

Approved: Carl Dean Holmes  
Date 2-15-1993

## MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on February 9, 1993 in Room 526-S of the Capitol.

All members were present except: Rep. Lloyd, excused  
Rep. Shore, excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
April Howell, Committee Secretary

Conferees appearing before the committee: Darrell Montei, Department of Wildlife & Parks  
Steve Hurst, Kansas Water Office  
Sam Brownback, Kansas State Board of Agriculture  
Don Low, Kansas Corporation Commission  
William Craven, Kansas Sierra Club  
Charles Jones, Department of Health & Environment  
Robert C. Harder, Department of Health & Environment

Others attending: See attached list

The Chair opened the meeting by stating that today was the FINAL day for Committee and Agency request for Committee Bill introduction, and that they would only be accepted from State Agencies and Energy & Natural Resource Committee Members. He then opened the floor for Bill Introduction.

Don Low, Kansas Corporation Commission, requested a bill introduction for an amendment to K.S.A. 66-117, basically to clarify the existing statute and for a policy concerning integrated resource planning. (Attachment I)

A motion was made by Representative Grotewiel, seconded by Representative Lynch, to accept this proposal integrated resource planning. The motion carried.

Charles Jones, Kansas Department of Health & Environment, submitted a draft of a bill concerning nuclear safety emergency preparedness. The purpose of the bill is to authorize certain fees for emergency planning and preparedness activities by state and local agencies; relating to accidents at nuclear electricity production facilities; prescribing powers, duties and functions for the adjutant general; establishing the nuclear safety emergency preparedness fee fund. (Attachment II) 2

A motion was made by Representative Grotewiel and seconded by Representative Alldritt to accept this proposal. The motion carried.

A verbal motion was then presented by Representative Gatlin to repeal HB 2801 dealing with a solid waste law that was established last year. The motion was seconded by Representative Rezac to accept this bill request. The motion carried.

A verbal motion was then presented by Representative Freeborn for the Kansas Water Office to begin a study on revenue finance options and present to the Legislature next year to accept for the purchase of reservoir water. The motion was seconded by Representative Kejr to accept this bill request. The motion carried.

Representative McKinney then moved that a bill be drafted to provided for purchase of reservoir storage space under the 1985 Corp of Engineers Memorandum of Understanding with the State. (Attachment III)<sup>3</sup> The motion was made by Representative McKinney and seconded by Representative Alldritt to accept this bill request. The motion carried.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on February 9, 1993.

Representative Hayzlett then made a request that a bill be introduced that restricted the state rules and regulations of sanitary landfills. A motion was made by Representative Hayzlett and seconded by Representative Lawrence to accept this bill request. The motion carried.

Representative Grotewiel then presented information for introduction of a bill certifying professional geologists. (Attachment 4) The motion was made by Representative Grotewiel and seconded by Representative Rezac to accept this bill request. The motion carried.

A motion was made by Representative Hendrix to have a Committee Bill to provide for more expeditious hearings, for conservation division hearings involving proration and other oil and gas matters; to provide that the standard differential pressure (DSP) shall be 50% of the average field wide pressure until such time as the Corporation Commission makes a determination to either adopt the 50% DSP or to find an alternative DSP under its jurisdiction to conduct hearings and make orders. The motion was seconded by Representative Grotewiel to accept this bill request. The motion carried.

All introduction of Committee Bills was then closed by the Chair.

The Chair then introduced Darrell Monte of the Department of Wildlife & Parks who presented his support of **HB 2039**, which addresses the commercial hunting and fishing guide program in Kansas as established under K.S.A. 32-964. (Attachment 5)

Steven A Hurst, Director of the Kansas Water Office, then presented his testimony in favor of **HB 2040** permitting the Secretary of Agriculture be added as a nonvoting ex officio member of the Kansas Water Authority and amending K.S.A. 74-2622. (Attachment 6) Sam Brownback from the Board of Agriculture was also recognized as being in support of this Bill and commented briefly.

