

Approved 3-26-85
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by SENATOR MERRILL WERTS at
Chairperson

8:00 a.m./XXX p.m. on MARCH 20, 1985 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers - Research Department
Don Hayward - Revisor's Office
Nancy Jones - Committee Secretary

Conferees appearing before the committee:

Tom Stiles - Kansas Water Office, Water Resource Manager
Bob Binder - Kansas Water Authority, Chairman, Minimum Desirable Streamflow
Committee
David Pope - Water Resource Division, Chief Engineer
Ken Brunson - Kansas Fish and Game, Fisheries Division
Marsha Marshall - Kansas Natural Resource Council
Helen Stephen - League of Women Voters
Paul Fleenor - Kansas Farm Bureau

HB 2335 - Relating to minimum desirable streamflow

Tom Stiles testified the Kansas Water Office through HB 2335 is proposing minimum desirable streamflows for five additional streams in central Kansas for 1985. Mr. Stiles explains the purposes of minimum desirable streamflows is to preserve and maintain water quality and wildlife and to enhance recreations among agencies and public meetings throughout the state have been held. (Attachment A).

Bob Binder of Hays reviewed written testimony supporting HB 2335. Public meetings were held by the Kansas Water Authority relating to the five new streams under consideration. Although there is valid criticism, there needs to be establishment of minimum streamflow on these rivers. The minimum desirable streamflows do not have priority over existing water rights and efforts made in land treatment and conservation will not be sacrificed. The goal of the Kansas Water Authority is to maintain some water where possible in Kansas streams and this is viewed as the first step. (Attachment B);

A special point was made that as of last evening Fort Hays State University is the NAIA Basketball Champion for the second consecutive year and deserves recognition by the committee.

David Pope, testifying in support of HB 2335, stated his written statement re-inforces the issues outlined by previous conferees. The enactment of this bill would aid the further implementation of the Kansas Water plan. Changes proposed are a result of extensive public input and negotiations among agencies. The Chief Engineer has the responsibility to withhold from appropriation the water necessary to maintain desired minimum streamflow. If water is available, new permits would be granted and their rights would be junior to minimum desirable streamflow requirements. Mr. Pope anticipates the establishment of alluvial corridors along streams wherein new wells perhaps would not be allowed except for domestic use. Administration of this program would require additional staff and related expenses. (Attachment C).

Replying to a question from Senator Werts, Mr. Pope said orders were issued last year for all commercial users, small industries and irrigators, who were using water from rivers with designated minimum flows, to install meters in order to monitor water usage. The cost is approximately \$500 or higher per meter.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 123-S, Statehouse, at 8:00 a.m. ~~AM~~ PM on MARCH 20, 1985

Senator Kerr commented that there had been very little if any discussion during public hearings on the water plan regarding the establishing of alluvial corridors for purposes of allowing no new water permits. He suggested that further study of the relationship between alluvial aquifers and streamflow should be conducted before decisions are made to close stream corridors to new water permits.

Ken Brunson appeared in support of HB 2335. He stated that streams being considered have critical water depletion problems and flow protection standards are needed. There is a pronounced need to protect the marshlands, major wetlands and the flow for the state's two fish hatcheries. The Fish and Game Commission endorses HB 2335 as a commitment to manage public trust resources. (Attachment D).

Helen Stephens stated the League of Women Voters solidly endorses the concepts of the State Water Plan and the setting of minimum streamflow standards. Without HB 2335, there will be further depletion of a valuable resource. It is suggested a review by the Chief Engineer of the quantity of water used by all water right holders should be considered in the future by the legislature as changes may be necessary. (Attachment E).

Marsha Marshall stated the Kansas Natural Resource Council feels protection of streamflows is a judicious action. With such legislation, previous policies which were hostile to the environment are being modified. Standards should be set to avoid irreparable damage to habitat and wildlife. (Attachment F).

Paul Fleenor appeared as an opponent of HB 2335. He stated that rarely did minimum streamflows become the focus of attention in public hearings held on the State Water Plan. Water quality statement of the Farm Bureau was amended after public hearings as they are not convinced establishment of minimum desirable streamflow is the solution to water quality problems and additional designations. Members are concerned about the April 12, 1984 moratorium established for junior rights and appropriations being scaled down and diminished. He stated that exhaustive study has not been given to this topic and suggests this is not the time to establish more minimum desirable streamflow designations. More opportunity for discussion of the impact of the alluvial corridor proposal should be provided through public meetings. The Farm Bureau suggests the committee report this legislation unfavorably until significant study is made by all agencies involved. (Attachment G).

