

## MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman John Faber at 3:30 P.M. on February 20, 2008, in Room 783 of the DSOB.

All members were present except, Representatives Holmes and Flora, both of whom were excused.

## Committee staff present:

Raney Gilliland, Kansas Legislative Research Department  
Hank Avila, Kansas Legislative Research Department  
Gordon Self, Revisor of Statutes  
Kristen Kellems, Revisor of Statutes  
Florence Deeter, Committee Assistant

## Conferees appearing before the committee:

John Donley, Assistant General Counsel, Kansas Livestock Association  
Brad Harrelson, State Director, Kansas Farm Bureau  
Sue Schulte, Director of Communications, Kansas Corn Growers Association  
Woody Moses, Managing Director, Kansas Aggregate Producers' Association  
Sharon Falk, Manager, Groundwater Management District #5  
Mark Rude, Manager, Groundwater Management District #3  
Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture  
Pat Lehman, Northwest Kansas Groundwater Management District #4  
Bob Seiler, President, Equus Beds Groundwater Management District #2  
Kent Lamb, Mackville, Kansas  
Norman Jennings, President, Smoky Hill Vineyards and Winery  
Tuck Duncan, General Counsel, Kansas Wine and Spirits Wholesalers Association  
John Brewer, Owner, Wyldewood Cellars  
Phillip Bradley, Kansas Licensed Beverage Association

## Others attending:

See attached list.

The Chair opened the hearing on **HB 2908 - permits for farm wineries**.

Norman Jennings, President, Smoky Hill Vineyards and Winery, spoke as a proponent for the bill (Attachment 1). He listed the important issues addressed by the bill:

- Allowing wineries to sell to temporary permit holders, such as at the Kansas State Fair;
- Bringing Kansas into compliance with federal labeling requirements;
- Allowing permits to sell by-the-bottle at farmers' markets;
- Allowing multiple licenses and manufacturing locations.

Tuck Duncan, General Counsel, Kansas Wine and Spirits Wholesalers Association, stated that the Association had no objection to the provisions of the bill (Attachment 2). He suggested deleting the language on page 2, line 20, ". . .that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas," as being in conflict with federal regulations.

John Brewer, Owner, Wyldewood Cellars, Mulvane, spoke in support of the bill (Attachment 3). He noted that Wyldewood Cellars has four sales locations, 44 full-time employees, and provides over \$300,000 annually in taxes to the state. He stated that, by allowing sales to temporary permit holders, the bill corrects an oversight, and removing the 60% in-state requirement sets wineries free from an onerous restriction.

Tom Gronerman, Director, Alcoholic Beverage Control, Kansas Department of Revenue, testified as a neutral party, recommending that the bill needs some clarification regarding the temporary permits issued by the Director.

Phillip Bradley, CEO, Kansas Licensed Beverage Association, declared himself neutral regarding the bill, but stated that if **HB 2817 - microbrewery license, deleting the 50% Kansas-grown requirement** - were

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amended into the bill, the Association would support the bill (Attachment 4). He commented that such an amendment would place all alcohol products on the same level.

The hearing on HB 2908 was closed.

The Chair opened the hearing on HB 2625 - intensive groundwater use control areas, mandatory review and advisory committees. Staff Raney Gilliland reviewed the bill, saying the bill deals with intensive groundwater use control areas, IGUCA being the acronym used. The Chief Engineer of the Division of Water Resources uses IGUCA as a tool for water resources in Kansas. A 2007 interim committee suggested the establishment of a Review Advisory Committee for the purpose of looking at IGUCA's established within the last seven years. Members of the Review Advisory Committee are to be selected at random from the agriculture, industry and municipality arenas; two additional members are appointed by the Chief Engineer and one additional member by the Groundwater Management District. In addition, a Designation Advisory Committee would give consideration to the public interest for the purpose of allowing corrective action in the event a new IGUCA is proposed. Mr. Raney said one technical piece to be added on page 3, line 35, under sub-section (a) would state, "any intensive groundwater use control area".

John Donley, Assistant General Counsel, Kansas Livestock Association, testified as a proponent for the bill (Attachment 5). He noted that the present IGUCA (Intensive Groundwater Use Control Area) statute lacks an independent hearing officer and a mandatory review of IGUCA orders; both concerns are addressed by this bill.

Brad Harrelson, State Director, Kansas Farm Bureau, spoke in favor of the bill (Attachment 6). Noting that water conservation has become a top priority for agriculture, he said the review process and the independent hearing officer are important safeguards not only to regulate water usage, but to protect local economies. He stated that the present statute sometimes creates a conflict of interest among the decision-making principals.

Woody Moses, Managing Director, Kansas Aggregate Producers' Association, spoke in support of the bill (Attachment 7). He reviewed the history of groundwater management in the state, observing that the IGUCA statute created a conflicting water-rationing system and presently appears to be supplanting the original water-governing statute, the Kansas Water Appropriations Act (KWAA). He stated that the bill provides a clear procedure for establishing or continuing an IGUCA and clarifies the role between the Division of Water Resources and Groundwater Management Districts (GMDs).

Sue Schulte, Director of Communications, Kansas Corn Growers Association, spoke favorably of the bill, saying it gives citizens a voice in the IGUCA process (Attachment 8).

Sharon Falk, Manager, Big Bend Groundwater Management District #5, Stafford, testified as a proponent, suggesting additional wording for Section 4 (a) (1), "that the chief engineer shall serve as the nonvoting chairman . . ." *and shall maintain a complete true and correct record of the hearing* (Attachment 9). She noted that some living near an IGUCA with interests within the IGUCA should not be excluded.

Mark Rude, Manager, Southwest Kansas Groundwater Management District #3, Garden City, provided support for the bill (Attachment 10). He said the bill will restore the historical perspective and assure a good working relationship between the Chief Engineer and the Kansas Department of Agriculture. He suggested clarifying the language regarding the hearing process to assure an accurate record of proceedings.

Written testimony in support of the bill was provided by David Brenn, Executive Director, Western Kansas Groundwater Management District #1, Scott City (Attachment 11).

Constantine Cotsoradis, Deputy Secretary, Kansas Department of Agriculture, testified as an opponent of the bill (Attachment 12). He stated that the foundation for water management is the Kansas Water Appropriations Act. IGUCAs are additional tools to manage water in areas with declining resources; however, the bill would prohibit the chief engineer from independently initiating an IGUCA, thus keeping him from fulfilling his legislative mandate. Mr. Cotsoradis said IGUCAs were never intended to replace the chief engineer's authority, and he cited Nebraska's failure to comply with the Republican River Compact to illustrate the

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problem which the bill could create. As an alternative to the bill, he recommended establishing criteria under which the chief engineer may initiate an IGUCA. He also noted that the bill's provision of review committees creates an inflexibility that could result in unintended and untenable consequences.

Pat Lehman, Northwest Kansas Groundwater Management District #4, Colby, qualified his support for the bill (Attachment 13). He said the District supports amending Section 3 of K.S.A. 82a-1036, which reverses an Attorney General's opinion (2002-24). However, he said the remainder of the bill is deficient in that it removes the initiative from GMDs. He offered a number of recommendations to improve the bill.

The Chair noted written testimony was provided in opposition to the bill:

Bob Seiler, President, Equus Beds Groundwater Management District #2 (Attachment 14) and Frank Austenfeld, Attorney, representing the Kansas Wildlife Federation (Attachment 15).

Kent Lamb, Mackville, spoke in opposition to the bill, saying that the composition of the review committees will pit neighbor against neighbor, and limiting the authority of the Chief Engineer will dilute needed expertise in dealing with groundwater issues. Further, he said the bill lacks flexibility to apply to varying situations (Attachment 16).

The hearing on HB 2625 was closed.

The meeting was adjourned at 5:05 p.m. The next meeting is scheduled for Thursday, February 21, 2008.

# HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 20, 2008

NAME	REPRESENTING
Dr John A Brewer	Wyldehood Cellars
David Brunner	GMD #1
Kent Lamb	Individual
Lindsey Douglas	Hein Law Firm
JEAN MILER	CAPITOL STRATEGIES
John Ponky	Ks Livestock Ass'n
Kent Askren	Ks Farm Bureau
Wes Taylor	Ks Dept of Agriculture
Sue Schutte	Ks. Corn Growers
Carole Jordan	Ks Dept of Commerce
MARK R VIDE	GMD 3
CU Cotsonadi	KDA
Dana Petton	KAWG
Mary Jane Stankiewicz	KARA
LANE LETOURNEAU	KDA
Paul Graves	KDA
David Barfield	KDA
Adrian Polansky	KDA

February 19, 2008

To: House Agriculture and Natural Resources Committee

From: Norman M. Jennings

**RE: HB2908**

Mr. Chairman and members of the committee, thank you for the opportunity to offer this testimony. The grape and wine industry in Kansas is one that has the potential to be a major contributor to the state agritourism and value-added agricultural industries, as well as state tax revenue sources. As discussed during my report to the committee from the Grape & Wine Advisory Council earlier this session, we are a young industry that has seen substantial growth in the past few years. As our industry grows, we discover the changes that need to be made in our law to allow us to operate in similar fashion the wineries of other states. It is important to note that these items are in no way a radical departure from the ways wineries are allowed to operate in many other states.

HB 2908 addresses the following issues that when implemented will have a positive impact on our industry growth.

1. Allows wineries to sell to temporary permit holders. This fixes the logistics problem that keeps the wines that are not currently available at retail from being offered at the state fair. Currently the temporary permit holder must buy from a retailer with a wholesaler license. As only two wineries are available through retail stores, this leaves most Kansas wines out of the state fair and similar venues.
2. Makes the labeling requirements the same as the federal requirements. Example being a wine can not be called a Kansas wine if it contains less than 75% of Kansas grown fruit.
3. Allows the Director of the ABC to issue a permit allowing for sales by the bottle at farmers markets. There are some wineries that grow fruit and sell at farmers markets. They sell their fruits, vegetables, jellies, etc... and would like to be able to sell their wines at the same venues. This provision is similar to that used in other states including New York.
4. Make the same fix to farm winery industry that was done for micro breweries last session in that they would be allowed to have more than one winery license and manufacturing location.
5. Allows for the temporary permit holder at the state fair to sell, buy the original unopened bottle, the wines that are sold by the glass.

The items above are fully supported by the Kansas Grape Growers and Wine Maker Association. This association currently represents the majority of commercial growers and farm wineries in Kansas. The bill as published did contain language on page 2 lines 14 to 17 of section 1-c that the association is neutral toward. This language strikes the requirement to utilize a minimum of 60% Kansas fruit. As noted above, such wines are not allowed to be labeled as a Kansas wine and also can not be given a vintage date. The association is neutral on the issue for two reasons. Our industry desires the growth and expansion of Kansas fruit acreage. We also desire the growth of the winery industry. Because grapes are a perennial crop that requires 4 years to produce, we can never match supply with demand. When blessed with growth substantially above what the vineyard acreage will allow, some do not want the industry to suffer and not be able to satisfy this growth demand. As well, some want to be able to plant grapes and open their winery right away, utilizing out-of-state fruit to realize some sales while their vineyards become established. Because of the neutral position of our association, we request the removal of the deletion of this language.

