

The Kansas River Water Assurance District No. 1

And

The Cottonwood and Neosho River Basins Water Assurance District No. 3

Natural Resources Committee  
Kansas State Senate  
2012 Legislative Session

March 2, 2012

House Bill 2685

Galen E. Biery, Conferee

My name is Galen Biery. I am the General Manager for the Kansas River Water Assurance District No. 1, and the Cottonwood and Neosho River Basins Water Assurance District No. 3. The Board of Directors for both Districts have requested that I convey their opinions and concerns about HB 2685 to this committee.

This Bill provides for the formation of Reservoir Improvement Districts for the preservation or sustainability of the storage in reservoirs throughout Kansas. There are currently three Assurance Districts established in the State. In addition to the two I represent, there is the Marais des Cygne Water Assurance District No. 2. Together the three Districts serve approximately 1,153,000 Kansans.

At the present time, based upon the amount of time the various members have had to review the content of the proposed Bill, I am presenting a neutral stance while having some concerns about the wording of the Bill.

The basic idea of providing a method for stakeholders to join together to preserve storage in reservoirs upon which they are dependent can be supported, however, my reading of the Bill brings into question whether the wording provides what was intended. There are also sections of the Bill that may be open to different interpretations.

In Section 2(c), The definition of "Eligible Water Right Holder" includes (1) anyone with an appropriation right to draw from the reservoir, (2) a contract purchaser, or (3) a

member of an assurance district. Parties who have appropriation rights to draw from the reservoir could be considered as upstream. The downstream water right holders do not have appropriation rights in the reservoir, but in the flow in the river below the dam. They may have reservation rights in the storage. This is the same whether the downstream user is a water right holder or a contract purchaser. This limits "Eligible Water Right Holders" to those having water rights that allow them to withdraw directly from the Reservoir, to Contract Purchasers of Water from the Reservoir, or to members of an Assurance District who have appropriation rights. This does not provide for anyone else holding a water right for any other purpose in the stream flow or riparian groundwater to qualify as an "Eligible Water Right Holder". This appears to limit the formation of Reservoir Improvement Districts by downstream users to reservoirs associated with an Assurance Districts.

Sec. 3 and Sec. 8 - Only 20% of the total water rights are necessary to begin the formation of the district. If the proposal does not receive the required votes the proceedings will close and the costs will be determined by the steering committee and assessed upon the eligible water right holders. Does this mean they can force the other 80% to pay the costs created by the petitioner's?

Secs. 7(a) and 7(b) - The project goes forward if the eligible water right holders representing more than 50% of the combined quantities of the water rights vote for it. The proceedings are closed if 50% vote against it. What happens when only 80% vote and it splits 40-40? Does it close or does it remain open?

Sec. 14 – If the KWO approves the project plan, and the plan includes dredging of other work within the reservoir, there is no provision for the involvement of the Corps of Engineers.

Sec. 15(a) – Costs of the project are to be prorated to all eligible water right holders based upon the proportion of water used from the reservoir. How is this to be determined if the natural flow is sufficient to fulfill their needs?

Sec. 16 – The language of this section lists projects upstream from the reservoir, most likely upon private land. Is this within the purview of the Watershed Districts?

Sec. 18 – Does not allow for dissolution of the District if the projects are completed and fully paid for.

If the Bill does not provide for formation of improvement districts except by members of an Assurance District, then the Bill is not necessary. The Assurance Districts already contribute to the Operation and Maintenance of their respective reservoirs, and would be required to contribute to the costs of any work by the Corps of Engineers to preserve reservoir storage capacity. The Assurance Districts can also negotiate with the Kansas Water Office and the Corps of Engineers if the Districts wish to finance any projects similar to those anticipated by House Bill 2685.

The Bill has merit, especially when considering the past year's drought conditions and the knowledge that numerous reservoirs are losing capacity due to silting. I believe to fulfill the intent of the proposed legislation it will be necessary to reword portions of the Bill to clarify that intent.

Thank you for the opportunity to address the Committee related to the above issues. I am available if you have any questions.