

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: February 15, 2012
Before: House Committee on Agriculture and Natural Resource
By: Woody Moses, Kansas Aggregate Producers Association
Regarding: HB 2698 – Sand & Gravel Extraction/Water Use

Good Morning Chairman Powell and Members of the Committee:

My name is Woody Moses, Managing Director of the Kansas Aggregate Producers Association. The Kansas Aggregate Producers Association (KAPA) is an industry wide trade association comprised of over 170 members located or conducting operations in all 165 legislative districts in the state that provides basic building materials to all Kansans. I appreciate the opportunity to appear before you today with our comments on HB 2698 a measure dealing with the “use” of water in sand & gravel operations.

Winston Churchill once said Russia “is a riddle, wrapped in a mystery, inside an enigma.” Too many of us who deal with water law the same thing may apply for Kansas water law. For the Kansas sand and gravel industry, the Kansas Division of Water Resources (DWR) and this Legislature it is particularly vexing when it comes to water use associated with the development of natural resources such as sand & gravel. In our opinion the adoption of HB 2698 will go a long way towards resolving these issues.

What are these issues?

Sand, in appropriate gradations, is normally found in the alluvial aquifer (near rivers and streams) usually in areas that were closed to appropriation long ago, and unlike a farm or livestock operation cannot be moved to where water is available. Yet, the public demand for sand increases at a rate of 3-4 tons per Kansan per year, or almost 19 million tons per year. Over 70% of sand products are consumed statewide by the public through KDOT, cities and counties. Unfortunately, in order to meet this demand sand operators are forced to expose the alluvial aquifer to evaporation as a consequence of the resulting sand pit. As the sand, which belongs to

the operator, is mixed with the water, which is reserved to the public thus create an inner conflict with the Kansas Water Appropriations Act. The easy solution would be for the state to remove its water from the sand, as the sand operator is able to work dry operation more efficiently. So, how does the operator access his private property without unduly affecting the management of the public water resources?

Resource Management

From 1945 to 1987, it was not considered to be a problem by DWR as the total diversion by evaporation was minimal, even today it is less than 2/10 of 1% of annual industrial use. In 1987 DWR reconsidered its position and sought to regulate evaporation by term permit and eventually by water right in 1993. In 1995, the use was deemed to be not beneficial by the Legislature. However, as it was difficult to obtain the other necessary permits to conduct an operation this was repealed in 2004 and replaced with provisions agreed to by both the sand producers and DWR. This system was the result of a compromise; however the compromise was never fully implemented, so while it has been effective in the short term, long term issues must still be addressed, especially considering the numerous changes that have been made in water policy in this session. HB 2698 basically seeks to do this.

What will the bill do?

Under the provisions of HB 2698 the evaporation of groundwater will be regulated by a single permit authorizing the use of water for that purpose. The permit will cover all uses of water associated with a sand & gravel operation including the dredge, wash water wells, and net evaporation. This concept was envisioned in the earlier compromise. Adopting this concept will balance the public interest in both sand & gravel and water by:

- Providing a long term solution for sand & gravel operations, by securing reserves that may not be accessed for another 50-100 years.
- Reduce the work load of the Kansas Division of Water Resources.
- Provide economical access for the development of natural resources.
- Preserve property rights, while protecting the state resources

Protecting property rights, public resource, and developing natural resources are vital issues to all Kansans. In our opinion, HB 2698 will advance good policy in this area. We urge this committee to recommend it favorable for passage. Thank for the opportunity to present these comments. I will be pleased to respond to any questions you may have at this time.

WHAT IS A BENEFICIAL USE OF WATER?

It would appear from 1976 interim committee notes and sections of 82a-701 et. seq. the following questions should be asked in the determination of a beneficial use.

- Is water brought under control?
- Are diversions works constructed?
- Can the Chief Engineer order the diversion stopped?
- Is the diversion specific?
- Is the diversion measurable?

Types of Diversions			
Irrigation	Reservoir	Canals	Sand & Gravel Pit
By well Pump	By Floodgate Dam	By Headgates Headgates, Ditches & Valves	None None
Yes	Yes	Yes	No
Yes	Yes	Yes	No
Yes	Yes	Yes	No

General Availability of Ground Water & Normal Annual Precipitation in Kansas With Sand & Gravel Plants

