

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES BUDGET

The meeting was called to order by Chairman Larry Powell at 1:30 P.M. on January 22, 2007 in Room 235-N of the Capitol.

All members were present except:

Sydney Carlin- excused

Committee staff present:

Becky Krahl, Kansas Legislative Research Department  
Jason Thompson, Office of Revisor of Statutes  
Mike Corrigan, Office of Revisor of Statutes  
Lura Attig, Committee Assistant

Conferees appearing before the committee:

Allie Devine, Kansas Livestock Association  
David Cross, Kansas Livestock Association  
Constantine V. Cotsoradis, Kansas Department of Agriculture  
Wayne Bossert, Northwest Kansas Groundwater Management District #4  
Larry Panning  
Edward R. Moses, Kansas Aggregate Producers  
Edward J. Oborny

Others attending:

See attached list.

Hearing on: **HB 2070 -Intensive groundwater use control areas; time limitation on order of designation.**

Allie Devine, Vice President and General Counsel, Kansas Livestock Association, presented testimony in support of this bill (Attachment 1). Allie Devine explained the procedure for obtaining a water right and how any changes in those rights can affect property owners and business owners. The IGUCA (intensive groundwater use control area) statute was passed in 1978. The chief engineer of the division of water resources, Kansas Department of Agriculture has used the IGUCA statutes in lieu of the water appropriations act to manage the water resources of the state.

David Cross, President of the Kansas Livestock Association, presented testimony in support of this bill (Attachment 2). Mr. Cross outlined the concerns of producers who are either farming or ranching within an intensive groundwater control area or an area proposed for designation.

Constantine V. Cotsoradis, Deputy Secretary, Kansas Department of Agriculture, testified in opposition to **HB 2070** and distributed a map of the Walnut Creek Basin (Attachment 3). Mr. Cotsoradis believes that sunset periods are unnecessary and counterproductive.

Wayne Bossert, Manager, Northwest Kansas Groundwater Management District No. 4, testified in opposition to **HB 2070** (Attachment 4). GMD No. 4 proposes increasing the sunset period to a minimum of 10 years and provide for a conditional sunset rather than an automatic one.

Larry Panning of Ellinwood, Kansas, presented his short neutral testimony (Attachment 5).

Edward R. Moses, Managing Director, Kansas Aggregate Producers Association, presented neutral testimony with six exhibits (Attachment 6). Mr. Moses summarized water right issues and the IGUCA Act. He also changed his mind at the end of his testimony stating that he is now an opponent.

Written testimony was presented by Edward J. Oborny, Jr., President of Ed Junior Farm, Inc., who is neutral (Attachment 7).

Chairman Powell closed the hearing on **HB 2070**.

The meeting was adjourned at 3:15 p.m.

**House Agriculture & Natural Resources  
Budget Committee**

Date Jan. 22, 2007

Name	Representing
LANE LETOURNEAU	KDA
Barbara Hodgson	KDA
TINA ALDER	KDA
MARK HEIM	SCC
LARRY PANNING	SELF
WAYNE BOSSERT	NW KS GMD 4, COLBY
Dorothy Panning	visitor
Billie Devine	Ks. Livestock Assoc.
David R. Cramer	Ks Livestock Assn.
CV Cottraris	KDA
Woody Moses	KAPA
Mike Beam	Ks. Livestock Assn.
Brandon Yorkey	Division of Budget
Kent Askren	KFB
Steve Swaffar	KFB
Virginia Beemer	Rep.
Leslie Kaufman	Ks Co-op Council
Kent Haden	KLA





*Since 1894*

January 22, 2007

**Memorandum:** Kansas House of Representatives Agriculture and Natural Resources Budget Committee

**Summary of Testimony:** Allie Devine, Vice President and General Counsel, Kansas Livestock Association –Proponent HB 2070

Allie Devine will provide the committee with an overview of the recent uses of intensive ground water control areas (IGUCAs). Devine will outline how the chief engineer of the division of water resources, Kansas Department of Agriculture has used the IGUCA statutes in lieu of the water appropriations act to manage the water resources of the state. Devine will outline why this practice has caused an unstable regulatory environment which ultimately undermines business development because business will not invest in a regulatory environment that is not stable or places undo risk on business investments. Devine's testimony will also outline the need for the law to change to provide sunsets to IGUCA orders. A sunset will dictate a process for review and assure that IGUCA's are temporary as intended by the legislature. Finally, Devine will ask for the committee to adopt the Conservation Reserve Enhancement program as a tool to buy out water rights in targeted areas and provide producers with another tool to manage regulatory impact of enforcement of the water appropriations act.

House Agriculture & Natural  
Resources Budget Committee  
Date **01-22-07**  
Attachment # **1**





*Since 1894*

## TESTIMONY

To: House Agriculture and Natural Resources Budget Committee  
Rep. Larry Powell, Chairperson

From: Allie Devine, Vice President and General Counsel  
Kansas Livestock Association

Date: January 22, 2007

Subject: HB 2070

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.

Mr. Chairman, and members of the committee, my name is Allie Devine. I am here today representing the Kansas Livestock Association (KLA). As many of you know, KLA is a not for profit trade association representing over 5,000 livestock producers in Kansas. Our members are involved in all aspects of cattle production including cow calf, seedstock and commercial cattle feeding operations. Our members are also landowners, irrigators, and crop producers who have vital interests in the water resources of the state.

### **Background of the Issue:**

Our recent involvement in water issues arises from calls we have received from our members in the Pawnee Buckner watershed area just west of Larned, Kansas. In June 2006 the Chief Engineer issued an order initiating proceedings to amend the 1981 designation of the intensive groundwater control use control area (IGUCA) in the Pawnee Valley. An August hearing was held wherein staff of the division of water resources made recommendations to the Chief Engineer to substantially reduce the water allocations of water right holders in the area. Our members requested assistance of the association determine their rights. KLA has retained Dave Traster, Foulston Siefken to represent the association and our members. Those proceedings continue with a hearing scheduled for March. These proceedings have focused our attention on key issues facing the state and issues we believe need to be addressed by the legislature.

Since 1945 Kansas has utilized the Water Appropriations Act (KSA 82a-701 et seq. to 82a-734) to appropriate water through a permitting system. Under this system, anyone may make application to the division of water resources for water permit. With limited



exceptions, it is illegal to use water without a permit. Further, it is a fundamental principle of the system that those “first in time” are “first in right”. “In times of shortage, that means the earliest water right or permit holders have first rights to use the water”. (See Kansas Department of Agriculture website, “Kansas Handbook of Water Rights” <http://www.ksda.gov/appropriation/content/240>). A detailed description of how to apply for a water permit is provided in the handbook.

Since the passage of the Water Appropriations Act in 1945, thousands of water permits and certificates of appropriation have been issued. With the issuance of each permit,, the state has made findings of fact that the proposed use is beneficial and within reasonable limitations and that, so long as priorities are observed, the new use will not impair existing rights or unreasonably affect the public interest. Theoretically, when each water appropriation was permitted, it was calculated with the inclusion of a “margin of safety” to account for fluctuations of the static water table, stream flow, climatic conditions and other water uses. See, K.S.A. 82a-711a. Further, if the applicant/permit holder failed to develop the water right for a beneficial use, then that right could be abandoned for non-use (KSA 82a-718).

Water users rely upon this system and the representations made in the documents issued by the state to make investments, to develop their properties, and to plan for the future. It is an orderly, transparent, and fair process that has the respect of Kansans.

It is no secret that the Kansas has been aggressive in the development of its water resources. The history of development is easily recognized in the growth of crop production, livestock production, and agribusinesses throughout the state. It is also evident in the growth of industry and cities throughout central and western Kansas. The law provided a means for agriculture, cities, and industries to develop and put water to a beneficial use, and Kansans did just that.

As water resources became fully allocated, and in some areas arguably over allocated, the state switched to a “conservation policy”. The scope of use and the status of water supplies has been the subject of numerous studies and reports by numerous entities such as the Kansas Geological Survey, Kansas Water Office, Kansas Department of Agriculture, Kansas State University or the University of Kansas. The state has millions of dollars plotting, tracking, planning, and in some manner or another determining what water we have or don’t. (See Ground – Water Levels in Kansas, House Agriculture and Natural Resources Committee briefing January 17, 2007 Kansas Geological Survey available at [www.kgs.ku.edu](http://www.kgs.ku.edu)). In addition, most if not all of the Groundwater Management Districts have established “sustainable yields” for their areas.

### **The Issue:**

Over the past twenty years, the division of water resources has been utilizing the IGUCA statutes to address a variety of water issues throughout the state. (See attached “Intensive Groundwater Control Areas” document provided by Ks. Department of Agriculture and map.) In KSA 82a-1036 provides:

Whenever a groundwater management district recommends the same or whenever a petition signed by not less than three hundred (300) or by not less than five percent (5%) of the eligible voters of a groundwater management district, whichever is less, is submitted to the chief engineer, the chief engineer shall initiate, as soon as practicable thereafter, proceedings for the designation of a specifically defined area within such district as an intensive groundwater use control area. The chief engineer upon his or her own investigation may initiate such proceedings whenever said chief engineer has reason to believe that any one or more of the following conditions exist in a groundwater use area which is located outside the boundaries of an existing groundwater management district:

- (a) Groundwater levels in the area in question are declining or have declined excessively; or
- (b) the rate of withdrawal of groundwater within the area in question equals or exceeds the rate of recharge in such area; or
- (c) preventable waste of water is occurring or may occur within the area in question; or
- (d) unreasonable deterioration of the quality of water is occurring or may occur within the area in question; or
- (e) other conditions exist within the area in question which require regulation in the public interest.

Once the proceedings are initiated, hearings are held, and the chief engineer issues an order.

Simply put, the chief engineer has used the IGUCA statute in lieu of the Water Appropriations Act to manage water resources. With each new IGUCA, the complexity and level of restrictions change. (See attached "Intensive Groundwater Control Areas" document provided by the Kansas Department of Agriculture.)

On their face IGUCA orders seek to override the Water Appropriations Act. While several of the orders appear to follow the appropriations law by differentiating between senior and junior water right holders as groups, they do not differentiate between INDIVIDUAL water right holders with differing priorities as the appropriations law requires. In fact, IGUCA orders have sought to allocate a little to everyone, so that no one is called upon to bear the brunt of the regulation. In other words, no water right is ever cut completely off and the doctrine of "first in time-first in right" is ignored. This is often viewed as a "political neutral" response, in that it hurts no one person greatly but everyone some. This is a management scheme that works in the short run but has significant economic harm over time as it creates instability and uncertainty in the market place. As the state considers more areas for designation, the negative economic impact will be exacerbated.

In the short term, producers have difficulty anticipating what crops they can and cannot plant under altered water appropriations. Many producers have entered into cash rental agreements that anticipated a particular crop that may no longer be available to them.

Producer flexibility to adjust to their individual economic condition is reduced or eliminated. To our knowledge, an order once issued, is never withdrawn regardless of the potential for improving water availability, decreased demand or improved efficiencies. While this finality creates certainty within an area, it leads to more uncertainty in other areas. Producers wait and worry about whether they will be next. Over time, producers within the IGUCA learn to adjust but their incomes are impacted and eventually land values are deflated by decreased demand.

Agriculture is not the only industry impacted by IGUCA orders. While several of the initial orders did not affect industrial or municipal users, the proposed order for the Pawnee Buckner watershed does. (If IGUCA orders are issued, KLA supports the inclusion of all users.) Inclusion of other users further complicates and exacerbates the adverse economic impact posed by this regulatory framework.

For example, if an industry seeks to locate in Kansas, and it is dependent upon water, how can it protect itself? An obvious answer would be to purchase existing water rights. Those purchases may or may not be adequate depending upon what area of the state the business locates. If the area is currently not under an IGUCA, but in an area of consideration for an IGUCA, the business really has no way of anticipating what will happen or whether water supplies are adequate. Business investment is stifled by the uncertainty of the regulatory environment. We witnessed similar effects when government threatens to take property through the use of eminent domain. People simply withdraw from the marketplace and cease making improvements when the regulatory environment for critical resources such as land or water is uncertain. In short, persons don't invest in the game if they fear the rules will change and their investment lost.

