner, but the local community as well. With no fuel locally, Kansans were forced to drive great distances to find fuel for their cars, trucks, tractors and lawn mowers. Although HB 2756 may not cover the entire cost to upgrade a facility, it will go a long way to assist small businesses to stay in business so that all Kansans will have adequate fuel supply.

We urge your support of HB 2756.

Secondary Containment: Secondary means of containment for entire capacity of largest tank in the containment area and sufficient freeboard for precipitation, that is sufficiently impervious to contain discharged oil.

Integrity testing: A regular schedule of test and inspection to insure integrity of bulk storage containers. "You must combine visual inspection with another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing. Or another system on non-destructive shell testing".

Security: EPA's states "We believe that fencing, facility lighting, and the other measures prescribed in the rule to prevent vandalism are elements of good engineering practice for most facilities including mobile facilities."

Engineering Cost: \$1,200.00 to \$6,000.00 has been reported to us. A minimum of 10 hours will be spent in SPCC plan preparation alone. Additional cost can occur if engineer does specific design work for a facility.

Tank Removal: Under both state and federal law there is no mandate to remove tanks out of service, provided that they are capped and marked out of service. However, an abandoned facility could become unsightly overtime. To remove a tank used to contain petroleum products would involve not only costs associated with the physical removal of the tank, but also the expense to properly dispose of a tank in an approved method. Companies that dispose of used tanks can charge extensive fees to cover the safety and environmental liability they assume when they take possession of a used tank.

HOUSE BILL 2756
TALKING POINTS

Hearing set February 16, 2006
3:30 PM Room 231 North

- This bill will reimburse aboveground and bulk plant owners for upgrading or permanent closure of their tanks.
- The Environmental Protection Agency has amended the 1973 Spill Prevention Control and Countermeasure (SPCC) rule for aboveground tanks and bulk plants.
- Kansas tank owners may be forced to close bulk plants due to the cost to upgrade their bulk plants.
- Eligible tanks have a storage capacity of 1,320 gallons or more, but less than 1,000,000 gallons.
- Eligible storage tanks will contain petroleum products stored for resale use.
- Eligible tank owners would be reimbursed for 90% of the approved cost per facility up to \$25,000 to upgrade or dismantle their tanks.
- Eligible tank owners are tank registered with KDHE on or after November 22, 1993.
- Upgrade expenses must be incurred after August 1, 2001, and not later than October 30, 2007.
- Establishes the Kansas essential fuels supply trust fund (KEFSTF).
- Establishes the Kansas essential fuel supply trust fund compensation advisory board that will mediate disputes.
- Funding will come from the excess funds from the one-cent environmental assurance fee. When the underground and aboveground tank fund no longer requires the one-cent funding, the excess funds will be transferred to the KEFSTF.
- The KEFSTF funding levels will mirror the current underground petroleum storage tank release trust fund.
- Pipeline terminals and tanks located on federal facilities are not eligible for reimbursement.

Current trust fund generates \$1,600,000.00 to \$1,700,000.00 per month at \$.01 a gallon.

- UST fund \$5,000,000.00 max with \$2,000,000.00 minimum
- AST fund \$1,500,000.00 max with \$500,000.00 minimum
- Current Fee active 8 to 10 months per year
- \$3,200,000 to \$6,800,000.00 generated per year for Kansas Essential Fuels Trust Fund

3-7
3 continue

HOUSE BILL No. 2756

By Committee on Environment

1-27

9 AN ACT amending the Kansas storage tank act; providing for the retri-
10 bursement of certain expenses; establishing the Kansas essential fuels
11 supply trust fund and the Kansas essential fuel supply trust fund ad-
12 visory board; amending K.S.A. 65-34,117 and K.S.A. 2005 Supp. 65-
13 34,102 and repealing the existing sections.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 New Section 1. (a) There is hereby established as a segregated fund
17 in the state treasury the Kansas essential fuels supply trust fund. The fuels
18 supply fund shall be administered by the secretary. Revenue from the
19 following sources shall be deposited in the state treasury and credited to
20 the fuels supply fund:

- 21 (1) The applicable proceeds of the environmental assurance fee im-
22 posed by K.S.A. 65-34,117, and amendments thereto; and
- 23 (2) Interest attributable to investment of moneys in the fuels supply
24 fund.

25 (b) The fuels supply fund shall be used for the following:

- 26 (1) To reimburse an eligible owner of an aboveground storage tank
27 or bulk plant in accordance with the provisions of section 2, and amend-
28 ments thereto, for allowable expenses for an upgrade or permanent clo-
29 sure of an aboveground storage tank or bulk plant; and

- 30 (2) payment of the administrative technical and legal costs incurred
31 by the secretary in carrying out the provisions of sections 1 and 2, and
32 amendments thereto, including the cost of any additional employees or
33 increased general operating costs of the department attributable thereto,
34 which costs shall not be payable from any moneys other than those cred-
35 ited to the fuels supply trust fund.

36 (c) On or before the 10th of each month, the director of accounts
37 and reports shall transfer from the state general fund to the above Kansas
38 essential fuels supply trust fund interest earnings based on:

- 39 (1) The average daily balance of moneys in the above Kansas essential
40 fuels supply trust fund for the preceding month; and
- 41 (2) the net earnings rate of the pooled money investment portfolio
42 for the preceding month.

43 (d) All expenditures from the above Kansas essential fuels supply

1 trust fund shall be made in accordance with appropriation acts upon war-
2 rants of the director of accounts and reports issued pursuant to vouchers
3 approved by the secretary for the purposes set forth in this section.

4 (e) This section shall be part of and supplemental to the Kansas stor-
5 e tank act.

6 New Sec. 2. (a) The secretary may provide for the reimbursement
7 to eligible owners of aboveground storage tanks or bulk plants in accord-
8 ance with the provisions of this section and subject to the availability of
9 moneys in the Kansas essential fuels supply trust fund.

10 (b) The secretary may reimburse the owner of an aboveground stor-
11 age tank facility or bulk plant for upgrade expenses or permanent closure
12 expenses, in the amount specified in subsection (c), if all of the following
13 criteria are met:

14 (1) The aboveground storage tank facility was registered with the de-
15 partment on or after November 22, 1993;

16 (2) the aboveground storage tank contains petroleum;

17 (3) application is made on or before January 1, 2009, on a form pro-
18 vided by the department;

19 (4) upgrade expenses must be incurred after August 1, 2001, and not
20 later than October 30, 2007. Upgrade expenses are limited to reasonable
21 and necessary to the installation or improvement of equipment or systems
22 required for compliance with 40 CFR 112. Such expenses shall include,
23 but are not limited to, installation or upgrade of the following:

24 (A) Secondary containment;

25 (B) integrity testing;

26 (C) corrosion protection;

27 (D) loss prevention;

28 (E) engineering costs;

29 (F) security;

30 (G) drainage; and

31 (H) removal of noncompliant tanks;

32 (5) expenses for permanent closure activities, must be incurred after
33 August 1, 2001, and not later than October 30, 2007. Only expenses for
34 activities reasonable and necessary to permanently close an aboveground
35 storage tank facility are eligible for reimbursement. Reasonable and nec-
36 essary activities eligible for reimbursement include, but are not limited
37 to, the following:

38 (A) Removal of the tank and piping system;

39 (B) removal of tank support and confinement systems;

40 (C) removal of security systems;

41 (D) cleaning of tanks; and

42 (E) disposal of waste petroleum and other waste material including
43 concrete.

An aboveground storage tank or bulk plant shall be eligible for reimbursement under this section, if such above ground storage tank or bulk plant is used for the storage of petroleum products for resale.

products



BRIDGMAN OIL COMPANY, INC.

