



**Before the
House Agriculture and Natural Resources Committee
Testimony on HB 2451
Gary Harshberger, Kansas Water Authority
January 19, 2012**

Chairman Powell and members of the Committee, I am Gary Harshberger, Chairman of the Kansas Water Authority. I also chair the Ogallala Aquifer Advisory Committee, an *ad hoc* committee of the water authority, consisting of 22 stakeholders in western Kansas, to advise on removing barriers to conserving the aquifer. One of the barriers to conservation has been the “use it or lose it” aspect of the Kansas Water Appropriation Act. I am here to report both the Ogallala Aquifer Advisory Committee’s and the Kansas Water Authority’s support for House Bill 2451, to protect a groundwater right from unintentional abandonment in closed areas.

As most Kansans are aware, the Ogallala High Plains aquifer has had long term and dramatic declines. The drought of 2011 exacerbated the problem, as irrigators pumped the aquifer hard to save their crops. There is, however, widespread interest and support for conserving and extending the life of the Ogallala aquifer. Governor Brownback initiated a new effort to address this issue with an economic summit on the Ogallala aquifer July 21, 2011 in Colby, Kansas. Stakeholders were asked to give their ideas on the future of the aquifer, and what individuals and the State can do to help. Many people cited the problem of “use it or lose it” in which a water right must be used beneficially at least once every five years or risk abandonment. Although the Kansas Department of Agriculture, Division of Water Resources, has a long list of acceptable reasons for not using a water right, many farmers noted that it’s easier for them to use the well every few years, than to fill out the required paperwork and get approval for not using the water.

The Ogallala Aquifer Advisory Committee discussed the “use it or lose it” aspect of the abandonment statute in depth. The abandonment clause is a common feature of prior appropriation (first in time, first in right) water law, the doctrine that is the basis for the Kansas Water Appropriation Act. In areas which are open for further development, the requirement to use water can benefit economic development; it prevents a water right just being held on paper, which could prevent another interested person from putting it to beneficial use. However, most of the Ogallala aquifer is fully or over developed and closed to any new appropriations. In a closed area, one person not using their groundwater water right would have no impact on another person seeking to obtain a new water right.

On behalf of the Kansas Water Authority and the Ogallala Aquifer Advisory Committee, I encourage the Committee to adopt the proposed change, so that it is clear to all groundwater users in areas closed to new appropriations their water right is no longer at risk of abandonment just due to non-use. This change will signal a shift for the Ogallala aquifer from a culture of development to a culture of conservation.

Thank you for the opportunity to appear before the committee. I will be glad to respond to questions at the appropriate time.