Written testimony on minimum desirable streamflow was received from Jan Garton. (Attachment H).

The meeting was adjourned by the Chairman.

3-10-85

Guest List

Bill J. Liddleman	- Kinsley	
Ed Reinert	Topeka	Ks League Women Voters
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Bob Bender	Hayes	Ks KWA
Ken Brunson	Pratt, Ks.	Ks. Fish + Game Comm.
Tom Sales	Topeka	Kansas Water Office
Orren Lopez	Victoria	Ks Ass. Cons. Dist
David Pope	Topeka	DWR, KSBA
Bill Roseman	Winfield	Kansas Farm Bureau
Gerald E. Lawrence	Winfield	Kansas Farm Bureau
Roger Chadwell	Tairwin	Kansas Farm Bureau
Cuba Caldwell	Parsons, Ks.	
Leslie E. Relf	Topeka, Ks.	DWR - KSBA
Jerry Hylton	Topeka	Ks. Wildlife Fed.
Denny Burger	Wamego	Ks Wildlife Fed
Dorothy Ruby	Bunker Hill	Kansas. K.F.B.
Jaye Campbell	Beloit	" "
Kenny D. Hess	Topeka	Kan Dept. Health + Envir.
Dean Plinsky	Tescott	Kansas Farm Bureau
Douglas Rosebrook	Lincoln	" " "
Lois Rosebrook	Lincoln	Ks. Farm Bureau
Loris Plinsky	Tescott	Ks Farm Bureau
Rebecca Conshaw	Topeka	Comm. Farm Orgs.

Testimony of
Kansas Water Office
on
H.B. 2335
Minimum Desirable Streamflows
Before the
Senate Energy and Natural Resources Committee

March 20, 1985

S.E. LIND 3/20/85
Attachment A

MDS Streams

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 (Kinsley, Great Bend, Hutchinson)
 - Rattlesnake Creek (Macksville, Zenith)
 - 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." - Will not put water in stream.

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 Streamflows usually met 80 to 95 percent of time (baseflow dominated)
3. Negotiations among agencies in autumn
4. Public meetings and hearings

Factors Affecting Flows

1. Colorado
Arkansas Compact dispute
Ditch rights priority (to Garden City)
Increased groundwater use because of deficient streamflows
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 in summer
4. Existing Water Rights
Cheyenne Bottoms (30,000 acre-feet at 80 cfs) - Arkansas River
Quivira (22,000 acre-feet at 300 cfs) - Rattlesnake Creek
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
Largest estimate of use (South Fork Solomon) = 30,000 acre-feet, conservatively equivalent to 151 wells (750 wells around Rattlesnake Creek)
No evidence of significant dewatering by vegetation
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
Conditioned 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 rights 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 water management tool for future appropriations
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

Testimony by Robert Binder, Kansas Water Authority
to
Senate Energy and Natural Resources Committee Hearing
1985 Legislature
on HB 2335: Minimum Desirable Streamflows
March 20, 1985

3-20-85

The Kansas Water Authority has been committed to establishing minimum desirable streamflows in Kansas since 1982. In 1984, the Kansas Water Authority submitted to the Legislature a section of the State Water Plan on minimum desirable streamflows which outlined procedures for establishing, monitoring and administering minimum desirable streamflows, as well as recommended minimum desirable streamflow values for the Marais des Cygnes, Neosho, Cottonwood and Little Arkansas rivers. The Legislature, through Senate Bill 735, adopted those minimum desirable streamflows as well as passed Senate Bill 497, which effectively established April 12, 1984, as the priority date for all minimum desirable streamflows established from now until 1990.

In appropriation

For the 1985 Legislature, flow values are recommended for the Arkansas River at Kinsley, Great Bend and Hutchinson; Rattlesnake Creek and the North Fork, South Fork and mainstem of the Ninnescah River. These values were recommended by the committee of state agencies and Groundwater Management District No. 5 and approved by the Authority in December.

The public has certainly been involved in considerations of these flow recommendations. (190)

On November 7, the Kansas Water Authority and Kansas Water Office conducted two public meetings on the specific minimum desirable streamflow values at Hutchinson and Pratt. Comments at

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ATTACHMENT B

the Hutchinson meeting were concerned with environmental protection. The comments at the Pratt meeting were concerned with the effect of these flow values on existing rights and new irrigation in the area. Approximately 150 people attended the two meetings. On November 20, the Kansas Water Authority conducted a public hearing in Larned on minimum desirable streamflows. Twenty-five individuals gave oral testimony in regard to the minimum desirable streamflow section and 50 individuals or organizations submitted written testimony to the Kansas Water Office at the hearing or in the week following the public hearing. Approximately 200 people were present at the hearing.