109 Clay Street • Hutchinson, KS 67501-7093 • 620-665-6811 • Fax: 620-665-1082

February 13, 2006

Madam Chairman and members of the House Environment Committee:

My name is Brad Thompson and I am Vice President of Bridgman Oil Co of Hutchinson Kansas. I stand before you in support of HB 2756.

Bridgman Oil has supplied fuels to rural farm accounts for the past 46 years in Reno, Harvey, Sedgwick, and McPherson counties. The continuing saga of federal mandates such as SPCC incurs cost to my company that will result in rural fuel bulk facilities being closed. The cost of installations needed to upgrade facilities will result in the closures of them. These facilities are important to my rural customers as without them in place, they will have to travel to the next community for their fuel needs. This would be one less business in their community which in turn helps destroy rural Kansas.

With the passage of HB 2756 Bridgman Oil could use appropriated monies to keep these facilities in operation. With out the passage of HB 2756, I will have to make hard decisions as to which facility I can keep open and which ones will be closed. This is not an expense that I can pass along to my customers as competition from big box businesses keeps my margins at all time lows and without some kind of assistance, rural Kansas will be hurt.

I urge you to pass HB 2756 and help me in preserving rural Kansas for the next generation that follows. Thank you

Sincerely:

Brad Thompson
Vice President

House Environment Committee
February 16, 2006
Attachment 4

Date: February 16, 2006
To: House Environment Committee
From: Jeff Turnbull, Owner
Turnbull Oil, Inc.
Plainville, KS
Re: HB 2756

Madam Chairman and members of the House Environment Committee:

My name is Jeff Turnbull and I am the owner and president of Turnbull Oil, Inc., in Plainville, Kansas. I stand before you in support of House Bill 2756.

Turnbull Oil is a two-generation, 40-year old small business that specializes in selling and delivering gas and diesel to the agricultural, railroad, and construction businesses. We have three bulk fuel facilities located in Plainville, Palco and Hill City. We currently employ six people in these communities. While this business is critical to the existence of our customers it is threatened by the EPA's Spill Prevention Control and Countermeasure Plan referred to as SPCC. The SPCC is an unfunded mandate that will result in numerous plant and business closings due to the exorbitant costs, which will obviously hurt many small towns and the businesses they support.

Let me explain. Turnbull Oil in 2005 had net sales of \$6.7 million with earnings of \$4,146; in 2004 a net sales of \$4.4 million with earnings of \$18,140. The reasons behind such low earnings are primarily the increase costs of fuel, insurance and the inability to increase margins to an already economically strapped agricultural community. This leaves little room for updating any equipment or facilities.

The SPCC Plan is an unfunded mandate created by the EPA to prevent pollution of "Navigable Waters." Initially this concept had merit, but the EPA had broadened their definition of navigable water to include all potential discharges over 2 spills > 42 gallons per year in any ditch, gutter, etc.

What this means to a bulk fuel dealer is that we will have to meet the following minimal guidelines to be in compliance:

1. We will need non-permeable dikes and floors to capture 110% of the largest tank capacity – basically cement.
2. We will need a catch basin for loading and unloading trucks capable of handling the largest capacity of a single tank on a truck – 3,000 +/- gallons.
3. We will need security fencing and lighting.
4. We will need locked valves and locked electrical controls.
5. We must test the tanks and piping for integrity.
6. We need an in-depth plan and reporting procedures for discharges, even if it is water.

House Environment Committee
February 16, 2006
Attachment 5

7. We must train personnel on spill reporting procedures.
8. We must get this plan approved by a professional engineer.

My estimated cost for the previously mentions "minimal" compliances are as follows:

Cement Dikes, Floors and Catch Basin	\$29,740
Fencing	\$ 5,000.
Lighting	\$ 2,000
Professional Engineering Plan	<u>\$ 5,000</u>
Total per location	\$41,740

I am asking on behalf of hundreds of bulk dealerships, such as mine, that this committee allow us to be included in the already implemented \$.01 per gallon environmental assurance fee to meeting these requirements. Although the proposed ceiling of \$25,000 per location in the House Bill 2756 is of aid, it is not nearly enough money to cover these projects and will result in numerous facility closings if the amount is not increased.

In conclusion, with Turnbull Oil working off a 7% gross margin, we can ill afford these costs. We cannot pass these costs on to our customer base. The end result will be numerous closings of plants, numerous layoffs, and ultimately a valuable service to our farmers and construction industries will be lost or hard-pressed to find adequate services. I am asking this committee to approve HB 2756, increase the amount available through the Kansas Environmental Assurance Fee and keep our small businesses in Kansas viable.

Thank you.



816 SW Tyler St., Ste. 300
Topeka, Kansas 66612
Phone: 785-233-4085
Cell: 785-220-4068
Fax: 785-233-1038
www.kansasco-op.coop

House Environment Committee

Feb. 16, 2006

HB 2756 - establishing the Kansas Essential Fuels Supply Trust Fund.

Chair Freeborn and members of the House Committee on the Environment, thank you for the opportunity to appear on behalf of the Kansas Cooperative Council in support of HB 2756. This bill will establish the Kansas Essential Fuels Supply Trust Fund that can assist qualified petroleum product storage facilities with financial assistance to meet upgrade requirements or to help cover the cost of closure. This is a very timely measure as our industry is actively upgrading as a result of US EPA's Spill Prevention Containment and Countermeasure (SPCC) regulation.

I am Leslie Kaufman and I serve the Council as Executive Director. The Council represents all forms of cooperatively structured businesses across Kansas. Almost half of our members are engaged in agricultural businesses. Many of these operations have a petroleum component to them. They have been and continue to be affected by SPCC. This rule is having a significant fiscal impact on our members.

We have been working with our national affiliate, the National Council of Farmer Cooperatives (NCFC), on this issue for months. There are still impracticalities for our industry in these regulations - for both our agribusinesses and the farmers and ranchers that own/control these enterprises. (I have attached some of our recent correspondence with EPA regarding SPCC as background information). Nevertheless, our co-ops are making strides to comply with SPCC provisions. For many, this will require upgrades to facilities that can be extremely costly.

We have one cooperative with four petroleum product operational sites. They are in the process of upgrading to further comply with SPCC and expect to spend roughly \$10,000 per site on just fencing, whistles (tank filling/overflowing alarms) and related engineering. This bill will provide an important financial

House Environment Committee

February 16, 2006

Attachment 6

as this one that need to upgrade at a measurable cost. We anticipate this bill may make a difference in whether or not some facilities continue to even exist.

We appreciate that HB 2756 finances the trust fund in a manner that does not negatively impact either the underground or aboveground storage funds. It is important to us that fee funds maintain their integrity and we see the addition of the essential fuels supply trust fitting within the framework of the environmental assessment.

From our members' experiences over the last few months, it seems EPA is increasing the aggressiveness of their regulatory program relative to SPCC. Thus, creation of this trust fund comes at an extremely important time. Some of our members will have pursued upgrades sooner than others. As such, we appreciate that improvement costs incurred as far back as August 2001 can be eligible for reimbursement under this program. This is important to recognize those operators that reacted more quickly to changing requirements. It avoids a situation where the "early bird" is essentially penalized and the late-comer garners all the benefits.

The Kansas Essential Fuels Supply Trust Fund is a positive development for our members. We support enactment of the fund and respectfully request this committee act favorably on HB 2756. Thank you.



816 SW Tyler St., Ste. 300
Topeka, Kansas 66612
Phone: 785-233-4085
Fax: 785-233-1038
www.kansasco-op.coop

February 9, 2006

Mr. Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OPA-2005-0001

Dear Administrator Johnson:

On behalf of the Kansas Cooperative Council, we submit the following comments on the EPA's proposed changes to the SPCC regulation and support the comments submitted by the Agriculture Coalition on the Spill Prevention, Control and Countermeasure (SPCC), which includes organizations representing farmers, ranchers, farmer cooperatives, livestock operations and related agribusinesses.

