

Approved April 8, 1989  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at  
Chairperson

3:30 ~~xxx~~ p.m. on March 27, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Krehbiel (excused)

Committee staff present:

Raney Gilliland, Legislative Research  
Mary Torrence, Revisor of Statutes' Office  
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

David L. Pope, Chief Engineer-Director, Division of Water Resources,  
Kansas State Board of Agriculture  
James A. Power, Director, Division of Environment,  
Kansas Department of Health and Environment  
Charlene Stinard, Kansas Natural Resource Council, Kansas Chapter  
of the Sierra Club, Kansas Wildlife Federation,  
Kansas League of Women Voters and Kansas  
Audubon Council  
Karl Muedener, Director, Bureau of Water Protection,  
Kansas Department of Health and Environment  
Clark Duffy, Assistant Director, Kansas Water Office  
Dennis Schwartz, Kansas Rural Water Association  
M.S. Mitchell, Legislative Chairman, Home Builders Assoc. of Kansas  
David Corliss, League of Kansas Municipalities  
James Meitl, Water District No. 1 of Johnson County

The meeting was called to order by Chairman Dennis Spaniol.

Senate Bill 133 - Water appropriation permit fee for water power project purposes.

David Pope testified as a proponent on behalf of the Division of Water Resources, Board of Agriculture. He supported this bill because of the apparent inequity in fees required for water power purposes, in comparison to other uses of water. Attachment 1.

Committee discussion concerned application fee structure, water consumptive use, and the effect of a hydropower facility on stream flow in Spring River in Southeast Kansas.

Senate Bill 120 - Unlawful sewage discharge penalties.

James Power represented the Department of Health and Environment in support of this bill. He noted that the intent of the legislation was to assure that state statutes meet minimum requirements of the federal government for the state to continue administering the federal water pollution control program. His testimony included background information, House Bill 3027 which addressed this issue in the 1988 session, and discussion of each section of Senate Bill 120. Attachment 2. Included with Mr. Power's written testimony was a copy of a letter to Mr. John Simpson, Attorney, Fairway, Kansas from Morris Kay, Regional Administrator of the U.S. Environmental Protection Agency. Attachment 2a.

Discussion followed relative to the extent of changes this would make in current law and whether it exceeds federal law requirements.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 27, 19 89

Charlene Stinard was a proponent representing the Kansas Natural Resource Council and also speaking on behalf of the Kansas Chapter of the Sierra Club, Kansas Wildlife Federation, Kansas League of Women Voters, and Kansas Audubon Council. She urged support for Senate Bill 120 which would bring Kansas into compliance with U.S. Environmental Protection Agency requirements to operate the state's National Pollution Discharge Elimination System (NPDES) program. Attachment 3.

Brief discussion followed.

House Bill 2539 - Relating to public water supply systems.

Karl Mueldeener presented testimony of the Department of Health and Environment in favor of this bill. He advised that this would make two major revisions to state statutes applicable to public water supply systems. Attachment 4.

Discussion related to term of bonds in relation to term of permits, power given to the Secretary of Health and Environment, budgeting and easements.

Clark Duffy represented the Kansas Water Office in support of House Bill 2539. He noted that this bill would implement two sub-sections of the Quality Section of the Kansas Water Plan which were approved by the Kansas Water Authority in 1984. He explained the changes that implementation of this legislation would make in current state statutes. Attachment 5.

Representative Gatlin requested that times, dates and places of the public meetings and hearings held by the Kansas Water Authority referred to by Mr. Duffy be provided for the committee. Mr. Duffy agreed to that.

Charlene Stinard, representing the Kansas Natural Resource Council, testified in support of House Bill 2539. She called attention to two important elements in the bill: 1) it establishes a 10-year permit cycle for public water supply systems and 2) it requires the development of water supply protection plans. Attachment 6.

Dennis Schwartz spoke as a proponent, representing the Kansas Rural Water Association. His organization supported House Bill 2539, but encouraged re-permitting on a five year rather than a ten year basis. Attachment 7.

M.S. Mitchell spoke on behalf of the Home Builders Association as an opponent to House Bill 2539. He reviewed previous bills on this subject and felt that this current legislation still did not address their problems. Attachment 8. Mr. Mitchell submitted copies of testimony by Dr. Douglas Hahn, Director, Sedgwick County Department of Environmental Resources and attached documents. Attachments 8a, b, c, d, e, and f. Mr. Mitchell reviewed the following points from Dr. Hahn's testimony: 1) no funding is provided for the preparation or implementation of the plans from either the federal or state government to the local water supply operators; 2) there is a legal problem with the enforcement of the plan and 3) no attempt has been made to form a committee or advisory group to work out the implementation language before the legislation is passed.

David Corliss represented the League of Kansas Municipalities. He stated that the League is in general support of legislation encouraging

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,

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the development and implementation of public water supply protection plans. However, they believed that House Bill 2539 would mandate certain unnecessary reporting and permitting requirements and would not adequately define the scope and workability of protection plans. The objections and suggestions of the League are outlined in Mr. Corliss' written testimony. Attachment 9.

Jim Meitl, representing Water District No. 1 of Johnson County, opposed House Bill 2539. It was their belief that compliance with this legislation would unnecessarily require increased administrative paper work as well as additional staff. They felt that local water purveyors should be responsible for developing their own public water supply protection plans. Attachment 10.

This concluded the hearings and the meeting was adjourned at 5:00 p.m.

The next meeting of the House Energy and Natural Resource Committee will be held at 3:30 p.m. on March 28, 1989.



STATEMENT OF DAVID L. POPE  
CHIEF ENGINEER-DIRECTOR  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE  
BEFORE THE  
HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
ON SENATE BILL NO. 133

March 27, 1989

Chairman Spaniol and Members of the Committee, thank you for this opportunity to appear on Senate Bill No. 133 concerning the application fees to be charged for water to be used for water power purposes. This use is also commonly referred to as hydropower.

The filing fees for all new applications to appropriate water for any beneficial use, except domestic use, are set by K.S.A. 1988 Supp. 82a-708a. These fees, which are based on the proposed annual quantity to be appropriated in acre feet, range from a minimum of \$100 on up depending on the amount of water requested. The fee schedule has generally worked very well and is appropriate for most applications for permit to appropriate water. However, it has recently been called to our attention that a proposed hydropower facility is being considered for installation at the existing Empire Lake by JDJ Energy Company in extreme southeast Kansas near Riverton on the Spring River.

Water power is a beneficial use of water recognized and defined by the Division of Water Resources administrative regulations. Hydropower facilities are somewhat unique in that they do not consume water, but merely use it to generate electricity by letting it flow through their turbines. Because even a relatively small hydropower facility needs to pass large quantities through its turbines, the annual amount of water which they must appropriate is quite large. JDJ Enterprises would need to apply for somewhere in the vicinity of 750,000 acre feet per year, even though very little, if any, of the water would be consumed.

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The use of water for water power purposes, could, in some cases, affect other water users on the river. Consequently, I feel it is appropriate for this type of use to be required to file an application and receive a permit as currently required by the Water Appropriation Act so the permit can be conditioned as necessary to protect other water users and the public interest. In this case, I am not aware of any adverse effects to other affected parties as a result of the project, based upon the information that has been provided thus far describing the proposed operation. The filing fee for the facility in question would apparently range from \$75,000 to \$125,000 depending on the details of the operation. In contrast, a typical application fee for most proposed appropriations ranges from several hundred dollars to a few thousand, even for relatively large uses of water. The fee proposed in Senate Bill No. 133 of \$100 plus \$200 for each 100 cubic feet per second, or portion thereof, of water to be diverted through turbines, would appear to be reasonable. This would result in a fee for the facility discussed above of \$4,000 as compared to the fee currently required by statute of at least \$75,000.

To our knowledge, there have only been a few water power facilities constructed in Kansas and only one of them is now in operation. This is the first hydropower application to be filed with us since the law was amended in 1982 to impose a graduated fee schedule, instead of a flat filing fee.

