

Approved: 3-5-96  
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 21, 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:

Mike Dealy, Manager, Equus Beds Groundwater Management District No. 2  
Sharon Falk, Manager, Big Bend Groundwater Management District No. 5  
Steve Frost, Executive Director, Southwest Groundwater Management  
Gerald T. Blain, P.E., Superintendent of Production and Pumping, City of Wichita  
Wayne A. Bossert, Manager, Groundwater Management District No. 4  
Paul Hiebert, Director of Public Works, South Hutchinson  
Nadine Stannard, Associated Material & Supply, Wichita  
Mitch Mitchell, Southcentral Kansas resident  
Carl Nuzman, Layne Geosciences, Overland Park, KS  
Bill R. Fuller, Associate Director, Public Affairs Division, Kansas Farm Bureau  
David L. Pope, Chief engineer-Director, Division of Water Resources, Kansas  
Department of Agriculture

Others attending: See attached list

**SB 621--concerning sand and gravel pits; relating to evaporation of water from such pits**

Mike Dealy, Equus Beds Groundwater Management District No. 2 appeared before the Committee and presented testimony in support of **SB 621** (Attachment 1). Mr. Dealy stated this bill would protect the vital groundwater supplies in the state from over-development and contamination from improperly sited, constructed and operated sand and gravel mining facilities.

Mr. Dealy expressed the opinion that all groundwater diversions, including evaporation from aggregate mining, must be permitted, thereby providing for proper management and orderly development of the Equus beds aquifer by balancing aquifer recharge with groundwater diversions and protecting the aquifer from contamination.

Sharon Falk, Big Bend Groundwater Management District No. 5 presented testimony stating **SB 621** proposes amendments that would be fair to all water users in her district, would sustain groundwater resource for the future and will prevent economic deterioration (Attachment 2).

Steven K. Frost, Executive Director, Southwest Kansas Groundwater Management District, appeared in support of **SB 621** referencing a resolution adopted unanimously late last year by the Board supporting the provisions of this bill (Attachment 3). The District is comprised of a 15 member board of elected representatives from over 10,000 water users in the district. Mr. Frost showed an illustration pointing out the boundaries of the Arkansas River intensive usage groundwater control area, a feature of much controversy and scrutiny within the state. He stated that there are approximately 750 acres of exposed groundwater in their district at the present time.

Gerald T. Blain, P. W., Superintendent of Production and Pumping, City of Wichita, presented testimony in support of **SB 621** stating Wichita derives almost 50 percent of its water supply from the Equus Beds aquifer (Attachment 4). Mr. Blain stated the opinion that action concerning sand and gravel taken last year possibly did not weigh its impacts on other water users as well as those of the sand and gravel industry.

Mr. Blain expressed the opinion that even with the implementation of this bill three methods of acquiring water rights could be available to the sand and gravel industry and are listed in written testimony. He further noted the alternatives are the same as those used by all other agricultural, municipal, and industrial water users needing additional water rights.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on February 21, 1996.

Wayne A. Bossert, Manager, Groundwater Management District No. 4, Colby, presented testimony in support of **SB 621** stating it basically restores the integrity of the Water Appropriations Act and addresses all seven problematic issues explained in testimony on HB 2476 in the 1995 legislative session (Attachment 5). He noted that K.S.A. 82a-734 as currently written exempts evaporative losses from sand and gravel operations from requiring water rights unless the Chief Engineer determines them to have a substantial adverse impact on groundwater supplies.

Paul Hiebert, Director of Public Works, City of South Hutchinson, appeared and presented a letter from the Mayor of the City of South Hutchinson (Attachment 6). The letter urged the Committee to maintain the integrity of the water supply for the City of South Hutchinson as well as the State of Kansas by construing water exposed as a result of the opening and operation of sand and gravel pits as a beneficial use and diversion of water subject to the regulatory authority of the Kansas Water Appropriation Act.

Bill R. Fuller, Associate Director, Public Affairs Division, Kansas Farm Bureau, appeared in support of the concept of **SB 621** stating that while compliance with the Water Appropriation Act is restrictive and sometimes painful his organization believes it is important that all water users play by the same rules (Attachment 7).

David L. Pope, Chief Engineer-Director, Division of Water Resources, Kansas Department of Agriculture, presented testimony to the Committee on **SB 621** (Attachment 8) Mr. Pope stated he opposed passage of HB 2476, in the 1995 Legislative Session. However, following its passage in both houses both he and Agriculture Secretary Devine recommended the Governor sign the bill noting that future legislation might be required to fully protect existing water rights. He also pointed out a needed technical amendment change from K.S.A. 92a-954 to Supp. 82a-734.

Mr. Pope outlined the effect of **SB 621** stating one area left unresolved concerning applications for permits to appropriate water for evaporation for sand and gravel operations and pending but unapproved applications for new permits to appropriate water for that same purpose. He also questioned the intention of the committee concerning owners and operators holding current water rights and applications and whether they be allowed to retain them.

Mr. Pope told the Committee he and his staff were continuing to meet with interested parties to further improve **SB 621**.

Nadine Stannard, Associated Material and Supply, Wichita, appeared and presented testimony to the Committee stated the proposed legislation is not necessary because it is based on the assumption that evaporative losses are great and the reality is that the losses are small. The evaporative losses from a ten acre pit would be equivalent to the evaporation loss of a ten acre grove of cottonwood trees. Mrs. Stannard said there are numerous beneficial uses for pits one of which being beautiful areas of homes.

Mrs. Stannard reviewed the process her business has gone through establishing sand pits in the years since 1980. Difficulties of the water permitting process have proved unworkable for them in the past with an application for a water permit was shown to members of the committee (Attachment 9). Mrs. Stannard stated that if **SB 621** was enacted it would be retroactive and closed by stating that without being able to obtain water rights she could not even bid on sand needed for paving on several locations in the Wichita area. A video was presented by Nadine Stannard but not included in the attachments since it cannot be filmed for use. The video has been placed in a separate file with Legislative Services.

