

Approved: Carl Dean Holmes
Date 4-24-96

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 12:14 p.m. on March 25, 1996, in Room 526-S of the Capitol.

All members were present except: Representative Doug Lawrence - Excused

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

Conferees appearing before the committee: Michael T. Dealy, Equus Beds Groundwater Mgmt. District #2
Bill R. Fuller, Kansas Farm Bureau
Al LeDoux, Kansas Water Office
Edward R. Moses, Kansas Aggregate Producers' Association
Wayland J. Anderson, Division of Water Resources
David Penny, KAW Sand Company
M. S. Mitchell, Kansas Building Industry Association

Others attending: See attached list

Chairperson Holmes distributed Minutes from February 21, 22, 23, 26, March 4, 5, and 6 for the committee members to review. He announced that the committee will meet again Wednesday noon for a hearing on **SB 617** and that there might be a conference committee meeting on **HB 2600** today if time permits upon adjournment of the House. The members of the conference committee are Chairman Holmes, Representative Joann Freeborn, and Representative Dennis McKinney. There were three bills turned in this morning that will go to conference, and any of the freshman or others who would like to be on a conference committee should let Chairperson Holmes know.

Hearing on Substitute for SB 621: Waters of the state; evaporation from sand and gravel pits

Mike Dealy. Mr. Dealy, manager of the Equus Beds Groundwater Management District No. 2, spoke in support of **SB 621** because the bill would protect the state's vital groundwater supplies from over-development and contamination from improperly sited, constructed and operated sand and gravel mining facilities. He felt the bill represents a reasonable and prudent compromise after much discussion by industry representatives, groundwater management district officials, state water officials and legislators. (Attachment #1)

Bill Fuller. Mr. Fuller, associate director of public affairs for KFB, expressed support for the provisions in the Substitute for **SB 621** because it provides some fairness and is an attempt to put all water users on somewhat of a level playing field. He asked for favorable consideration of the substitute bill. (Attachment #2)

Al LeDoux. Mr. LeDoux, director of the Kansas Water Office, testified as a proponent of the Substitute for **SB 621** as it is currently written. The bill would require sand and gravel pits to apply for the necessary water appropriation permits if they are in a groundwater management district, an intensive groundwater use control area or in areas where the Chief Engineer deems it necessary to protect existing rights and the public interest. (Attachment #3)

Edward "Woody" Moses. Mr. Moses, managing director of the Kansas Aggregate Producers' Association, appeared in limited support of Substitute for **SB 621**. He felt the problem with **SB 621** is that it provides for an inconsistent way of regulating sand and gravel pits since provisions in the bill allow for a twenty-year grandfather clause for operations within Groundwater Management Districts or Intensive Groundwater Use Control Areas. (Attachment #4)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on March 25, 1996.

Wayland Anderson. Mr. Anderson, assistant chief engineer of the Division of Water Resources, testified in support of the Substitute for **SB 621**. He gave a background of the bill since its inception last session as **HB 2476** which the Division opposed. They now support adoption of the Senate bill because it addresses most of the concerns raised during the 1995 session and is an improvement since it brings pit operations in those areas of the state where water management is critical back under the provisions of the Kansas Water Appropriation Act. (Attachment #5)

David Penny. Mr. Penny, of KAW Sand Company, spoke in opposition to Substitute for **SB 621** because it holds the production of sand captive to users of water. He feels it is unfair because every other consumer of surface water is exempt from paying for water evaporation, and this law would make sand more expensive to Kansas citizens with no additional benefits. (Attachment #6)

M.S. Mitchell. Mr. Mitchell, of the Kansas Building Industry Association, appeared to oppose the Substitute for **SB 621** because he believes there is no valid, scientific reason to determine there would be a substantially adverse impact on an area's groundwater supply due to the operation of sand and gravel production sites. (Attachment #7)

Chairperson Holmes distributed faxes received to the members of the committee. The faxes were in support of **SB 621** and were from: Sharon Falk, manager of Big Bend Groundwater Management District #5 (Attachment #8); Mike Taylor, governmental relations director for the City of Wichita (Attachment #9); Wayne A. Bossert, manager of NW Kansas Groundwater District #4 (Attachment #10); and Steven K. Frost, executive director of the SW Kansas Groundwater Management District #3 (Attachment #11).

Questions followed after which the hearing was closed.

Representative Rich Becker moved that the Minutes for February 21, 22, 23, 26, March 4, 5, and 6th be approved. Representative Bill Feuerborn seconded the motion. The motion carried.

Chairperson Holmes reminded the committee there would be a hearing on **SB 617** at 12:30 p.m. this Wednesday.

The meeting adjourned at 2:05 p.m.

The next meeting is scheduled for March 27, 1996.

ENERGY AND NATURAL RESOURCES COMMITTEE
COMMITTEE GUEST LIST

DATE: March 25, 1996

NAME	REPRESENTING
Chase Penny	DCC School
Juni Penny	DCC School
David Penny	Kaw Sand Co.
Mary Shivers	KDOT
Al LeDoux	KWO
JANET STUBBS	KBIA
M S MITCHELL	KBIA
FREG KRISSEK	KDA
Wayland Anderson	KDA
MICHAEL T. DEALY	GMOZ
Mike Taylor	City of Wichita
BILL R. FULLER	Kansas Farm Bureau
Anne Spiess	Ks. Assoc. of Counties
Tom Hall	Victory Sand/BSC Holdings
Cynthia Abbott	Ks. Audubon Council
Jean Barber	Barber & Associates
E.R. "Woody" Meas	Ks. Agg. Prod. Assn.

EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2

313 Spruce Street
Halstead, Kansas 67056-1925
Voice - 316 835-2224 Fax - 316 835-2210



**Testimony before the
House Energy and Natural Resources Committee
concerning
Senate Bill 621 - Evaporation from sand and gravel pits
by
Michael T. Dealy, Manager
March 25, 1996**

On behalf of the Board of Directors, Equus Beds Groundwater Management District No. 2, I wish to thank Chairman Holmes and members of the Committee for the opportunity to testify in support of SB-621.

The bill if passed, would protect the State's vital groundwater supplies, including the Equus Beds aquifer, from over-development and contamination from improperly sited, constructed and operated sand and gravel mining facilities.

The Equus Beds aquifer is the sole-source of fresh and usable groundwater for industrial, municipal, and irrigation uses throughout south-central Kansas. Over 1,600 permitted water wells and points of diversion withdraw an average of 51.2 billion gallons from the aquifer annually.

Nearly 500,000 people, or 20 percent of the State's population, in Harvey, Sedgwick, McPherson and Reno counties rely on the aquifer for drinking water and other daily needs.

The Equus Beds aquifer is the lifeblood for the area's businesses and industries. Without it, goods such as packaged food, pharmaceuticals, petroleum products, glass products, aircraft, salt, farm equipment, oil and gas, and aggregate could not be produced or manufactured. Including agriculture related services, mining, construction, manufacturing, transportation, wholesale and retail trade services, the total annual payroll for industry and commerce in the four county area was over five billions dollars in 1990.

The aquifer is a wellspring for agriculture in the four county area. Most farms are family owned and average about 395 acres. Almost 100,000 acres are irrigated using groundwater from the Equus Beds aquifer. Livestock production includes cattle, hogs, sheep and chickens and is evenly distributed on farms throughout the groundwater management district. Total livestock and crop production was \$317 million in 1991.

To manage and protect this valuable water resource from depletion and contamination, the groundwater management district was created in 1975 by local people representing municipal, agricultural, industrial and domestic water users. An aquifer management program was developed and adopted by the Board of Directors, Equus Beds Groundwater Management District. The program limits groundwater withdrawals or diversions to annual recharge and seeks to maintain the natural water quality of the aquifer through protection and remediation.

Evaporation is part of the hydrologic cycle. The never-ending cycle transfers water from the earth's land and water bodies to the atmosphere. Evaporation from water bodies is an

House ENR
3-25-96
Attachment 1

important consideration in managing water resources and can be measured with an error of plus or minus 10 percent, *Applied Hydrogeology, Fetter, 1980*.

Gross evaporation in the Equus Beds area ranges from 52 inches to 56 inches per year, *Estimates of Freshwater Storage and Potential Natural Recharge for Principal Aquifers in Kansas, Hansen, 1991*. Net evaporation ranges from 22 inches to 25 inches per year averaging 24 inches annually.

