

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Ron Fox at
Chairperson

3:30 ~~xxx~~ a.m./p.m. on February 27, 1985 in room 313-S of the Capitol.

All members were present except:

All members were present.

Committee staff present:

Ramon Powers, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Mr. Thomas Stiles, Kansas Water Office
David L. Pope, Chief Engineer-Director, Division of Water
Resources, Kansas State Board of Agriculture
Mr. Ken Brunson, Kansas Fish and Game Commission
Marsha Marshall, Kansas Natural Resource Council
Jan Garton, Manhattan, Kansas
Paul E. Fleener, Director, Public Affairs Division,
Kansas Farm Bureau
Rich McKee, Executive Secretary, Feedlot Division,
Kansas Livestock Association
Helen Stephens, League of Women Voters of Kansas
(Submitted written testimony only)

Chairman Ron Fox called the committee's attention to the minutes of the February 12, February 18, February 19, February 20 and February 25 meetings, which had been passed out. The hearing then began on House Bill 2235--Minimum desirable streamflows for certain water courses.

Mr. Tom stiles, a staff member of the Kansas Water Office, told the committee that he had been chiefly responsible for establishing and developing the policies and values of minimum desirable streamflows. He used several charts to illustrate the points listed in his written testimony. (Attachment 1) Mr. Stiles discussed several questions of committee members following his presentation.

Mr. David Pope, Chief Engineer, said that his office would administer the program if House Bill 2335 were passed, but cautioned that these would be complex responsibilities which would require additional staff and other related expenses. (Attachment 2) Mr. Pope commented that he was not an opponent or proponent of this bill, but he felt that the fiscal note on it represented the minimum administrative costs expected to occur from the program. (Attachment 3) Several committee members had questions for Mr. Pope.

Mr. Ken Brunson represented the Kansas Fish and Game Commission. He said that his agency endorsed House Bill 2335 and saw no need for further study before adopting the standards recommended in it. He noted a sense of urgency due to the rates of water depletion in recent years and felt that these modest minimum desirable streamflows were critically important. (Attachment 4)

Marsha Marshall spoke as a representative of the Kansas Natural Resource Council. She said that her organization strongly supported the minimum streamflow standards for the watercourses listed in New Section 2 of House Bill 2335. She commented that KNRC encouraged the Water Office to set flows high enough to prevent irreversible damage from occurring in the future. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

room 313-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on February 27, 1985.

Jan Garton of Manhattan, Kansas, endorsed the concept of minimum streamflow protection. However, she requested the committee to consider increasing the levels of protection to levels that would be more meaningful, especially in the western portion of the state. She offered four recommendations on page 2 of her written testimony. (Attachment 6)

Mr. Paul Fleener, representing Kansas Farm Bureau, testified in opposition to House Bill 2335. His organization believed that an exhaustive study should be made by this legislature or a committee created by this legislature or a committee designated by this legislature to examine all aspects of designation of minimum desirable streamflow. (Attachment 7) Considerable discussion followed Mr. Fleener's presentation.

Mr. Rich McKee, representing the Kansas Livestock Association, listed some concerns of members of his organization. One concern was related to the status of senior water rights (granted on or before April 12, 1984) after a minimum desirable streamflow has been established. Another concern was the conflicting signals being sent out by various agencies of both state and national governments related to water runoff, etc. (Attachment 8)

The written testimony submitted by Helen Stephens of the League of Women Voters of Kansas supported the passage of House Bill 2335 and endorsed the concepts of the state water plan regarding minimum desirable streamflow. (Attachment 9)

The meeting was adjourned at 5:15 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held on March 4, 1985 at 3:30 p.m. in Room 313-S.

Testimony of
Kansas Water Office
on
H.B. 2335
Minimum Desirable Streamflows
House Energy and Natural Resources Committee
February 27, 1985

Attachment 1 -- 2/27/85
Energy and Natural Resources

1. Minimum Desirable Streamflows Set in 1984
 - Neosho River
 - Cottonwood River
 - Marais des Cygnes River
 - Little Arkansas River

2. Minimum Desirable Streamflows Proposed in 1985
 - Middle reaches of Arkansas River
 - Rattlesnake Creek
 - North Fork, South Fork, Mainstem Ninnescah River

Purposes of Minimum Desirable Streamflows

1. Preserve, maintain or enhance instream water uses relative to water quality, fish, wildlife, aquatic life, recreation and general aesthetics (K.S.A. 82a-928(9)).
2. Management tool for Chief Engineer in granting new appropriations.
3. "Preventive medicine, not corrective surgery."