The Kansas Cooperative Council is a statewide association representing all forms of cooperative businesses. Approximately half of our nearly 200 members are directly involved in agribusiness. Many are directly impacted by SPCC provisions.

It is imperative that EPA establish a different approach for the agricultural sector and establish a clear definition of a farm, farming operation, and agribusiness for purposes of this rule. It is also vital that EPA acknowledge that oil storage in our industry cannot be aggregated but must be established on a non-contiguous field by non-contiguous field basis. A recent survey conducted by the US Department of Agriculture found that farms with multiple oil storage sites are, on average 4.1 miles from the main site. It would be impractical to aggregate storage on sites so far apart.

There are many questions relevant and applicable only to farms, livestock operations, farmer cooperatives and other agribusinesses that still exist with EPA's latest proposal. It is essential that EPA take the time to collect relevant data on our industry before it proceeds with costly and burdensome regulation. EPA must completely understand the unique nature of the industry, our history of spills and our reaction to those spills, and the challenges this rule poses in its current form and the cost.

We urge the EPA to continue to work with the agriculture coalition to create a rule practical and relevant to our industry.

Thank you for the opportunity to comment on the SPCC proposed rule. Should you need to contact us, you may reach me by phone at 785-233-4085, by fax at 785-233-1038 or by mail at 816 SW Tyler St., Topeka, Kansas 66612.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie Kaufman".

Leslie J. Kaufman, Executive Director
Kansas Cooperative Council

January 11, 2006

Mr. Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Docket ID No. EPA – HQ - OPA – 2005 - 0003

Dear Administrator Johnson:

The Agriculture Coalition on the Spill Prevention, Control and Countermeasure (SPCC), which includes organizations representing farmers, ranchers, farmer cooperatives, livestock operations and related agribusinesses, requests that the U.S. Environmental Protection Agency (EPA) issue a formal statement suspending compliance with the SPCC rule given the uncertainty that surrounds the applicability of the 1973 rule [FR Dec. 11, 1973, Vol. 38, No. 237, Parts I & II]. Also, the coalition strongly urges that all agricultural facilities – farms, farmer cooperatives and other agribusinesses – be granted an indefinite extension of compliance until more information can be gathered by the EPA on the unique nature of our industries, our needs, our history of spills and how those spills were addressed.

While the coalition has been working in good faith with EPA for three years, since the promulgation of the 2002 rule, much uncertainty still surrounds the applicability, deadlines, costs to implement, and definitions of both farm and agribusiness. Although we are pleased with some of the changes EPA has initiated in regard to the 2005 SPCC Proposed Rule, outstanding issues do remain. EPA's 2005 Proposed Rule grants farms with 10,000 gallons or less of storage AND a spill plan, in accordance with the 1973 SPCC rule, an indefinite extension of compliance deadlines. Farms with 10,000 gallons or less and without a plan or farms with more than 10,000 gallons of storage will not be afforded the indefinite compliance extension deadline. The relief provided by this indefinite extension is minimal as most farming facilities were unaware that the SPCC rule even applied to them. Also, we maintain that if EPA, in its own words, "believes that the unique characteristics of farms pose particular challenges to SPCC compliance and that further consideration of the requirements as they relate to farms is warranted," that consideration and further investigation should be applied to farms of all size. For more than 30 years EPA has apparently not regarded these facilities as within the enforcement universe. As stated by an EPA official of the Oil Program Office, at the December 12, 2005, stakeholder briefing "*Inspection and compliance was relegated primarily to large oil storage and processing sites and distribution terminals with direct access to navigable waters or facilities that had a spill directly impacting a waterway.*" Given this, we continue to believe that a formal suspension of enforcement for all farms as well as cooperatives and other agribusinesses is appropriate until more information can be gathered.

The Agency's own analysis concludes that EPA is lacking sufficient data to impose these costly regulations on many segments of agriculture. However, a USDA study estimates that, in the case of production agriculture, there is a spill history of less than one percent. The same study also estimates that EPA's rule could cost farmers as much as 4.5 billion dollars. Delaying compliance dates for all of agriculture, including farmer cooperatives and other agribusinesses, is fair, consistent, and will give the Agency time to gather additional data to the extent needed to determine if agriculture needs regulating and if yes, how best to regulate different segments within

the industry.

EPA has acknowledged that its data estimating the cost of implementation and the number of operations subject to the rule is much larger than the Agency originally concluded. This will have a dramatic impact on the Agency's ability to enforce the rule as well as the educational effort by the Agency and stakeholders in informing regulated operations of the rule. Also, current data on our industry will help define a more relevant threshold trigger. EPA stated that a 10,000-gallon trigger was established to remain consistent with those in other regulations related to oil discharges, like the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan or NCP). The NCP was developed in 1968 as a response to a massive oil spill from the oil tanker *Torrey Canyon* off the coast of England. Revisions to the NCP, of which the most recent was finalized in 1994, were again in response to a massive spill, this time the *Exxon Valdez*. Given its unique characteristics and lack of any significant spill history, the agriculture industry cannot be compared to the spills of huge oil tankers. Before any rule is applied to our industry, EPA must evaluate the threat (if any) we present and establish rules applicable to the industry, which includes appropriate triggers.

We have previously suggested a tiered approach with regard to the establishment of triggers and various requirements. While the 10,000-gallon trigger is certainly better than the current 1,320-gallon threshold, we are greatly concerned that it still appears to be based on an aggregated amount. Again, we want to emphasize that to the extent it applies to farms it should be based on a site-by-site approach, and not simply aggregated for the entire farm. This is because farms are generally comprised of multiple fields and parcels that are noncontiguous and/or nonadjacent and that often have several fueling sites.

The agriculture coalition will continue to work with EPA on creating a rule practical and relevant to our industry. However, real data on today's agricultural businesses, whether they be farms, farmer cooperatives or other agribusinesses, must be collected and analyzed. We can then work with EPA to encourage compliance for all our affected members; to inform, educate, and train as necessary.

We reiterate our request that EPA alleviate the uncertainty surrounding this rule by formally suspending enforcement of all agricultural facilities and by extending indefinitely compliance deadlines for those facilities. We would welcome an opportunity to discuss this further at your convenience.

Sincerely,

Agribusiness Association of Iowa
AgriBusiness Association of Kentucky
Agricultural Retailers Association
Agri-Mark, Inc.
Alabama Cattlemen's Association
Alabama Crop Management Association
Alabama Farmers Cooperative, Inc.
Alabama Farmers Federation

American Corn Growers Association
American Crystal Sugar Company
American Farm Bureau Federation
American Soybean Association
Arizona Cattle Feeders' Association
Arizona Cattle Growers Association
Arkansas Cattlemen's Association
Blue Diamond Growers

