

Approved

Ken Grotewiel
Date 4/8/91

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Ken Grotewiel at
Chairperson

5:15 ~~xxx~~ p.m. on March 27, 1991 in room 526-S of the Capitol.

All members were present except:
Representative Charlton, excused
Representative Hendrix, excused
Representative Krehbiel, excused
Representative Patrick, excused
Representative Rezac, excused
Representative Stevens, excused

Committee staff present:
Raney Gilliland, Principal Analyst, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Pat Mah, Legislative Research
Lenore Olson, Committee Secretary

Conferees appearing before the committee:
Bill Fuller, Assistant Director, Public Affairs Division, Kansas Farm Bureau
John George, Mill Creek, Marmaton, Deer Creek, and Turkey Creek Watersheds
Chuck Shelton, Uniontown, Kansas
Richard Jones, Executive Director, Kansas Association of Conservation Districts
Howard Tice, Kansas Association of Wheat Growers
Ron Fox, Director, Bureau of Environmental Quality, Division of Environment
Ed King, past president, See-Kan Resource Conservation & Development Board
Jack Lacey, Secretary, Wildlife and Parks
Ken Brunson, Kansas Association of American Fisheries Society
Dwight Platt, Professor of Biology, Bethel College, North Newton
Shaun McGrath, Kansas Natural Resource Council
Scott Andrews, Sierra Club - Kansas Chapter
Tom Swan, The Wildlife Society - Kansas Chapter
Dr. Ed Martinko, State Biologist and Director, Kansas Biological Society
Representative Tom Thompson
Ron Fehr, Assistant Director of Parks & Recreation, City of Manhattan
Darrell Montei, Department of Wildlife and Parks
Dick Dilsaver, Coleman Company
Priscilla Lindsey, North American Trail Ride Conference
Larry Ross, Bicycle Kansas
Kathryn Plummer, Kansas Pinto Horse Association

Chairperson Grotewiel called the meeting to order and opened the hearing on SB 341.

Bill Fuller, Kansas Farm Bureau, testified in support of SB 341, stating that it provides a broader and more structured method for input to the Secretary of Wildlife and Parks on an **advisory** basis. He also stated that it will result in more public input, improve citizen understanding and reduce conflict. (Attachment 1)

John George testified in support of SB 341. He stated that they have experienced over the last few years some dramatic improprieties in the ways in which the Kansas Threatened and Endangered Species Act is interpreted and administered by the Kansas Department of Wildlife and Parks. (Attachment 2)

Chuck Shelton testified in support of SB 341, but believes that the bill needs to be strengthened to the point of alleviating some injustices that have already been propagated by the Kansas Department of Wildlife and Parks. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,

room 526-S, Statehouse, at 5:15 a.m./~~pm~~ on March 27, 1991

Richard Jones testified in support of SB 341. He stated that the Conservation Districts of Kansas believe that an independent committee should be established to review the requirements made of local people by the Department of Wildlife and Parks in permitting construction of works of improvement to assure that they are logical and reasonable from both an environmental and economical standpoint. (Attachment 4)

Howard Tice testified in support of SB 341, stating that there is a definite need for the advisory committee which would be created by this bill. He said that major watershed projects have been delayed and have been threatened with excessive cost increases because of concerns by the Department of Wildlife and Parks about some creature on the state's Endangered Species List. (Attachment 5)

Ron Fox, Division of Environment, testified in support of SB 341, stating that it would allow KDHE to have some input on the endangered and threatened species listing in the state. (Attachment 6)

Ed King testified in support of SB 341, stating that Kansas needs a review procedure with an independent board when communications break down between a project sponsor and the Kansas Department of Wildlife and Parks. Kansas also needs to review the list of endangered species and determine if all of them really need to be on that list. (Attachment 7)

Jack Lacey, Secretary of Wildlife and Parks, testified in opposition to SB 341. He stated that the Department cannot support this bill as drafted because of increased costs and the increased special permit processing time which will delay project clearance for the various sponsors. (Attachment 8)

Ken Brunson testified in opposition to SB 341, stating that the Kansas Chapter of the American Fisheries Society passed a resolution opposing SB 341.

Dwight Platt testified in opposition to SB 341, stating that it is move in the wrong direction and would increase the bureaucratic complications in the way of an effective nongame and endangered species program. (Attachment 9)

Shawn McGrath testified in opposition to SB 341. He stated that the committee proposed in this bill is unnecessary, would cost the state a lot of money to implement, and would be unqualified to make decisions about the conservation of wildlife. (Attachment 10)

Scott Andrews testified in opposition to SB 341, stating that it opens the door for special interests that oppose protection of endangered species to gain control of their management and press for the de-listing of species which get in the way of their projects and actions. (Attachment 11)

Tom Swan testified in opposition to SB 341, stating that it is an attempt to weaken the state Non-game and Endangered Species Conservation Act. (Attachment 12)

Dr. Ed Martinko testified in opposition to SB 341, stating that the Kansas Biological Survey supports the concept of this bill but believes that the additional level of bureaucracy that it creates is unnecessary. (Attachment 13)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 526-S, Statehouse, at 5:15 ~~xx~~m./p.m. on March 27, 1991

Written testimony on SB 341 was submitted by:

Jerry Hazlett, Kansas Wildlife Federation, Inc. (Attachment 14)

Nancy Kantola, Committee of Kansas Farm Organizations (Attachment 15)

Joyce Wolf, Kansas Audubon Council (Attachment 16)

The Chair closed the hearing on SB 341 and directed the Committee to turn to SB 79.

A motion was made by Representative Holmes, seconded by Representative Freeman, to amend SB 79 to include the 1990 and 1991 season, and to pass SB 79 as amended. The motion carried.

The Chair opened the hearing on HR 6027.

Representative Tom Thompson testified in support of HR 6027, stating that this plan would identify trail routes, prioritize them, and propose financing. (Attachment 17)

Ron Fehr testified in support of HR 6027, stating what Kansas desperately needs is to link our parks, lakes, waterways and communities through a systematic, comprehensive state trail and greenway network. (Attachment 18)

Darrell Montei testified in support of HR 6027, stating that the Department recognizes the importance of these historic trails to the state and is currently reviewing various trails for possible recreational values. (Attachment 19)

Dick Dilsaver testified in support of HR 6027. He described the "America Discovery Trail," which crosses the country, east to west, going through Nebraska and bypassing Kansas.

Priscilla Lindsey testified in support of HR 6027. She stated that a comprehensive trails system is a wonderful way to give public exposure to Kansas' unique geography, historical trails, and landmarks. (Attachment 20)

Larry Ross testified in support of HR 6027, stating that it would highlight Kansas' natural heritage and its historical heritage and recreational potential. (Attachment 21)

Kathryn Plummer testified in support of HR 6027, stating that this bill is needed in particular for our children, who can learn to appreciate the beauty of Kansas trails.

Written testimony on HR 6027 was provided by:

Mike Beam, Kansas Livestock Association (Attachment 22)

Kaaren Jones, Tecumseh (Attachment 23)

Jerry Morgan, Jerry's Bike Shop (Attachment 24)

Bill Maasen, Johnson County Park and Recreation District
(Attachment 25)

The Chair closed the hearing on HR 6027.

A motion was made by Representative Freeman, seconded by Representative Corbin, to approve the minutes of March 25, 1991. The motion carried.

The meeting adjourned at 7:15 p.m.

COMMITTEE: _____

DATE: 3/27/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Scott Andrews	724 1/2 S. Kansas Ave	Sierra Club
Cathy, Carrie, Christie Plummer	8829 S.W. 41st Topeka, KS 66610	Kansas Pinto Horse Ass'n
Priscilla Lindsey	RR 1, Box 15 Fontana 66026	North American Trail Ride Conference
Harriett Barber	RR #1 Box 91 Benton, KS 67017	South Central K. Trail Riders Kansas Trail Council
Irene Plunklee	145 N. Socata Drive Wichita, Kansas 67212	Kansas Trails Council South Central Trail Riders Wichita Area Trail Riders (Horse Ass'n)
ELLEN KREHBIEL QUERNER	1117 N. Roosevelt Wichita, K. 67208	NORTH AMERICAN TRAIL RIDE CONFERENCE South Central Trail Riders Association
STEVEN E LINDSEY	P.O. Box 265 LaCygne KS 66040	NORTH AMR. TRAIL RIDE CONFERENCE CONSULTING FORESTER
Ron R. Fehr	214 Ridge Dr, Manhattan, KS 66520	City of Manhattan Kansas Recreation Park Ass'n
LAURA CULLY	TOPEKA	KS RECREATION PARK ASSN
HOWARD W. TICE	Hutchinson	Ks. Ass'n of Water Growers
Tom SWAN	Mound City	Ks Chapt - The W. Water Society
Dwight PLATT	Newton	Kansas Herpetological Society
John Henderson	Topeka	Div Wtr Res., KS Bd Ag.
Lola Warner	TOPEKA	St. Conservation Comm
Karen Jones	7343 SE 45th Tecumseh	N. Amer. Trail Ride Conf
Tara Neil	RR #4 Ft. Scott	Marmaton watershed
Dwayne Neil	RR #4 Ft. Scott KS	marmaton watershed
George Warren	Box 147 Uniontown Kansas	Basin Advisory Committee Marmaton Watershed
Richard Dixon	RR #4, Fort. Scott, KS.	Marmaton Watershed
J. W. Cameron	Sumnerfield, Mo	K.A.C.D. President
Richard & James	527 W. Main Rd Salina, KS	Ks Bur. of Conservation
Chuck Shelton	R.R. 1 Box 21 Uniontown Kansas 66779	Land - owner
John George	Uniontown Kansas 66779	Watershed Eng.



PUBLIC POLICY STATEMENT

HOUSE ENERGY and NATURAL RESOURCES COMMITTEE

Re: **S.B. 341 - Supplementing the Nongame and
Endangered Species Conservation Act**

March 27, 1991
Topeka, Kansas

Presented by:

Bill Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Grotewiel and members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We certainly appreciate the opportunity to join with the State Association of Watershed Districts and the Kansas Association of Conservation Districts in requesting the introduction of this bill. We are testifying in **support** of **S.B. 341**. Our remarks are based upon policy developed by the farm and ranch members of the 105 County Farm Bureaus in Kansas. The **Threatened and Endangered Species** resolution is included as "attachment A" for your review.

Representatives from the Marmaton and Mill Creek Watershed Districts outlined their concerns about the Threatened and Endangered Species Act and its enforcement to the KFB Board of Directors at their September 1990 meeting. In fact, the concerned members took the KFB Board on a tour of several construction sites to illustrate the

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3/27/91
Attachment 1*

problems. They were concerned about and pointed out examples increased costs, unreasonable habitat mitigation requirements and construction delays.

Since that time KFB leadership and staff has assisted the Bourbon County Farm Bureau in researching the issue. In the process, we met with Ken Kern, Executive Director of the State Conservation Commission and Bob Meinen, then Secretary and Steve Adams, Aquatic Ecologist with the Kansas Department of Wildlife and Parks. More recently, we discussed the issue with Jack Lacey, the current Secretary of KW&P and his staff. We are not suggesting these agencies support or oppose this proposed legislation ... they may speak for themselves. I have also toured the sites both by air and on the ground. We point out these activities to illustrate the extensive effort and deliberation that has gone into developing the recommendations in S.B. 341. We have attached the "**Threatened and Endangered Species ... a time for review!**" issue paper we prepared at the request of our membership. This will give you background on the issue.

S.B. 341 provides a broader and more structured method for input to the Secretary of KW&P on an **advisory** basis. The "Endangered and Threatened Wildlife Species and Habitat Advisory Committee" to be created would not have "veto" power over the Secretary ... only advisory. Also, the bill would put into statute a practice sometimes followed by the Department in reviewing the list of protected species at least every 5 years.

The Department of Wildlife and Parks testified in the Senate hearing they reviewed 1,575 projects during 1989 and 1990. Of these, only 50 (3.1%) required a "special permit". This averages only 25 "special permits" per year. These are the only projects we believe

ould be reviewed by the "Advisory Committee". Therefore, we believe there should be little, if any, delay in issuing these "special permits".

S.B. 341 does not propose compensation for members of the "Advisory Committee". Therefore, little if any expense would result from passage of this bill.

We believe the membership of the "Advisory Committee" is appropriate. The Secretary may continue to use as many professionals as he desires in reviewing the species list and determining the requirements in issuing the "special permits". While the "Advisory Committee" does include wildlife and habitat professionals, several of the members represent the interests that will be affected by the Secretary's decisions. All groups represented have an appreciation for and a stake in preserving our natural resources and the environment. **We believe S.B. 341 will result in more public input, improve citizen understanding and reduce conflict.**

To give you a real-life feel for the frustrations and problems, John George and Elwin Ermel from Bourbon County will share their experiences with the Committee. We believe they will establish the need for the proposed legislation.

Mr. Chairman, we would respond to questions now or after others have testified. Thank you!

KANSAS FARM BUREAU

1991 POLICY

Threatened and Endangered Species

CNR-16

Listing a species as threatened or endangered shall be on that basis alone and not on the basis of "rarity." Documentation shall be required to demonstrate conclusively that any species proposed to be protected under K.S.A. 32-957, et. seq., shall actually be present in a clearly defined geographic area, and be dependent for survival on habitat in that location.

The law should not permit encroachment upon economic agricultural practices.

Scientific data supporting the inclusion of a species shall receive wide dissemination to landowners and private organizations representing the rights of these landowners.

Any agency, organization or person requesting a rare, threatened or endangered classification to be placed on any species, or requesting critical habitat designation, should be required to provide and fund an environmental impact report with emphasis on the economic impact of the action.

We believe KDWP should initiate review of the Kansas Threatened and Endangered Species list in 1991, and a complete review should be conducted at least every five years thereafter. A Species Review Committee should be created. It should consist of one representative from each of the following entities:

1. Kansas Department of Wildlife and Parks,
2. Kansas Conservation Commission,
3. Association of Kansas Watershed Districts,
4. Kansas Department of Health and Environment,
5. Kansas Biological Survey,
6. Kansas Association of Counties,
7. Kansas Department of Transportation,
8. League of Kansas Municipalities, and
9. State Board of Agriculture.

In addition to representatives from the above named agencies and associations, we believe there should be not less than three private agricultural landowners named to the Species Review Committee.

We believe mitigation or acreage replacement measures should take into account cost/benefit ratios, and the economic impact of any proposal for mitigation or acreage replacement. We believe KDWP should not require mitigation or replacement of habitat in areas where conversion of the habitat is insignificant in relationship to the total amount of habitat available in the area. Mitigation proposals should be subject to review by the Species Review Committee, and that committee must have authority to modify or eliminate mitigation requirements.

... this resolution was adopted by the Voting Delegates Representing 105 County Farm Bureaus at the 72nd Annual Meeting of Kansas Farm Bureau in Wichita, December 8, 1990.

ISSUE ANALYSIS....

INFORMATION on PUBLIC POLICY

Prepared as a Service to Members by the
Public Affairs Division, Kansas Farm Bureau



THREATENED AND ENDANGERED SPECIES...a time for review!

JANUARY, 1991

THE ISSUE

Major concern about the Threatened and Endangered Species Act and its enforcement is being expressed. Landowners and public officials in Southeast Kansas planning Watershed Dams and Multi-purpose Small Lakes charge actions by the Kansas Department of Wildlife and Parks (KDWP) are responsible for increased costs, unreasonable habitat mitigation requirements and construction delays.

As an example, landowners in Bourbon County building a watershed project that created a 14 acre lake, were forced to give easements on 100 acres. Most all economic activity on this woodland will be banned for the next 50 years. Landowners receive no compensation for the easements, however property taxes and any land payments will continue. This mitigation requirement is to preserve woodland habitat for the "Northern Red Belly Snake" and "Broadhead Skink" that might reside in the area.

BACKGROUND

Threatened and Endangered Species are protected by both federal and state laws. The Kansas Nongame and Endangered Species Conservation Act of 1975 places the responsibility upon the KDWP. Input was provided by 153 people...government agencies, universities, consultants and individuals...in selecting species for the Threatened and Endangered list. The list for Kansas includes federally designated and state selected species. In 1978, 137 species were submitted for consideration...26 were

approved. By 1980, the list declined to 24 species. In 1990, the list included 46 species. The Secretary of the KDWP shall determine whether any species of wildlife indigenous to the state is a threatened species or an endangered species in this state because of any of the following factors:

- (1) The present or threatened destruction, modification or curtailment of its habitat or range;
- (2) The over utilization of such species for commercial, sporting, scientific, education or other purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) The presence of other natural or manmade factors affecting its continued existence within this state.

Persons undertaking projects that alter or disturb habitat of protected species shall obtain a permit from the Secretary of KDWP. Projects should be reviewed which impact streams, wetlands, native woodland or native prairie.

Species of wildlife which occur in this state and which have been determined to be threatened or endangered by federal law shall receive full consideration by the Secretary of KDWP.

The Secretary may not add a species or remove a species from the list unless the secretary has first:

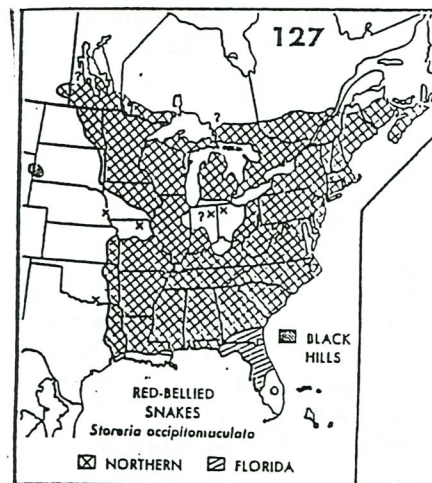
- (A) Published a public notice of such proposed action;
- (B) Notified the governor of any state which shares a common border with this state and in which the species is known to occur; and
- (C) Allowed at least 30 days for comment from the public and

other interested parties, except where an emergency situation exists, the secretary may add species to such lists provided the secretary has published a public notice.

The Northern Red Belly Snake and Broadhead Skink are not on the federal list, rather they have been designated to be protected by the State of Kansas.

The Northern Red Belly Snake is 8-10 inches long. On its dorsal side, its color may be slate gray or reddish brown. Two thin darker stripes are on each side. The snake's belly may be bright orange-red or jet black. Any combination of dorsal and belly colors can occur. There are three light spots on the neck.

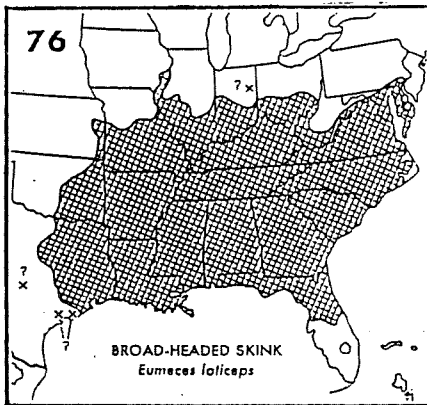
This snake requires woodlands with dense leaf litter or areas where rocks, logs, or other debris are abundant. Its probable range is limited to the eastern tier of counties in Kansas where native upland woodlands occur.



The Broadhead Skink is a lizard that has flat, smooth scales. It has

yellow stripes on its back and sides and two yellow stripes on the head. This species exhibits different colors at various stages of adult life. Young adults are black with yellow strips and have a bright blue tail. Older females are brownish, the yellow strips may fade to brown or gray, and the blue tail becomes gray. Older males are uniform olive or tan, and lack stripes. Male Broadhead Skinks are larger than females and develop an orange-red head during breeding. Broadhead and Five-lined Skinks are extremely difficult to tell apart.

Broadhead Skinks require mature woodlands having dead and decaying timber. It spends much of its time in tree cavities, especially in standing dead trees. It is intolerant of intensive lumbering and woodland grazing. In Kansas, this skink is limited to south-east counties.



A major concern is whether the species are actually present in the area where the habitat is being protected. A second concern is the amount of habitat to be converted in relationship to the total amount of habitat available for the species. The amount of habitat affected by these flood control and water supply dams is extremely small compared to the total habitat that exists.

