

Approved: 2-14-96
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 February 8, 1996 in Room 254-E- of the Capitol.

All members were present except:
Robert Vancrum, Excused

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:
Written testimony, Edward Martinko, State Biologist & Director
Written information from K D O T concerning Heel Splitter mussel
Written information from William J. Craven,

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 called attention of committee members to the written testimony placed before them from Edward Martinko, State Biologist & Director (Attachment 1). Mr. Martinko was unable to make his presentation on January 26, 1996 when opposition to **SB 473** was heard by the committee.

Mr. Martinko stated in his testimony that the rules and regulations developed by the Kansas Department of Wildlife and Parks are integral to the effective implementation and administration of the Nongame and Endangered Species Conservation Act passed in 1975 and that **SB 473** could jeopardize agreements and place federal funds in jeopardy.

Written information from Kansas Department of Transportation relates events associated with a state highway project in Allen county and illustrate the negative effect of well meaning legislation and the failure to carry out its intended purpose (Attachment 2). These events cost the people of Kansas an increase of approximately \$750,000 and involved relocating alignment of a highway, building an additional bridge to span the Oxbow river to preserve a "Heel Splitter" mussel. Ultimately, the river dried up, the mussels died and the people of Kansas had funded a \$750,000 project for no purpose.

Written information from William J. Craven provided information and proposed a substitute bill to set up a statewide task force to make recommendations to the 1997 Kansas Legislature pertaining to the Kansas nongame and endangered species conservation act (Attachment 3).

Mr. Craven, at the request of the Chairperson, spoke to the committee concerning his proposal. He felt there are ways to make the act more flexible yet preserve the intent of the act, including more voluntary and less regulatory input. He expressed the hope that through mediation between land owners, environmentalists and other interested parties, common ground could be established.

A task force with members from organizations represented on the Kansas Nongame Wildlife Advisory Council was suggested by Mr. Craven. Other suggested members would be a representative of the Kansas Livestock Association, the Kansas Natural Resource Council, the Kansas Association of Conservation Districts, Kansas Association of Watershed Districts.

In addressing the issue of the Topeka Shiner Mr. Craven stated he was opposed to a moratorium but suggested the question be re-reviewed in light of recommendations from the task force.

A member of the committee suggested that urban sprawl displaces creatures but it appeared the concern was only with farmers, the rural areas whose rights seem to be given little or no consideration.

Bill Fuller, Kansas Farm Bureau, addressed the committee and stated he had no authority to endorse any type of nongame advisory group. He suggested to Mr. Craven that if such a task force were assembled it would be absolutely essential that the task force be expanded beyond the Nongame Advisory Board. Referencing the suggestion by Mr. Craven for no governmental involvement except for input, Mr. Fuller stated there is a great deal of expertise within organizations belonging to the Nongame Advisory Board and they could be brought in by request for data and research.

CONTINUATION SHEET

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

Mr. Fuller suggested the task force could be a key to promote a moratorium at an appropriate time rather than a substitute for a moratorium. He made two points: 1) A balanced representation of entities with major interest in this issue is a necessity. 2) This was not seen as a purely substitute bill, that if the committee wants a moratorium, resolutions could come through the task force to remove the moratorium.

The chair questioned Darrel Montei of Wildlife and Parks about watershed projects put "on delay" due to the Topeka Shiner issue. Mr. Montei called on Chris Mammoliti who stated the action the department took referred to two specific structures in the Southfork Watershed District. A legal agreement has been developed with them and the watershed district is going to modify their general plan to drop some of the proposed structures causing concern. A "no opposition" clause has been given to another 10 structures so they can proceed, however two of the 10 currently have had "abeyance requested" on the department of Agriculture permit. As soon as they have approved a general plan through the Division of Water Resources Chief Engineer, the department of Wildlife & Parks would remove all objections to those two structures. The general plan contains 25 to 30 structures with 9 structures being dropped, proceeding with 10 others with another 8-10 still outstanding with more sampling to be done. Following all of the above, the watershed will then need to learn whether the landowners want to go forward with structures.

A member expressed concern that the science used in making some of these decisions is not adequate and perhaps there are not enough people involved in this issue. The opinion was expressed that if this process is not dealt with in a more satisfactory manner it could be an issue that would need to come before the Legislature. It appears that a very narrow structure is making all of the decisions.

Mr. Mammoliti stated that in reviewing the agreement with the watersheds, it would appear the department has approached this in a very reasonable manner, that is to maximize the district's legal ability to get flood control and still conserve the species.

