

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 P.M. on February 7, 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 Bogner, Chairman Water TAP Subcommittee, Kansas Water Congress  
Richard Wenstrom, Farm owner, and Water Protection Assoc of Central KS  
Steve Swaffar, Kansas Farm Bureau  
Scott Carlson, Ks Conservation Commission  
Paul Tobia, Vice President, Kansas Water Congress  
Mark Rude, Executive Director, Groundwater Management Water District #3  
Kent Lamb, Chairman State Affairs Committee, Kansas Water Congress  
Charles Benjamin, Sierra Club  
Tracy Streeter, Director, Kansas Water Authority  
Sharon Faulk, Big Bend Groundwater Management Water District #5  
Leslie Kaufman, Kansas Cooperative Council  
Pat Lehman, Groundwater Management Water District #4  
Mike Beam, Kansas Livestock Association  
Lane Letourneau, Manager, Water Appropriations  
Duane Simpson, Kansas Grain and Feed Association and Kansas Agribusiness Retailers Association

Others attending:

See attached list.

Chairperson Freeborn asked that everyone sign the guest list, she announced the agenda for next Thursday, February 9; possible action on bills previously heard, briefing on chronic wasting disease in deer by department of Wildlife and Parks, Presentation on Encroachment Management Through Use of Army Compatible Use Buffers (ACUB) by Craig Phillips, Fort Riley. Everyone has been given copy of **HB2716 - Granting of easement for diversion works on Kansas river for water district number 1 of Johnson county** with balloons, (See attachment 1) and a copy of fiscal notes for **HB2710 - Creates the water right transition assistance program** (See attachment 2) and **HB2716** (See attachment 3).

Chairperson Freeborn opened the hearing on **HB2710**, she ask if there was anyone who had to leave for other commitments, if not, testimony would take place in the order people called in to get on the list. No one came forward needing to leave early.

Tom Bogner, Chairman, Water Transition Assistance Program Subcommittee, Kansas Water Congress, proponent, testified (See attachment 4).

Richard Wenstrom, farm owner, Water Protection Association of Central Kansas, proponent, testified (See attachment 5).

Steve Swaffar, Kansas Farm Bureau, proponent, testified (See attachment 6).

Scott Carlson, Assistant Director, State Conservation Commission, proponent, testified (See attachment 7).

Paul Tobia, Vice President, Kansas Water Congress, proponent, testified (See attachment 8).

Mark Rude, Executive Director of Southwest Groundwater Management, District #3, proponent, testified (See attachment 9).

CONTINUATION SHEET

MINUTES OF THE House Environment Committee at 3:30 P.M. on February 7, 2006 in Room 231-N of the Capitol.

Kent Lamb, Chairperson for the State Affairs Committee of the Kansas Water Congress, proponent, testified (See attachment 10).

Charles Benjamin, Kansas Chapter of Sierra Club, proponent, testified (See attachment 11).

Tracy Streeter, Director, Kansas Water Authority, proponent, testified (See attachment 12).

Sharon Faulk, Big Bend Groundwater Management District #5, proponent, testified (See attachment 13).

Leslie Kaufman, Executive Directory, Kansas Cooperative Council, proponent, testified (See attachment 14).

Pat Lehman, Groundwater Management District #4, proponent, testified (See attachment 15).

Mike Beam, Senior Vice President, Kansas Livestock Association, proponent, testified (See attachment 16).

Lane Letourneau, Division of Water Resources, Kansas Department of Agriculture, proponent, testified (See attachment 17).

Written testimony was given to each committee member from Carl Nuzman, Consulting Engineer/Hydrogeologist, proponent (See attachment 18).

Duane Simpson, Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association, opponent, testified (See attachment 19).

Questions and discussion followed the testimony. Chairperson Freeborn closed the hearing on **HB2710**.

Chairperson Freeborn opened the hearing on **HB2716**.

Rob Olson, Representative, District 26, proponent, testified (See attachment 20).

Michael Armstrong, General Manager Water District #1 of Johnson County, proponent, testified (See attachment 21).

Questions and discussion followed the testimony. Chairperson Freeborn closed the hearing on **HB2716**.

Chairperson Freeborn adjourned the meeting at 6:10pm. The next scheduled meeting is Thursday, February 9.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 02/07/06

NAME	REPRESENTING
SCOTT Carlson	SCC
Erik Wisner	KDA
Lane Letourneau	KDA
Audy Shaw	SWKIA
Josie Kaufman	Ks Coop Council
Pat Lehman	GMD #4
Sharon Falk	GMD #5
MARK RUSE	GMD #3
Amelia Kellman	Rep. Johnson
Jess Price	Rep. Burgin
PAUL TOBIN	Ks WATER CONGRESS
Steve Swaffar	Ks Farm Bureau
Kent Astren	Ks Farm Bureau
Kent Lamb	Mackville
RICHARD WENSTROM	WATER PACK
Dave Walds	KDHE
SEAN MILLEL	Ks WATER CONGRESS
Estelle Montgomery	Hein Law Firm

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 2/7/2006

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NAME	REPRESENTING
Earl Lewis	KWO
Macy Hunter	KWO
Mike Beam	Ks. LUSTK. ASSN.
Charles Bryson	KS Sierra Club
MIKE ARMSTRONG	WATER ONE
Tom Schrempf	Water One
Terry Frederick	Water One
Kent Weatherby	KS River Water Assn Dist
Eric Arner	Water One



# HOUSE BILL No. 2716

By Representatives Olson, Beamer, Brown, Brunk, Burgess, Carlson, Carter, Colloton, Cox, Freeborn, George, Goico, Grange, Hawk, Hayzlett, Huebert, Huff, Huntington, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Knox, Lane, Long, Mast, Masterson, Mays, Merrick, Judy Morrison, Oharah, Otto, Owens, Pileher-Cook, Powers, Proehl, Ruff, Ruiz, S. Sharp, Siegfried, Sloan, Svaty, Swenson, Treaster, Vickrey, Watkins, Wilk, Williams, Wolf, Yoder and Yonally

1-25

15 AN ACT concerning water; granting an easement for construction of  
16 diversion works along the Kansas river.

17  
18 *Be it enacted by the Legislature of the State of Kansas:*

19 Section 1. (a) The secretary of state is hereby authorized and di-  
20 rected to grant an easement to water district no. 1 of Johnson county,  
21 Kansas, on a tract of land owned by the state of Kansas along the south  
22 and north banks of the Kansas river described as follows: Commencing  
23 at ~~the southwest corner of the northwest quarter of section 26, township~~  
24 ~~11 south, range 15 east of the 6th p.m., thence on a line 89°59'26" along~~  
25 ~~the south line of the northwest quarter, a distance of 1,305.42 feet to the~~  
26 ~~southeast corner of government survey lot 4; thence on a line 31°25'19",~~  
27 ~~and distance of 2,175.90 feet to the point of beginning; thence on a line~~  
28 ~~95°45'25" a distance of 961.04 feet; thence on a line 311°43'22", a dis-~~  
29 ~~tance of 1,277.83 feet; thence on a line 79°43'22", a distance of 1,809.23~~  
30 ~~feet; thence on a line 169°23'29", a distance of 963.02 feet; thence on a~~  
31 ~~line 250°23'29", a distance of 170.00 feet to the point of beginning. Less~~  
32 ~~that part of the above described tract lying northerly high bank of the~~  
33 ~~Kansas river and less that part of such tract lying southerly of the southerly~~  
34 ~~high bank of the Kansas river.~~

the east half of the southeast quarter of the southwest quarter of Section 31, Township 11 South, Range 24 East, the east half of the northeast quarter of the southwest quarter of Section 31, Township 11 South, Range 24 East, and the southeast quarter of Section 31, Township 11 South, Range 24 East. Less that part of the above described tract lying northerly of the northerly high bank of the Kansas River and less that part of such tract lying southerly of the southerly high bank of the Kansas River

35 (b) Such easement shall be conditioned on water district no. 1 of  
36 Johnson county assuming full responsibility for the use of such easement  
37 and holding the state of Kansas harmless therefor. Such easement shall  
38 terminate if the land is no longer used for the purpose for which the  
39 easement was granted.

40 (c) Water district no. 1 of Johnson county Kansas, is hereby author-  
41 ized to acquire the easement described in subsection (a) and to use such  
42 easement for the purpose of locating, constructing, maintaining and op-  
43 erating diversion works for the appropriation of water and to assume full

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- 1 responsibility for such use and hold the state of Kansas harmless therefor.
- 2 Sec. 2. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

February 7, 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 2710 by House Committee on Environment

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2710 is respectfully submitted to your committee.

HB 2710 would establish the Water Right Transition Assistance Program to be administered by the State Conservation Commission (SCC) with cooperation from the Division of Water Resources in the Kansas Department of Agriculture, and local governing agencies, including groundwater management districts. The purpose of the program is to reduce consumptive water use in priority areas of the state by issuing water right transition grants for privately held water rights. The bill would give the SCC authority to receive and expend federal, state, or private funds to implement the program. Priority would be given to applications for permanent water right retirements, with any remaining funds utilized to fund applications in which water use would be stopped for a period of four years or less. All affected landowners must give written consent regarding any request for a permanent water right retirement.

Contracts accepted under the Water Right Transition Assistance Program must result in a net reduction in consumptive use of the water right or rights enrolled in the program based on the average historic consumptive water use. The historic consumptive water use would refer to the average amount of water consumed by crop irrigation during four of the six preceding calendar years. The year with the highest use, as well as the year with the lowest use would be dropped out of the calculation. If more than one water right would overlap the location that is enrolled in the program, all overlapping water rights would be enrolled in the program, or landowners who do not want to be enrolled would be required to provide the documentation to eliminate the

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The Honorable Joann Freeborn, Chairperson  
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portion that should not be included. The SCC would adopt rules and regulations for the administration of the program which would expire in five years. Any person who violates the program's terms would be subject to a civil penalty between \$100 and \$1,000.

The State Conservation Commission (SCC) indicates that the bill would cost an additional \$1,175,332 from the State Water Plan Fund, including \$777,212 from the *Kansas v. Colorado* damage award that was deposited into the State Water Plan Fund. Expenditures of \$1,175,332 are included in *The FY 2007 Governor's Budget Report* in programs that implement permanent irrigation water use reductions. The SCC would need 1.00 additional Program Coordinator FTE position to manage the program, operating expenditures, and the remainder of the funds would be in grants to landowners. Total expenditures to implement the program include:

Salary and benefits	\$ 51,000
Travel, office, and computer supplies	16,000
Grants	<u>1,108,332</u>
Total	\$1,175,332

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Max Foster, Agriculture  
Mark Heim, Conservation Commission  
Joe Fund, Water Office

February 6, 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 2716 by Representative Olson, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2716 is respectfully submitted to your committee.

HB 2716 would grant an easement to Water District No. 1 of Johnson County on a state-owned tract of land along the south and north banks of the Kansas River for the purpose of constructing, maintaining, and operating diversion works for the appropriation of water. Diversion works are projects that are constructed to appropriate water for a beneficial use.