FARM BUREAU POLICY

A letter to Governor Hayden in January, 1990 was critical of KFB Policy and asked him to reject any attempts to change the law. The correspondence by a wildlife author included a petition signed by 22 individuals. The first paragraph stated:

"The enclosed petition is in response to unfortunate resolutions by various state organizations (i.e. Kansas Farm

Bureau, Kansas Association of Conservation Districts, Southeast Kansas Association of Conservation Districts) promoting a change in the current mitigation requirements required by the Kansas Endangered Species Act, a change which would bring about the destruction of the natural habitat of a number of southeastern Kansas animals currently on the state threatened species list. The resolutions by those three organizations (KFB, KACD, SKACD) again demonstrates their long-established disregard for Kansas wildlife and our natural environment, and illustrates anew their ignorance of our environment and how it is polluted."

Representatives from the Marmaton and Mill Creek Watershed Districts outlined their concerns to the KFB Board of Directors at their September meeting. KFB leadership and staff assisted the Bourbon County Farm Bureau in researching the issue and proposing amendments to strengthen KFB Policy. Delegates representing the 105 County Farm Bureaus adopted this KFB Resolution for 1991:

"Listing a species as threatened or endangered shall be on that basis alone and not on the basis of "rarity." Documentation shall be required to demonstrate conclusively that any species proposed to be protected under K.S.A. 32-957, et. seq., shall actually be present in a clearly defined geographic area, and be dependent for survival on habitat in that location.

The law should not permit encroachment upon economic agricultural practices.

Scientific data supporting the inclusion of a species shall receive wide dissemination to landowners and private organizations representing the rights of these landowners.

Any agency, organization or person requesting critical habitat designation, should be required to provide and fund an environmental impact report with emphasis on the economic impact of the action.

We believe KDWP should initiate review of the Kansas Threatened and Endangered Species list in 1991, and a complete review should be conducted at least every five years thereafter. A Species Review Committee should be created. It should consist of one representative from each of the following entities:

1. Kansas Department of Wildlife and Parks,
2. Kansas Conservation Commission,
3. Association of Kansas Watershed Districts,
4. Kansas Department of Health and Environment,
5. Kansas Biological Survey,
6. Kansas Association of Counties,
7. Kansas Department of Transportation,
8. League of Kansas Municipalities, and
9. State Board of Agriculture.

In addition to representatives from the above named agencies and associations, we believe there should be not less than three private agricultural landowners named to the Species Review Committee.

We believe mitigation or acreage replacement measures should take into account cost/benefit ratios, and the economic impact of any proposal for mitigation or acreage replacement. We believe KDWP should not require mitigation or replacement of habitat in areas where conversion of the habitat is insignificant in relationship to the total amount of habitat available in the area. Mitigation proposals should be subject to review by the Species Review Committee, and that committee must have authority to modify or eliminate mitigation requirements.

THE CHALLENGE

This is a statewide issue and will require a statewide effort. Threatened and Endangered Species occur in every county in Kansas. A few years ago, the concern was with the threat by EPA to ban certain pesticides in southcentral Kansas. This plan proposed to protect two birds...Least Tern and Piping Plover. The plan was modified. Implementation was delayed.

If Farm Bureau policy is to be approved by the Legislature, every member must explain the problem and seek the support of his or her State Representative and Senator.

Prepared by: Bill Fuller

John George

TESTIMONY OF THE MILL CREEK, MARMATON, DEER CREEK, AND TURKEY CREEK
WATERSHEDS BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
MARCH 27, 1991

Ladies and Gentlemen:

We thank you for this opportunity to appear before this committee in support of a cause that has been a dramatic concern to any and all Kansans who care about their environment, wildlife, and people. We are not here because we are insensitive to concerns for threatened or endangered species of wildlife. We are here because **we do care about the environment** and are involved in **conservation, resource development, and management** efforts that serve all appropriate uses in our region of influence. Our patrons support an investment in over **340,000 acres of wildlife habitat** having a value in excess of **\$100,000,000** upon which they pay an estimated **\$4,000,000 in property taxes** annually.

We have experienced, however, over the last few years some dramatic **improprieties** in the ways in which the **Kansas Threatened and Endangered Species Act** is interpreted and administered by the **Kansas Department of Wildlife and Parks**. There appears glaringly evident within the Kansas Department of Wildlife and Parks an **anti-landowner and anti-water resources** conservation and development **bias** that taken in concert with their total **lack of accountability** in interpreting and administering the T&E Act raises many questions as to the propriety with which the agency develops and imposes requirements upon many projects throughout various sectors of government and the private sector. In the case of watershed projects, we have experienced demands for habitat mitigation that

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3/27/91
Attachment 2*

appear to be totally beyond any semblance of reason and justification. Several examples of these will be heard by you today. In view of the wide latitude and impunity with which KDWP believes they are mandated to operate under the T&E Act, it would appear that watershed programs and, in fact, many areas of economic and resource development at least in Southeast Kansas, if not throughout the State of Kansas, are dead issues. We certainly cannot project the successful procurement of easements for water supply development and flood protection if we have to give KDWP a seven acre snake and lizard preserve for every acre of flood pool created as was recently required on one of our watershed lakes. Neither can we expect to justify a **50% increase in the cost** of every project just to meet their supposed habitat mitigation requirements as happened on the Bone Creek Reservoir project.

As a result of extensive experience with KDWP and a study of their actions, laws, and regulations, we believe the T&E Act and/or its administration is severely flawed in at least the following ways:

1. **NO TEST OF REASONABILITY REQUIRED.** Several species are on the T & E list on the basis of one **unsubstantiated recommendation**. The Broadheaded Skink and The Northern Redbellied Snake are both indigenous to the entire southeastern United States but appear to have been put on the T & E list in Kansas solely because they don't reside in the Western two-thirds of the State.

KDWP would like for us to believe that the recommendation of **one so-called expert out of 153 queried** constitutes an adequate **scientific basis** for conscripting private property rights. We find it more than a little incredulous that an **opinion survey** is the extent of

scientific basis utilized to justify a program that has **unlimited economic impact** on the State of Kansas and nobody outside of KDWP has any authority to modify, direct, or even review the program. If KDWP cared about people (they don't) using the criteria they have used in listing the Broadhead Skink and the Red Bellied Snake, they would list Missourians as threatened in Kansas.

2. **NO SYSTEM OF CHECKS AND BALANCES.** In developing their supposed mitigation requirements, KDWP appears to have a **blank check**. They do not have to report to anyone or justify to anyone the costs of their program requirements. They are somewhat fond of telling us that **we have no choice but to do things their way**.
3. **NO REVIEW AUTHORITY.** Unlike many of the actions of other State Agencies, there is no provision for review of KDWP requirements by other State Agencies or a higher State authority. In this country, no other person or government entity is afforded that degree of autonomy. Even the **President of the United States** is subject to **review, re-direction, and possible removal from office**.
4. **NO APPEAL AUTHORITY.** Similarly, there does not appear to be any appeal authority. Watershed Districts constitute a natural resource protection and conservation entity provided for under state law and voted into existence by the entire populous of the District. They are working to resolve real world problems with real world constraints. Surely the legislature does not intend for **KDWP to run roughshod** over all of their efforts while **conscripting private property rights and public funds**; and in service only to **phantom issues**. KDWP has stated often that if it was up to them, there **wouldn't be any watershed lakes built**.
5. **NO OVERSIGHT AUTHORITY.** There does not appear to have been provided any oversight authority wherein the regulations promulgated by KDWP and the supposed mitigation requirements conjured up by KDWP have to be substantiated to anyone else in State government or the private sector.
6. **NO FISCAL ACCOUNTABILITY.** Every major publicly funded project from which KDWP so willingly conscripts funds or property rights have had to **justify** their existence upon some reasonable **economic basis**. KDWP now has free rein under the T & E Act to loot the coffers of those programs. Add lack of fiscal accountability to the long

list of items wherein they have likewise escaped accountability.

We have a lot invested in the wildlife habitat that we manage and pay taxes upon. Many of our detractors have invested in a **few square feet of concrete suburbia** and a **donation** to the Tuesday Evening Environmental Discussion Group. We beseech you to ask each of these self-appointed environmentalists how much of their personal assets are really invested in wildlife habitat.

7. **IRRATIONAL VALUE SYSTEM.** KDWP uses no system of relative values in making decisions on mitigation. As far as KDWP is concerned, there is no level of direct or indirect project benefit to human or other species that justifies any **balancing or reduction** of KDWP T & E requirements by rational criteria or by input from project sponsors or other State agencies.

In the case of watershed projects, they consider the benefits to flood damage reduction, improved water quantity and quality, reduced sediment, increased aquatic environment, and increased wildlife habitat all irrelevant to any of their mitigation requirements. **Norman Borlaug**, the father of the green revolution, has observed that **many of these self-appointed environmentalists are displaying a reduced gene frequency for common sense.**

As a result of having observed and having been subjected to the dramatic improprieties resulting from the above, we have sought to work with Kansas Farm Bureau, State Association of Kansas Watersheds, Kansas Association of Conservation Districts, and any other entity who is concerned about the environment in the State of Kansas, wildlife in the State of Kansas, and the economy in the State of Kansas to seek to have the legislature rectify these obvious improprieties. We applaud the existence of Senate Bill #341 and have suggested through the resolution process and the various agencies that the following parameters be embodied in such

a legislative modification of the T&E Act. For your review, the points of concern to us are delineated below as items a through j.

a. We believe that KDWP should be responsible enough to document by **scientifically valid means** (not just an opinion survey) that a specie is, in fact, threatened or endangered before it can be listed as such and habitat mitigation is required on its behalf.

b. We believe that the Kansas Department of Wildlife and Parks should have to document that locally existing populations of threatened or endangered species will suffer significant adverse impact from a proposed project before habitat mitigation permits or measures can be required.

c. We believe that the KDWP should have to document the **economic and social impact** of retaining or adding any specie to the T & E List and justify same in light of past, current, and projected future populations of said specie in Kansas.

d. We believe that KDWP should have to document the social and economic impact of any proposed habitat mitigation requirements in view of past, current and projected future populations of the specific specie in the presumed range of the specie in Kansas as well as in the vicinity of a particular project. KDWP should have to document beyond any reasonable doubt the criticality of converted habitat to a listed specie before considering the imposition of habitat mitigation requirements on any project.

e. KDWP should have to take cognizance of the positive social, economic and environmental impacts of a project in defining any mitigation requirements and allow a 1:1 compensation for said positive aspects against mitigation requirements.

f. We believe that KDWP should have to initiate the review of the Kansas Threatened and Endangered Species list within two years of the adoption of this resolution and at least every five years thereafter. The retention or addition of any specie on the threatened or endangered list should require a consensus of a **Threatened and Endangered Specie Review Committee**.

g. We believe that public notice of the intent to retain or add any specie to the list of threatened or endangered species as well as environmental impact studies, economic impact studies, and any scientific data supporting said inclusion

should receive wide dissemination to landowners and private organizations representing the rights of these landowners with adequate time for analysis, review and appropriate comment.

h. We believe that the benefits of required mitigation measures must more than offset any and all costs of said mitigation requirements. The law should not permit encroachment upon normal agricultural practices, serve as the vehicle for adverse condemnation of private property or property rights, nor provide for T & E habitat mitigation to make unfeasible an otherwise justified and feasible project.

We believe that all **economic costs** of the T & E Act must be born by the State of Kansas as opposed to transferring those costs to unaware private project cooperators and that **KDWP should be the primary financial sponsor** of their required habitat mitigation requirements. Making KDWP fiscally responsible for their requirements is the surest way to interject common sense and some semblance of judgement into their requirements.

i. We believe that the T & E Act **should not require mitigation of habitat** in areas where **conversion of habitat** by a specific project is **insignificant** in relationship to the total amount of habitat available in the area.

j. We believe that questionable or unjustified mitigation **requirements should be subject to appeal and review** by the T & E Species Review Committee. The T & E Species Review Committee should have authority to modify or negate mitigation requirements.

k. We believe that KDWP **should be forced to return property rights** that have been **wrongfully confiscated** via adverse condemnation under currently existing statutes and implementing regulations and that private landowners should be compensated for income lost and tax burdens unfairly carried since the inception of KDWP impositions on their property.

We recognize that it is difficult, if not impossible, to write statutes that cannot be abused by the unscrupulous. However, KDWP has documented beyond any shadow of a doubt that they cannot be trusted with the wide latitude that they enjoy under the Threatened and Endangered Species Act. For that reason we are concerned that

all of the above points be clearly and specifically covered in proposed legislation. As Senate Bill #341 now exists, we are not sure that the above points have all been adequately covered. Special attention should be paid in amending Senate Bill #341 to cover the concerns delineated in a, b, d, e, h, i, j, and k above.

In summary, we strongly urge the development of rational and justified legislation for threatened and endangered species that deserves and can be supported by all Kansans. We believe that Senate Bill #341 could be that vehicle with adequate amendments. We applaud and stand ready to assist your efforts in that direction in any way we can.

ATTACHMENT I

MARMATON AND MILL CREEK WATERSHED DISTRICTS TESTIMONY
BEFORE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Senator Ross Doyen
State Capitol
Topeka, KS 66612

Dear Sir:

The Kansas Threatened and Endangered Species Act of 1975 is affecting economic and social development in Kansas in ways never envisioned or intended when the act was past. Southeast Kansas is feeling the brunt of these impacts because the majority of the T&E species are located in SEK.

The T&E Act as administered by the Department of Wildlife and Parks is now and will even more so in the future place onerous barriers to economic and social development in SEK. Southeast Kansas has to overcome problems such as not having enough quality water for domestic and industrial use, poor transportation systems and the threat of devastating floods like Fort Scott experienced in 1986 and more... The Mill Creek and Marmaton River flood control projects created by the citizens of these areas by popular vote can see already that they will not achieve their flood control goals because of the manner in which KDWP is interpreting and enforcing the Kansas Administrative Regulations created with the T&E Act. The Bone Creek Reservoir Project which is essential to the people of Crawford and Cherokee counties was nearly destroyed by KDWP's obstructionist attitude. The Bone Creek Project is

viable today not because KDWP compromised on the amount of T&E habitat mitigation required but rather the project sponsors were bullied into many hundreds of thousands of dollars worth of habitat mitigation prescribed and demanded by KDWP.

KDOT is aware and will become more acutely aware of the costs associated with the T&E Act and KDWP obstinance as they design and construct a much needed highway in SEK.

KDWP will not compromise on the mitigation of T&E habitat no matter how worthy or needed a project might be to local citizens. KDWP regulations can destroy badly needed improvements before they can even begin by adding hundreds of thousands of dollars to the cost of the project for T&E mitigation. KDWP will not compromise no matter what the cost of mitigation. There is no monetary cost too high or public project worthy enough to convince KDWP to sacrifice one acre of T&E habitat. The only currency that the KDWP values is habitat units. The welfare of the citizens of Kansas be damned they will not compromise on habitat units. If a project destroys X number of habitat units, X number of habitat units have to be replaced. Unfortunately, this is not a one for one replacement. We in SEK have seen as many as 8 acres of land required as mitigation for each acre of habitat disturbed. KDWP uses the T&E permit system as a form of blackmail. If you want to do a project that affects T&E habitat you have to meet their demands before you can get a permit to construct. In the process they are indirectly requiring that restrictive easements be placed on private property that usurp the landowner's use of his own land

without due process of law or fair compensation. This they do in the name of the Kansas Threatened and Endangered Species Act. We do not believe that these types of activities were the intention of the legislature when they passed the act!

At some point and time the people of Kansas must say that a particular project is too important to the well-being of her citizens to allow KDWP to run roughshod over it. KDWP will claim that they are only doing their job according to the act. This is rubbish, don't listen to it. The act in and of itself is good legislation. It is the Kansas Administrative Regulations promulgated by KDWP and their contemptuous and arrogant application of these regulations that are the problem. Any bureaucracy that has the audacity to label its new secretary as incompetent to hold office has the ability to misuse the very rules and regulations that itself creates.

We, common citizens of the state of Kansas, are here today seeking relief from the KDWP regulations relating to the T&E Act because we have no other recourse. The T&E Act, and most certainly the administrative regulations drawn-up by KDWP, do not allow for any legislative or public oversight that we are aware of. The act has no realistic appeal process for individuals or entities who feel they have been mistreated to seek justice. KDWP wrote the law (administrative regulations), they are the judge, the prosecutor, the jury, the hangman, and the undertaker!

KDWP is using the T&E Act as a means to obstruct any kind of development that impacts any type of habitat that they wish to

protect. Through shrewd selection of species using methods that are questionable, they are using the T&E Act to further their own selfish interests rather than the interests of the people of Kansas. Left unchecked they can carefully select and place species on the T&E list to obstruct almost any type of development they wish. This cannot be allowed. KDWP must be accountable to the wishes of the people of Kansas and the legislature. If the inner workings and procedures used by KDWP in administering the T&E Act were fully exposed, we are sure there would be changes made quickly by the legislature. We are but a small group working with few funds and limited expertise. They are a large government agency with a very vocal and pernicious lobby supporting them. Senator Doyen, we assure you there is a rotten apple in the barrel but you will have to dig to find it and KDWP will do everything they can to hide it from you.

We do fully support Senate Bill #341 that would create an advisory committee to the Secretary of KDWP in matters related to the T&E Act. In truth we believe the whole act needs to be overhauled with careful attention given by the legislature to any administrative regulations drawn up by KDWP. The Advisory Committee may be adequate to interject the needs and values of the people of Kansas and perhaps balance the overzealous and self-serving manner in which KDWP has administered the T&E Act in the past.

MARMATON WATERSHED DISTRICT
MILL CREEK WATERSHED DISTRICT



Agricultural Engineering Associates

102 E. Second, Box 4,
Uniontown, Kansas 66779
Phone: 316-756-4845

ATTACHMENT II

March 19, 1991

Mr Ken Grotewiel
Representative
Kansas State House of Representatives
Topeka, Kansas 66612

Re: Senate Bill 341

Dear Representative Grotewiel:

This letter is sent to alert you to the improprieties that have been generated by the Kansas Department of Wildlife and Parks under the auspices of the Kansas Threatened and Endangered Species Act of 1975 and the importance of passing through the house a strengthened version of Senate Bill 341.

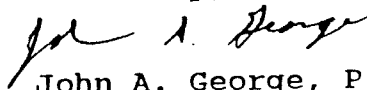
It is enlightening to recognize that KDWP did little or nothing under the T & E Act for ten years but in the last five years they developed and have been administering regulations that have the effect of conscripting private property rights and public funds and diverting them to KDWP's own private agenda totally without substantiation by the T & E Act. In so doing, they have departed from any semblance of rationality or accountability to the people or the State of Kansas. None of the normal checks and balances that we all count on to preserve and protect the assets and rights of the people and the State from autocratic and tyrannical rule currently apply to KDWP and their administration of the T & E Act. They have already taken extreme and dramatic advantage of same and show every proclivity to expand their domain at the expense of the land-owners of the State as well as the budgets of other State programs.

Several landowners and water resource conservation and development projects in Southeast Kansas have been especially hard hit by the insanity and extremity of their demands, but no one is exempt from their sword as they have demonstrated the total autonomy and the willingness to conscript property rights and plunder the coffers of other State programs until the legislature provides some means of injecting oversight and accountability provisions into their agenda.

We strongly urge you to move quickly to sponsor hearings on the subject bill and pass out of committee a strengthened version of same. I am enclosing herewith a copy of a letter from Senator Walker that characterizes the shallow thinking of many opponents to the bill as well as a response to same from the chairmen of the

Mill Creek and Marmaton Watersheds. We all want to preserve and conserve our wildlife and natural resources but insane zeal should never have been allowed to replace and preclude technically and socially sound policy and actions as has happened in KDWP under the claimed title of threatened and endangered specie protection. We greatly appreciate your leadership in moving this effort for responsible environmental and resource management for all Kansans forward in the legislative process.

Sincerely,



John A. George, P.E.

enc.

cc: Rep. Carl Dean Holmes
Rep. Betty Jo Charleton
Rep. John McClure
Rep. Gill Gregory

ATTACHMENT III
March 19, 1991

Marmaton Watershed
c/o Dwayne Neil
102 East 2nd
Uniontown, KS 66779

Mill Creek Watershed
c/o Paul Pavey
Rt. 3
Fort Scott, KS 66701

Mr. Doug Walker, Senator
12th District
State Capitol Building
Topeka, KS 66612

Re: Senate Bill #341

Dear Mr. Walker:

We are in receipt of your letter of March 14th explaining your position relative to Senate Bill 341. Upon review of same, it is obvious why those of us in the private sector become very frustrated and disillusioned with our political representatives.

