

Approved 3-26-1991
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

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

8:04 a.m. on March 21, 1991 in room 423-S of the Capitol.

All members were present except: All members were present.

Committee staff present:

Pat Mah, Legislative Research Department
Don Hayward, Revisor of Statutes
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

Joyce Wolf, Audubon Society
Darrell Montei, Wildlife and Parks
Ed Martinko, Kansas Biological Survey
Scott Andrews, Kansas Chapter Sierra Club
Sara Corless, Kansas City, Home Builders Association
Mike Beam, Kansas Livestock Association
Bill Fuller, Kansas Farm Bureau Association

The Chairman opened the hearing on SB 268 - amending the nongame and endangered species conservation act; protection of plants thereunder. The Chairman stated this was scheduled as an information meeting, and there was a possibility that this subject might need to be study further during the interim.

Joyce Wolf presented testimony supporting the bill. She shared background information and a few slides of a particular prairie that contained the two species that would be protected by SB 268: the Elkins tract at Lawrence, Kansas where the Western Praire Fringed Orchid and Mead's Milkweed were destroyed last fall (Attachment 1). Ms. Wolfe responded to questions.

Darrell Moneti presented written testimony supporting SB 268. However, the Department recommended the listings should be restricted to those species on the federal list, and suggested further review before any action is taken (Attachment 2). Mr. Moneti responded to questions.

Ed Martinko testified that SB 268 if properly amended and enacted, would stand as evidence of this states concern for its natural biological heritage and its dedication to protecting irreplaceable natural resources. (Attachment 3).

Scott Andrews expressed support for adding the plants on the Federal Endangered Species List to the state endangered species act, also they favor the establishment of a license or permit fee. He explain the term and concept of biodiversity or biological diversity (Attachment 4).

Sara Corless told of problems that the Federal Government has had with the implementation of the Endangered Species Act of 1973 (ESA). She suggested Kansas should make use of the protections and conservation measures already available to them. Creating additional bureaucracy at the state level to expand on a federal law that is already too complex would be a grave mistake at this time (Attachment 5).

Mike Beam said his organization is very fearful of expanding the Endangered Species Conservation Act to give the state increased authority for affecting the private property rights of Kansas Landowners and tenants (Attachment 6).

Bill Fuller recommend SB 268 receive no consideration at least until

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources,
room 423-S, Statehouse, at 8:04 a.m./~~p.m.~~ on March 21, 1991.

SB 341 is approved by the Legislature and signed by the Governor (Attachment 7).

Written testimony opposing SB 268 was submitted by Janet Stubbs, The Home Builders Association of Kansas (Attachment 8).

Senator Sallee moved to adopted the minutes of March 20, 1991. The motion was seconded by Senator Frahm. The motion carried.

The meeting adjourned at 9:02 a.m. The next meeting will be at 8:00 a.m., March 26, 1991.

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date March 21, 1991

PLEASE PRINT GUEST LIST

NAME

REPRESENTING

Shawn McGrath

KNRC

Topeka

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1578

(913) 296-2436
FAX (913) 296-0231

JOAN FINNEY, GOVERNOR

March 14, 1991

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

Dear Senator Doyen:

SUBJECT: Fiscal Note for SB 268 by Committee on Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 268 is respectfully submitted to your committee.

SB 268 would amend the Kansas Nongame and Endangered Species Conservation Act to include plants. Under current law, this bill pertains only to wildlife. Plants are defined as any member of the plant kingdom, including seeds, roots, and other parts.

The Department of Wildlife and Parks is directed to study plants, make a list of plants which are endangered and enact conservation plans for plants through the rule and regulation process which are intended to preserve these endangered plants. The Department of Wildlife and Parks would have the authority to take legal action to obtain an injunction against acts or practices which subject any endangered wildlife or plant specie to imminent danger of destruction.

SB 268 would also require a new state habitat protection stamp to enter any land managed by the Department of Wildlife and Parks, other than state parks. This stamp would be in addition to any other license, permit, or stamp issued by the Department. The Department of Wildlife and Parks would determine any exceptions to the permit requirement and set the fee for the permit through the rules and regulations process.

