

Approved Wednesday, February 14, 1990
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by SENATOR DAN THIESSEN at
Chairperson

11:00 a.m. ~~xxx~~ on Thursday, February 1, 1990 in room 519-S of the Capitol.

All members were present except:
Senator James Francisco

Committee staff present:
Don Hayward, Revisor's Office
Chris Courtwright, Research Department
Tom Severn, Research Department

Conferees appearing before the committee:
Ed Moses, Aggregate Producers Association
Mr. Peters, An Operator of the River
Janet Stubbs, Home Builders Assn. of KS., Inc.
Mark Burghart, Department of Revenue

Chairman Thiessen called the meeting to order at 11:08 p.m. and told the members that they had minutes in front of them, dated January 29, 1990 and asked if there was a motion on the minutes.

Senator Fred Kerr moved to adopt the minutes of January 29, 1990, 2nd by Senator Karr. The motion to adopt the minutes carried.

Chairman Thiessen turned attention to SB471 and recognized Ed Moses, Managing Director of the Kansas Aggregate Producers Association.

SB471: AN ACT concerning the removal of certain materials from rivers; relating to the payment of compensation therefor; amending K.S.A. 70a-102 and repealing the existing section.

Ed Moses said the Aggregate Producers Association is interested in SB471 and appears in opposition of the bill as drafted. He said, their objections are primarily centered around the royalty fee being raised from 2¢ to 15¢ per ton, an increase of 650%. He said, as he testifies he would like for the committee to see themselves as sellers of sand sand and not taxers of sand, because he said, in fact that is what you are, as the state holds title to the navigable river bed. He said, since the state does hold title since 1913 the state charged those people who commercially dredged the river a royalty for harvesting that sand. In 1930 the royalty fee was set at 2¢ per ton, and in 1964 all the contracts were reviewed and was left at 2¢ per ton. He said, then in 1988, when the Governor went through the budgetary process, he noticed the fee had not been raised since 1930, and he recommended the fee be raised to 15¢ per ton.

He said the Kansas River Sand Producers thought they were operating under a contract with the State, and they thought before any fees would be raised they would be notified by the seller of the sand, the State of Kansas. However, it was done through the Administrative Rules and Regulations process and on October 13, 1989 our members received a notice in the mail, that the royalty had been raised 2¢ to 15¢.

The Kansas River Sand Producers would therefore propose that SB471 be amended in line 35 to read "Such amount shall not exceed \$.08 per ton for river sand."

Mr. Moses said the Kansas River Sand Producers are required to bear the cost of the U.S. Army Corp of Engineer regulatory plan. As Missouri River producers are not regulated this is an additional cost component which adversely effects the ability of our producers to compete. (ATTACHMENT 1)

Tom Severn said to Mr. Moses, you used the term harvesting sand, and he said his understanding was that the I.R.S. in the early seventies changed the way in which you were able to write off the rights in the river-bed to recognize the fact that the upstream dam had caused the diminishing of the floods and the replenishing of the sand supply. He asked, Mr. Moses, is this not true?

Mr. Moses said Mr. Peters is an operator of the river, and more technically able to answer the question.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on Thursday, February 1, 1990

Mr. Peters said we were granted a depletational allowance by the IRS and yes the river is depleting material available, but you still hold the title, so regardless of the fact that we are having to move our operations, we are still mining during that process. He said, regardless of the fact that we have to move our operations, we are still mining during that process. He said, they were granted through the State Board of Agriculture to mine.

He said he owns both Builders Sand in K.C., Mo. and Victory Sand in Topeka and he said, if the state sand tax is raised to 15¢ a ton, it would be cheaper for most sand miners to quit taking it out of the KS river and to mine it from pits near the river, and he said, at 8¢ it would still be feasible to mine sand from the river. Above that its economics, and he thought most of the six companies that use the KS river for sand would move to river bottom land mining and chew up the land.

Senator Montgomery said he was confused on the process that has been followed. He asked, does the Department not have the right to sit this by rules and regulations, prior to this bill, because that is what the language of the bill says and it says up to 15¢. He said, he thought they would have to have a hearing before it could go to 15¢, it would have to go through the process of rules and regs, he said, this language gives them the authority, and he does not understand why we would want to give them the authority, if they already have it.

Ed Moses said we are not here today, to discuss whether they have the authority or not we are here to request line 35 of the bill to read "such amount shall not exceed 8¢ per ton for river sand".

