

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on March 2, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Judy Holliday, Committee Secretary

Conferees appearing before the Committee:

Tracy Streeter, Director, Kansas Water Office
Leslie Kaufman, Executive Director, Kansas Cooperative Council
David Brenn, President, Kansas Water Congress
Greg Foley, Director, State Conservation Commission
Mary Jane Stankiewicz, Vice President & General Counsel, Kansas Grain and Feed Association

Others attending:

See attached list.

Chairperson McGinn called the Committee members' attention to minutes of the three previous meetings and noted they would be approved at the next Committee meeting on March 3.

Chairperson McGinn opened the hearing on **HB 2710, Creates the water rights transition assistance program**, and asked Raney Gilliland, Assistant Director, Kansas Legislative Research, to explain the provisions of the bill. Mr. Gilliland explained the bill creates a pilot program administered by the State Conservation Commission that allows for partial or complete retirement of water rights in certain targeted areas. He explained that the House had changed this from a permanent to a pilot program, with only two targeted areas now, Prairie Dog Creek area in north central Kansas, and Rattlesnake Creek in south central Kansas. The program expires five years from the fiscal year when funds are appropriated, and there are provisions for civil penalties if certain guidelines are not followed. He noted the cost of the program was \$1.5 million per year. The program would be approved by the Department of Agriculture's Division of Water Resources and the groundwater management districts when monitoring abilities are in place to ensure compliance. The State Conservation Commission would be required to conduct an economic impact study on the local communities.

Mr. Gilliland called the Committee's attention to references in the bill to "pilot program" that should be changed to be consistent. He also noted that there were exceptions for irrigation purposes. He called the Committee's attention to language regarding "issuing water right transition grants," but the House language was "purchasing water rights," and that he felt consistency of language was needed to prevent problems down the road.

Chairperson McGinn asked if the Colorado lawsuit money funds the program and if some money is used across the state or just in the two targeted areas. Mr. Gilliland told the Committee that the House recommended using the money in the two specific areas.

Senator Taddiken asked about the State Conservation Commission retiring water rights, and he thought that should be the Division of Water Resources' responsibility and could leave the wrong message. He felt there should be some clarification made.

Tracy Streeter, Director, Kansas Water Office, testified as a proponent of **HB 2710 (Attachment 1)**. He told the Committee his testimony was basically the same as that given in the House. Mr. Streeter explained that the Water Office and the Kansas Water Congress were both participants in getting the retirement of water rights program established. Mr. Streeter explained that the legislation has a three-pronged effect: it provides permanent water retirement; program providing 4-10 years of incentives for retirement and allowing dryland production; and the conservation enhancement program. He told the Committee there may be a need to

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on March 2, 2006, in Room 423-S of the Capitol.

debate some of the technical issues and for other conferees to get their heads together to see how the House version fits into the grand scheme of things.

Leslie Kaufman, Executive Director, Kansas Cooperative Council, testified in support of **HB 2710** (Attachment 2). Ms. Kaufman stated the Council had not supported such a bill in the past, but commended the Water Congress for addressing elements critical to the Council's membership. Ms. Kaufman stated that she was pleased the bill ran through the policy committee rather than the budget committee. She also stated that previous bills had not been supported by the Co-op Council because of irrigation transition programs that prohibited dryland farming and dictated land management practices as a means of addressing water concerns. Ms. Kaufman told the Committee that the impacts of the proposal must be considered, and that an economic impact study should be part of the language of the bill.

David Brenn, President of the Kansas Water Congress, testified in support of **HB 2710** (Attachment 3). He told the Committee that he was on a subcommittee appointed to deal with water rights, and the subcommittee met eight times regarding implementation of voluntary participation in the program. The product of that subcommittee was **HB 2710** introduced in the House Environment Committee. This bill is the first bill that deals with consumptive use and not land use, dryland farming important to local economies, responsibility of local sovereignty to develop tools to address this problem, and is not a CREP-type, highly funded program. He stated that the Kansas Water Congress supports **HB 2710** as introduced but has two areas of concern regarding language, and asked that these changes be made to restore the bill to the original intent as introduced in the House.

Greg Foley, Director, State Conservation Commission, testified in opposition to **HB 2710** (Attachment 4). He called the attention to several House amendments that cause concern: The retirement of partial water rights or taking part of a water right; lack of funding, and requiring an economic analysis study for such a small area because it is not realistic. He believes the bill takes funds away from the purchasing of as much water rights as possible. He stated he would submit written copies of his testimony at the Friday, March 3 meeting.

