Approved: Carl Dean Holmes 3-15-95
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on February 22, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Kline - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Edward Moses - KS Aggregate Producers Assn
Carl Nuzman - Layne GeoSciences Inc
Nadine Stannard - Associated Material and Supply Co
Victor & Yvette Holzmeister-Klotz - Klotz Sand Co, Holcomb
David Barcley - Alsop Sand Company, Concordia KS
Stephen A. Hurst - KS Water Office
David L. Pope - KS Department of Agriculture
Don Low - KS Corporation Commission
The Honorable Jim Garner - KS House of Representatives
Rob Hodges - KS Telecommunications Association

Others attending: See attached list

Chairperson Holmes opened the meeting to hearings.

Hearing on HB 2476:

Edward Moses. (See Attachment #1.) Mr. Moses prefaced his testimony announcing that he is accompanied to the meeting today by members of the Kansas sand and gravel industry, recommending the Committee's approval of **HB 2476.**

Mr. Moses detailed a research study he did wherein he found no evidence of concern regarding the subject matter in this measure. He reported an interesting item of discovery in that research was a report in 1977 of the Special Interim Committee on Water Issues. He cited an excerpt from a paragraph, "In any event all diversions must be specific and measurable." He said the Association believes the legislative committee purposely used that language because it feared a broad interpretation of diversion by regulators. To take the concept one step further, he inquired, if the sand and gravel industry adversely effects water conservation by creating evaporation, then who will be next? Another confusing issue: If evaporation is a "beneficial use" and they are unable to receive a water right, are sand and gravel producers still not entitled to remove minerals under their private property rights.

He reported there is support on technicals grounds. The sand and gravel industry does not create a net loss of water through their physical operations, since there is actually a retention of water through their physical operations. Additionally, it makes sense to approve this legislation due to economics.

Mr. Moses said from a practical standpoint, in a day and age when voters and constituents are demanding less government and regulation, is it feasible to expend time and attention to regulating the sand and gravel industry when given the amount of water actually utilized, if any, by the industry.

In closing, Mr. Moses emphasized that the industry is not requesting an exemption; rather, they are asking for a policy decision or reaffirmation of legislative intent. He encouraged the Committee to report **HB 2476** favorable for passage.

Carl E. Nuzman. (See Attachment #2.) By way of some background experience, Mr. Nuzman reported that he is a licensed professional engineer in Kansas, and 18 other states, and is a certified hydrogeologist by the American Institute of Hydrology.

Mr. Nuzman reported in some detail the history of the Kansas Water Appropriation Act beginning in 1945 and it ensuing path to present date. In his attached position paper, he stated there are very serious inconsistencies in trying to fit evaporation use from gravel pits and aquifer into the framework of the Act. He noted that sand and gravel pits within the radius of influence of an operating well are not detrimental. Shallow sand and gravel pits could actually increase the storage yield of aquifer, thereby increasing the beneficial use that can be made of the groundwater resource. Therefore, sand and gravel pits should be exempted from the safe yield rules and regulations. Mr. Nuzman contends that the benefits to the water yield to the aquifer are far greater than the loss of water by evaporation from the pit.

Mr. Nuzman pointed to the economic benefits, stating its value to the public. He specifically cited J. H. Shears Sons, Inc in the Hutchinson, Kansas area, who supplies 52 small contractors and businesses; 10 municipalities; townships, public utilities; 9 ready-mix concrete plants; 5 asphalt-mixing plants; and the Department of Transportation highway projects with materials. He said that with the number of employees and payroll it yields a great economic impact on the cities of Hutchinson; Newton; McPherson; Emporia; Lincoln; and Stafford.

Unreasonable rules and regulations create a serious economic hardship to the sand and gravel pit operators, and the general population. Therefore, Mr. Nuzman said sand and gravel pits should be exempted from the requirement of having a permanent water right for continued evaporation (in the public interest).

In closing, Mr. Nuzman said it is recognized that the Division of Water Resources desires to have some type of knowledge as to where the pits are operating, their location and size, which could be done by use of the term permit. There is, however, no need for any type of permanent water right after the pit is closed to account for evaporation losses. Mr. Nuzman said this is contrary to the intent of the original Water Appropriation Act.

Nadine Stannard. Ms. Stannard is the owner and president of the Associated Material and Supply Company in Wichita. She acquired the existing company in 1989 at which time she became involved in trying to acquire water rights. She was informed by the Division of Water Resources that because the pit was already there, that body of water would be granted water rights, but that water rights weren't available for any enlargement of the pond. She had to submit two applications for each production site; one application for the existing body of water, and another application for an additional area to be added to the pond.

Ms. Stannard has parcels of land purchased and permitted for the production of sand from the county (and has had for a number of years), but she cannot get water rights. If this does not materialize, she will ultimately be forced to begin the layoff of employees. She encouraged support of **HB 2476.** (Ms. Stannard will forward a copy of her testimony for the record.)

Victor and Yvette Holzmeister-Klotz. Mr. and Mrs. Holzmeister-Klotz reported their dilemma of having to continue to pay salary to employees for a long period of time due to their inability to receive satisfaction from the Division of Water Resources. They were in continual contact with DWR, awaiting their water permits to no avail. Ultimately they were forced to hire an attorney to approach DWR to resolve this issue. It was only when the attorney became involved that they finally received their permits. They reported that before hiring an attorney, their own efforts met with the same answer "week after week." In their efforts to work with the DWR office, they were continually given the same answer - their permit 'needed one more signature.' They added how costly this was to them, given the fact that they were paying employees to stay with the company, and then the added expense of having to hire attorney to resolve the matter.

Mr. and Mrs. Klotz fear that they may eventually face the possibility of having to give up their company. They said that 90% of their business is to the State of Kansas, and they do their best to save the State dollars, and hope to continue to be able to continue this trend. They respectfully asked that the Committee support **HB 2476**. (Written testimony will be forwarded for the record.)

Dane Barcley. (See Attachment #3.) Mr. Barcley reported that he and his father acquired their company in 1953. He provided history of the Department of Water Resources from 1945 to 1993. He said that if their industry had been treated equally with other industrial and agricultural users, they would have been prepared. They try to keep a 20-40 year sand reserve, and they would have done the same with water appropriation.

Mr. Barcley questions why this issue had not been resolved long ago. He speculates that perhaps DWR cannot reach an agreement. Mr. Barcley concluded by stating to the Committee if they would support **HB 2476** it will:

A. Solve the problem of how to turn back the clock and provide sand and gravel producers equal opportunity under the law.

B. Stop the endless discussions on positive effects of sand pits versus evaporative loss and DWR internal discussions of how to "fit 'our' square peg into DWR's round hole."

C. Save the taxpayers in the State of Kansas untold amounts of money or, at least, make those tax dollars more effective by keeping the sand producer's cost from raising needlessly.

Steve Hurst. (See Attachment #4.) Mr. Hurst expressed opposition to language in **HB 2467**. He explained it ignores hydrologic facts by stating that evaporation from excavated sand and gravel pits exposing underlying ground water does not constitute diversion or use of water under the provisions of the Kansas Water Appropriation Act.

He said his particular concern with this bill is that it creates an exempted class of industrial water use and would eliminate their contribution to the State Water Plan Fund. The position of the Kansas Water Authority has been to maintain the delicate balance in contributions among water users, and to resist granting exemptions to any one user group. In his view, Mr. Hurst said any exemption seriously disrupts the balance among users.

Mr. Hurst believes the exemption provided by **HB 2467** defies hydrologic fact, prudent water use policy and equitable distribution of contribution to the State Water Fund among users. It would, he said, threaten to unravel the fine balance among water users and the general public in funding implementation.

David Pope. (See Attachment #5.) Mr. Pope explained in some detail several reasons why the Division of Water Resources opposes passage of **HB 2467**. In brief, they are:

- If the bill is passed, it would be the first exemption under the Act for regulation of any type of beneficial use.
- It would be contrary to the legislative intent to have one single statewide comprehensive system of water regulation in the state.
- As with many water uses in the state, the statewide total water use is relatively small, however, the local impact can be quite significant.
- All other users of water in the state which cause evaporation to the source of water supply are required to get permits for evaporation.
- Exempting pit operators from the KWAA at this late date would be terribly inequitable to those operators who have dutifully complied with the law and expended substantial sums of money to purchase existing water rights to keep their operations lawful in accordance with provisions of the KWAA.
- The Division of Water Resources has attempted to work with the Aggregate Industry since 1986, to bring it into compliance with the KWAA.

Mr. Pope concluded that if the Legislature feels that the Division needs to further refine its administration in this area, it is suggested that the Committee table the bill until next year to allow the Division time to further explore an administrative solution.

Hearing on HB 2416:

Don Low. (See Attachment #6.) Mr. Low offered neutral comments on this proposed legislation, stating the Kansas Corporation Commission does not know the bill's purpose or intent. He said he would provide information on non-published service that will help evaluate the impact of the proposed bill.

