

Approved: 2-1-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on January 25, 1996 in Room 254-E- of the Capitol.

All members were present :

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Ardan Ensley, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Bill Fuller, Associate Director, Public Affairs Division, Kansas Farm Bureau
Duane Hund, Land Owner, Mill Creek Watershed
Charles Rayl, Attorney for South Fork and Middle Creek Watersheds
Lauren Brunner, Lyons Creek Watershed
Don Rezac, Director, Kansas Association of Conservation Districts
Mike McFadden, Kansas Chapter, Wildlife Society

Others attending: See attached list

SB 473 - amending the nongame and endangered species conservation act; concerning the listing of nongame, threatened and endangered species

Chairperson Sallee opened the meeting and called on Bill Fuller, Kansas Farm Bureau, who spoke in support of **SB 473** and presented written testimony containing the policy the members of Kansas Farm Bureau recently adopted and a statement presented at the July 13, 1995 public meeting concerning the placing of the Topeka Shiner on the Kansas Endangered Species List (Attachment 1). Mr. Fuller told members that his organization has worked together with Wildlife and Parks, watershed districts and land owners to work out conflicts and develop a win/win situation and there are times when additional time is needed and problems do occur.

Mr. Fuller showed a short video prepared by a Farm Bureau video team which told 8 or 9 instances where watershed construction was dropped if it would help protect the Topeka Shiner habitat. Farmers are concerned that the water cannot be used for cattle. Mr. Duane Hund and nearly all other landowners in his watershed district cooperated in a voluntary survey of Topeka Shiners in streams which run through their property. More Topeka Shiners were found than expected. Therefore, activities occurring in the tributaries are not having a negative effect. Mr. Hund expressed the belief that a five year waiting period should be put in place to give more time to the voluntary effort. Mr. Fuller suggested land owners needed to get involved early in the process of endangered species listings.

Mr. Fuller presented committee members with copies of an audio prepared by Sam Knipp, a radio broadcaster, who did an extensive five part radio program concerning watershed districts with Topeka Shiners in some of those districts. On the tape Mr. Chris Mammaloti, Aquatic Ecologist, Kansas Wildlife and Parks, stated on the tape that of 85 or 90 watershed districts in the state of Kansas and only 5 or 6 watershed districts actually have Topeka Shiners within their boundaries and even within those areas the Topeka Shiners don't occur everywhere and some sites within their districts will be affected but in no way will it shut down or cause significant alteration in the watershed program as a whole. Rancher Frank Kingston, a member of the South Fork Watershed District, Cottonwood Falls, Kansas, stated that his watershed district has already given up 9 prospective sites for watershed dams in order to help settle the Topeka Shiner issue, thereby giving up the opportunity and the right to build these structures just for the preservation of the Shiner.

Mr. Fuller urged committee members to listen to the tape. He also stated many parts of **SB 473** closely reflect Farm Bureau Policy and urged their consideration.

Duane Hund, Paxico and from the Mill Creek Watershed District, presented testimony on **SB 473** (Attachment 2). Mr. Hund related his experiences dealing with U.S. Fish and Wildlife Service in Manhattan, Kansas part of which was a comprehensive survey of Mill Creek and most of the 13 tributaries draining into it. Forty-eight of 50 landowners agreed to cooperate. Contrary to a study published by William Layher (one man) Topeka Shiners were found in pools containing game fish, they also were thriving on tributaries which had detention structures in place. Mr. Hund closed by stating he did not like the idea of **SB 473** but neither did he like the Kansas Wildlife and Parks Commission voting to list the Topeka Shiner as an endangered species without granting more time for unmandated cooperation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on January 25, 1996.

Charles R. Rayl, Attorney for South Fork and Middle Creek Watersheds, presented testimony in support of **SB 473 (Attachment 3)**. Mr. Rayl departed from his written testimony noting that wildlife such as deer, antelope and have returned to Chase county on the South Fork Watershed due to good stewardship of people in that area. He read K.S.A. 24-1201a which calls for establishment of watershed districts. Mr. Rayl noted the federal moratorium on spending for the purpose of listing new species on the federal endangered Species Act of 1973 and suggested **SB 473** be amended using January 1, 1996 to be the effective date of the listing moratorium in Kansas rather than July 1, 1996.

Mr. Rayl concluded that Middle Creek and South Fork Watersheds support **SB 473** and were working with Chris Mammoliti, Aqua Biologist, Kansas Wildlife and Parks, in studying and surveying the Topeka Shiner and hoped for additional time to complete the studies.

Lauren Brunner, Lyons Creek Watershed appeared and presented testimony in support of **SB 473 (Attachment 4)**. Mr. Brunner told members how watershed lakes built on intermittent streams that have no springs establish conservation pools and can help the Shiner habitat. Mr. Brunner noted an aquatic researcher for Wildlife and Parks said watersheds and the Shiner can co-exist.

Don Rezac, Director on the Kansas Association of Conservation Districts (KACD) appeared on behalf of 105 conservation districts in Kansas and to testify in favor of **SB 473 (Attachment 5)**. Mr. Rezac stated his organization agree and support requirements of the Secretary of Wildlife and Parks listed in written testimony. He also expressed support of the requirement that any person requesting the listing or removal of a species on the state threatened or endangered list be required to provide and fund an environmental impact report with emphasis on the economic impact of the action. He also stated he would like to see more public input on these issues.

Mike Beam, Kansas Livestock Association, a statewide organization representing over 7,000 farmers and ranchers, appeared in support of **SB 473 (Attachment 6)**. Mr. Beam stated his organization was most interested in the provision to restrict the listing of species in the future noting there is much frustration with the federal endangered species law, primarily towards interpretation and administration of the act, not the objective of conserving plant and animal species. The conferee stated a vote to place the Topeka Shiner on the threatened or endangered state list could be a roadblock to the construction of watershed projects and other projects that are "publicly funded" or "state/federally assisted" and suggested the committee consider amending the bill to make the effective date in Section 2, January 1, 1996.

Mike McFadden, Kansas Chapter of The Wildlife Society, presented testimony in opposition to **SB 473 (Attachment 7)**. Mr. McFadden told the committee that one of the goals of his organization was to stimulate an attitude of good stewardship and it was felt this bill was poor stewardship. He noted apparent conflict with state law which gives authority to Kansas Wildlife and Parks and requires a petitioner, at his own cost, to fund impact studies for the change in listing designation of a species which is unfair since Wildlife and Parks is a state resource. It was further noted that the submittal of listings of plans to other state agencies usurps authority.

Staff told the committee the bill involves two different things, the first to actually freeze those endangered and threatened species that are on the current list and to only authorize the secretary to add only those on the federal list. All of the department's present authority with regard to making studies and ongoing surveys and maintain their regulations in the areas on their lists, in addition the bill would provide that on the basis of the studies they would report annually to the Legislature. The Secretary would not be authorized to add a threatened or endangered species. The Legislature would retain the ability to add or remove from the list any species recommended by the Secretary of Wildlife and Parks.

Staff stated that in the 1995 session the Legislature provided within the Rules and Regulations Filing Act provide some additional and very specific things with regards to threatened or endangered species with regard to the Secretary. Background provided stated that an attempt to provide a uniform filing area, in addition to those acts there were additional requirements to address unique circumstances, one of which occurs in this situation. Under rules and regulations there are numerous steps and a fiscal impact statement was included last year. Some of the same things are built into **SB 473**. Staff told the committee there was a need to decide what parts are now covered in the filing act and what additional steps are needed to cover this particular department in this area. Staff noted it would be best to have them all in one place but probably it was not possible. The bill was designed to say that no more species could be added to the threatened or endangered list that is not on the federal list but it has to be by rule and regulation.

The Chairperson announced that the hearings would be continued January 26, 1996 in Room 254-E.

The meeting adjourned at 9:00 a.m.
The next meeting is scheduled for January 26, 1996.

**SENATE ENERGY & NATURAL RESOURCES
COMMITTEE GUEST LIST**

DATE: January 25, 1996

NAME	REPRESENTING
Lauren Brunner	Lyons Creek Watershed
Larry Morgan	" " "
Craig Alterhofen	Lyons Creek Watershed
Jim Krueger	Lyons Creek Watershed
Ben Hamille	South Fork Watershed
Robert Stanville	Southfork Watershed
Don Reyer	KACD
Frank Hinkson II	South Fork Watershed Dist. Cottonwood Falls, Ks. 66845
CHARLIS RAYL	SOUTH FORK WATERSHED MIDDLE CREEK WATERSHED
Bill Fuller	Kansas Farm Bureau
Sam Knipp	Kansas Farm Bureau
Leslie Kaufman	Kansas Farm Bureau
Duane Hund	MILL CREEK WATERSHED
Nick Haines	KS Public Radio
Mike Beem	Ks Livestock Assn.
Deb Lambley	KS Dept of Agric.
Anne Spiess	Ks. Assoc of Counties
Bob Wood	Ks Dept Wildlife & Parks
Jerry Horak	" " "

SENATE ENERGY & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: 1/25/96

NAME	REPRESENTING
Mike McFadden	Kans. Chapter The Wildlife Society
Blake Henning	State Conservation Commission
Paul Liechti	Kansas Biological Survey
Bill Caven	KANS / Seena Club
Cynthia Abbott	Ks. Audubon Council
Amelia McIntyre	KS Dept. of Wildlife & Parks
GORDON STOKEMER	KS DEPT WILDLIFE & PARKS - COMM WICHITA AUDUBON SOCIETY
Chris Mammoliti	Ks Wildlife & Parks
Darrell Monte	KDWP
STEVE WILLIAMS	KDWP



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Re: S.B. 473 - Amends the Process of Listing Threatened and Endangered Species

January 25, 1996
Topeka, Kansas

Presented by:
Bill Fuller, Associate Director
Public Affairs Division
Kansas Farm Bureau

Chairman Sallee and members of the Committee:

Many farm and ranch members of Farm Bureau in Kansas have expressed concerns about various Threatened and Endangered Species issues over the years.

The most recent is the proposal to list the Topeka shiner. Our members recognize and support the flood control, recreational water quality and conservation benefits resulting from the construction of watershed structures.

Our concerns focus on the delays, increased costs and outright prohibition on construction at some sites. To the credit of the Kansas Department of Wildlife and Parks and several Watershed Districts, cooperation and compromise have led to plans acceptable to both parties. But, this has not happened in all cases. More work and more time is needed.

Senate Energy & Nat'l Resources
January 24, 1996
Attachment 1

My name is Bill Fuller. I am the Associate Director of the Public Affairs Division for Kansas Farm Bureau. At the most recent KFB annual meeting the 411 voting delegates representing the 105 county Farm Bureaus expended and adopted policy concerning Threatened and Endangered Species (see attachment A).

To best illustrate Farm Bureaus concern and involvement, we call your attention to:

1. KFB Statement at KDWP July 13, 1995 Public Hearing
2. KFB/AFBF Video
3. KFB radio series

Farm Bureau supports the goals outlined in S.B. 473 designed to slow and allow more public input in the listing process. Page three of the bill specifically lists several provisions recommended in KFB policy concerning the state listing of federal species:

1. Public hearing;
2. Expanded agency involvement;
3. Involvement by agencies with projects that may be impacted;
4. Preparation of economic impact report; and
5. Review list at least every 5 years.

We appreciate this opportunity to relay our concerns, outline Farm Bureau policy and express our support of S.B. 473.

Thank you!

Listing a species as threatened or endangered should require documentation to demonstrate conclusively that species proposed to be protected are actually present in a clearly defined geographic area, and are dependent for survival on habitat in that location.

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

Additionally, any species placed on the federal list under the Endangered Species Act may be added to the state list only after the following criteria have been met:

1. public hearings;
2. approval by the Kansas Department of Wildlife and Parks;
3. approval by the Kansas Biological Survey;
4. review by any agency with programs that may be impacted; and
5. compliance with the state review process and state statutory requirements.

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

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

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

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

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



PUBLIC POLICY STATEMENT

KANSAS DEPARTMENT OF WILDLIFE AND PARKS

**Re: Petition to List the Topeka Shiner As Threatened Under the
Kansas Nongame and Endangered Species Conservation Act.**

Public Hearing
July 13, 1995

Emporia, Kansas

Presented by:
Bill Fuller, Associate Director
Public Affairs Division
Kansas Farm Bureau

Secretary Williams and members of the Kansas Department of Wildlife and Parks Commission:

We certainly appreciate this opportunity to comment on the proposal to list the Topeka shiner as a threatened species. We have several questions and will express a number of concerns on behalf of the farm and ranch members of Farm Bureau in Kansas.

My name is Bill Fuller. I am the Associate Director of the Public Affairs Division for Kansas Farm Bureau. My responsibilities include working with the Kansas Legislature and state agencies on legislation and regulations dealing with natural resources and the environment.

We recommend that the proposal to list the Topeka shiner be shelved. We believe the request to halt, or at least delay, the listing is prudent and reasonable for a number of reasons.

Property owners and the general public need more information about the need for the proposed listing and the impacts of any listing. There are many unanswered questions. Will the construction of watershed structures be halted, the number built be reduced, or the time of completion be delayed? Will costs be increased? Will restrictions be placed upon the use of privately owned farm and ranch lands? While the briefing by the agency tonight has been helpful, we have seen little information in the media about the proposed listing or this meeting. We believe some of the resistance to the proposed listing is a lack of widespread, factual information. We at Kansas Farm Bureau would welcome usable information from the agency that could be distributed through our publications and network of 105 county Farm Bureau Natural Resource and Environmental Committees.

What are the expected costs associated with listing the species? While the vast majority of property owners support the protection of animal and plant species, we believe the process should include a cost/benefit analysis. Have the flood control, recreational, water quality and conservation benefits of watershed dams been adequately considered? There is fear listing the Topeka shiner will cause problems similar to the listing of the Neosho madtom where the livelihood of at least one individual was destroyed, businesses were restricted and the costs of road materials were increased to both individuals and local governments. We believe it is imperative government agencies prepare a management plan that takes into account economic factors prior to any new threatened or endangered species listing.

It is our understanding dialogue and compromise between the Watershed Districts and the Kansas Department of Wildlife and Parks has occurred over the past two years in at least three of the watersheds. We applaud both the watershed officials and the agency in their efforts to resolve the problem. It seems a delay in this proposed listing would give the opportunity to all six watersheds in the northern Flint Hills region and the agency to develop plans acceptable to all parties and avoid the need to list the species.

We realize the meeting tonight concerns a state listing by the Kansas Department of Wildlife and Parks, however some officials expect the U.S. Fish and Wildlife Service to follow with a federal listing. The most compelling reason, we believe, to halt the listing of the Topeka shiner is that Congress is in the process of making changes to the Endangered Species Act (ESA). Reauthorization of the ESA is expected to result in major reform. Ineffective mandates and penalties must give way to cooperative, voluntary incentives, which protect people as well as plants and animals. The ESA was designed to protect threatened or endangered species. It was never intended to stifle productivity or trample the rights of property owners.

A recent 6-3 Supreme Court decision continues the broad government interpretation of "harm" to include "habitat modification." Landowners will continue to be threatened and/or prosecuted for the lawful use of private property if that use unintentionally modifies the habitat of endangered species. Those penalties can apply even when the species does not actually occupy the land. This clearly is unacceptable. There is a better way.

Landowners, homeowners and others seek ESA reform, not repeal. Farmers take pride in caring for species habitat. It is important to note that nearly 80 percent of all endangered species reside on

private land. That is why it is essential the law and regulations be changed to provide incentives to save species, rather than the current act which penalizes landowners if an endangered species is found on their land. It is important the financial burden to protect species on private property be shared by society. Landowners must be compensated when the use of their property is restricted by endangered species regulations.

In closing, we repeat our request to shelf the listing of the Topeka shiner. Citizens and the private sector need more information. Agriculture, business and homeowners must be aware of the costs. With the expectation Congress will do a major overhaul of the ESA, we ask you to consider delaying the listing of the Topeka shiner until the "new" rules are in place.

Thank you!



ACCENT

November 17, 1995

2627 KFB Plaza, Manhattan, KS 66502

(913) 587-6000, EXT. 6117

NOTE: This is a 5-part series on the Endangered Species Act

SPOT #1 A CREEK RUNS THROUGH IT

In part one we learn where the "Mighty Minnow" (Topeka Shiner) lives and is it endangered.

OPEN: (nat sound of water in creek...)
CLOSE: "...for the Kansas Farm Bureau."
TIME: 2:26

SPOT #2 LISTING THE MIGHTY MINNOW COULD IMPACT ON FARMERS

What does the law say about an endangered species and how does it affect landowners?

OPEN: "It's only two inches..."
CLOSE: "...for the Kansas Farm Bureau."
TIME: 3:31

SPOT #3 CAN THE MIGHTY MINNOW HALT WATERSHED PROJECTS?

The government says the listing would have little impact but landowners tell a different story.

OPEN: "Watershed dams can be..."
CLOSE: "...for the Kansas Farm Bureau."
TIME: 3:08

SPOT #4 COULD IT BE NUMBER 963?

Kansas landowners need to speak up now if they are concerned about the Mighty Minnow making the ESA list.

OPEN: "Today there are approximately 962..."
CLOSE: "...for the Kansas Farm Bureau."
TIME: 2:30

SPOT #5 CAN WE SAVE EVERY LIVING SPECIES?

Probably not say scientists and landowners but we need to work together to save as many as possible.

OPEN: "With over 1500 species..."
CLOSE: "...for the Kansas Farm Bureau."
TIME: 2:35

Good morning! My name is Duane Hund from Paxico in Wabaunsee County. I am a farmer/stockman and have served as a board member and contracting officer for the Mill Creek Watershed District since 1976.

I received a letter from William Gill, field supervisor with the U.S. Fish and Wildlife Service in Manhattan, Kansas, February 1994. Mr. Gill advised the Topeka Shiner was a candidate species for federal listing on the threatened and endangered category. On behalf of the watershed district, I met with the U.S.F.&W. service in April of 1994. This dialogue focused on the development of an action plan for how the district might deal with the issue. An action plan was agreed to in the Fall of 1994 about the time Kansas Wildlife & Parks received a petition to place the Topeka Shiner in the States listing for threatened status. Mill Creeks action plan was instituted in the Spring of 1995. The key to its' development was a comprehensive survey of Mill Creek and most of the 13 tributaries which drain into it. This survey required the cooperation of 50 landowners. 48 agreed to allow this survey work by KDW&P and USF&W which was completed by September 1995. Please stop for a moment and consider the significance of 48 out of 50 landowners agreeing to something like this!!!

The petition to list the Topeka Shiner as threatened was based largely upon a study published by William Layher. This study pointed directly to watershed impoundments as the chief cause for declining Topeka Shiner populations. Our survey work this past year revealed that despite Layhers study, populations of

Senate Energy & Nat'l Resources
January 25 1996
Attachment 2

Hund pg. 2,

Topeka Shiners were thriving on tributaries which had detention structures in place. Some tributaries without dams had no populations, while others had surprisingly large populations. We also found Topeka Shiners in pools containing game fish. (Bass and channel cats) This was contrary to Layhers study and could not be explained by either KDWP or USFWS.

