Approved February 28, 1989
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources.

The meeting was called to order by Senator Ross Doyen at
Chairperson

8:05 a.m./~~p.m.~~ on February 22, 1989 in room 423-S of the Capitol.

All members were present except: quorum present.

Committee staff present:
Don Hayward, Revisor
Raney Gilliland, Research
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:
Tom Stiles, Kansas Water Office
Charlene Stinard, Kansas Natural Resource Council
Darrell Montei, Kansas Department of Wildlife and Parks
Wayland Anderson, Division of Water Resources, Kansas State Board of Agriculture

List of other present is on file.

Chairman Doyen opened the hearing on S. B. 266 - relating to minimum streamflows. He called on Tom Stiles.

Mr. Stiles presented testimony supporting S.B. 266 (Attachment I).

Charlene Stinard presented testimony supporting the bill (Attachment II).

Darrell Montei presented written testimony endorsing the bill (Attachment III).

Wayland Anderson written testimony states the division is satisfied with the process that took place in order to set minimum desirable (Attachment IV).

The hearing was closed.

Chairman Doyen asked for discussion or action on S.B. 266.

A motion was made by Senator Martin to report S.B. 266 favorable for passage. The motion was seconded by Senator Langworthy, and the motion carried.

The minutes of February 14, 15 and 16 were adopted.

The meeting adjourned at 8:28 a.m. The next meeting will be on February 23, 1989.

1989 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 22, 1989

PLEASE PRINT GUEST LIST

NAME	REPRESENTING
Tom Stiles	Kansas Water Office
Charlene Stunard	Ks Natural Resource Council
Lelland E. Rolfe	DWR - KSBA
Kathleen Warren	DOB
CR Duffy	Kansas Water Office
Margaret Ahrens	Ks Chapter, Sierra Club
BILL FULLER	Kansas Farm Bureau
ED SCHAUB	COSTAL CORP
Charles Nicolay	KOMA

Senate Bill 266
1989 Session
February 23, 1989

The Honorable Ross Doyen, Chairperson
Senate Committee on Energy and Natural Resources
Senate Chamber
Third Floor, Statehouse

Dear Senator Doyen:

SUBJECT: Fiscal Note for SB 266 by Committee on Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 266 is respectfully submitted to your committee.

SB 266 amends KSA 1988 Supp. 82a-703c to establish minimum desirable streamflows on certain Kansas watercourses. This adds the Walnut, Whitewater, Spring, and Solomon rivers to the list with statutory minimum desirable streamflows. Also included is Chapman Creek.

The bill has no fiscal impact.

Michael F. O'Keefe
Director of the Budget

MFO:KW:dlf

cc: Joseph Harkins, Kansas Water Office

6007

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Energy and Natural Resources

Recommends that Senate Bill No. 266

"AN ACT concerning water; relating to minimum streamflows; amending K.S.A. 1988 Supp. 82a-703c and repealing the existing section."

Be passed.

_____Chairperson

Testimony of the Kansas Water Office
to the
Senate Energy and Natural Resources Committee
Re: S.B. 266
Minimum Desirable Streamflows

History

Minimum desirable streamflows are identified in the State Water Plan to preserve, maintain or enhance baseflows for instream water users relative to water quality, fish, wildlife, aquatic life, recreation, general aesthetics and domestic uses and for the protection of existing water rights. The 1980 Legislature passed a law to protect streams from depletion by new water rights. The 1983 Legislature directed the Kansas Water Authority and the Kansas Water Office to develop procedures for establishing and administering minimum streamflows. To that end, the Kansas Water Authority and the Kansas Water Office have worked to establish minimum streamflows on streams in the state. Streamflow standards have been set by the Legislature in 1984, 1985 and 1987 on a total of 18 streams. Streamflows for five additional streams are recommended in Senate Bill 266. Figure 1 shows the location of existing and proposed streams under the minimum desirable streamflow program. Note that the program is associated with streams in the eastern two-thirds of the state.

