

Approved: Carl Dean Holmes
Date 2/13/96

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:37 p.m. on January 31, 1996, in Room 526-S of the Capitol.

All members were present except: Representative Terry Presta - Excused

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

Conferees appearing before the committee: Lon Ingram, Kansas Department of Transportation
Bill Craven, Kansas Resource Council
Mark Maher, Citizens for the Future of Jefferson County
Lance Burr, Friends of the Kaw
Mike Calwell, Friends of the Kaw
Bob Neis, Weaver Bottom Drainage District

Others attending: See attached list

Chairperson Holmes opened the meeting with some agenda announcements and distribution of the Kansas Corporation Commission Conservation Division Remediation Site Status Report. (Copies available in the Research Department)

Hearing on HB 2663: Increase in royalties on sand taken from state rivers and removal of exemption of sand taken for governmental use

Lon Ingram. Mr. Ingram, Bureau Chief for the Bureau of Materials and Research, represented the Kansas Department of Transportation and provided testimony on the fiscal impact of **HB 2663** on the Transportation Department. (Attachment #1)

Questions followed.

Bill Craven. Mr. Craven testified in support of **HB 2663** and of increasing the royalty figure even higher. (Attachment #2)

Mark Maher. Mr. Maher, representing Citizens for the Future of Jefferson County and Friends of the Kaw, testified in favor of **HB 2663**. (Attachment #3)

Lance Burr. Mr. Burr, co-founder of Friends of the Kaw, spoke in behalf of **HB 2663**. He submitted information to the interim committee this fall and will provide extra copies to the current members of the Committee. His group feels the \$.15 is an artificial price and doesn't think the sand in the Kaw River should be sold at any price. The seventeen dams that trap water before it hits the Kaw River are taking the sand from the high regions, and there is not a replenishment rate of sand from the Kaw anymore. Many farmers have lost considerable acreage as sand is pulled from the banks.

He invited the committee members to canoe the Kaw River anytime they would like to this spring. He has talked to several business/landowner people on the river who are willing to lease their land for sand production; off-river sand dredging. They are especially interested if some of the recommendations of the experts on reclamation of sand dredging pits are adopted.

Mike Calwell, who will be speaking next, gathered information on the price of sand from on-river locations versus off-river locations. This was presented to the interim committee. Kansas has the lowest priced sand in the United States; partly because we are giving away a valuable resource and because we have such tremendous sand deposits.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m., on January 31, 1996.

Mr. Burr would like to see the language of Line 36 of the bill to be specific that "a person's own domestic use" is for use and not for resale. His group feels that the Kaw River should remain natural and suggests a staggered increase from the \$.08 to the \$.15 this year and then go on up over the next five years to \$.50 to encourage people to get out of the river.

He's been told the Kaw River is 50th in the United States in water quality and is the 6th most endangered river in the North American continent, and he feels it is time for the leaders to roll up their sleeves and deal with it to protect it for future generations.

Mike Calwell. Mr. Calwell distributed reprints of a Guest Editorial from the January, 1996, issue of Kanhistique. The article is on page 10 and is entitled "Your Kansas River Is Now in Danger!" (Copies available in the State Library)

He reviewed the topic of sand availability which he covered with the interim committee back in October. He found out from the well library at the Kansas Geological Survey Office in Lawrence that the Kaw River Valley Basin had enough sand to last indefinitely for pit mining away from the river.

The key concern of Water District No. 1 in Johnson County is the removal of silt from the water. It is the single most expensive thing they face on a daily basis and is much higher than what they are taking in from royalties. Once the sand is taken out of the river, it can't be rebuilt or repaired.

The chairperson clarified for the Committee that currently 50% of the revenues from the sand royalty goes to the State Water Plan. Before last year's legislation that clarified this, that 50% went to the State General Fund. The other 50% goes back to the county and drainage districts. The percentage figures in the bill are there to try to hold constant what is going back to the county and drainage districts.

Questions and discussion followed. The Chair allowed a gentleman from a drainage district who wanted to comment.

Bob Neis. Mr. Neis is the secretary/treasurer of the drainage district in Weaver Bottom. The district is in favor of the \$.15 raise, but they want the money to come back to the drainage district to protect the ground. The Corps of Engineers is letting the water out of the reservoir with such force that the landowners are losing their ground. There are piles of sand to be dredged, but they aren't allowed to dredge where it will save two bottoms. The drainage district wants to get back enough money so they can put in rock jetties to stabilize the ground.

More questions and discussion followed after which the hearing was closed.

The meeting adjourned at 5:10 p.m.