I have lobbied the KDWP commission to vote for a five year moratorium on this listing. Five years would give W&P personnel time to educate landowners and further study Layhers analysis. It would also send a message of cooperation to landowners, without the government mandates a listing would infer. This "carrot" approach works so much better than the "stick" approach. Landowners would be given the opportunity to participate in the solution to a declining species problem.

My paradigm has undergone a shift the past year. I have five children who are the sixth generation produced on the Hund farm. Stewardship is very important to us. We value Mill Creek and the diverse life contained within. Cooperating with KDWP and USFWS was automatic. My Christian beliefs tell me God created the birds of the air and the fish of the sea for mans needs. God did not say **destroy!!!**

Concerning SB 473. I do not like this bill anymore than I like the idea of W&P commission voting to list, without granting more time for unmandated cooperation. In a nutshell both sides need **TRUST!!!** Trust by watershed districts who need the expertise biologists provide. Trust by government agencies who need the

Hund pg. 3,

cooperation of landowners to provide the best solutions for endangered species. We need to remove the heavy hand of government in favor of people working towards common goals.

I understand the desire of the proponents of SB 473. My desire is not to build walls. Walls do nothing friendly for the Topeka Shiner. Topeka Shiners need all the friends they can have. Kansas Wildlife and Parks Aquatic Ecologist has told me he does not feel a five year moratorium would adversely affect Topeka Shiner populations.

In my view of a cooperative world, we don't need Threatened and Endangered listings. We also should not need SB 473. Landowners will cooperate especially when given incentives to do so. When wildlife agencies educate, "species" win!!! Consensus develops and we have win/win situations.

The landowners in Wabaunsee county and other areas are cooperating. Will Wildlife and Parks commission decide to reward this cooperation? We shall know after the commission votes on the Topeka Shiner listing this evening.

Thank you for your attention. I may be reached for your questions at (913) 636-5477.

MIDDLE CREEK AND SOUTH FORK PROPONENT OF SB 473

LEGISLATIVE POLICY
PUBLIC NECESSITY – WATERSHED DISTRICT

The State of Kansas has established public policy for the creation of water management in K.S.A. 24-1201a. That statute states:

"It is recognized that serious problems of water management resulting from erosion, floodwater or sediment damages or instability of natural water supplies are arising in the watersheds of the rivers and streams of the state of Kansas; that for the purpose of alleviating such damages and furthering the conservation, development, utilization and disposal of water and thereby preserving and protecting the state's land and water resources, it is legislatively determined that it is necessary and advisable to establish watershed districts with the power to construct, operate and maintain works of improvement needed to carry out such purposes; that there is hereby declared the public necessity for the creation of such district in watersheds including lands that are subject to erosion, floodwater or sediment damages or that would be benefited by the construction of works of improvement for the conservation, development, utilization and disposal of water; and that it is further declared that the formation of such districts will inure to the general benefit of all of the taxable, tangible property included therein."

Middle Creek Watershed Joint District No. 62, Chase, Marion and Morris County, Kansas, includes 72, 211 acres (112.83 square miles). South Fork Watershed Joint District No. 76 Butler, Chase and Greenwood Counties, Kansas, includes 184,550 acres (288.36 square miles). Both districts were formed under the authority of the Kansas Watershed District Act (KSA 24-1201, et. seq.). These watersheds are located in the heart of the Flint Hills of East Central Kansas. The area is known for its extensive highly productive tall grass prairie grasses. The economy of these watersheds is primarily based on the breeding, feeding, grazing and raising of cattle. Almost all of the arable land is located in the flood plains of the tributaries of the Cottonwood River. These flood plains are used primarily for the production of cattle feed.

ECONOMICS

The districts in cooperation with the Kansas State Conservation Commission, U. S. Department of Agriculture, Kansas Wildlife and Parks, under authority of the Watershed Protection and Flood Prevention Act PL 83-566 (16USC1001-1008) and in accordance with the National Environmental Policy Act of 1969 PL 91-170 (42USC4321 et. seq.) prepared their watershed plans and environmental impact statements. These statements point out major economic problems are caused by flooding and scour erosion. The construction of the PL 566 flood control structures improve the economic viability of the rural communities within the districts. The studies show that there is a positive benefit cost ratio for the construction of the PL 566 structures. We support the SB473 provisions requiring an environmental impact report with emphasis on the economic impact of listing a species.

SOIL CONSERVATION AND WATER QUALITY

Out-of-bank flooding occurs once or twice per year and the out-of-bank, high velocity water due to the steep flood plain gradient scours the fields, removes the top soil and exposes the subsoils and adds to the stream sediments. The construction of the watershed dams substantially reduces the flooding and soil erosion and improves the water quality. It is my understanding that one of the stated goals of the Governor of the State of Kansas is to improve water quality and to provide quality water for municipalities. The watershed districts have a positive impact on attaining these objectives.

Senate Energy & Nat'l Resources
January 25, 1996
Attachment 3

FEDERAL MORATORIUM ON NEW LISTING ON ENDANGERED SPECIES

The federal government has a moratorium on spending for the purpose of listing new species on the federal endangered Species Act of 1973 (16USC1533) a copy of which is included in your packet. We support amending SB 473 to have the date of January 1, 1996, be the effective date of the listing moratorium in Kansas rather than July 1, 1996. The endangered species list for Kansas should not include species not included on the federal list.

DISTRICT SPECIES CONSERVATION

The members of the board of directors of the watersheds are all farmers and ranchers. These farmers and ranchers have for generations been good stewards of the soil and water and providers of habitat for wildlife . This is the reason that the Flint Hills of Kansas are such a pristine area exemplifying the tallgrass native prairies. The board of directors of both watersheds have been involved extensively with mitigation of the impact of the construction of watershed dams on the Topeka Shiner and the Neosho Mad Tom.

South Fork recently entered into a species conservation plan agreement with the Kansas Wildlife and Parks to remove nine dams from its plan to mitigate the impact on the Topeka Shiner and the Neosho Mad Tom, a copy of this agreement is in the packet. Middle Creek is negotiating with the department to formulate a species conservation plan, the draft of which removes two of the last four PL 566 structures from its plan. Both districts have been very cooperative in the facilitating of monitoring studies and department surveys for the Topeka Shiner.

PETITION FOR SPECIES REVIEW

Notwithstanding the federal moratorium, U. S. Fish and Wildlife Service employee, Vernon M. Tabor, filed a petition for species review with the Kansas Department of Wildlife and Parks, a copy of which is enclosed in the packet. The petitioner relies upon flimsey and sketchy information with which to support his allegations. The surveys cited in his petition are extremely limited based on Layher (1993) one sampling in two preinboundment years 1983 and 1984 and one sampling in one post inboundment year 1989. The opinion of Professor F. Robert Henderson Emeritus Kansas State University recommends that the Topeka Shiner remain on the species in need of conservation list. A copy of his opinion is in your packet. It is our position that the department should make intensive surveys of the species population before listing or changing the category of a species.

CONCLUSION

Middle Creek and South Fork Watersheds support SB473 to provide a moratorium from adding species to the state threatened and endangered list and to cause the state list to be the same as the federal listing. We request that the effective date be January 1, 1996, as a federal moratorium is now in effect. We philosophically support the emphasis on the economic impact of listing a species.

Respectfully Submitted,


Charles R. Rayl

Rayl and Fowler, Chartered, P. O. Box 640, Cottonwood Falls, KS 66845 (316-273-6333)
Attorneys for South Fork and Middle Creek Watersheds

MIDDLE CREEK WATERSHED JOINT DISTRICT #62
CHASE, MARION, AND MORRIS COUNTIES, KANSAS

BACKGROUND

Middle Creek Watershed includes 72,211 acres (112.83 square miles) in Chase, Marion, and Morris Counties, Kansas. The population of the watershed area is approximately 1,000 people. The economy in the area is based upon agriculture. Middle Creek Watershed formulated its watershed plan and environmental impact study statement in August of 1982, with the cooperation of the Soil Conservation Service, the Kansas Fish and Game Commission, U.S. Forrest Service, and other federal and state governmental agencies. The watershed construction plan calls for the construction of 15 PL 566 structures and 13 state funded structures. The watershed has currently completed 7 PL 566 structures and 4 state funded structures.

ENVIRONMENTAL IMPACT STATEMENT WITH
RESPECT TO TOPEKA SHINER

The Middle Creek Watershed Environmental Impact Study specifically addresses at page 27 of said statement, the unique Topeka Shiner question. The Topeka Shiner habitat is apparently in spring fed pools. Concern was expressed about construction of flood water retarding dams at sites 4, 9, and 11. Loss of this habitat has been mitigated by Middle Creek as necessary to meet the requirements of the Kansas Fish and Game Commission. The 404 permit issued by the Corps of Engineers specifically addresses this issue. As a specific requirement, paragraph letter O of the 404 permit number 94-0074 states, "prior the construction of Site Number 11 (within one year), you must conduct a survey for Topeka Shiners (*Notropis Topeka*), within the area of the stream (.5 miles in both directions of the center line of the dam). The survey must also include the tributaries of this stream in the up stream direction only. If any Topeka Shiners are found, you must conduct the mitigation measures specifically specified in the environmental impact statement completed for your watershed. These mitigation measures being investigated include transplanting Topeka Shiners to other locations with similar habitat. The three dam sites where the Topeka Shiners have been found are to be built last, giving the transplanting experiment some time to become effective. If transplanting proves unsuccessful, other alternatives, including construction at substitute sites or deleting of structures for 9 and 11 from the plan will be considered." These alternatives were developed jointly with the Kansas Fish and Game Commission.

Middle Creek Watershed has constructed Site Number 4. After consultation with the Kansas Park and Wildlife, the district is currently reviewing not constructing Site Number 9. The district intends to proceed with its plans to construct Site Number 11.

LAYHER STUDY

A review of the study of William G. Layher entitled "Changes in Fish Community Structure Resulting From a Flood Control Dam in a Flint Hills Stream, Kansas with Emphasis on the Topeka Shiner" reveals that the information available with respect to the Topeka Shiner is inconclusive. Mr. Layher states at page 4 of his study that little data is available to render a decision regarding the necessary permits to allow construction of the impoundments. It goes on to state that head water streams in the area of the species can be affected by prolong droughts. He indicates that the Topeka Shiner thrives in large pools in intermittent streams and that such pools may be fed by weak springs

or percolation between gravel beds. It appears to the district that the construction of the impoundment sites within the district would enhance the ability of the intermittent streams to be fed by springs and percolation of water between gravel beds because the water is held more closely to the head waters of the streams and watersheds. Mr. Layher also indicates that the species may be collected in a stream one year and not in a subsequent year (page 4). He goes on to state that "the potential impact of impounding head waters and streams on the Topeka Shiner is unknown. During drought conditions, such impoundments may provide refuge for adults." This language seems to support the position of the watershed district that the Topeka Shiner should not be listed as an endangered species. He indicates further, on page 6, "we propose to initiate the study to determine the changes of the Topeka Shiner populations. This study indicates that the fish were sampled once per year and early fall (October and November) with a 50 foot seine with a 1/8th inch mesh." We question what the seine was in width and whether or not it had sufficient width to cover the entire depth of the sampled pool. We also question the validity of the statements made within the study because rainfall amounts were not documented each year within the watershed of each stream nor were the stream conditions adequately documented. The sampling that is referred to in his study occurred in only two pre-impoundment years, 1983 and 1984; and in one post-impoundment year, 1989. It is the position of the Middle Creek Watershed that such limited amount of sampling is not grounds to place a species on the endangered species list because the data is inadequate. His data indicates that the Topeka Shiners occurred only in two of the pools during 1983 and that there were no fish found in what he classified as environment number two as most of the pools were dry in 1984. The district concurs that the dry conditions cause difficulties for any fish life habitating in the two creeks. Carrying the analysis further into the view of the study survey conducted in 1989, we acknowledge that the summers of 1987 and 1988 were extremely dry in East Central Kansas and were dry in the area of Cauthorn Creek and Scribby Creek. Mr. Layher points out that there was significant rainfall that occurred in the late summer of 1989. We would question that the lateness of the significant rainfall in the summer of 1989 would have a positive impact on the Topeka Shiner in view of the two years of previous drought. Our primary concern with this survey is that the samplings are extremely limited, only two samples taking place prior to the construction of Site Number 4 and only one sample is referred to in the study subsequent to the construction of Site Number 4. It is our position that such limited sampling does not give rise to any measurable scientific evidence that the construction of impoundments and flood control dams have any measurable impact upon the Topeka Shiner population.

SUMMARY

In summary, it is the position of the Middle Creek Watershed that there is insufficient data available to determine that the Topeka Shiner is endangered because of its nature of the fish being a migratory fish and that it varies its habitat considerably from year to year in drought conditions or rainfall conditions may have a measurable impact upon it. So as to confirm with a reasonable degree of certainty the status of the Topeka Shiner, more data needs to be gathered before the Topeka Shiner is considered to be placed on the endangered list. The district has been very cooperative and has assisted the Kansas Department of Parks and Wildlife in its effort to gather data. The district supports waiting until the federal moratorium is resolved before any further action is taken.

SUBMITTED BY:
RAYL AND FOWLER, CHARTERED

CHARLES R. RAYL
Attorneys for Middle Creek Watershed

South Fork Topeka Shiner



STATE OF KANSAS

DEPARTMENT OF WILDLIFE & PARKS



Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953

Charles R. Rayl, Esq.
Rayl and Fowler, Chartered
P.O. Box 640
327 Broadway
Cottonwood Falls, KS 66845-0640

RE: South Fork Watershed District

Dear Charlie:

Enclosed are two originals of the Agreement, dated January 12, 1996, as now executed on behalf of the State of Kansas, through the Department of Wildlife and Parks, and the South Fork Watershed Joint District No. 76. Pursuant to your request, enclosed is a copy of the agenda of the Commission meeting scheduled for January 25, 1996, at the Downtown Ramada Inn. The public hearing on the listing of the Topeka Shiner (revisions to Regulation 115-15-1) will occur in the evening. The evening portion of the meeting starts at 7:00 p.m. Thank you for your efforts in developing this Agreement.

Sincerely,

Amelia J. McIntyre
Amelia J. McIntyre, Legal Counsel

Enclosures

cc: Secretary Steve Williams

AJM/dme

CB
INFO REQUESTED
[Signature]

8 JAN 21 00

SF Topeka Shiner

AGREEMENT

This agreement entered into on this 12th day of January, 1996, by and between the State of Kansas, Department of Wildlife and Parks by and through its Secretary, Steve Williams, hereinafter called "Department" and South Fork Watershed Joint District No. 76, Chase, Butler and Greenwood Counties, Kansas, hereinafter called "District".

1. The District is a Kansas Corporation pursuant to the Kansas Watershed District Act, K.S.A. 24-1201 et seq.

2. The District caused to be prepared a General Plan dated November, 1972, as amended October, 1984, hereinafter called "General Plan" which both have been approved by the chief engineer pursuant to K.S.A. 24-1213.

3. The General Plan as shown on the project map provided for the construction of 26 structures pursuant to Public Law 566, 83rd Congress, 68 STAT 666, as amended, structures numbered Site 1 through Site 26, inclusively. The General Plan as shown on the project map provided for the construction of 18 State of Kansas funded structures numbered Site 101 through 118, inclusively.

4. The Department has filed pending objections to the completion and construction of certain structures shown on the District General Plan alleging that said construction may impact certain species shown on various State or Federal species lists including the Topeka Shiner.

5. The Department recognizes that the District has been exceptionally cooperative with U. S. Fish and Wildlife Service and the Department with respect to facilitating monitoring studies of the Neosho Madtom and Topeka Shiner and the District has expended considerable sums of its money to fund these studies. The Department recognizes that the District's willingness to limit construction of the total number of sites shown on its General Plan is commendable. The District recognizes that the Department has expended personnel and equipment in a cooperative effort between the District and the Department to study the Neosho Madtom.

IN CONSIDERATION of the following mutual promises and covenants it is agreed that:

A. The District agrees not to complete planned construction of Sites 5, 7, 8, 12, 13, 18, 19, 25 and 26 shown on its General Plan, unless otherwise mutually agreed upon by the Department and the District and, subject to the provisions of Paragraph G hereof. The District agrees not to construct PL566 dams on the same tributary that said above listed sites are situated on the General Plan. The District agrees to contact the Department prior to the District expending significant expenses for the construction of state funded structures on said tributaries. The Department agrees to provide appropriate surveys to determine the presence of or the effect on the Topeka Shiner that may result from the construction of the proposed state funded structures.

B. The Department agrees not to object or in any other manner oppose before any local, state or federal agency whatsoever, the construction, maintenance and operation of Sites PL 566 or state funded 16, 24, 106, 114 and 117 by the District subsequent to approval of the modified General Plan by the chief engineer of the Division of Water Resources and the District's Board of Directors contemplated to be submitted to implement this Agreement. The Department further agrees upon approval of the modified General Plan by the chief engineer of the Division of Water

Resources and the District's Board of Directors, to withdraw, remove, strike from the records, repeal, rescind and in any manner required and to discontinue its objection related to the presence or effect upon the Topeka Shiner of any kind, character, nature and description which has heretofore been made. Subject to the provisions of paragraph C below, the Department upon approval of the modified General Plan as contemplated above hereby waives any other objection that would in any manner adversely affect the construction of the sites set forth in this paragraph. Upon execution of this agreement, the Department shall advise the U.S. Fish and Wildlife Services of its intent to withdraw its objection pending such approval of the modified General Plan.

C. The District agrees to construct Site 16 with a minimum 18 inch diameter draw down pipe laid on an elevation at the intake location and exit location similar to the stream bed elevation prior to construction of Site 16. The engineering design of said Site 16 shall be made by Natural Resource Conservation Service, USDA. The Department may provide information to the NRCS with respect to the design of Site 16. The District agrees to request that NRCS consult with the Department and the Department agrees to consult with NRCS with respect to the preliminary design of the Site 16 structure. The District agrees to request the NRCS to provide the Department 60 days in which to make comments subsequent to such consultations.

D. The District is granted certain rights pursuant to K.S.A. 24-1218. The District grants without warranty to the Department a nonexclusive access to Sites 16 and 24 for the purpose of monitoring by the Department of fish populations. It is specifically understood that the District shall not be liable nor suffer any penalty by the Department in the event that any landowner or landowners of the property that is the site of Sites 16 and 24 or property adjacent thereto should deny the Department access to said Sites 16 and 24 for any reason whatsoever. The District agrees to contact the landowners of Sites 16 and 24 for the purpose of obtaining voluntary grants of easements accruing to the benefit of the Department and the District to facilitate, access, by the Department for the purpose of conducting semi-annual inspections and surveys for the presence of Topeka Shiner populations. Upon failure to obtain such voluntary easements, the District will cooperate and invite Department personnel as a part of the annual inspections as otherwise occurring by the District at these sites to conduct such inspections and surveys of Topeka Shiner populations.