Discussion touched on the question of whether a species is really endangered, if they exist in quantity in other states. The department stated the law applies to existing habitats within the borders of Kansas, a law to conserve. Mr. Montei stated the issue of listing a critter in the state of Kansas is a scientific one, that the department had no problem reviewing those procedures as well as reviewing what happens to the critter and the treatment of it after listing. Mr. Montei stated they had no problem with a self imposed moratorium if a task force is created and stated they would not list any critters until such a time that a report is made to the Legislature for reconsideration of the issue.

In answer to a member's question about previous testimony in another committee, Mr. Montei stated he did articulate how the regulation of the endangered species act in the state of Kansas was enforced along with its relation to projects that are publicly funded or projects that require a permit from other federal or state agencies. He noted the intent of his comment had been that the impact was not on the private land owners in terms of what they do with their property, whether they graze it or farm it since that is not how the state plan is enforced.

The Chairperson asked committee members whether it would be agreeable to them if the representatives of the two sides visit and work together on the issue and then revisit the subject next week. Members expressed agreement.

The handling of a species after it is placed on the list and then multiplies to the point where it becomes a nuisance was questioned by a member.

Another member suggested the possibility of setting up a mechanism of where Wildlife and Parks would have to come to the Legislature each year, to both House and Senate Energy committees, with any proposals for listing. If there were objections a resolution could be passed stating it would not be allowed.

The chairman encouraged dialogue among the interested people.

The chairman stated he still had some strong feelings about the need for KDHE and Commerce to have some kind of dialogue about valid businesses that might be in the recycling area. He questioned whether the committee would be interested in offering a resolution to that effect.

Senator Lee, with a second from Senator Tillotson, made a motion to introduce a resolution for KDHE and Commerce to have a dialogue concerning valid businesses in the recycling area. The motion carried.

The meeting adjourned at 8:50 a.m.

The next meeting is scheduled for February 13, 1996.

SENATE ENERGY & NATURAL RESOURCES
COMMITTEE GUEST LIST

DATE: February 8, 1996

NAME	REPRESENTING
DARRELL MONTEI	KDWP
Dale Lamb leg	RDA
STEVE WILLIAMS	KDWP
Chris Mammoliti	KDWP
Paul Liechti	Ks. Biol. Survey
Bill Craven	KANRC/Siena
Cynthia Abbott	Ks. Audubon Council
Mike Beam	Ks LUSTK Assn.
Amelia McIntyre	KDWP
Lee Burkard	Ks. Geological Survey
JOANNE BRIER	Ks Agr Socmen
JAMIE Clover Adams	KS Fertilizer & Chemical Assn
LEWJENE SCHNEIDER	Ks LIVESTOCK Assoc.
Duane Hunt	mill creek watershed distri
Bill Fuller	Kansas Farm Bureau



The University of Kansas

Kansas Biological Survey

January 29, 1996

Senator Don Sallee
Chairman, Senate Energy and Natural Resources Committee
Statehouse, Room 255E
Topeka, Kansas

Chairman Sallee and members of the committee,

I apologize for not being able to attend the hearing on SB 473 on January 25-26. I learned of the bill the afternoon before the hearing, and prior commitments prevented me from attending. I since have had an opportunity to review SB 473, and I respectfully offer the following comments for your and the committee's consideration.

The Kansas Biological Survey (KBS) is a research and service unit of the University of Kansas and a non-regulatory agency of the State. As such, KBS has developed a reputation of respect among decision-makers because it provides current, accurate, and objective information based on solid science. The Survey is interested in SB 473 for two reasons: 1) its direct affect on the Kansas Nongame and Endangered Species Conservation Act; and 2) the potential impact that passage of SB 473 would have on the operation of KBS.

The current Nongame and Endangered Species Conservation Act was passed in 1975 to enable the State to be proactive in the conservation of its indigenous wildlife species. Kansans continue to support overwhelmingly these efforts, as evidenced by a 1991 survey of Kansans' attitudes regarding endangered and threatened wildlife. We believe that the existing Act provides an effective framework in which to carry out these efforts. Rules and regulations developed by the Kansas Department of Wildlife and Parks (KDWP) are integral to the effective implementation and administration of the Act. Over the years, these rules and regulations have been modified and improved in response to demands from the public; however, further refinement may be needed. SB 473 would substantially limit the effectiveness of the Act by greatly limiting those species that could be considered for listing under the Act. Consequently, passage of SB 473 would limit KDWP's ability to carry out the original intent of the Act and it would be contrary to the interests of the majority of Kansas citizens. Furthermore, passage of this bill could jeopardize the existing agreement between the U.S. Fish and Wildlife Service and KDWP, placing in jeopardy federal funds to KDWP that are used for conservation programs.