Mr. Low said that non-published service is an option available to customers in many areas of Kansas. When a number is non-published, it will not be printed in the local telephone directory; nor will it be available to the public through directory assistance. Twenty-nine companies in the state offer some form of non-published service. Most telephone companies also offer another similar service "non-list" service. This will not be printed in the local telephone directory, but available through directory assistance. Mr. Low suggests that since these two services are so similar, it may be of benefit to clarify which is intended to be affected by the bill.

The Honorable Jim D. Garner. (See Attachment #7.) In supporting **HB 2416**, Representative Garner said it would simply prohibit telephone companies operating in our state from charging special fees for consumers who requests unpublished phone numbers. He added that this bill is needed because consumers who wish to have unpublished telephone numbers (and who pay for this service) are actually paying for a service they no longer receive. Since the advent of the new "Caller ID" technology, no one has an unlisted phone number. Representative Garner's investigation of Caller ID revealed that the name and number is displayed regardless of whether the number is listed or unlisted. For all practical purposes, he pointed out that there is no longer unpublished telephone numbers in the State of Kansas. Therefore, he feels individuals are paying a fee for a service they no longer receive. He recommends favorable passage of **HB 2416.**

Rob Hodges. (See Attachment #8.) Mr. Hodges reported that the Kansas Telecommunications Association (KTA) is concerned about the impacts this bill will have on their businesses. He noted that the bill addresses only "unpublished phone number" service. Some KTA member companies differentiate between "non-published" service and "non-listed" service. Other companies treat the two categories as the same service.

Mr. Hodges said it seems that new telecommunications services are announced every day and bills such as this could have the effect of limiting or discouraging services. Of specific concern is the loss of revenue for those companies currently charging a non-published service fee. Also, the bill prohibits charging a fee for providing "unpublished phone number" service. Mr. Hodges contends that **HB 2416** would be interpreted as prohibiting the fees normally charged when a customer's telephone number is changed.

Beyond the financial concerns, KTA members are concerned with the potential for large amounts of extra work as more customers request what would become a free service. Customers would be allowed the option of changing their service several times with few consequences. (In or out of non-published service.)

Action on: HB 2475:

Representative Sloan made a motion to adopt the balloon on **HB 2475** to amend Page 1, line 36, ~~Kansas member of the central interstate low level radioactive waste commission.~~ *governor*. Representative Alldritt seconded. Motion carried (See Attachment #9.)

Representative Sloan made a conceptual motion on **HB 2475,** Page 2, line 12, to insert language indicating that the state will not pay anyone's expenses; salaries; per diem,or other expenses, if they are already receiving a salary from another source. Representative Lloyd seconded. Motion carried.

Representative Freeborn made a motion to amend **HB 2475**, Page 1, Section 1. (a), lines 27; 28; and 29, to combine (4) and (5), *the general counsel of the state corporation commission and the director of the division of utilities of the state corporation commission; or an employee designated by the chairman.* Representative Aurand seconded. Motion carried

Representative Lawrence made a motion to amend **HB 2475**, Page 1, line 39 (B),~~three members~~ *one member;* line 41 (C), ~~two~~ *three* members; Page 2, line 1 (D), ~~one member~~ *two members*. Representative Freeborn seconded. Motion carried.

Representative Sloan made a motion to amend **HB 2475, Page 1,** lines 19 (2) and 23 (3), the chairperson *or designee*, vice-chairperson *or designee*. Representative Lawrence seconded. Motion carried.

Representative McKinney moved to pass **HB 2475** favorably, as amended. Representative Flower seconded. Motion carried.

Action on 2457:

Representative McClure moved to adopt the balloon on **HB 2457**. Representative Sloan seconded. Motion carried. (See Attachment #10.)

Representative McKinney moved to amend balloon by striking "in place soils," and inserting *geological conditions* as is appropriate within the language. Representative Lawrence seconded. Motion carried.

Representative McClure made a motion to amend **HB 2457**, Page 3, publication in ~~the statute book~~ *Kansas Register*. Representative Sloan seconded. Motion carried.

Representative McKinney made a motion to pass **HB 2457** favorably, as amended. Representative McClure seconded. Motion carried.

Action on HB 2437:

Representative Alldritt moved to adopt the balloon on **HB 2437**. Representative Sloan seconded. Motion failed (See Attachment #11.)

Representative Aurand moved to adopt the balloon on **HB 2437**. Representative Freeborn seconded. Motion carried. (See Attachment #12.)

Representative Lawrence made a motion to report **HB 2437** favorable for passage, as amended. Representative Myers seconded. Motion carried. Representatives McClure; Sloan; Alldritt; McKinney; Krehbiel and Flora requested to be recorded as voting nay.

There being no other business to come before the Committee, the meeting adjourned at 7:00 p.m.

The next meeting is scheduled for February 23, 1995.

ADDENDUM TO FEBRUARY 22, 1995 MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

Follow-up written testimony on **House Bill 2476:**

Victor and Yvette Holzmeister-Klotz: (See Attachment #13.)

Nadine Stannard: (See Attachment #14.)

ENERGY AND NATURAL RESOURCES COMMITTEE
GUEST LIST

DATE: February 22, 1995

NAME	REPRESENTING
Jim McCune	A.A.R.P.
Nadine Stannard	KAPA
Donna L. Irwin	AARP
TOM YOUNG	AARP
Woody Moses	KAPA
Steve Hurst	KWO
[illegible]	KAPA
[illegible]	KAPA
Harold [illegible]	KAPA
David Penny	KAPA
Hugh Didier	KAPA
DANE BARCLAY	KAPA
A.Y. DRUMMOND	KAPA
JIM RALSTON	KAPA
Lee Gerhard	Kan. Geol. Survey
CARL NUZMAN PE, PHg	Consultant KAPA
Michelle Peterson	Ks. Gov. Consulting
Blake Henning	St. Conservation Commission
MARSHALL CLARK	KEC

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ENERGY AND NATURAL RESOURCES COMMITTEE
GUEST LIST

DATE: February 22 [redacted] **1995**

NAME	REPRESENTING
Denny Koch	SW Bell
Bob Totten	Ks Contractors Association
Bruce Graham	KEPCo,
Matt Hoh	KCC/Student
Tom Stikes	KWO
PHILIP HURLEY	PATRICK J. HURLEY & CO,
Sheila Allen	SWBT
Bill Bider	KDHE
VIRGINIA STARK	ATCT
David L Pope	DWR, Dept of Agric
Leland E. Rolfs	
Janet Krueb	AARP
Don Low	KCC
Rob Hodges	Ks Telecom Assn

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KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

Testimony
before the
House Energy & Natural Resources Committee
Seventy-Sixth Legislature
of the
Kansas Aggregate Producers' Association
on
HB2476 - Relating to Sand & Gravel Pits

February 22, 1995

Mr. Chairman and Members of the committee I appreciate the opportunity to appear before you today on behalf of HB2476. My name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association. I am accompanied by members of the Kansas sand & gravel industry also here today advocating your consideration and approval of House Bill No. 2476.

Justice Oliver Wendall Holmes once wrote what the law should be about is "fairness" not "sameness". But all too often in today's society those who administer the law seek to achieve "sameness". It is such a question of fairness that brings us before you today. Since 1987, the Kansas Aggregate Producers' Association has endeavored to represent Kansas sand & gravel producers in development of a reasonable regulatory model for our industry in compliance with Kansas Water Appropriation Act (82a-701). After a lot of struggle we have finally come to the conclusion that the best method of resolving this matter is to bring it before this committee. Our dilemma centers around the inability of the sand & gravel producers to achieve a mode of regulation that satisfies both producers and the Kansas Division of Water Resources. We believe this inability is due to the way Kansas Water Appropriations Act is construed rather than a lack of cooperation on either the part of Kansas Aggregate Producers' Association or the Kansas Division of Water Resources (DWR).

Since the passage of the Water Appropriations Act in 1945 water users have been allowed to file for and protect water rights (but were not required to receive permission prior to the actual appropriation of water). In the intervening years, various Chief Engineers of the Kansas Division of Water Resources have reviewed the dynamics of sand & gravel operations in the alluvial acquifer and determined that the removal of sand and gravel did not constitute a "beneficial use" of water. This determination was based on four factors: a) sand & gravel was being removed and the water, previously intermingled with sand, actually remained at the site b) no diversion works as defined and or anticipated in the Water Appropriation Acts were constructed; c) water was not brought under control, and d); the diversion, if any, was not specific or measurable. As a result of this determination the sand & gravel industry for a period of 48 years was not allowed or later required to secure permanent water appropriations rights.

In 1978, faced with the rapidly escalating use of groundwater in Western Kansas as a result of dry land irrigation, the legislature amended the Water Appropriations Act to make it a requirement for water users to secure a permit from DWR prior to the appropriation of water.

In 1988, with a new Chief Engineer and different staff input at the DWR, a change of philosophy took place and an administrative policy was developed requiring sand & gravel producers to obtain a hydraulic dredging permit before commencing operations. After discussion

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Attachment #1

with the DWR the sand & gravel producers reluctantly agreed to the new policy. Agreed, because hydraulic dredging certainly brought water under control (for 3-5 minutes) in the classic sense. Reluctantly, because we still had difficulty with it being a "beneficial use". In a sand & gravel operation water is an unavoidable but unwanted **byproduct** of the process. The energy needed to extract sand from the water puts "wet operations" at disadvantage when compared to "dry operations". All things being considered a dry operation is more efficient than a wet one; therefore it is difficult to see where our industry receives a beneficial use.

