

Approved: 3-15-93  
Date

## MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Chairperson David Corbin at 10:10 a.m. on March 11, 1993 in Room 423-S of the Capitol.

All members were present except: Quorum was present

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Lila McClaflin, Committee Secretary

Conferees appearing before the committee: Ted Ensley, Secretary, Kansas Department of Wildlife and Parks  
Darrell Moneti, Kansas Department of Wildlife and Parks  
Jerry Hazlett, Wildlife Federation  
Joyce Wolf, Audubon Society

Others attending: See attached list

The hearing for the opponents was continued on SB 302 - concerning watershed districts; relating to the powers and duties. The proponents were heard on February 24. The Chairman called on Ted Ensley.

Ted Ensley stated they opposed the bill and he called on Darrell Moneti to present the testimony. Mr. Moneti said they opposed the bill because it would seriously restrict an individual landowner's ability to protect and manage their properties within their legal authorities (Attachment 1).

A question and answer time followed regarding if landowners should be allowed to give their land for wildlife easements especially if it appears it is being done to stop a public project. Mr. Moneti said Wildlife and Parks is working on developing guidelines to be used in granting easements.

Jerry Hazlett opposed the bill and suggested the Soil Conservation Service is about to issue its new watershed planning manual and that the South Fork project may be up for reconsideration under the new planning guidelines (Attachment 2).

Joyce Wolf urged the Committee to vote no on SB 302. She stated the Audubon Council was extremely concerned about the proposal to grant the power of eminent domain to watershed districts (Attachment 3).

The Chair told the Wildlife and Parks representatives that he would like to have their guidelines available before the end of the 1993 Session.

A motion was made by Senator Wisdom to adopt the minutes of the March 9 meeting. Seconded by Senator Morris. Motion carried.

The next meeting is scheduled for March 15, 1993. The meeting adjourned at 10:50 a. m.

## GUEST LIST

COMMITTEE: Senate Agriculture

DATE: 3-11-93

[illegible]

STATE OF KANSAS



Joan Finney  
Governor

DEPARTMENT OF WILDLIFE & PARKS

Theodore D. Ensley  
Secretary

OFFICE OF THE SECRETARY

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**S.B. 302**

Testimony Presented To: Senate Agriculture Committee  
Presented By: Kansas Department of Wildlife and Parks  
February 23, 1993

S.B. 302 would provide watershed districts (an entity created by and subordinate to the State) the authority to acquire by gift, purchase, exchange or eminent domain any land and interest in land rights, title, interest, grants or easements owned or possessed by the Kansas Department of Wildlife and Parks. The Department must strongly oppose this bill as a dangerous precedent and counter to the broader interests of the state and its people.

It would give watershed districts authority to override state policy, interests and authority. Lands owned or possessed by the State of Kansas via the Department for public purposes would no longer be assured of such designation. Kansas statutes and case law from Kansas and other states clearly establish the superior rights of the state over a sub-entity of the state.

Under this bill, any Department land could be taken which would result in major program failures and a breach of the public trust. Many of those properties have been purchased, developed and/or managed under federal aid (P.R. & D.J.) programs. Loss of State properties through condemnation by a watershed district would violate provisions of federal law and require replacement, and pay back plus interest of federal aid monies. A copy of 50 C.F.R. Part 80, Section 80.14 is included which details those federal aid provisions. This bill would also jeopardize future federal aid availability to this state if the state were ruled to be out of compliance.

*Senate Ag. Co.  
Attachment 1  
3-11-93*

Any lands or interest in lands which have been or may be provided to the State via the Department through donation or gift would no longer be secure. Few individuals would choose to donate land or an interest in land if the Department were unable to assure the integrity of their donation. This would seriously compromise natural resource and recreational programs undertaken for the people of this state. As such, it would seriously restrict an individual landowner's ability to protect and manage their properties within their legal authorities.

Mr. Chairman and members of the Committee, we strongly urge that S.B. 302 not be passed.

Similar to other and other...  
 Found the Federal Aid in Fish and Wildlife  
 Restoration Program (50 CFR Part...  
 480.12 Cost sharing prices and with equal benefits as the

prices and with equal benefits as the original property. The State may have a reasonable time, up to three years from the date of notification by the regional director, to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the regional director, the property shall be used or disposed of as provided by Attachment N of OMB Circular A-102.

(c) Federal Aid funds shall not be used for the purpose of producing income. However, income producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities shall be accounted for in the project records and disposed of as directed by the Director.

**\$ 80.15 Allowable costs.**

Allowable costs are limited to those which are necessary and reasonable for accomplishment of approved project purposes, and are in accordance with the cost principles of OMB Circular A-87.

(a) All costs must be supported by source documents or other records as necessary to substantiate the application of funds. Such documentation and records are subject to review by the Secretary to determine the allowability of costs.

(b) Costs incurred prior to the effective date of the project agreement are allowable only when specifically provided for in project agreement.

(c) Projects or facilities designed to include purposes other than those eligible under the pertinent Act shall provide for the allocation of costs among the various purposes. The method used to allocate costs shall produce an equitable distribution of costs based on the relative uses or benefits provided.