You have indicated that it is your feeling that supporters of this bill are unaware of the existing review process and the opportunity for public input to the Secretary of Wildlife and Parks on these matters. From our experience it is obvious that you and presumably many of the other legislators are unaware how ineffective those existing review processes are and how insensitive Wildlife and Parks is to any societal concerns. We have studied the law and looked for every opportunity to rectify the ridiculous decisions that the Kansas Department of Wildlife and Parks have been forcing upon us. The Department of Wildlife and Parks and its supporters are fond of giving lip service encouraging earlier participation with the agency with the assertion this would solve all problems. We assure you that we have consulted extensively with Wildlife and Parks for many years relative to these issues. We routinely get responses from them such as:

"We don't have to consider any economic, social or common sense parameters in defining mitigation requirements."

"This is the way it is--you can't do anything about it."

"If it was up to me, there would be no public monies spent on private lands."

"If it was up to me, there would be no public monies spent on watershed projects."

"If it was up to me, there wouldn't be any watershed dams built."

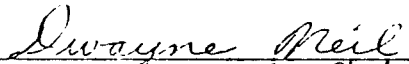
The Department of Wildlife and Parks currently has carte blanche in defining and implementing the Kansas T&E Act. They have made it perfectly clear that they aren't interested in and don't have to take heed of our concerns nor anyone else's.

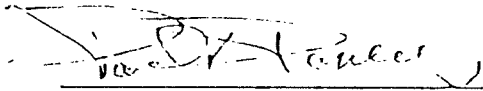
In addition to Wildlife and Parks, we have consulted routinely with the Kansas Division of Water Resources, the State Conservation Commission, and the Kansas Department of Health & Environment; the other agencies that you allude to as being on the currently established environmental coordination act review committee. They continuously tell us that they are unable to influence the thinking of the Division of Wildlife and Parks.

We fully recognize that the committee provided for in Senate Bill 341 is advisory only in nature and that the Secretary of Wildlife and Parks might very well totally ignore all of their advice and counsel. We would very much like to see a mechanism implemented that provides for more accountability on the part of the Department of Wildlife and Parks than is called for in Senate Bill 341. However, with the weak representation provided to these issues by legislators such as yourself, we have been advised that we will be lucky if we can get this provision in place. We certainly haven't seen any sign that you are willing to assist even this effort, let alone a more appropriate stronger one.

There are many people in Southeastern Kansas that; when they become aware of how superficial your knowledge, understanding, and support of this issue is and has been; will share our extreme disappointment with your representation of this area.

Sincerely,


Dwayne Neil, Chairman
Marmaton Watershed Dist. 102


Paul Pavéy, Chairman
Mill Creek Watershed

Testimony of Chuck Shelton

To: Kansas Senate Committee on Energy and Natural Resources

March 26, 1991

I am Chuck Shelton, and I live north of Uniontown, Kansas. Part of our land falls within the boundaries of the Marmaton Watershed District. Approximately three years ago the district approached me for an easement to build one of several needed floodwater detention reservoirs which have the side benefits of enhancing water supply, water quality, wildlife habitat, ect. I gladly gave the easement recognizing that there are dramatic and significant flood damages down stream as well as the need for better water quality and more water supply in the areas below me.

As things transpired, the Department of Wildlife and Parks are back requiring an easement for the Broadhead Skink and the Redbellied Snake. At this point they are wanting 100 acres for a couple of small animals that may exist or may not exist in this area of Bourbon County Kansas. In return for a public project to benefit the entire area, they required this easement for 100 acres of mine and my neighbors land with the stipulation that it can never be cleared for the life of the project, and only limited grazing. Actually the floodwater detention structure took approximately 13 acres of timber land which Wildlife and Parks said was critical habitat for these two little reptiles, which may, or may not exist in this area. In so requesting, they did not take into consideration that there is an estimated 13,000 acres of like land within a ten mile radius of this site. Likewise, they take no cognizance of the fact that this is a publicly funded project that has been justified on the basis of cost benefit ratios. Neither do they provide any compensation for the easement and the land rights that it represents.

At this time my neighbor and I are now faced with a 50 year easement which substantially precludes significant economic activity on this 100 acres for the life of the project, but we receive nothing in return. The land will continue to taxed at its normal tax rate. There was no payment for the easement nor any other benefits accrued during this process. I believe that this is a case of taking private property rights without compensation sometimes known as adverse condemnation. I also believe it is absolutely unjustified in the sense that these two species are indigenous to the entire Eastern and Southern United States and simply have not been wide spread throughout Kansas because most of Kansas does not provide habitat for them. I believe it is probable that the are listed as threatened species

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3/27/91

Attachment 3

in Kansas totally without justification since KDWP has to justify to no one the listing of these species or any other as threatened or endangered. I believe that our property rights have been usurped totally without proper justification.

Yes, I am here in support of the proposed Senate Bill 341. However, I believe that the Bill needs to be strengthened to the point of alleviating some injustices that have already been propagated by the Kansas Department of Wildlife and Parks

Thank you for your time and consideration.

HOUSE ENERGY AND NATURAL RESOURCE COMMITTEE

MARCH 27, 1991

Testimony on Senate Bill No. 341 - AN ACT amending the nongame and endangered species conservation act; establishing the endangered and threatened species and habitat advisory committee.

I am Richard G. Jones, Executive Director of the Kansas Association of Conservation Districts.

The Association represents the 105 County Conservation Districts in Kansas. Conservation Districts provide assistance to landowners and operators for the protection and improvement of their soil, water, plant, and animal resources. Conservation Districts are governed by a five member board of supervisors made up of local landowners who serve without compensation.

On November 20, 1990, at our Associations 45th Annual Meeting, the members passed a resolution requesting that the Kansas Legislature create an independent group or committee to hear appeals on projects when the sponsor and Kansas Department of Wildlife and Parks have a disagreement on the issuing of a permit to install works of improvement. A copy of the resolution is attached.

Senate Bill 341 establishes such a committee, with the responsibility of reviewing and being advisory to the Secretary of the Department of Wildlife and Parks in granting of permits along with other duties dealing with the State's endangered and threatened wildlife species.

The Conservation Districts of Kansas have continually implemented local conservation programs to the benefit of our State's natural resources, including our wildlife. They have accomplished this by being

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Attachment 4*

aware that all natural resources are important and have a place in our environment. This includes consideration for the safety and health of humans along with the needs for other resources. We cannot forget that we all have a place in our limited environment and that the safety and health of our fellow man must have some priority as we are the only ones that can initiate changes.

Information from the Kansas Department of Wildlife and Parks indicate that there were some 1,575 projects that went through the Department and the State's environmental review process in 1990. Of this total, only 16 required any special mitigation. I do not believe the intent of Senate Bill 341 is for the proposed advisory committee to review all projects (that is the total 1,575), but to review and give advice on those that the Department considers needing special mitigation, and to review the current Kansas list of endangered and threatened species and proposed additions to it. If properly informed and managed, the proposed committee should not add to the already enormous delays in implementing works of improvement that have occurred because of special mitigation requirements. In fact it could have the opposite affect through more logical negotiations between the Department and the local citizens.

You may hear testimony from some environmental groups that this committee has no expertise in the wildlife area and therefore are not qualified to review the permitting activities of the Kansas Department of Wildlife and Parks. Senate Bill 341 does not call for a committee made up of environmental experts, but calls for an advisory committee that is concerned for all species that exist in our environment and that can advise the Secretary of Wildlife and Parks on his decisions when they have a major impact on works of improvement proposed by local people.

The Conservation Districts of Kansas believe that an Independent Committee should be established to review the requirements made of local people by the Department of Wildlife and Parks in permitting construction of works of improvement to assure that they are logical and reasonable from both an environmental and economical standpoint. The Committee should also review the listing of endangered and threatened species, including the current list and any proposed additions to the list.

Thank you for the opportunity to testify on this issue and we urge the passage of Senate Bill No. 341.

ESTABLISH APPEAL PROCESS FOR KANSAS DEPARTMENT OF WILDLIFE AND PARKS
CONSTRUCTION PERMITS

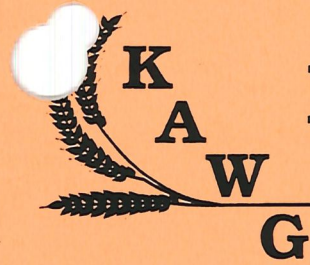
WHEREAS, watershed districts, rural water districts, towns and other entities building dams or other works of improvement in Kansas must obtain approval of the plans for the Kansas Department of Wildlife and Parks before construction can take place; and

WHEREAS, these entities have invested considerable sums of money in developing feasibility studies or long-range plans which depend on these construction projects to meet their goals; and

WHEREAS, Kansas Department of Wildlife and Parks has made determinations which have either stopped construction projects or added considerable costs or mitigation based on a decision within their department that certain environmental conditions exist that must either be protected or mitigated by the sponsor; and

WHEREAS, the safety and health of humans should carry a higher priority than plants and animals considered by the Kansas Department of Wildlife and Parks to be threatened or endangered, when in fact they may not exist in this area, or they are in abundance in adjoining states where they are not threatened or endangered,

THEREFORE, BE IT RESOLVED, that an independent group or committee be created by the legislature to hear appeals on projects when the sponsor and Kansas Department of Wildlife and Parks have a disagreement on the issuing of a permit to construct a dam or other works of improvement.



Howard Tice

Kansas Association of Wheat Growers

P.O. Box 2349 • Hutchinson, KS 67504-2349 • (316) 662-2367

ONE STRONG VOICE FOR WHEAT

TESTIMONY

House Committee on Energy & Natural Resources
Representative Ken Grotewiel, Chairman

SB-341

Mr. Chairman and members of the committee, I am **Howard Tice**, Executive Director of the **Kansas Association of Wheat Growers**. On their behalf, I thank you for the opportunity to appear today in support of **SB-341**.

We feel there is a definite need for the advisory committee which would be created by this bill. Major watershed projects have been delayed and have been threatened with excessive cost increases because of concerns by the **Department of Wildlife and Parks** about some creature on the state's **Endangered Species List**. Our **Association** has also been advised that farmers have been refused permits to build structures necessary for conservation plans which are required in order for them to qualify for federal farm programs, for the same reasons.

We are not saying that endangered species should not be protected. What we are saying is that someone needs to inject some common sense into the handling of the problems that arise. The project that caught the attention of the **Wichita Eagle** this past weekend, and was probably most responsible for the introduction of this bill, is a good example.

The **Bone Creek Project** involves a reservoir that will provide flood protection to local communities; farm homes and fields; and roads and bridges in southeast **Kansas**. The project also includes a treatment plant and distribution system to supply good quality water to people in **Crawford** and **Cherokee** counties, who now have poor quality water. Unfortunately, this project has experienced major delays and excessive increases in costs because of a mitigation process that doesn't use common sense, and therefore, isn't working.

The **Department of Wildlife and Parks** is requiring the project to purchase nearly **300** acres of cropland to plant hardwood trees, to replace lost habitat. However, according to reports we have received, they don't even know if any of the creatures they say they are protecting are found in the area. At least, there is no documentation of actual species population in the area in question. They have simply declared that the trees which they want replaced are "*suitable*" habitat for the so-called endangered species.

For a project in the **Mill Creek/Marmaton Watershed District**, according to the **Wichita Eagle**, the **Department** has required **75** acres of hardwood trees to replace **15** acres destroyed. We have been told of another project, with a **13** acre pool, that required **100** acres for mitigation. The **Eagle** refers to a complicated formula that is used to determine how much habitat needs to be replaced to mitigate the loss of current "*suitable*" habitat. However, it is difficult at best to understand how such lopsided numbers, and the associated costs can be justified by any formula, complex or simple.

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3/27/91
Attachment 5*

In the case of the Broadheaded Skink, the Northern Redbelly Snake, the Central Newt and the Eastern Spotted Skink, and the southeastern Kansas water projects, the lack of sense becomes more pronounced because these species are found in abundance in Missouri and other states to the east of Kansas. The only habitat in Kansas that is considered "suitable" for these species is in the eastern half of three or four counties that border Missouri. The requirements and related costs to protect habitat that probably isn't even being used, by species that are abundant in neighboring states, are simply not justifiable.

The aim of SB-341 is to inject reality into the mitigation process. It would not affect projects that require no mitigation. Where mitigation is required, it is obvious from the examples cited, that the Department of Wildlife and Parks needs help.

The committee recommended in the bill includes the expertise of the state biologist and the state forester, people skilled in conservation needs and techniques, a person experienced in watershed development, plus the Kansas Secretaries of Health & Environment, Transportation and Agriculture and a person "knowledgeable in and representative of wildlife and environmental interests of citizens."

Another factor that should be considered in this debate is the impact of regulation on private property rights. Congress is considering legislation to address the impact of federal agency regulations on private property rights. While Senate Bill 50, the Private Property Rights Act of 1991 may not affect the larger projects, it could well be applied to private conservation projects that have been delayed or stopped, or where regulations have greatly increased project costs.

The advisory committee created by SB-341, is designed to prevent costly delays and excessive added expenses to worthwhile projects, as well as more realistic mitigation plans. At the same time, it could prevent unnecessary court battles and expensive state settlements in the future, if Senate Bill 50 becomes law at the federal level, and courts apply it to state cases.

I have attached copies of information sent to me from Representative Pat Roberts' office, concerning the Private Property Rights Act of 1991. While the bill specifically refers to the "taking" of private property, the courts have determined that regulations that "go too far" amount to a "taking of property."

{Where the quality of the faxed copies was too poor to be readable, I have retyped them for you.}

To ensure that agencies establish the appropriate procedures for assessing whether or not regulation may result in the taking of private property, so as to avoid such where possible.

IN THE SENATE OF THE UNITED STATES

JANUARY 14 (legislative day, JANUARY 8), 1991

Mr. STANKE (for himself, Mr. BOREN, Mr. GRASSLEY, Mr. HEFLIN, Mr. THURMOND, Mr. PRYOR, Mr. NICKLES, Mr. CRAIG, Mr. HATCH, Mr. BURNS, Mr. HELMS, and Mr. WALLOP) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To ensure that agencies establish the appropriate procedures for assessing whether or not regulation may result in the taking of private property, so as to avoid such where possible.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Private Property Rights
5 Act of 1991".

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

2

1 (1) The term "agency" means all executive
2 branch agencies which engage in activity with the po-
3 tential for taking private property, including any mili-
4 tary department of the United States Government, any
5 United States Government corporation, United States
6 Government controlled corporation, or other establish-
7 ment in the Executive Branch of the United States
8 Government.

53

9 (2) The term "taking of private property" means
10 an activity wherein private property is taken such that
11 compensation to the owner of that property is required
12 by the Fifth Amendment to the Constitution of the
13 United States.

14 **SEC. 3. PROTECTION OF PRIVATE PROPERTY.**

15 No regulation promulgated after the date of enactment
16 of this Act by any agency shall become effective until the
17 issuing agency is certified by the Attorney General to be in
18 compliance with Executive Order 12830 or similar proce-
19 dures to assess the potential for the taking of private proper-
20 ty in the course of Federal regulatory activity, with the goal
21 of minimizing such where possible.

22 **SEC. 4. JUDICIAL REVIEW.**

23 (a) Judicial review of actions taken pursuant to this Act
24 shall be limited to whether the Attorney General has certified
25 the issuing agency as in compliance with Executive Order

3

1 12830 or similar procedures, such review to be permitted in
2 the same forum and at the same time as the issued regula-
3 tions are otherwise subject to judicial review. Only persons
4 adversely affected or grieved by agency action shall have
5 standing to challenge that action as contrary to this Act. In
6 no event shall such review include any issue for which the
7 United States Claims Court has jurisdiction.

8 (b) Nothing in this section shall affect any otherwise
9 available judicial review of agency action.

THE PRIVATE PROPERTY RIGHTS ACT OF 1990 (1991)

INTRODUCTION

PRIVATE PROPERTY AT RISK

Many constitutional scholars believe it was inevitable: as American industry expands, natural resources are developed and population grows, government will attempt to control this growth with increasing levels of regulation. Almost every day, the federal government issues a new ream of regulations that place more demands on individuals and businesses, in hopes of addressing society's problems. Congress' budget crisis only speeds this trend, since it far less expensive to simply mandate public benefits (open spaces, low-income housing, medical care, etc.) rather than budget taxpayer dollars to achieve those same goals. The mounting burden of this regulation may conflict with basic property rights guaranteed by the Constitution.

The Constitution provides that "private property [shall not] be taken for public use without just compensation." The courts have determined that regulations which "go too far" [i.e. deny economic use of one's property without provocation or cause], amounts to a "taking of property" and requires compensation be paid to the owner. The U.S. Government is currently facing well over a BILLION dollars in "takings" claims of this type. Just in 1990, several of the largest "takings" judgements in the history of the United States were handed down by the U.S. Claims Court. And in California, property owners who can afford legal costs are winning about 50% of their "takings" claims before the intermediate appeals courts.

NEEDED: REGULATION WHICH RESPECTS PRIVATE PROPERTY

The need for the federal government to be more careful in how it regulates has been recognized since 1967, when a series of landmark Supreme Court cases clarified the rights of property owners against excessive regulation. A year later, President Reagan signed an Executive Order [E.O. 12630] which required agencies to "look before they leap" at what the private property impact of their regulations might be. At the current time; however, there is no statutory requirement that agencies even consider the impact on private property when issuing regulations.

That is why a bipartisan groups of Senators, supported by small business, farm and civil rights groups, as well as free-market environmentalists have proposed the Private Property Rights Act of 1990. (1991) This Act requires that federal agencies adopt administrative procedures to "assess the potential for taking private property in the course of regulatory activity, with the goal of minimizing such where possible." These procedures may be similar to those required by E.O. 12630, but must reflect the Court's current interpretation of what constitutes a "taking of private property." This assessment will allow agencies to draft regulations that impose on property rights as little as possible, while still achieving their regulatory goals. As a result, the public interest is served, individual property rights are protected without costly court battles and taxpayers need not pay compensation for "takings" that could have been avoided.

Testimony presented to
Committee on Energy and Natural Resources
by
The Kansas Department of Health and Environment
Senate Bill 341

The Kansas Department of Health and Environment supports SB 341. It would allow KDHE to have some input on the endangered and threatened species listing in the state. The issue of those species often comes up in permitting actions. KDHE could have some insight and input on the formulation of this list.

Testimony presented by: Ron Fox
Director
Bureau of Environmental Quality
Division of Environment
March 27, 1991

*E+NR
3/27/91
Attachment 6*

March 27, 1991

Honorable Representatives and Guests:

My name is Ed King. I am past president of the See-Kan Resource Conservation and Development Board. Our 27 person board is appointed by elected officials in our nine county area of southeastern Kansas. I live in Woodson County. I wish to speak in support of Senate Bill 341.

Over the past 22 years our See-Kan RC&D Board has helped local people carry out needed projects. Today, I want to address the Bone Creek Project and the difficulties local people have had in satisfying the demands of the Kansas Department of Wildlife and Parks for mitigation. This multipurpose reservoir is a high priority with our board due to the critical need to provide a new source of high quality water to the people in Crawford and Cherokee Counties.

There is not time enough for me to fully explain their need but let me state that the eleven communities involved with Public Wholesale Water Supply District # 11 have severe water quality problems. All have high levels of hardness, causing pipes and fixtures to have very short lives. But the real concern is for the health of the 14,000 people living in these small communities and drinking the water from their deep wells. These people are faced daily with using water that is high in sodium, chlorides, and magnesium. Some of the communities have radium 226, radium 228 and Gross Alpha in their water which exceeds safe drinking water standards. These communities must notify their people every month that their water does not meet safe drinking water standard. For these small communities, joining together to construct a new reservoir for safe drinking water is the most economical and permanent cure to their problems. The Bone Creek Reservoir was selected as the best alternative after a detailed feasibility study.

