

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 16, 1994 in Room 526-S of the Capitol.

All members were present except: Representative Charlton - Excused
Representative McKinney - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Alan Steppat, Water Protection Assn of Central KS
Richard Wenstrom, Water Protection Assn of Central KS
Edward R. Moses, KS Aggregate Producers Assn
David Pope, Dept of Water Resources

Others attending: See attached list

Chairperson Holmes opened the meeting announcing the bills for action on tomorrow's schedule. He urged the Committee to work with staff on any amendments they wish to present on any of the bills for action. Also, the Subcommittee on Sludge will meet upon adjournment of today's Standing Committee meeting and will finalize their drafts to present to the Committee Thursday.

The Chair also outlined the agenda items for hearings the week of February 21, reminding the Committee that March 23 is the deadline for consideration of bills for public hearings out of the respective chambers.

Briefing on Quivera Wildlife Refuge:

Alan Steppat. Mr. thanked the Chair for the time to make a presentation on the Water Pack, and introduced Water Pack member Richard Wenstrom.

Richard Wenstrom. (See Attachment #1) As a board member of Water Pack, Mr. Wenstrom explained that this organization originated approximately four years ago as a result of hearings held in Great Bend related to the Cheyenne Bottoms issue. The organization formed to avoid some of the problems in that area. The Water Pack is an association of farmers and agribusiness, emphasizing that 90% of its membership is farmers. They are presently taking a lead role in education and water conservation strategies. Referring to a chart furnished to the Committee, Mr. Wenstrom stated their Association presently functions within a 14-county area, wherein there is approximately 672,000 irrigated acres. Given the example, if an irrigated acre produces an acre of rain at about \$260 per acre of income, that area produces each year approximately \$240 million, not including livestock which would double that number. (Would be higher if dry land were added.) In essence, this is a high production agricultural area. There is an additional \$3.4 million in real estate taxes paid as a result of irrigation.

Mr. Wenstrom referred to another map showing the so-called Rattlesnake Creek Sub-basin, and outlining the Big Bend Groundwater Management District. In the eastern edge of Stafford County is the Quivera National Wildlife Refuge, managed by the federal Department of Interior. Rattlesnake Creek is located in the western portion of the lower Arkansas Basin of South Central Kansas, most of which runs through Stafford, Edwards and Kiowa Counties. Agricultural crop land is the predominant land use in the sub-basin with grassland second in use. Irrigation is the predominant use, accounting for approximately 98% of the volume appropriated in groundwater rights and permits. Six public water supply systems exist in the sub-basin, all of which rely on groundwater as their source of supply.

The average annual precipitation in the Rattlesnake Creek Sub-basin varies from 26 inches along the eastern side to 23 inches in the western portion (Actual precipitation can vary from 14" to 40" annually.)

Mr. Wenstrom reported that due to the semi-arid climate and the variances in seasonal rainfall, the time water is available to the Quivera National Wildlife Refuge is not always when the water is needed to maintain the habitat. To adequately manage these variances he said the development of a storage system to collect water at peak flow would hold water that normally flows past the refuge. With the current primitive transfer system (old stream channels and sloughs), a system of lined ditches would reduce the

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on February 16, 1994.

volume of water necessary to maintain the natural habitat.

It is the goal of Water Pack to 1) obtain public and private funds to assist the US Fish and Wildlife Service to do engineering studies for efficient water resource management of the Wildlife Refuge; 2) facilitate the incorporation of Rattlesnake Creek Sub-basin modeling information provided to Quivera National Wildlife Refuge by the Kansas Geological Survey and Groundwater Management District #5 and new Quivera Project engineering studies into a water management plan at the Refuge; 3) reduce the critical nature of water delivery timing to the Refuge through the development of transfer and storage projects; and 4) maintain viability of local economies.

Upon formation of a coalition, the initial focus should be the engineering studies, and funding options that would be led by an attempt to secure funds through congressional appropriations to the US Department of Interior.

In conclusion Mr. Wenstrom said the Water Pack believes the Quivera Project offers an opportunity to enhance a valuable United States asset and at the same time help protect and utilize a valuable state resource - water. Their membership coalition enhances the likelihood of success.

Upon completion of his testimony, Mr. Wenstrom introduced board members of the Water Pack who attended today's hearing. They are: Roger Stotts, President; Steve Maechtlen, Vice President; Kent L. Moore, Treasurer; Darla Mainquist, Executive Director; Past President, Kent Lamb; Gordon Schmidt, and Todd Zimmerman, Board of Directors.

Chairperson Holmes expressed his appreciation for Mr. Wenstrom presentation, noting the efforts of the Water Pack to address a situation before it becomes a problem.

Hearing on Division of Water Resources:

David L. Pope. (See Attachment #1) Mr. Pope reported on the Division of Water Resource's duties regarding applications to change the authorized place of use, point of diversion and use made of water.

Citing the procedures as outlined in the statutes regarding owner of water rights, he said they must apply in writing to the chief engineer for approval of any proposed change; demonstrate that the proposed change is reasonable and will not impair existing water rights; demonstrate that the change relates to the same local source of supply as to that which the water right relates; and receive approval for any proposed changes. The statute states that the Chief Engineer shall approve/reject the change in accordance with procedures for processing an original application for appropriation of water. Mr. Pope said the Division has adopted policies and procedures directly related to the administrative processing of applications for change.

In 1989, the Division implemented administrative procedures for expediting the applications for short move changes (moving 300 feet or less). These procedures allow same day approval in most cases. In addition, the Division has recently adopted a new policy assisting in evaluating applications for changes in place of use and the use made of water (type of use). It prevents impairment of other existing water rights surrounding the original point of diversion and protects the public interest. This procedure also protects a water right owner's originally perfected water right.

Often an application for a change in one water right requires other water rights related to the same point of diversion and/or place of use to be reviewed. Careful consideration must be exercised before the application can be adequately processed.

Currently, there are approximately 680 applications pending for changes to existing water rights, and a nine-month backlog in processing time from the filing date receipt and the time the application is reviewed by an environmental scientist. From initial review to approval time typically takes less than 60 days (if all necessary information is filed correctly).

The Division acknowledges and appreciates the concern of Kansas water users regarding the backlog of change applications and the amount of time involved in processing the files. They currently have three full-time environmental scientists and one clerical staff person working on change applications and, they too, are frustrated by this backlog. They do attempt, however, to administer the statutes expeditiously, given the budget and staff resources provided by the Legislature. Mr. Pope noted some of the more important factors contributing to the backlog:

1. There are limited staff resources to processing of applications.
2. Staff turnover has been extremely detrimental due to the time required to properly train a new staff member.
3. Continued increased interest in water rights and value, water shortage and conflicts all contribute to the complexity and problems associated with water rights changes.
4. Changes in farming practices, ownership changes and reconfiguration of irrigated tracts or other types of systems result in many requests to change the water rights. New policies and proposed regulations being prepared by the Division are designed to aid the applicant and the Division, outlining precise guidance on changes criteria (reducing processing time).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on February 16, 1994.

5. A significant amount of staff time is utilized answering written and verbal inquiries regarding the backlog.

6. Since 1990 the Division has adopted more policies governing processing change applications to better manage the water resources, thereby increasing processing time (it takes a lot more time and effort to tell an application "no"). The Division considers their efforts reasonably successful since there have been very few challenges to their decisions.

Mr. Pope says it will require time to reduce the backlog, but actions taken by the Division will eventually help. Having been understaffed to deal with an ever-increasing and wide range of issues, he said they simply have not been able to deal with all important issues as they would like.

Edward R. Moses. (See Attachment #3) Mr. Moses assured the Committee that his presence as a conferee today in no way reflects upon the Division of Water Resources efforts in their work regarding their processing procedures. He appears to offer proposed suggestions to possibly aid the Division in reducing the backlog of appropriation and change-of-use applications. The following is a summary of recommendations the Kansas Aggregate Producers Association considers to be an approach to resolve some of the problems. He introduced guest, Mr. Jim Ralston of Wichita, who has had difficulty in obtaining water rights and will be available to the Committee for questions.

- Overhaul the Kansas Water Appropriations Act. (Need to update the 1945 law).
- Require Division to review all new applications for water rights immediately and deny if area applied is over appropriated.
- Give the Division 90 days to process application for change-of-use request. In addition, there should be a definite deadline if further information is solicited (due to inaccurate initial application).
- Severely decrease the amount of information the Division requires from municipal water use reports and the man hours involved in these reports. (See letter to City of Atchison in this attachment).
- Require the Division to establish a special term permit program for the sand and gravel industry. (See December 10, 1993 self-explanatory letter in this attachment)
- Require the Division to promulgate more rules and regulations rather than allowing them to rule by administrative procedure, subjecting them to a review by the Joint Committee on Rules and Regulations.
- Recommend a comprehensive Legislative Post Audit, reviewing all operations and management practices of the Division for inefficiencies and unnecessary micro-management.
- Establish a Board of Water Right Appeals (similar to the Board of Tax Appeals) which action would instill decorum into the decisions of the Division.
- Clearly define the role of Groundwater Management Districts in the issuance of water appropriation rights.
- Urge the Division of Water Resources, in conjunction with the Kansas Geological Survey, to develop and recommend a "water systems-based approach" to water resources management policy of Kansas.

Following a lengthy discussion with the conferees, Chairperson Holmes offered plaudits to the Division of Water Resources (in conjunction with two other state agencies) in putting forth their efforts over the last nine years in dealing with Colorado lawsuit. He acknowledged the burden of extra work this caused to the Division, and suggested some of the problems addressed today may indirectly be attributed to the amount of the work involved in the lawsuit. In addition, they are possibly preparing litigation with another neighboring state and he understands the difficulty the Division is experiencing.

Upon completion of its business, the meeting adjourned at 5:05 p.m.

The next meeting is scheduled for February 17, 1994.



