

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Charlie L. Angell at
Chairperson

8:00 a.m./~~p.m.~~ on Thursday, February 2, 1984 in room 123-S of the Capitol.

All members were present except:
Senator Ed Roitz (Excused)

Committee staff present:

Ramon Powers, Research Department
Raney Gilliland, Research Department
Don Hayward, Revisor's Office
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:

Lee Rolfs, Division of Water Resources, State Board of Agriculture
Richard Malm, Jefferson County Commissioner
John Elmore, Kansas City Corps of Engineers
Darrell Montei, Kansas Fish and Game Commission
John Blythe, Kansas Farm Bureau
Mike Beam, Kansas Livestock Association
Fred Allen, Kansas Association of Counties

Senator Gordon moved that the minutes of the February 1, 1984 meeting be approved. Senator Feleciano seconded the motion, and the motion carried.

S.B. 555 - Diversion and transportation of water for use in other states

Lee Rolfs distributed a balloon copy of S.B. 555 (Attachment 1) and explained the minor technical amendments. Senator Werts moved that the bill be amended as shown on the balloon copy. Senator Gordon seconded the motion, and the motion carried. Senator Werts moved that the bill be recommended favorable, as amended, for passage. Vice-Chairman Kerr seconded the motion, and the motion carried 10-0.

S.C.R. 1644 - License requirements between Army Corps of Engineers and fish and game commission;
Re Proposal No. 24

Senator Gordon reviewed the background of the bill. He said that the resolution urges Congress to pass legislation changing the licensing procedures of the Army Corps of Engineers to allow the Fish and Game Commission to pay an in-lieu-of tax to local units of government on land leased from the Corps.

Richard Malm testified in support of S.C.R. 1644. He said it would be the first step in helping the counties receive some revenues from this land. Mr. Malm told the Committee that the county receives 75¢ per acre from the Bureau of Land Management on land which is part of a federal reservoir project. When land is managed by the Corps, the county receives 75% of the cash rent; but when this same land is licensed by Fish and Game, the county receives nothing. Mr. Malm noted that his concerns are not only for county revenues but also for school funding. He said that Jefferson County is being shorted about \$80,000. Answering questions from Senator Hess, Mr. Malm said that the Corps license specifies that any revenues derived off of land leased to the Fish and Game Commission must go back into the project.

John Elmore read his written testimony (Attachment 2). Mr. Elmore described the four basic phases of the Corps' land acquisition policy. He said that the Corps' land management activities in Kansas are governed by specific congressional project authorization, by other federal laws and by internal Corps rules and regulations. He emphasized that agriculture is not an authorized use of project lands and that agricultural leases are only a management tool to accomplish general resource management objectives. Mr. Elmore stated that the federal policy is that state fish and game agencies should be responsible for management of wildlife and fisheries resources on the local level. He added that the Corps enjoys a good relationship with the Kansas Fish and Game Commission. Mr. Elmore answered questions from Committee members.

Darrell Montei discussed the importance of public lands and the high percentage of public use of these lands. He said it is not true that the Fish and Game Commission has no concern for the counties' problems. The Commission in no way feels that a county should support Fish and Game having a management area in their county; but at the same time, neither does the Commission

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources,
room 123-S, Statehouse, at 8:00 a.m./~~XXX~~ on Thursday, February 2, 1984

feel they should support a county. Mr. Montei feels it should be first established that the counties are actually suffering a financial loss; and in that case, to develop an appropriate funding source. He mentioned that the counties receive 75¢ per acre from the Bureau of Land Management; he said many counties have also negotiated a law enforcement contract; and he pointed out other benefits such as increased property valuation and the decrease of some required services.

John Blythe testified in support of the resolution. His organization supports a policy of the Fish and Game Commission paying an in-lieu-of tax. Mr. Blythe agreed with Senator Rehorn's statement that if the land is managed by the Corps, there is one set of rules, but if the land is managed by Fish and Game, there is another set of rules.

