
M E M O R A N D U M

TO: Chairman Kinzer and Members of the House Judiciary Committee
FROM: David M. Traster
DATE: February 27, 2012
RE: **Testimony on HB 2553**

My name is David M. Traster. I am an attorney with Foulston Siefkin LLP. I represent the Nemaha Brown Watershed Joint District No. 7 and its nine individual Board Members in a lawsuit that was filed in the U.S. District Court for the District of Kansas by the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas.

There are numerous allegations but the Tribe currently asserts two main claims. First, that it is entitled to a previously undefined water right, called a “federally reserved water right” or a “*Winters* Doctrine water right” pursuant to the holding in a 1908 U.S. Supreme Court case, *Winters v. U.S.*, 207 U.S. 564. That portion of the lawsuit has been stayed and is not at issue here.

Second, the Tribe seeks enforcement of an alleged Watershed District promise to exercise its power of eminent domain on behalf of the Tribe to acquire approximately 1,200 acres of land, both on and off of the Tribe’s Reservation, for a multi-purpose reservoir, generally referred to as the Plum Creek Reservoir, as described in a document called the *1994 Watershed Plan and Environmental Impact Statement*.

The Watershed District denies that the *1994 Watershed Plan* is a binding contract and denies that it obligates the Watershed District to acquire property for the Plum Creek project or for the Tribe.

The defendants, Dexter Davis, Wayne Heiniger, Glenn Hennigan, Leo Wessel, Rodney Lierz, Jim Renyer, Roger Ploeger, David Zeit, and Rodney Heinen, are current or former elected Members of the Watershed District’s Board of Directors, who have each been sued in both their official capacity and as individuals.

Essentially, the Tribe seeks declaratory and monetary relief from the individual Board Members, asserting that they “unlawfully” refused to cast votes in favor of the Watershed District’s alleged obligation to condemn land for the Tribe.

The case was filed in June of 2006 and the parties engaged in some formal and informal discovery, principally the exchange of existing documents. In August of 2007, on the motion of all parties, the case was stayed to allow the parties to pursue settlement. Extensive settlement negotiations took place but were ultimately unsuccessful. The stay of the condemnation claims was lifted in December of 2011 and the Tribe and the Watershed District are now engaged in formal discovery.

Attorney General Kline first retained our firm to represent all of the State defendants, which at the time included the following:

Watershed District and its Board Members;

Greg A. Foley, in his official capacity as Executive Director of the Kansas **State Conservation Commission** (now the Division of Conservation of the Kansas Department of Agriculture);

Brad Swearingen, in his official capacity as President of the Board of Supervisors of **Brown County Conservation District**; and

Timothy J. Burdick, in his official capacity as President of the Board of Supervisors of the **Nemaha County Conservation District**.

We determined that there was a potential conflict of interest so Attorney General Kline retained J. Steven Massoni, a Lawrence attorney, to represent the Brown County Conservation District and the Nemaha County Conservation District.

Attorney General Kline, Attorney General Morrison, and Attorney General Six continued to fund the defense of all of these state defendants until September 23, 2011, when Attorney General Schmidt terminated funding of the defense of the Watershed District and the individual defendants.¹

While the funding for the defense of the Watershed District was terminated, funding for the Brown County Conservation District and the Nemaha County Conservation District continued until they were dismissed from the case *without prejudice* in December of 2011, along with the Kansas State Conservation Commission and others.

Conservation Districts are “state” entities.

In an Attorney General Opinion dated February 18, 1987, addressed to Kenneth F. Kern, then Executive Director of the Kansas State Conservation Commission, Attorney General Stephan opined that County Conservation Districts are state entities for purposes of the Tort Claims Act. The Synopsis in Kan. Atty. Gen. Op. No. 87-31 states:

The Kansas Conservation Commission is an agency of the state. Even though district supervisors and district employees perform functions locally, they act as members of a collective effort to conserve state resources. Therefore, they are to be considered state employees for purposes of the Kansas tort claims act. Our opinion in this matter is to be narrowly construed, as many units of government perform what are essentially parts of an overall state function. However, other such organizations are more easily analyzed by traditional tests.

¹ Former Deputy Attorney General Mike Leitch, who was first hired by Attorney General Morrison and retained by Attorney General Six, expressed reservations about whether Watershed Districts should be covered by the Tort Claims Fund but did not terminate funding.