You have two attachments to my report. The first provides details of the Bone Creek Reservoir, treatment plant, and distribution system. One page provides water quality data for several southeastern Kansas communities. The second attachment is a letter from the Kansas Department of Wildlife and Parks, dated May 31, 1990 explaining how the PWWS #11 will be required to plant and maintain 296.4 acres of cropland to trees. This area will be to mitigate the loss of 222.3 acres of trees within the Bone Creek Reservoir project. The new reservoir will cover 540 surface acres with water.

Our board is very much aware of the problems and delays that the Public Wholesale Water Supply District #11 has had

E & NR
3/27/91
Attachment 7

because of critters on the state threatened and endangered species list. I will address this specific problem since it has been on going for three years and is still not resolved. Please be aware that the four species the Kansas Department of Wildlife and Parks has listed as threatened are all on the Kansas T & E species list, not the national list. The four are the Broadheaded Skink, the Northern Redbelly Snake, the Central Newt, and the Eastern Spotted Skunk. All of these species live in timber areas in states to our east. Our counties in southeastern Kansas are at the western edge of their habitat. These species are abundant in Missouri and states to the east, according to Robert Hiland, a retired Kansas Fish and Game Biologist living in Crawford County. The timbered area where the Bone Creek Reservoir is to be located has been labeled as suitable habitat for the above species. To label these species as threatened is misleading. Just because Kansas has only a few counties suitable for these critters to live, does not make them threatened.

Requiring mitigation for a species that is not threatened is an injustice to our people. It is causing delays in getting a much needed project on the ground and it increases costs. With the Bone Creek site, the PWWSO board estimates cost increases of about \$300,000 for land and tree planting. This does not include the cost of maintaining this hardwood forest forever. It also takes some of our best farm land out of production to plant more trees in an area where we already have a great abundance of trees.

Bone Creek Reservoir has been delayed a year or more because of demands by the Kansas Department of Wildlife and Parks to carry our extensive mitigation. The initial site for the reservoir was in a heavily wooded area. The Kansas Department of Wildlife and Parks demanded the PWWSO #11 purchase over 600 acres of cropland and plant it to hardwood trees to mitigate this first site. Three years later and after four revisions in the Bone Creek Reservoir plans, the mitigation needs has not been agreed to. The PWWSO board moved the location of the dam downstream nearly a mile and lowered the water level 15 feet to protect more timber and wildlife habitat.

The current demands of the Kansas Wildlife and Parks Department is for the PWWSO board to purchase 296.4 acres of cropland and plant this to hardwood trees. This will require the purchase of several additional farms near the reservoir to acquire the needed cropland that is suitable for growing trees that produce nuts. We believe this is an unnecessary expense.

After the land has been purchased and planted to trees, the PWWSO board will be required to maintain this land in timber forever. Not just as long as the lake is full of

water, but FOREVER. The local people will be required to pick up the full cost of this mitigation. There are no federal or state grants that cover any of the cost of mitigation, so the extra \$300,000 will be added to the overall cost of the project. People using the water will pay higher water rates over the life of the project to pay for this mitigation. Every one of the eight towns have median household incomes below the poverty level, according to Dennis Stafford, Farmers Home Administration, Chanute District Office. Income levels for the three rural water district areas have not been calculated as yet.

Kansas needs a review procedure with an independent board when communications break down between a project sponsor and the Kansas Department of Wildlife and Parks. This review board needs to have the authority to provide advice and resolve problems.

Kansas needs to review the list of endangered species and determine if all of them really need to be on that list. This decision needs to be based on a multi-state determination and not only on what may be happening in a few counties of the state.

If mitigation is an issue this House Committee wants to support and believes it is in the best interests of our state, then there is another issue. The state should be covering the mitigation costs for the Bone Creek Reservoir and similar projects from the general fund.

I thank you for taking the time to hear me concerning Senate Bill 341. I do hope this will be the beginning of a better working relationship between local project sponsors and the state. Our local people are trying to provide much needed services for our people and trying to satisfy the need to protect our natural resources.

Ed King
Past President
See-Kan RC&D Board

BONE CREEK RESERVOIR

Treatment and Distribution System

Preliminary Data
on
Selected Option for a
Multipurpose Reservoir

by
Public Wholesale Water Supply District #11
Crawford and Cherokee Counties

January 9, 1991

Jim Gaskell, RC&D Coordinator, See-Kan RC&D Office,
Route 2, Box 293-A, Chanute, KS 66720
Phone 431-6180

BONE CREEK RESERVOIR

A feasibility Study has been completed on the Bone Creek Reservoir. The study covered two different locations and several different size dams at each location. The Public Wholesale Water Supply District # 11 has selected a site for the multipurpose reservoir in Section 12, Township 28S, Range 24E, Crawford County. The dam will be located approximately 7 miles north and 5 1/2 miles east of Girard. Bone Creek flows into the Marmaton River after it enters Missouri.

The Bone Creek Reservoir will create a 540 surface acre lake when built and it fills. It will have over 9,000 acre feet of water (more than 3 BILLION gallons) for water supply. It can yield 2.95 million gallons of water daily. These are average figures and daily production can vary. This is considerably more water than is currently being used (1.7 mgd) by the eleven entities who have indicated interest in the PWWSO.

The projected yield of 2.95 mgd take into account rainfall, runoff, evaporation and seepage. The water stored in the reservoir would yield the stated amount 98 percent of the time for a period equal to the worst drought of record. There is a two percent chance the reservoir would not be able to yield the full 2.95 mgd. This reflects the odds that the area could experience a drought worse than the record one of the 1950's two years out of each one hundred.

Much higher yields can be obtained from this reservoir if a combination of ground water from existing wells and the Bone Creek Reservoir are both used. This is what is proposed: cities with a good source of water from wells and adequate treatment could blend their own well water to be supplied from Bone Creek. This will reduce the cost of water somewhat and provide backup water in case of a water shortage. This will let each entity meet the requirements of the Kansas Department of Health and Environment that an alternate source of water be available.

The Site of Bone Creek Reservoir is in a rugged part of Crawford County. The stream is of good quality, draining 12.5 square miles. The site is wooded and has rock outcrops around the shore line. The PWWSO has included some recreational facilities in their proposal to make recreational access to this lake possible. The State of Kansas has been requested to study the lake area as a potential location for a state park. The See-Kan RC&D Board conducted a study in 1977 with assistance from the Soil Conservation Service. The report identified a potential development that could serve 50,000 visitors annually if installed. A copy of this study has been made a part of this report. By increasing the recreational facilities, many more visitors can be served.

An obstacle that was difficult to overcome was the presence of threatened species and the loss of habitat that several declared threatened species use. After nearly three years of work with the Kansas Department of Wildlife and Parks, a plan has been developed that should be acceptable to meet their requirements. The PWWSO #11 board has agreed to purchase 296.4 acres of farmland and plant it to hardwood trees. This area will be established and maintained forever by the district. The added cost of several hundred thousand dollars will be paid for by increased water rates by users, and grant funds from federal and state taxes.

A second obstacle that has not been overcome is the reluctance of small towns and rural water districts to enter into contracts to purchase treated water from the PWWSO. Contracts have been offered to all eleven entities who became a part of the steering committee to finance the feasibility study. Water will cost these entities \$2.90 per 1,000 gallons. Not a high cost but two to three times what most small entities in Cherokee and Crawford Counties now charge for water. Several are reluctant to raise their water rates to cover the increased cost, even though water quality is poor to plain bad.

Two things are needed to make this project feasible: 1. A revision of state law permitting the State of Kansas to participate in the purchase of storage capacity in Type 3 reservoirs under the Small Lakes Program, and 2. A state appropriation to cover a portion of the cost of this to allow the five entities who have signed contracts to proceed with construction. This "loan" from the state will be repaid as other entities are brought on line in years ahead. The Kansas Water Office is ready to certify that a need exists in the Cherokee and Crawford County area within the next twenty years for the full storage planned for Bone Creek Reservoir. The PWWSO board estimates a state appropriation of about \$2.5 million is needed to move the project forward.

The PWWSO board has considered development of the ground water with a water softening type treatment plant to clean up the water. Radium 226 and hydrogen sulfide can be removed from the water but sodium cannot be removed. The board has rejected this option due to the uncertainties of the ground water resources, the high cost of building and operating a water softening treatment plant, and if they used wells for their water source, there would be no alternate source of supply for the area.

The Bone Creek Reservoir will also provide flood protection downstream including U.S. Highway 69 north of Arma.

Jim Gaskell
RC&D Coordinator, Chanute
January 9, 1991

December 13, 1990

PUBLIC WHOLESALE WATER SUPPLY DISTRICT NO. 11
REVISED PRELIMINARY FINANCING ANALYSIS

revised 1-71
g/h.
revised 3/21/91
g/h & m.n.

In accordance with the revised engineering feasibility ^{Not in-} study including Arma, Chicopee RWD, Girard, Mulberry and Crawford Co. RWD No. 2 as compiled by Larkin Associates, I have outlined the financing alternative that is currently available to the District and am including the plan of financing for your review. I have also taken into consideration some conservative assumptions as follows: *City of Arcadia added 1-8-91. J.S.*

- (a) The project cost is \$9,800,000. \$1.5
- (b) Kansas Small Lakes Program Grant and other Kansas Grants could be obtained in the total amount of ~~\$4,511,010~~ *3,511,010* (\$2,011,010 existing grant) (Need added \$2.5 million State purchase water storage)
- (c) Dingle-Johnson Grant funds could be obtained in the total amount of \$120,000.
- (d) Farmers Home Administration Grant could be obtained in the total amount of \$1,895,240 *+ 750,000 grant = 2,645,240*
- (e) Farmers Home Administration would commit to an intermediate interest rate of 6.125% on \$1,523,750 *(loan) + 250,000 = 1,773,750* — Total FmHA = \$4,418,990
- (f) The District would issue \$1,750,000 in general obligation bonds.
- (g) The amount to be financed is ~~\$3,273,750~~ *3,523,750*
- (h) The Farmers Home Administration revenue bond issue is a 40 year term with a debt service coverage requirement of 110%.
- (i) The General Obligation Bonds would be for a 20 year term with no debt service coverage requirement.
- (j) The estimated annual minimum allocation for which the water rate has been established is 118,800,000 gallons per year.
- (k) 25% increase in water sales by the third year.

The following summarizes the cost per 1000 gallons:

	<u>General Obligation Bonds</u>	<u>FmHA Revenue Bonds</u>	<u>Total</u>
Annual Principal and Interest Payment (3rd Year)	\$168,400.00	\$103,410.00	
Coverage Requirement	0.00	10,340.00	
Annual Debt Service Requirement	168,400.00	113,750.00	\$282,150.00
New Water Plant O & M <i>@ 1.00/1000 gal.</i>			<u>148,500.00</u>
Total			\$430,650.00
Cost per 1000 gallons			\$2.90

(This will have small increase)

- could increase water cost small amt

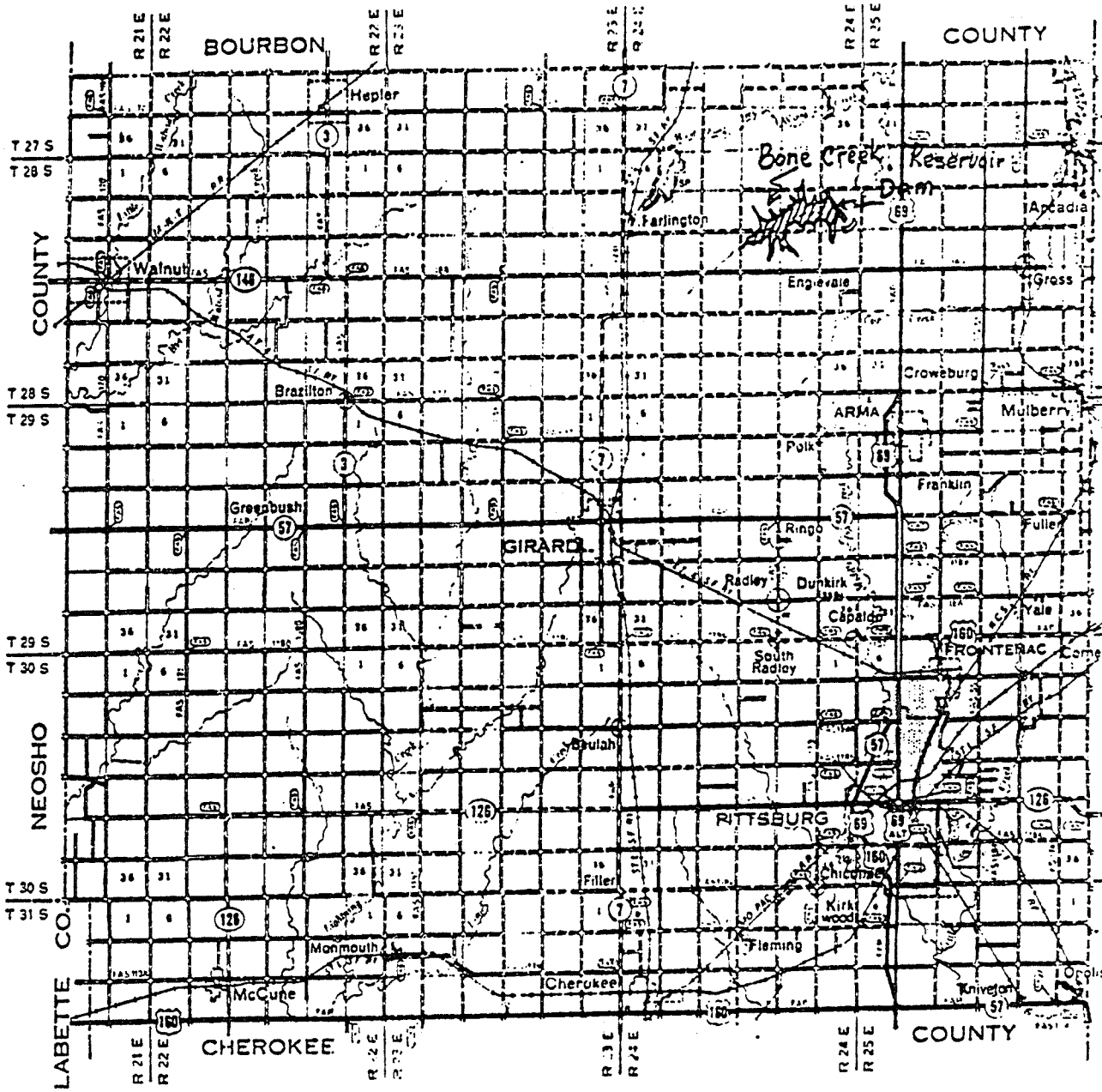
**ESTIMATED PROJECT COSTS
WATER SUPPLY FROM BONE CREEK RESERVOIR**

<u>Item</u>	<u>Cost Estimate</u>
1. Distribution System	
a. Piping	\$ 2,628,600.00
b. Valves & Fittings	30,000.00
c. Pump Station & Phase Converters	80,000.00
d. Radio Telemetry	<u>120,000.00</u>
Subtotal Distribution System	\$ 2,858,600.00
2. Water Treatment Plant	\$ 1,900,000.00
3. Elevated Storage Tank	<u>\$ 315,000.00</u>
Total Construction	\$ 5,073,600.00
Engineering, Legal, Administration, Land, Financing, Contingencies (25%)	\$ 1,268,400.00
Subtotal	<u>\$ 6,342,000.00</u>
4. Reservoir Construction with project costs & Contingencies	<u>\$ 5,841,465.00</u>
Total Estimated Project Costs	\$12,183,465.00 *

Source: Oct 89

**LARKIN ASSOCIATES
CONSULTING ENGINEERS, INC.**
9233 Ward Parkway, Suite 300
Kansas City, Missouri 64114
Telephone - 816/361-0440
FAX - 816/361-0045
LA No. 89031-00

** Note: With less than the
eleven entities under contract,
costs will be revised down. J.M.
1-9-91*



LEGEND

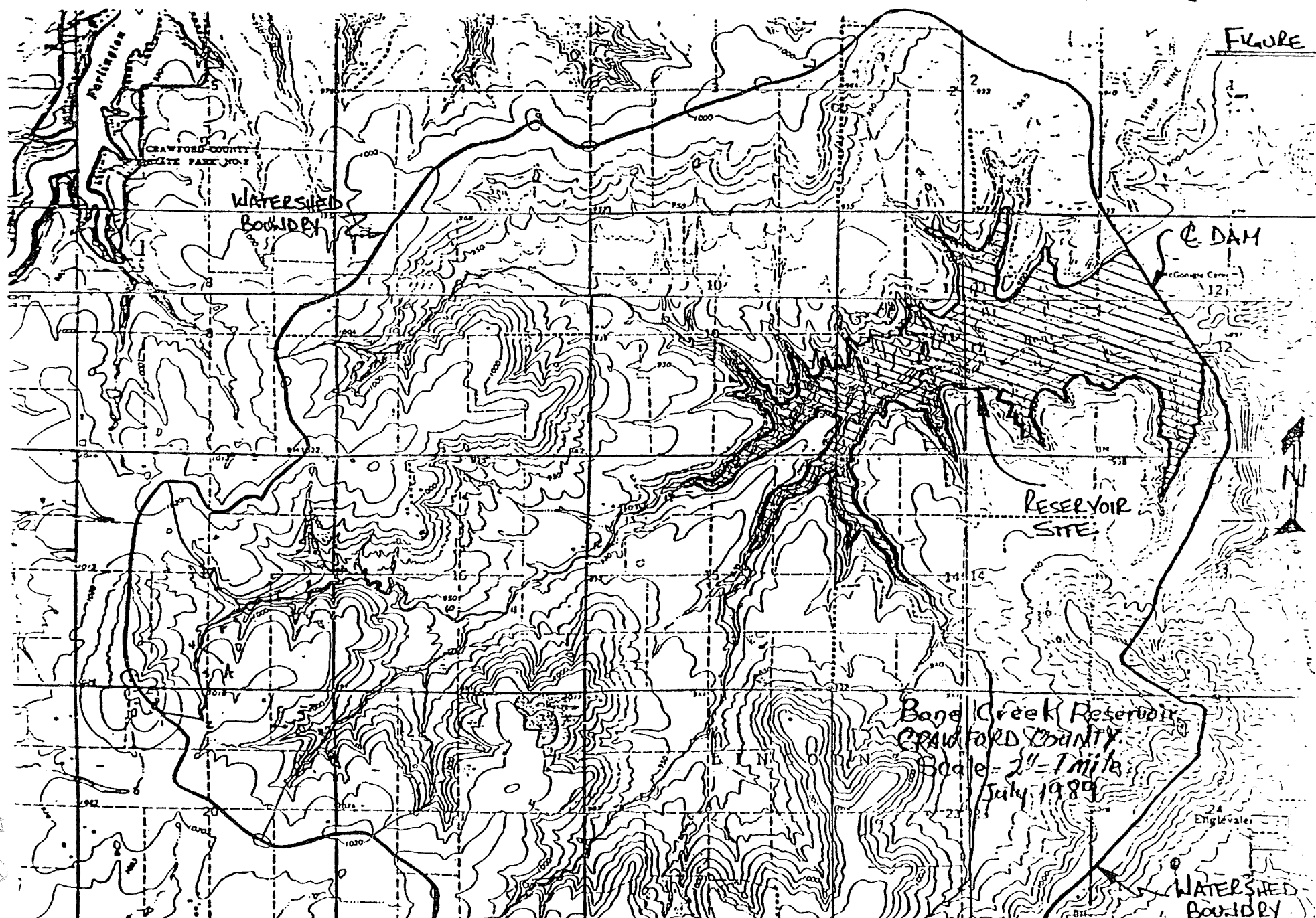
- ROADS AND ROADWAY FEATURES**
- PRIMITIVE ROAD
 - UNIMPROVED ROAD
 - GRADED AND DRAINED ROAD
 - SOIL SURFACED ROAD
 - GRAVEL OR STONE ROAD
 - NOT GRADED OR DRAINED
 - GRAVEL OR STONE ROAD
 - GRADED AND DRAINED
 - GRAVEL OR STONE ROAD WITH STABILIZED SURFACE
 - BITUMINOUS ROAD-LOW TYPE
 - PAVED ROAD
 - DIVIDED HIGHWAY
 - HIGHWAY WITH FULL CONTROL OF ACCESS AND INTERCHANGE

