

Approved: Carl Dean Holmes
Date 4-24-96

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 7:10 a.m. on April 24, 1996, in Room 519-S of the Capitol.

All members were present except:

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:

Others attending: See attached list

Chairperson Holmes distributed the Minutes of March 7, 8, 11, 12, 13, 14, 18, 25, and 27 to the members for their review.

Action on SB 755: Funding of remediation of certain oil and gas contamination sites and costs of plugging abandoned oil and gas wells

A letter to Governor Graves from Kent Lamb, chairman of the Kansas Water Authority, regarding **SB 755** was distributed to the members. (Attachment #1)

A Proposed House Substitute for **SB 755** was distributed by the Revisor. (Attachment #2)

Representative Tom Sloan moved that the House Substitute for SB 755 be passed out favorably. Representative Laura McClure seconded the motion. Discussion followed. The motion carried.

Action on Sub SB 621: Waters of the state; evaporation from sand and gravel pits

Representative Dennis McKinney moved to strike the provisions of Sub SB 621 and insert the provisions of HB 2615. Representative Steve Lloyd seconded the motion. Discussion followed. The motion carried.

Representative Dennis McKinney moved that Sub SB 621 be passed out favorably as amended. Representative Steve Lloyd seconded the motion. The motion carried.

Action on SB 617: Moratorium on sand dredging along portions of the Kansas river

Representative Don Myers moved to table SB 617. Representative Rich Becker seconded the motion. The motion failed.

Representative Richard Alldritt moved that SB 617 be passed out favorably. Representative Joann Flower seconded the motion. Discussion followed. The motion and second were withdrawn on request of Representative Laura McClure.

Representative Laura McClure distributed a rough draft of an amendment to **SB 617** and explained the changes which would narrow the scope of the study of the development of a recreational corridor along the Kansas River. (Attachment #3)

Representative Laura McClure moved to adopt the amendment to SB 617. Representative Becky Hutchins seconded the motion. Discussion followed. The motion failed.

Representative Clay Aurand moved to amend SB 617 on page 1 by reinserting the stricken language in lines

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 519-S Statehouse, at 7:00 a.m., on April 24, 1996.

33-37. Representative Terry Presta seconded the motion. Discussion followed. The motion failed.

Representative Terry Presta moved to amend **SB 617** on page 2, line 30, by striking "March 1, 1998" and inserting "March 1, 1996." Representative Steve Lloyd seconded the motion. Discussion followed. The motion failed.

Representative Laura McClure moved to amend the original **SB 617** on page 1, line 41, by striking "\$.08" and inserting "\$.15" per ton taken; and on her amendment to **SB 617** on page 3, line 7, by striking "in conjunction with" and inserting "and . . ." and on line 16 and 17, by striking "to send one representative . . ." Representative Richard Alldritt seconded the motion. Discussion followed. The motion carried.

Representative Doug Lawrence moved to amend **SB 617** on page 1 by striking all of Section 1. Representative Tom Sloan seconded the motion. Discussion followed. The motion carried.

Representative Laura McClure moved to amend **SB 617** on page 3, line 1 (c) by inserting "or sand dredging to maintain channel flow." Representative Tom Sloan seconded the motion. The motion carried.

Representative Dennis McKinney moved to amend **SB 617** on page 3, New Sec. 4, line 6, by inserting "the Kansas Geological Survey in conjunction with the Department of Wildlife and Parks, Kansas Water Office, and Department of Commerce . . ." Representative Tom Sloan seconded the motion. Discussion followed. The motion carried.

Representative Tom Sloan moved to amend **SB 617** on page 3, New Sec. 4, by inserting "The cost of this study shall be prorated among the four state agencies now identified in the bill on the basis of their budget size." Representative Dennis McKinney seconded the motion. Discussion followed. The motion carried.

Representative Tom Sloan moved to amend **SB 617** on page 3, after line 17, by inserting "(l) all land owners along the river; (m) Lower Republican River Basin Advisory Commission; (n) Large consumers of river sand." Representative Dennis McKinney seconded the motion. Discussion followed. Representative Sloan withdrew the motion. Representative McKinney withdrew the second.

Representative Doug Lawrence moved to amend **SB 617** on page 3 by striking lines 16-29 and inserting "A public notification shall be required throughout the affected area of the entire river." Representative Laura McClure seconded the motion. The motion carried.

Chairperson Holmes distributed two handouts from the Kansas Aggregate Producers Association regarding **SB 617** and apologized for the delay in handing them out. (Attachments 4 & 5)

Representative Laura McClure moved that **SB 617** be passed out favorably as amended. Representative Richard Alldritt seconded the motion. Discussion followed. The motion carried.

Chairperson Holmes announced that this would probably be the last meeting of the Session. He praised this committee's accomplishments over the past two years and thanked the staff for their hard work.

Representative Joann Freeborn moved the Minutes for March 7, 8, 11, 12, 13, 14, 18, 25, and 27 be approved. Representative Bob Krehbiel seconded the motion. The motion carried.

The Minutes for today's meeting and for the April 4th meeting will be handed out this week and if no corrections are made, they will stand approved upon adjournment of the Session.

Representative Laura McClure thanked Chairperson Holmes for being so fair to all the conferees and the committee members.

The meeting adjourned at 9:25 a.m.

ENERGY AND NATURAL RESOURCES COMMITTEE
COMMITTEE GUEST LIST

DATE: April 24, 1996

NAME	REPRESENTING
Robert Russell	RUSSELL FARMS
Bob Hedman	—
Mary Shivers	KDOT
TOM DAY	KCC
TIM MCKEE	KCC
Steve Hatfield	RITCHIE SAND, INC
DAVE BARCLAY	ALSOP SAND CO.
DAVE WALKER	WALKER STONE, KONZA SAND
Don Schuack	KIOGA.
DAVID BLEAKLEY	EKOGA
DAVE MURFIN	KIOGA
Charles Clark	Holiday Sand & Gravel
Dave Penny	Kaw Sand Co.
William J Penny	Penny's Concrete, Inc.
William J Penny	Victory Sand & Gravel
Woody Moses	K. Aggregate Prod. Assoc
DAN STEVENS	TEXACO INC.
HUGH DIDIER	MEIER'S READY MIX, INC.
JOHN R. NEUNER	KANSAS SAND & CONCRETE INC

ENERGY AND NATURAL RESOURCES COMMITTEE
COMMITTEE GUEST LIST

DATE: April 24, 96 7AM

NAME	REPRESENTING
Jim Peterson	Victory Sand
Carol King	Victory Sand
Don Collins	Builders Sand Co.
Mike Beam	Ks LUSTK Assn.
Ken Peterson	KS Petroleum Council
Richard Martin	API
Offshoots	Western Resources
Janet Stubbs	Ks. Bldg. Ind. Assn.
Tommye Sherwood	Friends of the Kaw
DAVE MURPHY	Kansas Canoe Association + Kansas City Whitewater Club
J.P. Small	Mobil Exploration / Prod.
Jim Allen	EKO GA
Mark Maher	CITIZENS FOR THE FUTURE OF JEFFERSON COUNTY + FRIENDS OF THE KAW
Lance Burr	Friends of the Kaw
Beir Gaven	KARC / Sierra Club
Vicky Foth	Friends of the Kaw
Edward Rowe	League of Women Voters / Ks
Mike Calwell	Friends of the Kaw, Kansas Canoe Assoc.
Amelia McIntyre	Ks Dept of Wildlife & Parks

KANSAS WATER AUTHORITY

Suite 300, 109 S.W. 9th Street, Topeka, KS 66612-1249 (913) 296-3185

Kent Lamb, Chairman

RR 1, Box 69, Macksville, KS 67557 (316) 348-2315



April 15, 1996

Governor Bill Graves
Statehouse
Topeka, Kansas 66612

Dear Governor Graves:

The Kansas Water Authority met in Great Bend on April 10-11. One of the items under discussion was the status of Senate Bill 755, the abandoned oil and gas well fund bill. The Kansas Water Authority is very interested in the issue and thanks Chairman McKee and Mr. Heinemann for briefing the Quality Committee. The Kansas Water Authority supports the conceptual approach undertaken by SB 755 and wishes to convey their perspective on the issue.

First, the Authority recognizes State Water Plan Funds will play a significant part in the financing of any remediation package for oil and gas sites. The Authority requests the Kansas Corporation Commission participate in the Annual Implementation Process for the *Kansas Water Plan* to assist the agency in setting priorities for the next fiscal year. The Annual Implementation Plan will be developed by the Authority at its July 10-11 meeting in Topeka.

The use of the State Water Plan Fund under provisions of Senate Bill 755 is unlike the usual method of appropriation from that fund, in that the State Water Plan Fund makes a demand transfer to the Abandoned Oil and Gas Well Fund instead of agency programs. Therefore, the Authority will have to take this demand transfer, currently proposed at \$400,000, "off the top," prior to making recommendations to you this fall on expenditures from the State Water Plan Fund. Thus, this use of the State Water Plan Fund will be exempt from consideration of changing priorities over time. The Authority agrees with you on the priority of this issue, but asks that a sunset provision be tied to the demand transfer, similar to the proposed language of the House version. This provision would allow a revisit of the priority of remediating any remaining sites after a period of time.