In 1992 the DWR began developing a new policy which would further require sand & gravel operators to obtain a permanent water appropriation right to cover the evaporation from sand & gravel pits. We met with DWR in November, 1992 to discuss the ramifications. At that time we were assured that existing operations would be covered and sand & gravel operators would not have an inordinate amount of trouble securing rights to cover their operations. The new policy was instituted by DWR in May of 1993. Relying on DWR assurances, once again we reluctantly agreed to try and comply. At the inception it became readily apparent to sand & gravel producers that this new policy was not going to work for three reasons. First, DWR defined existing operations as being the limit of the water surface of the pit as of May 1993, and thus did not cover existing operations as envisioned by sand & gravel producers. Second, as other water users have been receiving water appropriation rights in alluvial basins since 1945 most areas in which our operations are conducted were classified as overappropriated by DWR and closed to the issuance of new water rights several years ago. Thus forcing a situation whereby sand & gravel producers, not having been required or allowed for the past 48 years, to compete with other water appropriators who had secured their water rights up to 48 years earlier.

We spent the summer of 1993 trying to secure water rights and found the task impossible. The problem grew so difficult that by December of 1993 four producers were faced with facing an actual shut down of their operations. If it had been allowed to happen, this shut down would have resulted in the loss of over 100 jobs and an almost total inability to supply sand & gravel in the Arkansas River Basin from Hutchinson to Dodge City. This situation was fortunately adverted when upon our petition DWR agreed to provide an additional 15 acre feet of water under a term permit for up to five years.

Since that time we have asked the Division to grant water rights to existing sand & gravel operations which would put us on an equal footing with other users since 1945. This request was refused by DWR as being unfair to current water right holders. We then requested DWR to return to the policy covering evaporation through the use of Terms Permits, this was rejected as being impractical. Finally, we have conducted research at a cost of approximately $10,000, and based upon that research have requested a waiver of sand & gravel operations from the "safe yield rule". Our research demonstrates that sand & gravel creates water storage beneficial to our State in excess of any net evaporation from water exposed by the opening of pits. As of this date the Division has not responded to this request.

Our position, and the position of the first three Chief Engineers of the Division of Water Resources, is that the legislature never intended for the "evaporation created by the opening of sand & gravel pits" to be regulated as a beneficial use of water under the act. The Kansas Division of Water Resources current position, relying on "sameness", is that evaporation is beneficial use of water and as such requires a water right be secured prior to appropriation. Our reasons for this belief centers in four different areas historical, economical, technical, and practical.

Historically, until 1988, the legislature nor even the DWR has ever expressed an interest in our industry. In the course of representing member producers in this area for the last eight years I have conducted a lot of research and not found one reference to Sand & Gravel operations in any of the material considered by the legislature, the Division of Water Resources or any other state agencies since 1945. Yet sand & gravel operations have been documented as early as the building

of Caesaria Maritima in 68 A.D. If we have been creating a loss of water since then why has this crisis only been recognized in one state and not prior to 1988. Looking beyond Kansas we have been unable to find any other examples of where evaporation has been considered to be a diversion of water and thus creating a beneficial use. Many states use an evaporation calculation in the determination of consumptive use but only after a diversion works has been constructed and water has been diverted (i.e.: the construction of a dam). Additionally, we are unable to find one single court case in which a sand & gravel operator has been held to impair the rights of neighboring water users as a result of evaporation. We think the reason for this is obvious. Many experts before us have asked and been unable to answer the following questions. How is evaporation bringing water under control? How do you control the uncontrollable? Where does the point of diversion occur? How is the diversion specific and measurable? Under current law (82a-714) the Chief Engineer is required to inspect a diversion works upon its completion and prior to the issuance of a certified water appropriation right. If the digging of a sand & gravel pit is deemed the construction of a diversion works then - - When will the diversion works be completed and ready for inspection? Sand & gravel operations normally last 40 - 50 years. The only way to effectively control evaporation is to not create it. Historically, we think many others from time to time have studied these issues and came to the same commonsense conclusion that it was pointless to try and regulate sand & gravel pits on the basis of evaporation.

During my research one interesting item did surface. In the report of the 1977 Special Interim Committee on Water Issues to the legislature the following excerpt appeared in a paragraph on diversion "In any event all diversions must be specific and measurable". We think the legislative committee purposely used that language because it feared a broad interpretation of diversion by regulators. Let's now take the concept of a broad interpretation one step further. If the sand & gravel industry adversely effects water conservation by creating evaporation, then - - Who will be next? Does not a farmer planting a seed and growing a plant create evaporation? We submit to you that questions such as these led the legislature to prefer a narrow interpretation of "beneficial use", "control" and "diversion".

Another confusing issue: If evaporation is a "beneficial use" and we are unable to receive a water right are sand & gravel producers still not entitled to remove minerals under their private property rights. If this is not true then we respectfully request the state of Kansas to remove the public's water from our sand.

Our second area of support is on technical grounds. The sand & gravel industry does not create a net loss of water through our physical operations; rather, the dynamics of sand & gravel operations actually improve the retention of water throughout the state of Kansas. As a result of the storage which is created once the solids are removed. Our technical representative, Mr. Carl Nuzman, P.E.; will be addressing this in his testimony which will immediately follow.

In the third area of economics we think it makes sense to approve this legislation. Attached you will find a comparison illustrating the proportions of the sand & gravel industry throughout the state of Kansas when compared to agricultural production. We ask you to take a look at the relative amounts of the water used to support each industry and given the ratios--does it make sense to shut down almost 100% of all the sand production in the state of Kansas and sacrifice almost 50 million dollars worth of economic activity? Just for the sake of being consistent with the "paper water" accounting system currently employed by the state.

Finally on the practical level, in a day and age when voters and constituents are demanding less government, less regulation and better use of government resources we ask if it really makes sense to expend the time and effort that the DWR has over the last 5-6 years to account for less than 2/10 of 1 % (per tabulation of 1991 water use reports) of all water used in the state calculated on the gross assumption of evaporation used by DWR which is not even adjusted for the water storage created. We maintain as a matter of good public policy that the DWR has bigger problems

to deal with such as water issues with the states of Nebraska and Colorado. The amount of time and attention they have devoted to regulating the sand & gravel industry is ridiculous in comparison to the water actually utilized, if any, by our industry.

In closing we would like to stress that the industry is not requesting an exemption. Our hydraulic dredges our currently regulated and we are not asking for relief from this regulation. What we are asking for is a policy decision or reaffirmation of legislative intent. Furthermore, we are not here to bash the Division of Water Resources. The DWR has worked with us patiently and cooperatively for the last eight years trying to resolve this matter. We feel the inability to resolve this matter lies in the fact that a law designed to regulate irrigation and other uses where the diversion is specific and measurable. For this and the many reasons outlined above and out of fairness and commonsense, we ask you to report HB2476 out favorable for passage.

Thank you for your time and consideration of this very important matter.

ECONOMIC IMPACT
OF THE
KANSAS AGGREGATE INDUSTRY

by:
David Cantrell

In trying to determine the impact of our industry on the economy of Kansas I uncovered an interesting fact. Although Kansas is known as the WHEAT STATE and does indeed lead the nation in wheat production it also produces large amounts of corn, sorghum, and soybeans, aggregates do play a large part in the overall scheme of things.

In 1993 Kansas produced 388,500,000 bushels of wheat, 216,000,000 bushels of corn, 176,400,000 bushels of sorghum and 51,800,000 bushels of soybeans, (these figures came from the Kansas State Bureau of Statistics). These are all impressive number and do indeed give you an idea of farming impact on the states economy. We generally refer to our aggregate usage in tons so I broke the crop totals down into tons (realizing that wheat, corn, etc. have a lower specific gravity) to see how we compare. This is when it got interesting, Wheat translated to 11,655,000 tons, Corn 6,480,000 tons, Sorghum 5,292,000 tons and Soybeans 1,544,000 tons. Again these are very impressive numbers. Using U.S. Bureau of Mine Statistics we find that crushed Stone produced 18,600,000 tons which is 38% more than wheat and considerably more than the other grains. When Sand and Gravel production is thrown into the equation at 13,100,000 tons we get a total of 31,700,000 tons of aggregate produced which is more than the crops mentioned combined (24,981,000). While we will always be regarded as a farm state with a farm based economy, mining plays a huge part in the states well-being.

One other note of interest is that in the United States mining and construction are at the top of the average hourly earnings scale for manufacturing jobs at $14.51 and $14.11 per hour respectively. While some people may not want us next door we are vital to the economy of any area that we are operating in.

Sources:

Kansas State Board of Agriculture
U.S. Bureau of Mines
Federal Reserve, 10th District

GLOSSARY

Acre-foot - the quantity of water required to cover one acre to a depth of one foot; equal to 43,560 cubic feet or 325,851 gallons.

Administration of water rights - the distribution of water according to priority of right.

