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Jackie McClaskey, Secretary

Governor Sam Brownback

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Chairman Schwartz:

Thank you and your committee for hearing my testimony on HB2227 concerning water conservation areas (WCA). The committee asked some excellent fundamental questions about the way the WCAs would work and while I responded to questions, I respectfully request the Committee's consideration of the following additional information:

*How is the WCA different that the Local Enhanced Management Area (LEMA)?*

- 1) The LEMA is an action that is sponsored by a groundwater management district board of directors and can be initiated by a majority of board members without any additional consent of the water right holders in the district.

The WCA is 100% voluntary and 100% consensus driven. No water right holder is compelled to consider or enter into a WCA. If one or more water right holders chooses to pursue a WCA, all parties involved have to agree to every term and condition of the WCA, including the chief engineer.

- 2) Developing a LEMA involves a hearing process that takes several months, at least, involves testimony and reports, and, if implemented, imposes a management plan on the willing and unwilling participants alike.

The WCA is 100% consensus driven and therefore needs no hearing process. The stakeholders – the water right holders and the chief engineer are the only ones that need to agree on the terms and conditions of the consent agreement within the WCA.

*How is the WCA like the LEMA?*

- 1) Both the LEMA and WCA are conservation tools designed to address water resource problems, the most common of which are severe declines in groundwater levels, and the rate of withdrawal greatly exceeding the rate of recharge.
- 2) In both the LEMA and WCA, the original water right is not altered.
- 3) Both the LEMA and WCA offer the opportunity for flexibility, an example of which is seen in the LEMA in Sheridan County where participants are authorized to move their allocations between farm

units, optimizing their water use so that they can meet the LEMA water use reduction targets while maximizing profits.

However, the prior appropriation system is not compromised by either the WCA or the LEMA. Junior water rights cannot be operated to impair senior water rights.

- 4) Both LEMAs and WCAs can be as large or as small as they need to be to meet the needs of the local interests.

*It's very difficult to get the majority of a large number of farmers to agree to a management strategy. They tried in GMD1 and failed. And why would you want smaller coalitions? Will they be enough to make a difference? Do the borders of the WCA have to be contiguous?*

- 1) It is true that the GMD1 LEMA failed to get the 67% approval that the GMD1 board of directors decided to require for approval. But it is also true that 52% of the water right holders that voted in favor of the GMD1 LEMA. That's a lot of folks that were ready to commit to serious action to conserve water in their area.
- 2) Smaller coalitions are another conservation tool, because water savings stay local. Groundwater in the Ogallala Aquifer moves on the order of a foot per day. So, even if a small area of water right holders joins to form a WCA, that small area will benefit from their own conservation and they will have more water in the future.
- 3) The borders within a WCA don't necessarily have to be contiguous. Before entering the consent agreement, the chief engineer will have to determine, among other factors, if the proposed area is manageable.

*If the WCA is in place and the GMD implements a management plan or develops a LEMA, is there a conflict? Which controls or trumps the other?*

- 1) If there is a LEMA or other GMD management plan in place and a group wants to form a WCA, then a WCA could be formed within the GMD management area if the WCA conserved more water, as determined by the chief engineer, than the existing GMD management plan.
- 2) If there is a WCA and the GMD implements a LEMA or other management plan, the water right holders in the WCA will be bound to the management plan, WCA or GMD, which conserves more water as determined by the chief engineer. In the case where the GMD action is found to conserve more water, any flexibility provided in the WCA would remain in place for the duration of the WCA, so long as that flexibility did not compromise the water savings of the GMD action, as determined by the chief engineer.

*What if one or more of the WCA participants wants to end their participation? What if the chief engineer wants to make changes to the WCA?*

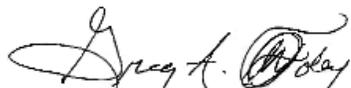
- 1) Once the WCA is entered into, only 100% of the water right holders can terminate the WCA early – before the originally agreed-to termination date.
- 2) Once the WCA is entered into, it requires the consent of the chief engineer and 100% of the water right holders to change the terms and conditions of the WCA.
- 3) Water rights in WCAs are subject to water right administration just like any other water right. This is the same for water rights participating in LEMAs and other GMD management actions.

*What about unintended consequences?*

It is a simple thing to cast doubt on a new idea, but from the agency's perspective, the WCA is a powerful tool to enable a group of willing water right holders to take timely, meaningful action to control the value and destiny of their property rights. This is a grass-roots tool that promotes creativity and responsibility and we have a hard time seeing any negative effects to the water right holders who have the foresight, the will, and the courage to save some water for their futures and future generations.

Thank you for considering these additional comments in support of the Water Conservation Area. We believe there is strong localized demand for a path forward to a future where there is a viable water supply in the Ogallala Aquifer in Kansas. If there are any further questions, please call at 785-564-6621 or email me at [greg.foley@kda.ks.gov](mailto:greg.foley@kda.ks.gov).

Respectfully,

A handwritten signature in black ink that reads "Greg A. Foley". The signature is written in a cursive style with a large, stylized "G" and "F".

Greg A. Foley  
Executive Director  
Division of Conservation, Kansas Department of Agriculture