M. S. Mitchell, resident of south central Kansas, appeared in opposition to **SB 621** stating no roads with all weather surfaces can be built without using layers of sand and gravel (Attachment 10). Numerous uses of sand were called to the attention of the Committee as well as the total utilization of topsoil, sand and aggregate. Eventually the "sandpit lakes" become the core amenity for commercial and residential development providing water based communities.

Mr. Mitchell stated there is no scientific evidence that over thirty years experience with using "sandpit lakes" as storage basins for stormwater runoff has adversely affected the quality of water or groundwater.

Further testimony will be continued before the Senate Energy and Natural Resources Committee Thursday, February 22, at 3:30 p.m. at a meeting in Room 529.

The next meeting is scheduled for February 22, 1996.

SENATE ENERGY & NATURAL RESOURCES  
COMMITTEE GUEST LIST

DATE: February 21, 1996

NAME	REPRESENTING
M. S. MITCHELL	KANSAS BUILDING INDUSTRY ASSN
BILL R. FULLER	Kansas Farm Bureau
Steven Frost	SW KS GMD
Sharon Falk	GMD # 5
WAYNE BOSSERT	NW KS GMD # 4
M. D. Dwyer	EB GMD # 2
Jerry Blain	City of Wichita
Paul Hiebert	City of South Hutchinson
Sen. Christine Downey	
Mike Taylor	City of Wichita
Mary Shivers	KDOT
Janet Stuhls	Ks. Bldg. IND. ASSN.
Leslie Kaufman	Ks Farm Bureau
Roy Wash	Hutchinson Ks. SHEARS INC.
Henry Barclay	Aksop SAND Co.
Jean Barber	Barber of Osawatomie
Paul L. Page	Kansas Dept of Agric - DWR
Leland E. Ruff	
Woody Mason	Ks Aggregate Prod Assn

## **EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2**

313 Spruce Street  
Halstead, Kansas 67056-1925  
Voice - 316 835-2224 Fax - 316 835-2210

**Testimony before the  
Senate Energy and Natural Resources Committee  
concerning  
Senate Bill 621 - Evaporation from sand and gravel pits  
by  
Michael T. Dealy, Manager  
February 21, 1996**

On behalf of the Board of Directors, Equus Beds Groundwater Management District No. 2, I wish to thank Chairman Sallee and members of the Committee for the opportunity to testify in support of SB-621.

The bill if passed would protect the State's vital groundwater supplies, including the Equus Beds aquifer, from over-development and contamination from improperly sited, constructed and operated sand and gravel mining facilities.

The Equus Beds aquifer is the sole-source of fresh and usable groundwater for industrial, municipal, and irrigation uses throughout south-central Kansas. Over 1,600 permitted water wells or points of diversion withdraw an average of 51.2 billion gallons from the aquifer annually.

Nearly 500,000 people, or 20 percent of the State's population, live and work in Harvey, Sedgwick, McPherson and Reno counties and depend on the aquifer for drinking water and other personal needs.

The Equus Beds aquifer is the life's-blood for the area's businesses and industries. Without it, goods such as packaged food, pharmaceuticals, petroleum products, glass products, aircraft, salt, farm equipment, oil and gas, and aggregate could not be produced or manufactured. Including agriculture related services, mining, construction, manufacturing, transportation, wholesale and retail trade services, the total annual payroll for industry and commerce in the four county area was over five billions dollars in 1990.

The aquifer extends over an area of fertile farmland in the four county area. Most farms are family owned and average about 395 acres. Almost 100,000 acres of cropland is irrigated using groundwater from the Equus Beds aquifer. Livestock production includes cattle, hogs, sheep and chickens and is evenly distributed on farms throughout the groundwater management district. Total livestock and crop production was \$317 million in 1991.

To manage and protect the Equus Beds aquifer from depletion contamination, the groundwater management district was formed in 1975 by local people representing municipalities, agricultural, industries and domestic water users. A management program was adopted by the Equus Beds Groundwater Management District No. 2, Board of Directors, which limits groundwater withdrawals or diversions to annual groundwater recharge and seeks to maintain the natural water quality of the aquifer through protection and remediation.

Evaporation is part of the hydrologic cycle. The never-ending cycle transfers water from land and water bodies of the earth to the atmosphere. Evaporation from water bodies is an

*Senate Energy & Natural Res.  
February 21, 1996  
Attachment 1*

important consideration in managing water resources and can be measured with an error of plus or minus 10 percent, *Applied Hydrogeology, Fetter, 1980*.

Gross evaporation in the Equus Beds area ranges from 52 inches to 56 inches per year, *Estimates of Freshwater Storage and Potential Natural Recharge for Principal Aquifers in Kansas, Hansen, 1991*. Net evaporation ranges from 22 inches to 25 inches per year averaging 24 inches annually.

Sand and gravel deposits are abundant throughout the State and the Equus Beds area, *Bulletin 189, Kansas Geological Survey, 1968*.

A myriad of sand and gravel mining facilities have developed throughout the State, *Bulletin 199, Kansas Geological Survey, 1970*

Normally, an aquifer is not directly exposed to the atmosphere and suffers no evaporative loss or diversion *Groundwater Manual, US Department of the Interior, 1981*.

Aggregate mining is an environmentally intrusive process that removes millions of cubic yards of sand and gravel overlying the Equus Beds aquifer, exposing the shallow aquifer to the evaporative process.

The aggregate mining process permanently opens up and exposes the Equus Beds aquifer to a variety of imminent environmental conditions, including evaporative losses and contamination from runoff of untreated flood and storm water.

Sand and gravel pits are commonly located near rivers, streams, in flood plains or in flood ways. Without proper siting and adequate safeguards, poor quality flood waters can enter the pit and be directly injected into the aquifer.

Flood waters and effluent from a sewage treatment facility flow into an unpermitted pit located near a public water supply well field. Water quality data near the site indicates a substantial degradation of the groundwater quality.

As shown in the figure entitled, *Generalized Illustration of a Sand and Gravel Pit, Completed in the Equus Beds aquifer*, a typical operation will mine over a million cubic yards of protective soil overlying the Equus Beds aquifer, creating an opening in the aquifer that is 50 feet to 60 feet deep, one-half mile long and a quarter mile wide.