In summary, I am in support of Senate Bill No. 133, because of the apparent inequity in fees required for water power purposes, in comparison to other uses of water. For the record, I am neither an advocate nor an opponent of the current entity who has raised this issue with us, and plan to review any application, if and when received, on its merits in accordance with the provisions of the Water Appropriation Act. We may or may not receive other water power applications in the future, but it would appear that the proposed

fee schedule would also be reasonable for any other facility that might be proposed in Kansas.

I would be happy to answer any questions you might have. Thank you very much for your time.

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

*Forbes Field*

*Topeka, Kansas 66620-0001*

*Phone (913) 296-1500*

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Testimony presented to

House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

Senate Bill 120

This bill would amend state statutes pertaining to enforcement of water pollution control statutes, namely K.S.A. 65-165, 65-167, 65-170e, and 65-171d. The intent of the bill is to assure state statutes meet certain minimum requirements of the federal government for Kansas to continue administering the federal water pollution control program.

In 1972, the federal Clean Water Act was significantly amended, more or less in the form we know it today. After the 1972 amendments, the Kansas water pollution control program was accepted by EPA to administer the federal program for the issuance of wastewater discharge permits and the general water pollution control program for Kansas. Amendments to the federal law were made on four different occasions since 1972. State statutes dealing with the water pollution control program have been slightly modified as a result of the federal changes. In 1985, EPA performed an in-depth audit of the Kansas water pollution control program, including state regulations and statutes on which the Kansas program is based. The audit was performed by EPA's Region VII legal office. EPA presented KDHE a lengthy evaluation regarding the state water pollution control permit program. For several years the Department negotiated various issues raised by EPA, and most were resolved. Regulation changes to the wastewater permit program were also implemented to respond to program deficiencies. Statutory changes were also negotiated and ultimately a series of five questions were submitted to the Kansas Attorney General for an opinion concerning the adequacy of Kansas statutes.

The 1988 Legislative Session addressed this issue with House Bill 3027, with the bill dying in the Senate Agriculture Committee. Last year's bill became controversial because of language concerning private pond

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exemptions. This year's bill does not address the private farm pond exemption. In a letter dated August 15, 1988, Mr. Morris Kay, Regional Administrator in Kansas City, encouraged the State to seek the necessary statutory change in this session.

Sections 1 and 4 were requested by the Department of Health and Environment to correct dates in K.S.A. 65-165 and K.S.A. 65-171(d). Both of these date changes would bring the statutes into compliance with the current federal Clean Water Act. If the dates are left as currently in the statutes, we would need to take action to bring municipalities into compliance with the federal act in effect at that time. The amendments made by Congress allow for an extension of time for municipalities to attain compliance and we feel the change is appropriate.

Section 2 of the bill amends K.S.A. 65-167 to increase the penalty provisions to be consistent with the federal statute and regulations (40 CFR Part 123.27 - State Program Requirements). For willful and negligent discharge of sewage, this modification allows, upon conviction, a penalty of not less than \$1,000 and not more than \$10,000 per day. As a point of clarification, this particular statute -- since it requires conviction-- would be used infrequently for enforcement of water pollution control statutes. The state generally relies on administrative orders and penalties for wastewater enforcement. In other words, this change does not limit the Department to a minimum of a \$1,000 fine for any violation of water pollution control standards. Penalties or corrective orders may still be issued under other state statutes. This change pertains only to willful and negligent discharge and can be imposed only on conviction.

Section 3 of the bill amends 65-170e to address public rights in enforcement activities. Federal regulations (40 CFR Part 123.27, "State Program Requirements") require provisions be made for public rights in enforcement activities. The Department has allowed intervention in certain civil and administrative actions but state law does not address this issue. Section 3 of this bill would allow "any person having an interest which is or may be affected" the right to intervene in civil actions brought by the Secretary. Public participation would occur during an appeal of an order by the Secretary of Health and Environment. If an order of the Secretary is appealed, a hearing is scheduled and the affected parties can state their case at that time. As the law stands now, any affected party's involvement in these actions is simply not addressed.

Section 2 of this bill will have no impact on normal agency activities. Section 3 (public intervention) will result in additional work and coordination with our civil enforcement actions. We do not request any additional funds to implement this bill.

We urge your consideration and passage of this bill.

Presented by:  
James A. Power, Director  
Division of Environment, KDHE  
March 27, 1989

Karl W. Mueldeener, Director  
Bureau of Water Protection, KDHE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

APR 15 1988

OFFICE OF  
THE REGIONAL ADMINISTRATOR

Mr. John Simpson  
Attorney at Law  
4330 Shawnee Mission Parkway, Suite 132  
Fairway, Kansas 66205

Re: Kansas' Legal Authority to Administer the NPDES Program

Dear Mr. Simpson:

Thank you for your letter of June 29, 1988, stating your concern that the Kansas Legislature failed to enact legislation needed to support administration of the state's NPDES program. We have appreciated your long standing involvement with this matter, and have attempted to keep you informed of progress in bringing Kansas' legal authority completely in line with federal requirements.

A brief review of the history of those efforts may be useful. Because federal regulatory requirements have changed since the enactment of the Federal Water Pollution Control Act (now the Clean Water Act) in 1972, and the subsequent approval of the Kansas NPDES program in 1974, the EPA Regional Office, in 1985, initiated a review of the legal basis for the Kansas NPDES program. We did so by preparing and forwarding to the state and to EPA headquarters an analysis of Kansas statutes and regulations, as well as of the standard terms and conditions included in issued permits. In the months that followed, our staff worked closely with the staff of the Kansas Department of Health and Environment (KDHE) to develop needed revisions to the state's regulations, and to secure opinions of the Attorney General confirming, to the extent possible, that Kansas' statutory authority remained sufficient to underwrite the state's program. Toward the end of 1986, numerous changes were made in both the regulations and the standard conditions, in an effort to conform them to federal law.

In early 1987, EPA headquarters supplied additional comments on the legal sufficiency of the Kansas program, and they were included in our discussions, as well. Two lengthy opinions of the Kansas Attorney General were issued, on September 1, 1987, and on October 26, 1987, resolving many of our concerns about the statutory support for the program. It appeared, however, that certain matters would definitely require attention from the legislature.

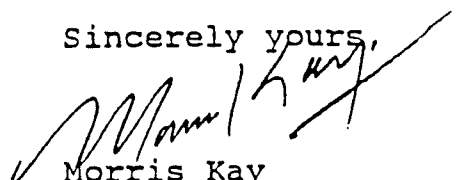
House Bill 3027 was introduced into the 1988 legislative session. As subsequently amended, it would have done the following: updated the references to federal law to enable certain federal regulations to be adopted by reference; increased the criminal penalty for discharging without filing required reports; and established the right of citizen participation in state enforcement actions. The bill failed to pass out of the conference committee. In view of the failure of the legislature to enact the bill, your letter asks that we recommend to the Administrator that the Kansas NPDES program be withdrawn.

As your letter points out, withdrawal of the program would be a severe penalty. While I understand your frustration with this lengthy process, I believe that my primary consideration should be the environmental implications of program withdrawal. Transfer of a state program to the EPA would unavoidably create disruption, both in terms of program administration and in the lives of the involved personnel. That should be avoided if possible, particularly if there is a likelihood that the program would be retransferred to the state shortly thereafter. As you also point out, the needed statutory changes are not controversial. Therefore, the adoption of the required changes, enabling a withdrawn program to be retransferred to the state, could well occur as early as the next legislative session. Because we expect that the state would participate fully in the hearing process prior to the Administrator's decision concerning the adequacy of the program, that decision might not even occur until after the legislature has had another opportunity to amend the statutes. In addition, the Act provides a 90 day period after a determination that the program is inadequate for the state to take corrective action and avoid actual withdrawal of its program.

For the above reasons, I have decided not to recommend program withdrawal to the Administrator at this time. My staff will continue to work closely with KDHE to see that the needed changes are finally adopted during the next session of the Kansas Legislature. I am confident that the state will not miss another opportunity to provide the necessary statutory support for this essential water pollution control program.