We thank the committee for hearing this bill and offer to answer any questions you may have at this time.

Sincerely,

Norman M. Jennings

President – Smoky Hill Vineyards & Winery  
Vice President - Kansas Grape Growers & Wine Makers Association  
Chairman – Grape & Wine Advisory Council

**WINE & SPIRITS**

WHOLESALE ASSOCIATION

**Statement of  
R.E. "Tuck" Duncan, General Counsel  
February 20, 2008**

**The Kansas Wine & Spirits Wholesalers Association supports HB 2908.**

We have no objection to extending sale to *holders of temporary permits as authorized by K.S.A. 2007 Supp. 41-2645, and amendments thereto.* (p.1 line 20).

We do not object to the removal of the requirement that not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas provided that the label of domestic wine and domestic fortified wine shall be in *accordance with labeling requirements established by the United States department of treasury.* But you should delete the language at page 2 line 20 which states "that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas." as it is not necessary and in conflict with the amendment. Treasury regulations Title 27: Alcohol, Tobacco and Firearms, part 4—labeling and advertising of wine, Section 4.25 *provides that:*

(a) *Definition* —(1) *American wine.* An American appellation of origin is: (i) The United States; (ii) a State; (iii) two or no more than three States which are all contiguous; (iv) a county (which must be identified with the word "county", in the same size of type, and in letters as conspicuous as the name of the county); (v) two or no more than three counties in the same States; or (vi) a viticultural area (as defined in paragraph (e) of this section).

(2) *Imported wine.* An appellation of origin for imported wine is: (i) A country, (ii) a state, province, territory, or similar political subdivision of a country equivalent to a state or county; or (iii) a viticultural area.

(b) *Qualification* —(1) *American wine.* An American wine is entitled to an appellation of origin other than a multicounty or multistate appellation, or a viticultural area, if:

(i) **At least 75 percent of the wine is derived from fruit or agricultural products grown in the appellation area indicated;** (ii) it has been fully finished (except for cellar treatment pursuant to §4.22(c), and blending which does not result in an alteration of class or type under §4.22(b)) in the United States, if labeled "American"; or, if labeled with a State appellation, within the labeled State or an adjacent State; or if labeled with a county appellation, within the State in which the labeled county is located; and (iii) it conforms to the laws and regulations of the named appellation area governing the composition, method of manufacture, and designation of wines made in such place.

We support the sale of this agricultural alcohol product at farmers markets. This provision is similar to one in New York law. *"The director may issue to a licensed farm winery a permit to sell its domestic wine, labeled as set forth in subsection (c), by the bottle, at farmers markets operated on a not-for-profit basis. The permit shall state the specific location of the farmers market and shall require that an agent or representative from the farm winery be present, with the permit, at the time of sale."* (p.3, line 3)

We have no objection to the multiple ownership provision (p.6) and we support the sale of *wine in its original, unopened container* at the state fairgrounds during the fair by a person who has entered into an agreement with the state fair board for that purpose. (p. 8, line 31).

Thank you for your attention to and consideration of these matters.

*Attached: What the Wine Label Tells You, Source: ttb.gov*

## WHAT THE WINE LABEL TELLS YOU

As consumers become more adventuresome in their wine selections, they look to the label for more information. What makes one wine different from another? What is the dominant grape in the wine? Where were they grown? Although TTB regulations are quite detailed and only apply to wine of at least seven percent alcohol, this pamphlet contains enough basic information to assist the consumer in making an informed choice when buying wine. This pamphlet discusses wine made from grapes. Wine may be also made from other fruit and agricultural products.

### BRAND

The brand name is a name used by the bottler to identify the product. Any brand name is acceptable if it does not mislead the consumer.

### VINTAGE DATE

A vintage date on the label indicates the year in which the grapes were harvested. If a vintage date is shown on the label at all, an appellation of origin smaller than a country must also be shown. If an American or imported wine uses a state, county or their foreign equivalent as an appellation of origin, 85 percent of the grapes must be from that year; if a viticultural area or the foreign equivalent is used, the percentage is raised to 95 percent.

### APPELLATION OF ORIGIN

Appellation of origin is another name for the place in which the dominant grapes used in the wine were grown. It can be the name of a country, state, county or geographic region called a viticultural area or their foreign equivalents.

A country, state or county appellation or their foreign equivalent on the label means that at least 75 percent of the wine is produced from grapes grown in the place named.

### VITICULTURAL AREA

An American viticultural area is a defined grape-growing region with soil, climate, history and geographic features which set it apart from the surrounding areas.

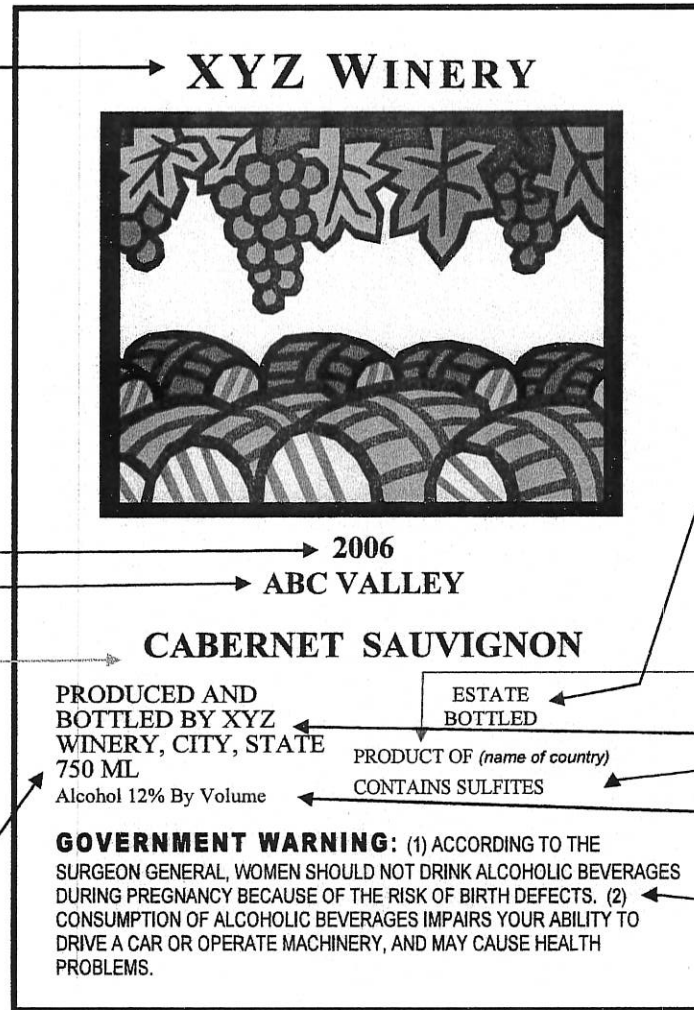
A viticultural area appellation on the label indicates that 85 percent or more of the wine was produced from grapes grown in the named area.

### NET CONTENTS

The net contents of wine is stated in the metric system of measure and is the amount of product in the container.

### VARIETAL DESIGNATIONS

Varietal designations are the names of the dominant grapes used in the wine. Cabernet Sauvignon, Chardonnay, Zinfandel, and Merlot are examples of grape varieties. A varietal designation on the label requires an appellation of origin and means that at least 75 percent of the grapes used to make the wine are of that variety, and that the entire 75 percent comes from the stated appellation of origin. (Except "Vitis usca" grapes, such as Concord, which require 51 percent).



### OTHER DESIGNATIONS

Wine labels are not required to bear a varietal designation. Other designations may be used to identify the wine. Examples are Red Wine, White Wine, Table Wine.

Some imported wines are designated with a distinctive name which is permissible only on specific wines from a particular place or region within the country of origin, for example, Asti Spumanti from Italy and Bordeaux from France.

### ESTATE BOTTLED

"Estate Bottled" means that 100 percent of the wine came from grapes grown on land owned or controlled by the winery, which must be located in a viticultural area. The winery must crush and ferment the grapes, finish, age, process and bottle the wine on their premises. The winery and the vineyard must be in the same viticultural area.

### NAME AND ADDRESS

The name or trade name and address(es) of the bottler or importer must appear on the label. Domestic wines will state "Bottled By:" followed by the name and address of the bottler. Imported wines will state "Imported By:" followed by the name and address of the importer.

Domestic wines may have this statement further qualified with terms such as "Produced", meaning that not less than 75 percent of the wine was fermented at the stated address, or "Vinted", which means that the wine was subjected to cellar treatment at the stated address.

### COUNTRY OF ORIGIN

A country of origin statement is required on all imported wines. For example, "Product of (insert name of country)".

### ALCOHOL CONTENT

A statement of alcohol content in percent by volume appears on most labels. As an alternative some bottlers prefer to label wine with an alcohol content between 7 and 14 percent as "Table Wine" or "Light Wine."

### DECLARATION OF SULFITES

Required on any wine intended for interstate commerce that contains 10 or more parts per million (ppm) sulfur dioxide. Not required for wines only sold in intrastate commerce.

### HEALTH WARNING STATEMENT

Required on all alcoholic beverages containing .5% or more alcohol by volume. "GOVERNMENT WARNING" must appear in capital letters and bold type. The remainder of the statement may not appear in bold type. The statement must be separate and apart from all other information.

### GENERAL REQUIREMENTS

All mandatory information is required to be shown in readily legible printing and on a contrasting background. All mandatory statements on a 750ml bottle, except the alcohol content statement, must appear in printing no smaller than 2mm. The alcohol content statement is required to be from 1-3mm in height regardless of container size.



# Wyldeewood Cellars Winery

P.O. Box 45 Mulvane, Kansas 67110 (316) 554-9463 (316) 554-9191

Good afternoon Chairman and members of the committee. I am Dr. John A. Brewer owner of Wyldeewood Cellars and I am here to testify in support of HB2908. Wyldeewood Cellars has four sales locations, 44 full time employees, and provides over \$300,000 annually in direct taxes to Kansas (gallonage, liquor enforcement, sales, and property taxes). We purchase fruit from over 40 growers and produce over 55% of the wine made in Kansas. Wyldeewood Cellars' wines have earned over 400 International Wine Awards, including numerous double and triple gold, and our Spiced Elderberry Wine won a national competition to be the only wine served in the Olympic Village in the 2002 Winter Olympics. As a result of our many awards, I was invited to be the first Professional International Wine Judge in Kansas. Other Kansas wineries have also won numerous International Wine Awards.

Governor Sebelius's recent statement, about not making wine in Kansas, highlighted the problems that the Kansas wine industry is experiencing. The modifications to the Farm Winery Law proposed by HB2908 will help the Farm Wineries bring their products to market and educate the public that there is a Kansas Wine Industry, which produces World Class Wines.

The ability to sell to temporary permit holders corrects an oversight. At present, farm wineries can sell directly to clubs and drinking establishments, but have to sell to a liquor store, who then sells to the temporary permit holders. This restricted the number of wineries that could be represented at the State Fair and severely limits temporary permit holders' use of Kansas wines.