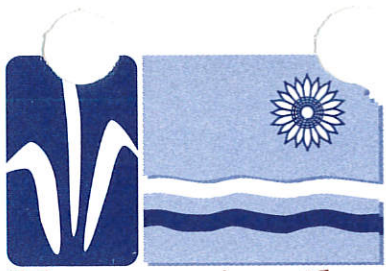
California Association of Wheat Growers	Mid America CropLife Association
California Cattlemen's Association	Minnesota Crop Production Retailers
California Dairies, Inc.	Mississippi Cattlemen's Association
California Rice Commission	Missouri Agriculture Industries Council, Inc
CHS Inc.	Missouri Cattlemen's Association
CoBank	Missouri Corn Growers Association
Colorado Farm Bureau	Montana Agricultural Business Association
Colorado Livestock Association	Montana Stockgrowers Association
Corn Producers Association of Texas	National Agricultural Aviation Association
Dairy Farmers of America	National Association of Wheat Growers
Dairylea Cooperative, Inc.	National Barley Growers Association
Dairy Producers of New Mexico	National Cattlemen's Beef Association
Farm Credit Council	National Corn Growers Association
Florida Cattlemen's Association	National Cotton Council
Florida Farm Bureau Federation	National Council of Farmer Cooperatives
Georgia Agribusiness Council	National Farmers Union
Georgia Cattlemen's Association	National Grange
GROWMARK, Inc.	National Grape Cooperative Association, Inc.
Idaho Cattle Association	National Milk Producers Federation
Idaho Grain Producers Association	National Sorghum Producers
Illinois Beef Association	Nebraska Cattlemen
Illinois Corn Growers Association	Nebraska Cooperative Council
Illinois Farm Bureau	Nebraska Wheat Growers Association
Indiana Beef Cattle Association	Nevada Cattlemen's Association
Indiana Grain and Feed Assn	New Jersey Farm Bureau
Indiana Plant Food & Ag Chemicals Assn	New Mexico Cattle Grower's Association
Institute of Shortening and Edible Oils, Inc.	North Carolina Cattlemen's Association
Iowa Cattlemen's Association	North Carolina Farm Bureau
Kansas Agricultural Retailers Association	North Dakota Stockmen's Association
Kansas Association of Wheat Growers	Ocean Spray Cranberries, Inc.
Kansas Cooperative Council	Ohio Cattlemen's Association
Kansas Corn Growers Association	Ohio Corn Growers Association
Kansas Farm Bureau	Ohio Farm Bureau Federation, Inc
Kansas Grain Sorghum Producers Association	Oklahoma Agribusiness Retailers Association
Kansas Livestock Association	Oklahoma Cattlemen's Association
Kentucky Cattlemen's Association	Oklahoma Farm Bureau
Kentucky Corn Growers Association	Oklahoma Wheat Growers Association
Kentucky Farm Bureau	Olive Growers Council of California, Inc.
Kentucky Small Grain Growers Association	Oregon Cattlemen's Association
Land O' Lakes, Inc.	Oregon Wheat Growers League
MFA Incorporated	Producers Cooperative Oil Mill, OK
Michigan Agri-Business Association	South Carolina Cattlemen's Association
Michigan Cattlemen's Association	South Carolina Farm Bureau Federation
Michigan Corn Growers Association	South Carolina Fertilizer and Agrichemicals Association
Michigan Farm Bureau	Southern Crop Production Association
Michigan Milk Producers Association	

Mr. Stephen L. Johnson
U.S. Environmental Protection Agency
January 11, 2006

Page 4 of 4

South Dakota Association of Cooperatives
South Dakota Cattlemen's Association
South Dakota Corn Growers Association
South Dakota Wheat Inc
South East Dairy Farmers Association
Southern States Cooperative, Inc.
Soybean Producers of America
Sun-Maid Growers of California
Tennessee Cattlemen's Association
Tennessee Farmers Cooperative
Tennessee Farm Bureau Federation
Texas & Southwestern Cattle Raisers
Texas Cattle Feeders Association
Texas Farm Bureau
Texas Wheat Producers Association
The Fertilizer Institute
United Egg Producers
USA Rice Federation

US Canola Association
U.S. Custom Harvesters, Inc.
US Rice Producers Association
Utah Cattlemen's Association
Virginia Small Grain Association
Washington Association of Wheat Growers
Washington Cattle Feeders Association
Washington State Council of Farmer
Cooperatives
Welch's
West Central
Western Plant Health Association
Western United Dairymen
Wisconsin Fertilizer & Chemical Association
Wyoming Ag Business Association
Wyoming Stock Growers Association



KARA

Safe & Abundant Food Through Sound Science

Kansas Agribusiness Retailers Association

810 SW Tyler, Ste 100
P.O. Box 1517
Topeka, KS 66601-1517
Phone (785) 234-0463
Fax (785) 234-2930
www.kansasag.org

House Environment Committee

HB 2756

February 16, 2006

Mary Jane Stankiewicz

Good afternoon Madam Chairman and members of the House Environment Committee, I am Mary Jane Stankiewicz, Vice President and General Counsel for the Kansas Agribusiness Retailers Association and I appear before you in support of HB 2756. KARA has members throughout the state that provide various products and services to the farmers and other members of their various communities.

One of the services that some of our members provide is the sale of fuel. The Environmental Protection Agency has implemented regulations that will cause a number of our members that have aboveground tanks to either upgrade or permanently close their tanks. HB 2756 would provide up to \$25,000 to cover the costs of upgrading or closure of the facilities.

We are hopeful that this program will be of great benefit in keeping gas retailers in business in our smaller, rural communities. While our members are the core group of gas retailers in the state, they do provide this service to a number of rural communities. These facilities are constantly weighing and balancing the cost of providing a service with the return on the investment. Without this assistance, a number of the facilities might determine that it is time to close their gas retail service and just focus on providing agronomic services to that particular community.

We hope you support HB 2756 because these small communities do not need to lose any more services than they have already experienced. Thank you for your time and consideration.

House Environment Committee
February 16, 2006
Attachment 7



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on House Bill 2756
Kansas Essential Fuels Supply Trust Fund
An Act amending the Kansas Storage Tank Act
to
House Environment Committee
Presented by Gary Blackburn
Director, Bureau of Environmental Remediation
February 16, 2006**

Chairperson Freeborn and members of the House Environment Committee, I am pleased to appear before you today to discuss House Bill 2756, the Kansas Essential Fuels Supply Trust Fund.

This is an amendment to the Storage Tank Act to provide a reimbursement fund to assist owners of aboveground storage tanks and bulk plants with the cost of upgrading their facilities to meet the requirements of the US Environmental Protection Agency's Spill Control and Countermeasures (SPCC) regulations for aboveground storage tanks outlined in 40 Code of Federal Regulations 112. As originally written, the bill appears to include all aboveground storage tanks that must meet the SPCC requirements, except those owned by the federal government. According to the agency database, this would include about 3,000 facilities at a potential cost of \$75,000,000. If the bill is reduced to only facilities where the fuel is used for resale or retail, as suggested by the Petroleum Marketers and Convenience Store Association of Kansas, about 726 facilities would be eligible at a cost ranging between \$7,000,000 and \$18,000,000, depending on participation and actual cost.

The new federal regulations require owners of aboveground storage tanks containing petroleum or other hazardous substances to have secondary containment, integrity testing, corrosion protection, security and loss prevention. These requirements along with a spill contingency plan must be in place and signed by a licensed Professional Engineer by October 31, 2007.

The Kansas Department of Health and Environment provides reimbursement to assist owners and operators of storage tanks in programs similar to that proposed in this bill: the Kansas Petroleum Storage Tank Release Trust Funds. The Underground and Aboveground Storage Tank trust funds provide financial assistance to storage tank owners and operators to perform corrective action in response to spills of petroleum from their storage tank systems.

Towards the same end, House Bill 2756 will provide reimbursements to aboveground storage tank owners to assist them in preventing spills. The Kansas Essential Fuels Supply Trust Fund is structured in a manner similar to the Kansas Petroleum Storage Tank Release Trust Funds. While

House Environment Committee
February 16, 2006
Attachment 8

the department has the experience and expertise to carry out the functions of this new fund some additional staffing will be needed to perform the work. As proposed, this program will only collect the environmental assurance fee when the UST and AST funds do not require the income.