Again, thank you for your interest and concern. We will continue to keep you advised of developments.

Sincerely yours,



Morris Kay  
Regional Administrator

cc: Dr. Stanley Grant, Secretary  
Kansas Department of Health  
and Environment

# Kansas Natural Resource Council

Testimony before the House Energy and Natural Resources Committee  
SB 120: penalties for unlawful discharge of sewage

Charlene A. Stinard, Kansas Natural Resource Council

March 27, 1989

My name is Charlene Stinard, and I represent members of the Kansas Natural Resource Council, a private, non-profit organization promoting sustainable natural resource policies for the state of Kansas. I have been asked to speak on behalf of the Kansas Chapter of the Sierra Club, the Kansas Wildlife Federation, the Kansas League of Women Voters, and the Kansas Audubon Council.

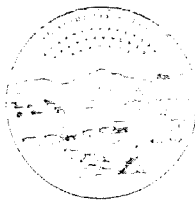
SB 120 brings Kansas into compliance with US Environmental Protection Agency requirements to operate the state's National Pollution Discharge Elimination System (NPDES) program.

One essential element in protecting water from pollution under Clean Water Act provisions has been the right of citizens to intervene in enforcement actions. The right to intervene in civil or administrative actions is extended by this bill to include injunctive actions -- actions to stop violations. This amendment allows citizens to intervene to stop unlawful discharges, preventing further contamination of our waterways.

With this addition, SB 120 brings us into compliance for regulation of the NPDES program in Kansas. In addition, it is good public policy to offer citizens the opportunity to participate in pollution abatement and prevention. We urge your support for SB 120, bringing Kansas into compliance with federal pollution discharge regulations.



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Attachment 3



## DEPARTMENT OF HEALTH AND ENVIRONMENT

*Forbes Field**Topeka, Kansas 66620-0001**Phone (913) 296-1500*Mike Hayden, *Governor*Stanley C. Grant, Ph.D., *Secretary*Gary K. Hulett, Ph.D., *Under Secretary*

Testimony presented to

House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

House Bill 2539

House Bill 2539 makes two major revisions to state statutes applicable to public water supply systems. These revisions would require issuance of renewable permits not to exceed ten years duration and development of a public water supply protection plan as part of the permit application.

The existing permit system for public water supplies is essentially a construction permit. Any addition to a system such as a water tower, pump station, or treatment plant upgrade, receives a separate permit. Permits are presently issued in perpetuity since there are no provisions to revoke or modify. We believe it prudent to periodically assess a public water supply's overall condition and capability. A renewable operating permit for the entire system will provide a legal mechanism to require periodic assessments. These periodic assessments would be completed during the permit application process.

Kansas has a good record of providing safe water through public water supplies. This good record is based on a program of five elements: 1) good water system design; 2) operator training and certification; 3) technical assistance and periodic inspection; 4) mandatory disinfection; and, 5) monitoring of water quality. This bill would add an important sixth safeguard -- source protection.

Development and implementation of a public water supply protection plan would also be required as part of the permit application process. This requirement is based on the theory that prevention is cheaper than cleanup. Monitoring of public water supplies has revealed contamination of water supplies from man-made sources.

We believe there is a need for local entities to be aware of actions or events which might impact the quality of their water supply. We believe

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it is equally important for local entities to define what local actions could reasonably protect the quality of those supplies. Each supply has unique characteristics which best suit local determination of protective methods.

The most controversial local control program is probably zoning, but a host of other options exist, including:

Education	Ag Practices
Industry Siting	Treatment Options
Land Purchases/Leasing	Sanitary Codes
Mine Siting	Septic Tank Controls
Critical Management Areas	Cross Connection Control
Inventories	Alternate Sources
Monitoring	Nonpoint Source Control
Oil and Gas Operation Siting	Landfill Siting
County Water & Wastewater Plans	Subdivision Standards
Abandoned Well Plugging	

This concept is included in the Kansas Water Plan and has the support of the Kansas Water Authority.

Presented by: Karl Mueldener  
Director, Bureau of Water Protection  
Department of Health & Environment  
March 27, 1989

Testimony by the Kansas Water Office  
to the  
House Energy and Natural Resources Committee  
March 27, 1989

Re: H.B. 2539

The Kansas Water Office supports the passage of H.B. 2539. This bill would essentially implement two sub-sections of the Quality Section of the Kansas Water Plan--Public Water Supply Protection Plan for Small Water Impoundments and Public Water Supply Aquifer Protection Plan. These sub-sections were approved by the Kansas Water Authority after they were discussed at 11 public meetings and two formal public hearings during 1984. The concepts embodied in these sub-sections received widespread public support throughout the state.

H.B. 2539 would amend K.S.A. 65-163 to:

- (1) modify the permit system for operation of public water supplies to only require one overall permit with a term not to exceed 10 years, and
- (2) require that a public water supply protection plan be submitted as part of the permit application.

As indicated in the State Water Plan, the public water supply protection plan should outline a strategy for protection of drinking water sources and provide information necessary for its implementation. This would include a review of the quality of the drinking water, location of potential contamination sources, identification of remedial measures and protection strategies, and an evaluation of existing management practices, where appropriate.

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This simple, common sense approach to protecting the integrity of drinking water should be the most basic obligation of the utility to its customers.

To my knowledge, there are only two organizations in the state that have difficulty with this concept. In the past, they indicated their concern over the lack of power of the public water supply system to implement the protection plan once it has been prepared. I submit that failure to implement a plan does not reflect a lack of power but simply a lack of initiative. The opportunity exists to protect public water supplies from virtually all types of pollution. In some cases, it will require negotiation and compromise to develop an effective plan of protection. However, it is clear that all citizens benefit if we are willing to take the initiative to protect the water supplies of the state from pollution.

Because of the importance of these two sub-sections of the State Water Plan and the delays in their implementation, both the Kansas Water Office and the Kansas Water Authority urges your consideration and passage of H.B. 2539 during this 1989 Session of the Kansas Legislature.



# Kansas Natural Resource Council

Testimony before the House Energy and Natural Resources Committee  
HB 2439: concerning public water supply systems

Charlene A. Stinard, Kansas Natural Resource Council

March 27, 1989

My name is Chalrene Stinard, and I represent the Kansas Natural Resource Council, a private, non-profit organization whose members promote sustainable natural resource policies for the state of Kansas. One of the most critical issues facing Kansans in the near future is meeting our needs for consistent and quality water supplies.

HB 2539 has two important elements addressing this issue:

- it establishes a 10-year permit cycle for public water supply systems, and
- it requires the development of water supply protection plans.

A renewable permit system would allow periodic review of public water supply systems for technical capabilities, for compliance with quality standards, and for continuing ability to meet community (growth) needs.

Water supply protection plans help communities identify potential sources of contamination and possibilities for dealing with those threats, and help indicate the importance of local planning to meet future water supply needs.

A convergence of conditions, including the continuing drought and applications to transfer waters from one basin to another, provide the impetus to support this legislation now. Adequate future supplies of drinking water depend on our initiative in the present to protect our water sources and maintain our water delivery systems.

HB 2539 would assure that public water supply systems be maintained according to minimal state standards, and that communities plan adequately for the protection of water supplies.

We urge your support for HB 2539.



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KRWA

TESTIMONY IN SUPPORT OF HOUSE BILL 2539  
BEFORE THE HOUSE ENERGY & NATURAL RESOURCES COMMITTEE  
March 22, 1989

The Kansas Rural Water Association supports HB 2539.

The Kansas Rural Water Association represents public water supply systems serving populations less than 10,000. These are rural water districts, municipal systems and private systems.

Public water supply systems should be encouraged in every way possible to develop water supply protection plans and conservation plans. The qualifications of such plans should be reviewed and approved by the primacy agency in Kansas, the Kansas Department of Health & Environment, as part of a re-permitting process required by HB 2539. Additionally, it is the opinion of the Kansas Rural Water Association that re-permitting should also include a review of the adequacy of cross connection control programs and, that all public water supply systems have appropriate certification for operators as required by regulation.