The 60% Kansas grown requirement has not helped encourage Kansas agriculture in fruit crops, but has restricted the establishment of new wineries and the growth of existing wineries. After 13 years in business, we still are not able to buy more than a few hundred pounds of grapes in Kansas in any given year. Our best grape purchase year allowed us to make about 75 gallons of wine. Fruit growers routinely contact me about becoming an approved elderberry supplier. They see the market that we have created for elderberries and are willing to invest their money to become a part of that market. The same holds true for grapes. The 60% regulation requires growers to invest for up to five years before a market has been established. Very few people are willing to do this. Since Kansas can not require out of state wineries to use 60% Kansas grown fruit in the wine they sell in Kansas, the recent Supreme Court decision suggests that our 60% requirement is unconstitutional. Several states have already removed their in state fruit requirement in light of the Supreme Court decision. Neither Oklahoma or Colorado have an in state fruit requirement. Oklahoma has 54 wineries and Colorado has over 80. The Kansas wine industry is ten years older than Oklahoma's, and we still have less than 20 wineries.

To be able to produce a profit, a winery has to sell most of its products at retail. Retail outlets are expensive to maintain all year and must be licensed for at least nine months. Most of our wineries cannot afford this, but they need the outlet for retail sales, since their tasting room is often at the vineyard and not in a retail location. The Farmers' Market permit would allow affordable, controlled, short term retail outlets at existing retail locations.

Last year, microbreweries were allowed to hold multiple licenses. Farm wineries need the same ability so we can combine capital with existing expertise to grow our industry and provide for the transition of

the business to the next generation or other investors. Also multiple licenses would allow multiple fermentation facilities across the state which encourages the use of local fruit. Having to haul fruit for three hours in 100 degree heat to get to the fermentation facility substantially degrades the quality of the fruit. Local processing is good for both the winery and the fruit grower and stimulates interest in local growers.

Adding the ability for the State Fair Wine Garden permit holder to sell wine in unopened containers allows more wineries to be represented at the State Fair and allows the permit holder to generate additional profits for the State Fair. Most of our wineries are not large enough to be distributed or sell through the liquor stores in Hutchinson. The wine exhibit at the State Fair generates a huge amount of public interest in Kansas wines, but the fair goers are told they may have to drive halfway across the State to purchase a particular wine. The ability to sell in unopened containers solves this problem and promotes Kansas wine.

Thank you for your time and interest and please support HB2908 to improve the Kansas Wine Industry.

Dr. John A. Brewer



*Kansas  
Licensed  
Beverage  
Association*

Testimony on  
HB-2908, February 20, 2008

House Agriculture and Natural Resources Committee

Chairman Faber, and Members of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Association. The KLBA represents the interests of the men and women in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels, and restaurants. These are the places you frequent and enjoy with the tens of thousands of employees that are glad to serve you. Thank you for the opportunity to speak today and I will be brief.

Although this bill addresses an issue that we will take no position on today, we have 1 concern that we would ask for you to remedy by attaching the language of HB 2817.

The Farm Wineries and Microbreweries of Kansas have proceeded in parallel paths helping to grow an active and thriving cottage industry. They act as eco-devo incubators for a fine micro market of Kansas craftsmen. And in this bill on pg 2, line 14 it eliminates the minimum percent content. HB 2817 does the exact same thing for the micro-breweries. The Director of the ABC has conducted research and can testify as to the unavailability of any of the required content domestically. And in addition it is extremely unlikely that they can or will be grown in KS in the future. Therefore we ask for the same consideration.

Again thank you for your attention and consideration. I am available for your questions.

*Philip Bradley  
CEO*

785.766-7492  
[www.klba.org](http://www.klba.org)  
[info@klba.org](mailto:info@klba.org)

Philip Bradley



*Since 1894*

## TESTIMONY

To: The House Committee on Agriculture and Natural Resources  
Rep. John Faber, Chairperson

From: John Donley

Date: February 20, 2008

Subject: **House Bill 2625** –An act concerning intensive groundwater use control areas; relating to mandatory review and advisory committees

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 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 Afternoon. My name is John Donley. I am Assistant General Counsel for the Kansas Livestock Association. I appreciate the opportunity to discuss KLA's position on Intensive Groundwater Use Control Areas (IGUCA).

Many of you sat on the Special Committee on Energy, Natural Resources and Environment during last years interims. That committee spent a good deal of time looking into the issues surrounding IGUCAs. KLA is supportive of the bill (HB 2625) that was passed favorably out of that committee. While there are other concerns that we have regarding the IGUCA statute, this bill will help rectify some of the concerns that we currently have about the process of implementing an IGUCA. Additionally, this bill provides for a mandatory review of existing and future IGUCA orders, which is a concept that KLA also supports.

Two of the main concerns that KLA has with the existing IGUCA statute is the lack of an independent hearing officer or committee and the lack of a statutory review of IGUCA orders. HB 2625 addresses both of these concerns.

The provision in HB 2625 that creates an independent designation advisory committee to be the "fact finders" during the hearing to determine whether or not an IGUCA order is necessary in the proposed area is good state policy because it allows affected citizens to be more directly involved in the decision making process. It is important to note that under the language in HB 2625, the chief engineer still has to make the final

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determination as to whether an IGUCA order is necessary. However, the chief engineer will now have a committee of interested stakeholders who will be a resource while making such a decision.

K.S.A 82a-1038(c) provides that IGUCA orders shall remain in full force and effect until or unless an appeal order is issued. Thus, KLA supports the provision in HB 2625 that creates a committee made up similarly to the designation advisory committee that will also be the “fact finders” regarding the review of existing IGUCA orders. This review advisory committee has all of the positive benefits that the advisory committee discussed earlier has as well.

The IGUCA statutes provide that affected water right holders may seek review of the order as it pertains to their water right. (K.S.A. 82a-1038(d)). Under current law, the burden of proof is clearly upon the individual to challenge the order. Our members fear, that once an order is issued there is little or no chance for it to be modified without an expenditure of substantial resources by water right holders. Therefore, the fact that the state shall have the burden of proving the need for the continuance of an IGUCA designation in HB 2625 is an important aspect of this legislation. Frankly, it is too expensive for affected stakeholders to afford to pay the experts that are necessary in order to show that an IGUCA is no longer necessary; therefore, placing the burden of proof on the state during the review process is a positive development in the IGUCA statute.

Finally, KLA is also supportive of the provision in HB 2625 that requires the recommendation from the groundwater management district in the affected groundwater use area before an IGUCA proceeding can be initiated by the chief engineer. It seems logical to us that the entity that is most directly involved with groundwater issues in an area should be the entity that initiates the proceedings to create a potential IGUCA.

Admittedly, KLA has other concerns regarding the IGUCA statute as it exists today. However, the policy that is set forth in HB 2625 is good public policy that alleviates many of the concerns that we have with the current law. Thank you for your time, and I will stand for questions at the appropriate time.

**Kansas Farm Bureau**  
**POLICY STATEMENT**

**House Agriculture and Natural Resources Committee**

**Re:HB 2625 an act concerning intensive groundwater use control areas**

**February 20, 2008**

**Submitted by:**

**Brad Harrelson**

**State Policy Director**

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Chairman Faber and members of the committee, on behalf of the members of Kansas Farm Bureau (KFB) we provide the following comments in support of HB 2625. I am Brad Harrelson, State Policy Director for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Water conservation and appropriate regulatory actions has become a top priority for agriculture the last few years. For those of you that served on the Interim Legislative committee this fall that addressed the IGUCA issue, you got quite an education on the Kansas water law and regulations. At the time of the Interim Committee discussions, KFB was in the midst of a policy development process on the topic and we were unable to share specific policy developed by our members, but we shared our concerns about the process and how it might impact our members. As a review, we were concerned about the appropriate place(s) to use an IGUCA, the administrative procedures and decisions of an IGUCA, and situations where strict administration of the Water Appropriations Act is not practical, and an IGUCA may be the best administrative tool available. I am pleased to share with you today the specific policy adopted by our members in anticipation of this bill and the hearing today. The policy reads as follows:

**We support the implementation of Intensive Groundwater Use Control Areas (IGUCA) as an alternative, if strict administration of water rights would result in a significant negative impact to the local economy or be ineffective in protecting senior water rights. State agencies may be called upon to provide factual information but should not be party in any IGUCA proceedings. An unbiased individual, with equivalent expertise to that of the Chief Engineer, should serve as hearing officer during the IGUCA proceedings; if no equivalent individual exists, then the Chief Engineer may serve as hearing officer. All existing and future IGUCAs should be reviewed periodically. The review should examine all aspects of the IGUCA including its effectiveness and the need for continuation or discontinuation of any corrective controls.**

KFB does support the use of an IGUCA when circumstances are appropriate. There are examples in Kansas, particularly in aquifers with little or no recharge like the Ogallala aquifer, where strict administration of the Water Appropriations Act will be detrimental to the economy. The aquifer is not a smooth, level-bottomed container therefore wells are not equally capable of accessing the resource, regardless of the seniority of the water right. In unique situations like this, where strict enforcement of priority does not accomplish the desired results of satisfying senior water rights and potentially ruins the economy, the use of IGUCA may be a more attractive

option. However, the extraordinary provisions of an IGUCA should be used infrequently and with discretion, but still should respect the seniority of water rights.

The recent IGUCA proceedings in the Pawnee-Buckner basin have brought to light the process of establishing or expanding an IGUCA. HB 2625 addresses many of our concerns, including a more thorough review process through the advisory committees and the establishment of specific review periods. KFB stands in support of the bill, however we believe there is one issue that has still not been addressed. That is the role that State agencies may play during the IGUCA hearings. In the Pawnee-Buckner IGUCA expansion proceedings, the Basin Team a group of state employees working under the Chief Engineer, were granted party status. This meant they were able to provide testimony, call witnesses and cross-examine other witnesses. We believe this presented the hearing officer, in this case the Chief Engineer, with a distinct conflict with his own employees. The Basin Team works for the hearing officer, who is supposed to be impartial and considerate of both sides, yet as a party the Basin Team presented information towards a particular conclusion. It is only human nature to place trust in individuals you hire and supervise, how can someone be completely impartial in this type of situation. The role for agencies should be to provide empirical data and historic information to the Chief Engineer, not to argue for one conclusion or another. We view this as inappropriate and it should not be allowed to occur in the future. KFB suggests the committee amend HB 2625 to make this correction.

KFB appreciates the efforts of the Special Interim Committee and this committee to improve on our existing law. Water management is vital to our economy so it is important we get this right. Thank you for this opportunity to provide testimony.