The new funds generated by this stamp would be deposited in a new fund entitled "Biodiversity and Habitat Protection Fee Fund." This fund could be used only for specified types of wildlife research studies, educational programs concerning

The Honorable Ross Doyen
March 14, 1991
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endangered species and the importance of biodiversity, publication of a wildlife and plant viewing guide, and to protect crucial wildlife habitat.

The Division of the Budget estimates that passage of SB 268 would require an addition of 1.0 FTE position and expenditure of \$83,341 from the Wildlife Fee Fund.

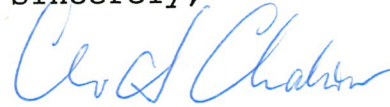
The portion of the bill which concerns adding plants to the Nongame and Endangered Species Act would cost \$48,341. Implementation of the provisions of the bill would require a Wildlife Program Specialist I at a cost of \$33,341 and operating expenditures of \$15,000.

The portion of the bill which establishes a permit for entry onto lands managed by the Department of Wildlife and Parks would require an estimated \$35,000. Of this amount, \$15,000 would be for temporary salary and wages for clerical personnel to manage the new permits. Other operating expenditures are estimated at \$20,000 and would be primarily printing and postage.

SB 268 would also generate new receipts from the sale of permits, which would be deposited into a Biodiversity and Habitat Protection Fee Fund. The receipts to this fund would depend upon the number of permits sold and the price set for those permits by the Department of Wildlife and Parks. The department anticipates that the cost for an annual permit would be \$10. The Division of the Budget estimates that the new permit would generate \$4,536,440, based on the sale of 453,644 permits.

The expenditure of receipts from the new fund would be determined by the appropriations process in accordance with guidelines established in SB 268. The language of the bill apparently would not permit the funds to be used for administrative costs.

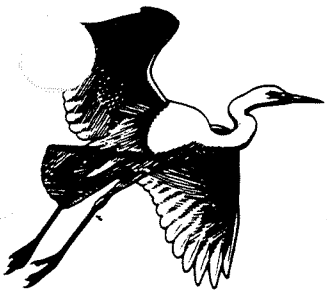
Sincerely,



Louis S. Chabira
Deputy Director

cc: Dick Koerth, Wildlife and Parks

3681



Kansas Audubon Council

March 21, 1991

Senate Committee on Energy and Natural Resources

Thank you Mr. Chairman and members of the committee for the opportunity to appear before you today in support of SB 268. In order to give you a sense of the reason why we asked for this bill to be introduced, I would like to share with you some background information and a few slides of a particular prairie that contained the two plant species that would be protected by SB 268: the Western Prairie Fringed Orchid, and Mead's Milkweed.

At one time the tallgrass prairie extended from Indiana to eastern Kansas and from Canada to central Oklahoma. This was largely determined by the amount of annual precipitation. Because the two species we are talking about are usually associated with tallgrass prairies, only a relatively limited area within the state provides suitable habitat for them. The rainfall that supported the luxuriant growth of these tallgrass prairies also provides abundant moisture for grain crops so that much of the land has been converted to agriculture; therefore, the two species are usually found only on small patches of remnant tallgrass prairies.

The Elkins tract was especially significant because it was an unusually large remnant tallgrass prairie in fine ecological condition, supporting over 150 species of plants on about 70 acres. It was located about 5 miles west of Lawrence along Highway 40. The early design of the Southwest Lawrence Trafficway routed the road alongside the western edge of the prairie, but eventually the alignment was altered so as to not encroach upon the prairie. While interested for several years in protecting the prairie, the imminent threat the road posed, provided the challenge to those who would have liked to see it preserved. You can see from these photographs, made available to us by Dan Dancer, that the prairie was managed successfully to exclude significant amounts of woody vegetation. Close examination of the overall pattern of the prairie illustrates its diversity in that the west edge was a wet meadow where the Western Prairie Fringed Orchid was seen, and the higher, drier areas provided a haven for the Mead's Milkweed.

Other than its intrinsic value as a remnant tallgrass prairie, many persons in the area also saw its educational potential. It could have provided a wonderful opportunity to share our prairie heritage with children and their families. It could have encouraged them to learn by seeing and experiencing the actual sights and sounds of the prairie.

