

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on February 17, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes
Raney Gilliland, Kansas Legislative Research Department
Stanley Rasmussen, Senate Fellow, U.S. Army
Grace Greene, Committee Assistant

Conferees appearing before the Committee:

Senator Tom Holland, District #3
Burke Griggs, Staff Attorney, Department of Agriculture
Mark Rude, Kansas Groundwater Management District No.'s 1, 2, 3, 4 & 5
John Donley, Assistant Counsel, Kansas Livestock Association
Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau

Others attending: See attached list.

Senator McGinn brought the minutes from the meetings of January 28th, January 29th, and February 4th to the Committee for approval. Senator Abrams made a motion to approve the minutes. Senator Bruce seconded the motion. The motion carried.

Kristin Kellems provided a briefing on **SB 496 - Limiting powers of rural water districts.**

Senator Tom Holland (Attachment 1) addressed the Committee in support of **SB 496.**

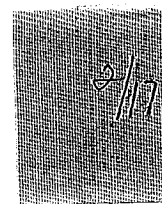
Mr. Holland took questions from the Committee.

Kristin Kellems provided a briefing on **SB 510 - Creating a conservation use water right.**

Ms. Kellems took questions from the Committee.

Burke Griggs, Staff Attorney, Department of Agriculture, (Attachment 2) addressed the Committee in support of **SB 510.** Mr. Griggs stated that the bill secures property rights in the conservation of water and restores the balance between the right to use water and the right to have that property right protected, by enacting a new beneficial use of water. Mr. Griggs addressed the elements of the bill, the purposes of the bill, economic benefits, and what objections opponents of the bill are raising.

Mr. Griggs took questions from the Committee.



CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 8:30 a.m. on February 17, 2010, in Room 144-S of the Capitol.

Mark Rude, Kansas Groundwater Management District No.'s 1, 2, 3, 4 & 5 (Attachment 3) addressed the Committee concerning **SB 510**. Mr. Rude stated, on behalf of the Groundwater Management Districts, the districts support the development and concept of the bill; however, it only addresses one of their concerns, the fee funded design. Lastly, Mr. Rude provided recommendations to the bill.

Mr. Rude answered questions from the Committee.

John Donley, Assistant Counsel, Kansas Livestock Association (KLA) (Attachment 4) addressed the Committee in support of **SB 510**. Mr. Donley recommended changes to the bill and concurred with the amendments provided by the Department of Agriculture. Secondly, Mr. Donley stated KLA would like language added to the bill that requires the Chief Engineer to grant a change of use application if requested by the water right owner.

Mr. Donley took questions from the Committee.

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau (Attachment 5) addressed the Committee as an opponent of **SB 510**. Mr. Swaffar addressed concerns with the bill, including the applicability of the proposed beneficial use statewide and unintended consequence of potential water stockpiling. Mr. Swaffar provided suggested language for **SB 510**.

Mr. Swaffar took questions from the Committee.

The following provided written testimony:

Elmer Ronnebaum, General Manager, Kansas Rural Water Association (Attachment 6)
Leslie Kaufman, Executive Director, Kansas Corporation Council (Attachment 7)

The next meeting is scheduled for February 25, 2010.

The meeting was adjourned at 9:28 a.m.

State of Kansas
Senate Chamber

TOM HOLLAND
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COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: ASSESSMENT AND TAXATION
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INTERSTATE COOPERATION
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON INFORMATION TECHNOLOGY

February 17th, 2010

Chairperson McGinn and Committee Members:

Good morning! My name is Tom Holland and I am the State Senator for the 3rd District serving portions of Douglas and Leavenworth counties and all of Jefferson County. I am here today to ask for your support of Senate Bill 496, an act concerning foreclosures as they relate to Rural Water Districts.

Fiscal Note Summary

SB 496 would reinstate any water unit benefit attached to land currently subject to judicial foreclosure or sale under the following conditions:

1. If the benefit water unit paid water use charges or another monthly charge to the rural water district within a period of 24 months prior to the foreclosure;
2. If the foreclosing creditor, assignee, or purchaser paid all charges associated with the unit including water purchased, monthly minimum fees, late fees, debt service fees, or reasonable disconnect fees.