The Kansas Rural Water Association respectfully suggests that rather than having permits issued for ten (10) years, that public water supply system permits be issued for five (5) years. In our opinion, the five (5) year re-permitting would cause systems to address corrections or bring about improvements on a more timely basis. With a re-permitting only every ten (10) years, there will more than likely be a complete turn-over of personnel or elected officials governing the water utility.

The Kansas Rural Water Association supports HB 2539 and encourages the re-permitting on a five (5) year basis.

*Elmer Ronnebaum*

Elmer Ronnebaum  
Program Manager, KRWA

*H Energy and NR  
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Attachment 7*

KANSAS RURAL WATER ASSOCIATION  
P.O. Box 226  
Seneca, Kansas 66538  
(913) 336-3760

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

TESTIMONY OF M. S. MITCHELL

LEGISLATIVE CHAIRMAN OF HOME BUILDERS ASSOCIATION OF KANSAS

HOUSE BILL 2539

MARCH 27, 1989

Mr. Chairman and Members of the Committee:

I am appearing today as Legislative Chairman of the Home Builders Association of Kansas in opposition to the passage of House Bill 2539, titled "An Act relating to public water supply systems" which contains the main provisions of what in earlier years of hearings before this legislature was commonly known as the "Environmental Protection Plan measure".

In 1986, the first edition of this bill was sponsored by the Kansas Department of Health and Environment because it embodied two of the subsections of the Quality Section of the Kansas Water Plan: "Public Water Supply Aquifer Protection Plan" and "Public Water Supply Protection Plan for Small Water Impoundments". Those two subsections were written into the Kansas Water Plan because of the claim that existing pollution control laws are ineffective in dealing with the protection of either underground or surface water supplies and therefore it was necessary to prepare environmental protection plans for all public water supplies. The new concept which was required to make the environmental protection plans work where existing pollution control statues do not was called "ENVIRONMENTAL PERFORMANCE ZONING" which "embraces a multitude of zoning review procedures, which can be employed to control, guide, and in some instances, prohibit growth and development, with a view to minimizing the negative aspects of urbanization on the ecological system. The concept of environmental performance zoning has been developed in several other states in order to protect sensitive ecological systems, wetlands and other special environmental areas. This concept is based on the principle that an owner of land has no inherent and absolute right to use the land in a manner for which it was unsuited in its natural state...." (quote from Kansas Water Plan).

Mr. Chairman, as you can well imagine, the Home Builders Association of Kansas opposed that 1986 bill because we saw it as a direct threat to local land use authority and an opportunity for the Secretary of KDHE to control all future housing development. We were assured that land use control was not the intent of the proposed legislation and at the end of the 1986 session were advised to work with KDHE and Kansas Water Office staff, as well as others who expressed interest in the bill, to come to a compromise in time for the 1987 session.

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We participated in several discussions during the interim period and came to agreement on some very important points:

1. Neither KDHE nor KWO would introduce legislation which would propose Environmental Performance Zoning.
2. Until the Federal Wellhead Protection Program Guidelines were available for study to determine exactly what Kansas needed to do to comply that legislation was premature.
3. An Advisory Task Force should be appointed to assist in developing the recommendations for specific legislation to protect public water supplies. The Task Force recommendations were to address the following issues:
  - a. Procedures for issuance of permits and renewal term.
  - b. Duties of state and local government and water supply officials with respect to development and implementation of protection plans.
  - c. Plans must be based on available hydrologic and hydrogeologic data.
  - d. Identification of potential sources of contaminants.
  - e. Provision for technical and financial assistance to aid in implementation of control measures.
  - f. Provision for alternate supplies in event of contamination.
  - g. Consideration of potential sources of contaminants within the protection zone of a public water supply.
  - h. Address all legal issues pertinent to implementation of a protection plan.
5. Some provision for funding assistance by the state must accompany the responsibility of the water supply operators to prepare the plans.
6. There must be some provision for the decision of the Secretary to be appealed to the judiciary.

What we did not come to agreement to with KDHE was whether the Task Force should do its work before legislation was passed or after. We, and I believe most of the other conferees, wanted the Task Force to have a hand in the drafting of the legislation. For whatever reason, KDHE did not agree and so in mid-February Senate Bill 285 was introduced. SB 285 added the water distribution system to the things which could not be changed without prior by the Secretary of KDHE, kept the renewal term at five years, required the water supply system operator to implement the protection plan (but did not provide the legal means to do so), provided for a Task Force but only to assist in developing rules and regulations and failed to include any funding by the state for plan preparation or implementation. SB 285 failed to pass out of the House Committee.

During the intervening period Home Builders representatives and others who shared our interest in the bill, have met with KDHE staff and discussed the issue of environmental protection plans for public water supplies. Again and again the same questions have been raised. How can an operator control land use in a wide area outside its political jurisdiction which has the potential for contaminating its water supply? This becomes especially true for the operator of a small public water supply system such as a summer church camp. (By regulation, a public water supply is any which has more than ten service connections, or which serves twenty five or more persons at least 60 days per year). The answer found in HB 2539 is that the applicant for a permit may request a waiver, which the Secretary may, or may not, grant.

Why should the water supply operators be mandated to prepare and implement protection plans? Since there is no Federal funding for state and local participation in the Wellhead Protection Program state legislation is voluntary and the state should provide funding if it wants to operate the Program. The HB 2539 answer to state funding assistance is addressed by another opportunity for the applicant to request a waiver.

Shouldn't the Task Force be appointed to assist KDHE in the development of legislation if public water supply protection plans are to be required? HB 2539 addresses the question of before legislation or after it by omitting any reference to the appointment of the Task Force.

If public improvement bonds are issued for terms of 15 to 20 years shouldn't the water supply permits be granted for the same length of time to persuade the bond buyers that the utility will have a product to sell to pay off the bonds? HB 2539 increases the permit term from five years to ten, but the renewal term is still less than the financing period for public improvement bonds.

Why is it necessary for the Secretary of KDHE to grant prior approval for any change in the distribution system of a public water supply? We believe that the provision in HB 2539 which gives KDHE control over every extension of the distribution system of a public water supply would permit the state to control future housing development. There has been no case made for the necessity to take such authority away from local government.

In short, nothing in HB 2539 solves the problems we had with the earlier bills and the Home Builders Association of Kansas again opposes its passage out of committee.



## DEPARTMENT OF ENVIRONMENTAL RESOURCES

HISTORIC COURTHOUSE  
510 NORTH MAIN  
WICHITA KANSAS

TELEPHONE: (316) 268-7380

March 23, 1989

TO: Willie Martin  
Intergovernmental Coordinator

FROM: Dr. D. R. Hahn, Director *drh*  
Sedgwick County Department of Environmental Resources

RE: Review and Critique of House Bill No. 2539

I have reviewed House Bill 2539 concerning public water supply systems. The principal concept of this piece of legislation is a requirement for the development of water supply protection plans by various entities within Kansas. I support that concept and do not have any philosophical problem with it. However, this legislation has appeared in other forms during the past three sessions of the Kansas legislature. We opposed that legislation for a variety of reasons. House Bill 2539, which was introduced in this session, represents a rewrite and reconfiguration of the earlier legislation. While there have been some significant changes in the construction of this legislation as compared to its predecessors, I still have some strong concerns. I would offer the following comments regarding House Bill 2539:

1. In the past, we felt that it was premature to pursue this and similar legislation until the United States Environmental Protection Agency had promulgated its guidelines under the Federal Wellhead Protection Program (WHP). Those guidelines were released early in 1988. However, the federal government did not provide any funding for wellhead protection programs as had been promised. Pursuit of such programs at this time creates obvious financial burdens for state and local entities. Such financial impacts are not addressed in House Bill 2539 and should be addressed prior to the passage of such legislation.

2. The City of Mt. Hope, Kansas, had received a grant to develop a water supply protection program in order to develop a model for such activity and to determine and "debug" any problems with the federal guidelines. Prudence would dictate that we await the results of such a study prior to embarking on a state-wide program with undetermined results and costs. A copy of the Mt. Hope program is attached to this memorandum.