The Office of the Secretary of State indicates that it would be required to hire an attorney to review the legal description and prepare and file the easement at a cost of between \$5,000 and \$10,000. The bill would not have a fiscal effect on the Kansas Water Office. The localities where the easement is to be located may have a fiscal effect related to changes that need to be made in existing regulations or documents and for the construction costs of any diversion projects. Any fiscal effect resulting from the passage of this bill would be in addition to amounts recommended in *The FY 2007 Governor's Budget Report*.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Janet Chubb, Secretary of State's Office  
Joe Fund, Water Office  
Judy Moler, Kansas Association of Counties

House Environment Committee  
February 7, 2006  
Attachment 3

Testimony in support of HB 2710  
House Environment Committee  
February 7, 2006

By Tom Bogner, Chairman, Water Transition Assistance Program Subcommittee  
Kansas Water Congress

Chairman Freeborn and members of the committee thank you for the opportunity to appear before you in support of HB 2710. My name is Tom Bogner, and I have operated a family farm for many years in Ford County, north and west of Dodge City. I am a past member of the Kansas Water Authority. I served as chairman of the Kansas Water Office Ogallala Aquifer Management Committee that recommended the subunit approach to water management that is now in the State Water Plan. I currently serve on the board of Southwest Kansas Groundwater Management District No. 3 in Garden City. This past year, I have chaired the Kansas Water Congress subcommittee on the Water Transition Assistance Program (Water TAP or WTAP). I am testifying today on behalf of the work of the Kansas Water Congress and in support of HB 2710.

The Chairman of the Kansas Water Congress State Affairs Committee, Kent Lamb, appointed the Water TAP subcommittee on February 24, 2005. This subcommittee is comprised of representation from all four western Kansas Groundwater Management Districts (GMD's), Kansas Farm Bureau (KFB), Kansas Livestock Association (KLA), Kansas Grain and Feed Association (KGFA), Kansas Dairy Commission (KDC) and representation from the Water Protection Association of Central Kansas (WATERPACK). Through the process of developing appropriate language for Water TAP, relevant state agencies provided technical resources and input, including the offices of the Secretary of Agriculture and the Chief Engineer of the Division of Water Resources (KDA-DWR), the Kansas Water Office (KWO), and the State Conservation Commission (SCC). The sub-committee met eight (8) times during 2005

House Environment Committee  
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After due consideration, the State Affairs Committee of the Kansas Water Congress voted to approve the Water TAP draft language and submit it into the 2006 legislative process. What you are considering today is the result of a lot of effort put into a specific process to provide Kansas with one important tool for the management of water. This tool is vital because it insures three key elements to a program to reduce water consumption and extend the water supply.

First, it is **Targeted**. Water TAP is a voluntary incentive based program applied to targeted areas where we really need reductions in water consumption. These grants are only available in targeted or high priority areas as designated by the groundwater management districts and the chief engineer of the Division of Water Resources, or solely by the chief engineer of the Division of Water Resources for all priority areas outside the groundwater management districts.

Second, it is **Accountable**. Eligible water rights must be actively consuming water in the targeted areas. This is the first program to deal specifically with consumptive use rather than land use.

Third, it is **Limited**. Water TAP is limited both by the available funding and carries a five-year legislative sunset provision.

Through this targeted, accountable and limited approach, Water TAP should provide a means to assess the economic and hydrologic outcome of this water management tool.

Finally, let me say that this bill can stand alone. Water TAP does not require that you consider the merits of other ideas or programs. I believe HB 2710 is as good for Kansas as the process and the people that worked to produce it, and I ask for your support. Thank you for the opportunity to speak today and I will readily stand for questions at the appropriate time.



Testimony before the House Environment Committee - House Bill 2710  
Tuesday, February 7, 2006 - 3:30 p.m.

Madam Chairman and Committee Members:

Thank you for the opportunity to testify this afternoon. My name is Richard Wenstrom, and I am the owner-operator of an irrigated farming operation in Edwards County. I am here today representing the Water Protection Association of Central Kansas (Water PACK) to state our support for House Bill 2710.

In the Rattlesnake Creek Basin, we are currently in the 6<sup>th</sup> year of a 12 year Management Plan, signed into effect by the Chief Engineer in the year 2000, which calls for a reduction of 24,000 acre feet of water use over this 12 year period. One of the strategies in our plan for achieving this water use reduction is permanent water right retirement. Our plan calls for a 7,500 AF of water use reduction over the 12 years with this program. To accomplish this, approximately 10,400 AF in gross water rights would need to be retired permanently. Other voluntary strategies involving conservation of water through new tillage techniques, irrigation scheduling, water banking, are already in effect. We need the help of state and Federal government for statutory authority and funding to make permanent reduction of water rights a reality.

House Bill 2710 seeks to accomplish this permanent retirement of water rights through a program entitled water right transition assistance. The language in the bill provides mechanisms to ensure that real water use reductions will take place with the transition of irrigated land to dryland by relating to historic consumptive use, and by dealing fairly with overlaps in the place of authorized use of the water.

There are some who may oppose this bill because of the lost tax revenue and the loss of input sales such as seed and fertilizer when irrigated land is taken out of production. As irrigators and a members of Water PACK, on the surface it would appear that we should oppose the bill as well. Yet we support this bill. Allowing for a few wells to be taken out of production in our midst will be instrumental in reaching the prescribed management goals in our basin, and thus allow the continued production of crops such as corn, alfalfa, and soybeans that are profitable for our producers, and that complement the livestock industry that we all depend on. If we fail to reach our management goals, and an IGUCA (Intensive Ground Water Use Control Area) ensues, high valued irrigated crops such as corn and alfalfa, will no longer be grown in this area of Kansas. This will result in many, many more times the loss in tax revenue and input sales compared to the small losses from a few water rights that are permanently retired. Furthermore, with an IGUCA, we will see, for this whole 3,000 mile square area, decreased land values and tax base, decreased monies for schools and communities, further decreases in population, and a general loss of equity for our farms, banking institutions, and businesses. In short, decisions we make today will determine whether a hugely productive area of Kansas will remain so with a stable groundwater and surface water supply.

House Bill 2710 is one of the most important steps in keeping our farmers on the land while stabilizing our irrigation water supplies into the distant future.

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

Richard J. Wenstrom,  
Water Protection Association of Central Kansas

House Environment Committee  
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***Kansas Farm Bureau***  
***POLICY STATEMENT***

**House Environment Committee**

**HB 2710: Water Rights Transition Assistance Program**

**February 7, 2006**

**Submitted by:**

**Steve M. Swaffar**

**Director of Natural Resources**

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Chairperson Freeborn and Committee members, thank you for this opportunity to provide testimony today in support of HB 2710, a bill which would help ease the burden of transitioning from high capacity irrigation to using less water in areas that are experiencing significant water level decline rates in Kansas.

I am Steve Swaffar, Director of Natural Resources for the Kansas Farm Bureau. Kansas Farm Bureau policy supports the notion of voluntary, incentive based programs which allow landowners to determine if a proposal such as HB 2710 is right for them and their operation. Many of our members have experienced the challenges of dealing with high fuel costs, deepening water levels and stagnant commodity prices; consequently providing an incentive to transition out of irrigation but retaining the right to continue farming the land is an appealing option for some.

We have worked diligently to reach consensus with other members of the Kansas Water Congress State Affairs Committee to formulate the proposals found in HB 2710. We believe this process has resulted in a product most are comfortable with and one the legislature can endorse. Applying the concepts of HB 2710 to targeted, high priority aquifer decline areas of the state will result in the reduction of consumptive use without jeopardizing the trickle-down of money from agriculture to our local main street businesses. We also believe the scope of this project is small enough that it will not harm the regional economy but provide enough incentive to sustain individual operations throughout the conversion to dryland farming.

While this program certainly is not a quick fix, it is a good first step in helping to reduce our dependency on high capacity irrigation in targeted areas and

House Environment Committee

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hopefully it will eliminate, or greatly reduce, the need to regulate water rights by the State of Kansas. Administration of water rights is a worst case scenario for everyone because its affect is felt immediately and ultimately everyone shares its burden. Individual operations are severely impacted, land values plummet, tax revenue diminishes and eventually the affect is felt in the State coffers.

We are confident the State Conservation Commission will develop rules and regulations that will produce results you can identify and quantify. Additionally, by providing a five year sunset, as proposed in HB 2710, the State should have adequate time to evaluate the program and measure its results before efforts to enhance or discontinue the program are made. We believe it is time for Kansas to give the concept of a voluntary, incentive based water conservation proposal such as HB 2710 a try. On behalf of the members of Kansas Farm Bureau we request you give this bill favorable consideration.



Greg A. Foley, Executive Director

**KANSAS**  
State Conservation Commission

Kathleen Sebelius, Governor

**Testimony on the HB 2710 concerning Water Transition Assistance Program  
to  
The House Committee on Environment  
by  
Scott B. Carlson  
Assistant Director  
State Conservation Commission**

**February 7, 2006**

Chairperson Freeborn and members of the Committee, thank you for the opportunity to provide testimony on HB 2710 and potential implementation responsibilities for the State Conservation Commission (SCC).

Water Transition Assistance Program

The Water Transition Assistance Program (WTAP) originated from ideas and input from western Kansas irrigators that were concerned about the future of irrigated agriculture in areas of significant groundwater decline. Several years ago, Kansans began brainstorming ideas for new incentive programs with our Congressional delegation. As a result, recommendations were made by the Kansas Water Authority (KWA) to develop a water right retirement program for Kansas. Irrigation transition legislation was first proposed in the 2004 legislature with the introduction of HB 2620. In 2005, HB 2400 was introduced to the committee.

The SCC worked with the Water Congress to modify last years bill and greatly appreciated the opportunity to provide technical assistance to such a diverse group. The SCC supports the majority of the components within this bill. However, HB 2710 has a short-term component and it is the opinion of this agency that there are existing federal programs with much greater annual funding to address *short-term* incentives. As an example, the Natural Resources Conservation Service (NRCS) administers the Environmental Quality Incentives Program (EQIP) funded at \$3.2 million annually to address water conservation issues. Within EQIP there is a Water Conservation Program to transition irrigated land to dryland from 4-10 years.

The KWA recommended that the SCC, in FY 2007, request \$398,120 of State Water Plan funding and \$777,212 from damage award funds from the Colorado lawsuit, for a targeted water right retirement program. This total amount of \$1,175,332 is requested as part of the State Water Plan Projects Initiative for FY 2007 to address *permanent* water right retirement. The Governor supported the Kansas Water Authority (KWA) recommendation in her budget.

The goal of this program is to provide voluntary incentives to retire water rights on a short-term or permanent basis in focused over appropriated areas with sustainable irrigation potential. To accomplish this task the SCC will work closely with Groundwater Management Districts and the Kansas Department of Agriculture (KDA) in identification of priority areas and prioritization of applications. With the anticipated complexities of administration due to overlapping water rights issues, historic consumptive use documentation, and the potential number of applications, the SCC is requesting one FTE to augment the SCC staff. Beginning in FY 2007, a Program Coordinator will be required to review, coordinate, prioritize and process applications and required documentation with the Groundwater Management Districts and the KDA Division of Water Resources staff.

In conclusion, the SCC supports the intent of state funded programs to reduce the consumptive use of water in over-appropriated areas of the state. Transition grants provided to irrigators that result in dismissal of water rights is one tool, in a box of many, which could enable the state to better manage aquifer stabilization and stream recovery in priority areas.

Madam Chair, I would like to thank you for the opportunity to provide testimony on HB 2710. I will stand for questions at the pleasure of the committee.