The Authority is deeply concerned over the continued proliferation of abandoned oil and gas wells in the future. The funding approach taken under Senate Bill 755 is appropriate for addressing the issue of past or present sites. The Authority encourages the oil and gas industry to take steps toward assumption of financial responsibility by their operators to reduce the magnitude of this problem in the future. Again, language in the House version regarding financial responsibility would be appropriate. Furthermore, the two cents per foot intent to drill fee should be allowed to accumulate over time without restriction and directed toward abandoned wells after July 1 of this year.

House ENR
4-24-96
Attachment 1

Governor Graves
April 15, 1996
Page 2

The Kansas Water Authority supports you in your attempts to deal with the issue of oil and gas site remediation and plugging abandoned wells. Throughout the process of rectifying this problem, priorities need to be set to direct resources to the most onerous sites. The Authority welcomes the opportunity to work with the Kansas Corporation Commission and the oil and gas industry on addressing these issues, regardless of the outcome of Senate Bill 755.

Thank you for your leadership on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kent B. Lamb".

Kent Lamb
Chairman

KL:gvsb755.ltr/ja

cc: Tim McKee, Chair, KCC
David Heinemann, KCC
Senator Don Sallee
Senator David Kerr
Rep. Carl Holmes
Rep. Robin Jennison

PROPOSED House Substitute for SENATE BILL NO. 755

By Committee on Energy and Natural Resources

1 AN ACT concerning oil and gas; concerning the prevention of
 2 pollution and protection of water quality; providing for
 3 payment of costs of remediation of certain contamination
 4 sites and costs of plugging, replugging and repairing
 5 certain wells and remediation of pollution from such wells;
 6 amending K.S.A. 27-118, 55-151, 55-161, 55-179 and 55-180
 7 and K.S.A. 1995 Supp. 55-155 and repealing the existing
 8 sections; also repealing K.S.A. 1995 Supp. 74-632 and K.S.A.
 9 55-179, as amended by section 2 of 1996 Senate Bill No. 685.

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

11 New Section 1. As used in this section and sections 2, 5 and
 12 12:

13 (a) "Abandoned well" means any well that the commission has
 14 authority to plug, replug or repair under K.S.A. 55-179 and
 15 amendments thereto.

16 (b) "Commission" means the state corporation commission.

17 (c) "Contamination site" means any of: (1) The 17 sites of
 18 pollution from oil and gas activities, identified as of March 1,
 19 1996, over which jurisdiction was transferred from the department
 20 of health and environment to the commission by chapter 204 of the
 21 1995 Session Laws of Kansas; or (2) the 92 sites of pollution
 22 from oil and gas activities identified by the commission as of
 23 March 1, 1996.

24 (d) "Well site" means the location of any pollution from a
 25 well.

26 New Sec. 2. (a) There is hereby established in the state
 27 treasury the abandoned oil and gas well fund.

28 (b) Moneys in the abandoned oil and gas well fund shall be
 29 used only for the purpose of paying the costs of: (1)
 30 Investigation and remediation of contamination sites; (2)

House ENR
 4-24-96
 Attachment 2

1 investigation of abandoned wells, and their well sites, drilling
2 of which began before July 1, 1996; and (3) plugging, replugging
3 or repairing abandoned wells, and remediation of the well sites,
4 drilling of which began before July 1, 1996, in accordance with a
5 prioritization schedule adopted by the commission and based on
6 the degree of threat to public health or the environment. No
7 moneys credited to the fund shall be used to pay administrative
8 expenses of the commission or to pay compensation or other
9 expenses of employing personnel to carry out the duties of the
10 commission.

11 (c) On the 10th day of each month, the director of accounts
12 and reports shall transfer from the state general fund to the
13 abandoned oil and gas well fund the amount of money certified by
14 the pooled money investment board in accordance with this
15 subsection. Prior to the 10th day of each month, the pooled
16 money investment board shall certify to the director of accounts
17 and reports the amount of money equal to the proportionate amount
18 of all the interest credited to the state general fund for the
19 preceding period of time specified under this subsection,
20 pursuant to K.S.A. 75-4210a and amendments thereto, that is
21 attributable to moneys in the abandoned oil and gas well fund.
22 Such amount of money shall be determined by the pooled money
23 investment board based on: (1) The average daily balance of
24 moneys in the abandoned oil and gas well fund during the period
25 of time specified under this subsection as certified to the board
26 by the director of accounts and reports; and (2) the average
27 interest rate on repurchase agreements of less than 30 days'
28 duration entered into by the pooled money investment board for
29 that period of time. On or before the fifth day of the month for
30 the preceding month, the director of accounts and reports shall
31 certify to the pooled money investment board the average daily
32 balance of moneys in the abandoned oil and gas well fund for the
33 period of time specified under this subsection.

34 (d) All expenditures from the abandoned oil and gas well
35 fund shall be made in accordance with appropriations acts upon

1 warrants of the director of accounts and reports issued pursuant
2 to vouchers approved by the chairperson of the state corporation
3 commission or a person designated by the chairperson.

4 New Sec. 3. (a) Except as provided by subsection (b), on
5 July 15, 1996, and on the 15th day of each calendar quarter
6 thereafter before July 1, 2002, the director of accounts and
7 reports shall transfer \$100,000 from the state general fund,
8 \$100,000 from the state water plan fund established by K.S.A.
9 82a-951 and amendments thereto and \$100,000 from the conservation
10 fee fund established by K.S.A. 55-143 and amendments thereto to
11 the abandoned oil and gas well fund established by section 2.

12 (b) Whenever the unobligated principal balance of the
13 abandoned oil and gas well fund exceeds \$500,000, no moneys shall
14 be credited to the fund pursuant to subsection (a) until the
15 unobligated principal balance of the fund is equal to \$200,000 or
16 less, at which time moneys shall again be credited to the fund
17 pursuant to subsection (a).

18 (c) Any increase in fees by the state corporation commission
19 to carry out the provisions of this section shall as nearly as
20 possible be assessed equally on oil and gas.

21 Sec. 4. K.S.A. 27-118 is hereby amended to read as follows:
22 27-118. All moneys received by the state of Kansas from the
23 United States under the mineral leasing act as the state's share
24 ~~to-be-used-for-the-construction-and-maintenance-of--public--roads~~
25 ~~or--for-the-support-of-public-schools-or-other-public-educational~~
26 ~~institutions-as-provided-by-section-35,-chapter-85-of-the-Acts-of~~
27 ~~Congress-of--1920--(41--Stat.--450;--30--U.-S.-C.--191)--and--any~~
28 ~~amendments--thereto~~ shall be deposited in the state treasury by
29 the state treasurer, and ~~fifty-percent--(50%)~~ 50% of all such
30 moneys shall be credited to the state general fund, and the
31 remaining ~~fifty-percent-(50%)~~ 50% shall be credited to the state
32 highway--fund abandoned oil and gas well fund established by
33 section 2.

34 New Sec. 5. (a) There is hereby established in the state
35 treasury the well plugging fund.

1 (b) Moneys in the well plugging fund shall be used only for
2 the purpose of paying the costs of plugging, replugging or
3 repairing abandoned wells, and remediation of the well sites,
4 drilling of which began on or after July 1, 1996.

5 (c) On the 10th day of each month, the director of accounts
6 and reports shall transfer from the state general fund to the
7 well plugging fund the amount of money certified by the pooled
8 money investment board in accordance with this subsection. Prior
9 to the 10th day of each month, the pooled money investment board
10 shall certify to the director of accounts and reports the amount
11 of money equal to the proportionate amount of all the interest
12 credited to the state general fund for the preceding period of
13 time specified under this subsection, pursuant to K.S.A. 75-4210a
14 and amendments thereto, that is attributable to moneys in the
15 well plugging fund. Such amount of money shall be determined by
16 the pooled money investment board based on: (1) The average daily
17 balance of moneys in the well plugging fund during the period of
18 time specified under this subsection as certified to the board by
19 the director of accounts and reports; and (2) the average
20 interest rate on repurchase agreements of less than 30 days'
21 duration entered into by the pooled money investment board for
22 that period of time. On or before the fifth day of the month for
23 the preceding month, the director of accounts and reports shall
24 certify to the pooled money investment board the average daily
25 balance of moneys in the well plugging fund for the period of
26 time specified under this subsection.

27 (d) All expenditures from the well plugging fund shall be
28 made in accordance with appropriations acts upon warrants of the
29 director of accounts and reports issued pursuant to vouchers
30 approved by the chairperson of the commission or a person
31 designated by the chairperson.