GUEST LIST

Committee: Energy and Natural Resources

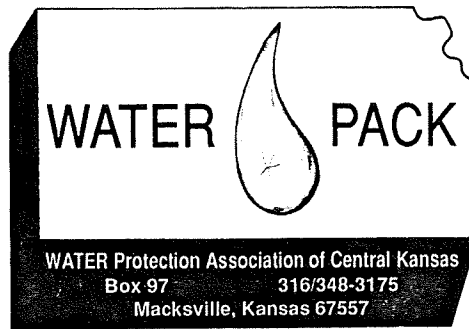
Date: 2/16/94

| NAME: (Please print) | Address: | Company/Organization: |
|----------------------|-----------------------------------|--------------------------|
| KENT L. MOORE | RR 1 Iuka, Ks 67066 | Water Pack |
| Todd Zimmerman | 1545 Ave. R Lyons, Ks 67554 | Water Pack |
| Darla Mainquist | Box 393 Pratt, Ks 67124 | Water Pack |
| RICHARD WENSTROM | RT. 1, Box 107, Kinsley, Ks 67547 | Water Pack |
| Steve Maechtle | Box 61A Pratt Ks | Water Pack |
| Tricia R. Sears | Topeka | Kansas Audubon Council |
| Kent Lamb | Rt. 1 Box 69, Macksville, Ks. | KWRA |
| J. C. Long | Topeka | U.C.U. |
| Roger Stotts | Greensburg Ks 67054 | Water Pack |
| Robert Buddemeier | Lawrence KS | KGS |
| Leland E. Rolp | Topeka, Ks | DWR-KSBA |
| Doc Waple | Topeka KS | DWR-KSBA |
| Kevin R. Schutt | Haviland Ks | GMD #5 |
| Eugene Stotts | Byers, Ks | GMD #5 |
| Dick Isaacs | Wichita | Coleman Co. |
| Gordon Schmidt | Inman Ks. | GMD #2 Water Pack |
| Tom Stiles | Topeka KS | KWO |
| Edward Moses | ✓ ✓ | ICAPA |
| Harold Morgan | Dodge City Ks | Dodge City Sand Co |
| Jim Russell | P.O. 17470 Wichita | Western Mobile Kvas Inc. |
| Kerry Wedel | TOPEKA | Kansas Water Office |
| Bill Craven | Topeka | Kansas Sierra Club |
| Glen Steppat | TOPEKA | PETE McGill & Assoc. |
| JANET STUBBS | Topeka | Ks. Bldg. IND. ASSN. |
| Jean Barber | Topeka | Travel Ind. Assn of KS |



Date: _____

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The Water Protection Association of Central Kansas was formed four years ago as a result of the hearings held addressing the water supply issues related to Cheyenne Bottoms. Water PACK did not participate in, but, did monitor the intensive groundwater use control area (IGUCA) hearings.

Water PACK is an association of farmers and agribusinesses organized to promote, foster and encourage the intelligent, economical, and sustainable use of quality water.

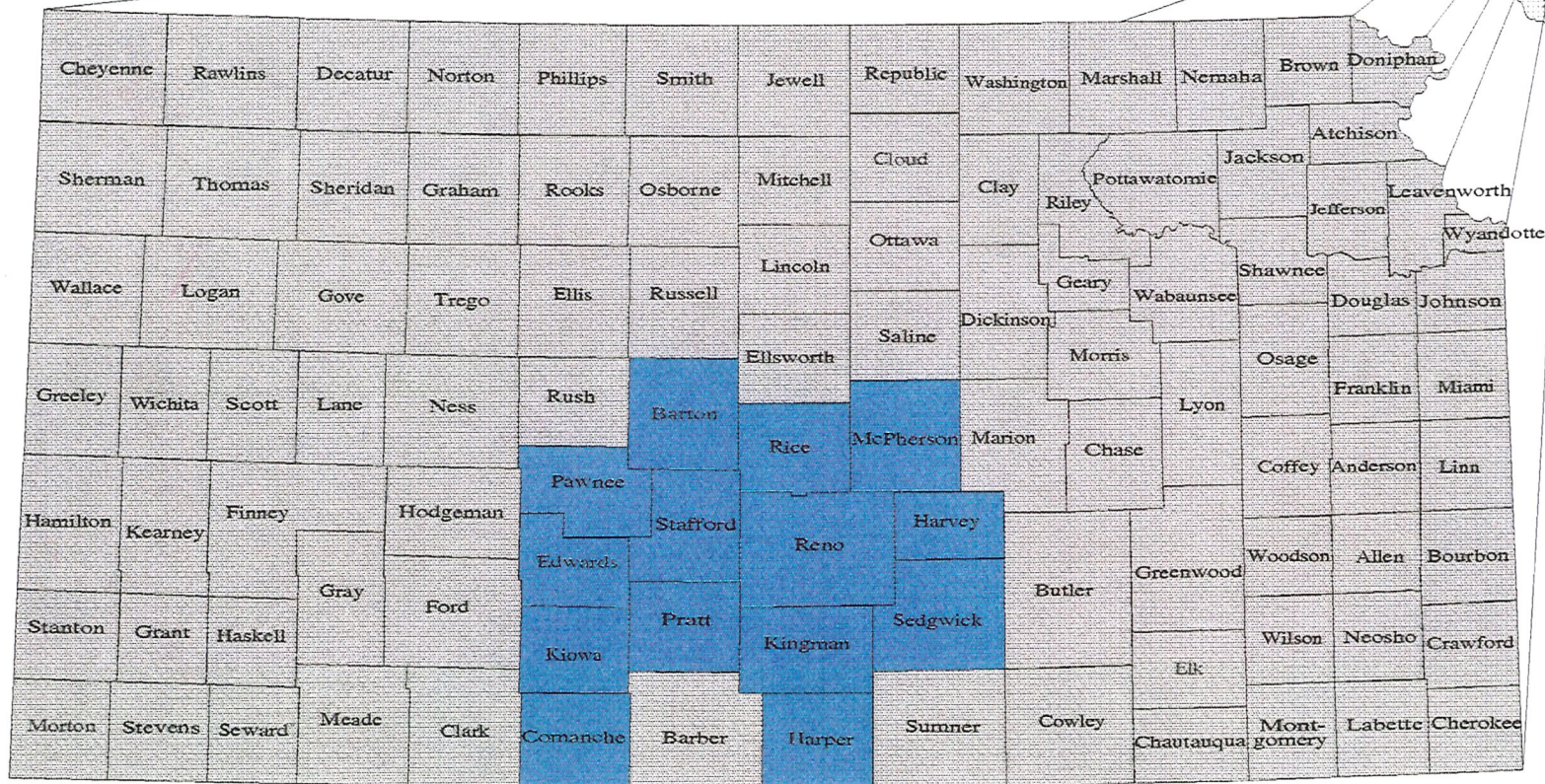
Water PACK is taking a lead role in education programs and the development of conservation strategies. We are asking people to take a long range view of water conservation and management.


Water PACK helps members by:

1. Determine the quantity and quality of water.
2. Take action when necessary to protect water rights.
3. Encourage improvements in water management.
4. Study and involvement with legislation, rules and regulations which affect members.