Appropriation - the act or acts involved in the taking and reducing to personal possession of water occurring in a stream or other body of water, and of applying such water to beneficial uses or purposes.

Aquifer - a saturated underground body of rock or similar material capable of storing water and transmitting it to wells or springs.

CFS (cubic feet per second) - the volume of water which flows in one second; one cubic foot = approximately 7.48 gallons.

Consumptive use - water withdrawn from a supply which, because of absorption, transpiration, evaporation, or incorporation in a manufactured product, is not returned directly to a surface or ground water supply; hence, water which is lost for immediate further use. For example, irrigation is a consumptive use.

Depletion - the withdrawal of water from surface or ground water reservoirs at a rate greater than the rate of replenishment.

Diversion works - pump, motor and other devices used to withdraw water.

Groundwater - water that occurs beneath the land surface and completely fills all pore spaces of the rock material in which it occurs.

Perfection of Water Right - Completion of a diversion works and the full application of water for a beneficial use according to the provisions of the appropriation permit.

Mined water - withdrawal in excess of recharge of a water supply causing an increasing depletion of that supply.

Recharge - addition of water to an aquifer. Occurs naturally from rainfall. Artificial recharge through injection wells, or by spreading surface water where it will infiltrate.

Safe yield - the maximum dependable draft which can be made continuously upon a source of water supply during a period of years during which the probable driest period or period of greatest deficiency in water supply is likely to occur. Dependability is relative and is a function of storage provided and drought probability.

Saturated thickness - that part of an aquifer actually filled with water.

Water quality - chemical, physical and biological characteristics of water in respect to its suitability for a particular purpose.

Well log - a chronological record of the soil and rock formations which were encountered in the operation of sinking a well including the water-bearing characteristics of each formation.

Yield - the rate at which water may be drawn from a formation through a well to cause a drawdown of a stipulated depth. The usual units of measurement are gallons per minute per foot.

Layne GeoSciences, Inc. A Subsidiary of Layne, Inc.

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November 7, 1994

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Second Floor
Topeka, KS 66612-1283

RE: Kansas Water Appropriation Act Requirements Concerning Aggregate Operations

Dear Mr. Pope:

Enclosed is a Position Paper on the Kansas Water Rights Issue prepared by Layne GeoSciences, Inc. We appreciate your consideration of the enclosed paper and hope that you will act in favor of the position.

Respectfully Submitted,

Kansas Aggregate Producers Association

Prepared by,

Carl E. Nuzman, P.E. P.Hg.
Vice President and Chief Hydrologist
Layne GeoSciences, Inc.

2/22/95
Energy & Natural Resources
Attachment #2

LGI

Kansas Aggregate Producers Association

Position Paper
on
Kansas Water Rights Issue

The Kansas Aggregate Producers have been placed in a difficult position by the change in the Division of Water Resources, Kansas State Board of Agriculture policy on acquisition of water rights. Policy No. 86-1 is not consistent with the intent of the Kansas Water Appropriation Act. The Kansas Aggregate Producers Association (KAPA) presents this position paper to support the Division of Water Resources in their efforts to create and improve regulations which can be used to properly and efficiently manage the water resources of our state. KAPA further recognizes the need for the chief engineer to identify sand and gravel operations throughout the state so that the Division may properly carry out the duties assigned by the legislature.

When the Kansas Water Appropriation Act was passed in 1945 and amended in 1958, there was no basic change to the definition of a water right, meaning any vested or appropriation right under which a person may lawfully divert and use water. To establish water right R.V. Smrha, then Chief Engineer, relied upon K.S.A.82A-706b to define what constituted a diversion of water. This paragraph defines... "upon making a determination of unlawful diversion, the chief engineer or his or her authorized agents shall direct at headgates, valves, or other controlling works of any ditch, canal, conduit, pipe, well or structure be open, closed, adjusted or regulated as may be necessary to secure water to the person having the prior right to its use, or to steer water for the purpose to which it was released from storage under authority of the State of Kansas or pursuant to an agreement between the state and federal government". Smrha found that gravel pits did not comply with the definition of a diversion. Therefore, gravel pits were exempt from the authority of the Kansas Water Appropriation Act. Because of this, gravel pit operators historically were not required to establish any type of water right. This historic position denied them the opportunity to establish their priority of time in their appropriations for use along with other water users in the State.

In the 1960's, when federal reservoirs were being constructed by the Corps of Engineers and the Bureau of Reclamation for Irrigation Districts, water right applications were modified. A provision was included for water impounded in a man-made structure that would not otherwise be available for appropriation. Since these reservoirs had large surface areas and lost considerable water to evaporation, it was decided that an allowance for the release and control of water should be made for evaporative losses from surface water reservoirs. In this case, specific diversion works and head gates were available in the structure to control releases of water as determined by the Chief Engineer in the administration of his duties. Somehow this concept was carried over to sand and gravel pits constructed in an aquifer where no man-made diversion works exist for the specific control of water. Since evaporation losses are uncontrollable, and because no actual point of diversion exists, sand and gravel pits should be exempted from the Water Appropriation Act regulations.

Policy modifications were made by the Division of Water Resources due to a report made by the 1976 Legislative Special Committee on Energy and Natural Resources and subsequent Testimony No. 4 in a 1977 session of the Kansas legislature. Evaporative losses were only considered important by the Division of Water Resources in ascertaining the total safe yield of a basin. Further, the legislature expanded the definition of public interest to be on a broad "economic sense" and not limited to considering the basis of public interest only on "safe yield" of an aquifer system.

Sand and gravel pits within the radius of influence of an operating well are not detrimental. Shallow sand and gravel pits could actually increase the storage yield of the aquifer, thereby increasing the beneficial use that can be made of the groundwater resource. Therefore, sand and gravel pits should be exempted from the safe yield rules and regulations. The benefits to the water yield to the aquifer are far greater than the loss of water by evaporation from the pit. Therefore, the Chief Engineer should not require any type of permanent water right when a pit ceases to become functional in a gravel mining operation.

An example was given by one of the members of the KAPA where an irrigation well existed downgradient from a site acquired for a sand and gravel pit near Scandia, Kansas. The irrigation well was approximately 40 feet deep with an operating radius of influence of about 1300 to 1500 feet, typically in 30 feet of saturated sand and gravel material. Assuming the permeability of this material is 1500 gpd/ft^2 (200ft/day) this well has a theoretical specific capacity of about 30gpm/ft of drawdown. A typical well in service over several years has an operating efficiency of about 60%, with an actual operating specific capacity of 18gpm/ft. of drawdown. Prior to the construction and excavation of the pit, the owner tried to operate this well at 400gpm or more and during dry summers the pump would frequently break suction. The sand and gravel pit was excavated upgradient of this well approximately 600 to 700 feet away from the property line and when the next dry period occurred, the irrigation well continued to pump in excess of 400gpm with a specific capacity of about 25gpm/ft. of drawdown. The operating efficiency was increased to about 80% with the sand and gravel pit in place. The increase of storage yield served as an interim source of recharge to this irrigation well, allowing operation during the hot summer months when the well previously broke suction.

As has been adequately acknowledged on term permits for dredging, the consumptive use of a gravel pit operation is extremely minimal. The value of sand and gravel materials to the public is extremely important when the economic impact of each sand and gravel pit operation is fully considered. For example, the facility operated by J. H. Shears' Sons, Inc. in the Hutchinson area supplies 52 small contractors and businesses, 10 municipalities, townships, and public utilities, 9 ready-mix concrete plants, 5 asphalt-mixing plants, and the Department of Transportation highway projects with materials. The number of employees and annual payroll of $2.3 million historically turns over seven times in the community resulting in a $16.1 million economic impact. It is estimated the Hutchinson facility of Shears' Sons, Inc. affects 245 employees and has a major economic impact on the cities of Hutchinson, Newton, McPherson, Emporia, Lincoln and Stafford. The amount of water evaporated from sand and gravel pits is estimated to be about 2/10 of 1% of the total water appropriated within the state of Kansas, while the economic impact of these sand and gravel pits exceeds $100 million to the state of Kansas. Unreasonable rules and regulations create a serious economic hardship to the sand and gravel pit operators and the general population of the state of Kansas. Therefore, in the public interest, sand and gravel pits

should be exempted from the requirement of having a permanent water right for continued evaporation as defined in Policy No. 86-1 of the Division of Water Resources.

It is recognized that the Division of Water Resources desires to have some type of knowledge as to where these pits are operating, their location and their size. This could be handled adequately by the use of the term permit for the duration of the active mining of the pits. This will also allow the Division of Water Resources to obtain the quantity of water circulated by the pit for appropriate water taxation and monitoring by other state agencies. There is no need for any type of permanent water right after the pit is closed to account for evaporation losses. This is contrary to the intent of the original Water Appropriation Act.

February 22, 1995

KAPA
800 S.W. Jackson St. #1408
Topeka, KS 66612-2214

RE: HB 2476 Hearing

Dear Sirs:

Just a note since we are unable to be there for the hearing. We do need this bill passed. We run a small sand business and 2 years ago purchased ground to open 2nd pit and just this winter we finally got approval for the water permit with restrctions on size etc. If we can't open this new pit and pump like we need to we will be forced out of business. WE NEED PASSAGE OF HOUSE BILL # 2476.