Derivation of Minimum Desirable Streamflows

1. Input by Other Agencies
 - a. Kansas Fish and Game Commission (fishery needs)
 - b. Kansas Department of Health and Environment (water quality needs)
 - c. Division of Water Resources (water rights and hydrology)
 - d. Groundwater Management District No. 5 (groundwater hydrology)
2. Hydrologic Analysis - Flow Duration Curves - Minimum Desirable Streamflow met 80 to 95 Percent of Time
3. Negotiations

Factors Affecting Flows

1. Colorado
 - Arkansas Compact dispute
 - Ditch rights priority (to Garden City)
 - Increased groundwater use
2. Flow in Arkansas River
 - Severe declines
 - No recharge to region
3. Precipitation
 - High in spring
 - Below normal in summer
 - No recharge, high demand for groundwater
4. Existing Water Rights
 - Cheyenne Bottoms (30,000 acre-feet at 80 cfs)
 - Quivira (22,200 acre-feet at 300 cfs)
5. Groundwater Appropriations
 - 140,000 acre-feet in 1974 in Big Bend Prairie
 - 940,000 acre-feet in 1984 in Big Bend Prairie
 - Approximately 70 percent use annually
 - Safe yield has been cut from 6,000 acre-feet to 3,000 acre-feet
6. Conservation Practices
 - Retain runoff: 40-50 percent reduction in 1930-1950 streamflows
 - Reduce alluvial recharge from runoff
 - Enhance percolation and baseflows
7. Trees
 - Diurnal consumptive use
 - Stream flush after frost
 - Estimated use of South Fork Solomon = 30,000 acre-feet \approx 151 wells
(750 wells around Rattlesnake Creek)
 - No evidence of significant dewatering by phreatophytes
 - Amount of vegetation along stream has been constant over time yet
stream depletion has increased in last few years

Administration of Minimum Desirable Streamflows

1. Administration of Rights
 - Junior (April 12, 1984) - subject to shut down (surface or groundwater)
 - Existing rights - subject to approved rate and quantity
2. Approval of New Appropriations
 - Denial - lack of water
 - Conditional to minimum desirable streamflow
 - Setback of wells from stream
3. Reach Determination
 - Gaging station not indicative of entire stream
 - Kinsley - Larned
 - Macksville - St. John
 - Administration based on expected significant results, thus administration of right far upstream or far from channel would not occur
4. Discretion is left to Chief Engineer in administration
 - Case by case assessment
 - Remedial administrative action

Summary

1. Flows are intended as a guideline and water management tool.
2. Many factors affect flows, none preclude setting minimum desirable streamflows at recommended levels.
3. Recommended flows are the most reliable under present hydrologic conditions.
4. Chief Engineer should have flexibility in administration.
5. Existing water appropriations cannot be shut down by minimum desirable streamflows.

STATEMENT OF DAVID L. POPE
CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE

TO HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HOUSE BILL NO. 2335
FEBRUARY 27, 1985

Chairman Fox and Members of the Committee, thank you for the opportunity to comment on House Bill No. 2335 pertaining to the establishment of minimum desirable streamflows. House Bill No. 2335 would amend K.S.A. 82a-703a regarding the procedure to establish minimum desirable streamflows for any watercourse in this state. This would be consistent with other proposed changes regarding the adoption of the State Water Plan, which current law requires to be adopted by reference. Last year Senate Bill No. 735 adopted by reference minimum desirable streamflows for four rivers in Kansas: the Marais des Cygne, the Neosho, the Cottonwood and the Little Arkansas. Each of these four rivers are also included in new section 2 of this bill because of the proposed change in method of adoption. In addition, House Bill No. 2335 includes proposed minimum desirable streamflow requirements for several additional streams including portions of the Arkansas River, Rattlesnake Creek, North Fork Ninnescah River, South Fork Ninnescah River and the Ninnescah River.

The Division of Water Resources, Kansas State Board of Agriculture, has had an opportunity to provide input into the development of proposed minimum desirable streamflows through an interagency technical committee working closely with the Kansas Water Office. The proposal for minimum desirable streamflow standards on the five new stream reaches contained in House Bill No. 2335 is the result of extensive discussions and negotiations

between the water related agencies and has resulted in the best consensus of opinion between those agencies, taking into consideration extensive public input at the public meetings and hearings, as to what those minimum desirable streamflows should be. The Division is satisfied with the process that took place in order to set those minimum desirable streamflow values which are being brought before the legislature for approval this year.