*Energy & Natural Resources
Attachment #1
2/16/94*

Water Protection Association of Central Kansas, 1993










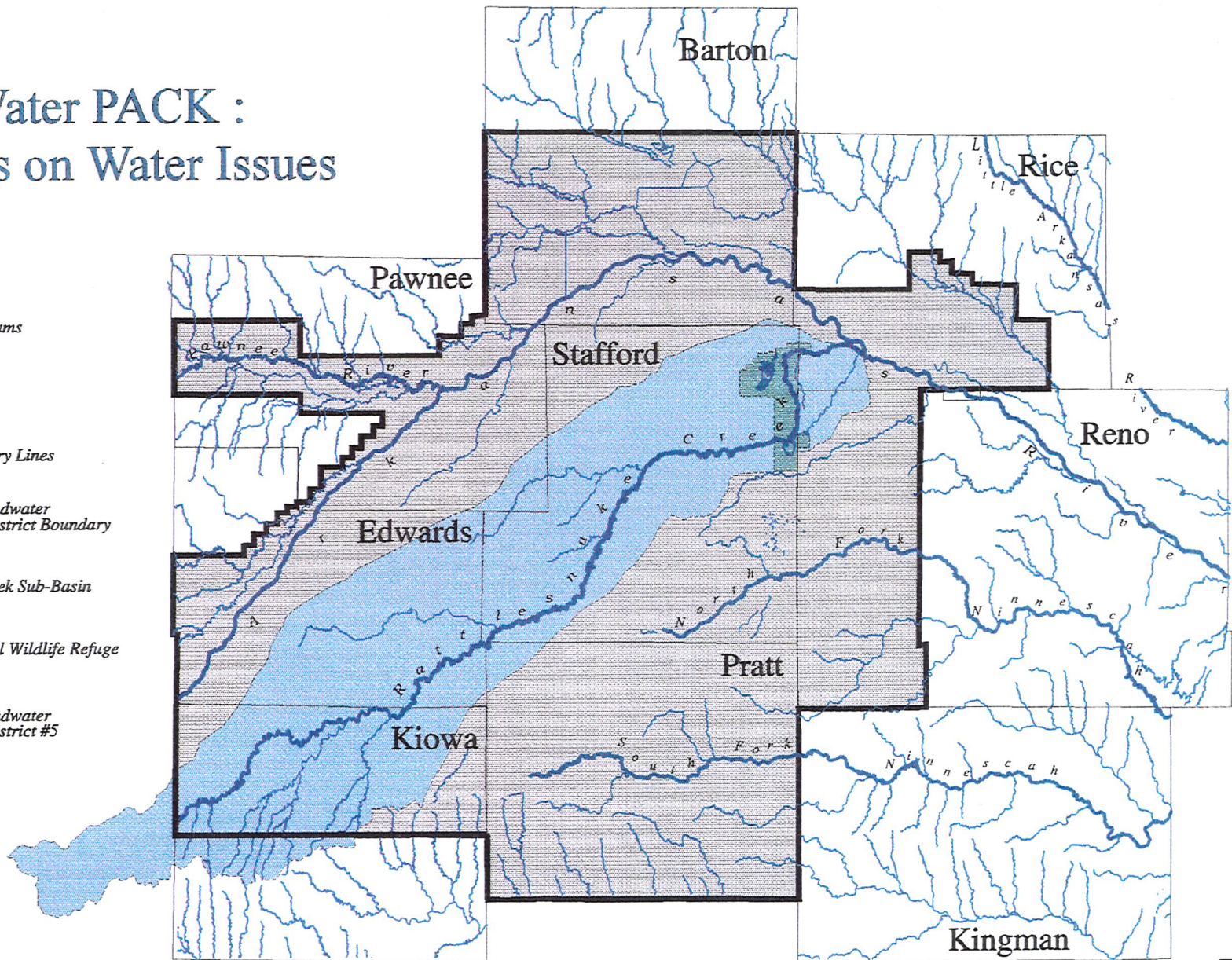
 Participating Counties

0 25 50
Miles

1-2
GMR

Water PACK : Focus on Water Issues

-  Rivers and Streams
-  Primary Rivers
-  County Boundary Lines
-  Big Bend Groundwater Management District Boundary
-  Rattlesnake Creek Sub-Basin
-  Quivira National Wildlife Refuge
-  Big Bend Groundwater Management District #5



Economic Overview of Irrigated Agriculture in the Water PACK area of Kansas

671,900 irrigated acres in the Water PACK area (1992)

Total dollars generated by irrigation

| | | |
|---|-----------------|---|
| | \$358.00 | Irrigated average income per acre |
| x | 671,900 | Total number of irrigated acres in the Water PACK area |
| | \$240,540,200 | Total dollars generated on irrigated land |
| x | 5 | Number of times a dollar turns in the Water PACK area |
| | \$1,202,701,000 | Money turned in the Water PACK area as a result of irrigation |

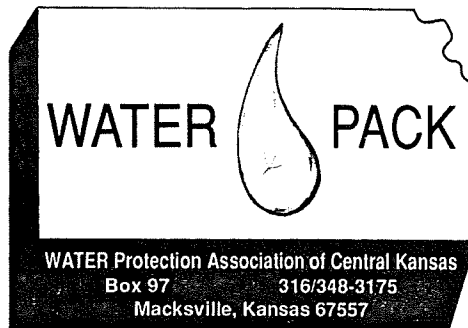
Total additional dollars generated by irrigation in the Water PACK area:

| | | |
|---|---------------|--|
| | 671,900 | Irrigated acres in the Water PACK area |
| x | \$230.08 | Average irrigated income per acre |
| | \$154,590,752 | Additional dollars generated by irrigation |
| x | 5 | Number of times a dollar turns in the area |
| | \$772,953,760 | Dollars circulating in the Water PACK area as a result of irrigation |

There is an additional \$3,359,500 of real estate taxes paid as a direct result of irrigation. (Generally thought to be an additional \$5/acre in taxes generated on irrigated over dryland acres.

Jobs created by irrigation:

| | | |
|---|---------------|---|
| | 671,900 | Acres irrigated in the Water PACK area |
| x | \$230.08 | Additional dollars generated by irrigation |
| | \$154,590,752 | Additional dollars generated by irrigation |
| x | 2.5 | Factor in determining jobs created |
| | \$386,476,880 | Worth of jobs created |
| / | \$16,500 | Estimated per capita income in the Water PACK area |
| | 23,423 | Total people supported by irrigation in the Water PACK area |



March 30, 1993

QUIVIRA PROJECT ENHANCEMENT PROJECT FOR QUIVIRA NATIONAL WILDLIFE REFUGE

INTRODUCTION

The Water Protection Association of Central Kansas (Water PACK) was formed to address water issues. Water PACK is finding itself in several roles at this time. Water PACK has become a watchdog over water studies related to different drainage basins as well as a platform for educational programs related to water law, water policies, and water conservation in Kansas. In the area of water conservation, Water PACK is developing water conservation strategies concurrent with encouraging members to conserve through use of high efficiency delivery systems and water timing.

Acknowledging a less than adequate stream flow in some months to meet Quivira National Wildlife Refuge demands and excess flow in other months, Water PACK invites organizations to form a coalition for the purpose of doing a feasibility study addressing the possibility of upgrading water facilities at Quivira National Wildlife Refuge to allow for more timely storage, conservation and delivery of water in the system.

It is essential to the economy of Kansas to maximize the use of water resources of the state. Both the economy and the wildlife habitat are vital to the long term stability of the area. To accomplish this, all parties, agriculture, municipalities and the Quivira National Wildlife Refuge will need to develop management programs that will reduce these water requirements and maintain the natural and economic environment. It is the position of Water PACK that the water resources of this area are adequate to supply the existing appropriations if all parties use available technology and implement water management programs.

ISSUES

SUPPLY

1. Rattlesnake Creek is located in the western portion of the Lower Arkansas Basin in south central Kansas. The majority of the subbasin is contained in Stafford, Kiowa and Edwards counties. Smaller portions of the subbasin are located in Rice, Barton, Reno, Pawnee, Ford and Clark counties. Agricultural cropland represents the predominant land use in the subbasin. Grassland is the second most prominent land use.
2. The predominant water use in the subbasin is for irrigation accounting for approximately 98 percent of the volume of appropriated ground water rights and permits. The largest permitted surface water use is from Rattlesnake Creek for the Quivira National Wildlife Refuge in Stafford County. Six public water supply systems exist in the subbasin, all of which rely on groundwater as their source of supply.
3. The principal source of water supply for beneficial uses in the Rattlesnake Creek Subbasin is groundwater. The average annual precipitation in the subbasin varies from 26 inches along the eastern side to 23 inches in the western portion. Actual precipitation received can vary widely ranging from 14 inches to over 40 inches annually. Since the area is a semi-arid region, there is a large variance in precipitation from season to season as well as year to year. To further disrupt the supply, the events of rainfall over two inches at a time, vary greatly. Such events recharge the water table and increase the stream flow of the Rattlesnake Creek.

SUPPLY MANAGEMENT

1. Timing

Due to the semi-arid climate and the variances in rainfall from season to season as well as year to year, the time water is available to the Quivira National Wildlife Refuge is not always when the water is needed to maintain the habitat.

2. Storage

To adequately manage the variances in stream flow that the climatic conditions create, the development of a storage system to collect water in times of high stream flows would hold water that normally flows past the refuge.

3. Transfers

The current transfer system in the refuge is very primitive, being old stream channels and sloughs. A transfer system of lined ditches moving water from the many ponds and dikes in the refuge would reduce the volume of water necessary to maintain the natural habitat on the refuge.

GOALS & OBJECTIVES

- 1. To obtain public and private sector funding to assist US Fish & Wildlife Service to complete engineering studies required for the efficient management of the Quivira National Wildlife Refuge water resource.**
- 2. To facilitate the incorporation of Rattlesnake Creek Subbasin modeling information provided to Quivira National Wildlife Refuge by the Kansas Geological Survey and the Groundwater Management District #5 and new Quivira Project engineering studies into a water management plan at Quivira National Wildlife Refuge.**
- 3. To reduce the critical nature of water delivery timing to Quivira National Wildlife Refuge through the development of transfer and storage projects at the refuge.**
- 4. To maintain viability of local economies.**