The Mt. Hope study was conducted by staff of the United States Geological Survey (USGS). USGS staff advised me today that the Mt. Hope WHP study has been completed, the draft report is written, the colleague review of the draft document is finished, and the author is currently reviewing and completing the final draft of the report utilizing colleague comments. The Mt. Hope report is expected to be released in approximately two months according to USGS staff. USGS staff further advised me that the Mt. Hope study identifies some interesting concerns and problems that should be addressed prior to the codification of a state-wide wellhead protection program.

As an additional note, I heard a presentation in 1988 by staff from the Kansas Corporation Commission regarding a pilot wellhead protection study at Oakley, Kansas. Staff had identified significant problems in developing a protection plan for a small community with a relatively simple water supply system. Those problems should be rectified prior to committing the rest of the state to such action.

In light of the Oakley and Mt. Hope studies, it would seem wise to utilize lessons learned from those studies prior to the development of legislation regarding protection of water supplies in the state of Kansas. In my opinion, this bill places the cart before the horse.

3. Lines 79-85 of House Bill 2539 could be construed to require local officials to commit to land use control measures in areas over which they have no control. For example, portions of the current water supply for citizens in Sedgwick County, Kansas, are located outside of the county, placing such supplies outside the political jurisdiction of the municipalities and county government. It is likely that future water supplies may be located even more geographically distant from the local jurisdictions than current

supplies. The language of the bill creates a "catch 22" in that local officials are held liable for problems in areas under which they have absolutely no control. This issue must be resolved. Further, the plan proposed is virtually useless without an enforcement mechanism which was omitted in the bill. I suspect that many legal briar patches exist in this area.

We have raised this concern regarding the bill during each of the last three sessions of the legislature. The response has been to include a section contained in lines 86-91 of the current bill allowing the Secretary to exempt certain applicants for hydrological, geohydrological, financial, or legal reasons. However, such waiver is at the discretion of the Secretary. This provision really sidesteps dealing with the issue of land use and "extra-territorial jurisdiction". I believe that a task force or an interim committee should grapple with these legal issues prior to the enactment of legislation such as this. Pretending the issues do not exist will not address the problem.

4. A key flaw in the proposed legislation, in my opinion, is "putting the cart before the horse". It seems most appropriate to me to carefully study the complex issues involved with this legislation, to develop reasoned legislation as a result of such study which addresses the legal and technical concerns, and to submit such legislation for review by the public and potential passage by the Kansas legislature as is the democratic process. However, state staff seem bent on passing this legislation with all of its unresolved issues and with its far reaching implications. We have suggested appointment of a task force or consideration by an interim committee to resolve such issues prior to the passage of such legislation during both 1987 and 1988. The suggestion was first made during the 1987 legislative session and again during June of 1987 to both the Director of the Kansas Water Office and the Secretary of the Kansas Department of Health and Environment. Action was not taken in either year. It is evident that state staff desire passage of a "blank check" without public input or review. It suggests that state staff fear oversight by the legislature and the public.



Willie Martin  
Page 4  
March 23, 1989

5. Section 3 on page 2 (lines 45-53) describes a permit term not to exceed 10 years (line 47). I have concerns that such a time period for a permit does not synchronize well with traditional 15 and 20 year bonding cycles for financing public water supply systems. I believe the permit period should coincide with such terms for financing.
6. Lines 54-78 describe a process where a complaint is made to the Secretary and the Secretary may cause local officials to provide various types of information and documents to enable him to conduct an investigation of such complaint. The language does not differentiate between frivolous and documented, serious complaints. The staff time and costs necessary to respond to the Secretary's inquiries can be significant, especially if such investigations are repetitive and based on frivolous complaints. Some mechanism should be developed to distinguish among frivolous and substantive complaints and concerns.

After reviewing the language of House Bill 2539 and considering the history of the bill and state staff responses during the past four sessions of the Kansas legislature (including the current one), I would offer the following comments about this legislation. First, I sincerely believe that water supply protection is an important and serious concern to all of us and should be addressed. Second, in light of the legal issues raised by this legislation and in light of the Mt. Hope WHP study which is nearing completion, it would seem wise to refer this legislation to an interim committee for study or to defer the legislation until the 1990 session of the legislature when these factors can be included in the proposed legislation. In the interim, the lessons learned from the Mt. Hope study and any research dealing with the legal issues raised by this bill should be incorporated into the language of any similar legislation introduced in the 1990 session of the Kansas legislature. If such action is taken, I would hope that state staff would address such issues seriously and not merely recycle the same legislation.

cmh  
Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

SEP 18 1987



Doug Hahn, Director  
Department of Environmental Resources  
Sedgwick County, Kansas  
510 N. Main  
Wichita, Kansas 67203

Dear Doug:

Enclosed is a copy of an Interagency Agreement between USGS and EPA for a project which focuses on describing and demonstrating methods for delineating a wellhead protection area around the public water supply well system in Mt. Hope, Kansas. As this activity is within Sedgwick County, we felt it would interest you.

I'm also enclosing some additional background information on the Wellhead Protection Program. EPA's role in carrying out this provision of the 1986 Safe Drinking Water Act (SDWA) Amendments is to provide financial and technical assistance to interested states. We believe that Kansas will apply for the first year development grant for the establishment of a Wellhead Protection Program in the state.

If you have any questions, call me or Pat Costello, of my staff, at (913) 236-2970.

Sincerely yours,

Timothy L. Amsden, Director  
Office of Groundwater Protection

Enclosure



# United States Department of the Interior

GEOLOGICAL SURVEY  
Water Resources Division  
1950 Constant Avenue - Campus West  
Lawrence, Kansas 66046

September 11, 1987

Mr. J. Patrick Costello  
EPA Region VII  
Office of Ground Water Protection  
726 Minnesota Avenue  
Kansas City, Kansas 66101

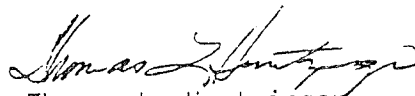
Dear Mr. Costello:

Thank you for the Interagency Agreement No. DW14932747-01-0, dated 9/1/87, providing \$25,000 to the U.S. Geological Survey for description and demonstration of methods for delineating wellhead protection areas around public water supply wells in the midwest. I have signed the agreement as requested.

We will do this work and will bill you in an amount not to exceed \$25,000, on a TFS 7306, in lieu of Standard Form 1081.

It is understood that the results of this work will be available to the U.S. Geological Survey for publication and use in connection with related work. Because we did not complete this agreement as soon as originally planned, we will need to move the due dates on the attached proposal back one month. We trust this meets your approval as discussed with you today.

Sincerely,

  
Thomas L. Huntzinger  
Acting District Chief

cc: Carol Rompage  
Chief, Grants Administration

1. IAG Identification Number  
 DWL4932747-01-0

2. Funding Location by Region  
 07

INTERAGENCY AGREEMENT/AMENDMENT  
 Part I - GENERAL INFORMATION

3. Type of Action  
 IAG

4. Program Abbreviation

5. Name and Address of EPA Organization  
 U.S. EPA Region 7  
 OGWP  
 725 Minnesota Avenue  
 Kansas City, KS 66101

6. Name and Address of Other Agency  
 U.S. Geological Survey - WRO (Dept. of Interior)  
 1950 Constant Avenue  
 Campus West  
 Lawrence, Kansas 66046

7. Project Title Description and Demonstration of Methods for Delineating Wellhead Protection Areas Around Public Water Supply Wells in the Midwest

8. EPA Project Officer (Name, Address, Telephone Number)  
 J. Patrick Costello (913) 236-2915  
 EPA Region 7 FTS 757 2915  
 OGWP, 725 Minnesota Avenue  
 Kansas City, Kansas 66101

9. Other Agency Project Officer (Name, Address, Telephone Number)  
 Christy Hansen (913) 264-1321  
 U.S. Geological Survey  
 1950 Constant Avenue, Campus West  
 Lawrence, Kansas 66046

10. Project Period  
 September 1, 1987 - May 1, 1988

11. Budget Period  
 September 1, 1987 - May 1, 1988

12. Scope of Work (Attach additional sheets, as needed)

The U.S. Geological Survey, Water Resources Division, Lawrence, Kansas, will conduct a project which describes and demonstrates methodologies for delineating zones of influence and consequently wellhead protection areas around public water supply wells in the midwest. The project is to outline appropriate methods for delineating zones of influence around large-yield wells under hydrogeologic conditions common within the state of Kansas. This effort will focus on the hydraulics of flow, as the basic control on subsurface contaminant movement within zones of influence. The work will focus on unconfined and semi-confined conditions. Accompanying the primary objective will be the identification of data requirements for the designated methods, and possible sources for acquiring or estimating such data. Zones of influence for a range of travel-times of contaminant movement toward a well will be delineated for an example public-supply site in Kansas. This will include the use of the ARC/INFO Geographic Information System to facilitate analysis and presentation of results.