Mary Jane Stankiewicz, Kansas Grain and Feed Association, testified in opposition to **HB 2710** (Attachment 5). Ms. Stankiewicz complimented the Water Congress in its efforts to bring all parties to the table and for crafting an improved version of the bill debated in the House Environment Committee last year. Ms. Stankiewicz urged the Committee to adopt the proposed House amendments which set out how much and where the money would be spent and the impact of taking water rights out in a predominantly agricultural area. Attached to her testimony was a bill balloon with the proposed language changes supported by Kansas Grain and Feed Association.

Copies of the written testimony of Big Bend Groundwater Management District No. Five (Attachment 6), and The Water Protection Association of Central Kansas (Attachment 7) were distributed to Committee members for their review.

Chairperson McGinn told the Committee that due to time, the hearing on **HB 2710** would be continued at the Friday, March 10 meeting, and that **HB 2875, Concerning inspection fees for works constructed for appropriation of water for beneficial use**, would be postponed until the March 9 Committee meeting.

There being no further discussion, the meeting adjourned.



K A N S A S

TRACY STREETER, DIRECTOR

KANSAS WATER OFFICE

KATHLEEN SEBELIUS, GOVERNOR

Testimony on House Bill 2710 Senate Natural Resources Committee

March 2, 2006

Chairperson McGinn 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.

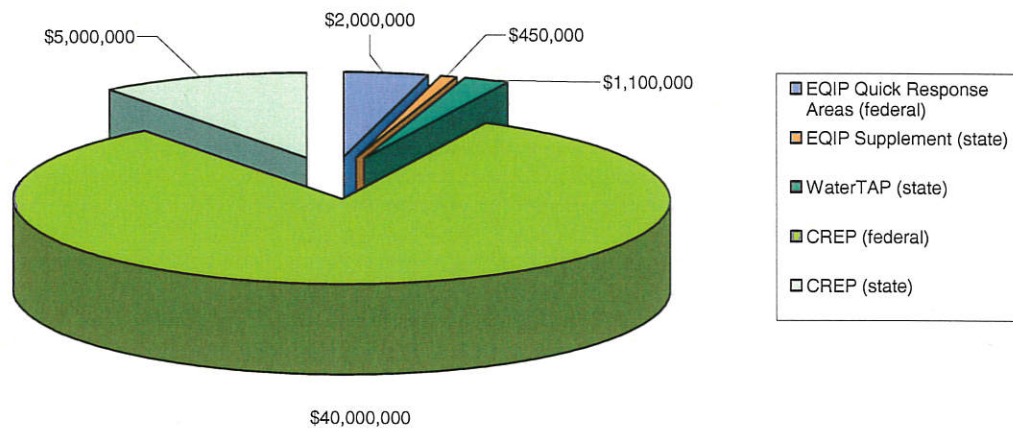
In addition to permanent water right retirement funding, the KWA also recommended SWP funding to supplement efforts currently underway through the federal Environmental Quality Incentives Program (EQIP) to provide short-term incentives to irrigated land managers to convert to dry land farming. Over \$2 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,

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.



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

Senate Committee on Natural Resources

March 2, 2006

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

Chairman McGinn and members of the Senate Natural Resources Committee, thank you for the opportunity to comment in support of HB 2710 on behalf of the Kansas Cooperative Council. I am Leslie Kaufman and I serve the Council as Executive Director. The Council represents all forms of cooperatively structured businesses across Kansas. More than half of our members are engaged in agricultural businesses.

During the past three sessions, the Kansas Cooperative 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 irrigation transition proposals have been eliminated under the water right transition assistance program detailed in HB 2710. We commend the Kansas Water Congress for their efforts in crafting the original bill. In our opinion, they were successful in bringing together a cross-section of varied interests to compile a proposal that was far superior to previous irrigation transition concepts. Additionally, the amendments approved in the House (in the Environment Committee and Committee of the Whole) have further improved the bill, in our eyes.

We understand the need to address water quantity situations in Kansas. Voluntary, incentive-based programs like WTAP can be appropriate tools for encouraging water savings. This fall, our Legislative Action Committee

*Senate Natural Resources
March 2, 2006
Attachment 2*

recommended, and our Board of Directors approved, a new policy direction for our association by adopting the following 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. This is an important policy tenant for us and a critical element in helping maintain vitality in rural communities. The original HB 2710 also allows continued irrigation if proper change of use procedures are followed. This, combined with the House amendment providing for the retirement of a permanent partial water right: recognizes that certain cover crops can draw as much water from the ground as some crops; leaves room for advancements in agriculture technology; allows for system improvements in irrigation efficiency improvements; contemplates the developments of drought resistant crops; and allows for adaptation due to introduction of new crops and changes in crop mixes.