Mike Beam summarized his written testimony (Attachment 3) in support of S.C.R. 1644. He stated there is a negative impact to local units of government and landowners when the land is managed by the Fish and Game Commission. He brought up other problems of increased wildlife damage, noxious weeds, increased road maintenance, etc.

Fred Allen testified in support of S.C.R. 1644. He pointed out the resolution only urges that Fish and Game be allowed to make in-lieu-of tax payments but the specifics would still need to be worked out. Mr. Allen said it would be very helpful to have this resolution when they meet with members of Congress in March.

The meeting was adjourned at 8:58 a.m. by the Chairman. The next meeting of the Committee will be at 8:00 a.m. on February 3, 1984.

Senate Energy & Natural Resources

Feb. 2, 1984

<u>Name</u>	<u>Organization</u>
David L. Byrd	DWR, KSBA
Edward S. Rolf	DWR, KSBA
Leonard Eisele	Farm Service Corp. inc.
Roy Dix	Farmer
Chip Wheeler	Ks Legis. Policy Group
Fred Allen	Ks Assoc of Counties
Richard Malm	Jefferson Co.
DAVID JACKSON	CORPS OF ENGINEERS - K.C.
JOHN D. ELMORE	CORPS OF ENGINEERS - KANSAS CITY
EUGENE UPSCHULTE	- - - - -
ALFRED A. BECKER	- - - - -
Jerry Hazlett	Ks Wildlife Federation
DARRELL MONTEI	Ks. FISH & GAME Comm.
Mike Beem	Ks. Luth. Ann.
John Blythe	Ks Farm Bureau
Roy D. Sheppard	N. O. P. L.
Richard D. Kready	KPL / Gas Service Co.

SENATE BILL No. 555

By Committee on Energy and Natural Resources

1-23

0016 AN ACT relating to water; concerning the diversion of water for
0017 use in other states; amending K.S.A. 82a-726 and repealing the
0018 existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 82a-726 is hereby amended to read as fol-
0021 lows: 82a-726. Subject to the provisions of article 7 of chapter 82a
0022 of the Kansas Statutes Annotated and acts amendatory thereof or
0023 supplemental thereto; Any person, firm, city, village, municipal
0024 corporation or any other entity in this state intending to with-
0025 draw ~~divert~~ and transport groundwater ~~water~~ produced from any
0026 well or wells ~~a point or points of diversion~~ located in this state
0027 for use in an adjoining ~~another~~ state, shall make application to
0028 the chief engineer of the division of water resources of the state
0029 board of agriculture for a permit to appropriate water for benefi-
0030 cial use ~~or file an application for change in point of diversion,~~
0031 ~~place of use, type of use or any combination thereof.~~ If the chief
0032 engineer of the division of water resources finds that such
0033 withdrawal and transportation of such groundwater is reason-
0034 able; not contrary to the conservation and use of groundwater
0035 and not otherwise detrimental to the public welfare; he or she
0036 ~~the diversion and transportation of such water complies with~~
0037 ~~the provisions of K.S.A. 1983 Supp. 82a-1501 to 82a-1506, in-~~
0038 ~~clusive, and amendments thereto, and any other state law per-~~
0039 ~~taining to such diversion, transportation and use of water, the~~
0040 chief engineer shall grant a permit therefor ~~if the state in which~~
0041 ~~the water is to be used grants reciprocal rights to withdraw and~~
0042 ~~transport groundwater from that state for use in this state upon~~
0043 ~~such terms, conditions and limitations that the chief engineer~~
0044 ~~deem necessary for the protection of public interest.~~ It

the Kansas water appropriation act, and amendments thereto,

approve such application

Atch. 1

0015 shall be an express condition of any such permit that should the
0016 water subject to such permit be necessary to protect the public
0017 health and safety of the citizens of this state, such permit may
0018 be suspended, modified or revoked by the chief engineer for
0019 such necessity.

, including

any such water

approved application

0050 Sec. 2. K.S.A. 82a-726 is hereby repealed.

0051 Sec. 3. This act shall take effect and be in force from and
0052 after its publication in the statute book.

GOOD MORNING MR. CHAIRMAN. MY NAME IS JOHN ELMORE. I AM THE CHIEF OF THE OPERATIONS DIVISION FOR THE KANSAS CITY DISTRICT CORPS OF ENGINEERS. I HAVE THREE OTHER MEMBERS OF THE DISTRICT STAFF WITH ME THIS AFTERNOON.