The KLA water committee and the KLA natural resources committee discussed these issues and adopted a resolution calling for state to adhere to the Water Appropriations Act. If IGUCA orders are utilized, we support the inclusion of all types of water users. Our members support legislation to sunset IGUCA orders. We support HB 2070 as a means of assuring that IGUCA orders are periodically and publicly reviewed.

We believe that the IGUCA law should be used as a temporary solution to isolated problems as the legislature intended when it was adopted in 1978 after several drought years. Long term, the state must rely upon the Water Appropriations Act. Kansas has invested millions of dollars in the development of the system and Kansans have relied upon it to make business decisions.

The state has over appropriated many areas. As the state moves toward enforcement of the Water Appropriations Act, it should use other tools to ease the regulatory pressure. We believe the state should enact an aggressive campaign to purchase water rights on a targeted basis to relieve the regulatory burden. Our members support the adoption and implementation of a targeted Conservation Reserve Enhancement program that allows for dryland crop production. We understand that USDA has not allowed such production in the current program. We offer our support to make changes at the federal level to address this issue.



In the meantime, we encourage this committee to adopt the Conservation Reserve Enhancement program proposed by the Kansas Water Office and state conservation commission with the caveat that if the federal law changes so would the program and with additional criteria for prioritization of purchases of water rights. We support further targeting the program to purchase water rights voluntarily offered by bid by landowners (1) within areas identified by the state as having an impact on interstate compliance; (2) within the Arkansas River basin and where an impairment action has been filed or an IGUCA order proposed or issued.

The state created expectations for Kansans when it issued water permits. Producers and landowners had no idea that the state was over appropriating some areas. In reliance upon those statements and documents, producers made investments and developed their land. The state has now recognized its mistake. The state has established "sustainable yields" or targets for reduction. We believe an aggressive purchase program will allow the state to achieve those levels while allowing the market place to operate and value land and resources according to their worth. Such a system would provide water right holders with options for their future and return them to decision makers not decision takers. In the long run, this will provide the most stable economic base.

## Intensive Groundwater Use Control Areas (IGUCA)

This is a summary, as of January 2007. The actual IGUCA Orders and other documents should be referred to as needed for actual conclusions and provisions of the Orders.

### **McPherson County, IGUCA**

Initiated: February 13, 1979 by Board of Directors, EQUUS Beds GMD No. 2

#### Reasons for Recommendation

1. Groundwater levels are declining and have declined excessively
2. Rate of withdrawal of groundwater in that area has exceeded rate of recharge

Public Hearing: September 18, 1979

Order issued March 28, 1980

#### Conclusions

1. Groundwater levels in the area in question have declined
2. The rate of withdrawal of groundwater exceeds the rate of recharge in the area
3. Area should be closed to new appropriations

#### Provisions

1. Set boundaries
2. Closed the area to further groundwater appropriation
3. Required installation of water flowmeters
4. Directed the Board of Directors of GMD No. 2 to annually review all water related information in the IGUCA and allowed it to request a hearing if amendments to the IGUCA were necessary
5. Chief Engineer can amend the IGUCA if deemed in the public interest.

### **Pawnee Valley IGUCA**

Initiated: June 20, 1980 by the Board of Directors of GMD No. 5

#### Reasons for request

1. Slow decline of water levels since 1943
2. A maximum withdrawal study was being conducted

Public Hearing: November 25, 1980

Order issued July 8, 1981

#### Conclusions:

1. The groundwater levels in the area in question have declined
2. Rate of withdrawal of groundwater exceeds the rate of recharge
3. Safe yield criteria should be set at 1,500 acre-feet in a one mile radius circle annually
4. Establishment of the boundaries

#### Provisions

1. Established Boundaries of the IGUCA
2. Set safe yield criteria of 1,500 acre-feet in one mile radius circle on applications filed after June 19, 1978

3. Directed the Board of Directors of the Big Bend GMD No. 5 to annually review all water related information in the IGUCA and allowed them to request a hearing if amendments to the IGUCA were necessary
4. Chief Engineer can amend the IGUCA if deemed in the public interest

Amendment requested February 14, 1985 by Big Bend GMD No. 5 to change the safe yield criteria to 750 acre-feet

Public Hearing held on August 15, 1985

Order issued September 13, 1985

Conclusions:

1. Groundwater levels in the area in question have continued to decline
2. Rate of withdrawal of groundwater exceeds the rate of recharge
3. Public interest requires that further limitations was needed
4. Safe-Yield amount of 750 acre-feet per calendar year be imposed

Provision

1. Revised safe yield criteria to 750 acre-feet

Proceedings to Amend the IGUCA initiated June 16, 2006

Hearing scheduled for the weeks of March 12, 2007 and March 26, 2007

## **Burrton IGUCA**

Initiated: June 11, 1982 by EQUUS Beds GMD No. 2 Board of Directors

Reasons for Request

1. Deteriorating water quality due to high chloride concentrations detected in the groundwater

Public hearing held on August 4, 1982

Hearing continued to establish a task force. Task Force was formed and composed of KDHE, KGS, KWO, GMD No. 2, KCC, KWA, KS Independent Oil and Gas Producers Association, water right holders

Public hearing continued on February 21, 1984 with Task Force results available

Order issued on June 1, 1984

Conclusions:

1. Unreasonable deterioration of the water quality occurring
2. Corrective controls needed in order to protect public interest
3. Boundaries
4. Installation of meters
5. New applications be reviewed on a case-by-case basis and analyzed on the KGS computer model
6. Additional recommendations by the Task Force be forwarded to other entities or agencies having jurisdiction or authority

Provisions

1. Set boundaries
2. Corrective Control Provisions
  - Review of all applications on a case-by-case basis and analysis on the KGS computer model



- Directed the Board of Directors of GMD No. 2 to annually review all hydrologic data and allowed them the ability to request a hearing to amend the IGUCA if deemed necessary
- Required installation of flowmeters
- Forward Task Force recommendations
- Chief engineer can amend the IGUCA if deemed to be in the public interest

## **Arkansas River Valley IGUCA, Hamilton, Kearny, Finney, Gray and Ford Counties**

Initiated: April 12, 1984 requested by GMD No. 3 and information in the office of the Chief Engineer

Reasons for request:

1. Moratorium in place since January 21, 1977 in part of the area and chief engineer requested a study be conducted
2. October 3, 1983 chief engineer notified the study was completed by the USGS
3. Information in the office of the chief engineer appear to show groundwater levels are declining or have declined excessively, rate of withdrawal of groundwater equals or exceeds rate of recharge and conditions exist that require regulation in the public interest

Public Hearing: November 6, 1985

Order issued September 29, 1986

### Conclusions

1. Area above Bear Creek Fault zone is more complex system, therefore areas above and below require separate control provisions
2. State line flows diminished
3. Groundwater levels were declining or had declined excessively
4. Rate of withdrawal equaled or exceeded the rate of recharge
5. Conditions existed which required regulation in the public interest
6. Groundwater levels in the lower reach have continually declined
7. Present rate of withdrawal of water from the lower reach exceeds rate of recharge
8. Rate of withdrawal in upper reach exceeds rate of inflow and recharge resulting in decline of water level in the alluvial aquifer and reduction of surface flow

### Provisions

1. Set boundaries
2. Closed the area to further appropriations
3. No changes in point of diversion will be approved closer to the river
4. New or replacement wells constructed to minimize leakage from the alluvium to Ogallala
5. Requirement for test logs for changes in point of diversion

6. Task Force appointed to provide advice and recommendations to the chief engineer (one representative from each entity)
  - Associated Ditch System
  - GMD No. 3
  - Lower reach surface water user of the Arkansas River
  - Upper reach surface water user of the Arkansas River
  - Lower reach groundwater user of the Arkansas River
  - Upper reach groundwater user of the Arkansas River
  - Upper Arkansas river Basin Advisory Committee
  - Groundwater user for municipal or industrial
  - SW KS Irrigation Association
  - Two representatives at large

7. GMD No. 3 can request a hearing to amend and make recommendations separate from the task force

8. Chief engineer can amend the IGUCA if deemed in the public interest

Task Force report issued recommendations on June 1989 that owners of all non-domestic wells are required to install water flowmeters and that water diversions be monitored and overpumping of authorized quantities not be allowed. The Task Force further recommended that additional regulations may be needed to control water use and that the recommendations should provide a basis to initiate additional management practices.

Amended March 6, 1987, mainly clarification changes

## **Hays and Immediate Area IGUCA**

Initiated: February 26, 1985 by the City of Hays and information in the chief engineers office

Reason for Request

1. To address the issue of private domestic water wells and their usage for outside discretionary activities
2. Appears preventable waste is occurring, or may occur and other conditions which require regulation in the public interest

Public Hearing: May 30, 1985

Order issued July 3, 1985

### Conclusions

1. Inadequate information on the number and location of domestic water wells and needs to be determined
2. Conditions exist that require regulation in the public interest
3. Watering of lawns, gardens, trees, shrubs, and other outdoor vegetation at a time when temperatures are high, strong winds and high solar radiation exists causes excessive evaporation which is considered preventable waste

### Provisions

1. Set boundaries
2. Required registration of domestic wells

3. Registered domestic wells are not subject to mandatory provisions of any water conservation plan adopted by the City of Hays
  4. Chief Engineer can ban, or allow the City of Hays to ban, the use of wells to water lawns, gardens, trees, shrubs, and other outdoor vegetation during the hours of 12:00 noon through 7:00 pm daily from June 1 to September 30 inclusive each year, if information shows that well users are not voluntarily avoiding the watering of the vegetation
  5. Chief Engineer can amend if deemed in the public interest
- Amended August 29, 1985 for clarification purposes

Bans on watering have been issued in 1988 through 1993, and 1995 through 2006.

### **“Smoky Hill River”-Trego, Ellis, Rush, and Russell Counties, Kansas IGUCA**

Initiated: November 30, 1983 by the Chief Engineer

Reason for Initiation

1. Conditions existed in the groundwater alluvium which required regulation in the public interest

Public Hearing: February 23 and 24, 1984

Interim Order issued May 31, 1984

#### Conclusions

1. Groundwater levels in the area in question have declined
2. Present rate of withdrawal of water exceeds the rate of recharge
3. Interrelationship of the surface and groundwater requires regulation in the public interest
4. Close the area to new appropriations
5. Alluvium of the Smoky Hill River Valley and its major tributaries between Cedar Bluff Dam and a point four miles north and west of Sharon Springs, KS require regulation in the public interest

#### Provisions

1. Set boundaries of IGUCA
2. Closed the area to new appropriations
3. Installation of water flowmeters
4. File water use reports by March 1 each year (static water level, serial number of water meter, and meter reading at beginning and end of calendar year
5. Appropriated irrigation water use restricted
  - Average 15 acre-inches/acre on maximum authorized acres (base period of 1977 to 1982)
6. All other appropriations and water uses restricted
  - Calendar year 1984 95% of maximum usage for any one of the calendar years 1981, 1982, 1983
  - 1985 to....90% of maximum usage 1981-1983
  - Usage are not to exceed authorized quantity



7. Task Force appointed to further study the water supply and demand and make recommendations to the chief engineer and composed of one representative from each of the following entities in IGUCA area.
  - Conservation District
  - Rural Water District
  - City of Hays
  - City of Russell
  - Water Right holder for irrigation use
  - Cedar Bluff Irrigation District
  - Domestic user
  - Kansas Water Office
  - KGS
  - USBR
  - KWA
8. The task force was also specifically charged with providing advice and recommendations on plans and alternatives for bringing the stream-aquifer system into balance between water supply and demand
  - Changes to operation and/or use of water stored in Cedar Bluff Reservoir
  - Limitations on the withdrawal of water
  - Alternative sources of water for use by existing water users
  - Conservation plans for water use
  - Items deemed necessary for long-term solutions to the water supply problems

The task force met nine times with each representative presenting report on their area of expertise. The task force reviewed all reports, followed by brainstorming sessions to produce a list of ideas as potential recommendations. The task force adopted a set of recommendations and submitted to the chief engineer November 1985:

- Utilize the KGS water management model to manage the water and to cooperate with KWO and KGS in refining the model for use in basin and state-wide planning
- Investigate the possibility of establishing a minimum by-pass of flows originating above Cedar Bluff Dam and the minimum bypass is subject to agreements with those holding the storage rights
- Water users to file water conservation plans
- City of Hays should develop an alternate source of supply to reduce the draft on the Smoky Hill basin
- Reduce water use allocations for all water users except domestic (share the shortage by all water users)
- Extend boundaries of the IGUCA to include the high terraces adjacent to the alluvium

- Abandon domestic rights that are now Rural Water District No. 1 and transfer the amount of water to a new appropriation for the rural water district
- Request Legislature for funds for research and development of the Dakota Formation
- Awareness of the pollution problems especially related to the production and storage of petroleum products
- KSU Extension Service and other agencies to assist in developing and implementing water education programs
- Endorsed the proceedings to extend the boundaries above Cedar Bluff Dam and to expedite the proceedings
- Continue to use the Smoky Hill Task Force as an advisory committee
- Other items were discussed and no action taken but were included in the report as a matter of information to the chief engineer.