The Watershed District contends that the factors used by Attorney General Stephan apply fully and completely to Watershed Districts and that they are, therefore, entitled to a defense under the Tort Claims Act.

Watershed Districts are “instrumentalities” of the State

The Tort Claims Fund is implicated only if Watershed Districts meet the definition of the term “state,” which is defined to mean “the state of Kansas and any department or branch of state government, or any agency, authority, institution or other *instrumentality thereof*.” K.S.A. 75-6102(a) (emphasis added). The Watershed District believes that it is clear that both Conservation Districts and Watershed Districts fit this definition, if for no other reason than they are both instrumentalities of the State.

In *Purvis v. Williams*, 276 Kan. 182, 188, 73 P.3d 740 (2003), the Kansas Supreme Court discussed the definition of the word instrumentality stating:

Employing a definitional analysis, Black’s Law Dictionary 802 (7th ed. 1999), defines “instrumentality” as a *thing used to achieve an end or purpose*, or a *means or agency through which a function of another entity is accomplished*. The American Heritage Dictionary 681 (8th edition 1971), defines “instrumentality” as the quality or circumstance of being instrumental. That same source defines “instrumental” as *servicing as an instrument; helpful*, or as of, pertaining to, or accomplished with an instrument. “Instrument” is then further defined as a *means by which something is done; agency, or one used to accomplish some purpose*. (Emphasis added.)

Using this definition of instrumentality, it is clear that the Tort Claims Act definition of “state” includes entities formed, authorized, or otherwise used by the State to carry out duties and functions assigned to them by the Legislature or that advance Kansas public policy objectives established by the Legislature.

The Kansas Legislature has clearly stated that Watershed Districts, like Conservation Districts, are necessary and are integral players in the State’s effort to preserve and protect the State’s land and water resources.

The Legislature has declared that there is a “*public necessity*” to create Watershed Districts in order to protect the natural water supplies belonging to the State of Kansas. K.S.A. 24-1201a (emphasis added). The Legislature has also declared that Watershed Districts are “*necessary*” to further the conservation, development, and utilization of water “thereby preserving and protecting the *state’s land and water resources*.”² *Id.* (emphasis added).

² The Legislature establishes Kansas public policy; that is not the function of the Attorney General’s office. *State ex rel. Londerholm v. Columbia Pictures Corp.*, 197 Kan. 448 (1966) (“The authority to declare the public policy of this state is vested in the legislature ...”). See also *State ex rel. Schneider v. Bennett*, 219 Kan. 285, 300 (1976) and *State, ex rel. v. Columbia Pictures Corporation*, 197 Kan. 448 (1966).

Local units of government are formed for local rather than for State purposes and exist at the pleasure of the State. However, a search through Chapters 12-15 of the Kansas Statutes Annotated reveals no legislative pronouncement that cities, for example, are a “public necessity” or that they are “necessary” to advance the State’s interests, as opposed to local interests.

Watershed Districts, like Conservation Districts, are, in fact, “necessary” instrumentalities of the State because even though Watershed Districts “perform their duties locally, they act as members of a collective effort to accomplish a State program. Kan. Atty. Gen. Op. No. 87-31. Like Conservation Districts, they should be considered State agencies for purposes of the Kansas Tort Claims Act..

Summary of the stated reasons for termination

The Attorney General’s decision to terminate funding was based on differences between Watershed Districts and Conservation Districts that are not substantive. The reasons given were that Watershed Districts have the authority to levy taxes, have the power to exercise eminent domain, and are created either by local petition or by resolution of a Board of County Commissioners. In addition, Conservation Districts are labeled as “governmental subdivisions” of the State. K.S.A. 2010 Supp. 2-1908.

The Watershed District asserts that these distinctions amount to form over function. In fact, each of these factors cut against the Attorney General’s decision to terminate funding of the District’s defense.

Local Funding

The Attorney General asserts that there are differences between Conservation Districts and Watershed Districts because Conservation Districts receive funding from the State. While that is true, in order to receive those funds, County Commissions must match the State’s contributions with local funds, dollar for dollar. K.S.A. 2-1907c. Technically, the State matches the local contribution and the total amount of State funding that any County Conservation District may receive is capped at \$25,000 annually. *Id.*

Thus, Conservation Districts receive money from the State if, and only if, the local County Commission is willing to allocate local funds to the District. Whether or not a local Conservation District is allocated any funds at all is a purely local decision but it is clear that without local funding, State funding is not available.