32 Sec. 6. K.S.A. 55-151 is hereby amended to read as follows:
33 55-151. (a) Prior to the drilling of any well, every operator
34 shall file an application of intent to drill with the commission.
35 Such application shall include such information as required by

1 the commission and shall be on a form prescribed by the
2 commission. No change in the use of a well shall be made without
3 express approval of the commission. ~~No fee shall be required to~~
4 ~~accompany any~~ Each application of intent to drill a well filed
5 before July 1, 2002, shall be accompanied by a fee in an amount
6 equal to \$.02 per foot of estimated total depth of the well or
7 \$40, whichever is greater. No drilling shall be commenced until
8 the authorized agents of the commission have approved the
9 application. The agent, in giving approval, shall determine that
10 the proposed construction of the well will protect all usable
11 waters. Such approval shall include the amount of pipe necessary
12 to protect all usable water, plugging requirements upon
13 abandonment and such other requirements deemed appropriate by the
14 commission. The commission may refuse to process any application
15 submitted pursuant to this section unless the applicant has been
16 in compliance with all rules and regulations adopted pursuant to
17 this act.

18 (b) The commission shall send to the secretary of the
19 department of health and environment copies of all notifications
20 of intents to drill. The commission shall send to the clerk of
21 any county in which a well will be drilled a copy of the intent
22 to drill such well.

23 (c) Fees collected by the commission pursuant to this
24 section shall be deposited in the state treasury and credited to
25 the well plugging fund created by section 5.

26 Sec. 7. K.S.A. 1995 Supp. 55-155 is hereby amended to read
27 as follows: 55-155. (a) Operators and contractors shall be
28 licensed by the commission pursuant to this section.

29 (b) Every operator and contractor shall file an application
30 or a renewal application with the commission. Application and
31 renewal application forms shall be prescribed, prepared and
32 furnished by the commission.

33 (c) No application or renewal application shall be approved
34 until the applicant has:

35 (1) Provided sufficient information, as required by the

1 commission, for purposes of identification;

2 (2) submitted evidence that all current and prior years'
3 taxes for property associated with the drilling or servicing of
4 wells have been paid;

5 (3) demonstrated to the commission's satisfaction that the
6 applicant complies with all requirements of chapter 55 of the
7 Kansas Statutes Annotated, all rules and regulations adopted
8 thereunder and all commission orders and enforcement agreements,
9 if the applicant is registered with the federal securities and
10 exchange commission;

11 (4) demonstrated to the commission's satisfaction that the
12 following comply with all requirements of chapter 55 of the
13 Kansas Statutes Annotated, all rules and regulations adopted
14 thereunder and all commission orders and enforcement agreements,
15 if the applicant is not registered with the federal securities
16 and exchange commission: (A) The applicant; (B) any officer,
17 director, partner or member of the applicant; (C) any stockholder
18 owning in the aggregate more than 5% of the stock of the
19 applicant; and (D) any spouse, parent, brother, sister, child,
20 parent-in-law, brother-in-law or sister-in-law of the foregoing;

21 (5) paid an annual license fee of \$100, except that an
22 applicant for a license who is operating one gas well used
23 strictly for the purpose of heating a residential dwelling shall
24 pay an annual license fee of \$25;

25 (6) submitted one of the following to assure financial
26 responsibility for costs of plugging wells operated in the state
27 by the operator: (A) A bond in an amount established by the
28 commission for each well operated by the operator but not
29 exceeding a total of bond of \$100,000 for all wells operated by
30 the operator; (B) evidence of acceptance of responsibility for
31 such costs by another party, determined by the commission to have
32 financial ability to be held responsible for such costs in the
33 event of failure of the operator to plug the operator's wells;
34 (C) evidence of participation in a well plugging insurance pool
35 created to manage the risk of unplugged wells; or (D) other

1 financial security approved by the commission; and

2 ~~(6)~~ (7) paid an annual license fee of \$25 for each rig
3 operated by the applicant. The commission shall issue an
4 identification tag for each such rig which shall be displayed on
5 such rig at all times.

6 (d) Upon the approval of the application or renewal
7 application, the commission shall issue to such applicant a
8 license which shall be in full force and effect until one year
9 from the date of issuance or until surrendered, suspended or
10 revoked as provided in K.S.A. 55-162, and amendments thereto. No
11 new license shall be issued to any applicant who has had a
12 license revoked until the expiration of one year from the date of
13 such revocation.

14 (e) The commission shall remit all moneys received from fees
15 assessed pursuant to this section to the state treasurer at least
16 monthly. Upon receipt of each such remittance, the state
17 treasurer shall deposit the entire amount thereof in the state
18 treasury. Twenty percent of each such deposit shall be credited
19 to the state general fund and the balance shall be credited to
20 the conservation fee fund created by K.S.A. 55-143, and
21 amendments thereto.

22 Sec. 8. K.S.A. 55-161 is hereby amended to read as follows:
23 55-161. The commission shall investigate abandoned wells, and,
24 based on actual or potential pollution problems, may select
25 abandoned wells to be drilled out by the commission in order to
26 test the integrity of the plugs. The cost of such testing shall
27 be paid from the conservation fee fund, the abandoned oil and gas
28 well fund or the well plugging fund, as appropriate.

29 Sec. 9. K.S.A. 55-179 is hereby amended to read as follows:
30 55-179. (a) Upon receipt of any complaint filed pursuant to
31 K.S.A. 55-178 and amendments thereto, the commission shall make
32 an investigation for the purpose of determining whether such
33 abandoned well is polluting or is likely to pollute any usable
34 water strata or supply or causing the loss of usable water, or
35 the commission may initiate such investigation on its own motion.

1 If the commission determines:

2 (1) That such abandoned well is causing or likely to cause
3 such pollution or loss; and

4 (2) (A) that no person is legally responsible for the proper
5 care and control of such well; or (B) that ~~such person so~~ the
6 person legally responsible for the care and control of such well
7 is dead ~~or,~~ is no longer in existence ~~or,~~ is insolvent or cannot
8 be found, then, ~~within---60---days~~ after completing its
9 investigation, and as funds are available, the commission shall
10 plug, replug or repair such well, or cause it to be plugged,
11 replugged or repaired, in such a manner as to prevent any further
12 pollution or danger of pollution of any usable water strata or
13 supply or loss of usable water, and shall remediate pollution
14 from the well, whenever practicable. The cost of ~~such plugging~~
15 the investigation; the plugging, replugging or repair; and the
16 remediation shall be paid by the commission from the conservation
17 fee fund, the abandoned oil and gas well fund or the well
18 plugging fund, as appropriate.

19 (b) For the purposes of this section, a person who is
20 legally responsible for the proper care and control of an
21 abandoned well shall include, but is not limited to, one or more
22 of the following: Any operator of a waterflood or other pressure
23 maintenance program deemed to be causing pollution or loss of
24 usable water; the current or last operator of the lease upon
25 which such well is located, irrespective of whether such operator
26 plugged or abandoned such well; and the original operator who
27 plugged or abandoned such well; and any person who tampers with
28 or removes surface equipment on downhole equipment from the well.

29 (c) Whenever the commission determines that a well has been
30 abandoned and is causing or is likely to cause pollution of any
31 usable water strata or supply or loss of usable water, and
32 whenever the commission has reason to believe that a particular
33 person is legally responsible for the proper care and control of
34 such well, the commission shall cause such person to come before
35 it at a hearing held in accordance with the provisions of the

1 Kansas administrative procedure act to show cause why the
2 requisite care and control has not been exercised with respect to
3 such well. After such hearing, if the commission finds that ~~such~~
4 the person is legally responsible for the proper care and control
5 of such well and that such well is abandoned, in fact, and is
6 causing or is likely to cause pollution of any usable water
7 strata or supply or loss of usable water, the commission may make
8 any order or orders prescribed in K.S.A. 55-162, and amendments
9 thereto. Proceedings for reconsideration and judicial review of
10 any of the commission's orders may be held pursuant to K.S.A.
11 55-606, and amendments thereto.

12 (d) For the purpose of this section, any well which has been
13 abandoned, in fact, and has not been plugged pursuant to the
14 rules and regulations in effect at the time of plugging such well
15 shall be and is hereby deemed likely to cause pollution of any
16 usable water strata or supply.

17 (e) For the purpose of this section, the person legally
18 responsible for the proper care and control of an abandoned well
19 shall not include the landowner or surface owner unless the
20 landowner or surface owner has operated or produced the well, has
21 deliberately altered or tampered with such well thereby causing
22 the pollution or has assumed by written contract such
23 responsibility.

24 Sec. 10. K.S.A. 55-180 is hereby amended to read as follows:
25 55-180. (a) The fact that any person has initiated or supported a
26 proceeding before the commission, or has remedied or attempted to
27 remedy the condition of any well under the authority of this act,
28 shall not be construed as an admission of liability or received
29 in evidence against such person in any action or proceeding
30 wherein responsibility for or damages from surface or subsurface
31 pollution, or injury to any usable water or oil-bearing or
32 gas-bearing formation, is or may become an issue; nor shall such
33 fact be construed as releasing or discharging any action, cause
34 of action or claim against such person existing in favor of any
35 third person for damages to property resulting from surface or

1 subsurface pollution, or injury to any usable water or
2 oil-bearing or gas-bearing formation.