E. The information gathered by the aforesaid monitoring described in Paragraph D above shall not be used by the Department to oppose or object to the construction of any watershed detention structure sites numbered 1, 103, 104, 105, 106, 110, 114, and 117, whatsoever as located within the boundaries of the District.

F. Upon the approval of funding by Natural Resources Conservation Services or State of Kansas Conservation Commission for the design of the structures, the District and the Department agree to cooperate in the survey sampling for the presence of the Topeka Shiner in the vicinity of detention structure sites marked 4, 11, 14, 15, 21, 108, 109 and 115 as shown on the General Plan. If such sampling results show that the Topeka Shiner is present in the vicinity of structure site, then such site (or sites) will be deemed included in the list of sites dealt with in Paragraph A above. If such sampling results show that the Topeka Shiner is not present in the vicinity of a structure site, then such site (or sites) will be deemed included in the list of sites dealt with in Paragraph E above.

G. The Department agrees to survey sample for the Topeka Shiner at Site 17 for three consecutive years. If the Topeka Shiner is not found, the District may build Site 17. If the Topeka Shiner is found then Site 17 will not be constructed. Provided, however, the Department agrees to then sample Sites 18 and 19 for three consecutive years. If the Topeka Shiner is not found on either

Site 18 or Site 19, either, but not both, Site 18 or 19 may be constructed by the District. The Department shall survey the sites twice annually during the three year period setforth above.

H. District and Department agree that this agreement is intended to serve as a species conservation plan to be submitted to the Corps of Engineers as a portion of the District Permit Application for construction of the sites. The Department agrees to support this plan in any proceedings before any governmental agency.

I. This agreement shall be binding upon the parties hereto, their successors and assigns.

DISTRICT

DEPARTMENT

Frank Hinkson

Steve Williams

Frank Hinkson, President
South Fork Watershed Joint District No. 76

Steve Williams, Secretary
Department of Wildlife and Parks

ACKNOWLEDGEMENT

STATE OF KANSAS, COUNTY OF CHASE, ss:

The foregoing instrument was acknowledged before me this 10th day of January, 1996, by Frank Hinkson, President of the South Fork Watershed Joint District No. 76.

Deanna S. Sellner



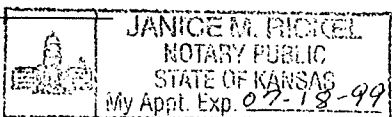
Notary Public

My Appointment Expires:

STATE OF KANSAS, COUNTY OF SHAWNEE, ss:

The foregoing instrument was acknowledged before me this 12th day of January, 1996, by Steve Williams, Secretary of the Department of Wildlife and Parks.

Janice M. Rickel



Notary Public

My Appointment Expires:

South Fork Watershed Joint District No. 76
Cottonwood Falls, Kansas 66845

July 13, 1995

Kansas Department of Wildlife and Parks Commission:

I would like to thank the Commission for having this public meeting and the opportunity to speak before you. I am Frank Hinkson, President of the South Fork Watershed District. ~~Our district is one of the larger watersheds in the Cottonwood-Neosho Basin. Our district takes in parts of three counties, Chase, Butler, and Greenwood, and covers about 184,000 acres.~~

This is not the first species to directly affect our watershed district. As you may know, our watershed district had to fund a monitoring study on the Neosho Madtom in order for us to continue any construction within our district. This study has been on going for the past three years at a cost of \$27,000 per year. I realize the Topeka Shiner is a separate issue, but it shows the cost and sacrifice our watershed district has had to go through to satisfy concerns about Endangered Species.

I have three main points to make as to why ~~we feel the~~ Topeka Shiner should not be listed on the State Threatened or Endangered List.

First of all, the U. S. Congress has placed a moratorium on placing any more species on the Federal list until after Congress re-authorizes the present Endangered Species Act. This process is scheduled to take place during this session of Congress. I believe it would be a very hasty and pre-mature ~~decision to place the Shiner on the State T&E list now, before~~ Congress has re-written the Endangered Species Act. There is a very good chance that the new Act will include much stronger measures protecting private property. Economic implications will also be addressed in the areas that the listed species encompasses. We, therefore, urge the Commission to not even consider listing the Topeka Shiner or any other species on the state list until after the U. S. Congress has re-written the Endangered Species Act.

My second point deals with private property rights. Congressman Billy Tauzin of Louisiana stated it best when he said that the greatness of our country arises from the economic opportunities afforded by the use and ownership of private property. Ownership of property makes most of us better citizens and increases our involvement in local and national government activities. Our government ought to be encouraging, not discouraging private property ownership.

As we watch former communist governments move in the direction of a free enterprise economy, based on ownership of private property, our own government is moving, just as fast, in

the opposite direction. Greater burdens are being placed on private property owners and the government is making it riskier to own private property. An individual who purchases property, assumes the debt to make that investment, and pays substantial property taxes, should at least be able to try and make a return on that investment without the government actively working against him.

Our Constitution was adopted, not just to grant power to the government, but also to limit the power of the government and to protect the rights of the individual. Without the protection provided by our Fifth Amendment, our government can deprive property owners of their land use, without just compensation. Most of the cases that have arisen in which landowners have lost the use of their property have been under the Endangered Species Act or the Wetlands Permitting Program.

Unfortunately, there is a growing attitude within the federal bureaucracy that it is acceptable to disregard the legal rights of private property owners, as long as the goal is one they deem to be praise worthy. There is also a growing movement to preserve various types of habitat in order to protect plants and animals for the so-called benefit of the general public, but at the total expense of the individual property owner. This would be the case here if the Topeka Shiner is listed. The vast majority of the land owners in the Flint Hills region have been good stewards of their property. However, if the Shiner is listed, these land owners could be prevented from using their own private property or the value of their property decreased because of restrictions and measures taken to preserve the habitat of the Topeka Shiner. Case in point is the gravel removal issue locally on private property as it relates to the Neosho Madtom. I feel the private property rights of land owners should be addressed and given a much higher priority than the rights of a 3" long minnow that has no economic use other than bait or as an aquarium fish, especially when there are 82 other species within the minnow family all located in North America.

My third point involves the South Fork Watershed District directly. According to the 1993 U. S. Fish & Wildlife Service status report on the Topeka Shiner, some of the best and most stable historic populations of the Topeka Shiner in Kansas are located within the South Fork Watershed because we do have high quality streams that drain primarily upland prairie.

On page 15 of this status report, under Article 2 Existing Threats, it states: existing land use practices, dewatering of streams with associated reductions in ground water levels, and the continuing development of watershed impoundments represent the greatest existing threats to the species. Also in the petition to list the Shiner by Mr. Tabor, he cites habitat degradation caused by sedimentation and continued watershed impoundment construction as the main threats to the Topeka Shiner. To our knowledge, there has been no long-term or on-going studies to document these statements. A few papers have been written, based on sporadic and occasional samplings, to

base these opinions on. There is no scientific documentation that watershed impoundment construction actually extripates the Shiner. While we disagree with their conclusions about watershed construction, we have addressed these concerns.

At the June 1995 meeting of the South Fork Board of Directors, we met with Chris Mammoliti, of the Kansas Department of Wildlife and Parks, to discuss the Shiner issue within our watershed. In our general plan, dated 1972, South Fork had plans to build 26 PL 566 flood-retarding structures. These are the federally funded structures. Of these 26 proposed sites, 14 of them had been found to have historic populations of the Shiner in their area. Of these 14 known sites of Shiners, our district has already built 3 structures. At our June meeting, the South Fork Board of Directors voted to remove, or permanently eliminate 9 sites from our general plan. Eight of these sites are those with historic Shiner populations. Our proposal to Kansas Department of Wildlife & Parks was: South Fork would remove 9 structures from our general plan in exchange for Wildlife & Parks allowing us to obtain the necessary permits, without opposition, to build 2 more PL 566 structures and 3 state funded structures. Of our 26 original sites, only 10 structures will be built. We feel South Fork Watershed has addressed and acted on the major concerns raised by this petition. By removing approximately 60% of the sites that had historic populations of the Shiner within our watershed, this action should go a long way in calming the fears of the petitioner about watershed construction on South Fork. The Kansas Department of Wildlife & Parks conducted an April 1995 sampling of Shiners near site #24, on Thurman Creek drainage, within the South Fork watershed. Topeka Shiners were found in seven different locations in that immediate area, and the report stated: although small numbers of the species were captured, they appear to be part of a relatively stable population. (I would like to add that Minckley and Cross, in their study, believed this minnow increased in abundance in the Flint Hill streams during dry weather and decreased in wet weather. This 1995 study was done during a more wet period of time.) By South Fork removing these 8 construction sites of known Shiner populations, these measures should help to insure that the stable populations within our watershed remain stable.

I want to point out a few of the benefits these small watershed dams provide. They reduce flood damages to farm ground, and to roads and bridges. They minimize soil erosion and increase municipal water supplies, as well as provide new habitat for many species of fish and birds. They also contribute some recreational value. A 1994 news release from the USDA stated that small watershed dams provided over \$12 million in flood damage reductions in Kansas during the summer floods of 1993 alone.

A further note about PL 566 construction is the funding. Due to steep budget cuts during FY 95, no new money for construction was available. Currently, new PL 566 construction in Kansas

is on hold due to lack of federal funding, and it appears FY 96 will also not have funding available.

In summary, I would like to encourage the Commission to wait until after the U.S. Congress re-writes the Endangered Species Act before it even considers listing any more species on the State Threatened and Endangered List. Secondly, please consider the needs and rights of private property owners. And finally, the necessary steps have already taken place within South Fork to insure adequate Topeka Shiner habitat without having to list this species on the Endangered List. I want to thank you for your time and attention and ask that you please consider my comments.

STATE OF KANSAS



DEPARTMENT OF WILDLIFE & PARKS

OPERATIONS OFFICE

512 SE 25th Ave.
Pratt, KS 67124-8174
(316) 672-5911 / FAX (316) 672-6020

July 5, 1995

Mr. G.W. Yeager, Contracting Officer
South Fork WJD #76
Rt. 1, Box 113A
Cottonwood Falls, KS 66845

Dear Mr. Yeager:

The Department has given consideration to your letter of June 21, 1995. That letter indicates the willingness of the Watershed Board to drop nine sites (5, 7, 8, 12, 13, 18, 19, 25, and 26), which have documented Topeka shiner collections, if the Department of Wildlife and Parks removes its current objection to site 24 and offers no future objection to sites 106, 114, and 117. The Department has already agreed to remove our objection to site 16 should an acceptable engineering design be implemented. After considerable discussion, the Department feels this is a reasonable approach which not only conserves identified habitat for the Topeka shiner, but also allows the District to meet its flood protection goals. The Department of Wildlife and Parks is willing to enter into a written agreement which documents our concurrence. When a document acceptable to the Department and the District is signed, we will send a letter to the Division of Water Resources removing our objections to site 24.

To initiate this action we recommend the District draft a document for our review. We would like this document to contain provisions which allow the Department to conduct ongoing monitoring of the Topeka shiner populations at sites 16 and 24. The monitoring would allow further analysis of the impact of flood control dams on Topeka shiner populations as well as document the potential for dry dams as a mitigative tool. This knowledge would be beneficial to the Department, the South Fork District, and other districts with known populations of sensitive fish species. The Department would be responsible for all costs associated with this monitoring. Also, the information collected would not be used to alter an agreement made for sites 16, 24, 106, 114, and 117.

If you have any questions or concerns feel free to contact the Environmental Services Section at the letterhead address. We appreciate the District's willingness to address our concerns and look forward to resolution of this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Mammoliti".

Chris Mammoliti, Aquatic Ecologist
Environmental Services Section

xc: KDWP, Williams/Manes/Kramer
SCC, Streeter
USFWS, Gill

SAKW, Hamm
NRCS, Habiger

An Opinion for Consideration Related to the Petition Review
of the Topeka Shiner Notropis topeka

F. Robert Henderson
Professor Emeritus KSU
Private Consultant

History of the Endangered Species Legislation

The first Federal endangered species legislation was enacted in 1966. In three years, a concern for endangered species worldwide was noted by the formation of CITES, the Convention on International Trade in Endangered Species.

The 1966 endangered species legislation lacked power to really protect endangered species, so the Endangered Species Act of 1973 set forth federal rules and regulations for our country. Two federal agencies, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service are responsible for reviewing the status of species in trouble to see if they warrant listing as either endangered or threatened, and subsequent action for recovery.

The decision for listing is to be based solely on scientific data rather than social or economic factors. (Although these factors must be considered when designating "critical habitat" and formulating recovery plans. Once a species is listed, no branch of the federal government can proceed with a federally funded project where a listed species might occur without first contacting and consulting with the U.S. Fish and Wildlife Service.

A 1995, U.S. Supreme Court decision upholding government regulators' authority to restrict activities on private property under the Endangered Species Act of 1973, was recently announced. The Court said the 1973 law provides "comprehensive protection for endangered and threatened species" and the government's interpretation that such protection includes habitat is reasonable.

With the federal ESA coming up for its next reauthorization in Congress, there is much controversy being expressed over economics, the balance of nature, property rights and limits of development. As a result, there is currently a moratorium on federally listing any new species. This moratorium is scheduled to be lifted in October 1995. It is likely that some refinements in the Endangered Species Act of 1973 will be made.

History of the Kansas Program

¹This opinion was prepared for the Cottonwood-Neosho Watershed Committee for consideration by KDWP at a meeting in Emporia Kansas at 7 pm on July 13, 1995.

Following closely on the heels of enactment of the Federal Endangered species Act of 1973, the State of Kansas enacted in 1975 the Non-game and Endangered Species Conservation Act. In 1979 a Federal\State cooperative funding agreement was established to cost share endangered and threatened species projects. If a species is federally listed more federal dollars can be given to a state for studies and projects to increase the species. The more ES listed the more federal dollars.

In Kansas, with mandate from the Non-game and Endangered Species Conservation Act of 1975, the KDWP established rules, regulations and programs necessary for the conservation of threatened and endangered (T&E) species and Species In Need of Conservation (SINC). Anyone with information about a species can petition the KDWP for consideration of listing that species.

Once a species is listed as being federally endangered, the state must list that species as being endangered also. However, a state can list other species as the state wildlife agency terms appropriate. A State's list has no relationship to a the federal list. If a species is listed by KDWP as either threatened or endangered both require an action permit in all cases where federal\state dollars are involved or in any other situation where any other kind of permit is required.

History of the status of The Topeka Shiner, TS.

With a history of state wildlife agencies funding and interests resting, primarily with sport hunting and fishing, the status of non-game species is generally unknown and generally not monitored. The original range of the Topeka Shiner is found in six states, where these minnows still occur: Nebraska, Kansas, Iowa, Missouri, and Minnesota.

According to Mike Fritz with the Nebraska state wildlife agency (pers. comm. July 10, 1995) the Topeka shiner is not listed as threatened in Nebraska. Four small minnows are listed. According to Fritz very few searches have been conducted for the Topeka shiner by his agency. They do plan to conduct searches in the next few years.

According to Irene Studel with the South Dakota Game and Parks Department (pers. comm. July 12, 1995) the Topeka shiner is not listed in South Dakota. She indicated it locally common in three river watersheds: Big Souix, James, and Vermillion in a nine county area. Further she said they have very little data to compare its abundance now with the historical abundance. New records were recorded in 1992 in Turner and McCook counties.

According to Darrel Howell with the Iowa Department of Natural Resources (pers. Comm. July 12, 1995) the Topeka shiner is not

listed in Iowa. His opinion was he questioned the need to list the Topeka shiner nationally. He indicated more searches are needed. He indicated U.S. Fish and Wildlife in Iowa had conducted some surveys for the Topeka shiner but that he has not received a copy of their findings.

The current status by the different state wildlife agency people I spoke to seem to assume the current populations are not known in large areas of the range of the Topeka shiner. This area in South Dakota, Nebraska, Kansas and Iowa cover large areas. Minnesota has a smaller area where Topeka shiners occur. Tabor in(1994) petition stated under "Current global distribution": Iowa 1 watershed; South Dakota 2 watersheds; Nebraska - presumed extirpated.

Howell seems to have the impression the Topeka shiner was nearly gone from Kansas, while we here in Kansas seemed to get the idea the Topeka shiner has nearly disappeared from all other states.

History of the Topeka shiner in Kansas

In 1980 the Topeka shiner was put on KDWP threatened species list. In 1987 many new populations were located and KDWP reclassified the Topeka Shiner to the category Species In Need of Conservation, (SINC).

A petitioner (1994) has recommended the KDWP change the status of the Topeka shiner in Kansas from a SINC to ES. The KDWP has a long-standing endangered species steering committee. This committee reviews petitions for listing species and recommends to the commission the category the committee thinks the species should be classified as. In the current petition to list the Topeka Shiner the Committee recommends a threatened category instead of an endangered category.

There is a case in history from which we might learn, We do not want to follow in the footsteps of the snail darter, Percina tanasi, and the Tellico dam on the Little Tennessee River. This federally listed endangered species was protected by a court order which halted work on a multimillion-dollar, nearly completed dam. The supreme court upheld the lower courts opinion. A committee established through legislation for the purpose of addressing issues such as this, ruled that the Tellico dam should not be built. But Congress pushed through a special measure to finish the dam anyway. Afterwards widespread searches found other wild populations of the snail darter and the species was reclassified, (Chadwick, 1995).

Almost all writers whose work I have reviewed, indicate the Topeka shiner can be found at a given location; other times not, and again found in later years. Often these minnows are located in

new or different creeks.

Some of the biologists who prepared information about Topeka shiners often used phrases like, "the extent of predation on the species is unknown", (Tabor, 1993). "Information concerning parasites or disease is not available", (Tabor, 1993). "The species appears dependent on high water quality" ... (Tabor, 1993). "No conclusive evidence of precise cause of the decline Topeka shiner populations in the dammed stream was found; ..." (Layher, 1993). Then some rather strong conclusions are drawn, there is a real lack of good information about the TS.

Minckley and Cross (1959) believed this minnow increased in abundance in Flint Hills streams during dry weather and decreased in wet weather. During the time of this recent concern for the Topeka shiner, I remind the reader the recent years have been more wet than dry.

Layher(1993), based his conclusions on sampling in two pre-impoundment years, 1983 and 1984; and in one post-impoundment year, 1989. He collected samples once a year in October and November. Perhaps different results could have been obtained if he sampled on a monthly bases. We do not see a history of rainfall at the sites during the study nor current flows on the creeks. On page 13 of Layher(1993) he indicates the summers of 1987 and 1988 were among the driest on record for east-central Kansas, but significant rainfall occurred in the late summer of 1989. By sampling in October and November 1989 the Topeka shiners could very likely have been dis-placed by earlier rainfalls. His study showed 113 Topeka shiners were in the fish samples in 1989 from Cauthorn's creek. Maybe they all moved to that creek. A decision as important as that of the KDWP in this case should not be made based on one study.