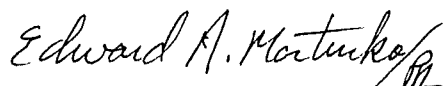
KBS has gathered and disseminated information about the State's biota since 1911, and we work closely with KDWP in support of the Act. Currently, KBS fills more than 700 requests

annually from public agencies, landowners, local units of government, and private developers for information on rare, threatened, and endangered species, species distributions, and environmental impacts. Information provided by KBS has helped KDWP determine the status and distribution of species, identify those that warrant protection under the Act, and identify those no longer needing protection. KBS also has one representative on the 7-member task force that reviews the State lists. Our experience is that the review process is, in fact, scientifically based. For example, during the last 5-year review of the lists, conducted in 1991, information on the status and distribution of proposed species, some of which was provided by KBS, was used to evaluate candidates for inclusion on and removal from the state lists, and to upgrade or downgrade currently listed species. In addition to the species added to the list in 1991, five species were removed from the lists (Glossy snake, Crawfish frog, Eastern hognose snake, Regal fritillary butterfly, and Prairie falcon). It is clear from these experiences that the decision-making process could be enhanced with an increase in the availability of good scientific information.

Section 2.c.2.C of the bill calls on the secretary to receive the approval of KBS for the addition or removal of any species from the Kansas endangered and threatened species lists. Because of the large number of requests for information received by KBS annually and the small size of our staff, we are very concerned about the impact of SB 473 on our operation and our over-committed staff. While it is not possible to predict the full impact of SB 473 on KBS at this time, it will likely increase the demands for our services and further reduce staff time for the scientific work necessary to support the listing process.

For the reasons stated above, the Kansas Biological Survey does not support SB 473. If you have additional questions, please let me know.


Respectfully,



Edward A. Martinko
State Biologist & Director

Kansas Department of Transportation

District Four
P. O. Box 498
Chanute, Kansas 66720

DATE: January 26, 1996
TO: Mr. W. M. Lackey, P.E.
Assistant Secretary and State
Transportation Engineer
FROM: Dee E. Kimbell, P.E. 
District Engineer
SUBJ: HEEL-SPLITTER MUSSEL VS ALLEN COUNTY PROJECT
RE: Our Conversation January 25, 1996

The events associated with a state highway project in Allen county illustrate the negative effect of well meaning legislation and the failure to carry out its intended purpose.

The presence of a "Heel Splitter" mussel in an oxbow caused the project to be delayed a little over a year and increased the cost of the project by approximately \$ 750,000.

Despite these expenses to the people of Kansas, no attempt was made to salvage the mussel when the oxbow dried up prior to beginning the project; and the agency was made to spend approximately \$500,000 to accommodate a mussel no longer there.

Chronology of Events:

1. Project in Allen County was scheduled for letting in 1981.
2. The presence of the "Heel Splitter" mussel was discovered and no permits would be granted until accommodation plans were agreed on.
3. Four alternatives to resolve the issue were set forth:
#1 - \$780,000 #2 - \$1.4 million
#3 - \$600,000 #4 - \$1.1 million
4. In 1980, a memorandum of agreement was signed, agreeing to the plan set forth in alternate #3. This included relocating the alignment of the highway and building an additional bridge to span the oxbow.

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5. In September 1980, the oxbow began to dry and the mussels were moved from the construction area after KDOT maintenance forces completed driving sheet piling and erecting a hay-bale barrier.
6. In May of 1981, the oxbow was totally dry and remained such for several weeks. Prior to this, officials were notified that it was occurring and the answer received was that there was no longer a concern for the mussels as they had been found elsewhere and there was no money to move them.
7. We ask permission to scrap the "mussel accommodation" items on the project (approximately \$500,000), but were told no - just incase some survived.
8. The project was let in 1982; a delay of approximately one year.

DEK:dek

pc: Nancy Bogina, Assist. to the Secretary
Jim Brewer, Eng. Mgr., State Road Office

WILLIAM J. CRAVEN

ATTORNEY AT LAW

935 S. KANSAS AVENUE, SUITE 200

TOPEKA, KANSAS 66612

913-232-1555

913-232-2232 FAX

February 6, 1996

Hand-delivered

Hon. Don Sallee
Senate Energy and Natural Resources Committee
Statehouse
Topeka, KS 66612

Re: State Endangered Species
Legislation, S.B. 473 and 516

Dear Senator Sallee:

As you and the other committee members know, I am trying to avoid a protracted, divisive, and high-profile squabble over the state endangered species act. As I said in my testimony on S.B. 473, I believe a task force of interested groups--including landowners--can mediate this issue and recommend changes to the Legislature which provide for more voluntary conservation agreements for listed species and which minimize uncertainty on the part of landowners as to their responsibilities under the act. Across the nation, those are the twin concerns most frequently voiced by those concerned with the regulatory burdens of the federal Endangered Species Act or a state counterpart.