The next meeting is scheduled for February 1, 1996.

ENERGY AND NATURAL RESOURCES COMMITTEE
COMMITTEE GUEST LIST

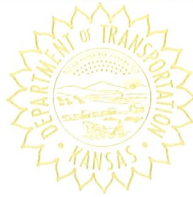
DATE: January 31, 1996

NAME	REPRESENTING
Clifford Neis	
David Perry	Kow Sarda Co
William Lottberg	Weaver Bottom Drainage Dist
Robert Neis	Weaver Bottom Drainage Dist
MURL WESTHEFFER	FARM INTERESTS
Don Westhoffer	Farm Interests
Mary Shuiers	KDOT
Jan Ingram	KDOT
Charles Miller	KAPA, Topeka
Tecy Leatherman	KCCI
Duane Waterworth	Division of the Budget
Lee Gerhard	Kansas Geological Survey
Lawrence Brady	Kansas Geol. Survey
Dave Hobbs	Western Resources
Mark Make	Citizens for the Future of Jefferson County
Janice Bann	Friends of the Kaw
Patty Beyer	Friends of the Kaw
John De	Friends of the Kaw
Mike Colwell	Friends of the KAW

ENERGY AND NATURAL RESOURCES COMMITTEE
COMMITTEE GUEST LIST

DATE: January 31, 1996

NAME	REPRESENTING
Anne Spiess	Ks. Assoc. of Counties



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**TESTIMONY BEFORE THE
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**
Regarding H.B. 2663
Eliminating the Public Entity Royalty Exemption
on River Sand

January 31, 1996

Mr. Chairman and Committee Members:

On behalf of the Kansas Department of Transportation, I am here today to provide testimony on the fiscal impact of H.B. 2663 on the Department.

The Kansas Department of Transportation interprets the provisions of H.B. 2663, as it affects sand production, to be limited to sand produced directly from a river. As such, we believe that only sand produced from the Kansas and Missouri Rivers in Northeast Kansas will be affected. Since only a small portion of the sand purchased by the Kansas Department of Transportation is believed to be affected, the fiscal impact of H.B. 2663 on the Department is considered to be minimal. If, however, future actions should extend these increases to all locations where sand is produced, the fiscal impact could be much more significant for the Kansas Department of Transportation.

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The Kansas Department of Transportation contracts for the purchase of hot mixed asphalt and concrete products that contain river sand. The Department also purchases a minor amount of river sand for use as snow and ice control aggregates and as maintenance repair aggregates.

Figures provided by the Kansas Aggregate Producers Association were used to assess the fiscal impact of H.B. 2663 on the Kansas Department of Transportation. Total production of river sand is estimated to be 2.25 million tons. About seventy percent of that production is provided for public use. About half of that seventy percent is used by the Kansas Department of Transportation. These estimates yield an increase in annual costs of \$ 118,125 for the Department.

(2,250,000 tons X 0.7 X 0.5 X \$0.15 per ton)



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Testimony of Bill Craven
Kansas Natural Resource Council and
Kansas Sierra Club
H.B. 2663
House Energy and Natural Resources Committee
Jan. 31, 1996

Thank you for the opportunity to testify, basically as a proponent, on this bill. This was an issue considered by the interim committee, and this is the first of several bills dealing with Kansas River-related matters. To assist those of you who weren't involved during the summer, the basics are as follows: The Kansas Water Authority last summer authorized the Department of Wildlife and Parks to conduct a study of whether a recreational corridor in and along a stretch of the Kansas River should be established. This effort is widely supported across the state. Separate and apart from the recreational corridor, a significant number of groups are also working to establish a natural heritage project along the Kansas River to call attention to the importance of the valley to the Indian Nations, to agriculture, and to the settlement of northeastern Kansas. This natural heritage project is thus far entirely a project that doesn't involve legislation.

The importance of this bill for the river is obvious: The Kansas River, for all practical purposes, is the only river in the state where a recreational corridor can be established. It is the only navigable river in the state owned by the people. You all know that the Arkansas and the Missouri rivers are considered navigable, but for practical purposes, the Kansas River is truly the only river available to the public. Just as important, the sand is also owned by the people.

For many of us, our work along the Kansas River is a matter of even greater importance than it was last year. I hope this isn't the first you learn of the death of KNRC founder and long-time president Bill Ward. Bill was 49, and died from an unexpected heart failure. Bill was involved in nearly every environmental and energy policy question that has surfaced before this committee, and I know that some of you knew him well and had great respect for his ability and integrity. Bill had the original insight to create a public corridor along the river, and at his services less than five weeks ago, his family and his friends agreed to dedicate our work along the river in his memory. It is our hope that one day his vision is realized and that the corridor is named after him as a tribute. As many of you know, Ken Grotewiel, a former member of this committee, is now the president of KNRC.