# KAPA

Kansas Aggregate  
Producers' Association

Edward R. Moses  
Managing Director

## TESTIMONY

Date: February 20, 2008

Before: The House Agriculture & Natural Resources Committee

By: Edward R. Moses, Managing Director  
Kansas Aggregate Producers Association

Regarding: HB 2625 – Intensive Groundwater Use Control Areas (IGUCA)

Good afternoon Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today and provide our comments in support of HB 2625. 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 an 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 not answering all of the issues concerning Kansas water law it is a step in the right direction thus we support HB 2625. We think this measure will enhance Kansas water law by establishing:

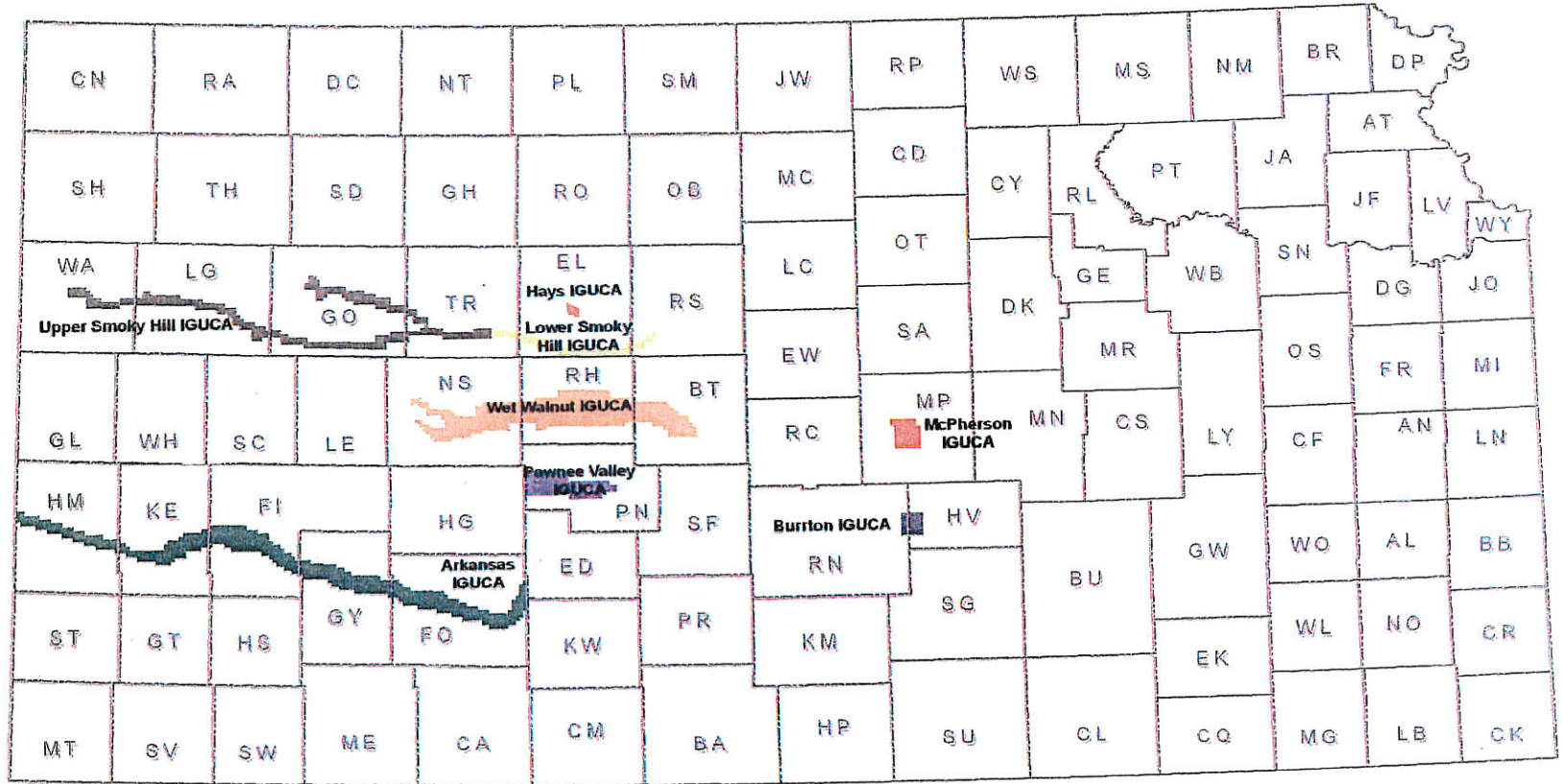
1. A clear procedure for the establishment or continuance of an IGUCA, and
2. clarifying the role between the Division of Water Resources and Groundwater Management Districts with respect to the establishment of an IGUCA within the boundaries of a Groundwater Management District.

While these measures are a good start we think the bill could be improved further by adding a definition of the "public interest" similar to the definition contained in the Groundwater Management District Act, equally applicable to the Kansas Water Appropriation Act. Especially, as the bill before you specifically references the "public interest" on page 4, line 17.

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

Exhibit 1 - KAPA Testimony - HB2070  
January 22, 2007

# Intensive Groundwater Use Control Areas in Kansas

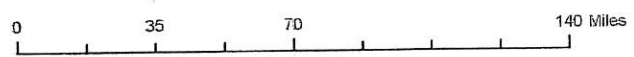


### Legend

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



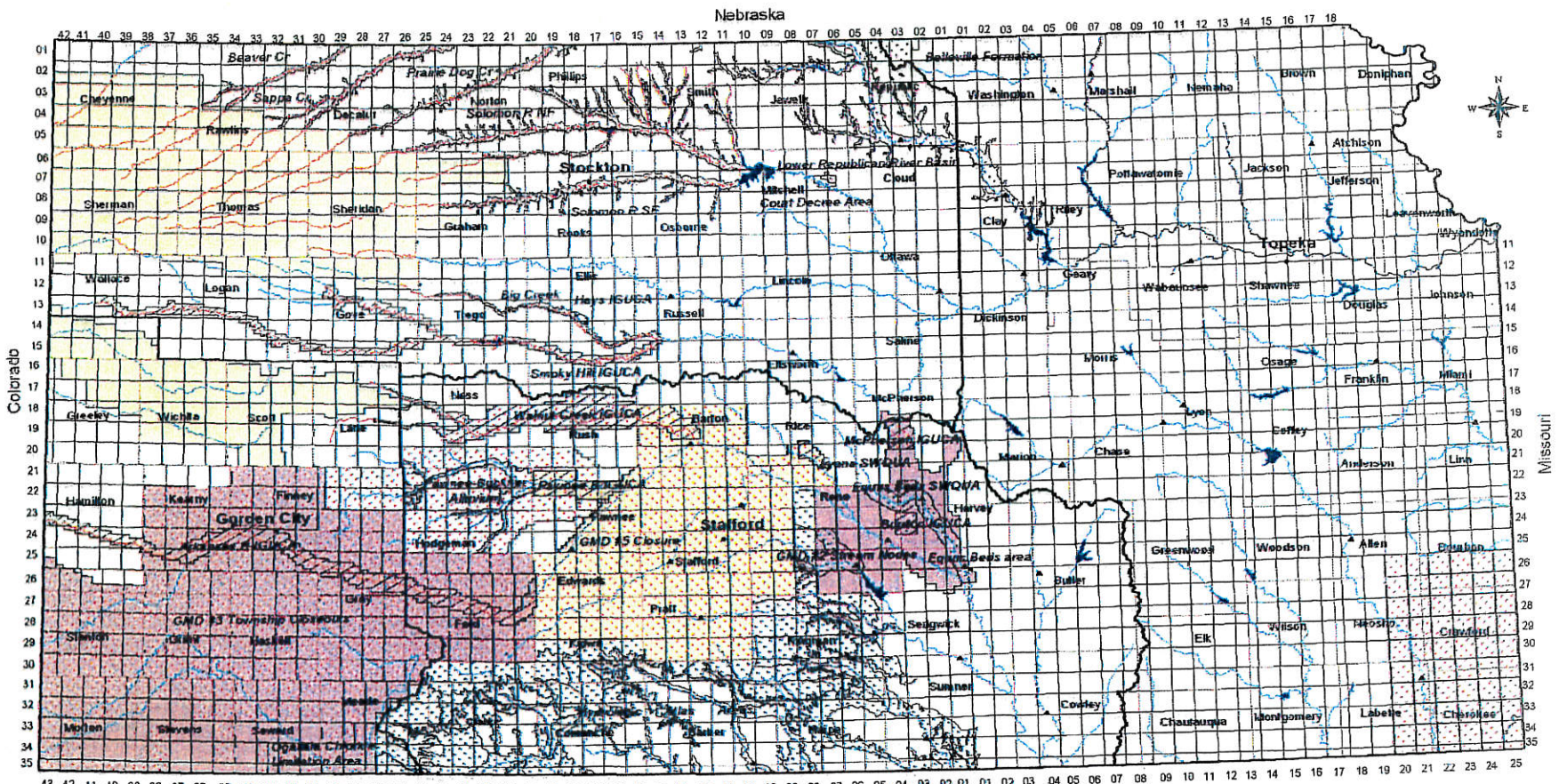
Kansas Department of Agriculture  
Division of Water Resources  
January 12, 2007