If the legislature enacts legislation establishing these minimum desirable streamflows, it would be the responsibility of the Chief Engineer to withhold from appropriation that amount of water deemed necessary to establish and maintain for the identified watercourse the desired minimum streamflow. In other words, our office would be required to determine whether or not there was sufficient water available for appropriation in excess of the amount of water deemed necessary to satisfy the existing senior water rights and the minimum desirable streamflow requirements. In those cases where additional water is not available, additional permits for the appropriation of water would not be granted. If water is available a significant portion of the time, new appropriations would be granted, however, these appropriation rights would be junior to the minimum desirable streamflow requirements. Any such junior appropriation would be subject to regulation during periods of low flow and would not be allowed to divert water when the minimum desirable streamflow requirements were not being satisfied. These proposed minimum desirable streamflows would not affect the holders of existing senior water rights with a priority date on or before April 12, 1984, except that we would need to more closely monitor compliance with the conditions of their permits during times of streamflow administration.

Since groundwater withdrawals from wells in the alluvial aquifer along these streams can significantly affect the streamflow, I would also antici-

pate the possible designation of an alluvial corridor along several of these streams wherein new wells would not be allowed. I feel it would be impractical to authorize a new well to be drilled near such a stream and then attempt to regulate that well during periods of low flow because of the complex interrelationship between surface and ground water and the lag effect of the groundwater pumpage.

In closing, I would simply say that my office stands ready and willing to administer this program if House Bill No. 2335 is passed. However, I would call to your attention the fact that these are complex responsibilities and would require additional staff and other related expenses. The five stream reaches involved represent approximately 400 miles of stream in a ten county area of south central Kansas. We feel our fiscal note on the bill represents the minimum administrative costs expected to occur from the program.

Thank you very much. I would be happy to answer any questions the Committee might have.

Fiscal Note
1985 Session
February 21, 1985

Bill No.

The Honorable Ron Fox, Chairperson
Committee on Energy and Natural Resources
House of Representatives
Third Floor, Statehouse

523-5

Dear Representative Fox:

SUBJECT: Fiscal Note for House Bill No. 2335 by Committee
on Energy and Natural Resources

In accordance with K.S.A. 75-3715a, the following fiscal note concerning House Bill No. 2335 is respectfully submitted to your committee.

House Bill No. 2335 establishes minimum streamflow standards for five additional rivers: the Arkansas, Rattlesnake Creek, the North Fork Ninnescah, the South Fork Ninnescah, and the Ninnescah. These standards are as recommended by the Minimum Desirable Streamflow subsection of the State Water Plan as submitted to the 1985 Legislature. Also, due to a procedural change in the law, minimum streamflow standards set for four streams last year are reestablished. These streams are the Neosho, the Cottonwood, the Marais des Cygnes, and the Little Arkansas.

The State Board of Agriculture, Division of Water Resources, is responsible for protecting these standards during periods of low-flow. The agency estimates that two additional hydrologists will be necessary to adequately administer these standards. Total first-year costs are estimated at \$61,284, including \$51,684 for salaries and wages. These amounts do not include salary plan revision costs.

In summary, enactment of House Bill No. 2335 would require expenditures of \$61,284 in FY 1986, exclusive of any salary plan revision. These expenditures would be from the State General Fund and are in addition to amounts included in the FY 1986 Governor's Budget Report.

Alden K. Shields
Alden K. Shields
Director of the Budget

AKS:DN:dh

Attachment 3 -- 2/27/85
Energy and Natural Resources

STATE WATER PLAN/MINIMUM DESIRABLE STREAMFLOWS
TESTIMONY PRESENTED TO THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
by the
KANSAS FISH AND GAME COMMISSION
February 27, 1985

The Kansas Fish and Game Commission endorses House Bill No. 2335. We recognize that this bill includes minimum desirable streamflow recommendations for nine streams including four which received flow standards adopted by the 1984 Kansas Legislature. We again support the flow levels established for the initial segments, the Marais des Cygnes, Neosho, Cottonwood, and Little Arkansas Rivers and see no reason for modifying those amounts.