9. Initiated proceedings to extend the boundaries to include the alluvium of the Smoky Hill River Valley and its major tributaries

10. Chief Engineer can amend the IGUCA if deemed in the public interest

Supplemental Order issued January 23, 1987

1. Extended the boundaries to include Gove County

### **Wallace, Logan, Gove and Trego Counties IGUCA (Smoky Hill and Hackberry Creek Valleys)**

Initiated: May 31, 1984, in the order for the Smoky Hill River IGUCA

Reasons for initiating

1. Testimony and evidence was received in the hearing for "Smoky Hill River" IGUCA proceedings
2. Declining inflow of water into Cedar Bluff Reservoir contributed to the declining water levels and water flow below the Reservoir
3. Information contained in the files of DWR indicated streamflows in the Smoky Hill River and Hackberry Creek above Cedar Bluff Reservoir were declining or had declined excessively and that conditions existed which might require regulation in the public interest

Public Hearing: February 26, 1987

Order issued July 20, 1988

Conclusions

1. Smoky Hill and Hackberry alluvium and terrace deposits are hydraulically connected to the stream systems
2. Groundwater levels in portions of the Smoky Hill River Alluvium are declining
3. Streamflow above Cedar Bluff Reservoir are declining and have reduced flow into the Reservoir

4. Streamflow declines are primarily due to effects of increased conservation practices and ground and surface water pumping out of the alluvial valley
5. Conditions exist that require regulation in the public interest (declining inflow of water into Cedar Bluff Reservoir is contributing to the declines in water levels and streamflow below the Reservoir)
6. Area should be closed to further appropriations

Provisions

1. Set Boundaries
2. Closed the area to further surface and groundwater appropriations
3. Chief engineer can amend the IGUCA if deemed in the public interest

**Walnut Creek IGUCA, Barton, Rush and Ness Counties**

Initiated: March 13, 1990

Reasons for Request

1. DWR Report No. 89-1 was completed and titled "Availability of Water in Walnut Creek, its Tributaries, their Valley Alluviums, and Hydraulically Connected Aquifers", September 1989
2. October 10, 1989, Department of Wildlife and Parks, requested the chief engineer initiate proceedings in areas that affect the water right for Cheyenne Bottoms in the Walnut Creek drainage basin
3. Appears groundwater levels are declining or have declined excessively, rate of withdrawal of groundwater equals or exceeds rate of recharge, and conditions exist which require regulation in the public interest
4. January 11, 1990, Big Bend GMD No. 5 requested chief engineer to initiate proceedings in Walnut Creek in Barton County.

Public Hearing: December 4-7, 1990, January 3-4, February 5-8, March 19-22 and 26-28, 1991, April 18, 1991

Order issued January 29, 1992

Conclusions:

1. Overall groundwater levels in the area have declined on a long-term basis and in certain parts of the area, have declined excessively
2. Withdrawals of groundwater exceed recharge as evidenced by the declining groundwater levels
3. Walnut Creek and its valley alluvium are hydraulically connected; declining groundwater levels are in part responsible for declines in baseflow; streamflow in Walnut Creek, provides some recharge to the aquifer
4. Conservation practices, terraces, tillage practices, farm ponds, and watershed structures are in part responsible for declines in overland runoff and declines in streamflow
5. Walnut Creek historically is an intermittent stream that has periods of little or no baseflow
6. Long-term sustainable yield of the aquifer is no more than approximately 22,700 acre-feet per year
7. IGUCA should be established



8. Excluded some areas originally proposed (South of Dry Walnut Creek)
9. Closed the area to further appropriations of ground and surface water
10. In the public interest to regulate ground and surface water in the hydrologic system
11. Surface water may require different controls in order to allow surface water to be captured during periods when adequate flow is available
12. In a water-short hydrologic system, water by any water user may affect the amount of water available to some or all other users in the area
13. In the public interest to allow the aquifer to recharge to a level (other than fluctuations caused by climatic variations) to where water levels are at or above the streambed elevation; baseflow would be present more frequently; when baseflow is present, any runoff would make its way downstream further than if baseflow was not present; Average annual groundwater withdrawals be limited to no more than long-term sustainable yield
14. Appropriation rights in excess of the reasonable needs shall not be allowed
15. Waste of water defined and if waste of water occurs, chief engineer may suspend use of that water right until owner shows that it will no longer occur.
16. Water use requirements can vary from year-to-year based on factors such as climatic, location, type of crop grown, water use efficiency and that a currently reasonable amount of water is less than what may have been authorized or perfected historically
17. Reasonable average annual amount of water needed to divert for irrigation
  - Barton County, 12 inches
  - Rush County, 13 inches
  - Ness County, 14 inches
18. In the public interest to allow flexibility by setting allocations on a five year basis ( 5 times the reasonable average annual amount, which allows use to exceed the reasonable annual average to degree necessary to meet water demands without waste or excess use as long as the total allocated for the 5 years is not exceeded)
19. Vested and appropriation rights, authorized for groundwater use, in order of priority, total accumulated authorized quantity of approximately 22,700 acre-feet/year are considered senior rights for purposes of determining allocations. For the first 5 year period these senior water rights include priority dates on or before October 1, 1965
20. Junior appropriation rights are defined as appropriation rights with priority dates after October 1, 1965
21. Vested water rights are allocated their full authorized quantities
22. Senior water rights allocated an amount deemed reasonable for the area
23. Junior water rights are allocated the remaining portion of the approximately 22,700 acre-feet
24. Cheyenne Bottoms is an extremely important wetland and water is essential for its maintenance
25. Inadequate information in the record to determine additional management criteria for the surface water impoundments

26. Flowmeters are needed
27. Establish an advisory committee to make recommendations to the chief engineer deemed necessary to refine and evaluate the management of the IGUCA and changes to the corrective controls

Provisions

1. Established the boundaries
2. Closed the area to further appropriations
3. Required installation of flowmeters
4. Required water users to file water user reports no later than March 1 and asked for additional information to be reported (static water level, serial number of meter, meter reading at the beginning and end of calendar year, any additional information needed to administer order)
5. Set Five-year allocations
6. Set long-term sustainable yield at approximately 22, 700 acre-feet
7. Defined the reasonable quantities based on priority and maximum acres irrigated between 1985 to 1990
  - Vested current authorized quantities
  - Senior: Barton 12 inches multiplied by max acres irrigated; Rush 13 inches multiplied by max acres irrigated; and Ness 14 inches multiplied by max acres irrigated
  - Junior (44 % of the allocations for senior rights): Barton 5.25 inches multiplied by max acres irrigated; Rush 5.75 inches multiplied by max acres irrigated; and Ness 6.25 inches multiplied by max acres irrigated
8. Municipal, non-vested allocated 1989 population and reasonable per capita use or the quantity authorized, whichever is less
9. Non-vested for all other types of use are allocated 90% of maximum use reported from 1985 to 1990 or sum of the annual quantity of vested and senior and 44% of appropriation authorized
10. Groundwater use may divert allocation for any authorized place of use from a combination of any of the wells authorized to divert
11. Approximately each five year the chief engineer may evaluate the information collect from additional studies, status of water rights and permits and make adjustments in corrective controls
12. If water user exceeds five year allocation, the amount allocated for the next five years is reduced by twice the amount over pumped
13. DWR sends out to each water user the five year allocation
14. Required all vested rights for surface and groundwater use, municipal and industrial appropriation rights for surface or groundwater use and holders of recreation surface rights to file conservation plans
15. Chief engineer may adopt any special policies and procedures deemed in the public interest
16. Corrective controls are incorporated as conditions of each water right authorized in the IGUCA area
17. Established an advisory committee to make recommendations and composed of each formal participant at the conclusion of the hearing. This committee met 16 times between 1992 and 2001, made several recommendations to the

chief engineer, which have been adopted, and is still in existence although it has not met recently.

18. Chief engineer may make changes deemed to be in the public interest

Partial Stay and Request for Temporary Remedies filed on February 19, 1992 by the Walnut Creek Basin Association and Mid Kansas Quality Water Association

- The order issued on January 29, 1992 remained in full force and effect as written
- Request for partial stay and temporary remedies were denied in part and granted in part

Supplemental Order issued December 6, 1996

- April 9, 1996 Walnut Creek IGUCA Advisory Committee made recommendations to the chief engineer to increase allocations for the City of Otis helium plan;
- Allow carry over any allocation unused in the five year period 1992 to 1996 to the new five year period 1997-2001;
- Compute allocations for water rights that had been in CRP during the 1985 to 1990

Chief Engineer concluded that the recommendations would not injure any existing water rights and granted the recommendations

Amended Order issued June 24, 1998

- The Supplemental Order, December 6, 1996 did not take into account those cases where a water right was found to be in good standing and no acres were reported as irrigated during the 6 years prior to enrollment in the CRP
- The Amended Order provided a means for calculating an allocation for water rights in CRP with no reported irrigated acres the 6 years prior to enrollment

Supplemental Amended Order (III) June 29, 2001

- Allowed each water right owner to carry over unused allocations from any one five year allocation period to the next five year allocation period so long as it doesn't exceed the maximum authorized quantity
- Allow applications to be filed for additional rate, with applicable conditions



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## Kansas Handbook of Water Rights

### Why Do I Need a Water Right?

Water, like other natural resources enjoyed so bountifully by Kansans, is protected for the use and benefit of the citizens of this state. Water should be used wisely and good conservation measures should be practiced by all water users.

The Kansas Water Appropriation Act protects both the people's right to use Kansas water and the state's supplies of groundwater and surface water for the future.

The law is administered by the Kansas Department of Agriculture's Division of Water Resources, which issues permits to appropriate water, regulates usage, and keeps records of all water rights in the state.

It is illegal for individuals in Kansas to use water without holding a vested right or applying for, and receiving a permit to appropriate water from the Division of Water Resources.

The exception is water used solely for domestic purposes - that is, water primarily used for the household, watering livestock on pasture, or watering up to two acres of lawn and gardens. No permit is needed for that class of water usage.

The Water Appropriation Act affects all Kansans. If you are a farmer who uses irrigation to grow crops, it requires you to obtain a permit and to make yearly reports of the water you use. If you are a city dweller who drinks, washes with, or cavorts in, city water, you likely are able to do so because your municipality has a water right or rights.

The right to use Kansas water is based on the principle of "first in time - first in right." In times of shortage, that means the earliest water right or permit holders have first rights to use the water. The maintenance of water right and permit records allows Kansas water to be apportioned fairly.

*... the Water Appropriation Act is Kansas law. Violating it can subject you to a maximum of six months in jail and a \$500 fine.*

Why is it so important to follow proper procedures to obtain a water right and report use of water? One reason is to protect the investment in your right to divert water for beneficial use on your farm for irrigation, a feedlot, recreational reservoir, or in your municipality, water supply district, or industry. Another reason is to protect Kansas water resources for tomorrow and future generations. Finally, you should remember that the Water Appropriation Act is Kansas law. Violating that law can subject you to a maximum of six months in jail and a \$500 fine.

### Step by Step Guide to Obtaining a Water Right

#### 1. File an Application

Contact the Division of Water Resources for an application to appropriate water for beneficial use. Anyone who wishes to use water for any purpose other than domestic use must file an application accompanied by a filing fee which is determined by the amount of water to be appropriated. Obtain a form from the Division of Water Resources, 109 SW 9th Street, Second Floor, Topeka, Kansas 66612-1283. Applications filed within a groundwater management district are reviewed by the district, and recommendations are made based on the policies, and rules and regulations of that district.

## **2. Receive Permit**

If it is determined that: (1) water is available at the desired location; (2) its appropriation will not interfere with other area water rights, minimum desirable streamflow, or the public interest; and (3) it meets all other Division requirements, the application may be approved.