Background

I was contacted by a constituent this past June regarding his purchase of a foreclosed home. At the time of closing he found out that they were being charged a fee of \$5,000 for purchase of a benefit membership from the servicing rural water district. I worked with Gary Hanson, an attorney with the Kansas Rural Water Association, to craft the language for this bill.

I very much appreciate the committee's consideration of this bill.

Sincerely,

A handwritten signature in black ink that reads "Tom Holland".

Tom Holland
State Senator – 3rd District

**Testimony on Senate Bill 510
to
The Senate Natural Resources Committee**

**Burke Griggs
Staff Attorney
Kansas Department of Agriculture**

February 17, 2010

Good morning, Chairman McGinn and members of the committee. I am Burke Griggs, staff attorney with the Kansas Department of Agriculture. I am here in support of Senate Bill 510, which secures property rights in the conservation of water.

The bill has four elements. First, it defines “conservation use” as “the maintenance of a water right for future use.” Second, it recognizes conservation as a distinct beneficial use of water, statewide, like all other recognized beneficial uses. Third, it prohibits the diversion of water under a conservation use right. Finally, the bill guarantees that the owner of a water right can change to and from conservation use with his property rights intact. By establishing conservation use as a beneficial use, the bill provides property rights protections previously unavailable under Kansas law, while conserving water at the same time.

A Kansas water right is a right to use water. If a water right owner does not use water for five successive years, he risks losing his water right to abandonment. This is known as the “use it or lose it” rule. DWR regulations contain numerous exceptions that can temporarily forestall the threat of abandonment, but these regulations can be cancelled or modified. The recently cancelled WRCP provided one such exception, but it had several problems.

SB 510 is a better approach. By establishing conservation use as a beneficial use of water, the water rights owner who holds a conservation use right is using that water—by maintaining the water right for future use, the same way a businessman uses money by keeping it in cash reserve. Because he is legally using the water in this way, and cannot divert water, the water rights owner protects his property right from abandonment and conserves water at the same time. For years, stakeholders across Kansas have wrestled with the “use it or lose it” rule: how can a water right owner conserve water for the future without putting his property rights at risk? WRCP and SB 316 just put this problem off, by creating a temporary exception. By contrast, SB 510 resolves the problem, by recognizing conservation as a beneficial use—a permanent, real property right, in keeping with the rest of the Kansas Water Appropriation Act.

In 1945, the legislature passed the Kansas Water Appropriation Act, which formally established water rights as real property rights. Later amendments of the Act have regularly responded to Kansas’ evolving water needs. SB 510 continues this tradition of providing voluntary, property-rights based conservation programs within the framework of the Act. Adding a new beneficial use, as this bill does, is in keeping with the evolution of Kansas water law that has taken place since 1945. And from a procedural standpoint, SB 510 does not change the core statutes by

which water rights are obtained, changed, and declared abandoned. In sum, this is not a drastic philosophical change at all. SB 510 reaffirms a water right's owner's discretion to use the quantity of water authorized by his water right, as long as that use is legal and reasonable.

Because SB 510 enhances the property rights of a water rights owner, it provides a number of previously unavailable benefits to that owner. First, by changing his use to conservation use, he need not maintain a pump, pump water simply to prevent abandonment, or engage in other economically inefficient activities that also waste water. Second, the bill increases the marketability of water rights, by allowing a water right owner to sell or lease a water right that might otherwise be lost to abandonment. Currently, there are over 17,500 owners of vested and certified water rights in Kansas—irrigators, industries, municipalities, and other users. Any discussion of economic benefit begins with those water rights owners. Third, owners of conservation use rights can leverage those rights to obtain federal conservation benefits, just as with WRCP, but in a more flexible way. And finally, conservation use water rights stand to benefit other water rights owners, by reducing groundwater drawdown and improving streamflows—and thus reducing their pumping costs.