Robert C. Harder, Secretary of the Department of Health and Environment, presented his testimony seeking an amendment to K.S.A. 74-2622 which would allow non-voting members ex officio of the Water Authority to designate alternate representatives. (Attachment 7)

Final testimony was then given by William Craven, Kansas Sierra Club, in reference to his opposition of **HB 2040** in that members of the water authority should be appointed on the basis of certain qualifications by the public and in turn they would be accountable to the public and not permitted to delegate these powers. (Attachment 8)

The Chair opened the floor for questions by the Representatives.

The meeting adjourned at 4:40 p.m.

The next meeting is scheduled for February 10, 1993.



Date: February 9 '93

GUEST REGISTER

HOUSE

★ COMMITTEE ON ENERGY AND NATURAL RESOURCES ★

NAME	ORGANIZATION	ADDRESS	PHONE
Steve Miller	Sunflower Electric Power	Days	628-2845
Dan Stevens	Texaco Inc.	Tulsa, OK	918 560-6035
CHARLES JONES	KDHE	Topeka	
Nicholas Lester	Ks. Gov. Consulting	Topeka	
Ed Rose	Bd. of Technical Professions	Topeka, Ks	
Spencer Tomb	Ks. Wildlife Fed	Manhattan	537-8265
Dennis Schwartz	Ks Water Authority	Tecumseh	319-5553
GR Duffley	Ks Petroleum Council	Topeka	234-0585 <del>276-51</del>
J. Barker	Travel Industry	Topeka	233-9465
Marshall Clark	KCC	Topeka	478-4774
✓ Darrell Monte	KDWP	PRATT	
✓ Steve Hunt	KWCO	Topeka	3185
✓ Sam Bunnick	KSBOT	Topeka	8538
✓ Don Low	KCC	"	211-3199
ED SCHAUB	WESTERN RESOURCES	"	575-6422
TOM DAY	KCC	"	271-3190
Bill Fuller	Kansas Farm Bureau	Manhattan	587-6000
Warty Bloomquist	KDFA	Topeka	296-6747
✓ William Craven	KS Sierra Club		
✓ Robert C. Harder	Dept. Health / Environment		

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 66-117 is hereby amended to read as follows:

66-117.(a) Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of such public utility or common carrier except by filing the same with the commission at least 30 days prior to the proposed effective date. The commission, for good cause, may allow such changed rate, joint rate, toll, charge or classification or schedule of charges, or rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier to become effective on less than 30 days notice. Any such proposed change shall be shown by filing with the state corporation commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules or classifications, or in new issues thereof.

(b) Whenever any common carrier or public utility governed by the provisions of this act files with the state corporation commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, the commission either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such schedule and defer the effective date of such change in rate, joint rate, toll, charge or classification or schedule of charges, or any rule of regulation or practice pertaining to the service or rates of any such public utility or common carrier by delivering to such public utility or common carrier a statement in writing of its reasons for such suspension. The commission shall not delay the effective date of the proposed change in rate, joint rate, toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, more than 240 days beyond the date the public utility or common carrier filed its application requesting the proposed change. If the commission does not suspend the proposed schedule within 30 days of the date the same is filed by the public utility or common carrier, such proposed schedule shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, within 240 days after the carrier or utility files its application requesting the proposed change, then the schedule shall be deemed approved by the commission and the proposed change shall be effective immediately, except that (1) for proposes of the foregoing provisions regarding the period of time within which the commission shall act on an application, any amendment to an application for a proposed change in any rate, which increases the

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amount sought by the public utility or common carrier or substantially alters the facts used as a basis for option of the commission, be deemed a new application and the 240-day period shall begin again from the date of the filing of the amendment, and (2) if hearings are in process before the commission on a proposed change requested by the public utility or common carrier on the last day of such 240-day period, such hearings plus 20 days to allow the commission to prepare and issue its final order.