However, Layher's own admission's a previous publication (Layher et.al. 1986) stated "that recent range (of the Topeka shiner) appears to not be diminishing and that the populations are not under major threats". Maybe the next study will cause yet another reversal. Other causes could have been involved, since this species seem to decline at times where dams are not present.

Incorrect Claim as to cow-calve trends

Tabor (1993) claimed the decline of the prairie, alterations, degradations, changing management practices such as conversion from seasonal grazing to year around cow/calf operations, increased grazing of riparian zones and conversion to cropland" are all causes for the decline of the Topeka shiner. I just do not see proof to support these broad statements as they relate to the decline of the Topeka shiner.

The information that follows demonstrates that the number of cow-calf operations have not increased in Chase, Bulter or

Greenwood counties, nor in the Flint Hills in general. The Agriculture department in Kansas keeps records of the number of cows that have calved each year in each county in the state. The past twenty-four years 1970-1994 shows a decline in Chase from 19,500 in 1970 to 12,400 in 1994. Likewise Bulter from 40,500 to 25,600; and Greenwood from 45,500 to 26,400. In fact the total numbers of all cattle and calves has decreased between 1970 and 1994. Chase county 82,000 in 1970 to 42,100 in 1994; Bulter 146,000 to 126,200 and Greenwood 110,000 to 79,700.

The suggestion that somehow cow-calf production is bad for the grassland is wrong. Parton and Risser(1980) found that a moderately stocked year-round cow-calf grazing system is more beneficial to the tallgrass prairie than a more highly stocked seasonal steer grazing system because the former increases the above ground and below ground primary production and the plant nutrient uptake rates.

We should try different ways

Perhaps people should be experimenting with Topeka shiners to study these creatures in captivity, to determine DNA and identify different genetic strains, so to produce these minnows in aquaculture situations. Couldn't we do these things without declaring the Topeka shiner either T or E? Prophet (1985), in a study to test the success of transplanting Topeka shiners found that Topeka shiners can be transported from one site to another with low mortality.

Layher (1993) on page 4 stated headwater streams in areas of the species' occurrence can be affected by prolonged droughts. To hold water in the headwaters should help the species not hurt it. He goes on to write the potential impact of impounding headwater streams on TS is unknown. Surely management practices could be developed and tested to create habitat in watershed lakes where TS could gain protection from predators

The values of Watershed lakes

In the earlier days of the conservation effort we were taught to try to keep the rainfall where it falls. In the 1950' and 60's many people protested the construction of large federal lakes.

Today, there are hundreds of watershed lakes and 100,000 plus farm ponds in Kansas. The soil conservation practices in place now help to keep the rain where it falls. New ideas are being adopted, such as Filter Strips along streams where cultivation occurs. Do farm ponds contribute to the decline of Topeka shiners?

The construction of watershed dams and farm ponds has benefitted many different species of wildlife. Is it the purpose

and plan of KDWP to return the prairie to some stand still state as envisioned by your agency? Are we suppose to manage the tall-grass prairie for the Topeka shiner or for the greatest number of species? We need first to know why Topeka shiners declined in other states and in Kansas, if in fact they have declined.

Flood control is a major benefit of watershed dams. The reduction of flooding downstream from watershed dams has helped save hundreds of acres of top soil. Prophet et al (1981) stated maintenance of flow year-round, or at least for more weeks than normally occurs, would improve the overall environmental quality of the affected stream.

What is the goal of KDWP

If it is KDWP purpose to protect the Kansas biological diversity, wouldn't we be better off managing ecosystems to keep the greatest number of plants and animals from becoming imperiled in the first place?

I know for a fact that the KDWP does not have an over abundance of ready cash; neither do ranchers. It costs everyone a lot of money to try to rescue creatures one at a time. The rancher must first make a living, however, and most Kansas landowners are not able to manage their land for wildlife to the degree some people seem to think they should.

Kansas has a wealth of wild animals and plants. With 97% of the land in private ownership, and most all fish and game is produced on private land. This abundance is due partly, if not totally, to management by the private landowner. Hunters and fishermen are dependent on the good will of private landowners for a place to hunt and fish.

The future of the great diversity of native wildlife in Kansas rests in the hands of private landowners, not with KDWP. In the Flint Hills, most landowners have a great amount of pride in producing crops of wildlife. To have wildlife is a tradition that is respected, but to read and hear things that simply are not true, is the basis for the problems that exist between private landowners and KDWP; and private landowners and the U.S. Fish and Wildlife Service.

There is a great deal of cooperation between KDWP and private landowners, Chris Mammoliti, Aquatic Ecologist in the Environmental Services Section meets with Watershed committees, reviews data and plans work. The Middle creek watershed and the South Fork watershed committees have agreed to not build on some sites, postpone other sites, asks for KDWP's assistance and ideas. Landowners have provided access to their lands and shown a true interests in the problems surrounding the Topeka shiner.

Why not strengthen that partnership by setting up demonstration areas of excellent TS habitat on private land. Look into the development of habitat to protect TS in watershed lakes. Treat landowners fairly, keep them informed and consider their point of view. Create incentives for private landowners to conserve Topeka shiners. The program should prevent the species from becoming either endangered or threatened. Try to make better use of the limited resources of your agency as well of the landowner, by focusing on groups of species in the same habitat, like "Prairie Grasses and Wildlife: Twin Crops".

I recommend leaving the Topeka shiner as currently listed SINC.

Respectfully submitted on July 13, 1995

F. Robert Henderson

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Personal interviews:

Fritz, Mike. Nebraska Wildlife Agency. Lincoln, Ne. 402 471-5440.

Howell, Darral. Iowa Wildlife Agency. 515 281-8524.

Stukel, Irene. South Dakota Wildlife Agency 605 773-3391.

V I T A

F. ROBERT HENDERSON

PERSONAL DATA

Birthdate and Place: January 13, 1933, San Antonio, Texas

Ranch Address: HC 1, Box 80
Hamilton, KS 66853
(316) 645-2261

Residence: 2121 Browning Avenue
Manhattan, Kansas 66502
(913) 537-7895

EDUCATION

M.S. Zoology-Botany, Fort Hays State University, 1956

B.S. Zoology-Botany, Fort Hays State University, 1956

One-year study at University of Kansas on mammals - 1959-1960

Sabbatical leave, Kansas State University, November 1981 - March 1982, to conduct research regarding animal damage control.

POSITIONS HELD

Professor Emeritus - February 2, 1995 to present.

Professor, and State Leader (until 1988) for Extension Wildlife Damage Control, Kansas State University, Cooperative Extension Service, Manhattan, KS, June, 1983 - February 1, 1995.

Associate Professor, and State Leader for Extension Wildlife Damage Control, Kansas State University, Cooperative Extension Service, Manhattan, KS, July, 1977 - June, 1983.

Assistant Professor, Extension Specialist, Wildlife Damage Control, Kansas State University, Cooperative Extension Service, Manhattan, KS, July 1, 1968 to July 1, 1977.

1968 - 1977 Organized and managed the development of competent Extension Education programs for the State of Kansas in Animal Damage Control. Planned and conducted public meetings, agent training, on-farm demonstrations in animal damage control methodology. Developed and maintained liaison with wildlife organizations and agencies, environmental groups and private industry. Directed the planning, budgeting, and scheduling of Extension Wildlife activities.

After originating, organizing and supervising the first workshop in 1973 on Wildlife Damage Control, which attracted 140 participants from 29 states, administrators were so pleased that biannual workshops were sponsored by the Great Plains Agricultural Council. These workshops have continued every two years since 1973,

the next one will be held in April 1995. The applicant organized and supervised the First Great Plains Furbearer Workshop in 1974, which was attended by 120 participants from 21 states.

Developed training aids and publications and conducted pesticide safety and proper use training programs in Kansas for vertebrate pest control applicators. Developed newsletters, publications, slide sets, movies, and video tapes to insure a flow of up-to-date information from research results on ADC Kansas Extension Agriculture Agents in 105 counties.

Worked with commercial fish producers in Kansas on ADC problems and produced a bimonthly newsletter for Kansas commercial fish producers.

Worked with producers on a one-to-one basis, trained them to reduce animal damage and avoid additional losses. Trained, certified, and supervised 320 ADC volunteers statewide. Developed and maintained interdepartmental cooperation to expedite solutions to ADC problems within the state.

Produced an 8 mm movie about coyote damage control that later was reproduced on 16 mm film by the EPA with technical advice from me. This film about coyote predation on livestock is used nationwide.

Other accomplishments during these first nine years included Kansas Legislative approval of the results of the ADC program with passage of the Wildlife Damage Control Act of 1973. In 1975 the Kansas Legislature added a second specialist to our staff.

1978 -1983 Originated, developed and organized ten state Wildlife Damage Control Workshops biannually. Developed and updated wildlife damage control handbook for a ten-state area. Appeared before legislative (city, county, state and/or federal) committees to give expert testimony.

Worked three years with farm and environmental groups to get agreement on the use of a device called M-44 for use in coyote control. After that I developed M-44 training program and manual (manual used by the State of Oregon and by commercial manufacturers of M-44 devices).

Developed educational aids and led training sessions in a 50-county area for prairie dog control. Developed and trained local police, firemen, park workers, and personnel of city, county health and police departments. Worked with airport managers and U.S. Armed Forces on bird damage control.

Wrote parts of nine manuals for pesticide safety training and certification in Kansas. Screened and rendered opinions of all vertebrate control toxicants offered for registration in Kansas. Served as lead agency representative in advising public of recommendations on all chemicals registered for use in ADC in Kansas.

Developed a close working agreement between state and federal agencies in wildlife matters. Developed ten 4-H wildlife related statewide projects. Developed an FFA project in ADC on a statewide basis. Developed the first statewide trapper education program that led to the passage of legislation requiring a mandatory testing program for all new fur harvesters in Kansas.

Encouraged and was successful in obtaining \$40,000 funding for a progressive ADC research proposal to study sheep management as it relates to coyote depredation. This study was the first of its kind. Developed what many people believe is the most effective ADC self-help educational program in the United States. Developed and supervised a statewide Wildlife Damage Control volunteer program with 300 to 500 volunteers.

1983 - 1995 Served as editor and promoted a 630-page Great Plains Handbook on ways to increase wildlife on farms and ranches and ideas for supplemental income from wildlife resources. Produced state-wide telenet educational program on lease hunting in 1987. After several successful project completions by the late 1980's we received over \$100,000 a year in grants to produce educational material about wildlife.

Developed and maintained wildlife habitat and land leasing for hunting and fishing education programs on a statewide basis. By the early 1990's the four areas of responsibility, (1) animal damage control, (2) wildlife habitat enhancement, (3) fisheries in farm ponds and commercial fish hatcheries, and (4) youth programs in wildlife subject matter areas, I spend the following percentages of time: (1) 70%; (2) 10%; (3) 10%; and (4) 10%.

District Game Manager, South Dakota Game, Fish & Parks Dept., Kadoka, South Dakota. May 1, 1961, to June, 1968. Worked in Badlands District, which included a 10,000 square mile area in southwestern South Dakota.

Responsibilities, Duties, and Accomplishments: Supervised management and development of public education in predator calling from 1961 through June, 1968. This was a major part of my job duties. Assistant in Department predator and nuisance animal control programs. Served as Judge of World Champion Predator Calling contest.

In 1964, black-footed ferrets were discovered living in prairie dog towns in the area in which I was responsible for game management. Between 1964 and 1968, I conducted research on the life history of black-footed ferrets. I was the principal author of the first major paper ever written about the black-footed ferret, which was entitled, "Black-Footed Ferret in South Dakota". Because of this work I am recognized as a premiere authority on the black-footed ferret.

My duties as Game Manager included the responsibility for the management of Sharp-Tailed Grouse, Greater Prairie Chicken, Antelope (in connection with antelope census work gained 2500 hours of low level flying experience), White-Tailed Deer, Mule Deer, Wild Turkey, Greater Canada Geese, Big Horn Sheep and general wildlife management duties.

Taught employees of state wildlife agency, federal ADC employees, hunters and general public how to call predators. Traveled state-wide, presenting more than 100 public speeches on the art of calling predators. In addition, conducted more than 50 training sessions for agency personnel in the art of predator calling. Served as technical advisor in the production of the 16 mm movie, "Predators for Sport". Successfully introduced the sport of predator calling to northern Great Plains of the United States. Taught predator calling class at the University of Wisconsin. Started predator calling contests.

Owner and Manager, Fish and Wildlife Management Consulting Service, Lawrence, Kansas, May, 1960 - September, 1960.

Drew up management plans for private shooting preserves and management of fishing lakes. ADC experience gained from this endeavor in working with private land owners on ADC problems around shooting preserves, game bird rearing facilities and fishing lakes. Conducted predator calling classes.

Research Assistant, Kansas Biological Survey, Lawrence, Kansas, April, 1959 - April, 1960.

Conducted research on beaver damage and as a result wrote "Beaver in Kansas", a book which was published by the Kansas Biological Survey.

Wildlife Biologist, Ranch owned by O. A. Sutton, private landowner and industrialist, August, 1956 - March, 1959.

Worked as wildlife biologist on a 10,000-acre ranch. Worked with quail, deer, pheasant, ducks, fishing, land management and shooting preserve management. Worked on wildlife damage control problems around pen-reared released birds and rearing pens.

Biologist Aide, Kansas Forestry, Fish and Game Commission, Summers of 1951 through 1955.

Worked summers while in college on law enforcement, fisheries management and depredation control around fish hatcheries. During the winters while attending college, worked as a state trapper removing beaver from complaint areas.

CONSULTATIONS AND REQUESTED ASSISTANCE

- 1989 - Video tape series Ag and Wildlife for nation-wide use.
- 1988 - Virginia sheep growers about coyote damage control.
- 1988 - Study about prairie dogs in United States for EPA.
- 1988 - Iowa sheep growers regarding coyote damage control.
- 1984 - Strychnine cancellation hearing - Washington, D.C.
- 1983 - Illinois Cooperative Extension Service - Coyote Damage Control.
- 1982 - 1080 Legislative Hearing to control predators - Washington, D.C.
- 1982 - Michigan Cooperative Extension Service - Trapper education.
- 1982 - Arkansas Cooperative Extension Service - Trapper education.
- 1982 - Oklahoma Cooperative Extension Service - Trapper education.
- 1980 - Illinois Cooperative Extension Service - Development of Extension Wildlife position.
- 1979 - Iowa Conservation Department trapper education.
- 1978 - Consultant to Woodstream Corporation on development of coyote trap improvement.
- 1975 - Woodstream Corporation - expert witness for the corporation before Congressional hearing sub-committee regarding leghold trap legislation, Washington, D. C.
- 1974 - National Audubon Society - expert witness before the Secretary of the Interior regarding predator control.
- 1974 - Illinois Cooperative Extension Service - regarding the development of an Extension Wildlife position.
- 1973 - National Wool Growers - witness before Congressional hearing on Predator Control in Washington, D.C.
- 1972 - Oregon Cooperative Extension Service - development of Extension Wildlife position.
- 1970 - Colorado Wildlife Conservation Agency - development of Extension Wildlife position.
- 1969 - South Dakota Game, Fish and Parks Department - development of Extension Wildlife position.

AWARDS

- 1993 - Outstanding Service Award; presented by The Great Plains Agriculture Council.
- 1992 - Meritorious Service Award for Outstanding Service Work in Kansas; by the Alpha Rho Chapter of Epsilon Sigma Phi, National Honorary Extension Fraternity.
- 1991 - Pioneer Award for early work on behalf of the Kansas Furharvester's Association.
- 1985 - USDA Superior Service Award for development of Wildlife Damage Control Program in Kansas.
- 1983 - Visual Aids Award, Cooperative Extension Service, Kansas State University, Manhattan.
- 1980 - Good Guy Award from Kansas State University 4-H Department.
- 1978 - Professional "Wildlife Conservation Award" presented to ten people in the United States by the American Motors Corp.
- 1977 - "Environmental Protection Agency Recognition Award".
- 1975 - Kansas Farmer Award, Future Farmers of America, Kansas Chapter.
- 1974 - "Wildlife Conservation Award" given by the State and National Wildlife Federation.
- 1972 - "Conservationist of the Year Award in Kansas" given by the State and National Wildlife Federation.
- 1967 - "Outstanding Contribution to Wildlife Management" from the South Dakota Chapter of the Wildlife Society. First award of its kind in South Dakota.

ORGANIZATIONAL COMMITTEE MEMBERSHIP

- Great Plains Agricultural Council Advisory Committee on Wildlife, since its creation in 1980, and Chairman-elect, 1985.
- Vertebrate Pest Committee of The Wildlife Society.
- Range and Conservation Committee, Kansas Livestock Association.
- Predator Committee, Kansas Sheep Association and Kansas Livestock Association.
- Chemical Task Force Committee, Kansas State University, 1969.
- Extension Renewable Natural Resources Committee, 1977.

MEMBERSHIPS IN ORGANIZATIONS

- Epsilon Sigma Phi, National Honorary Extension Fraternity.
- Wildlife Society - Certified Wildlife Biologist.

PUBLICATIONS

- Green, Jeff, F.R. Henderson and Mark Collinge, Coyote Damage Control. Great Plains Wildlife Prevention and Control. Scott Hygnstrom ed, University of Nebraska, Extension Service, Lincoln, NE 20 pp, 1995.
- Henderson, F.R. 4-H Wildlife Notebook. Kansas State University pub. 1995.
- Tischendorf, Jay and F.R. Henderson, Puma in the Great Plains. Blue Jay. 1994.
- Lee, Charles and F.R. Henderson, co-editors, Private Lands Wildlife Management Manual. Kansas State University and Western Resources pub, 420 pages. 1994.
- Henderson, F. R. and Philip Balch, 4-H Leaders Guide to Fish and Wildlife Projects in the Great Plains. Kansas State University pub, 350 pages. 1991.
- Henderson, F. R., Editor. Increasing Wildlife on Farms and Ranches. Kansas State University pub., 600 pages. 1987.
- Choate, Jerry, F. R. Henderson, and E. K. Boggess. The Status of the Black-Footed Ferret in Kansas. Transactions, Kansas Academy of Science. 85 (3), pp. 121-132. 1982.
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- Henderson, F. R., and E. K. Boggess. 2% Zinc Phosphide for Prairie Dog Control. Kansas State University Coop. Ext. Service pub. AF-32, 4 pp. 1979.
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- Henderson F. R., E. K. Boggess. A public education program of predator damage control. Proceedings of the North American Wildlife and Natural Resources Conference, pp. 323-328. 1977.
- Henderson, F. R., and R. J. Little. Status of the black-footed ferret and black-tailed prairie dog in Kansas. Proceedings, Black- Footed Ferret and Prairie Dog Workshop, 406 Sept. 1973, pp. 34-40. 1973.
- Henderson, F. R. Controlling Prairie Dogs. Coop. Ext. Service. pub. L-350 (revised), Kansas State University, leaflet. 1973
- Robel, Robert J., F. R. Henderson, and W. Jackson. Some Sharp- Tailed Grouse Population Statistics from South Dakota. Journal of Wildlife Management, Vol. 36, No. 1, pp. 87-98. 1972.
- Henderson, F. R., P.F. Springer, and R. Adrian. The Black-Footed Ferret in South Dakota. Tech. Bulletin. South Dakota Dept. Game, Fish and Parks 4:vi + 1-37. 1969.

