

MINUTES OF THE HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 9:00 a.m. on March 7, 2011, in Room 783 in the Docking State Office Building.

All members were present except:

Representative Rocky Fund - Excused
Representative Michael Peterson - Excused
Representative Vincent Wetta - Excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Raney Gilliland, Kansas Legislative Research Department
Michael Wales, Kansas Legislative Research Department
Kay Scarlett, Committee Assistant

Conferees appearing before the Committee:

Paul Graves, Assistant Chief Engineer, Division of Water Resources, Department of Agriculture
Mark Rude, Executive Director, Southwest Kansas Groundwater Management District No. 3
Douglas Smith, Garden City Company (written only)
Earl Lewis, Assistant Director, Kansas Water Office
Greg Foley, Executive Director, State Conservation Commission
Representative Tom Sloan
Kevin Newkirk, Manager, CK Processing, Manhattan, Kansas (written only)

Others attending:

See attached list.

Chairman Powell reported on the Energy Council meeting he attended in Washington, D.C., last week where the price of gasoline was the major topic. The main reason for the current increase in the price of gasoline is unrest in the middle east. The President is the only one that can tap into the strategic petroleum reserve and the Chairman didn't believe that was a good option at this time. A disc of the meeting will be made available from Raney Gilliland, Kansas Legislative Research Department.

Hearing on HB 2357 – Arkansas River Gaging Fund.

Chairman Powell opened the hearing on **HB 2357**. Sean Ostrow, Office of the Revisor of Statutes, explained that this bill would establish the Arkansas River Gaging Fund that would be administered by the Secretary of the Kansas Department of Agriculture. All expenditures from the fund would be for the operation and maintenance of the gages along the Arkansas River necessary to manage water levels in the river under the Arkansas River Compact. In addition, royalties from the state's oil and gas leases in Hamilton, Kearny, Finney, Gray, and Ford Counties would be deposited in the Arkansas River Gaging Fund.

Paul Graves, Assistant Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, testified in support of **HB 2357** stating that the Department is responsible for administering the Arkansas River Compact in Kansas and allocating river flows among entities that have water rights entitling them to those flows. **HB 2357** would allow the Department to use royalties from the state's oil and gas leases in Hamilton, Kearny, Finney, Gray, and Ford Counties to fund operation and maintenance of stream gages to manage the Arkansas River under the compact. He said there is a need to resume operation of two discontinued stream gages on the Arkansas River and three discontinued stream gages on irrigation ditches fed by the Arkansas River in Hamilton, Kearny, and Finney Counties. The most recent costs quoted by the U.S. Geological Survey to return these five stream gages to operation would total \$51,360. The Department would resume, in priority order, operation and maintenance of stream gages as revenues allow. (Attachment 1)

Mark Rude, Executive Director, Southwest Kansas Groundwater Management District No. 3, appeared in support of **HB 2357** and the restoration of funding for the lost water measurement stations needed to manage the available Arkansas River water supplies in Southwest Kansas. The groundwater management district supports using state revenue generated from state owned oil and gas property beneath the bed and banks of the river to manage the river flows. (Attachment 2)

CONTINUATION SHEET

The minutes of the House Agriculture & Natural Resources Committee at 9:00 a.m. on March 7, 2011, in Room 783 of the Docking State Office Building.

Douglas Smith, on behalf of the Garden City Company which owns and operates Lake McKinney northwest of Deerfield in Kearny County, submitted written testimony in support of **HB 2357** and the permanent funding source it establishes for the operation and maintenance of river stream gages and irrigation ditch gages along the Arkansas River. (Attachment 3)

There being no other conferees, the hearing on **HB 2357** was closed.

Hearing on SB 122 – Authorizing the director of the Kansas Water Office to grant easements on state property on the Arkansas, Kansas and Missouri rivers.

Chairman Powell opened the hearing on **SB 122**. Sean Ostrow, Office of the Revisor of Statutes, explained that **SB 122** would authorize the Director of the Kansas Water Office, after consultation with the Kansas Department of Agriculture, the Kansas Department of Health and Environment, the Kansas Department of Wildlife and Parks, and the State Conservation Commission, to negotiate and grant easements on state property for construction and maintenance of conservation projects with cooperating landowners on the Arkansas, Kansas, and Missouri Rivers.

Earl Lewis, Assistant Director, Kansas Water Office, appeared in support of **SB 122** that would give the Kansas Water Office Director the authority to work with landowners adjacent to the state's three navigable rivers on projects proposing to stabilize the rivers' beds and banks. In the past this has been accomplished by legislation, wherein the Secretary of State grants the easement to the landowner, allowing him access to the state's property along the river. **SB 122** proposes to streamline the process for conservation projects by allowing the Water Office Director to grant the easements after consulting with other state agencies and a comment period on behalf of the State of Kansas. It was noted that other state agencies have the authority to grant an easement for a limited purpose. (Attachment 4)

Greg Foley, Executive Director, State Conservation Commission, testified in support of **SB 122** stating that passage of the bill would be beneficial to private landowners that have property adjacent to a navigable river. He highlighted three individual projects that have requested technical and financial assistance to design and install stream bank stabilization measures on their property to prevent further encroachment of the river into their property. The problem this legislation is attempting to solve is the land from the high water mark inward to the river is actually state owned property. Under current law each individual landowner and every project is required to come before the Legislature to have a specific law passed authorizing each project. He said that passage of **SB 122** would streamline the process. (Attachment 5)

Representative Tom Sloan appeared in support of **SB 122** and asked that the committee consider adding the contents of **HB 2096**. He explained that **HB 2096** was introduced by the House Vision 2020 Committee as a result of two years of hearings and work on surface drinking water supply, flood control, sedimentation, algae blooms, and other issues. The bill was referred separately to the Vision 2020 Committee and the Agriculture and Natural Resources Committee. He reported that no hearings had been scheduled while the Governor and his staff reviewed the bill to determine if it fit their vision or Roadmap for Kansas. The Governor's Liaison reported that the Governor had looked over the bill and thought it was a good idea. Because of the Governor's support, Representative Sloan asked for the committee's consideration. (Attachment 6)

Kevin Newkirk, Manager, CK Processing, Manhattan, submitted written testimony in support of **SB 122** stating that conservation projects within the state's navigable waterways currently are prohibited because no state agency is authorized to grant an easement allowing construction within the waterways. He stated that stream bank erosion causes soil loss and stream bank stabilization projects are effective methods of preventing soil loss and establishing stable, environmentally beneficial stream banks. (Attachment 7)

Mark Rude, Executive Director, Southwest Kansas Groundwater Management District No. 3, appeared in opposition to the scope and implications of the language in **SB 122**, but in support of the efforts to facilitate the proper work of adjacent landowners to stabilize the stream banks. He said that if the language was modified just for the purpose of stabilizing banks, he could be a proponent. (Attachment 8)

There being no other conferees, the Chairman closed the hearing on **SB 122**.

CONTINUATION SHEET

The minutes of the House Agriculture & Natural Resources Committee at 9:00 a.m. on March 7, 2011, in Room 783 of the Docking State Office Building.

Discussion and action on HR 6009 – A resolution to change the language of conservation easement assignments from “perpetuity” to “life of the project.”