(c) Except as provided in subsection (b), no change shall be made in any rate, toll, charge or classification or schedule of charges, joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission, and within 30 days after such changes have been authorized by the state corporation commission or become effective as provided in subsection (b), copies of all tariffs, schedules, and classifications, and all rules and regulations, shall be filed in every station, office or depot of every such public utility and every common carrier in this state, for public inspection.

(d) Upon a showing by a public utility before the state corporation commission at a public hearing and a finding by the commission that such utility has invested in, **or implemented,** projects, ~~or~~ systems, **programs or measures** that can be reasonably expected (1) to produce energy from a renewable resource other than nuclear for the use of its customers, (2) to cause the conservation of energy used by its customers, or (3) to bring about the more efficient use of energy by its customers, the commission may allow a return on such investment equal to an increment of from 1/2% to 2% plus an amount equal to the rate of return fixed for the utility's other investment in property found by the commission to be used or required to be used in its services to the public— **or may adopt other incentive, revenue replacement, or alternative cost recovery mechanisms in order to promote the cost effective investment in, or implementation of, such projects, systems, programs or measures.** The commission may also allow such higher rate of return on, **or adopt such other incentive, revenue replacement or alternative cost recovery mechanisms with regard to,** investments by a public utility in experimental projects, such as load management devices, which it determines after public hearing to be reasonably designed to cause more efficient utilization of energy and in energy conservation programs or measures which it determines after public hearing provides a reduction in energy usage by its customers in a cost-effective manner. **In determining the cost effectiveness of such projects, systems, programs and measures, or of alternative energy supply resources, the commission may consider the avoided environmental impacts and other societal costs of meeting customer needs for energy due to such projects, systems, programs, measures and supply resources, and may require investment in, or implementation of, such projects, systems, programs, and measures or alternative supply resources. Nothing in this section shall limit the commission's authority to allow,**

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**adopt or order reasonable ratemaking or regulatory methods, mechanisms and procedures.**

(e) Except as to the time limits prescribed in subsection (b), proceedings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 2. K.S.A. 66-117 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

II

February 1, 1993

BILL NO. \_\_\_\_\_  
BY Charles Jones

AN ACT enacting the Kansas nuclear safety emergency preparedness act; authorizing certain fees for emergency planning and preparedness activities by state and local agencies; relating to accidents at nuclear electricity production facilities; prescribing powers, duties and functions for the adjutant general; establishing the nuclear safety emergency preparedness fee fund.

Be it enacted by the Legislature of the State of Kansas:

Section 1. This act shall be known and may be cited as the "Kansas nuclear safety emergency preparedness act."

Sec. 2. As used in this act:

(a) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing.

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(b) "Nuclear facility" means any facility which utilizes nuclear energy to produce electricity and which has all or any part of an emergency planning zone within Kansas.

(c) "Emergency planning zone" means an area surrounding a nuclear facility for which planning is needed to assure that prompt and effective actions can be taken to protect the public in the event of an accident. Each nuclear facility shall have, as a minimum: a plume exposure pathway planning zone consisting of an area of approximately 10 miles radius surrounding the facility, and; an ingestion exposure pathway planning zone consisting of an area approximately 50 miles in radius surrounding the facility.

(d) "Emergency preparedness" has the meaning ascribed thereto by K.S.A. 48-904 and amendments thereto.

Sec. 3. (a) Persons engaged in the production of electricity through the utilization of nuclear energy at a nuclear facility shall pay fees to the adjutant general to cover the costs incurred by state and local government agencies in establishing and maintaining appropriate emergency preparedness plans and programs for an accident at a nuclear facility, including the costs of administering this act.



(b) Fees collected under the provisions of this act shall be used exclusively to fund those state and local government activities approved as necessary by the adjutant general to develop, maintain and implement the appropriate plans and programs necessary for preparedness for an accident at a nuclear facility and for administration of this act.

(c) State agencies and local governments of Kansas incurring expenses attributable to developing and maintaining plans and programs to meet responsibilities in the event of a nuclear accident at a nuclear facility may apply to the adjutant general for payment for those expenses. Upon approval by the adjutant general of emergency preparedness budgets submitted by state and local government agencies therefor, the adjutant general shall pay or reimburse such expenses or may disburse moneys in advance of such expenses from fees collected pursuant to this act.

