

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on March 16, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the Committee:

Steve Swaffar, Kansas Farm Bureau
Brent Haden, Kansas Livestock Association
Herb Graves, Kansas Association of Watersheds
Adrian Polansky, Secretary of Agriculture

Others attending:

See attached list.

Chairperson McGinn told the Committee that in the interest of time, the hearing on **HB 2867, Concerning dam safety**, would be opened and testimony taken until 9:00 a.m., at which time the hearing on **HB 2867** would close and the Committee would open the hearing on **HB 2710, Creating the water right transition assistance program**.

Brent Haden, Assistant Counsel for the Kansas Livestock Association, testified in support of **HB 2867** (Attachment 1). Mr. Haden stated that **HB 2867** was identical to **SB 524** but was significantly amended in the House, removed sections dealing with hazard reclassification for downstream development; contains a clause requiring the Division of Water Resources to pay for all dam inspections; requires Chief Engineer to utilize all existing maps to create breach inundation maps for existing maps; requires the Chief Engineer to inspect but not require correction of defects of dams that only endanger lives of the dam's owner, operator or family if the dam failed; requires that the Chief Engineer obtain written certification from the dam owner acknowledging acceptance of risk; requires notification by the owner to the buyer of the dam regarding the dam's condition prior to transfer of ownership and notification by the new owner to the Chief Engineer upon transfer of ownership; and a requirement that results of the Chief Engineer's inspection of the dam be filed with the register of deeds in the county where the dam is located. Mr. Haden testified that KLA believes dam owners should not be subjected to expensive inspection and repair requirements when the only lives endangered by the dam are those of the owner or their immediate families. Mr. Haden called the Committee's attention to written testimony submitted by Kansas Livestock Association members Phyllis and Dee Scherich, Merrill Ranch, Comanche County, Kansas (Attachment 2).

Herbert R. Graves, Jr., Executive Director of the State Association of Kansas Watersheds (SAKW), testified in opposition to **HB 2867** (Attachment 3). Mr. Graves stated that there was no need to include fees for inspections by the Chief Engineer, Division of Water Resources. SAKW's position is that dam inspections are a financial burden to dam owners, and funds should be allocated to existing dam construction and rehabilitation programs to share costs with dam owners for the required hazard class inspections. Mr. Graves called the Committee's attention to language changes regarding breach inundation maps, liability of dam owners, continued development by the landowner in the breach inundation area, and exemptions to certain dam owners.

Adrian Polansky, Secretary of Agriculture, Kansas Department of Agriculture, testified in opposition to **HB 2867** (Attachment 4). Secretary Polansky compared **HB 2867** to **SB 524** which the Department also opposed because of the risk to life and property. Secretary Polansky stated that the Division of Water Resources informed him there are probably only four dams that fit the parameters of this bill, and that his agency would rather work with the State Conservation Commission and the Kansas Water Office to find funding for making these four structures safer than to pass legislation that endangers public safety and conflicts with the mission of the dam safety laws. He estimated that the cost of dam repairs would average \$100,000 each. Secretary Polansky discussed other problems with the bill, including inspections and reporting to dam owners who may

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on March 16, 2006, in Room 423-S of the Capitol.

not correct the deficiencies, written certification from the dam owner that he or she accepts the risk, requiring the dam owner to inform a buyer of the dam's condition prior to property transfer, and the excessive cost of breach inundation maps (\$17 million for 5500 dams) with regard to downstream development.

There were no questions on HB 2867 and the hearing was closed.

Chairperson McGinn opened the hearing on HB 2710 and stated that there was a motion on the floor by Senator Huelskamp for an amendment to the bill (Attachment 5). Senator Huelskamp made a motion to withdraw his amendment and submitted an updated amendment, seconded by Senator Ostmeyer. The motion carried.

Senator Huelskamp told the Committee that in the second amendment (Attachment 6) the language was updated to include "any acquisition of water rights or leasing of water rights would be through a program enacted by the Legislature." Language also included giving preference to senior water rights. Senator Huelskamp asked if anyone was aware of any current water rights programs operating without legislative authorization. Mike Hayden, Secretary of Wildlife and Parks, told the Committee there is a program through which water rights were leased for irrigation rights in Norton County and how important this was to that region. He asked that the project be exempted from this bill.