Testimony in support of HB 2710  
House Environment Committee  
February 7, 2006

By Paul Tobia, Vice President, Kansas Water Congress

Thank you Chairman Freeborn and members of the committee. My name is Paul Tobia and I am from Wichita, Kansas. I am a retired chemical company executive. My work career consists of 30 plus years in the chemical industry working in seven different states for five different major chemical companies. Part of my community service career in Kansas includes past Chair of the Wichita Chamber of Commerce, past board member of the Kansas State Chamber of Commerce & Industry, past member of the Kansas Water Authority representing industry. Currently I'm on four non-profit boards in various capacities. I am here today as Vice President of the Kansas Water Congress. I, and others from the Congress testifying today, am here to urge you to support House Bill 2710, the Water Transition Assistance Program or Water TAP.

The mission of the Kansas Water Congress is to promote the wise management and stewardship of the state's water resources. To protect, conserve and develop Kansas water resources for the benefit of Kansas' present and future generations. The Kansas Water Congress is a non-profit, fee funded entity separate and distinct from existing state agencies, associations, other organizations and direct political affiliation.

After 10 years of preliminary discussions, the Kansas Water Congress was formed in February, 2003. It is organized into 29 divisions. Twelve (12) based on water basins and seventeen (17) are general, representing various interests such as agricultural, mining, manufacturing, financing, municipal and the like. There are also seven advisory positions covering such areas as law, research and geology. In short we are a broad based, state wide group that provides a forum where interested parties may meet, discuss and study the main water issues in our state and reach consensus on actions to be taken.

Which brings me back to HB 2710. The Kansas Water Congress supports this bill and firmly believes it is in the best interests of the State of Kansas. It is our wish that the committee support it as well. Thank you for the opportunity to appear before you today and I am happy to stand for questions at the appropriate time.



Testimony in support of HB 2710  
House Environment Committee  
February 7, 2006

By Mark Rude, Executive Director,  
Southwest Kansas Groundwater Management District No. 3

Chair Freeborn and members of the committee, thank you for the opportunity to appear before you in support of HB 2710. My name is Mark Rude, and I am the Executive Director of the Southwest Kansas Groundwater Management District No. 3 (GMD3).

In recent years, nearly half of the numbers of acres irrigated annually in Kansas are in GMD3, which amount to about 1.5 million acres. Annual use has been about 2 million acre feet. The calculated annual recharge from rainfall is only about 12,093 acre feet and the recharge to aquifers from the Arkansas River flows from Colorado was about 84,000 acre feet each year before the recent drought. Some areas in GMD3 are about 21 times over appropriated and about 17 times over pumped if safe yield is the standard used. Those areas would require about a 0.4% reduction in actual use each year for 50 years before reaching a safe yield balance.

But simple math and a simple program approach will not solve the long term water supply issues in GMD3 nor in other areas of the state. This is mainly true because there are big differences in the hydrologic and institutional realities between each local water supply source. These differences require special considerations and a set of good tools to address the problems. The process followed by the Kansas Water Congress to develop the language for HB 2710 has produced a good tool for targeting of water use reduction.

Water TAP is a voluntary incentive based program that can be applied to local targeted areas where we may really need reductions in water consump

believes strongly in the development of good targeting tools for specific areas and the need of reduced water consumption. In fact, we recently allowed hundreds of thousands of NRCS dollars previously available to Southwest Kansas under the ground and surface water portion of EQIP to be applied in other areas of the state this year so that the Quick Response Area (QRA) targeting tool under that program could get off the ground with minimal argument over the appropriate portion of the funding pie for each QRA. Where previously 80% of the available funds went to the heavily irrigated SW Kansas, this year only 20%, or \$400,000 went to the QRA in Southwest Kansas GMD3. The NRCS method of allocating funds for QRA's may change in the future, but GMD3 believed enough in the targeting of funds to QRA's that it was considered worth the temporary loss of share to develop the NRCS cooperation and the targeting tool for Kansas.

Another point I would like to emphasize is that with limited funds available to buy back water consumption, incentives must be effective. One of the funding sources considered for Water TAP is the statewide portion of the KS v. CO damage funds. We are in full agreement with Representative Carl Holmes who expressed to the House Environment Committee yesterday that damage funds are one time funds that should not be wasted. We know that those funds were quantified from losses and pumping costs to local irrigated farms. We also know that no value could be assigned to the water now missing from the aquifer to replace what was held in Colorado. This represents water lost without any benefit. With the damages as an expense to local producers and less water in storage for later use, GMD3 has a special interest in seeing those funds well spent. Water TAP provides an important accountability by defining the consumptive use credited for purchase to insure an effective use of those funds.

HB 2710 is a good tool for Kansas and an important step in the right direction to promote water for the future needs. Thank you for the opportunity to speak today and I will readily stand for questions at the appropriate time.

House Environment Committee  
Tuesday, February 7, 2006

Madame Chair and Committee Members:

Thank you for the opportunity to appear before the committee this afternoon. My name is Kent Lamb from Macksville in Stafford County. I am a farmer and irrigator. I also serve as Chairperson for the State Affairs Committee of the Kansas Water Congress. The KWC united the efforts and expertise of their membership and key agencies to develop the concept encompassed by House Bill 2710.

As to the question of: "Why is this bill needed?" or "Doesn't current law address the situation?", please allow me to explain. There have been many critical, priority areas of future water use conflicts identified in the three western groundwater management districts. Strict regulation would happen slowly and at a great cost to the state and the water users. The outcome of the hearings and orders will likely be challenged in the court system which could take years before corrective actions are implemented. In the end, all affected water users will be faced with large water use reductions which will cause an economic hardship and the erosion of tax bases for that area and the state.

HB 2710 is a proactive approach to identify a problem area, offering a voluntary incentive based program to achieve targeted solutions and meeting the water requirements of the area with a minimum negative economic impact. This is a tool for targeting funds to water users for the purpose of the reduction of consumptive water use in small, targeted areas. This is not a massive program to idle land or cover large acreages.

While the process of identification of priority areas has to date been focused on western Kansas, this program could be implemented anywhere in the state in an identified critical groundwater use area. The benefits of this legislation can be for any groundwater use area to ease their water appropriation conflicts.

The State of Kansas has invested millions of dollars and a great effort has been made to solve potential water use conflicts at the local level. Very little funding has been approved to date for the programs that were developed. Now is the time to adopt Water TAP to help achieve the goals that were identified by the water planning process.

If I could make a few brief points:

1. The program is voluntary, incentive based and will be administered by the State Conservation Commission
2. Funding may be received from federal, state or private sources.
3. "High priority areas" will be determined by the chief engineer of the Division of Water Resources and the Groundwater Management Districts. Outside of the GMDs the chief engineer of Division of Water Resources will identify priority areas.
4. Water right transition grants will be issued for only privately held water rights.
5. Permanent water right retirements will be considered for funding as a first priority.
6. Upon enrollment of a water right the chief engineer of the Division of Water Resources will dismiss and terminate the water right in accordance with terms of the contract.
7. Contracts accepted under Water TAP must result in a net reduction of consumptive use based on "historic consumptive water use" as defined in the text of the bill.
8. Land enrolled in the Water TAP program may continue dry land crop production.
9. Land enrolled in the Water TAP program may be irrigated if another water right may be lawfully transferred to the enrolled property.
10. The Water Right Transition Assistance Program will expire in 5 years.

Thank you for your attention and consideration of the Water Transition Assistance Program. I urge you to give favorable action on HB 2710.

Kent Lamb

**Charles M. Benjamin, Ph.D., J.D.**  
Attorney at Law  
P.O. Box 1642, Lawrence, Kansas 66044-8642  
(785) 841-5902; 841-5922 facsimile  
[chasbenjamin@sbcglobal.net](mailto:chasbenjamin@sbcglobal.net)

**Testimony in Support of H.B. 2710**  
Creating the Water Rights Transition Assistance Program  
**On Behalf of the Kansas Chapter of Sierra Club**  
Before the Kansas House Environment Committee  
February 7, 2006

Madam Chair, members of the Committee, thank you for the opportunity to testify in support of H.B. 2710 on behalf of the Sierra Club the world oldest and largest grass-roots environmental organization in the world with over 750,000 members including over 4,000 in Kansas.

Sierra Club supports public policies that promote the responsible use of natural resources, such as aquifers, in a way that ensures their long term sustainability. We have known for a long time that the policy of "planned depletion" of the Ogallala aquifer would eventually result in the depletion of the aquifer. What we may not have known is how quickly that depletion would occur in some places in the aquifer because of the use of center pivot irrigation systems used primarily to grow corn in western Kansas. Now we have a situation of near crisis in western Kansas towns like Ulysses. Even the city of Hays is struggling with ensuring an adequate water supply. I have attached to this testimony a February 2, 2006 Associated Press story about the water situation in Ulysses and January 31, 2006 story in the Hays Daily News that describes these "water worries" in western Kansas.

To make matters worse, Sunflower Electric has bought 35,000 acres of farm ground in western Kansas in order to acquire their water rights. They need this water to expand their coal-fired electric generating plants from a single 360 megawatt coal plant with an additional three new coal plants to bring their total coal burning electric power plants to 2310 megawatts. When completed this coal burning power complex in southwestern Kansas will be larger than Westar's Jeffrey coal burning complex, itself one of the largest coal power complexes in the country. The proposed Holcomb 2-4 units will employ water cooling towers which will use an enormous quantity of groundwater in this water short area. This water loss will be by deliberate evaporation. Once the power plants are built they will be consuming water at the design rate for at least 50 years. Sunflower will use huge quantities of water even in wet years when farmers would not need to draw down the aquifer. Sunflower and its investors will need to do this to protect their \$3.5 billion investment. Thus they will have the means and the incentive to use every drop. Two of three new coal burning plants are being constructed by Tri-State Generation and Transmission Association of Westminster, Colorado who will transmit and sell the power to Colorado.

H.B. 2710 is one way to reduce the "consumptive use" of water in over-appropriated areas of the state. These transition grants provided to irrigators that result in dismissal of their water rights is an important tool to enable the state of Kansas to better manage our declining aquifer resources. We therefore urge your support of this important legislation.

House Environment Committee  
February 7, 2006  
Attachment 11



# WATER

## worries

As aquifer drops, farmers, towns in western Kansas brace for costly future for survival

By GARANCE BURKE  
The Associated Press

ULYSSES — The prairie spreads for miles here in stubby, ashen-colored patches. Irrigation pivots spray out in circles, each minute sucking up hundreds of gallons of cold water from beneath the oil fields.

Ed Wiltse, mayor of the 6,000 citizens of this south-

west Kansas county seat, is weighing how to spend

his city's money. This year, there's little question where much of the money will go: he'll pump a quarter of the public works budget into buying water.

The vast underground pool that fills Ulysses' faucets, called the Ogallala Aquifer, is running low, forcing towns and farmers to spend beyond their means to tap alternative sources.

"Out here, water is like gold," said Wiltse, adjusting his glasses as he runs his hands over a chart of the town's faltering wells. "Without it, we perish."

The aquifer nourishes vital industries on the plains — its rich soil produces the nation's beef supply and much of its wheat and corn crops.

Ulysses sits in a stretch of the corn belt where the water table has dropped about 25 feet in the last decade.

Once wild rivers have turned to gravel, and above-ground streams stopped running years ago. It's been a long time since anyone thought the sky might water their crops.

As Ulysses' biggest well approaches bedrock, Wiltse's trying to figure out how the town will pay to pump water from an aquifer that each year drops further below ground.

Since the 1940s, its wells have drawn from the Ogallala Aquifer, the world's largest underground water system. The Ogallala irrigates one-third of the nation's corn crops and provides drinking water to eight Midwestern states. It's also the fastest disappearing aquifer in the world.