The new streams as part of this second year's effort include the Arkansas River from Kinsley to Hutchinson, Rattlesnake Creek, the Ninnescah River and both of its branches. While we consider the entire minimum desirable streamflow effort very important, protected flows for these four streams carry even more significance. These streams lie on the cutting edge of some very serious water depletion problems. At the same time, they support some of Kansas' finest public and wildlife resources. Two major wetlands receive their principle water supplies from two of these streams. A diversion dam and canal system delivers water from the Arkansas River to Cheyenne Bottoms which is managed by this agency. Quivera National Wildlife Refuge obtains its water supply from Rattlesnake Creek and is managed by the U.S. Fish and Wildlife Service. These two areas are the most important marshes in the central waterfowl flyway. As more marshland is drained every year in Kansas and the nation, the extreme importance of maintaining these large wetlands becomes even more pronounced. While we recognize that the recommended minimum desirable streamflows for the Arkansas River at Kinsley and Rattlesnake Creek are very low in late summer and early fall when water is needed for fall marsh habitat, we believe that these protected volumes may help assure at least some water for these areas. The South Fork Ninnescah River is very important to Kansas because it provides most of the water to the state's principle fish hatchery at Pratt. Although our new hatchery at Milford will absorb the lead role in fish production in the near future, the Pratt hatchery will remain in operation and will continue to depend on reliable river flows for a substantial portion of its water. All of these streams provide many public use benefits in the form of fishing, hunting, trapping, and water based recreation.

It is appropriate that the state promulgate flow protection standards as part of the State Water Plan. Fish and wildlife populations are publicly owned and water in these streams and the aquifers that feed them are held in public trust and available for appropriation to beneficial uses. Before water rights are granted for beneficial uses, the state must consider if those rights may be in the public interest. The appropriation statutes are not specific on the subject of public interest considerations, therefore, the exact nature of how public interest is evaluated by the Division of Water Resources in granting water rights is vague at best. These recommended flows provide the state and specifically the Chief Engineer of the Division of Water Resources clear numerical guidance on the matter of public interest.

These standards before you today are the culmination of intensive hydrological and biological assessments, interagency negotiation sessions and public review. A water hearing held at Larned on November 20 of last year illustrated that there is a definite public interest in seeing protected flows set for the Arkansas River, Rattlesnake Creek, and the Ninnescah River and its branches. The recommended flows also meet the test of reasonableness in that they have been shown to be achievable

80 to 90 percent of the time. Certainly, one to three cubic feet per second, as is recommended for summer flows for three of these streams, cannot be considered unrealistic. We see no need for further study before these standards are adopted as suggested by some. Conversely, there is a sense of urgency given the rates of water depletion in recent years in this area of the state. Additionally, sufficient safeguards are already built into these recommendations since senior water right holders are unaffected and potential reassessment of flows for the Arkansas River and Rattlesnake Creek due to lag effects of groundwater withdrawals is already acknowledged.

We cannot claim that these recommended minimum desirable streamflows are ideal for fish and wildlife resources of these streams. The Kansas Fish and Game Commission recognizes that initial recommendations are based on predicted impacts to fisheries given varying flow levels and do not address associated riparian wildlife needs. Regardless, these modest minimum desirable streamflows are critically important. Their adoption will signal a true commitment by the citizens of this state in properly managing public trust resources and seeing to it that some of them are left over for future generations to enjoy.

Kansas Natural Resource Council

Testimony
before the
House Energy and Natural Resources Committee
on
HB 2335, concerning minimum streamflows
presented by
Marsha Marshall
February 27, 1985

KNRC strongly supports minimum streamflow standards for the water-courses listed in New Section 2 of this bill. The protection of minimum streamflows is a judicious action which recognizes the inherent value of these rivers, apart from their capacity to meet consumptive uses. Minimum streamflows also recognize the value of instream flows for wildlife, fish, recreation, and aesthetic purposes.

Nonconsumptive uses aside, the condition of our streams is also a prime indicator of the environment's ability to support our lives and economic activity. Policies which have been hostile to our streams, particularly in western Kansas, are ultimately hostile to our agriculture, economy, and communities. With minimum streamflow legislation we are beginning to modify these past policies and are assuring the continued health and vitality of rivers and streams.

KNRC supports higher standards, in some cases, than those proposed in this bill. For example, proposed standards for the upper Arkansas at Kinsley and Great Bend set flows below averages over the last 10 years, and these recent averages are, in turn, less than historic levels prior to 1974. Rather than endorsing further declines, we support preserving our present diminished streamflows at the very least.

Standards should preserve options for the future and should avoid irreparable damage to the habitat and wildlife. If we discover down the road that standards were initially set too low, it will be difficult to raise them. Once the water has been appropriated to other uses, the state will have a hard time recovering water rights for streamflow. On the other hand, if time and experience show that the standards are too high, they may be more easily lowered by an act of the legislature.

KNRC supports the process of setting minimum streamflow standards, and we encourage the Water Office to set flows high enough to prevent irreversible damage from occurring in the future.