Although criticism is valid on certain points, those points do not preclude the establishment of minimum desirable streamflows at locations along the rivers. Furthermore, the Kansas Fish and Game Commission and Groundwater Management District No. 5 have testified in support of both the concept of minimum desirable streamflows and the flow values as they are presented.

The Kansas Water Authority recognizes the complex interaction between surface and groundwater in the Great Bend Prairie area. We also recognize the limitations in establishing minimum desirable streamflows along the rivers which traverse the Great Bend Prairie. The Kansas Water Authority reiterates that minimum desirable streamflows do not have priority over existing water rights. We do not intend minimum desirable streamflows to sacrifice the efforts made in land treatment and conservation practices.

Nonetheless, establishing the minimum desirable streamflows

at the selected points along the streams in this area provides some protection to the stream as well as to existing rights by providing guidance to the Chief Engineer in granting future appropriations of surface and groundwater in this area. The Kansas Water Authority defers to the professional judgment of the Chief Engineer and his staff in the actual administration of these minimum desirable streamflows. The flows are not intended to be met 100 percent of the time. They are recommended, recognizing that they would fall short at times due to existing appropriations, conservation practices and natural climatic factors. Nonetheless, the Kansas Water Authority has made it a goal to maintain some water where possible in the streams of Kansas and the Kansas Water Authority views establishing minimum desirable streamflows as a first step toward achieving that goal. The Water Authority recommends approval of House Bill 2335 on minimum desirable streamflows. Thank you.

3-20

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

TO SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HOUSE BILL NO. 2335
MARCH 20, 1985

Chairman Werts 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

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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.

STATE WATER PLAN/MINIMUM DESIRABLE STREAMFLOWS
TESTIMONY PRESENTED TO THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
by the
KANSAS FISH AND GAME COMMISSION
March 20, 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 five 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,

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ATTACHMENT D

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.

LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

909 Topeka Boulevard-Annex

913/354-7478

Topeka, Kansas 66612

SENATE ENERGY AND NATURAL RESOURCES

March 20, 1985

House Bill No. 2335

Mr. Chairman and Members of the Committee:

My name is Helen Stephens, representing the League of Women Voters of Kansas.

The League has completed two studies on Water Resources Management; one in 1977 and a second in 1984. Attached to my testimony, is our 1984 position paper.

The League of Women Voters of Kansas supports passage of H. B. 2335 and solidly endorses the concepts set forth in the State Water Plan regarding Minimum Desirable Streamflow. We do not have the expertise to say the flows being set are too high or too low, but we do believe the Kansas Water Office has found, at least for the present, a balance that is appropriate for preserving our water resources and acceptable to the citizens of Kansas.

It has been argued that H.B. 2335 should not be passed until further studies have been completed. League believes the studies have been completed and the flows set forth are a solid beginning towards preserving what we have. If this bill is not passed and further studies are done without setting flows, we are allowing a valuable resource to be depleted without proper planning and management. A prime component of the State Water Plan is the continuing, ongoing evaluation and planning of our resources. If, in fact, some streamflows are found to be too high or too low, this continuing process will allow for changes to be made.

A second point being argued is Section 1 of H.B. 2335 -- the withholding of water from appropriation to maintain minimum streamflow. This, as you know, applies to only Junior Rights (those acquired after April 12, 1984) -- not to all rights. Those holding rights acquired after this date have those rights knowing of the restrictions that apply. We believe there is not a full understanding as to who is affected by this April 12, 1984 date.

The League of Women Voters believes the restrictions placed on Junior Rights is a giant step towards proper management and planning of the water resources of Kansas. It is our belief that sometime in the future the Legislature will have to consider a review of the Appropriation Act to allow the Chief Engineer the right to review regularly and possibly revise both the purpose of and quantity of water used by all water right holders. We came to this consensus realizing that it would not be a popular concept and also realizing that the present rate of usage cannot continue if we want to preserve our water and its quality.

We commend the Kansas 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 House Bill No. 2335.

Thank you for the opportunity to present our views.

Helen Stephens
J. E. HARR 3/20/85
ATTACHMENT E

WATER RESOURCES MANAGEMENT

Background: The League of Women Voters of Kansas undertook a study of the supply, use and quality of water in Kansas in 1977. The statement of position was announced in December 1978 and was first approved by Convention delegates in 1979. In 1984, the League again studied water issues under the title of "Water Resources Management in Kansas". This statement of position encompasses points of member agreement from both the 1977 and 1984 consensuses.