- ROAD SYSTEM DESIGNATION**
- FEDERAL AID INTERESTY HIGHWAY SYSTEM
 - FEDERAL AID THROUGH ROUTE SYSTEM
 - STATE HIGHWAY SYSTEM
 - STATE NUMBERED HIGHWAY
 - STATE NUMBERED HIGHWAY END OF DESIGNATED SYSTEM OR MARKED ROUTE
 - INTERSTATE HIGHWAY SYSTEM
 - U.S. NUMBERED HIGHWAY
 - STATE NUMBERED HIGHWAY
 - STATE NUMBERED HIGHWAY
 - END OF DESIGNATED SYSTEM OR MARKED ROUTE



Proposed location
 Bone Creek Reservoir
 11-3-89
 GENERAL HIGHWAY A
CRAWFORD COUNTY
KANSAS
 APPROVED BY THE
 STATE HIGHWAY COMMISSION OF KANSAS
 DEPARTMENT OF PLANNING AND DEVELOPMENT
 IN CONSULTATION WITH THE
 U. S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION

FIGURE



CRAWFORD COUNTY
STATE PARK NO. 2

WATERSHED
BOUNDARY

DAM

RESERVOIR
SITE

Bond Creek Reservoir
CRAWFORD COUNTY
Scale - 2" = 1 mile
July 1989

WATERSHED
BOUNDARY

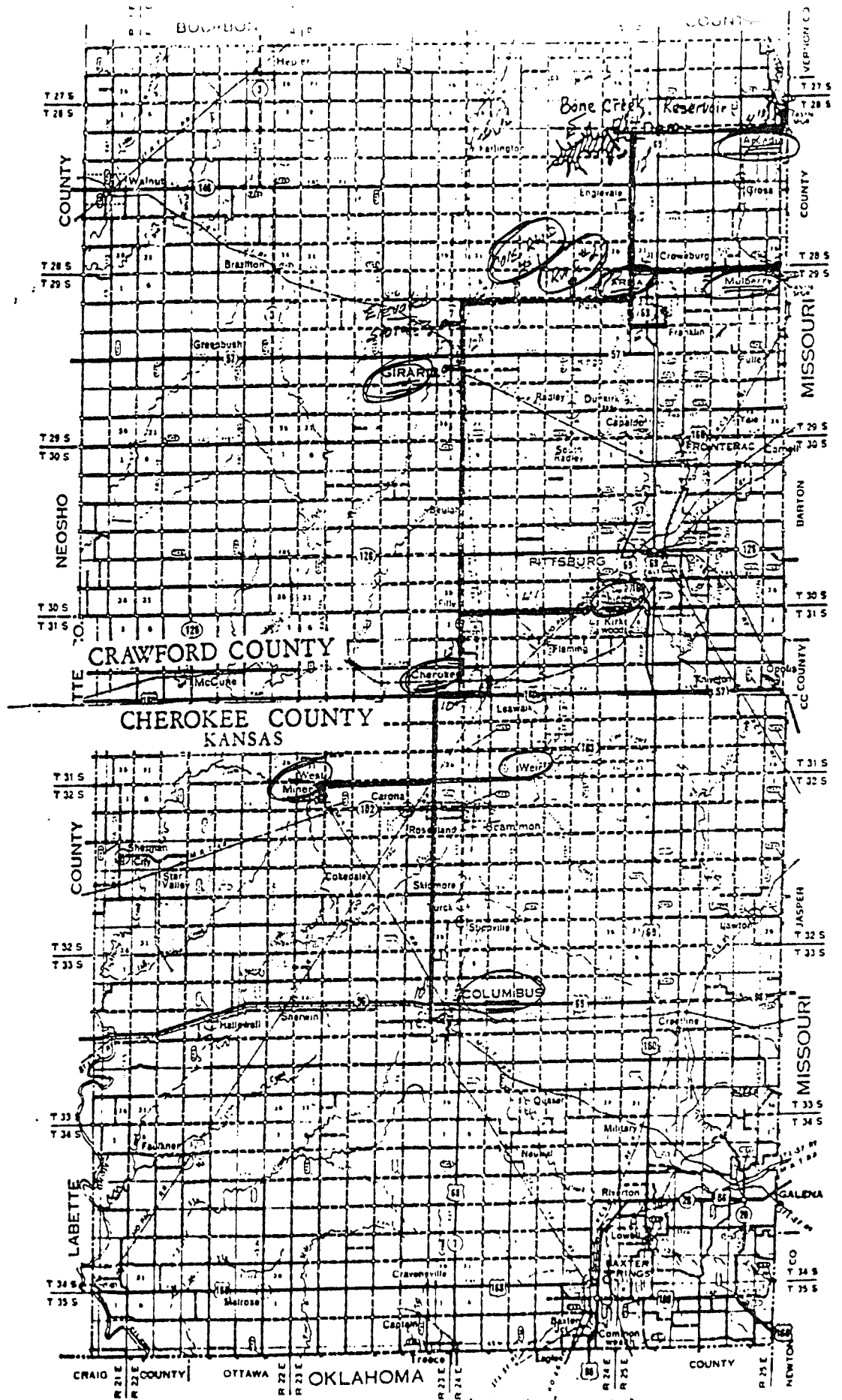
7-10

PROPOSED
BONE CREEK RESERVOIR
CRAWFORD COUNTY

November 3, 1989

PRELIMINARY STRUCTURAL DATA

Item	Unit	Total
Total Drainage Area	Sq. Miles	12.5
Elevations:		
	Ft.	
Top of Dam	m.s.l.	912.0
Emergency Spillway	m.s.l.	900.0
Principal Spillway	m.s.l.	895.0
Water Intake Elevations		
	Ft.	
Low intake	m.s.l.	879.0
Middle intake	m.s.l.	886.0
High intake	m.s.l.	893.0
Maximum Height of Dam	Ft.	59.0
Capacities:		
	Ac. Ft.	
Sediment Submerged	Ac. Ft.	666.0
Water Supply & Recreation	Ac. Ft.	9284.0
Flood Water Retarding	Ac. Ft.	2700.0
Total Capacity	Ac. Ft.	12,650.0
Surface Areas:		
	Acres	
Permanent Water	Acres	540.0
Flood Water Retarding	Acres	610.0
Top of Dam	Acres	845.0
Capacity Equivalents:		
	Inches	
Sediment Volume	Inches	1.0
Flood Water Retarding Vol.	Inches	4.0
Water Supply and Rec.	Inches	13.9
Volume of Fill		
	C.Y.	
Without Crest Roadway (20')	C.Y.	915,000
With Crest Road (40')	C.Y.	1,008,000



Proposed distribution lines
 Bone Creek - PWWSB #11

7-12

**CRAWFORD - CHEROKEE
PUBLIC WHOLESAL WATER SUPPLY DISTRICT NO. 11**

September 25, 1989

*Contracts
Signed
w/ PWSO*

<u>Entity</u>	<u>Current Source</u>	<u>Meters Served</u>	<u>Storage (1000 gal.)</u>	<u>Water Used 1988 (MG/Yr.)</u>	<u>Avg. Month 1988 (MG/Mo.)</u>	<u>Peak Month 1988 (MG/Mo.)</u>	<u>Est. Max Mo. From Wholesale (MG/Mo.)</u>	<u>Est. Min. Mo. From Wholesale (MG/Mo.)</u>	<u>Wholesale Sole/Partial Source</u>
Arcadia	Wells	250	85 Stp	13.2*	1.1*	1.3	2.2	1.1	P *
Arma	Wells - 2	724	75 Elev/200 Elev.	92.8	7.7	9.4	10.0	5.0	P *
Chicapee R.W.D.	Pittsburg	182	None	13.5	1.1	1.5	2.2	1.1	P *
Cherokee	Wells	332	2 - 50 Stp 60 Elev.	27.0**	2.3**	2.6**	1.6	0.8	P
Columbus	Wells	1,660	140 stp - 225 Elev.	175.8	14.7	17.8	14.0	7.0	P
Cons. R.W.D. No. 1 Crow.	Wells	600*		90.0*	6.0*	7.0*	3.0*	1.5*	P
Girard	Wells	1,260	1000, Ground Tank 2 Stp	147.0	12.3	14.0*	12.0	6.0	P *
Mulberry	Wells	292	50 Elev.	29.8	2.5	3.0*	3.0	1.5	P *
R.W.D. #2	Cons.RWD #1	150*		9.0*	0.8*	1.0*	1.6*	0.8*	P
West Mineral	Well	<u>114</u>	123 Stp	<u>7.5</u>	<u>0.65</u>	<u>1.1**</u>	<u>1.4</u>	<u>0.7</u>	P
		5,564		605.6	49.2	58.7*	51.0 MG/Mo. (1.70 MGD)	25.5 MG/Mo. (0.85 MGD)	

Wier - - -

*Estimated
**1987 Information

4-13

**Comparison of Minerals Detected in Domestic Water Supplies
Compared with
Untreated Water from Bone Creek**

3-91 JG

Source: KDH&E

Date	Source	Mineral Analysis - Milligrams/Liter										Radiation Picocuries/Liter		
		Total Hardness CaCO ₃	Calcium	Magnesium	Sodium	Chloride	Sulfate	Nitrate	Fluoride	Total Iron	Manganese	Gross Alpha	Radium 226	Radium 228
6/88	Arcadia	252	59	26	169	265	57	0.02	0.80	0.024	0.013	± 7.5 ± 2.4	2.2 ± 0.4	1.5 ± 0.7
12/87	Arma- Well	282	67	28	176	220	59	ND	0.76	0.08	ND	± 10.6 ± 2.8	4.8 ± 0.6	1.6 ± 1.7
5/76	Bone Creek- Raw Water	252	89	7.3	11	8	65	0.3	0.2	0.005	0.01	NA	NA	NA
2/88	Cherokee	295	65	32	85	71	93	0.07	0.73	0.05	0.00	± 6 ± 1	2.3 ± 0.5	NA
1/91	Columbus	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	± 18 ± 3	NA	NA
2/88	Crawford- RWD #1 Well	179	41	19	83	85	ND	ND	0.43	0.04	NA	-	-	-
12/81	Crawford- RWD #2	209	49	21	369	331	46	0.1	1.6	0.02	0.00	NA	NA	NA
-/75	Crawford- RWD #7-Well	424	99	43	290	495	109	0.1	0.8	0.31	0.00	NA	3.9 ± 0.6	1.3 ± 0.8
3/88	Girard- Well	317	74	33	108	147	98	0.46	0.71	0.05	NA	± 9.5 ± 2.5	2.4 ± 0.6	-
7/88	Mulberry- Well	226	52	24	117	148	30	0.07	0.60	0.06	0.02	± 9.6 ± 2.4	1.6 ± 0.5	-
4/88	Pittsburg-City Wells	114	19	16	75	85	62	0.1	0.94	0.08	0.01	± 2.8 ± 1.3	-	-
6/87	West Mineral Well	361	83	38	213	268	118	ND	1.29	0.02	0.02	± 12.2 ± 3.3	4.6 ± 0.5	0.6 ± 0.7
10/90	Weir	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	± 3 ± 2	NA	NA
Health Concerns					>100	>250							>15	Total >5.0

7/14



OPERATIONS OFFICE
RR 2, Box 54A
Pratt, Kansas 67124
316-672-5911
Equal Opportunity Employer

DEPARTMENT OF WILDLIFE & PARKS
MIKE HAYES, Governor
ROBERT L. MEINEN, Secretary
W. ALAN WENTZ, Assistant Secretary

May 31, 1990

Maurice Harley
Chairman, PWWS District #11
P.O. Box 308
Girard, KS 66743

Ref: D1.0900
Bone Creek

Dear Mr. Harley:

In January, 1989, a habitat evaluation of the Bone Creek site was conducted utilizing a subjective procedure currently used by Kansas Department of Wildlife and Parks (KDWP) for determining probable impacts of proposed development projects on wildlife habitats. The SCS uses a similar procedure on proposed structural measures. In addition, KDWP assessed the site as probable habitat for threatened and endangered species. The site was documented as critical habitat for the threatened Broadhead Skink, *Eumeces laticeps*; a woodland dwelling reptile. The subjective evaluation conducted found the woodland to be destroyed to be of optimum quality for wildlife dependent thereon, including the Broadhead Skink. Subsequent to the above, the initial evaluation was challenged by Public Wholesale Water Supply District #11 (PWWS). In October, 1989, KDWP Secretary Meinen requested that a second evaluation, utilizing more objective procedures be conducted and assigned Robert Wood as the field coordinator. The initial attempt to conduct the field work in December was postponed due to severe weather. Field work for the second evaluation was conducted over the period March 20-22, 1990. A total of 15 people representing three agencies were involved in collecting the field data. Agencies represented were the U.S. Soil Conservation Service (SCS), U.S. Fish and Wildlife Service (USFWS), and KDWP. This letter will serve to transmit, in part, our report on the evaluation.

Due to time and personnel constraints, the terrestrial evaluation was limited to woodlands within the proposed project acquisition area. A total of 12 randomly selected sample plots of approximately 0.3 ac. each were used for woodland habitat measurements. Six of the sample plots were within the project impact area, below design permanent pool elevation, and six were located outside of the impact area. One additional measured sample plot was classified as an orange-grass invaded pasture and was not included in any overall woodland quality calculations. Data collected from the six impact area plots have been used to calculate quality value of the woodlands to be destroyed (222.3 ac.) by the dam/spillway construction and inundation by the permanent pool.

Evaluation of the aquatic habitat (Bone Creek mainstem) will be based on data collected at three sample stations of 100 meters length each. Two of the stations were located upstream of the dam within the permanent pool area and the third downstream of the dam near the small cemetery. We have not completed final analysis of the aquatic data, but there were no rare or unique aquatic organisms or communities documented. We will provide a more complete aquatic report at a later date. All maps and field data forms generated by this evaluation, for both terrestrial and aquatic sampling, will be placed on permanent file at this office and are available for review if you so desire.

This objective evaluation was based on procedures developed by the USFWS whereby specific habitat variables for given wildlife species are measured quantitatively then applied to qualitative curves which result in assigning values ranging from 0 to 1.0, with 1.0 representing optimum quality habitat for the species in question.

Terrestrially, the project will have significant adverse impact on a wide variety of woodland and woodland edge dwelling wildlife. Specific habitat variables were measured for the Hairy Woodpecker, Fox Squirrel, Mink, Eastern Cottontail, and Broadhead Skink. Published habitat models are on file for the first four species while best professional biological knowledge was used to identify habitat variables for the Broadhead Skink. Rather than go into detail in this letter, I have enclosed a copy of Bob Wood's report on the specific procedures and data collected.

Based on the field data collected, we have documented the woodland habitat to be destroyed by the proposed Bone Creek Reservoir site to be optimum for Broadhead Skink having a quality value of 1.0. Based on previously documented measurements, a total of 222.3 ac. of woodland will be destroyed which currently yield 222.3 Habitat Units (HU) annually for Broadhead Skink. As we have explained in previous correspondence, mitigation measures must be implemented to replace the lost HU value which will occur over the life of the project. Although the project's impact will be in perpetuity, for purposes of calculation, the life of the project is presumed to be 100 years which results in a loss of 22,230 HU ($222.3 \times 1.0 \times 100$). The mitigation measures can take the form of woodland plantings and/or improvement of existing woodland habitats. To totally mitigate the 22,230 HU that will be lost over the life of the project by tree plantings, a minimum of 296.4 acres of new woodland comprised of an adapted mix of native trees that will result in a mature woodland with 50% or more of the canopy in hard mast species (oaks, hickory, pecan) must be established. The current Crawford County Soil Survey indicates there are sufficient areas suitable for woodland plantings within the proposed acquisition area to meet the mitigation requirements for the project. The parcels outlined in orange on the enclosed map are likely candidates for woodland plantings. As project plans are further developed, our personnel can assist in developing more specific measures.

Upon completion, the project mitigation measures must yield sufficient HUs to completely offset the projected losses.

Results of this most recent habitat evaluation have not changed our determination that an Action Permit can be issued for the Bone Creek project as long as sufficient mitigation measures are included to assure that no net loss of habitat unit value for Broadhead Skinks will occur over the life of the project's impact. We still consider the project's impact life to be in perpetuity. All mitigation measures associated with the project must also be maintained in perpetuity. Such maintenance will be the responsibility of the permittee.

If you have any questions, feel free to contact me.

Sincerely,



Joe D. Kramer, Chief
Fisheries and Wildlife Division

JDK/rdw/bk

Enc.

xc: W/Enclosure
KDWP, Secy. Meinen
KDWP, Reg. 5 F/W Supv.
USFWS, Haley
SCS, Kuiper
~~SEE-KAN-RC&D, Jim Gaskell~~
Assist. Secy. - Alan Wentz

S.B. 341

Testimony Provided to: House Energy and
Natural Resources Committee

Provided by: Department of Wildlife and Parks

March 27, 1991

S.B. 341 would establish an Endangered and Threatened Species and Habitat Advisory Committee to consult with and be advisory to the Secretary of Wildlife and Parks in matters pertaining to threatened and endangered species. Such consultations would be required prior to any of the following actions:

- Listing or delisting of any threatened or endangered species or any species considered in need of conservation.
- A review at least every five years of all threatened, endangered and species in need of conservation lists.
- Adoption of any regulations designed to protect or conserve threatened or endangered species.
- Issuance of special permits.
- Establishment of programs for the conservation of threatened, endangered and nongame species. This may include studies of these species.

During 1989 and 1990, the Department reviewed 1,575 projects through the states' environmental review process. Of these, only 50 (3.1%) required a special permit and 34 of the 50 projects were able to avoid any mitigation requirements by adjustments to their

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3/27/91
Attachment 8

plans. Sixteen projects (2.1%) did require special mitigation to compensate for losses to threatened or endangered species. The average response time to review a project and provide a report was 22 days.

Mandatory review of special permits by the "review committee" will add 4 to 6 weeks to the review time provided that timely meetings can be arranged. Substantial increases in communication and staff time will occur.

The Department cannot support S.B. 341 as drafted because of increased costs and the increased special permit processing time which will delay project clearance for the various sponsors. Increased review and input into the threatened and endangered species program and activities under that program is always beneficial, but a mandated review step is not necessary. Input is actively solicited during the various program activities including regulatory and species listing efforts. Creation of another review committee duplicates Department efforts.

A problem rests with several projects that have or will have a major impact on threatened or endangered species and our mitigation requirements for those several projects. Had the Department been invited to participate in project planning at an earlier date by the sponsors, many adverse impacts on threatened and endangered species could have been avoided thus reducing mitigation needs.

The addition of a mandatory permit review step which will add to the costs and delay project approval is not in the best interest

of the state, the resource or those project sponsors who desire expedient permit processing. The Department has initiated several actions in response to the concerns expressed by others and proposes to continue and to increase those efforts. Those actions include:

- Meetings with the various entities to explain listing procedures and to receive input for Department consideration.
- Circulation of proposed regulations to a wider range of interested parties.
- Methods for becoming involved in project planning at an earlier date.
- Working with other agencies to determine project impacts and possible mitigation needs.
- Reviews of project reports by the Department with sponsors and explanations of rationale involved.
- Development and implementation of threatened and endangered and nongame programs with public involvement.

The Department is quite willing to work with the various entities to better explain and to improve the threatened and endangered program in our state. Such involvement would not necessarily be limited to only those areas specified in S.B. 341. The Department welcomes input and advice on any aspect of the threatened and endangered effort, but does not believe a mandated approach is desirable.

SB 341
ISSUES AND RESPONSES

Issue: Public involvement in threatened and endangered species listing.

Response: The public may petition to list or delist any species. KDWP biologists review petitions and make recommendations to public representatives on Wildlife and Parks Commission for action. Proposed listings are published in the Kansas Register for comment and are also sent to those having an interest. Adjacent state Governors also are notified for comment.

Issue: Criteria for listing or delisting threatened or endangered species.

Response: Numeric criteria are used to rate species based on 1. species status (population trend, rarity, taxonomic status and breeding status), 2. habitat status (reduction in distribution and loss of habitat), 3. vulnerability (degree of specialization, sensitivity to environmental hazards, exploitation, recovery capacity and manageability, and 4. other significant factors not listed above.