Each year about 80 million gallons of groundwater is diverted by evaporation from a single pit, enough water to irrigate 160 acres or supply the city of Wichita for one day, Hutchinson for a week, Newton for three weeks, McPherson for a month or Halstead for five months.

In Groundwater Management District #2, approximately 1,300 acres have been or will be mined, permanently exposing the Equus Beds aquifer to evaporative losses and diverting nearly 850 million gallons from the aquifer annually.

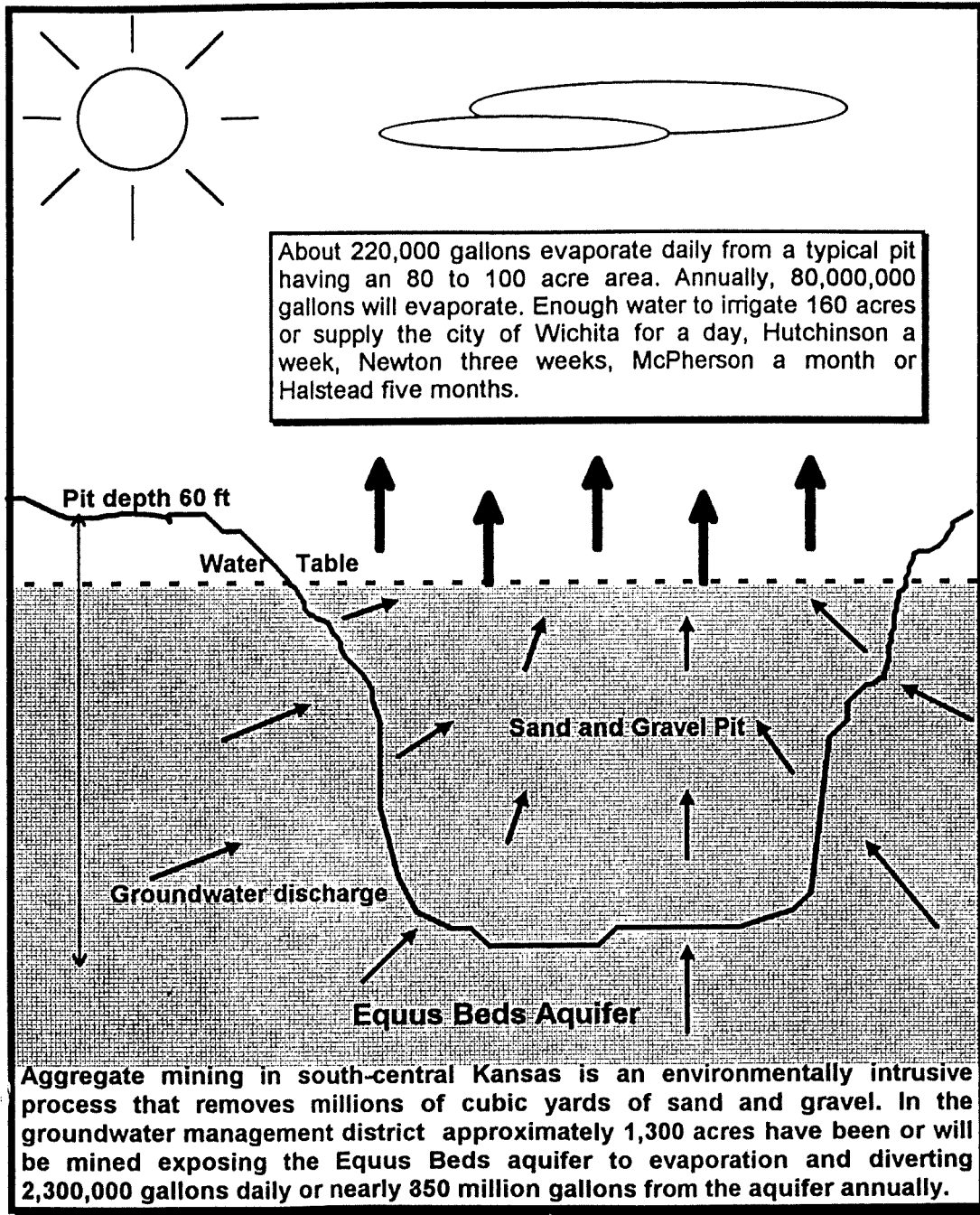
Certain portions of the Equus Beds aquifer are fully appropriated or developed. Any additional groundwater diversions in these areas will exceed the recharge rate and the aquifer safe-yield resulting in the depletion of the Equus Beds aquifer.

All groundwater diversions, including evaporation from aggregate mining, **must** be permitted, so as to provide for the proper management and orderly development of the Equus Beds aquifer by balancing aquifer recharge with groundwater diversions and protecting the aquifer from contamination.

The Board of Directors, Equus Beds Groundwater Management District No. 2, supports SB-621 which modifies K.S.A. 82a-734 to require groundwater diversion by evaporation from sand and gravel pits be subject to the Kansas Water Law:

- 1) within the boundaries of a groundwater management district established pursuant to K.S.A. 82a-1020 et seq., and amendments thereto (refer to the map entitled, *Groundwater Management Districts, Special Water Quality Use Areas and Intensive Groundwater Use Control Areas*, for location of groundwater management districts);
- 2) within the boundaries of an intensive groundwater use control area established pursuant to K.S.A. 82a-1036 and amendments thereto (refer to the map entitled, *Groundwater Management Districts, Special Water Quality Use Areas and Intensive Groundwater Use Control Areas*, for location of intensive groundwater use control areas; or
- 3) when the chief engineer, division of water resources, determines that it is necessary in order to manage and protect the beneficial use of the state's water, preserve the rights of priority of appropriation and protect the public interest and use of water.

Thank you Chairman Sallee and Committee members.



**GENERALIZED ILLUSTRATION OF A SAND AND GRAVEL PIT, COMPLETED IN THE EQUUS BEDS AQUIFER.**







# Big Bend Groundwater Management District No. 5

125 South Main • P.O. Box 7 • Stafford, Kansas 67578 • Phone 316-234-5352

**TESTIMONY  
PRESENTED TO THE  
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE  
BY SHARON FALK, MANAGER  
BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. FIVE**

Chairman Sallee and Committee Members,

As representative of the Big Bend GMD #5, I would like to express the sentiment of the District Board of Directors on SB 621. I appreciate the opportunity to speak to you on this very important issue.