If a County Commission chooses to allocate less than \$25,000 in local funds, State funds are reduced as well. (If a County allocates only \$10,000 to a local Conservation District, the State will provide a matching amount and the District’s budget will be limited to \$20,000.) On the other hand, if a local Conservation District needs operating funds in excess of \$50,000 (\$25,000 in State funds plus \$25,000 in local funds), it must obtain all of the excess from the County Commission.

In its proposed 2011 budget, Johnson County allocated \$25,000 in local funds to the Johnson County Conservation District.³ This is the bare minimum that Johnson County must allocate to the Conservation District in order to receive the full \$25,000 in State funds. K.S.A. 2-1907c.

In its 2011 budget, the Douglas County Conservation District was allocated local funds in the amount of \$84,150. Its 2010 budget included \$84,150 in local funds and the 2009 actual expenditure was \$85,000 in local funds.⁴ Thus, the Douglas County Conservation District receives only 23% of its budget from the State; the other 77% comes from local sources.

The Nemaha County Conservation District receives local funds that are included in the County budget.⁵ Moreover, it appears that the Nemaha County Conservation District is allocated approximately \$5,400 per month in local funds. (January 31, 2011, \$5,483.75⁶; March 31, 2011, \$5,400⁷; May 31, 2011, \$5,400⁸; July 29, 2011, \$5,400.⁹) Assuming that to be the case, Nemaha County pays nearly \$65,000 to the Nemaha County Conservation District compared to only \$25,000 from the State treasury.

Thus, the Nemaha County Conservation District is a State agency for Tort Claims Act purposes even though it receives only 28% of its operating revenue from the State and over 78% comes from local funds.

In contrast to the maximum 50% match¹⁰ the State provides to Conservation Districts, Watershed Districts receive up to 80% of the cost of the watershed dams they construct for the State. K.A.R. 11-3-2(a) and K.A.R. 11-3-4(b). Moreover, the maximum potential dollar

³ <http://budget.jocogov.org/11Docs/06-16-10%20FY2011%20Department%20Presentations.pdf>.

⁴ http://www.douglas-County.com/depts/as/bu/docs/pdf/bu_Countybudget_2011.pdf?category_id=, page 79.

⁵ <http://ks-1-test.manatron.com/Portals/ks-nemaha/documents/Commissioners/Minutes/unofficial%20minutes/mn09122011.pdf>. (“Chairman Burdick signed the ... 2012 Nemaha County Conservation District Budget as presented.”)

⁶ <http://ks-1-test.manatron.com/Portals/ks-nemaha/documents/Commissioners/Minutes/2011%20minutes/mn01312011.pdf>.

⁷ <http://ks-1-test.manatron.com/Portals/ks-nemaha/documents/Commissioners/Minutes/2011%20minutes/mn04042011.pdf>.

⁸ <http://ks-1-test.manatron.com/Portals/ks-nemaha/documents/Commissioners/Minutes/2011%20minutes/mn05312011.pdf>.

⁹ <http://ks-1-test.manatron.com/Portals/ks-nemaha/documents/Commissioners/Minutes/2011%20minutes/mn08012011.pdf>.

¹⁰ As discussed in the text, Johnson County has a 50% match because it allocates the bare minimum of \$25,000 from local sources to the Johnson County Conservation District while the State provides only a 28% match to the Nemaha County Conservation District.

contribution from the State, up to \$120,000 annually per structure, is much higher for Watershed Districts than for Conservation Districts. *Id.*

Finally, “[m]ost Watershed Districts do not employ full-time staff and do not have an office.”¹¹ Thus, the fact that Conservation Districts receive State funding and Watershed Districts do not is more likely a function of the practical needs of the two entities rather than a substantive difference in the nature of the agencies themselves. Stated another way, Watershed Districts do not have a need for the same kind of State funding that is provided to Conservation Districts.

While we agree that Conservation Districts and Watershed Districts are funded with different mechanisms, a significant portion of Conservation District funding is from local sources. While the same is true for Watershed Districts, it appears that a greater percentage comes from State sources. The fact that Conservation Districts receive State funding does not support the conclusion that Watershed Districts are not instrumentalities of the State.