Chairperson asked for a motion to accept the Senator Huelskamp's amendment. A motion was made and seconded to accept the amendment. The motion carried.

Senator Taddiken made a motion to offer an amendment to remove "partial water rights" by striking lines 30 and lines 38-42 and inserting "permanent water rights", seconded by Senator Pyle. The motion carried. Senator Taddiken explained that this would make the bill cleaner and easier to administer.

Chairperson McGinn asked Raney Gilliland, Legislative Research Department, to explain the bill. Mr. Gilliland called attention to the first amendment to the bill which was made at the March 10, 2006, Committee meeting. This amendment clarified language that the State Conservation Commission does not have the authority to terminate water rights but has the authority to enter into contracts that result in the termination of water rights. On the next amendment on page 3, beginning on line 27-31, a motion was made to delete the economic impact study [bracketed language] and the language regarding reporting to the Senate Standing Committee on Natural Resources and the House Committee on Environment on the economic impact studies being conducted on the reduction of water consumption. Further language changes on page 2 dealing with number of areas, strike language to "not more than 2"

Chairperson McGinn asked if there was any more discussion. There being none, she told the Committee they would continue discussions on HB 2710 at the Committee meeting on Friday, March 17, and asked staff to clean up the language on HB 2710. Chairperson McGinn also told the Committee it would be hearing SB 526, Concerning sales of over-the-counter deer tags at that meeting.

Senator Taddiken asked for a moment to tell the Committee about the Kansas Health Foundation being in the Capitol today. He reminded the Committee that last year the Kansas Health Foundation got an any-sex tag for deer and an elk permit and sold the tags at the Elks National Convention. The deer tag was purchased by a Washington resident for \$7,000 and the elk tag brought \$23,000. Senator Taddiken told the Committee that this money will be used in Kansas for projects such as Big Brothers and Sisters, Kids Outdoors, and other charities, and the idea of making money for charitable projects related to outdoors and hunting worked.

Chairperson McGinn asked Committee members to review the minutes of the March 2 and 3 Committee meetings and be prepared to approve them at the Friday, March 17 meeting.

There being no further discussion to come before the Committee, the meeting adjourned at 9:35 a.m.



Since 1894
TESTIMONY

To: Senate Natural Resources Committee
Senator Carolyn McGinn, Chair

From: Brent Haden, Assistant Counsel, Kansas Livestock Association

Date: March 16, 2006

Re: HB 2867

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 production, cattle feeding, grazing land management and diversified farming operations.

Good morning Madame Chair and members of the Committee. My name is Brent Haden, and I serve as Assistant Counsel for the Kansas Livestock Association. I appreciate the opportunity to testify this morning to discuss KLA's support for HB 2867.

I appeared before this committee last month to discuss my support for SB 524, which would have prohibited the chief engineer of the Department of Water Resources (DWR) from changing the hazard class of a dam due to downstream development, and would have prevented the chief engineer from requiring inspections or repairs on any dam that only endangers the owners or operators of the dam in question.

I am back today because the House Environment Committee took up HB 2867, a bill identical to SB 524, and passed out an amended version. HB 2867 as amended is substantially different than the language in the original SB 524. The amended version of HB 2867 does several things:

1. The sections dealing with hazard reclassification due to downstream development have been removed.
2. A clause requiring DWR to pay for all dam inspections has been added.
3. The bill now requires the chief engineer to utilize all existing maps available from state and federal sources to create breach inundation maps for existing dams.
4. The bill requires the chief engineer to inspect, but not require the correction of defects in, any dam which would only endanger the lives of the dam's owner or operator, or their immediate family, if the dam were to fail.

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5. The bill requires that the chief engineer obtain written certification from such a dam owner or operator acknowledging that the owner or operator accepts such risk.
6. The bill requires the owner of such a dam to notify the buyer of such a dam of the condition of the dam prior to transfer of ownership of the dam, and that new owner notify the chief engineer upon transfer of ownership.
7. The bill requires that the results of the chief engineer's inspection on such dams be filed with the register of deeds in the county where the dam is located.