Our Groundwater Management District encompasses 2.5 million acres and overlies one of the most abundant groundwater systems in the state. Approximately 800,000 acre feet are permitted in our district. The District operates under a sustainable yield policy, whereas we try to maintain a sustainable source for future generations.

Although we have an abundant resource, there are many areas where development is very near the sustainable yield amount. Some areas of the District are closed to further development and anyone proposing to develop in those areas must purchase existing rights. This is the case for all types of use except small quantities.

SB 621 proposes amendments that would be fair to all waterusers in GMD #5 and puts all users on the same "playing field". I will offer an example: A farmer with a large well irrigating 130 acres will be authorized to pump approximately 200 acre feet. A groundwater water pit of 70 acres, **for evaporation only**, will use 245 acre feet. There are many existing groundwater pits in GMD #5 and the potential exists for many more.

The District does not wish to prevent economic growth. However, on the other hand, sustaining our groundwater resource for the future will prevent economic deterioration.

Again, I point out, the importance of equal and fair treatment to all waterusers in GMD #5.

Thank you for your time and patience in this matter.

Senate Energy & Natural Res.  
February 24, 1996  
Attachment 2



**Southwest Kansas  
Groundwater Management District**

\* \* \* \* \*

**(316) 275-7147**

**409 Campus Drive, Suite 106  
Garden City, Kansas 67846**

February 22, 1996

Senator Don Sallee, Chairman  
Senate Energy and Natural Resources Committee  
Statehouse, Room 255-E  
Topeka, Kansas 66612-1504

RE: S.B. 621

Dear Senator Sallee,

Enclosed please find a statement (for the record) of the District's testimony of February 21, 1996 regarding the above-referenced, proposed legislation - as promised.

The District appreciates your efforts on these issues of vital importance to the people of the District. As always, we look forward to working with you in the future!

Please write or call if you have any questions or if we can be of any assistance.

Sincerely,

Steven K. Frost  
Executive Director

pc: Board of Directors  
Honorable Bill Graves, Governor of Kansas  
David L. Pope, Chief Engineer DWR  
Al Ledoux, Director KWO

Senate Energy & Natural Res.  
February 21, 1996  
Attachment 3



**Southwest Kansas  
Groundwater Management District**

\* \* \* \* \*

**(316) 275-7147**

**409 Campus Drive, Suite 106  
Garden City, Kansas 67846**

**Testimony**

of the

**Southwest Kansas Groundwater Management District**

presented before the

**Senate Energy and Natural Resources Committee**

regarding

**Senate Bill 621**

on

**February 21, 1996**

by

**Steven K. Frost, Executive Director**

**Chairman Sallee and Associate Committee Members,**

The District sincerely appreciates the opportunity to testify on the proposals of S.B. 621 pending before you today. My name is Steven Frost, Executive Director of the Southwest Kansas Groundwater Management District.

By our correspondence to Governor Graves of December 19, 1995, you have previously received a copy (enclosed) of the Director's Resolution No. 95-4 regarding "Aggregate Mining, Groundwater Exposures". The District's Board consists of 15 elected officials representing the interests of over 10,000 water users in Southwest Kansas. **The resolution supporting the provisions of S.B. 621 was unanimously adopted by the Board to forward for your awareness and consideration.** Interestingly, the District has received no input from the sand and gravel industry on this subject.

I wish to briefly draw your attention to this illustration of the Arkansas River Intensive Groundwater Use Control Area (display of exhibit). As you are aware, this area is presently the subject of a great deal of interest and scrutiny, for a number of reasons. The District estimates there are approximately 750 acres of exposed groundwater resulting from active sand and gravel operations in this area, the evaporation from which represents a considerable amount of water (enough for 5 major feedlots, for example). It is the Director's considered opinion that it is not appropriate to restrict the amount and type of appropriations for all other uses of water except aggregate mining.

A great deal of rhetoric has been generated about the critical need for sand and gravel and the "economic oppression" which would result from the implementation of S.B. 621 and subsequent permitting requirements for evaporation of groundwater exposures. While there is a definite need for the products produced by aggregate mining, these arguments are simply not consistent with all other types of economic development which may be suppressed by the lack of availability of water in the Arkansas River Intensive Groundwater Use Control Area.

In other words, it is not equitable to allow the proliferation of groundwater exposures which effectively use as much water as a neighboring, competing use (i.e. municipal, industrial, stockwater, etc.) may desire. These other uses are not allowed to appropriate "new" waters.

**The District comprehensively advocates the equitable administration of our water laws, particularly within the boundaries of this District, and especially within the Arkansas River Intensive Groundwater Use Control Area. As equally important for review are the potential water quality impacts which sizable groundwater exposures represent to freshwater aquifers. For these reasons, the District solidly endorses your adoption of S.B. 621.**

**Thank you for your consideration. As always, the District is available to answer any questions or provide any assistance on these important issues.**



**RESOLUTION 95-4**

**OF THE**

**SOUTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT**

**WHEREAS**, the Southwest Kansas Groundwater Management District was formed for the proper management and conservation of the groundwater resources of Southwest Kansas; and

**WHEREAS**, groundwater is the principal source of fresh and usable water for industrial, municipal, stockwater, irrigation, and domestic use throughout the District; and

**WHEREAS**, the groundwater of the District is presently fully appropriated and developed in most areas of the District; and

**WHEREAS**, any additional diversions in developed areas will over-appropriate and exceed the available recharge rate thereby resulting in additional depletion of the groundwater in excess of the District's Allowable Aquifer Yield policies; and

**WHEREAS**, mining of sand and gravel in Southwest Kansas is a hydraulically intrusive process that removes millions of cubic yards of sand and gravel within the groundwater of the District, thereby exposing the water-table to the evaporative process; and

