

MINUTES OF THE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:30 a.m. on February 16, 2011, in Room 159-S of the Capitol.

All members were present except:
Steve Morris - excused

Committee staff present:
Tamera Lawrence, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Heather O'Hara, Kansas Legislative Research Department
Laura Younker, Kansas Legislative Research Department
Judy Seitz, Committee Assistant

Conferees appearing before the Committee:
Tracy Streeter, Director, Kansas Water Office (KWO)
Paul Graves, Assistant Chief Engineer, Kansas Department of Agriculture (KDA),
Division of Water Resources
Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau (KFB)
Leslie Kaufman, President/CEO, Kansas Cooperative Council (KCC) presenting joint testimony
for the KCC, Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers
Association (KARA)

Others attending:
See attached list.

Vice Chair Teichman introduced Bronwyn McNaughton, Merriam who is shadowing her as part of the Gifted and Talented Students' Shadow Day at the Legislature. Senator Emler's shadow, Bethany Wiles, Shawnee was also introduced.

Tamera Lawrence, Office of the Revisor of Statutes, reviewed **SB 147 – Interstate water litigation fund.** She said currently that K.S.A. 2010 Supp. 82a-1804 states that 100% of all monies received from any dispute or litigation from Colorado and Nebraska regarding the Republican river compact goes into the interstate water litigation fund until that fund reaches \$20 million. Once the \$20 million is reached, the money received is used for conservation projects along the Republican River. **SB 147** would eliminate the cap.

Tracy Streeter, Director, Kansas Water Office (KWO) testified in support of **SB 147 (Attachment 1)**. He said that this bill would enhance the state's ability to request funding from the Legislature for conservation projects which would enhance water use efficiency or improve the overall management of water in these basins.

Mr. Streeter took questions from the Committee.

Paul Graves, Assistant Chief Engineer, Kansas Department of Agriculture (KDA), Division of Water Resources, appeared in support of **SB 147 (Attachment 2)**. He stated that this bill reflects a pragmatic approach to maintaining a potent interstate water litigation fund without the restriction of a specified cap and shows other states that Kansas is serious and ready to defend its interests in interstate waters.

Mr. Graves took questions from the Committee.

Heather O'Hara, Kansas Legislative Research, distributed a chart showing the Republican River damages' disposition as of January 17 (**Attachment 3**).

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau (KFB), presented testimony in support of **SB 147 (Attachment 4)**. Mr. Swaffar said members of the KFB have suffered the damages due to non-compliance and their interests should not be jeopardized by the fund transfer. These crop producers have never been compensated for their losses and many still live with the threat of water right administration.

CONTINUATION SHEET

The minutes of the Senate Agriculture Committee at 8:30 a.m. on February 16, 2011, in Room 159-S of the Capitol.

Mr. Swaffar offered to stand for questions.

Leslie Kaufman, President/CEO, Kansas Cooperative Council (KCC) appeared in support of **SB 147** on behalf of the KCC, the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA) (Attachment 5). She said that the money is in the fund to be used to protect and defend the water rights of their members. Ms. Kaufman stated that the monetary resources set aside to protect their members' compact rights must also be protected.

Ms. Kaufman offered to take questions.

There was discussion on **SB 147**.

The hearings were closed on **SB 147**.

The next meeting is scheduled for February 22, 2011.

The meeting was adjourned at 9:10 a.m.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 16, 2011

[illegible]



**Senate Agriculture Committee
Testimony on Senate Bill 147
Disposition of Republican River Litigation Funds
February 16, 2011**

Chairman Taddiken and members of the Committee, I am Tracy Streeter, Director of the Kansas Water Office (KWO). Thank for the opportunity to appear before you today in support of Senate Bill 147, which amends K.S.A. 82a-1804 concerning the disposition of monies resulting from the Republican River Compact disputes.

The state of Kansas has maintained, and I want to reemphasize today, our first priority is the delivery of water in accordance with the terms of the Final Settlement Stipulation adopted by the U.S. Supreme Court. In the likely event Kansas receives both water and money, it is imperative that we have the framework in place allowing the State to utilize the funding to conserve and efficiently utilize water delivered under the terms of the Settlement as well as any high flow events we may experience in the future. The amendments proposed in Senate Bill 147 will not only ensure that funds are deposited to sustain our ability to litigate in the future, but will also ensure that funds are available to implement necessary projects in the upper and lower portions of the Republican River Basin.

Stakeholder committees in the upper and lower basins began the process of identifying projects that enhance water use efficiency or improve the overall management of water within the respective basins. In addition, a reconnaissance study was completed in the upper basin to identify possible options for the use of water should an augmentation pipeline proposed by Colorado be approved to meet its compact obligations.