Conservation use should operate statewide—just like all other beneficial uses of water under Kansas law. The need for water conservation is not limited to closed areas, dry areas, or overdeveloped areas. Even in eastern Kansas, much of the surface water use is conditioned upon available streamflows not allocated to senior uses. Moreover, reservoir capacity is decreasing due to sediment accumulation, while water demands continue to increase. Drought is never limited to closed areas. Because Kansas is such a varied state geologically and hydrologically, DWR anticipates putting forth regulations that address these variations—as it currently does for other beneficial uses of water.

Some stakeholder groups have expressed concerns that SB 510 will promote hoarding. These concerns are overstated. First, only vested and certified rights can be converted to conservation use: as a result, there are significant restrictions on what can be “tied up”. Water rights for other uses such as irrigation can still be obtained by appropriation, where water is available. Second, the same change procedures will govern changes from conservation use rights to subsequent uses, and these procedures give the Chief Engineer substantial discretion in evaluating the reasonableness of a change application, depending on the location of the water supply, the proposed use, and other factors. Third, SB 510 does not change existing limitations on the reasonable use needs of municipal users. Finally, keep private property rights in mind. If a water right owner has made the decision that placing his right into conservation use is in his interest, then he should be allowed to do so, and the state should not impede the exercise of his private property rights.

SB 510 builds on a central tradition in Kansas water law: protecting property rights in water, while adapting to changing economic, technological, and hydrological realities. By allowing a water right owner to voluntarily change his right to conservation use, and by giving that conservation use right the full protection of the law, SB 510 enhances the private property rights of the owner, while promoting water conservation at the same time.

I will stand for questions at the appropriate time.

Conservation Use Bill Summary

Kansas Department of Agriculture, February 2, 2010

1. What does the bill do?

- a. Recognizes conservation as a distinct beneficial use of water, statewide, with no time limit.
- b. Because conservation use is a beneficial use, a conservation use water right that is properly maintained is not subject to abandonment actions.
- c. While a water right's use is designated as conservation, the diversion of water is prohibited. Like other water rights, it does not guarantee the future availability of water supplies.
- d. Substantially improves upon WRCP in three ways:
 - i. Gives legal status to conservation, providing protections not available under the WRCP or the Kansas water banking act, K.S.A. 82a-761 *et seq.*
 - ii. Allows flexibility. The owner can choose how long to keep his water right in conservation use. He's not tied into a term contract, as in WRCP.
 - iii. Pays its own way through the change fee process.

2. If enacted, how will a conservation use water right work in practice?

- a. Because it is limited to vested and certified rights, the attributes of a conservation right are known and established up front.
- b. When a right (such as an irrigation right) is changed to a conservation use right, diversion will be prohibited, but the water right, properly maintained, will be protected from abandonment.
- c. Under rules yet to be developed, it is expected that:
 - i. Annual water use reports will be required;
 - ii. Diversion works such as the pump, gear head, and power source will not have to be maintained, but water level measuring devices will be required; and
 - iii. The change to conservation use will not be subject to consumptive use rules.
- d. When a conservation use right is changed to a different right:
 - i. Per existing law, changes cannot impair existing rights.
 - ii. It is expected that the consumptive use rules regarding change in use made of water will be applied to the former, diverting use, and as otherwise appropriate under law.
- e. How will a conservation use water right affect other rights?
 - i. It may benefit them, by reducing groundwater drawdown and improving streamflows.
 - ii. Owners of rights have the same protections under the common law as before.
- f. Further details will be worked out in rules and regulations, in cooperation with stakeholders.

3. Has this idea worked elsewhere?

- a. This bill is unique to Kansas, and its protections of water rights as property rights.
- b. Other than Oklahoma and South Dakota, every prior appropriation state in the west has eliminated the diversion requirement where diversion, as here, is not necessary.
- c. Where the law has allowed water rights owners to change their rights to conservation use without turning them over to the state, those owners have pursued conservation.
- d. Where the law has required that water rights be surrendered to the state for conservation purposes, that requirement has proven to be a disincentive, as in Washington, Oregon, and Colorado.