Senator Frahm said she is on the Administrative Rules and Regulations Committee and the notice of the hearing was in the March 16th register, and the Department went through the entire process, when they came to us with the departments recommendations of 15¢ she said, the department went through the entire process when they came to us, and the departments recommendation to us was 15¢, and she thought Mr. Moses point is somewhat arbitrary, she thought the department intended to testify today. She said, their committee felt like they needed to have some greater authority reviewing this, than just this recommendation of 15¢.

Chairman Thiessen said he was concerned about using our land for pit operations when we have other sources that we could be using, and take up that land because in the future at some point we are going to want that land, and he said, it is gone forever if you go to pit operations.

Janet Stubbs said she went over the bill with her legislative chairman, and he questioned the word "any" before the word river, in the drafting of the bill, and they felt there are only 2 or 3 navigatable rivers in the state of KS, that should be able to be harvested, and she said, they felt the way it is drafted here, that private property rivers would be included, by this language. Don Hayward said we don't own the river bottom, navigatable streams etc. in this state, so therefore, how could the director put a tax on private property.

Senator Frahm said that was discussed in the Administrative Rules and Regulations Committee and they decided to leave it alone because it had always been that way. She said statute 92-96 is going to be replaced by 92-96a, and their authority was before this regulation that they had hearings on and made the changes, they said would have 2¢ per ton, and when it came to our committee they were raising it to 15¢. Our committee does not tell an agency or department to make changes when we are not sure they are following legislative intent. The reason they would have in this new bill, the authority to raise it to 15¢, is because that is the figure that they wanted to go to that they recommended. In their Rules and Regs process that is what they did. We bring this bill to all our colleagues to look at, and see if they agree with the 15¢.

Chairman Thiessen recognized Mark Burghart, Department of Revenue.

Mark Burghart said they don't want the authority to set this rate. He said, they are very much in favor of the legislature determining what this rate is to be, and specify it. This is the only instance where the authority is delegated to the Department.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
room 519-S, Statehouse, at 11:00 a.m./p.m. on Thursday, February 1, 1990.

He said he pulled some contracts out of the provision, that are 50 years old and the rate was still 2¢ back then. It was determined that the rate should be increased with the rate of inflation and 15¢ is what they came up with, which was included in the recommendations to the Governor. We did go through the typical Rules and Regs process and we sent it to the Attorney Generals office, the Department of Administration and we had a public hearing and the hearing notice was published in the KS Register, and the joint committee reviewed the regulation, and we sent notice to the affected Companies, advising them that the change would be effective November 1, 1989 to be reflected on the return that they had to file by December 15th, and on that same notice he said, he also advised them that it was not necessary to collect royalty on any sand that was sold to local government or the State of KS, which is a considerable amount for some of the Companies, it is about half of their production. He said, when you are talking about a raise of 2¢ to 15¢, when you look at the total affect, you are looking at an increase of less than 8% of sales.

Chairman Thiessen concluded hearings on SB471.

Senator Martin moved to amend SB471 on page 1, line 16 before "river" by inserting "such"; line 17, by striking "any" where it first appears and inserting "such"; in line 24, before the period by inserting "and, with respect to river sand, such compensation shall be computed at the rate of 8¢ per ton taken"; in line 35, by striking all after the period; by striking all in line 36, 2nd by Senator Karr. The motion to amend carried.

Senator Martin moved to favorably pass SB471 as amended, 2nd by Senator Karr. The motion carried.

The Chairman turned attention to SB418.

Senator Martin moved to amend Senator Bond's suggested amendment into SB418, 2nd by Senator Oleen. The motion carried.

Senator Langworthy moved to favorably pass SB418 as amended, 2nd by Senator Lee. The motion carried.

Chairman Thiessen adjourned the meeting at 11:50 p.m..

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TESTIMONY

by

The Kansas Aggregate Producers Association

Before the

SENATE COMMITTEE ON ASSESSMENT AND TAXATION

Regarding

SB471: concerning the removal of certain materials from rivers; relating to the payment of compensation therefor.

Thank you for the opportunity to provide commentary on Senate Bill 471 concerning the Sand Royalty Fees.

My name is Ed Moses. I am the Managing Director of the Kansas Aggregate Producers Association. Our Association represents over 250 aggregate, concrete, and associate member firms in the Kansas construction industry.

The Kansas Aggregate Producers Association and more particularly the Kansas River Sand Producers are opposed to SB471 as drafted. Our objections are primarily centered around the royalty fee being raised from 2 cents per ton to 15 cents per ton, an increase of 650%.