**WHEREAS**, aggregate mining sites are located in or adjacent to rivers and streams which are subject to flooding; and

**WHEREAS**, aggregate mining permanently opens and exposes the groundwater of the District to a variety of uncontrollable conditions, including diversion of groundwater from evaporation and potential injection of undesirable flood water and storm water runoff; and

**WHEREAS**, the District's aquifer management program provides for the proper and orderly development of groundwater by balancing aquifer recharge with planned groundwater withdrawals, and protecting the aquifer from contamination; and

**WHEREAS**, applications filed for permit to divert or withdraw groundwater for beneficial use must comply with the District's aquifer management program; then

**THEREFORE**, be it resolved by the Board of Directors of the Southwest Kansas Groundwater Management District that all aggregate mining or dredging operations within the District should be subject to all the appropriate provisions of the Kansas Water Appropriation Act, the Groundwater Management District Act, the Rules and Regulations of the Division of Water Resources, and the Management Program and policies of the Southwest Kansas Groundwater Management District; and not be exempted as in the present form of K.S.A. 82a-734 which was adopted by the Kansas Legislature in 1995; and

**THEREFORE**, be it resolved by the Board of Directors that the following revisions to K.S.A. 82a-734 are necessary, reasonable, and justifiable, and further, advocated for adoption:

AN ACT concerning sand and gravel pits; relating to the application of certain statutes to evaporation of water therefrom. Be it enacted by the Legislature of the State of Kansas:

Section 1. Except as provided for in paragraph (c), evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall not be construed to be a use or diversion of water for the purposes of article 7 of chapter 82a of the Kansas Statutes Annotated.

(a) An operator shall notify the Chief Engineer of the Division of Water Resources of the Department of Agriculture of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

(b) Whether or not the activity is required to be permitted pursuant to K.S.A. 82a-701 et seq., all evaporation from sand and gravel pits, shall be reported as an industrial use to the Chief Engineer by the pit owner pursuant to K.S.A. 82a-732, and the determination of gallons used shall be supplied by the Chief Engineer to the Director of Taxation for the purpose of assessing the water protection fee pursuant to K.S.A. 82a-954, and amendments thereto.

(c) Evaporation of water from sand and gravel pits shall be considered as a beneficial use or diversion of water subject to the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq., and amendments thereto:

(1) within the boundaries of a groundwater management district established pursuant to K.S.A. 82a-1020 et seq., and amendments thereto;

(2) within the boundaries of an intensive groundwater use control area established pursuant to K.S.A. 82a-1036 and amendments thereto; or

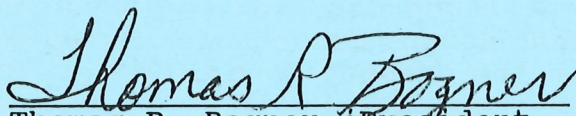
(3) when the Chief Engineer determines that it is necessary to manage and protect the beneficial use of the state's water, preserve the rights of priority of appropriation and to protect the public interest and use of water.

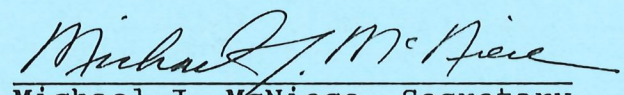
(d) This section shall be part of and supplemental of the Kansas Water Appropriation Act.

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

**THEREBY**, that upon incorporation of the referenced revisions to K.S.A. 82a-734, all groundwater diversions except domestic use, including evaporation from aggregate mining must be permitted, so as to provide for the proper management and orderly development of the groundwater of the District.

Adopted this 13th day of September, 1995

  
Thomas R. Bogner, President

  
Michael J. McNiece, Secretary

Testimony on SB-601

By the City of Wichita

Represented by  
Gerald T. Blain, P.E.  
Superintendent of Production and Pumping

The City of Wichita currently derives almost 50% of its water supply from the Equus Beds aquifer. This aquifer is also a source for sand and gravel, and it provides a significant amount of this product for use in Kansas and surrounding areas. The City believes that proper management of the Equus Beds is vital to the continued availability of high quality water for the City. In order to manage the aquifer it is important that it be managed under a "safe yield" approach. In order for that approach to be successful, all water uses from the aquifer must be accounted for so that the aquifer can be maintained in a manor that will assure that water will be available forever. It is also very important that the quality of that water be protected.

When the sand and gravel bill was enacted last year, we feel that perhaps there was not enough opportunity to weigh its impacts, not only on the sand and gravel industry, but on the other water users as well.

Under the amendments proposed for this law, which would "grandfather" existing sand and gravel pits, and contiguous lands already set aside for pit expansions, existing pits would be able to develop to their full potential, but would be required to take precautions to prohibit surface water runoff from entering their pits, and thus threatening the groundwater quality. We hear a lot today about government "taking" or "reducing" the value of their property. By including these "grandfather" provisions, it can be assured that this will not occur to those who have already invested in existing sand and gravel pits.

There has also been some discussions about the continued ability to develop new sand and gravel pits if they are required to obtain a water right for evaporation, especially in areas where all of the existing water rights have already been appropriated (or even over-appropriated). I do not feel that this requirement is actually a detriment to the that industry's ability to continue. If a new sand and gravel pit it to be developed, the owner or developer still three methods of acquiring the water rights that would account for the water which would be evaporated from that new pit. They can:

- 1) Site the new pit on land that already has a water right associated with it.
- 2) Acquire additional land with a water right on it, and have the water right reallocated to the sand pit. At that point, if the owner or developer desired, the land that originally had the water right associated with it can be sold as dry land and returned to agricultural usage.
- 3) An existing water right can be purchased from a near-by agricultural or industrial user and converted for the use of the new sand pit.

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February 21, 1996  
Attachment 4

These alternatives are the same as those that are currently used by all other agricultural, municipal, and industrial water users who need additional water rights. While these alternatives may increase the initial cost of the land for the sand pit, it is part of the cost of using a scarce resource...our groundwater.

I feel that the changes to last year's bill that are included in SB-621 will allow for the protection of valuable and vulnerable water supplies, will uphold the validity and power of the State's existing water appropriations policies, and will also allow the sand and gravel industry to continue to expand.



**NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 4**  
**STATEMENT OF ISSUE**  
**February 21, 1996**

PO Box 905  
Colby, Kansas 67701-0905  
(913) 462-3915  
Fax: (913) 462-2693

**ISSUE: SB 621**

K.S.A. 82a-734 as currently written exempts evaporative losses from sand and gravel operations from requiring water rights unless the Chief Engineer determines them to have a substantial adverse impact on groundwater supplies. This exemption continues to hamper the ability of state and local water entities from effectively and fairly managing local resources.

SB 621 currently being debated removes this exemption for at least the most important water areas of the state.

**BACKGROUND IDENTIFICATION:**

K.S.A. 82a-734 was originally introduced in the 1995 Legislature as HB 2476, and represented a significant change to the Kansas water appropriation act. The Northwest Kansas Groundwater Management District No. 4 provided written testimony to the Senate Energy and Natural Resources Committee on March 13, 1995 listing seven reasons why the original bill was problematic. This testimony was very late in the process, missing the House debate altogether. We also provided much the same information to Governor Graves with a request that he veto the bill upon reaching his desk. The bill ultimately passed the House and Senate and was signed into law by Governor Graves.

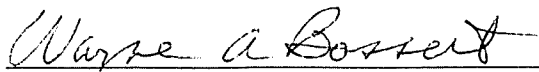
**CONCERNS:**

None. Our GMD is supporting SB 621. As currently drafted, this bill satisfactorily addresses all seven concerns we originally had regarding this issue.

**RECOMMENDATIONS:**

Passage of SB 621 as currently drafted.

Approved by Board action - February 15, 1996

  
Signed: Wayne A. Bossert, GMD 4 Manager

Senate Energy & Natural Res.  
February 21, 1996  
Attachment 5

Additional information may be obtained by contacting:

Wayne Bossert, Manager  
Northwest Kansas Groundwater Management District No. 4  
1175 S. Range Avenue  
PO Box 905  
Colby, KS 67701-0905  
(913) 462-3915; Fax (913) 462-2693  
e-mail: wbossert@colby.ixks.com

[wab\issue.mst]

# City of South Hutchinson



2 South Main • South Hutchinson, Kansas 67505-1598 • (316) 663-7104 • Fax (316) 663-7168

February 19, 1996

Senator Don Sallee  
Chairman of the Energy and  
Natural Resources Committee  
Kansas Senate  
State Capitol Building  
Topeka, KS 66612

RE: The evaporation of water from sand and gravel pits

Dear Senator Sallee:

As Mayor of the City of South Hutchinson, Kansas, it has come to my attention that your committee is about to consider proposed revisions of a bill which would revise KSA 82a - 734, pertaining to beneficial use and diversion of water for purposes of the Kansas Water Appropriation Act, as set forth in KSA 82a-701 et. sec. and amendments thereto.

The City of South Hutchinson urges your committee to maintain the integrity of the water supply for the City of South Hutchinson as well as the State of Kansas, by construing water exposed as a result of the opening and operation of sand and gravel pits as a beneficial use and diversion of water subject to the regulatory authority of the Kansas Water Appropriation Act. The City, together with all other appropriate and legitimate and appropriate users of this state's valuable water resource must, before appropriation thereof, adhere to the guidelines set forth by the legislature and the Kansas Division of Water Resources to assure the State of Kansas that there is no inappropriate and wasteful use of its water supply.

There are hundreds of sand and gravel pits located in the State of Kansas which because of their operation, expose water which is subject to evaporation. This should be determined to be a diversion of water for purposes of the Kansas Water Appropriation Act and should be regulated accordingly. Millions of gallons of water will be lost for the beneficial use of the residents of this state if such unregulated use of this state's resource is allowed. Truly, it has been determined that almost 220,000 gallons of water evaporate each day from a typical pit having an 80 to 100 acre area. This translates into 80 million gallons of water per year lost to the evaporation process. That is enough water to irrigate 160 acres or to supply a city the size of Wichita, Kansas, for a single day, Hutchinson, for a single week, Newton, for 3 weeks, McPherson, a month or Halstead, Kansas, for 5 months.

Certainly if any governmental entity or proposed water user were to drain 80 million

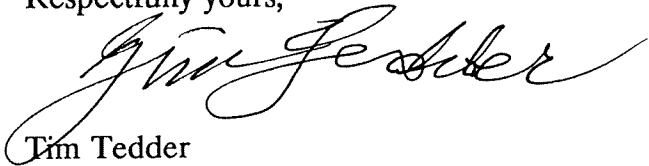
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February 21, 1996  
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gallons of water from the water supply of this state, the legislature, by and through the Division of Water Resources would rightfully construe such drawdown as a diversion of its water and should be regulated under the Kansas Water Appropriation Act.

It is urged that necessary measures be taken to ensure that any appropriation the size of which your committee is about to address fall under the auspices and regulatory procedures of the Division of Water Resources.

If you should have any questions regarding this subject matter, please don't hesitate to contact me. I would be most happy to discuss this issue with you.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Tim Tedder". The signature is written in dark ink and is positioned above the printed name.

Tim Tedder  
Mayor of the City of South Hutchinson, Kansas



# PUBLIC POLICY STATEMENT

## SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

RE: SB 621 - Reinstates Kansas Water Law on the Sand and Gravel Industry.

February 21, 1996  
Topeka, Kansas

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

Chairman Sallee and members of the Committee:

My name is Bill Fuller. I am the Associate Director of the Public Affairs Division for Kansas Farm Bureau. We are here to express support for the concept outlined in SB 621.

Support for Groundwater Management Districts and their authority to manage the precious water resource in their regions is a long-standing policy of Kansas Farm Bureau. We agree with the concerns of the Groundwater Management Districts concerning the 1994 amendments that provides for an exemption to the Water Appropriation Act.

While compliance with the Water Appropriation Act is restrictive and sometimes painful for our agricultural users of water, we believe it is important that all water users by the same rules. Exemptions for any industry can open the door and lead to the demise of Kansas water law.

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February 21, 1996  
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We support proper management and the orderly development of groundwater. We advocate the equitable administration of water laws for cities, agriculture and industry. We respectfully ask for your favorable consideration of SB 621. Thank You!