As I mentioned in my testimony on this issue last month, an expensive problem has arisen for some Kansas dam owners because some dams have been classified as hazard class C, the highest and most expensive class, even though the only lives or homes they threaten are those of the dam's owner or operator, or their immediate families. For example, KLA has a member in south-central Kansas whose farm dam has been classified as a hazard class C dam because two houses, both of which belong to the ranch trust he operates, sit below the dam. Under current law, the owner is responsible for hiring an engineer to inspect the dam every three years, and to repair any defects in the dam to DWR specifications. This has created a situation in which it would be cheaper for the landowner to move both houses from their current locations than to repair the dam to DWR's satisfaction.

KLA believes dam owners should not be subjected to the repair requirements of K.S.A. 82a-303c when the only lives endangered by a dam are those of the dam's owner or operator, or their immediate families, and HB 2867 amends that statute to remove those requirements. Under the amended HB 2867, the chief engineer would be required to inspect such a dam, but the dam owner or operator would not be required to repair a structural defect in the dam, so long as the dam owner signed an acknowledgement of the risk. The bill would also protect future purchasers of the dam by requiring disclosure of the condition of the dam to a prospective buyer, and by requiring all inspections of the dam to be filed and attached to the property file at the recorder of deeds' office.

In conclusion, KLA believes that dam owners should not be subjected to expensive inspection and repair requirements when the only lives endangered by the dam in question are those of the dam owner or operator or their immediate families. I appreciate the chance to discuss our concerns with you this morning, and KLA stands ready to assist the Committee in any way we can with this important issue. Thank you.

TESTIMONY

To: Senate Natural Resources Committee
Senator Carolyn McGinn, Chair

From: Phyllis & Dee Scherich, Merrill Ranch, Comanche County, Kansas

Date: March 16, 2006

Re: HB 2867

We'd like to help you understand the issues we are dealing with concerning an existing dam on private property. We have managed this property for a Trust since 1976, taking over from my father, who had managed it since 1945. The pond created by the dam covers approximately 5 surface acres. This dam has been categorized as a Class C (high hazard) structure because of two homes that are located below it. These homes are privately owned and house only the ranch operators and their families. One of the homes has been located at its present site since the early 1900's or before, and the other since the early 1940's.

The dam was built probably in the 1930's. No record of a permit seems to exist. We assume the dam was built for two purposes: flood control and as the only water source for cattle in the pasture in which it is located. We have considered eliminating the pond, but feel that would only increase the chances for damage to the homes, and persons living in them, when we receive high run-off rains. The watershed area above the dam is limited. We feel it is even less of a problem now that it is a mature CRP grass pasture than when it was farm land. There is not currently any development downstream of this dam, and all downstream drainage from this dam to the Salt Fork River is also privately owned by the same owner.

The problem with the dam was first brought to our attention by the Department of Agriculture several years ago after the dam was discovered using air surveillance. At that time the laws governing dam safety were brought to our attention. We have been working with the Department of Agriculture and the Water Resources Board since that time. We have paid a \$1500 "inspection fee", received a report on what needs to be done to bring the dam into compliance, and have contacted a consulting engineering firm concerning an evaluation. That firm has estimated it would cost us between \$8,560 and \$12,350 – JUST for the engineering – IF the engineering is approved by KDWR. Add to that the costs of getting the actual work done, and we believe it will be less expensive to either move or replace the existing homes. In addition, the present law would require an inspection of this dam every three years with a minimum of a \$1500 inspection fee hereafter.

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We recognize that the dam could be a potential hazard and would like to be able to proceed to make it safer, but with the rising costs of operations, we don't feel the Ranch can stand the prohibitive cost of the engineering and inspections, plus the repairs.

We have contacted a local contractor who has had extensive experience in building and repairing dams. He has assessed the situation and feels we can make the recommended changes for safety to the existing structures and lives at a reasonable cost, which we are willing to do. We would like to be able to proceed with these repairs in a timely fashion as the pond is at a low level at this time, but are hesitant to go ahead not knowing if the work he would perform would pass inspections. If it did not, we would have to redo the work to meet the requirements. We now have another meeting scheduled with a representative of the Kansas Department of Water Resources, a representative of the Department of Agriculture and a professional engineer regarding the dam, and while we would like to ensure the dam is safe, we are concerned that this cannot be done in a way that is both cost effective and will satisfy DWR.

