

Sean Miller
Testimony to the House Ag & Natural Resource Committee
Opposing HB 2227
On Behalf of Western Kansas GMD #1, SW Kansas GMD #3, & NW Kansas GMD #4
Thursday, February 12, 2015

Chairman Schwartz, members of the committee, my name is Sean Miller and I am here today on behalf of the three Western Kansas Groundwater Management Districts to express our concern over HB 2227 related to Water Conservation Areas (WCAs). The legislative declaration of the Groundwater Management District Act (found in K.S.A. 82a-1020) recognized the need to create organized local districts to ensure, among other purposes, the conservation of groundwater while giving local stakeholders additional local control. To that end we support the intent of this bill as it provides opportunity for voluntary water conservation measures, but as is often the case the devil is in the details.

While there are seemingly a number of vagaries included in this bill, our primary concern resides in subsection (d) which appears to make the groundwater management district and its significant management process and plan, a plan approved by the chief engineer, subservient to this newly created water conservation area consent agreement policy. This appears to be inconsistent with existing state law found in K.S.A. 82a-733(g) and the general governing authority granted to the GMDs under the Groundwater Management District Act.

There are a number of other significant questions this legislation raises but doesn't appear to completely answer. The GMDs have, and continue to promote water conservation. But those conservation measures must be considered in the full context of other water management public interests the GMD process is charged to consider by law. Many of the tools to conserve water are likely already available within the GMDs. So perhaps it's a tool better assigned for approval by the GMD and only necessary for chief engineer approval outside of existing GMD boundaries.

Next, the development of a WCA has been described as an action that could only occur if 100% of the water right owners agree to participate in the conservation measures. That does not seem to be explicit in the language of HB 2227. There also doesn't appear to be any consideration for how the WCA is ended if the water use goals of one or more of the landowners change. Further, because the triggering events in (a)(2) are a reference to the current IGUCA statutes for triggering an IGUCA in areas outside a GMD, then once a WCA is implemented, the agreement is dissolved by the water right owners and the corrective control provisions in section (a)(3) do not fix the concerns, is the area outside a GMD in a default IGUCA?

Additionally, HB 2227 also appears to apply exclusively to groundwater rights, but it is unclear how the imposition of a WCA would affect the interaction with surface water rights or domestic wells in, or near, the boundaries of the WCA.

Finally, in a period of limited state and local resources, who will fund the ongoing compliance monitoring and enforcement required under subsection (a)(5)? The GMDs are the only existing entity with a locally elected management board and with existing taxing authority to support their operations. Will GMDs be responsible for this monitoring?

In conclusion, as the committee members know, water management is a cornerstone issue in Kansas, and while we wholly support voluntary conservation measures, there are significant concerns with the language of HB 2227 as it currently exists. We have seen great success and cooperation in recent years as stakeholder groups worked long and hard to develop local enhanced management areas, multi-year flex accounts, and developed policy to help end the “use it or lose it” aspect of Kansas law in areas closed to new appropriations. This proposal to develop water conservation areas, while intriguing, appears to have a significant number of inconsistencies and unanswered questions relating to existing policy. We welcome the opportunity to work with you, the Department of Agriculture, Division of Water Resources, and other stakeholders to take these good ideas and develop them into good policy providing additional flexibility to better facilitate the conservation of Kansas most precious natural resource, water.

Thank you for the opportunity to provide these comments. I want to reiterate again that we are supportive of additional voluntary water conservation measures, but believe the framework to implement those measures is key to the long term success. I am happy to address any questions the committee may have at the appropriate time.