In 1984, the Legislature passed a law which effectively gave any minimum streamflow a priority date of April 12, 1984, provided the streamflow was enacted prior to July 1, 1990. Water rights with priority dates on or before April 12, 1984, retained their

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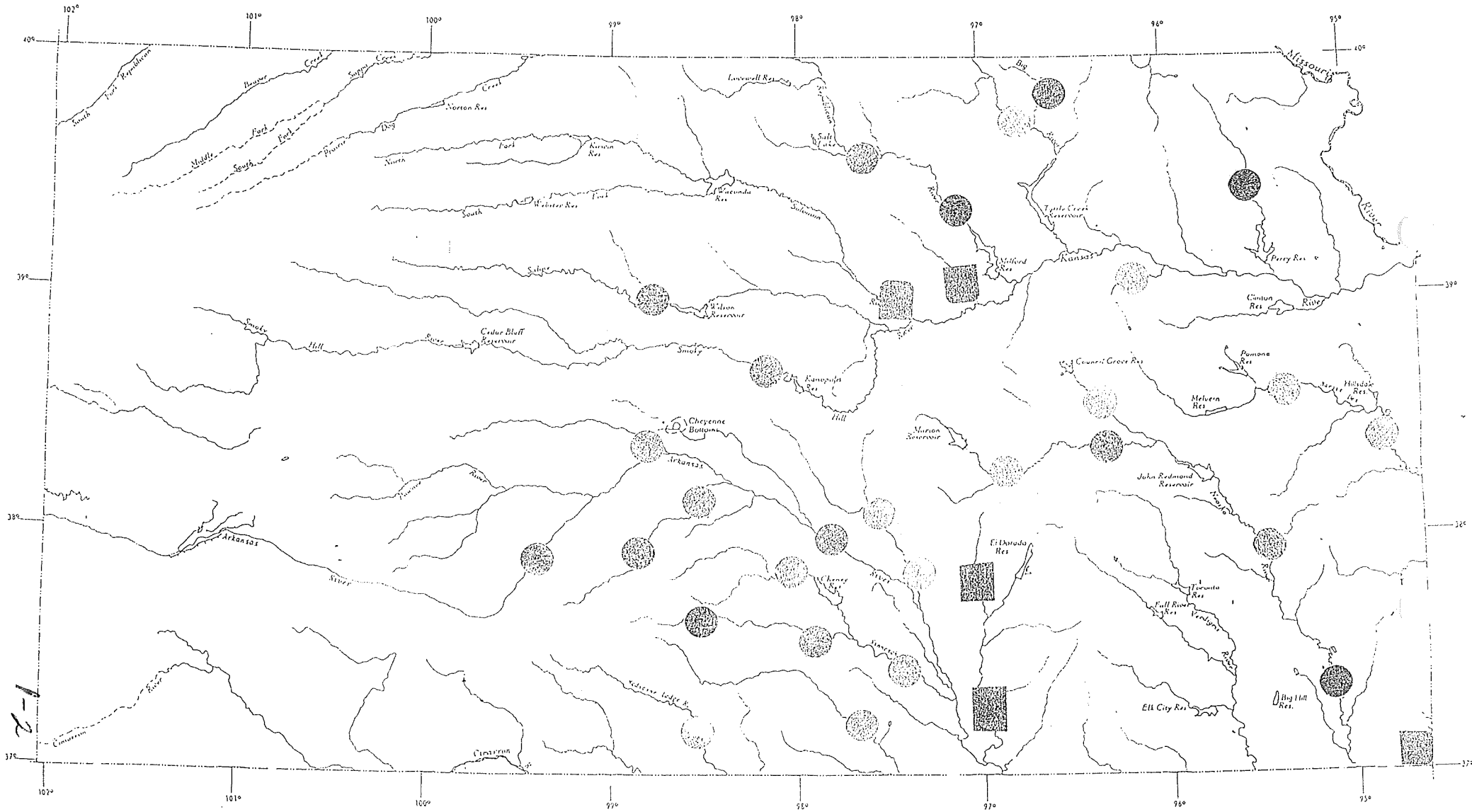
Attachment I

FIGURE 1. LOCATION OF MINIMUM DESIRABLE STREAMFLOWS



= Existing Standards

= Proposed Standards

seniority over minimum streamflows. As we approach the end of the "window of establishment" in 1990, the minimum streamflow program is undergoing a shift in emphasis from one of establishment to one of operation and administration. Barring extraordinary conditions, the proposed streams in Senate Bill 266 represent the last set of minimum streamflows to be presented to the Legislature.