The aforementioned scope of work can be broken down into three phases. Each phase corresponds to three different levels of funding. The attached proposal, i.e., Proposal A) consists basically of a single demonstration project (a specific site) within the state of Kansas (that is possible for \$25,000). That site is Mt. Hope in Sedgwick County, Kansas, a small midwest agricultural community. Broader application of procedures which are contained in the next two phases would require higher funding and are not, therefore, within the scope of this IAG; however, with additional funding becoming available at some later date, this IAG could be amended to include the second and third phase if so desired.

13. Statutory Authority for both Transfer of Funds and Project Activities

14. Other Agency Type

FUNDS	PREVIOUS AMOUNT	AMOUNT THIS ACTION	AMENDED TOTAL
15. EPA Amount		25,000.00	
16. EPA In-Kind Amount			
17. Other Agency Amount			
18. Other Agency In-Kind Amount			
19. Total Project Cost		25,000.00	

20. Fiscal Information

Program Element	FY	Appropriation	Doc. Control No.	Account Number	Object Class	Obligation/Deobligation Amt
Bmmc2E	87	687/30108	KEP001	7BMM07K900	25.71	\$25,000.00

PART II — APPROVED BUDGET

IAG IDENTIFICATION NO.

21. Budget Categories	Total Itemization of Estimated Cost to Date
a) Personnel	\$ 19,700
b) Fringe Benefits	500
c) Travel	
d) Equipment	1,300
e) Supplies	1,000
f) Procurement/Assistance <i>Computer Service</i>	
g) Construction	
h) Other <i>Report Production</i>	\$ 2,500
i) Total Direct Charges	\$ 25,000
j) Indirect Costs: Rate \$ Base	
(k) Total EPA Share <i>100%</i> (Other Agency Share %)	\$ 25,000

22. Is equipment authorized to be furnished by EPA or acquired with EPA funds?  Yes  No  
 (Identify all equipment costing \$1,000 or more)

23. Are any of these funds being used on extramural agreements?  Yes  No (See Item 21f)

Grant,  Cooperative Agreement, or  Procurement

Contactor/Recipient Name (if known)	Total Extramural Amount Under This Project	Percent Funded by EPA (if known)
U.S. Geological Survey Water Resources Div. Lawrence, KS	\$25,000.00	100%

PART III — PAYMENT METHODS AND BILLING INSTRUCTIONS

24.  Disbursement Agreement:

Reimbursement

Request for reimbursement of actual costs will be itemized on SF 1081 or SF 1080 and submitted to the Financial Management Office, Environmental Protection Agency, 26 West St. Clair, Cincinnati, OH 45268:

Monthly  Quarterly  Upon Completion of Work

Advance

Only available for use by Federal agencies on working capital fund or with appropriate justification of need for this type of payment method. Unexpended funds at completion of work will be returned to EPA. Quarterly cost reports will be forwarded to the Financial Management Office, Environmental Protection Agency, 26 West St. Clair, Cincinnati, OH 45268.

Allocation Transfer

Used to transfer obligational authority or transfer of function between Federal agencies. Must receive prior approval by the Office of the Comptroller, Budget Division, Budget Formulation and Control Branch, EPA Headquarters.

25.  Reimbursement Agreement

Other Agency's IAG Identification Number

Billing Instructions and Frequency

Billing Address

PART IV — ACCEPTANCE CONDITIONS

IAG IDENTIFICATION NO.

26. General Conditions:

The other agency covenants and agrees that it will expeditiously initiate and complete the project work for which funds have been awarded under this agreement.

27. Special Conditions:

Part V — OFFER AND ACCEPTANCE

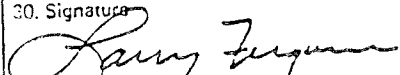
NOTE: 1) For disbursement actions, the agreement/amendment must be signed in duplicate and one original returned to the Grants Administration Division for Headquarters agreements and to the appropriate EPA IAG administration office for Regional agreements within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. The agreement/amendment must be forwarded to the address cited in Item 28 after acceptance signature.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time may result in the withdrawal of the offer by the Agency. Any change to the agreement by the other agency subsequent to the document being signed by the EPA Action Official which the Action Official determines to materially alter the agreement/amendment shall void the agreement/amendment.

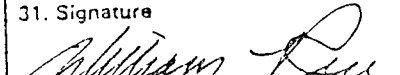
2) For reimbursement actions, the other agency will initiate the action and forward two original agreements/amendments to the appropriate EPA program office for signature. The agreements/amendments will then be forwarded to the appropriate EPA IAG administration office for acceptance signature on behalf of the Environmental Protection Agency. One original copy will be returned to the other agency after acceptance.

EPA IAG Administration Office (for administrative/management assistance)	EPA Program Office (for technical assistance)
28. Organization/Address Pat LaRue, Grants Administration Section U.S. Environmental Protection Agency Region VII 726 Minnesota Avenue Kansas City, Kansas 66101	29. Organization/Address U.S. EPA, Region VII Office of Ground Water Protection 726 Minnesota Avenue Kansas City, Kansas 66101


Decision Official on Behalf of the Environmental Protection Agency Program Office

30. Signature 	Typed Name and Title Paul M. Walker, Director Water Management Division	Date 8/5/87
--	---	----------------

Action Official on Behalf of the Environmental Protection Agency

31. Signature 	Typed Name and Title Morris Kay Regional Administrator	Date 9/1/87
--	--	----------------

Authorizing Official on Behalf of the Other Agency

32. Signature 	Typed Name and Title Thomas L. Huntzinger, Kansas District Acting District Chief	Date 9/11/87
--	--	-----------------

## PROPOSAL A

### TITLE:

Example demonstration of procedures for delineating wellhead protection areas around a Midwest public ground-water supply site

### PROBLEM:

Awareness and concern regarding ground-water contamination potential is increasing in the Midwest United States, where ground water is an important source of public water supply. Many of the productive aquifers are quite shallow and overlain by relatively permeable materials, making them particularly vulnerable to contamination. Protection of ground-water quality and response to contamination events both depend on a reasonable understanding of basic flow patterns within the zone of influence of pumping wells. The Environmental Protection Agency is involved in defining wellhead protection strategies. A demonstration of the application of these strategies to a site in the Midwest United States is needed.

### OBJECTIVE:

The primary objective of the project is to outline appropriate methods and data required to delineate the wellhead protection area around a Midwest United States public ground-water supply site. Additionally, the utility of a geographic information system to the delineation and display of the wellhead protection areas and associated information will be demonstrated.

### SCOPE:

The methods chosen for delineating well head protection areas for this project will focus on the hydraulics of flow as the basic control on subsurface contaminant movement. Other aspects of contaminant transport are beyond the scope of this study. Only data required to delineate the wellhead protection area for the example site will be compiled.

### APPROACH:

Mt. Hope in Sedgwick County, Kansas is a small Midwest agricultural community. Information from two general hydrologic studies of Sedgwick County (one previously published and one currently in progress), from a recently completed computer model of the major aquifer in the area, and a recently completed DRASTIC model in adjoining Harvey County are available for the 36 square mile area around Mt. Hope and make it an attractive choice for a wellhead protection demonstration site.