MR. GENE UPSCHULTE, CHIEF, REAL ESTATE DIVISION

MR. AL BECKER, CHIEF, MANAGEMENT & DISPOSAL BRANCH,
REAL ESTATE DIVISION

MR. DAVID JACKSON, CHIEF, NATURAL RESOURCES MANAGEMENT
BRANCH

I FELT IT MIGHT BE BENEFICIAL TO PROVIDE A SHORT PREPARED STATEMENT THAT ADDRESSES CORPS OF ENGINEERS REAL ESTATE AND LAND MANAGEMENT PRACTICES. SUBSEQUENT TO THAT PRESENTATION, I AND OTHER MEMBERS OF THE STAFF WILL RESPOND TO YOUR QUESTIONS. SHOULD YOU HAVE QUESTIONS DURING MY PRESENTATION, PLEASE FEEL FREE TO VOICE THEM AT ANY TIME.

LAND ACQUISITION

REAL ESTATE REQUIREMENTS FOR MULTI-PURPOSE PROJECTS ARE BASED UPON ENGINEERING AND OPERATIONAL PLANS AND THE APPLICATION OF NORMAL REAL ESTATE PRACTICES. THE SIZE OF THE PROJECT DEPENDS ON AUTHORIZED PROJECT PURPOSES SUCH AS FLOOD CONTROL, NAVIGATION, HYDROPOWER, WATER SUPPLY AND IRRIGATION. OTHER PROJECT FEATURES SUCH AS RECREATION, FISH AND WILDLIFE ENHANCEMENT AND MITIGATION MAY REQUIRE ADDITIONAL LAND BEYOND PROJECT WATER STORAGE NEEDS.

THE CORPS ACQUISITION POLICY HAS EVOLVED THROUGH FOUR BASIC PHASES. PRIOR TO 1953, LANDS FOR LAKE PROJECTS WERE ACQUIRED IN ACCORDANCE WITH A LIBERAL CRITERIA, BASED ON PROJECT REQUIREMENTS, REASONABLE ACQUISITION BOUNDARY LINES, AND LOCAL CONDITIONS AND ATTITUDES.

THE FIRST JOINT DEPARTMENT OF INTERIOR AND ARMY POLICY RELATIVE TO THE ACQUISITION OF LAND WAS ADOPTED IN 1953 AND IS GENERALLY REFERRED TO AS THE EISENHOWER POLICY. IT PROVIDED FOR FEE ACQUISITION OF A 300-FOOT BLOCK-OUT OF THE CONSERVATION POOL,

OR FEE ACQUISITION TO THE FIVE-YEAR FLOOD FREQUENCY, AT AGENCY DISCRETION. "BLOCKING-OUT" REFERS TO THE REAL ESTATE PRACTICE OF SELECTING STRAIGHT BOUNDARY LINES TO CONNECT ONE POINT TO ANOTHER POINT IN ORDER TO ENCOMPASS A RESERVOIR PROJECT AND, THUS, PROVIDE A MORE READILY IDENTIFIABLE AND MORE EASILY SURVEYED PROJECT.

THE ARMY CHOSE TO APPLY THE FIVE-YEAR FLOOD FREQUENCY IN ALL CASES. THE CORPS IMPLEMENTATION OF THIS POLICY WAS CRITICIZED BY THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS FOR NOT PERMITTING EFFICIENT OR FULL PROTECTION AND DEVELOPMENT OF RECREATION, SCENIC AND FISH AND WILDLIFE RESOURCES. THE POMONA, WILSON, MILFORD AND TUTTLE CREEK PROJECTS ARE EXAMPLES OF THE EISENHOWER POLICY.