Purpose and Limitations of Minimum Streamflows

The purpose of the minimum streamflow program is to protect the previously stated instream water uses from over-appropriation. The program is administered within the framework of the Water Appropriation Act. K.S.A. 82a-703a authorizes the Chief Engineer of the Division of Water Resources to withhold minimum streamflows from appropriation. Since the appropriation of water is done on a time-based priority system, only those water rights applied for after April 12, 1984, can be administered under the minimum streamflow program. Additionally, domestic water rights are not subject to administration.

In establishing minimum streamflows, the state has recognized such a program only works when there is water to protect under normal conditions. Thus, there has been no effort to propose streamflow standards on western Kansas streams which only flow with the occasional rain. Likewise, minimum streamflow are established at baseflow levels that ensure a high likelihood of occurrence. Establishing streamflow levels at values that have been historically met less than half the time is infeasible. The state

also recognizes the limitation of trying to maintain minimum streamflows in the face of drought. The goal of minimum streamflows is not to keep streams flowing during drought. Their purpose is to prevent streams from depletion through over-use. Figure 2 shows the relation of minimum streamflows to normal and drought flows on the Little Blue River in 1988.

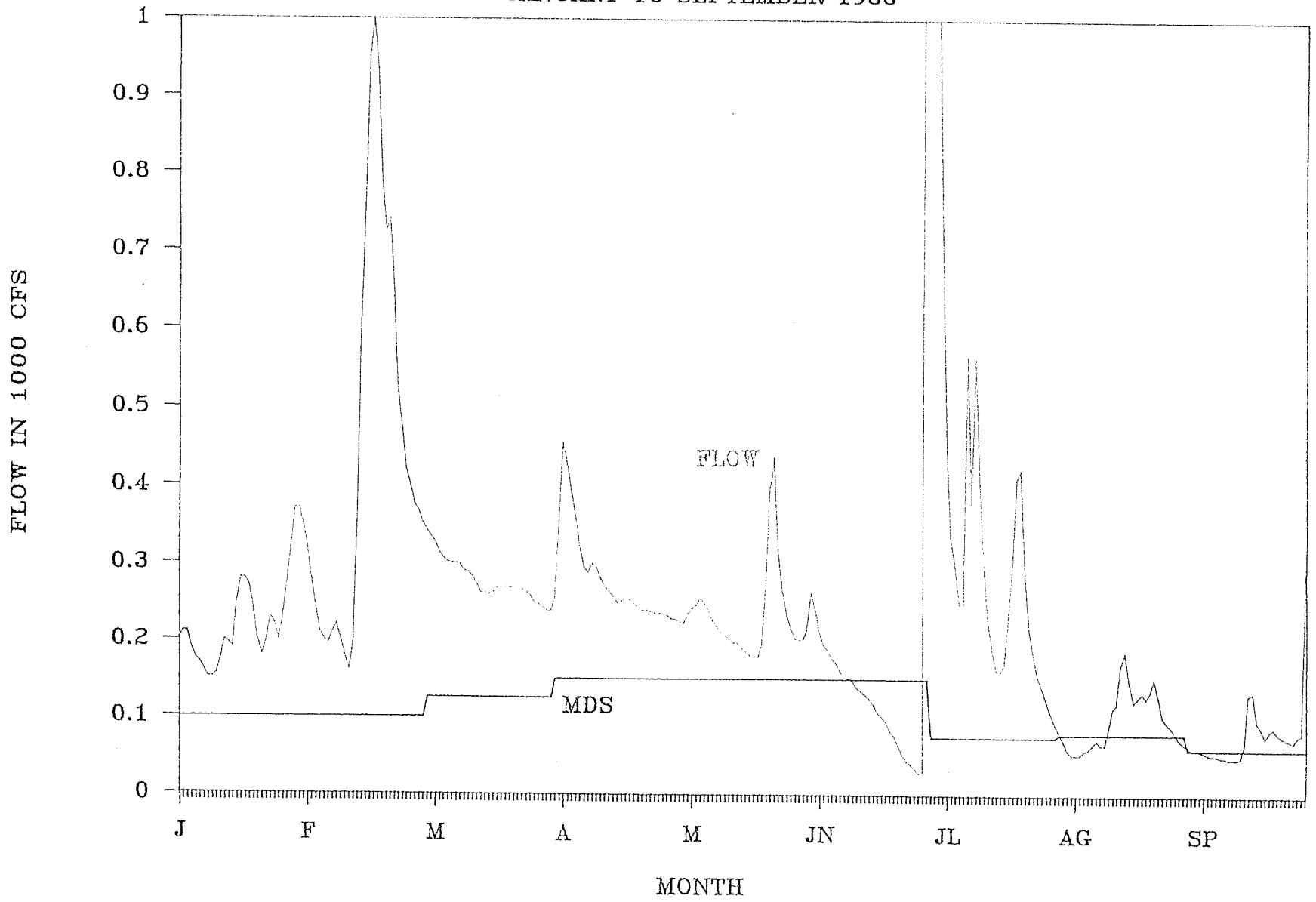
Recommended Flows for 1989

Senate Bill 266 lists the streamflow standards for five additional streams to be added to K.S.A. 82a-703c. These streams include the Walnut, Whitewater, Spring and Solomon rivers and Chapman Creek. These streams exhibit aquatic characteristics and flow reliability which make minimum streamflows a viable management option. The proposed flows have been met historically 80-90 percent of the time, they are baseflows. These flows have been developed through the interagency process which has produced minimum streamflow recommendations since 1984 and are consistent with the methodology of establishing minimum desirable streamflows. This includes public review and comment in the basins of concern. The Kansas Water Office supports approval of these flows. We also propose to present to the 1990 Legislature, final evaluations and recommendations on the 23 streams based on field investigations and data from 1984 to 1989.

FIGURE 2

FLOWS IN THE LITTLE BLUE RIVER

JANUARY TO SEPTEMBER 1988



1-9

Technical Amendment

We wish to note an error in the bill. The January flow for the South Fork of the Ninnescah River at Murdock is listed as 180 cfs, it should read 80 cfs.

Thank you for your time.

1-6

Testimony before the Senate Energy & Natural Resources
SB 266: minimum streamflow