3 (b) The commission, on its own motion, may initiate an
4 investigation into any pollution problem related to oil and gas
5 activity. In taking such action the commission may require or
6 perform the testing, sampling, monitoring or disposal of any
7 source of groundwater pollution related to oil and gas
8 activities.

9 (c) The commission or any other person authorized by the
10 commission who has no obligation to plug, replug or repair any
11 abandoned well, but who does so in accordance with the provisions
12 of this act, shall have a cause of action for the reasonable cost
13 and expense incurred in investigating pollution from the well;
14 plugging, replugging or repairing the well; and remediating
15 pollution from the well against any person who is legally
16 responsible for the proper care and control of such well pursuant
17 to the provisions of ~~section--327--and--such~~ K.S.A. 55-179 and
18 amendments thereto and the commission or other person shall have
19 a lien upon the interest of such obligated person in and to the
20 oil and gas rights in the land and equipment located thereon.

21 (d) Any moneys recovered by the commission in an action
22 pursuant to subsection (c) shall be remitted to the state
23 treasurer. The state treasurer shall deposit the entire amount
24 of the remittance in the state treasury and credit it to the
25 conservation fee fund, the abandoned oil and gas well fund or the
26 well plugging fund, as appropriate based on the fund from which
27 the costs incurred by the commission were paid.

28 New Sec. 11. (a) The governor shall appoint a task force to
29 study:

30 (1) Statutory changes that would enhance the commission's
31 ability to reduce the number of wells newly abandoned each year;

32 (2) ways to make the conservation division of the commission
33 more efficient to make better use of staff and other resources;
34 and

35 (3) technological advances in surface and subsurface

1 remediation techniques.

2 (b) Members of the task force shall include, but not be
3 limited to, one representative of the Kansas Independent Oil and
4 Gas Association, one representative of the Eastern Kansas Oil and
5 Gas Association, two representatives of the Kansas Petroleum
6 Council, one representative of the League of Kansas
7 Municipalities, one representative of the Kansas Rural Water
8 Association and one representative of environmental interests.

9 (c) The state corporation commission shall provide such
10 staff assistance to the task force as may be requested by the
11 task force.

12 (d) On or before the first day of the 1997 regular
13 legislative session, the task force shall submit a report of its
14 findings and recommendations to the governor and to the
15 chairperson, vice-chairperson and ranking minority member of the
16 standing committee on energy and natural resources of the senate
17 and the house of representatives.

18 New Sec. 12. (a) The commission shall prepare an annual
19 report containing the following information regarding each
20 contamination site:

21 (1) A description and evaluation of the site, including
22 surface and subsurface contamination;

23 (2) the immediacy of the threat to public health or the
24 environment from pollution from the site, including any
25 contamination of drinking water or groundwater;

26 (3) the level of surface and subsurface remediation
27 recommended;

28 (4) any unusual problems associated with investigation or
29 remediation of pollution from the site;

30 (5) an estimate of the cost to achieve the recommended level
31 of remediation or, if no estimate is possible, an estimate of the
32 cost to conduct an investigation sufficient to determine the cost
33 of remediation;

34 (6) any funds available to pay the costs of remediation;

35 (7) with regard to remediation of pollution from the site

1 performed during the preceding fiscal year: (A) The nature of
2 such remediation; (B) the total amount expended for such
3 remediation; and (C) the amount expended for administrative
4 expenses of the commission and compensation and other expenses of
5 employing personnel to carry out the duties of the commission;
6 and

7 (8) total expenditures in preceding fiscal years for
8 remediation at the site.

9 (b) The commission shall prepare an annual report containing
10 the following information regarding abandoned wells and their
11 well sites:

12 (1) Documentation of the number of unplugged abandoned
13 wells in the state; and

14 (2) a multiyear plan for dealing with unplugged abandoned
15 wells that categorizes wells according to the risk posed to
16 public health and the environment, sets forth a schedule for
17 plugging wells posing the most serious risks and addresses
18 funding of the plan.

19 (c) The commission shall submit the reports provided for by
20 this section to the governor and the chairperson and ranking
21 minority member of the committees on energy and natural resources
22 of the senate and the house of representatives, on or before the
23 first day of the regular legislative session each year.

24 New Sec. 13. The state corporation commission shall create
25 and maintain a data base of all oil or gas wells in existence in
26 this state. The data base shall include the location of each
27 well and name, address and other information relevant to the
28 identity of the operator of the well.

29 Sec. 14. K.S.A. 28-118, 55-151, 55-161, 55-179 and 55-180
30 and K.S.A. 1995 Supp. 55-155 and 74-632 and K.S.A. 55-179, as
31 amended by section 2 of 1996 Senate Bill No. 685 are hereby
32 repealed.

33 Sec. 15. This act shall take effect and be in force from and
34 after its publication in the statute book.

1 (c) Nothing in this act shall prevent sand dredging necessary to *main-*
2 *tain operations of existing or proposed water intake structures, pro-*
3 *vide for utility maintenance or* preserve transportation right of ways,
4 levees, dikes and other structures necessary to preserve property in or
5 along the Kansas river.

6 *New Sec. 4. On or before January 12, 1998, the department of*
7 *wildlife and parks (in conjunction with the Kansas water office shall*
8 *conduct a study of the development of a recreational corridor in*
9 *and along the entire Kansas river and access thereto and its impact*
10 *on the economy and recreation of Kansas and* shall submit to the
11 legislature a report and recommendations based on the depart-
12 ment's study pertaining to development of a recreational corridor
13 in and along the entire Kansas river. [their study. All meetings per-
14 taining to the study shall be open to the public and the public may
15 submit testimony.]

16 [The following organizations and agencies shall be invited to send
17 one representative to provide input in the study:

- 18 [(a) Division of water resources;
- 19 [(b) state conservation commission;
- 20 [(c) Kaw Valley heritage project;
- 21 [(d) Kansas land trust;
- 22 [(e) all watershed districts draining into the Kansas river;
- 23 [(f) all drainage districts adjacent to the Kansas river;
- 24 [(g) each municipal county parks and recreation department
- 25 adjacent to the Kansas river;
- 26 [(h) friends of the KAW;
- 27 [(i) Kansas canoe association;
- 28 [(j) Kansas aggregate producers association; and
- 29 [(k) Kansas travel and tourism commission.]

30 Sec. 45. K.S.A. 70a-102 and 82a-301 are hereby repealed.

31 Sec. 56. This act shall take effect and be in force from and after its
32 publication in the Kansas register.

delete and
replace with
" and "

delete

delete

delete

House ENR
4-24-96
Attachment 3

MEMORANDUM

Date: April 4, 1996
To: Members of the House Committee on Energy and Natural Resources
From: Kansas Aggregate Producers Association
Subject: SB #617

May it please the committee. The Kansas Aggregate Producers' Association would like to make the following clarification's regarding testimony on SB #617, the proposed river dredging moratorium.

- It should be noted that the purpose of the Corps regulatory plan was to limit **bed** degradation not **bank** degradation. Bank degradation occurs as a result of a natural meander of the river and is what makes sand harvesting possible.
- With the construction of the flood control reservoirs at Milford, Tuttle Creek, Clinton and Perry the Kansas River has lost its natural scour (high-water flows that transport debris and sand down river). The Corps of Engineers has sought to replace this phenomena by allowing artificial scour (sand harvesting). Harvesting at strategic points is the mechanism designed to replace this loss of scour.
- The assertions that abundant deposits of sand are available in the river valley are simply false. Sand suitable for construction, road building, fiberglass manufacture, and ready mixed concrete is only available from the river. The river is where the heavier and larger gradations fall. Sand is not just sand. Like other commodities discussed in this committee; there are different types of coal, different types of dirt and different types of sand. Concrete sand is most economically mined from the river. If not harvested, it eventually travels to the Gulf of Mexico. It seems unnecessary to destroy wetlands and a riparian forest in order to forego the harvesting of a natural resource. Water well core drillings and aggregate core drillings are not the same; just as the sand is not the same.
- The study of the impacts of commercial dredging done by the U S Army Corps of Engineers was conducted from River Mile 0 to River Mile 163.9 or confluence of the Smoky Hill and Republican River (ESI -44). The Kansas Department of Wildlife and Parks commented more than once on the recreational aspects of the river. Please refer to the attachment on Public Involvement regarding the development of the plan. The Kansas Aggregate Producers are not opposed to a recreational study being conducted on the river concurrent with river operations. However, we see no reason for the suspension of any permits or proposed permits during this process; the river can be shared. It takes less than one mile of river to sustain two harvesting operations.

Over

House ENR
4-24-96
Attachment 4

- Excerpts (B24 - B25) from the Environmental Impact Statements issued by the Corps are attached. Obviously the recreational impacts of the river were considered.
- While the Kansas Aggregate Producers did not raise the issue of linkage between SB 617 and SB 621, it certainly is an interesting thought. If one is only interested in water or one is only interested in recreation, then apparently there would be no linkage. However, if you are a sand and gravel producer it should be quite obvious that SB 617 and SB 621 are important bills. A reasonable case can be made that the state should have a sand and gravel policy as well as a policy on water and recreational resources. After all 2.6 million Kansans use sand daily.