### 25 years left

In many places, the aquifer is flush with water — in the area near Nebraska's Platte River, for instance, streams quickly recharge the water table's deep channels.

But hydrologists estimate in the flat plains around Ulysses, the aquifer will last about another 25 years if present usage continues. Farther south in the Texas panhandle, the United States Geological Survey's prognosis is even worse: the water table near Lubbock, Texas, is so depleted that the city would have gone dry by 2003 if leaders hadn't bought up water rights — a legal term for the privilege of tapping new sources of water.

Some farmers have started switching from corn to cotton, which needs less water. But for drinking water, towns have little choice but to spend mil-

lions to move water from miles away.

"We've just gone through a four-year drought," said Wiltse. "So now we're having to go further out from the city to purchase water rights. This time, we're not only paying to buy more water, but we'll be paying for underground water pipelines and booster pumps."

Aquifers hold the trapped runoff of several ice ages, but

many in the United States have been depleted and contaminated in the last few decades. One, under Long Island in New York, is poisoned with chemical waste. Another, in Arizona, is being withdrawn more than 10 times faster than it can be recharged by rainfall.

The Ogallala was born between the age when the Rocky Mountains were still emerging, and when the Great Plains were an inland sea. If it were spread out over the United States, it could cover the entire country with 1½ feet of water.

But with this year's spike in the price of natural gas and electricity, some Midwestern farmers are quitting the business entirely because it costs too much to run their irrigation pumps.

Last month, Gov. Kathleen Sebelius proposed to pay farmers to stop watering their

crops, going against nearly a century of state policy that doled out water rights to farmers almost indiscriminately. Along the state's western edge, the state has virtually banned any new uses of water.

"Once that water is used, it's not going to come back," said hydrologist Brownie Wilson, who monitors water declines at the University of Kansas in Lawrence. "But water users don't want to be restricted — they want to be paid to stop."

After years of ignoring the problem, the federal government is trying to take action. This year's agriculture appropriations bill acknowledges the aquifer could go dry within two decades and calls for federal conservation efforts.

"There's an old saying that whisky's for drinking and water's for fighting," said U.S. Sen. Sam Brownback, a Kansas Republican. "Water is the life blood of this region. There's no question that it is our biggest policy question."

### Opposing regulations

Both the National Corn Growers Association and the American Farm Bureau op-

pose any federal regulation of ground water, claiming that water rights are a state issue. Brownback said it's been nearly impossible to get support for limits on water used by eight states reliant on the aquifer — Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wyoming.

Kansas laws say the first entity to be granted a water right, whether a person or a farm, can use all the water they're entitled to in times of shortage, even if that means harvesting the last drop available. But after decades of treating the aquifer like an inexhaustible resource, city leaders and farmers are suddenly talking about conservation.

A group of concerned growers in Thomas County, Kan. are considering an across-the-board 10 percent reduction in their water use.

If Kansas legislators approve Sebelius' budget, the farmers may get a payout. But Bob Buddemeier, who runs the Kansas Geological Survey, said unless the state overhauls its water laws to encourage and enforce conservation efforts,

*Handwritten signature*

H-2

# Wellfield reconfiguration will go to

By MIKE CORN  
HAYS DAILY NEWS 1-31-06

## Pay...g a big price

City leaders in Lubbock, Texas, thought the future looked downright dismal before they began buying up new water rights last year. The town has now spent \$100 million to supply the city with water for the next 100 years.

"This ain't the time to play politics," said Lubbock councilman Gary Boren. "It's one of those things that if you don't have it you'll pay any price to get it."

After watching dozens of farmers foreclose, Ulysses farmer Donnie Young switched many fields from corn to cotton, which needs just two inches of water a year. He also became a partner in the Santa Fe Trail Dairy, a huge milking operation whose 10,000 cows sprawl out across the flat plains.

He said the spike in energy prices this winter will halve his income, and cost him an additional \$12,000 to irrigate. So instead, he's integrated his two businesses. Young irrigates his crops with wastewater that's already been used in six different processes at the dairy. In turn, the cows' hot milk is cooled using water flowing directly from the aquifer.

"When I started out we used to flood this whole plain," Young said, an arm resting on his truck window as he leaves the cotton fields for the dairy. "We're gonna reach the point where it will no longer be economical to pump water. We may already be there today."

The state's water agency has scheduled a three-day hearing into the city of Hays' request to reconfigure its wellfield along the Smoky Hill River near Schoenchen.

The request has been pending since October 2004. The Division of Water Resources had asked for additional information from the city concerning the effect that changing the layout of the wellfield would have on the river and additional wells in the area.

The hearing, which will begin at 2 p.m. April 3 at the Veterans of Foreign Wars Hall, 2106 Vine, will almost exclusively be a formal affair, complete with a lawyer representing the state. The formal hearings are scheduled to continue through April 5 if necessary.

The only break from that formality will come at 7 p.m. April 3 when the general public — anyone with an opinion on the request — will have a chance to talk.

A letter from DWR Chief Engineer

David Pope confirms that even informal comments will be "considered in the determination" of the request.

Those comments could be limited so that everyone will have the chance to talk.

During the formal portion of the hearing, only people with water rights in the area, generally within a half-mile of where the city of Hays has water wells existing or where it wants to move wells, will take part.

Hays generally is asking the state for permission to move and redrill about half of the wells that are in the Smoky Hill River aquifer. The six wells that are being moved are governed by three water rights the city holds in the river valley.

The hope is to spread out the wells so that they don't interfere with each other when water is being pumped.

More than 30 people have been identified as holding water rights within the area, and as a result will be able to testify at the hearings. There also has been a surface water right holder identified in the area between the Hays and Russell wellfields. Russell's wellfield is located near Pfeifer.

There might be a third group of people involved, but they will have to file an application to intervene in the hearing, according to public notice. That notice must be filed with the state by Feb. 15, and must identify the legal basis for participating.

The formality of the hearing is a result of the area where the wellfield is located being contained in an Intensive Groundwater Use Control Area. An area from Cedar Bluff Reservoir on the west to the confluence of the Smoky and Big Creek in Russell County has been in the IGUCA for more than 20 years.

As a result, the area effectively has been closed to additional

wells and additional water use. Although Hays is asking to move some of its wells, it is not asking for additional water rights.

DWR spokeswoman Lisa Taylor said the agency has notified water rights holders in the area concerning the public hearing.

Conducting a hearing is an option that is always available, Taylor said.

Generally, she said, the number of affected water right holders is small.

"This project is a little bit bigger," Taylor said. "We always have that option at our disposal. We prefer to have a hearing if there's keen public interest."

Residents of the Schoenchen area have indicated an interest in the change, an interest that nearly a year ago prompted a flurry of letters to the state's water agency.

In addition to appearing at the hearing, written comments can be made as long as they are post-marked no later than April 5, the last day of the hearing.

The proposal offered by the city is available for public review in Topeka, but also at the DWR office in Stockton and at the Hays Public Library.

Taylor said maps accompanying the request are about an inch thick. Documents supporting the change are about 2 inches thick.

Managing editor Mike Corn can be reached at (785) 628-1081, ext.

129, or by e-mail at [mcorn@dailynews.net](mailto:mcorn@dailynews.net).

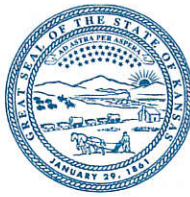
## Water rights

• **WHAT'S A WATER RIGHT?** It allows a person, a corporation or a city to use up to a certain amount of water each year for a specific purpose. The state can revoke the water right if the user doesn't draw on the amount of water granted each year. For rights granted from 1984 on, Kansas can mandate that a user not draw on allotted water if the water flow in any aquifer or stream in the area is lower than the minimum levels set by the state.

• **WHO CAN APPLY?** Any farmer, corporation or municipality can apply for a water right, but in most of Western Kansas, there's no new water available.

• **WHY IT MATTERS:** Water rights determine how water is apportioned. In Kansas, the right to use water is based on the principle of "first in time, first in right." So in times of shortage, that means the first person, corporation or municipality to get a water right can use all the water to which he, she or it is entitled, even if that means taking the last drop available.





# K A N S A S

TRACY STREETER, DIRECTOR

KANSAS WATER OFFICE

KATHLEEN SEBELIUS, GOVERNOR

## Testimony on House Bill 2710 House Environment Committee

February 7, 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 Bill 2710 and the creation of the Water Right Transition Assistance Program. The KWO has provided input into the process of the Kansas Water Congress which led to the introduction of this proposed legislation.

The Kansas Water Authority (KWA) and the Water Office are supportive of voluntary, incentive-based mechanisms to stabilize and/or extend the useful life of the Ogallala/High Plains Aquifer. The KWO has supported legislation similar to HB 2710 each of the past two legislative sessions.

In its recommendations to the Governor and 2006 Legislature, the KWA recommended FY 2007 State Water Plan (SWP) Funds totaling \$1,175,332 for permanent water right retirement. Of this amount, \$777,212 is recommended from Arkansas River litigation damage award. This recommendation is supported in the Governor's budget.

In addition to permanent water right retirement funding, the KWA also recommended SWP funding to supplement efforts currently underway through the federal Environmental Quality Incentives Program (EQIP) to provide short-term incentives to irrigated land managers to convert to dry land farming. Over \$2 million in annual federal funding has been targeted for these incentives in Quick Response Areas identified by Groundwater Management Districts 1, 3, 4 and 5, and targeted areas outside GMD boundaries as designated by the Division of Water Resources. HB 2710 contains a provision to allow funding for non-permanent water right retirement through set-aside agreements of not less than four years as a secondary priority to permanent water right retirement offers. The KWO recommends, in an effort to avoid duplication, that this provision be implemented in a fashion which is complimentary to the existing EQIP Quick Response Area incentives and the EQIP supplemental funding already recommended in the State Conservation Commission budget.

As a result of the opportunities presented with the receipt of the Arkansas River litigation damage award, the KWA also recommended the development of a Conservation Reserve Enhancement Program (CREP) for the Arkansas River corridor from the Colorado state line to just downstream of Great Bend. A component of the federal Conservation Reserve Program,

House Environment Committee

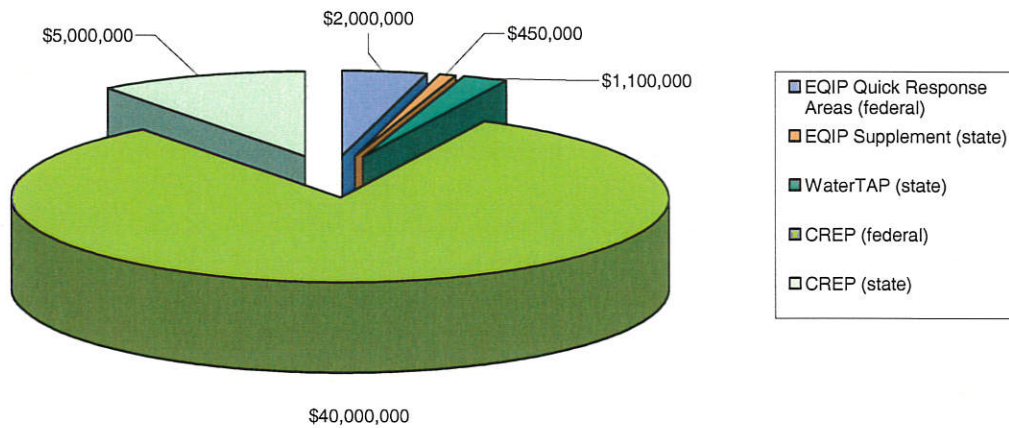
February 7, 2006

Attachment 12

CREP provides a unique opportunity to leverage at least \$40,000,000 in federal funding to convert irrigated lands along the Ark River to permanent vegetation for up to 15 years. In addition to annual federal rental payments, state funds would be utilized to compensate participants for the permanent retirement of the associated water rights.