Statement of Position: The League of Women Voters of Kansas recognizes that water is a natural resource basic to the present and future well-being of Kansas citizens and to the economy of the State. A continuous supply of water must be maintained within Kansas through conservation and the use of best available management procedures. Because of inequitable distribution, variable quality, and competition for water, there must be orderly planning for water supply, uses and quality and strict enforcement of water laws, regulations, and management procedures.

In order to achieve this, the League supports the following:

PLANNING AND IMPLEMENTATION

Short-term and long-term planning for Kansas water resources should consider all non-polluted and polluted waters of the state. Planning should address, but not be limited to, new water sources, water quality, wildlife management, flood control and recreation. The planning process must include input from all levels of government---federal, state and local. Development and maintenance of water supplies should be implemented by the State and local governments, with one goal being potable water for all citizens.

The League recommends the following policies for water resources management:

1. Development of research, data collection and information systems.
2. Establishment of water management districts for rivers basins or subbasins.
3. Inclusion of soil, economic and environmental impacts.
4. Requirement of conservation plans from municipal, agricultural and industrial users.
5. Development of drought contingency plans.
6. Use of small lakes for municipal water supplies or for periods of drought.
7. Purchase of additional water storage capacity in federal reservoirs by the State.
8. Transfer of water within the state to meet municipal needs.
9. Establishment and use of a trust fund.
10. Protection of wetlands.
11. Establishment and enforcement of Interstate Compacts.
12. Strict enforcement of water statutes and regulations.

WATER RIGHTS

League members judge the Appropriations Doctrine to be deficient by not providing the State with sufficient flexibility to recover a vested or appropriated right when it becomes necessary to redistribute that right according to a priority of greater need. The League believes that the State should be given authority to review regularly both the purpose of and quantity of water used by water right holders and to recover rights as needed by purchase or condemnation.

The League questions the policy of giving all "beneficial uses" equal weight and ranks the priorities (preferences) of water use as domestic, livestock and general farm use, in-stream flow, irrigation, industry, energy and oil, and recreation. When water is in short supply, public health and safety should preempt all other rights. When there is no pressing need for a higher priority use, water right holders should be permitted to hold their rights without using them.

WATER SUPPLY

Long-term and short-term planning for adequate water supplies and the careful implementation of water programs and projects is essential. The League of Women Voters of Kansas believes that the State has some responsibility to develop and maintain water supplies for present and future uses by means of: 1) the construction and maintenance of dams and reservoirs in conjunction with the federal government, and 2) the purchase of additional or excess water storage capacity in federal reservoirs.

To meet the water needs of municipalities, the State and local governments should consider the use of small lakes and the transfer of water within the state. The establishment of water management districts by aquifer, river basin or subbasin is supported by the League to enhance water planning and program implementation and facilitate participation of local users and suppliers. Water management districts should have broad citizen representation.

To sustain water supplies, drought contingency plans should be developed by major users to ensure that all users have access to a minimum supply of water.

The League supports a comprehensive State Water Plan that encompasses procedures for all aspects of surface and groundwater supply, use and quality. This State Water Plan should be part of a Kansas Environmental Plan. League members agree that the State Water Plan should be implemented at the local level whenever possible.

The League supports the transfer of water within the state for municipal needs only and with the following considerations:

1. Environmental impact study on place of water origin, route or transfer and place of final use.
2. Water conservation practices of the place of origin and place of use.
3. Compliance with long-term water goals and policies of each aquifer involved in a transfer.
4. Ability of beneficiaries of the water transfer to fund the project.

WATER QUALITY

The quality of Kansas surface and groundwater should be preserved and improved with emphasis on the protection of drinking water. This should be accomplished by federal, state and local governments through enforcement of statutes and regulations. Water policies should address, but not be limited to, the establishment and implementation of soil and water conservation practices; the cleanup or improvement of water with naturally occurring pollution; and the control of non-point sources and point sources of pollution through best management practices. At least secondary treatment of discharges of waste from point sources is desirable. Measures should be implemented to control such non-point sources as agricultural runoff, mine drainage, urban stormwater runoff and irrigation runoff. Mandatory penalties should be imposed on those who impair water quality.

The quality of Kansas waters should be monitored regularly and maintained at levels that will support the biota and wetlands of the state.

CONSERVATION OF WATER

The League of Women Voters of Kansas advocates the conservation of water as being important to the future management of the state's water resources. Conservation is necessary at all times but especially during periods of drought. Education is only one measure to achieve conservation of water and must be supplemented by other measures.