TABLE EIS-11
RESULTS OF CONTINUITY MODEL, 1985 TO 1995

Net aggradation (+) in feet for the 10-year period, 1985 to 1995
Net degradation (-) in feet for the 10-year period, 1985 to 1995

Reach Number	River Mile	Rate A Mining (No Dredging)	Rate B Mining	Rate C Mining	Rate D Mining (Existing)	Rate E Mining
1	170.4 - 147.5	-1	-1	-1	-1	-1
2	147.5 - 121.5	+1	+1	0	0	0
3	121.5 - 101.2	0	0	0	0	0
4	101.2 - 101.0	0	0	0	0	0
5	101.0 - 93.0	+1	+1	+1	+1	+1
6	93.0 - 88.0	0	-1	-2	-2	-2
7	(Topeka) 88.0 - 80.6	0	-1	-1	-1	-1
8	80.6 - 64.5	0	0	0	0	0
9	64.5 - 51.9	-1	-1	-1	-1	-1
10	(Lawrence) 51.9 - 51.7	0	0	0	0	0
11	51.7 - 46.7	-1	-1	-2	-2	-2
12	46.7 - 41.6	0	0	0	0	0
13	41.6 - 34.8	-1	-1	-1	-1	-1
14	34.8 - 31.0	-1	-2	-2	-2	-2
15	(De Soto) 31.0 - 26.5	0	-2	-3	-3	-3
16	26.5 - 22.0	0	0	-1	-3	-2
17	22.0 - 15.1	0	-2	-2	-2	-3
18	15.1 - 14.9	0	0	0	0	0
19	14.9 - 12.4	0	-2	-3	-6	-11
20	12.4 - 12.2	0	0	0	0	0

Source: Simons, Li, and Associates, 1985

CORPS RESPONSE TO COMMENTS

H-4

STATE OF KANSAS



Mike Hayden, Governor

9.

State Of Kansas
Kansas Water Office
April 10, 1989

KANSAS WATER OFFICE
Joseph F. Barkus
Director

Suite 200
109 SW Ninth
Topeka, Kansas 66612-1215
913-296-3185

April 10, 1989

Colonel John H. Atkinson
District Engineer
U.S. Corps of Engineers
700 Federal Building
Kansas City, MO 64106

Dear Colonel Atkinson:

Re: State of Kansas - Agency Comments on Draft Regulatory Report
and Environmental Impact Statement For Commercial Dredging
Activities on the Kansas River

B
2
C

The State of Kansas water-related agencies and other state agencies dealing with commercial dredging activities and their impact on the Kansas River, wish to thank the Corps of Engineers for the opportunity to review and comment on the draft document, "Regulatory Report and Environmental Impact Statement for Commercial Dredging Activities on the Kansas River." Inasmuch as the bed and banks of the Kansas River are the property of the State of Kansas, the state has a vested interest in the adoption or proliferation of new regulations affecting the river.

The state agencies participating in these comments have reviewed the draft report and have discussed the potential impacts of its proposals. While these agencies commend the Kansas City District for addressing the issue of commercial sand dredging and considering its past, current and future effects on the Kansas River and environs including: morphological impacts, ecological impacts and economic impacts, the agencies would like to bring some areas of concern to the attention of the Corps.

The Division of Water Resources, State Board of Agriculture, currently regulates commercial sand dredging operations in the channel of the Kansas River. The Division of Water Resources has serious concerns that the proposed restrictions on dredging may

1

Comment is noted.

4-5

move dredgers out of the channel and on to the floodplain and banks, thus, outside of the Division's regulatory authority. Thus, commercial dredging would go from a highly regulated industry to one that is much less regulated. The Division of Water Resources is also concerned about the environmental and economic effects of dredging in the floodplain and on the banks such as: destruction of naturally occurring wetland areas, destruction of riparian green belts and animal habitat, bank destabilization, permanent open pits from sand removal, potential liability and hazards from operations and effect on levees and highway bridges. The Division of Water Resources believes that the state may need to promulgate additional regulations to establish authority to address these issues and regulate floodplain and bank operations.

The Kansas Water Office shares the Division of Water Resources' concerns enumerated above. The State Water Plan identifies the protection of wetland and riparian areas as a high state priority. The Kansas Water Office is also concerned that the river's aesthetics and recreational use and potential use are discounted and not addressed at all in the Corps' report. The Kansas River is identified for development of a river recreation program in the State Water Plan and is the most accessible of the navigable rivers in the state.

The Kansas Department of Wildlife and Parks (which will forward a separate statement to the Corps of Engineers) also participated in the discussion of agency concerns. They were especially concerned with the Environmental Impact Statement noting that it was particularly weak in the areas of recreation, threatened and endangered species and mitigation of damages to county, state and city parks and recreation facilities along the river. The Department of Wildlife and Parks felt the management plan should have reviewed recreational impacts inasmuch as the Kansas River is the largest recreational river in the state and is being considered by the National Park Service for designation in the Wild and Scenic River Program. Wildlife and Parks was also concerned that only Sec. 10 was used by the Corps as authority for the report and not Section 404.

The Attorney General's Office was concerned about the possibility of the new regulations forcing dredgers onto the floodplain and suggested that the state may want to promulgate regulations to deal with this contingency.

2
3
4
5
6

Comment is noted.

The aesthetics of the Kansas River was not discussed as a significant impact category in the Draft EIS because impacts on the aesthetics, resulting from dredging activities, are generally only of a localized nature. The existing disturbed condition of the river (railroad tracks, bank stabilization structures, indiscriminate dumping of trash) has a greater impact on the aesthetics than dredging. Recreational concerns are addressed in the report on pages EIS-31 and EIS-57. The presence of dredgers on the Kansas River should not inhibit development of a river recreation program as identified in the State Water Plan.

The Kansas Wildlife and Parks letter of April 13, 1989 follows this letter. Recreational impacts are addressed on page EIS-57. Very limited information is available from the State and other sources concerning existing recreation on the Kansas River. It should be noted that the 57-mile reach of the Kansas River that is being considered for designation in the National Wild and Scenic River System has been classified as being eligible for recreational river status. According to the 1980 draft report prepared by the Heritage Conservation and Recreation Service, now the National Park Service, this segment "did not meet eligibility for SCENIC classification due to the extensive shoreline intrusions and to the absence of outstanding scenic values."

The Corps of Engineers authority to regulate commercial dredging operations on the Kansas River is contained in Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). No regulatory authority is granted under Section 404 of the Clean Water Act since the dredged material is processed entirely on shore.

Comment is noted.

B-24

CORPS RESPONSE TO COMMENTS

4-6

Colonel John H. Atkinson
Page 3
April 10, 1989

The Secretary of State's Office was represented but had no comments at this time.

7 Comment is noted.

The Department of Commerce expressed concerns about the impact on business in Kansas and noted that this is just one more complication for entities trying to do business in Kansas. The Department of Commerce would like to encourage businesses to remain in Kansas by trying to keep the technicalities of doing business more simple. Commerce offered to assist any business adversely impacted by the effects of the Corps' regulations.

8 Comment is noted.

The Kansas Department of Revenue, which currently collects the Sand Royalty, stated that it is too early to know what effect the Corps' proposed regulations would have on reporting and collection of royalties.

9 Comment is noted.

The Kansas Department of Health and Environment (which has forwarded a letter under separate cover to the Corps) expressed support for the Corps' regulatory plan inasmuch as it protects public water supply intake structures which are effected by degradation of the river bed. The Kansas Department of Health and Environment would like Sec. IX of the Corps' plan to prohibit dredged return water from coming within 1000 feet upstream of any public water supply intake and would like return water near intakes to be passed through a siltation basin to prevent turbidity effects on treatment.

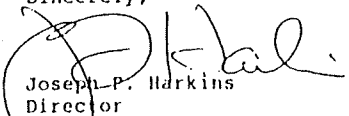
10 Requirements concerning a minimum distance between a dredge and a water intake structure and requirements concerning siltation basins will be considered on a case-by-case basis. The Kansas City District believes that potential impacts to drinking water supplies, from an individual dredging operation, should be evaluated on a site specific basis, since the potential level of toxic substances which may be released as a result of dredging operations varies from one reach of the river to another. All interested parties will be provided an opportunity to comment on all future requested permits prior to a determination by the Kansas City District to issue or deny those permits.

The Kansas Department of Transportation also reviewed the draft report and noted that a substantial portion of highway construction funds are expended for projects within the commercial area of the dredging operations on the Kansas River. It is recognized that highway construction costs in this area will increase as dredging operations become restricted. The Kansas Department of Transportation believes that the proposed dredging regulations are reasonable and prudent measures and supports the Corps' efforts to reduce the degradation of the Kansas River. The Department of Transportation is satisfied that sufficient evaluation of the problem and the impact of the proposed regulations has been accomplished and supports prompt implementation of the regulations.