We have consistently argued against prescriptive land management as a means of addressing water issues or enforcing reduction programs. HB 2710 and the House amendments ensure that it is the water quantity that is regulated, not the land, and we strongly support this concept.

Another important component in an irrigation transition proposal is projecting where the impacts will be, not only from a hydrologic perspective but an economic outlook, as well. The state must insure that measures taken do not have serious negative economic impacts on the region's economy. The original HB 2710 did not contain an economic impact component. As such, our support for the original bill was noted as "partial". The House Environment Committee added a requirement for annual reporting to legislative committees on the program impacts once implemented. We think this is an excellent improvement to the bill but falls short in providing valuable data at the outset of a program.

An attempt to provide the up-front evaluation was successful on the House floor. The House Committee of the Whole amendment requires an up-front

economic analysis be submitted to the Legislative Coordinating Council (LCC) for review prior to initiating the water right retirements. We appreciate this improvement over the original bill, but we would respectfully suggest that the LCC should not just look over the study. The analysis needs to be evaluated to ensure there are true merits in the projected outcomes and the state is not simply throwing money at a problem. We feel that LCC approval to move forward, if supported by the economic analysis, should be a requirement in the bill and would ask this Committee to consider adding language to that effect.

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

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.

Since this program sunsets in 5 years, we think it appropriate to treat it as a pilot program. We feel it is appropriate for the legislature to designate where the two potential implementation areas will be. We do not see this as an effort to micro-manage agencies or programs. Rather, this is a valid use of legislative oversight to ensure lawmakers know the exact areas where state dollars will be spent.

Over the years, the issue of “where’s the money going” has been a concern of ours. As the bill now reads, we know where the money will be spent and the maximum dollar amount to be expended. We know from discussions over the years that the areas chosen have been anticipated to be recipients of irrigation transition funds. The bill solidifies those areas as project targets, ensuring lawmakers and the citizens of Kansas where the investment will be made.

We consider the amendments naming the Prairie Dog Creek area and Rattlesnake area to be improvements to the bill because of the certainty provided in setting forth the areas statutorily. Naming of the Prairie Dog is important, too, so that the state can increase compliance with the Kansas-Nebraska Compact. We

hear a lot about Nebraska's failures to comply further east along the Republican River, but Kansas is falling short in northwest Kansas. The state needs to improve our compliance along the Prairie Dog to better position itself in attempts to secure greater compliance by Nebraska further downstream.

We appreciate the amendment capping the state and federal dollars that can be spent on this pilot program. If local dollars are channeled through this program, we feel they should be subject to the overall program limitation of \$1.5 million, as well. We would encourage this Committee to make that edition when it works the bill.

In closing, we once again commend the Kansas Water Congress for their hard work on the original bill and recognize improvements made in the House. This proposal is much improved over other transition proposals, but we encourage this Committee to continue the improvements by including the suggested amendments referenced above. Thank you for allowing us the chance to comment on this bill and are willing to provide assistance to further enhance HB 2710, should you so desire. Thank you.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2710

By Committee on Environment

1-25

12 AN ACT concerning water; creating the water right transition assistance
13 program.

14

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

16 Section 1. (a) There is hereby established the water right transition
17 assistance **pilot project** program. The program shall be administered by
18 the state conservation commission. The Kansas department of agriculture,
19 division of water resources and recognized local governing agencies, in-
20 cluding groundwater management districts, shall cooperate in program
21 implementation. The program shall be administered for the purpose of
22 reducing consumptive use in the target or high priority areas of the state
23 by issuing water right transition grants for privately held water rights.

24 (b) (1) The state conservation commission may receive and expend
25 funds from the federal or state government, or private source for the
26 purpose of carrying out the provisions of this section.

27 (2) ~~Federal and state funds shall not exceed \$1,500,000 per~~ state, and local
28 year.

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

34 (d) All applications for permanent water right retirements shall be
35 considered for funding as a first priority. If allocated funds are not com-
36 pletely used for permanent retirement grants, then the remaining funds
37 may be used for set aside agreements of not less than four calendar years.