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

TOM SLOAN
 REPRESENTATIVE, 45TH DISTRICT
 DOUGLAS COUNTY

STATE CAPITOL BUILDING
 ROOM 446-N
 TOPEKA, KANSAS 66612-1504
 (785) 296-7677
 1-800-432-3924

772 HWY 40
 LAWRENCE, KANSAS 66049-4174
 (785) 841-1526
 sloan@house.state.ks.us



TOPEKA
 HOUSE OF
 REPRESENTATIVES

Testimony on HR 6008 - Resolution to Corps. of Engineers

February 16, 2006

House Environment Committee

Madam Chairman, Members of the Committee: HR 6008 urges the U.S. Army Corps. of Engineers to approve a plan by which the Corps. and Kansas will invest in extending the life of each Corps.-constructed reservoir in the state. As Committee members remember, the State has contracts to acquire most of the water storage capacity in such reservoirs as Clinton, Perry, and Milford. As the reservoirs age, the amount of sediment in the reservoirs increases, thereby decreasing the flood control, drinking water storage capacity, and recreational opportunities available.

The Resolution recognizes that the Corps. and state have mutual interests in preserving these reservoirs' storage capacity beyond their design life and encourages the Corps. and Kansas Congressional Delegation to work with the state so that investments made by the state in extending the productive life of the reservoirs shall constitute payments toward the purchase price of the reservoir storage capacity.

The Council of State Governments (CSG) members endorsed similar language calling on the Corps. to work with all states having reservoirs to address siltation and other longevity problems. This resolution supports the CSG initiative and our best interests.

Committee, in the rush to introduce the resolution I inadvertently left in language stating that the state is purchasing the reservoirs. We are purchasing storage capacity and the resolutions's language will need to be corrected to reflect that point.

Thank you for your attention and I will be pleased to respond to questions at the appropriate time.

9-2

House Resolution No. 6008

By Committee on Environment

1-26

9 A RESOLUTION urging the United States army corps of engineers and
10 the Kansas congressional delegation to approve a plan made by the
11 state of Kansas to preserve and extend the life of the United States
12 army corps of engineers administered lakes in the state of Kansas.
13

14 WHEREAS, The United States army corps of engineers constructed
15 many reservoirs in Kansas; and

16 WHEREAS, Those reservoirs have provided flood control, recrea-
17 tional opportunities and drinking water supplies to more than one million
18 Kansans; and

19 WHEREAS, The reservoirs represent partnerships between the
20 United States government and the citizens of Kansas and their elected
21 representatives; and

22 WHEREAS, The reservoirs are being adversely impacted by sedimen-
23 tation that significantly reduces the storage capacity of the reservoirs and
24 such sedimentation is accruing at faster rates than originally projected;
25 and

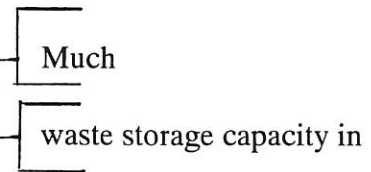
26 WHEREAS, The on-going reduction in storage capacity has deleteri-
27 ous effects on water quality, flood control capabilities and recreational
28 opportunities; and

29 WHEREAS, Available and suitable land to construct new reservoirs
30 by the United States army corps of engineers is essentially unavailable;
31 and

32 WHEREAS, Raising the height of existing dams is largely not feasible
33 because of the economic and political difficulties associated with flooding
34 additional land above the normal reservoir flood plain; and

35 WHEREAS, The direct and indirect benefits and costs associated with
36 maintaining and preserving these important water impoundments are
37 currently being shared by the United States government and the state of
38 Kansas; and

39 WHEREAS, [Most] of the [United States army corps of engineers con-
40 structed reservoirs in Kansas will be purchased by the people of Kansas
41 with the expectation that their flood control, drinking water supply and
42 recreational function will be viable for many more decades: Now,
43 therefore,



1 *Be it resolved by the House of Representatives of the State of Kan-*
 2 *sas:* That the House of Representatives of the state of Kansas recognizes
 3 the value and importance of these reservoirs to the federal government,
 4 residents of down stream states and the people of Kansas; and

5 *Be it further resolved:* That the House of Representatives of the state
 6 of Kansas recognizes the importance of investing wisely to preserve these
 7 reservoirs to prevent the devastating floods that occurred prior to their
 8 construction; and

9 *Be it further resolved:* That the House of Representatives of the state
 10 of Kansas supports development of a program by which investments by
 11 individual states, as approved by the United States army corps of engi-
 12 neers, to preserve the maximum flood control and drinking water supply
 13 storage capacity of reservoirs constructed by the United States army corps
 14 of engineers shall be considered as payments toward the purchase price
 15 of the individual reservoirs; and

16 *Be it further resolved:* That the Chief Clerk of the House of Repre-
 17 sentatives provide an enrolled copy of this resolution to the commanding
 18 officer of the United States army corps of engineers, the Kansas con-
 19 gressional delegation and the Governor.

water storage capacity in the



K A N S A S

TRACY STREETER, DIRECTOR

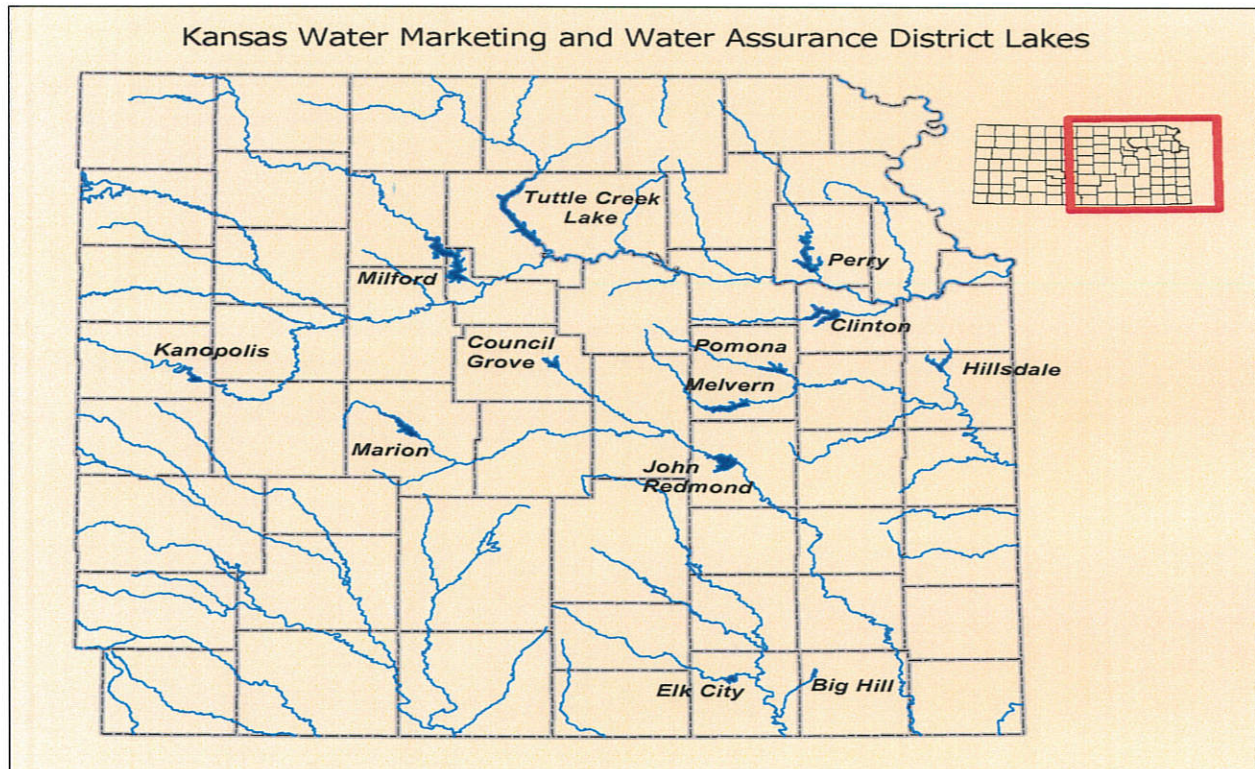
KATHLEEN SEBELIUS, GOVERNOR

KANSAS WATER OFFICE

Testimony on House Resolution 6008 House Environment Committee

February 16, 2006

Chairperson Freeborn and members of the Committee, I am Tracy Streeter, Director of the Kansas Water Office (KWO). I am pleased to appear before you today in support of House Resolution 6008. Seventeen of our 24 federal reservoirs in Kansas were constructed by the U.S. Army Corps of Engineers with 13 of those reservoirs containing water supply storage for purchase under long-term contract with the state of Kansas. Each of those lakes is included in the state's Water Marketing and Assurance Programs.