Sand and gravel deposits are abundant throughout the State and the Equus Beds area, *Bulletin 189, Kansas Geological Survey, 1968*.

A myriad of sand and gravel mining facilities have developed throughout the State, *Bulletin 199, Kansas Geological Survey, 1970*

Normally, an aquifer is not directly exposed to the atmosphere and suffers no evaporative loss or diversion *Groundwater Manual, US Department of the Interior, 1981*.

Aggregate mining is an environmentally intrusive process that removes millions of cubic yards of sand and gravel overlying the Equus Beds aquifer, exposing the shallow aquifer to the evaporative process.

The aggregate mining process permanently opens up and exposes the Equus Beds aquifer to a variety of imminent environmental conditions, including evaporative losses and contamination from runoff of untreated flood and storm water.

Sand and gravel pits are commonly located near rivers, streams, in flood plains or in flood ways. Without proper siting and adequate safeguards, poor quality flood waters can enter the pit and be directly injected into the aquifer.

As an example, flood waters and effluent from a sewage treatment facility flow into an unpermitted pit located near a public water supply well field. Water quality data near the site indicates a substantial degradation of the groundwater quality has occurred since the untreated flow entered the pit.

As shown in the figure entitled, *Generalized Illustration of a Sand and Gravel Pit, Completed in the Equus Beds aquifer*, a typical operation will mine over a million cubic yards of protective soil overlying the Equus Beds aquifer, creating an opening in the aquifer that is 50 feet to 60 feet deep, one-half mile long and a quarter mile wide.

Each year about 80 million gallons of groundwater is diverted by evaporation from a single pit, enough water to annually irrigate 160 acres or supply the city of Wichita for one day, Hutchinson for a week, Newton for three weeks, McPherson for a month or Pretty Prairie for over a year.

In Groundwater Management District #2, approximately 1,300 acres will be mined, permanently exposing the Equus Beds aquifer to evaporative losses and diverting nearly 850 million gallons from the aquifer annually.

Certain portions of the Equus Beds aquifer are fully appropriated or developed. Any additional groundwater diversions in these areas will exceed the recharge rate and the aquifer safe-yield resulting in the depletion of the Equus Beds aquifer.

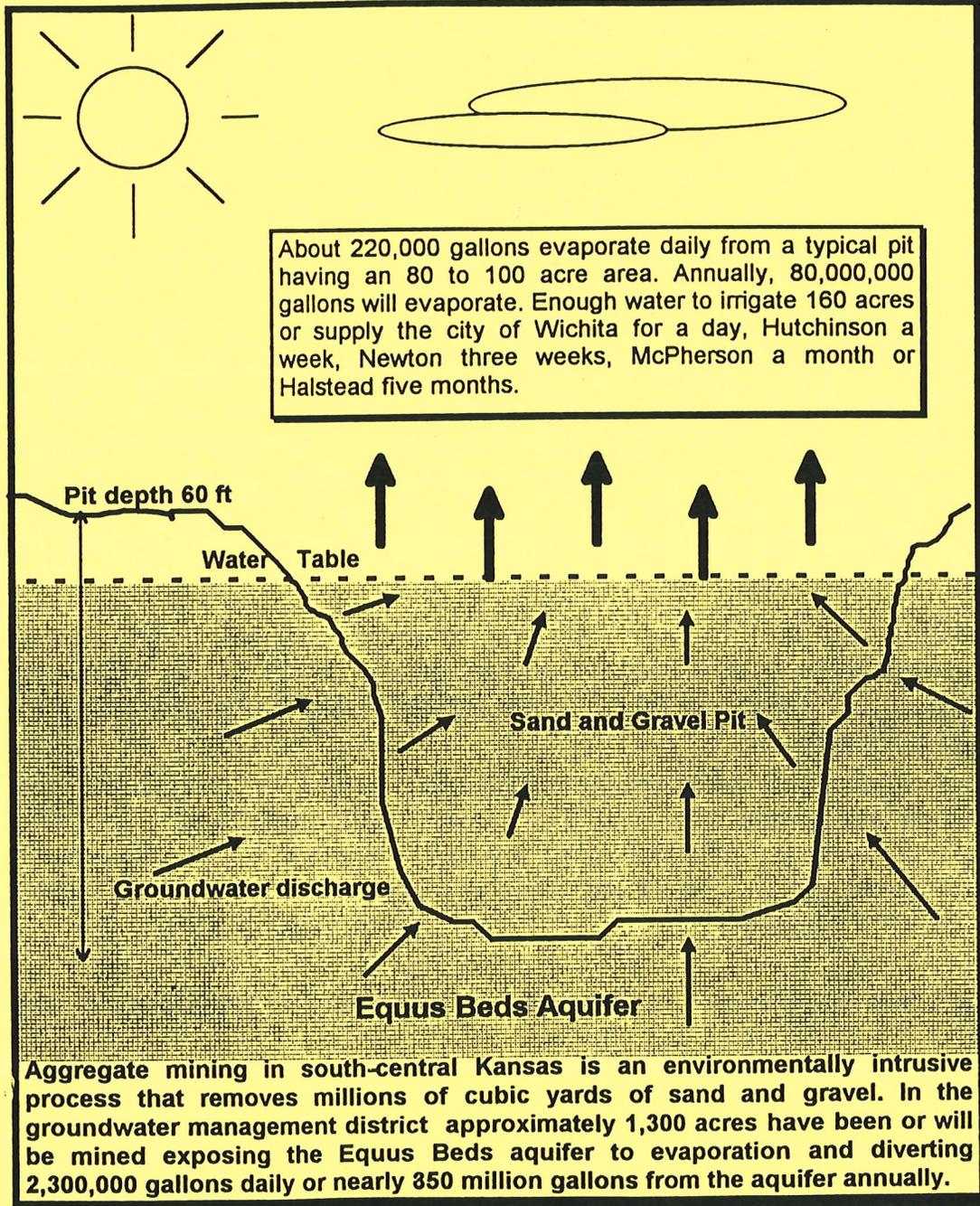
All groundwater diversions, including evaporation from aggregate mining, **must** be permitted, so as to provide for the proper management and development of the Equus Beds aquifer by balancing aquifer recharge with groundwater diversions and protecting the aquifer from contamination.

The Board of Directors, Equus Beds Groundwater Management District No. 2, supports SB-621 which modifies K.S.A. 82a-734 to require groundwater diversion by evaporation from sand and gravel pits be subject to the Kansas Water Law:

- 1) within the boundaries of a groundwater management district established pursuant to K.S.A. 82a-1020 et seq., and amendments thereto (refer to the map entitled, *Groundwater Management Districts, Special Water Quality Use Areas and Intensive Groundwater Use Control Areas*, for location of groundwater management districts);
- 2) within the boundaries of an intensive groundwater use control area established pursuant to K.S.A. 82a-1036 and amendments thereto (refer to the map entitled, *Groundwater Management Districts, Special Water Quality Use Areas and Intensive Groundwater Use Control Areas*, for location of intensive groundwater use control areas; or
- 3) when the chief engineer, division of water resources, determines that it is necessary in order to manage and protect the beneficial use of the state's water, preserve the rights of priority of appropriation and protect the public interest and use of water.

A great deal of effort and discussion by industry representatives, groundwater management district officials, state water officials and legislators has forged SB 621. The bill before the committee represents a reasonable and prudent compromise that will provided for the continued production of the State's aggregate and protect the State's groundwater resource from depletion and contamination.

Thank you Chairman Holmes and Committee members for the opportunity to testify on this vital issue.



GENERALIZED ILLUSTRATION OF A SAND AND GRAVEL PIT, COMPLETED IN THE EQUUS BEDS AQUIFER.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

RE: Sub. SB 621 - Reinstates Some Provisions of the Kansas Water Appropriation Act on Some Sand and Gravel Operations.

**March 25, 1996
Topeka, Kansas**

**Presented by:
Bill R. Fuller, Associate Director
Public Affairs Division
Kansas Farm Bureau**

Chairman Holmes and members of the Committee:

My name is Bill Fuller. I am the Associate Director of the Public Affairs Division for Kansas Farm Bureau. We are here to express support for the provisions outlined in Sub. SB 621.

Support for Groundwater Management Districts and their authority to manage the precious water resource in their regions of the state is a long-standing policy of Kansas Farm Bureau. We agree with the concerns of the Groundwater Management Districts concerning the 1995 amendments that provides for an exemption to the Water Appropriation Act.