Henderson, F. R. Wanted--Black-Footed Ferret. Pamphlet Cooperative Extension Service, Kansas State University, 8 pp. 1969.

Henderson, F. R. The Prairie Dog. Kansas State University Cooperative Extension Service, Publ. MF-212, 20 pp. 1969.

Henderson, F. R. Controlling Prairie Dogs. Cooperative Extension Service pub. L-350, Kansas State University leaflet. 1969.

Henderson, F. R. Ferret Search on in Kansas. Kansas Fish and Game, Winter issue, pp. 18-21. 1968.

Henderson, F. R., F. W. Brooks, R. E. Wood, and R. B. Dahlgren. Sexing of Prairie Grouse by Crown Feather Patterns, Journal of Wildlife Management, Vol. 31, No. 4, pp. 764-769. 1967.

Jones, J. K. and F. R. Henderson. Noteworthy Records of Foxes from South Dakota. Journal of Mammalogy, Vol. 44, No. 3, pp. 283. 1963.

Dahlgren, R. B. C. M. Twedt, F. R. Henderson. Lens Weights of Sharp-Tailed Grouse. Journal of Wildlife Management, Vol. 28, No. 4, pp. 853-854. 1962.

Henderson, F. R. Beaver in Kansas. Kansas Biological Survey, Kansas University Museum of Natural History, December, No. 26, 85 pp. 1960.

COMMISSION BRIEFING ON THE TOPEKA SHINER, *Notropis topeka*

PROPOSED ACTION:

The species is recommended for listing as "threatened" under regulations pursuant to the Kansas Nongame and Endangered Species Conservation Act. It is currently listed as a "species in need of conservation." The threatened designation requires any person or organization sponsoring or responsible for a publicly funded action, a state or federally assisted action, or an action requiring a permit from another state or federal government agency, which impacts the listed species or its critical habitat, to make application to the Secretary for a permit. Under current regulation K.A.R. 115-15-3, an "action" is any activity that results in physical impacts to threatened or endangered species or their habitats. Oversight of the permit system within the Department is the responsibility of the Environmental Services Section.

The Kansas Nongame and Endangered Species Conservation Act, a compilation of twelve statutes (32-957 thru 32-963, 32-1009 thru 32-1012, and 32-1033), places the responsibility for identifying and undertaking appropriate conservation measures for threatened and endangered wildlife species directly upon the Department of Wildlife and Parks. The Act requires the Department to not only identify and list threatened and endangered species but also undertake efforts to conserve listed species and pursue increasing their populations to the point they are no longer threatened or endangered. Further, should any other species be found needing protection under the Act, additions to the list are to be made.

If the Topeka shiner becomes listed under the Act, there would be little if any impact to private citizens. Private actions, by individual citizens on their own property, would not be subject to T/E permitting requirements unless they involve the aforementioned state or federal assistance, funding, or permits.

FEDERAL STATUS:

The United States Fish and Wildlife Service (USFWS) has classified the Topeka shiner as a Category 1 candidate species. This classification means the USFWS possesses substantial information supporting a proposal to list the species under auspices of the Federal Endangered Species Act. During evaluation for category 1 status, the Topeka shiner was given the highest ranking priority possible for a species of a polytypic (more than one species) genus. Preliminary consideration is being given for a federal proposal to list the species as endangered.

PETITION PROCESS:

On October 12, 1994, the Secretary of the Department of Wildlife and Parks received a petition to reclassify the status of the Topeka shiner from Species in Need of Conservation (SINC) to Endangered. The petition, with accompanying information, was reviewed by a task force composed of personnel from KDWP, the USFWS, and the Kansas Biological Survey. The task force determined that the petition was in order and that the petitioner provided adequate justification to support additional review of the species. In November, evaluation forms were sent to 21 Kansas professionals who have knowledge of the species. The purpose of this evaluation was to acquire status and trend information about the Topeka shiner population from several different sources. The scientific evaluations indicated that the species should be listed as threatened. In February, the task force met to review and discuss all information gathered on the Topeka shiner. Task force consensus was to recommend to the Department that the species be listed as threatened.

GENERAL:

The species was first identified by C.H. Gilbert in 1884 from Shunganunga Creek, Shawnee County, Kansas. It is a small fish of the minnow family, not exceeding 3" in length. It is stout-bodied with an overall silvery coloration and well

defined dark stripe along the side. The tail fin has a distinct wedge-shaped spot at its base.

HABITAT:

The Topeka shiner inhabits the calm pool portions of high-quality tributary streams draining upland prairies. The species is typically found in perennial headwater areas which are maintained by spring or seep flows. It has also been found in smaller perennial or semi-perennial streams. The stream may or may not be bordered by trees. The pool substrate is typically gravel, rubble, or sand, but the shiner can tolerate low to moderate sedimentation. Topeka shiners can tolerate a range of water temperatures, but cooler spring-maintained systems are considered optimum.

HABITS:

The Topeka shiner occurs in open water, occupying the lower half of the water column. It is considered a schooling fish and frequently occurs with other minnows common to smaller streams. The species feeds primarily on small insects and their larvae.

The species spawns from late June to August, depending upon climatic conditions and geographic setting. The young mature in one year, with a maximum life span of two to three years. This species utilizes the nests of other fish such as the green sunfish and orangespotted sunfish. A dependence on silt-free gravel for spawning may exist, which would explain the use of sunfish nests.

GEOGRAPHIC RANGE:

The species is known from the Kansas River Basin in Kansas and Nebraska, the Arkansas River Basin in southcentral Kansas, the Missouri River Basin in central and northwestern Missouri, eastern Nebraska, western Iowa, southeastern South Dakota, and southwestern Minnesota, and the Des Moines River Basin in north-central and southeastern Iowa and extreme northeastern

Missouri. Isolated occurrences have been documented from the Sand Hills region of Nebraska and eastern Iowa. The species has exhibited major declines in distribution and abundance throughout its historic range. For example, of 61 historic locations in Iowa, the species is known to currently exist in only 3.

In Kansas, there has been a shift of population density from central and western Kansas prairie streams, now largely bordered by cultivated farmland, to native grassland drainages of the Flint Hills. Of 63 historic locations in Kansas, the species is known to currently exist in 20. The species now occurs only in the northern Flint Hills region and Willow Creek in Wallace County.

THREATS:

High turbidity/sedimentation; high water temperature; stream dewatering; impoundments; channelization; removal of riparian vegetation; intensive cultivation; intensive grazing.

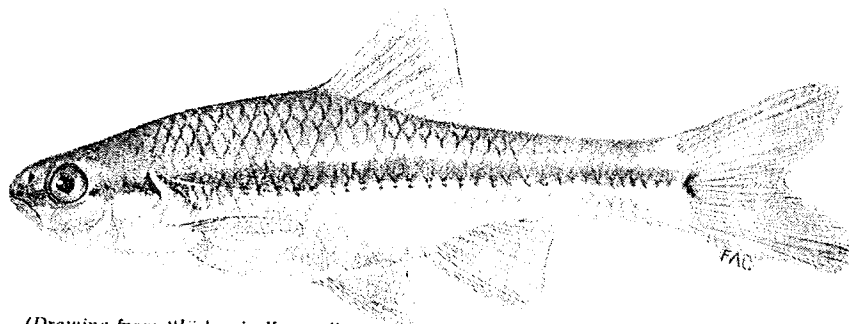
It is suspected that significant increases in stream silt and sediment due to agricultural practices since the turn of the century have caused critical reductions in favorable habitat for this species. It's occurrence in the Flint Hills reflects the fish's required habitat conditions, which were much more prevalent historically in other portions of the state. Any change in traditional rangeland management that alters the habitat of the drainage area or stream quality will have negative impacts on the species. Construction of impoundments causes physical and limnological habitat changes and increases the number and sizes of predator fish within the stream system to the detriment of Topeka shiner populations.

CURRENT ENVIRONMENTAL SERVICES SECTION ACTIONS:

- Through the Water Projects Environmental Coordination Act, the Environmental Services Section (ESS) recommended Department of Agriculture permits for two watershed dams within the South Fork Watershed District (Chase County), be held in abeyance until KDWP review of the petition to list the species was

finalized. Ongoing coordination with the watershed district has led to a verbal agreement which would allow for construction of the two dams while still providing habitat protection for the Topeka shiner.

- Through the tri-agency watershed review process (KDWP, NRCS, USFWS), ESS recommended that alternative locations be considered for two potential dam sites in the Diamond Creek Watershed District (Chase and Morris Counties), and for one potential dam site in the Lyon Creek Watershed District (Dickinson County).
- ESS staff conducted a survey for Topeka shiners at 14 planned dam sites within the Middle Creek Watershed District (Chase and Marion counties). No Topeka shiners were found, and a report to that effect was provided to the District.
- ESS staff is currently conducting a survey for Topeka shiners in the Mill Creek Watershed District (Wabaunsee County). This survey is in response to a request from the District's Board of Directors for information regarding stream segments important to the species. The objective of the survey is to identify locations where flood control dams can be constructed without impacting Topeka shiner populations.



(Drawing from "Fishes in Kansas"
1975)

by Frank B. Cross and Joseph T. Collins.



DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

REPLY TO
ATTENTION OF:

December 30, 1994

Regulatory Branch
(94-00074)

Mr. Harold Wells
Middle Creek Watershed
Joint District No. 62
Route 1, Box 46
Elmdale, Kansas 66850

Dear Mr. Wells:

As requested by your application, dated March 8, 1993, enclosed is a proposed Department of the Army (DA) permit, in duplicate, with drawing attached. When executed, the permit will authorize your plan to construct two earthen dams on unnamed tributaries of Middle Creek in Marion County, Kansas.

Enclosed is a "PROVISIONAL PERMIT". The provisional permit is NOT VALID and does not authorize you to do your work. The provisional permit describes the work that will be authorized, and the general and special conditions which will be placed on your final DA permit, if the State of Kansas water quality certification requirements are satisfied as described below. No work is to be performed in the waterway until you receive a validated copy of the DA permit.

Under the Clean Water Act, a Section 404 DA permit cannot be issued until the State grants or waives Section 401 water quality certification. As of this date, the Kansas Department of Health and Environment has not issued a Section 401 water quality certification for your proposed work.

Conditions of the Section 401 water quality certification will become conditions to the final DA permit. Should the State's action on the required certification preclude validation of the provisional permit in its current form, a modification to the provisional permit will be evaluated and you will be notified as appropriate. Substantial changes may require a new permit evaluation process, including issuing a new public notice.

Once the State has issued the required Section 401 water quality certification and you agree to the terms and conditions of the provisional permit, you should sign and date the original and duplicate copy of the enclosed permit document. Each copy of the permit document should be signed on page 3 above the word "Permittee," dated, and returned within 30 days from the date of

this letter. A preaddressed envelope is enclosed for your convenience. Upon receipt of the properly signed documents, the permit will be executed and returned to you for your files. Your DA permit will not be valid until we have returned a copy to you bearing both your signature and the signature of the appropriate Corps official.

If the Kansas Department of Health and Environment denies the required Section 401 water quality certification, then the DA permit is denied without prejudice. If you should subsequently obtain a Section 401 water quality certification, you should contact this office to determine how to proceed with your permit application.

If you have any questions concerning your Section 401 water quality certification, please contact Mr. Scott Satterthwaith of the Kansas Department of Health and Environment, Bureau of Water, Nonpoint Source Section, Building 283, Forbes Field, Topeka, Kansas 66620 or telephone 913-296-5582.

Please note that special conditions n. and o. of the enclosed provisional permit document require a feasibility investigation and survey requirements for measures to minimize impacts to the Topeka Shiner, *Notropis topeka* (Shiner). Although Site No. 11 was surveyed in mid-1994 and no Shiners were located, the site appears to exhibit high quality habitat. We suggest that this area be periodically surveyed by qualified personnel until the proposed structure is confirmed for construction. Such data would likely be a significant factor in the decision of modifying the design of Site No. 11 to operate as a dry structure.

If you have any other questions concerning your application for a DA permit, please contact Brian McNulty at 816-426-5047.

Sincerely,



for

David A. Jackson
Deputy Chief for Operations
Construction-Operations Division

Enclosures

Copy Furnished:

Rayl and Fowler, Chartered
Cottonwood Falls, Kansas

PROVISIONAL PERMIT

NOT VALID

DO NOT BEGIN WORK

This PROVISIONAL PERMIT is NOT VALID until:

1) You obtain a Section 401 water quality certification from the Kansas Department of Health and Environment.

2) You sign and return the enclosed provisional permit with the State Section 401 water quality certification and the appropriate permit fee as indicated below:

_____ \$10 _____ \$100 x No fee required

3) The Corps of Engineers signs the permit and returns it to you.

Your permit is denied without prejudice, if the State denies your Section 401 water quality certification.

DO NOT BEGIN WORK

DEPARTMENT OF THE ARMY PERMIT

Permittee Middle Creek Watershed Joint District No. 62

Permit No. 94-00074

Issuing Office U.S. Army Engineer District, Kansas City

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Project Description: Proposed: This permit authorizes the placement of fill material below the ordinary high water mark and inundation of the tributary stream channel in conjunction with construction of two earthen dam structures as shown in the attached drawing (Site No. 6 and Site No. 11). The structures will consist of vegetated emergency spillways and principal spillways constructed of reinforced concrete pipe or other suitable material as approved by the Kansas State Board of Agriculture.

Project Drawing(s): See attached drawing, Sheets 1 of 1, dated 12/28/94.

Project Location: Two project sites are located on unnamed tributaries to Middle Creek. Site 6 is located in Section 1, Township 19 south, Range 5 east, and Site 11 is located in Section 34, Township 18 south, Range 5 east, both in Marion County, Kansas.

(Site 6: Latitude: 38°26'04"N - Longitude: 96°49'28"W)
(Site 11: Latitude: 38°26'30"N - Longitude: 96°51'32"W)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 1999. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

See continuation sheets, pages 4 and 5, of this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- Section 404 of the Clean Water Act (33 U.S.C. 1344).
- Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Harold R. ...
(PERMITTEE)

1-3-95
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)
RICHARD H. GORING
BY: DAVID A. JACKSON
Deputy Chief for Operations
Construction-Operations Division

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

Special Conditions:

- a. If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor; and, you must give a copy of this entire permit to the contractor.
- b. You must use clean, uncontaminated materials for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into the waters of the United States by natural runoff or by leaching.
- c. You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in a nonwetland area above the ordinary high water mark and at a location where the concrete and wash water cannot enter the water body or an adjacent wetland area.
- d. You must excavate, dredge and/or fill in the watercourse in a manner that will minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.
- e. You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body.
- f. You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.
- g. You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.
- h. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work.
- i. Upon completion of earthwork operations, you must seed, replant or otherwise protect from erosion all fills in the water or on shore, and other areas on shore disturbed during construction.
- j. If riprap is used in construction of any structure, you must use only graded rock, quarry-run rock and/or clean concrete rubble for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150-pound pieces. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume. If you use concrete rubble, you must break all large slabs to conform to the well graded requirement, and remove all exposed reinforcement rods, trash, asphalt, and other extraneous materials before you place the rubble in the water of the United States.
- k. If any jurisdictional wetlands are discovered that would be adversely impacted by activities authorized by this permit, you must contact the Corps of Engineers. Appropriate measures will be required and developed at that time, ensuring impacts to these wetlands be avoided, minimized, and/or mitigated as appropriate.
- l. The Kansas State Conservation Commission has agreed to conduct Phase I surveys of all structures that do not have Natural Resource Conservation Service involvement in either funding and/or design. If the Kansas State Historical Society (SHPO) determines that investigations of cultural and/or historic resources are warranted beyond a Phase I survey, you must notify the Corps of Engineers. The Corps of Engineers and/or the Natural Resource Conservation Service, depending upon the circumstances of the SHPO's request and site conditions, will coordinate any further investigation and evaluation in compliance with Section 106 of the National Historic Preservation Act.

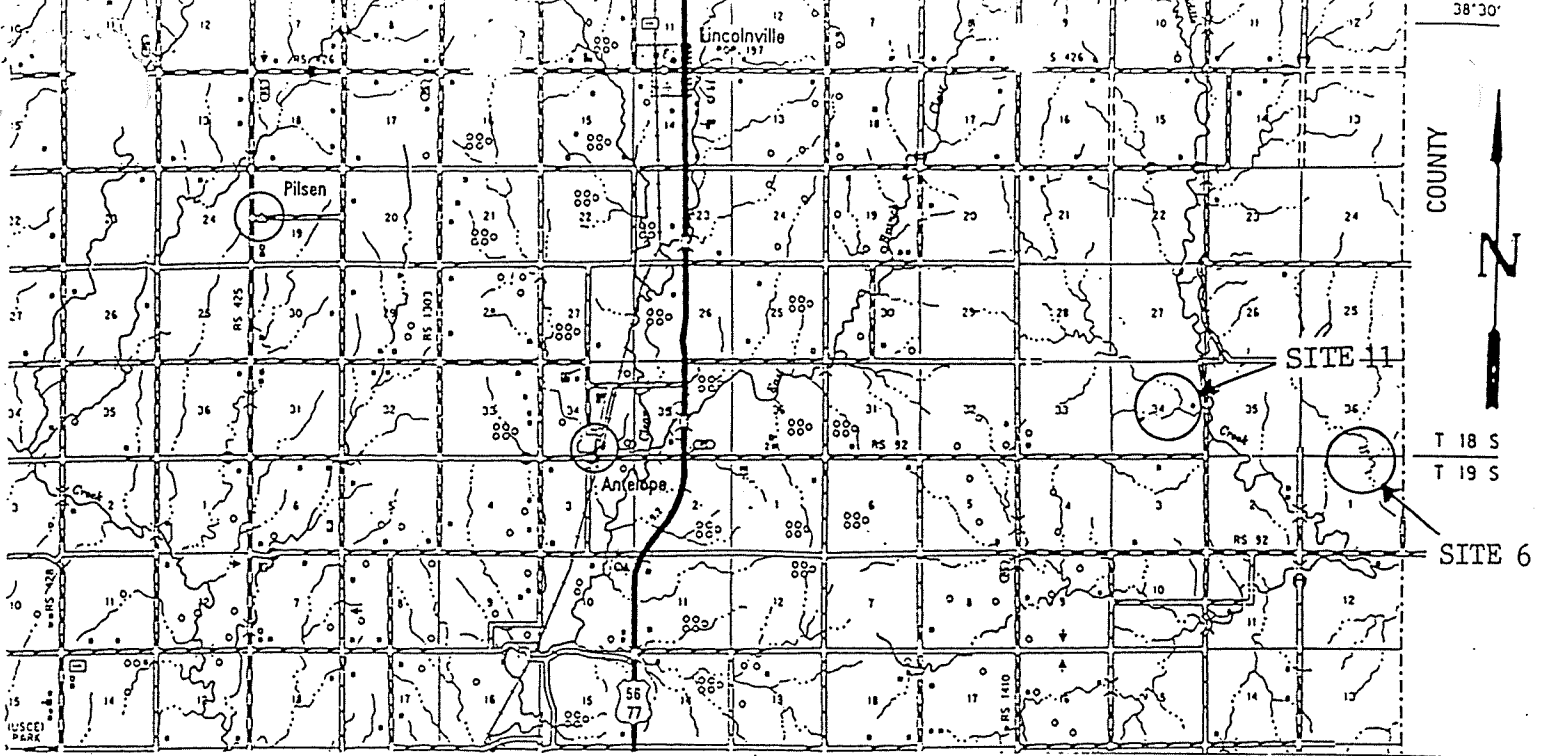
Special Conditions: (continued)

m. If relocation of this structure exceeds any of the criteria listed below, you must notify the Corps of Engineers for modification of this permit. A modification must be requested in writing and authorized by the Corps prior to initiating construction in a revised location.