STATE OF KANSAS

BILL GRAVES, GOVERNOR  
Alice A. Devine, Secretary of Agriculture



DIVISION OF WATER RESOURCES  
David L. Pope, Chief Engineer-Director  
901 South Kansas Avenue, 2nd Floor  
Topeka, Kansas 66612-1283  
(913) 296-3717 FAX (913) 296-1176

KANSAS DEPARTMENT OF AGRICULTURE

TESTIMONY

TO THE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

by

David L. Pope, Chief Engineer-Director

Presented February 21, 1996

Re: Senate Bill No. 621

Good morning, Chairman Sallee and Members of the Committee. My name is David L. Pope and I am the Chief Engineer-Director of the Division of Water Resources, Kansas Department of Agriculture. In my capacity as Chief Engineer, I am charged by statute with the administration of Kansas Water Appropriation Act, K.S.A. 82a-701 *et seq.*

I am here today to testify as a proponent of SB 621 which proposes to amend K.S.A. 1995 Supp. 82a-734 which exempted the evaporation of groundwater exposed as a result of opening or operation of a sand and gravel pit from the permitting requirements of the Kansas Water Appropriation Act, unless the Chief Engineer determines it would have a "substantially adverse impact on the area groundwater supply".

Even though the Division of Water Resources opposed passage of HB 2476 during the hearings held by this Committee last session, after the bill had passed both houses, Secretary Devine and I recommended to the Governor that he sign the bill, however, we did express reservations "that new regulations or future legislation may be required to fully protect existing water rights." See attached letter from Governor Bill Graves to Mr. Mike Dealy, Manager of Equus Beds Groundwater Management District No. 2, dated April 3, 1995.

Today you have before you SB 621 which has been proposed by the Equus Beds Groundwater Management District No. 2 to address concerns regarding the impact of sand and gravel operations on area groundwater supplies. I might point out that K.S.A. 1995 Supp. 82a-734 needs to be technically amended to correct the reference to K.S.A. 92a-954. (See SB 621, line 34, which has been correctly amended to read K.S.A. 82a-954.)

At the request of Chairman Sallee, for the past several weeks I and representatives of my office have met with Mike Dealy, Manager of Equus Beds Groundwater Management District No. 2, and Woody Moses, representative of Kansas Aggregate Producers Association, to discuss possible amendments to SB 621 which could be supported by the Aggregate Producers, the Groundwater Management Districts and the Division of Water Resources.



The effect of SB 621 would be as follows:

- 1) All operators which propose to open new pits or expand existing pit operations which would expose the groundwater table to evaporation on or after April 6, 1995, [the effective date of HB 2476] would not be required to get a permit for evaporation unless the pit was: (a) within a Groundwater Management District, (b) within an Intensive Groundwater Use Control Area established by the Chief Engineer pursuant to K.S.A. 82a-1036 *et seq.*, or (c) the Chief Engineer has determined that it is necessary to regulate the operation in order to effectively manage and protect the beneficial use of the State's water, preserve the rights of prior appropriations and to protect the public interest and use of the water.
  
- 2) For operations within Groundwater Management Districts, Intensive Control Areas and other areas determined by the Chief Engineer to need permits, operators must obtain regular permits to appropriate water from the Division of Water Resources where available. If new permits to appropriate water are not available because the area is over-appropriated, operators must acquire existing water rights in the vicinity, and retire them or change them to the proposed operation.
  
- 3) Subsection (1)(c) will require pit operations to report evaporation on an annual basis pursuant to K.S.A. 82a-732 and that information will be provided by the Chief Engineer to the Director of Taxation for the purpose of assessing the Water Protection Fee. The statutory citation to the Water Protection Fee will be corrected to read K.S.A. 82a-954.

4) One area left unresolved by both K.S.A. 1995 Supp. 82a-734 and SB 621 is the status of: (a) approved applications for permits to appropriate water for evaporation for sand and gravel operations, and (b) pending, but unapproved, applications for new permits to appropriate water for that same purpose. The current language of K.S.A. 82a-734 would suggest that all existing water rights and applications for evaporation for sand and gravel pit operations should be dismissed. Was that the intention of the committee or should the owners and operators holding those current water rights and applications be allowed to retain them? If you inserted the phrase "on or after April 6, 1995" after the word *pits* in line 17, it would clarify that existing water rights or applications could be retained.

#### Conclusion

I support adoption of SB 621. I feel that it addresses some of the concerns which the Division of Water Resources raised during the 1995 Session before this committee.

I and my staff are continuing to meet with Mr. Dealy and Mr. Moses to explore improvements to SB 621, which can be supported by all three of us. We seem to be making progress, but we have reached no definite recommendations for the Committee at this time.

I appreciate this opportunity to appear and I would be happy to answer any questions you might have.

STATE OF KANSAS

BILL GRAVES, Governor  
State Capitol, 2nd Floor  
Topeka, Kansas 66612-1590



(913) 296-  
1-800-432-  
TDD: 1-800-992-  
FAX: (913) 296-

OFFICE OF THE GOVERNOR

April 3, 1995

Mike Dealy, Manager  
Equus Beds Groundwater Mangement District No. 2  
313 Spruce Street  
Halstead, KS 67056-1925

Dear Mr. Dealy:

Thank you for your recent letter concerning HB 2476, which exempts sand and gravel pit operations from some of the permit requirements of the Kansas Water Appropriation Act. As you know, the Division of Water Resources within the Board of Agriculture testified in opposition to this bill as introduced. However, the bill was amended to require operators to notify the Chief Engineer of the Division of Water Resources whenever any existing or proposed sand and gravel pit is to be excavated or expanded. In addition, if the Chief Engineer determines that a pit has a substantially adverse impact on the area groundwater supply, the evaporation of water from the pit would be subject to all existing requirements.

HB 2476 passed the House on a 121-3 vote, and passed the Senate 31-7. With some reservations, I signed HB 2476 on March 30. Secretary of Agriculture Allie Devine has indicated that new regulations or future legislation may be required to fully protect existing water rights.