Chairman Powell opened discussion on **HR 6009**.

Representative Moxley stated that Representative Brookens had prepared alternative language for **HR 6009**. Representative Brookens believes the new language better clarifies the intent of the resolution. He reported that Senator Roberts was meeting with the U.S. Army Corps of Engineers on Thursday and it was hoped this resolution could be passed out of the House by that time. (Attachment 9)

Representative Moxley moved to recommend HR 6009, as amended, favorably for adoption in the form of Substitute for HR 6009. Seconded by Representative Brookens, the motion carried.

The meeting adjourned at 10:45 a.m. The next meeting of the House Agriculture & Natural Resources Committee is scheduled for March 8, 2011.

HOUSE AG & NATURAL RESOURCES COMMITTEE
GUEST LIST

DATE: MARCH 7, 2011

[illegible]



**Testimony on HB 2357, Arkansas River Gaging Fund
to
the House Committee on Agriculture and Natural Resources**

**Paul Graves, Assistant Chief Engineer
Kansas Department of Agriculture
March 7, 2011**

Chairman Powell and members of the committee, I am Paul Graves, Assistant Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources (DWR). I appear before you today in support of HB 2357.

DWR is responsible for administering the Arkansas River Compact in Kansas and allocating river flows among entities that have water rights entitling them to those flows. Streamgages operated and maintained by the U.S. Geological Survey (USGS) provide accurate information that helps us determine available flows at various locations, distribute those flows to water right holders, and call for compact releases from John Martin Reservoir in Colorado under certain circumstances.

Due to budget cuts in the past few years, we have had to layoff some staff, hold vacant positions open, reduce equipment replacement, and reduce other operating expenses including contractual services. In FY 2011, we have insufficient funds to cover the state's share of operation and maintenance costs for 12 USGS streamgages, seven of which were discontinued due to lack of funding (USGS was able to continue operation of the other five gages with alternate funding). Of those discontinued streamgages, two are in the Arkansas River at Deerfield and Kendall, three are in Arkansas River irrigation canals known as the Amazon-Great Eastern Ditch near Lakin, Southside Ditch near Lakin, and Farmer's Ditch near Deerfield, and the other two are not applicable to HB 2357. These streamgage locations are shown on the attached map.

HB 2357 would allow us to use royalties from the state's oil and gas leases in Hamilton, Kearny, Finney, Gray and Ford Counties to fund operation and maintenance of streamgages to manage the Arkansas River under the compact. We think that means the revenues could be used for O&M of both the river gages and ditch gages in this area.

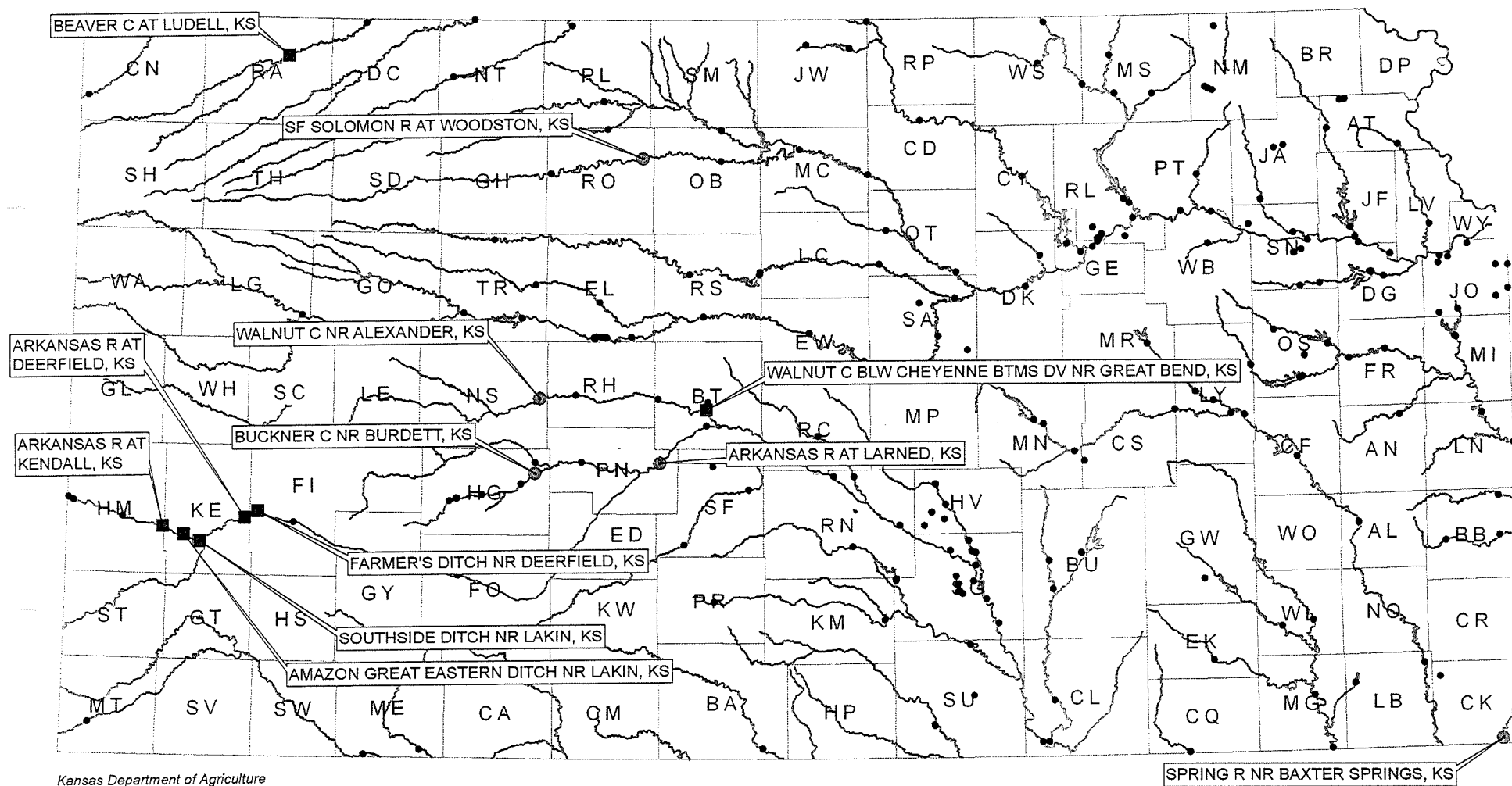
We have been unable to determine the anticipated amounts of oil and gas royalties, therefore at this time we do not know how many of the five streamgages in question could be returned to operation. The most recent costs quoted by USGS to return these five streamgages to operation would total \$51,360. A cost breakdown by gage is attached.

If HB 2357 is enacted, we will use the available revenues in the Arkansas River Gaging Fund to bring these gages back into operation in priority order, or as many as possible to achieve the greatest benefits for Kansas.

Thank you for the opportunity to comment on the bill. I will stand for questions at the chairman's pleasure.