Attachment 5 -- 2/27/85
Energy and Natural Resources

Testimony on minimum desirable streamflow recommendations

Jan Garton
219 Westwood
Manhattan, Ks. 66502

November 20, 1984

In some ways, the idea of establishing minimum desirable streamflow levels is a sad one for it indicates what little regard man has had for his environment and what little empathy he has for his natural surroundings. Because we value water not for its natural bounty, but for what we can make it do for us, we are here now, attempting to decide how little water we can leave in a stream bed and still say that it flows.

Without question, I do support the protection of in-stream flows to preserve our natural environment. Our streams, creeks and rivers sustained enormous wildlife populations and produced bountiful crops of trees, ferns and grasses before they ever watered cattle or corn.

The Kansas legislature wrote into the state water plan the provision for "...the identification of minimum desirable streamflows to preserve, maintain or enhance in-stream water uses relative to water quality, fish, wildlife, aquatic life, recreation and general aesthetics." This says to me quite clearly that the purity of stream water and the life it provides to wildlife populations should be uppermost in establishing the minimum levels of streamflow.

Minimum streamflows can certainly be considered life warrants, because they protect our native rivers and creeks from total dewatering. But they are also death warrants, because they set the limits of the available habitat. If you are going to sign a death warrant, at the least you should know these two things: who is going to die, and how many will die.

This knowledge should extend to the populations that live in the water and those dependent on the habitat created by the water. Has the negotiating committee made an effort to determine the effect of the proposed flows on Quivira National Wildlife Refuge, a wetland area designated as a critical habitat by the U.S. Fish and Wildlife Service? What impact will these flows have on the status of the vulnerable population of whooping cranes?

It is unfair to the people of Kansas to produce minimum streamflow recommendations in terms of cubic feet per second without being able to explain to them what that means in terms of life and death, or what that means to the quality of their water.

If the people of Kansas are to be involved in the development of the state water plan and in making decisions that will affect them and their children, then they ought to be able to clearly understand the issues and the consequences of their decisions. This they cannot do with respect to minimum streamflows.

Therefore, I make these recommendations:

- (1) That this year's minimum streamflow recommendations be raised so that no designated flow is below those suggested by the Kansas Fish and Game Commission.
- (2) That models be developed so that the impacts of minimum streamflow levels upon riparian habitat, fisheries and terrestrial wildlife populations can be predicted, and that methods be developed to determine the impact of low flows on Quivira NWR and other downstream habitats.
- (3) That groundwater development within the alluvium of all streams under consideration for minimum streamflow protection be barred.
- (4) That once models have been developed, future minimum streamflow protection be negotiated on the basis of life levels, so it will be clear what kind of population and habitat losses will be incurred by proposed minimum streamflows.

I think it is appropriate to remark here that minimum streamflow protections, as invaluable as they may be, are still attempts to deal with the symptoms and not the causes of dewatering problems. Until we address the problem of overappropriated water supplies, the incentive will be to support the very lowest levels of streamflow protection. This is costly, not only to the environment, but to our children, for they will ultimately inherit our mistakes and failures -- or our courage and foresight.

When streamflows for the Arkansas, the Rattlesnake and the Ninnescah are established, they should be meaningful. They should reflect the goal set by the legislature to preserve, maintain or enhance wildlife opportunities and water quality. I ask the committee to re-evaluate its recommendations in light of probable severe impacts on wildlife populations and habitats.

Statement to:
HOUSE ENERGY & NATURAL RESOURCES COMMITTEE

RE: H.B. 2335 - Establishment of Minimum Desirable Streamflows
for Certain Watercourses
February 27, 1985
Topeka, Kansas

Presented by:
Paul E. Fleener, Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee:

Attached to our statement you will find one page of water-related policy positions adopted by the voting delegates at our most recent Kansas Farm Bureau annual meeting, held in Wichita on December 2-4, 1984. The focus of our comments will be from one paragraph of one policy position relating to water quality standards. Before addressing that statement and the topic of H.B. 2335 let me first indicate to you agriculture, the largest user of water in Kansas, is vitally concerned with every aspect of water law in the state. On September 14, 1984 we prepared and provided for our members three research papers on:

* WATER LAW ADMINISTRATION IN KANSAS

Duties and responsibilities of State Agencies

* WATER PLANNING AND WATER MANAGEMENT IN KANSAS

A Brief History

* WATER QUALITY AND WATER CONSERVATION IN KANSAS.