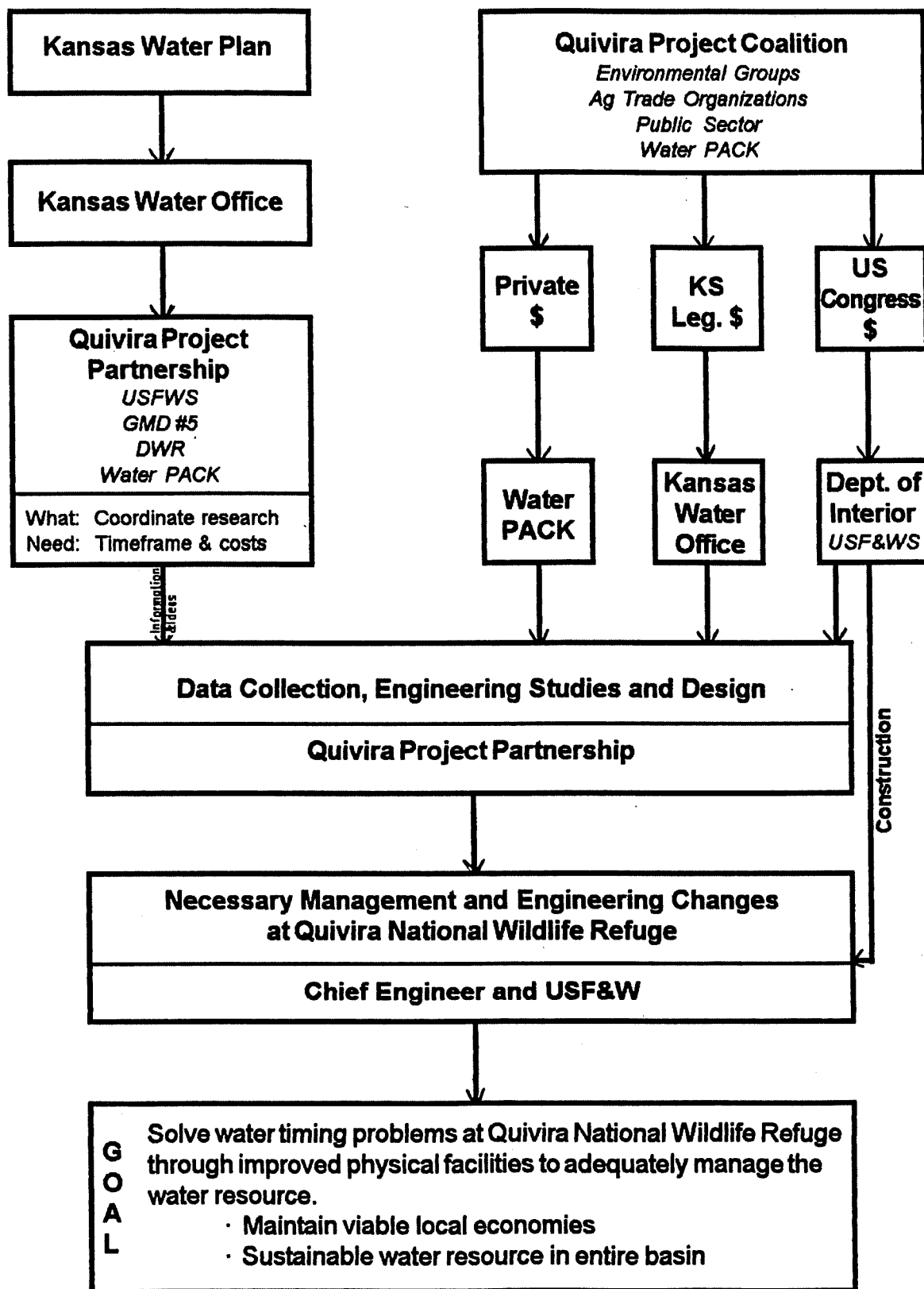
PLAN IMPLEMENTATION

Following the formation of a coalition with common goals, the initial focus should be on securing funding for engineering studies at Quivira. Possible sources beyond the coalition members are private organizations focused on wildlife protection issues, State and Federal Grants available for projects of this type, and State or Federal funding through congressional appropriations.

Implementation of management alternatives at Quivira National Wildlife Refuge would be implemented through US Fish & Wildlife Services. Funding options would be led by an attempt to secure funds through congressional appropriations to the US Department of Interior.

In conclusion.

The Water Protection Association of Central Kansas believes that the Quivira Project offers an opportunity to enhance a valuable United States asset and at the same time help protect and utilize a valuable state resource, water. Coalition members from agriculture, environment and business combined with a singleness of purpose most surely enhances our likelihood of success.



QUIVIRA PARTNERSHIP

PENDING MEMBERS

Big Bend Groundwater Management District #5

U.S. Fish & Wildlife Service

Division of Water Resources

Water Protection Association of Central Kansas

The partners, who represent all water users in the Rattlesnake Creek Basin, are committed to a cooperative approach and to acknowledge the interest of all partners within the basin. They also understand water conservation shall be a guiding principle for all partners and are committed to JOINT planning efforts, to minimize duplication and maximize the use of available resources.

QUIVIRA PROJECT COALITION MEMBERS

Great Bend Chamber of Commerce

Michael Walts
1307 Williams
Great Bend, KS 67530
(316) 792-2401

Nature Conservancy

Alan Pollom
3601 SW 29th; Suite 112B
Topeka, KS 66614
(913) 272-5115

***Kansas Farm Bureau**

Bill Fuller
2627 KFB Plaza
Manhattan, KS 66502
(913) 587-6000

***Ducks Unlimited**

David Wesley
101 Business Park Drive; Suite D
Jackson, MS 39213
(601) 956-1936
Lee Queal
1004 W. 9th
Pratt, KS 67124
(316) 672-6100

Wichita Chamber of Commerce

Gerald Holman
350 W. Douglas
Wichita, KS 67202
(316) 265-7771

***Kansas Audubon Council**

Joyce Wolf
2535 Arkansas
Lawrence, KS 66046
(913) 749-3203

Kansas Livestock Association

Mike Beam
6031 SW 37th Street
Topeka, KS 66614-51259
(913) 273-5115

***Water PACK**

Steve Maechtlen
PO Box 393
Pratt, KS 67124
(316) 672-3896

***Reno County Economic Development Council**

Chad DeLong
PO Box 519
Hutchinson, KS 67504-0519
(316) 662-3397

*Indicates Coalition Membership form has been signed.

QUIVIRA PROJECT COALITION MEMBERS

ENVIROMENTAL INTERESTS

**Nature Conservancy
Kansas Audubon Council
Ducks Unlimited**

PUBLIC SECTOR

**Great Bend Chamber of Commerce
Wichita Chamber of Commerce
Reno County Economic Development Council**

AGRICULTURAL TRADE ORGANIZATIONS

**Kansas Farm Bureau
Kansas Livestock Association
Water PACK**

The purpose of the Quivira Project Coalition is to seek funding from private sources, state government and the federal government to carry out the plans developed by the Quivira Project Partnership.

**Water PACK
Presentation to House and Senate
Energy and Natural Resources Committees**

February 16, 1994

Members of the Committees:

Because of the time constraints we faced when developing the attached material for your consideration, we have not received input and comments from the Chief Engineer, the President of Big Bend Groundwater Management District, nor the U.S. Fish and Wildlife Service.

Please consider this material as representative of Water PACK's position and understanding of the issues. The other parties listed as "pending members" of the Quivira Partnership, and the Quivira Project Coalition members who have not signed the membership form, may differ with Water PACK on various issues.

Testimony before the
House Energy & Natural Resources Committee
By David L. Pope, Chief Engineer-Director
Division of Water Resources
Kansas State Board of Agriculture
on February 16, 1994
Re: Change Application Backlog

Mr. Chairman and members of the committee:

I am here today at the request of Chairman Holmes to provide information to the committee concerning the Division of Water Resource's duties regarding applications to change the authorized place of use, the authorized point of diversion and the authorized use made of water, especially as related to our backlog in the processing of such applications.

K.S.A. 1993 Supp. 82a-708b indicates that an owner of a water right shall:
(1) apply in writing to the chief engineer for approval of any proposed change,
(2) demonstrate to the chief engineer that the proposed change is reasonable and will not impair existing water rights, (3) demonstrate that the proposed change relates to the same local source of supply as to that to which the water right relates and (4) receive the approval of the chief engineer with respect to any proposed change. The statute also requires that the Chief Engineer shall approve or reject the application for change in accordance with the provisions and

procedures prescribed for processing an original application for permit to appropriate water.

Kansas Administrative Regulations 5-5-1 through 5-5-6 pertain to applications for changes to existing water rights and the procedures and information required for processing these changes.

The Division has also adopted policies and procedures that directly relate to the administrative processing of applications for change. These are designed to assist staff in the processing of applications for changes to water rights in a technically sound and consistent manner.

In 1989, the Division implemented administrative procedures to assist in expeditious processing of applications for short move changes (moving 300 feet or less) in points of diversion by delegating this authority to our field office level. Approvals can be issued the same day as the application is made in most cases.

The Division has recently adopted a new administrative policy that assists in the process of evaluating applications for changes in place of use and the use made of water (i.e. type of use). It prevents impairment of other existing water rights surrounding the original point of diversion and protects the public interest by not allowing an increase in historic consumptive use. The procedure also protects a water right owner's originally perfected water right. (See attachment A.)

An application for a change in one water right often requires other water rights related to the same point of diversion and/or place of use to be reviewed because of the pending change. This interrelationship must be carefully considered before the change application can be adequately processed. Analysis of change applications can be extremely complex because of the interrelationships with other water rights.

Attachment B shows some of the evaluations or steps necessary to process a typical change application.

There are currently approximately 680 applications for changes to existing water rights pending review by the Division. There is approximately a nine month backlog in processing time from the date the file is received and the time the application is initially reviewed by the environmental scientist. From initial review until approval or disapproval, it typically takes less than 60 days, unless the applicant fails to provide necessary information or significant actions are necessary on a related water right file.

We only have three full time environmental scientists and one clerical staff person working on change applications.

We are aware that there is considerable concern by Kansas water users about the size of our backlog of change applications and the amount of time it takes to process these files. The Division acknowledges and appreciates these concerns. My staff and I are also very frustrated by the backlog. However, we do attempt to administer the statutes to the best of our abilities with the

budget and staff resources provided by the legislature. A graph is attached (Attachment C) which shows change application activity by fiscal years for the last six years. This graph shows the number of applications received, the number of applications processed and the number of applications pending action.

There are many factors that contribute to the backlog. Some of the more important ones are:

- 1) There are limited staff resources to work on processing of applications. Currently, only three full time environmental scientists and one clerical staff work the majority of their time on changes.
- 2) Staff turnover has been extremely detrimental due to the time required to properly train a new staff member about water rights administration and perform adequately in this complex area. The increase in pay range due to the job classification study earlier this fiscal year was a positive step to limit historic turnover and should help allow us retain a more experienced staff.
- 3) Continued increased interest in water rights and their value, water shortages and conflicts all contribute to the complexity and problems associated with changes to water rights.
- 4) Changes in farming practices, ownership changes and reconfiguration of irrigated tracts or other types of systems, often to use more efficient systems, result in many requests to change water rights. These

applications frequently also result in concerns about potential increases in the amount of water that will be used under the proposed change compared to historic conditions. That issue has to be carefully evaluated. New policies and proposed regulations being prepared by the Division should help both the applicants and the Division of Water Resources by providing clear guidance on the criteria for changes, thereby reducing processing time.

- 5) As the backlog continues, understandably the applicants' frustrations grow. This generates more written and verbal inquiries and complaints about the status of the applications. A significant amount of staff time is now devoted to answering those inquiries, which puts us further behind. This is a vicious cycle. One idea has been to seek funding for an ombudsman to answer written and telephonic inquiries concerning application status, thus freeing technical staff to process applications.
- 6) Since about 1990, the Division of Water Resources has adopted more policies governing processing change applications to better manage our water resources. But as a consequence, processing time and complexity have increased significantly. More applications are being denied or limited. It takes a lot more time and effort to tell an applicant "no". Everything has to be right because it will be challenged in most cases. The Division obviously has been doing its job well because there have been very few successful challenges to our decisions.