38 (d) (e) **Permanent retirement of partial water rights shall only**
39 **be approved by the Kansas department of agriculture division of**
40 **water resources when the groundwater management district has**
41 **the metering and monitoring capabilities necessary to ensure com-**
42 **pliance with the program.**

43 (f) Water rights enrolled in the water right transition assistance pro-

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

7 ~~(h)~~ (j) If more than one water right overlaps the place of use author-
 8 ized by the water right proposed to be enrolled in the water right tran-
 9 sition assistance program, then all overlapping water rights shall be en-
 10 rolled in water right transition assistance program or the landowners shall
 11 take the necessary lawful steps to eliminate the overlap with the water
 12 right to be enrolled. The burden shall be on the landowner to provide
 13 sufficient information to substantiate that the proposed use of water by
 14 the resulting exercise of all water rights involved will result in the net
 15 reduction amount of historic consumptive water use by the water right
 16 or water rights to be enrolled. The state conservation commission may
 17 require such documentation to be provided by someone with special
 18 knowledge or experience related to water rights and such operations.

19 ~~(i)~~ (k) The state conservation commission shall adopt rules and reg-
 20 ulations as necessary for the administration of this section. **When adopt-**
 21 **ing such rules and regulations the state conservation commission**
 22 **shall consider cropping, system design, metered water use and all**
 23 **other pertinent information that will permit a verifiable reduction**
 24 **in annual water consumptive use and permit alternative crop or**
 25 **other use of the land so that the landowner's economic opportu-**
 26 **nities are taken into account.**

27 ~~(j)~~ (l) [The state conservation commission shall be required to
 28 conduct an economic impact study that analyzes the impact to the
 29 local community within the project area or areas. The study shall
 30 be submitted to the legislative coordinating council for their ~~re-~~ *approval*
 31 ~~view~~ prior to the purchase of water rights.] The state conservation
 32 commission shall report annually to the senate standing committee
 33 on natural resources and the house standing committee on envi-
 34 ronment on the results of economic impact studies conducted on
 35 the reduction of water consumption and the financial impact on
 36 the communities within the program areas. Such studies shall in-
 37 clude comparative data for areas and communities outside the pro-
 38 gram areas.

39 (m) The water right transition assistance program shall expire five
 40 years from the effective date of the fiscal year for which state moneys are
 41 appropriated thereof and approval of program rules and regulations.

42 ~~(k)~~ (n) Water right transition assistance grants for water rights to re-
 43 main unused for the contract period shall constitute due and sufficient

Testimony in support of HB 2710
Senate Natural Resource Committee
March 2, 2006

By David A. Brenn, President, Kansas Water Congress

Chairman McGinn and members of the committee thank you for the opportunity to appear before you in support of HB 2710. My name is David Brenn, and I am the President of the Kansas Water Congress. I am also a member of the Kansas Water Authority representing the three western groundwater management districts (GMD's 1, 3 and 4). I currently serve on the board of Southwest Kansas Groundwater Management District No. 3 in Garden City and I am a commissioner on the Arkansas River Compact. I am testifying today on behalf of the work of the Kansas Water Congress and in support of HB 2710 as it was originally introduced.

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 times during 2005.

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 T/AP 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.

The Kansas Water Congress continues to support HB 2710 as it was introduced in the House of Representatives on January 25, 2006. However, since its introduction there have been numerous amendments to the initial language that change the intent of the bill, most notably:

- Page 2, lines 9 and 12-14; new subsection (g)(1).
 - The addition of the phrase “not more than two” and the deletion of the language on lines 12-14. It was not the intent of HB 2710 as introduced to limit this program to only two specific areas.
 - In order to restore the original intent of HB 2710 it would be necessary to amend the current language (as amended and passed by the House Committee of the Whole) by:
 - In new subsection (g)(1), striking “not more than two” on line 9;
&

- In new subsection (g)(1), restoring the language on lines 12-14 to read, "...or priority areas outside the groundwater management districts as designated by the chief engineer of the Kansas department of agriculture division of water resources."
- Page 3, lines 27-38; new subsection (l)
 - The addition on the House floor of "The state conservation commission shall be required to conduct an economic impact study that analyzes the impact to the local community within the project area or areas. The study shall be submitted to the legislative coordinating council for their review prior to the purchase of water rights." HB 2710, as introduced, is targeted specifically to achieving a reduction in consumptive use and is limited in scope both by the availability of funding and by the five year sunset provision. Due to these limitations the commission of an economic study was not included in the original language.
 - In order to restore the original intent of HB 2710, it would be necessary to amend new subsection (l) to strike:
 - “The state conservation commission shall be required to conduct an economic impact study that analyzes the impact to the local community within the project area or areas. The study shall be submitted to the legislative coordinating council for their review prior to the purchase of water rights.”

The changes noted above would restore the original intent of HB 2710 as it was introduced in the House. 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.e., CREP, EQIP, etc.). I firmly believe HB 2710 as introduced 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 provide testimony.