## **3. Complete Diversion Works**

After the permit is issued by the Division of Water Resources, its holder is free to complete the authorized diversion works by drilling and completing a well, pumpsite or building a dam within the time allowed. Check valves also are required for safety in chemigation use. The permit holder then must notify the Division of Water Resources of the completion of the diversion works and submit the required field inspection fee. If required, water flow meters must be installed before water is put to use and before a notice of completion of the diversion works can be accepted. (A dam impounding more than 50 acre-feet of water requires an additional permit from the Division's Water Structures Section.)

## **4. Develop the Water Right**

At this point the applicant has a specific period of time, usually four to five years, to "perfect"- or to develop -the water right by actually using water as authorized by the permit. If more time is needed, an extension of time must be requested in writing with the required fee, before expiration of this period. The water right is based on the year of the largest amount of beneficial use within the terms, conditions, and limitations of the approval of the application.

## **5. Field Inspection**

After the water right has been completed, the Division of Water Resources conducts a field inspection to determine such things as rates of diversion of water, where and how the water has been used, as well as other numerous details of the actual operation in relation to the perfection - or development - of the water right. These tests will determine the maximum and normal rates of water diversion. Water use reports and other information also will be analyzed to determine the quantity of water diverted and acres irrigated each year within the limits of the permit.

## **6. Comment on Draft Certificate**

After the Division of Water Resources determines the extent of water right developed, the water right holder will receive a draft certificate of appropriation. He or she has 30 days to comment on the proposed certificate of appropriation.

## **7. Certificate Issued**

When the water right holder receives the actual certificate, he or she must file it with the Register of Deeds in each county where the authorized point or points of diversion is/are located.

## **8. Water Use Reported Yearly**

After the application to appropriate water is approved, the permit holder is required to complete and return a yearly report of water use no later than March 1 of each year. The forms, which are mailed in January to the permit holder or to the designated water use correspondent, are for the previous year's usage. The Kansas legislature has made the report of water use mandatory and authorized fines for late reporting. Deliberate falsification of data on a report is a class C misdemeanor. Water use reports are used to perfect the water right and prove it has not been abandoned. Reports must be submitted even if water was not used in the previous year and the reason for nonuse explained.

## **Special Cases**

### **Abandonment of a Water Right**

A water right is considered abandoned after five successive years of nonuse without due and



sufficient cause. Examples of due and sufficient cause for nonuse include such reasons as water being unavailable from the source of supply, adequate moisture is provided by natural precipitation for production of crops normally requiring full or partial irrigation within the region of the state in which the place of use is located, or temporary pollution of the water supply.

### ***Changing a Water Right***

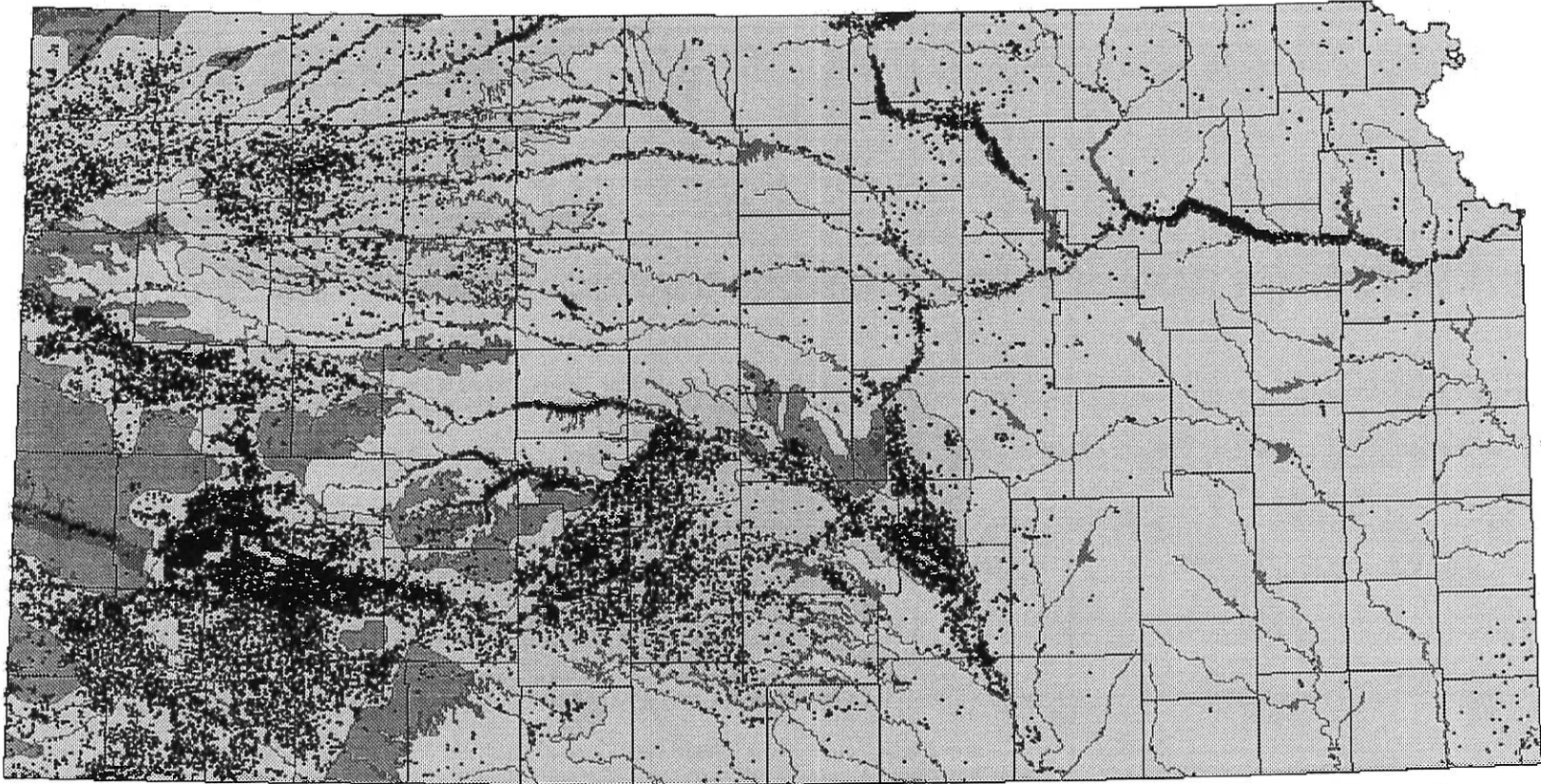
If a water right holder wants to change such things as the place of use, the type of water use, or a point of diversion, he or she is required to file an application for change with the Division of Water Resources, and to pay the appropriate filing fee. Some parts of Kansas have no water available for new permits. In those areas, acquisition of an existing water right and obtaining approval to change one of the features may be the only way to meet such a change request.

### ***Temporary Permits***

Temporary permits are available for water use which will last less than six months and generally consist of less than a million gallons of water used for non-domestic purposes. Temporary permits, which often are issued for such purposes as oil well drilling or small construction projects, must be accompanied by a filing fee.

### ***Where to Find Help***

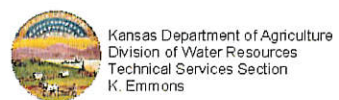
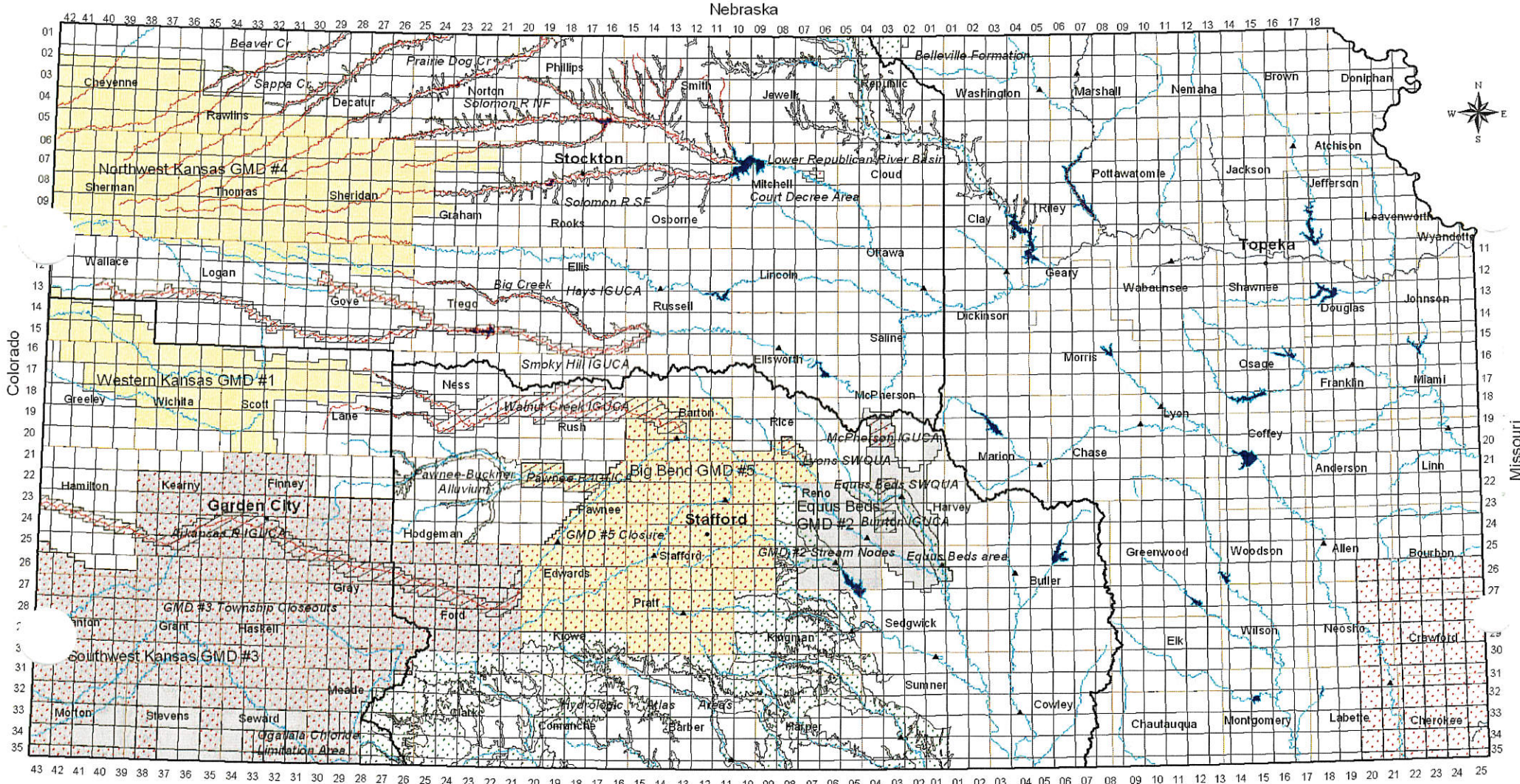
You can contact the Division of Water Resources at the Kansas Department of Agriculture, 109 SW 9th Street, Second Floor, Topeka, Kansas 66612-1283, or call (785) 296-3717. For your convenience, Division of Water Resources field offices are located across the state.



**Figure 6 – Ground-water Well Development for Water Rights.** This map does not include the majority of domestic wells; rather it shows the larger production wells that are required to have a water right. Ground-water development in eastern Kansas is generally confined to alluvial aquifer systems that closely are tied to stream/river surface water flow. The importance of the HP aquifer can readily be seen by the amount of development in south-central and western Kansas.



1-22



- GMD #1, #4, #5
- GMD #2, #3
- IGUCA or SWQUA
- Closed Area, generally excluding temporary and other small uses in some cases. See regulation for details.
- Area subject to Special Restrictions. See regulation for requirements.

- Closed Streams, generally excluding temporary and other small uses in some cases. See regulation for details.
- Restricted Streams, specific restrictions for streams and alluvium given in regulation.
- Streams, surface water generally available. Includes Missouri River.

- Field Office Boundary
- Regional Field Offices
- County
- text Name of affected area
- MDS Gaging Stations

Disclaimer-Features on this map represent conditions as of the date of the map, and are subject to change. The user is referred to specific policies, regulations, and/or orders of the Chief Engineer.