The reason the task force has appeal is that this is an extremely complex issue which will take more than an hour or two of time to work through. I think it would be a far more efficient and effective practice to assign the research and initial drafting assignments to this task force rather than try to deal with this issue in the short and intense timeframe of the legislative session. As you heard at the hearing, there is considerable reason to believe that the interested groups can work out many of these issues.

Under existing law, the Kansas Nongame Wildlife Advisory Council is composed of representatives of many groups which have considerable academic, professional, and/or voluntary expertise with Kansas wildlife issues. I have attached the by-laws of the Council and a current membership list.

Neither the Sierra Club nor the Kansas Natural Resource Council--the two groups I work--for has membership on this Council. Neither do the watershed districts or the Kansas Livestock Association, both of which appeared as conferees on S.B. 473. It would be my hope that the task force would include representatives of these groups in addition to the groups which already have members on the Council. It is my hope that the task force would have a series of meetings in order to obtain the widest possible input from all segments of Kansas life which have an interest in this topic. I would suggest that Kathy George, the existing Council president, be asked to chair this task force. Kathy has been on the Council for about 10 years.

As for the Topeka Shiner, my sense is that the task force would not address that question. The Wildlife and Parks Commission postponed any consideration of the Shiner until

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its April meeting. My perspective is that science--and only science--should determine whether the Shiner gets listed. Based on the evidence, the Shiner either is or isn't eligible for listing. Other considerations should not interfere with a decision which should be based only the best biological evidence available.

However, I also think that any decision on the Shiner should be subject to re-review based on whatever statutory recommendations are made by the task force and eventually implemented by the Legislature.

I hope you and the committee carefully consider this offer as a way to mediate this issue while maintaining a state statute which actively strives to protect the natural heritage of Kansas. I have enclosed a substitute for S.B. 473 in in attempt to keep this compromise effort alive and well.

Sincerely yours,

A handwritten signature in cursive script that reads "Bill Craven". The signature is written in dark ink and is positioned above the printed name.

William J. Craven

PROPOSED BILL NO. SUB. S.B. 473

Sec. 1. There is hereby created a statewide task force which shall consider, and make recommendations to, the 1997 Kansas Legislature pertaining to the Kansas nongame and endangered species conservation act, K.S.A. 32-957 et seq. The members of the task force shall include a single representative of the groups currently comprising the Kansas Nongame Wildlife Advisory Council. That representative shall be determined by each group now a member of the council. In addition, the task force membership shall include a representative from the Kansas Natural Resource Council, the Kansas Livestock Association, the Kansas Association of Conservation Districts, and the Kansas Association of Watershed Districts. The task force shall be chaired by the chair of the Kansas Nongame Wildlife Advisory Council.

Sec. 2. The task force shall review and consider proposed amendments to the act which provide incentives to landowners, which rely on increased voluntary cooperation with the intent of the act, and which minimize landowner uncertainties as to acceptable practices on private lands which are the habitat of listed species or species eligible for listing.

Sec. 3. No governmental assistance shall be obtained by the task force except to the extent necessary to obtain technical advice.

Sec. 4. The task force shall report to the Kansas Legislature on or before January 1, 1997.

Sec. 5. This act shall be effective upon publication in the Kansas Register.

KANSAS NONGAME WILDLIFE ADVISORY COUNCIL

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As Approved 1/13/81
As Amended 2/10/83
As Amended 7/12/90

BY-LAWS OF THE KANSAS NONGAME WILDLIFE ADVISORY COUNCIL

ARTICLE I - NAME

Section 1. This organization shall be know as the Kansas Nongame Wildlife Advisory Council.

ARTICLE II - PURPOSE

Section 1. It shall be the role of the Kansas Nongame Wildlife Advisory Council to serve as a citizens advisory group to the Department of Wildlife and Parks by offering advice to the Secretary and the immediate staff on the integration of nongame wildlife efforts into all levels of the Department.