The Kansas Water Authority, for the past two years, has identified the unfunded liability facing the state of Kansas relative to the future payment obligations resulting from federal water storage purchase contracts. In addition, the KWA has also focused its attention to the drainage areas above all federal reservoirs for watershed restoration and protection strategies (WRAPS). The concepts contained in HR 6008 will assist our efforts in reducing Kansas' reservoir debt at the federal level while maximizing our investments in watershed restoration and protection activities.

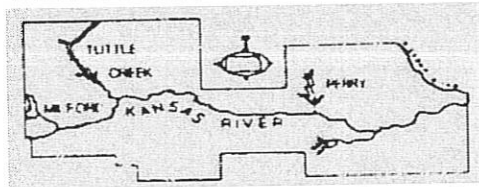
Thank you for the opportunity to appear before you today in support of HR 6008. I will stand for questions at the appropriate time.

House Environment Committee

February 16, 2006

Attachment 10

The Kansas River



Water Assurance District No. 1

212 SW 7th Street – Topeka, Kansas 6603-3717

**Environment Committee
House of Representatives
2006 Legislative Session**

House Resolution No. 6008

Chairman Freeborn and members of the committee I am sending this letter to you in support of House Resolution No. 6008 on behalf of the Kansas River Water Assurance District No. 1.

The U. S. Army Corps of Engineers reservoirs constructed in the State of Kansas were intended to serve a vital role in multiple disciplines. The cost/benefit studies justifying the projects included benefits for flood protection to farms and cities, enhancement of the environment, increased recreation possibilities for our residents, and water supply for our cities and industry.

A little discussed part of the Pick-Sloan Plan authorizing these projects was protection of the agricultural land above each of the reservoirs by constructing land treatment in the form of terraces and waterways to slow the rate of erosion that, if left unchecked, would diminish the useful life of the lakes. Unfortunately for all of the people of Kansas the federal government abandoned this part of the plan once the reservoirs were constructed. The result is that valuable tillable land has eroded threatening the life of the reservoirs. Flood benefits are lessened. Water supply is diminished. Valuable and irreplaceable top soil is deposited in the reservoirs where it has become a liability rather than an asset to the state.

At the same time the agricultural community, indeed the entire state, wooed to support the construction of these reservoirs at the expense of the loss of many thousand acres of productive land, has been betrayed by the federal governments failure to deliver on promises to protect the land above each lake. Instead they have shifted primary responsibility for this work to the state and individual farmers where the monetary means of finishing the task is limited.

Assurance districts as a group support and encourage the continued development of plans, together with timely implementation of those plans, to protect and preserve these important water impoundments for all of the purposes for which they were constructed.

Sincerely,
Kent Weatherby

House Environment Committee
February 16, 2006
Attachment 11

February 16, 2006

The Honorable Joann Freeborn, Chairperson
House Committee on Environment
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Representative Freeborn:

SUBJECT: Fiscal Note for HB 2875 by House Committee on Environment

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2875 is respectfully submitted to your committee.

HB 2875 would amend current regulations regarding the fees charged for inspections of existing diversion works. Diversion works are projects constructed to appropriate water for beneficial use from waterways or water rights. An application and project plan must be approved by the Chief Engineer of the Division of Water Resources of the Department of Agriculture who has authority over water rights for the state. An approved diversion work must be inspected to determine if all terms, conditions, and limitations of the approved application have been met. Currently, the inspection fee is \$400. The bill would not charge a fee for existing works previously inspected, and would lower from \$400 to \$100 the fee for sand and gravel diversion works that have not been previously inspected.


Estimated State Fiscal Effect				
	FY 2006 SGF	FY 2006 All Funds	FY 2007 SGF	FY 2007 All Funds
Revenue	--	--	--	(\$22,200)
Expenditure	--	--	--	--
FTE Pos.	--	--	--	--

House Environment Committee
February 16, 2006
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The Honorable Joann Freeborn, Chairperson
February 16, 2006
Page 2—2875

The Department of Agriculture indicates that passage of the bill would reduce revenue to the Water Appropriation and Certification Fee Fund by \$22,200. This is based on the estimate that the \$400 inspection fee would not be charged for 30 field inspections for new applications on existing diversion works for a total reduction of \$12,000. The estimate for the fee revenue reduction for sand and gravel diversion works inspections would total \$10,200 based on a \$300 reduction in the fee for 34 inspections. The fiscal effect of this bill is not accounted for in *The FY 2007 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Max Foster, Agriculture
Joe Fund, Water Office

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: February 16, 2006
Before: The House Environment Committee
By: Edward R. Moses, Managing Director
Kansas Aggregate Producer's Association
Regarding: House Bill 2875 – Water Inspection Fees

Good Afternoon Madame Chair and Members of the Committee:

My name is Edward (Woody) Moses, Managing Director of the Kansas Aggregate Producers' Association, the Kansas Aggregate Producers' Association is an industry wide trade association comprised of over 175 members located or conducting operations in all 165 legislative districts in this state providing basic building materials to all Kansans. We appreciate the opportunity to appear before you today in support of HB 2875 a bill introduced at our request.

This bill has its genesis in the measures contained in SB 364 approved by the 2004 legislature. As many of you were on this committee at that time you will recall SB 364 essentially established an integrating statewide policy on the regulation of sand and gravel industry for water evaporation under the Kansas Water Appropriations Act. In order to accomplish this integration you, also authorized, as a part of SB 364 a study, when completed, to make necessary recommendations on the integration process. Our industry had hoped to be able to have a complete package of recommendations for you before this committee by this time; regarding needed adjustments in the Kansas Water Appropriations Act to adequately account for the differences in water use typically found in the sand and gravel industry versus a more traditional type of water diversion anticipated in the original Kansas Water Appropriations Act.

This bill would primarily establish two modifications in the administration of water inspection fees as they apply to the sand and gravel industry.

First is surrounding the "point of diversion". Unlike traditional water uses the point of diversion in a sand and gravel operation is not necessarily fixed at all times and in all places. As a sand and gravel operator gradually opens a pit the point of diversion is subject to change following the deposit. The Kansas Division of Water Resources (DW

House Environment Committee
February 16, 2006
Attachment 13

specify that point of diversion for a sand & gravel operation shall be considered to be the geocenter of the pit. As a result a working of a deposit the operator may end up mining either east, west, north or south following the sand and gravel deposit; as a result the geocenter of the pit changes almost daily and therefore the point of diversion. Unfortunately under DWR rules if the point of diversion moves more than 350 feet the operator is required to file for a change in point of diversion and is required to file for a new water right and pay a new inspection fee. As a means of illustration I ask you to refer to the attached diagram showing the possible situation. At this point, I would like to point out that this proposed change would also affect traditional water users as well.