The State should have the authority to require conservation plans from major water users. Present municipal, agricultural and industrial water rights holders should each submit conservation plans as should all subsequent applicants for water rights.

Where irrigation is involved from either surface or groundwater, conservation plans should provide for metering water flow and for the use of the most water efficient methods and equipment. The State should develop demonstration projects, conduct research on water-sparing crops, and provide the technical assistance in these areas.

Conservation efforts should encourage the practice of recycling and reuse of water wherever economically feasible, with the cost of technical assistance for such practices being shared by the industry or municipality and the State.

Another method supported by the League to encourage water conservation is a special assessment on consumptive users of water and on those who deplete water supplies.

The planned depletion of groundwater is not an acceptable policy for water conservation. The safe yield policy of an aquifer should be secured by the withholding of further water rights whenever feasible.

League members view the conservation of water as critical in the protection of the wetlands of the state.

A request for the transfer of large quantities of water over extended periods of time should be an occasion to examine the adequacy of water conservation plans of both the transferring and receiving regions.

FINANCING WATER RESOURCES

The League of Women Voters of Kansas views both water users and beneficiaries and the State as having roles in financing water programs and projects. The users should pay for the treatment of a municipality's drinking water and wastewater. Users should be responsible for obtaining their own water sources. Beneficiaries should be responsible for funding a project to transfer water from a reservoir to a community.

Users and the State should pay for the: 1) construction of local and regional storage dams or water projects, 2) improvement in the quality of water with naturally occurring pollution such as mineral intrusion, and 3) technical assistance to investigate procedures for reuse and recycling of industrial and municipal water.

The State should pay for the storage of state-owned water in the nine federal reservoirs presently involved in the state water marketing program from the sale of this water. The State should pay the costs of research, data collection and information systems that undergird effective planning.

To finance current and future water projects, the League advocates that the State establish and use a trust fund and a resource withdrawal fee on metered water. To aid communities or districts in the construction of water treatment and wastewater treatment facilities, the State should guarantee their loans.

Other sources of revenue supported by the League to fund water programs and projects are: 1) a surcharge on additional water withdrawn or used during drought or high-use periods, 2) an extra fee or higher rate for consumptive water users, and 3) an extra fee or higher rate for users who deplete water quantity or impair water quality.

This Revised Statement of Position was approved by the Board of Directors of the League of Women Voters of Kansas on December 10, 1984. Original Draft: Prepared by the LWVK Water Committee on December 4, 1984.

R. Edward Reinert

Helen Stephens

Mary Ann Bradford, Chair

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

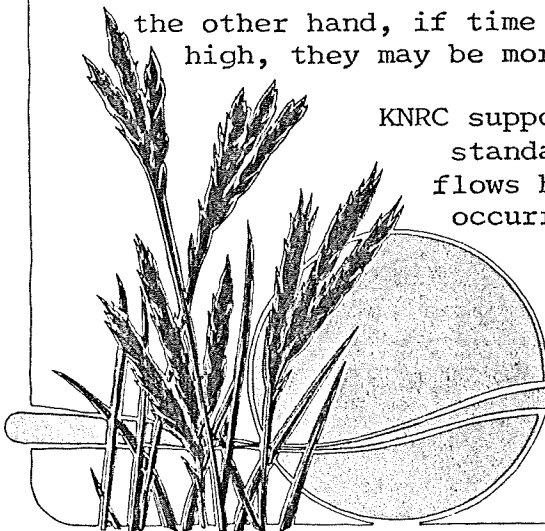
KNRC strongly supports minimum streamflow standards for the water-courses listed in New Section 2 of this bill. The protection of minimum streamflows is a judicious action which recognizes the inherent value of these rivers, apart from their capacity to meet consumptive uses. Minimum streamflows also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



Statement to:
SENATE ENERGY & NATURAL RESOURCES COMMITTEE

RE: H.B. 2335 - Establishment of Minimum Desirable Streamflows
for Certain Watercourses
March 20, 1985
Topeka, Kansas

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

Mr. Chairman and Members of the Committee:

We come to you today as OPPONENTS of H.B. 2335, a measure which proposes to establish minimum desirable streamflows for a portion of the Arkansas River, the Ninnescah River and Rattlesnake Creek. The water is already over the dam on minimum streamflow legislation. A number of our members wish now, in 1985, that we had opposed the 1984 legislation designating minimum streamflows for the Marais des Cygnes, Neosho, Cottonwood and Little Arkansas Rivers. We did not have the policy position then that we have today, a position I will elaborate on a bit more later on in our testimony.

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

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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 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

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Study not complete

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 is 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.

3-20-85

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.

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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.