Waiting to receive the good news on passage, I remain, Jean Peter, President. Raymond SAnd & Gravel, Inc., R.R. #1 Box 78, Ellinwood, KS 67526.

Jean Peter

Clip and Return

HB 2476 Hearing
February 22 1995

p Yes, I will be able to attend

p No, I am unable to attend

Name: J. Jean Peter

Company: Raymond Sand & Gravel, Inc.

Dane Barclay
General Manager
Alsop Sand Co., Inc.
P.O. Box 331
Concordia, Kansas 66901

I. Let me tell you a little about myself and the company I represent.

A. My grandfather started the company in 1931.

B. Upon my grandfather's death in 1953, my father returned to Kansas to run the company.

C. He and I presently run the company.

II. It is within your power to solve a problem that has haunted our industry for some time. The requirement for appropriation of water rights to cover evaporation of surface water exposed in sand and gravel pits. This needlessly drives up the cost of our product with the loser being every taxpayer in the state of Kansas. This requirement raises the cost of every cubic yard of concrete in every sidewalk, foundation, basement, street, bridge, and highway, as well as every ton of asphalt in every street, parking lot and highway. All of this to regulate less than two tenths of one percent of the total usage of water in the state of Kansas.

III. Let me provide you with a little history of KDWR:

A. 1945 - Water appropriation act was passed. Water users could file for appropriations on a voluntary basis to protect their rights.

B. 1978 - 1. Legislature makes it mandatory that anyone diverting water for beneficial use must have prior approval from the Chief Engineer.

2. At that time KDWR does not rule that hydraulic dredging in sand and gravel pits constitute a diversion or beneficial use and does not require prior approval.

C. 1988 - KDWR informs us that we must get term permits for our hydraulic dredge at each sand and gravel pit. That involved only fees and paperwork.

D. 1990 - Tax on water use for water plan

1. The first six months tax was based on total gallons run through the dredge and returned to the sand pit.

2. The last half of 1990 the tax was calculated on tons of sand and gravel sold.

E. 1991 - KDWR decided that neither of those plans was workable, but applied the tax on an evaporation calculation.

F. May 1, 1993 - KDWR announces that we will be

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required to acquire appropriations of water rights to cover the evaporation from the ground water exposed in our sand pits.

IV. After relating Kansas Division of Water Resources history in regard to sand producers, there are two points that need to be made.

A.1. First is the inconsistency with which KDWR has handled the sand dredging operators clearly shows that we don't fit within their system either under the industrial or agricultural areas. In fact they really don't know what to do with us.

2. Three out of the last four Chief Engineers have declared that hydraulic dredging does not constitute a diversion or beneficial use.

3. Only when you realize that the areas we operate in have been overappropriated does the magnitude of this problem become clear. There are no appropriations left.

B. The second point that needs to be clarified is that by waiting until there are no more appropriations available, to change the rules and require us to acquire appropriations, KDWR has denied us equal protection under the law.

They tell us we can buy rights from some other user, but what farmer is going to sell off his water right so that he can turn his irrigated farm in to dryland? If we did find a party willing to sell a water right, that cost would be passed on to the taxpayer.

If, since 1945, we had been treated equally with other industrial and agricultural users, we would have been prepared. We would have acquired water rights while they were still available. We try to keep 20 to 40 years of sand reserves and we would have done the same with water appropriation, but since from 1945 thru 1993 we were told that we did not need appropriation of water rights, we were denied that opportunity.

V. In an effort to come to a workable solution, we have met repeatedly with KDWR for the last seven years.

A. All of this time and energy to cover an evaporative loss that amounts to two tenths of one percent of the total usage in the state of Kansas using KDWR figures.

B. If you couple this with the documentation the hydrologist, Carl Nuzman, a past expert witness for KDWR, has provided, showing that a sand pit actually has a positive effect on the aquifer that offsets the evaporative loss, it makes one wonder why this hasn't been resolved long ago. The only answer I can find is that the people at KDWR really can't agree among themselves what to do with us.

VI. If you will support House Bill 2476:

A. You will solve the problem of how to turn back the clock and provide sand and gravel producers equal opportunity under the law.

B. You will stop the endless discussions on positive effects of sand pits versus evaporative loss and KDWR internal discussions of how to fit our square peg into KDWR's round hole.

C. You will save the taxpayers in the state of Kansas untold amounts of money or at least make those tax dollars more effective by keeping the sand producer's cost from raising needlessly.

Thank you for considering our position in this matter.

Testimony of Stephen A. Hurst
Director, Kansas Water Office
Before the
House Energy and Natural Resources Committee
on House Bill 2476
February 22, 1995

Chairman Holmes and members of the committee:

I am Stephen A. Hurst, Director of the Kansas Water Office. I wish to express my opposition to the proposed language contained within House Bill 2476. This language would choose to ignore hydrologic facts by stating that evaporation from excavated sand and gravel pits exposing underlying ground water does not constitute diversion or use of water under the provisions of the Kansas Water Appropriation Act. I will leave the question of inequity among water users in exempting this particular brand of consumptive use from allocation decisions to the expertise of the Division of Water Resources.

My particular concern with this bill is that it creates an exempted class of industrial water use and would eliminate their contribution to the State Water Plan Fund. These pits are charged the Water Protection Fee described in K.S.A. 82a-951, *et. seq.* of three cents per 1,000 gallons against the water use estimated by Division of Water Resources. That water use is the evaporation potential from the surface area of these pits as they are opened and expose the ground water to the atmosphere. The Division of Water Resources uses a standard formula to estimate the annual evaporation with due credit for annual precipitation. In 1993, the estimated revenue collected from these sand and gravel pits was about $13,800. Projections by Division of Water Resources indicate potential revenue from expansions of known existing pits could exceed $50,000 annually. This amount of revenue may seem trivial in light of the annual revenue of the State Water Plan Fund of $15-16

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million, however, I believe that such an exemption sets a very dangerous precedent. The position of the Kansas Water Authority has been to maintain the delicate balance in contributions among water users and to resist granting exemptions to any one user group. Last year, we opposed a proposed exemption to be extended to industrial users who used their waste water as a secondary supply to fish farms, currently the only industry exempted from paying the fee. In my view, any exemption seriously disrupts the balance among users.

I am especially concerned of a "snowball" effect such an exemption as promoted by House Bill 2476 would create. For years, an electric utility in eastern Kansas fought with Division of Water Resources over the designation of evaporation from their cooling lake as an industrial water use. The two parties eventually settled on a mutually acceptable solution. Should House Bill 2476 pass, that settlement would be in jeopardy. It would be quite easy to envision scores of industrial users jumping on the House Bill 2476 bandwagon and claiming that their consumptive use was natural and exempt from any fee. Certainly municipal and stockwater users would begin to seek exemptions based on credits for return flows after they diverted and used water. I believe that this bill would open the door for erosion of the State Water Plan Fund.

In short, the exemption provided by House Bill 2476 defies hydrologic fact, prudent water use policy and equitable distribution of contributing to the State Water Plan Fund among users. One small group would benefit from this bill, but in the process, it would threaten to unravel the fine balance among water users and the general public in funding implementation of the State Water Plan. I would urge the committee to not pass House Bill 2476.

Testimony before
the House Energy & Natural Resources Committee
RE: HOUSE BILL 2476
February 22, 1995
by
David L. Pope, Chief Engineer,
Division of Water Resources
Kansas State Department of Agriculture

Chairman Holmes and Members of the Committee, I thank you for this opportunity to testify in opposition to HB 2476 which would exempt evaporation from sand and gravel pits from the permitting requirements of the Kansas Water Appropriation Act (KWAA).

In 1945, the Kansas Legislature passed the KWAA. K.S.A. 82a-701 et seq. By the passage of the KWAA, the Legislature determined that, "All water within the state of Kansas is hereby dedicated to the use of the people of the state, subject to the control and regulation of the state in the manner herein prescribed." K.S.A. 82a-702. Effective January 1, 1978, the Legislature made it, "unlawful for any person to appropriate water from any source without first applying for and obtaining a permit to appropriate water in accordance with the Act ..." with minor exceptions. K.S.A. 82a-728(a).

All types of beneficial use of water fall into one of ten categories as defined by the KWAA and the regulations promulgated thereunder. K.S.A. 82a-707(b); K.A.R. 5-1-1(f). One of these ten types of beneficial uses of water is "industrial use". K.A.R. 5-1-1(n). This regulation specifically provides that industrial use includes, "evaporation caused by exposing the groundwater table or increasing the surface area of a stream, lake, pit or quarry, by excavation or dredging."

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HB 2476, if passed, would exempt evaporation of water exposed as the result of the opening or operation of sand and gravel pits from regulation under the KWAA.

The Division of Water Resources opposes passage of HB 2476 for a number of reasons.

First, if passed this would be the first exemption under the Act for regulation of any type of beneficial use. Even domestic users of water, which are not required to get a permit under the KWAA, are subject to regulation if there is a conflict between users. The Division of Water Resources feels that exempting any class of beneficial use would be a dangerous precedent to set because most, if not all, water users would prefer to be exempt from the KWAA. Once one type of beneficial use is excluded, where does one draw the line regarding exempting other types of beneficial use?