Authority to levy taxes

It is true that Watershed Districts have authority to levy taxes. However, K.S.A. 2-1907b specifically provides that County Commissioners may pay Conservation Districts from the County general fund in order to allow them to “carry out their duties under this act.” That same provision states that County Commissioners may levy taxes on property within a Conservation District to provide additional monies for operations and to pay principal and interest on bonds.

Thus, both Watershed Districts and Conservation Districts are supported by local tax levies. The authority granted to Watershed Districts to levy taxes is not a meaningful distinction; the fact that Conservation Districts must go through the County Commission simply means that they are one step removed from this power.

In fact, the authority to levy taxes directly is a point in favor of coverage for Watershed Districts. Because Conservation Districts must obtain local funding from the County Commission, and because that funding can be denied at the discretion of the County Commission, and because of the cost-sharing nature of Conservation District funding discussed above, Conservation Districts are much more constrained by local decision makers than Watershed Districts.

The fact that Watershed Districts can levy taxes makes them less subject to local control, allowing them to fulfill their State-mandated responsibilities without the need to obtain permission, and without the risk of interference from local units of government. More importantly, Watershed Districts do not have to compete with other local programs for scarce local dollars.

In stark contrast, because Conservation Districts must obtain funding from County Commissions, they are more subject to local influences and must compete with other programs for funding.

¹¹ <http://scc.ks.gov/node/44>.

The fact that Counties share the State’s interest in the conservation of soil and water, and in furtherance of those interests, create and fund entities like Conservation Districts and Watershed Districts, does not make either of these entities “local.”

Just because the State is able to shift the burden of protecting its interests from the State fisc to local taxpayers does not support the argument that Conservation Districts or Watershed Districts are not instrumentalities of the State. We agree that Conservation Districts are instrumentalities of the State in spite of a great deal of local control. It is clear however, that the power to levy property taxes supports rather than detracts from the argument that Watershed Districts are covered by the Tort Claims Act.

Formation of Watershed Districts

The AG also relied on the fact that Watershed Districts are formed by petition or action of the local County Commission. However, the provision of the Conservation District Act by which Conservation Districts were formed was set out in K.S.A. 2-1905.¹² This section was repealed in 1989, presumably because Conservation Districts covering all parts of the State had been formed and the provision was no longer needed.¹³ Under that provision, Conservation Districts were formed by petition signed by local landowners in a manner very similar to the formation of Watershed Districts pursuant to K.S.A. 24-1203.¹⁴

One of the duties assigned to the State Conservation Commission is an obligation “to disseminate information throughout the State concerning the activities and programs of the Conservation Districts organized hereunder and to *encourage the formation of such districts* in areas where their organization is desirable.” See K.S.A. 2-1904(e)(5) (emphasis added). If Conservation Districts are formed by the State, which they were not, why would the State Conservation Commission need to “encourage” their formation?

While we agree that the formation of Watershed Districts is optional, the previous discussion makes it clear that the continued existence of County Conservation Districts is solely within the control of local County Commissions. Their *de facto* existence depends on the local County Commission’s decision to allocate matching funds each and every year; a County Commission can easily terminate their function by simply eliminating the local funding component.

In contrast, once a Watershed District is formed, the County Commission has no authority to either terminate its existence or to interfere with its funding.

In a related argument, the AG asserted that there are Conservation Districts in every County while Watershed Districts cover only a portion of the State. This is a reflection of the fact that soil conservation is the primary focus of Conservation Districts and soil erosion is caused by both wind and surface water.

¹² L. 1976, Ch. 7, § 1.

¹³ L. 1989, Ch. 5, § 6, effective July 1, 1989.

¹⁴ L. 1976, Ch. 7, § 1.

While the wind blows in all 105 Counties, there are vast differences in annual rainfall. Soil erosion caused by surface water is of greatest concern in the eastern third of the State. I am attaching a map showing the location of the Watershed Districts that have been created across the State. The vast majority of these districts are in the eastern third of the State where rainfall, and thus soil erosion by surface water, is a much greater concern.

It is interesting that the only Watershed Districts in the western half of the State are in the upper Arkansas River basin, which is subject to flooding mainly when there are heavy rains in Colorado. Thus, while the “soil resources of the state” exist in every County, surface water, which is the principal focus of Watershed Districts, is much more heavily concentrated in the eastern third of the State.