While compliance with the Water Appropriation Act is restrictive and sometimes painful for our agricultural users of water, we believe it is important that all water users abide by the same rules. We are not here to harm any industry. We are here to protect the integrity of the Water Appropriation Act.

House ENR
3-25-96
Attachment 2

Exemptions for any industry can open the door and lead to the demise of the Kansas Water Appropriation Act. We believe Sub. SB 621 provides some fairness and is an attempt to put all water users on somewhat a level playing field.

We support proper management and the orderly development of groundwater. We advocate the equitable administration of water laws for cities, agriculture and industry.

The proposal before you today is compromise bill agreed to by water officials and certain water users. Perhaps none are in complete agreement with the substitute bill, but that may be the sign of a reasonable compromise. We respectfully ask for your favorable consideration of Sub. SB 621. Thank You!

**Testimony of Al LeDoux,
Director, Kansas Water Office,
Before the
House Energy and Natural Resources Committee
on Substitute for Senate Bill No. 621
March 26, 1996**

Mr. Chairman and members of the House Energy and Natural Resources Committee, I come before you today as a proponent of the Substitute for Senate Bill 621.

Most of you are aware the Substitute for Senate Bill 621 passed through the Senate by a vote of 35 to 4 just this last week. The bill requires sand and gravel pits to apply for the necessary water appropriation permits if they are in a groundwater management district, an intensive groundwater use control area or in areas where the Chief Engineer deems it necessary to protect existing rights and the public interest.

These water appropriation permits apply to pits opened or operated after April 6, 1995. Within those areas, the evaporation from pits will be exempt from consideration of safe yield and allowable appropriation if the pit was in existence or permitted for hydraulic dredging before July 1, 1995, and the application for permit is filed on or before December 31, 1997, and if the maximum annual quantity does not exceed evaporation needs based on expansion of the pits up to January 1, 2018.

Mr. Chairman, I appreciate being given the opportunity to address this piece of legislation with the Committee. We, in the Kansas Water Office, support the Substitute for Senate Bill 621 as it is currently written.

AL:sb621.tst/ja

House EWR
3-25-96
Attachment 3

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

by the

Kansas Aggregate Producers' Association

Before the

HOUSE ENERGY AND NATRUAL RESOURCES COMMITTEE

Regarding SB #621 - Evaporation Issues
March 25, 1996

Mr. Chairman and members of the committee, my name is Edward R. Moses and it is a pleasure to appear before you today on behalf of the Kansas Aggregate Producers' Association to discuss SB 621.

We appear before you today in limited support of Senate Sub 621. Limited in the sense that if this committee feels it is necessary to take action, SB 621 is a solution which would prove palatable to our industry. However, as indicated earlier by the Division of Water Resources, we think SB 621 in its current form, will require additional work. It should also be noted that SB 621 is not the original piece of legislation compromised to in the Senate. It is, considerably different since initial introduction.

SB 621 is very similar to the legislation passed by this body last year, which primarily exempts sand and gravel operations unless it is determined by the Chief Engineer of the Division of Water Resources that a sand and gravel operation would have a "substantially adverse impact on the area groundwater supply". Senate Sub 621 would alter last year's legislation by providing a mechanism to allow groundwater management districts to require that the diversion of water by evaporation by a sand and gravel operation be considered a beneficial use within the boundaries of a Groundwater Management District (GMD) or Intensive Groundwater Use Control Area (IGUCA). The problem with SB 621 is that it provides for an inconsistent way of regulating sand and gravel pits as provisions in the bill allow for a twenty-year grandfather clause for operations within GMD's and IGUCA's. As this provides relief from the substantial adverse impact determination as rendered by DWR we are able to give our support to the bill.

For several reasons the attempt to manage sand and gravel operations in this bill need to be carefully considered.

- The regulation of sand and gravel operations may cause a reverse public impairment. In other words, if a sand and gravel operation is required to buy a water right from an irrigator in the immediate area, it is accomplished by having to pay a premium to a particular water user. The price is then added to the production cost of sand and is spread through the whole community. Not only is this a community problem, one can see it is a state-wide problem if you will refer to the map that has been provided in this testimony. One can readily note that a substantial portion of all sand and gravel production falls within the

House ENR
3-25-96
Attachment 4

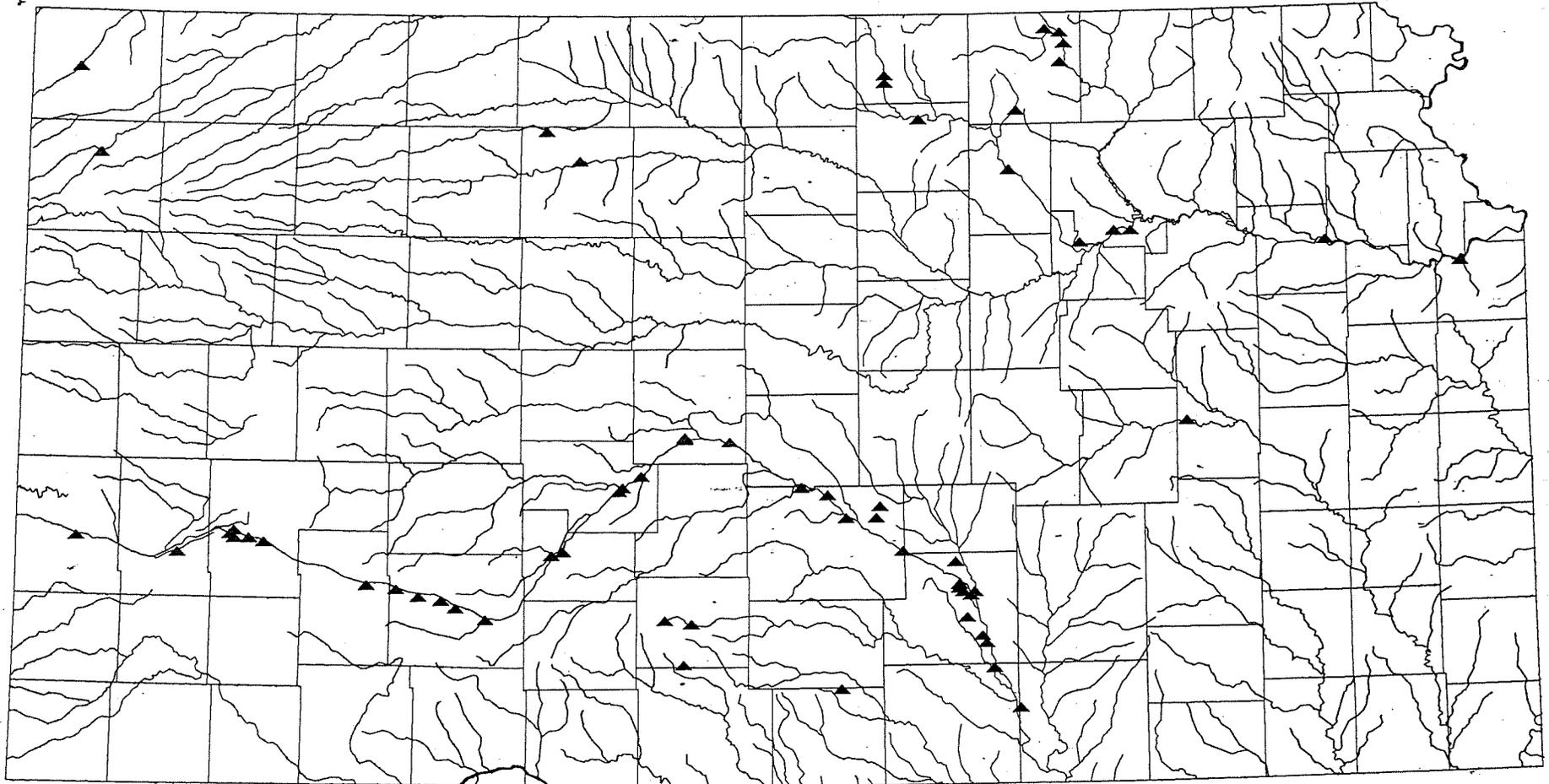
boundaries of a GMD or IGUCA. Consequently, sand users all over the state will be effected by this legislation.