Second, to pass the bill would be contrary to the legislative intent to have one single statewide comprehensive system of water regulation in the state. To exempt any class of beneficial users from the permitting process does not exempt the users from possible regulation under the KWAA. The KWAA provides that, "it shall be unlawful for any person to prevent, by diversion or otherwise, any waters of this state from moving to a person having a prior right to use the same ..." Whether such uses are permitted or not, they still would not have any right to impair any other water rights in the state. Permitting pits is extremely important because, unlike other water uses which can be regulated or

shut off if they adversely affect someone else, it is extremely difficult to physically control evaporation once the groundwater table is exposed.

Third, as with many water uses in the state, the statewide total water use is relatively small, however, the local impact can be quite significant. For example, a sand pit in Finney county which exposes 50 acres of water table has an average annual net evaporation of 48 inches. In an average year, the net evaporation from the surface of that sand pit would be 200 acre feet. This is a significant amount of water, especially in an area closed to new appropriations, or at least any new appropriations over five acre feet per year. It makes very little sense to tell someone wishing to drill a well to pump ten acre feet for stock watering or a small business that they cannot have a new permit, but still allow unregulated construction of a large sand pit in the same area which will appropriate 20 times that amount of water forever.

Fourth, all other users of water in the state which cause evaporation to the source of water supply are required to get permits for evaporation. These would include recreational users, wildlife refuges, and power plants who use water for cooling purposes. If you exempt sand and gravel pit operators from getting a permit for evaporation use which occurs as a consequence of their operation, what would be the technical basis for not exempting other users who cause evaporation to the source of supply? The Division recently concluded a court case with a power plant that did not wish to have a permit for industrial use for evaporation from its cooling lake. Eventually, the power company agreed to a reasonable method of calculating evaporation as a part of its water use.

Any depletion of the source of water supply caused by an activity of humans affects the water supply available to others in the system. It is vitally important that the Division of Water Resources be able to regulate all users.

Fifth, exempting pit operators from the KWAA at this late date would be terribly inequitable to those operators who have dutifully complied with the law and expended substantial sums of money to purchase existing water rights to keep their operations lawful in accordance with provisions of the KWAA.

Sixth, the Division of Water Resources has attempted to work with the Aggregate Industry since 1986, to bring it into compliance with the KWAA. While I won't review the history of these efforts in detail, I would like to emphasis certain key points:

(a) On December 3, 1990, at the request of the legislature, I amended the regulations to remove the large quantity of water recirculated for hydraulic dredging from the industrial use category, and coincidentally relieve the aggregate producers from paying the Water Protection Fee for the large quantities of water recirculated solely for hydraulic dredging purposes. K.A.R. 5-1-1(f) and (gg).

(b) As of May 1, 1993, I waived the safe yield or allowable appropriation criteria to allow the aggregate industry to file permits to appropriate water to the extent evaporation was occurring from the size of the water surface of the pits in existence as of May 1, 1993. In essence, all evaporation use occurring as of May 1, 1993, was grandfathered in.

(c) As to future evaporation from pits after May 1, 1993, the aggregate industry had the usual options of obtaining a new permit where water is available or acquiring an existing water right and filing a change application. I also gave the aggregate industry a third option of acquiring an equivalent active existing water right, preferably upgradient, in the same or hydraulically connected source of supply, and permanently retiring it to compensate for future pit evaporation. This was an unprecedented option I allowed only for the evaporation of groundwater from pits because pits lack a drawdown cone of depression and, therefore, have a unique effect on the stream-aquifer system.

(d) Effective November 28, 1994, by regulation I granted each pit a 15 acre foot exemption from the safe yield criteria to get a permit to cover any evaporation begun since May 1, 1993, to allow pits to continue operations while searching for additional water rights for future evaporation. K.A.R. 5-3-16.

(e) Ever since our meeting with the aggregate industry on December 20, 1993, we have indicated to the industry that we are still willing to consider any scientific or hydrologic information it has which would substantiate why evaporation should be exempt from the safe yield policy. To date, the little information that was submitted by the industry has not substantiated the basis for such a waiver or exemption. We have even studied the matter in-house, but to date the results are inconclusive. There is a possibility that there may be some scientific basis for exempting evaporation from safe yield criteria in the more water rich eastern part of the state of Kansas generally due to the higher rainfall, lower evaporation and proportionally less impact to the hydrologic

system. We are willing to continue to consider that possibility, but such an exemption would have to be adopted as a rule and regulation.

Conclusion

The Division opposes the passage of HB 2476 for the reasons set forth above. If the Legislature feels that the Division needs to further refine its administration in this area, we would suggest that the Committee table the bill until next year to allow the Division time to further explore an administrative solution.

I would be happy to answer any questions at this time.

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

Presentation of the
Kansas Corporation Commission On

HB 2416

The Kansas Corporation Commission is not taking a position on this proposed legislation, especially since we don't know what the purpose or intent of the bill is. However, we thought you might desire some information on non-published service that will help you evaluate the impact of the proposed bill.

Non-published service is an option available to customers in many areas of Kansas. When a number is non-published, it will not be printed in the local telephone directory, nor will it be available to the public through directory assistance. Three telephone companies in the state do not offer non-published service, the other twenty nine companies do offer some form of non-published service.

Most telephone companies also offer another similar service called "Non-list" service. When a number is non-list, it will not be printed in the local telephone directory, but it will be available to the public through directory assistance. Since the services are so similar, it may be of some benefit to clarify which is intended to be affected by the bill.

Pursuant to an legislative inquiry, the Commission staff compiled the following information, based on responses from over 85% of the local companies. Each telephone company has its own specific charge for non-published service. The rates range from no-charge to $2.00 per month. There are 130,785 subscribers to non-published service and the total yearly revenues collected by the telephone companies for this service is $3,014,361. We have not compiled information concerning non-list rates and revenues.

The impact of this bill would vary from company to company. Some companies would not be affected by this legislation since they either do not offer the service, or else offer it free of charge. Others may be significantly affected by the reduction in revenues. The impact on individual companies ranges from none to $2,000,000.

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Attachment #6

STATE OF KANSAS

JIM D. GARNER
REPRESENTATIVE, 11TH DISTRICT
601 EAST 12TH, P.O. BOX 538
(316) 251-1864 (H), (316) 251-5950 (O)
COFFEYVILLE, KS 67337
STATE CAPITOL, RM 284-W
TOPEKA, KS 66612-1504
(913) 296-7675
1-800-432-3924 (DURING SESSION)

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING DEMOCRAT: JUDICIARY
MEMBER: SELECT COMMITTEE ON JUVENILE CRIME
SELECT COMMITTEE ON HIGHER EDUCATION
RULES AND JOURNAL
KANSAS JUDICIAL COUNCIL
CRIMINAL LAW ADVISORY COMMITTEE
NCSL ASSEMBLY ON FEDERAL ISSUES—LAW AND JUSTICE COMMITTEE

22 February 1995

TESTIMONY BEFORE THE
HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON H.B. 2416

Mr. Chairman and members of committee:

Thank you for the opportunity to appear in support of H.B. 2416. H.B 2416 would simply prohibit telephone companies operating in our state from charging special fees for consumers who requests unpublished phone numbers.

This bill is needed because consumers who wish to have unpublished telephone numbers and who pay for this service are actually paying for a service they no longer receive. Since the advent of the new "Caller ID" technology, no one has an unlisted phone number.

In the past, I have pushed for legislation to regulate the use of "Caller ID". The previous legislation would have required any telecommunication company offering a caller identification service to allow callers, who so requests, to block disclosure of the display of their telephone number, on a per line basis, to any such caller identification devise.

Since at least 1987, telephone companies have been starting to offer the new "caller identification" service. This service displays the telephone number of the calling party each time the phone rings. This technology is now a reality in Kansas. I have raised the concerns over individual rights to "informational privacy," particularly a person's right to control who has access to his or her telephone number.

My success has not been too good with my caller id bills. In 1992, the House Committee on Computers, Communication and Technology did not pass the bill out, and last year, this committee used the "Caller ID" bill as a vehicle to pass TeleKansas II. This year, I decided to give up on the idea of regulating disclosure of numbers on caller identification devises. However during the second week of the session, I saw the new advertising campaign promoting Caller ID (see attachments). I was amazed to learn that the new devises do not only display the incoming caller's phone number, but also displays the caller's name.

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attachment #7

Upon additional investigation, I learned that the name and number is displayed regardless of whether the number is listed or unlisted. Thus, for all practical purposes, there is no longer unpublished telephone numbers in the State of Kansas. It is not fair to let people think that they are buying a service (unpublished numbers) when in reality their number is freely displayed to anyone having a caller identification device.

Currently, there are 130,785 unlisted phone numbers in Kansas, according to the Kansas Corporation Commission. Of the 32 phone companies operating in Kansas, five charge no fee for the service of a "unpublished" number. The remaining companies charge a fee of from $0.50 to $2.00 per month. The total revenue for the phone companies is $251,196.75 each month in these charges. I feel these individuals are paying a fee for a service they no longer receive.