Many of the actions taken by the Division to reduce the backlog will help, but require time to become effective. In addition, the Division has been historically understaffed to deal with an ever increasing and wide range of issues in the water management and administration field, and we simply have not been able to deal with all important issues on as timely a basis as all of us would like.

Should you have any questions, I will try to answer them at this time.

KANSAS STATE BOARD OF AGRICULTURE
DIVISION OF WATER RESOURCESM E M O R A N D U M

TO: DWR Staff

DATE: August 13, 1993

FROM: David L. Pope RE: Administrative Policy
No. 93-5

Attached is Administrative Policy No. 93-5, entitled Changes in the Type of Beneficial Use Made of Water from Irrigation to Other Types of Beneficial Use.

As most of you are aware, this policy has been under consideration for several years, has gone through a great number of drafts, and has been the subject of much debate and discussion.

The difficulty in formulating this policy was to strike a delicate balance between several different objectives. Our primary goal was to protect water users in an area where there is a point of diversion for which an application is filed to change the type of beneficial use from irrigation to another type of beneficial use. The yardstick chose to measure potential injury was to ensure that the extent of consumptive use will not be increased substantially after a vested right has been determined or the time allowed in which to perfect the water right has expired (K.A.R. 5-5-3).

The method used to accomplish this objective had to be carefully chosen so that it did not encourage water users to use water unnecessarily in order to keep from losing a water right, or even perceiving that they would lose a water right, and at the same time not reward people who did use water unnecessarily or wastefully. Every effort was made to formulate a policy which would protect water users in the area from which a change in type of use was contemplated, while at the same time, not perpetuate the perception that the Division of Water Resources has a "use it or lose it" policy, or penalize those users that have conserved in the past.

We feel that we have achieved that balance in the following ways:

- 1) All of the factors chosen to evaluate the annual quantity of water which can be changed will be beyond the control of the water right owner to manipulate immediately before or at the time of the change. The key factors used in the analysis are the maximum acreage legally irrigated in any one year prior to June 28, 1945, in the case of vested rights, or the maximum acreage legally irrigated in any one calendar year during the perfection period, in the case of appropriation rights. This may not necessarily be the year of record. This gives the water right owner every benefit of doubt as to the extent of his or her operation during the perfection period. The only subtraction from the acreage base is any acres which have been physically abandoned for a long enough period of time to constitute abandonment.

EJR
2-7

MEMORANDUM

August 13, 1993

Page No. 2

2) The primary standard will be the net irrigation requirements for corn for a 50% chance rainfall. Many water rights were perfected by the growing of corn. It is a crop typically fully irrigated, as compared to the other primary crops. After exploring a number of standards, including a hypothetical crop based on composite crops grown in each county, and considering data limitations and looking at what produced the most consistent results throughout the state of Kansas, it was felt that corn proved the most reliable and reasonable indicator of actual consumptive use that took place during the perfection period. Of course, this also has the impact of not penalizing someone who conserved water by growing a crop that required less water or someone that was highly efficient in the past. The 50% chance rainfall represented the average demand that irrigator would have placed on the aquifer during a period of use prior to the change application.

3) If the applicant for the proposed change can justify the need for more flexibility in the annual quantity of water used (such as by showing a history of varying demands over the years or the need for conjunctive management between a groundwater supply and a surface water supply that is not always available), then Option II, B, allows a five-year fixed allocation of water of five times the net irrigation requirement for corn for 50% chance rainfall with a maximum in any one year being the net irrigation requirements for corn for the 80% chance rainfall.

4) If an applicant is not satisfied that this procedure accurately calculates the consumptive use under his or her water right during the perfection period, they have the option to have an engineering or similar study done to prove to the satisfaction of the Chief Engineer that their information and analysis is more accurate for that water right. However, the burden is on the applicant to demonstrate that their analysis is correct.

If you have any questions about the policy itself or how it was derived, please feel free to ask. We feel that this policy will allow appropriate amounts of water to be transferred while at the same time protecting other water right owners in the area and the public interest. At the same time it will not encourage unnecessary use of water or allow water right owners to "farm their water" by inflating water use in the years immediately preceding the change application. It is our hope that this policy, in conjunction with the Water Rights Conservation Program and our Abandonment Policy, will lay to rest any perception that Division of Water Resources has a "use it or lose it" policy, which we certainly do not have.

DLP/LER/bs

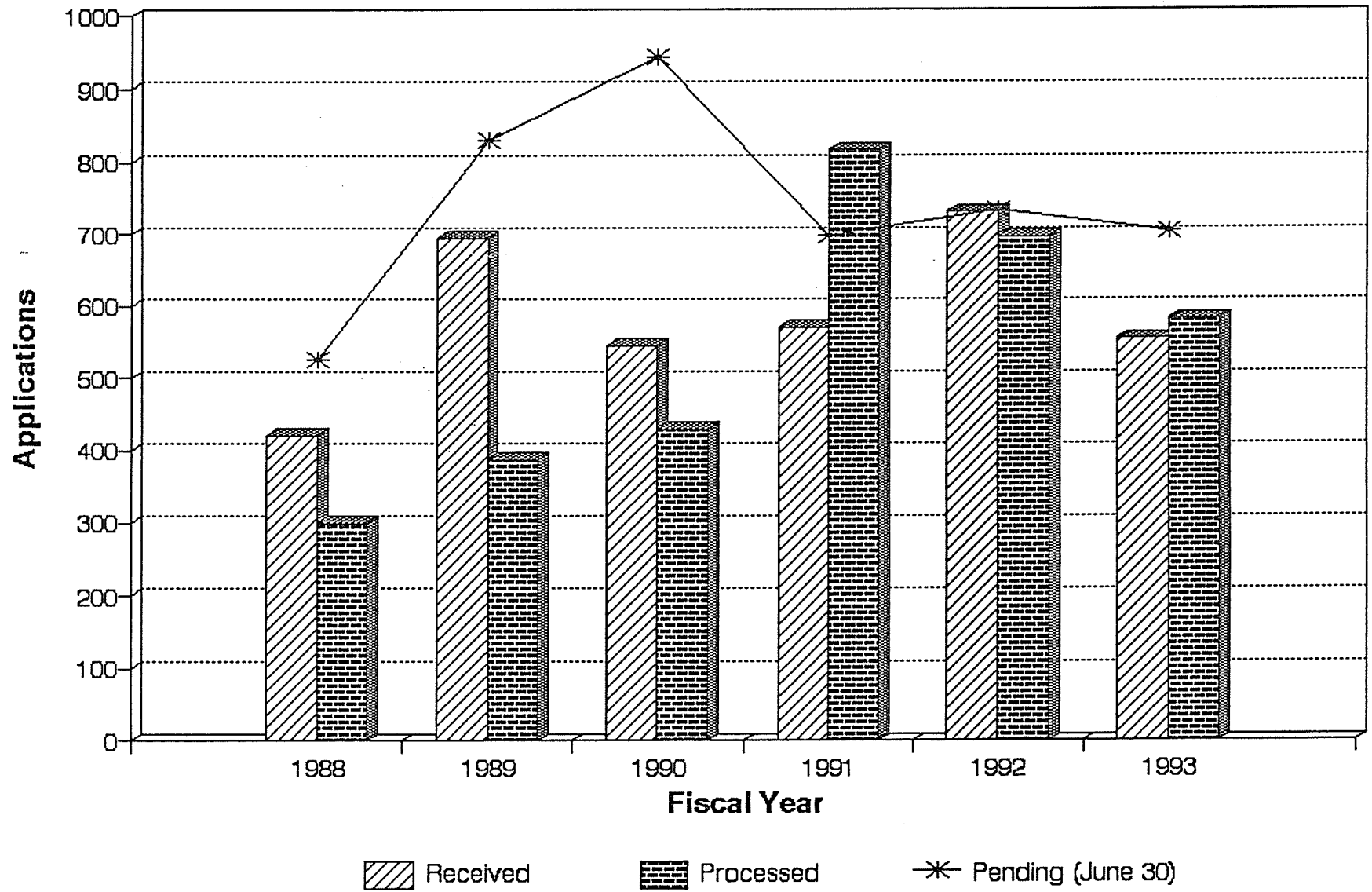
ERK
2-8

EVALUATIONS OR ACTIONS NECESSARY TO PROCESS A TYPICAL CHANGE APPLICATION

1. Reviewing information on an application to determine that it is complete and accurate; and, if necessary, obtaining additional information from the applicant to complete the application,
2. Determining if the application was made in good faith,
3. Determining if the proposed use of water is for a beneficial purpose,
4. Determining if the proposed rate of diversion is within reasonable limitations for the proposed use,
5. Determining if the proposed quantity is within reasonable limitations for the proposed use,
6. Determine if the proposed use will prejudicially and unreasonably affect the public interest,
7. Determine whether a proposed change in point of diversion is in the same local source of supply as the originally authorized point of diversion; it may be necessary to review test hole logs and driller's logs,
8. Determining whether there would be probable impairment by the proposed appropriation to an existing appropriation,

9. Performing any necessary hydrologic analysis of any proposed change,
10. Determining whether a conservation plan should be required and, if so, reviewing that plan to ensure all requirements are met,
11. Evaluating the application to ensure all of the rules and regulations of the groundwater management district have been met, if the water right is located in a groundwater management district. Proper communication with the groundwater management district must occur to ascertain its recommendation on the approval or denial of the subject application,
12. Properly notifying all water diverters within one half mile radius of the proposed water appropriation and proper resolution of their concerns, if any, and
13. Evaluating the application in relation to all other applications that may have the same point of diversion or place of use so a comprehensive assessment of the total water to be appropriated is considered. This also means that the status of those other applications must be ascertained in order to have a complete evaluation. For example, one or more certificates may have to be issued on related applications before a change application may be properly processed.