Charlene A. Stinard, Kansas Natural Resource Council

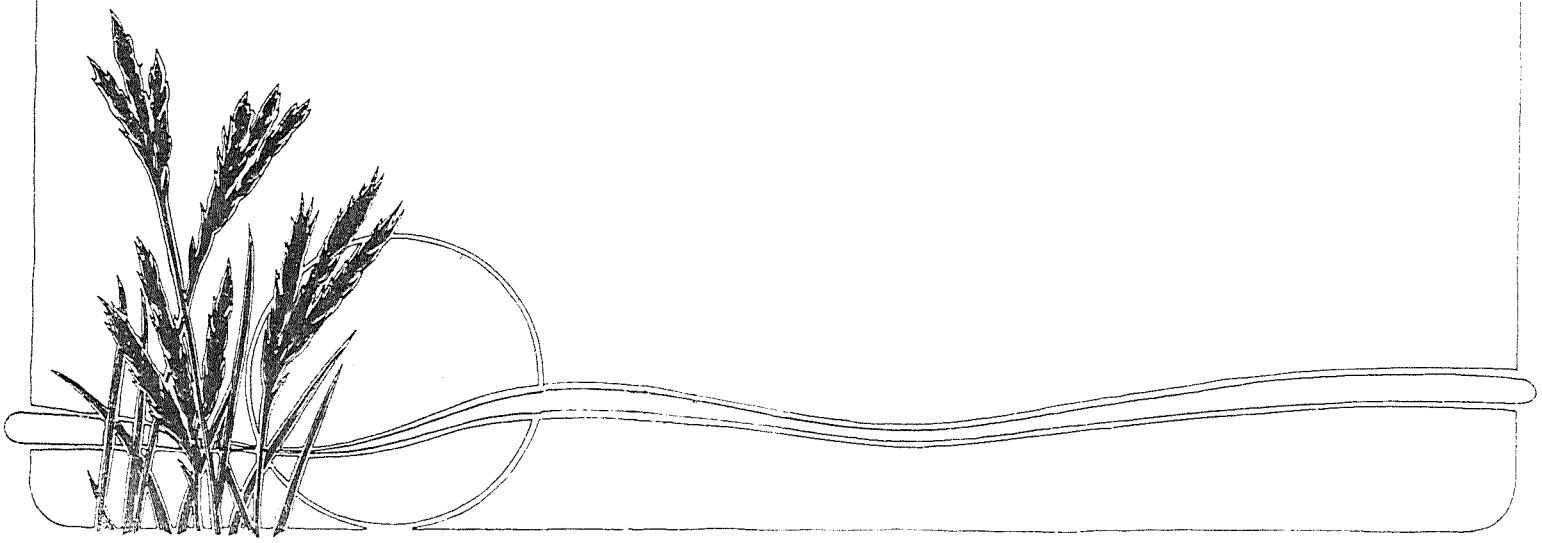
February 22, 1989

My name is Charlene Stinard, and I represent the Kansas Natural Resource Council, a private, non-profit organization whose members advocate sustainable resource policies and practices. Our organization has supported minimum streamflow legislation since the first rivers were designated in 1984.

The protection of minimum streamflows recognizes the inherent value of our rivers, apart from their capacity to meet our consumptive needs. Historically, the legacy of rivers and streams was reflected in many Indian treaties, which pledged lands "for as long as rivers flow and the grasses grow." These two conditions were understood as essential to the human spirit; without them, there was no reason to remain on dying land.

Water in Kansas is a public trust, and preserving our rivers and streams recognizes their inherent value -- their value for wildlife, fish, recreation, and aesthetics. The condition of our rivers and streams is a prime indicator of our environment's ability to support our lives and our economic activities. Policies hostile to our rivers and streams are ultimately hostile to our agriculture, our economy, and our communities. When we compromise the integrity of our water, we jeopardize our own.

Setting minimum streamflow standards ranks as one of the highest achievements of the water planning process. We urge your support of SB 266.



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attachment II

S.B. 266

Testimony Provided to the Senate Energy and Natural Resources Committee

February 22, 1989

Provided by the Kansas Department of Wildlife and Parks

The Kansas Department of Wildlife and Parks endorses Senate Bill No. 266. This legislation adds five new streams to the existing 18 which have minimum desirable streamflow values established. These entries include the Walnut, Whitewater, Spring, and Solomon Rivers along with Chapman Creek. We commend the Kansas Water Office, Kansas Water Authority and the legislature for their dedication to this water protection effort. Minimum desirable streamflows are a rational and appropriate tool for planning and managing multi-purpose uses of our stream resources.

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attachment III

STATEMENT OF WAYLAND ANDERSON
ASSISTANT CHIEF ENGINEER
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON SENATE BILL NO. 266

February 22, 1989