(d) The adjutant general shall remit to the state treasurer all moneys received from fees fixed and collected pursuant to this act. Upon receipt of such moneys, the state treasurer shall deposit the entire amount in the state treasury and credit it to the nuclear safety emergency preparedness fee fund which is hereby established in the state treasury. The adjutant general shall administer the nuclear safety emergency preparedness fee fund. All expenditures from the nuclear safety emergency preparedness fee fund shall be

in accordance with the provisions of appropriation acts.

(e) When the total of all fees collected under this act during any fiscal year exceeds the total expenditures from the nuclear safety emergency preparedness fee fund under this act from appropriations for that fiscal year, the amount of receipts that exceeds such expenditures shall be credited to the persons who were assessed such fees for that fiscal year, and such amount shall be credited against the fees to be collected under this act for the ensuing fiscal year. Each such person shall receive as a credit that amount of the excess which corresponds proportionately to the amount of fees the person paid with respect to all fees collected under this act in the fiscal year that produced the excess.

Sec. 4. (a) The adjutant general shall adopt rules and regulations necessary to administer and implement the provisions of this act. Such rules and regulations shall include a schedule for the submission of emergency preparedness budget requests by participating state and local government agencies and for the payment and disbursement of moneys from the nuclear safety emergency preparedness fee fund. Commencing with the fiscal year ending June 30, 1993, the adjutant general shall prepare a budget estimate for each fiscal year showing the total of operating expenditures and capital improvement expenditures projected to be incurred in administering this act during the fiscal year. The budget estimate under this act shall be prepared only after

consultation with those persons liable for the fees imposed under this act as to the costs necessary to enable state and local government agencies to perform their responsibilities in the event of a nuclear accident at a nuclear facility.

(b) Within the limitations of appropriation acts, the adjutant general is authorized to employ appropriate personnel necessary to administer the provisions of this act and the rules and regulations adopted thereunder. All costs incurred by the adjutant general in administering the provisions of this act shall be paid from fees collected pursuant to this act.

Sec. 5. The adjutant general shall administer this act in conjunction with the administration of the Kansas emergency preparedness act.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

STATE OF KANSAS

III

DENNIS MCKINNEY  
REPRESENTATIVE, 108TH DISTRICT  
612 S. SPRUCE  
GREENSBURG, KS 67054  
(316) 723-2129  
STATE CAPITOL—278-W  
TOPEKA, KS 66612-1504  
(913) 296-7658



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: ENERGY & NATURAL RESOURCES  
TAXATION  
TRANSPORTATION

I move that a bill be drafted to provide for purchase of reservoir storage space under the 1985 Corp of Engineers Memorandum of Understanding with the State. In addition the bill would authorize bonds to be issued to finance the purchase by the Kansas Development Finance Authority, such bonds to be issued not later than July 1, 1994 with debt service to start no earlier than July 1, 1995.

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KANSAS PROFESSIONAL GEOLOGIST PRACTICE ACT

*A registration act, not a licensing act.*

PURPOSE

- \*\*\*\* SAFEGUARD LIFE, HEALTH, AND PROPERTY OF THE CITIZENS OF KANSAS AND WELFARE OF THE PUBLIC.
- \*\*\*\* MEET LEGISLATIVE MANDATES AND FOR THE PROTECTION OF PUBLIC TRUST, MERITED BY THE INCREASE IN ENVIRONMENTAL LEGISLATION WHICH REQUIRES GEOLOGICAL EXPERTISE.
- \*\*\*\* PROTECT SMALL BUSINESS OWNERS WHO MAY EXPOSE THEMSELVES TO FINANCIAL AND LIABILITY BURDENS BY USING NON-TECHNICAL PRACTITIONERS.
- \*\*\*\* PROVIDE MINIMUM QUALIFICATIONS FOR PERSONS PRACTICING GEOLOGY WHICH AFFECTS THE HEALTH, SAFETY, AND WELFARE OF THE PUBLIC OR THE PROTECTION OF THE ENVIRONMENT.