Kansas Department of Agriculture

# Closed and Restricted Areas

Division of Water Resources



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

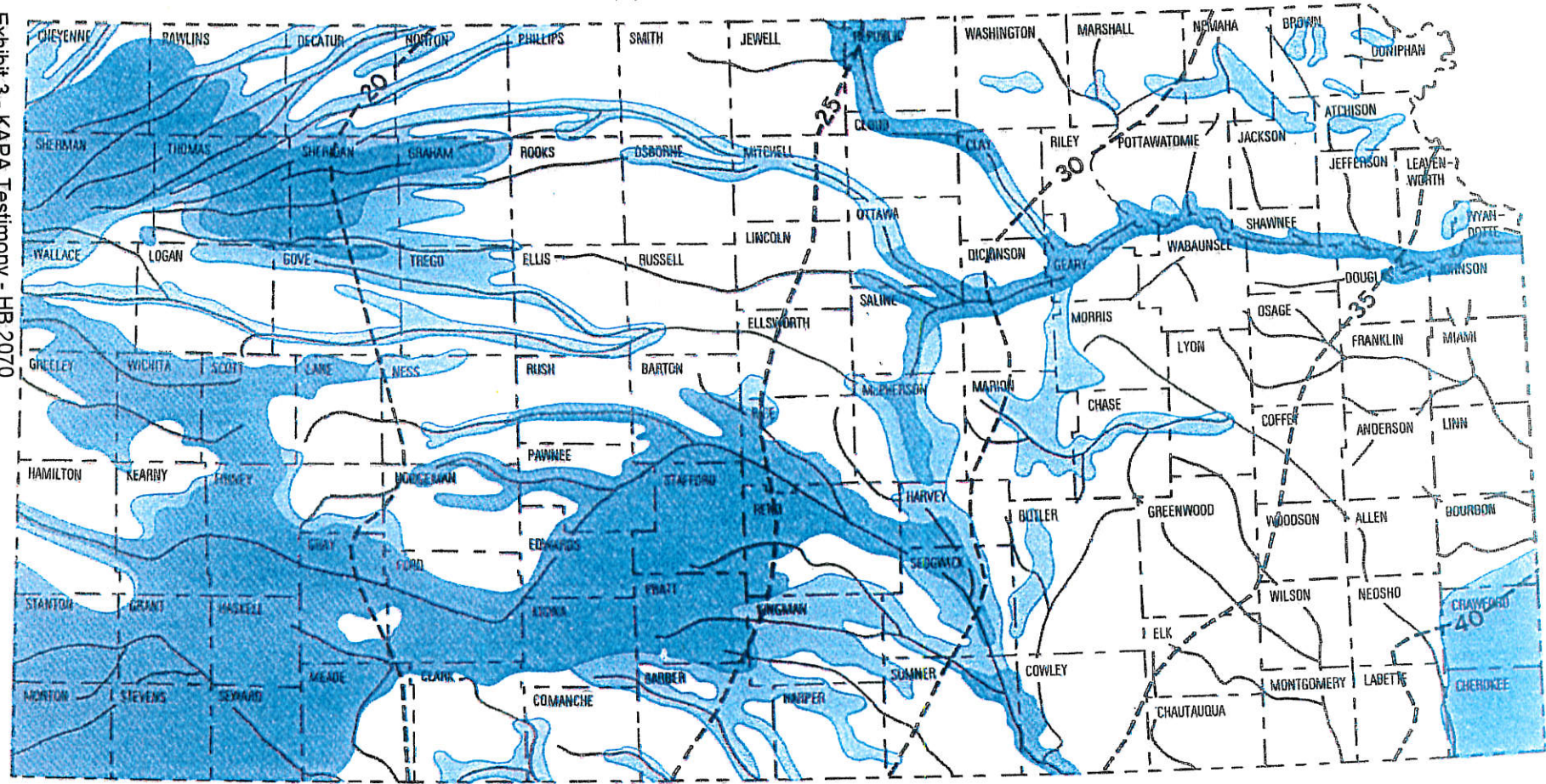
- |                |  |   |                        |
|----------------|--|---|------------------------|
| GMD #1, #4, #5 | Closed Area, generally excluding temporary and other small uses in some cases. See regulation for details. | Restricted Streams, specific restrictions for streams and alluvium given in regulation. | Field Office Boundary  |
| GMD #2, #3     | Area subject to Special Restrictions. See regulation for requirements.                                     | Streams, surface water generally available. Includes Missouri River.                    | Regional Field Offices |
| IGUCA or SWQUA |  |   | 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, 2006

# 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

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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 programs. [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 Millford 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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## Legend

- [Kansas.gov Content](#)
- [External Site](#)
- [Subscriber Service](#)

**[PDF] Walnut Basin Advisory Committee Meeting September 29, 2006**  
... 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 of Ogallala**  
... to better manage Ogallala, especially for **areas** that must ... statutorily require 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](#)

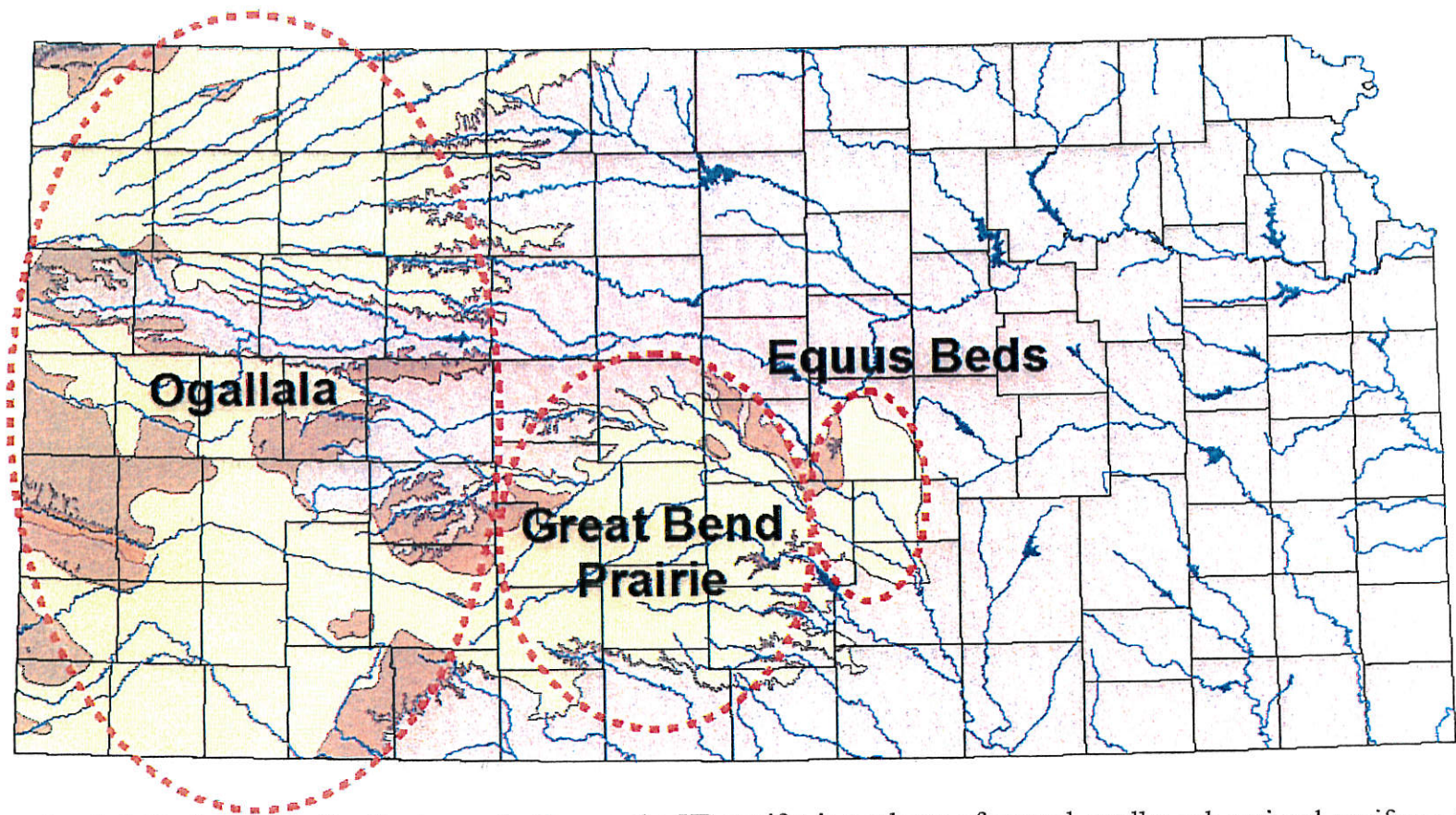
**[PDF] EXHIBIT A - CONSERVATION PRIORITY AREAS, EQUIPMENT AND OPERATIONS**  
... B - TOTAL CREP ACRES AND AUTHORIZED QUANTITY OF **GROUNDWATER** ... Ready™ corn, a ... of Lorsban™ insecticide to **control** Western Bean Cutworm. [www.kwo.org/KWA/Rpt\\_Exhibits%20A\\_P.pdf](http://www.kwo.org/KWA/Rpt_Exhibits%20A_P.pdf)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

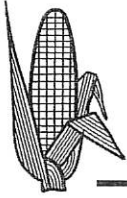
**KDHE - Division of Environment - BEFS - Water Quality 1996 - Part 4**  
... Additional monitoring is done in **intensive groundwater** usage **are** procure long-term, statewide **groundwater** quality data for **use** in the ... [www.kdheks.gov/befs/305b\\_1996/part\\_4.htm](http://www.kdheks.gov/befs/305b_1996/part_4.htm)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

7-7



**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.



## **Kansas Corn Growers Association**

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**Testimony of Sue Schulte on House Bill 2625  
House Agriculture and Natural Resources Committee  
February 20, 2008**

I am here on behalf of the Kansas Corn Growers Association to speak in support of House Bill 2625.

This bill is straightforward. It gives citizens in the affected areas a voice in the IGUCA process by creating advisory committees to review existing IGUCAs and also advisory committees to consider proposed IGUCAs. The make up of these committee ensures that the people most affected by water issues in those areas would have a say in whether an existing IGUCA should continue, or whether a proposed IGUCA should be implemented. Both of these committees would be charged with the responsibility to determine whether one or more of the conditions outlined in the IGUCA statute exist in the area. Also, the Chief Engineer would continue to play a critical role in the process.

We also support the language that would require a Groundwater Management District's approval before an IGUCA could be recommended in a GMD's district.

We don't believe the provisions in this bill would be detrimental to the IGUCA process. In fact, allowing local involvement should foster a better understanding and possibly more acceptance of this type of program.



Big Bend Groundwater Management District #5  
125 South Main – P O Box 7  
Stafford, Kansas 67578  
Tele: 620-234-5352

February 20, 2008

Comments to:  
Agriculture & Natural Resources Committee  
Representative John Faber, Chairman  
Regarding HB 2625

Chairman Faber and committee members, my name is Sharon Falk and I represent the Big Bend Groundwater Management District #5 located in Stafford, Kansas.

I would like to first point out that GMD #5 recognizes the importance of the IGUCA statutes as a tool in the administration of water rights. It is the current process that we question. HB 2625 tries to address several of the issues surrounding the process but adds confusion in some areas.

Big Bend GMD #5 supports the amendments to K.S.A. 82a 1036 as drafted in the proposed legislation. The amendment clarifies the statute and its original intent that an IGUCA can only be initiated within a GMD through a recommendation of the Board of Directors or a subset of the members in that District.

In the testimony that we presented to the interim committee, we asked that consideration be given to language requiring an independent hearing officer to oversee the hearing process. The current statutes call for the chief engineer to preside over the hearing in which he/she initiates. In lieu of the independent hearing officer, we feel that the proposed language in K.S.A. 82a-1037 does offer additional oversight to the process.

However, we would like you to consider amendments to Section 4 (a) (1) – The chief engineer shall serve as the nonvoting chairman of the designation committee **and shall maintain a complete true and correct record of the hearing.**

Section 4 (a) (3) Each voting member of the designation advisory committee shall be a resident of the affected area. What if a water user lives two miles out of the affected area but yet has several water rights within the area. Why would they be excluded from serving on the designation advisory committee?

Section 4 (b) requires written notice be given by a publication in a newspaper or newspapers of general circulation within the area of question. We feel direct notification should be given by the chief engineer's office to all water right holders within the affected area. Too much is at stake for these individuals not to receive direct notification.

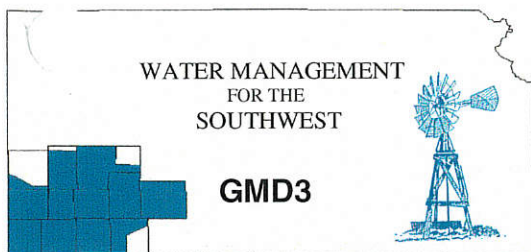
GMD#5 would also like to see an amendment to the statutes that would address the issue regarding the staff of the chief engineer being allowed to intervene as a party in the hearing process. *K.S.A. 77-545 could be used as an example to allow an information exchange without giving the chief engineer's staff the ability to intervene.* This statute is embodied within the Kansas Administrative Act and applies to another state agency in their hearing process.