Chairman Doyen and Members of the Committee, thank you for this opportunity to appear and testify about Senate Bill No. 266 which would establish minimum desirable streamflows for five new rivers and streams. If the legislature passes Senate Bill No. 266 establishing minimum streamflows on these five new streams (the Walnut River, White Water River, Spring River, Chapman Creek and Solomon River). It will be the responsibility of the Chief Engineer to withhold from appropriation that amount of water deemed necessary to establish and maintain, for these water courses, 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.

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, provided they are operating in compliance with the conditions of their

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attachment IV

permits during times of streamflow administration.

Any junior appropriation (i.e., one with an application filed after April 12, 1984) would be subject to regulation during periods of low flow and would not be allowed to divert water if such diversion would cause the minimum desirable streamflow to not be satisfied.

In some cases, groundwater withdrawals from wells in the alluvial aquifer along streams can significantly affect the streamflow. Therefore, it will be necessary for us to analyze the effect of new wells on these streamflow requirements in order to determine whether new wells should be allowed, and if so, at what distance to the stream. Groundwater - surface water interrelationships are normally quite complex and vary from one stream system to another. Therefore, it is necessary for the Chief Engineer to have stream specific policies and procedure concerning the approval of wells.

In essence, the minimum desirable streamflow program does not change the way the water rights are administered, except to leave a certain portion of streamflow, when available, in the stream for in-stream flow purposes, rather than to allow that water to be appropriated for new consumptive uses. In addition to the environmental and water quality benefits associated with this in-stream flow, it should make it easier to protect existing water rights, such as domestic rights for livestock watering. Said another way, once a stream has been dried up or severely depleted, even regulation of junior upstream water users may still not make it possible to provide an adequate supply of water for senior downstream users. However, if we can maintain some limited amount of water in the steam, this problem can normally be overcome.

The Division of Water Resources, Kansas State Board of Agriculture, has had an opportunity to provide input into the development of the 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 Senate Bill No. 266 is the result of extensive discussions 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 meeting 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.

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