

**Testimony to the
House Agriculture and Natural Resources Committee
HB 2625
Presented by Wayne Bossert
For the Northwest Kansas Groundwater Management District #4
February 19, 2008**

Thank you, Mister Chairman and members of the committee for this opportunity to testify. I am Wayne Bossert and I represent 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 section 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~~Whenever~~ 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 ~~in a groundwater use area which is located outside the boundaries of an existing groundwater management district:~~ (a)(1) Groundwater levels in the area in question are declining or have declined excessively; or (b)(2) the rate of withdrawal of groundwater within the area in question equals or exceeds the rate of recharge in such area; or (c)(3) preventable waste of water is occurring or may occur within the area in question; (d)(4) unreasonable deterioration of the quality of water is occurring or may occur within the area in question; or (e)(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. ~~and a~~ full and complete record of the documentary and oral evidencesame shall be kept. History: L. 1978, ch. 437, § 3; July 1.)

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, ~~and~~ 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.

(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;

(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.

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.