Among the issues contained in the interim report is the issue of whether the royalty should be increased. The considerations are these: (1) The current royalty of 8¢/ton is low when compared to what private landowners receive from operators in other parts of the state. My information is that those royalties range from approximately 25¢ upwards to a dollar or so. This information is not readily available or reported publicly. That is the range I have heard, but I wouldn't take an oath to that effect. (2) The current royalty creates an incentive to dredge sand from a public resource without due regard for the environmental implications. (3) The current royalty creates a disincentive for operators to obtain sand from the floodplain from land owned by private landowners. (4) The existing system essentially subsidizes dredgers to obtain public sand from a public resource and sell it

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for private gain. This might be acceptable if Kansas River sand were the only source available. But a lot of sand is available elsewhere.

During the interim hearings, there was testimony about the environmental effects of sand-dredging, and there was testimony as to the availability of sand in and around Lawrence from the floodplain. This is not an issue of impeding growth and development or the availability of sand in the Lawrence area or anywhere else.

I support the provisions in lines 32-36 pertaining to an exemption from royalties for personal, domestic use.

Section 2 of the bill deals with the issue of how royalties are distributed. I recognize that a separate bill, H.B. 2616, which has passed the House, also deals with that question. I didn't testify on that bill because I knew this bill was also in the works. My only comment on this issue is that I would suggest that some small amount of the proceeds from royalties be used to help fund the study now being conducted by the Department of Wildlife and Parks. Currently, that study is being conducted with existing resources. That means (1) it may take longer than if additional resources were dedicated to this study, and (2) that the study won't have the benefit of a private consultant, who could probably add quite a bit to what is presented to the department, to the water authority, to the public, and to the legislature.

My main point in testifying is to address the increase in the royalties. Frankly, I don't think the 15¢/ton proposal is sufficient. My intent is not to be punitive. Rather, my intent is select a figure that accomplishes the objective of creating an incentive for dredgers to move off the river. I would urge that the committee amend line 26 to increase the royalty to the 25¢/ton or 30¢/ton figure, and escalate that figure by a two or three cents every two years thereafter. There is substantial doubt that the recreation corridor can co-exist with dredging which moves into stretches of the river where dredging has never before occurred. It is also important to realize that the royalty figure can be revisited after the completion of the ongoing study.

Thank you for the opportunity to appear before the committee.

Comments to: The House Committee on Energy and Natural Resources

Regarding: A proposal to increase the royalty assessed for sand and gravel dredged from Kansas's navigable rivers (the Kansas, Missouri, and Arkansas Rivers)

Submitted by: Mark Maher for Citizens for the Future of Jefferson County and for Friends of the Kaw, on January 31, 1996

I am in favor of increasing the royalty assessed per ton of sand mined from 8¢ to at least 15¢ per ton. While there are several valid reasons for such action at this time, I wish to address but one. The Legislature needs to provide for a measure of accountability currently and historically absent from the administrative oversight process.

The Kansas Department of Revenue is responsible for collecting and disbursing sand royalty funds. The annual royalty receipts from the sand and gravel industry have ranged from \$159,000 to \$273,000 since the fee was set at 8¢ per ton effective January 1991. KDOR annual expenses for administering the funds have ranged from a low of \$14,086 to a high of \$26,999 from 1991 through 1995, roughly 10% of the value of collections.

A \$14,000 to \$27,000 allowance for administrative expenses has been too low to permit the agency to develop much less put into practice an ongoing quality control review or even an intermittent audit of the mining industry's reports of monthly or annual production. In other words, the agency has accepted the production figures submitted by the operators year after year without verification. KDOR is not alone in this practice. No other state or federal agency including the U.S. Army Corps of Engineers has made a single, much less an ongoing systematic attempt to verify the industry's production reports.

By now, staff from KDOR and USACE and some members of the State House and Senate are aware of a regulation in place since January 1, 1966 (K.S.A. 71-102, 71-103) which exempts sand from royalty assessment when it is sold to state agencies or any other municipal corporation. Copies of the regulations pertaining to sand royalty collections were submitted to the Interim Committee in September, 1995. I subsequently visited with staff at KDOR and confirmed 1/1/66 as a correct effective date. KDOR is not however responsible for tracking royalty exemptions. No state or federal agency tracks how much sand is mined from Kansas's navigable rivers and then sold for state, county, and city projects in any given year.