The power of eminent domain

The AG also suggests that Watershed Districts have the power of eminent domain but Conservation Districts do not. However, the Kansas Department of Transportation is certainly a State agency and it has been delegated the power of eminent domain. K.S.A. 68-413. On the other hand, there are any number of entities that have not been delegated the power of eminent domain but they are nonetheless State, not local agencies. The fact that Watershed Districts have been delegated the power of eminent domain does not support the argument that they are not instrumentalities of the State.

It seems apparent that the Legislature delegates the power of eminent domain to those State and local entities that need this power in order to carry out their functions. Whether or not a State agency has the power of eminent domain is not related to whether its function is primarily State or local, but is based on the particular agency’s mission.

Moreover, if a local Conservation District needed to acquire real property by condemnation, it would have to convince the local County Commission to exercise this authority on its behalf. The fact that Watershed Districts are able to exercise condemnation authority independent of local control is an argument in favor of their character as State, rather than local entities.

A rose by any other name

The AG’s final argument is based on a label set out in the Conservation District statute. While I understand that the Legislature has labeled Conservation Districts as governmental subdivisions of the State, there is no negative implication that Watershed Districts are not.

We agree that it would have been clearer if the Legislature had specifically labeled Watershed Districts as governmental subdivisions. But the fact that the Watershed District statute was enacted without such a label does not, *ipso facto*, indicate that it is not a State instrumentality.

Instead, the function, purpose, and structure of Watershed Districts as described in the statutory scheme read as a whole makes it abundantly clear that the primary function of Watershed Districts is the conservation of both soil and the State’s surface water.

While the Legislature has said that the soil is an asset of the State,¹⁵ there is no indication in Kansas law that the State claims actual fee title to the vast majority of the soils that are being conserved by Conservation Districts.

In stark contrast, the State has made it abundantly clear that it does have fee title to all of the water resources of the State,¹⁶ including surface water being preserved, protected, and conserved by Watershed Districts as directed by the Legislature in the Watershed District Act and as funded on an annual basis, in large part, by legislative appropriations.

Conservation Commission Handbook

The Conservation Commission prepared and published a comprehensive handbook providing Watershed Districts with detailed guidance about how to operate their programs in compliance with extensive state statutes, oversight, and directives. Under the heading “LIABILITY/TORT CLAIMS ACT,” the January 2008 Watershed District Handbook states:

Accountability is important because as stewards of public funds and a governmental body working with individuals and other entities, legal complications may arise. ***District directors and employees have protection from liability while discharging their official duties.*** According to Watershed District Law K.S.A. 24-1209, watershed districts may sue and be sued in the name of the district. ***The Kansas Tort Claims Act, K.S.A. 75-6101 et seq., covers district directors and employees if acting within the scope of their duties.*** The Attorney General of Kansas determines if fraud or malice is evident. ***A basic goal of the Tort Claims Act is to protect the directors from being personally sued for their actions or omissions. Coverage under the Tort Claims Act means that district officials and employees have liability coverage for damages to others or property while acting within the scope of their duties or employment. In the event of a claim the State Attorney General will represent the district and the State will pay all legal expenses.*** Claims made against a watershed district cannot exceed \$500,000 and are paid by the State of Kansas. (K.S.A. 75-6105) A watershed district may obtain its own insurance to provide for its defense or liability for claims. (K.S.A. 75-6111) This insurance may be purchased from any insurance company. ***The SCC does not recommend a district purchase liability insurance as the Attorney General of Kansas has determined through an official opinion that watershed districts are covered under the Tort Claims Act.***

¹⁵ “It is hereby declared, as a matter of legislative determination: A. *The condition.* That the farm and grazing lands of the state of Kansas are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people...” K.S.A. 2-1902.

¹⁶ “Dedication of use of water. All water within the state of Kansas is hereby dedicated to the use of the people of the state, subject to the control and regulation of the state in the manner herein prescribed.” K.S.A. 82a-702.

When a district does obtain additional liability insurance the limitation of awards in K.S.A. 75-6105 does not apply. The limitation will be fixed at the amount for which insurance coverage has been purchased. If an award is made by the courts, the districts purchased insurance will be awarded before the state tort liability insurance. According to K.S.A. 75-6102, “employee” means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, with or without compensation. The best way to avoid legal liability is to conscientiously perform the job of director; understand the role and responsibilities, keep accurate minutes, go to board meetings, keep well informed of what the district is doing and stay free of any potential conflicts of interest. A district may call upon the county attorney within the district, the State Attorney General and the State Conservation Commission for assistance. The SCC staff can best help a district determine the best source of assistance or information regarding legal questions. Note: Although districts are covered under the Tort Claims Act, it is advisable that districts maintain insurance coverage to protect district property from accidental damage or theft and to cover expenses of an injury. (Emphasis added.)