USGS Streamgages

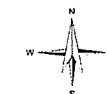
1-2



Kansas Department of Agriculture
Administrative Services. GIS
February 3, 2011

Gages

● Continued (5)* ■ Discontinued (7)* • Other (213, of which 40 are stage only)



Gages funded in part by DWR in FY 2010 and continued with funding by other agencies in FY 2011 or discontinued in FY 2011 due to budget cuts.

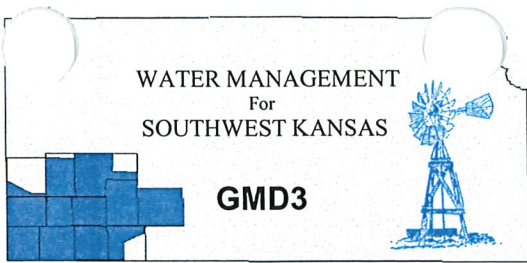
FY 2011 State Cost-Share for USGS Streamgages Previously Contracted with DWR in FY 2010

(Based on May 26, 2010 meeting with USGS, Jan. 31, 2011 email from USGS, and Feb. 16, 2011 email from USGS)

Location	State share of cost to continue (as of May 2010)	State share of cost to resume (as of March 2011)	Outcome after DWR funding discontinued
Amazon-Great Eastern Ditch near Lakin	\$ 4,000	\$ 8,000	Discontinued
Arkansas River at Deerfield	\$ 10,710	\$ 15,680	Discontinued
Arkansas River at Kendall	\$ 10,710	\$ 15,680	Discontinued
Arkansas River near Larned	\$ 6,780	NA	Funded through U.S. Geological Survey
Beaver Creek at Ludell	\$ 9,180	NA	Discontinued
Buckner Creek near Burdett	\$ 9,180	NA	Funded through U.S. Geological Survey
Farmer's Ditch near Deerfield	\$ 4,000	\$ 6,000	Discontinued
SF Solomon River at Woodston	\$ 10,710	NA	Funded through Kansas Water Office
Southside Ditch near Lakin	\$ 4,000	\$ 6,000	Discontinued
Spring River near Baxter Springs	\$ 1,200	NA	Funded through Kansas Water Office
Walnut Creek below Cheyenne Bottoms Diversion near Great Bend	\$ 10,170	NA	Discontinued
Walnut Creek near Alexander	\$ 9,180	NA	Funded through U.S. Geological Survey
Total	\$ 89,820	NA	
Total for seven discontinued gages	\$ 52,770	NA	
Total for five discontinued Arkansas River/ditch gages	\$ 33,420	\$ 51,360	

Notes:

1. Cost to resume operation of the discontinued streamgages has increased because USGS matching funds were allocated to other gages and are no longer available for these gages.
2. The streamgage in the Amazon-Great Eastern Ditch (two ditches sharing the same channel at the streamgage location) has a higher O&M cost than the other ditch gages due to its longer period of operation each year as this channel is also used to divert flows for storage in Lake McKinney during the off-season.



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House Committee on Agriculture and Natural Resources

Testimony supporting HB 2357
By: Mark E. Rude, Executive Director, GMD3
March 7, 2011

Chairman Powell and members of the committee, I am Mark Rude, Executive Director of the Southwest Kansas Groundwater Management District No. 3. I appear before you today in support of the restoration of funding for the lost water measurement stations needed to manage the available Arkansas River water supplies in Southwest Kansas, which is the purpose of HB 2357. We support using state revenue generated from State owned oil and gas property beneath the bed and banks of the river to manage the river flows.

On April 12, 1984 an IGUCA was requested by GMD3 for the Upper Arkansas River, and in 1985 the KS v CO Supreme Court case was filed. Since those dates, work to improve timely information on the Upper Arkansas River and canal operations has been ongoing to improve measurement and management decisions that maximize the usable water supply in southwest Kansas. Efforts to develop and maintain usable gaging sites and important timely data have been sporadic and dependent on available DWR resources since that time. Working agreements between DWR and the Ditch companies in the 1990's resulted in sophisticated concrete measuring flumes installed by the ditches with the understanding that if this was done, DWR would contract with the USGS to provide hydrographer and equipment services and provide web based publishing of flow information for timely and accurate information. This has worked very well until the agency funding crunch.

The lack of agency funds ended the operating partnership with the USGS on five sites (two river gages and three canal gages). In October 2010 the U.S. Geological Survey discontinued operation of the five gages which are located in the Upper Arkansas River or in irrigation ditches fed by Arkansas River flows. DWR's share for funding these five discontinued Arkansas River/ditch gages would have been \$33,420 in FY 2011. At present, the cost to resume operation of these five gages would be \$55,360 because federal matching funds were committed to other streamgages and federal funds for streamgages are expected to decrease this year. Projects to improve river operations and water sharing in the Upper Ark are underway and the results of these projects rely on accurate gaging data. Compact commissioners Randy Hayzlett and Dave Brenn are directly involved in the projects and support this initiative to restore funding to the needed gages.

The loss of these gages affects Kansans ability to manage the river resource and to quantify releases needed from John Martin Reservoir to satisfy Kansas water users and to distribute the available surface water flows. The management of the river water supplies is impaired without the needed funding for these gages. I have attached some information and graphs that may help illustrate how this information is used to manage deliveries from Colorado in southwest Kansas.

State general fund revenues from oil and gas leases of state land have been provided from the river corridor for many years, and HB 2357 simply seeks to establish a fund from these river revenues to manage the river.