The Interim Committee heard testimony in October that the industry's spokesman estimated in spring of 1995 that 80% of Kansas's sand and gravel production was consumed by public works projects. When later questioned about the accuracy of that figure by the USACE regulator, the spokesman responded that he had inflated the percentage to some degree, without offering an alternative value. The Interim Committee also received testimony that the foremost authority on sand and gravel production for the U.S. Bureau of Mines recently wrote "between 80-95% of the aggregates produced in the U.S. are used for construction

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purposes such as highways, roads, airports, dams, buildings and private homes." While this doesn't prove that a 80/20 ratio of public to private sand consumption can be used as a convenient rule of thumb, it does lead us in that direction.

Presumably, documentation exists somewhere which would prove how many tons of sand are being mined under the royalty exemption provision. Neither the industry spokesman nor any of the mining operators have volunteered to collect or release that information to the Corps, KDOR, any other state or federal agency, or to private or public interest groups concerned about the industry's regulatory compliance. I and others have submitted written requests to the Kansas Department of Transportation to learn how much sand that agency purchased under the exemption provisions through all or even part of the 1991-1995 period. Their minimal charge for providing such information (\$500 deposit with the likelihood of substantial additional charges) was beyond our ability to pay.

What percentage of possible public works sand consumption is revealed by a comparison of the industry's two sets of production figures reported following the 1990 publication of the Corps' much quoted Final Regulatory Report and Environmental Impact Statement of Commercial Sand Dredging on the Kansas River? As noted above, the producers report only the tonnage subject to royalty payments to KDOR (monthly). They send total production figures semiannually to the USACE's regulatory branch.

	Total for Kansas River Reported to the USACE	Amount Subject to Royalty Assessment Reported to KDOR for the Kansas River	Balance Subject to the Royalty Exemption
1991	2,995,262 tons	2,240,415 tons	754,847 tons
1992	2,855,898 tons	1,847,340 tons	1,008,558 tons
1993	2,916,094 tons	1,946,301 tons	969,793 tons
1994	2,697,723 tons	2,301,439 tons	396,284 tons
1995	second half of 1995 data not yet submitted	2,860,243 tons	likely less than 400,000

The total annual sand extraction permitted for all active Kansas River dredging sites in any given year following the implementation of the Corps' regulatory plan was very close to 3,000,000 tons. A producer reporting production in excess of his permitted amount to the Corps would face the loss of his operating permit. As I reported in October, if the industry is submitting accurate reports to the Corps and to KDOR, the portion of the total tonnage mined and used for public works projects ranged from a peak of 35% in 1993 to a downward trending low of well under 15% from January 1994 projected through December 1995. As one of your members concluded last fall, the figures just don't add up.

On the average, the population of Kansas consumes sand at the rate of approximately 4 tons per person per year. One would expect the high-growth Northeast Kansas/Kansas River Valley region to have been

consuming sand in excess of that amount during the last five or six years. As you can see above, sand is being mined from the Kansas River at a rate of approximately three tons per person per year. Approximately a tenth of that amount is being mined from pits in the region, still leaving the area apparently "sand short." Mining operators have suggested during public hearings over the past year that Missouri River sand has been making up whatever shortfall has occurred due to the impact of the USACE regulatory plan. However, if you examine the dredging industry's 1994 (1995 pending) production report of sand taken from their Missouri River operations from St. Joseph south and east approximately 120 miles downriver, a prudent person would doubt that sufficient sand is available to meet the growing K.C. Missouri metropolitan area demand and that of Northeastern Kansas. I submitted details about the Missouri River sand production to the Committee last fall. Lacking further documentation, I have concluded that some producers are substantially underreporting their production figures to both KDOR and USACE.

I suggested to the Interim Committee that a historical analysis of the sand and gravel mining industry's compliance or non-compliance with KDOR regulations during the life of the royalty exemption provisions might be most effectively undertaken by the Legislative Post Audit, and not by one or more concerned citizens or by their elected representatives.

I suggest to you now that an increase of at least 7¢ per ton in the royalty assessment would allow the agency in charge of collections to fund accounting practices which: would not decrease the money currently available to the qualifying counties and drainage districts; should greatly improve the credibility of the regulatory system by limiting the ability of a few or even one unethical operator to take advantage of others trying to conduct business honestly; and must improve the probability that the public's interests are being protected by the fair and equitable enforcement of state law and regulations.

I thank you for allowing me to appear before you today.

Mark Maher

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