The second part of the bill addresses the situation of the actual field inspection itself. Many of you will remember as a result of earlier legislation in an effort to speed up the processing of water right applications the legislature mandated a \$400 field inspection fee upon the notification to the Chief Engineer of the Division of Water Resources of completion of diversion works. The \$400 fee, anticipating a traditional well inspection, was set high enough to allow for a DWR inspector to come out inspect casing, test the meter, pump and other parts of a traditional diversion works. In the case of sand and gravel evaporation the diversion works are what can be referred to as nontraditional in nature as the diversion is created by a sand and gravel operator exposing the alluvial aquifer to evaporation thru the mere digging of a hole or creating a pit. As a result the only diversion works completed in this case is the opening of a pit. Obviously, the opening of a pit does not require a pump, does not require a casing and does not require a meter; in this light it seems unreasonable to assess a \$400 fee with respect to a field inspection that requires the confirmation of the existence of a pit. In many respects we even question whether a field inspection is necessary as all pits and quarries in Kansas are currently regulated and inspected yearly by the State Conservation Commission. It is our suggestion this legislature should consider mandating by HB 2875, an inspection fee of \$100 in lieu of \$400. We thank you for the opportunity to appear before you today and I will stand ready to answer questions at the appropriate time.

Subject

HB-2875

Point of diversion

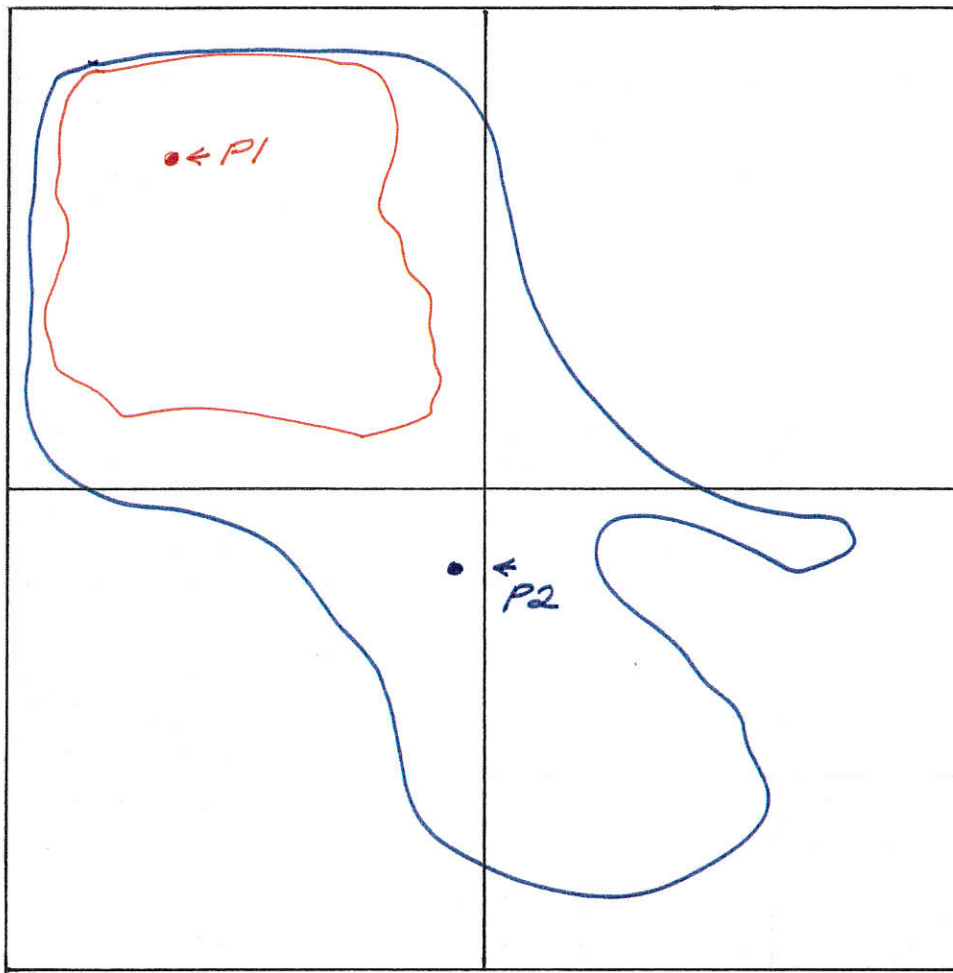
illustration



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Date 16 FEB 06

Sheet 1 of

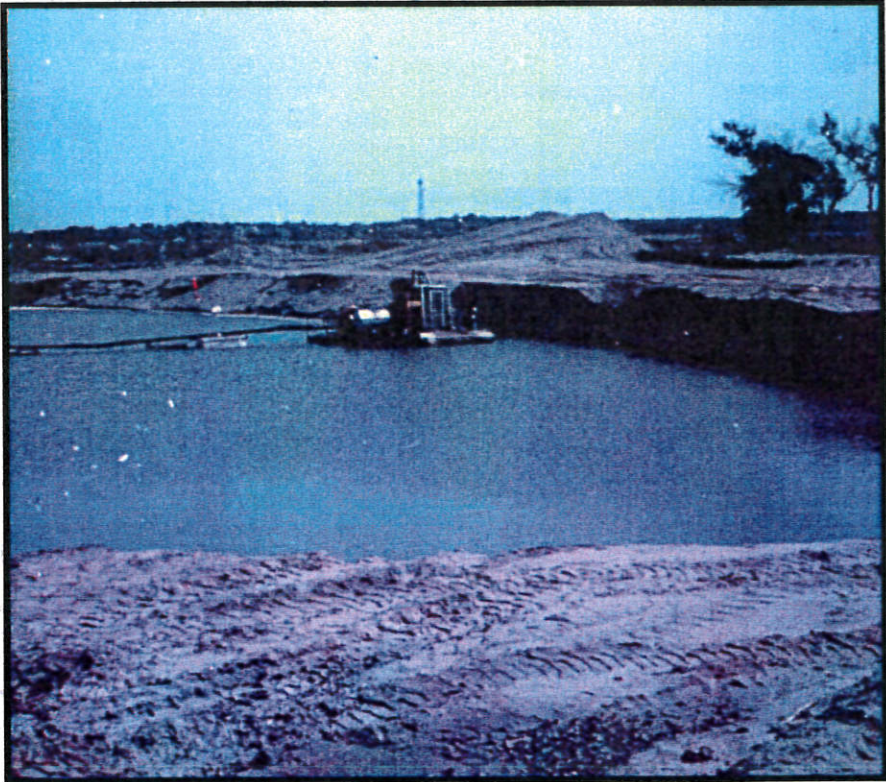


P1 = Original Point of Diversion

*P2 = New point of diversion due to change in
geo center of pit*

Count on Concrete

Typical sand & gravel operations with diversion works.



Kansas Aggregate Producers' Association
HB 2875

Timeline on Water Right # 45373 (nee' 41732)

- 1995 - Well was drilled
- 1996 - Diversion works inspected and approved by DWR
- 2004- Diversions works reinspected by DWR. Global positioning technology (GPS) used by DWR finds "point of diversion" is in wrong location. Requires well owner to dismiss file # 41732 and refile thus losing priority. Well owner files for new water right paying second inspection fee on 12/20/04.
- 2006 - Still waiting for inspection

"Assessing the Quality of a Water Right," John C. Peck, 70 J.K.F. 5, 26 (2001).
Rights in Groundwater—Some Lessons from the Past," John C. Peck, XII Kan. J.L. Pub Pol'y No. 1, 103 (2003).

82a-708.

Law Review and Bar Journal References:
"Assessing the Quality of a Water Right," John C. Peck, 70 J.K.B.A. No. 5, 26 (2001).

82a-708a. Applications for permits to appropriate water; fee. (a) Any person may apply for a permit to appropriate water to a beneficial use, notwithstanding that the application pertains to the use of water by another, or upon or in connection with the lands of another. Any rights to the beneficial use of water perfected under such application shall attach to the lands on or in connection with which the water is used and shall remain subject to the control of the owners of the lands as in other cases provided by law.