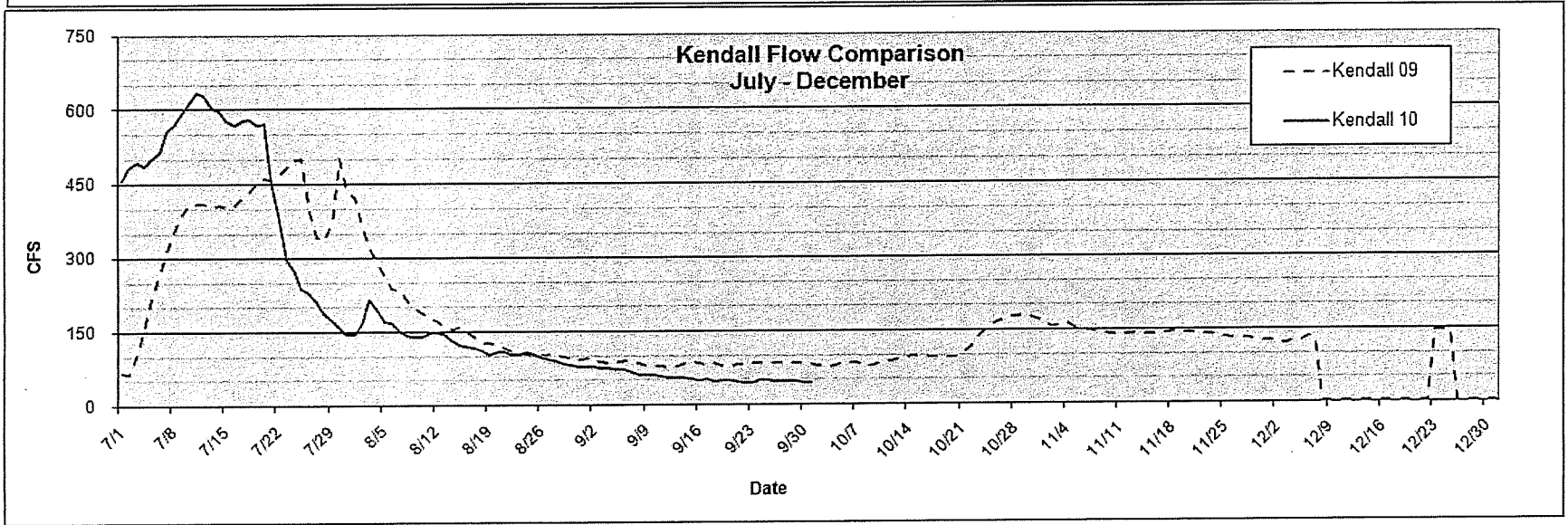
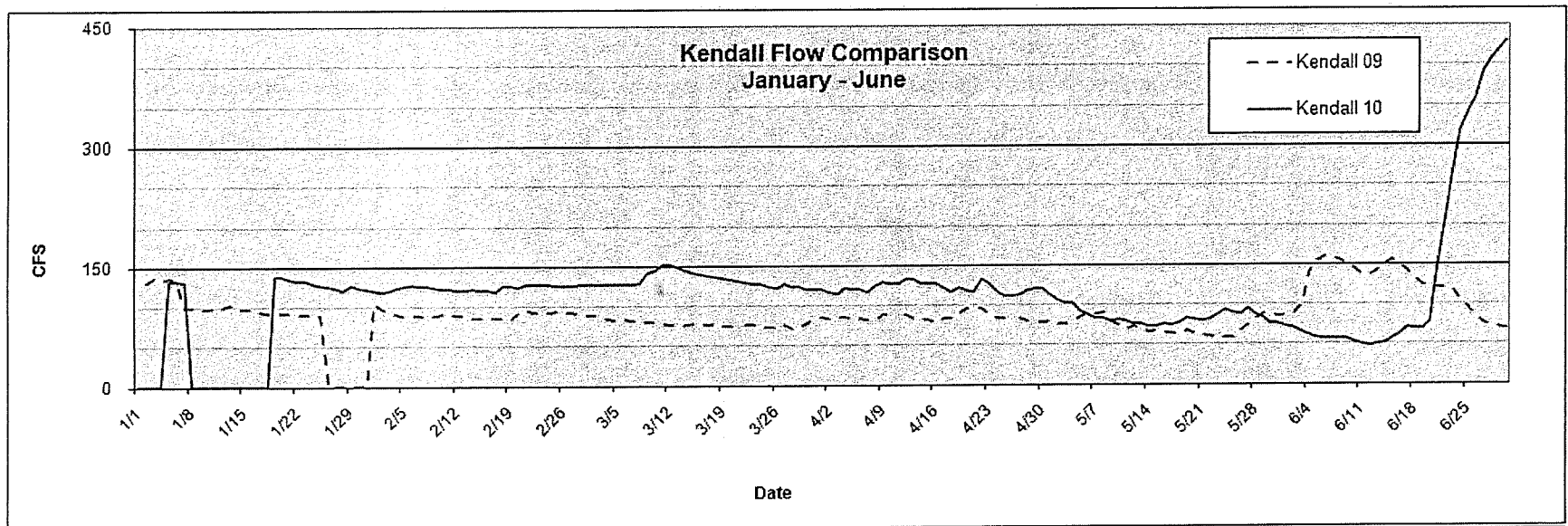
Thank you for the opportunity to provide testimony. I will stand for questions at the appropriate time.

House Ag & Natural Resources
March 7, 2011
Attachment 2

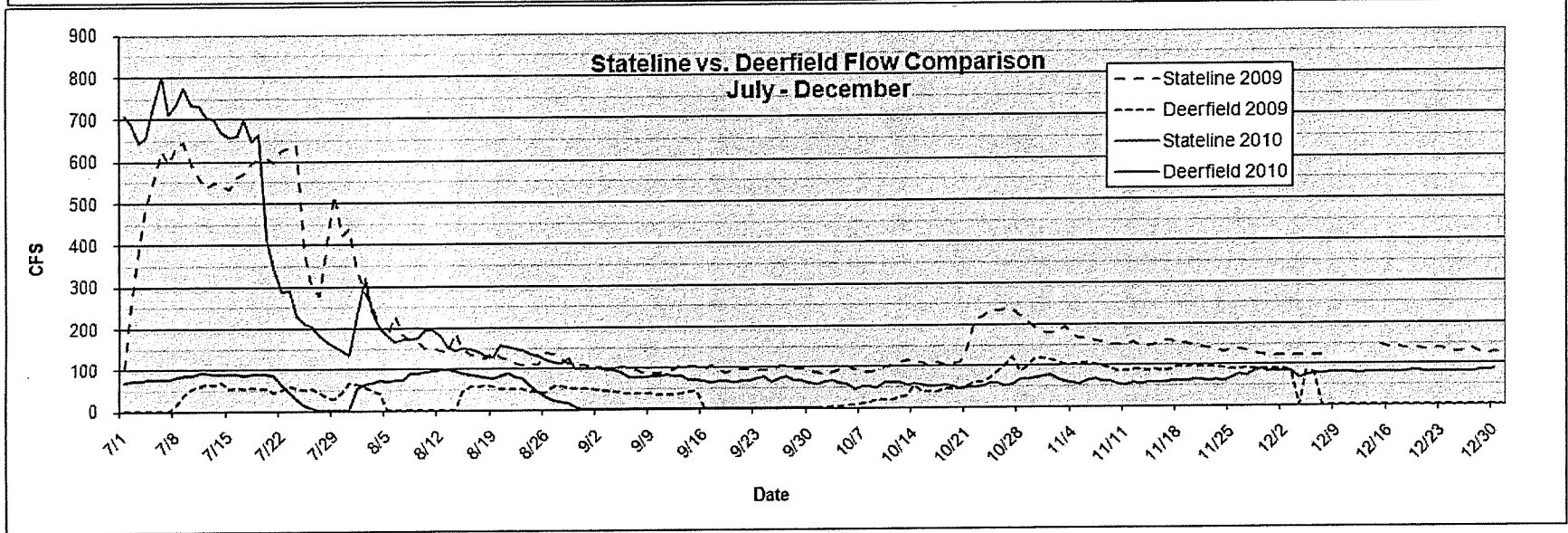
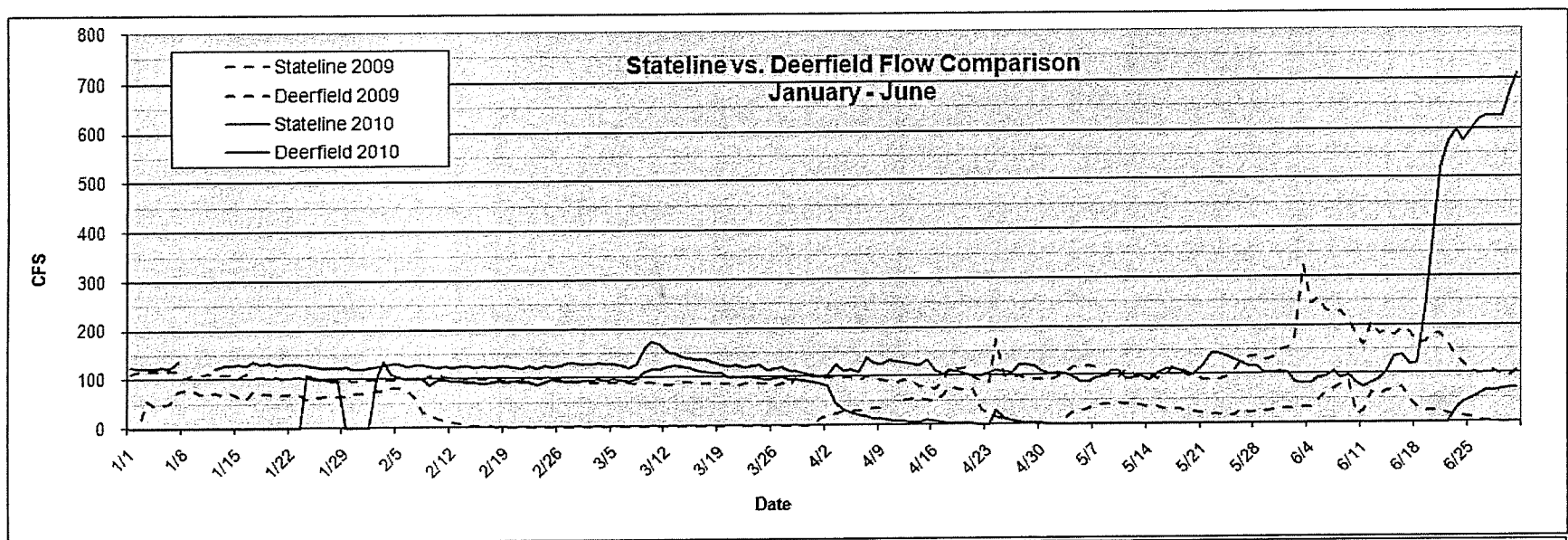
Key Gaging stations in the Arkansas River Basin below Pueblo Reservoir, Colorado (From Kansas DWR)