11 Comments are noted.

This concludes the listing of comments and concerns of these Kansas state agencies dealing with commercial dredging activities on the Kansas River. Thank you for the opportunity to review your report and we hope the comments are helpful. Should you have any questions, please contact us.

Sincerely,


Joseph P. Markins
Director

JFH:SAH:dk

BNS

VII. PUBLIC INVOLVEMENT

1. Scoping Meeting

Scoping is that part of the EIS process, involving public participation, during which the scope of issues to be addressed in the EIS are determined and their significance with respect to a proposed action is identified. During the preparation of this EIS, scoping consisted of two features, a scoping meeting and a comment sheet.

A public notice, with a enclosed comment sheet (Appendix B), was mailed to Federal, State, and local governmental agencies, along with interested citizens, prior to the Scoping Meeting held on October 9, 1985. Respondents to the comment sheet were asked to identify areas of their concern with respect to sand and gravel dredging in the Kansas River, the alternatives which would alleviate their concerns, and the beneficial or detrimental effects associated with each alternative. Twenty-five sheets were returned either by mail or at the Scoping Meeting. In addition, seven letters of comment were also received.

An estimated 100 persons attended the Scoping Meeting. The meeting consisted of a brief introduction on the purpose for the meeting after which the attendees were divided into groups and asked to identify their areas of concern, and the alternatives which would alleviate their concerns.

Since the feedback requested in the comment sheets and from the groups was essentially the same, the results are presented together for comparison in Tables EIS-13 and EIS-14. Table EIS-13 displays the public concerns and Table EIS-14 shows the public's solutions to these concerns. The ranking of the solutions does not necessarily correspond to the concerns identified, and there is not a solution for each concern.

The following is a list of Federal, State, and local agencies, organizations, and individuals who were sent a notice of the scoping meeting.

US Department of Agriculture
Soil Conservation Service, State Conservationist (Kansas)

US Department of the Interior
Fish and Wildlife Service
National Park Service
Geological Survey

US Department of Transportation
Federal Highway Administration

JS Environmental Protection Agency
Region VII

Honorable Robert J. Dole
Honorable Nancy Landon Kassebaum
Honorable Jan Meyers
Honorable Jim Slattery
Honorable John C. Danforth
Honorable Thomas F. Eagleton
Honorable E. Thomas Coleman
Honorable Ike Skelton
Honorable Alan D. Wheat

State of Kansas

Governor
Bureau of Design
Department of Health and Environment
Department of Transportation
Fish and Game
Geological Survey
State Board of Agriculture
State Historic Preservation Officer
Water Office

Douglas County, Director of Public Works
Geary County, Public Works Director
Jefferson County, County Engineer
Johnson County, County Engineer
Leavenworth County, County Engineer
Leavenworth County, Highway Administrator
Pottawatomie County, County Engineer
Riley County, County Engineer
Shawnee County, County Engineer
Wabaunsee County, Road and Bridge Supervisor
Wyandotte County, County Engineer

State of Missouri
Governor

Kansas Local Officials

Bonner Springs, City Clerk
DeSoto, City Clerk
Edwardsville, City Clerk
Eudora, City Clerk
Kansas City
Mayor
City Clerk/Manager
City Planning Director
Lawrence, City Clerk
Manhattan, City Clerk
Topeka, City Clerk
Topeka, Water Supervisor
Wamego, City Clerk

Missouri Local Officials

Kansas City, Mayor
Kansas City, City Clerk
Cottonwood Drainage District
Kaw River Drainage District
Kaw Valley Drainage District
Lenape Drainage Board
Monticello Drainage District
North Topeka Drainage District
Tri County Drainage District
Builders Sand Company and Victory Sand and Gravel Company
Consumers Sand Company, Inc.
Holliday Sand and Gravel Company
Hub Materials, Inc.
Kansas Aggregate Producers Association
Kansas Sand and Concrete Company, Inc.
Kaw Sand Company
Kaw Valley Sand and Gravel Company
Kershaw Ready-Mix Concrete and Sand Company, Inc.
Meier Ready Mix, Inc.
The Penny's Ready Mixed Concrete Company of Lawrence, Inc.
Wamego Sand Company, Inc.
Associated General Contractors of Missouri
Builders' Association of Kansas City
Kansas City Area Economic Development Council
Kansas Contractors' Association
Heavy Contractors' Association
Laborer's Local #1290
Sante Fe Railway, Division Engineer
Union Pacific System, District Engineer
City Service Gas Company
Phillips Petroleum Company
Williams Pipeline Company
Water District No. 1 of Johnson County, Kansas
Bowersock Mills Power Company
Kansas Power and Light Company
Kansas River Parkway Association
Sierra Club, Midwest Office
National Audubon Society
Kansas Chapter, American Fisheries Society
Dr. Wakefield Dort, Jr.
Dr. Frank Cross
Dr. Robert Smith
Walter A. Rieke
Raymond Coffey
John R. Stubbs

800 S.W. Jackson Street. #1408
Topeka, Kansas 66612-2214
(913) 235-1188 • Fax (913) 235-2544

KAPA

Kansas Aggregate
Producers' Association

Edward R. Mc
Managing Dir

DATE: April 4, 1996
TO: Representative Laura McClure
FROM: Woody Moses *Woody*
SUBJECT: Aggregate Supply in the Kansas River Floodplain

Attached is information provided by two Kansas River sand dredgers regarding their efforts to obtain suitable sand in the Kansas River floodplain. These investigations were conducted during the period when the U.S. Army Corps of Engineers proposed a total ban on dredging. By way of information, two other studies on sand availability (U.S. Bureau of Mines, 1991 and Burns & Mc Donnell, 1986) tend to support our findings. If we can be of any further assistance please advise.

cc: House Energy and Natural Resources Committee

House ENR
4-24-96
Attachment 5



Holliday

SAND AND GRAVEL COMPANY

6811 WEST 63RD STREET
OVERLAND PARK, KANSAS 66202

Phone 238-5920
Area Code 913

Ray J. Ulsch
Vice President

October 14, 1987

Mr. Mel Jewett, Chief Regulatory Branch
U.S. Corps of Engineers
700 Federal Building
Kansas City, Mo. 64106-2896

Re: Comments on Kansas River Flood Plain Sand & Gravel Investigations

Dear Sir:

We would appreciate your consideration of these comments in reference to the availability of aggregates in the Kansas River flood plain.

Our comments required some preparation and we ask that you would excuse us for taking so long to reply.

Very truly yours,

HOLLIDAY SAND & GRAVEL COMPANY

M. R. Odell

Mike Odell
Production Engineer

MO/mg

Attachments

5-2

Comments on: The Report on Kansas River
Flood Plain Sand and Gravel
Investigations

By: Holliday Sand & Gravel Company
6811 West 63rd Street
Overland Park, Kansas 66202

October 14, 1987

SUMMARY

The purpose of our comments is to apply additional thought and study to the availability of aggregates in the Kansas River Flood Plain.

We have added six critical factors to the engineering study done by Burns & McDonnell: 1. Disinterested Landowners, 2. Industrial Development (competition from), 3. Zoning Problems, 4. Geographic Reductions in Available Area, 5. Deposit Marketability and 6. Poor Access. We believe that these factors alone reduce availability of land by 50%. Just as the Burns & McDonnell Report was just a beginning, our small and unfunded study is incomplete and only a beginning.

No simple substitute for aggregates has been found. We have been working on a pit site for two years, and to date, do not have a satisfactory site. If our Company's river production is halted, we will need 50 acres (net) per year to replace it. We don't believe this quantity of acreage is available.

The cost increases for flood plain aggregates will be 100% or more. This is without any real reclamation costs. The state, counties and cities are really unprepared for this shift in mining practices - there are no existing reclamation laws. The cost of properly reclaiming the land could add another 100% to the cost of aggregates. These kinds of cost increases will have a severe impact on many of our local industries and in turn on the population as a whole.

For these reasons, we urge you to reconsider any drastic and across-the-board changes in policy. We honestly feel that too much of the existing data and proposed effects of Kansas River dredging is empirical and with too high a probability of error to substantiate a drastic change in aggregate supply to our large metropolitan area.

It is hoped these comments will be considered and will provide additional input into the development of a regulatory plan for commercial sand and gravel dredging in the Kansas River.

We believe the report prepared by Burns & McDonnell is fairly accurate as far as quality determination. The quantities of sand and gravel available, however, are substantially different from the report and greatly impact the potential of the flood plain for being a satisfactory alternative to Kansas River dredging.

The following six critical factors affect the quantity and were not considered by Burns & McDonnell.