Actions on Change Applications By Fiscal Year



11-2
2723

MEMO
KANSAS AGGREGATE PRODUCERS ASSOCIATION

TO: The House Committee on Energy and Natural Resources

FROM: Edward R. Moses, Managing Director

SUBJECT: The KAPA **top ten** suggestions to reduce the Division of Water Resources backlog of appropriation and change-of-use applications

1. Overhaul the Kansas Water Appropriation Act. It is hard to believe a law drafted in 1945 can meet the water resource management needs of the 90's.
2. Require Kansas Division of Water Resources (KDWR) to review all new applications for water rights immediately and deny if area applied for is over appropriated, or in a formal or informal moratorium. This would take only a few minutes on a computer; and water right applicants should be advised as soon as possible.
3. Give KDWR 90 days to approve, modified, deny or return for further information an application for water right application or change-of-use requests. If returned, applications should have a definite deadline for return of information.
4. Severely decrease the amount of information KDWR requires from municipal water use reports and the man-hours used to audit these reports. In this day and age it is silly to micro manage municipal water operations as illustrated in the attached letter to the City of Atchison.
5. Require the KDWR to establish a Special Term Permit program for the sand & gravel industry. Our letter of December 10, 1993 (copy attached) to the Division is self-explanatory. It appears a lot of man-hours are wasted trying regulate an industry based on an hydrologically unsound "worst case" scenario which still only accounts for less than 2/10% of all water use reported in the State.
6. Require KDWR to promulgate more rules and regulations rather than allowing them to rule by administrative procedure. This would subject KDWR policy to review by the Joint Committee on Rules and Regulations for legislative intent, and clarify operating policies to field employees.
7. Recommend a comprehensive Legislative Post Audit reviewing all operations and management practices of the Division of Water Resources for inefficiencies and unnecessary micro management.
8. Establish a Board of Water Right Appeals similar in scope and authority to the Board of Tax Appeals. This action would serve to instill some common sense into the decisions of the KDWR and only makes sense in the face of increasing demands for water in our State.
9. Clearly define the role of Groundwater Management Districts in the issuance of water appropriation rights. The Chief Engineer should be urged to override district moratoriums if granting Water Rights in those districts will serve a wider public interest.
10. Urge the Kansas Division of Water Resources, in conjunction with the Kansas Geological Survey, to develop and recommend a "water systems based approach" to water resource management policy of Kansas.

*Energy & Natural Resources
Attachment #3
2/16/94*



KANSAS STATE BOARD OF AGRICULTURE

Sam Brownback, Secretary

DIVISION OF WATER RESOURCES

David L. Pope, Chief Engineer-Director
901 S. Kansas Avenue, Second Floor
Topeka, Kansas 66612-1283
(913) 296-3717 Fax (913) 296-1176

July 13, 1993

City of Atchison
Attn: Shirley Moses
515 Kansas Avenue
Atchison, KS 66002

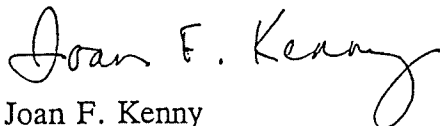
Dear Ms. Moses:

I am sending you a revised copy of the 1992 Municipal Water Use Report for the City of Atchison for your records. The quantity of raw water diverted from the Missouri River is indicated on Part A of the report. This amount was determined by adding 20 million gallons to the metered high service quantity in Part B, Column 1, to account for basin washing at the water treatment plant, as estimated by Mike Cavanaugh at the filter plant. When the City installs a meter at the river intake (or at the filter plant) the actual amount of water diverted can be compared to the high service meter reading to verify amounts used in the treatment process. I encourage the City to install a raw water meter as soon as possible. I also recommend that you consult with Mr. Cavanaugh on a regular basis to coordinate information on water pumped and water sold. This communication will not only give the City better information on its water supply and distribution, but will also make it easier for you to fill out the annual water use report.

I encourage the City to keep monthly records of all metered water use for city services, even if these uses are free. Accounting for as much water use as possible allows you to identify true water losses, such as those caused by leaks, underregistering customer meters, and water theft. Unaccounted for water represents a revenue loss to the City, since it costs to treat and distribute the water even if it is not sold. A meter changeout program, in which a certain percentage of customer meters are replaced each year so that eventually none are more than ten years old, can help recover some of these losses. I commend the City for budgeting for a meter replacement program.

Other revisions to the water use report are due to rounding the reported figures to thousands of gallons. If you have any questions about the report, now or next year, please feel free to call me at (913) 296-3187.

Sincerely,

A handwritten signature in cursive script that reads "Joan F. Kenny". The signature is fluid and written in dark ink.

Joan F. Kenny
Water Resource Planner

JFK:dll

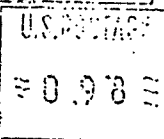
Enclosure

cc: Mike Cavanaugh

**1992 MUNICIPAL WATER USE REPORT
(PUBLIC WATER SUPPLY)**

**IMPORTANT: YOU MUST REPORT ANNUAL USAGE OR THE REASON FOR NON-USAGE, IN ORDER TO
PROTECT YOUR RIGHT TO USE WATER**

This is the annual Water Use Report required to retain all Vested or Appropriate. Please begin by reading the instructions for Part A on the reverse side of this page. Also include information needed if you have disposed of your interest in one or more questions on how to complete this form, please contact the Water Use Coordinator at (913) 367-0414 for your records, and return the original report to:



BY MARCH 1, 1993.
Press changes, which may be made. If you have any questions on how to complete this form, please contact the Water Use Coordinator at (913) 367-0414 for your records, and return the original report to:

Water Use Coordinator
Kansas State Board of Agriculture
Division of Water Resources
901 South Kansas, Second Floor
Topeka, Kansas 66612-1283

PART A: POINTS OF DIVERSION

| Water Right File Number | Legal Descriptions Point(s) of Diversion | Metered Quantity | Meter Units | Hours Pumped | Est. Pump Rate (gpm) | Well Data | | |
|--|---|--|----------------|-----------------|-------------------------------|---------------|-------------------|------------------|
| | | | | | | Well Depth | Depth to Water | Date Measured |
| 0002-00 aka: LOT 3 | 1805N 3630W 31-05-21E 01 | * 4343 AF | | | | | | |
| 3306-00 aka: LOT 3 | 1805N 3630W 31-05-21E 01 | Report under file number | | | AT0002-00 | | | |
| 6676-00 aka: LOT 3 | 1805N 3630W 31-05-21E 01 | Report under file number | | | AT0002-00 | | | |
| <p><i>No meter on raw water intake. Quantity determined using metered high service total from Part B, Col. 1, plus 20 MGY estimated for basin washing (information provided in phone call to Mike Cavanaugh 7-7-93).</i></p> <p align="center"> <div> <div>DIV. OF WATER RES.</div> <div>RECEIVED</div> <div>MAR 05 1993</div> <div>ST. BO. OF AGRICULTURE</div> </div> </p> | | | | | | | | |
| | | $1375,098,000 \text{ gal} + 20,000,000 \text{ gal} = 1,395,098,000 \text{ gal}$ $325,851 \text{ gal / AF}$ | | | | | | |
| | | | | | | | | |

☒ Check, but if you are purchasing water from or selling water to other public water suppliers and report amounts on PART B, columns 2 and 3, and PART E.

Date: March 3, 1993 Telephone: (913) 367-0414

I submit this report with the knowledge that if it contains any false information I will be guilty of a Class C misdemeanor.

92 000488 -1 MUN Top. 3 0
Office Use FO CO GMD

SHIRLEY MOSES
Name (Printed or Typed)

CITY OF ATCHISON
515 KANSAS AVENUE
ATCHISON KS 66002

Shirley Moses
Name (Signature)

____ Owner _____ Tenant _____ Agent

1992 MUNICIPAL WATER USE REPORT (PUBLIC WATER SUPPLY)

PART B: MONTHLY WATER USE SUMMARY (REPORT ALL AMOUNTS IN UNITS OF 1000 GALLONS)

000488 / MUN

NOTE: REPORT WATER USE IN COLUMNS 1 THROUGH 6, BASED ON THE MONTH OF ACTUAL USE.

- Column 1: The amount of water diverted, by month, from all points of diversion. If possible, raw water meters should be read at the same time of the month as customer meters. For most public water suppliers, the total amount in this column should equal the total of the amounts reported in PART A.
- Column 2: The amount of water purchased, by month, from all other public water supply systems or the Kansas Water Office. Please provide further detail in PART E.
- Column 3: The amount of water sold, by month, to all other public water supply systems. Please provide further detail in PART E.
- Column 4: The amount of water sold, by month, to all pasture, stockwater, feedlot, or bulk water service connections. Also, the amount of water sold, by month, to all industries and farmsteads using at least 200,000 gallons of water per year.
- Column 5: The amount of water sold, by month, to your residential and commercial customers and to industries and farmsteads using less than 200,000 gallons of water per year.
- Column 6: The amount of water use, by month, that is metered at individual service connections and supplied free for public service or use in the treatment process.
- Column 7: The amount of remaining water use, by month. The gallons reported in this column are found by adding the numbers in Columns 1 and 2 and subtracting the numbers in Columns 3, 4, 5, and 6. If you do not sell water to your customers, this column simply represents the total amount of water that you diverted or purchased.