The review process outlined in the bill may serve to address the review requirements, but we feel it could be simplified by requiring the chief engineer to adopt regulations that would address that issue.

In closing, I would point out to the committee that GMD#5 is currently involved in the proposed expansion of the Pawnee/Buckner IGUCA and have witnessed first hand some of the issues discussed above. The Walnut Creek IGUCA is partially located within the District and other areas of the District are being reviewed for possible restrictions. Please consider our concerns when you review the potential changes to these statutes.

Thank you for your time and efforts towards this issue. I would be glad to try to any answers you might have.

Respectfully submitted by:  
Sharon Falk  
Manager  
Big Bend Groundwater Management District #5



**Southwest Kansas**  
**Groundwater Management District No. 3**  
409 Campus Drive, Suite 108  
Garden City, Kansas 67846-6158  
(620) 275-7147 phone (620) 275-1431 fax  
www.gmd3.org

## **Testimony to the House Agriculture and Natural Resources Committee**

### **HEARING: HB 2625**

**By Mark Rude**  
**Executive Director**  
**Southwest Kansas Groundwater Management District No. 3**  
**February 20, 2008**

Chairman Faber and members of the committee, my name is Mark Rude. I am executive director of the Southwest Kansas Groundwater Management District No.3 (GMD3). Thank you for the opportunity to provide testimony on HB 2625. We stand in support of the Bill but with some notable concerns.

**We support the IGUCA concept** as a public process to address the critical regional water supply issues. We consider this process a necessary and important option in the western third of the state where groundwater supplies and aquifer recharge change significantly from place to place within a broad aquifer system. Without the IGUCA option, the strict application of the prior appropriation doctrine under the Water Appropriations Act could have a devastating effect on agriculture and the economy in our part of the state.

**We support HB 2625 amending K.S.A. 82a-1036** (Sec. 3 of the bill; page 3, line 34) as it provides clarification regarding the necessity for the chief engineer to receive a request to initiate an IGUCA proceeding when a GMD area is involved. This restores our historical perspective that was changed by the Attorney General's opinion 2002-24. Our working relationship with the chief engineer and the Kansas Department of Agriculture has historically been very positive and collaborative in our mutual efforts to meet the demands of the public interest. That good working relationship is expected to continue into the future. If the authority of the chief engineer provided under the Water Appropriation Act is not appropriate to protect the public interest when he or she must take action, then that issue should be readily evident to the local membership of a GMD and an IGUCA request provided if not

HS Ag & Nat'l. Resources

2-20-08

Attachment 10

already requested by the GMD. We believe the amendment in HB 2625 is appropriate and consistent with the public interest embodied in both the Water Appropriation Act and the Groundwater Management District Act.

**We are concerned that HB 2625 may not place the burden on the right entity to insure the best possible record for consideration by the committee and the chief engineer.** We believe that once initiated, an IGUCA process should create the best public record of facts and opinions possible from which the best solutions and recommendations can be produced. HB 2625 requires an advisory panel of representative water users that is chaired by a non-voting chief engineer to conduct an IGUCA hearing. After conducting an IGUCA hearing, the committee will provide recommendations to the chief engineer for appropriate action. We believe the chief engineer should have sufficient authority over the committee activity and hearing proceedings to insure both an efficient hearing process and also that the best possible record be created for consideration by the committee and the chief engineer. We question whether sufficient authority exists in the language of the bill. We recommend consideration of appropriate clarifying language as an amendment by the House Agriculture and Natural Resources Committee that will place the responsibility on the chief engineer to insure the best possible record of all of the available facts.

Thank you for this opportunity to appear before you today. I would be happy to answer any questions that you may have.



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WESTERN KANSAS GROUNDWATER MANAGEMENT DISTRICT NO.1

**Testimony to the  
House Agriculture and Natural Resources Committee**

**HB 2625**

**By David Brenn  
Executive Director  
Western Kansas Groundwater Management District No. 1  
February 20, 2008**

**Chairman Faber and members of the committee, my name is Dave Brenn. I am executive director of Western Kansas Groundwater Management District No. 1. Thank you for the opportunity to provide testimony on HB 2625. I am testifying in support of the concept of Bill but with some significant concerns.**

**We support the amending of KSA 82a-1036 (Sec. 3, page 3, line 34 of the current Bill. This amendment clarifies the roles of the GMD and the Chief Engineer in regards to requesting and initiation of the IGUCA process within a groundwater management district. We believe the amendment appropriately allows for the public interest as included in the Water Appropriation Act and the Groundwater Management District Act. We currently and historically have had very good and positive working relationships with the KDWR and the KDA. This relationship is important now and into the future to insure the combined efforts to best represent the interests of our district and the state.**

**We support an appropriate and workable public review process both for existing and any future IGUCAs, however we have concerns that the bill as currently written may not create the best public record of facts and opinions as well as may not place the burden on the right party or parties to produce the best possible record for recommendations or decisions.**

**Thank you for the opportunity to appear before you.**

**Testimony on HB 2625**  
**to**  
**House Agriculture and Natural Resources Committee**  
**by**  
**Constantine V. Cotsoradis**  
**Deputy Secretary**  
**Kansas Department of Agriculture**  
**February 20, 2008**

Good afternoon, Mr. Chairman and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture, and I am here in opposition to House Bill 2625.

The general intent of this bill is to resolve concerns about how IGUCAs are established and whether and how often they are reviewed once they are established.

We have been working with our stakeholders for the past year to determine how we can resolve their concerns without compromising the integrity of Kansas water law. My hope is that you will recognize the benefit of this approach and forego action on this bill to allow us additional time to develop a comprehensive package of regulations and proposed statutory amendments.

In support of this request, I would say that we can't discuss intensive groundwater use control areas without mentioning the Kansas Water Appropriation Act. It is the foundation for all water resource management in Kansas. It directs the chief engineer to manage the state's water resources for the benefit of all Kansans. It provides needed structure for allocating water for beneficial use by prioritizing water rights by date.

The IGUCA statute is an additional tool the chief engineer can use to better manage water in overappropriated areas with declining resources. Any prescribed corrective control provisions honor the priority date system to the extent practical while preserving the economic viability of an affected region.

HB 2625 would prohibit the chief engineer from independently initiating an intensive groundwater use control area in a groundwater management district, and it would require creating two review committees to make recommendations to the chief engineer regarding IGUCAs.

It's important to note that the chief engineer has never initiated an IGUCA within a GMD without the GMD's request. However, the chief engineer must reserve the right to do so if he is to fulfill his legislative mandate to manage the states water resources for the benefit of all Kansans.

Groundwater management districts were created to provide input into regional water management issues. They were not intended to replace the chief engineer's authority. We can look to our north to see what happens when a state does not have authority to manage its waters. Nebraska's natural resource districts control groundwater, and the state cannot compel them to manage it even to comply with the Republican River Compact. Consequently, Nebraska is liable to us for tens of millions of dollars to compensate for water Kansas is due under the compact but did not receive.

We believe a practical solution is to establish criteria under which the chief engineer may initiate an IGUCA in a GMD. This will allow local control to continue and preserve the chief engineer's authority to act if he needs to. The criteria would be:

- the chief engineer advises the GMD of the problem;
- the GMD fails to develop a plan to address the problem within a reasonable amount of time;
- the chief engineer determines that strict administration of water rights by priority date will not offer as much protection to senior water rights as an IGUCA, or it will require greater water use reductions than an IGUCA.

The bill also would require creating two types of committees – with the chief engineer as chair – to make recommendations to the chief engineer regarding IGUCAs. One committee would hold the public hearing, listen to testimony and make complex hydrological recommendations regarding whether there should be an IGUCA in a given area. The other committee would provide periodic review of an established IGUCA and recommend whether it should continue and what its corrective control measures should be.

On the surface, it may appear that having review committees will enhance the process. However, it could have unintended consequences. To illustrate, look at the one-size-fits-all composition of these committees. They require representatives from agriculture, municipal, industrial and major water users in the area, even though that model doesn't fit existing IGUCAs. For example, the Hays IGUCA affects only the city of Hays and its residents, because it restricts when city residents can water their lawns. It doesn't have either an agricultural or industrial component, so their representation isn't needed.

The committee that provides the periodic review duplicates the process already in place. In fact, existing IGUCAs that restrict water use are reviewed more often than specified in this bill. The McPherson and Burrton IGUCAs are reviewed annually, while the Walnut Creek IGUCA is reviewed at least every five years. Shortly after it was initiated, the Walnut Creek IGUCA was reviewed and amended twice.

The chief engineer and his staff have expertise and access to data and sophisticated hydrological models on which they can base effective corrective control measures. This point was raised at the Kansas Water Congress a few weeks ago, when it was suggested that DWR staff would need to help the proposed advisory committee develop recommendations for corrective control measures. The discussion that followed questioned the need for the

committee to make recommendations when DWR staff would have to tell the committee what to recommend.

I believe Kansas has the best water law in the nation. We owe it to our constituents to proceed cautiously, especially when they are willing to help us resolve their concerns.

Please do not act on this bill. Instead, let us continue to work with our stakeholders to develop a comprehensive package of regulations and proposed statutory amendments that will resolve their concerns.

I will answer questions at the appropriate time.



**Testimony to the  
House Agriculture and Natural Resources Committee  
HB 2625  
Presented by Pat Lehman  
For the Northwest Kansas Groundwater Management District #4  
February 20, 2008**

Thank you, Mister Chairman and members of the committee for this opportunity to testify. I am Pat Lehman and I am presenting this testimony for the Northwest Kansas Groundwater Management District #4 headquartered in Colby, KS. I am testifying in support of one section of HB 2625 and in opposition to the remainder of the bill.

**1) GMD 4 supports the amending of KSA 82a-1036 (Sec. 3 of the bill; page 3, line 34) as drafted.** This amendment more clearly re-states the 1978 Legislative intent of this statute which was changed through Attorney General Stovall's opinion 2002-24. Allowing the Attorney General to change state policy we feel is inappropriate.

**2) GMD 4 opposes the remainder of the bill – not because we disagree with the intent, but the approach.** We agree that a periodic review process is an important improvement, and we agree that more local involvement should be incorporated in the decision to establish any IGUCA, but we believe there is a better approach than proposed in this bill.

**3) GMD 4 also finds the bill deficient in that it does not require any IGUCA to initially set goals or objectives that will be important in the periodic review process everyone agrees is needed.**

**4) GMD 4 recommends the following for those sections of the bill we oppose:**

a) Amend KSA 82a-1037 requiring that the hearing process consider desired goals and objectives of any IGUCA under consideration. Currently the only requirement of the hearing is to consider the question of designating the area of the IGUCA.

b) Amend the IGUCA statutes appropriately to provide specific authority for the chief engineer to promulgate rules and regulations for at least the IGUCA review process and a required goal setting procedure.

c) Amend KSA 82a-1038 (b) to require a periodic review process, as specified by regulation, be included in any order establishing any future IGUCA. Moreover, any existing IGUCA order not already including a review process should be administratively amended to include one – also as prescribed by regulation. We suggest that the regulation process be allowed to set the specific review processes details such as how often, who should be involved, when the work products should be completed, what role and weight the original goals and objectives

should have, and what amendments to the IGUCA formation order are appropriate for discussion and recommendation.

d) Amend KSA 82a-1038 (b) to require that specific goals and objectives be included in any order establishing any future IGUCA, and, any existing IGUCA order not already including a specific set of goals and objectives be amended to include such a set after the advisory committee is called back together to consider these issues and make their recommendation to the chief engineer – also as prescribed by regulation.