These papers were examined carefully by members across Kansas and in every county. In addition to this information a number of our members gleaned and gave information at the public input meetings held by the Kansas Water Office in its development and refinement of the Kansas Water Plan.

At our December, 1984 annual meeting new language was added to an already existing policy position on Water Quality Standards. That new language is as follows:

We recognize the need for reasonable standards to protect and maintain the quality of our surface waters and groundwater. We are not convinced that establishment of "minimum desirable streamflows" is the solution to water quality problems. We believe additional study of the economic and environmental impact of legislation or regulation requiring minimum streamflow is necessary. We oppose additional minimum streamflow designations until such studies are completed.

Mr. Chairman, and Members of the Committee, there are 65 recommendations from the Kansas Water Office and Kansas Water Authority relating to the Kansas Water Plan. Recommendation #20 is the pivotal recommendation of three relating to ~~existing~~^{minimum} desirable streamflows. This recommendation is embodied in H.B. 2335 which seeks to designate minimum desirable streamflow requirements for additional watercourses in Kansas.

As the members of this Committee know, minimum streamflows were approved for the Marais des Cygnes, Neosho, Cottonwood and Little Arkansas Rivers by the 1984 Legislature. And I'm quoting directly from the recommendation page regarding minimum desirable streamflows . . . "The 1984 Legislature also passed a law effectively establishing April 12, 1984 as the priority date for all minimum desirable streamflows established before July 1, 1990. Minimum streamflows have been recommended for the Arkansas River, Ninnescah River and Rattlesnake Creek." In the papers provided to each member of this Committee and to your colleagues in the House and Senate there is an explanation that the initial year cost of the establishment of minimum desirable streamflows for the Rattlesnake Creek, North Fork of the Ninnescah River, South Fork of the Ninnescah River and the Ninnescah River is \$60,000. After that it is estimated by the Kansas Water Office that the annual cost of examining, maintaining and administering minimum streamflow requirements for these additional watercourses will be \$200,000 per year.

Mr. Chairman and Members of the Committee, the administration necessary to maintain minimum desirable streamflows is a responsibility of the Division of Water Resources. The Kansas Water Appropriation Act states in part:

Whenever the Legislature approves any section or amendment of the State Water Plan which identifies a minimum desirable streamflow for any watercourse in this state . . . , the Chief Engineer shall withhold from appropriation that amount of water

deemed necessary to establish and maintain for the identified watercourse the desired minimum streamflow.

A water right is a property right. The Water Office in its description of minimum desirable streamflows has indicated that "one option is for the state to condemn and purchase senior rights in order to achieve some minimum desirable streamflows." The Water Office and Water Authority reject that option as being too expensive and likely to "precipitate long and costly legal proceedings." However the recommendation is made and the statement is contained in the management section dealing with minimum desirable streamflows that "existing rights on priority streams may be used to achieve minimum desirable streamflows."

As our policy position indicated we are opposed to the establishment of additional watercourses for minimum desirable streamflow designation until an exhaustive study has been made of the economic and environmental impact of such designation, maintenance and administration of minimum streamflows. An exhaustive study was not undertaken in the development of the State Water Plan. That is not to dilute nor diminish the study and effort and input that was given this topic. However, designation of minimum desirable streamflows ¹⁵ ~~gives~~ of such magnitude and import that our people believe a thorough study, either by this Legislature or a committee created by this Legislature, or a committee designated by this Legislature to examine all aspects of designation of minimum desirable streamflow should be undertaken. We think that is not too much to ask given the nature of the

watercourse of this state . . . given the nature of rainfall patterns in this state, and given the language contained in the management section that tells how (methodology) and when such streamflow designations should be achieved.

On page 6 of the final draft of the subsection of the Kansas Water Plan dealing with minimum desirable streamflows it is indicated that 12 items will be considered by the Kansas Water Office when recommending minimum desirable streamflows. The first three relate to aquatic life, ambient water quality, and recreational and aesthetic considerations before water appropriation rights are even listed. Further it is not until the 12th point (1) that economic considerations of administration and future development is or will be considered.

In conclusion Mr. Chairman, and Members of the Committee, we oppose H.B. 2335. We urge this committee to report unfavorably this piece of legislation. We further urge this committee to initiate legislation to establish a comprehensive committee of Legislators, appropriate state agency personnel, and Water Office and Water Authority staff and members to thoroughly examine not only those watercourses named in this legislation for designation of minimum desirable streamflows but all other watercourses in the state where, prior to 1990, it is expected, hoped or anticipated by the Kansas Water Office that minimum desirable streamflows will be in place. As the report of the Water Office indicates, again quoting from the Water Plan, "A minimum desirable streamflow plan cannot create water where water does not exist." We believe much

more examination needs to go into this topic before there is any additional legislation designating watercourses in this state for minimum desirable streamflow requirements.