In the lower basin, the stakeholder committee developed a set of recommendations which ultimately was adopted by the Kansas Water Authority and is now part of the Kansas Water Plan. These recommendations most notably include increasing storage at Lovewell Reservoir, the evaluation of options for a new reservoir as well as enhancing storage opportunities at Jamestown Wildlife Area. To increase storage at Lovewell, a federal feasibility study must be conducted by the Bureau of Reclamation. The study has been authorized, but not funded. The Water Office and others are working with our Congressional delegation to secure funding for this study which will also require a non-federal match.

All of these options focus on increasing storage to ensure that compact water and excess flows can be made available to water users when needed most. Senate Bill 147 will enhance the state's ability to request funding from the Legislature to these types of projects, sooner rather than later.

Thank you again for the opportunity to appear before you today in support of Senate Bill 147. I will stand for questions at the appropriate time.

*Senate Agriculture Committee
2-16-11
Attachment 1*



**Testimony on SB 147, Interstate Water Litigation Fund
to
Senate Committee on Agriculture
by
Paul Graves
Assistant Chief Engineer
Kansas Department of Agriculture
Division of Water Resources**

February 16, 2011

Chairman Taddiken and members of the committee, I am Paul Graves, Assistant Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources. I appear before you today to testify in support of SB 147.

SB 147 would amend K.S.A. 82a-1804, Moneys Recovered in Republican River Compact Litigation, to use recovered moneys to replenish the interstate water litigation fund by an amount equal to the total expenses of litigation plus 5 percent, instead of replenishing the fund to \$20 million per the existing law. As in the current law, any remaining recovered moneys after replenishing the interstate water litigation fund would be credited to the Republican River water conservation projects fund.

The chief engineer of the Kansas Department of Agriculture's Division of Water Resources serves as Kansas' commissioner to the Republican River Compact, and he is responsible for administering the compact together with the commissioners from Colorado and Nebraska. Last spring, Chief Engineer David Barfield worked with the Kansas Attorney General to file a lawsuit in the U.S. Supreme Court over Nebraska's overuse of water in 2005-2006 (after administrative remedies including a required non-binding arbitration process failed to achieve acceptable results). At present the Court is awaiting a brief on this case from the U.S. Solicitor General. If the Court decides to accept the case, it will appoint a special master to conduct the case.

The current lawsuit underscores the importance of the interstate water litigation fund to enable Kansas to promptly take action in response to compact violations. Perhaps as importantly, the existence of the interstate water litigation fund shows other states that Kansas is serious and ready to defend its interests in interstate waters.

For these reasons the chief engineer has supported past legislation to establish and strengthen the interstate water litigation fund. In 2008 we testified in favor of SB 89, which established the existing law with dedicated funds and direction on how Republican River damage moneys from other states would be spent. In 2010 we testified in favor of SB 558, which sought to secure the interstate water litigation fund against use for other purposes.

*Senate Agriculture Committee
2-16-11
Attachment 2*

We support SB 147 because it reflects a pragmatic approach to maintaining a potent interstate water litigation fund without the restriction of a specified cap, thereby strengthening Kansas' ability to defend its interests in interstate waters for the long-term benefit of Kansans who rely on these supplies.

Thank you for the opportunity to express our comments on this bill. I will stand for questions at the appropriate time.

Republican River Damages' Disposition
January 27, 2011

Nebraska Moneys

Colorado Moneys

Deposited into Interstate Litigation Fund (K.S.A. 82a-1802) at the Attorney General's Office until balance reaches \$20.0 million.

Nebraska Moneys over
\$20.0 million balance

Colorado Moneys over
\$20.0 million balance

Nebraska Moneys: Republican River Water Conservation Projects-
Nebraska Moneys Fund

- 1/3 deposited into the State Water Plan Fund to be used for water conservation projects with priority given to those projects which will ensure the State of Kansas will remain in compliance with the Republican River Compact.
- 2/3 to be used for conservation projects in the Lower Republican River Basin.

Colorado Moneys: Republican River Water Conservation Projects-
Colorado Moneys Fund

- 1/3 deposited into the State Water Plan Fund to be credited to the State Water Plan Fund to be used for water conservation projects.
- 2/3 to be expended only for conservation projects in those areas of the state in the Upper Republican River Basin in Northwest Kansas.