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The vision for the site included an interpretive center which would foster a spirit of understanding and appreciation for Kansas and its diversity of habitat types and the kinds of wild creatures that can be found here. Needless to say, many persons were deeply saddened by its destruction.

The intent of the Kansas Audubon Council in this bill is to:

- * provide protection from destruction to federally listed plant species
- * provide a mechanism for the state to adopt a conservation program to enhance the survivability of these plant species
- * to cooperate with the KDWP to institute a public lands permit system which will:
- * provide greater opportunities for KDWP to protect a wide variety of special habitat and species associations, and
- * encourage the strengthening and enhancement of public educational opportunities regarding wildlife, natural resources and biodiversity.

In order to narrow the protection of this bill to only those plants listed by federal law, and to clarify a few other items, we would like to offer the following comments and amendments:

Section 1: defines the terms used in the nongame and endangered species conservation act. We suggest an amendment to part (f) so that it would read:

(f) "Plant" means any member of the plant kingdom, including seeds, roots and other parts thereof, listed pursuant to Pub. L. No. 93-205 (December 28, 1973), the endangered species act of 1973, and amendments thereto.

The effect of this amendment would be to limit protection to the two plant species found in Kansas that currently appear on the federal list (the third species has not been documented since the 1800s).

Section 2: gives the secretary the authority to conduct investigations, adopt rules and regulations, and develop conservation plans and programs for nongame and plant species.

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Section 3: provides for the same sort of programs, rules and regs etc. for threatened and endangered species and it also defines certain prohibited acts. To be absolutely certain that no misunderstanding will arise, we suggest that language be added to (f) to clarify that the hay harvested and cattle grazed on these prairies are not subject to the prohibitions listed in (b)(1) and (2).

Additionally, although we are unaware of any current attempt to commercially propagate and sell the two plant species, the following amendment should probably be added:

(g) With the advice of the state biologist, the secretary shall adopt rules restricting the possessing, transporting, sale, offering for sale, or exposure for sale, for commercial purposes of wild plants or parts thereof, that are listed as endangered or threatened by rule adopted under K.S.A. 1990 Supp. 32-959. The rules may prohibit the taking of any endangered or threatened plant, or parts thereof, for commercial purposes, from any wood lot, prairie, field, or forest, or from any other location in which such plant is found growing in its native habitat. This section does not prevent any nurseryman or dealer who is licensed under _____, from selling, offering for sale, shipping, or otherwise disposing of any endangered or threatened plants or parts thereof when such plants have been commercially grown by a licensed nursery or legally imported into this state. For the purposes of this subsection, "commercial purposes" means with intent to sell or trade endangered or threatened plants for gain or profit. "Commercially grown" means to grow plants under cultivation in tilled plots or in a greenhouse.

Section 4, I believe, is the part of the bill that Senator Winter requested be drafted and inserted. It provides the secretary the authority to intervene when a species is under imminent danger of destruction.

The comment we would add here is that it would be our hope and expectation that some sort of negotiating process would be a part of the outcome of the intervention. Some states which have plant protection statutes allow landowners to petition the secretary to protect the habitat of at-risk species through lease, easement or acquisition. Kansas landowners do currently offer their lands to the state;

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hopefully, that program could be expanded to provide protection to critical habitat for the threatened and endangered species, thus the need to provide additional funding for this program.

Section 5: since 1989 the Kansas Audubon Council has had a series of discussions with KDWP about our willingness to purchase some sort of license or permit to use public lands like Cheyenne Bottoms. We recognize the fact that in a relatively short time, some of the department's fee funds are projected to have a negative balance. Our organization believes our members need to contribute their fair share. Recent conversations with the new secretary about section 5 of SB 268 and the department's desire to examine all of its fees, licenses, and permits have led us to be willing to work with them, perhaps through an interim study session, to come up with a fee schedule that takes into consideration the need for non-consumptive users to participate in supporting department activities.

The only additional comment that I would offer is that habitat protection and the enhancement of educational opportunities related to wildlife and our natural resources are some of the main goals that our organization supports. We would prefer to see that new funds generated by a public lands use permit be used for those sorts of purposes.