BECAUSE OF THE CRITICISM OF THE HOUSE COMMITTEE, A NEW POLICY WAS DEVELOPED IN 1962. THIS POLICY PROVIDED FOR ACQUISITION IN FEE TO A 300-FOOT BLOCK-OUT OF THE FLOOD CONTROL POOL OR TO THE MAXIMUM FLOWAGE LINE, WHICHEVER WAS GREATER. THIS PROVIDED

FOR LANDS TO MEET PRESENT AND FUTURE REQUIREMENTS AS AUTHORIZED BY CONGRESS FOR OUTDOOR RECREATION AND FISH AND WILDLIFE ENHANCEMENT. THE PERRY, CLINTON AND MELVERN PROJECTS ARE EXAMPLES OF THIS ACQUISITION POLICY.

IN 1971, THE ARMY REVISED ITS POLICY TO PROVIDE UNIFORMITY WITH THE DEPARTMENT OF INTERIOR. THE REVISION PROVIDED THAT FEE BE ACQUIRED TO THE GREATER OF 300 FEET HORIZONTALLY FROM THE TOP OF THE CONSERVATION POOL OR THE TOP OF THE MAXIMUM FLOWAGE LINE. THIS 300 FOOT "BUFFER ZONE" WAS SELECTED BY BOTH THE DEPARTMENTS OF THE ARMY AND INTERIOR AS THE MINIMUM LAND AREA GENERALLY NEEDED FOR REALIZATION OF RESOURCE MANAGEMENT. HILLSDALE PROJECT LANDS WERE ACQUIRED UNDER THIS POLICY.

LAND MANAGEMENT ACTIVITIES

CORPS' LAND MANAGEMENT ACTIVITIES AT KANSAS WATER RESOURCE DEVELOPMENT PROJECTS ARE GOVERNED BY THE SPECIFIC CONGRESSIONAL PROJECT AUTHORIZATION, BY OTHER FEDERAL LAWS, AND BY INTERNAL CORPS OF ENGINEERS RULES AND REGULATIONS. PROJECT AUTHORIZATIONS DESCRIBE

BROAD PROJECT PURPOSES AND GIVE THE CORPS THE AUTHORITY TO CONSTRUCT AND SUBSEQUENTLY OPERATE THE PROJECT FOR THOSE PURPOSES.

OTHER FEDERAL LAWS DEALING WITH PROTECTION OF THE ENVIRONMENT, METHODS OF USE OF PROJECT LANDS AND DISPOSITION OF REVENUES COLLECTED FROM LAND MANAGEMENT PROGRAMS ALSO PLAY A MAJOR ROLE IN PROJECT DEVELOPMENT AND OPERATION.

THE SECRETARY OF THE ARMY POSSESSES AUTHORITY TO LEASE OR LICENSE FEDERAL WATER PROJECT LANDS FOR A VARIETY OF PUBLIC PURPOSES INCLUDING FISH AND WILDLIFE CONSERVATION. SECTION 4 OF THE FLOOD CONTROL ACT OF 1944, 58 STAT. 889, AS AMENDED, 16 USC 460D, AUTHORIZES THE SECRETARY OF ARMY TO LEASE OR LICENSE LANDS AT CORPS OF ENGINEERS WATER RESOURCE DEVELOPMENT PROJECTS TO STATE WILDLIFE AGENCIES FOR DEVELOPMENT AND CONSERVATION OF FISH AND WILDLIFE. THE LAW ALSO PROVIDES THAT THE LICENSEE OR LESSEE MAY BE AUTHORIZED TO CUT TIMBER AND HARVEST CROPS AS MAY BE NECESSARY TO FURTHER SUCH BENEFICIAL USES AND TO COLLECT AND UTILIZE THE PROCEEDS OF ANY SALES OF TIMBER AND CROPS IN THE DEVELOPMENT, CONSERVATION, MAINTENANCE AND UTILIZATION OF

SUCH LANDS. THE CORPS OF ENGINEERS ADMINISTERS THIS LAW BY REQUIRING STATE FISH AND GAME AGENCIES TO SUBMIT ANNUAL MANAGEMENT PLANS AND ACCOUNT FOR CROP REVENUES EXPENDED ON EACH PROJECT LICENSED AREA. ANY MONIES NOT UTILIZED BY THE STATE TO DEFRAY AREA MANAGEMENT EXPENSES ARE TO BE PAID TO THE CORPS AT FIVE-YEAR INTERVALS AND ARE DEPOSITED IN THE US TREASURY.