David A. Brenn
 President
 Kansas Water Congress
 (620) 287-4541
 DBrenn@gcnest.com

Kent Lamb, Chair
 State Affairs Committee
 Kansas Water Congress
 (620) 546-5684
 2bmalkc@myvine.com

Tom Bogner, Chair
 Water TAP Subcommittee
 Kansas Water Congress
 (620) 339-0537
 tbogner@ucom.net



Greg A. Foley, Executive Director

KANSAS
State Conservation Commission

Kathleen Sebelius, Governor

Testimony on the HB 2710 concerning Water Transition Assistance Program

to

The Senate Committee on Natural Resources

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

March 2, 2006

Chairperson McGinn and members of the Committee, thank you for the opportunity to provide testimony on HB 2710, a proposed Water Transition Assistance Program (WTAP) that will be administered by the State Conservation Commission (SCC).

Madam Chair, I stand in opposition to HB 2710 as amended by the House Committee of the Whole. The SCC rose in support of this bill as proposed in the House Environment Committee prior to any amendments.

The first area of concern is Section 1 (e), a section of the bill that authorizes the retirement of a partial water right. The SCC has raised this concern to the Water Congress and other stakeholders as well. The implementation of such action will be complex and difficult to prevent compliance with a new authorized quantity for consumptive use. With the limited amount of resources available, the SCC recommends that the Committee strike this sub-section from the bill to provide focus exclusively on the retirement of a whole water right.

There is an amendment made by the House that we do support, the amendment to identify very specific geographic areas that the program will be eligible within. The amended bill makes the Prairie Dog Creek and the Rattlesnake Creek hydrologic units as the eligible areas for the pilot program. The SCC supports this targeting primarily due to the limited amount of funding that is projected to be available for this program. To place the proposed funding in perspective, a typical irrigated center pivot irrigation system will consist of approximately 128 acres. If the estimated value of the real property water right is \$800, it will cost \$102,400 to permanently retire the subject water right. This example would allow only eleven water rights to be retired within these two closed and over-appropriated areas.

The last, but most significant, concern is with Section 2 (l); lines 27 through lines 38. This proposed section would require the SCC to conduct an economic impact study to the local communities. In addition, it requires that study is to be submitted to the Legislative

Mills Building, 109 SW 9th Street, Suite 500, Topeka, KS 66612-1215
785-296-3600 Fax 785-296-6172 www.accesskansas.org/kssc

*Senate Natural Resources
March 2, 2006
Attachment 4*

Coordinating Council for their review prior to the purchase of any water right. Opponents to this bill maintain this issue as the stronghold argument, however, there has been confusion on this program and its potential impact compared to a similar program the Conservation Reserve Enhancement Program (CREP). The WTAP will impact approximately 1,400 acres annually, where the CREP has the potential to impact as many as 100,000 acres. The CREP has the potential to be over **70** times larger in impacted acres. The SCC is an agency that is not qualified to perform such studies and would be required to outsource through a research based entity. The Kansas Water Office is currently working with Kansas State University on just this type of economic analysis and that study is nearing completion. The initial study cost proposal to the KWO was nearly \$100,000. Those funds were not available so the comprehensiveness of the study was targeted to smaller effort at approximately \$20,000. This section is a duplication of efforts with current studies. The SCC respectfully requests that the Senate Committee on Natural Resources strike this entire section if the program responsibility is to be left with the SCC.

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

Madam Chair, I would like to thank you for the opportunity to provide testimony on this important component as a tool in the water management toolbox. I will stand for questions at the pleasure of the committee.

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**Kansas Grain and Feed Association
Kansas Agribusiness Retailers
Association**



SENATE NATURAL RESOURCES COMMITTEE

MARCH 2, 2006

HB 2710

MARY JANE STANKIEWICZ

Good morning Madam Chair and members of the Senate Natural Resources Committee. I am Mary Jane Stankiewicz, the Vice President and General Counsel for the Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association and I appear in opposition to HB 2710.

Before I begin, to talk about this bill I want to compliment the time and effort that Dave Brenn and the Kansas Water Congress put forth to bring all interested parties to the table, even people like myself that happen to represent people that do not support the idea of paying people not to irrigate. The end result is a bill that is significantly different and much improved version than what was debated in the House Environment Committee last year.

While the bill began its trek through the legislative process in an improved state, we understand and appreciate the House's desire to nail down some of the specifics of the bill, especially since this is a pilot program. Because we are not in compliance with the Kansas Nebraska Compact, due to water consumption in and around the Prairie Dog Creek area, we think naming the Prairie Dog as one of the target areas was a reasonable decision. We have long heard that the Rattlesnake area is the other primary target by the state agencies so the naming of this location was not a surprise. Since these were the two areas of the state that had always been rumored as the target areas we believe naming these areas to be a totally acceptable and normal process for the legislature, especially since this is the start of a water right retirement program and not merely the addition to a long standing program.