**Proposed Statutory Language to Accomplish all Issues Noted:**

The following revision marks copy of the current IGUCA statutes we believe addresses each of our issues and will result in an improved IGUCA process overall.

**K.S.A. 82a-1036. Initiation of proceedings for designation of intensive groundwater use control area; duties of chief engineer; findings.** (a) In a groundwater use area which is located within the boundaries of an existing groundwater management district or districts, only when 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 or districts as an intensive groundwater use control area.

(b) In a groundwater use area which is located outside the boundaries of an existing groundwater management district, 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; (1) Groundwater levels in the area in question are declining or have declined excessively; or (2) the rate of withdrawal of groundwater within the area in question equals or exceeds the rate of recharge in such area; or (3) preventable waste of water is occurring or may occur within the area in question; (4) unreasonable deterioration of the quality of water is occurring or may occur within the area in question; or (5) other conditions exist within the area in question which require regulation in the public interest. (History: L. 1978, ch. 437, § 2; July 1.)

**K.S.A. 82a-1037. Same; hearings.** In any case where proceedings for the designation of an intensive groundwater use control area are initiated, the chief engineer shall hold and conduct a public hearing on the question of designating such an area as an intensive groundwater use control area. Written notice of the hearing shall be given to every person holding a water right in the area in question and notice of the hearing shall be given by one publication in a newspaper or newspapers of general circulation within the area in question at least thirty (30) days prior to the date set for such hearing. The notice shall state the question and shall denote the time and place of the hearing. At the hearing, documentary and oral evidence shall be taken on all pertinent issues relative to the question and on what goals and objectives should be achieved by the IGUCA if established. A full and complete record of the documentary and oral evidence shall be kept. History: L. 1978, ch. 437, § 3; July 1.)

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**K.S.A. 82a-1038. Designation of intensive groundwater use control area; orders; review.** (a)

In any case where the chief engineer finds that any one or more of the circumstances set forth in K.S.A. 82a-1036 and amendments thereto exist and that the public interest requires that any one or more corrective controls be adopted, the chief engineer shall designate, by order, the area in question, or any part thereof, as an intensive groundwater use control area.

(b) The order of the chief engineer shall define specifically the boundaries of the intensive groundwater use control area, shall indicate the circumstances upon which the findings of the chief engineer are made, shall include the IGUCA goals and objectives which shall be based upon the record of documentary and oral evidence, and shall include an appropriate review process per regulation(s) promulgated by the chief engineer pursuant to New Sec. 1. The review process shall be supported by the state agencies with responsibilities in water, and any existing IGUCA order not providing a review process per New Sec. 1, or a set of goals and objectives based upon the evidence, shall be administratively amended to include same. The order of the chief engineer may include any one or more of the following corrective control provisions: (1) A provision closing the intensive groundwater use control area to any further appropriation of groundwater in which event the chief engineer shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such area; (2) a provision determining the permissible total withdrawal of groundwater in the intensive groundwater use control area each day, month or year, and, insofar as may be reasonably done, the chief engineer shall apportion such permissible total withdrawal among the valid groundwater right holders in such area in accordance with the relative dates of priority of such rights; (3) a provision reducing the permissible withdrawal of groundwater by any one or more appropriators thereof, or by wells in the intensive groundwater use control area; (4) a provision requiring and specifying a system of rotation of groundwater use in the intensive groundwater use control area; (5) any one or more other provisions making such additional requirements as are necessary to protect the public interest. The chief engineer is hereby authorized to delegate the enforcement of any corrective control provisions ordered for an intensive groundwater use control area to groundwater management district number 4 or to any city, if such district or city is located within or partially within the boundaries of such area.

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(c) Except as provided by subsection (d), the order of designation of an intensive groundwater use control area shall be in full force and effect from the date of its entry in the records of the chief engineer's office unless and until its operation shall be stayed by an appeal from an order entered on review of the chief engineer's order pursuant to K.S.A. 1999 Supp. 82a-1901 and amendments thereto in accordance with the provisions of the act for judicial review and civil enforcement of agency actions. The chief engineer upon request shall deliver a copy of such order to any interested person who is affected by such order, and shall file a copy of the same with the register of deeds of any county within which such designated control area lies.

(d) If the holder of a groundwater right within the area designated as an intensive groundwater use control area applies for review of the order of designation pursuant to K.S.A. 1999 Supp. 82a-1901 and amendments thereto, the provisions of the order with respect to the inclusion of the holder's right within the area may be stayed in accordance with the Kansas administrative procedure act. (History: L. 1978, ch. 437, § 4; L. 1984, ch. 338, § 31; L. 1990, ch. 363, § 1; L. 1999, ch. 130, § 9; July 1.)

**K.S.A. 82a-1039. No limitation of authority of chief engineer.** Nothing in this act shall be construed as limiting or affecting any duty or power of the chief engineer granted pursuant to the Kansas water appropriation act. (History: L. 1978, ch. 437, § 5; July 1.)

**K.S.A. 82a-1040. Act supplemental to K.S.A. 82a-1020 to 82a-1035.** The provisions of K.S.A. 82a-1036 to 82a-1039, inclusive, of this act shall be part of and supplemental to the provisions of K.S.A. 82a-1020 to 82a-1035, inclusive, and acts amendatory thereof or supplemental thereto. (History: L. 1978, ch. 437, § 5; July 1.)

**New Sec 1. Authority to Promulgate Regulations for a Periodic IGUCA Review Procedure.**

**(a) The chief engineer shall promulgate regulations on or before December 31, 2008 covering the periodic review of all IGUCAS established in Kansas. Said regulations shall require at least:**

(1) a review of every IGUCA within a period of time not to exceed 12 years from its formation date if it is a new IGUCA formed subsequent to this act, or from the date of its last review if it is an existing IGUCA whose order already provides for a periodic review process, or from the date of this act if it is an existing IGUCA whose order does not provide for any periodic review process;

(2) the establishment of an odd-numbered, advisory review committee not to exceed 13 IGUCA-area residents who shall be either water right owners or a knowledgeable and involved individuals. The charge of this committee shall be to review at least:

(a) the pertinent facts of the original IGUCA formation process including the state agency roles in the formation process;

(b) all new data, reports, programs, policies, laws and activities related to water in the area since the IGUCA formation and their impact(s) on the IGUCA water resources and the original goals of that IGUCA; and

(c) the economic and social impacts the IGUCA has had on the area as these impacts relate to the post-IGUCA water use under whatever corrective control provisions were ordered.

(3) an advisory review committee generated report to the chief engineer on all review findings and recommendations in regard to continuing the IGUCA with or without any changes (including changes to any or all corrective control provisions); expansion or reduction of the IGUCA area, or, cancellation of the IGUCA;

(4) an appropriate action by the chief engineer on the existing IGUCA order following his or her due consideration of the advisory review committee report which shall include one or more of the following:

(1) continue the IGUCA with its original or current corrective control provisions;

(2) add, eliminate or modify any corrective control provisions;

(3) reduce or enlarge the IGUCA boundaries;

(4) change any allocations within the IGUCA;

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(5) address any other issues identified in the review report; or

(6) dismiss the IGUCA and recommend alternative measures, if necessary, to address the water issues in the IGUCA.

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**Further Discussion:**

1) While the proposed review advisory and designation advisory committees will both involve local folks directly in the process earlier than before, which is a good thing, it can also be confining. A few of the questions are (and there are others):

- Some IGUCAs will inevitably be established which do not include any municipalities where HB 2625 in every case requires one municipal representative.
- The chief engineer and DWR staff will in every case be the entity most familiar with the local land owners and water right owners to insure the most representative and workable review committee.
- Less prominent, but equally important water use categories are not provided representation and will feel overlooked.
- The individual water right owners who sit on the designation advisory committee will be forfeiting their participation in the very important hearing and testimony process. Since this process will directly impact their businesses, there may be an unwillingness to serve on the proposed designation advisory committee.

All these issues suggest a more flexible process is needed to identify and appoint any committee being contemplated. Statutorily requiring the basics of a review process and allowing regulations to provide the necessary flexibility is what GMD 4 is suggesting.

2) Two issues the above proposal does not address which others have suggested are:

- a) an independent hearing officer for IGUCA proceedings; and
- b) the state agencies (particularly DWR) being a party to the IGUCA proceedings.

GMD 4 does not support an independent hearing office due to cost and concerns over finding technically and legally qualified hearing officers for such an important process.

GMD 4 has not addressed the issue of DWR being a party to the IGUCA proceedings because we don't see the current process as being broken enough to repair.

In the unlikely event that a hearing process might waiver from the norm because of either of these concerns, we feel our proposed review procedure can and will be able to correct any problematic decisions made from a questionable process.

**Testimony before the  
Committee on Agriculture and Natural Resources  
Concerning  
House Bill 2625 – Intensive Groundwater Use Control Areas  
By  
Equus Beds Groundwater Management District No. 2  
February 20, 2008**

On behalf of the Board of Directors of the Equus Beds Groundwater Management District No. 2, I wish to thank Chairman Faber and members of the committee for the opportunity to provide information concerning Intensive Groundwater Use Control Areas (IGUCA) and to testify concerning HB 2625.

The bill seeks to modify K.S.A. 82a-1036 in an attempt to clarify that, inside a groundwater management district(s), only a groundwater management district, or required number of groundwater management district members, may request that the Chief Engineer, Division of Water Resources, initiate IGUCA establishment proceedings. The bill also attempts to modify K.S.A. 82a-1037 to include formations of an IGUCA designation advisory committee and an IGUCA review advisory committee. The District is particularly concerned about the bill's possible effects on the two IGUCAs currently in place in the District, as well as the potential effects on any future IGUCAs proposed to be established, or actually established in the District.

#### **BACKGROUND INFORMATION**

The Equus Beds aquifer is the sole-source of fresh and usable groundwater for industrial, municipal, and irrigation uses throughout south-central Kansas. Over 2,000 permitted water wells and points of diversion withdraw an average of 57.7 billion gallons from the aquifer annually.

Over 500,000 people, or approximately 20 percent of the entire State's population, in Harvey, Sedgwick, McPherson and Reno counties rely on the aquifer for drinking water and other daily needs. Additionally, over 100,000 acres are irrigated using groundwater from the Equus Beds aquifer. The aquifer also supplies water for the area's livestock production, businesses, industries, and recreational activities. Certainly, the area's economy and way of life would be quite different without the aquifer's continued source of fresh and useable water.