- A reverse impairment to an individual water user may also be created. For example, the Division of Water Resources has determined that a 100-acre operation in Pawnee County would require 308 acre-feet of water. Under the grandfather clause envisioned in SB 621 this water would be assigned to the particular sand and gravel operation to the detriment of all other users in the area, as 308 A/F would be reduced from the available water supply. As there has never been a direct impairment of water use by a sand and gravel pit we question the feasibility and fairness of adopting such a policy. For this reason the committee may wish to consider the amendment we have attached to our testimony. This amendment would allow GMD's the right to declare sand and gravel operations a beneficial or non-beneficial use of water.
- Timing is inconsistent in SB 621. For example, sand and gravel operators within GMD's will receive a twenty-year grandfather clause. However, if after passage it is later determined that users outside the Groundwater Management Districts need water rights; then how will water rights be administered to those sand and gravel operators at this point in time.
- Finally, we would like the committee to carefully consider whether there is sufficient cause to require the regulation of water use by the sand and gravel industry under SB 621. We have not in the past and will not in the future object to some form of regulation. We think that more time needs to be given to study exactly how a sand and gravel operation interact with the aquifer. The Division of Water Resources probably has chosen to view our impact from a worst case scenario which may or may not be appropriate. Since sand and gravel pits have never created a direct impairment to an existing water user and; as a matter of fact, in some instances pits have been shown to provide more supply within the two-mile safe yield area. The Kansas Aggregate Producers think the best way to do this is through some type of system that provides for a special permit of sand and gravel operations. A review process that will weigh the balance between the private and public good before a sand and gravel operation is ever started and then issue a special permit or special water right, which allows for these operations to be conducted appropriately under Kansas Water Appropriation Act.

We thank you once again for allowing us to appear before you today with our thoughts and comments on this important piece of legislation.

Pit Dredge Locations in Kansas - 1995

4-3



- County Boundaries
- Hydrology
- Pit Dredge Locations

Map Produced by the State of Kansas Data Access and Support Center
Kansas Geological Survey

Map not drawn to scale

- Alternative regulatory proposals made by sand & gravel producers to the Division of Water Resources over the last seven years:
 - A. Grant water rights sufficient to cover evaporation on all existing sand & gravel operations and existing reserves to producers on a one time basis. After that Sand & Gravel operators must compete with all other water users on an equal basis. Status: Rejected by DWR
 - B. Continue to regulate existing operations and reserves by term permit and convert future operations to water appropriation rights. Status: Rejected by DWR
 - C. Create a new category of beneficial use for sand & gravel and develop rules & regulations to fit our industry. Status: Rejected by DWR
 - D. Rewrite rules & regulations concerning the definitions of evaporation as a beneficial use. Status: Rejected by DWR
 - F. Jointly propose legislation to address the problem of Sand & Gravel compliance with the Water Appropriation Act. Status: Rejected by DWR.
 - G. Cover evaporation by water rights but grant exemption from the safe yield rule. Status: Under consideration.

ECONOMIC IMPACT OF THE KANSAS AGGREGATE INDUSTRY

by:
David Cantrell

In trying to determine the impact of our industry on the economy of Kansas I uncovered an interesting fact. Although Kansas is known as the WHEAT STATE and does indeed lead the nation in wheat production it also produces large amounts of corn, sorghum, and soybeans, aggregates do play a large part in the overall scheme of things.

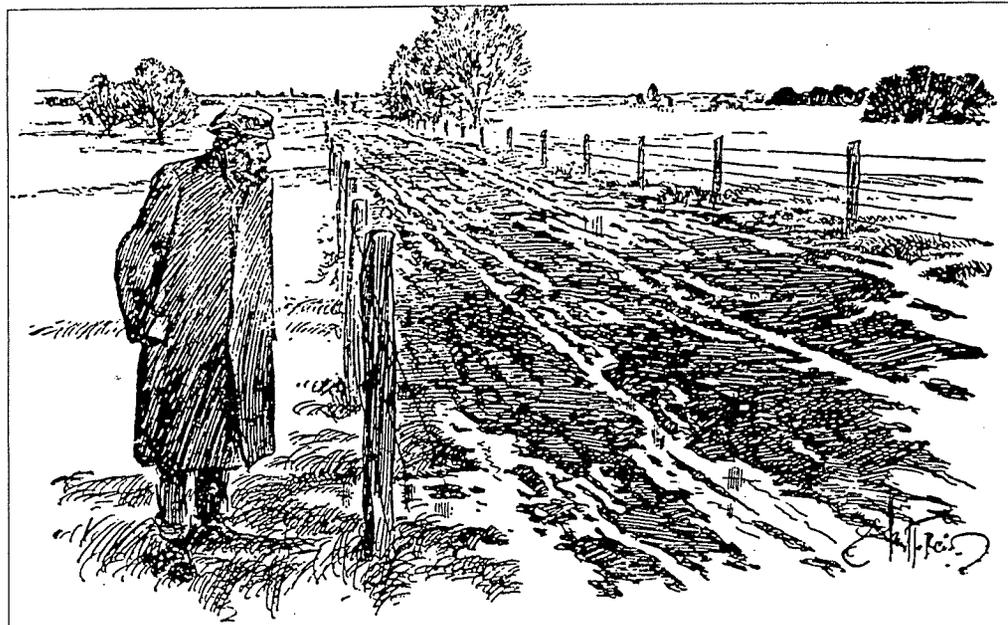
In 1993 Kansas produced 388,500,000 bushels of wheat, 216,000,000 bushels of corn, 176,400,000 bushels of sorghum and 51,800,000 bushels of soybeans, (these figures came from the Kansas State Bureau of Statistics). These are all impressive number and do indeed give you an idea of farming impact on the states economy. We generally refer to our aggregate usage in tons so I broke the crop totals down into tons (realizing that wheat, corn, etc. have a lower specific gravity) to see how we compare. This is when it got interesting, Wheat translated to 11,655,000 tons, Corn 6,480,000 tons, Sorghum 5,292,000 tons and Soybeans 1,544,000 tons. Again these are very impressive numbers. Using U.S. Bureau of Mine Statistics we find that crushed Stone produced 18,600,000 tons which is 38% more than wheat and considerably more than the other grains. When Sand and Gravel production is thrown into the equation at 13,100,000 tons we get a total of 31,700,000 tons of aggregate produced which is more than the crops mentioned combined (24,981,000). While we will always be regarded as a farm state with a farm based economy, mining plays a huge part in the states well-being.

One other note of interest is that in the United States mining and construction are at the top of the average hourly earnings scale for manufacturing jobs at \$14.51 and \$14.11 per hour respectively. While some people may not want us next door we are vital to the economy of any area that we are operating in.

Sources:

Kansas State Board of Agriculture
U.S. Bureau of Mines
Federal Reserve, 10th District

This commentary in a December 1914 issue of the Kansas Farmer illustrates a powerful argument in favor of good roads: aiding farmers in bringing their products to market and thereby decreasing monetary losses.



THIS ROAD NEAR CONCORDIA COST THIS FARMER \$1,800.—HE RECEIVED AN OFFER FOR HIS CATTLE BUT THE ROADS WERE IMPASSABLE AND IT WAS SEVERAL DAYS BEFORE HE COULD DRIVE THEM TO TOWN. BY THAT TIME THE MARKET HAD DECLINED \$2.50 PER HUNDRED. ARE YOU PAYING THE SAME SORT OF TRIBUTE TO BAD ROADS?

4-7

1 See. 3. K.S.A. 1995 Supp. 82a-711 and 82a-734 are hereby repealed.
2 [Section 1. K.S.A. 1995 Supp. 82a-734 is hereby amended to
3 read as follows: 82a-734. (a) Except as provided by subsection (d),
4 evaporation of water exposed as the result of the opening or operation of
5 sand and gravel pits on and after April 6, 1995, shall not be construed to
6 be a use or diversion of water for the purposes of article 7 of chapter 82a
7 of the Kansas Statutes Annotated.

8 [(b) An operator will shall notify the chief engineer of the division
9 of water resources of the state board department of agriculture of the
10 location and area extent of any existing or proposed sand and gravel
11 pit to be excavated, expanded or operated by the operator.

12 [(b) Unless the chief engineer determines that it has a substantially
13 adverse impact on the area groundwater supply, the evaporation of water
14 exposed as the result of the opening or operation of sand and gravel pits
15 shall not be construed to be a beneficial use or diversion of water for the
16 purposes of the Kansas water appropriation act, K.S.A. 82a-701 et seq.,
17 and amendments thereto.