Again, I thank you Mr. Chairman for holding hearings on this bill. I ask the Members of the Committee to recommend favorable passage of H.B. 2416.

Caller ID. Now with number and name.

Now that you can get it with name display, Southwestern Bell's Caller ID packs a lot more punch. Order Caller ID with name display by February 28, and get free service connection. Call 1-800-234-BELL.

Southwestern Bell Telephone

7-3

KANSAS TELEPHONE COMPANIES			
Company	Non-Published Rate	No. of Customers	Total Monthly Non-Published Revenues
1	$0.50	0	$0.00
2	$1.00	18	$18.00
3	$0.50	3	$1.50
4	Does not offer non-published service		
5	$1.00	126	$126.00
6	$1.25	170	$212.50
7	Does not offer non-published service		
8	$0.50	14	$7.00
9	$0.50	56	$28.00
10	$0.50	275	$137.50
11	$1.00	130	$130.00
12	Does not offer non-published service		
13	$0.50	9	$4.50
14	$0.50	102	$51.00
15	$0.50	223	$111.50
16	$2.00	114,405	$228,810.00
17	$1.90	10,618	$20,174.00
18	$1.00	166	$166.00
19	$1.00	41	$41.00
20	$0.75	261	$195.75
21	$0.00	1	$0.00
22	$1.00	175	$175.00
23	$1.00	57	$57.00
24	$1.00	184	$184.00
25	$0.00	83	$0.00
26	$0.50	705	$352.50
27	$0.00	401	$0.00
28	$1.00	214	$214.00
29	$0.00	318	$0.00
30	$0.00	165	$0.00
31	$1.00	1,765	$1,765.00
32	$1.00	100	$100.00
Totals		130,785	$251,196.75

KTA

Legislative Testimony

Kansas Telecommunications Association, 700 S.W. Jackson St., Suite 704, Topeka, KS 66603-3731

Testimony before the
House Committee on Energy and Natural Resources

HB 2416

February 22, 1995

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of telephone companies, long distance companies, and firms and individuals who provide service to and support for the telecommunications industry in Kansas.

I appear today to voice the KTA's opposition to HB 2416. KTA members are concerned about the impacts the bill will have on their businesses.

First, it should be noted that the bill addresses only "unpublished phone number" service. Some KTA member companies differentiate between "non-published" service and "non-listed" service. Other companies treat the two categories as the same service. For companies that draw the distinction, "non-published" commonly means the number will not be printed in the telephone directory and it will not be available from directory assistance. "Non-listed" typically means the number is not in the telephone book listings, but is available through directory assistance.

Generally speaking, KTA members wonder at the timeliness of HB 2416. Competition in telecommunications is on a fast track nationwide. It seems that new telecommunications services are announced every day. Bills such as HB 2416, which could have the effect of limiting or discouraging services being offered to customers, seem to conflict with the future of telecommunications.

As to KTA members specific concerns about HB 2416, obviously there will be lost revenue for those companies that currently charge a fee for non-published service. Those revenues are taken into account by the KCC in setting the telephone company's overall rates and charges, but the bill would eliminate the revenue without eliminating the costs of providing the service.

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On another financial issue, the bill prohibits charging a fee for providing "unpublished phone number" service. In some cases, a customer must be assigned a new telephone number to receive "non-published" service. HB 2416 could be interpreted as prohibiting the fees normally charged when a customer's telephone number is changed. If that is the case, the lost revenue figure would be increased significantly.

Beyond those financial concerns, our members also are concerned with the potential for large amounts of extra work as more customers request what would become a free service with the passage of HB 2416. Currently, customers make a value judgment about whether or not to purchase non-published service. If HB 2416 was to become law, customers could opt in or out of non-published service on a whim, with few consequences for changing their minds several times.

The current system for "non-published" service is working well. Customers determine whether they want the service and are willing to pay for it. Telephone companies are reimbursed for their efforts and work hard to make sure their customers' wishes are met.

On behalf of the members of the Kansas Telecommunications Association, I ask that you report HB 2416 unfavorably. I will try to respond to any questions you may have.

HOUSE BILL No. 2475

By Committee on Energy and Natural Resources

2-14

AN ACT concerning the central interstate low-level radioactive waste compact; creating the low-level radioactive waste compact advisory committee and prescribe duties thereof.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) There is hereby established the low-level radioactive waste compact advisory committee. The advisory committee shall be composed of 24 members as follows:

(1) The Kansas member of the central interstate low-level radioactive waste commission;

(2) the chairperson, vice-chairperson and ranking minority party member of the standing committee on energy and natural resources of the senate and one minority party member of the standing committee designated by the chairperson of the standing committee;

(3) the chairperson, vice-chairperson and ranking minority party member of the standing committee on energy and natural resources of the house of representatives and one minority party member of the standing committee designated by the chairperson of the standing committee;

(4) the general counsel of the state corporation commission;

(5) the director of the division of utilities of the state corporation commission;

(6) the attorney general or a deputy or assistant attorney general designated by the attorney general;

(7) the head of the radiation safety office of the university of Kansas medical center;

(8) the head of the radiation safety office of Kansas state university; and

(9) 10 members appointed by the ~~Kansas member of the central interstate low-level radioactive waste commission~~ governor, as follows:

(A) Four members representing the interests of hospitals in this state;

(B) three members representing the interests of nuclear generation facilities in this state;

(C) two members representing the interests of electric public utilities in this state which sell power generated by nuclear generation facilities in this state; and

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(D) one member representing the interests of other industries in this state which generate low-level radioactive waste.

(b) The Kansas member of the central interstate low-level radioactive waste commission shall serve as chairperson of the low-level radioactive waste compact advisory committee.

(c) The low-level radioactive waste compact advisory committee shall meet on call of the chairperson of the advisory committee and shall consult with and advise the chairperson regarding the chairperson's duties as the Kansas member of the central interstate low-level radioactive waste commission.

(d) Members of the low-level radioactive waste compact advisory committee shall receive amounts provided for in subsection (e) of K.S.A. 75-3223 and amendments thereto. enumerated in subsections (a)(2) through (a)(8)

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

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fective until 45 days after the beginning of the next ensuing session of the legislature, which date shall be specifically provided in such rule and regulation.

(2) The provisions of subsection (c)(1) shall not apply to rules and regulations adopted before January 1, 1995, which establish standards for location, design and operation of solid waste processing facilities and disposal areas.

(d) The secretary shall not adopt any rules and regulations establishing soil compaction or soil percolation standards for any solid waste disposal area, or expansion or alteration of any solid waste disposal area, which was permitted and in existence on January 1, 1995, if monitoring wells indicate no groundwater pollution from such disposal area.

Sec. 2. K.S.A. 1994 Supp. 65-3406 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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Any solid waste disposal area which qualifies for the exemption provided for by subsection (b) and which successfully demonstrates that naturally occurring in-place soils provide sufficient protection against groundwater contamination shall not be required to construct a landfill liner or leachate collection system. The secretary shall adopt rules and regulations which establish criteria for performing this demonstration and standards for liner and leachate collection systems for exempt landfills which fail the demonstration. All solid waste disposal areas which qualify for the exemption provided for by subsection (b) shall be required to comply with all applicable federal requirements specified in subtitle D of the resource conservation and recovery act and 40 CFR Part 258, as in effect on the effective date of this act, or equivalent rules and regulations adopted by the secretary and approved by the U.S. environmental protection agency, including location restrictions, operating requirements and closure standards for municipal solid waste landfills. Operating requirements include, but are not limited to, hazardous waste screening, daily cover, intermediate cover, disease vector control, gas monitoring and management, air emissions, survey controls, compaction, recordkeeping and groundwater monitoring.

The identification of groundwater contamination caused by disposal activities at a solid waste disposal which has qualified for the exemption provided for by subsection (b) shall result in:

(1) The loss of such exemption; and

(2) the application of all corrective action and design requirements specified in federal laws and regulations, or in equivalent rules and regulations adopted by the secretary and approved by the U.S. environmental protection agency, to such disposal area.

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HOUSE BILL No. 2437

By Committee on Energy and Natural Resources

2-8

AN ACT concerning the citizens' utility ratepayer board; amending K.S.A. 66-1222 ~~and 66-1223~~ and repealing the existing ~~sections~~ section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 66-1222 is hereby amended to read as follows: 66-1222. (a) There is hereby established a citizens' utility ratepayer board which shall consist of five members appointed by the governor. Subject to the provisions of K.S.A. ~~1992~~ *1994* Supp. 75-4315c *and amendments thereto*, the governor shall appoint one member from each congressional district and the remainder from the state at large. *Not more than three members shall be members of the same political party.* The members of the board shall serve for a term of four years. All vacancies in office of members so appointed shall be filled by appointment by the governor for the unexpired term of the member creating the vacancy.

(b) The board shall organize annually by the election from its membership of a chairperson and shall adopt such rules of procedure as the board deems necessary for conducting its business.