Please note: in Section 5, line 28, it has been explained that "habitat protection stamp" has a specific meaning beyond what we intended and this should be replaced by "public lands use permit." Similarly, the word "stamp(s)" in lines 31 and 33, should be replaced by "permit."

In conclusion, I would like to share with you a quotation from a book I recently received as a gift. It summarizes more eloquently than I can for the need for SB 268.

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SENATE BILL 268

Testimony Provided To: Senate Energy & Natural Resources Committee

Presented By: Ks. Dept. of Wildlife and Parks

March 21, 1991

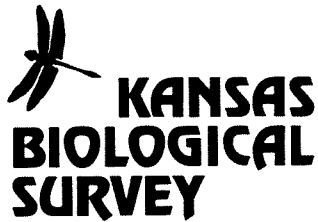
S.B. 268 would add plants to statutes involving threatened and endangered wildlife. It also creates a habitat stamp requirement to use public lands. Receipts of the fund would be used for various programs involving threatened and endangered plants. It is our understanding the intent was to involve only plant species on the federal T. & E. lists, but it appears that state species could also be listed by the way the bill is drafted.

The Department can support the concept of state threatened and endangered plant statutes. However, the listings should be restricted to those species on the federal list.

The proposed funding source would not be appropriate for the specified uses. The public using public areas and paying a fee to use those areas would expect the funds to be used to improve and maintain those areas and likely would also expect additional areas to be made available.

Although we support the concept, the Department recommends the bill receive further review and thought before an action is taken.

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Attachment 2*



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

March 21, 1991

Chairman Doyen and members of the Committee:

The Kansas Biological Survey endorses the basic principles of Senate Bill 268. Kansas currently is among a minority of states without a native plant protection law. This bill would amend the Kansas Nongame and Endangered Species Conservation Act to protect plants deemed by the Secretary of the Department of Wildlife and Parks to be in need of conservation. We believe this action is warranted in light of the demonstrable threats to many of the state's native plants. Amending the Nongame Conservation Act to achieve this goal is sensible and appropriate. We do recommend, however, that protection be limited to those plant species listed as endangered or threatened under the federal Endangered Species Act (P.L. No. 93-205, as amended) and with extant populations in Kansas. The global rarity of these species and the threats to their continued survival already are well documented. Eleven other Kansas plants are candidates for listing by the U.S. Fish and Wildlife Service, but more information about their status and threats must be evaluated by the Service before determinations about the appropriateness of listing can be made. Information gathered and maintained by the Biological Survey will be essential in this process.

Kansas has extant populations of two federally protected plants: Mead's milkweed (Asclepias meadii Torr.) and Western prairie fringed orchid (Platanthera praeclara Sheviak & Bowles). Both species are listed by the U.S. Fish and Wildlife Service as threatened. Running buffalo clover

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(Trifolium stoloniferum Muhl. ex A. Eat.) also is federally protected and once occurred in Kansas, but no surviving populations are known in the state.

Mead's milkweed grows on moist to dry tallgrass prairies in the eastern sixth of Kansas. Formerly distributed throughout the lower Midwest, this species now is extirpated in two states and survives at half a dozen sites in two other states. Nearly 95% of the world's remaining populations of Mead's milkweed occur in Kansas and Missouri. While 44% of the populations outside of Kansas have some level of protection, 97% of all Kansas populations remain unprotected.

Western prairie fringed orchid occurs on wet to moist tallgrass prairies in the eastern quarter of Kansas. Historically, it was found throughout a large area of the Midwest and eastern Great Plains, but the species has suffered a 77% decline in the number of sites rangewide. Kansas has less than two dozen historic and extant occurrences of this orchid, and it has been observed at just three sites over the last two decades. Six populations are confirmed by the Biological Survey to have been destroyed.

Many of Kansas' plants, animals, and natural communities face a perilous existence. Habitat destruction is the single greatest factor contributing to global impoverishment of biological diversity. Declining, endangered, and extinct species are symptoms of ecosystem decay, and our efforts to protect and recover endangered species will be little more than ecological triage unless placed in a broader, ecosystem context. Successful strategies to protect endangered species will be those that blend preservation goals with utilitarian considerations, and we believe that S.B. 268 could be beneficial in this regard.