SENATE BILL No. 510

By Committee on Agriculture

2-2

9 AN ACT concerning water; relating to the beneficial use of water.

10

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

12 Section 1. (a) As used in this section, "conservation use" means the
13 maintenance of a water right for future use.

14 (b) Conservation use shall be a distinct beneficial use of water. Diver-
15 sion under a conservation use water right shall be prohibited.

16 (c) A vested or certified water right which has not been deemed aban-
17 doned pursuant to K.S.A. 82a-718, and amendments thereto, may be
18 changed to a conservation use pursuant to K.S.A. 82a-708b, and amend-
19 ments thereto, and any rules and regulations as promulgated by the chief
20 engineer. ←

21 (d) A conservation use water right may be changed pursuant to K.S.A.
22 2009 Supp. 82a-708b, and amendments thereto, and any rules and reg-
23 ulations promulgated by the chief engineer.

24 Sec. 2. This act shall take effect and be in force from and after its
25 publication in the statute book.

A conservation use water right shall retain the attributes, terms and conditions of its immediately prior use, including priority, authorized quantity, rate of diversion, point of diversion, place of use, source of supply, and administration pursuant to K.S.A. 2009 Supp. 82a-701 et seq. and K.S.A. 2009 Supp. 82a-1020 et seq., and amendments thereto, and any rules and regulations as promulgated by the chief engineer.

Testimony RE: SB 510
Senate Natural Resources Committee

Provided By:

Kansas Groundwater Management Districts No.'s 1, 2, 3, 4 and 5

February 17, 2010

SB 510

An ACT concerning water; relating to the beneficial use of water.

BACKGROUND:

With the elimination of the Water Rights Conservation Program (WRCP), and because conservation is so important, there has been a flurry of activity to find an acceptable replacement. SB 510 is one of these conservation-oriented approaches.

SB 510 is simple in that it adds "conservation use" as a beneficial use of water in Kansas. This bill is necessary to support a replacement WRCP program being developed by the division of water resources, Kansas department of agriculture, to be implemented via regulations. This proposal has been introduced for comment in a bulleted outline form – attached to this testimony as Attachment 1.

Other conservation-oriented efforts include a currently pending regulation being promulgated by the division of water resources, Kansas Department of Agriculture that adds another due and sufficient cause for nonuse under existing KAR 5-7-1, and HB 2565 which if passed will make not pumping a well in closed areas of the state a due and sufficient cause for nonuse as long as the well is maintained.

Each of these efforts and approaches has its own advantages and disadvantages. None of them seem to cover all six of the most important issues raised during the discussions on eliminating WRCP which are considered necessary to being an effective conservation program that current water right owners will participate in – which were: 1) a definite time period a water right could be enrolled in a conservation program; 2) a fee funded program design; 3) the authority for the well owner to safely cap the well and store the equipment during the well's nonuse; 4) being applied to closed areas of the state where conservation most positively affects existing water rights and does not affect the right of others to obtain rights to unappropriated water; 5) certainty on behalf of the water right owner of the validity and extent of the water right when entering and coming out of the conservation program; and 6) restricting the status of any administration call by a water right holder whose water right is in conservation status.

SB 510 CONCERNS & COMMENTS:

1. While the new conservation use authorized by SB 510 is a clever, direct and simple way to approach a new conservation ethic in Kansas, and we support its development, the bill draft itself only addresses one of the six issue concerns cited above – the fee funded design. These six concerns should either be included in the statutory language

of SB 510, or, accommodated by promulgated regulations for whatever program(s) is developed by DWR to implement SB 510. The current program being proposed by DWR (see Attachment 1) does not address three of the six issues as follows:

- a) There is no time limit a water right can be maintained in the conservation program being proposed by DWR once SB 510 is passed; and
- b) Water rights from every area of the state – closed, open, over-appropriated and under-appropriated - can be changed in the DWR program proposal if SB 510 is passed; and
- c) The uncertainty of what a water right will be allowed to be by the chief engineer when it is changed from conservation to some other use type in the future is a disincentive for use of this program. If such assurance is what the new language being offered by DWR accomplishes, then this concern goes away.