18 [(c) Evaporation from sand and gravel pits, as calculated by the chief
19 engineer, will be reported as an industrial use Whether or not the activity
20 is required to be permitted pursuant to K.S.A. 82a-701 et seq. and amend-
21 ments thereto all evaporation from sand and gravel pits shall be reported
22 as an industrial use to the chief engineer by the pit owner pursuant to
23 K.S.A. 82a-732 and amendments thereto and the determination of gallons
24 used shall be supplied by the chief engineer to the director of taxation
25 for the purpose of assessing the water protection fee pursuant to
26 K.S.A. 82a-954 82a-954, and amendments thereto.

27 [(d) Evaporation of water from sand and gravel pits shall be consid-
28 ered as a beneficial use or diversion of water subject to the Kansas water
29 appropriation act, K.S.A. 82a-701 et seq. and amendments thereto:

30 [(1) Within the boundaries of a groundwater management district
31 established pursuant to K.S.A. 82a-1020 et seq. and amendments thereto;

32 [(2) within the boundaries of an intensive groundwater use control
33 area established pursuant to K.S.A. 82a-1036 and amendments thereto;
34 or

35 [(3) when the chief engineer shows that it is necessary to manage and
36 protect the beneficial use of the state's water, preserve the rights of pri-
37 ority of appropriation and to protect the public interest and use of water.

38 [(e) Within the areas specified in subsection (d), an application for a
39 permit to appropriate water for evaporation of groundwater caused by
40 exposing the water table shall be exempt from meeting the safe yield,
41 allowable appropriation or similar criteria to the extent that it meets all
42 of the following criteria:

43 [(1) The application is filed for a commercial or governmental sand

← When determined by the board of directors
of that ground water management district.

WHAT IS A BENEFICIAL USE OF WATER?

It would appear from 1976 interim committee notes and sections of 82a-701 et. seq. the following questions should be asked in the determination of a beneficial use.

	Types of Diversions			Sand & Gravel Pit
	Irrigation	Reservoir	Canals	
Is water brought under control?	By well	By Floodgate	By Headgates	None
Are diversions works constructed?	Pump	Dam	Headgates, Ditches & Valves	None
Can the Chief Engineer order the diversion stopped?	Yes	Yes	Yes	No
Is the diversion specific?	Yes	Yes	Yes	No
Is the diversion measurable?	Yes	Yes	Yes	No

STATE OF KANSAS

BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture



DIVISION OF WATER RESOURCES
David L. Pope, Chief Engineer-Director
901 South Kansas Avenue, 2nd Floor
Topeka, Kansas 66612-1283
(913) 296-3717 FAX (913) 296-1176

KANSAS DEPARTMENT OF AGRICULTURE

TESTIMONY

TO THE

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

by

Wayland J. Anderson, Assistant Chief Engineer

Division of Water Resources, Kansas Department of Agriculture

Presented March 25, 1996

Re: Substitute for Senate Bill No. 621

Chairman Holmes and Members of the Committee. My name is Wayland J. Anderson, Assistant Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture. David L. Pope, Chief Engineer, who is charged by statute with the administration of Kansas Water Appropriation Act, K.S.A. 82a-701 *et seq.*, could not be here today because he is in California assisting with the Kansas v. Colorado trial.

I am here today to testify as a proponent of Substitute for SB 621, as amended by the Senate Committee of the Whole (SB 621).

SB 621 proposes to amend K.S.A. 1995 Supp. 82a-734 which exempted the evaporation of groundwater exposed as a result of opening or operation of a sand and gravel pit from the permitting requirements of the Kansas Water Appropriation Act, unless the Chief Engineer determines it would have a "substantially adverse impact on the area groundwater supply".

Even though the Division of Water Resources opposed passage of HB 2476 during the hearings held by this Committee last session, after the bill had passed both houses, Secretary Devine and David Pope recommended to the Governor that he sign the bill,

however, the Division expressed reservations "that new regulations or future legislation may be required to fully protect existing water rights." See attached letter from Governor Bill Graves to Mr. Mike Dealy, Manager of Equus Beds Groundwater Management District No. 2, dated April 3, 1995.

Today you have before you SB 621 which was originally proposed by the Equus Beds Groundwater Management District No. 2 to address concerns regarding the impact of sand and gravel operations on area groundwater supplies.

Representatives of the Division have met with Mike Dealy, Manager of Equus Beds Groundwater Management District No. 2, and Woody Moses, representative of Kansas Aggregate Producers Association, to discuss possible amendments to K.S.A. (1995 Supp.) 82a-734 which could be supported by the Kansas Aggregate Producers Association, the Groundwater Management Districts and the Division of Water Resources.

The result of those discussions was Substitute for SB 621, as amended by Senate Committee (copy attached). This version was supported by all three interests before the Senate Energy and Natural Resources Committee. It was passed by the Senate, sent to the House and then returned to the Senate upon the request of the Senate. That is the version which the Division still prefers because it would bring all pits in the State of Kansas back under the provisions of the Water Appropriation Act. That bill, Substitute for SB 621, was subsequently amended by the Senate Committee of the Whole and passed. The version of Substitute for SB 621 which you now have before you, would have the following effects:

- 1) All operators which propose to open new pits or expand existing pit operations which would expose the groundwater table to evaporation on or after July 1, 1995, would not be required to get a permit for evaporation unless the pit was: (a) within a Groundwater Management District, (b) within an Intensive Groundwater Use Control Area established by the Chief Engineer pursuant to K.S.A. 82a-1036 *et seq.*, or (c) the Chief Engineer has shown that it is necessary to regulate the operation in order to effectively manage and protect the beneficial use of the State's water, preserve the rights of prior appropriations and to protect the public interest and use of the water.
- 2) For operations within Groundwater Management Districts, Intensive Control Areas and other areas determined by the Chief Engineer to need permits, operators must obtain regular permits to appropriate water from the Division of Water Resources just like any other non-domestic water user.

Within the areas where permits are required to be obtained, commercial and governmental pit operations in existence as of July 1, 1995, will be grandfathered in with respect to the safe yield, allowable appropriation or similar criteria under the Water Appropriation Act (subsection (e) [page 3, line 38]). Future operations of these pits in existence as of July 1, 1995, will be grandfathered in to the extent that water use for evaporation is projected for the next 20 years based on the past history of those operations.

In order to qualify for the grandfather provision, sand and gravel operators must file an application with the Chief Engineer, on or before December 31, 1997. In other words, pit operations in existence before July 1, 1995, will be grandfathered for 20 years of water use for evaporation if they file applications by December 31, 1997.

Subsection (f) [page 4, line 11] allows an operator in existence before July 1, 1995, if he or she runs out of sand reserves in the next 20 years, to fully transfer the unused portion of that grandfathered permit to another pit operation within certain limitations. The unused portion of the permit could generally be transferred up to two miles within the same source of supply. An escape clause also allows the Chief Engineer to approve a transfer in excess of two miles if certain criteria are met.

3) Subsection (1)(c) [page 3, line 18] will require pit operators to report evaporation on an annual basis pursuant to K.S.A. 82a-732 and that information will be provided by the Chief Engineer to the Director of Taxation for the purpose of assessing the Water Protection Fee. The statutory citation to the Water Protection Fee is corrected to read K.S.A. 82a-954.

4) One area left unresolved by both K.S.A. 1995 Supp. 82a-734, and the bill you have before you, is the status of: (a) water rights and approved applications for permits to appropriate water for evaporation from sand and gravel operations after April 6, 1995, and (b) pending, but unapproved, applications for new permits to appropriate water for that same purpose, in areas outside Groundwater Management Districts, IGUCAs and areas designated by the Chief Engineer. The current language would suggest they should be dismissed by the Division.

Conclusion

The Division supports adoption of Substitute for SB 621, as amended by the Senate Committee of the Whole. It addresses most of the concerns which the Division of Water Resources raised during the 1995 Legislative Session before this committee and is an improvement to K.S.A. 1995 Supp. 82a-734. Basically, it brings pit operations in those areas of the State where water management is critical back under the provisions of the Kansas Water Appropriation Act.

I appreciate this opportunity to appear and I would be happy to answer any questions you might have.