Thank you for the opportunity to present our views.

Soil and Water Conservation

We believe the owners and operators of agricultural land can best be served by a voluntary approach to soil conservation using federal and state cost-sharing funds as an incentive for developing and maintaining farm plans, and constructing and maintaining soil and water conservation structures. We ask the Kansas Legislature to adequately fund the state share of cost-sharing programs.

An intensive educational program conducted by the KSU Agricultural Extension Service, in cooperation with the Soil Conservation Service, the Soil Conservation Districts, and county Farm Bureaus, could improve our rangeland and cultural practices on cultivated acres.

We believe KDOT and county highway departments should require that highway construction procedures are conducted in such a way that soil conservation practices are implemented. We further believe pipeline companies, as well as electric and telephone utilities, should be required to preserve and replace top soil, and to reseed those portions of native grass pastures disturbed during construction of underground facility projects.

State Water Agencies

Water is one of our most precious and important natural resources. All segments of our population and all component parts of our economy require an adequate supply of water.

We will continue to oppose changes in Kansas water laws that would result in major reorganization of state water agencies. We believe that a separation of powers and a system of checks and balances in the administration of water programs gives Kansans a better result than any further consolidation would produce.

State Water Policy

We support development of a State Water Plan for Kansas. We believe the Kansas Water Authority should have responsibility for development of the State Water Plan. The Authority should be the agency for water management in Kansas.

The State Water Plan should promote conservation of water by all users. It should also contain far-sighted, well-conceived, and carefully controlled use of international, interstate, and intrastate transfers of water to benefit agricultural producers and all other Kansans.

We urge the KWA to incorporate into the State Water Plan a strong conservation ethic, and methodology for recycling water to extend the life of this limited resource.

Water Districts

We recognize the benefits of Rural Water Districts. Those benefits should be assured by legislation and regulations that guarantee and protect water rights for original rural water district patrons.

We will support legislation—both on a national and state level—that will make funds available for grants to be used in the construction of Rural Water Districts.

We will support legislation—both on a national and state level—that will finance, through federal funds (Farmers Home Administration), Rural Water Districts from watershed structures.

Water Management in Kansas

Kansas farmers and ranchers recognize the importance of securing a Kansas water right as provided by law.

We support the Kansas Ground Water Management District Act, as amended in the 1978 Session of the Kansas Legislature, which gives local water users a voice in determining the use of ground water. Irrigation wells within a GWMD should not be subject to "user fees."

We encourage our members to participate in the organization and management of Ground Water Management Districts. Through participation they will be in a position to have an effective voice in calling for any needed changes, additions or deletions to the Ground Water Management District Act.

Water Quality Standards

We recognize the need for reasonable standards to protect and maintain the quality of our surface waters and groundwater. We are not convinced that establishment of "minimum desirable streamflows" is the solution to water quality problems. We believe additional study of the economic and environmental impact of legislation or regulation requiring minimum streamflow is necessary. We oppose additional minimum streamflow designations until such studies are completed.

We urge the Legislature to make adequate appropriation of funds, to assure that the agency or agencies responsible for issuance of well drilling permits and the maintenance of water quality are enforcing existing statutes and regulations relating to salt water disposal and proper plugging of dry holes.

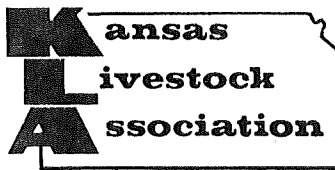
The Kansas Corporation Commission and the Department of Health and Environment should, prior to giving approval for disposal of salt brines, determine that the proposed method of disposal will assure that there will be no contamination of any fresh water. No well drilled on leased property should be used for disposal of salt water from wells on other property without consent from and compensation to the landowner. The power of eminent domain should NOT be granted for the purpose of salt brine disposal.

We ask that legislation be enacted to require that surface pipes shall be set to a depth sufficient to protect all fresh water formations from contamination.

Watershed Programs

There are many urgently needed watershed structures yet to be built in Kansas. We request that funding for those structures, furnished by the state and supervised by the State Conservation Commission, be increased to facilitate and encourage this statewide program.

In order to expedite planning and construction of watersheds, we urge the Kansas Legislature to consider permissive legislation authorizing the levy of one mill on the acreage of potential watershed areas for a period no longer than two years for the purpose of creating a trust fund, with the annual interest earned from such trust fund to be used for planning expenses involved in new watershed projects.