- The purpose(s) of the specific structure remains unchanged.
- Any relocation of the specific structure will not:
 - adversely affect the benefits or beneficiaries of the site
 - move the site more than 660 feet upstream or downstream
 - increase or decrease the drainage area by more than 20 percent
- The size of the specific structure as identified in the general plan does not increase more than the listed tolerances of the following items.
 - Detention storage by 20 percent
 - The permanent pool surface area by 20 percent
- The specific project is not an additional structure to the general plan.
- The topographic location remains feasible for construction of a safe and appropriate structure in the public interest.

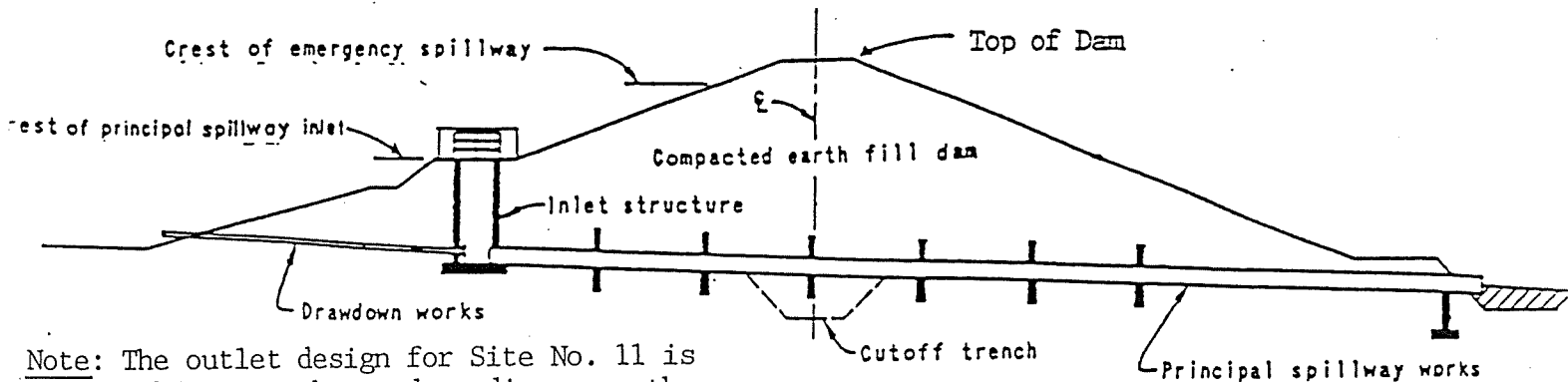
n. You must investigate the engineering feasibility of the construction Site No. 11 such that it operates as a dry structure and would not impair the movement of aquatic species indigenous to the affected stream. You must provide a report to the Corps of Engineers, documenting this feasibility investigation. Results of this investigation may require design modifications to allow operation of the structure as stated above. Increased costs associated with any modification will not solely be reason for determining an alternative to be unacceptable. You must not begin construction of this structure until a feasibility report is approved in writing by the Corps of Engineers.

o. Prior to construction of Site No. 11 (within one (1) year), you must conduct a survey for Topeka Shiners, *Notropis topeka*, within the area of the stream (0.5 miles in both directions of the centerline of the dam). The survey must also include tributaries to this stream in the upstream direction only. If any Topeka Shiners are found, you must conduct the mitigation measures specified in the Environmental Impact Statement completed for your watershed.



LOCATION MAP
 SITE 6: SECTION 1, T19S, R5E
 SITE 11: SECTION 34, T18S, R5E

TYPICAL EARTH DAM WITH DROP INLET SPILLWAY



Note: The outlet design for Site No. 11 is subject to change depending upon the outcome of a feasibility study required by Special Condition n. of this permit.

CROSS SECTION OF DAM ON CENTERLINE OF PRINCIPAL SPILLWAY

ADJACENT PROPERTY OWNERS:

SITE 6

Edward J. Broz
 Dudley J. Donahue
 James C. Donahue
 Lloyd Darrow
 Phillip J. Stuart, Trustee
 Alton Matz
 Jim Ronsick
 Shield Farms, Inc.
 Keith Harder, Trustee

SITE 11

Robert L. Novak
 Frick Farms, Inc.
 Martin Pecinovsky
 Phillip Smith
 Otto Lehmann
 Leland Bernardt
 Ted Haefner
 Steven Matz
 Viola C. Richman
 Edward Broz
 John Wayne Gutsch

APPLICATION NO. 94-00074
 BY MIDDLE CREEK WATERSHED JOINT
 DISTRICT NO. 62
 FOR 2 DAMS
 UNNAMED TRIBUTARY TO MIDDLE CREEK
 MARION COUNTY, KANSAS
 SHEET 1 of 1
 28 Dec 94

Middle Creek
North Snake River

1 and of which \$11,557,000 shall be (10)available until ex-
 2 pended for operation and maintenance of fishery mitiga-
 3 tion facilities constructed by the Corps of Engineers under
 4 the Lower Snake River Compensation Plan, authorized by
 5 the Water Resources Development Act of 1976 (90 Stat.
 6 2921), to compensate for loss of fishery resources from
 7 water development projects on the Lower Snake River:
 8 *Provided*, That unobligated and unexpended balances in
 9 the Resource Management account at the end of fiscal
 10 year 1995, shall be merged with and made a part of the
 11 fiscal year 1996 Resource Management appropriation, and
 12 shall remain available for obligation until September 30,
 13 ~~1995~~ (11): *Provided further*, That no monies appropriated
 14 under this Act or any other law shall be used to implement
 15 subsections (a), (b), (c), (e), (g), or (i) of section 4 of the
 16 Endangered Species Act of 1973, (16 U.S.C. 1533) until
 17 such time as legislation reauthorizing the Act is enacted or
 18 until the end of fiscal year 1996, whichever is earlier, except
 19 that monies appropriated under this Act may be used to
 20 delist or reclassify species pursuant to subsections
 21 4(a)(2)(B), 4(c)(2)(B)(i), and 4(c)(2)(B)(ii) of the Act.

CONSTRUCTION

23 For construction and acquisition of buildings and
 24 other facilities required in the conservation, management,
 25 investigation, protection, and utilization of fishery and
 26 wildlife resources, and the acquisition of lands and inter-

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Kansas Department of Wildlife and Parks

PETITION FOR SPECIES REVIEW

Species Common Name Topeka shiner

Species Scientific Name Notropis topeka (Gilbert)
(Use name from list of references enclosed)

Recommended change in petitioned species status:

Move to: Endangered Threatened Species in Need of Conservation
Remove from: Listing Endangered Threatened
 Species in Need of Conservation

1. Describe the species' current distribution (not population size).
In Kansas: (Chase & Butler) S. Fork of the Cottonwood River watershed; (Geary) Davis Ck.; (Marshall) N. Elm Ck.; (Pottawatomie) Clear Fork; (Riley) Deep Ck. & Walnut Ck.; (Wabaunsee) Mill Ck. & Mission Ck.; (Wallace) Willow Ck.

Current global distribution: Missouri - 5 watersheds; Minnesota - 1 watershed; Iowa - 1 watershed; South Dakota - 2 watersheds; Nebraska - presumed extirpated.

Cite references or studies supporting distribution information: See attached bibliography, in addition to: Pflieger, 1992 & 1993 Personal Comm.; Tabor, 1993 USFWS Status Report; Tabor, 1994 Statewide Survey for the Topeka shiner in Iowa

2. How and to what magnitude has the species' distribution changed during the past 35 years? In Kansas: It has declined or been extirpated from streams in eastern Kansas and the periphery of the Flint Hills; extirpated from several Flint Hills streams; extirpated from 1 of 2 locales in western Kansas.

Globally: The species has suffered major declines in range and population numbers throughout its range. For example, the species was known from 61 sites in 25 Iowa counties, it is now present at 3 sites in 2 Iowa counties.

Cite references or studies supporting change information: Same as #1, in addition to M. Claussen, 1992, Nebraska Game & Parks Comm.; Stasiak, 1992, Univ. of Nebraska - Omaha; Tabor & Powell, 1992, Survey for Topeka shiner in KS.

3. Describe the species' population (not distribution) trends during the past 35 years. In Kansas: Populations remain at "natural" levels within several streams within the species range, but many other populations, particularly on the periphery of the Flint Hills have declined or disappeared.

Globally: Dramatic declines are apparent in both distribution and abundance throughout the species range.

Cite references or studies supporting population trend information: _____
Same references and studies as #1 & #2. _____

4. What proportion of the species' global population is currently found within Kansas? Approximately 50%.

Cite information upon which you base this determination: Tabor, 1993,
U.S. Fish and Wildlife Service Rangewide Status Report on the Topeka Shiner.

5. What is the species' current residency status in Kansas (vagrant, migrant, year-round, introduced, etc.): year-round

6. Describe the species' current breeding status within Kansas including changes or trends during the past 35 years you are aware of: In streams with minimal habitat degradation, reproduction apparently continues at natural levels. In degraded streams, reproduction is diminished or eliminated.

Cite references or studies supporting reproduction information: _____
Same references and studies as #1 & #2. _____

7. Describe the species' habitat requirements: The species is characteristic of perennial, low order prairie streams with high water quality, often in association with springs or seeps. Substrate is usually clean gravel, cobble or sand. The species most often occurs in pool or run areas, being pelagic in nature.

Cite references or studies supporting habitat information: _____
See attached bibliography. _____

8. Discuss the species' degree of specialization with regard to habitat, food or other life history factors: The species is a nektonic insect vore dependent on high water quality and relatively clean substrates. These habitats are characteristic of prairie streams with minimal agricultural impacts.

9. Discuss the species' sensitivity to environmental contaminants, if any, including known actual or potential problems: The species is sensitive to sedimentation, high turbidity levels, eutrophication, high water temperature, and other characteristics of poor water quality.

Cite references or studies supporting contaminant sensitivity information:

Same references and studies as #1 & #2. _____

10. To what degree is this species currently vulnerable to consumptive and/or commercial use in Kansas and what relation does that use have on its total population? There is no widespread consumptive or commercial use of this species. It is occasionally collected for use as fish bait and aquarium fish.

Cite references or studies supporting consumptive use information: _____

N/A _____

11. To what degree is this species' Kansas habitat currently and/or potentially threatened by alteration or destruction? Discuss: In areas with intensive agricultural use habitat degradations such as sedimentation and eutrophication continue. Destruction and alteration of habitat and flow regimes by continued watershed impoundment construction seriously endanger the species continued existence in the Flint Hills region.

12. Discuss the potential for recovery of this species through conservation measures. Be specific as to what measures you feel should be implemented to aid recovery: Recovery of the species to its native range is not an option due to the extent of changes to its habitat across its range. However, the species could be preserved in areas where it continues to exist by preserving or reestablishing riparian zones, minimizing livestock access to riparian, and eliminating further construction of impoundments in watersheds where the species persists.

13. Summarize your reasons for requesting a review of this species. This species is an excellent representative of our Kansas natural prairie ichthyofauna, and with the decline in native prairie and alterations and degradations to the aquatic systems within them, this species continued existence is gravely endangered.

Feel free to attach any information you may have pertaining to the status or biology of this species that will help the Commission in its review.

Petitioner(s):

Name: Vernon M. Tabor

Address: 1407 Deep Creek Lane

City: Manhattan State: KS Zip: 66502

Phone (913) 539-6879 (home) (913) 539-3474 (work)

Literature Cited

- Cross, F.B. 1967. Handbook of fishes of Kansas. Miscellaneous Publication 45, Museum of Natural History, University of Kansas. pp. 1-357.
- Cross, F.B. and M. Braasch. 1968. Qualitative changes in the fish-fauna of the upper Neosho River system, 1952-1967. Transactions of the Kansas Academy of Sciences. 71(3): 350-360.
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TOPEKA SHINER
Notropis topeka

GENERAL: First identified by C.H. Gilbert in 1884 from Shunganunga Creek, Shawnee County, Kansas. It is a small minnow, not exceeding 3" in length. Silvery-sided with a well defined dark stripe along the side. The tail fin has a distinct wedge- or chevron-shaped spot at its base.

HABITAT: The Topeka shiner inhabits the pool portions of high quality streams which drain upland prairies. The species is typically found in headwater areas which are maintained by spring or seep flows. It has also been found in smaller perennial or semi-perennial streams. The stream may or may not be bordered by streams. The pools substrate is typically gravel, rubble, or sand but the shiner can tolerate low to moderate sedimentation. Topeka shiners can tolerate a wide range of water temperatures but cooler spring-maintained systems are considered optimum.

HABITS: The Topeka shiner is pelagic, occurring throughout the water column. It is considered a schooling fish which frequently occurs with other minnows common to smaller streams. The fish is insectivorous primarily feeding on small insects and/or their larvae.

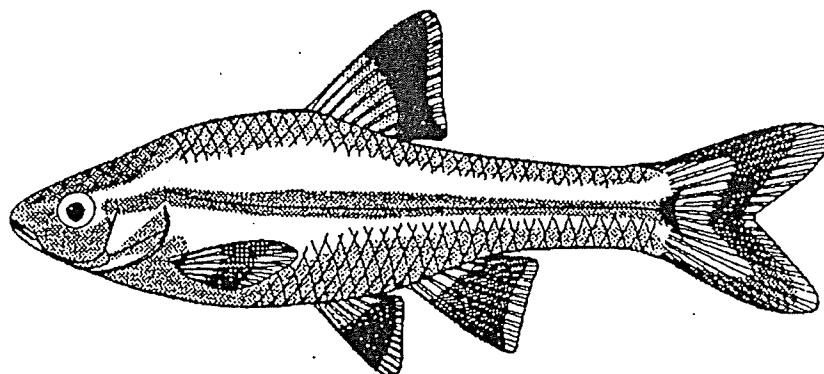
Breeding occurs from mid-May to late-August, depending upon current conditions and geographic setting. This species utilizes the nests of other fish such as the green sunfish and orangespotted sunfish. A dependence on silt-free gravel for spawning may exist which would explain the use of sunfish nests.

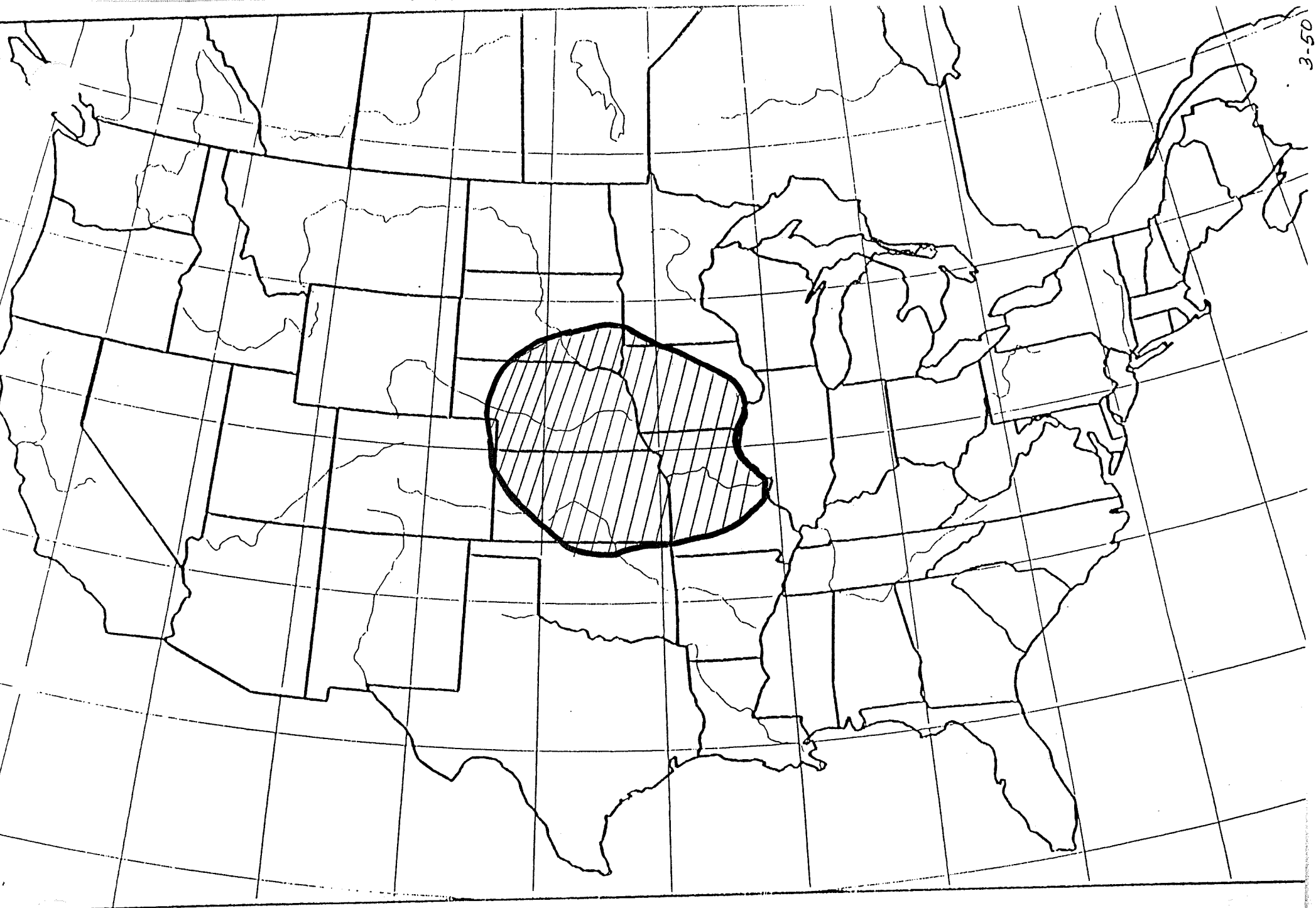
GEOGRAPHIC RANGE:

This species is known from the Kansas River basin in Kansas and Nebraska, the Arkansas River basin in southcentral Kansas, the Missouri River basin in central and northwestern Missouri, eastern Nebraska, western Iowa, southeastern South Dakota, and southwestern Minnesota, and the Des Moines River basin in north-central and southeastern Iowa and extreme northeastern Missouri. Isolated occurrences have been documented from the Sand Hills region of Nebraska and eastern Iowa.