## High Plains Aquifer Incentive Programs

*Existing and proposed permanent or multi-year retirement of irrigation water rights*



In closing, the passage of HB 2710, coupled with the EQIP Quick Response Area funding, state-funded EQIP supplemental program, and Arkansas River CREP provide viable, incentive-based tools for reducing consumptive use in the Ogallala and High Plains Aquifers. I encourage your support of HB 2710 and will stand for questions at the appropriate time.

BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO FIVE  
125 SOUTH MAIN  
STAFFORD KANSAS 67578  
620-234-5352

Testimony before the House Committee on Environment  
Concerning  
House Bill 2710 – Water Right Transition Assistance Program

On behalf of the Board of Directors, Big Bend GMD #5, I wish to thank you Chairperson Freeborn and members of the Committee for the opportunity to share the Board's support for this program.

This bill seeks to establish a water right transition assistance program that in our opinion will help meet the requirement to reduce consumptive use in various areas of the state. We support the permanent retirement of water rights (Section 1 (c)) because it reduces consumptive use of the water resources and the administrative costs associated with the water right, both of which benefits the State of Kansas as a whole.

The Board further supports the concept of applying the grants in areas that have been designated as target or high priority areas by the Groundwater Management Districts and the chief engineer of the Division of Water Resources (Section 1 (e)).

Section 1 (f) requires a net reduction in consumptive use equivalent to the amount of historic consumptive use of the water right enrolled and further ensures that such reduction in consumptive use occurs. This will assure a cost effective program.

Section 2, of the bill dealing with penalties also enhances the effectiveness of the program.

.....

Groundwater Management District No. 5 has been actively involved in the purchase and retirement of water rights in the District for the last several years. The board has increased the assessment rates in the District to pursue this endeavor with very little opposition from the water users. However, we cannot carry the burden ourselves. This proposed legislation opens the door for other funding options that will enhance these current efforts.

In closing, we ask that the committee endorse this proposed legislation, as we believe it can benefit the state as a whole.

Thank you again for the opportunity to appear before you today.

Respectively submitted by  
Sharon Falk, Manager  
Big Bend Groundwater Management District No 5

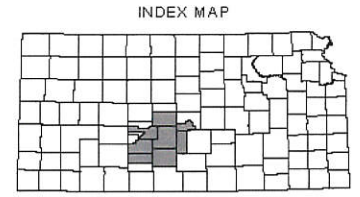
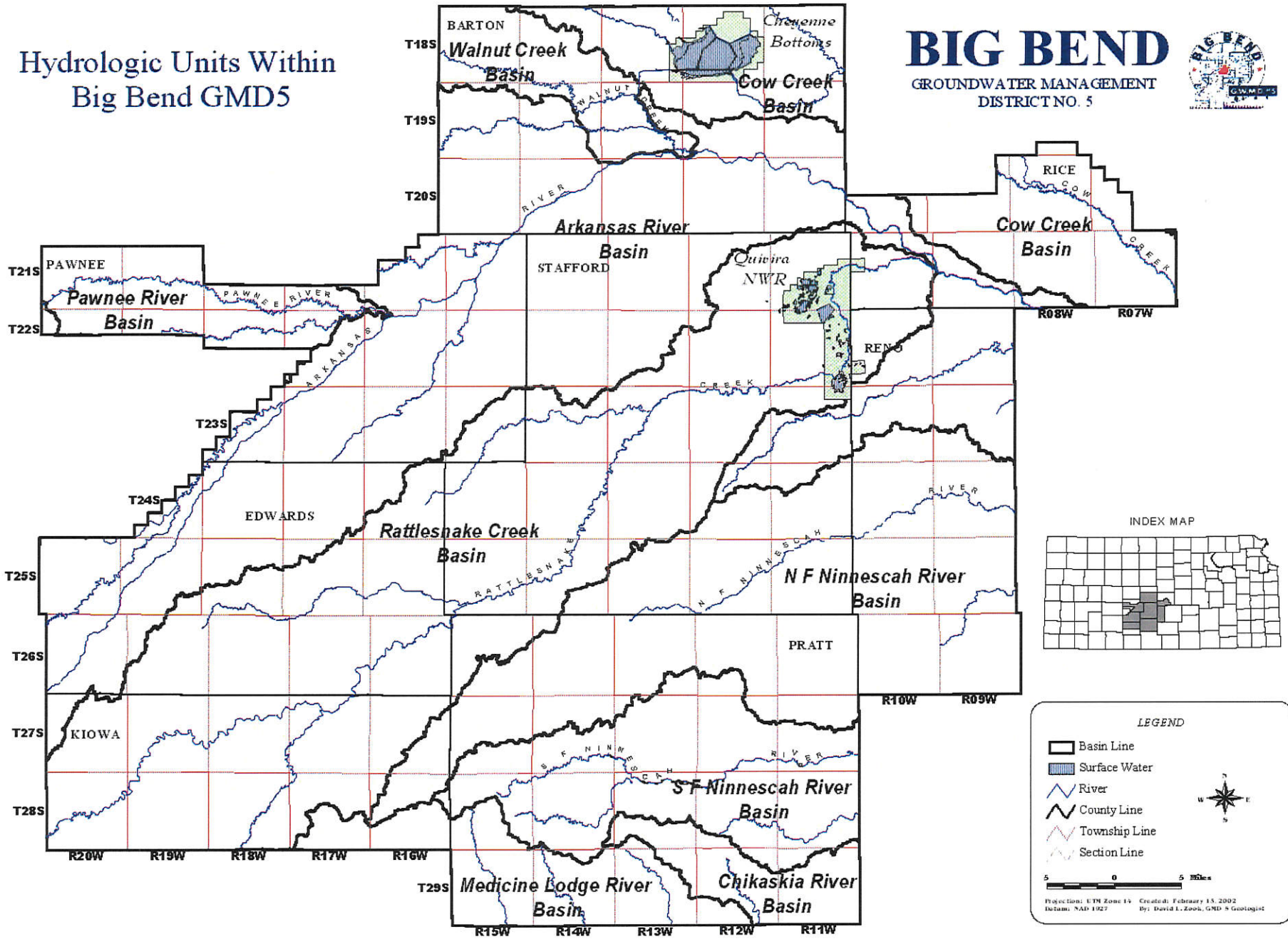
House Environment Committee  
February 7, 2006  
Attachment 13



# Hydrologic Units Within Big Bend GMD5

## BIG BEND

GROUNDWATER MANAGEMENT DISTRICT NO. 5



**LEGEND**

- Basin Line
- Surface Water
- River
- County Line
- Township Line
- Section Line

5 0 5 miles

Projection: UTM Zone 14 Created: February 15, 2002  
Datum: NAD 1927 By: David L. Zook, GMD 5 Geologist



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. 7, 2006

### HB 2710 - establishing a Water Transition Assistance Program (WTAP).

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 partial support of HB 2710. 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. We appear today in partial support HB 2710.

The Council has expressed concerns with irrigation transition programs that prohibit dryland farming and attempt to dictate land management practices as a means of addressing water concerns. Many of the problems we have noted in previous ITAP proposals have been eliminated under the WTAP proposed in HB 2710.

This fall, our Legislative Action Committee recommended, and our Board of Directors approved, a new policy direction for our association by adopting the policy language:

*Programs designed to encourage irrigation transitions must include an economic analysis, which evaluates the impacts on the local community, businesses and tax base. This Council supports a program that provides for transition to dryland farming.*

The WTAP does allow for dryland farming, thus we can support the program. Our support is noted as partial since an economic analysis has not been done to evaluate the impacts the WTAP could have on the implementation area.

We understand the need to address water quantity situations in Kansas. Voluntary, incentive-based programs like WTAP can be appropriate.

House Environment Committee  
February 7, 2006  
Attachment 14

encouraging water savings. But, the state must insure that measures taken do not have serious negative economic impacts on the region's economy. As such, you may want to look at economic impacts before moving forward.

We appreciate that under the WTAP, contracts accepted into the program must result in a net reduction in consumptive use. We raised concerns with other proposals that not did show a clear tie to hydrologic impacts.

We objected strenuously to previous proposals that set forth prescriptive land management provisions like prohibiting dryland farming and forever banning any irrigation. Such provisions were bureaucratic impediments to land management decisions. They completely ignored the potential for technologic advances such as drought resistant crops, the fact that certain cover grasses consume as much water as some dryland crops and changes in cropping patterns. As we read it, WTAP will allow changes under existing water law to transfer the place of use from another water right on land once served by a transitioned right. We think this type of flexibility is essential to an irrigation transition program.

We are pleased to see a sunset included as part of the bill. This will force re-examination of the program after 4-5 years. This allows time for data to be collected and for the WTAP to "prove itself". If beneficial impacts are not being achieved, the program does not have to be extended.

In closing, we commend the Kansas Water Congress for their hard work on this bill. This proposal is much improved over other transition proposals. Thank you for allowing us the chance to comment on this bill.



# **NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT #4**

**Testimony to the  
House Environment Committee  
HB 2710  
Presented by Patrick T. Lehman  
For the Northwest Kansas Groundwater  
Management District #4  
February 7, 2006**

Thank you, Madam Chairman and members of the committee. I am Pat Lehman and I represent the Northwest Kansas Groundwater Management District #4.

On behalf of the Board of Directors of GMD #4, I am testifying in support of HB 2710. The process of getting this bill draft has been focused, organized and inclusive of many viewpoints. The Kansas Water Congress involves all the parties from previous year's debates both pro and con. These entities have been on the subcommittee developing this bill jointly.

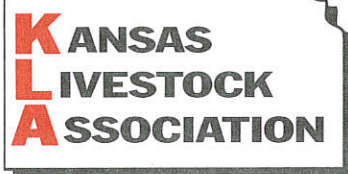
The board feels that HB 2710 will help us achieve the State Water Plan 2010 objectives of reducing groundwater declines. Passage of this bill will provide several sources of funding. The State Water Plan is proposing \$1.1 million next year and \$1 million each year for the next four years. A foundation established by the Board of Directors of GMD #4 currently has \$235,000 with which to work.

HB 2710 is different from EQIP but is expected to coordinate reasonably well with all federal, state and private efforts to set aside consumptive water use.

This bill offers the most direct way to reduce consumptive water use in targeted areas with the less economic and social impacts than regulated reductions.

Thank you, Madam Chairman. I will be glad to answer questions at the appropriate time.

House Environment Committee  
February 7, 2006  
Attachment 15



Since 1894

## TESTIMONY

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

From: Mike Beam, Senior Vice President

Date: February 7, 2006

Subj: **House Bill 2710** -A bill creating the water right transition assistance program.

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker cattle production, cattle feeding, grazing land management and diversified farming operations.*

*Kansas ranked second nationally with 6.65 million cattle on ranches and in feed yards as of January 1, 2005. The state's beef industry consumes 72% of the corn, 16% of the soybeans, and 60% of the hay grown in Kansas.*

The future of the Kansas livestock industry is dependant on a productive and sustainable grain and forage base. Groundwater and irrigation is essential for producing a viable supply of grain and forage in many parts of this state.