Issue: Listing of species in Kansas that are not threatened or endangered elsewhere.

Response: The Kansas Nongame and Endangered Species Conservation Act protects all species that are endemic to Kansas. Some species are more common outside of Kansas. If only species that were threatened or endangered throughout the

United States were listed by KDWP there would be no need for state protection--they would be protected under the federal Endangered Species Act. Listing of species which are threatened or endangered in Kansas also protects unique habitats of species important to the state. Endangered species can serve as barometers to environmental health of ecosystems.

Issue: Criteria for designating critical habitat for threatened or endangered species.

Response: Designated critical habitat areas must be within the listed species current probable range and possess habitat features known to be essential to the species population. Other criteria considered by KDWP are current and historical occurrence records and the species migrant, seasonal or other behavioral patterns.

Issue: When threatened or endangered species permits are required.

Response: A threatened or endangered species permit issued by KDWP is required whenever a publicly funded project or a project requiring another state or federal permit will impact a threatened or endangered species or its designated critical habitat.

Issue: Public involvement in threatened or endangered species permit decisions.

Response: KDWP attempts to work with project sponsors whenever possible to develop mutually acceptable permit conditions. Public meetings also have been held in the

past.

Issue: Consideration of economic impacts in threatened or endangered species permit decisions.

Response: KDWP is sensitive to economic impact on project sponsors and works to develop mutually acceptable permit conditions. However, adverse effects on threatened or endangered species must be avoided or fully mitigated.

Issue: Mitigation requirements associated with threatened or endangered species permits.

Response: Only 1 in 3 threatened or endangered species permits require special mitigation to offset or compensate impacts to a species habitat. Mitigation involves replacement of lost habitat values. Habitat values are calculated using established scientific procedure. Habitat values reflect both habitat quantity and quality. Therefore, mitigation acreage requirements may be larger or smaller than impacted acreage depending on differences in habitat quality.

Issue: Mitigation responsibility.

Response: Projects must be considered in their entirety and all costs and requirements associated with a project are a part of the project. A project must assume responsibility for the impacts of the project which would include any adverse affects on the environment or on threatened or endangered species. Because the adverse impacts are due to the project, costs associated with mitigation must be included as a project cost. It is not

somebody else's' responsibility to satisfy mitigation needs. This is the procedure used with federal projects and also applies to other publicly funded projects at a state or local level.

Issue: Marmaton Watershed Project

Response: One of three watershed structure sites would impact 15 acres of high quality habitat for the threatened broadhead skink. Originally, 108 acres of mitigation was planned. Alternative mitigation plans requiring 71 acres were developed with landowners and project sponsors. Larger amount of mitigation acreages was due to differences in habitat quality.

Issue: Bone Creek Reservoir Project

Response: Original project site would have destroyed 316 acres of high quality broadhead skink habitat. This site would have required 520 acres of mitigation. An alternative project site was selected that impacted only 223 acres of habitat and required 296 acres of mitigation. This alternative site, in addition to having less impact on the broadhead skink, also produced .8 million more gallons of water per day than the previous proposal.

Issue: Gravel dredging in the Neosho and Cottonwood River.

Response: The Neosho and Cottonwood River are designated as critical habitat for the Neosho madtom. This small catfish is listed on both federal and state threatened and endangered species lists. It burrows into gravel bar habitats during the day and feeds at night. Gravel

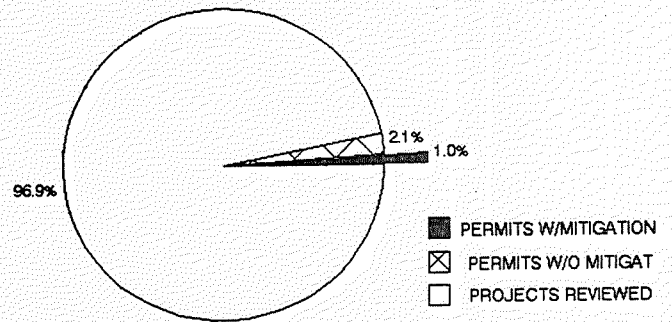
dredging activities both destroy Neosho madtom habitat and harass, harm or kill individual specimens. A moratorium has been placed on gravel dredging in these mainstream rivers until studies can evaluate impact on species.

KANSAS DEPARTMENT OF WILDLIFE AND PARKS

Threatened and Endangered Species Permit Summary

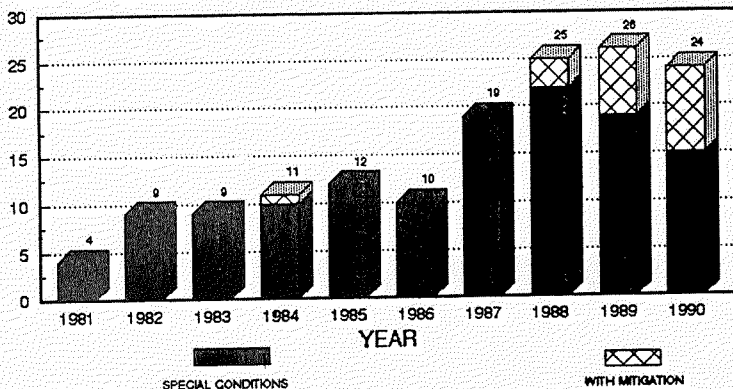
During 1989 and 1990, 1575 projects were reviewed by the Kansas Department of Wildlife and Parks for their potential impact on threatened or endangered (T&E) species. Only 50 (3.1%) were found to require a T&E permit. Of that number, 34 (2.1%) projects were able to avoid any adverse impact while 16 (1.0%) required special mitigation measures. If such special conditions can be devised to protect T&E species, no project is ever denied a T&E permit.

1989-1990



1981 - 1990

NO. OF PERMITS

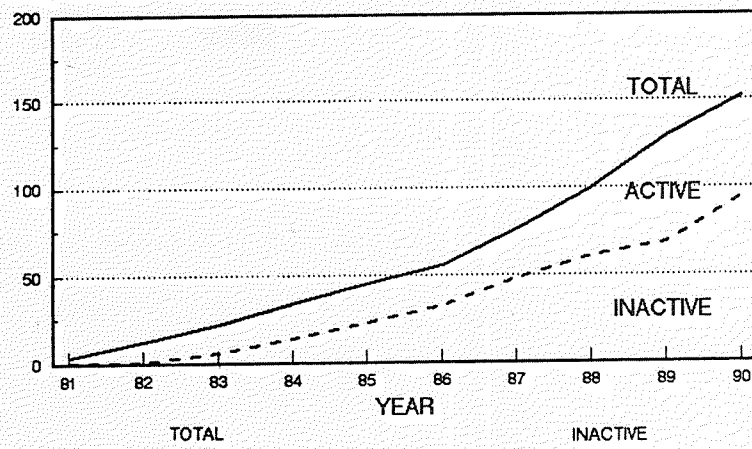


The workload associated with T&E permit administration has increased significantly over time. The addition of 21 species in 1987 to the previous state list of 24 species nearly doubled the number of permits issued. Similarly, the passage of the Water Project Environmental Coordination Act saw a vast increase in the number of projects reviewed for T&E considerations after 1987.

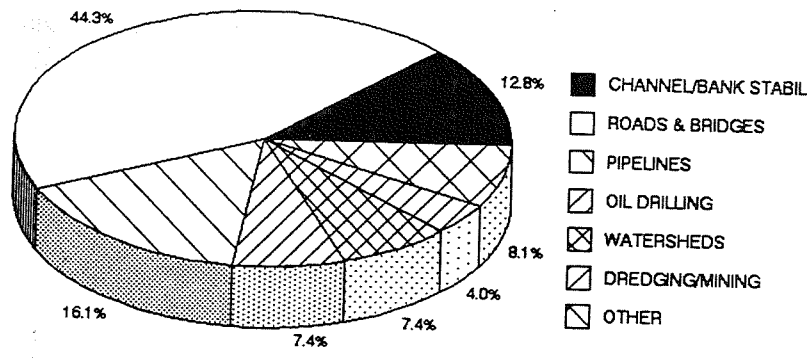
T&E permits remain on active file until final construction is completed or work on the permitted project is terminated by the sponsor. Active T&E permits are reviewed periodically for compliance. Since 1981, 149 T&E permits have been issued with 94 projects having been successfully completed or terminated.

1981-1990

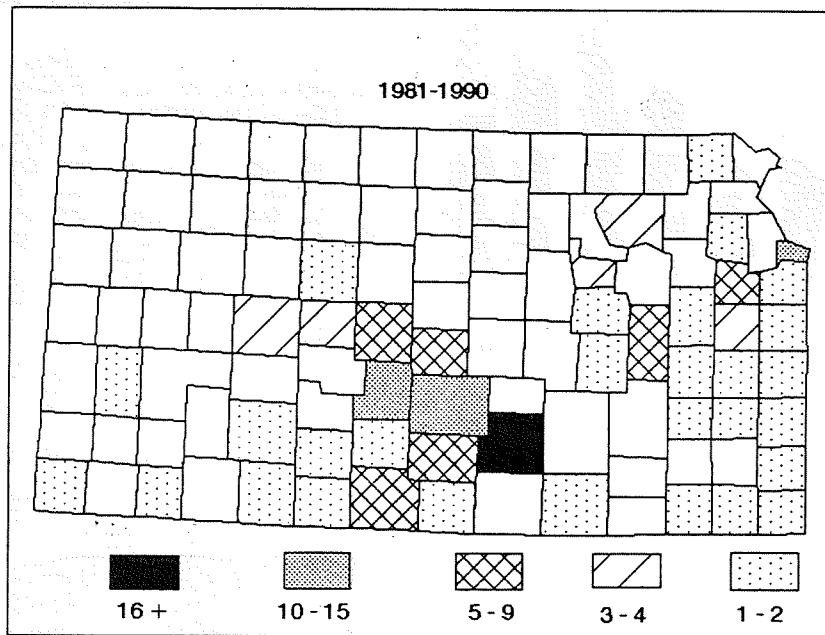
CUMULATIVE NO. OF PERMITS



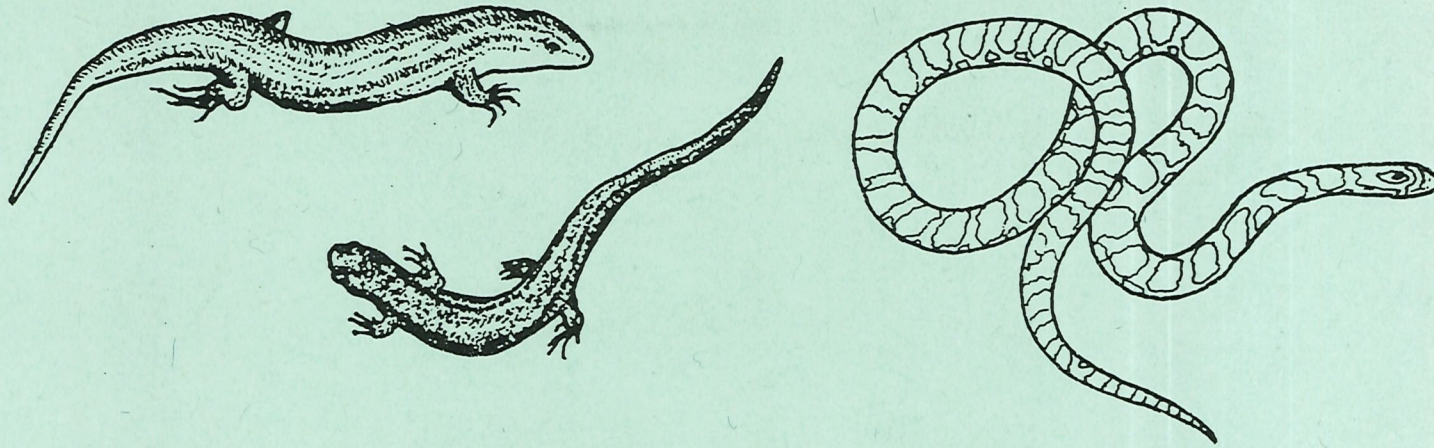
A variety of projects have been developed under T&E permits. While road and bridge construction represent the vast majority, any public funded project or one requiring another federal or state permit must be reviewed. Permits may even be required to do habitat restoration work to benefit a T&E species.



The geographic distribution of T&E permits generally coincides with where species habitats and development growth overlap.



Source: Environmental Services Section, KS. Dept. Wildl. & Parks, 12/18/90



T&E PROTECTION

To most people, the broadhead skink, sicklefin chub, grotto salamander and eastern hognose snake aren't very glamorous animals. However, these species, along with a consortium of other fish, amphibians, reptiles, birds, mammals and even insects, are unique. They are among 46 animal species that have been named by the Kansas Department of Wildlife and Parks as threatened or endangered in Kansas.

Such species are listed because of their rarity or vulnerability, or because of disturbing trends in their population or habitat. Without protective efforts by the Department, extinction of these species becomes a real possibility.

Authority to protect threatened and endangered animals in Kansas came with the passage of the Nongame and Endangered Species Conservation Act in 1975. That legislation gave the Department of Wildlife and Parks not only the authority to list such animals, but also to develop a permit program to protect their habitat against development proj-

ects and other adverse human activities. The Environmental Services Section is responsible for administering that permit program for the Department.

The addition of 21 species in 1987 to the previous state list of 24 species has nearly doubled the number of permits issued each year. Similarly, the passage of the Water Project Environmental Coordination Act saw a vast increase in the number of projects reviewed for threatened and endangered species considerations in 1988 and thereafter.

During 1989 and 1990, the Environmental Services Section reviewed approximately 1,575 development projects for threatened and endangered species concerns. Only 50 (3.1%) of these projects were found to require a threatened or endangered species permit. Of that number, **34 (2.1%) projects were able to avoid any adverse impact while 16 (1.0%) required special mitigation.**

Threatened and endangered species permits remain on active file until final construction is completed or work on the permitted project is terminated by the spon-

sor. Active threatened and endangered species permits are reviewed periodically for compliance. Since 1981, 149 permits have been successfully completed or terminated.

A variety of projects have been developed under threatened and endangered species permits. While road and bridge construction, channel and bank stabilization, and pipelines represent the majority, any publicly funded project or one requiring another federal or state permit must be reviewed. Permits may even be required to do habitat restoration work to benefit the threatened or endangered species themselves.

The Kansas Department of Wildlife and Park's threatened and endangered species protection efforts have done more than help prevent the extinction of 46 animals. The critical habitats for these animals are also home for hundreds of other wildlife species. Protection of these unique areas helps guarantee a lasting legacy of Kansas' diverse natural heritage.

Eric Schenck

Bone Creek

The first habitat evaluation of the Bone Creek Reservoir site was performed by field personnel of KDWP. Project sponsors did not agree with the evaluation and disputed the mitigation plan. Secretary Bob Meinen met with the sponsors and agreed to conduct a second habitat evaluation.

The second evaluation was performed by Environmental Service personnel of the KDWP's Pratt office. Personnel from the U. S. Fish and Wildlife Service and the Soil Conservation Service participated in the second evaluation. A member of SEKAN also accompanied the review team. Results were quite similar between the two evaluations. In fact, the second evaluation actually determined a slightly greater habitat loss.

Habitat is evaluated using a habitat evaluation procedure (HEP) which is a proven and acceptable method to determine habitat quality and quantity.

March 27, 1991

Testimony
presented with regard to Senate Bill No. 341

by

Dwight R. Platt
Professor of Biology
Bethel College
North Newton, Kansas

My name is Dwight Platt. I am a Professor of Biology at Bethel College where I have been on the faculty since 1957. I am also President-elect of the Kansas Herpetological Society and Secretary of the Kansas Ornithological Society. I have had a long-time interest in threatened and endangered species of animals and plants in Kansas. From 1971 to 1975 I was Chair of the Conservation Committee of the Kansas Academy of Science when this committee compiled one of the first scientific lists of rare, endangered and extirpated species of vertebrate animals in Kansas. These lists were published in the Transactions of the Kansas Academy of Science in 1974. From 1980 to 1986 I served on the Kansas Nongame Wildlife Advisory Council and was the second Chair of the Council, serving in that capacity from 1982 to 1984.

E. O. Wilson, the Harvard Biologist, said ten years ago, "The one process ongoing in the 1980s that will take millions of years to correct is the loss of genetic and species diversity by the destruction of natural habitats. This is the folly our descendants are least likely to forgive us." It is a consensus among many scientists that biological impoverishment of our planet by species decline and extinction is one of the most critical problems we face today and in the immediate future. This is a problem that is being addressed by the Kansas Nongame and Endangered Species Conservation Act. I am concerned that Senate Bill No. 341 amending and supplementing this act is not only unnecessary but will complicate the accomplishment of the objectives of the act.

E + NR
3/27/91
Attachment 9

Since the initiation of the nongame wildlife program, the Kansas Nongame Wildlife Advisory Council has provided consultation to the state wildlife agency in the implementation of this program. This Council has represented the interests of those Kansans who have contributed to the Chickadee Checkoff, a primary source of funding for this program. This Council has been able to operate in a professional manner because of the representation on the Council and its committees. It has been able to provide information and advice from those scientists in the state most knowledgeable about these nongame wildlife species.

Senate Bill No. 341 establishes another advisory committee with overlapping responsibilities to the Kansas Nongame Wildlife Advisory Council. This committee does not have the potential to provide the professional advice and information that has been provided by the Council. This is an important concern if the act is to be effective because decisions with regard to the listing and delisting of species must be made on the basis of biological information and biological criteria. Most of the members of the proposed Endangered and Threatened Wildlife Species and Habitat Advisory Committee represent state agencies or organizations that might have projects that would impact the survival of endangered species. Provisions are made in the present legislation for the input of such special interests. The present law mandates that the Secretary will make determinations on the status of species after appropriate consultations with federal agencies, other interested state agencies and interested persons and organizations. It also mandates public notice and opportunity for public comment on such determinations. This provides the opportunity for public input from a wide range of groups, not the very limited groups to be represented on the proposed advisory committee.

The agency has operated in a responsible and thorough manner in developing the present list of endangered and threatened species. In the last review of

the list, the Nongame Task Force reviewed 183 species and solicited and received information from 102 knowledgeable individuals in order to compile the list of 45 threatened or endangered species. I understand that the agency is beginning a new five year review of the list and will again be soliciting information from knowledgeable persons throughout the state.

The regulations used by the agency in controlling those actions likely to destroy endangered or threatened species or their habitat are very reasonable. The requirement of mitigating and compensating measures for the damage caused by such actions is a useful way to allow for development projects without unacceptable damage to species and their habitat and is typical of endangered species programs.

This last summer I spent a few weeks in the Amazon region of Brazil. The diversity and beauty of the tropical rain forest captivates most of us and raises our concern about the protection of the diversity of life. However Brazilians wondered why we were concerned about their Amazonian forest when more than 85% of it is still there. They wondered whether we were equally concerned about the diversity of natural communities and habitats in our own country where much smaller percentages are left under natural conditions. I think all of us here would agree that it is important to protect our natural heritage in Kansas. There are many reasons for doing so -- ecological reasons, esthetic reasons, historical reasons, ethical reasons, religious reasons and economic reasons. I hope that we can continue to develop better state programs for protection of our native biological resources. However I believe that the proposal in Senate Bill No. 341 is a move in the wrong direction and would increase the bureaucratic complications in the way of an effective nongame and endangered species program.

Kansas Natural Resource Council

March 27, 1991

Testimony before the House Energy and Natural Resources Committee

Re: SB341 Concerning the Endangered & Threatened Species Act

From: Shaun McGrath, Program Director

My name is Shaun McGrath, and I represent the Kansas Natural Resource Council, a private, non-profit, organization which advocates sustainable resource policies for the state. Our membership is over 850 statewide.

SB341 would establish the 'Threatened and Endangered Species and Habitat Committee'. The committee would be advisory to the Secretary of Wildlife and Parks, and would be charged with the responsibility of reviewing most all decisions made by the Secretary regarding T&E species and non-game wildlife, including:

- listing or delisting species on the T&E list;
- listing or delisting species on the non-game wildlife list;
- reviewing conservation measures to protect listed species;
- reviewing special permits; and
- reviewing all rules and regulations which the Secretary wishes to adopt regarding T&E species and non-game wildlife.