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STATE OF KANSAS



Joan Finney  
Governor

DEPARTMENT OF WILDLIFE & PARKS

Theodore D. Ensley  
Secretary

OFFICE OF THE SECRETARY

900 SW Jackson St., Suite 502 / Topeka, Kansas 66612 - 1233  
(913) 296-2281 / FAX (913) 296-6953

H.B. 2039


PRO

Testimony Provided To: House Energy & Natural Resources Committee  
Provided By: Kansas Department of Wildlife and Parks  
February 9, 1993

H.B. 2039 addresses the commercial hunting and fishing guide program in Kansas as established under K.S.A. 32-964. That statute was amended during the last days of the 1992 Legislative Session to create an exemption from the commercial guide permit for those individuals guiding five or fewer days and receiving \$500 or less for guiding services. It was intended to provide the Department with rule and regulation authority for these exempted guides, but the final wording of the 1992 bill (H.B. 3115) did not adequately include that authority.

H.B. 2039 defines those exempted guides as "provisional guides" and then exempts provisional guides from the guide permit requirement. They would be required to register as a provisional guide. The bill clarifies that provisional guides would be required to have the proper licenses or stamps, unless otherwise exempt from license or stamp requirements. It also provides that provisional guides could not perform the actual taking of wildlife for clients.

The bill provides rule and regulation authority to the Department in regard to provisional guides. The regulatory effort would primarily address registration and a limited reporting system. It is likely the Department would issue a card to the provisional guide to be carried while guiding.

 H.B. 2039 is Department requested legislation and the Department supports the bill.

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Testimony by  
Stephen A. Hurst, Director  
Kansas Water Office  
before the  
House Energy and Natural Resources Committee

PRO

February 9, 1993

Re: H.B. 2040

Thank you Mr. Chairman and members of the Committee: I am Stephen A. Hurst, Director of the Kansas Water Office. The bill that you have before you today is amendatory in nature and very specific and limited in scope. H.B. 2040, which was introduced to you by the Kansas Water Office on behalf of the Kansas Water Authority, would help in the implementation of the State Water Plan sub-section entitled "Coordination of Geographic Based Planning and Implementation Process," which requires, in part, that the Secretary of Agriculture be added as a nonvoting ex officio member of the Kansas Water Authority. This bill will amend K.S.A. 74-2622 *et seq.*

The Kansas Water Authority in the above mentioned sub-section of the State Water Plan recognized that the Division of Water Resources and the State Board of Agriculture have separate statutory authorities and responsibilities. As a result, this sub-section included representatives of both the Secretary of Agriculture and the Division of Water Resources on the five area coordination teams that meet regularly as a part of the state water planning process. These five area coordination teams are comprised of top level field office personnel of the various water-related agencies, and meet regularly to discuss topical water issues in their particular area of the state. These area coordination teams have enhanced input, from an agency perspective, into the basin planning process which involves 132 volunteer individuals, 11 in each of the 12 planning basins used by the Kansas Water Authority in developing recommendations for the Governor and

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6.

Legislature and in developing the State Water Plan.

As you know, the Division of Water Resources and the Chief Engineer have the regulatory responsibilities of tracking and issuing water rights and permits, and enforcing many regulations as to the use of water and construction of channels and dams that may impact the course of streams and the free flow of water in the state. The statutory authority setting out the responsibilities of the Division of Water Resources are separate from those State Board of Agriculture which has responsibilities in the area of pesticide and agricultural chemical management and permitting and the management of several farm programs. By adding a representative of the State Board of Agriculture on the area coordination teams, the Secretary is represented at the basin level of planning but is still not involved directly with the Kansas Water Authority in providing agency head level input into the decision making process on such important issues as pesticide application, licensing and management and its impacts in the area of non-point source pollution of the state's streams and water bodies. As you know, the State Board of Agriculture last year formed a pesticide management area (PMA) in the drainage area of the Delaware River in northeast Kansas. This pesticide management area was the first one of its kind in the nation and was a very progressive step towards the management of agricultural, chemical runoff and the protection of water supplies. The State Board of Agriculture is also currently looking at alternative crops and irrigation techniques in western Kansas to lower the rate of groundwater usage in that part of the state in an attempt to address the aquifer depletion problems with the Ogallala Aquifer.