The provision that allows partial, permanent retirement of water rights is a unique spin on the idea of water right retirements. Previously, the idea of partial retirements was not attractive since the water right holder would remain the owner of the total water right but just agree to only irrigate with a portion of the water right. This could lead to misuse and abuse of the system and was

understandably not supported by the administration. However, since under HB 2710, the owner must partially retire the water right, it resolves the problem. Now the water right owner can agree to only water with half of his/her water right, retire the other half and since monitoring and metering is required, enforcement and compliance is ensured. I have spoken with the chief engineer and he has stated that this provision of the bill is workable and may allow some cropping flexibility that other programs did not allow.

We would ask you to consider the following amendments:

1. Page 1, line 27 - add the word "**local**" before the word "federal". It was our understanding the original draft amendment and the intent of the sponsor of the amendment was to specify the total amount of money that can be used for this project, including local dollars. By not referring to local dollars, we are leaving a gaping hole in this issue.

Groundwater management district number 5, which encompasses part of the Rattlesnake Creek basin, has a \$850,000 budget for 2006; of which \$561,000 is for water management expenses. This is just one illustration of the significant resources that can be added to this program and if local money is not taken into consideration it could totally distort the size and scope of the program.

While the state cannot prevent the local groundwater management districts or other entities from running a similar program in their area and quite frankly a number of them are currently buying water rights. However, you do have the authority to cap a state program and we would urge you to accept this amendment. The agencies had only asked for \$1.175 million for this program so the amendment does not harm or cut the program. This amendment would clarify exactly how much money is going to be spent on this area and if nothing else, would send a message to the budget committee that you support the bill and the projects. Therefore we urge you to cap all funds, including local dollars, at \$1.5 million.

2. Page 3, line 31, we ask that you amend this section to ask for the economic impact study to be reviewed **and approved** by the legislative coordinating council. The purpose of this section is so that the legislature could review the results of the economic impact study and see if there are any issues that need to be addressed based on this data. Over the past few years, we have consistently asked for economic impact studies to be done and are supportive of the House's recognition of the need to have this input. However, just having a report submitted to the legislature does not ensure that anyone will read or analyze it and the mere submission of the report would not serve a real purpose. Once again since this is a pilot program, we urge you to not only have a report submitted to the legislature, but to ensure you know how the program will impact the areas that have been identified in this bill. By looking at the report, the legislature can possibly gain further insight into the program and whether there is other changes that need to be made based on this data.

While we do not support the overall concept of this bill, if you chose to pass this bill, we would urge you to support the House amendments and to adopt the proposed amendments. The House amendments merely set out how much money would be spent, where the money would be spent and what is the impact of taking water rights out use in a predominantly agricultural area. These seem to be rational and reasonable items and ones that should be nailed down before you authorize a new program. If you were to commit your own money, wouldn't these be the types of questions that you would want clarity on prior to writing the check?

Thank you for your time and attention. I would be happy to stand for questions at the appropriate time.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2710

By Committee on Environment

1-25

12 AN ACT concerning water; creating the water right transition assistance
13 program.

14

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

16 Section 1. (a) There is hereby established the water right transition
17 assistance **pilot project** program. The program shall be administered by
18 the state conservation commission. The Kansas department of agriculture,
19 division of water resources and recognized local governing agencies, in-
20 cluding groundwater management districts, shall cooperate in program
21 implementation. The program shall be administered for the purpose of
22 reducing consumptive use in the target or high priority areas of the state
23 by issuing water right transition grants for privately held water rights.

24 (b) (1) The state conservation commission may receive and expend
25 funds from the federal or state government, or private source for the
26 purpose of carrying out the provisions of this section.

27 ~~(2) Federal and state funds shall not exceed \$1,500,000 per~~ Local,
28 year.

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

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

38 ~~(d)~~ (e) **Permanent retirement of partial water rights shall only**
39 **be approved by the Kansas department of agriculture division of**
40 **water resources when the groundwater management district has**
41 **the metering and monitoring capabilities necessary to ensure com-**
42 **pliance with the program.**

43 (f) Water rights enrolled in the water right transition assistance pro-

1 gram for permanent retirement shall require the written consent of all
2 landowners and authorized agents to voluntarily request dismissal and
3 forfeiture of priority of the enrolled water right. Upon enrollment of the
4 water right into the water right transition assistance program, the chief
5 engineer of the Kansas department of agriculture division of water re-
6 sources shall concurrently dismiss and terminate the water right in ac-
7 cordance with the terms of the contract.