When we look at the future of irrigation in the high plains, we cannot dismiss the obvious. Many areas are over appropriated and ground water is being pumped at rate faster than its recharged. The Division of Water Resources continues to receive complaints of water right impairments. In several instances, irrigators and water right holders are developing and advancing initiatives to reduce consumptive use on hopes of avoiding the designation of an Intensive Groundwater Use Control Area.

The Kansas Livestock Association (KLA) believes HB 2710 provides a tool, if funding is made available, to help address the over appropriation of water on a voluntary basis. KLA supports HB 2710.

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Attachment 16

The program proposed by HB 2710 is not a new concept.

- The idea of permanently retiring a limited number of water rights, and groundwater pumping, in priority areas was proposed by stakeholders in southwest Kansas several years ago. (Mayo report)
- The Kansas Water Authority, through its ongoing water planning process, has repeatedly identified and designated this program as an important tool to extend and conserve ground water for future generations.
- The Kansas Natural Resources Legacy Alliance, in 2003, identified groundwater quantity as a key factor that could limit future economic and population growth. This group, after consultation from stakeholders at the local level, suggested the following strategy:

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

- In addition, this idea has considerable local support by several Groundwater Management Districts. These entities are governed by local citizens committed to programs and initiatives that extend and/or sustain groundwater use.
- After a year of discussions and deliberations, the Kansas Water Congress has collectively drafted and recommended the bill before this committee this afternoon.

I would contend it's time for the 2006 Kansas Legislature to give its approval to a statutory program that provides a tool for addressing one of the state's most serious economic and natural resource challenges. I urge this committee to give HB 2710 its favorable consideration.

Thank you!



# KANSAS

DEPARTMENT OF AGRICULTURE  
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2710  
to  
the House Committee on Environment**

**by  
Lane Letourneau  
Division of Water Resources  
Kansas Department of Agriculture**

**February 7, 2006**

Good afternoon Chairperson Freeborn and members of the committee. I am Lane Letourneau, manager of the water appropriation program in the Department of Agriculture's division of water resources. I am here to testify in support of HB 2710.

This bill would establish a Water Right Transition Assistance Program (WTAP) to reduce consumptive water use in target- or high-priority areas. These areas would be designated by the division of water resources and the groundwater management districts for the State Conservation Commission, which will administer the program.

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

If the WTAP program is initiated by the Legislature, water rights enrolled for permanent retirement in eligible areas will be dismissed and terminated in accordance with the terms of contracts between the individuals and the SCC. The result should benefit areas of the state that now show significant water level decline or stream flow depletion, and where long-term water use reductions are needed. Set-aside agreements also can be allowed if funds are available to achieve short-term reductions in use.

The bill requires contracts to result in a net reduction of consumptive use equivalent to the historic use of the water right, or water rights, enrolled in the program. However, it also provides some flexibility for landowners and water users related to future land use, as long as it still results in a reduction in consumptive use.

House Environment Committee  
February 7, 2006  
Attachment 17

109 SW 9th St., Topeka, KS 66612-1280

Voice (785) 296-3556 Fax (785) 296-8389 <http://www.accesskansas.org/kda>



One primary use of this program would be the area covered by the High Plains/Ogallala Aquifer, where we have been involved in implementing management strategies in some areas and working with groundwater management districts to carry out the Ogallala Aquifer management section of the State Water Plan. The goal is to extend the life of the aquifer by managing it on a hydrological unit basis because of wide differences in water use, groundwater depletion and the aquifer's remaining usable life.

In many areas of Kansas, there is no question that water use reductions must occur. There is not enough water available to continue indefinitely the current level of pumping. The Water Right Transition Assistance Program could provide a way to reduce consumptive water use in highly targeted areas to achieve maximum results with limited public funds.

The proposed Water Right Transition Assistance Program is a way to facilitate water use reduction. A variety of options are being implemented and considered, and there appears to be strong local interest in voluntary, incentive-based programs to reduce water use in these areas.

We support WTAP goals of reducing net consumptive use, dealing with overlapping water rights, and providing flexibility for land owners and water users.

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

Carl E. Nuzman, P.E., P.Hg.  
Consulting Engineer/Hydrogeologist  
3314 NW Huxman Road  
Silver Lake, KS 66539

February 1, 2006

House Environment Committee  
State Capital Building  
Topeka, Kansas

RE: HB 2710

Attn: Joann Freeborn, Chairman

The Ogallala aquifer is the engine that drives the Western Kansas economy. When sub-units of the Ogallala aquifer have been identified by the Groundwater Management Districts and areas outside of the Districts by the Division of Water Resources, of the Kansas State Department of Agriculture, select areas will be prioritized as needing assistance in transition from irrigation back to dry land farming. The real problem not understood by most people is that the transition process takes several years to regain normal agricultural productivity under dry land conditions. The water transition assistance program as provided by HB 2710 is an appropriate beginning to extend the life of the Ogallala aquifer and will provide a vital tool for the Groundwater management Districts and the Division of Water Resources..

As an irrigation farm owner living in the Kansas River valley, and as a professional assisting many farmers with water rights problems in the Ogallala aquifer, I have an understanding and great appreciation of the difficulty many of these farmers face in the near future. The permanent retirement of water rights in selected priority areas will serve as an example for others to follow.

As a member of the Kansas Water Congress, I fully support HB 2710 and urge the Committee to favorably approve this bill for passage by the full House of Representatives.

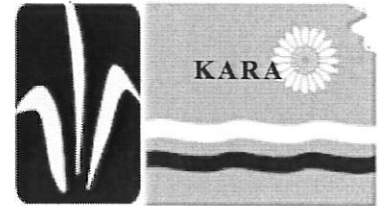
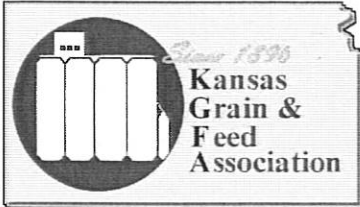
Respectfully submitted for your consideration,



Carl E. Nuzman, P.E., P.Hg.  
Consulting Engineer/Hydrogeologist

House Environment Committee  
February 7, 2006  
Attachment 18





STATEMENT OF THE  
KANSAS GRAIN & FEED ASSOCIATION  
AND THE  
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION  
SUBMITTED TO THE  
HOUSE TAXATION COMMITTEE  
IN OPPOSITION TO HOUSE BILL 2710  
REP. JOANN FREEBORN, CHAIR  
FEBRUARY 7, 2006

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

Thank you Madam Chair and members of the House Environment Committee; I am Duane Simpson, Vice President of Government Affairs for the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. On behalf of these organizations, I am testifying in opposition to House Bill 2710.

HB 2710 is the bill that is being called the WaterTAP bill. As you read this bill it will probably look familiar since it's the newer version of last year's ITAP bill (HB 2400). While this bill has solved some of the technical problems that were found in HB 2400, the 2 basic questions remain:

- Is retiring water rights an appropriate remedy?
- Even if retiring water rights is believed to be the right course of action, what would the economic impact be?

While there is no dispute that the water table is declining, we have seen no information that shows that this program will leave Western Kansas in better shape economically or hydrologically. The State Conservation Commission has over \$1 million proposed in their budget for irrigation retirement programs yet there is no economic or hydrological analysis that has been conducted that proves we will end up any better in 10 years.

The reality is that while we are debating this issue, the people in Western Kansas are already reducing water rights due to the high fuel costs and the high costs of fertilizer. Just last week, Rep. Holmes stated to another committee that he visited with a banker in Plains who told him that he did not have a single customer that could show him how irrigating corn would have a positive cash flow. This is similar to the statement made by Steve Irsik at the January 2006 Water Authority meeting when he

informed the group that "with these energy costs, irrigation does not work."

These are not just anecdotal statements. These comments represent the reality of what is happening in Western Kansas right now. Irrigation does not make financial sense at this time. We fear the state will only be buying marginal water rights that are not cost effective anymore. The people with strong wells will wait and hope that the tide will turn on the energy costs. However, if you are a farmer near or past retirement age with a marginal well and you happened to live in a high priority area, then this program would be attractive to you. The question is: would it be the right public policy choice for the state to be spending money buying marginal wells that are not even being pumped in these times of high energy prices?

Even if you still believe that buying water rights is an appropriate program, doesn't it make sense to know what will be the effect of buying these water rights? We encourage you to make sure that you know how much water the state anticipates buying with more than \$1 million and how much longer it will extend the aquifer.

You should also follow a "Legislators Hippocratic Oath: First, do no harm." What will be the economic impact of retiring these water rights? We know that dryland is taxed at a lesser rate than irrigated land and grassland is taxed at the lowest rate of both of these. Therefore this program will decrease the tax base which will then have an impact on the schools and counties that rely on those taxes. Furthermore there will be a secondary impact to the various businesses in the area. At the same time they are losing business, their taxes are going to go up to help make up the property tax shortfall. Before you enact any program we ask that you require an economic impact study be completed and reviewed by the Legislature so that you know the impact of this bill. Once the water rights are forfeited they cannot be reinstated and the damage will be irreparable.

Therefore, we urge you vote no on this bill, at least until these questions are answered and we know for sure that it will not harm the area where it is enacted.



TOPEKA

HOUSE OF  
REPRESENTATIVESCOMMITTEE ASSIGNMENTS  
TAXATION  
TRANSPORTATION  
FINANCIAL INSTITUTIONS  
ECONOMIC DEVELOPMENTFebruary 7<sup>th</sup>, 2006

The Honorable Joann Freeborn, Chairperson  
House Committee on Environment  
State House-Room 231-N  
Topeka, Kansas 66612

Subject: HB 2716

Authorizes the Secretary of State to grant an easement to Water District No. One of Johnson County, Kansas (Water One) for the construction of a diversion works on the Kansas river. The diversion works will be located just downstream of the I-435 bridge and will replace the current rock jetty structure operated by Water One at that same location. In granting this easement and authorizing the diversion works, Water One is required to hold the State of Kansas harmless.

Water One relies on the Kansas river for approximately one third of their raw water supply. In March of 2004, the current rock jetty was breached causing the loss of the use of the Kansas river surface water intake as a water supply source. HB 2716 is necessary so that Water One may construct a more permanent structure in the Kansas river to protect their access to raw water and meet the demands of the more than 380,000 people they serve in Johnson County.

Representative Rob Olson

House District 26

House Environment Committee  
February 7, 2006  
Attachment 20

## TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2716

TO: Rep. Joann Freeborn; and  
Members of the House Environment Committee

DATE: February 7, 2006

RE: House Bill No. 2716—An Act concerning water; granting an easement for construction of diversion works along the Kansas river.

Ladies and Gentlemen:

This testimony is offered by Water District No. 1 of Johnson County, Kansas (“WaterOne”) in support of House Bill 2716 in an effort to protect its Kansas River raw water intake structure from river bed degradation. WaterOne urges this Committee to approve House Bill 2716.

### Background

Water District No. 1 of Johnson County, Kansas is a quasi-municipal corporation organized pursuant to K.S.A. 19-3501 et seq. The governing body for WaterOne is comprised of seven (7) board members elected at large from the service territory, each serving staggered four year terms. WaterOne serves approximately 385,000 residents of Johnson County, Kansas, with a service territory of over 271 square miles, with over 2500 miles of transmission and distribution mains providing drinking water to 18 municipalities (see Attachment 1). WaterOne has no taxing authority and derives revenue from water sales and system development charges. Water District No. 1 of Johnson County is not a part of Johnson County government and is a separate governmental entity, operating much like a city of the first class in Kansas. The day-to-day operations of WaterOne are the responsibility of the General Manager, Michael J. Armstrong.