| Month | Column 1 Raw Water Diverted Under Your Rights (1000 Gallons) | Column 2 Water Purchased From All Sources (1000 Gallons) | Column 3 Water Sold to Other Public Water Suppliers (1000 Gallons) | Column 4 Water Sold to Your Livestock and Industrial Customers (1000 Gallons) | Column 5 Water Sold to Your Residential and Commercial Customers (1000 Gallons) | Column 6 Metered Water Provided Free For Public Service (1000 Gallons) | Column 7 Remaining Water Used (See Above Explanation) (1000 Gallons) |
|-------|---|---|---|---|---|--|---|
| Jan. | 113,984,000 | | 10,974,075 | 42,026,020 | 33,887,935 | | 27,095,970 |
| Feb. | 108,180,000 | | 9,622,650 | 47,063,925 | 31,785,715 | | 19,707,710 |
| Mar. | 109,820,000 | | 11,531,150 | 53,614,575 | 28,178,760 | | 16,495,515 |
| Apr. | 111,153,000 | | 12,103,950 | 48,275,700 | 30,010,200 | | 20,763,150 |
| May | 128,218,000 | | 10,384,900 | 53,056,725 | 33,535,500 | | 31,240,875 |
| June | 124,856,000 | | 12,584,875 | 57,018,225 | 37,391,625 | | 17,861,275 |
| July | 124,615,000 | | 12,337,350 | 59,941,800 | 37,905,975 | | 14,429,875 |
| Aug. | 122,473,000 | | 10,167,025 | 59,830,275 | 35,844,675 | | 16,631,025 |
| Sept. | 111,348,000 | | 11,822,200 | 57,573,075 | 38,055,075 | | 3,897,650 |
| Oct. | 117,674,000 | | 8,631,975 | 46,513,350 | 36,728,475 | | 25,800,200 |
| Nov. | 110,412,000 | | 8,991,075 | 54,807,375 | 38,872,425 | | 7,741,125 |
| Dec. | 112,365,000 | | 10,794,050 | 48,893,175 | 33,451,725 | | 19,226,050 |
| Total | 1,395,098,000 | | 129,945,275 | 628,614,220 | 415,648,085 | | 220,890,420 |

PART C: POPULATION, SERVICE CONNECTIONS, WATER AND SEWER RATES

1. Estimate the population served for the usage in Columns 5, 6, and 7; if you are a city, mobile home park, rural water district, school or an institutional facility. 10,650
2. If you are a city, mobile home park or rural water district, provide the number of active service connections according to their primary type of use during 1992. 3874 Residential/Domestic
389 Commercial/Institutional 5 Industrial 5 Pasture/Stockwater/Feedlot 5 Other (Specify) 4273 Total Active Service Connections
3. How many of your customer meters are more than ten years old? 2323

Spoke to S. Moses 7-7-93. City has 35-40 metered services that used to be read and billed monthly - they don't do this anymore. I advised her to encourage the city to read the meters monthly to record amounts used, when if services are not charged for water.

15.8

16.3

2.75

ST. JO. AGRICULTURE

MAR 0 1993

REC'D
DIV. OF WATER RESOURCES

3-5

RT D: WASTEWATER DISCHARGE

If you do not have a wastewater treatment facility, please check here.

If you have a nondischarging pond or lagoon, please check here. X

If you have a wastewater treatment facility that discharges to a stream or public water body, check here X and complete the information below:

Amount of Discharge (1000 Gallons): 872,789,000

Whiskey Creek, which flows into

(Does the above amount include rainwater?) X Yes No

the Missouri River

Name(s) of Stream or Public Water Body Receiving the Discharge

PART E: WATER SOLD TO OR PURCHASED FROM OTHER ENTITIES

Please provide the name of each PUBLIC WATER SUPPLIER that water was sold to or purchased from during the year. Water purchased from the Kansas Water Office should also be recorded here. Report all quantities in units of 1000 gallons. Copy this form as needed to completely report sold and purchased water. The total amount of water purchased each month should be entered in column 2 of PART B, and the total amount sold each month should be entered in column 3 of PART B.

Name: Rural Water District #1

County: Atchison

| | <u> X </u> Sold to | <u> </u> Purchased from |
|-------|----------------------|------------------------------|
| Jan. | <u>240,000</u> | |
| Feb. | <u>331,000</u> | |
| Mar. | <u>206,000</u> | |
| Apr. | <u>166,000</u> | |
| May | <u>154,000</u> | |
| June | <u>141,000</u> | |
| July | <u>568,000</u> | |
| Aug. | <u>247,300</u> | |
| Sep. | <u>713,000</u> | |
| Oct. | <u>144,000</u> | |
| Nov. | <u>155,000</u> | |
| Dec. | <u>140,000</u> | |
| Total | <u>3,205,300</u> | |

Name: Rural Water District #2

County: Atchison

| | <u> X </u> Sold to | <u> </u> Purchased from |
|-------|----------------------|------------------------------|
| Jan. | <u>382,725</u> | |
| Feb. | <u>338,625</u> | |
| Mar. | <u>304,275</u> | |
| Apr. | <u>385,275</u> | |
| May | <u>337,500</u> | |
| June | <u>423,825</u> | |
| July | <u>360,150</u> | |
| Aug. | <u>362,100</u> | |
| Sep. | <u>348,825</u> | |
| Oct. | <u>349,125</u> | |
| Nov. | <u>345,000</u> | |
| Dec. | <u>396,750</u> | |
| Total | <u>4,334,325</u> | |

Name: Rural Water District #3

County: Atchison

| | <u> X </u> Sold to | <u> </u> Purchased from |
|-------|----------------------|------------------------------|
| Jan. | <u>269,175</u> | |
| Feb. | <u>20,400</u> | |
| Mar. | <u>230,925</u> | |
| Apr. | <u>382,275</u> | |
| May | <u>256,200</u> | |
| June | <u>471,750</u> | |
| July | <u>339,450</u> | |
| Aug. | <u>369,000</u> | |
| Sep. | <u>462,600</u> | |
| Oct. | <u>354,450</u> | |
| Nov. | <u>363,000</u> | |
| Dec. | <u>329,025</u> | |
| Total | <u>3,848,250</u> | |

DIV. OF WATERS RES.
 RECEIVED
 MAR 05 1993
 ST. BD. OF AGRICULTURE

Name: Rural Water District #5

County: Atchison

| | <u> X </u> Sold to | <u> </u> Purchased from |
|-------|----------------------|------------------------------|
| Jan. | <u>6,842,175</u> | |
| Feb. | <u>6,145,725</u> | |
| Mar. | <u>7,541,550</u> | |
| Apr. | <u>7,744,650</u> | |
| May | <u>6,914,700</u> | |
| June | <u>8,731,800</u> | |
| July | <u>7,859,250</u> | |
| Aug. | <u>6,648,825</u> | |
| Sep. | <u>7,645,575</u> | |
| Oct. | <u>5,667,300</u> | |
| Nov. | <u>6,055,875</u> | |
| Dec. | <u>7,339,275</u> | |
| Total | <u>85,136,700</u> | |



Kansas Aggregate Producers' Association

December 10, 1993

COPY

Mr. David L. Pope, P. E.; Chief Engineer
Kansas State Board of Agriculture
Division of Water Resources
901 Kansas Avenue - Second Floor
Topeka, Kansas 66612

RE: Kansas Division of Water Resources Administrative Policy # 86-1, Effective: May 1, 1993

Dear David:

The purpose of this letter is to request the **immediate** rescission of the above captioned policy governing sand and gravel operations in the alluvium. It has become apparent since the inception of this policy on May 1, of this year that it places an unfair burden upon the public as well as the sand and gravel industry trying to serve that public. Initially you will remember we as an industry in our meeting with you on November 19, 1992 and your staff at our annual meeting in February of 1993, indicated our industry would attempt to comply with the additional requirement of your office to secure permanent water appropriation rights for our future operations.

Since then it has become readily apparent to our industry this is easier said than done. As of this writing our Association headquarters has received 15 requests from operators for assistance in the processing of permanent water right applications. 15 operators needing assistance may not seem like many, but please consider there are only 30 to 33 commercial alluvial operations in the state. In other words almost 50% of the sand & gravel industry is experiencing problems directly affecting their ability to conduct future operations which is now reaching crisis proportions.

- **Securing Water Rights** - The ability to secure new or existing rights has been almost impossible for the 15 users to date. In only one of these cases have we successfully retired a water right and reassigned it to another use. And in this particular case the owner of the right is also a principal in the sand company to which it will be transferred. The problem of securing water rights appears to reach back to 1978 when most water users, other than sand & gravel operators, were required to obtain water rights or term permits. As you know the water rights in the alluvium were among the first to go having been issued to irrigators and others in the intervening time between 1978 and May 1, 1993. By May 1, 1993 most or all of these alluvial areas have become over appropriated and closed to further water right development. Since, the law is based on the doctrine of "prior appropriation" the implementation of the new policy has effectively forced our industry to line up fifteen years late in the search for water rights. As most of our operations are located in the floodplain, generally in overdeveloped areas, it has been virtually impossible to secure approval for new rights or find old ones to retire. When we do find existing rights, we then have run into inconsistent policies within the Division of Water Resources regarding the appropriate way to retire and reissue rights.

This problem is further complicated by the issuance of formal and informal moratoriums which do not take into account the dynamic nature of sand & gravel operations and the customers they

supply. Also, sand deposits are no respecters of moratoriums, Groundwater Management Districts, or Intensive Groundwater Use Control Areas. In other words, deposits are located where nature put them, and they cannot be moved simply because a moratorium or groundwater district line is drawn on a map.

Because of the dynamic nature of sand operations and the inherent unfairness in the requirement to obtain water rights in areas overdeveloped years ago, we suggest the Division of Water Resources return, at least temporarily, to the policy of issuing term permits to govern sand and gravel operations.