It is precisely these types of issues that the Kansas Water Authority had in mind with their recommendation in the State Water Plan sub-section to add the Secretary of Agriculture as

an ex officio nonvoting member to the Kansas Water Authority. The voting members of the Kansas Water Authority desire the input of the various state water-related agency heads from their unique areas of expertise on crucial funding and policy issues. Such input into the planning process is invaluable to the voting membership of the Kansas Water Authority. --

This legislation was subject to the full scrutiny and review of the Kansas water planing process which included discussion among the voting and ex officio members of the Kansas Water Authority at their regular public meetings both in special committee and the in the committee of the whole. This legislative proposal was approved by the voting membership to go out to the 12 public meetings held by the Kansas Water Authority, one in each basin across the state and was the subject of public input and discussion at those meetings as well as at two formal public hearings, one held in Hays, Kansas, and one held in Topeka. Following public input, the Kansas Water Authority approved the sub-section recommending the addition of the Secretary of Agriculture as an ex officio member and requested the Kansas Water Office to present their legislative recommendation to the state legislature, which we have done. I would also like to note that there is no fiscal impact attached to this bill.

I appreciate the opportunity to testify before you here today and urge your favorable consideration of H.B. 2040.

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

913-296-1535

February 8, 1993

The Honorable Carl Holmes  
Chairman, House Energy and Natural Resources  
State House, Room 156-E  
Topeka, Kansas 66612

Dr.  
Harder  
Amendment  
to  
2040

Dear Representative Holmes:

The purpose of this letter is to seek amendments to KSA 74-2622 which would allow non-voting members ex-officio of the Water Authority to designate alternate representatives.

It has long been the policy of the authority to not seat alternates at either its general or committee meetings. This policy stems from authority feelings that water issues are of sufficient importance to merit the involvement of only top-line administrators. While we share the sense of importance of water in Kansas, the policy doesn't recognize scheduling conflicts which often face top-line administrators. In point of fact, there has historically been spotty attendance from several key authority members.

If an agency is not seated at authority or committee meetings, the opportunity for participation in deliberations is severely restricted. This has the effect of muting agency input into matters of importance to that non-represented agency, and denies the authority the insight and information that the delegate may be able to offer.

In order to remedy this situation and allow alternate representation, we would offer the following amendment to K.S.A. 74-2622:

The state geologist, the chief engineer of the division of water resource of the board of agriculture, the secretary of health and environment, the chairperson of the state corporation commission, the secretary of commerce, the secretary of the Kansas water office, the secretary of wildlife and parks, the administrative officer of the state

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conservation commission and the director of the agricultural experimentation stations of the Kansas state university of agriculture and applied science shall be non-voting members ex-officio of the authority. Upon written notification to the authority chairperson, non-voting members ex-officio may appoint a delegate to represent them on the authority and its committees. The director of the Kansas water office shall serve as secretary of the authority.

This amendment would not and should not be interpreted as removing the obligation for primary authority representatives to make every effort to attend authority meetings. However, it does establish a reasonable mechanism for ensuring agency participation when scheduling conflicts arise.

Thank you for giving this matter your attention.

Sincerely

A handwritten signature in dark ink, appearing to read "Robert C. Harder", written in a cursive style.

Robert C. Harder  
Secretary



# SIERRA CLUB

## Kansas Chapter

Testimony of William Craven  
Kansas Sierra Club  
H.B. 2040

House Energy and Natural Resources Committee  
February 9, 1993

OPP.  
2040

Thank you, Mr. Chairman, for giving the 3,000 members of the Kansas Sierra Club an opportunity to voice their concerns about this bill. I would be remiss if I didn't note up front that I am probably going to be the only skunk at the picnic as this bill is considered today.