In Kansas, it is now known to occur only in the Flint Hills region and Willow Creek in Wallace County. The species has exhibited major declines in distribution and abundance throughout its historic range. For example, of 61 historic locations in Iowa, the species is known to currently exist in 3.

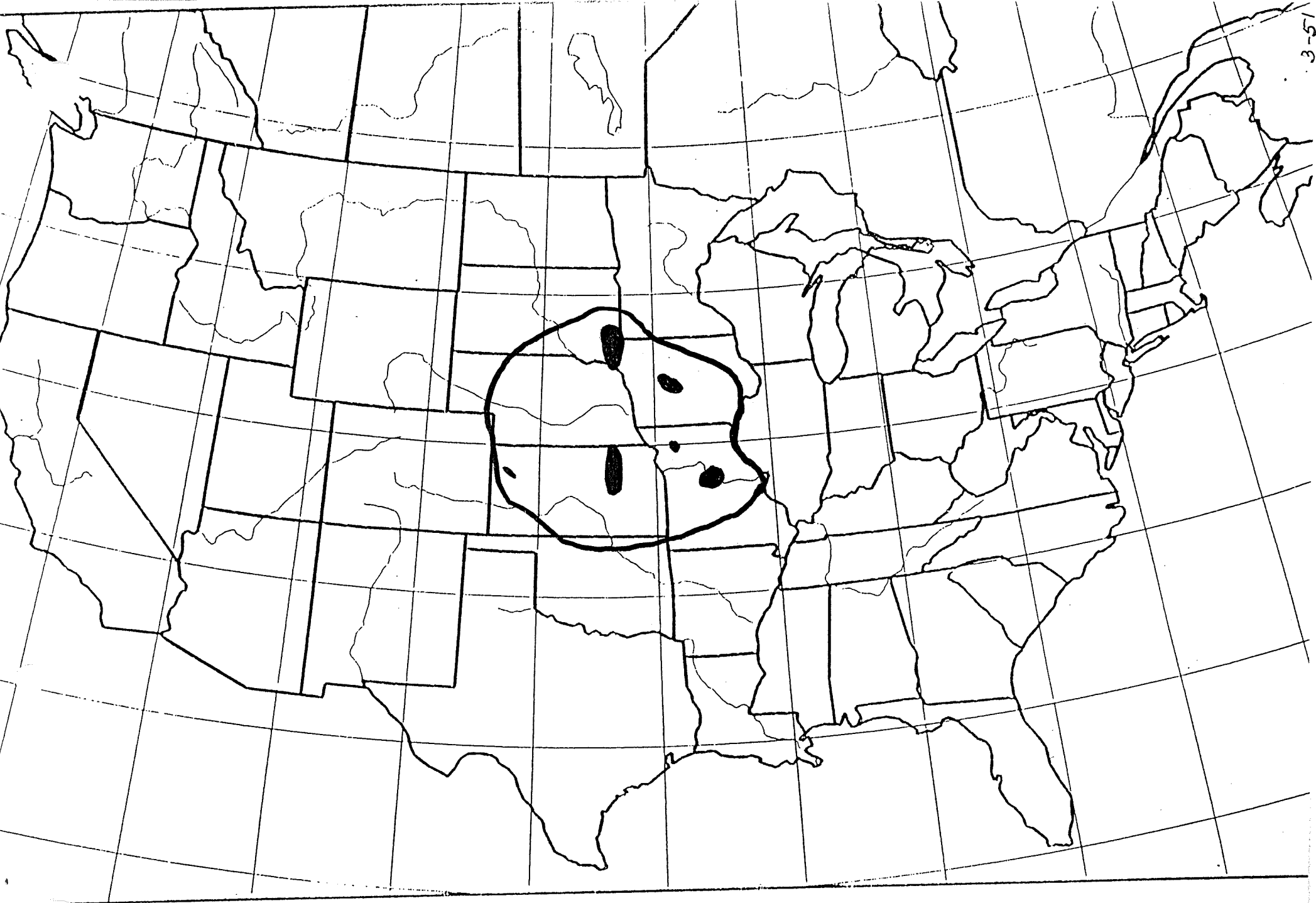
THREATS: High turbidity/sedimentation; high water temperature; stream dewatering; impoundments; channelization; removal of riparian vegetation; intensive cultivation; intensive grazing.





3-50

TOPEKA SHINER - HISTORIC RANGE



TOPEKA SHINER - CURRENT KNOWN POPULATIONS



DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
700 FEDERAL BUILDING
KANSAS CITY, MISSOURI 64106-2896

May 6, 1994

REPLY TO
ATTENTION OF:

Regulatory Branch
(93-00369)

Mr. G. W. Yeager
South Fork Watershed Joint District 76
Rural Route 1, Box 113A
Cottonwood Falls, Kansas 66845

Dear Mr. Yeager:

As requested by your application, dated December 20, 1992, enclosed is a proposed Department of the Army permit, in duplicate, with drawings attached. When executed, the permit will authorize your plan to construct seven (7) earthen dams in the South Fork Cottonwood River Drainage Basin.

The water quality certification issued by Kansas Department of Health and Environment for your project contains conditions which address water quality concerns. Please note that the conditions presented in this certification are incorporated into the special conditions of the Department of the Army permit by reference, as stated in General Condition "5" of the permit document. A copy of the state certification is attached to the permit document.

Please sign the original and duplicate copy of the enclosed permit document. Each copy of the permit document should be signed on page 3 above the word "Permittee," dated, and returned within 30 days from the date of this letter. A preaddressed envelope is enclosed for your convenience. Upon receipt of the properly signed documents, the permit will be executed and returned to you for your files.

If you have any questions concerning this matter, please feel free to write me or to call Mr. Brian McNulty at 816-426-5047.

Sincerely,

David A. Jackson
Acting Chief, Operations Division

Enclosures

DEPARTMENT OF THE ARMY PERMIT

Permittee South Fork Watershed Joint District No. 76

Permit No. 93-00369

Issuing Office U.S. Army Engineer District, Kansas City

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Project Description: Proposed: This permit authorizes the placement of fill material below the ordinary high water mark and inundation of the tributary stream channel in conjunction with construction of the seven (7) floodwater retarding structures shown in the attached table. The structures will consist of earthen dams with vegetated or rock emergency spillways and principal spillways constructed of reinforced concrete, welded steel, or corrugated metal depending on the structure size and classification.

Permit Drawing(s): See attached drawings, Sheets 1 of 3 through 3 of 3, dated 4/22/94.

Project Location: The individual structures are located on several tributaries in the South Fork Cottonwood River Drainage Basin in the vicinity of Cottonwood Falls, Kansas. Three counties included in the watershed basin are Greenwood, Chase, and Butler. Locations of individual project sites are shown on the attached drawings.

(Latitude: 38°16'47"N - Longitude: 96°24'30W)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 2009. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

See continuation sheets, pages 4 and 5, of this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)
RICHARD H. GORING
BY: DAVID A. JACKSON
Acting Chief, Operations Division

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

Special Conditions:

- a. If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor; and, you must give a copy of this entire permit to the contractor.
- b. You must use clean, uncontaminated materials for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into the waters of the United States by natural runoff or by leaching.
- c. You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in a nonwetland area above the ordinary high water mark and at a location where the concrete and wash water cannot enter the water body or an adjacent wetland area.
- d. You must excavate, dredge and/or fill in the watercourse in a manner that will minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.
- e. You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body.
- f. You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.
- g. You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.
- h. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work.
- i. Upon completion of earthwork operations, you must seed, replant or otherwise protect from erosion all fills in the water or on shore, and other areas on shore disturbed during construction.
- j. If riprap is used in construction of any structure, you must use only graded rock, quarry-run rock and/or clean concrete rubble for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150-pound pieces. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume. If you use concrete rubble, you must break all large slabs to conform to the well graded requirement, and remove all exposed reinforcement rods, trash, asphalt, and other extraneous materials before you place the rubble in the water of the United States.
- k. You must provide a wetland mitigation plan for the unavoidable impact of 1.4 acres of wetland resulting from construction of Dam No. 2. This plan must be approved prior to initiating construction on this structure. If any additional jurisdictional wetlands are discovered that would be adversely impacted by this or any other structure authorized by this permit, you must contact the Corps of Engineers. Appropriate measures will be required and developed at that time, ensuring impacts to these wetlands be avoided, minimized, and/or mitigated as appropriate.

Special Conditions: (continued)

l. The Kansas State Conservation Commission has agreed to conduct Phase I surveys of all structures that do not have Soil Conservation Service involvement in either funding and/or design. If the Kansas State Historical Society (SHPO) determines that investigations of cultural and/or historic resources are warranted beyond a Phase I survey, you must notify the Corps of Engineers. The Corps of Engineers and/or the Soil Conservation Service, depending upon the circumstances of the SHPO's request and site conditions, will coordinate any further investigation and evaluation in compliance with Section 106 of the National Historic Preservation Act.

m. If relocation of a structure exceeds any of the criteria listed below, you must notify the Corps of Engineers for modification of this permit. A modification must be requested in writing and authorized by the Corps prior to initiating construction in a revised location.

- The purpose(s) of the specific structure remains unchanged.
- Any relocation of the specific structure will not:
 - adversely affect the benefits or beneficiaries of the site
 - move the site more than 660 feet upstream or downstream
 - increase or decrease the drainage area by more than 20 percent
- The size of the specific structure as identified in the general plan does not increase more than the listed tolerances of the following items.
 - Detention storage by 20 percent
 - The permanent pool surface area by 20 percent
- The specific project is not an additional structure to the general plan.
- The topographic location remains feasible for construction of a safe and appropriate structure in the public interest.

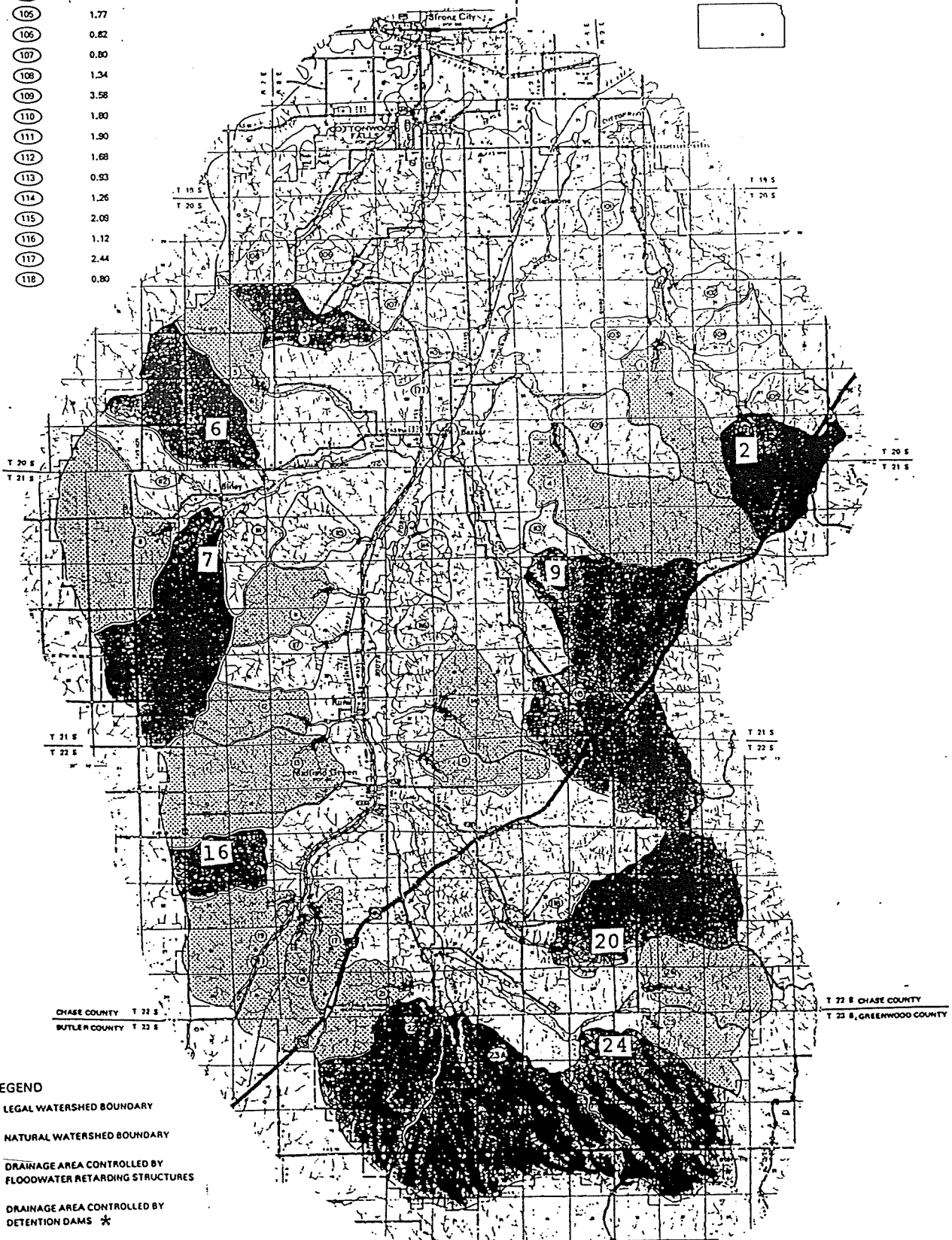
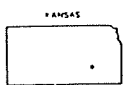
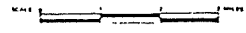
n. Every five years, this permit will be reviewed by the Corps and coordinated with interested resource agencies. This permit will automatically expire 31 December 1999 or 31 December 2004 if you fail to initiate the necessary review prior to these dates. You must furnish information for initiating review of the watershed project within one year of each review expiration date. The Corps will send a letter approximately nine months prior to the review expiration date, reminding you to initiate the review process. A letter from you, with the following information is required to initiate the review:

- Number of structures constructed since issuance of permit and anticipated to be constructed before the end of the next five-year period.
- Location of all structures in the watershed, noting those that are built and those that are proposed in the next five year period.

During this review, the Corps may decide that a public notice and reevaluation of the public interest are warranted. This permit will automatically expire and you will be notified in writing if this determination is made.

IN SQUARE MILES

10	4.56	101	1.12
16	2.08	102	1.34
20	6.90	103	0.80
22	9.24	104	1.50
23A	8.11	105	1.77
24	8.17	106	0.82
1	2.74	107	0.80
4	8.06	108	1.34
5	6.40	109	3.58
6	13.46	110	1.80
8	8.77	111	1.90
11	3.76	112	1.68
12	8.63	113	0.93
13	2.86	114	1.26
14	7.18	115	2.09
15	2.60	116	1.12
17	2.54	117	2.44
18	7.42	118	0.80
19	3.52		
21	2.34		
25	1.56		
26	3.96		
	4.56		
	2.74		
	2.99		
	4.22		



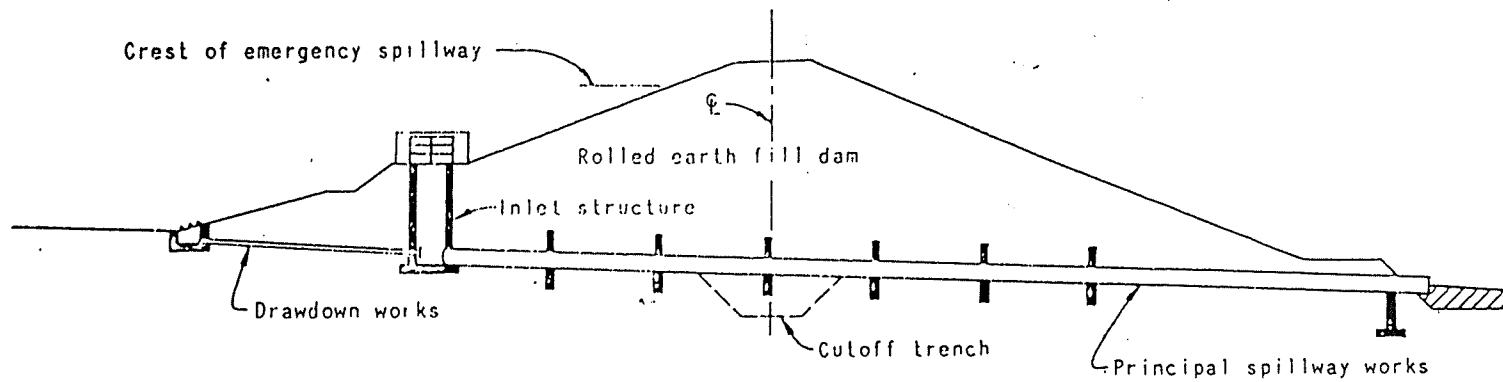
- LEGEND**
- LEGAL WATERSHED BOUNDARY
 - NATURAL WATERSHED BOUNDARY
 - DRAINAGE AREA CONTROLLED BY FLOODWATER RETARDING STRUCTURES
 - DRAINAGE AREA CONTROLLED BY DETENTION DAMS *
 - DRAINAGE AREA OF PLANNING ALTERNATIVES

Dam Location

- 2 NE 1/4 Sec 33, NW 1/4 Sec 34, SW 1/4 Sec 27, T20S, R9E
- 6 S 1/2 Sec 36, T20S, R7E
- 7 NE 1/4 Sec 11, NW 1/4 Sec 12, SE 1/4 Sec 2, T21S, R7E
- 9 NW 1/4 Sec 14, T21S, R8E
- 16 SE 1/4 Sec 13, T22S, R7E
- 20 SE 1/4 Sec 26, T22S, R8E

APPLICATION NO. 93-00369
 BY SOUTH FORK WATERSHED JOINT DISTRICT 76
 FOR 7 EARTHEN DAMS
 SOUTH FORK COTTONWOOD RIVER DRAINAGE BASIN
 CHASE, BUTLER & GREENWOOD COUNTIES, KANSAS
 SHEET 1 of 3

TYPICAL EARTH DAM WITH PIPE DROP INLET



CROSS SECTION OF DAM ON CENTERLINE OF PRINCIPAL SPILLWAY

APPLICATION NO. 93-00369
BY SOUTH FORK WATERSHED JOINT DISTRICT 76
FOR 7 EARTHEN DAMS
SOUTH FORK COTTONWOOD RIVER DRAINAGE BASIN
CHASE, BUTLER & GREENWOOD COUNTIES, KANSAS
SHEET 2 of 3
Dated 4/22/94

3-579

STRUCTURE DATA FOR FLOOD WATER RETARDING STRUCTURES
 AUTHORIZED BY DEPARTMENT OF THE ARMY PERMIT NO. 93-00369
 SOUTH FORK WATERSHED JOINT DISTRICT NO 76

Dam No.	Normal Pool (acre)	Flood Pool (acre)	Dam Ht. (feet)	Dam Volume (cu.yd)	Location
2	29.0	102.0	36	184,600	NE $\frac{1}{4}$ Sec 33, NW $\frac{1}{4}$ Sec 34, SW $\frac{1}{4}$ Sec 27, T20S, R9E
6	34.0	115.0	37	150,800	S $\frac{1}{2}$ Sec 36, T20S, R7E
7	50.0	215.0	42	202,500	NE $\frac{1}{4}$ Sec 11, NW $\frac{1}{4}$ Sec 12, SE $\frac{1}{4}$ Sec 2, T21S, R7E
9	60.0	240.0	45	172,000	NW $\frac{1}{4}$ Sec 14, T21S, R8E
16	17.0	70.0	33	75,200	SE $\frac{1}{4}$ Sec 13, T22S, R7E
20	45.0	170.0	41	211,900	SE $\frac{1}{4}$ Sec 26, T22S, R8E
24	49.0	176.0	43	196,500	W $\frac{1}{2}$ Sec 1, T23S, R8E

APPLICATION 93-00369
 BY SOUTH FORK WATERSHED JOINT DISTRICT NO. 76
 FOR 7 EARTHEN DAMS
 SOUTH FORK COTTONWOOD RIVER DRAINAGE BASIN
 CHASE, BUTLER, & GREENWOOD COUNTIES, KANSAS
 SHEET 3 OF 3
 Dated 4/22/94

3-60

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

Reply To: 913-296-5567

May 5, 1994

Section 401 - Water Quality Certification

Mr. M. D. Jewett, Chief
Regulatory BR/Operations Div.
U.S. Army Corps of Engineers
700 Federal Building
Kansas City, MO 64106-2896

Attn: CEMRK-OD-93-00369: Construction of 7 flood control structures at various locations -- Sections 33 & 34, Township 20 south Range 9 east, Section 36, Township 20 south Range 7 east, Sections 11 & 12 Township 21 south Range 7 east, Section 14, Township 21 south Range 8 east, Section 13, Township 22 south Range 7 east, Section 26, Township 22 south Range 8 east -- Chase, County and Section 1, Township 23 south Range 8 east, Butler County, Kansas. Applicant, South Fork Watershed District No. 76, Box 113A, Cottonwood Falls, Kansas 66845. Corps Project Officer, Brian McNulty.