- **Equal Protection** - Several of our members are being put at an operating disadvantage since through our cooperation with your office they are easily identified as members of our association, which is committed to cooperating with you as best it can under the circumstances. Meanwhile, other producers (non members) are allowed to continue their operations even when the existence of these operations have been brought to the attention of DWR Water Commissioners. In one case a major operation in central Kansas continues without a hydraulic dredging or an industrial use permit to cover net evaporation. It also appears this operation has never paid any water use fees. While concurrently, a KAPA member operating 20 miles upstream from this operation, who having permit applications on file with your office since 2/8/93, will be forced to cease operations in January of 1994 due to the inability to permit future operations with your office. Another small producer located 10 miles downstream from the operation cited above will be forced to cease operations in June of 1994. If this happens the illegal operator will be the only one left producing in this market area. It has also come to our attention that several sand & gravel operations owned by political subdivisions are being allowed to operate without securing the appropriate permits from the Division of Water Resources. In view of these problems we suggest the Division of Water Resources return to the practice of issuing term permits at least until the Division has adequate resources to identify and enforce the law fairly among all producers. This discriminatory enforcement practice in our judgment violates our right to equal protection under the law. As is clearly guaranteed under the 14th Amendment of The Constitution of the United States.
- **Calculation of Water Use** - After several conversations with hydrologists, regulators and producers located both inside and outside Kansas it appears the method employed by the Division of Water Resources in the calculation of the necessary amount of water rights to cover evaporative use is flawed. Specifically, in the calculation currently used no credit is given for the water storage created, for the reduced amount of pre existing evapotranspiration, for the infiltration of rain water run off collected by the pit into the aquifer. Further, the current method of calculation is based on observed surface evaporation of Kansas reservoirs managed by United States Corps of Engineers. The methodology unfairly penalizes sand & gravel operations as this evaporation includes losses from wind and wave action to a greater extent than normally experienced in a sand & gravel operation. Once again, it would appear fair and sensible to immediately return to the policy of issuing term permits until calculations based on sound data can be developed.
- **Public Interest** - If the current administrative policy remains in effect there is no doubt the public interest in receiving adequate supplies of sand at a fair price will be adversely effected. For example, in the case cited above if the two operations cease in January and June the Kansas Division of Water Resources will have handed the illegal operator a "de facto" monopoly in that market area. These two operations, which are trying to operate within the law, currently supply three counties, three larger cities and over twenty townships in their market area. In addition many smaller political subdivisions, commercial accounts and the Kansas Department of Transportation are supplied as well. At first, assuming the illegal operation does not have adequate capacity, most of these entities will be unable to get sand at

any price. It would not be in the public's interest if during this period a school bus were to slid off an unsanded country road. While such an example may be far fetched and emotional, it is within the realm of possibility. Later, after achieving capacity, the illegal sand plant would be able to set the price in a monopolistic fashion. Then if the illegal plant was finally shut down there would be no sand for anyone.

In another case in Saline County the Division of Water Resources is creating another monopoly by refusing to respond to an operator's request for a permit via a public interest waiver. In this case the operator is supplying the City of Salina, Saline County, Dickinson County, two ready mix concrete operations, and several townships. This process is already beginning to take effect as this operator has been unable to quote sand supplies for the upcoming I-135 highway construction contract to be let on December 16th of this year. The Kansas Department of Transportation, the Kansas Contractors Association and our office has received inquiries from contractors regarding their inability to receive competitive quotations on sand. By default there is now only one sand producer in the area able to supply this job, and this producer is aware of their position in the market. Eventually with existing supplies exhausted, this operator will cease to produce and force the customers listed above to purchase their future supplies from the only remaining operator in the area.

Ironically, in either case the exposure of groundwater to evaporation will remain the same; but the public interest will suffer nevertheless by having to absorb higher prices through the artificial creation of a monopoly. This can be avoided if the policy is rescinded and term permits are issued to both operators.

- **Allocation of Resources** - The total amounts of water diverted, even by DWR calculations, is minuscule compared to other uses. For example, a 10 acre pit will serve the most of aggregate needs within a 40 mile radius of it's location. Assuming 3 acre feet(A/F) of net evaporation per acre per year, for this hypothetical pit would yield a total of 30 A/F per year. Now assume there are 40 irrigation wells in the same 40 mile radius using an average of 200 A/F per year per well for a total of 8000 A/F per year, and further assume other uses within the radius (i.e.: municipal & industrial) amount to 4000 A/F per year. In the 40 mile radius there is a total diversion of 12,000 A/F. The sand & gravel operation will use 30 A/F or 1/4 of 1% of the total water diverted in the area over the course of a year. Now consider an even larger scenario. If the Kansas sand & gravel industry had 50 pits of 100 acres each (which it does not) the annual diversion at 3 A/F per acre would equal 15,000 A/F for the whole state. Compare this against a total use in the state of 5,447,501 A/F in 1991. The sand & evaporative water use in this state amounts 2/10 of 1% when compared to the overall annual diversion. Given this minuscule amount (which is overstated) one must then question if the resources allocated to the Division of Water Resources by the Legislature are being misused in the over regulation of one small industry. It could be argued bigger problems exist within the mission of the Division of Water Resources. We will admit that the problem of developing a neat well organized regulatory plan for the sand & gravel industry is a vexation. However, we also question whether the resources allocated to that end are worth the negligible results. If those resources could be spent in reducing agricultural consumption by 1/2 of 1%, it would save the public almost 26,000 A/F per year while assuring a steady supply of sand at a reasonable price for all.
- **Conservation** - The requirement to secure and perfect a water right merely encourages a sand & gravel operation to over excavate a tract. Since the water appropriation process requires a user to perfect or fully develop their right during the first five years. Again using the example of the 10 acre pit using 30 A/F per year, this operation would have to uncover all 10 acres during the first 5 years in order to perfect and retain the 30 A/F water right. As most sand & gravel operations are not fully developed until 20-25 years it makes little sense to prematurely

expose the aquifer to evaporation. Once again through the use of term permits, policies could be developed to encourage an operator too minimize surface exposure by dredging deep first.

Or, please consider another scenario: an operator could find property in an area where water rights are available and could be transferred; sink a well, pump water on to the ground to perfect the right and then apply for retirement and transfer. Most agree such an action would be counter-productive. But, once again it is within the realm of possibility under the current administrative policy.

- **Regulatory Policy Development** - While there was certainly no requirement on the part of your office to include the industry in the development of a sensible regulatory plan it might have been easier if our producers had been allowed a higher level of participation in the development of the current policy. During our meetings of November 19, 1992 and in February of 1993 our industry advocated the development of special long term permits to cover some of the concerns raised by your office. Additionally, we requested a liberalized policy regarding the retirement and transfer of water rights, a review of the method of calculating net evaporation and a mechanism to allow the grand-fathering of existing operations. After February there was no further contact between the Association and the Division. As the policy was in the development stage no drafts were circulated by your office for review by our producers; and all conversations were verbal. Mr. Falk promised a response to some of the questions posed to him by our members at our February meeting. However this response according to our records was not received. In May 1993 I made at least 2 phone calls requesting a copy of the policy as this office was already receiving inquiries from my members. During both of those phones conversation I was advised the policy while drafted was not yet in final form and a copy would be provided as soon as this was done. A written copy of the policy dated May 1, 1993 was finally hand delivered by Wayland Anderson sometime in mid June. Which then begs the question, how can a policy be effective before it is written.

Now, one serious misunderstanding has arisen from that policy governing the definition of an "existing operation" as a result of a faulty regulatory development process. To our producers, during the meetings previously mentioned, the definition of an "existing operation" is the tract of land which the sand plant is operating regardless of the size of the pit. This by the way is the definition used by zoning boards and the Mine Safety & Health Administration in governing their relationships with sand & gravel operations. As such, this definition has become the "common" one in the industry. However, in Administrative Policy 86-1 "existing operation" is narrowly defined as the current surface area of the pit. Since the Association was not allowed to see or address the written policy before it's inception the industry has been stopped "dead in it's tracks" as future exposure of surface water must be permitted by the acquisition of additional water rights. Our industry assumed the "grand fathering" of "existing operations" (dredged or not) would allow us sufficient time to develop a plan for acquiring future water rights necessary to cover future needs. This single misunderstanding has probably contributed the most to the crisis we jointly face today. We still think it is basically unfair to expect our producers to do "now" what other water users have been doing for 15 years.

Additionally, producers have been further hampered by the ill defined policies regarding the retirement and transfer of existing water rights. Instead of the "liberalized" policy which was promised there has been no policy. In some cases we think the process has been made more difficult. For example, one operator who was successful in finding a right was requested by your office to retire it and apply for new right in it's place. This would make the new right junior and consequently a course of action the operator is reluctant take for reasons that should be obvious.

In view of all of the issues and problems discussed above we would like to make the following proposal:

- 1.) The Kansas Division of Water Resources immediately rescind Administrative Policy #86-1 and temporarily return to the former policy of issuing term permits for the evaporative use associated with sand & gravel operations.
- 2.) Conduct a comprehensive economic, scientific and policy review on the total effect of sand & gravel operations in the alluvium. Including a cost/benefit study on the regulation of the industry versus the total mission of the Kansas Division of Water Resources. It is also suggested an analysis on defining the public's interest with respect to adequate supplies of water versus adequate supplies of sand & gravel should be considered.
- 3.) Upon completion of the review suggested above we jointly develop a regulatory plan to fully address the findings of that review that is workable, makes sense and meets an identifiable public policy goal.

Adoption of this proposal will result in the proactive accomplishment of two things. First, in the short term, it will assure the continued steady flow of aggregate supplies into the Kansas economy. Second, in the long term, it will provide for the sensible development of a system to efficiently regulate the sand & gravel industry in a manner that will assure the needs of future Kansans for sand and water are met in a balanced manner.

In the final analysis, David, we are appealing to your sense of logic and fairness to the public as well as the sand & gravel industry in resolving these issues in an orderly manner. If in your opinion legislation is needed to resolve any of the issues raised above please advise. I am sure the Kansas Aggregate Producers' Association is willing to cosponsor any measure which would break the current logjam. As many producers (almost 50%) are at or near their operating limits, the kindness of a quick response will be greatly appreciated. Thank you for your review and consideration of this matter.

My best to you and yours during this holiday season!

Sincerely,

Edward R. Moses

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