2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

Statement of the
KANSAS LIVESTOCK ASSOCIATION
to the
House Committee on Energy and Natural Resources
Rep. Ron Fox, Chairman
with respect to
Minimum Desirable Stream Flows

presented by

Rich McKee
Executive Secretary
Feedlot Division

February 27, 1985

Mr. Chairman and members of the committee, my name is Rich McKee and I'm here today to represent the members of the Kansas Livestock Association. KLA is a statewide voluntary association of livestock producers. Our association represents the entire spectrum of beef cattle production including cow-calf operators, stocker operators and feeders. In addition, KLA also represents swine and sheep producers. A large percentage of our membership is also engaged in farming and crop production activities. For many years our association has actively participated in the legislative process to represent the best interests of Kansas agriculture generally, the livestock producing segment specifically. We appreciate the chance to appear before your committee to share with you some of our views and experiences relative to minimum desirable stream flows.

There are several questions and/or clarifications that our members have concerning minimum desirable stream flows. The first concern is the status of senior water rights (granted on or before April 12, 1984) after a minimum desirable stream flow has been established. There seems to be conflicting wording in the final draft and the summary of the final draft of the Kansas Water Plan. To this point, HB 2335 which concerns the establishment of minimum desirable stream flows, could become more palatable to the membership of KLA if it was clarified within this bill that no existing water rights with priority dates on or before April 12, 1984, would be reduced or eliminated to the proposed minimum desirable stream flows.

Attachment 8 -- 2/27/85
Energy and Natural Resources

One other concern we have in regard to any minimum desirable stream flow designated by the legislature is the conflicting signals being sent out by various agencies of both state and national governments. For years, the Soil Conservation Service has encouraged decreased water runoff from agricultural lands. To a great extent, this objective has been met due to the continual efforts of innovative and practical management techniques. The continued request for the establishment of additional minimum desirable stream flows sends conflicting signals to the farmers and ranchers who nurture and care for the land and water resources they have available. On the one hand, government agencies are asking our members to prevent water runoff while another agency seemingly asks for more runoff.

Finally, Mr. Chairman and members of the committee, we hope any decisions you make in regard to minimum desirable stream flows are done so with due regard for landowners who live and depend on this resource for their livelihood.

LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

909 Topeka Boulevard-Annex

913/354-7478

Topeka, Kansas 66612

HOUSE ENERGY AND NATURAL RESOURCES

February 28, 1985

House Bill No. 2335

Mr. Chairman and Members of the Committee:

The League of Women Voters of Kansas supports passage of H.B. 2335 and wholeheartly endorses the concepts set forth in the State Water Plan regarding Minimum Desirable Streamflow.

It is our thought that sometime in the future the legislature will have to consider reviewing the Appropriation Act to allow the Chief Engineer the right to limit, but not cut off, the quantity of water presently received by Senior Right Holders.

We commend the Water Office for the clarification in their methodology of how minimum streamflows are determined, and in the administration of same.

Again, we support passage of this legislation.

Thank you.

Helen Stephens
League of Women Voters of Kansas



Big Bend Groundwater Management District No. 5

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

February 27, 1985

The Honorable Ron Fox
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Dear Representative Fox:

Please find enclosed, written testimony, to be presented to the House Energy and Natural Resources Committee from the Big Bend Groundwater Management District #5.

Due to illness, Manager Ralph Davis could not present the testimony in person.

I appreciate your attention towards this matter. Thank you.

Sincerely,

Sharon Falk
Assistant Manager

SF/sjs
enc.

Attachment 10 -- 2/27/85
Energy and Natural Resources



Big Bend Groundwater Management District No. 5

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

MINIMUM DESIRABLE STREAMFLOW
TESTIMONY FROM BIG BEND GMD #5
PRESENTED TO THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
FEBRUARY 28, 1985

The Big Bend Groundwater Management District #5 supports the general concept of minimum desirable streamflow. The district also supports the streamflow values that have been proposed for the streams under consideration. The proposed streamflow values accurately reflect the quantity of water available at the present. The district feels that the proposed values should be subject to re-evaluation in the future because the full impact of existing groundwater appropriation in the region have not yet been assessed.

There is also a great deal of concern about the method of administration for maintaining the proposed streamflows. It is not clear how groundwater rights junior to April 12, 1984 will be dealt with. A poorly devised administrative scheme will only serve to penalize certain junior groundwater users without actually maintaining the proposed minimum desirable streamflows.