A progressive feature of S.B. 268 is its establishment of a biodiversity and habitat fee fund. This provision appropriately emphasizes the importance of maintaining biological diversity, and it would complement existing provisions of the Nongame Conservation Act. Fees from the fund would be used to conduct natural areas inventories, enhance educational facilities and materials, undertake outreach efforts, and protect sensitive and unique habitats. Nonconsumptive wildlife recreation is experiencing ever-increasing levels of participation, and we believe this growing constituency will support the habitat

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fee fund for its many potential benefits to present and future generations of Kansans. Clearly, all aspects of the habitat fee fund should be reviewed by the Department of Wildlife and Parks to ensure that they are compatible with the department's existing programs and fee structures. We defer to KDWP's recommendations on the most cost-effective and efficient manner of imposing, collecting, and disbursing these fees.

The Natural Areas Program of the Biological Survey maintains Natural Heritage Databases and Kansas Biota Databases, which summarize our current knowledge of the status, location, and distribution of Kansas plants, animals, and natural communities. These computerized information systems require continual updating because the state's landscape and biota are dynamic. Information in these databases will be essential to fully implementing the Nongame and Endangered Species Conservation Act if it is amended by S.B. 268.

Because the Biological Survey is a small unit, passage of S.B. 268 would require the addition of a staff member to assist with database maintenance, record processing, and field evaluations and to provide data to KDWP on a periodic and on-going basis. Recent actions to amend the Nongame Conservation Act through S.B. 341 would place further demands on the limited resources of the Survey, which responded to nearly 450 data requests requiring 550 staff hours in 1990. To accommodate this increased workload, a fiscal note is being sent that will identify the agency's needs if it is to respond effectively to the new provisions of the Nongame and Endangered Species Conservation Act.

The Kansas Biological Survey believes that S.B. 268, if properly amended and enacted, will stand as tangible evidence of this state's concern for its natural biological heritage and its dedication to protecting this irreplaceable natural resource. Thank you for the opportunity to comment on this issue.

Note: on p. 4, line 19, misspelled word - should read "endangered species"



SIERRA CLUB

Kansas Chapter

Testimony to Senate Energy and Natural Resources

S.B. 268 - Explanation of Biodiversity

I am Scott Andrews representing the Kansas Chapter of the Sierra Club. We are in favor of S.B. 268 and the adding of plants on the Federal Endangered Species List to the state endangered species act. We also favor the establishment of a license or permit fee so that those of us who enjoy the public lands in Kansas in ways other than hunting and fishing will be required to pay our fair share. It would, perhaps be beneficial to expand the possible use of funds generated from this fee beyond the protection of endangered species and biodiversity, outlined in the bill, to all non-game programs.

Since this bill is essentially dead for this year, and this hearing is primarily for informational purposes, I would like to take the opportunity to explain the term and concept of biodiversity. This is an approach gaining in both scientific and policy circles and you will doubtless hear the term used a great deal in future debates.

Biodiversity, or biological diversity, refers to the full range of variety and variability of living organisms and the ecosystems in which they occur. It is a broader context than the traditional in which to consider, and protect, the functioning, living systems of the Earth. Biodiversity encompasses three main types of diversity.

Ecosystem Diversity - the diverse ecosystems and biological communities in which organisms live. It is important to protect those systems which harbor rare and endangered species, provide vital environmental processes (wetlands), exhibit great internal diversity (tropical rainforest) or are themselves rare systems (deep-soil Tallgrass prairie).

Species Diversity - The myriad of plant and animal species on Earth and the traditional object of endangered species preservation efforts.

Genetic Diversity - the genetic composition and variety among populations of given species. Genes are the building blocks of living organisms and genetic variability helps assure a species has within its population the variety, the options, it needs to survive and evolve into the future. Endangered species with low populations and little genetic variability are considered to have much less chance of long-term survival.

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Increasingly it is difficult and expensive to wait until a species is on the brink of extinction before trying to save it. This is partly why protection of "peripheral" species is necessary. Not only to keep a species from being extirpated from Kansas (and losing it from the state's Natural heritage) but to deal with species before they are driven to the brink of global extinction. We have come to realize we must also look at the larger pieces and the need to protect the critical habitats of these species. We have even come to realize it is important to save some ecosystems, like the Tallgrass Prairie, for their own intrinsic value.