Methods described by the U.S. Environmental Protection Agency in "Guidelines for delineation of wellhead protection areas" (and possibly other sources) for delineating the wellhead protection area around public supply wells will be evaluated for their appropriateness to the Mt. Hope, Kansas, example site. The types of information needed to apply each selected method will be compiled and stored in forms compatible with the ARC/INFO geographic information system. The selected methods will be used to delineate wellhead protection areas for all public supply wells in the 36 square mile area around Mt. Hope, Kansas. The information compiled and each selected method's resulting wellhead protection areas will be displayed through the use of ARC/INFO.

1) Define methods

Methods applicable to defining short-term and long-term wellhead protection areas will be defined. For example, areas associated with travel-time periods of 90 days, 5 years, and 20 years would provide information pertinent to short- and long-term contaminant movement toward a well. Methods appropriate for use would reflect various levels of sophistication, depending on degree of hydrologic complexity of the site and on availability of data. These methods range from an arbitrary fixed radius of influence to analytical or numerical methods.

2) Specify data requirements

Data required for application of each selected method will be described, and relative sensitivities of the various parameters to the desired solution will be evaluated. This will be helpful to future decisions regarding the desirability of acquiring particular types of data.

3) Delineate wellhead protection areas :

Appropriate information for the 36 square mile area around Mt. Hope, Kansas, will be compiled and entered into ARC/INFO geographic information system. Wellhead protection areas for a range of travel-times will be delineated for the Mt. Hope, Kansas, public-supply wells. Selected maps, other graphical presentations, and tables will be produced by the geographic information system to present these data. The types of data to be presented may include, but not be limited to:

- a) Geology (including major aquifers)
- b) Soils
- c) RCRA and CERCLA sites
- d) Landfills (active and inactive)
- e) Wells
- f) Landuse (including wetlands)
- g) Topography
- h) Water table
- i) Depth to water
- j) Hydraulic conductivity
- k) Water quality
- l) Precipitation



- m) Transportation network
- n) Political boundaries
- o) Potential contamination sources
- p) Wellhead protection areas for each selected method

4) Prepare reports

Results will be provided to EPA for peer review in the form of a preliminary draft of a USGS Open-File report. Results will be published in both the USGS Open-File and Water-Resource Investigation series.

TIME AND COST:

The proposed project would require 8 months to complete, and could begin September 1, 1987. Estimated total cost is \$25,000. Major cost items are as follows:

Salary	\$19,700
Travel	500
Supplies and materials	1,300
Computer services	1,000
Report production	2,500
	-----
Total cost	\$25,000

WORKPLAN

Phase I

Project begins	September 1, 1987
Evaluation of wellhead protection methods	September 1, 1987
Define data requirements for selected methods	November 1, 1987
1st quarterly progress report	December 1, 1987
Compile and enter data for Mt. Hope example	December 15, 1987
Delineate WHP areas for Mt. Hope example	January 15, 1988
Begin writing report	February 15, 1988
2nd quarterly progress report	March 1, 1988
Draft report to EPA for peer review	March 21, 1988
Draft report returned from EPA	April 7, 1988
Revised report returned to EPA	May 1, 1988



# League of Kansas Municipalities

# Municipal Legislative Testimony

*An Instrumentality of its Member Kansas Cities. 112 West Seventh Street, Topeka, Kansas 66603 Area 913-354-9565*

TO: House Committee on Energy and Natural Resources  
FROM: David Corliss  
DATE: March 27, 1989  
RE: HB 2539; Public Water Supply System Permits and Protection Plans

The League of Kansas Municipalities is in general support of legislation encouraging the development and implementation of public water supply protection plans. The protection of current and future water supplies is an important priority for the nearly 500 city-owned and operated water systems in Kansas. However, HB 2539 mandates certain unnecessary reporting and permitting requirements and fails to adequately define the scope and workability of protection plans.

The Statement of Municipal Policy adopted by city voting delegates at the League's 78th annual city conference provides, in part, the following:

"J-1e. Water Quality Protection. We endorse concepts within the state water plan encouraging greater state and local involvement in a broad range of environmental protection efforts and encouraging a state-local partnership to develop and implement protection plans. In conjunction with these efforts, cities should develop water quality protection plans, inventory potential sources of contamination, and be aggressive in the use of local zoning and subdivision regulation controls to protect public surface water and groundwater supplies. While we support the general concept of water supply protection legislation, renewal permits to operate a public water supply system should not be required for at least two years following the final adoption of the applicable state rules and regulations. Such regulations should be broad and flexible, permitting local discretion to meet local conditions."

The League's Water and Environment Committee met on March 17, and raised a number of questions and concerns regarding HB 2539 that, in our opinion, should be addressed in considering this legislation.

The requirement that any change in the manner of water supply distribution have prior approval of the KDHE Secretary (lines 35:38) would create a burdensome requirement, unrelated to any water quality needs. We interpret "distribution" to include such routine and daily functions as the installation of customer service lines, the replacement of aging pipes, or even the maintenance of fire hydrants. Is it necessary that KDHE approve every change in the distribution of every water supply system? Does KDHE have the manpower to quickly respond to the frequent distribution changes made at all public water supply systems? If this information is simply to be "noted and filed," why require it in the first place?

Similar arguments can be made against the requirement that a renewed permit be obtained whenever any part of a public water supply system is "modified" (lines 51:53). Modifications to many water supply systems occur frequently. Should a permit be required everytime any part of a water system is changed? Again, terms such as "distribution" and "modified" raise concerns of regulatory over-reaching that should be clarified before this legislation proceeds.

As you know, the Kansas Water Authority recommendations to the 1989 Legislature for implementing the State Water Plan included \$124,876 to allow KDHE to provide technical assistance to local units of government for the development of public water supply protection plans. The Authority recommendations also stated that "legislation is necessary to authorize the secretary of the Kansas Department of Health and Environment to select, on a priority basis, those public water supply systems which require protection plans." The League supports funding of KDHE technical assistance for the development of public water supply protection plans. With many systems facing water shortages and other systems concerned about their vulnerability to an extended drought, funding for water supply protection plans should be a high legislative priority.

It appears to us that the proper legislative course this year is to fully fund KDHE assistance in the development of protection plans and then use the information from this Water Plan project as the basis for requiring protection plans statewide. A track record on protection plan development should help in answering numerous concerns raised about HB 2539. How much will protection plan development and implementation cost? Do city water systems need extra-territorial powers to fully protect their water supply sources outside their jurisdiction? What will be the typical scope of a protection plan approved by KDHE? How will they differ from current protection efforts? Answers to these and other questions, appear to be necessary before the legislature allows KDHE to mandate protection plans for every water system.

The League supports the establishment of an advisory committee to work with KDHE in the development of rules and regulations authorized by this bill. An advisory committee will allow KDHE to receive input from a variety of different water systems, large and small, rural and urban. Also, by convention action, the League recommends that the permit requirement not take effect for at least two years following their final adoption. This would allow time for the governing bodies of water systems to adjust rates to finance the plan, develop a planning process and take such other action as is necessary to comply with the regulations. Where a river basin is involved, we think the development of meaningful protection plans will require considerable time.

# WATER DISTRICT NO. 1 OF JOHNSON COUNTY



5930 Beverly — Mission, Kansas 66202  
Mailing Address: P.O. Box 2921, Mission, Kansas 66201

Tel. (913) 722-3000

TESTIMONY ON HB 2539  
BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE  
MARCH 27, 1989

GOOD MORNING MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

MY NAME IS JAMES MEITL AND I REPRESENT WATER DISTRICT NO. 1 OF JOHNSON COUNTY. FOR THE BENEFIT OF THOSE OF YOU THAT MIGHT NOT BE FAMILIAR WITH OUR DISTRICT, WE ARE THE SECOND LARGEST WATER UTILITY IN THE GREATER KANSAS CITY METROPOLITAN AREA AND THE STATE OF KANSAS. WE SERVE APPROXIMATELY 250,000 INDIVIDUALS THROUGHOUT FIFTEEN CITIES IN JOHNSON COUNTY.