(d) Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency must be in accord with an approved cost allocation plan and shall not exceed in any one fiscal year three percentum of the annual apportionment.

(e) Not more than 10 per centum of the annual amount apportioned to each State under provisions of the Federal Aid in Sport Fish Restoration

(b) Real property acquired or constructed with Federal Aid funds must continue to serve the purpose for which acquired or constructed.

1-3

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TESTIMONY - SB302

SENATE AGRICULTURE COMMITTEE

MARCH 11, 1993

Thank you Mr. Chairman and Members of the Committee for this opportunity to speak in opposition to SB302. I am Jerry Hazlett representing The Kansas Wildlife Federation. The Federation is a nonprofit statewide volunteer organization dedicated to the conservation of our air, soil, water, woodlands, and wildlife resources.

The Federation opposes SB302 because it appears to be in conflict with many State and Federal laws and is not in keeping with the responsibilities of the Kansas Department of Wildlife and Parks nor of organized watershed districts. These responsibilities have been authorized by previous Legislatures and have withstood the test of time.

Specifically the passage of this bill would place millions of dollars, past, present and future, PR and DJ Federal Aid in jeopardy.

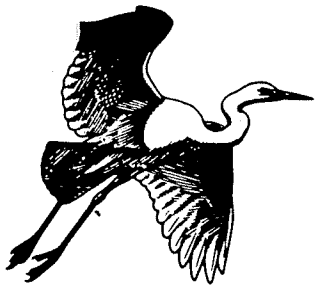
There is great effort going on today in many State legislatures and in the Congress of the United States to define illegal takings of private lands due to Government actions. Those behind this effort want to redefine government takings as being unconstitutional. They choose to ignore 200 years of court cases that serve to define the Constitutionality of private land takings.

SB302 also ignores this history of litigation that protects the public interest, health and welfare. Indeed it would trample the private property rights of the individual who chose to give an easement to protect his property.

It is unfortunate that this committee is using its valuable time on this issue. In 1984, this PL566 watershed project was approved with a marginal cost benefit ratio of 1.2 : 1. If this project were considered in today's world, because of land treatment improvements, the CRP program and the value of ag commodities, it would be considered a waste of \$6.4 million dollars of taxpayers money. It is our understanding that the Soil Conservation Service is about to issue its new watershed planning manual and that the South Fork project may be up for reconsideration under the new planning guidelines.

The Kansas Wildlife Federation respectfully asks this Committee to not pass this bill.

*Senate Ag Co  
attachment 2  
3-11-93*



# Kansas Audubon Council

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February 24, 1993  
Senate Agriculture Committee  
Testimony on SB 302

I want to thank the Chairman and committee members for this opportunity to appear before you today to testify on SB 302. For the record, my name is Joyce Wolf and I am the legislative liaison for the Kansas Audubon Council, a non-profit organization which is comprised of the nearly 5000 Kansas members of the National Audubon Society.

The Audubon Council wishes to make it clear that we are strongly opposed to SB 302 and urge you to vote no on this bill. Our primary concerns are two:

1) Private property rights: Yesterday in the Senate Judiciary Committee we heard from a number of organizations which asked for compensation for what they considered partial "taking" of private property rights through state agency regulatory processes. It seems ironic that we are here today talking about the right of a group of citizens to deny the right of a landowner to enter into an agreement with a state agency to protect that owner's land in a manner he/she sees fit. Conservation easements are very cost effective mechanisms for a landowner to enter into agreement with the holder of the easement. The owner gets protection of his/her property while not relinquishing title to the land. The holder of the easement acquires the obligation to ensure that the land is managed in the manner that the agreement describes. In most instances that means that the land will be maintained in its current usage so that the wildlife habitat that is mentioned in the fourth power in lines 30-36 on page one of the bill is protected with little or no expenditure of public funds.

2) Right of eminent domain: During the recodification of the statutes dealing with the Kansas Department of Wildlife and Parks, there was considerable discussion of whether the agency should maintain its powers of eminent domain. It was pointed out that the agency had used that power in a very conservative and judicious manner and was sensitive to the controversy that arises when such powers are used by any governmental body.

The Audubon Council is extremely concerned about the proposal to grant the power of eminent domain to watershed districts (an association of citizens to form a specialized taxing unit) to nullify an agreement that was entered into by a private land owner with a state agency or with any other entity empowered to hold conservation easements. These agreements are not entered into lightly or with abandon. Each party to the agreement must carefully determine the appropriateness of the circumstances and work out an arrangement that satisfies the needs of both parties.

One of the primary reasons conservation easements are granted and accepted is to protect ecologically sensitive lands. From the Council's understanding of this particular situation, it appears that indeed this conservation easement on this particular piece of land was granted for that purpose. In instances like this it seems to us that a larger public good is served by the action of a single landowner in exercising his/her right to protect his/her private property also provides protection to a portion of the state's natural resources. We appreciate this opportunity to share our concerns; we urge you to vote no on SB 302.

*Senate Ag. Com.  
3-11-93  
attachment 3*