

**Testimony before the
Special Committee on Natural Resources
By Greg Wilson – November 13, 2017**

The Kansas River Water Assurance District (KRWAD) appreciate the opportunity to submit testimony regarding future funding for water issues facing Kansas. KRWAD members are listed at the end of this testimony. However, more than 1 million residents of northeast Kansas rely on the drought protection assurance districts provide. We are concerned that the committee receive an accurate description of the differences between the Water Marketing program and the Water Assurance program.

Water Assurance Districts - Background

- The Water Assurance Program Act (K.S.A. 82a-1330 et seq.) was passed by the Kansas legislature in 1986.
- It enables municipal and industrial water appropriation right holders on regulated rivers and streams to organize for the purpose of suppling water from reservoir storage to the members of the organization in times of drought.
- The statute is largely organizational in nature delineating how water assurance districts are to be established, and is included in the filed testiomy. (See Appendix A) I will not bore you now with that level of detail.

There are three Assurance Districts organized and are currently in operation, they are;

1. The Kansas River Water Assurance District #1 formed in 1987,
2. The Marais des Cygne River Water Assurance District #2 in 1995, and
3. The Cottonwood and Neosho Rivers Water Assurance District #3 in 1996

Comparing the Marketing and Water Assurance programs through a few questions we hope will help provide this committee the appropriate context for future funding decisions.

How does a Water Assurance District Member Differ from a Water Marketing Purchaser

Comparison Questions	Assurance Program Act	Water Marketing Program Act
Who may participate?	Municipal & Industrial water right holders only	Anyone
Are DWR water rights required?	Yes (Members must apply and pay for their water rights and may only appropriate water under the program to the extent they have rights.)	No (This is a signal benefit this program has over the assurance program)
Is delivery of water guaranteed?	No (If there is water in the Assurance storage pool it is theirs – if not they must rely on their water rights.)	Yes –subject to 2% chance of drought. (The State is obligated to deliver water 100% to the extent it has called storage into service.)
How is loss of storage through siltation considered?	Assurance district members acknowledge the reality that federal reservoirs were constructed with the concept of ‘design life.’ At the end of the ‘design life’ they would resort to their appropriation rights as contemplated by Kansas law: (First in time: First in Right) Siltation is monitored in operations plans negotiated every 5 years.	At the end of a reservoir’s ‘design life’ anyone with a separate water right and having a marketing contract from that reservoir would need to rely solely on their water right. Those without a separate water right would need to apply to DWR for a water right and go to the back of the line. (First in time: First in Right)

Comparison Questions	Assurance Program Act	Water Marketing Program Act
Who owns the storage in the federal reservoir?	Assurance District Members	The State of Kansas
Who pays for maintenance on that storage?	Assurance District pay 100% of all maintenance expended by the Corps of Engineers on storage they own.	The State of Kansas pays 100% of all maintenance expended <u>on the remaining storage</u> called into service regardless of reservoir location.
How long does participation in the program last?	The statute does not provide for surrender of ownership of the Water Assurance Storage Pool to the State thereby creating a burden on the general fund.	Term negotiated by the State and the applicant (originally 40 years).
How is payment made?	The KWO collects money from the assurance district to pay for the storage until 100% of the cost of that storage has been paid. Thereafter the KWO collects money from the assurance district to pay for Corps of Engineers' cost of operation and maintenance on the assurance districts' storage capacity in each individual reservoir. In addition, the KWO collect money to pay for the State's expenditure for administration and enforcement allocated to the assurance district storage.	The Kansas Statutes Annotated provide for a rate formula to be determined each year.

Comparison Questions	Assurance Program Act	Water Marketing Program Act
<p>What other advantage exists?</p>	<p>Water right holders who band together and form a corporate entity to buy storage have an understanding of the cost of that storage.</p>	<p>The cost of high priced storage in a reservoir will be shared by all participants in the marketing program.</p> <p>Likewise, the cost of maintaining older reservoirs with their accompanying increased cost is shared by all participants in the marketing program.</p>
<p>What other disadvantage exists?</p>	<p>All of the assurance storage pools are located in older reservoirs making the assurance members responsible for 100% of the high cost.</p>	<p>The high priced reservoirs brought into service by the State created a disincentive to future marketing applicants.</p>

Conclusion

The Water Assurance Program and the Water Marketing Program are mutually exclusive methods the public has to access water in the federal reservoirs in Kansas. Agricultural interests are foreclosed by law from participating in the assurance program but have access through the marketing program. This is not an oversight in Kansas law. It is dictated by an act of Congress in each reservoir authorization bill. Corps of Engineer projects differ from Bureau of Reclamation projects. Irrigation is generally not an authorized purpose in Corps projects but is for Bureau projects. For instance, irrigation is an appropriate use in Kannapolis reservoir but not in Milford, Tuttle Creek or Perry.