July 11, 2005





*Since 1894*

Date: January 22, 2007

**Memorandum:** Kansas House of Representatives Agriculture and Natural Resources Budget Committee

**Summary of Testimony:** David Cross, President of the Kansas Livestock Association Proponent of HB 2070

David Cross will outline the concerns of producers who are either farming/ranching within an intensive groundwater control area or an area proposed for designation.

Key concerns of producers include: (1) fear of the unknown; (2) lost revenue and impacts upon long term rental agreements or mortgages; (3) confusion over the final regulations and relatively short periods of time to adapt; (4) need for assurances that all types of water users will be regulated and not just agricultural operations; (5) inability of the producers to plan for future expansions or changes of use; (6) adverse effects on local economies and need to return to the stability offered by the Water Appropriations Act; (7) need for sunset provisions to assure continuous reviews and producer input; (8) need for water right buy out programs to provide relief valve to water users suffering from the burden of regulation.

House Agriculture & Natural  
Resources Budget Committee  
Date *01-22-07*  
Attachment # *2*



*Since 1894*

Testimony of David Cross  
President, Kansas Livestock Association

House Agriculture and Natural Resources Budget Committee

Representative Larry Powell, Chair

Date: January 22, 2007

Mr. Chairman, members of the Committee my name is David Cross, Lewis, Kansas. I am a farmer/rancher and the current president of the Kansas Livestock Association. I farm near the area of the proposed intensive groundwater control area (IGUCA) in the Pawnee Buckner watershed. I am not here to debate the particulars of that proposed IGUCA but I will use it as an example of what producers experience during the hearing process and ultimately what happens if an order is issued.

**Fear of the Unknown:** The overriding emotion is fear of the unknown. Producers when faced with the threat of an IGUCA immediately wonder how they will be able to adapt. Most producers have mortgages on their land. Producers in this area have been growing highly profitable crops of corn and alfalfa. If forced to switch to other crops, that will have a significant impact on their incomes. In some circumstances, producers have cash leased land under 5-10 year contracts. Disruption in irrigation water availability will greatly affect those contracts. From the preliminary discussions, it appears that will be the case.

**Lost revenue:** Corn and alfalfa require a "full" water right, which in our area is 18 inches per year. Under the proposed IGUCA for the Pawnee Buckner, senior water rights would be allocated 10 inches on either the maximum number of acres actually irrigated in any one year from 1996 through 2003 or the acres authorized, whichever is less. The juniors would be allocated 6 inches with the same acreage restrictions as the seniors. (See Water Resources Analysis of the Pawnee-Buckner-Sawlog Subbasin, Hodgeman, Ness, and Pawnee counties August 2006) While the staff have made this recommendation, it is not certain that the chief engineer will agree. In fact, the groundwater management district is prepared to present testimony that the groundwater declines suggested by the staff do not exist to the degree stated.

**Confusion and short time to adjust:** All of this process has caused confusion among local water users. No one is certain of the outcome. To make the situation worse, the proposed IGUCA in the Pawnee Buckner if adopted may impact operations this summer. This is very short notice on an issue that has long lasting effects. We understand that discussions of voluntary reduction plans have been ongoing for many years, but voluntary reductions are considerably different than mandatory reductions.

2-2



**Effect on all users:** Our members believe that all water users should be impacted by an IGUCA and that agriculture should not be the only sector affected. In the proposed IGUCA, the staff has recommended that "water rights for all other types of beneficial users to be allocated 90 percent of their maximum use reported for the period 1996-2003.

**Inability to plan for the future:** Livestock producers have purchased land in anticipation of needing that land/water right for conversion to livestock watering. Under existing rules, if an irrigation right is converted to livestock watering, the division reduces the allocation by approximately 1/3 under the change of use provisions. Livestock producers are wondering whether the Iguacu process will be enforced against the actual use or an appropriated amount. Again, the regulatory framework causes uncertainty for planning any expansion or change of use. This is an issue for all types of businesses with water rights-not just livestock.

**Effect on local economies:** We are aware of the KSU report that indicates that application of an IGUCA is more preferable economically than enforcement of the Water Appropriations Act wherein some users may have no water available. While the Water Appropriations Act enforcement seems harsh, it is stable and known. The IGUCA scenario is uncertain and broad reaching. Over time, the IGUCA process affects larger areas and can depress entire regions. The Water Appropriations Act enforcement would work on a more targeted basis relating to individuals in a given small area. Also the Water Appropriations Act will allow for the market place to work-producers or businesses can still rely on the priority scheme to value irrigated land, or water right for sales or conversion.

**Need for sunset:** Producers suggested that the legislature consider sunsets on the IGUCA laws because many feel that there is no finality to the process. For example, many believe that conditions have changed in the Wet Walnut and perhaps the order should be modified. We understand there are provisions for review, but without producer action, the state does not act. Local politics sometimes makes it difficult for an individual to act. We think a sunset or periodic review of these orders gives everyone the opportunity to voice their concerns; review scientific reports of the water resources and be a part of decision making.

**Need for solutions:** Because so many producers have relied upon the water appropriations process, and because economic hardships are likely with the implementation of any water restrictions, we strongly encourage the state to purchase and retire water rights. We can't go back-there is too much invested, but the state can provide mechanisms for additional choices. A voluntary buy out program is the only means of the state meeting its "sustainable yields" while giving producers choices and maintaining stability in the local economies of affected areas.

ICT ? sale  
Wet Walnut 5 year



# KANSAS

DEPARTMENT OF AGRICULTURE  
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2070 to  
House Appropriations, Agriculture and Natural Resources Budget Committee

by  
Constantine V. Cotsoradis  
Deputy Secretary  
Kansas Department of Agriculture

January 22, 2007

Good afternoon, Mr. Chairman and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture, and I am here to testify in opposition to House Bill 2070.

HB 2070 adds a sunset provision to intensive groundwater use control area (IGUCA) orders. Our opposition to this change is not because it requires that IGUCA orders be reviewed to determine if they are still needed, but rather because sunsets are unnecessary and counterproductive. It also runs counter to the intent of the original statute.

The IGUCA statute arose out of concerns in the late 1970s about drought and near-drought conditions and groundwater depletion. They were enacted to allow for implementing long-term conservation and intensive management practices to prevent a critical shortage of this vital resource. In its wisdom, the 1978 Legislature did not put a timeline on the process. That means these practices were to continue until the desired result – a combination of conserving groundwater and averting critical shortages – is accomplished. It's unrealistic to believe that these results can be achieved in five years, or that gains wouldn't be reversed if conservation measures were brought to a halt.

The chief engineer retains jurisdiction over the IGUCA order and can, when sufficient cause is shown, amend the order. In fact, of the eight IGUCA orders currently in effect, four have been amended and proceedings to amend a fifth are under way. Also, many intensive groundwater use control areas have a stakeholder task force to advise the chief engineer on IGUCA-related issues, and most IGUCAs are reviewed periodically by an advisory committee or a groundwater management district, or by the division of water resources.

The IGUCA statute offers a more comprehensive method to deal with complex water problems than may be possible under the Kansas Water Appropriation Act alone. Each intensive groundwater use control area is established to address a specific problem in a specific

area at the time it is established. These are long-term water resource issues and the solutions are tailored specifically to them.

For example, aquifer properties — such as depth, thickness, extent of water level decline, the relationship to streams, and other factual matters — often vary significantly, as do the location and extent of current water use. That means water use restrictions must fit the circumstances if they are to resolve the problem.

In some instances, special water use restrictions or water conservation requirements are in effect only under the IGUCA. A sunset would strike these important water conserving requirements and could very well result in water right impairment and harm to water supplies, which is contrary to public interest. In some cases, it could lead to unnecessary conflict or litigation if new IGUCAs are considered to replace existing ones or if no action is taken.

It's time consuming and expensive to establish an IGUCA. We estimate it would cost our agency close to \$2 million to re-establish the eight existing IGUCAs, and it would necessitate adding at least 1.5 full-time equivalent positions to manage the work. It's also costly for water users who choose to be a party to the proceedings because they must attend formal hearings and possibly hire attorneys or water consultants to represent their interests. Hearings are necessary for due process and to ensure that good information is available on which to base decisions. Water users and the public get to help craft the solution for their local water problems. They, along with the chief engineer, work to find solutions that conserve water and protect water rights in a way that maintains the economic viability of the region. This is done in a manner that is as consistent as possible under the umbrella of the Kansas Water Appropriation Act.

The Kansas Department of Agriculture is always open to new ways of doing things if it's more efficient, effective or economic, while allowing us to meet our statutory objective. This time, however, we're confident the proposal will do nothing but make the IGUCA process more complicated and costly, and, in some instances, actually imperil our water supply.

I will answer questions at the appropriate time.

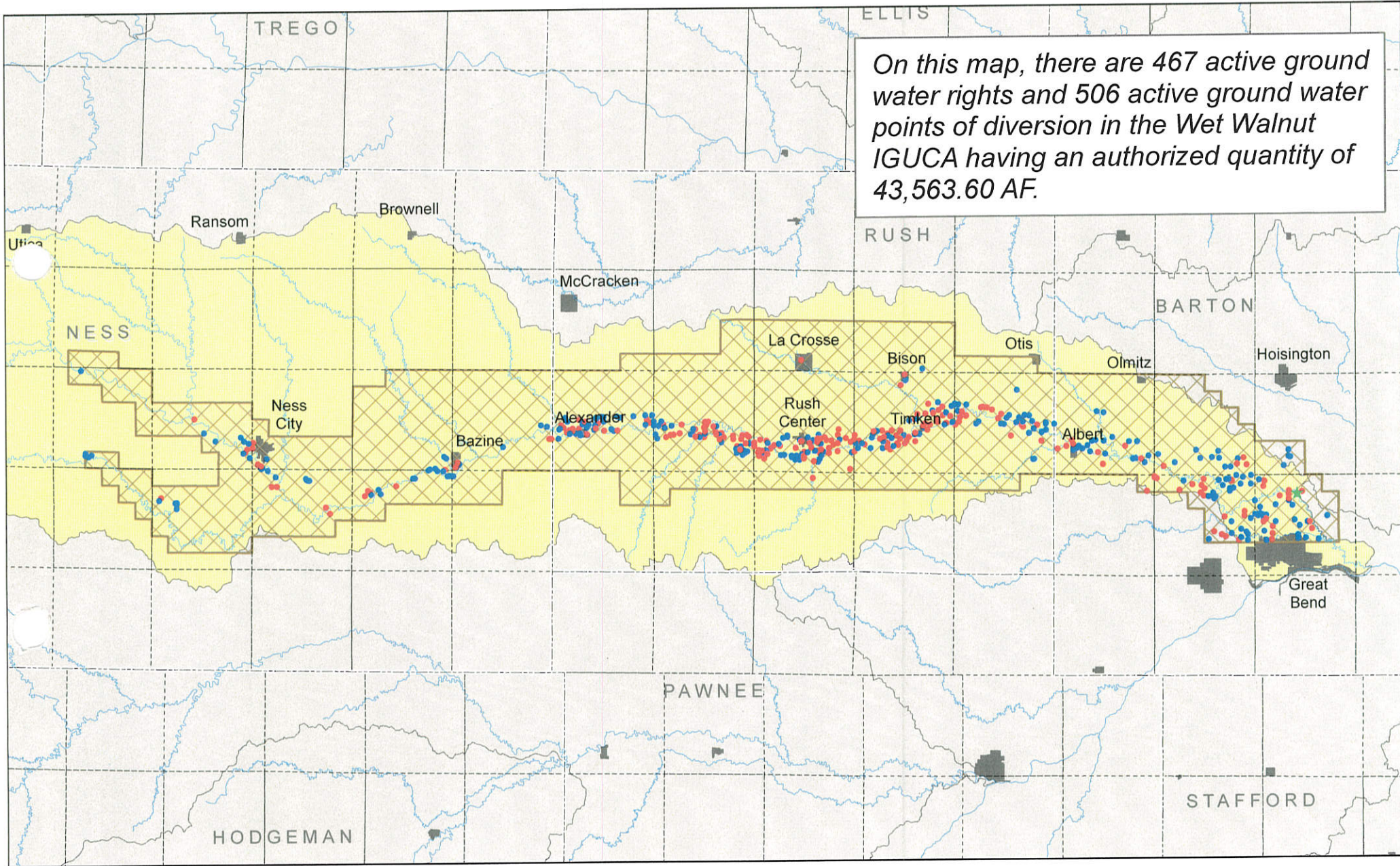


# Walnut Creek Basin

IGUCA IN PLACE

3-3

*On this map, there are 467 active ground water rights and 506 active ground water points of diversion in the Wet Walnut IGUCA having an authorized quantity of 43,563.60 AF.*



### Legend

- Ground Water Pds before 1966
- Ground Water Pds after 1966
- Streams
- Cities
- Walnut Creek
- Wet Walnut IGUCA

★ File Number 439





Testimony of Northwest Kansas Groundwater Management District 4

P.O. Box 905, Colby, KS 67701 Tel: 785-462-3915

[www.gmd4.org](http://www.gmd4.org)

Date: January 22, 2007

Provided by: Wayne Bossert, Manager

**RE: HB 2070**

Pros:

1. The sunset provision requiring a new IGUCA process each 5 years to continue any IGUCA places the regulated community on more equal footing with the regulators during each 5-year iteration.
2. The existing IGUCA statutes, with many powerful groundwater management tools only available within them, have been resisted by some because there is no way to exit the IGUCA once formed. This bill provides a very clear term of any IGUCA.