These provisions, set out in the Watershed District Handbook prepared by the Conservation Commission and its staff for use by Kansas Watershed Districts, make it clear that the Conservation Commission believes that Watershed Districts are “state agencies” for Tort Claims Act purposes. The Commission has advised all of the Watershed Districts in the State that purchasing liability insurance is optional, but is not recommended since Watershed Districts are covered by the Tort Claims Act. Coupled with the opening sentence about stewardship of public funds, the Conservation Commission has sent the message that purchasing liability insurance is a waste of money.

This is persuasive authority for the proposition that the Attorney General’s analysis is focused on differences between Watershed Districts and Conservation Districts that are not substantive from a programmatic standpoint.

Conclusion

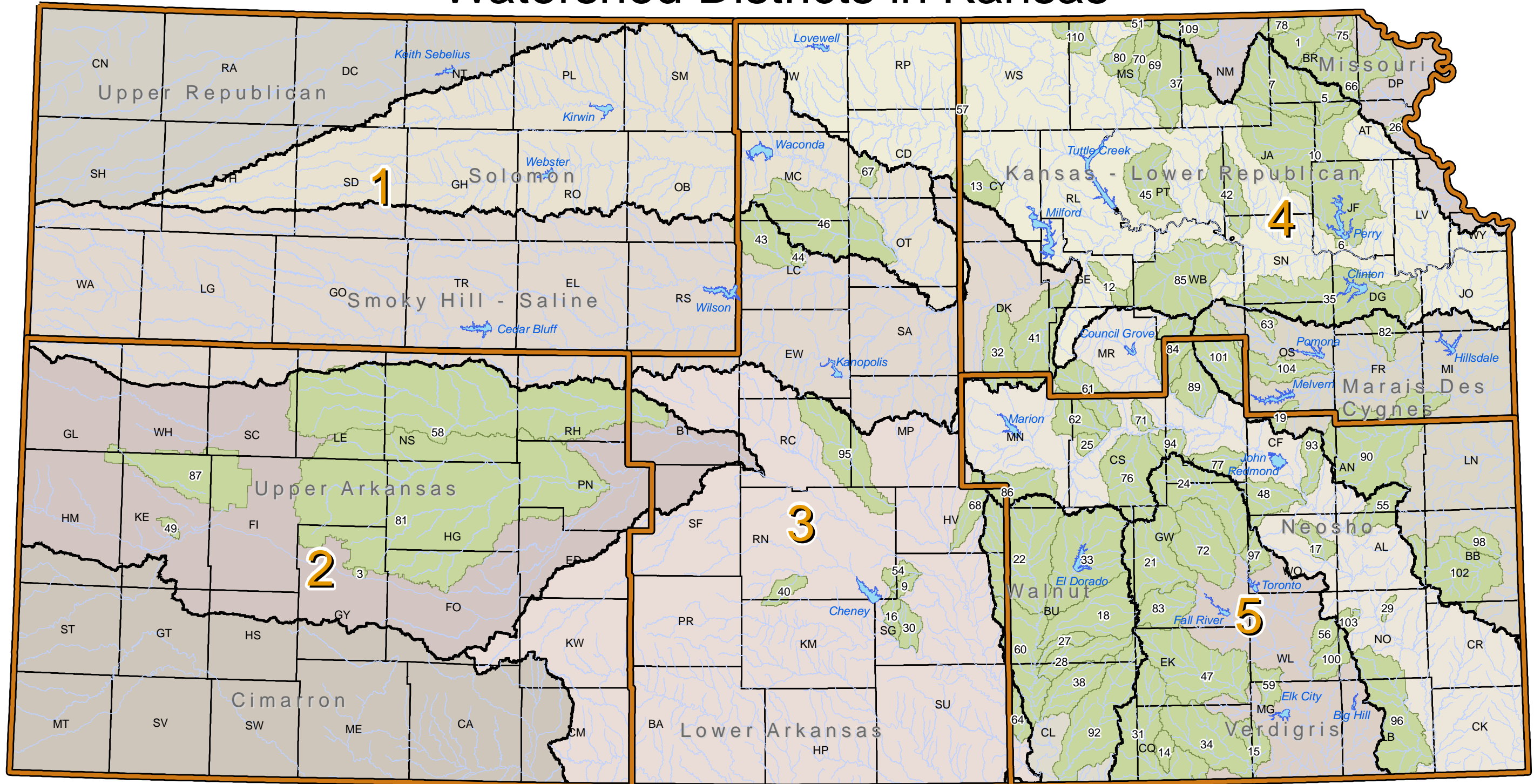
Watershed Districts are “instrumentalities” of the State because, as discussed in Attorney General Opinion No. 87-31, Conservation Districts are State agencies and all of the comparisons between the two entities are favorable. The arguments asserted in support of the decision to terminate funding of the Watershed District’s defense do not support the conclusion reached and the decision should be vacated.