STATE OF KANSAS

BILL GRAVES, Governor
State Capitol, 2nd Floor
Topeka, Kansas 66612-1590



(913) 296-
1-800-432-
TDD: 1-800-992-
FAX: (913) 296-

OFFICE OF THE GOVERNOR

April 3, 1995

Mike Dealy, Manager
Equus Beds Groundwater Mangement District No. 2
313 Spruce Street
Halstead, KS 67056-1925

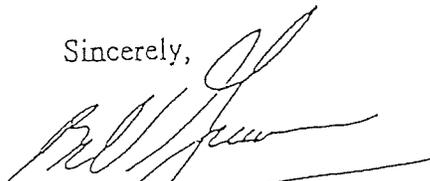
Dear Mr. Dealy:

Thank you for your recent letter concerning HB 2476, which exempts sand and gravel pit operations from some of the permit requirements of the Kansas Water Appropriation Act. As you know, the Division of Water Resources within the Board of Agriculture testified in opposition to this bill as introduced. However, the bill was amended to require operators to notify the Chief Engineer of the Division of Water Resources whenever any existing or proposed sand and gravel pit is to be excavated or expanded. In addition, if the Chief Engineer determines that a pit has a substantially adverse impact on the area groundwater supply, the evaporation of water from the pit would be subject to all existing requirements.

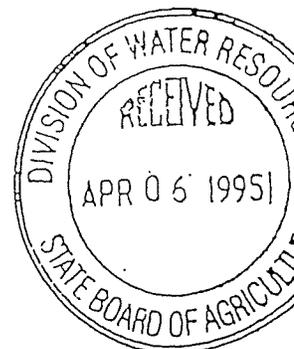
HB 2476 passed the House on a 121-3 vote, and passed the Senate 31-7. With some reservations, I signed HB 2476 on March 30. Secretary of Agriculture Allie Devine has indicated that new regulations or future legislation may be required to fully protect existing water rights.

I share your concern about the protection and preservation of our aquifers, and urge you to work with the Division of Water Resources to ensure that HB 2476 does not result in depletion or pollution of the aquifers. Please let me know if I can be of further assistance. Thank you for your input on this vital issue.

Sincerely,


BILL GRAVES
Governor

cc: Allie Devine, Secretary, Board of Agriculture
David Pope, Chief Engineer, Division of Water Resources



5-4

SUBSTITUTE for SENATE BILL No. 621

By Committee on Energy and Natural Resources

2-26

5-5

10 AN ACT concerning waters of the state; relating to the evaporation of
11 water from sand and gravel pits; amending K.S.A. 1995 Supp. 82a-711
12 and repealing the existing section; also repealing K.S.A. 1995 Supp.
13 82a-734.

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

15 Section 1. K.S.A. 1995 Supp. 82a-711 is hereby amended to read as
16 follows: 82a-711. (a) If a proposed use neither impairs a use under an
17 existing water right nor prejudicially and unreasonably affects the public
18 interest, the chief engineer shall approve all applications for such use
19 made in good faith in proper form which contemplate the utilization of
20 water for beneficial purpose, within reasonable limitations except that the
21 chief engineer shall not approve any application submitted for the pro-
22 posed use of fresh water in any case where other waters are available for
23 such proposed use and the use thereof is technologically and economically
24 feasible. Otherwise, the chief engineer shall make an order rejecting such
25 application or requiring its modification to conform to the public interest
26 to the end that the highest public benefit and maximum economical de-
27 velopment may result from the use of such water.

28 (b) In ascertaining whether a proposed use will prejudicially and un-
29 reasonably affect the public interest, the chief engineer shall take into
30 consideration:

- 31 (1) Established minimum desirable streamflow requirements;
- 32 (2) the area, safe yield and recharge rate of the appropriate water
33 supply;
- 34 (3) the priority of existing claims of all persons to use the water of
35 the appropriate water supply;
- 36 (4) the amount of each claim to use water from the appropriate water
37 supply; **and**
- 38 (5) all other matters pertaining to such question; **and**

39 (6) *any application to appropriate water for evaporation caused by a*
40 *sand and gravel pit operation exposing the groundwater table shall be*
41 *exempt from meeting the safe yield, allowable appropriation or similar*
42 *type of criteria if the chief engineer determines that the impact of the*
43

1 *evaporation on the source of supply is not significant, and that ap-*
2 *proval of the application will not directly impair a use under an*
3 *existing water right, nor prejudicially and unreasonably affect the*
4 *public interest, or it meets all of the following criteria:*

5 (i) *The application is filed for a commercial or governmental sand*
6 *and gravel operation in existence or permitted for hydraulic dredging*
7 *on or before July 1, 1995;*

8 (ii) *the application is filed on or before December 31, 1997;*

9 (iii) *the maximum annual quantity of water requested shall not exceed*
10 *the projected water needs for evaporation based on the historic average*
11 *annual rate of expansion of the surface area of the groundwater exposed*
12 *by that pit operation; and*

13 (iv) *the maximum annual quantity of water requested shall not exceed*
14 *the projected maximum annual need for evaporation for that pit operation*
15 *prior to January 1, 2018; and.*

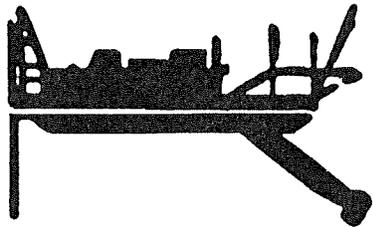
16 ~~(b)~~ **(c) Permits issued pursuant to subsection (b) (6)**
17 *shall allow only one pit operation at a time, but any unused quantity shall*
18 *be 100% transferable to another pit operation within two miles by the*
19 *same operator in the same source of water prior to January 1, 2018,*
20 *provided, however, that the maximum annual quantity shall not be in-*
21 *creased and the new location shall not cause substantial adverse impacts*
22 *to the area groundwater supply. The permit may be transferred to another*
23 *pit operation by the same operator beyond two miles in the same source*
24 *of water prior to January 1, 2018, if it is demonstrated to the satisfaction*
25 *of the chief engineer that the transfer will not substantially directly im-*
26 *pair a use under an existing water right, nor prejudicially and unreason-*
27 *ably affect the public interest.*

28 ~~(c)~~ **(d)** *With regard to whether a proposed use will impair a use under*
29 *an existing water right, impairment shall include the unreasonable raising*
30 *or lowering of the static water level or the unreasonable increase or de-*
31 *crease of the streamflow or the unreasonable deterioration of the water*
32 *quality at the water user's point of diversion beyond a reasonable eco-*
33 *nomical limit. Any person aggrieved by any order or decision by the chief*
34 *engineer relating to that person's application for a permit to appropriate*
35 *water may appeal to the district court in the manner prescribed by K.S.A.*
36 *82a-724, and amendments thereto.*

37 New Sec. 2. *This act is part of and supplemental to the Kansas water*
38 *appropriation act.*

39 Sec. 3. *K.S.A. 1995 Supp. 82a-711 and 82a-734 are hereby repealed.*

40 Sec. 4. *This act shall take effect and be in force from and after its*
41 *publication in the Kansas register.*



KAW SAND COMPANY

March 22, 1996

Honorable Representatives
Capitol Building
Topeka, Kansas

Subject: Senate Bill 621
Water Evaporation

Dear Kansas Representatives:

Last year, the aggregate producers of Kansas, the water board and the Chief Engineer of the Division of Water Resources, Mr. David Pope, devoted a great deal of time and effort to craft a bill regarding surface evaporation on dredge lakes. Because this bill was a compromise, no party was entirely happy but we each felt as though this bill would be workable. However, in subsequent action, the chief engineer denied the request of two sand producers from western Kansas to develop lake operations. Mr. Pope interpreted "substantially adverse" as, exceeding the safe yield for that area. Our understanding, during our discussions in 1995, and I think your intent, was to exempt the sand producers from the safe yield clause, but to protect other water users from having a negative impact on their supplies. I feel this interpretation was a breach of good faith on the part of the chief engineer in regard to the intent of last year's bill.

This year, the manager of Ground Water District #2 promoted Senate Bill 621, which essentially abrogates last year's compromise. It is dangerous legislation for the state of Kansas. This bill holds the the production of sand, one of our most vital natural resources, captive to users of another vital natural resource, water. Water is not essential to sand production, it is merely intertwined with it in river basins. Certainly, the surface evaporation is incidental to the entire process and miniscule in the Kansas Water Plan. Secondly, it is totally unfair. Every chief engineer prior to Mr. Pope, has determined that the surface evaporation is a natural phenomenon, for which no water rights are necessary.