Cons:

1. The 5-year automatic sunset period is in hydrologic terms a very short time. It is doubtful that most corrective control provisions implemented could be verified as working or non-working.
2. The labor intensive process of initiating an IGUCA and issuing the order will be hard pressed to occur each 5 years for IGUCA areas that need to be continued. This bill effectively places a very large hurdle in front of DWR - getting only 5 years to make something work, and if it seems to be working, having to re-do the process every 5 years to sustain the successful efforts. This is an inefficient approach.
3. The short time frame and cumbersome process to sustain an IGUCA significantly hinders both situations - the establishment of new IGUCAs and the continuation of new and existing ones. For management entities and water users who want or need the enhanced management tools provided by an IGUCA (the most significant one being the ability to apportion water reductions) they are less likely to be available and harder to keep in effect. The state's only reduction alternative without an IGUCA is the more direct and more austere "reverse order of priority".

GMD 4 Suggestions:

1. Increase the sunset period to a minimum of 10 years; and
2. Provide for a conditional sunset rather than an automatic one. An IGUCA would be sunsetted ONLY if pre-specified goals or benchmarks (which must be specifically related to the reason the IGUCA was created) are attained. The goals/benchmarks should have Legislative oversight to make sure they are not unreasonable (thus allowing DWR to create in essence a never-ending IGUCA). This approach requires DWR to issue reasonable IGUCA orders and provides an incentive for the regulated community to work hard at reaching the goals/benchmarks; and

*reduction permanent?*



3. Require a mid-term (5-year) report by DWR on the status of the progress of all corrective control provisions implemented. The report should also include a required section dedicated to the views and concerns of the regulated community - perhaps even drafted by a DWR-appointed advisory committee for inclusion - unedited.

Thank you for the opportunity to testify. The Northwest Kansas Groundwater Management District would be happy to answer any questions.

Wayne Bossert, Manager

Wayne Bossert

January 22, 2007

LARRY PANNING - ELLINWOOD, KS

SERVED ON:

BIG BEND GMD #5	1974-1993	=	<u>19</u> YRS
KWA	1981-1994	=	<u>13</u> YRS

WALNUT VALLEY IGUCA

REVIEW COMM. CHRMN. 1991 - ?

QUESTIONS ON HB 2070 PG. 2 LINE 3

1. PURPOSE OF 5YR. LIMIT
2. END OF 5YR. - STATUS OF WATER RIGHTS
3. EXPENSE OF ESTABLISHING AN IGUCA

COMMENT ON WALNUT VALLEY IGUCA

RECOMMEND 5YR. REVIEWS - NOT TERMINATE!

# KAPA

Kansas Aggregate  
Producers' Association

Edward R. Moses  
Managing Director

## TESTIMONY

Date: January 22, 2007  
Before: The House Agriculture & Natural Resources Budget Committee  
By: Edward R. Moses, Managing Director  
Kansas Aggregate Producers Association  
Regarding: HB 2070 – Intensive Groundwater Use Control Area (IGUCA) Sunset Provisions

Good afternoon Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today and provide our comments with respect to HB 2070. My name is Edward Moses, Managing Director, of the Kansas Aggregate Producer's Association. The Kansas Aggregate Producer's Association is a trade association comprised of sand & gravel and rock producers located throughout Kansas. Comprised of approximately 250 members our mission is to provide the 25-30 million tons of aggregate consumed by Kansans every year.

In March of 1977 Governor Robert Bennett in response to growing concerns about the rapid depletion of water resources within our state, appointed a special task force to study the issues and make appropriate recommendations. The task force, chaired by then Lieutenant Governor Shelby Smith and comprised of 24 public and private members, over the next two years held hearings and gathered a lot of data concerning the use and quality of water resources in Kansas. The results of this effort were formalized in two reports containing 39 separate recommendations regarding the management and development of Kansas water resources. Several of these were implemented by the 1978 and 1979 sessions of the Kansas Legislature, which led to sweeping changes in the Kansas Water Appropriation Act (KWAA); essentially converting it from a water appropriation law to a water conservation law. Included in this legislation was task force recommendation #14 which enacted K.S.A. 82a-1038, or commonly the IGUCA Act; curiously contained within the Groundwater Management District Act.

The task force and the legislature, recognizing there may be small areas where water needs were "critical" the IGUCA established provisions for the designation of an area and providing several tools to reduce water use in these areas. Among them:

- The closing of the area to any further water appropriation even where new water may be available.
- The establishment of rules allowing for mandatory reduction of water use within the IGUCA without regard to priority among senior and junior water right holders or with respect to type of use (i.e.: Irrigation versus Municipal).

Thus trumping the rationing system of "first in time, first in right" contained within the provisions of the KWAA, and establishing two different rationing systems in conflict with each other.

In our opinion, after reading the Interim and Final Report of the Governors Task Force on Water Resources an IGUCA (1977 & 1978) was intended to be a limited device to address critical water needs in a specific area and not intended to be the primary method of administrating Kansas water policy. It is obvious from the other 38 recommendations contained in the reports the task force and the legislature meant the Kansas Water Appropriations to be the governing statute in dealing with water management issues. However, thirty years later disturbing trends are developing regarding the designation and application of the IGUCA Act. First, once IGUCA established it never seems to go away or is subject to regular independent review. Second, by growth both in size and in number they appear to be gradually but inextricably supplanting the KWAA.

Consider this, since the passage of the act in 1978 eight IGUCAs have been designated. Relatively innocent looking if one considers the map attached to this testimony (Exhibit #1). Consider however the second map (Exhibit #2) which illustrates all the other special restrictions on Kansas water, it is sobering. By further comparison to general groundwater availability (Exhibit #3) it is easy to determine that most of the groundwater in this state is already restricted over and above the KWAA. This becomes even more disconcerting with the proposed expansion of the Pawnee Valley IGUCA by five times (Exhibit #4). And it does not stop here the establishment of an IGUCA along the Middle Arkansas River is being studied and discussions have been held regarding IGUCAS on the Lower Arkansas River, the Republican River near Milford, the Kansas River near Perry and the Walnut River (Exhibit #5). Of the most concern to our industry is the expansion into the Middle Arkansas an area overlying the Great Bend Prairie Aquifer (Exhibit #6); where due to relatively higher recharge, water may be available. Especially in years when rainfall is higher than average. If this area was designated as an IGUCA access to this water would not be allowed. Surely, this was not the intention of the IGUCA Act. If taken to its logical conclusion the continued expansion and designation of areas under the IGUCA Act will eventually lead to a situation where the Kansas Water Appropriation Act is no longer viable. Yet, thousands of Kansans have made decisions and sizable investments on the rules as set forth in the KWAA. Is this fair?

While we are unable to support HB 2070, as drafted; obviously a five year sunset may go too far the other way. We think this measure may have some merit in bringing forth a debate on the proper roles of IGUCA's versus the KWAA and future policy regarding the designation of Intensive Groundwater Use Control Area. It is our recommendation this committee should work this bill and consider the following:

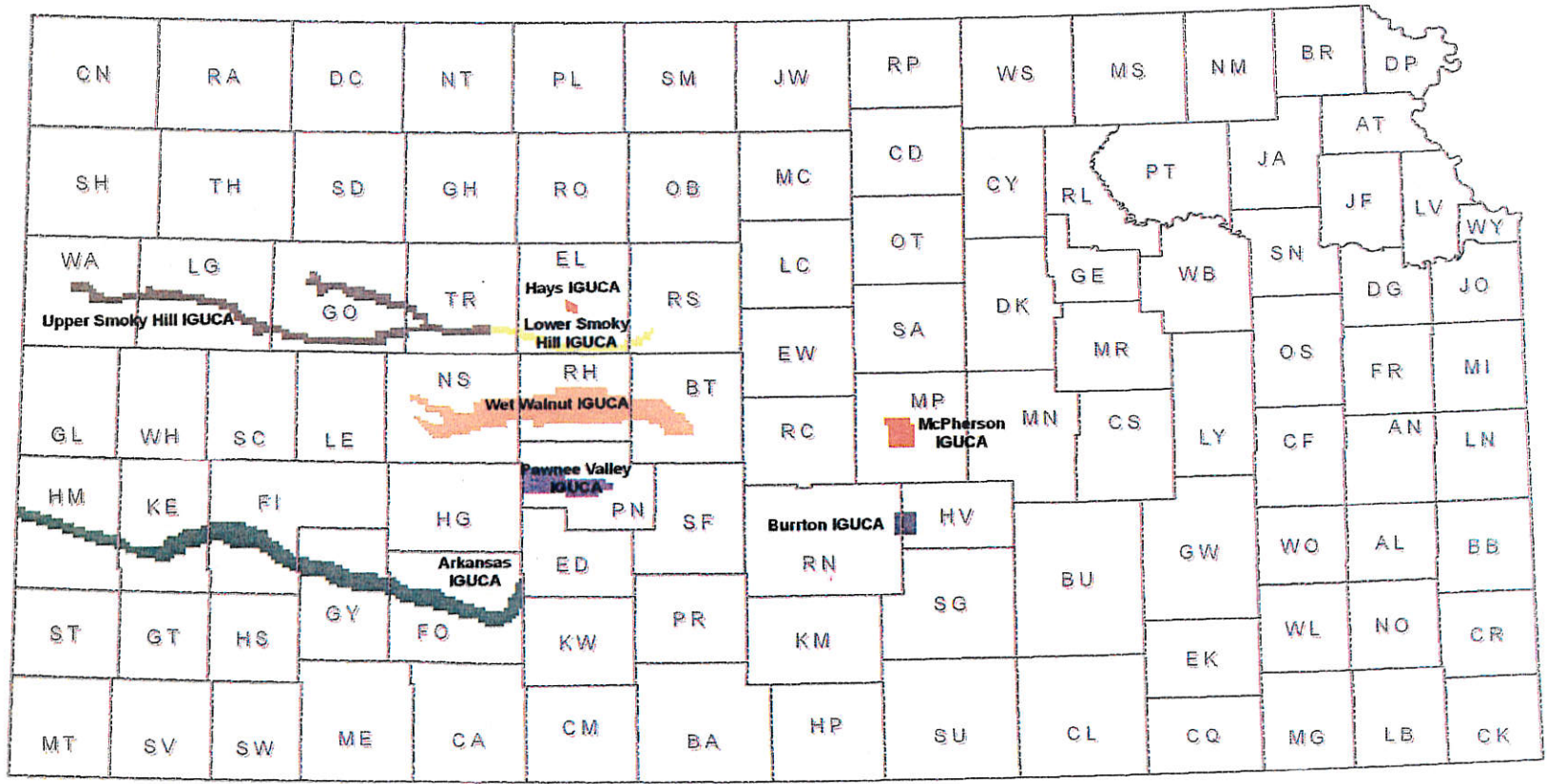
1. Amend K.S.A. 82a-1038 to provide for a 20 year sunset on all IGUCA's or alternatively establish an independent hearing to either review or disband an IGUCA after 20 years of operation.
2. Amend K.S.A. 82a-1038 to permit the acceptance of appropriation applications if water is available.