RECOMMENDATIONS:

1) SB 510 should be passed in such a manner that can support one or more conservation programs that can be implemented by regulation, and which statutorily includes language to address at least the following three issues:

- a) “Conservation” shall be a beneficial use eligible in areas closed by regulation or order of the chief engineer; or within the boundaries of a groundwater management district at the recommendation of the district’s board of directors; and
- b) certainty on behalf of the water right owner of the validity and extent of the water right when entering and coming out of the conservation program; and
- c) restrict the status of any administration call by a water right holder whose water right is in conservation status.

2) DWR regulations generated to implement SB 510 following its passage should address the three remaining issues.

With these two actions, and effective rule promulgation by DWR, Kansas will have a new beneficial use type of “conservation use” that supports the DWR proposed conservation alternative for water right holders which is most likely to be utilized by Kansas Water right owners.

Attachment 1:

Kansas Department of Agriculture – Conservation Use Bill Summary – February 2, 2010

1. What does the bill do?

- a. Recognizes conservation as a distinct beneficial use of water, statewide, with no time limit.
- b. Because conservation use is a beneficial use, a conservation use water right that is properly maintained is not subject to abandonment actions.
- c. While a water right's use is designated as conservation, the diversion of water is prohibited. Like other water rights, it does not guarantee the future availability of water supplies.
- d. Substantially improves upon WRCP in three ways:
 - i. Gives legal status to conservation, providing protections not available under the WRCP or the Kansas water banking act, K.S.A. 82a-761 *et seq.*
 - ii. Allows flexibility. The owner can choose how long to keep his water right in conservation use. He's not tied into a term contract, as in WRCP.
 - iii. Pays its own way through the change fee process.

2. If enacted, how will a conservation use water right work in practice?

- a. Because it is limited to vested and certified rights, the attributes of a conservation right are known and established up front.
- b. When a right (such as an irrigation right) is changed to a conservation use right, diversion will be prohibited, but the water right, properly maintained, will be protected from abandonment.
- c. Under rules yet to be developed, it is expected that:
 - i. Annual water use reports will be required;
 - ii. Diversion works such as the pump, gear head, and power source will not have to be maintained, but water level measuring devices will be required; and
 - iii. The change to conservation use will not be subject to consumptive use rules.
- d. When a conservation use right is changed to a different right:
 - i. Per existing law, changes cannot impair existing rights.
 - ii. It is expected that the consumptive use rules regarding change in use made of water will be applied to the former, diverting use, and as otherwise appropriate under law.
- e. How will a conservation use water right affect other rights?
 - i. It may benefit them, by reducing groundwater drawdown and improving streamflows.
 - ii. Owners of rights have the same protections under the common law as before.

Further details will be worked out in rules and regulations, in cooperation with stakeholders. (highlight added by DWR/KDA)

**KANSAS
LIVESTOCK
ASSOCIATION**

Since 1894

TESTIMONY

To: Senate Committee on Natural Resources
Senator Carolyn McGinn, Chair

From: John Donley, Assistant General Counsel

Date: February 17, 2010

Re: SB 510 -- Creating a conservation use water right

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 5,500 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, dairy production, grazing land management and diversified farming operations.

Good morning Chairperson McGinn and members of the Committee. My name is John Donley, and I am Assistant General Counsel for the Kansas Livestock Association. I appreciate the opportunity to testify this morning in support of SB 510.

KLA is generally supportive of measures that encourage water conservation practices. Under current law, if a water right owner has not made a lawful, beneficial use of the water for 5 consecutive years, the water right is considered abandoned, and the owner of that right will lose the water right. Therefore, there is an incentive to pump water even when it may not be necessary in order to avoid a determination by the Division of Water Resources that the water right has been abandoned.