To help avoid this expense for landowners in the future, we support the legislation supported by the Kansas Livestock Association (SB 524 and HB 2867) that would exempt this type of dam from inspection and repair requirements. We believe that dams that only pose a threat to the dam's owner or operator or their immediate families should be exempt from inspection and repair requirements, and that the safety and risk management for such dams should be left to their owners and operators. Thank you for listening to our concerns.



STATE ASSOCIATION
OF KANSAS WATERSHEDS



Madam Chairman,

I am Herbert R. Graves Jr., Executive Director of the State Association of Kansas Watersheds, SAKW for short.

SAKW apposed HB2867 as introduced in the House Environment Committee by written testimony. After many amendments, HB2867 is a better bill. Since companion bill SB524 has not been heard perhaps the efforts of this committee should be spent on making HB2867 an even better bill.

SAKW remains concerned about a few provisions of the bill.

Under Section 1, there really is no need to include the inspection fee schedule for inspections that will be carried out by the Chief Engineer, Division of Water Resources.

SAKW was not present for the debate in the House Environment committee or the debate heard on the floor of the full House. Based on information passed on to SAKW by some of those present at the hearings, there seems to be a few issues that we would like this committee to respond to.

The language of the bill is very clear that all inspections for hazard class C and B dams are to be conducted by a licensed engineer and paid for by the owner of the dam. Was this the intent of the amended bill? Perhaps the intent was to have hazard class C and B inspections also performed by DWR at their expense. SAKW only brings this up because we have heard a budget issue to look at providing the necessary staff to conduct these inspections is working its way through the legislative process. If this bill is passed into law as written, there would not seem to be any reason to try and fund additional staff positions in DWR. Maybe we have been on the wrong end of some false information.

SAKW knows that dam inspections are becoming more and more a financial burden to dam owners. If adding staff to DWR is not the answer, perhaps some consideration should be given to allocate additional funds to the existing dam construction and rehabilitation programs for the purpose of cost sharing with dam owners for the required hazard class inspections.

One editorial comment would be that under page 2, line 42 of the bill the next paragraph should be labeled as (6) (a) requiring a strike through of paragraph (7).

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Under paragraph (6) (d) starting with page 3, line 15, one could interpret this paragraph that the chief engineer will create breach inundation maps. All dam owners would support this 100%, but funds would be needed in the DWR budget to do this. If dam owners are to continue creating breach inundation maps at their expense with supplemental cost sharing dollars from existing programs, then this needs to be clarified in the bill language.

SAKW offers a few comments on the provisions of Section 2, para. (b) (1) starting on line 34 of page 3. The issue of accepted responsibility and or liability of dam owners should be further debated by this committee. This provision says continued development by the dam owner, his family, or operator in the breach inundation area is acceptable. Does the dam owner through the signed document also protect all invited guests or visitors? Should this provision pass a State legal test before becoming law?

If the bill is interested in exempting certain dam owners, maybe this is the time to consider exempting other dam owners. For instance every time rules and regulations change, several dam owners are notified that their dam is now considered illegal and must be upgraded to meet current criteria. The downstream conditions for these dams have not changed since construction. Why should existing dams that are just as sound as the day they were built and are still providing a proven service to the community be required to be rebuilt at tremendous costs to the dam owner?

SAKW appreciates the attention that dam safety, floodplain management, and required inspections have received during this past year. SAKW represents one of the largest dam ownerships in Kansas. We will continue to strive for the protection of these dam owners.

SAKW appreciates the opportunity to present our comments on HB2867.



Herbert R. Graves Jr.
SAKW Executive Director



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2867
to
the Senate Committee on Natural Resources**

**by
Adrian Polansky
Secretary of Agriculture
Kansas Department of Agriculture**

March 16, 2006

Good morning, Chairperson McGinn and members of the committee. I am Secretary of Agriculture Adrian Polansky, and I am here to testify in opposition to House Bill 2867.