Most recent data for House Agriculture and Natural Resources Committee Hearing, HB 2357

	27-Feb-11	28-Feb-11	01-Mar-11	02-Mar-11	03-Mar-11	04-Mar-11	05-Mar-11
1 Pueblo Reservoir Content (USBR)	249,648	250,279	251,094	251,956	252,867	253,918	
2 Trinidad Reservoir Content (Corps)	18,674	18,706	18,746	18,785	18,831	18,864	
3 John Martin Reservoir Content (Corps)	56,997	57,298	57,561	57,787	58,050	58,277	
4 JMR storage chg (calculated)	338	301	263	226	263	227	
5							
6							
7 Purgatoire @ Madrid (ARB 19)	19	21	16	19	17	19	
8 Purgatoire below Trinidad Reservoir (ARB 19)	0	0	0	0	0	0	
9 Purgatoire @ Fishers Crossing	19	17	17	14	14	14	
10 Highland Canal (Ark River Basin 17)	0	0	0	0	0	0	
11 Purgatoire @ Highland Canal (ARB 17)	na	na	na	na	na	na	
12							
13 Fountain Creek @ Pueblo (USGS)	150	146	142	146	102	102	
14 Ark @ Avondale (USGS)	330	338	347	314	318	314	
15 Ft Lyon Storage Canal (Ark River Basin 17)	49	57	61	24	0	0	
16 Ark near Rocky Ford	16	15	16	47	49	48	
17 Timpas Creek near Swink	11	11	11	10	12	12	
18 Ft Lyon Canal (Ark River Basin 17)	0	0	0	0	0	0	
19 Ark @ La Junta (Ark River Basin 17)	71	72	66	85	96	101	
20 Ark River Las Animas (USGS)	93	95	99	93	108	128	
21 Purgatoire Las Animas (USGS)	48	33	19	13	8	6	
22 Muddy Creek (ARB 67)	0	0	0	0	0	0	
23 JMR Release (USGS)	1	1	1	1	1	1	
24 JMR KS Call	0	0	0	0	0	0	
25 Fort Bent (ARB 67)	0	0	0	0	0	0	
26 Amity (ARB 67)	0	0	0	0	0	0	
27 Fort Bent Ditch Aug Station (ARB 67)	0	0	0	0	0	0	
28 Lamar Canal (ARB 67)	8	7	7	7	7	7	
29 Lamar Power & Light Discharge	10	10	10	10	10	10	
30 Ark @ Lamar (USGS)	9	8	8	8	9	9	
31 Hyde (ARB 67)	0	0	0	0	0	0	
32 Center Farm Aug Station (ARB 67)	0	0	0	0	0	0	
33 Buffalo (ARB 67)	0	0	0	0	0	0	
34 Ark @ Granada (USGS)	66	63	61	63	61	60	
35 Wild Horse near Holly (USGS)	seasonal	seasonal	seasonal	seasonal	seasonal	seasonal	seasonal
36							
37 Frontier Ditch (USGS)	0	0	0	0	0	0	
38 Ark @ Coolidge (USGS)	97	91	87	87	83	83	
39 Stateline (calculated)	97	91	87	87	83	83	0
40 Ark @ Syracuse (USGS)	89	89	82	78	76	76	
41 Ark @ Kendall (USGS)							
42 Amazon / Great Eastern Ditch (USGS)							
43 Southside Ditch (USGS)							
44 Ark @ Deerfield (USGS)							
45 Farmers Ditch (USGS)							
46 Ark @ Garden City (USGS)	0	0	0	0	0	0	
47							
48 Ark @ Coolidge Conductivity (USGS)	4,210	4,220	4,250	4,250	4,250	4,210	
49							



Provided with GMD3 testimony in support of HB 2357. Sample graphs from Kansas DWR.



THE GARDEN CITY COMPANY

REMARKS CONCERNING HOUSE BILL NO. 2357

HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

MARCH 7, 2011

Chairman Powell and Members of the Committee:

Thank you for the opportunity to present remarks in support of House Bill No. 2357 on behalf of the Garden City Company. The Garden City Company owns and operates Lake McKinney in northwest of Deerfield in Kearney County, Kansas and supplies water to surrounding areas through a series of canals and ditches for irrigation purposes. Lake McKinney is an above ground reservoir capable of storing water diversions from the Arkansas River for future use.

The Garden City Company supports House Bill No. 2357 and the permanent funding source it establishes for the operation and maintenance of river stream gages and irrigation ditch gages along the Arkansas River. These stream gages are used to measure the flow of water and help calculate releases of water from the State of Colorado. For the Garden City Company knowing what water is available for storage or diversion and the discharges coming from John Martin Reservoir in Colorado provides for more effective rotations with the various ditch companies creating more efficient use of our water resources.

Identifying and establishing stable financial support is important for continued monitoring and upkeep of this measuring equipment. Federal resources, primarily through the USGS, are and will continue to be limited making action by the State of Kansas essential to keep these gages functional.

We urge this committee to strongly consider and recommend House Bill No. 2357 favorable for passage.