SB 510 seeks to recognize conservation use as a beneficial use. We are generally supportive of such efforts to recognize conservation practices. However, we do not support the loss of any portion of the appropriated right if a water right holder claims conservation as a beneficial use then later seeks to use the water right for its original purpose (such as irrigation, livestock watering etc.). KLA would also like to see language that requires the Chief Engineer to grant a change of use application from conservation use to the use prior to conservation use if requested by the water right owner. KLA has had discussions with the department about our concerns, and it is our understanding that the department is in agreement and has language that will address these concerns.

I appreciate the opportunity to testify before the committee in support of SB 510 with modifications as well as other proposed concepts that will encourage water conservation practices while also protecting the property rights of the owners of water rights. I would be happy to stand for questions at the appropriate time. Thank you.

SENATE NATURAL RESOURCES

2-17-10

Attachment 4

***Kansas Farm Bureau
Policy Statement***

**Senate Natural Resources Committee
SB 510; An act concerning water**

**February 17, 2010
Submitted by:
Steve M. Swaffar
Director of Natural Resources**

Chairperson McGinn and members of the committee, thank you for this opportunity to provide testimony on Senate Bill 510 relating to the non-use of water for beneficial use. I am Steve Swaffar, Director of Natural Resources for the Kansas Farm Bureau. As written, KFB stands in opposition to SB 510.

Our biggest concern with the bill is the applicability of the proposed beneficial use statewide. SB 510 seeks to add a beneficial use to the list of 14 other beneficial uses currently in rules and regulations of the Kansas Water Appropriation Act. Termed conservation use, the reality is this new use is non-use of water and idling of water rights in areas where others could actively put water to use without jeopardizing the water supply.

Clearly there are areas of the State that stand to benefit from the non-use of water rights, above the Ogallala aquifer is the obvious example. However, there are other areas of the State still open to new water development to help generate economic gain for irrigation use, municipal drinking water, industrial use or one of the other eleven beneficial uses. KFB does not believe the application of a non-use beneficial use is appropriate in these areas.

We are not opposed if this new beneficial use is applied exclusively in areas of the State that are closed to new appropriations or areas where local water management districts determine the use should be available. In fact, these seem to be good places for this concept. Clearly there are no new appropriations of water going to be made in closed areas, so any water savings will extend and conserve any local supplies. This is the same purpose the Water Rights Conservation Program (WRCP) served in those areas. WRCP was a successful program in many of the areas of the State with diminishing water supply and it appears this bill is trying to address the loss of that program.

Another serious concern we have with the bill is the unintended consequence of potential water stockpiling or even water brokering. This new beneficial use would allow entities to purchase existing water rights, shelve those water rights for an indefinite time and then bring the rights back into use when growth has created the need for the water, all the while denying Kansans the opportunity to put water to use where water is otherwise available. KFB does not believe this was the intent of the Kansas Water Appropriation Act when it was originally created.

We also have some concerns about the mechanism for use changes shown in section 1(c) of the bill. Although a water right may maintain its attributes and appropriation amount once changed to this new use and then subsequently changed back, the Chief Engineer must still grant the use change under K.S.A. 82a-708(b). There are no guarantees that a future chief engineer will grant that use change. KFB believes it needs to be clearly stated in the statute that the chief engineer shall approve change requests to revert from conservation use back to the previously authorized use made of water.

Attached to my testimony is some suggested language for the Committee to consider that addresses our concerns. Thank you for allowing me to present testimony today. I would be happy to answer any questions you may have at the appropriate time.

SENATE BILL No. 510

By Committee on Agriculture

2-2

9 AN ACT concerning water; relating to the beneficial use of water.

10

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

12 Section 1. (a) As used in this section, "conservation use" means the
13 maintenance of a water right for future use.

14 (b) Conservation use shall be a distinct beneficial use of water. Diver-
15 sion under a conservation use water right shall be prohibited.

16 (c) A vested or certified water right which has not been deemed aban-
17 doned pursuant to K.S.A. 82a-718, and amendments thereto, may be
18 changed to a conservation use pursuant to K.S.A. 82a-708b, and amend-
19 ments thereto, and any rules and regulations as promulgated by the chief
20 engineer.