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



# Intensive Groundwater Use Control Areas in Kansas

Exhibit 1 - KAPA Testimony - HB2070  
January 22, 2007

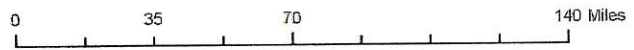


### Legend

- Arkansas IGUCA
- Hays IGUCA
- McPherson IGUCA
- Upper Smoky Hill IGUCA
- Burrton IGUCA
- Lower Smoky Hill IGUCA
- Pawnee Valley IGUCA
- Wet Walnut IGUCA



Kansas Department of Agriculture  
Division of Water Resources  
January 12, 2007

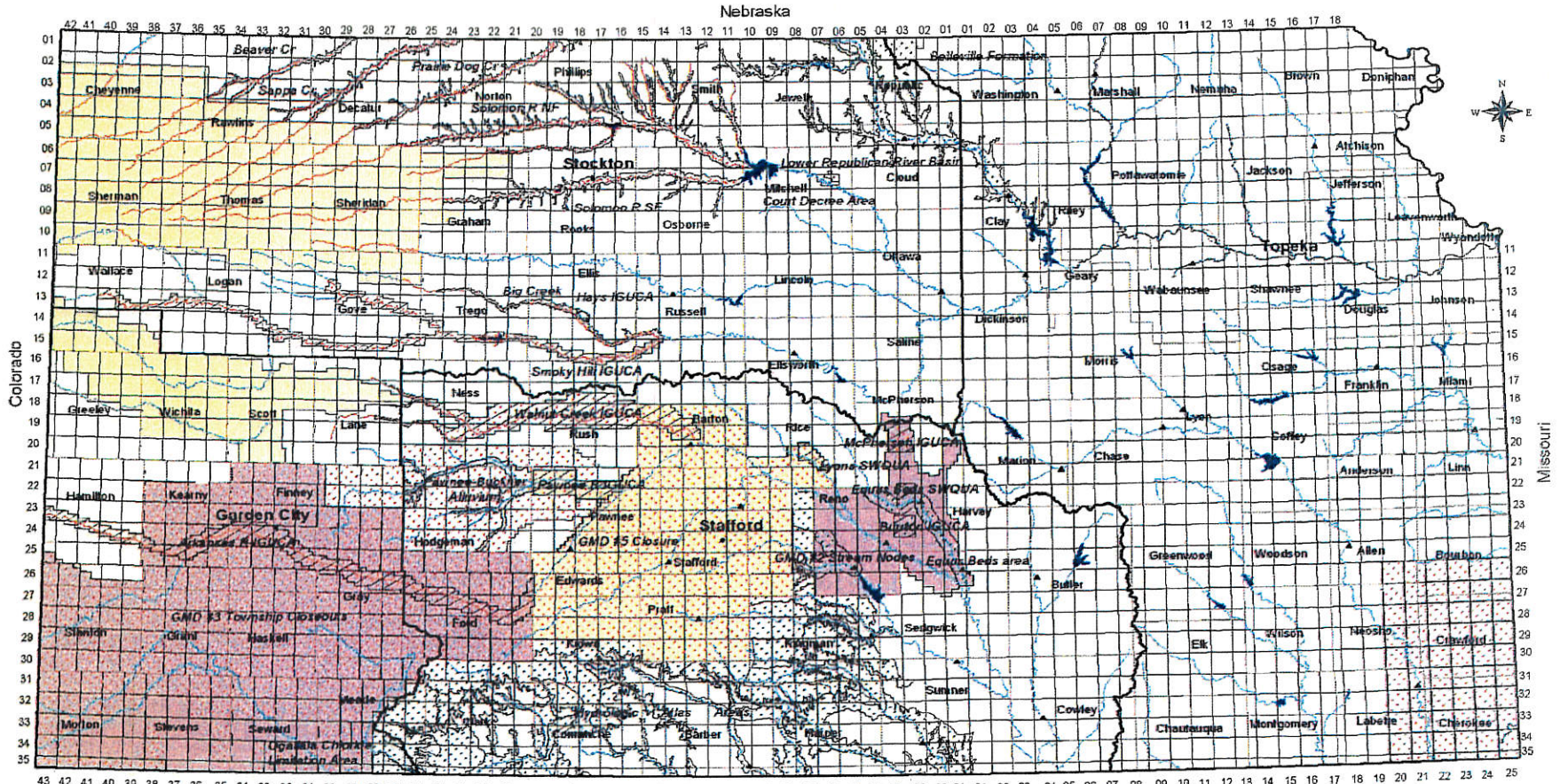




Kansas Department of Agriculture

# Closed and Restricted Areas

Division of Water Resources



Kansas Department of Agriculture  
 Division of Water Resources  
 Technical Services Section  
 K. Emmors

- GMD #1, #4, #5
- GMD #2, #3
- IGUCA or SWQUA

- Closed Area, generally excluding temporary and other small uses in some cases. See regulation for details.
- Area subject to Special Restrictions. See regulation for requirements.

- Closed Streams, generally excluding temporary and other small uses in some cases. See regulation for details.
- Restricted Streams, specific restrictions for streams and alluvium given in regulation.
- Streams, surface water generally available. Includes Missouri River.

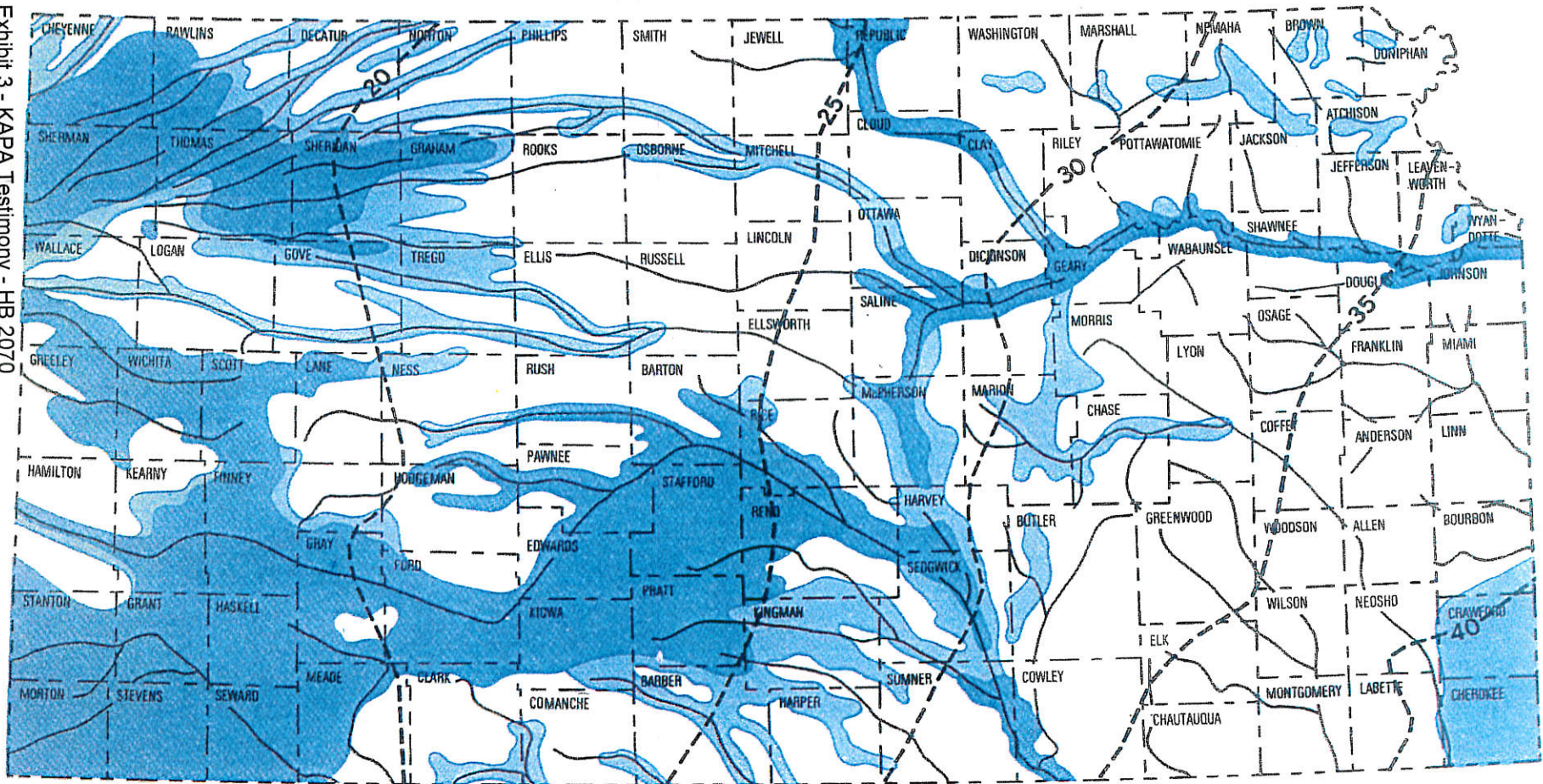
- Field Office Boundary
- Regional Field Offices
- County
- Name of affected area
- MDS Gaging Stations


Disclaimer: Features on this map represent conditions as of the date of the map and are subject to change. The user is referred to specific policies, regulations, and/or orders of the Chief Engineer.  
 July 18, 2008




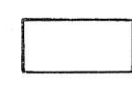
# General Availability of Ground Water and Normal Annual Precipitation in Kansas

Exhibit 3 - KAPA Testimony - HB 2070



 Yield of greater than 500 gallons per minute

 Yield of 100-500 gallons of water per minute

 Yield of less than 100 gallons of water per minute

 Precipitation contours in inches per year

0  100 mi



# PROCEEDINGS TO AMEND THE PAWNEE VALLEY IGUCA

JULY 2006

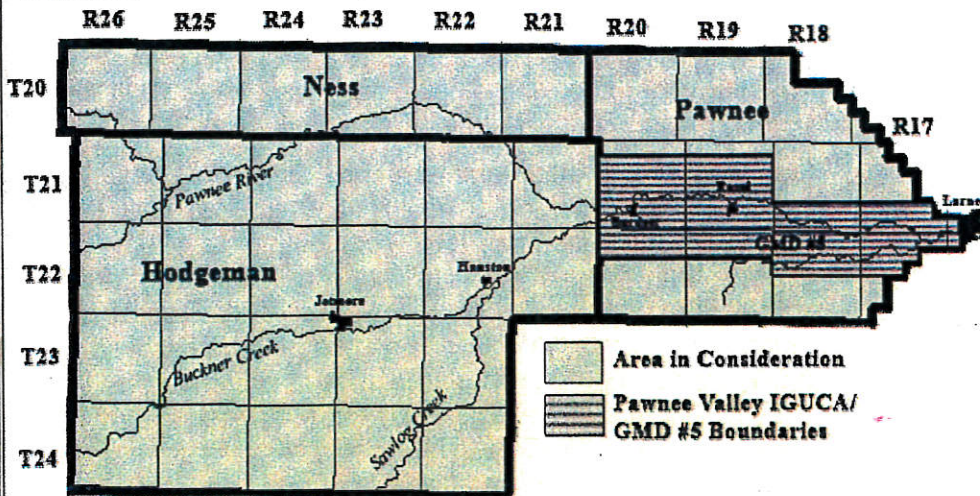
On June 19, 2006, the chief engineer initiated proceedings to amend the order that established the Pawnee Valley Intensive Groundwater Use Area (IGUCA) to include the part of the Pawnee-Buckner-Sawlog subbasin located in Hodgeman, Ness and Pawnee counties. These proceedings will include a public hearing to determine whether the Pawnee Valley IGUCA should be expanded and, if so, to define the new boundaries and the corrective control provisions necessary to regulate ground water use within those boundaries.

The hearing will be open to the public, but only parties to the proceedings will have an opportunity to present argument and evidence and conduct cross-examination of witnesses. Owners of water rights whose source is within the area under consideration, and others who have a legal interest in the outcome of the hearing may become parties to the hearing by attending a pre-hearing conference or filing a petition to the chief engineer for intervention. A time will be set aside for persons who do not wish to become parties to give their statements for the record.

The Subbasin Water Resource Management Program will hold public information meetings in Jetmore and Larned to explain its studies of the Pawnee-Buckner-Sawlog subbasin and water resource management.

## AREA UNDER CONSIDERATION

The area under consideration for designation of an IGUCA include the part of the Pawnee-Buckner-Sawlog subbasin located in Hodgeman, Ness and Pawnee counties. There are 755 non-domestic surface water and ground water rights in this area. Ninety-eight percent of the total quantity of water authorized under these water rights is used for irrigation.