1. Disinterested Landowners: For a variety of reasons, most property owners we have contacted so far are not interested in pit operation on their land at any price. In most cases the land is being used agriculturally and the owners are adamant about keeping it that way. A partial list is on page 6.
2. Industrial Development: Between Turner and DeSoto extensive areas are being promoted for industrial development. It is noted that Burns & McDonnell excluded the areas north of the river in the Turner to Bonner Springs reach, probably because of recent industrial development and the proposed racetrack at 98th and Woodend. No other area (except a small area in Eudora-Lawrence reach) have been designated unavailable. In reality, all of the area south of the river in the Turner-Bonner reach is planned industrial, unbuyable and unzoneable. The AT&SF Railway owns all the undeveloped bottom land near Turner and is disinterested in pits. The proposed Mill Creek

Development across from Edwardsville, and the existing Bonner Industrial District (east of 7 Highway along 43rd Street) have made pit zoning unfeasible.

3. Zoning Problem: The City of Shawnee has annexed the bottoms south of the river, west of 7 Highway; this entire area may be unzoneable. We were recently (October 5, 1987) turned down on zoning a 60 acre tract north of 43rd Street. We proposed to mine only 35 acres (all of which was in the 100 year flood plain) and offered to reclaim 10 additional acres out of the flood plain. The local farmers protested, Monticello Township protested, and the Shawnee Planning Commission voted 11 to 0 against us. We shall attempt zoning again with a different site with the one property owner who will still speak to us.

Still, the most inhibiting factor has been disinterested farmers, and we have not even investigated this in Douglas County.

4. Reductions in Available Area: The Burns & McDonnell study also failed to exclude the following geographic features and the setbacks required: water well fields, town of Wilder, levees, power transmission lines, railroads, streets and roads, the Kansas River (where it has eroded the banks), and timbered corridors along the river bank which provide habitat and prevent further erosion. The enclosed drawings show the missing exclusions to scale in the three eastmost reaches.

The Eudora-Lawrence reach is over 20 miles from the existing market and is excluded from our analysis. Property owners have not been contacted and water well information was not included in the Burns & McDonnell Ground water report. This area is also in the Lawrence market area which must obtain its own alternative supply.

These four factors add up to a 50% reduction in the available flood plain aggregates. However, further scrutiny is required. Of the remaining acreage, 91% is in the intermediate probability zone. This zone is defined as averaging only 43,000 tons of coarse, marketable sand per acre and up to 25% or 15 feet of overburden. 15 feet seems very likely according to our subsurface investigations (which generally agreed with the study) and would mean stripping costs of 56¢ per ton sold, resulting in a 23% cost increase. Sand prices have not increased this amount over the last ten years!

5. Deposit Marketability: One must also weigh the percent yield of S2 sands to the total deposit yield. S2 sands are defined as being coarse enough to be blended into sand for concrete aggregates (ASTM C-33). In our present operations, S2 sands comprise 86⁷⁰% of our sales. S1 sands, the fine sands on top of the S2 sand, comprise 14% of our sales. This ratio is very close to what is found in the 20 to 30 foot depth in the river. The ratio in the flood plain as shown on Table 11-1 of the study for the reaches from Bonner Springs to Lawrence (there will be no future pits in Turner to Bonner Springs reach) is 49% S1 sands (fine sands). This means that 35% of the deposit will be excavated, rehandled, and wasted. We estimate this added cost at 80¢ per ton. An added effect not shown here is that S1 sands are now sold at near-cost prices. A 35%

overabundance will make it hard to give away.

6. Poor access: Access to areas north of the river, and most areas west of DeSoto is poor. The sites would be up to 5 miles off the highway on a hilly, unimproved road. The sites north of the river will have to truck an extra 5 to 10 miles to get to the market area south of the river. This is because the only bridges with unrestricted load limits are at Eudora and at Bonner Springs (K-7). This adds another 70¢ cost to mining north of the river (58% of the available deposits).

We will now combine all these factors to arrive at the added cost and availability of S2 aggregates in the flood plain. After our additional exclusions, the total available sand is 243.5 million tons (see sheet 1 of 5). Of this, 124 million tons are S2 material. Approximately 3.7 million tons of Kansas River sand are sold annually in the Kansas City metro area. Of this, 86% or 3.2 million tons, are S2 sands. With a 3%* projected annual increase volume, this amounts to 26 years supply. The additional processing ^{stripping} costs total \$2.06, a 103% increase. Current costs are in the \$2.00 per ton range.

There will be additional factors which further reduce availability and increase costs. One example is the relationship between the size of the property and the net acreage mined. The average parcel is around 100 acres. With property setbacks, only 70% can be mined. A 50 acre site would net only 60%. We have had the most cooperation with owners of 40 to 80 acre sites.

*This increase has been used in previous COE reports.

Partial List of Disinterested Landowners

<u>Reach</u>	<u>Landowner</u>	<u>Acres</u> ±
Bonner/DeSoto	Wendt	30
	Howard	52
	Hill	57
	Theden	26
	Brunker	340
	Coleman	150
	Coker	60
	Hyort	80
	Zaring	20
	Caldwell	120
	Zimmerman	90
	Hodgdon	70
	Olander	340
Froman	158	
DeSoto/Eudora	Mistele	560
	Dicken	100
	Osborne	192
	Eisele	74

Acres req'd. per year for K.C. market

Market = 3.7 million tons (pg. 5)

Yield per acre = 43,000 tons (pg. 4)

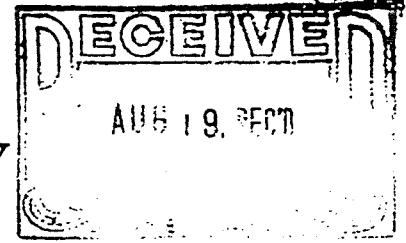
Acres yield for 100 acre site = 70% (pg. 5)

New acres needed each year =

$$\frac{3.7 \times 10^6}{43,000 \times .70} = 123 \text{ acres}$$

Also, unless huge tracts are obtained, sand plants would have to relocate every few years at a typical cost of \$3-500,000. if no major road construction is req'd.!

Conclusion; pits can supplement ^{river} production, but will never replace it in the narrow Kansas river floodplain.



KAW SAND COMPANY

DREDGING CONTRACTORS
P. O. BOX 554 LAWRENCE, KS 66044
(913) 843-0714

August 14, 1987

Mr. David A. Jackson
Chief of Operations
Corps of Engineers
700 Federal Building
Kansas City, MO 64106

Dear Mr. Jackson:

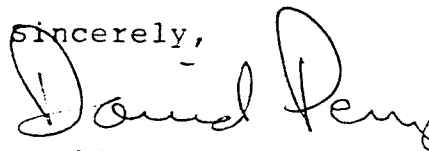
After reviewing the "Kansas River Flood Plain Sand and Gravel Investigations," I felt that the report gave a false impression that sand pit operations are a real alternative to river dredging. The Burns and McDonnell report gives figures of hundreds of millions of tons of available sand. There are those quantities out there in the flood plain, but the report is grossly erroneous in the locations, the availability, and the quality of the sand. I have been surveying and coring this area for years to locate good deposits. Most of the potential deposits in the report are unavailable or unuseful because of the location or the quality.

The quality of the deposits cited in the report are much less than the report ratings. The overburden removal is a heavy front end investment. The quality, particularly the coarseness, of the sand does not correspond in actual gradations of the cores to the grading of the reports on which the study was based. It is generally too fine to be saleable for use in concrete or recycled asphalt. Industrial and municipal wells dominate, to the exclusion of sand extraction, the good potential sand deposits. Most locations on the north side of the river are unuseable because of access roads and load-limited bridges to the market. Those on the south side are limited by access, either poor roads, egress-ingress rights, or regulatory restrictions. Without the power of eminent domain, access to the other potential good deposits is excluded by ownership and zoning proceedings.

I have included a short summary of my experience in obtaining the zoning of a pit operation. Also I have included a few of the newspaper clippings, most of these were neutral or mildly critical of our position. The harsher ones and the rather negative Channel Four news report I did not keep to forward to you. I hope this gives you an idea of the magnitude of the problems to use even an almost ideal site. I had owned for several years the land, had an access road maintenance agreement with the county, had a 600 foot access to a major road (old highway 10), had to cross no bridges and to pass only one residence. The land is in the flood plain (consequently no conflicting zoning) but is out of the floodway. The deposit is good material with 50 to 60 feet of good coarse sand and only 12 to 15 feet of overburden. In spite of this the zoning was nearly impossible.

Mr. David Jackson
August 14, 1987
Page 2

Other producers have tried to obtain land ownership or lease agreements without success. Others have failed to be able to dredge because of lack of zoning and federal or state regulations. I strongly recommend that the Corps of Engineers reconsider its position that sand pits are an option to river dredging.

sincerely,

David Penny
President

DP:de

enc.

cc: Mr. Woody Moses

Summary of Zoning
for Kaw Sand Company
Desoto, Kansas
by David Penny

This report is written to explain the difficulties of obtaining zoning of a sandpit operation in the Kaw River basin. We were successful in obtaining the zoning for a sandpit in the aforesaid area but not without great difficulty and expense. We had obtained a previous conditional use permit three years earlier but this one was much more difficult to obtain. I suspect that any later attempts may be fruitless no matter how well researched the plan.