THESE TYPES OF RECEIPTS ARE NOT SUBJECT TO PROVISIONS OF SECTION 7 OF FLOOD CONTROL ACT OF 1941, 55 STAT. 650, AS AMENDED AND 33USC 701C-3 THAT PROVIDES THAT 75% OF ALL CORPS OF ENGINEERS LEASE REVENUES ARE TO BE PAID TO THE STATES INVOLVED. THIS LEGISLATION WAS ENACTED TO PROVIDE SOME MEASURE OF COMPENSATION TO THE LOCAL TAXING UNITS FOR THE LOSS OF TAXES WHICH RESULTS WHEN LANDS ACQUIRED BY THE FEDERAL GOVERNMENT FOR FLOOD-CONTROL PURPOSES ARE REMOVED FROM THE LOCAL TAX ROLLS. (SENATE REPORT NO. 151, 83D CONGRESS 1ST SESSION 1953)

THE CORPS OF ENGINEERS WOULD LIKE TO EMPHASIZE THAT AGRICULTURE IS NOT AN AUTHORIZED USE OF PROJECT LANDS AND THAT AGRICULTURAL LEASES ARE ONLY A MANAGEMENT TOOL TO ACCOMPLISH GENERAL RESOURCE

MANAGEMENT OBJECTIVES INCLUDING FISH AND WILDLIFE PROTECTION AND MANAGEMENT.

THE FISH & WILDLIFE COORDINATION ACT OF 12 AUGUST 1958 (16 USC ET SEQ) REQUIRED THAT FEDERAL WATER RESOURCES DEVELOPMENT AGENCIES CONSULT WITH THE US FISH AND WILDLIFE SERVICE AND STATE FISH AND GAME AGENCIES WITH A VIEW TO THE CONSERVATION OF WILDLIFE RESOURCES. THE INTENT OF THE ACT IS TO PREVENT LOSS OF OR DAMAGE TO SUCH RESOURCES AS WELL AS TO PROVIDE FOR THE DEVELOPMENT AND IMPROVEMENT THEREOF IN CONNECTION WITH SUCH WATER RESOURCE PROJECTS.

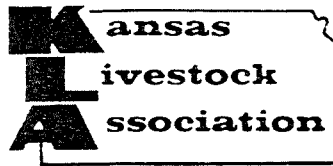
SECTION 3 OF THE COORDINATION ACT DIRECTS THAT PROJECT PLANNING INCLUDE PROVISIONS FOR THE USE OF PROJECT LANDS AND WATERS FOR THE CONSERVATION, MAINTENANCE AND MANAGEMENT OF WILDLIFE RESOURCES AND HABITATS. THE USE OF PROJECT LANDS FOR THAT PURPOSE IS FORMALIZED IN GENERAL PLANS APPROVED JOINTLY BY THE FISH AND WILDLIFE SERVICE, THE CORPS AND THE STATE FISH AND WILDLIFE AGENCY. THOSE IDENTIFIED PROJECT LANDS ARE MADE AVAILABLE WITHOUT COST (BY A LICENSING AGREEMENT) FOR ADMINISTRATION

BY THE STATE AGENCY. IN THE KANSAS CITY DISTRICT, GENERAL PLANS HAVE BEEN FORMALIZED FOR THE WILSON, TUTTLE CREEK, MILFORD, PERRY, CLINTON, MELVERN AND POMONA PROJECTS, AND LANDS HAVE BEEN SUBSEQUENTLY LICENSED TO THE KANSAS FISH AND GAME COMMISSION AT ALL THOSE PROJECTS EXCEPT POMONA.