Thank you for your time and consideration.

Douglas E. Smith
For the Garden City Company



**House Committee on Agriculture and Natural Resources
Testimony on Senate Bill 122
Easement Authority on State Property for Conservation Projects
March 7, 2011**

Chairman Powell and members of the Committee, I am Earl Lewis, Assistant Director of the Kansas Water Office (KWO). Thank for the opportunity to appear before you today in support of Senate Bill 122, which provides the KWO Director with the authority to work with landowners adjacent to our three navigable rivers on projects proposing to stabilize the rivers' beds and banks.

Kansas and US law is well settled that the State owns the bed and banks, up to the ordinary high water mark, of the three navigable rivers in Kansas; the Arkansas, Kansas, and Missouri. The U.S. Supreme Court has held that the bed and banks in all navigable rivers are owned by the states. See *United States v. Holt State Bank*, 270 U.S. 49 (1926). Kansas Supreme Court rulings parallel those of the US Supreme Court. See: *Murray v. State*, 226 Kan. 26 (1979); *Fowler v. Wood*, 73 Kan. 511 (1906). Navigability is defined according to these cases as well: the stream must be navigable in fact, in its natural condition, as a highway of commerce, at the time of statehood. See *Shively v. Bowlby*, 152 U.S. 1 (1894).

As a result, a riparian landowner (one who owns land along a navigable river in this case) needs an explicit grant of property from the state to access the river up to its banks for activities that include construction and maintenance of structures or to reshape the banks. Normally, this is accomplished by legislation, wherein the Secretary of State grants the easement to the landowner, allowing him access to the state's property along the river. Senate Bill 122 proposes to streamline the process for conservation projects by allowing the Water Office Director to grant the easements, after consulting with other state agencies and a comment period, on behalf of the state of Kansas.

The impetus for the proposed legislation stems from recent project proposals along the Kansas River. Four riparian landowners initiated funding requests from the USDA, Natural Resources Conservation Service and requested Stream Obstructions Act Permits from the Kansas Department of Agriculture, Division of Water Resources for bank stabilization projects. In each of these four instances, funding contracts with NRCS were terminated and permits were unable to be issued because the applicant (riparian landowner) was not the legal owner of the entire project area that includes state property below the ordinary high water mark.

The Legislature has, in the past, provided easements to both public and private interests along navigable rivers in the state:

- K.S.A. 82a-315 allowed the City of Topeka to construct diversion works on the Kansas River.(1987)
- K.S.A. 19-3521b grants an easement to Johnson County Water District No. 1 to construct diversion works on the Kansas River. (2006)
- K.S.A. 82a-212 granted Douglas County an easement on an island in the Kansas River.(1980)
- K.S.A. 82a-213, the state granted the City of Lawrence a park and recreation easement along the Kansas River. (1980)

- K.S.A. 82a-214 allowed a private company, MBPXL, to construct diversion works along the Arkansas River.(1981)
- K.S.A. 82a-218 granted Finney County an easement to construct a crossing on the Arkansas River. (1997)

The concept of legislation that would allow a state agency authority to grant an easement for limited purposes, as outlined in SB 122, is not unique. In K.S.A. 74-4551, the Legislature authorized the State Park and Resources Authority to grant an easement for access to a structure. K.S.A. 12-2711 grants the Secretary of Transportation broad authority to grant right of ways to municipalities who have contracted to provide a common supply of water for lay pipes, conduits and other infrastructure. K.S.A. 75-2131 allows an agency head whose agency controls land to grant public utility easements without legislative approval.

Successful passage of SB 122 will allow these and subsequent landowners to apply for funding and receive permit consideration for projects providing mutual benefits to the landowner and the state of Kansas. In the case of the Kansas River, bed and bank degradation is a serious concern and is a priority issue in the Kansas Water Plan.

Thank you, again, for the opportunity to appear before you today in support of Senate Bill 122. I will stand for questions at the appropriate time.

Testimony on SB 122

Authorizing the director of the Kansas Water Office to grant easements on state property on the Arkansas, Kansas and Missouri rivers.

to the

House Agriculture and Natural Resources Committee

by

**Greg A. Foley
Executive Director
State Conservation Commission**

March 7, 2011

Chairman Powell and members of the Committee, thank you for the opportunity to testify in support of SB 122. The State Conservation Commission (SCC) is responsible for implementation of many natural resource protection programs. The SCC administers the Riparian and Wetland Protection Program and partner with the Natural Resources Conservation Service through EQIP, which both fund leading best management practices to reduce soil losses from streambanks that transport downstream adding to sedimentation of water supply impoundments, federal reservoirs and/or impact total maximum daily loads.

The passage of SB 122, or similar language, would be beneficial to private landowners that have property adjacent to a navigable river. The SCC has encountered three individual projects that have requested technical and financial assistance to design and install streambank stabilization measures on their property to prevent further encroachment of the river into their property. The problem that we are trying to solve is the land from the high water mark inward to the river is actually state owned property. With part of the project being on private and part placed within the streambed, the landowner does not have authority or permission to install a practice to protect his/her own land from sloughing off and changing the property lines for the state. In my opinion, the mission of the proposed process will prevent significant survey costs and permitting hurdles for each individual landowner and every project would be required to come before the Legislature to have a specific law passed authorizing each project.

Chairman Powell and members of your committee, thank you for the opportunity to appear before your Committee today. I will stand for questions at the appropriate time.

cc: SCC Commissioners

STATE OF KANSAS

TOM SLOAN
REPRESENTATIVE, 45TH DISTRICT
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TOPEKA
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: VISION 2020

MEMBER: ENERGY AND UTILITIES
AGRICULTURE AND NATURAL
RESOURCES BUDGET
LOCAL GOVERNMENT
JOINT COMMITTEE ON ENERGY
AND ENVIRONMENT

House Agriculture Committee

March 7, 2011

Mr. Chairman, Members of the Committee: I rise in support of SB 122 with the request that you consider adding the contents of HB 2096.

Background: During the Bush Administration, the Assistant Secretary of the Army (Civil Works) twice visited Kansas for meetings with state agency heads and other key stakeholders with the objective of increasing coordinated planning and operations between Kansas' water agencies and the Corps of Engineers. Tracy Streeter can provide you great details about how concrete steps were taken as a result of those discussions.

When the Obama Administration appointed a new ASA-CW, a delegation of state water agency heads visited Ms. Darcy, detailed our on-going collaborative work and asked for two things in return: a) an increase in data sharing, and b) having a Corps employee based at the KS Water Office to serve as a liaison between Kansas and the Corps offices in K.C., Tulsa, Washington, D.C., and elsewhere. Both of those requests have been granted.

Ms Darcy will visit Kansas in June and meetings with the Kansas water agency heads are being scheduled. HB 2096 represents an effort to demonstrate to Ms. Darcy and the Corps that Kansas is serious about wanting to address long-term surface water sustainability issues – especially the matter of sedimentation and the impact that it has on flood control, water storage, water quality, and recreation opportunities. Each of the components of HB 2096 was developed last fall in consultation with the appropriate state agencies.