Projects specified in K.S.A. 82a-1804

- Efficiency improvements to canals or laterals managed and paid for by an irrigation district
- Water use efficiency upgrades
- Implementation of water conservation of irrigation and other types of water uses
- Implementation of water management plans or actions by water right holders
- Water measurement devices and monitoring equipment and upgrades
- Artificial recharge, funding the water transition assistance program, purchase of water rights and cost share for state or federal conservation programs that save water
- Maintenance of the channel and the tributaries of the Republican River
- Reservoir maintenance or purchase, lease, construction, or other acquisition of existing or new storage space in reservoirs
- Purchase, lease, or other acquisition of a water right
- Expenses incurred to construct and operate off-stream storage

Senate Agriculture Committee
2-16-11
Attachment 3

Republican River Damages' Disposition
January 27, 2011

Nebraska Moneys

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Projects specified in K.S.A. 82a-1804

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- Water measurement devices and monitoring equipment and upgrades
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**Kansas Farm Bureau
POLICY STATEMENT**

**Senate Agriculture Committee
Senate Bill 147, an act concerning interstate water**

**February 16, 2010
Submitted by:
Steve M. Swaffar
Director of Natural Resources**

Chairman Tadikken and members of the committee, thank you for this opportunity to provide testimony on Senate Bill 147, addressing the interstate water litigation fund. I am Steve Swaffar, Director of Natural Resources for the Kansas Farm Bureau.

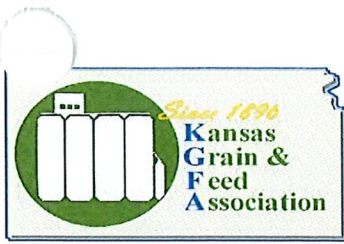
Kansas Farm Bureau stands in support of SB 147 in its efforts to reimburse the Interstate Water Litigation Fund (IWLF) for actual expenditures. Our members have been negatively impacted by upstream states being out of compliance with river compacts. If allowed to continue, agriculture and the state economy as a whole will continue to suffer from past and future compact violations. Therefore we believe this fund is necessary to promote restraint in upstream states.

The transfer of the balance from the account was unfortunate and could compromise leverage against upstream states if is not either restored or reimbursed. A sizeable litigation war chest serves as a litigation deterrent that garners the respect of our compact partners, but in lieu of this type of fund a promise to cover costs should serve adequately.

However, we must remember it is the water users that suffered the damages due to non-compliance and their interests should not be jeopardized by the fund transfer. These crop producers have never been compensated for their losses and many still live with the unnecessary threat of water right administration. Ensuring that some of these settlement funds would be made available to those impacted by the compact violations will at least partially make-up for those losses.

SB 147 would no longer require the IWLF be restored to \$20 million dollars before funds are directed to the conservation projects funds. KFB believes the damaged producers in the area should be given a high priority for use of those funds for conservation projects. Litigation costs will still be covered, but water users will gain some lost compensation. Thank you for this opportunity to provide testimony, I would be happy to answer questions at the appropriate time.

*Senate Agriculture Committee
2-16-11*



Senate Agriculture Committee

February 16, 2011

SB 147 – Interstate Water Litigation Fund

Thank you Chairman Taddiken and members of the Senate Agriculture Committee, I am Leslie Kaufman, the President and CEO of the Kansas Cooperative Council and I appear before you in support of SB 147 on behalf of the Kansas Cooperative Council, the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA).

The KCC is a voluntary, statewide trade association representing all forms of cooperative businesses across the state -- agricultural, utility, credit, financial, refining and consumer cooperatives. KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities which supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry.

All three associations support the purposes for which the Interstate Water Litigation Fund was created. The state has made, and continues to make, significant investments in protecting our rights under interstate water compacts. Using some of the dollars collected through legal actions to provide resources to carry-on these activities into the future is wise.

Obviously, we shared the disappointment of many a couple of years ago when a glitch in our budgeting process depleted the fund. But, we appreciate the legislative attempts brought forward

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Attachment 5*

nce then to replenish the fund. It will take time to fully re-build the Interstate Water Litigation Fund. During this process, we see where the provisions in SB 147 can be of positive benefit.

Protecting the state's rights under interstate water compacts is of critical importance to all Kansans. The state must have financial resources to protect and defend these rights. Water litigation is a very lengthy and costly process. Unfortunately, litigation may be necessary to ensure compliance with the compacts or that appropriate damages are paid. Therefore we need to have these litigation funds available if and when the issue arises. As such, we support the bill. The monetary resources set aside to protect our compact rights must, themselves, also be protected. We encourage the legislature to ensure that Interstate Water Litigation Funds are never again wiped-out by a budget mistake.

Thank you for this opportunity to comment on this measure and we hope your committee will take favorable action on SB 147.