8 (e) (g) (1) The state conservation commission shall make water right
9 transition grants available only in **not more than two** areas that have
10 been designated as target or high priority areas by the groundwater man-
11 agement districts and the chief engineer of the Kansas department of
12 agriculture division of water resources ~~or priority areas outside the~~
13 ~~groundwater management districts as designated by the chief engineer of~~
14 ~~the Kansas department of agriculture division of water resources.~~

15 (2) **Notwithstanding any other provisions of this act, one of the**
16 **two [of the] target or high priority areas shall be the prairie dog**
17 **creek area located in hydrologic unit code 10250015 [and the rat-**
18 **tlesnake creek subbasin located in hydrologic unit code 11030009].**

19 (f) (h) Contracts accepted under the water right transition assistance
20 program shall result in a net reduction in consumptive use equivalent to
21 the amount of historic consumptive use of the water right or rights en-
22 rolled in the program based on the average historic consumptive water
23 use. Except as provided for in paragraphs (g) and (h), once a water right
24 transition assistance program grant has been provided, the land author-
25 ized to be irrigated by the water right or water rights associated with that
26 grant shall not be irrigated ~~either permanently or for the period of the~~
27 ~~agreement, whichever is applicable.~~ Water right transition assistance pro-
28 gram contracts shall be subject to such terms, conditions and limitations
29 as may be necessary to ensure that such reduction in consumptive use
30 occurs and can be adequately monitored and enforced.

31 “Historic consumptive water use” means the average amount of water
32 consumed by crops as a result of the lawful beneficial use of water for
33 irrigation during four of the six preceding calendar years, with the highest
34 and lowest years removed from the analysis. For purposes of this program,
35 historic consumptive water use will be determined by multiplying the
36 average reported water use for the four selected years by a factor of 0.85
37 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity ir-
38 rigation systems and 0.95 for subsurface drip irrigation systems, but not
39 to exceed the net irrigation requirements for the 50% chance rainfall for
40 the appropriate county as shown in K.A.R. 5-5-12. The applicant may also
41 submit an engineering study that determines the average historic con-
42 sumptive water use as an alternative method if it is demonstrated to be
43 more accurate for the water right or water rights involved.

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

7 ~~(h)~~ (j) If more than one water right overlaps the place of use author-
 8 ized by the water right proposed to be enrolled in the water right tran-
 9 sition assistance program, then all overlapping water rights shall be en-
 10 rolled in water right transition assistance program or the landowners shall
 11 take the necessary lawful steps to eliminate the overlap with the water
 12 right to be enrolled. The burden shall be on the landowner to provide
 13 sufficient information to substantiate that the proposed use of water by
 14 the resulting exercise of all water rights involved will result in the net
 15 reduction amount of historic consumptive water use by the water right
 16 or water rights to be enrolled. The state conservation commission may
 17 require such documentation to be provided by someone with special
 18 knowledge or experience related to water rights and such operations.

19 ~~(i)~~ (k) The state conservation commission shall adopt rules and reg-
 20 ulations as necessary for the administration of this section. **When adopt-**
 21 **ing such rules and regulations the state conservation commission**
 22 **shall consider cropping, system design, metered water use and all**
 23 **other pertinent information that will permit a verifiable reduction**
 24 **in annual water consumptive use and permit alternative crop or**
 25 **other use of the land so that the landowner's economic opportu-**
 26 **nities are taken into account.**

27 ~~(j)~~ (l) [The state conservation commission shall be required to
 28 conduct an economic impact study that analyzes the impact to the
 29 local community within the project area or areas. The study shall
 30 be submitted to the legislative coordinating council for their re-
 31 view prior to the purchase of water rights.] The state conservation
 32 commission shall report annually to the senate standing committee
 33 on natural resources and the house standing committee on envi-
 34 ronment on the results of economic impact studies conducted on
 35 the reduction of water consumption and the financial impact on
 36 the communities within the program areas. Such studies shall in-
 37 clude comparative data for areas and communities outside the pro-
 38 gram areas.

and approval

39 (m) The water right transition assistance program shall expire five
 40 years from the effective date of the fiscal year for which state moneys are
 41 appropriated thereof and approval of program rules and regulations.

42 ~~(k)~~ (n) Water right transition assistance grants for water rights to re-
 43 main unused for the contract period shall constitute due and sufficient

1 cause for nonuse pursuant to K.S.A. 82a-718 and amendments thereto
2 pursuant to the determination of the chief engineer for the duration of
3 the water right transition assistance program contract.