Notwithstanding my "other hat" as the plaintiff's lawyer in the Board of Ag litigation, I want to share with you some of my perspective on this proposal. Permitting the Secretary of the Board of Ag to serve as an *ex officio* member of the Kansas Water Authority is objectionable, even if he is to serve only in that limited capacity. But what this bill brought to my attention is the fact that an even more objectionable formula exists by which several other members of the KWA are selected.

One of the allegations in the Board of Ag litigation is that it is unconstitutional for the legislature to delegate governmental power to representatives of private trade associations which are not accountable to the public. That point is a fundamental and basic tenet of democracy. This bill violates that basic precept. The Secretary of the Kansas State Board of Agriculture is not accountable to the public, to the legislature, or to the governor. That official is accountable only to members of private associations who elect the State Board of Agriculture and who, in turn, elect the Secretary.

As I go through existing law regarding appointments to the Kansas Water Authority, I find that one member comes from the Kansas Association of Conservation Districts (page 1, line 27), one is a member of the Kansas Association of Watershed Districts (page 1, line 29), a member representing large municipal water users is chosen from three nominations made by the League of Kansas Municipalities (page 1, line 34), and the member who represents small municipal water users is picked from three nominees sent in by the Kansas Rural Water District Association (page 1, Line 37). The member who represents industrial water users comes from nominees sent to the Kansas Association of Commerce and Industry (page 2, line 3).

Two members come from nominations made by groundwater management districts, which, although they are statutory bodies, limit participation only to landowners. Limiting the right to vote only to landowners is clearly unconstitutional. Specifically, groundwater management districts limit voting to those who own 40 or more acres or who pump groundwater. Corporations which own 40 acres or more or which pump groundwater can vote, but members of the public can't. Landowners can choose to exempt themselves

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from groundwater management districts, but the public, which has a vital interest in water issues, can't even participate. These provisions are set forth in K.S.A. 82a-1001.

I also note that the chief engineer of the Board of Ag's Division of Water Resources is also an *ex officio* member. If I haven't heard the answer at this hearing, the question is why the KSBA is entitled to two *ex officio* members?

As currently constituted, therefore, and if my math is correct, voting membership on the Kansas Water Authority is vested in the chairman who is appointed by the governor, two members of the public appointed by the governor, one member appointed by the President of the Senate, one member appointed by the Speaker, one member representing environmental interests, and seven members representing special interests. These seven members control a majority of the 13 voting memberships on the Kansas Water Authority. The rest of the membership is *ex officio*.

One more question: Section 1 of the act says that the governor shall appoint a chairman and 10 members. I have only been able to identify the chairman and nine members. Two of the ten represent the public, one represents environmental interests. That leaves seven. But the statute only lists six more who are appointed by the governor to represent special interests. Is there one more appointee due the Governor's office?

The remedy to this mess is obvious. Surely, the legislature can state that members of the water authority should be appointed on the basis of certain qualifications, some of which might be familiarity with large or small municipal systems, groundwater issues, or the like. There is no sense in delegating to private trade associations the exclusive right to occupy some of the seats on the Kansas Water Authority. For example, one member of the Kansas Water Authority is supposed to be a person with an interest in conservation and environmental issues (page 1, line 31). That description doesn't say that the person should be a member of the Audubon Council, the Sierra Club, or the Kansas Natural Resource Council. The same type of general description should exist throughout the act. The members must be appointed by public officials—including the governor and leaders of both parties in both houses of the legislature—leaders who are elected by, and accountable to, the public.

I make these recommendations for amendments with no malice to any current Kansas Water Authority member and without making judgments about any Kansas Water Authority decision.

I expect that some legislators will react to this testimony much the way some reacted to the injunction issued by a federal court judge in the Board of Ag case. "If it ain't broke, don't fix it," they will say. There is a short answer to that claim. If ain't democratic, it's broke.

Thank you for putting up with my testimony against H.B. 2040.

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