IT HAS BEEN A LONG-STANDING FEDERAL POLICY THAT STATE FISH AND GAME AGENCIES SHOULD BE RESPONSIBLE FOR MANAGEMENT OF WILDLIFE AND FISHERIES RESOURCES ON THE LOCAL LEVEL. INVOLVEMENT IN MANAGEMENT BY THE US FISH AND WILDLIFE SERVICE OCCURS ONLY WHEN SPECIES AFFECTING THE NATIONAL INTEREST ARE CONCERNED (ENDANGERED SPECIES AND MIGRATORY WATERFOWL). CORPS ACTIVITIES, TO DATE, THAT HAVE EMPHASIZED STATE MANAGEMENT OF WILDLIFE LANDS AT OUR LAKE PROJECTS, ARE CONSISTENT WITH THAT OVERALL FEDERAL POLICY. WE HAVE IN THE PAST, AND WILL IN THE FUTURE, WHEN DEVELOPING PLANS FOR MANAGEMENT AND PROTECTION OF PUBLIC LANDS WITH WILDLIFE MANAGEMENT POTENTIAL, GIVE HIGH PRIORITY TO ANY STATE DESIRE TO COOPERATE IN MANAGEMENT OF LANDS AT ANY CORPS PROJECT IN KANSAS.

THAT SUMMARIZES OUR REAL ESTATE AND LAND MANAGEMENT PRACTICES.

I WOULD LIKE TO CONCLUDE MY PRESENTATION BY STATING THAT WE
HAVE AND DO ENJOY A GOOD RELATIONSHIP WITH THE KANSAS FISH
& GAME COMMISSION. WE HAVE BENEFITED FROM OUR COOPERATIVE
MANAGEMENT AGREEMENT AND I AM SURE THAT THE CITIZENS OF KANSAS
HAVE ALSO BEEN BENEFICIARIES.



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Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

Statement of the
KANSAS LIVESTOCK ASSOCIATION
to the
SENATE ENERGY & NATURAL RESOURCES COMMITTEE
Sen. Charlie Angell, Chairman

in support of

SCR1644

presented by

Mike Beam
Executive Secretary
Cow-Calf/Stocker Division

February 2, 1984

Mr. Chairman and members of the committee, I am Mike Beam representing the 9,000 members of the Kansas Livestock Association. As most of you know, KLA members are farmers and ranchers who are involved in all segments of agricultural production. The Kansas Livestock Association supports SCR 1644.

This legislation was proposed by the Special Interim Committee on Energy & Natural Resources following a study of Proposal #24 - "Land Around Federal Reservoirs and Other Recreational Areas".

Please note that the language of this concurrent resolution states that the United States Army Corps of Engineers has licensed (leased) over 106,000 acres of land to the Kansas Fish & Game Commission. The Kansas Livestock Association supports this bill because when the Fish & Game Commission licenses Corps land it results in a negative financial impact on local units of government and adjacent landowners.

Many Kansas farmers/ranchers, marinas or other entities lease Army Corps of Engineers land in Kansas. The Corps remits approximately 75% of this lease revenue to counties where the land is located. The current Army Corps of Engineers policy states that revenues derived from land licensed to and under the management of the Fish & Game Commission must be spent on the licensed area and prohibits any payment to compensate the local taxing units for lost property tax revenues.

Because of this policy Corps land which is licensed to the Fish & Game Commission has a significant negative financial impact to local units of government.

Atch. 3

Local farmers, tenants and rural people in general are also negatively impacted by Fish & Game managed land designed for public hunting and wildlife habitat. During the committee hearings this summer KLA members indicated they had had numerous problems with wildlife damage to crops and livestock facilities. Our members near public hunting areas continually experience difficulties controlling trespassing by hunters on private land.

This summer a Jefferson county commissioner told the interim committee that because of the Fish & Game managed public hunting land the cost of road maintenance, law enforcement and medical services increased.

The Kansas Livestock Association fully agrees with the interim committee's recommendation to introduce SCR1644 to memorialize Congress to amend the procedures by which the Corps licenses land to the Kansas Fish & Game Commission. Because of the negative impact the Fish & Game licensed land has to local units of government, agricultural producers and rural citizens, it's important that the United States Army Corps of Engineers change its current policy. We urge this committee's support of SCR 1644.

Thank you.