Saving the smaller pieces--genes--is a little harder to get a handle on. However, in addition to their role in maintaining the survival of the populations in which they occur, they have value to society in their own right. One of the arguments for preserving species is that we may find them useful in the future (cancer cures, a new food fish, the predator of a crop pest). Similarly, some genes will be useful in livestock and crop breeding. Wild cultivars of our major crops may provide the crosses necessary to resist disease or survive drought.

In short, biodiversity gives us the broader context with which to protect our planet's precious living heritage.

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**Home Builders
Association**

of Greater Kansas City



600 EAST 103rd STREET • KANSAS CITY, MO 64131 • PHONE 816-942-8800 • FAX 816-942-8367

Senate Energy and Natural Resources Committee

Senate Bill 268

March 21, 1991

Senator Doyen and Members of the Committee:

My name is Sara Corless. I represent the Home Builders Association of Greater Kansas City.

Implementation of the Endangered Species Act of 1973 (ESA) has rapidly become a major issue within the development industry. I think most of us have now heard about or are aware of the northern spotted owl controversy of the Pacific Northwest and the polarizing effect it had on communities throughout Washington, Oregon, and northern California. Environmentalists were successful in listing the owl as a threatened species and the logging industry has been hard hit with a loss of jobs.

Other parts of the country as well are feeling the effects of the ESA's implementation. According to the U.S. Fish and Wildlife Service, approximately 500 species of animals and plants are considered to be in danger and therefore, eligible for listing. The Service has been processing approximately 50 listing petitions per year under directive from Congress.

Several questions have arisen and much confusion over the implementation of the Act since it was passed in 1973. (It has been amended seven times since then and will be reviewed for reauthorization again in 1993.)

The Home Builders Association supports the conservation of our ecosystems necessary to sustain threatened or endangered species. However, we are deeply concerned about the far-reaching power of this bill and the anti-growth message that it communicates.

It would appear that SB 268 is not necessary, given that the federal act is in place. The ESA grants the secretary of the U.S. Department of the Interior and the secretary of the

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U.S. Department of Commerce the authority to list endangered and threatened wildlife and plants on either a permanent or emergency basis. The ESA makes it a federal offense to either buy, sell, possess, export, or import any species listed as endangered or threatened or to buy, sell, possess, export, or import any product made from such species. Both the species and its habitat are protected from harm under the ESA.

A significant problem with the ESA is that the act does not provide for the consideration of the economic effects of a listing during the period of the petition review process. Economics may be considered only after the listing decision has been made. In such cases, only the Governor can request an appeal to the Secretaries of the Interior and his panel.

Probably the most fundamental problems with the current enforcement of the ESA is the apparent lack of scientific rigor needed to attain an emergency listing. Listing decisions are based on the "best scientific and commercial data available." the definition of which is not provided in the statute or regulations. Without meaningful criteria to determine "best available data" the secretary's decisions on listings are made without any process or peer review or background research to determine if other data or sources of data need to be considered.

Until these issues and others can be worked out at the federal level, Kansas should make use of the protections and conservation measures already available to them. Creating additional bureaucracy at the state level to expand on a federal law that is already too complex would be a grave mistake at this time.

We respectfully request that you vote no on Senate Bill 268.

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6031 S.W. 37th Street • Topeka, Kansas 66614-5128 • Telephone: (913) 273-5115
FAX: (913) 273-3399

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

March 20, 1991

TO: Senate Energy and Natural Resources Committee
Senator Ross Doyen, Chairman

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

RE: Senate Bill 268

The Kansas Livestock Association has reviewed this proposal and our board of directors voted overwhelmingly to oppose the bill. Our primary objection is that adding the protection of endangered or threatened plants to the Endangered Species Conservation Act will likely cause a deterioration in private property rights. As you know, our membership operates on farms and ranches all across this state and they are very sensitive to laws and regulations impacting land use and government acquisition authority.

To illustrate the potential consequences of this bill, I will try to explain a few points that will most assuredly cause more landowner dissatisfaction with our state's endangered species program.