AS ONE OF THE LARGEST WATER PURVEYORS IN THE STATE, I CAN ASSURE YOU THAT WATER DISTRICT #1 IS KEENLY AWARE OF THE ISSUES THAT FACE OUR INDUSTRY THAT AFFECT THE PROTECTION OF OUR WATER SUPPLIES.

WE APPLAUD THE STATE'S EFFORTS TO TRY TO BRING ABOUT A COORDINATED PLANNING EFFORT TO MANAGE OUR NATURAL RESOURCES. THIS BILL, WITH ITS COMPANION BILL HB 2538, REPRESENTS A GIGANTIC EFFORT TO FORCE PLANNING AT THE COUNTY AND LOCAL LEVEL NOT ONLY IN THE WATER RESOURCE AREA BUT ALSO IN THE SOLID WASTE, WASTE WATER, AND OTHER ENVIRONMENTAL AREAS.

OUR CONCERN WITH THIS AMENDMENT IS THAT IT HAS NO STATED PURPOSE OTHER THAN TO INCREASE ADMINISTRATIVE PAPER WORK AND BUREAUCRACY THAN CURRENTLY EXISTS OR CAN BE EFFECTIVELY STAFFED WITHOUT A MAJOR HIRING PROGRAM BY THE STATE. IF THE AMENDMENT PASSES,

THERE IS NO REASON TO BELIEVE THAT THE RESULTS WILL GIVE THE STATE ANY MORE ABILITY TO EFFECTIVELY PLAN AND, CONVERSELY, MAY CAUSE PROBLEMS IN AREAS THAT CURRENTLY DO NOT EXIST.

THERE ARE OVER 500 PUBLIC OR PRIVATE WATER SUPPLY SYSTEMS IN KANSAS AND IF EVERY ONE IS REQUIRED TO SUBMIT AN APPLICATION OR RENEWAL EVERY 10 YEARS, THAT MEANS THE STATE WILL REVIEW 50 PERMITS EVERY YEAR. IN ADDITION, EVERY TIME A SYSTEM IS MODIFIED IT MUST SEEK A RENEWAL PERMIT. A CONSERVATIVE NUMBER FOR THESE RENEWALS (BASED UPON WHAT I WOULD CONSIDER A MODIFICATION) WOULD BE 150 TO 200 SYSTEMS. IN ADDITION, "ANY CHANGE MADE IN THE MANNER OF STORAGE, PURIFICATION TREATMENT OR DISTRIBUTION OF THE WATER SUPPLY WITHOUT PRIOR APPROVAL OF THE SECRETARY" WILL NOT BE ALLOWED. VIRTUALLY EVERY SYSTEM IN THE STATE CHANGES ITS DISTRIBUTION SYSTEM EVERY YEAR, SO CONSERVATIVELY THAT WILL REQUIRE OVER 400 PRIOR APPROVALS. IN WATER DISTRICT #1 WE CHANGE OUR DISTRIBUTION SYSTEM EVERY DAY. SOME OF THE CHANGES ARE A RESULT OF PLANNING AND ARE IN OUR BUDGET, BUT MOST ARE A RESULT OF DEVELOPMENT OR SHIFTS IN DEMAND OF OUR WATER FROM ONE PART OF OUR SYSTEM TO ANOTHER. IT MAY BE REALISTIC TO SAY THAT WE WILL BE FILING FOR PRIOR APPROVALS WITH THE STATE SEVERAL TIMES A MONTH, AND MAYBE MORE IF YOU CONSIDER INSTALLING A FIRE HYDRANT AS A "CHANGE TO THE DISTRIBUTION SYSTEM".

ADDING UP THE NUMBERS, THE STATE COULD BE LOOKING AT 500-600 PLUS CHANGES TO THE DISTRIBUTION SYSTEM REQUEST. THIS ADDS UP TO A TOTAL OF BETWEEN 700-800 PERMITS EACH YEAR. THAT'S OVER TWO A DAY. I AM ASSUMING IT WILL TAKE MORE THAN JUST A COUPLE HOURS TO ISSUE PERMITS AND THEIR RENEWALS. AS A MATTER OF FACT IT WILL PROBABLY INCLUDE SEVERAL WEEKS OF REVIEW FOR MANY SYSTEMS,

MAILINGS BETWEEN THE SYSTEMS, PHONE CALLS, ENGINEERS' TIME, ETC.

WE IN JOHNSON COUNTY BELIEVE THESE DELAYS WOULD GREATLY HAMPER OUR DAILY OPERATIONS. WHEN A DEVELOPER WANTS A LINE EXTENSION WE RESPOND WITHIN DAYS, OR AT MINIMUM, A WEEK OR TWO. TO ADD THE STATE'S REVIEW WOULD BACKLOG OUR ENTIRE PROCESS, AND TO WHAT GOOD? I DOUBT THE STATE WILL REQUIRE MORE STRINGENT FIRE FLOWS OR HYDRANT SPACINGS THAN WE DO OR REQUIRE A MORE SOPHISTICATED VALVING OR CROSS-CONNECTION PROGRAM THAN WE DO, OR REQUIRE BETTER BACKFILL TECHNIQUES OR CLASS OF PIPE THAN WHAT WE DO. IS THE STATE WILLING TO HELP US PAY FOR THE COST OF MAILING OR TRAVEL TIME TO TOPEKA TO PROCESS PERMITS? NOT ONLY WILL THE STATE HAVE TO INCREASE THEIR STAFF, BUT SO WILL THE WATER DISTRICTS AND CITIES AND FOR NO APPARENT GOOD.

A SECOND CONCERN IS THE AREA OF "DEVELOPMENT AND IMPLEMENTATION OF PUBLIC WATER SUPPLY PROTECTION PLANS". DEVELOPMENT OF PUBLIC WATER SUPPLY PROTECTION PLANS ARE NOT SIMPLE EVEN IN THEIR MOST SIMPLE FORM. IF EVERY WATER SUPPLY IS REQUIRED TO DEVELOP ONE, THE COST ASSOCIATED WILL BE ASTRONOMICAL STATE WIDE. THEN WHAT IS THE STATE GOING TO DO WITH THESE? WHAT ARE THE WATER DISTRICTS' GOING TO DO WITH THEM? WE CONTEND THAT THE LOCAL WATER PURVEYORS SHOULD HAVE THE RESPONSIBILITY TO DEVELOP THESE ON THEIR OWN. THEY SHOULD NOT BE MANDATED BY THE STATE. ONCE DEVELOPED, THE PLANS CAN BE INTEGRATED IN THE STATE WATER PLANS THROUGH THE APPROPRIATE BASIN ADVISORY COMMITTEES. THESE AMENDMENTS CALL FOR THE SECRETARY TO APPROVE SUCH PLANS. WHAT HAPPENS WHEN I PUT RESTRICTIONS ON OTHER UNITS OF GOVERNMENT TO PROTECT MY WATER SUPPLY? WILL THE SECRETARY ENFORCE THESE AGAINST THAT UNIT OF GOVERNMENT?

THE PEOPLE IN THE STATE OF KANSAS THAT ARE INVOLVED IN PROVIDING WATER TO THE PEOPLE OF KANSAS ARE NOT THE ONES THAT NEED TO BE LEGISLATED AGAINST AND REGULATED. MORE EMPHASIS NEEDS TO BE PLACED ON LEGISLATION THAT ADDRESSES THE SOURCE OF OUR PROBLEMS. WITH THIS LEVEL OF HELP FROM TOPEKA WE AND THE STATE CAN GET OUR WATER SUPPLIES CLEANED UP. WE OPPOSE THESE AMENDMENTS BECAUSE THEY ARE COSTLY TO THE STATE AND THE WATER SUPPLY SYSTEMS AND DO NOT GET AT THE PROBLEM THAT IS TRYING TO BE ADDRESSED.