To manage and protect this valuable water resource from depletion and contamination, the Equus Beds Groundwater Management District was created in 1975 by local people representing municipal, agricultural, industrial and domestic water users. An aquifer management program was developed and adopted by the Board of Directors, Equus Beds Groundwater Management District. The District limits new groundwater withdrawals or diversions to annual recharge and seeks to maintain the natural water quality of the aquifer through protection and remediation. In cases where large-scale water quantity or quality problems have occurred, the District has requested the use of IGUCAs to manage the problem areas.

Currently two IGUCAs are located within the boundaries of the District. The McPherson IGUCA encompasses a 56-square mile area located in the northern part of the District and was established on March 28, 1980, to deal with excessive groundwater declines due to over-appropriation. The Burrton IGUCA covers a 36-square mile in Harvey and Reno counties and was established on June 1, 1984, because of deteriorating groundwater quality due to oil field brine contamination. The McPherson IGUCA and Burrton IGUCA were both initiated at the request of the District Board of Directors. Both IGUCA orders include a review process.

## **EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2**

Committee on Agriculture and Natural Resources Testimony – HB2625

February 20, 2008

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The McPherson IGUCA has assisted in stabilizing groundwater levels by establishing certain corrective control provisions, including closing the area to additional non-domestic and non-temporary groundwater appropriations.

The Burrton IGUCA has assisted in management of the saltwater contamination plumes in that area by, in part, requiring that all new groundwater permit applications be reviewed by the District on a case-by-case basis to determine the potential impact(s) on the aquifer and existing groundwater users in the area.

### **DISTRICT CONCERNS/POSITION**

The District believes that most, if not all, of the issues addressed by the bill could be resolved through the use of Kansas Administrative Regulations rather than changes to the existing statutes. Further, the District fears how establishment of review advisory committees could affect the District's current IGUCAs, which already contain review provisions.

The District is also concerned with the make-up of the advisory committees proposed by the bill. First, the District opposes that the advisory committee members must reside in the affected area. Doing so would exclude many District irrigation, municipal, recreational, industrial and other water users who do not live in the area. Second, the District is concerned that four of the seven committees members would be political appointees, with two being appointed by the president of the senate and two by the speaker of the house representatives. Third, the District is concerned that only one member of each committee would be appointed by the groundwater management district in which the IGUCA is located.

Should the bill proceed, the District does support the modification of K.S.A. 82a-1036, to clarify who can request IGUCA initiation proceedings within the boundaries of groundwater management district.

### **DISTRICT RECOMMENDATION**

The District believes that the McPherson IGUCA and Burrton IGUCA are both very important tools for proper management of the Equus Beds Aquifer and to help prevent impairment to existing groundwater users in the District. Modifying K.S.A. 82a-1037 to require the establishment of IGUCA designation and review committees could affect current and possible future IGUCAs in the District.

The District further believes that issues involving IGUCAs would be better dealt with using Kansas Administrative Regulations as opposed to modifying existing statutes. Therefore, the District recommends the committee take no action on the bill until the 2009 legislative session to allow the groundwater management districts, the Division of Water Resources, and other stakeholders the opportunity to develop regulations to address the various IGUCA issues.

Should the committee chose to advance HB 2625, the District supports modification of KSA 82a-1036 ONLY to clarify IGUCA initiation proceedings within a groundwater management district. The District opposes the remainder of the bill as currently written.

Thank you Chairman Faber and Committee members for the opportunity to testify on this important issue.

*Law Office of Frank L. Austenfeld\**

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To: Kansas House Committee on Agriculture

Re: HB 2625 By Special Committee on Energy, Natural Resources and Environment  
1-15 AN ACT concerning intensive groundwater use control areas; relating to mandatory review and advisory committees; amending K.S.A. 82a-1036 and 82a-1037 and K.S.A. 2007 Supp. 82a-1901 and repealing the existing sections.

Dear Mr. Chairman and respective committee members:

My name is Frank Austenfeld. I have represented the Kansas Wildlife Federation in the Wet Walnut Intensive Groundwater Use Control Area (IGUCA) hearings, the Pawnee Valley IGUCA hearings, the Mid-Arkansas Workgroup, and the Rattlesnake Creek Workgroup meetings. Being very familiar with the laws relating to IGUCA's, the policies relating to water law, the politics of such regulation, and the local opinions, I feel compelled to submit these written comments.

After review of HB 2625 it is painfully apparent that this is an attempt to reduce the authority of the Chief Engineer and reduce the ability of the silent majority to provide input into the IGUCA process. We all know that the vocal minority does not always represent the general public or the public interest. It is apparent that HB 2625 is such an attempt to place regulatory power in the hands of a vocal minority special interest group which is opposed by me and by KWF.

Precedent has been set in other DWR groundwater proceedings to allow an entity such as the Kansas Wildlife Federation (KWF) to represent the public interest. Specifically, KWF is a party to the Wet Walnut IGUCA proceedings and has been an active participant for approximately 15 years representing the public interest. Additionally, KWF is a member of the Mid-Arkansas River Basin Workgroup (see <http://www.ksda.gov/Default.aspx?tabid=194>) representing the public interest.

There can be no argument that groundwater and the depletion thereof does not affect surface water and the public interest (see *Kansas v. Colorado*). The public interest comes in many forms including health, environmental and recreation among others and those interests are intended to be protected and regulated by the Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USF&W), Kansas Department of Health and Environment (KDH&E), Kansas Water Office (KWO), Division of Water Resources (DWR), State Conservation Commission (SCC), and Kansas Department of Wildlife and Parks (KDWP) just to name a few. Jurisdiction from all of these entities extend to private lands as well as public lands in the State of Kansas including lands identified in the various IGUCA proceedings. Additionally, thousands of acres in lands identified in IGUCA proceedings are

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Attachment 15



leased by KDWP for walk in hunting as lands for public use (see [http://www.kdwp.state.ks.us/other\\_services/private\\_landowner\\_assistance/wildlife/walk in hunting](http://www.kdwp.state.ks.us/other_services/private_landowner_assistance/wildlife/walk_in_hunting)) . Many of these public interests are the same public interests KWF represents. The economic benefit to the state of Kansas is over \$500,000,000 annually as a result of hunting, fishing and wildlife viewing. The public at large and its interest in water resource management, conservation and regulation is one of the fundamental goals of IGUCA proceedings (see below)

### **DWR Goal**

*To provide sound management of the state's water resources for proper conservation, management, regulation and control of water and watercourses of the state. Water users and the public at large can be assured of a balanced and sensible approach to water resource management, conservation and regulation.*

### **DWR Overall Objective**

*To manage watercourses and the natural flow of water into and through Kansas in response to the natural hydrologic cycle and the demands of state residents.*

### **DWR Mission Statement**

*To provide sound management of the state's water resources through administration of state water laws by providing for the proper conservation, management, regulation and control of water and watercourses, through administration of 28 state laws, including four interstate river compacts and several programs assigned to the division by the governor.*

### **DWR Philosophy**

*To act in accordance with the highest standards of ethics, accountability, efficiency and openness. We affirm that protecting the state's water resources is a public and private trust. We approach our activities with a deep sense of purpose, responsibility and stewardship. Water users and the public at large can be assured of a balanced and sensible approach to water resource management and regulation.*

By limiting the authority of the Chief Engineer to initiate an IGUCA hearing it would invite the use of impairment proceedings to meet that accomplished goal of maintaining a healthy aquifer and healthy environment. What that means is that one by one, the junior water rights holders would be facing litigation to shut them down and thus put them out of business. Limiting the

powers of the Chief Engineer would in effect turn to singling out one of your constituents as the perpetrator of the demise of the aquifer when we all know it is much more complicated than that. Defending a water rights impairment action could easily cost an irrigator \$50,000 in legal fees and would turn them into the whipping post for the impairments as a whole. Is this really the intent of the legislature? Although once feared, I have never heard of an irrigator being put out of business in the Wet Walnut Basin as a result of the controls issued in that IGUCA. Basin-wide management of the aquifer(s) by DWR is a common sense approach for all water rights holders, groundwater and surface water. The IGUCA proceedings give an opportunity for public input. Sometimes it takes someone who is a nonresident to speak up without facing the pressures of the livestock, agricultural, or industrial sectors in the community.

In the IGUCA hearings, there is an opportunity to participate as a party. Those participants generally are continuing in the ongoing issues relating to future proceedings in the IGUCA area. This is a system that works and is representative of the public interest.

On behalf of the Kansas Wildlife Federation, we ask that HB 2625 be rejected.

Respectfully submitted,

s/Frank Austenfeld

Frank Austenfeld  
Attorney for the Kansas Wildlife Federation

February 20, 2008

Chairman Faber and Committee Members:

I am Kent Lamb from Macksville which is in Stafford County. I operate a family farm that was homesteaded in 1878 with my two sons. The development of irrigation in our area provided me the opportunity to return to our family farm when I finished college. Irrigation is and has been our major rural development. Our groundwater is at pre-development levels, and our saturated thickness is from 200 to 250 feet. My farm is in the Rattlesnake Basin.

I am testifying as an opponent to House Bill 2625. The designation advisory committee members will be in an unforgiving situation. Faced with negative pressure from their neighbors and the intimidation by their limited knowledge and experience in comparison to the Chief Engineer, they are being placed in a difficult circumstance. I believe that the Chief Engineer is the most prepared individual with his academic preparation, knowledge of water law, and professional objectivity to initiate proceedings and to serve as the hearing officer for all IGUCAs. His expertise should far exceed the abilities and qualifications of any person that could be selected to serve on any advisory committee. I feel that the real issue is the role of the DWR staff in relationship to the Chief Engineer in the IGUCA proceedings. Since all are from the same agency, there is the perception by many that the IGUCA process is a controlled administrative procedure with predetermined outcomes.

In past IGUCA hearings, the DWR staff has assumed the role of prosecutor and combatant. I propose that the agency be a resource of data and support to the process instead of being an aggressor among affected, participating entities. The Chief Engineer must have access to the best technical experts and all pertinent materials and data of record to render a fair and legal corrective order for the affected water rights. The participating entities of the hearing will provide the testimony, rebuttal, and possible corrective measures to the hearing officer. This format will insure that the Chief Engineer and DWR will not pre-arrange the IGUCA hearing process in advance.

The IGUCA Statute directs the Chief Engineer to consider existing conditions that may, if fact, determine that an IGUCA hearing is necessary. I feel that the existing conditions should be further defined in this statute. Many areas of the state have experienced groundwater declines of over 100 feet with no recharge potential, and no corrective action has been taken by the state. Our area has sufficient recharge to maintain pre-development groundwater levels and yet is threatened repeatedly by the DWR staff that an IGUCA will occur in our area in the near future. Also, achieving the Kansas Water Plan goals is not a condition for triggering an IGUCA. I believe that regulation is designed for corrective measures to positively improve conditions. It is not intended to create situations that cause hardship and harm to areas that have no deterioration in water quantity or quality.

Therefore, I urge you to clarify for the Chief Engineer and DWR their roles and the conditions necessary for an IGUCA proceeding. It is futile to plan and implement corrective actions where none are appropriate.

I will respond to questions at your pleasure.

Thank you for your attention.

Kent Lamb  
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