Determination of "Endangered" or "Threatened"

I believe this committee has heard testimony earlier concerning the broad authority of the Kansas Department of Wildlife and Parks in determining certain wildlife as threatened or endangered. By adding plants to this authority, we will only enhance and magnify such authority.

In subsection g of Section 1, Wildlife and Parks could declare a plant as a "threatened species" if it "appears likely, within the foreseeable future, to become an endangered species." Few states have the geographic and ecosystem diversity of Kansas. I doubt if there is a botanist anywhere who can truly say with 100% accuracy they know all the plant species growing in this great state. It's scary to think the state of Kansas would have the authority to regulate activities on private land because a certain plants future existence is in jeopardy.

Permits

Subsection b of Section 3 (KSA 1990 Supp. 32-961) indicates a person who posses an endangered species is required to obtain a special permit. Subsection d requires the permit holder to pay a fee. Perhaps these requirements are necessary for people who "possess, process, sell, offer for sale, deliver, carry, transport or ship" an endangered wildlife

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species. I'd certainly have to question, however, the merits of requiring a landowner to purchase a permit if he/she owns property with a plant species determined as endangered.

Furthermore, current law also requires the secretary of Wildlife and Parks to maintain a list of these permits. I would think this list of permittees, who possess endangered plants, could easily be a directory for endangered plant enthusiasts and invite trespassing or even theft of a rare plant species.

Agricultural Practices Restrictions

A new subsection f on page 4 recognizes and specifically says that the state cannot prohibit the "haying, grazing or burning when used as a management technique for the maintenance and preservation of prairies". This language would certainly alleviate some of the fears of our members who own or operate native grasslands. This would be a fairly narrow exception to Wildlife and Parks authority and the term "used as a management technique for the maintenance and preservation" could be subject to different interpretations.

Injunction or Restraining Order

I feel the language of new Section 4, page 4 is quite substantial and is a significant amendment to the entire Endangered Species Conservation Act. This section authorizes the Secretary of Wildlife and Parks to commence an action for a permanent or temporary injunction or a restraining order on activities effecting any threatened or endangered species.

In summary, we are very fearful of expanding the Endangered Species Conservation Act to give the state increased authority for affecting the private property rights of Kansas landowners and tenants. We respectfully ask that you not give favorable consideration to SB 268. Thank you.

MB:bkc

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PUBLIC POLICY STATEMENT

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Re: S.B. 268 - Providing For Protection of Plants Under the Non-game and Endangered Species Conservation Act

March 21, 1991

Topeka, Kansas

Presented By:
Bill Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Doyen 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 appreciate this opportunity to express our opposition to S.B. 268 on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Since farmers and ranchers were the first and are now the most sincere segment of our population working to protect our natural resources and the environment, we do appreciate the presence of plant and wildlife species. However, we insist common sense must be exercised and the interests of all citizens must be considered when implementing plans to protect these species. In fact, we oppose adding any plant or animal species to the protected list until a number of procedures are established in Kansas:

1. Review authority.
2. Appeals process.
3. Fiscal accountability.

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3/21/91
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S.B. 268 would bring plants under the protection of the non-game and endangered species conservation act. The bill goes on to state "nothing in this section shall be deemed to prohibit the following agricultural practices: haying, grazing or burning when used as a management technique for the maintenance and preservation of prairies" (page 4, line 12).

We have several questions on how S.B. 268 would effect normal farming and ranching management practices:

1. Could noxious weeds and brush be sprayed with appropriate controlled chemicals?
2. Could native grassland be broke for cropland?
3. Could CRP or other crop land planted to grass be returned to crop land use?
4. Could watershed dams and multi-purpose small lakes be constructed?
5. Could land be commercially developed?

Farm Bureau members have a strong conviction to the protection of private property rights. Part of Farm Bureau Policy states ... "When regulations or legislation regarding rare, threatened or endangered species alter agricultural practices for the benefit of mankind, agricultural producers should be compensated for the cost of altered agricultural practices". We see nothing in this bill to compensate owners for limiting any use of their private property. We must not forget the economic impact of reduced land use opportunities ... particularly private property where an economic return must be realized to meet land payments, taxes and family living expenses.