The Farm Bureau requested SB341, in order to create a means to influence the listing and delisting of threatened and endangered species, and to influence mitigation decisions due to development projects in T&E habitat.

KNRC believes that such public access is provided by existing statutes making this bill unnecessary.

* K.S.A. 32-960 states "The secretary shall make the determinations [of whether any species of wildlife indigenous to the state is a threatened species or an endangered species] ...after consultation, as appropriate, with federal agencies, other interested state agencies and interested persons and organizations."

* K.S.A. 32-960 also mandates that "the secretary may not add a species to nor remove a species from any such list unless the secretary has first published a public notice of such proposed action, and has allowed at least 30 days following publication of such public notice for comment from the public and other interested parties."

E+NR

3/27/91

Attachment 10

- * K.S.A. 32-960 also requires that "upon the petition of an interested person, the secretary shall conduct a review of any listed or unlisted species proposed to be removed from or added to the threatened or endangered lists."
- * The "Non-Game Wildlife Advisory Committee" already exists, and Farm Bureau is a member.
- * Under The Environmental Coordination Act a review of water development projects is already required from six of the seven state agencies listed in SB341.

Not only is the committee proposed in this bill redundant, it is unqualified to make decisions about wildlife. With the exception of the State Biologist and the State Forester, the Committee does not have the scientific expertise to make decisions about conservation measures necessary for nongame, threatened and endangered species to successfully sustain themselves - the intent of the Nongame and Endangered Species Conservation Act.

SB341 could also cost the state a lot of money to implement. The Secretary of KDWP reported that the Department reviewed 1575 proposals between 1989-1990. The average review response time was 22 days. If the Secretary must convene the Advisory Committee for every proposal, the Secretary estimated that the response time will increase by four weeks. The costs of convening this redundant committee for every decision regarding nongame and threatened species, as well as the costs resulting from delays make the fiscal impact of SB341 very great.

KNRC opposes SB341 on the grounds that the committee proposed in the bill is unnecessary, and, moreover, because it is unqualified to make decisions about the conservation of wildlife. Decisions about the needs of threatened and endangered species should continue to be made based on scientific reasoning.



SIERRA CLUB

Kansas Chapter

S.B. 341 - Threatened and Endangered Species Advisory Committee

I am Scott Andrews representing the Kansas Chapter of the Sierra Club. We adamantly oppose S.B. 341.

Concerns S.B. 341 opens the door for special interests that oppose protection of endangered species to gain control of their management and press for the de-listing of species which get in the way of their projects and actions.

The bill would hamstring wildlife management by requiring consultation and review with this committee on all actions, rules and regulations of Threatened and Endangered and non-game species.

Unnecessary and Redundant - Public comment and review by interested agencies is already in statute.

K.S.A. 32-960 (threatened and endangered species)

- determination of endangered status " after consultation with other interested state agencies and interested persons and organizations".

- "Secretary may not add a species or remove a species" from the list "unless first" publishing a notice and allowing 30 days for comment from the public and interested persons.

- "upon petition of an interested person the Secretary shall conduct a review"... "if substantial evidence warrants".

Environmental Coordination Act (K.S.A. 82a-325 through 82a-327).

- Review of water development projects (including endangered species aspects) by state agencies.

Wildlife and Parks Commission

- The Commission reviews all rules and regulations dealing with threatened and endangered, and non-game species.

The Sierra Club urges the members of this committee to kill S.B. 341 before it leads to the extirpation of species from Kansas.

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3/27/91
Attachment 11*

S.B. 341 - ~~Fact Sheet~~ *Outline*

I. Creates Endangered and Threatened Species and Habitat Advisory Committee composed of representatives from:

- State Biologist
- State Forester
- Conservation commission
- Assoc. of Conservation Districts
- Kansas Natural Resource Council
- Assoc. of Watershed Districts
- Dept. Health & Environment
- Dept. of Transportation
- Board of Agriculture

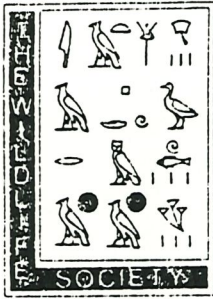
II. Committee shall conduct a review of all species on the state Threatened and Endangered (T&E) List at least once every 5 years.

Review and Advise the Secretary of Wildlife and Parks on:

- Adding or removing of species from the state protected list.
- Granting of special permits for projects effecting T&E
- Establishment of Conservation programs for T&E.

III. Before taking any of the following actions the Secretary of Wildlife and Parks must first consult with the Committee:

- adopting any rules or regulations on non-game species in need of conservation.
- determining if a species is threatened or endangered.
- adopting rules and regulations on the export, sale, possession, delivery, transport (etc.) of T&E including for scientific purposes or actions to enhance propagation or survival of the species.
- establishing any programs for conservation of non-game or T&E species including the acquisition of land or aquatic habitat.



Kansas Chapter

THE WILDLIFE SOCIETY

Testimony to House Energy & Natural
Resources Committee, Mar. 27, 1991
Reference SB 341

MR. CHAIRMAN, COMMITTEE MEMBERS:

I am Tom Swan, President-Elect of the Kansas Chapter of The Wildlife Society. We are the society for professional wildlife biologists. Our state chapter has over 100 members who represent a cross section of wildlifers working in the state. These include university professors, U.S. Fish & Wildlife Service refuge managers and ecological services personnel, research and management biologists from Kansas Department of Wildlife & Parks, zoo biologists, private wildlife consultants, teachers, employees of the Soil Conservation Service, Kansas State University Extension Forestry, Quail Unlimited, and Ducks Unlimited.

Our Society opposes Senate Bill 341. We recognize it purely as an attempt to weaken the state Non-game and Endangered Species Conservation Act. This act has served well since its passage in 1975. Many true conservation organizations worked hard drafting that legislation and their labors have been rewarded with a new emphasis on the importance of non-game species throughout the state. We have seen the effects on educational efforts in the schools, and research efforts by universities and Department of Wildlife & Parks to gain more knowledge about lesser known species and their habitat requirements.

Administration of the state's non-game and endangered species laws and regulations by the Department of Wildlife & Parks has been fair and equitable. I have personal experience working within the framework of those regulations. A Non-game Advisory Council already exists for making recommendations on programs and policies. Procedures already exist in the present law for petition by interested groups and individuals who wish to recommend a species be added to or deleted from the state list of threatened, endangered or species in need of conservation. Provisions include public notice and the need for the petitioner to present substantial evidence supporting a review.

E+NR
3/27/91
Attachment 12

The proposed new section establishing another advisory committee to oversee the Secretary of Kansas Department of Wildlife & Parks is redundant at best and at worst is an attempt by some organizations to sidestep the environmental consequences of their actions. The proposed habitat advisory committee membership reveals very few who would be qualified or have staff qualified to make a review of a specie's habitat requirements. It appears they have instead been recommended because past activities of their organizations have been in conflict with the Non-game and Endangered Species Conservation Act. Apparently they see an opportunity to push through regulations more favorable to their special interests.

We have a law, in place, which serves wildlife well and serves the present and future generations of Kansans to whom that wildlife heritage belongs. Weakening the law as proposed by Senate Bill 341 jeopardizes the wild resources of our state. The Kansas Chapter of The Wildlife Society stands ready to provide you with professional input to wildlife issues around the state. Thank you.



Testimony Provided by
Edward A. Martinko, State Biologist and Director
Kansas Biological Survey
to the
House Energy and Natural Resources Committee
regarding
Senate Bill 341

March 27, 1991

Chairman Gotewiel and members of the Committee:

The Kansas Biological Survey is a natural resources research agency that endorses the conservation of native species and their habitats for the benefit of all Kansans. The survey supports the concept of an advisory committee to consult with the Secretary of Wildlife and Parks on matters related to nongame species. Such committees can provide additional expertise and a sounding board for the Department in the administration of the nongame and endangered species act.

The existing Nongame Wildlife Advisory Council, however, could perform the consultation and advisory functions outlined in S.B. 341 if the council was routinely consulted on matters directly related to the Department's administration of the nongame and endangered species act. The utilization of this existing council, perhaps with a modification to the Council membership, would address the objectives of S.B. 341 while avoiding the creation of another level of bureaucracy and the associated cost.

Because the Biological Survey is a small unit that responded to more than 450 data requests requiring more than 550 hours of staff time in 1990, the passage of S.B. 341 would further increase our workload under the auspices of an additional bureaucracy and the directive "The staffs of all member of the committee shall provide such technical expertise to the committee deemed necessary to properly perform its duties pursuant to this act." It is our belief that a modified Nongame Advisory Council could provide the necessary input.

I would also like to call attention to the amendment made to the Bill by the Senate on Final Action (Section 1, lines 24-26) which replaces the Kansas Natural Resources Council with a person "knowledgeable in and representative of wildlife and environmental interests of citizens." Although we concur with this amendment, there is no provision for selecting this person.

In summary the Biological Survey supports the concept of S.B.341 but believes that the additional level of bureaucracy that it creates is unnecessary. Thank you for the opportunity to comment on this intent of this Bill.

*E+NR
3/27/91*

Kansas Wildlife Federation, Inc.

P.O. Box 5715
Topeka, Ks. 66605

Affiliate of National Wildlife Federation
913/266-6185

200 S.W. 30th
Suite 106
Topeka, Ks. 66611

TESTIMONY SB 341 AMENDING THE NONGAME & ENDANGERED SPECIES ACT

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE March 27, 1991

I am Jerry Hazlett, Executive Manager of the Kansas Wildlife Federation. The Federation is a non-profit wildlife and natural resources conservation and education organization. Our volunteer membership joins with the members of our national affiliate, the National Wildlife Federation, to support the wise use and sustained management of our vital air, water, soil, forest and wildlife resources.

The membership of the Federation in its Annual Meeting of March 2, 1991, adopted a resolution opposing Senate Bill 341. Attached is a copy of that resolution.

The Kansas Nongame and Endangered Species Act passed in 1975 and has been considered by other states as leading legislation because of its balance as for protecting these important resources with opportunities for public and varied interests input and involvement.

This Act now allows ample opportunity for any and all public involvement at the KDWP Staff, Commission and Nongame Advisory Committee levels, through the permit application review process, the KDWP rules and regulatory hearing processes and through other public meetings.

Many State Agencies and public interests work with KDWP in permit application review. Many use those opportunities to work with, and provide input into the Nongame and Endangered Species management program in Kansas. We urge those special interests who support SB 341, to also take advantage of the ample opportunities for involvement provided.

The Kansas Wildlife Federation requests this Committee to not pass this bill forward. It is not in the best interests of wildlife or associated natural resources, nor is it in the best interests of Kansas.

E & NR
3/27/91
attachment 14

KANSAS WILDLIFE FEDERATION

RESOLUTION 1991-3

SUPPORT OF THE KANSAS NONGAME AND ENDANGERED SPECIES ACT

WHEREAS, the passage of the 1975 Kansas Nongame and Endangered Species Act created a threatened and endangered species list along with measures to protect their habitats; and

WHEREAS, there are important biological, sociological and natural heritage reasons for protecting these species and their habitats; and

WHEREAS, threatened and endangered species habitats are also important to other wildlife; and

WHEREAS, the Kansas Department of Wildlife and Parks works in earnest with affected interests in the administration of this act to avoid negative impacts to these species; and

WHEREAS, only 1 percent of all applicable projects reviewed by the Kansas Department of Wildlife and Parks require special conditions; and

WHEREAS, no permit can be denied if such special conditions can be developed to protect these species; and

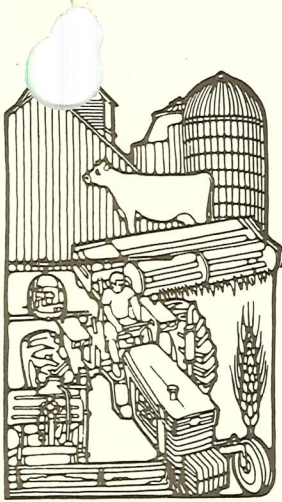
WHEREAS, the Kansas Department of Wildlife and Parks receives guidance from its own Commission and the Kansas Nongame Wildlife Advisory Council, which reviews nongame and threatened and endangered species programs of the Department; and

WHEREAS, Senate Bill 341 seeks to create yet another advisory board to review threatened and endangered species programs of the Department, therefore potentially delaying the Department's expeditious issuance of permits under authority of this act;

NOW, THEREFORE, BE IT RESOLVED, that the Kansas Wildlife Federation, Inc., in annual meeting assembled on March 2, 1991, in Emporia, Kansas, urges Governor Joan Finney and the Kansas Legislature to reject Senate Bill 341 and any other attempts to weaken the 1975 Kansas Nongame and Endangered Species Act and the regulations which implement its provisions; and

BE IT FURTHER RESOLVED, that the Kansas Wildlife Federation, Inc. supports legislation to strengthen the 1975 Kansas Nongame and Endangered Species Act so that it will continue to be a positive force in protecting threatened and endangered species, associated wildlife and their habitats in the State of Kansas.

written only



Committee of Kansas Farm Organizations

STATEMENT OF POSITION OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

RE: S.B. 341

House Committee on Energy and Natural Resources

March 27, 1991

Nancy E. Kantola
Legislative Agent
3604 Skyline Parkway
Topeka, KS 66614
(913) 273-5340

Mister Chairman, Members of the Committee: I am Nancy Kantola, Legislative Agent for the Committee of Kansas Farm Organizations. Our group is comprised of twenty-one member organizations. We require a unanimous vote to take a position on an issue.

We urge you to support the establishment of an advisory committee as provided in S.B. 341. Having the input of people with diverse experience and interests can help predict potential problems with new regulations and designations of endangered species.

Anticipating problems and conflicts can help avoid lawsuits and delays by working out successful compromises in advance.

While a committee which is advisory will not have the authority to over rule the secretary of wildlife and parks on matters of conservation and endangered species, members can be a knowledgeable source of information to improve communication between the public and the department.

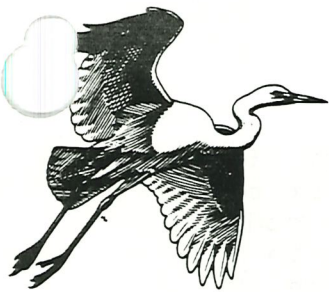
Thank you for your consideration.

Respectfully submitted,

Nancy E. Kantola
Nancy E. Kantola

- Committee of Kansas Farm Organization Members
- Associated Milk Producers, Inc.
- Kansas Agri-Women Association
- Kansas Association of Soil Conservation Districts
- Kansas Association of Wheat Growers
- Kansas Cooperative Council
- Kansas Corn Growers Association
- Kansas Electric Cooperatives
- Kansas Ethanol Association
- Kansas Farm Bureau
- Kansas Fertilizer and Chemical Association
- Kansas Grain and Feed Dealers Association
- Kansas Livestock Association
- Kansas Meat Processors Association
- Kansas Pork Producers Council
- Kansas Rural Water Districts Association
- Kansas Seed Industry Association
- Kansas Soybean Association
- Kansas State Grange
- Kansas Veterinary Medical Association
- Kansas Water Well Association
- Mid America Dairymen, Inc.

*E+NR
3/27/91
Attachment 15*



Kansas Audubon Council

SB 341

March 27, 1991

House Committee on Energy and Natural Resources

My name is Joyce Wolf; I am here on behalf of the 5000 Kansas members of the National Audubon Society who support the wise use and protection of our natural resources.

The Kansas Audubon Council opposes SB 341 for several reasons; we would like to offer the following comments:

1) Except for the state biologist and the state forester, the advisory committee established by SB 341 consists in general of organizations which do not possess the technical expertise to make scientific decisions on habitat and threatened or endangered species. While we realize that the committee is solely advisory, the number of times that the secretary of KDWP is required to consult with committee members seems overly burdensome. In that regard, we wonder what the cost of frequently convening the committee will be. It also raises the questions of who is responsible to pay for the technical experts for each agency and organization listed as an advisory committee member.

2) Section 2 deals with nongame wildlife. Under this provision, the secretary conducts investigations, formulates rules and regulations, and develops conservation programs for nongame species. The Kansas Farm Bureau is already a member of the Kansas Nongame Wildlife Advisory Council and participates with other Council members in reviewing projects funded by the Chickadee Checkoff Program like:

- * Reintroductions of various species like Eastern Chipmunks and Golden Eagles
- * Establishment of Bluebird trails
- * Enhancement of shorebird nesting areas, nursing home bird-feeder programs, and schoolyard wildlife habitat programs.

Do the advocates of SB 341 really want the State Conservation Commission, the Kansas Association of Conservation Districts, the Kansas Association of Watershed Districts, the Kansas Department of Health and Environment, the Kansas Department of Transportation, and the State Board of Agriculture to help decide where to put Bluebird trails? Which nursing homes should have bird-feeder programs? Where and how to promote shorebird nesting?

E+NR
3/27/91
Attachment 16

3) Section 3 deals with state threatened or endangered (T&E) species. There already exists a mechanism for review of these species. Subsection (b)(1) requires the secretary to consult with appropriate agencies, persons, and organizations in developing the list. And again, under section (c), the language is quite clear: the secretary may not list nor delist without giving public notice. This seems to make this advisory committee redundant; however, I suppose the department might be willing to specifically notify these agencies and organizations when species are being reviewed for listing or delisting, so that their comments could be considered along with all others.

Also under this section special permits are granted and conservation programs are carried out. The special permits are usually granted for scientific purposes like monitoring populations of T&E species, making observations of behavior of T&E species, or enhancing propagation of these species. Specific examples are:

- * Monitoring Whooping Crane migration
- * Observation of feeding/roosting habits of Bald Eagles
- * Developing habitat for Interior Least Terns

4) Having listened to the testimony of the proponents of SB 341 on the Senate side, it seems like one of the main concerns was the lack of opportunity for public input into mitigation requirements when a development project affected state threatened or endangered species. That could more easily be accomplished by requiring the mitigation requirements be subjected to the review of the agencies named under the Environmental Coordination Act as well as allow interested persons to petition the secretary to hold a public hearing/comment period on the mitigation requirements.

5) The other concern surrounded who should pay for those mitigation requirements. The Council believes that these costs, just like the costs that are incurred to hire consultants, engineers, architects, builders etc., should be considered part of the overall cost of the development project, and must be borne by the project sponsor.

We appreciate this opportunity to offer these comments and suggestions, and urge the committee to vote against SB 341.

TESTIMONY

before

Energy and Natural Resources

by Conferee:

Representative Tom Thompson

Comprehensive State Heritage Trails Plan

Proponent for HR 6027

As people drive west on Interstate 70 from the east coast they pass through cities like Columbus, Ohio and Indianapolis, Indiana. As they do so, they are taking a route that millions of people took as they moved west during the 1800's. When they reach St. Louis they see a large arch pointing skyward that is supposed to symbolize the gateway to the west. Many in Kansas City have said that the Arch should have been built in Kansas City.

Why? Because Kansas City is where wagon trains formed and people decided whether to take the northern route to Oregon or the southern route through Santa Fe to California. Often they sold their horses and got oxen to pull their wagons because of the rough journey ahead. Today, of course, these trails are known as the Santa Fe Trail and Oregon Trail and run much of their length through Kansas. As Kansas history developed, these trails were joined by cattle trails like the Chisholm Trail plus railroads taking passengers west and wheat and cattle east.

Today I want to introduce you to House Resolution 6027, the Comprehensive State Heritage Trails Plan. This resolution urges the Kansas Department of Wildlife and Parks, State Historical Society, and Department of Transportation to develop a plan that will utilize this great heritage. It urges them to plan interconnecting historic and recreational trails that will allow Kansans and Kansas visitors to experience Kansas trails first hand. This plan would identify trail routes, prioritize them, and propose financing. I urge you to pass this resolution out favorable for passage so we can all become more enriched by the great heritage found in Kansas.

E+NR
3/27/91
Attachment 17

MANHATTAN KANSAS



Mr. Chairman, Members of the Committee: I am Ron Fehr, Assistant Director of Parks and Recreation, City of Manhattan. I thank you for this opportunity to voice my wholehearted support of HR 6027.

Kansas is justifiably proud of its major historic trails. These trails provide a visible link to the vital role Kansas played in the western settlement of our country.

Kansas has in place numerous state parks scattered all across the state that are rich in recreation potential.