Governor's Position: HB 2096 was introduced by the Vision 2020 Committee as a result of two years of hearings and work on surface drinking water supply, flood control, sedimentation, algae blooms, and other issues. The bill was jointly assigned to the Vision 2020 and Agriculture Committees. No hearings on the bill were scheduled while the Governor and his staff reviewed the bill to determine if it fit their vision or Roadmap for our state.

Tim Shallenburger, Governor's Liaison, told both Chairman Powell and me that "the Governor had looked over your bill and thought it a good idea." Because of the Governor's support, I bring the bill to you for consideration.

Components of HB 2096:

- a) State Conservation Commission may fully fund streambank projects, if necessary, to address erosion and downstream impacts;

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- b) Multi-purpose small lakes program has required that any such impoundment include flood control and at least one of the following – drinking water supply or recreation. HB 2094 requires that at least two of those three benefits be included, thereby providing greater flexibility for the State Conservation Commission;
- c) Kansas Water Office to include within the water marketing program data collection costs for such programs as reservoir mapping, coring, sediment testing;
- d) Kansas Water Office shall report to the Legislature annually the projected cost of calling water in federal reservoirs into service and the costs to the state of delaying that call. Committee members will recall that the state has the option to purchase water storage rights in federal reservoirs at the original construction price/value, and that the option for each reservoir has an expiration date;
- e) Kansas Water Office may call water into service when in the best interests of the state. Committee members will recall that water historically is called into service when a municipality, water assurance district, or other recognized entity contracts to buy the water. Committee members also will recall that many times during periods of drought the Corps has released water from reservoirs to help float barges on the Missouri River and that Governors of both political parties have protested these releases. HB 2096 would allow the state to act to protect our long-range water supply interests, especially in a drought period;
- f) Kansas Biological Survey shall coordinate water data collections held by multiple state agencies. This does not mean that KBS is taking over, nor does it require state agencies to change the way they operate. KBS shall expand its ability to link databases so that public policy-makers have access to more complete data;
- g) Kansas Water Office is authorized to negotiate and grant easements on state properties identical to SB 122.

Summary: The devil is always in the details and I encourage you to closely examine HB 2096. With the exception of directing the Kansas Biological Survey to coordinate water databases for policy-making purposes and to include certain costs associated with collecting drinking water supply lake sedimentation and water quality data in the water marketing plan, *the bill is permissive, not a mandate and does not increase fees*. The Kansas Water Authority and Legislature would approve State Water Plan funding of the data collection activities.

The bill does send a clear message to the Assistant Secretary of the Army (Civil Works) that Kansans are serious about protecting the water supplies of 2/3rds of our population and that we are serious about wanting the Corps of Engineers to work more closely on water supply maintenance issues. The water agencies are developing a list of Corps' policy and funding changes Kansans believe appropriate.

I recognize that this is a large and somewhat complex bill, but if you believe that ensuring our people's long-term water supplies are vital (supplies to Wichita, Topeka, Lawrence, Johnson County, Pittsburg, and other rural and municipal systems supported by our surface water lakes/reservoirs), then I ask you to amend as much of HB 2096 as possible into SB 122 so that our water agency heads have bargaining tools when dealing with the ASA-CW.

Thank you for your consideration.

February 28, 2011

Kevin Newkirk
CK Processing
3490 Swamp Angel Road
Manhattan, KS 66502

Representative Larry Powel, Chair
House Agriculture and Natural Resources Committee

Dear Chairman Powel and House Agriculture and Natural Resources Committee Members:

I am writing in support of SB 122. Conservation projects within Kansas' navigable waterways are currently prohibited because no State agency is authorized to grant easements allowing construction within the waterways. It is vitally important that conservation projects be allowed in and along navigable waterways. Ironically, conservation projects were permitted along Kansas' navigable waterways until only recently. Please pass SB 122 so conservation projects can resume.

Farmland is one of Kansas' most valuable resources. Streambank erosion causes soil loss, which then becomes pollution in Kansas streams and rivers. Brock Emmert of The Watershed Institute recently estimated that our farm lost over 17 acres of prime farmland along the Kansas River at two specific sites between 1991 and 2008. 396,099 cubic yards of soil was lost, which equals nearly 26,000 semi truck loads of soil. Brock estimated the streambank erosion rate at 9.1 feet per year at one site and 6.1 feet at the other site.

Streambank stabilization projects are effective methods of preventing soil loss and establishing stable, environmentally beneficial streambanks. Three such projects have either been completed or are in the process of being completed on our farm. Partial funding for those projects came from National Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP). This program combines expertise from NRCS, The Watershed Institute and experienced contractors to design and implement streambank saving measures. The resulting streambanks are stable and covered with wildlife friendly vegetation. Riparian and grass buffer strips along rivers and streams hold soil in place and filter fertilizer and other agricultural chemicals out of water so it never enters the stream resulting in cleaner water from reduced sedimentation and chemical pollution.

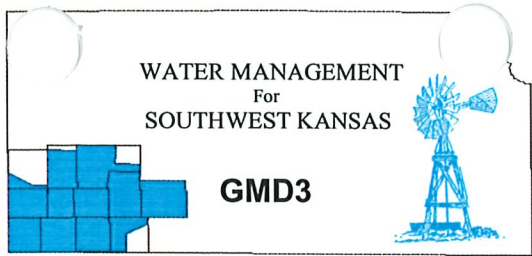
Please call me at 785-776-9269 or email at kevjnew@gmail.com if you have questions or comments. I am eager to provide additional information regarding this important bill.

Sincerely,



Kevin Newkirk
Manager, CK Processing

House Ag & Natural Resources
March 7, 2011
Attachment 7



Southwest Kansas
Groundwater Management District No. 3
2009 E. Spruce Street
Garden City, Kansas 67846-6158
(620) 275-7147 phone (620) 275-1431 fax
www.gmd3.org

Testimony on Senate Bill 122

to

The House Ag & Natural Resources Committee

By

Mark E. Rude, Executive Director

Southwest Kansas Groundwater Management District No. 3

March 7, 2011

Chairman Powell and members of the committee, my name is Mark Rude. I am executive director of the Southwest Kansas Groundwater Management District No.3 (GMD3). I am providing testimony in opposition of Senate Bill 122.

The many issues associated with the question of right to access and use of state property along the three riverways in Kansas designated as navigable streams continues to be a very significant set of unmanaged property interests that are both public and private in nature, and reach far beyond the good purposes of this bill. In many cases along the sometimes dry Arkansas River, the very issue of property boundaries is a matter for which reasonable and knowledgeable people can and do disagree.

For your benefit, I have attached a copy of a KSDA/DWR memorandum written by staff council Leland Rolfs to John Gottschamer of the Water Office, which outlines some of the considerations regarding this state resource and state – private property owner relationship for these areas

SB 122 is a laudable effort to provide an administrative remedy to the access authority problem that landowners adjacent to the navigable streams face when the river begins cutting into their property or field and some stream bank stabilization structures are needed to prevent bank erosion. Because of the morass of issues that exist as outlined in the above referenced memorandum, I stand in opposition to the scope and implications of the language, but in support of the efforts to facilitate the proper work of adjacent landowners to stabilize the stream banks.

I'll stand for questions at the appropriate time. Thank you for this opportunity to provide these comments.