Individuals may apply for and obtain marketing contracts. They may not participate in an assurance district. The assurance program requires the organization of a special corporation for that purpose thereby giving assurance to the State that the cost of buying storage will not become an obligation of the State.

Each program provides for the payment of operation, maintenance, administration and enforcement costs under the unique requirements of the two programs.

The KRWAD is a partner with the KWO and DWR in the operation of the assurance reservoirs pursuant to an operation agreement. Those agreements renegotiated every five years are consistent with the Kansas Water Appropriation Act. It takes into account the loss of storage capacity due to siltation. The State and KRWAD, along with the other water assurance districts, always recognized that federal reservoirs were constructed subject to a design life. To that end the State and the Corps of Engineer have successfully negotiated pool reallocation contracts in the federal reservoirs to address the problem of conservation pool loss resulting from siltation.

We want to thank this committee for letting us appear before you today.

Membership of Kansas River Water Assurance District No. 1

City of Bonner Springs
City of DeSoto
Futamura USA, Inc.
Hill's Division
City of Junction City
Westar – Jeffery Energy Center
Westar – Lawrence Energy Center
Westar – Tecumseh Energy Center
City of Lawrence
City of Manhattan
City of Olathe
City of Topeka
WaterOne (Water District #1 of Johnson County)
VVF, Ltd.

Appendix A
Organizational Steps
to
Establish a Water Assurance District

1. The process required for incorporation of the special corporation
 - a. It begins with a steering committee of interested water right holders who consult with the Kansas Water Office.
 - b. The KWO refers the matter to the Chief Engineer of DWR
 - c. The chief engineer determines the eligible water rights of the proposed district. In determining whether a water right may benefit, the chief engineer shall consider the following factors: The annual quantity and rate of diversion authorized by the water right and the frequency and the distribution of such use with time; and, the consumptive use, location and source of the water right; and such other factors as may be necessary to fully determine and understand the degree of such benefits.
 - d. That information is transmitted to the steering committee representing at least 20% of the total water rights in the proposed organization that files a *Petition* with the Secretary of State seeking the incorporation of a Special Corporation authorized by the Water Assurance Program Act.
 - e. Notice of the filing and a copy of the petition is circulated to all water right holders determined by the Chief Engineer to be eligible for membership.
 - f. We wait – until the Secretary of State either approves or rejects the petition
 - g. If the petition is rejected the matter dies and the steering committee is responsible for all costs.
 - h. If the petition is approved a date is set for an election on whether to establish a district – or not.
 - i. Voting is done on the basis of water rights – not number of members – more than 50% of the eligible water rights **MUST** be voted in favor of establishment for the matter to proceed.

Appendix A- Continued

- j. Results of the election are forwarded to the Secretary of State who then issues the Articles of Incorporation. An organizational meeting is held to elect board members and adopt by-laws.
- k. At this point all eligible water right holders MUST become a member of the district
- l. Once the corporate structure has been established additional consultation takes place within the Kansas Water Office/Kansas Water Authority process with the appropriate *basin advisory committee* input resulting in KWO negotiations to acquire the reservoir storage required to satisfy the level of drought assurance the district has determined meets its needs.
2. The powers of the assurance district board of directors
 - a. The board of directors meets at least once every quarter
 - b. The entire membership meets annually to adopt a budget and elect board members – the board consists of not less than 3 nor more than 9 members whose terms are staggered.
 - c. Voting at the annual meeting is on the basis of one entity – one vote. Weighted voting based on the quantity of water rights held is NOT permitted.
 - d. The board has the usual powers granted a corporation
3. Water right holders who do not choose to assure drought water commensurate with their total water rights are not left without recourse:
Nothing in this act shall prohibit any person from contracting to purchase or otherwise obtaining from the federal government emergency water stored in federal reservoirs and under the control of the federal government under rules and regulations of any agency of the federal government.