The State of Kansas has supplied sand to construction markets adjacent to the Kansas River since 1913. In the beginning, the royalty fee was set by oral agreement. In the 1930's written contracts were executed and the now defunct Executive Council was empowered to negotiate the fee with sand producers. At that time the royalty was set at 2 cents per ton, or approximately 4% of the 50 cents per ton market price. In 1964 all the contracts and fees were reviewed. At that time, due to market conditions, the royalty remained at 2 cents per ton. In 1989 the rate was unilaterally raised by the State of Kansas to 15 cents per ton. The purchasers of the sand (Kansas River Sand Producers) were not consulted during this rate setting process. We think had our group conferred with state officials the rate, due to market conditions, would have been set at a lower level. We are

appearing before you today in an effort to restore bilateralism to the establishment of an equitable sand royalty fee, for all concerned.

The Kansas River Sand Producers would therefore propose that SB471 be amended in line 35 to read "Such amount shall not exceed \$.08 per ton for river sand." There are several logical reasons for setting the fee at \$.08 per ton. Among them:

- Current market conditions in the Johnson-Wyandotte County area, where 80% of the sand is consumed, are not even conducive to an \$.08 per ton raise. In the Johnson-Wyandotte market the State must compete with Missouri River Sand; which is not assessed a royalty by the State of Missouri or regulated by the U.S. Army Corp of Engineers. Production of sand is fixed (or inelastic) on the Kansas river by the Corp of Engineers while the price remains elastic. As a result severe price increase will only drive Kansas river sand customers to Missouri river sand producers. By setting the price realistically , the State of Kansas can preserve a market share on which to base an increase in the future.
- Kansas River Sand Producers are required to bear the cost of the U.S. Army Corp of Engineer regulatory plan. As Missouri River producers are not regulated this is an additional cost component which adversely effects the ability of our producers to compete.
- Historically, the royalty was set at 4% of market price. Which was \$.02 on a market price of \$.50 per ton and should be \$.08 on the current average price of \$2.00 per ton.
- As pit operations are more cost effective, two river producers have already ceased river operations during the past year and have moved to pits. An unreasonable increase in price will encourage other river operators to evaluate the feasibility of river versus pit-type operations.

- The Department of Revenue, as a result of our December 12, 1989 meeting, believes there is justification to review the financial considerations associated with the increase (copy of letter attached).

In conclusion, we respectfully request the committee to consider the issues, as outlined above, and take positive action to set the rate at the level you deem appropriate.

We thank you for the opportunity to appear before you today and discuss these issues.