We strongly recommend S.B. 268 receive no consideration at least until S.B. 341 is approved by the Legislature and signed by the Governor. We thank this Committee and the entire Senate for passage of that bill. We believe S.B. 341 is a good, common sense step toward

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bringing accountability to the threatened and endangered species program in Kansas. While several habitat and species professionals are on the proposed Advisory Committee, those interests whose projects are effected by the decisions of the Secretary of Wildlife and Parks would gain a better understanding and provide input. With the need to review only 25 projects requiring special permits each year, few if any delays would be encountered and little if any resources would be required. Yes, the Advisory Committee would only serve in an advisory capacity and the secretary would continue to make the final decision. However, we believe much conflict could be avoided.

We appreciate this opportunity to express our opposition to S.B. 268. Thank you! We will attempt to respond to any questions you might have.

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WRITTEN TESTIMONY FOR
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
ON
SB 268

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

The Home Builders Association of Kansas opposes SB 268. The concept of public responsibility for preserving threatened or endangered species to the extent not normally recognized by the public as an appropriate function of government is, by SB 268, extended to include what Section 1(f) defines as "any member of the plant kingdom". Preservation in the form now law for the nongame and endangered species conservation act goes far beyond preservation defined in dictionaries to embrace the purpose of "increasing the number of individuals within species and populations of wildlife and plants up to the optimum carrying capacity of their habitat and maintaining such numbers". (Section 1(a), lines 19-22.)

An endangered species can be any species of the states' fauna determined to be in jeopardy. It is a good bet that most of these species will be what most people call weeds, which, incidentally, most of us have been trying to endanger for years. The determination of which species need to be increased rests with "the secretary" who can prohibit any act, with respect to plants, that he can now prohibit with respect to wildlife. The Secretary can require a permit for any person to act in any manner contrary to any rule adopted by the secretary which pertains to any endangered or any threatened plant. This authority could well give an entirely new meaning to the crime of "defoliation".

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It is comforting to find that any threatened or endangered plant may be captured or destroyed by any person without having to obtain a permit from the secretary in an emergency situation involving an immediate or demonstrable threat to human life. (Section 3(e), lines 8-11)

New subsection (f) on page 4 specifically exempts the agricultural practices of "haying, grazing or burning" when used as prairie management techniques from those acts which are prohibited. Not included as exempt are agricultural practices such as plowing, discing, chiseling, harrowing, dragging or application of fertilizer, pesticides or herbicides.

New Section 5 makes it illegal for any person to enter upon any state owned or managed land under the jurisdiction of the Department of Wildlife and Parks, other than state parks, without a valid state habitat protection stamp. Moneys received from the sale of such permits may be expended to conduct inventories to locate habitat in need of conservation, or which support unique species important for biodiversity, to develop education centers to teach the importance of biodiversity, to publish watchable viewing guides and to protect critical and crucial habitat by acquiring real property interests, presumably from owners who are not yet attuned to the importance of biodiversity.

If this was just one more boondoggle to increase the staff, budget and power of the Secretary, it would probably be laughable. But the opportunity for this act to encourage the interference of state government in the private use of land and the freedom of choice on how that land is to be used is frightening. Private property rights are under attack, and this is just one of the current campaigns. Can anyone predict how the "plant cops" will control such things as killing crabgrass in lawns because someone launches a

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campaign to protect some obscure variety of plant reported in the county? Will the criteria of all good farmers, a clean field or fence row, become illegal because in our zeal to eradicate bindweed we endangered its cousin, a yet-to-be-determined plant? Will the next "Agnes T. Frog" type demonstration be dedicated to a micro-weed aimed at stopping all or part of the highway program? Too extreme? Ask what would have been your reaction to this bill if it had been introduced twenty years ago; then ask yourself if Kansas is better off now than it was twenty years ago before we fully grasped the importance of biodiversity.

If there is merit in the protection, conservation and nurturing of plant species in Kansas, then a program to accomplish that end should be developed and be the subject of specific legislation for plants. To add "and plants" to all of the provisions of the wildlife protection law produced language such as that cited in subsection (e) on page 3 and could result in completely unforeseen and unintended restrictions on private property rights.

It is our request that SB 268 not be passed by this Committee.

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