KANSAS STATE BOARD OF AGRICULTURE
DIVISION OF WATER RESOURCES

RECEIVED

DEC 22 1993

MEMORANDUM

Field Office
Division of Water Resources
Garden City

TO: John Gottschamer

DATE: December 22, 1993

FROM: Leo Rolfs

RE: Arkansas River Corridor
Committee

The committee has identified the following basic issue:

**THE STATE OF KANSAS HAS NOT DESIGNATED ANY ENTITY OR PERSON TO
BE RESPONSIBLE FOR THE MANAGEMENT OF MANY TRACTS OF LAND
OWNED BY THE STATE OF KANSAS**

The following issues or concerns should be addressed:

1. How much property does the state of Kansas own which is not actively supervised and managed by any particular entity? These tracts would include the Arkansas River, the Kansas River, and the Missouri River, up to the ordinary high water mark.
2. The property which the state owns in these areas needs to be identified both legally and physically. This location would include identification of both the width of the river at any point and the location of the thread of the stream. It is clear that the state owns some interest in these navigable streams, but the nature and extent of that interest is not clear. An effort should be made either legislatively or judicially to establish the state's legal ownership interest in the bed and banks of these rivers up to the ordinary high water mark. Can the interest be extinguished by reliction (diminishment of the flows)? Does the answer depend on whether the reduction in flows occurred naturally or was caused by the activities of man, either in Kansas or in another state?
3. Should a legislative definition of the "ordinary high water mark" be sought using an engineering basis (such as the flow caused by a two year frequency storm unaffected by the activities of man)?
4. Once the physical boundaries of the state's property are identified, should they be marked or fenced in any manner? Who would do this? How would it be funded? Who would oversee the fencing and its maintenance, if not the property itself?
5. The citizens of the state are allowed to use state property for recreation. It is important for the adjoining landowners to know where the boundaries of state owned property are so that citizens do not trespass on private property adjoining the land owned by the state. Conversely, it is important that private interests (possessory or business) do not trespass upon the state.
6. From our preliminary discussions, it is apparent that the state may be losing large amounts of revenue from items such as:
 - a. oil and gas royalties from wells located on state owned property;
 - b. sand and gravel operations removing aggregate from state owned property, especially operations that are not located directly in an active stream channel but which are still on state property;

- c. lease payments for agricultural uses being made of state owned property such as grazing, farming, irrigating, wood cutting operations and recreational activities.

There may be considerable amounts of revenue that the state of Kansas is forfeiting by not actively managing the state owned property.

7. Apparently there is no consistency between state agencies in identifying the boundaries of state owned property, depending on the various activities which they administer or permit. For example, it appears that counties attempt to assign ownership to private individuals as close as possible to the streams listed above in order to maximize county tax revenues. This may conflict with the state's overall interest in wanting to utilize more of this land for public recreation or other purposes.
8. There is apparently no state entity which has the authority to lease state land, without express legislative authorization, for the construction of projects, such as: levees, boat ramps, road crossings, pipeline crossings, bridges or any other projects on state owned property.
9. It is not clear what jurisdiction Wildlife and Parks has over state owned land. K.S.A. 32-807(m) provides the Secretary of KDWP the

"authority, control and jurisdiction over all matters relating to the development of conservation of the natural resources of the state insofar as it pertains to forests, woodlands, public lands, submarginal lands, prevention of soil erosion, habitats and the control and utilization of waters, including all lakes, streams, reservoirs and dams . . ."

It is not clear what the legislature intended for KDWP to have control over navigable rivers because it did not use the term "navigable waters" in the above statute. The legislature also designated the Secretary of State as the party to purchase or sell the river and specifically passed legislation regarding the construction of boat ramps, weirs, etc.

10. If the state's ownership in this property is legally and physically identified, it would probably be in the state's interest to enter into maintenance activities, such as: channel clearing, dredging, construction of jetties, levees and riprap to ensure that the river stays within the boundaries of the property owned by the state. Obviously, this requires staff for engineering studies and money for construction.
11. Property owned by the state of Kansas needs to be monitored for unauthorized activities, particularly those which would be injurious to the value of the property, such as: pollution, dumping, illegal channel changes, construction of illegal levees, and other unauthorized uses.
12. The only statute which refers to state responsibilities for state ownership of the bed and banks, is K.S.A. 82a-201 et seq. According to this Act, when a navigable river changes course in a flood (by avulsion) it is the responsibility of the Secretary of State to sell the old channel and purchase the new channel. This has occurred only a few times when a controversy has arisen. The Secretary of State is not staffed to perform this function on a routine basis after every flood on every river. Determination of how the river channel changed may be very time consuming and expensive, especially if many years and many floods have occurred since the last determination.

Memorandum to John Gottschamer
December 22, 1993
Page No. 3

Recommendation

An inter-agency technical committee should be appointed to identify the extent and location of state owned property which is not actively managed, assess the value of the property and the cost of actively managing it. The committee should then make some recommendation to the legislature as to what needs to be done, such as creation of either a Public Land Management Agency or division in some other state agency to manage unmanaged state property.

It may well be that revenues would be generated from active management of this property in an amount sufficient to fund the activities of this agency, or provide a surplus. Apparently no state agency currently has the authority, expertise or staff resources to take on the responsibility of managing this orphan state property. This technical committee could begin by researching how other states manage their state owned public lands.

LER:bs

pc: Steve Hurst
David L. Pope
Wayland Anderson
George Austin
Guy Ellis
✓ Mark Rude
DeAnn Hupo-Seib
Constance Owen

SUBSTITUTE FOR HOUSE RESOLUTION NO. 6009

By Committee on Agriculture and Natural Resources

A RESOLUTION urging the U.S. Army Corps of Engineers to accept "Life of the Project" conservation easements.

WHEREAS, Conservation easements are needed to protect mitigation areas resulting from construction of watershed district flood retarding dams that require constant maintenance and management for an extended period of time; and

WHEREAS, The life of the project is defined to include the period of time during which the dam continues to function as a result of maintenance or rehabilitation; and

WHEREAS, By definition, the life of the project would, for all practical purposes, equate to perpetuity as described and desired by the Corps; and

WHEREAS, It is not necessary for the easement language to state perpetuity as the required term of the easement to effect the goals of the Corps and the landowners; and

WHEREAS, Landowners are reluctant to sign perpetuity easements for all time, without limits; and

WHEREAS, Whenever the impacted stream, woodland or wetland is returned to its pre-dam condition as agreed to by the Corps, dam owner and landowner, the easement is intended by all interested parties to be terminated; and

WHEREAS, The intent to maintain the mitigation easement area the same as is required of the project that created the need for the mitigation area is understood by the dam owner, landowner and the Corps: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That the members of the Kansas House of Representatives stand in support of efforts to convince the U.S. Army Corps of Engineers to accept conservation easement language for the "Life of the Project" and not for perpetuity;

and

Be it further resolved: That the Chief Clerk of the House of Representatives be directed to send enrolled copies of this resolution to the Secretary of Defense, the Speaker of the United States House of Representatives, the United States Senate Majority Leader, the United States Senate Republican Leader, and each member of the Kansas Congressional Delegation.