(b) Except as otherwise provided in subsections (d), (e) and (f), each application for a permit to appropriate water, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of acre feet in accordance with the following:

Table with 2 columns: Acre Feet, Fee. Rows include 0 to 100, 101 to 320, and More than 320 with corresponding fees and a note for additional 100 acre feet.

Commencing July 1, 2002, and ending June 30, 2010, the application fee shall be fixed by this section for the appropriate category of acre feet in accordance with the following:

Table with 2 columns: Acre Feet, Fee. Rows include 0 to 100, 101 to 320, and More than 320 with corresponding fees and a note for additional 100 acre feet.

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application, the application fee is sub-

tions for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

Table with 2 columns: Storage-Acre Feet, Fee. Rows include 0 to 250, and More than 250 with corresponding fees and a note for additional 250 storage-acre feet.

Commencing July 1, 2002, and ending June 30, 2010, the application fee shall be fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

Table with 2 columns: Storage-Acre Feet, Fee. Rows include 0 to 250, and More than 250 with corresponding fees and a note for additional 250 storage-acre feet.

The chief engineer shall render a decision on such permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application, the application fee is subject to refund upon request.

(d) Each application for a term permit pursuant to K.S.A. 2004 Supp. 82a-736, and amendments thereto, shall be accompanied by an application fee established by rules and regulations of the chief engineer in an amount not to exceed \$400 for the five-year period covered by the permit.

(e) For any application for a permit to appropriate water, except applications for permits for domestic use, which proposes to appropriate by both direct flow and storage, the fee charged shall be the fee under subsection (b) or subsection (c), whichever is larger, but not both fees.

(f) Each application for a permit to appropriate water for water power or dewatering purposes shall be accompanied by an application fee of \$100 plus \$200 for each 100 cubic feet per second, or part thereof, of the diversion rate requested in the application for the proposed project.

(g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

Law Review and Bar Journal References:
"Title and Related Considerations in Conveying Kansas Water Rights," John C. Peck, 66 J.K.B.A. No. 9, 38 (1997).

82a-708b. Application for change in place of use, point of diversion or use; fee; review of action on application.

(a) Any owner of a water right may change the place of use, the point of diversion or the use made of the water, without losing priority of right, provided such owner shall: (1) Apply in writing to the chief engineer for approval of any proposed change; (2) demonstrate to the chief engineer that any proposed change is reasonable and will not impair existing rights; (3) demonstrate to the chief engineer that any proposed change relates to the same local source of supply as that to which the water right relates; and (4) receive the approval of the chief engineer with respect to any proposed change. The chief engineer shall approve or reject the application for change in accordance with the provisions and procedures prescribed for processing original applications for permission to appropriate water. If the chief engineer disapproves the application for change, the rights, priorities and duties of the applicant shall remain unchanged. Any person aggrieved by an order or decision by the chief engineer relating to an application for change may petition for review thereof in accordance with the provisions of K.S.A. 2004 Supp. 82a-1901 and amendments thereto.

(b) Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

- (1) Application to change a point of diversion 300 feet or less \$50
(2) Application to change a point of diversion more than 300 feet 100
(3) Application to change the place of use 100
(4) Application to change the use made of water 150

Commencing July 1, 2002, and ending June 30, 2010, the application fee shall be set forth in the schedule below:

- (1) Application to change a point of diversion 300 feet or less \$100
(2) Application to change a point of diversion more than 300 feet 200
(3) Application to change the place of use 200
(4) Application to change the use made of the water 300

standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 150 days of receipt of a complete application, the application fee is subject to refund upon request. Any application submitted which requests two of the types of changes set forth above shall be accompanied by a fee of \$150, or commencing July 1, 2002, and ending June 30, 2010, a fee of not to exceed \$300. Any application which requests three types of changes shall be accompanied by a fee of \$250, or commencing July 1, 2002, and ending June 30, 2010, a fee of not to exceed \$500.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

History: L. 1957, ch. 539, § 4; L. 1982, ch. 4, § 18; L. 1985, ch. 339, § 2; L. 1990, ch. 361, § 1; L. 1999, ch. 130, § 4; L. 2002, ch. 181, § 22; L. 2004, ch. 85, § 17; July 1.

Law Review and Bar Journal References:
"Title and Related Considerations in Conveying Kansas Water Rights," John C. Peck, 66 J.K.B.A. No. 9, 38 (1997).
"1999 Legislative Wrap Up," Ron Smith, 68 J.K.B.A. No. 7, 16 (1999).

Attorney General's Opinions:
Regulations adopted by chief engineer at the request and applicable only to one groundwater management district are preempted by those which apply statewide. 98-24.

82a-709.

Law Review and Bar Journal References:
"Assessing the Quality of a Water Right," John C. Peck, 70 J.K.B.A. No. 5, 26 (2001).

82a-711. Permits to appropriate water; standards for approval of use; review of action on application.

(a) If a proposed use neither impairs a use under an existing water right nor prejudicially and unreasonably affects the public interest, the chief engineer shall approve all applications for such use made in good faith in proper form which contemplate the utilization of water for beneficial purpose, within reasonable limitations except that the chief engineer shall not approve any application submitted for the proposed use of fresh water in any case where other waters are available for such proposed use and the use thereof is technologically and economically feasible. Otherwise, the chief engineer shall make an order rejecting such application or modifying its

13-6

106



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2875
to
the House Committee on Environment**

**by
Constantine Cotsoradis
Assistant Secretary
Kansas Department of Agriculture**

February 16, 2006

Thank you, Madam Chairman and members of the committee. I am Constantine Cotsoradis, assistant secretary of agriculture, and I am here to testify in opposition of House Bill 2875.

Field inspections are performed by the division of water resources to verify that diversion works have been constructed and that the appropriation right is perfected in conformity with the approved application and plans. These field inspections are critical to determine that all terms, conditions and limitations of the approved application have been met, and to determine to what extent the water right has been developed.

HB 2875 would limit the chief engineer's ability to conduct field inspections on any new application that has been approved on existing diversion works previously approved by a senior right by reducing the program's funding. As written, we could not charge a fee for necessary field inspections conducted on previously inspected diversion works even when those field inspections are the result of an additional permit approved on an existing groundwater well or surface water pumpsite.

This would negatively impact funding for field work required to determine the extent of the water right development. Each new permit or appropriation of water leads to a separate water right, even if it relates to the same point of diversion that was inspected during the original application process.

The field inspection conducted is the same for sand and gravel operations as it is for any other authorized beneficial use. These field inspections are critical to determine the extent of water right development at sand and gravel operations, just like they are for other types of water rights. There is no reason to believe that that this type of use will be less expensive for the

agency, as the field inspection, determination of the perfection of the water right and issuance of the certificate of appropriation will still need to occur.

It is important to note that this legislation is the result of one person having to twice pay the field inspection fee for the same diversion works. The reason is because they submitted an application for a water right that we processed. During the initial field inspection we found they did not locate the well in the location specified on their application. The error was so great -- 625 feet, or about the distance from the Statehouse to the Curtis State Office Building -- that the water permit had to be dismissed and a new application submitted.

The agency expended a great deal of resources processing the application and inspecting the diversion works, as well as in dismissing the original water right. All processing was required to gain compliance. We then assisted the applicant by writing the new application, with the correct, known location, and we will conduct multiple inspections throughout the perfection of the water right.

We would have waived the fee if the additional inspections were the result of our error, but they were not. Changing our fee structure to satisfy the demands of one individual will have a long-term and negative impact not only on the division of water resources, but future water right applicants.

I will stand for questions at the appropriate time.