21 (d) A conservation use water right may be changed pursuant to K.S.A.
22 2009 Supp. 82a-708b, and amendments thereto, and any rules and reg-
23 ulations promulgated by the chief engineer.

24 Sec. 2. This act shall take effect and be in force from and after its
25 publication in the statute book.

and the chief engineer shall not administer to protect conservation use water rights.

and the chief engineer shall approve any such request to convert the water right back to the previously authorized use made of water.

(e) "Conservation" shall be a beneficial use eligible in areas closed by regulation or order of the chief engineer; or within the boundaries of a groundwater management district at the recommendation of the district's board of directors.



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**Comments on Senate Bill 496
Before the Senate Natural Resources Committee
Wednesday, February 17, 2010**

Madam Chair and Members of the Committee:

The Kansas Rural Water Association finds that Senate Bill 496 represents the policy that most water districts presently follow. Most rural water districts do not immediately forfeit a benefit unit (membership in a rural water district) for non-payment but try to give every opportunity for the present or future landowner to bring the membership to good standing by paying back charges. Senate Bill 496 would prohibit a rural water district from terminating a benefit unit when that unit is attached to land involved in a foreclosure and the district has received any payment in the previous 24 months to the date of the foreclosure or if the creditor or purchaser pays all back charges.

While it is within the authority of the local water district board of directors to reconsider a forfeiture and to allow the owner to have the meter be reinstated upon payment of the back water bill and any late fees that may be due on that bill, some districts may chose to not do so. This bill will provide uniformity among all rural water districts in that regard.

As background, the reason that benefit units (memberships) in rural water districts are forfeited is because the original bylaws of these districts contained such provisions for non-payment of charges, in effect, creating a form of a lien that would follow any subsequent owner of the property. "Benefit units" are an investment that the landowner makes to participate in the project and to receive water service – and non-payment of monthly fees can result in forfeiture of that unit and loss of the 'investment.' It is important that the right to terminate membership for non-payment be retained because if charges become nothing more than a bill that the landowner can walk away from, with the subsequent landowner able to simply apply for new service, the financial viability of these systems may break down.

If back charges are paid, the district is really not out of anything. SB 496 ensures that in the cases of foreclosure, that the benefit unit will not be forfeited.

Respectfully,

Elmer Ronnebaum
General Manager



Kansas Cooperative Council
P.O. Box 1747
Hutchinson, Kansas
67504-1747

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Senate Natural Resources Committee

February 17, 2010

SB 510 - conservation of water as a beneficial use.

Chairman McGinn and members of the Senate Natural Resources Committee, thank you for the opportunity to comment in support of SB 510. I am Leslie Kaufman, Executive Director for the Kansas Cooperative Council.

The Kansas Cooperative Council (KCC) represents all forms of cooperative businesses across the state -- agricultural, utility, credit, financial and consumer cooperatives. Approximately half of our members are grain elevator/farm supply cooperatives. In many areas of the state, especially the western portions of Kansas, our members rely on irrigated acres to produce the grain they will handle.

The KCC has been very vocal over the past several years regarding the need for water conservation options that do not precluded continued agricultural production, particularly crop production. The bill before you today will allow the preservation of a water right under the Kansas "use it or lose it" appropriation system by statutorily recognizing "conservation use" as a specific "beneficial use". It does this without any restrictions on land use.

There are many different ways in which water conservation can be advanced without prohibiting continued ag production. The bill before you is one such option. As such, we lend our support and encourage the development of other conservation initiatives that focus on water and the water right.

If you have any questions regarding our testimony or position on this bill, please feel free to contact me at 785-220-4068. Thank you.

The Mission of the Kansas Cooperative Council is to promote, support and advance the interests and understanding of agricultural, utility, credit and consumer cooperatives and their members through legislation and regulatory efforts, education and public relations.

SENATE NATURAL RESOURCES
2-17-10
Attachment 7