(c) The board shall hold such meetings as in its judgment may be necessary for the performance of its powers, duties and functions. Appointive members of the board shall receive ~~compensation, subsistence allowances, mileage and other expenses, *except subsistence,*~~ compensation, subsistence allowances, mileage and other expenses for attending meetings of the board as provided by K.S.A. 75-3223, and amendments thereto.

~~(d) The state corporation commission shall provide such technical and clerical staff assistance as may be requested by the board in the administration of the provisions of this act.~~ (d) The state corporation commission shall provide such technical and clerical staff assistance as may be requested by the board in the administration of the provisions of this act.

~~(e) (d)~~ (e) The board shall administer this act and shall have and may exercise the following powers, duties and functions:

(1) Employ an attorney as a consumer counsel;

(2) guide the activities of the consumer counsel; and

(3) recommend legislation to the legislature which in the board's judgment would positively affect the interests of utility consumers.

~~Sec. 2.~~ K.S.A. 66-1223 is hereby amended to read as follows: ~~66-1223. The consumer counsel may do the following:~~

~~(a) Represent residential and small commercial ratepayers before the~~

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state corporation commission;

~~(b) function~~ as an official intervenor in cases filed with the state corporation commission, including rate increase requests;

~~(c) initiate actions before the state corporation commission;~~

~~(d) represent residential and commercial ratepayers who file formal utility complaints with the state corporation commission;~~

~~(e)~~ *(b)* intervene in formal complaint cases which would affect *such* ratepayers; and

~~(f)~~ *(c)* make application for a rehearing ~~or seek judicial review~~ of any order or decision of the state corporation commission *which would affect such ratepayers*.

Sec. 3. K.S.A. 66-1222 ~~and 66-1223 are~~ hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

New Sec. 2.

CITIZENS' UTILITY RATEPAYER BOARD

(a) There is appropriated for the above agency from the following special revenue fund or funds all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures other than refunds authorized by law shall not exceed the following:

Utility regulatory fee fund.....$368,576

Gifts and donations fund.....No limit

Provided, That all moneys received by the citizens' utility ratepayer board for gifts and donations shall be deposited in the state treasury to the credit of the gifts and donations fund.

(b) On July 1, 1995, October 1, 1995, January 1, 1996, and April 1, 1996, or as soon after each such date as moneys are available, and upon receipt of certification by the state corporation commission of the amount to be transferred, the director of accounts and reports shall transfer from the public service regulation fund of the state corporation commission to the utility regulatory fee fund of the citizens' utility ratepayer board all moneys assessed by the state corporation commission for the citizens' utility ratepayer board under K.S.A. 66-1502 or 66-1503 and amendments thereto and deposited in the state treasury to the credit of the public service regulation fund.

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HOUSE BILL No. 2437

By Committee on Energy and Natural Resources

2-8

AN ACT concerning the citizens' utility ratepayer board; ~~amending K.S.A. 66-1222 and 66-1223 and repealing the existing sections~~ repealing K.S.A. 66-1222 through 66-1225,

Be it enacted by the Legislature of the State of Kansas:

Section 1. ~~K.S.A. 66-1222 is hereby amended to read as follows: 66-~~1222. (a) There is hereby established a citizens' utility ratepayer board which shall consist of five members appointed by the governor. Subject to the provisions of K.S.A. ~~1992~~ *1994* Supp. 75-4315c *and amendments thereto*, the governor shall appoint one member from each congressional district and the remainder from the state at large. *Not more than three members shall be members of the same political party.* The members of the board shall serve for a term of four years. All vacancies in office of members so appointed shall be filled by appointment by the governor for the unexpired term of the member creating the vacancy.

(b) The board shall organize annually by the election from its membership of a chairperson and shall adopt such rules of procedure as the board deems necessary for conducting its business.

(c) The board shall hold such meetings as in its judgment may be necessary for the performance of its powers, duties and functions. Appointive members of the board shall receive ~~compensation, subsistence allowances,~~ mileage and other expenses, *except subsistence*, for attending meetings of the board as provided by K.S.A. 75-3223, and amendments thereto.

~~(d) The state corporation commission shall provide such technical and clerical staff assistance as may be requested by the board in the administration of the provisions of this act.~~

~~(e)~~ *(d)* The board shall administer this act and shall have and may exercise the following powers, duties and functions:

(1) Employ an attorney as a consumer counsel;

(2) guide the activities of the consumer counsel; and

(3) recommend legislation to the legislature which in the board's judgment would positively affect the interests of utility consumers.

Sec. 2. K.S.A. 66-1223 is hereby amended to read as follows: 66-1223. The consumer counsel may do the following:

(a) Represent residential and small commercial ratepayers before the

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state corporation commission;

~~(b)~~ ~~function~~ as an official intervenor in cases filed with the state corporation commission, including rate increase requests;

~~(c)~~ ~~initiate actions before the state corporation commission;~~

~~(d)~~ ~~represent residential and commercial ratepayers who file formal utility complaints with the state corporation commission;~~

~~(e)~~ *(b)* intervene in formal complaint cases which would affect *such* ratepayers; and

~~(f)~~ *(c)* make application for a rehearing ~~or seek judicial review~~ of any order or decision of the state corporation commission *which would affect such ratepayers*.

~~Sec. 3.~~ K.S.A. 66-1222 ~~and 66-1223~~ through 66-1225 are hereby repealed.

Sec. ~~4.~~ 2 This act shall take effect and be in force from and after its publication in the statute book.

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2/23/9

INTRODUCTION: Victor and Yvette Holzmeister Klotz, representing Klotz Sand Co., Holcomb, KS. We currently employ 21 people, and hire on 5 - 8 extra trucks and drivers. My father began our business in 1977, and in 1987, I had a choice to either go to Chiropractic School or take over my fathers sand and gravel business. I chose to follow in my fathers footsteps, because it was what I knew, enjoyed, and believed I could make a decent living for my family with. Since that time, because of the water issues in our industry, I am extremely concerned that we may not be able to afford to stay in business, or continue the employment we currently do.

REASONING: We know the sand business, the problem has come with the obtaining and timeliness of receiving water permits from the Division of Water Resources. Specifically, we had waited the fair amount of time allotted to receive a water permit, but didn't receive it, so we called. We were told the document we needed still needed one signature, and it should go through anytime, but to give them another week. We did this, and were told week after week the same thing. We waited patiently, while continuing to pay employee wages, when we could not operate, hoping that the permit would come through. Finally, we could no longer continue to lose approx. $5,000 a day in lost revenue, continue to pay wages when not having the work to do because we did not have the permit, so we hired an attorney to meet with the DWR to hopefully obtain the signature we needed. Only when the attorney was physically in the DWR office did we receive the required signature, and of course, at our expense.

It has been next to impossible to obtain water rights, we even tried transferring ditch rights, but were told we could not. Water rights are not readily available and the ones that are, are extremely expensive. We have checked into this. These are expenses our company may not be able to overcome and if we can not, the result would be lost jobs, and more unemployment. And if by some chance, we do overcome the expensive burden our industry has been left with, will there be anyone that can afford the cost of our product? 90% of our business is to the State of Kansas - we do our best to save the State dollars in all of the road and highway work, and hope we will be able to continue serving the State of Kansas.

We thank you for giving us the opportunity to speak and we sincerely request you support on HB2476.

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Nadine Stannard

Thank you.

Sand is a basic construction material. Sand is the strength of brick, of concrete, of asphalt, even of glass.

Yet for all its basic commonness sand is concentrated in its availability. To use sand economically we have no choice but to go where the sand is; to extract sand from large commercially viable deposits wherever we can find them.

I am the owner and president of Associated Material & Supply Co. in Wichita. We employ 13 people who produce about a half million tons of sand each year.

The process is to remove the top soil which the trucking industry supplies to top soil contractors. Under the top soil is the fill dirt used for compactable material under buildings and for other construction projects. Under the fill dirt is the sand and gravel which is below the water table, and, therefore, needs to be conveyed to a processing plant in a slurry of sand and water. After the sand is processed, the water seeps out of the sand piles and back into the ground below.

As the dredging process proceeds more land needs to be stripped of the top soil and then fill dirt to expose the clean sand.

After the major deposits have been removed, the clean, clear lake which remains is ready for other beneficial uses. These lakes are perfect backdrops for homesites, parks, native trails, and businesses alike.

I'm from the Wichita, so I'm familiar with the areas that were sand pits there. The zoo and West Sedgwick Park area were sand pits. Twin Lakes was a sand pit. The Moorings, a housing area, was developed on a sand pit.

Associated Material has been in business since 1934 when my father-in-law established the corporation. Later my brother-in-law and husband grew into the business. When they retired in 1989, I bought the company from them.

That's when I became involved in trying to acquire water rights for operations that had been invested in years before. The Division of Water Resources told me that because the pit was already there that body of water would be granted water rights, but that water rights weren't available for any enlargement of the pond. I had to submit two applications for each production site. One application for the existing body of water and another application for additional area to be added to the pond.

I have water rights to allow for the development of part of each parcel of land purchased and permitted for the production of sand. I can not get water rights so I will be laying off some of my employees if some alternative isn't available.

I encourage you to support HB 2476

Are there any questions?

Thank you.

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Attachment #4