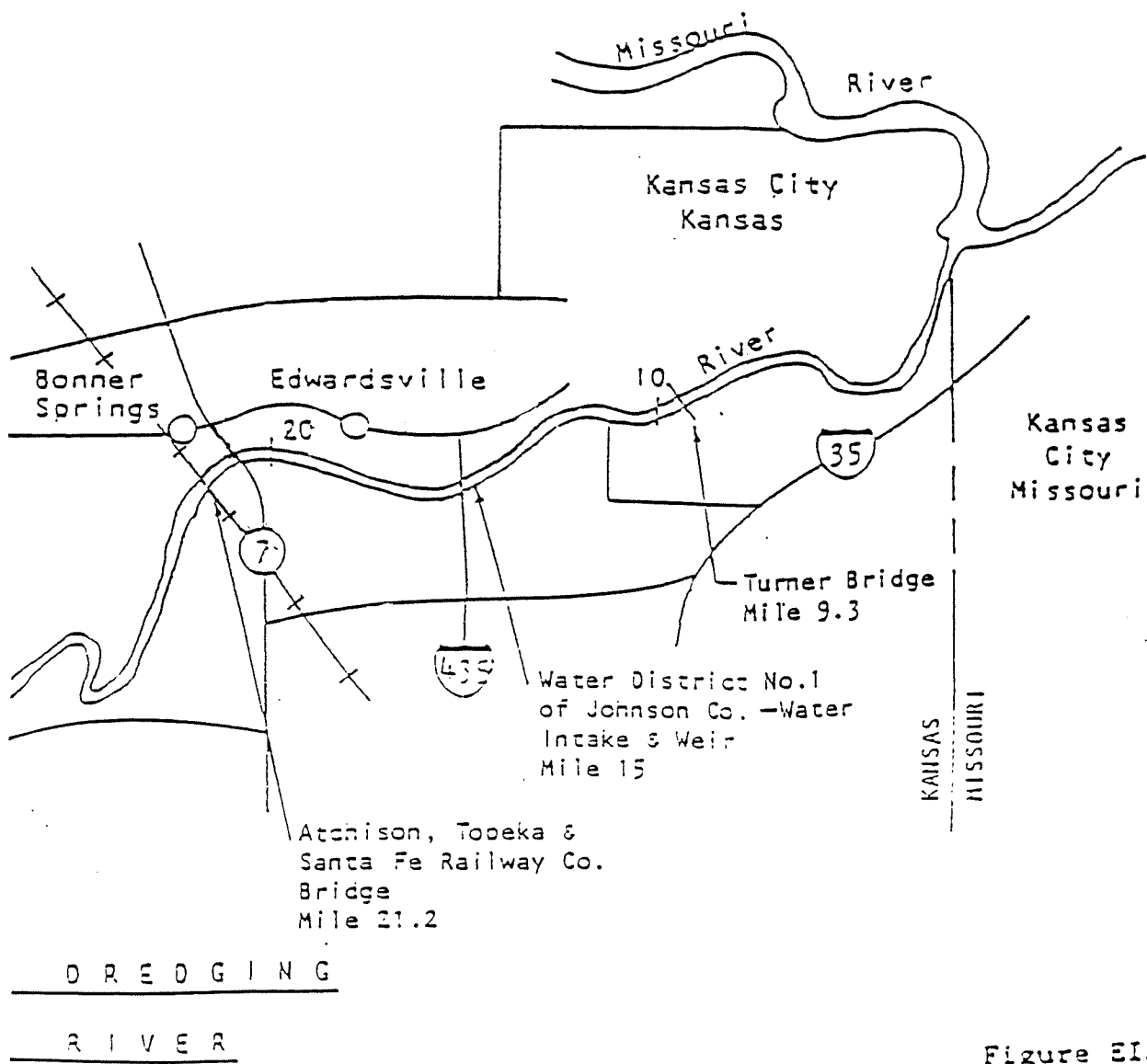


Figure EIS - 1
Existing Dredging
Operations on the
Kansas River



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary
Robert B Docking State Office Building
915 SW Harrison St
Topeka Kansas 66612-1588

December 19, 1989

Robert F. Lytle
Bennett, Lytle, Wetzler, Winn & Martin
Suite 300
5000 W. 95th Street
P. O. Box 8030
Prairie Village, Kansas 66208-0030

RE: Sand Royalties

Dear Mr. Lytle:

Susan Duffy and I enjoyed meeting with you and the other members of your contingent on December 12 to discuss the recent increase in the rate for sand royalties from \$.02 per ton to \$.15 per ton. I believe we now have a better understanding of your arguments concerning the financial effects that such an increase would have upon the individual members of the sand extraction industry.

Unfortunately, the Department of Revenue simply cannot ignore a valid regulation which has the force and effect of law. Absent a change in the regulation, \$.15 per ton must be remitted to the state on and after December 1, 1989 pursuant to the regulation and the contracts under which the sand companies are allowed to extract sand from Kansas riverbeds.

As I indicated during our meeting, I do not believe that the Joint Committee on Administrative Rules and Regulations had a complete understanding of the financial considerations associated with such an increase. Therefore, I will advise Dr. William Wolff, the staff person for the Joint Committee, of your concerns. It is my understanding that the Joint Committee has already voted to introduce a bill to statutorily set the royalty rate at \$.15 per ton. Consequently, Ed Moses will have another opportunity to present his arguments against a rate increase to a legislative committee during the 1990 Session. The appropriate standing committee can then decide whether the rate should be lowered or the increase phased in over a period of time.

General Information (913) 296-3909

*Office of the Secretary (913) 296-3041 • Legal Services Bureau (913) 296-2381
Audit Services Bureau (913) 296-7719 • Planning & Research Services Bureau (913) 296-3081
Administrative Services Bureau (913) 296-2331 • Personnel Services Bureau (913) 296-3077*

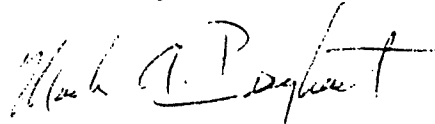
Robert F. Lytle
December 19, 1989
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Until K.A.R. 92-9-6a is amended or revoked, royalties at the rate of \$.15 must be remitted. However, royalties need not be remitted for any sand to be used exclusively for the improvement of highways, the construction of public buildings or for other public use.

Failure to remit the \$.15 amount shall constitute grounds for termination of any contract entered into between the sand company and the State of Kansas pursuant to K.S.A. 70a-101 et seq.

I trust this information will satisfy your immediate needs. Please contact my office if you require anything further.

Sincerely,



Mark A. Burghart
General Counsel

MAB:rab

cc: Ed Moses