WaterOne is fortunate to draw water from three distinct sources in order to meet water demands as well as keep pace with the development within its service territory. With a surface water intake on the Missouri River and a second surface water intake on the Kansas River and a small well field along the Kansas River, WaterOne has a treatment capacity of 180 million gallons per day. Roughly two thirds of the water supply comes from the Missouri River intake, with the remaining one third coming from the Kansas River intake. A fourth source of water is currently being developed along the

House Environment Committee

February 7, 2006

Attachment 21



Missouri River to ensure that WaterOne continues to be able to meet the water demands of its customers. House Bill 2716 deals with the continued ability of WaterOne to rely on the Kansas River intake as a reliable water source, now and in the future.

### The Need

The Kansas River raw water surface intake is located just downstream of the I-435 bridge in Wyandotte County (see Attachment 2). In the mid-1960's, WaterOne constructed a surface water intake at the elevation of the river bottom to draw water out of the Kansas River to help meet its growing system demands. Not long thereafter, due to channel degradation lowering river levels below the intake, a rock jetty stretching across the Kansas River was constructed to stabilize the channel level at the intake elevation. The sole purpose of the rock jetty was to maintain the channel level at the intake structure to insure proper hydraulics during low flow river conditions. The jetty was constructed under a permit issued by the U.S. Army Corps of Engineers in 1970. Since the intake and original jetty were constructed, the downstream channel of the Kansas River has continued to degrade. In fact, not long after the intake and jetty were constructed, the jetty was strengthened with larger rock as the difference in upstream and downstream elevations grew due to river bed degradation. Since that time, the jetty has continuously grown in size in order to maintain channel elevation at the intake as the river bed degraded downstream. In March of 2004, a significant breach occurred in the jetty causing the loss of the surface water intake as a source of supply (see Attachments 3-5). Fortunately, drinking water demands in March of 2004 were such that WaterOne was able to adequately supply the water needs of its customers completely off the Missouri River source of supply. The cost of the jetty repairs in 2004 exceeded \$1.7 million dollars (see Attachment 6). Additional dollars have been spent since that time to maintain the structure and keep it in working order. Because of the March 2004 breach, WaterOne commissioned consulting engineers Black & Veatch to evaluate the conditions that caused the breach and make recommendations regarding a long-term solution to address the continued viability of the rock jetty.

### The Solution

Black & Veatch reported to the Governing Body of WaterOne the results of their study in early 2005. The study found that river degradation had made the existing jetty unstable. Multiple options were evaluated and the recommendation was to construct a weir just upstream of the present rock jetty. The proposed weir is very similar to the structure constructed by the City of Topeka in the Kansas River (see Attachment 7). This weir would be a permanent structure with a foundation extending to bedrock, unlike the rock jetty that has no foundation and rests upon sand and sediment. The Governing Body of WaterOne adopted the recommendation and directed staff to initiate design, environmental assessment, agency permitting and potential funding sources for the weir. A new, permanent weir was determined to be a much more reliable structure that would be unaffected by continued river bed degradation and not susceptible to breaches like the one in 2004. The estimated cost to construct a weir is approximately \$15.2 million dollars. Pending successful approval and permitting requirements, construction of the

new weir should begin in the fall of 2006 with the anticipated goal of completion by the summer of 2008.

### Benefits of a Permanent Weir

There are a number of benefits associated with construction of a permanent weir:

1. WaterOne has invested significant dollars to improve the performance of the raw water intake on the Kansas River and a weir would enhance the availability of sufficient water supply in low river conditions.
2. The new weir maintains the status quo of this location in that the elevation would be the same as the present rock jetty.
3. A permanent weir would act as a control point on the Kansas River and arrest river bed degradation from moving upstream. Both state and federal agencies recognize the importance of a structure like this that can act as a checkpoint to river bed degradation.
4. A permanent weir provides much more reliability and does not have the potential for breach as a rock jetty.
5. A permanent weir provides reliability for upstream water stakeholders all the way to Bowersock dam in Lawrence by halting the degradation of the river bed.
6. A permanent weir helps protect important environmental habitats along the Kansas River from Lawrence to the WaterOne intake site.
7. A permanent weir helps prevent bank erosion by preventing cutting down of the river channel. Without a structure at the intake to prevent upstream degradation, significant property damage would occur to structures along the river, including bridges, outlet structures, pipeline crossings, flood levees and erosion control structures.
8. A permanent weir provides the ratepayers of WaterOne with a sound, long-term, reliable structure that will ensure water may be taken from the Kansas River for years to come without the risk and maintenance issues associated with the rock jetty.

### House Bill 2716

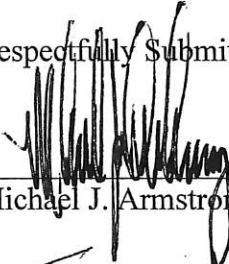
HB 2716 is a mirror image of K.S.A. 82a-215, easement for construction of diversion works along the Kansas River for the City of Topeka. While investigating the various permit requirements from the respective state and federal agencies, WaterOne was advised to follow the same protocol as the City of Topeka used for their weir on the Kansas River. HB 2716 would authorize the Secretary of State to grant an easement to WaterOne for the construction of a diversion works on the Kansas River in an area legally described between the I-435 bridge and the rock jetty structure. WaterOne would assume full responsibility for the design, construction, maintenance and operation of the diversion works (weir). Lastly, HB 2716 would require that WaterOne hold the State of Kansas harmless for the use of the easement and the weir.

Conclusion

WaterOne is firmly committed to the Kansas River as a long term source of water supply. In recent years, WaterOne has invested tens of millions of dollars to expand and maximize the available capacity of its Kansas River intake. Likewise, WaterOne has improved treatment facilities at this location in order to meet new drinking water standards. WaterOne is also a member of the Kansas River Water Assurance District and pays annual fees for water to be stored in the Kansas River reservoirs for its use. House Bill 2716, by granting an easement for a diversion works (weir), would allow WaterOne to protect the investment made at the Kansas River intake and provide dividends for years to come for the 385,000 and growing water customers in its service territory.

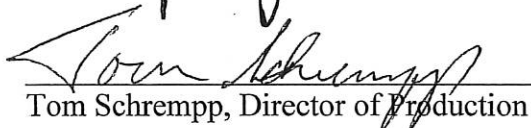
Thank you very much for your consideration of House Bill 2716.

Respectfully Submitted,



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Michael J. Armstrong, General Manager

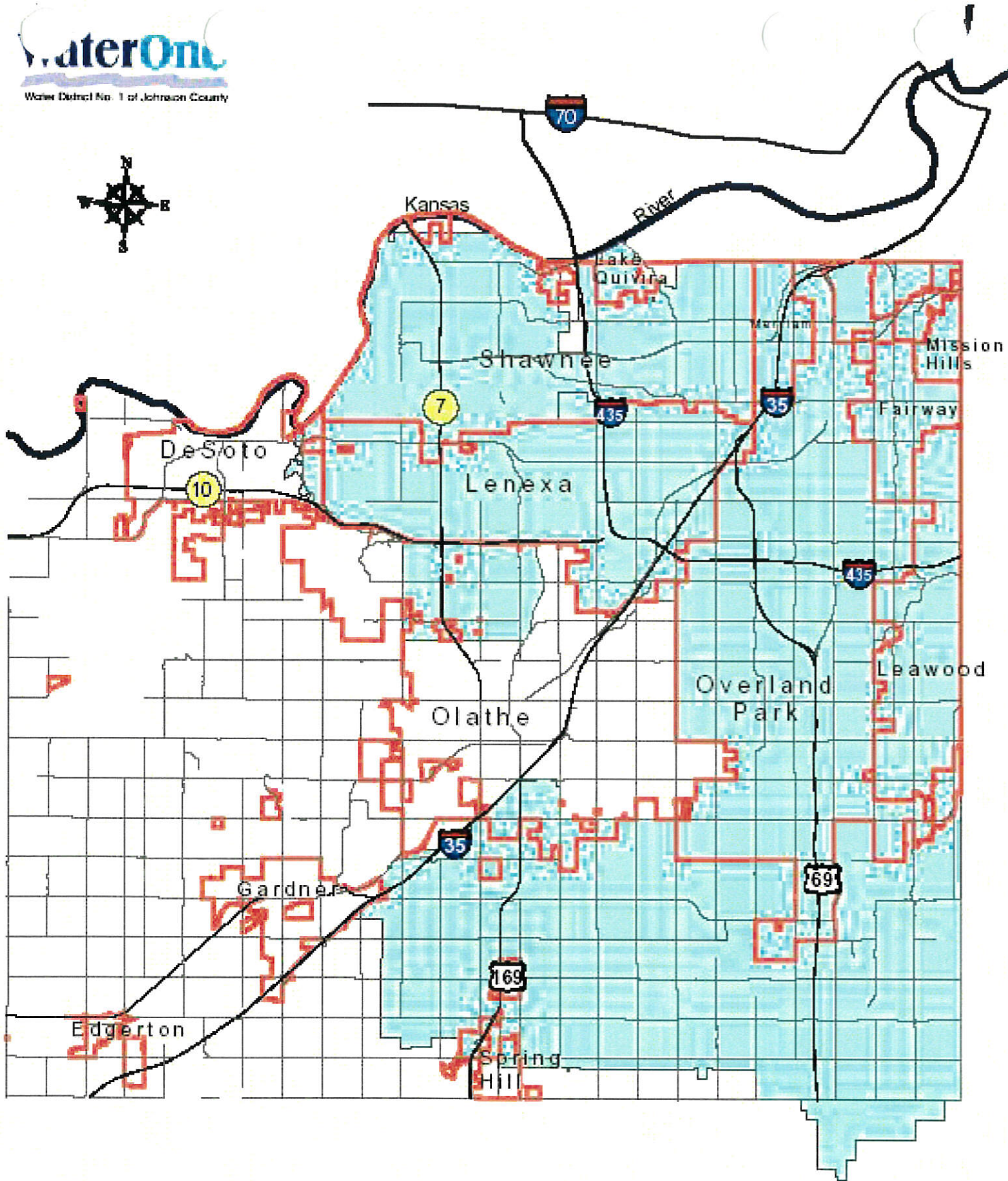


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Tom Schrempp, Director of Production

WaterOne Contact Information: Please feel free to direct questions or requests for additional information regarding the testimony of WaterOne in support of HB 2716 to, Eric R. Arner, General Counsel, WaterOne, 913-895-5519 or [earner@waterone.org](mailto:earner@waterone.org).