House ENR
3-25-96

The safe yield of water reservoirs and lakes is calculated by subtracting the evaporation . None of the reservoirs or lakes are required to purchase water rights or pay for water surface evaporation. Only a few non-taxed and free water rights have been issued, such as Cheyenne Bottoms, and this was an attempt to prevent irrigation and other water use from depleting its water supply. Some power plants may be paying for cooling lake evaporation but they have a real beneficial and consumptive use. On the other hand, all the other water surface evaporation in the state is exempt. All uses, other than sand production, of rivers, lakes, reservoirs, and ponds are exempt from evaporation water rights and payment of water surface evaporation. Is the water evaporation of rivers, lakes and ponds different from water evaporation of the alluvial lakes? Not at all, as the lawsuit we won against Colorado proves. The water held in reservoirs is the same water that supplies the ground water alluvium. Why then, are sand producers singled out some fifty years after the issuance of water rights began? All other previous state chief engineers and most hydrologists disagree with our current chief engineer, Mr. Pope's opinion that surface evaporation is a beneficial use of water and thus requires water rights. Numerous studies from drier states than Kansas, show that groundwater lakes are the most efficient means of water absorption during wet times and the most efficient release during drought conditions. In these states, the sand producers only pay for water consumption during production or water retained in their products. Such proposals have fallen on deaf ears in Kansas.

Why should every other consumer of surface water be exempt from paying for water evaporation? Has anyone, besides sand producers, ever been required to pay for water surface evaporation in the state of Kansas? Why should these two burdens be placed solely on the shoulders of sand producers? Even with a partial 20 year waiver it is a bitter pill to swallow to have river dredging ban in most of the state and a pending ban on most of the rest of Kansas. But it is a nearly impossible task to acquire water rights for lake operations in most of our state. If river operations are ban and river deposits unavailable because of water evaporation rights, we have very few good sand sources left. Is this good for Kansas? Has it benefited its tax paying sand producers? Has it benefited Kansas tax paying consumers with less expensive roads or homes? Or has it benefited the state with a new revenue source or saved costs on highway construction and building materials? This law makes our own natural resource, sand, more expensive to ourselves with no additional benefits. Any law that is more costly to our citizens is bad for Kansas.

I would appreciate your serious consideration of this matter.

TESTIMONY BEFORE HOUSE
COMMITTEE ON
ENERGY & NATURAL RESOURCES

Mr. Chairman, members of the Committee, I am M.S. Mitchell, appearing here today to oppose Amended Substitute for Senate Bill 621. As a long time resident of south central Kansas I am very familiar with the operations and importance of the Sand and Gravel industry to Kansas builders of all types of public and private structures. No road, highway or street can be built with all-weather surfaces without sand and gravel. What are commonly called "sand roads" are really dirt roads which have been stabilized and covered with layers of sand and gravel to provide reliable transportation links for the supplies that farmers use to plant and fertilize the crops, feed the stock and fuel the machines that drive modern agriculture.

As population density increases, homes are needed, streets and highways are paved, manufacturing and commerce flourish and cities and towns grow. In each of those activities, the products of the Sand and Gravel industry are needed everywhere.

There is an old joke about the hog operation where it is claimed that everything but the squeal is used. This is an apt characterization of the sand and gravel industry. Often starting with poor or marginal farm land, the top soil, if it is of good

House ENR
3-25-96
Attachment 7

M.S. Mitchell testimony on Amended Substitute for SB 621

quality, is stripped off and sold for a variety of landscaping uses. Next, if there is silt, it is carefully separated and stockpiled as a premium ingredient in asphalt paving. Any heavy soil not good for topsoil is sold for random fill, and finally the top layers of sand are removed to start the hydraulic dredging of sand and gravel. Highly sophisticated machinery washes, separates, grades and stockpiles the sand and gravel to meet a variety of specifications for concrete, asphalt, cement blocks, base course and subgrade stabilization, snow and ice control and surfacing material. Even the clods of heavy soil and oversized aggregate are saved for sale as "mudballs" or further separated to produce decorative landscaping pebbles or used as surface material for exposed aggregate concrete.

Fine sand is kept for use as backfill for trenches, around basement walls; gradations are produced which are used as filter material for sub-drains for building foundations and other gradations are placed around pipelines, drainlines and sewers to be hydraulically compacted by water flooding to produce maximum density. In Sedgwick County, the daily cover material for Brooks Landfill which is required by federal law, comes from sand and gravel operations, either from overburden or dredged sand. All in all, nothing is wasted.

As the sand and gravel are extracted by hydraulic dredging, groundwater fills the excavated area, replacing the 80 percent of volume formerly occupied by the sand and gravel. In these

M.S. Mitchell testimony on Amended Sub for SB 621 page 3

"sandpit lakes" groundwater is being conserved instead of flowing thorough the soil down-gradient and eventually entering local rivers and streams as surface flow.

When all of the sand and gravel have been extracted from a plant site, the resulting body of clean, fresh, clear water is left behind for wildlife habitat, water recreation and prime open space. These "sandpit lakes" have become the core amenity for commercial and residential development, providing water based communities impossible to find in nature in most parts of Kansas. When I describe these communities to persons living in other parts of the country, they are consistently envious of the availability, relatively low cost and ease of maintenance of the water amenity around which the communities are located.

All of this is under attack by those who would place a major restriction on the opening, operation and future use of sand and gravel production sites. Not before 1993 was the concept of calling evaporation from "sandpit lakes" a beneficial use requiring a water appropriation. There is no scientific evidence that these "sandpit lakes" have reduced the volume of groundwater available to those who have valid appropriations.

Also there is no scientific evidence that over thirty years experience with using "sandpit lakes" as storage basins for stormwater runoff has adversely affected the quality of water in

M.S. Mitchell testimony on Amended Sub for SB 621 page 4

those "sandpit lakes", or the groundwater up or down gradient from the lakes.

Mr. Chairman, members of the Committee, please do not pass this badly Amended Substitute for Senate Bill 621 out of Committee. If there are no valid reasons which would require the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture to determine that there would be a substantially adverse impact on an area's groundwater supply, then there should be no water appropriation required for the future opening, operation and maintenance of sand and gravel pits.



Big Bend Groundwater Management District No. 5

125 South Main • P.O. Box 7 • Stafford, Kansas 67578 • Phone 316-234-5352

**TESTIMONY
PRESENTED TO THE
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
BY SHARON FALK, MANAGER
BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. FIVE**

Chairman Holmes and Committee Members,

As representative of the Big Bend GMD #5, I would like to express the sentiment of the District Board of Directors on SB 621. I appreciate the opportunity to speak to you on this very important issue.

Our Groundwater Management District encompasses 2.5 million acres and overlies one of the most abundant groundwater systems in the state. Approximately 800,000 acre feet are permitted in our district. The District operates under a sustainable yield policy whereas we try to maintain a sustainable source for future generations.

Although we have an abundant resource, there are many areas where development is very near the sustainable yield amount. Some areas of the District are closed to further development and anyone proposing to develop in those areas must purchase existing rights. This is the case for all types of use except small quantities.

SB 621 proposes amendments that would be fair to all waterusers in GMD #5 and puts all users on the same "playing field". I will offer an example: A farmer with a large well irrigating 130 acres will be authorized to pump approximately 200 acre feet. A groundwater pit of 70 acres, **for evaporation only**, will use 245 acre feet. There are many existing groundwater pits in GMD #5 and the potential exists for many more.

The District does not wish to prevent economic growth. However, on the other hand, sustaining our groundwater resource for the future will prevent economic deterioration.

Again, I point out, the importance of equal and fair treatment to all waterusers in GMD #5.

Thank you for your time and patience in this matter.

House ENR
3-25-96
Attachment 8

**Testimony for the 1996 Kansas Legislature
House Energy and Natural Resources Committee**

Regarding Senate Bill 621

**Presented by
Mike Taylor, Government Relations Director,
City of Wichita**

March 25, 1996

The City of Wichita urges your support for Senate Bill 621 as now written. From our perspective, the measure is an important part of the efforts to protect the Equus Bed aquifer which supplies about half of Wichita's drinking water supply and provides water for many other South Central Kansas communities.

This version of the bill, approved by the Senate after lengthy debate and often hard fought compromise, strikes what we believe is a reasonable balance between the groundwater management district and sand and gravel pit operators.

Water is certainly a vital resource which needs protection. Sand and gravel is also an important and vital natural resource. Approving Senate Bill 621 as now written will serve both interests in a reasonable and prudent manner. The legislative process has worked well regarding Senate Bill 621. Both sides in this debate had their say and in the end reached a compromise.