## SCHEDULE

### Public Information Meeting

July 27, 2006  
10 a.m.  
(9 a.m., Open House)  
Jetmore,  
King Center

### Public Information Meeting

July 27, 2006  
3 p.m.  
(2 p.m., Open House)  
Larned,  
Larned City Hall

### Pre-hearing Conference

August 16, 2006  
1 p.m.  
(10 a.m. – noon,  
Open House)  
Larned,  
Larned City Hall

### Public Hearing

October 24, 2006  
10 a.m.  
Larned,  
Larned City Hall

### Public Comments

October 25, 2006  
7 p.m. - 9 p.m.  
Larned,  
Larned City Hall



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Intensive Groundwater Use Control Areas

Living

Searched for **Intensive Groundwater Use Control Areas**. Results 1 -

Education

**[PDF] WATER MANAGEMENT PROGRAMS**  
... Major issues include geographic information systems (GIS), **intensive use control areas** (IGUCAs), flowmeter specifications, and water assurance. [www.kwo.org/Kansas%20Water%20Plan/Water\\_management\\_programs](http://www.kwo.org/Kansas%20Water%20Plan/Water_management_programs)

Business

**[PDF] 1 WATER MANAGEMENT INTRODUCTION State policy regarding**  
... State law provides for designation of special **use areas**, called "**intensive use control areas**" to address defined **groundwater** problems (KSA 45-220). [www.kwo.org/Kansas%20Water%20Plan/Water\\_management05.pdf](http://www.kwo.org/Kansas%20Water%20Plan/Water_management05.pdf) - ; [\[ More results from www.kwo.org/Kansas%20Water%20Plan \]](#)

Travel & Tourism

Facts & History

**[PDF] Meeting Notes Lower Arkansas Basin Advisory Committee**  
... is to make the area an **Intensive Groundwater Use Control Area** on water **use** would mandate ... the Milford and Perry Lake areas been designated. [www.kwo.org/BACs/LARK/min\\_LARK\\_072104\\_db.pdf](http://www.kwo.org/BACs/LARK/min_LARK_072104_db.pdf) - 2006-03-02 - [Text Version](#)

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**[PDF] Walnut Basin Advisory Committee Meeting September 29,**  
... It also keeps them off of **areas** that are frequented by recreational users. [www.kwo.org/BACs/WAL/Min\\_WAL\\_092904\\_db.pdf](http://www.kwo.org/BACs/WAL/Min_WAL_092904_db.pdf) - 2006-03-02 - [Text Version](#)

**[PDF] Discussion and Recommendations for long-term management**  
... to better manage Ogallala, especially for **areas** that must ... statuto corrective **control** procedures, an **Intensive Groundwater Use Control Area**. [www.kwo.org/Reports%20&%20Publications/ogallala\\_mac\\_rpt.pdf](http://www.kwo.org/Reports%20&%20Publications/ogallala_mac_rpt.pdf) - 2006-03-02 - [Text Version](#)

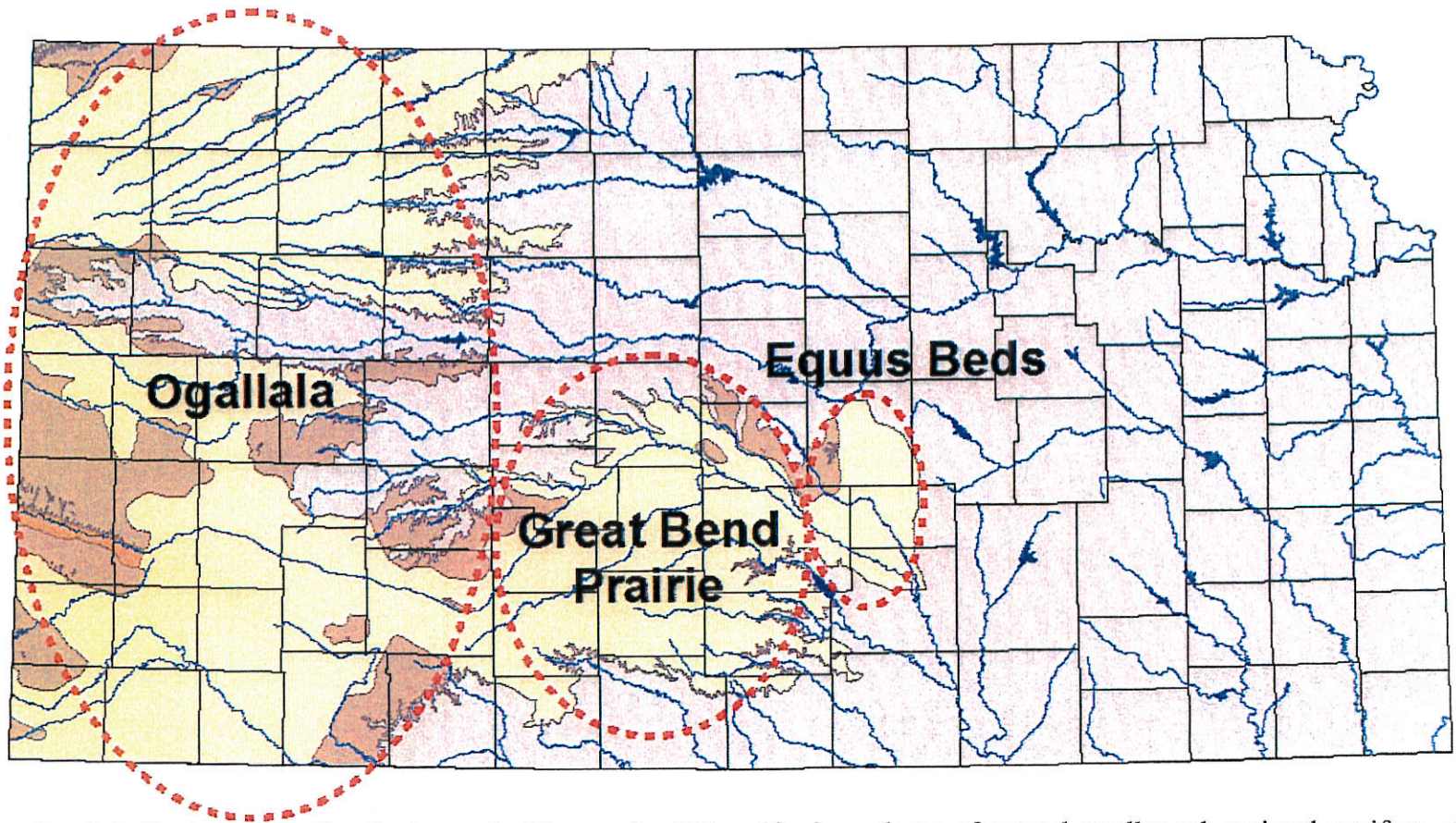
**[PDF] EXHIBIT A - CONSERVATION PRIORITY AREAS, EQIP GRANTS**  
... B - TOTAL CREP ACRES AND AUTHORIZED QUANTITY OF **GROUNDWATER** Ready™ corn, a ... of Lorsban™ insecticide to **control** Western Bean Cutworm. [www.kwo.org/KWA/Rpt\\_Exhibits%20A\\_P.pdf](http://www.kwo.org/KWA/Rpt_Exhibits%20A_P.pdf) - 2006-08-23 - [Text Version](#)

**[PDF] CREP**  
... Bottoms .....12 Figure 4. **Groundwater** Management Districts ... 16 River **Intensive** Ground Water ... 1990's water **use** in the ... [www.kwo.org/KWA/Rpt\\_Kansas\\_CREP\\_Proposal\\_080706\\_ss.pdf](http://www.kwo.org/KWA/Rpt_Kansas_CREP_Proposal_080706_ss.pdf) - 2006-08-23 - [Text Version](#)

**KDHE - Division of Environment - BEFS - Water Quality 1996 - Part 4**  
... Additional monitoring is done in **intensive groundwater** usage **are** procure long-term, statewide **groundwater** quality data for **use** in the ... [www.kdheks.gov/befs/305b\\_1996/part\\_4.htm](http://www.kdheks.gov/befs/305b_1996/part_4.htm) - 36k - 2006-09-18 - [Text Version](#)

**[PDF] Upper Arkansas River Conservation Project Reconnaissance**  
... **groundwater** interactions and possible improvements in water **use** of Declining **Groundwater** Levels ... or the period of **intensive** water use. [www.kwo.org/Reports%20&%20Publications/C&A/rpt\\_GMD3reconstudy](http://www.kwo.org/Reports%20&%20Publications/C&A/rpt_GMD3reconstudy)





**Figure 5 – Sub-Regional Aquifer Systems.** In Kansas, the HP aquifer is made up of several smaller sub-regional aquifers-- the Ogallala, Great Bend Prairie and Equus Beds. On a national scale, many people and publications will refer to the HP aquifer as the Ogallala. In Kansas, we make a distinction. The Great Bend Prairie and Equus Beds aquifers are generally closer to the land surface (not as deep) and are more responsive to recharge. They are managed as sustainable systems. The Ogallala is generally deeper and, with less annual precipitation, has little natural recharge. Recharge estimates for the Ogallala generally range between 0.5 to 1 inch annually.



# Ed Junior Farm, Inc.

Ed, Margaret & Tim Oborny



Written  
Only

1-21-2006

Representative Larry R. Powell –Chair  
Agriculture and Natural Resources Budget

Representative Powell:

Late last week House Bill No. 2070 was brought to my attention and I would like to comment on this proposed amendment to K.S.A. 2006Supp.82a-1038, better known as the intensive groundwater use control act. Perhaps you might share my thoughts with your committee at their meeting on Monday the 21<sup>st</sup> of January.

My name is Edward J. Oborny Jr. president of Ed Junior Farm Inc., a small family farm corporation, in Rush County, near Bison, Kansas. Our farm has just completed fifteen years of participation in the Wet Walnut Creek Basin IGUCA. My comments reflect my own thoughts and are not intended to represent any other IGUCA in Kansas, or any organization that I hold membership in.

I have had the privilege of applying irrigation water to a portion of our farm ground for over 50 years. My father drilled his first irrigation well in 1939, and at an early age I learned the value of underground water and how efficient and conservative use could prolong the use of that water. The Wet Walnut aquifer was a small shallow system that extended about a mile to either side of Walnut Creek and runs from Ness City to Great Bend. Well yields are subject to the static water table levels, and those levels are high when precipitation is adequate and low when dry periods are extended.

In 1989 a surface right water holder Cheyenne Bottoms Refuge, who acquired surface water from Walnut Creek, initiated impairment hearings. The chief engineer of the state division of water resources conducted IGUCA hearings in Great Bend for an extended period of time with many interested parties testifying. The results of the hearings were not liked by the irrigators, as three priorities rights were established. Vested rights, with 18 inches per acre use, Senior were 12 inches per acre, and Junior were 6.5 inches per acre use. Perhaps the least palatable part of the order was the fact that Cheyenne Bottoms Refuge's priority number was 439 a Senior right, however 10 Senior rights with lower priority numbers, actually Senior rights to Cheyenne Bottoms, were actually cut 33.33 %. Many of the irrigation right holders felt that the 1945 Water Appropriations Act was compromised.

Why would I bring all this history to your attention? The fact of the matter is that even though I did not like the order, fifteen years later I feel that the IGUCA actually made us better more efficient irrigators. The Walnut Creek Basin had over appropriated

water in the early-developed areas to my thinking, but those areas along with the higher numbered rights still have some irrigation water. It did not have the lower valuation impact that reducing irrigated ground to total dry land would have had. Neighbor relations remained just that. HB 2070 could limit the life of an IGUCA to five years. In most cases, the problem that initiated the IGUCA took many years to develop. Those problems, in all probability, need more than five years of an IGUCA to evaluate the progress. The five-year life might reinstate the hearing process that often, and become a financial burden on the taxpayers and right owners. And why would we want the chief engineer to have the authority to delegate the enforcement of any corrective control to ground water management district number 4, or to a city in the IGUCA? This reeks with conflict of interest. The Division of Water Resources should continue to be the enforcement agency. And lastly, please allow time for the people involved in these IGUCA areas or proposed areas to have a chance to submit testimony so that the people involved may have a say in there future. Thank you for your consideration. Edward J. Oborny Jr.