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

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

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

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

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

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

19 (c) Any penalties or reimbursements received under this act shall be
20 reappropriated for use in the water right transition assistance program.

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

BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. FIVE
TESTIMONY PRESENTED
TO THE
SENATE NATURAL RESOURCE COMMITTEE
March 8, 2006

Chairperson McGinn and Committee Members, my name is Sharon Falk, I am manager of the Big Bend Groundwater Management District No. Five. On behalf of the Board of Directors, GMD #5, I would like to present the following comments on HB 2710.

GMD#5 supported the original legislation introduced in the House. We felt the language as developed and proposed by the Kansas Water Congress was concise in dealing with the issues surrounding a program designed to purchase and retire water rights. We continue to support this bill because it seeks to reduce consumptive use in areas that are over appropriated. These are areas that will benefit from voluntary, incentive based programs.

Although we continue to support this legislative proposal, we are concerned with several of the amendments in the bill.

Section (c), We recommend the language "and the participating groundwater management districts shall carry over unexpended funds from one fiscal year to the next" be stricken from the bill. Only the state conservation commission would have this ability, as they are the entity described in section 1 (b) that may receive and expend funds from the federal or state government.

New Section (g) (1) and (2) - restore the language that was in the original bill. We believe that the State Conservation Commission, with input from the Division of Water Resources and the Groundwater Management Districts would make adequate and sufficient decisions in determining where the funds should be focused.

New Section (l) Strike this section from the bill. The amount of funding and the sunset provision set forth in this bill limits the economic impact of this legislation. We are much more concerned with the economic impact if restrictions are implemented in areas of our District.

Thank you for the opportunity to submit this testimony. If any of you have questions concerning my comments, please do not hesitate to call me.

Sharon Falk, Manager,
Big Bend Groundwater Management District #5
P O Box 7, Stafford, Ks. 67578
Tel: 620-234-5352
Fax: 620-234-5718
Email: sfalk_gmd5@sbcglobal.net

*Senate Natural Resources
March 2, 2006
Attachment 6*

The Water Protection Association of Central Kansas
306-A North Main Street
St. John, Kansas 67576
March 6, 2006

The Honorable Carolyn McGinn
Senator – District 31
Senate Natural Resources Committee Chair
State Capitol – 222 East
Topeka, KS 66612

Dear Senator McGinn:

REF: House Bill 2710

Thank you for the opportunity to provide written testimony on this bill, since we were unable to provide testimony in person last week. The Water Protection Association of Central Kansas is a grass-roots organization that represents irrigated producers in the triangular area from Great Bend to Kinsley-Greensburg to Kingman. We currently have two management plans in effect, approved by the Chief Engineer, that call for the reduction of water use over the next 5-10 years in order to stabilize our aquifer and give related streams some relief. The two basins of interest are the Rattlesnake Creek and the Middle Arkansas. The strategies for reducing water use include programs such as new tillage techniques, irrigation scheduling, water banking and the permanent retirement of water rights. Participation is voluntary. For example, the target for permanent retirement of water rights in the Rattlesnake Creek is 7,500 Acre-Feet, only 2.9% of appropriations.

House Bill 2710 provides statutory authority to purchase and permanently retire water rights within the basins we live and work in. Of the nominal 3,000 wells in this area, we seek to retire only a few, not enough to cause significant economic damage, but enough to contribute positively to the water use reduction goals.

Specifically, to address the language of the current version of House Bill 2710. We are in support of the current version of the bill, with the following exceptions:

Page 2, line 9: we support striking the language that limits the grants to only two specific areas, even though one of the two currently listed in the Rattlesnake Creek, an area that we are intimately working on. We would strike the words “not more than two” in line 9.

*Senate Natural Resources
March 2, 2006
Attachment 7*

Page 3, lines 27-31: While we are sensitive to economic concerns since we are all private business people in agriculture, we would strike the passage within brackets. Taking out a few wells in our midst is such a minute action that the economic effect is not worthy of taking the time and money for a detailed analysis. Furthermore, dryland farming will still take place on these acres, which lessens the economic effect to input suppliers and the local economy. Finally, we are limited each year in available funding and the sunset clause; the economic study proposed would only serve to slow down or stop the actual purchase of water rights under this bill.

Water PACIK will continue to be a resource for the legislature in the area of water rights purchase; we are ready to implement this bill, we need this authority to carry out our management plans and stabilize our irrigation water supplies into the distant future. Our desire is to keep our irrigated producers on the land and our local economies sustainable.

Sincerely,

Dennis Dutton
President