Thank you for your consideration.

House ENR
3-25-96
Attachment 1



**NORTHWEST KANSAS
GROUNDWATER
MANAGEMENT
DISTRICT NO. 4**

March 21, 1996

1175 South Range Avenue
P.O. Box 905
Colby, Kansas 67701-0905
Phone: (913) 462-3915

Representative Carl Holmes
Kansas State Legislature
State Capitol Bldg., Room 115-S
Topeka, KS 66612

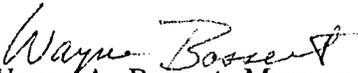
RE: Substitute for Senate Bill 621

Dear Representative Holmes:

Please find attached an issue paper regarding SB 621. On behalf of the Northwest Kansas Groundwater Management District No. 4 board of directors, I would like to submit this issue statement as testimony before your committee for the hearing scheduled on Monday, March 25, 1996. My apologies for not being present to give this testimony in person, but conflicts in my schedule have made this impossible.

If you have any questions, please let me know.

Sincerely,


Wayne A. Bossert, Manager
Northwest Kansas Groundwater
Management District No. 4

cc: GMD file;

House ENR
3-25-96
Attachment 10

**NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 4
STATEMENT OF ISSUE**

March 21, 1996

PO Box 905
Colby, Kansas 67701-0905
(913) 462-3915
Fax: (913) 462-2693

ISSUE: Substitute for Senate Bill 621

K.S.A. 82a-734 as currently written exempts evaporative losses from sand and gravel operations from requiring water rights unless the Chief Engineer determines them to have a substantial adverse impact on groundwater supplies. This exemption continues to hamper the ability of state and local water entities from effectively and fairly managing local resources.

SB 621 currently being debated removes this exemption for at least the most important water areas of the state.

BACKGROUND IDENTIFICATION:

K.S.A. 82a-734 was originally introduced in the 1995 Legislature as HB 2476, and represented a significant change to the Kansas water appropriation act. The Northwest Kansas Groundwater Management District No. 4 provided written testimony to the Senate Energy and Natural Resources Committee on March 13, 1995 listing seven reasons why the original bill was problematic. This testimony was very late in the process, missing the House debate altogether. We also provided much the same information to Governor Graves with a request that he veto the bill upon reaching his desk. The bill ultimately passed the House and Senate and was signed into law by Governor Graves.

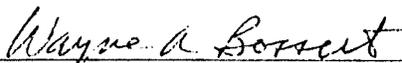
CONCERNS:

KSA 82a-734 exempts one industry from the Water Appropriation Act which is a dangerous precedent. Our GMD is therefore supporting Substitute for Senate Bill 621. As currently drafted, this bill satisfactorily addresses all seven concerns we originally had regarding this issue.

RECOMMENDATIONS:

Passage of Substitute for Senate Bill 621 as currently drafted.

Approved by Board based on February 15, 1996 action


Signed: Wayne A. Bossert, GMD 4 Manager

Additional information may be obtained by contacting:

Wayne Bossert, Manager
Northwest Kansas Groundwater Management District No. 4
1175 S. Range Avenue
PO Box 905
Colby, KS 67701-0905
(913) 462-3915; Fax (913) 462-2693
e-mail: wbossert@colby.ixks.com

[wab\issue.mst]



Southwest Kansas Groundwater Management District

* * * * *

(316) 275-7147

409 Campus Drive, Suite 106
Garden City, Kansas 67846

March 25, 1996

Representative Carl Dean Holmes, Chairman
House Energy and Natural Resources Committee
Statehouse, Room 115-South
Topeka, Kansas 66612-1504

RE: Substitute for S.B. 621

Dear Representative Holmes and Associate Committee Members,

The District strongly endorses your support and approval of the Substitute for S.B. 621 relating to evaporation of water from sand and gravel pits. The Directors are in unanimous agreement that the provisions of the Water Appropriation Act should equitably apply to all water users.

The Directors appreciate your efforts on these issues of vital importance to the people of the District. As always, we look forward to working with you in the future!

Please write or call if you have any questions or if we can be of any assistance.

Sincerely,

Steven K. Frost
Executive Director

pc: Board of Directors

House ENR
3-25-96
Attachment 11

RESOLUTION 95-4**OF THE****SOUTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT**

WHEREAS, the Southwest Kansas Groundwater Management District was formed for the proper management and conservation of the groundwater resources of Southwest Kansas; and

WHEREAS, groundwater is the principal source of fresh and usable water for industrial, municipal, stockwater, irrigation, and domestic use throughout the District; and

WHEREAS, the groundwater of the District is presently fully appropriated and developed in most areas of the District; and

WHEREAS, any additional diversions in developed areas will over-appropriate and exceed the available recharge rate thereby resulting in additional depletion of the groundwater in excess of the District's Allowable Aquifer Yield policies; and

WHEREAS, mining of sand and gravel in Southwest Kansas is a hydraulically intrusive process that removes millions of cubic yards of sand and gravel within the groundwater of the District, thereby exposing the water-table to the evaporative process; and

WHEREAS, aggregate mining sites are located in or adjacent to rivers and streams which are subject to flooding; and

WHEREAS, aggregate mining permanently opens and exposes the groundwater of the District to a variety of uncontrollable conditions, including diversion of groundwater from evaporation and potential injection of undesirable flood water and storm water runoff; and

WHEREAS, the District's aquifer management program provides for the proper and orderly development of groundwater by balancing aquifer recharge with planned groundwater withdrawals, and protecting the aquifer from contamination; and

WHEREAS, applications filed for permit to divert or withdraw groundwater for beneficial use must comply with the District's aquifer management program; then

THEREFORE, be it resolved by the Board of Directors of the Southwest Kansas Groundwater Management District that all aggregate mining or dredging operations within the District should be subject to all the appropriate provisions of the Kansas Water Appropriation Act, the Groundwater Management District Act, the Rules and Regulations of the Division of Water Resources, and the Management Program and policies of the Southwest Kansas Groundwater Management District; and not be exempted as in the present form of K.S.A. 82a-734 which was adopted by the Kansas Legislature in 1995; and

THEREFORE, be it resolved by the Board of Directors that the following revisions to K.S.A. 82a-734 are necessary, reasonable, and justifiable, and further, advocated for adoption:

AN ACT concerning sand and gravel pits; relating to the application of certain statutes to evaporation of water therefrom. Be it enacted by the Legislatura of the State of Kansas:

Section 1. Except as provided for in paragraph (c), evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall not be construed to be a use or diversion of water for the purposes of article 7 of chapter 82a of the Kansas Statutes Annotated.

(a) An operator shall notify the Chief Engineer of the Division of Water Resources of the Department of Agriculture of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

(b) Whether or not the activity is required to be permitted pursuant to K.S.A. 82a-701 et seq., all evaporation from sand and gravel pits, shall be reported as an industrial use to the Chief Engineer by the pit owner pursuant to K.S.A. 82a-732, and the determination of gallons used shall be supplied by the Chief Engineer to the Director of Taxation for the purpose of assessing the water protection fee pursuant to K.S.A. 82a-954, and amendments thereto.

(c) Evaporation of water from sand and gravel pits shall be considered as a beneficial use or diversion of water subject to the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq., and amendments thereto:

(1) within the boundaries of a groundwater management district established pursuant to K.S.A. 82a-1020 et seq., and amendments thereto;

(2) within the boundaries of an intensive groundwater use control area established pursuant to K.S.A. 82a-1036 and amendments thereto; or

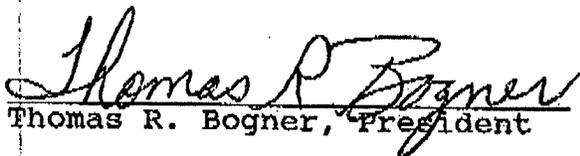
(3) when the Chief Engineer determines that it is necessary to manage and protect the beneficial use of the state's water, preserve the rights of priority of appropriation and to protect the public interest and use of water.

(d) This section shall be part of and supplemental of the Kansas Water Appropriation Act.

Section 2. This act shall take effect and be in force from and after its publication in the Kansas register.

THEREBY, that upon incorporation of the referenced revisions to K.S.A. 82a-734, all groundwater diversions except domestic use, including evaporation from aggregate mining must be permitted, so as to provide for the proper management and orderly development of the groundwater of the District.

Adopted this 13th day of September, 1995


Thomas R. Bogner, President


Michael J. McNiece, Secretary