Section 2. The principal duties of the Council are:

- a) to review nongame wildlife program plans proposed by the Department and make recommendations for consideration by the Secretary;
- b) to provide suggested guidelines for implementation of future research and management projects;
- c) to provide scientific expertise when needed;
- d) to provide a medium for researchers, managers, landowners, special interest groups, and the public to exchange information;
- e) to develop ideas for consideration by the Department;
- f) to bring issues of concern to the attention of the Secretary;
- g) to assist the Department in developing funding sources for wildlife efforts, with emphasis on nongame.

ARTICLE III - MEMBERSHIP

Section 1. Voting membership of the Council shall consist of one representative designated by each of the following organizations:

- a) Kansas Academy of Science
- b) Kansas Advisory Council for Environmental Education
- c) Kansas Audubon Council
- d) Kansas Chapter of the American Fisheries Society
- e) Kansas Chapter of the Wildlife Society
- f) Kansas Farm Bureau
- g) Kansas Herpetological Society
- h) Kansas Ornithological Society
- i) Kansas Recreation and Parks Association
- j) Kansas Wildflower Society
- k) Kansas Wildlife Federation

Representatives to the Council shall serve at the discretion of their respective organizations and shall represent the public's interests in the nongame wildlife of Kansas.

Section 2. A representative from the Kansas Biological Survey and a representative from the Commission of the Department shall be ex-officio members.

Section 3. If at any time a representative of any of the above organizations cannot attend a meeting, an alternate should be designated.

Section 4. Should any of the above organizations cease to exist or withdraw representation from the Council, the remaining Council members may select another organization to designate a representative to the Council.

Section 5. New organizations may be added to the Council upon written nomination by the Secretary or a member of the Council and an affirmative vote at a meeting by the majority of the Council members. The written nomination shall be submitted to the Council members at least ten days prior to the meeting.

Section 6. If any representative or alternate of a voting organization absents himself from three consecutive meetings, the President of the voting organization shall be contacted, and if no representative is sent to the 4th meeting, that organization shall be dropped from Article III, Section 1. The vacancy so created may be filled as provided in these By-Laws.

ARTICLE IV - OFFICERS

Section 1. The offices of the Council shall be a Chairman, Vice-Chairman, and Secretary-Treasurer.

Section 2. The officers shall be elected by the Council members for one year terms. Terms of office will begin on July 1. Officers may be reelected.

Section 3. In the event a vacancy occurs in the office of Chairman, the Vice-Chairman shall succeed to that office and the office of Vice-Chairman shall be declared vacant. Such vacancy is to be filled at the next regularly scheduled meeting by the remaining Council members present. In the event of any other office becoming vacant for any reason, the vacancy shall be filled by the Council in the above manner.

Section 4. The duties of the officers shall be such as are usually performed by such officers, or such duties as may be assigned to them by the Council.

ARTICLE V - MEETINGS

Section 1. There shall be two regular meetings of the Council each year at such time and place as may be determined by the Chairman in consultation with the Secretary.

Section 2. Special meetings of the Council may be held upon the call of the Chairman, upon request of the Secretary, or upon petition of three members of the Council. Ten days written notice of such special meetings, stating the purpose thereof, shall be submitted to each member of the Council and to the Secretary.

Section 3. A quorum at any meeting of the Council shall be a majority of the voting members of the Council. A quorum must be present at all meetings to conduct the business of the Council.

Section 4. All meetings of the Council shall be open to the public. The Council may adjourn to an executive session at any meeting upon a majority vote.

ARTICLE VI - COMMITTEES

Section 1. The Chairman shall appoint all standing committees and all special committees, with the approval of the Council, and shall define the duties of such committees.

Section 2. Membership of each committees must have at least one voting Council member acting in ex-officio capacity. Other members may be anyone deemed valuable to the committee. Such committees shall be reviewed by the Council at least annually and may be continued or dissolved at that time.

ARTICLE VII- MISCELLANEOUS

Section 1. Any organization designating a member to this Council shall be deemed to have accepted the By-Laws and shall be bound by them as if they had been a selecting organization at the time of the adoption of the By-Laws.

Section 2. Robert's Rules of Order shall govern all deliberations of this Council, except as otherwise provided in these By-Laws.

Section 3. No member of this Council or its officers shall enter into any financial commitment binding on the Council without authorization of the Council.

Section 4. No organization or individual representative of the Council shall make statements or take positions in the name of the Council that are not consistent with Council policy.

Section 5. The opinions and decisions of the Council shall not be construed as representing views of the selecting organizations.

Section 6. Amendments to these By-Laws may be adopted by a two-thirds vote of the members of the Council present at any meeting, provided written notice of the proposed amendment and date of such meeting has been submitted to the members of the Council at least ten days prior to the meeting date.