The Watershed District will appreciate your favorable consideration of HB 2553.

Respectfully submitted,

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Watershed Districts in Kansas



Kansas Water Office and State Conservation Commission

August 2006

Legend

-  Federal Lakes
-  Watershed District
-  SCC Area
-  County

| ID | NAME | ID | NAME | ID | NAME | ID | NAME | ID | NAME | ID | NAME | ID | NAME | ID | NAME | ID | NAME |
|----|--------------------------------|----|---------------------------|----|------------------------|----|----------------|----|-----------------------|----|------------------|----|---------------------|-----|-----------------------------|----|------|
| 1 | Walnut Creek | 16 | Spring Creek | 29 | Pecan Creek | 42 | Cross Creek | 56 | Cedar Creek | 68 | Sand Creek | 82 | Tauy Creek | 95 | Upper Little Arkansas River | | |
| 3 | Cimarron | 17 | Cherry-Plum Creek | 30 | Clear Creek | 43 | Spillman Creek | 57 | Dry Creek | 69 | Snipe Creek | 83 | Otter Creek | 96 | Labette-Hackberry Creeks | | |
| 5 | Little Delaware-Mission Creeks | 18 | Little Walnut-Hickory | 31 | Big Caney | 44 | Lost Creek | 58 | Wet Walnut | 70 | Vermillion Creek | 84 | Rock Creek | 97 | Cedar Creek | | |
| 6 | Thompsonville | 19 | Frog Creek | 32 | Turkey Creek | 45 | Rock Creek | 59 | Duck Creek | 71 | Peyton Creek | 85 | Mill Creek | 98 | Mill Creek | | |
| 7 | Nemaha-Brown | 21 | Fall River | 33 | Upper Walnut River | 46 | Salt Creek | 60 | Middle Walnut River | 72 | Walnut-West | 86 | Doyle Creek | 100 | Tri-Creek | | |
| 9 | Andale | 22 | Whitewater River | 34 | Twin Caney | 47 | Elk River | 61 | Diamond Creek | 75 | Roys Creek | 87 | James Draw | 101 | Upper Marais des Cygnes | | |
| 10 | Delaware | 24 | Upper Verdigris | 35 | Wakarusa | 48 | Big Creek | 62 | Middle Creek | 76 | South Fork | 89 | Allen Creek | 102 | Upper Marmaton | | |
| 12 | Humboldt | 25 | Silver Creek | 37 | Upper Black Vermillion | 49 | Lakin | 63 | Switzler Creek | 77 | Eagle Creek | 90 | Pottawatomie Creek | 103 | Turkey Creek | | |
| 13 | Five Creeks | 26 | White Clay-Brewery Creeks | 38 | Timber Creek | 51 | Mission Creek | 64 | Ark-River Tributaries | 78 | Pony Creek | 92 | Grouse-Silver Creek | 104 | Salt Creek | | |
| 14 | Grant-Shanghai | 27 | Muddy Creek | 40 | Goose Creek | 54 | Mount Hope | 66 | Wolf River | 80 | Spring Creek | 93 | Long-Scott Creek | 109 | Turkey Creek | | |
| 15 | Bee Creek | 28 | Rock Creek | 41 | Lyons Creek | 55 | Deer Creek | 67 | Fisher & Criss Creeks | 81 | Pawnee | 94 | Jacobs-Phenis Creek | 110 | Horseshoe Creek | | |