Our zoning, three years previous, was obtained through the Johnson County Commission. It required site and reclamation plans recommended by the Johnson County planning staff, then hearings before the whole zoning board and finally the commissioners. I owned the land, but was more or less pressured to accept concessions above and beyond the zoning requirements. These concessions cost me over one-million dollars of sand. These were sought by the City of Olathe who has wells near this first site. They would oppose the conditional use permit needed for a sandpit operation if the concessions were not made. They implied that they would use political pressure at the level of the county commissioners or legal action if necessary. This was in spite of a study by Professor David Parr, a KU hydrology professor, that showed the nearest wells would be enhanced in flow in the sandpit operation was put in. He also showed that possible contaminants due to dredging were negligible.

With the education of the first zoning, we applied last year (1986) for the zoning of another site less than a mile away. It was for a sandpit operation (conditional use permit) on sixty acres that I also own. We had extensive environmental impact studies done. Some were by Professor Parr and some by myself. They were over a year's time and involved cores, topographical surveys, studies on catastrophic scenerios for pit contaminations. The pit was then designed to insulate the pit from such scenarios. It was even designed to be used as a municipal water source during and after dredging. Having a similar situation as the previous zoning by being near Olathe's well, I was leary of being forced to make unjustified concessions. I had the land annexed to DeSoto where I felt we could have a less political evaluation of our project.

We applied for the conditional use permit, good only for a time period determined by the zoning authority, early in January, 1987. The notices of zoning board hearings were sent out by registered mail. Two of the neighboring land owners reacted harshly. One in particular contacted every newspaper, municipality, township, regulatory agency, and county commissioner possible. Objections were raised to zoning particularly by this neighbor and the City of Olathe with broad press coverage by the Olathe Daily News, Lawrence Journal World, The DeSoto Weekly, and the Kansas City Star & Times. The newspapers were generally unfavorable to our project which made our position more difficult to justify. Fortunately the objections were either irrelevant or answered by our studies. However, the City of Olathe, after the approval by the zoning board, requested a series of delays to study the project. The delays appear, in retrospect, to be used to prevent the zoning and any development of the sandpit operation.

The City of DeSoto allowed delays of three months. I that time, Olathe engaged their legal counsel and their engineering staff to find flaws in our engineering design or legal procedures. Also, they hired Burns and McDonnell for a \$50,000 study to raise objections to the project. Olathe approached the Kansas Dept. of Health and Environment to present a well-head protection plan to prevent the pit operation within 1000 feet of their wells. Such a plan was beforehand unknown. This resulted in a meeting with several officials from the Dept. of Health and Environment, the City of Olathe water staff, and the mayor of DeSoto. After seeing the extent of our studies, The Dept. of Health and Environment was more reluctant to force such a plan. Nearly every two weeks the City of Olathe sought to prejudice our case to the City Council of DeSoto by more objections and more requests for delays. My presence, or that of Professor Parr were required at each of the meetings to answer the objections over this three month period. Also, the mayor of DeSoto and myself attended a planning session with the City of Olathe commissioners to discuss the objections there.

As the technical objections proved less substantial and approval of our zoning request appeared more imminent, some one again stirred up the media; including Channel Four News. The newspapers were a little more sympathetic but the television airing on the 10 O'Clock news implied that the drinking water of Olathe was seriously threatened by our sandpit operation.

The area report

and-pit proposal stirs interest in DeSoto

By DUANE RETZLAFF
J-W Staff Writer

DeSOTO — A Lawrence firm's proposal to dig a sand pit northeast of DeSoto has raised both hopes and concerns.

DeSoto city officials hope the sand pit could become a future water source. Olathe officials and landowners near the proposed pit have raised concerns about water contamination and the effect on surrounding farmland.

Last week, the DeSoto Planning Commission voted to recommend that the city council approve a two-year special use permit for the dredging operation. The special use permit is on the agenda for the city council's next meeting, scheduled for 7:30 p.m. Thursday.

OLATHE CITY officials have agreed to file a protest petition at the city council's meeting, according to Mayor Jim Beadle, who met Thursday with the Olathe city council and city attorney. He said the petition is a procedural

step that protects Olathe, which has 11 water wells just east of the proposed sand pit, from giving up its rights at a later hearing.

"They still have some things they want to check on," he said, "and we're going to get more information for them."

Beadle said he agreed with Olathe officials that more time is needed to study the proposal.

"I don't think our council is fully prepared to make a decision on it next Thursday night, anyway," he said, predicting that the council will table a decision until their next meeting.

THE KAW SAND Co. now dredges sand out of the Kansas River near the proposed site about a quarter-mile northeast of the DeSoto city limits. Kaw Sand also dredges sand out of the river in Lawrence, less than a mile downstream from the Bowersock Dam.

The special use permit would allow David Penny, owner of Kaw Sand Co., to excavate 35 acres of the 50-acre field he owns about a quarter-mile northeast of the city limits for sand. The depth of the pit would range from 20 to 50 feet, reaching the underground water table.

The city could pump the water out of the pit. Iron and other minerals settle in the water when it's in the pond, Beadle said, so the resulting water is cleaner and would cost the city less to treat.

Beadle said DeSoto officials would be willing to share water from the sand pit. "We're not trying to hoard it," he said.

SOME PEOPLE aren't sold on the idea.

"I'm afraid they might start a new channel for the river," said Lloyd Coker, who owns several acres of farmland just west of the proposed site. "I'd hate to see that."

Coker recalled that years ago he planned to dig an irrigation well in the area but was stopped by the flood control board for that reason.

"It's just quicksand, that's all it is," he said.

It doesn't matter that the sand pit site is about three-fourths of a mile from the river, he said, warning, "it might take a few years, but it would work into it."

He said, "the Kaw Valley is about the best ground in the state. Hate to see it just go away."

VERNON ZARING, who owns two farms near the proposed pit, said he's concerned about what will happen after Penny completes the dredging operation. Zaring said he thinks Penny is "just after the sand," and will leave a big hole in the ground.

Zaring said he thinks pumping water out of the pit would be too expensive, adding that the city's water wells are closer to town.

Beadle said several provisions to the special use permit recommended by the planning commission address some of the concerns.

The mayor also said the federal land reclamation act prevents Penny from abandoning the pit

"He can't just walk away from it and just leave a hole in the ground," he said. By law, Penny would be required to fill in the pit with dirt or find some sort of productive use for the pit, such as a recreational area for water skiing or fishing. For example, an old pit along Kansas Highway 10 east of Lawrence is used for waterskiing.

Contacted at his Lawrence office Thursday, Penny said geological and hydrological reports on the proposal show the pit wouldn't

cause the river to make a new channel.

Possible water contamination can be prevented by building a levy around the pit to prevent runoff, he said, and by requiring electric pumps or pumps that use safe fuels such as soybean oil or alcohol.

"We don't want to have any liability in this thing," he said, adding that the company would take whatever measures are needed to make the pit safe.

1987

5-15

Proposed sand pit dredges up trouble

By SEAN REILLY
Daily News Reporter

DE SOTO — Planned excavation of about 35 acres of farmland 2 miles northeast of De Soto is dredging up troubles.

The De Soto Planning Commission has approved a recommendation to the city council to grant a special use permit for a sand pit operation. The recommendation will be reviewed by the council Feb. 12.

A public hearing was conducted prior to the vote taken by the planning commission.

If granted by the council, Steve Penny, owner of Kaw Sand Co., would have the right to excavate the land for sand. The pit would vary from about 20 feet to 50 feet in depth.

Penny owns the property where the proposed pit would be developed.

Attached to the recommendation are seven provisions Penny would have to abide by for the two-year permit.

Despite those provisions, though, residents of the area are not happy about having a sand pit for a neighbor.

One neighbor, Leon Coker, 69, a lifetime resident of De Soto, is concerned about the effect the sand pit could have on the quality of the Kansas River and the development of the area. He is also upset with the request and the way the planning commission handled the matter.

Coker maintains the pit would have an influence on the river, would change its course, disrupt the water supply in the area and make it unusable for the future.

"The pressure of the river will cut a new stream and go straight through 80 acres," he said.

A sand pit constructed during the early 1950s influenced the course of the river, Coker said. That pit was constructed during the Korean War and changed the river's course, cutting off about 20 acres of farmland, he added.

The old pit is now abandoned, full of shrubs and trees and can no

longer be used for farming, he said.

The owner of the sand company is proposing the pit be used for a fishing pond after the excavation is completed. Penny said he has talked with two professors at Kansas University and received encouragement for the excavation and fishing pond.

Another concern about the proposed pit is that it is about 300 feet south of Olathe's water wells, where Olathe residents receive about two-thirds of their daily water supply.

Terry McKanna, Olathe utilities director, said he was not notified of the proposed project and was going to investigate how it could effect the wells.

Howard Duncan, district engineer with the Kansas Department of Health and Environment, said the direction of the water flow would have a bearing on whether the Olathe water wells were effected by the excavation. He said

he did not foresee any problems with the proposed project.

The

Senate to consider 119th fund

Olathe city officials are keeping

5-16