Dear Mr. Jewett:

Pursuant to Section 401 of the Clean Water Act the Kansas Department of Health and Environment, Bureau of Water has reviewed the subject projects.

We have determined that the proposed project can be certified as being consistent with the Kansas Water Quality Standards provided the applicant complies with the following conditions:

1. Measures are taken to prevent violations of the water quality criteria described in K.A.R.28-16-28e. The applicant is directed to pay particular attention to preventing pollution impacts of turbidity, pH, temperature, nutrients, pesticides, chemicals, deposits of solids, suspended solids, floating debris, scum, visible oil and grease, and dissolved or emulsified grease concentrations in waters of the state during the project and after completion of the project. Appropriate measures include discharging runoff from the construction site to filter strips or detention basins, minimizing the amount of area being disturbed at any time, and rapidly stabilizing any disturbed areas with temporary and permanent vegetation.

Mr. Jewett
Page 2 PN# 93-00369
May 5, 1994

2. Upon completion of the project, disturbed areas, including equipment staging areas, shall be expeditiously stabilized with vegetation or other appropriate non-polluting material.
3. All waste materials produced by the construction project shall be disposed of in accordance with the provisions of the Kansas solid waste management statutes and regulations (K.S.A. 65-3401 and K.A.R. 28-29-1 et. seq.) or applicable local rules.
4. Should a spill of gasoline or discharge of pollutants occur, the Kansas Department of Health and Environment shall be notified immediately (913-296-1500).
5. The applicant shall take appropriate measures to capture any floating debris released to waters of the state as a result of this project.
6. Individual construction projects associated with these applications may be subject to the NPDES permitting requirements of 40 CFR 122.26. This certification does not relieve the applicant of the responsibility of the obligation to determine if the project is subject to the NPDES permitting requirements of 40CFR 122.26 and to secure such permit as needed. For additional information, the applicant is directed to contact:

Kansas Department of Health and Environment
Bureau of Water
Industrial Program Section
Building 283
Forbes Field
Topeka, Kansas 66620
Attention -- Marian Massoth
Phone 913-296-5556

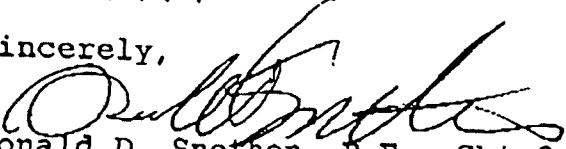
7. In the event these projects will provide for livestock watering via direct access to the impoundment, the dam and spillways shall be fenced. In the event that below the dam livestock watering facilities are provided, such facilities shall be designed to be operated in a manner that minimizes the discharge of pollutants from the watering site. Failure to do so may result in discharge of suspended solids, nutrients, oxygen demanding substances, nutrients, and bacteria to waters of the state. Methods to minimize the discharge such pollutants include but are not limited to:
 - a. Locating watering site at a distance and grade from the stream which permits establishment of a vegetated buffer or filter for intercepting pollutants discharged from the watering site.

Mr. Jewett
Page 3 PN# 93-00369
May 5, 1994

- b. Implementing grazing management methods which help maintain affected vegetation.
 - c. Establishing a cement or gravel area around the watering site to prevent erosion.
 - d. Maintaining good grass cover to provide for runoff filtration.
 - e. Strategic fencing of the discharge buffer area and immediate stream banks to protect and maintain vegetation providing pollutant filtration.
8. If the water body resulting from this project is not under single ownership or provides public access for such activities as swimming, boating, fishing, and other recreational activities, the water body is subject to the provisions of the Kansas Water Quality Standards. In order to protect the water quality of the impoundment:
- a. The county conservation district should be contacted to provide assistance in developing a watershed nonpoint source pollution control plan for the project.
 - b. Pollution control measures shall be consistent with state and local nonpoint source pollution management plans.
9. This certification does not relieve the applicant of the responsibility for any discharge into waters of the state. The Kansas Department of Health and Environment retains the option of revoking the certification any time an inappropriate discharge may occur; As provided for in K.S.A. 65-171(f), failure to comply with the conditions of this certification may subject the responsible party to fines up to \$10,000 per violation with each day the violation occurs constituting a separate violation.

If the applicant believes the conditions of this certification will result in impairment of important social and economic development, the applicant is advised of the variance provisions of K.A.R. 28-16-18f(c)(3).

Sincerely,


Donald D. Snethen, P.E., Chief,
Nonpoint Source Section
Bureau of Water

C Marian Massoth
South Central District Office

South Fork Watershed Joint District No. 76
Cottonwood Falls, Kansas 66845

January 25, 1996

The original intent of the Endangered Species Act of 1973 was to preserve key species that were the most in need. In some cases it has worked, such as the bald eagle, grizzly bear, and the falcon. In the meantime, new rules, new interpretations, regulations, and administrative decisions have continued to expand the power of the act. Today, certain species of rats, lizards, snails, minnows, and even insects have adversely affected peoples' everyday lives through the expanded power of the 1973 Act.

The South Fork Watershed District has already been greatly affected by the Endangered Species Act. Our watershed district was forced to fund a 7 yr. monitoring study on the Neosho Madtom at an annual cost of \$27,000, in order for us to continue any watershed construction within our district. The sad note about this is, that the Madtom has never been found within the South Fork Watershed drainage, but only found further down stream in the Cottonwood and Neosho Rivers. Essentially we are spending \$189,000 on the study of a species not found in our district.

As you may know, the Topeka Shiner, a 3" long minnow, has currently been petitioned for listing on the state threatened and endangered list. The Topeka Shiner is 1 out of 83 species of the minnow family found in North America. Over 20 species of the minnow family are found in the Flint Hills region of Kansas. If the Shiner is listed on the state list, it would make the permit process much harder, if not impossible, to build watershed structures within the Flint Hills region.

These watershed structures are very necessary for flood control of prime farm ground. They help control soil erosion, greatly reduce road and bridge repairs, help provide drinking water for small municipalities, and provide recreational use, as well as attract many species of wildlife. The Soil Conservation Service estimated that small watershed dams had provided over \$12 million in reduced flood damages in Kansas during the 1993 floods *a Lone.*

What has been missing in the Endangered Species Act is balance between species recovery, protection, cost and the impact on peoples' everyday lives. These are the primary reasons the U.S. Congress placed a moratorium on placing any more species on the Federal list last year. Until these issues are settled by re-authorizing the Act on the federal level, I think it would be very wise for the State of Kansas to follow the lead of the U.S. Congress and place a moratorium at the state level. It makes no sense at all for the state of Kansas to be adding more species to the state list when the federal level will soon have a new Act to follow for endangered species.

I am not against species preservation. However, I am against its expansion, which has been far beyond what was originally intended, without any regard for its impact on the people. I don't want the people in our rural communities to become an endangered species either. I would urge this committee to follow the lead of the U.S. Congress and place a moratorium on adding any more species to the State T & E list. I would also like to see this bill amended to be effective as of January 1, 1996. Thank you for your time.



FRANK HINKSON II
PRESIDENT, SOUTH FORK WATERSHED DISTRICT

LYONS CREEK WATERSHED
JOINT DISTRICT NO. 41

263 Broadway, Woodbine, Kansas 67492

The Endangered Species Act. Where are we going with it and what has it done to our country and our economic needs. The 22 year old act needs a common sense approach.

My name is Lauren Brunner. I am a farmer and rancher for several decades. I have served on the Lyons Creek Watershed board for 25 years. I live on the divide of two rivers and on the divide of two watersheds. Lyons Creek has an area of 180,000 acres or 280.9 sq. miles. Our goal is flood prevention but all the structures require land treatment and approval from eight different agencies before we can build a structure.

One agency is the Kansas Department of Wildlife and Parks. That is why we're here now to discuss the aquatic life or habitat of the Topeka Shiner. There is some concern that a watershed impoundment is detrimental to the Topeka Shiner. I contend it is not.

90% of watershed lakes are built on intermittent streams that have no springs. Water flows through these retarding structures when full or when it rains enough. In dry years the structures dry up completely, even the small body of water we call conservation pool. Now if Mother Nature gives us average rainfall, these structures will maintain a small stream from the drawdown and improve the habitat for the Topeka Shiner. Provision can be made to draw water from the conservation pool to run down stream and will help the habitat for the Shiner. The thing to remember is that the water in these structures is water that would end up in the ocean if the structure was not there.

I have a copy of the minutes of June 10, 1975 when we met with Fish and Game to discuss the E.P.A. Act and their concern for the Topeka Shiner, where as the watershed agreed in times of low water and drought the low water valve will be opened so that outflow would equal inflow.

Senate Energy & Nat'l Resources
January 25, 1996
Attachment 4

LYONS CREEK WATERSHED
JOINT DISTRICT NO. 41

263 Broadway, Woodbine, Kansas 67492

There are many things to consider when a certain species becomes extinct. In this case the Topeka Shiner. Drought, flooding, and game fish all contribute to his demise. I am sure watershed structures are not harmful to the Topeka Shiner.

An aquatic researcher for Wildlife and Parks said watersheds and the Shiner can co-exist. There is no need to place the Shiner on the endangered species list at this time. we have worked with Wildlife and Parks since 1975 and will continue to do so.

Sincerely,



Lauren Brunner

TESTIMONY ON SENATE BILL 473
KANSAS SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
BY
KANSAS ASSOCIATION OF CONSERVATION DISTRICTS
JANUARY 25, 1996
TOPEKA, KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Don Rezac, Director on the Kansas Association of Conservation Districts (KACD). I am here today on behalf of the 105 conservation districts in Kansas. We appreciate the opportunity to testify in favor of Senate Bill 473.

We strongly support a moratorium on the listing of any species on the State list of endangered or threatened species. There needs to be more specific input from local citizens into the need to list any species on the state endangered or threatened species list. Most, if not all, species listed have been through the efforts of our professional wildlife scientists and there has been little if any input from local citizens. Senate Bill 473 requires more input from local citizens and other state agencies. We agree and support the requirements of the Secretary of Wildlife and Parks to:

- (1) Publish a public notice of public hearings on all proposed actions to add or remove any species from the threatened or endangered list and to show the time and place of such public hearings.
- (2) Conduct a hearing thereon.
- (3) Receive approval of the Kansas Biological Survey.
- (4) Submit each proposal to and receive a response from any agency of the state having programs which will be impacted by the proposal.

Senate Energy & Nat'l Resources
January 25, 1996
Attachment 5

We strongly support the requirement that any person requesting the listing or removal of a species on the state threatened or endangered list be required to provide and fund an environmental impact report with emphasis on the economic impact of the action.

We appreciate the opportunity to provide testimony in support of this bill, Senate Bill 473.



*A Century of Service
1894-1994*

January 25, 1995

To: Senate Energy and Natural Resources Committee
Senator Don Sallee, Chairman

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

Re: **Senate Bill 473** - Amending the Nongame and Endangered Species Act

Mr. Chairman and committee members, I am Mike Beam, representing the Kansas Livestock Association (KLA) which supports SB 473. KLA is a statewide organization consisting of over 7,000 farmers and ranchers whose primary interest is beef cattle production. The beef cattle industry utilizes a substantial portion of this state's private land and is impacted by natural resource issues such as state and federal endangered species laws and regulations.

As I interpret the bill, it makes several changes in the "nongame and endangered species conservation act". The bill alters the process for designating a species as threatened or endangered. Currently a species is listed through the rules and regulations process. SB 473 requires Wildlife and Parks to report to the legislature, on or before February 1 each year, any species desired to be listed in accordance with our endangered species law. This report shall also contain the conservation plan and support data as to why a species should be listed. These requirements apply to species currently listed by rules and regulations and species designated as endangered after July 1, 1996.

Another aspect of the bill, (Sec. 2, page 3), contains a provision prohibiting the secretary from adding any species, which is not listed on the federal endangered species list, to the threatened or endangered list after July 1, 1996.

We support the concept of notifying the legislature of intent to list a species on the state endangered list. We are most interested, however, in the provision to restrict the listing of species in the future. The balance of my comments will focus on this aspect of the bill.

Anyone familiar with natural resources issues realizes there is much frustration with the federal endangered species law. This frustration is directed primarily towards the interpretation and administration of the act, not necessarily with the objective of conserving plant and animal species.

This public outcry has stimulated Congress to place a temporary moratorium on the listing of new endangered species. For the past several years, Congress has attempted to reform the federal act during the reauthorization process.

Our national affiliate, the National Cattlemen's Association, is part of an organized national effort to reform the federal endangered species act. This group, the Endangered Species Coordinating Council, is working with a bipartisan group of legislators to amend the act to balance species conservation with human, economic and social needs and to provide more effective protection of truly endangered species capable of recovery. A reauthorization bill has passed a House committee but no further action has occurred to date.

Why is the state law an issue? First, there's likely more pressure on states to list new species because of the federal moratorium. Secondly, there's genuine frustration with the consequences of adding certain species to the state threatened or endangered list.

Tonight, the Wildlife and Parks Commission will consider adding the Topeka Shiner to the threatened or endangered state list. This fish could be a roadblock to the construction of watershed projects and other projects that are "publicly funded" or "state/federally assisted".

K.A.R. 115-15-3 specifically says anyone responsible for a publicly funded or state/federally assisted project must obtain an action permit prior to construction. This requirement gives Wildlife and Parks full authority to deny a permit if they deem the project to impact listed species.

You'll hear from watershed districts who are frustrated because their efforts to conserve water and soil are hampered by this permitting requirement. These are conservation plans which benefit local communities and local units of government. I'm most familiar with the problems experienced by watershed districts, but any publicly funded project is impacted by this permitting requirement.

Therefore, Mr. Chairman, I'd suggest this committee seriously consider amending the bill to make the effective date in Section 2, January 1, 1996.

This restriction would allow the state legislature to put a hold on future listings and see how Congress may change the federal act. In the meantime, Wildlife and Parks can continue to advise watershed districts and other entities how planned projects may be modified and incorporate threatened or endangered species protection.

Thank you for introducing SB 473. We hope this committee will seriously consider this legislation.

Position Statement of The Kansas Chapter of The Wildlife Society:

PUBLIC FUNDED WATERSHED LAKE PLANNING & DEVELOPMENT

The development of publicly funded watershed lakes has periodically resulted in conflicts between fish and wildlife interests and project developers. The most visible conflict has been in regard to Kansas threatened or endangered species. Conflicts also exist in regard to the loss of valuable or unique ecosystems.

The development of some watershed lakes has resulted in losses of fish & wildlife habitats in which there is no technology for habitat replacement. These habitats include those of T & E species which have restrictive life requirements. Often secondary environmental effects include impacts to areas below the watershed lake. These include altered stream flows, natural changes in riparian vegetation induced by stream flow alterations, and manmade changes following a reduction of flood hazards which then result in intensified land use.

Watershed management, including the construction of dams, has a large economic and environmental effect on Kansas. Initial watershed planning should include all aspects of watershed management, including alternatives which improve the watershed itself. Considerations should include environmental, land use management, engineering, as well as other economic costs and benefits. General plans often are vague as to how economic benefits are derived. Improved analysis is required to insure efficient use of funds. Watershed plans should be frequently updated to consider updated information.

Subsequent general plans are now reviewed by various natural resource agencies but siting has already been designated. Economic considerations in initial siting include the value of land with agricultural lands considered to have a higher economic value. The value of "wild" lands should consider the cost or difficulty of replacing lost habitat (which is not always possible). Riparian areas often impacted by watershed lake construction also have non-wildlife benefits which should be considered. These benefits include flood control, improved water quality, timber products, stream bank stabilization and soil erosion protection.

The success of mitigation for losses of threatened or endangered wildlife and their habitat, is largely unknown. More evaluation is needed by resource agencies.

The economic value of T/E fish and wildlife species is difficult to quantify. The value to future generations of Americans may be extremely high. Because the extinction of individual fish and wildlife species is final, and their future value immeasurable, initial watershed management planning should consider the welfare of T/E species.

The Kansas Chapter of The Wildlife Society encourages federal, state and local government agencies to incorporate fish, wildlife and environmental considerations from the very start of watershed management planning or structure development. Watershed planning should take an integrated approach toward dealing with real and perceived problems.

The governor and the legislature should be particularly concerned with the efficient use of the state's resources: natural and taxpayer. If any interested party would like technical expertise in working toward this goal, the KCTWS is willing and ready to provide expertise.

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March 18, 1993

Senate Energy & Nat'l Resources
January 25, 1996
Attachment 7