This bill is very similar to SB 524, which your committee heard and we opposed because it put life and property at risk. Public safety continues to be the primary mission of the Department of Agriculture's dam safety program, and we must oppose any legislation that puts safety at risk.

In the last year we have seen dams fail or threaten to fail in Missouri and Massachusetts. We have seen levees fail in Louisiana. When these failures occurred, the power of the water unleashed by these manmade structures was considerable. And the damaging effects of that water did not differentiate between public or private property, or between the lives of family members or visitors, or between adults or minor children.

I am particularly troubled by the children. Minor children have no say in where they live or where they visit. Children could be endangered if this bill were to pass. Our society takes great pains to protect children, whether it's by banning lead paint or requiring booster seats for young children. Our policies say that we value children more than the dollar.

Division of water resources staff tell me they believe there are probably only four dams that fit the parameters of this bill. We would much rather work with other agencies, such as the State Conservation Commission and the Kansas Water Office, to find funding to make these four structures safe than to pass legislation that endangers public safety and sets a precedent of conflict with the mission of our dam safety laws. DWR staff estimate the cost of fixing each of these dams to be in the vicinity of \$100,000. Certainly, with agencies like the State Conservation Commission having funding dedicated to dam rehabilitation, it is possible to find a solution that does not put the public at risk.

There also are many technical and other problems with HB 2867, as amended by the House.

For instance, it now exempts from certain requirements those dams that “regularly and frequently” put at risk only the lives and property of the dam owner, his or her immediate family, his or her employees and their immediate families. “Regularly and frequently” is impossible to define.

The amended bill also requires our department to inspect these dams and to report deficiencies to dam owners. However, we cannot require the dam owner to correct problems we find if the lives and property “regularly and frequently” endangered are those of the dam owner or the dam owner’s employees.

Dam owners who do not correct deficiencies place themselves and others in a very perilous situation. If a dam fails and takes someone’s life or destroys property, the owner is likely to be sued. A jury will not be sympathetic to a dam owner who knew their dam was unsafe and failed to take corrective action. Even if the owner is not sued, and it is only his or her property that is damaged, it is unlikely an insurance company will cover it if the owner knew the dam was unsafe and failed to act. This bill provides a false and dangerous sense of security for dam owners.

The chief engineer also must obtain written certification from the dam owner acknowledging that he or she accepts that risk. The dam owner would be required to inform a buyer of the dam’s condition prior to property transfer. New owners would be required to notify the chief engineer of the transfer. This is very bureaucratic and likely unenforceable.

The amended bill also requires our agency to create breach inundation maps for all existing dams to identify how extensive flooding would be should one of these dams fail. Breach inundation maps are important, and they could be very useful for planning below-dam development, but the cost to create these maps for more than 5,500 existing dams is astronomical – \$17 million dollars. Clearly, we will not be able to comply with this mandate without adequate funding. Again, we support developing breach inundation maps, but it must be accomplished systematically with priority given to areas likely to see downstream development.

We need to find a solution to downstream development impacting a dam’s hazard classification, but placing children and employees at risk is not the solution. We are committed to working with our stakeholders to find solutions, but we are not willing to do so at a cost to public safety.

I will answer questions at the appropriate time.

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**
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-

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1 gram for permanent retirement shall require the written consent of all
 2 landowners and authorized agents to voluntarily request dismissal and
 forfeiture of priority of the enrolled water right. Upon enrollment of the
 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.

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.

New Sec. 3. (a) On and after the effective date of this act, notwithstanding the provisions of any other statute to the contrary, no moneys shall be expended by any state agency for the purpose of water rights purchase or leasing unless the acquisition or leasing is conducted in accordance with and subject to a program that is prescribed and specifically authorized by act of the legislature.
(b) As used in this section, "state agency" has the meaning ascribed thereto by K.S.A. 75-3701, and amendments thereto.

Renumber sections accordingly

HOUSE BILL No. 2710

By Committee on Environment

1-25

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16 Section 1. (a) There is hereby established the water right transition
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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**
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-

(f) When prioritizing among water right applications for acceptance under the water right transition assistance pilot project, where rights with similar hydrologic impacts are considered, priority should be given to the senior right as determined under the Kansas water appropriation act.

And by renumbering subsections accordingly

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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.

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

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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.