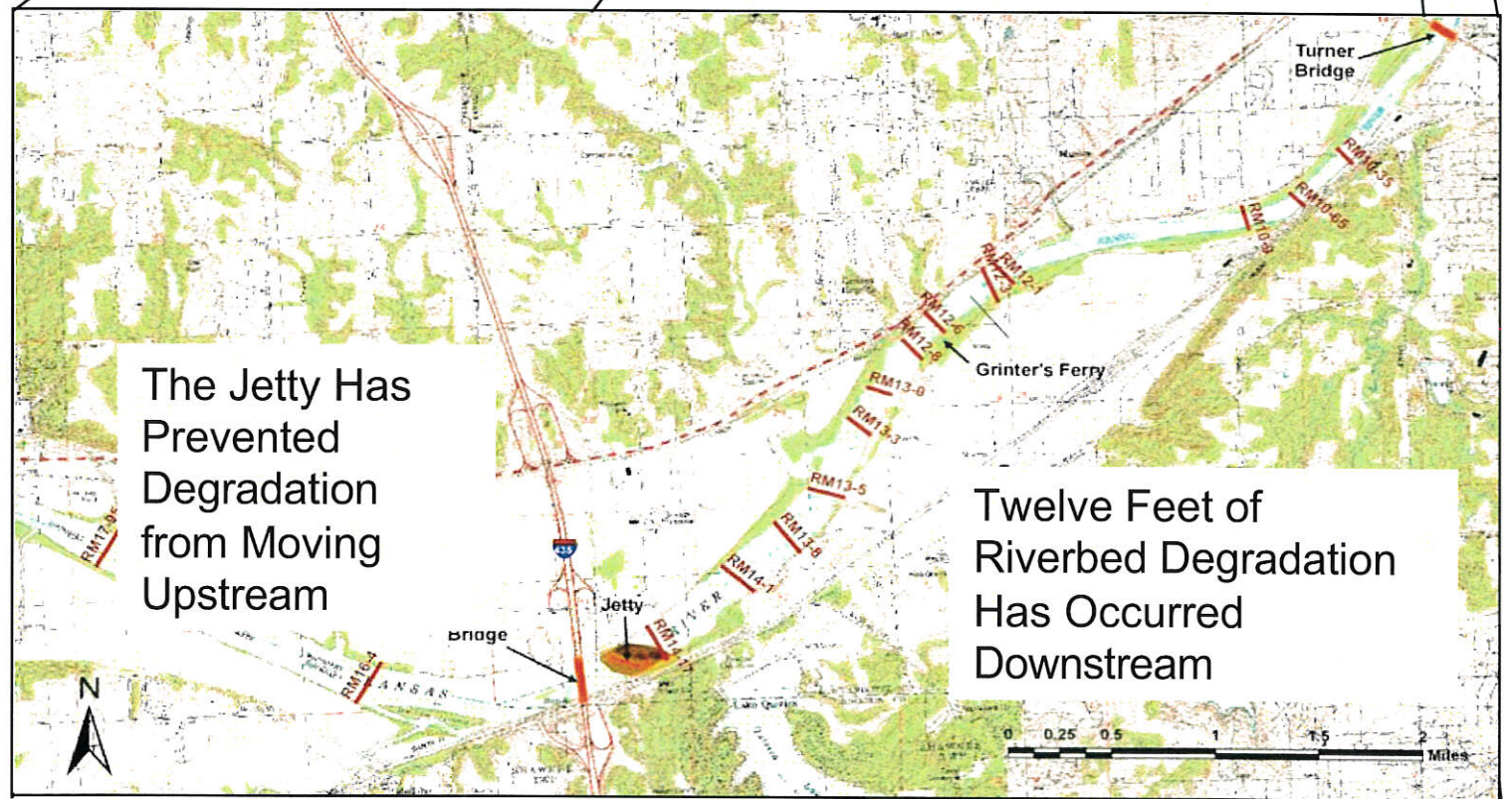
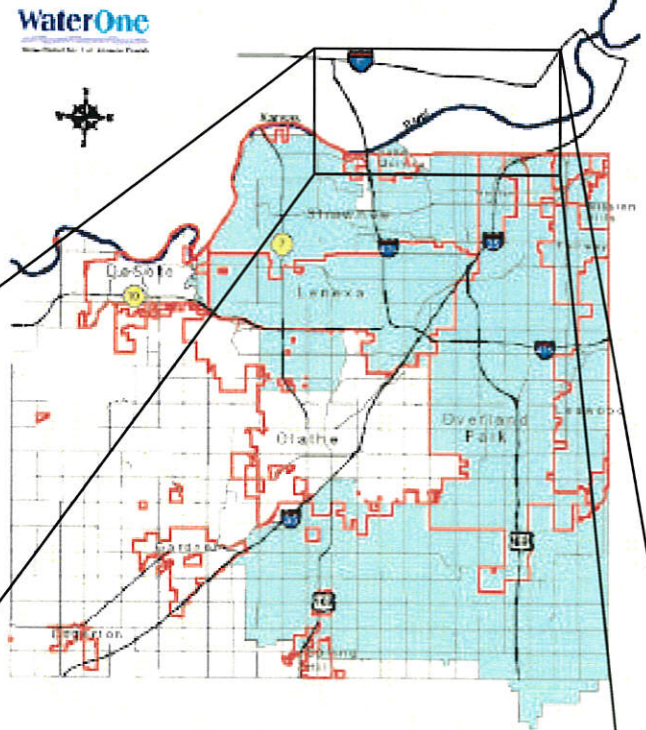


*Attachment 1*



# Kansas River Near WaterOne Jetty

## WaterOne Service Area



Attachment 2



Attachment 3

21-10



8/17



8-18



Attachment 4

21-8



21-9



Attachment 5

21-9



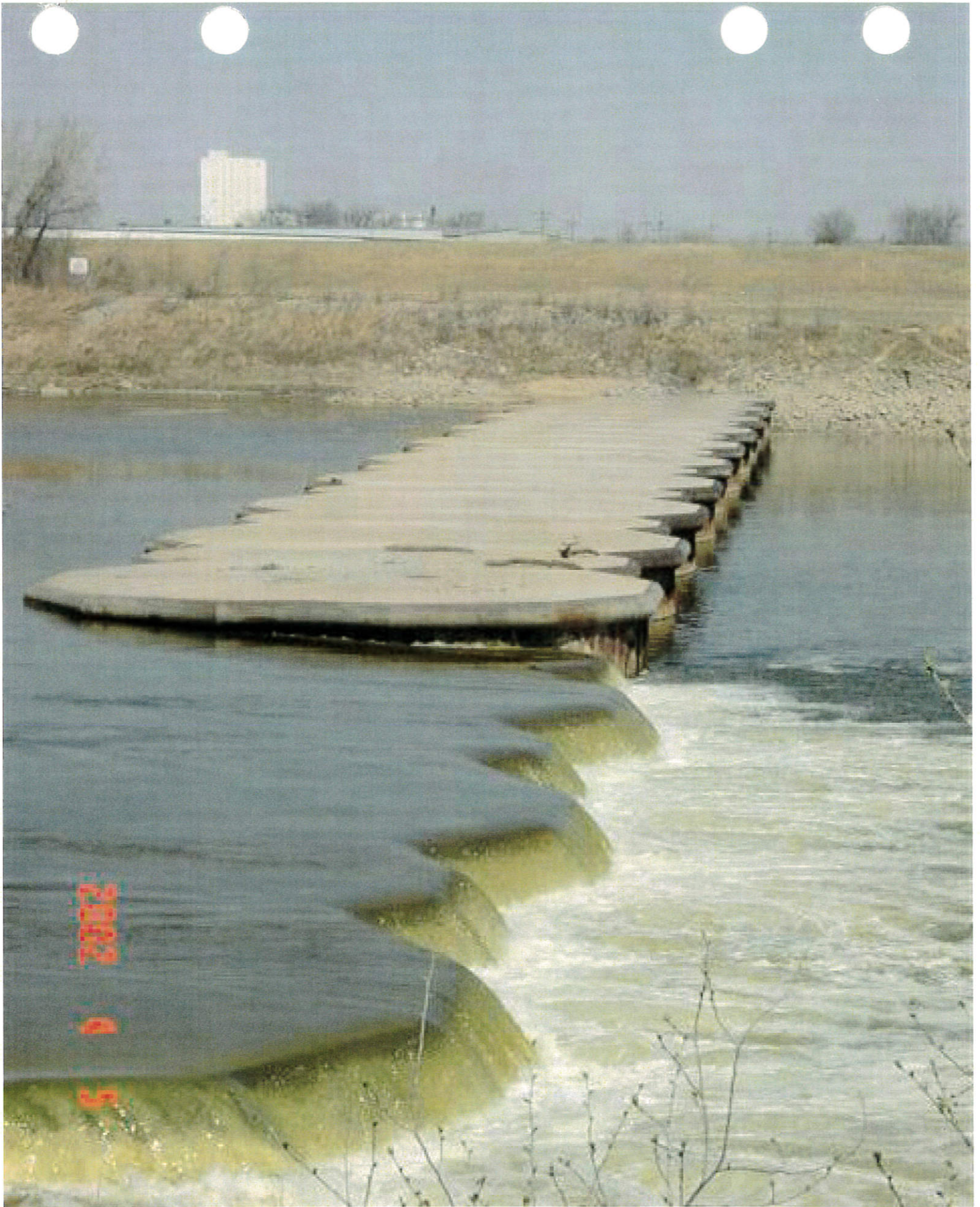


21-10

21-10

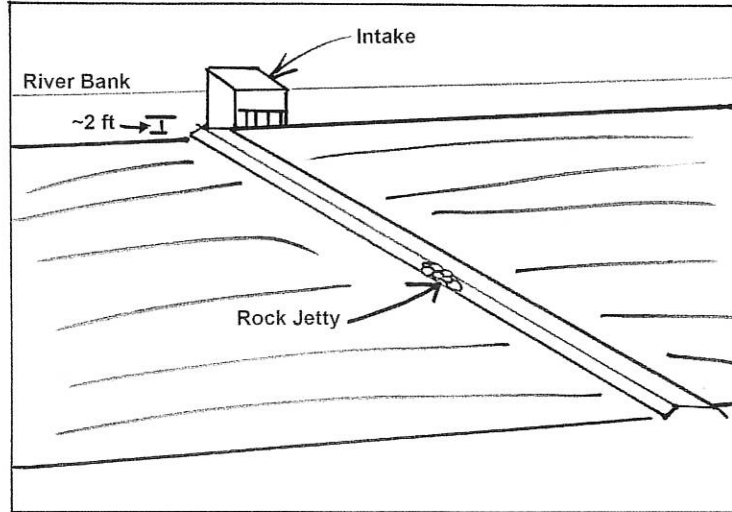
*Attachment 6*



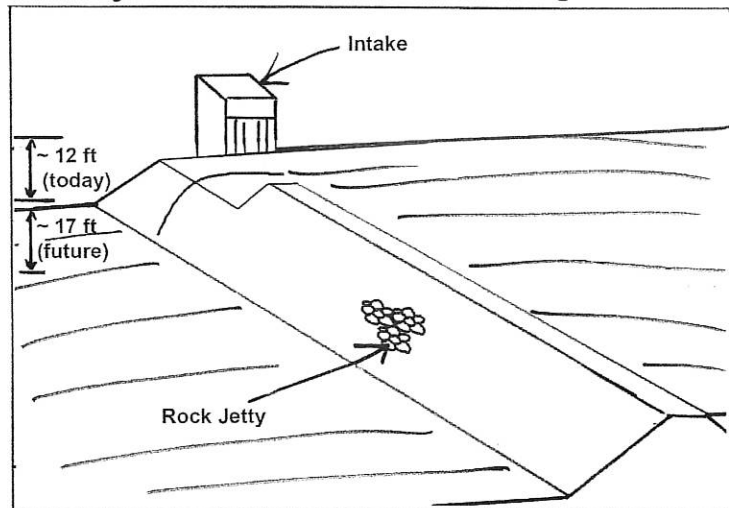


2002  
4  
9

### 1967 - Small Drop Across Jetty



### Today and Future with Bed Degredation



### During Breach of Jetty - No Water for Intake