Kansas has rail corridors on line for abandonment that, if railbanked and properly managed, are ideal for recreational use.

Kansas has an adequate highway and roads network to access these areas.

What Kansas desperately needs is to link our parks, lakes, waterways and communities through a systematic, comprehensive state trail and greenway network to provide access for Kansans and visitors who want to explore our heritage and our natural wonders on foot, bicycle, wagon or wheelchair.

Local communities have taken the lead in establishing networks of bikeways and walking trails. Lawrence, Kansas has developed 10 miles of multiuse trails along its Riverfront Park providing access from downtown to scenic nature trails. 8.4 miles of bike lanes and jogging trails lead users from Lawrence to Clinton Lake. On March 2 of this year, Lawrence opened the first operational rails to trails project in Kansas on an abandoned Santa Fe Railroad.

In my own city of Manhattan, voters approved a bond issue generating \$500,000 to construct a linear park and trail system. Five miles of this linear park system follow the Blue and Kansas Rivers, skirt downtown and link several neighborhoods and parks. The second phase will include nearly 2 miles of abandoned railroad right of way. The ultimate master plan calls for encircling the city with our linear park system linking schools, parks and neighborhoods as well as Tuttle Creek State Park.

This type of networking can and should go beyond the local community level. It is time for the State of Kansas to take the same approach to establishing a statewide of trails plan.

I urge the Energy and Natural Resources Committee to vote for House Resolution 6027.

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H.R. 6027

Testimony Presented to: House Energy and Natural Resources Committee

Provided By: Kansas Department of Wildlife and Parks

Date: March 27, 1991

H.R. 6027 requests our Department in cooperation with the Historical Society and KDOT to review historic trails in Kansas. Objectives include identification of trails suitable for a statewide system, a priority ranking of those trails and financing proposals for a heritage trails system. Although not mentioned, preparation of a heritage trails system plan of development and management would also be required to better determine a financing or funding plan.

The Department recognizes the importance of these historic trails to the state and is currently reviewing various trails for possible recreational values. The Department is supportive of increasing that effort as outlined in H.R. 6027. The requirement for completion of a plan by January 1, 1992 does not provide adequate time. It is recommended the date be postponed until January 1, 1993.

E+NR

3/27/91

Attachment 19

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HOUSE RESOLUTION 6027

I am Priscilla Lindsey of Fontana, Miami County, Kansas, speaking on behalf of equestrians supporting the Kansas Heritage Trails Resolution. I represent Kansas members of the North American Trail Ride Conference, a national organization that sanctions competitive trail events in United States, Mexico and Canada. I also speak for equestrians who ride for recreation, such as the 200 families belonging to the South Central Kansas Trail Riders organization and the thousands of other equestrians who belong to saddle clubs and trail clubs across Kansas, some of whom are in attendance today.

We support House Resolution #6027 and in doing so express our concern for the future availability of trails for recreational use. We support multi-use trails; horseback riding, hiking, bicycling, and cross country skiing, for example, are all compatible uses for the same trail. These recreational pursuits are continually growing in popularity.

A comprehensive trails system is also a wonderful way to give public exposure to our state's unique geography, historical trails, and landmarks. It will attract people away from the interstate highways and show that Kansas is not flat and barren.

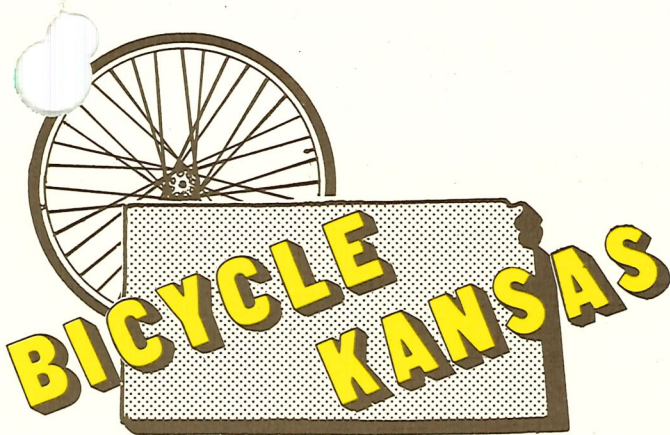
Attracting out-of-state users is a certainty, especially if the trails are available for organized events, such as competitive rides sanctioned by the North American Trail Ride Conference, endurance rides sanctioned by the American Endurance Ride Conference, and pleasure rides sponsored by saddle and trail riding clubs. Such events are already being held in Kansas on limited available space and have attracted riders from states coast to coast as well as all the surrounding states.

Equestrian organizations and individuals can offer expertise and labor in designing, planning, and maintaining trails. For example, my husband, Steve Lindsey, and I designed, mapped, marked and measured the equestrian trails at Kanopolis State Park and Linn County Park. Dozens of other riders helped with clearing and annual maintenance of these trails. South Central Kansas Trail Riders have a Trails Committee that is working with the Rails to Trails Conservancy and spends some time each year cleaning and maintaining trails in State Parks on a volunteer basis.

Some additional information I would like to share: Wisconsin has developed extensive multi-use trails and publishes a detailed Trails Directory. Information is available from Wisconsin State Horse Council, Inc., Room 287, Animal Sciences Building, 1675 Observatory Drive, Madison, WI 53706.

Horses in Kansas are a multi-million dollar industry, and the majority of horses are used for recreational purposes. Anything that supports and encourages that recreational-use generates increased circulation of money in our state. Therefore, we encourage you to support the Kansas Heritage Trails Resolution.

E+NR 3/27/91 Attachment 20



Larry Ross, President
P.O. Box 2585
Wichita, Kansas 67201
[316]-687-1475

GROWING APPRECIATION OF TRAILS - KANSAS & NATIONWIDE

NEED FOR A STATEWIDE COMPREHENSIVE TRAILS PLAN

- * rural and urban trails
- * linear, loop and linkage trails

BENEFITS AND ADVANTAGES OF STATEWIDE HERITAGE TRAILS PLAN

- * outdoor awareness and education (outdoor classroom)
- * recreation and health benefits for all Kansans
- * historic understanding and appreciation of Kansas
- * economic development - rural and urban
- * tourism and promotion of Kansas heritage
- * wildlife habitat
- * preservation of existing transportation corridors

COOPERATIVE EFFORT BETWEEN STATE GOVERNMENTAL DEPARTMENTS

KHS - role of historic trails during past 150 years of Kansas development and its inhabitants.

KDWP - understanding and appreciation of the natural beauty and natural resources of our state.

KDOT - role of transportation corridors, both non-motorized and motorized, in the development of the transportation network of our state.

remarks by: Larry Ross

member, Bd. of Park Commissioners
City of Wichita

member, Wichita-Sedgwick County
Greenway Commission

chair, Wichita Bicycle Plan Task
Force

DO YOURSELF

A GOOD TURN



• For Transportation

• For Health

• For Sport

• For Recreation

E+NR 3/27/91 Attachment 21

THE ECONOMIC IMPACT OF TRAVEL ON KANSAS

by THE U.S. TRAVEL DATA CENTER - WASHINGTON, D.C.

THE STATE OF KANSAS

- Travel expenditures total \$1.9 billion
- 42,000 people employed
- Visitor spending generated \$63.5 million in state tax revenues
- Visitor spending generated \$23.2 million in local tax revenues
- Visitor expenditures averaged \$18 million per county in Kansas

THE VISITOR INDUSTRY BENEFITS ALL 105 COUNTIES IN THE STATE

THE VISITOR INDUSTRY IMPORTS NEW DOLLARS

THE VISITOR INDUSTRY CREATES JOBS

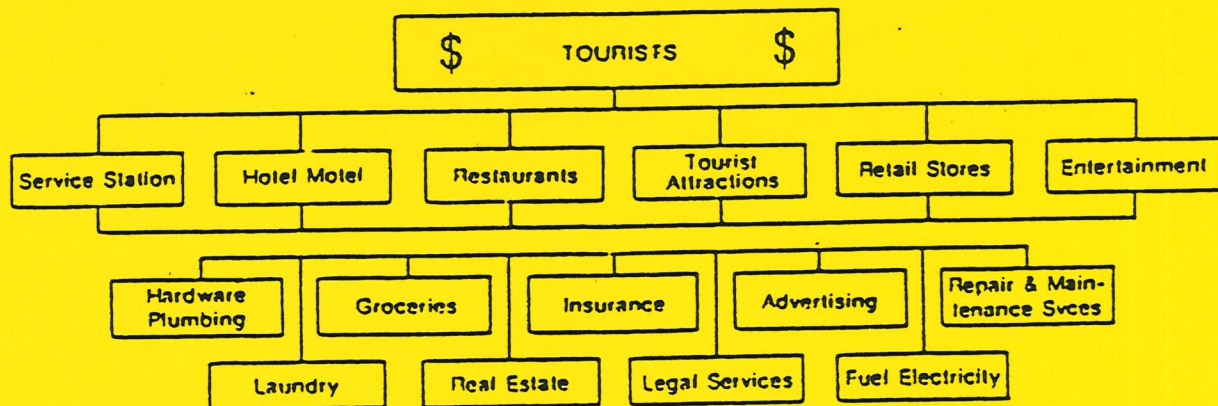
EXPANDS THE TAX BASE

ECONOMIC DIVERSIFICATION

CREATES AN IDENTITY AND IMAGE

THE VISITOR INDUSTRY ADDS QUALITY OF LIFE

Distribution of the Tourist Dollar



100 New Manufacturing Jobs

- Increase in population of 360
- 100 new households
- 91 more school children
- \$410,000 increase in personal income
- \$229,000 increase in bank deposits
- \$331,000 in retail sales
- 3 more retail outlets
- 65 industry-related jobs

100 New Tourists Per Day

- Increase in population of 459
- 140 new households
- \$78,000 in tax receipts or enough to support 156 school children
- \$777,000 increase in personal income
- \$144,000 increase in bank deposits
- \$1,120,000 in retail sales
- 7 more retail outlets
- 111 new industry-related jobs

The impact of tourists on a community is often underestimated. The above chart reflects the importance of a visitor on a community.

Information compiled by U.S. Department of Commerce



Written

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FAX: (913) 273-3399

Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

March 27, 1991

TO: House Energy and Natural Resources Committee
Representative Ken Grotewiel, Chairman

FROM: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

RE: HR 6027

The Kansas Livestock Association has serious concerns about a possible State Heritage Trails plan that's advocated in House Resolution 6027. Our primary concern is the potential impact on the private property rights of Kansas landowners.

Last fall, the Kansas Livestock Association's Cow-Calf/Stocker Council Executive Committee met with one of the corporate sponsors of the American Discovery Trail Scouting Expedition. Our members who attended this briefing were impressed with the private sponsors commitment and intentions. There's no doubt certain trails could provide economic development to the state and just as importantly give hikers, bikers and other outdoor enthusiasts more opportunity to view and appreciate our Kansas natural resources.

The one point made clear in our briefing is that it was certainly not the sponsors intentions to use any type of eminent domain for the development of such a trail.

I assume the supporters of HR 6027 and the Wildlife and Parks will want to incorporate part or all of the American Discovery Trail Expedition work in any Kansas trail plan.

We are also keenly aware that groups such as the Rails to Trails Conservancy have advocated the use of abandoned railroad right of ways (ROW) for uses as new trails. In Shawnee County, there has been quite a controversy on the use of abandoned railroad ROW from Topeka to Overbrook. Landowners along this ROW feel the land should revert back to adjoining property owners and they are very much concerned with increased traffic and potential trespass if the trail is eventually put in place.

I believe we have only seen the beginning of such controversies. Earlier in this session, John Jay Rosacker with the Kansas Department of Transportation, presented information to the House Transportation Committee on the future of railroad abandonments. He noted in this state there are 1,125 miles of railroad in category 1. Category 1 is defined as

E+NR
3/27/91
Attachment 22

a railroad line that can have an abandonment application filed within the next three years.

Many states, including Kansas, have looked at the revisionary laws once a railroad is abandoned. It's my understanding most court cases have ruled the land is deeded back to existing abutting property owners. In fact, the Kansas legislature passed HB 2998 in 1986 to clarify such practice. Unfortunately, a recent U.S. Supreme Court ruling indicated the federal law superseded all state laws and private groups could petition and take over the ROW once a line has been abandoned. Apparently, any group can come forward and say they want the ROW if they can prove they will pay the taxes and assume any liability.

As I mentioned earlier, we are very concerned about a "loss" of private property rights with any statewide trail system. Once a trail has been established, it can have a negative impact on the landowners property valuation. A few years ago there was a study in Seattle, Washington on 500 properties along a trail. The study showed these properties had a 31% increase in land values in the 8 years the trail had been in existence. These 500 properties border a 20 mile long urban lake in Seattle and the average property land value is \$198,000. In the same 8 years, inflation had gone up 67%, the average land value in the local county had gone up 146%, the average land value of other properties on the same urban lake had gone 206% and the average land value of the next row of properties immediately above and behind, but not abutting, the trail had gone up 126%. Landowners in that area certainly feel the trail had diminished the property value of their land.

In summary, we feel there are some dangers and legitimate concerns to consider if the state is going to embark on a major trail system. Perhaps this committee and the full House would like to add language to HR 6027 to ensure that landowners property rights are considered in the plan. I'd suggest the committee add another "be it further resolved" urging Wildlife and Parks to work with landowner groups to minimize property rights problems and be prohibited from using eminent domain for acquiring lands for trails.

MB:bkc

written only

TESTIMONY IN FAVOR OF HOUSE RESOLUTION NO. 6027

I support the resolution because I believe that such a trail system would both benefit the state and meet some recreational needs.

My particular interest is in equine trails or in trails which would be open to horseback riders in addition to hikers. As a 25 year horse owner and having been involved in a distance riding sport for 15 years, I have seen first hand the increasing unavailability of appropriate areas to enjoy pleasure riding. Urbanization has eliminated the quiet country road. Private land owners are reluctant to grant permission to use their land, either because the fear damage or lawsuits.

Various county and saddle club arenas meet most of the needs of that segment of the horse-owning public interested in arena type events. An equally large number of horse owners are interested in pleasure trail riding or in the distance riding sports. Those people are now looking toward the governmental recreation areas and are unfortunately finding that relatively few offer trails open to horses.

I am aware of public horse trails at Perry, Clinton and Kanopolis reservoirs and at Linn County Park. The Perry & Linn County trails as well as trails at Tuttle Creek and Hillsdale Reservoirs were developed by individuals who are members of the North American Trail Ride Conference. Sadly, the latter two trails are not open to the public at this time. These NATRC members supplied both the coordination skills and the physical labor to develop at least 25 miles of trail at each site in order to have sufficient trail mileage on which to hold nationally sanctioned competitions attracting riders from every area of the United States. In the case of the Perry trails local saddle clubs donated labor & funds to install signs and a water source at the trail head. Each park benefited by gaining a new recreational facility which increased park usage at minimal cost. If the state were to move forward with a system of heritage trails this same group of people and others like them in other parts of the state would be eager to develop even more trails.

I would also like to express my desire to see more trails for joint use of hikers and riders. A well established horse trail such as the trail at Perry State Park is an excellent hiking trail, needing no adaptation, other than to make hikers aware of its existence. Proper planning of future trails would allow use by both interest groups. As a taxpayer I am much in favor of getting the maximum return for my tax dollars.

Meeting the recreational needs of two groups of people while preserving and utilizing historical trails and rail routes seems an excellent way to do that.

Kaaren E Jones

Kaaren E. Jones
7343 SE 45th
Tecumseh, KS 66542

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3/27/91
Attachment 23*

W. F. Fitten

RESOLUTION 6027
THE STATE HERITAGE TRAIL PLAN

KANSAS BICYCLE DEALER ASSOCIATION - (BICYCLE SHOP OWNERS HAY, GOODLAND , MC PHERSON, HUTCHINSON, WICHITA, SALINA, TOPEKA, AND OTHERS) SUPPORT THE ENDORSEMENT OF THIS RESOLUTION. THIS PLAN ESTABLISHES A NET WORK OF HISTORIC AND RECREATIONAL ASPECTS FOR TRAILS WITHIN THE STATE OF KANSAS AS THEY BECOME AVAILABLE FOR DEVELOPMENT.

THE TIME HAS ARRIVED TO STEP FORWARD WITH THE LEADERSHIP AND DIRECTION THIS PLAN OUTLINES FOR THE PEOPLE OF KANSAS. THIS INTER-CONNECTION OF TRAIL SYSTEMS AND ITS DEVELOPMENT PROVIDES THE NECESSARY LINK FROM PLACE TO PLACE, AND DESTINATION TO DESTINATION THAT IS REQUIRED FOR A SUCCESSFUL TRAIL SYSTEM.

THIS MASTER PLAN PROVIDES A SYSTEM OF BUILDING BLOCKS FOR THE FUTURE, WHICH SHOULD BENEFIT ALL THE PEOPLE OF KANSAS.

PRESENTED BY JERRY D. MORGAN
OWNER OF JERRY'S BIKE SHOP,
1415 LANE
TOPEKA, KS 66604
SECRETARY-KANSAS BICYCLE DEALER
ASSOCIATION
PRESIDENT-KANSAS CHAPTER
NATIONAL BICYCLE DEALER
ASSOCIATION

E+NR

3/27/91

Attachment 24



KANSAS RECREATION AND PARK ASSOCIATION

700 JACKSON, SUITE 705
TOPEKA, KANSAS 66603

(913) 235-6533
Laura J. Kelly, Executive Director

Kansas House of Representatives
Energy and Natural Resources Committee
Public Hearing Statement

By
Kansas Recreation and Park Association
House Resolution Number 6027

On behalf of the Kansas Recreation and Park Association (KRPA), I thank you for the opportunity to speak on House Resolution 6027 regarding the coordination of the State Departments of Wildlife and Parks, The Historical Society and The Department of Transportation to develop a state heritage trails plan.

As the resolution states, Kansas was a gateway to the settlement of the western states over the Santa Fe Trail, the California Trail and the Oregon Trails. This past December and January, Kansas was visited by a three hearty soles scouting a proposed route of the American Discovery Trail - a trail that will hopefully become the only east-west transcontinental trail in the U. S. The trail will begin in California and extend to the State of Delaware bisecting the State of Kansas. While determining the route for this ambitions expedition, Kansas was chosen because of the significance of the historical routes in Kansas.

At present, our neighboring states of Iowa, Nebraska, Colorado and Missouri are all doing statewide trail planning and have extensive trail systems along abandoned rail lines and other scenic corridors. It is the feeling of KRPA that there are substantial recreational trail opportunities being lost because of a lack of statewide planning and coordination.

The 1987 President's Commission on Americans Outdoors reported that Americans are increasingly pursuing recreation opportunities closer to home. A key recommendation of the President's Commission was the creation of greenways, linear parks and trails utilizing stream corridors, abandoned rail lines and other utility corridors to satisfy this growing need. In Johnson County, along Park District operated trail facilities, visitations in 1990 were 155,000.

In the state of Iowa, small towns along the Hidden Valley Nature Trail, a 52 mile abandoned rail line, cities are seeing economic growth due to public use along the trail when it once appeared these cities would face extinction due to the loss of rail service. Similar success stories can be found throughout the United States where state organizations are turning what appears to be liabilities into community assets.

Some of the same people in these small communities, who feared an influx of visitors and the vandalism and theft associated with them, have become some of the biggest supporters. A Chief of Police in a small Iowa community has been quoted, "I was very skeptical of the trail, but it proved us wrong. These people out there aren't vandals or thieves, they are out for the scenery, a good time." The same can be said for all of our pedestrian trail users in Johnson County.

KRPA endorses House Resolution 6027 with the hope that it will lead to an increase in the awareness of the State Legislature of the need for legislation and statewide trail planning.

E+NR 3/27/91

attachment 25

Presenter on behalf of KRPA:

William R. Maasen, Land Acquisition Specialist
Johnson County Park and Recreation District
6501 Antioch Road
Shawnee Mission, KS 66202

President of KRPA:

Steve Snyder, Director
Salina Parks and Recreation Department
300 West Ash, Room 110
Salina, KS 67401
(913) 823-9141

KRPA Executive Director:

Laura Kelly, CTRS
Kansas Recreation and Park Association
700 Jackson, Suite 705
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