I share your concern about the protection and preservation of our aquifers, and urge you to work with the Division of Water Resources to ensure that HB 2476 does not result in depletion or pollution of the aquifers. Please let me know if I can be of further assistance. Thank you for your input on this vital issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Graves".

BILL GRAVES  
Governor

cc: Allie Devine, Secretary, Board of Agriculture  
David Pope, Chief Engineer, Division of Water Resources





Submit To: CHIEF ENGINEER-DIRECTOR  
 Division of Water Resources  
 Kansas State Board of Agriculture  
 901 S. Kansas Avenue, 2nd Floor  
 Topeka, KS 66612-1283

**APPLICATION FOR TERM PERMIT**

- GROUNDWATER
- SURFACE WATER
- (check one)

The State of Kansas

**A STATUTORY FILING FEE MUST ACCOMPANY THIS APPLICATION**  
 (Make check payable to the Division of Water Resources)

**1. Applicant: (Please print or type)**

Name \_\_\_\_\_  
 Street \_\_\_\_\_ R.R. \_\_\_\_\_  
 City and State \_\_\_\_\_  
 Zip Code \_\_\_\_\_ Telephone No. (\_\_\_\_) \_\_\_\_\_  
 Social Security I.D. No. \_\_\_\_\_  
 and/or Taxpayer I.D. No. \_\_\_\_\_

**4. Name and address of owner of land upon which point of diversion is located:**

\_\_\_\_\_  
 \_\_\_\_\_  
 If other than applicant, submit statement showing owner's permission to install diversion works has been obtained.

**5. Water is to be used for (briefly describe proposed use and explain the rate and quantity requested):**

\_\_\_\_\_  
 \_\_\_\_\_

**2. Location of Point of Diversion:**

Sec. \_\_\_\_\_, Twp. \_\_\_\_\_, Rng. \_\_\_\_\_ (E), (W),  
 \_\_\_\_\_ County, Kansas.

**6. Location of place of use:**

\_\_\_\_\_  
 \_\_\_\_\_

**Distance from Southeast Corner of Section:**

\_\_\_\_\_ feet North from Southeast Corner  
 \_\_\_\_\_ feet West from Southeast Corner

**7. Period of use:**

Commencing date: \_\_\_\_\_  
 Ending date: \_\_\_\_\_

NOTE: If point of diversion is not site specific (i.e., groundwater pit) show the approximate geographic center.

If off-stream pit, check here .

Will pit floor intersect water table? Yes  No

**3. Water Use Data:**

Proposed Max. Pumping Rate (gpm) \_\_\_\_\_  
 Amount Requested (acre-feet) \_\_\_\_\_  
 per calendar year  
 Depth of Well (feet) \_\_\_\_\_  
 Date (completed) (will be completed) \_\_\_\_\_  
 Drainage Basin \_\_\_\_\_  
 Name of Stream \_\_\_\_\_

**8. Location of the proposed point of diversion and those of other water users within 1/2 mile shall be indicated on the diagram to the lower-left, scale 1 inch = 2,000 feet. If surface water, indicate on the diagram the course of the stream, and its name. List other D.W.R. permit numbers that cover the requested point(s) of diversion or place of use here:**

\_\_\_\_\_  
 \_\_\_\_\_

**FEE SCHEDULE**

1. The filing fee for an application is based on the maximum amount of water use proposed within a year. Except for storage, the fee is:

Acre-feet	Fee
0 - 100	\$100.00
101 - 320	\$150.00
More than 320	\$150.00

plus \$10.00 for each additional 100 acre-feet or any part thereof.

2. The fee for an application in which storage is requested, is:

Acre-feet	Fee
0 - 250	\$100.00
More than 250	\$100.00

plus \$10.00 for each additional 250 acre-feet of storage or any part thereof.

NOTE: If an application requests both direct use and storage, the fee charged shall be as determined under No. 1 or No. 2 above, whichever is greater, but not both fees.

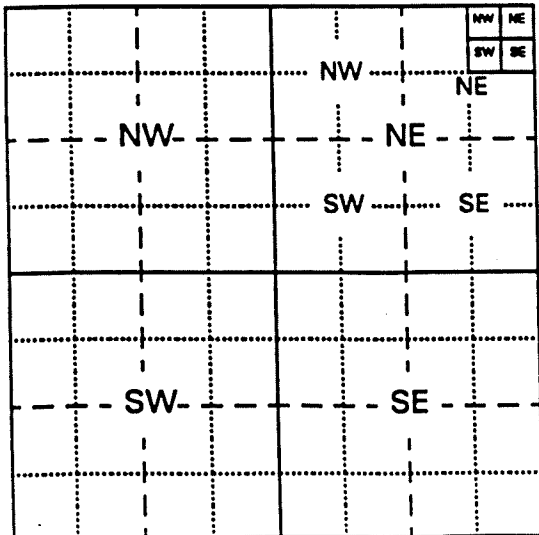
3. The fee for an application for a permit to appropriate water for water power purposes shall be \$100.00 plus \$200.00 for each 100 cubic feet per second, or part thereof, of the diversion rate requested.

4. There is a separate application form for domestic use. Do not use this form for domestic use.

**CONVERSION FACTORS**

1 acre-foot equals 325,851 gallons  
 1 million gallons equal 3.07 acre-feet

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Assisted by \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10,000 FT

9. For groundwater use, list below all wells within 1/2 mile of the proposed well, and plot locations upon the diagram on reverse side. If additional space is needed, attach a map.

Other wells -

Well A Owner(s): \_\_\_\_\_  
Address : \_\_\_\_\_

Well B Owner(s): \_\_\_\_\_  
Address : \_\_\_\_\_

10. For surface water use, list below the names and addresses of all landowners from a point 1/2 mile upstream to a point 1/2 mile downstream of the tract of land upon which the point of diversion is located. If additional space is needed, attach sheet.

Tract A Owner(s): \_\_\_\_\_  
Address : \_\_\_\_\_

Tract B Owner(s): \_\_\_\_\_  
Address : \_\_\_\_\_

11. The applicant states that the information set hereon is true and accurate to the best of his/her knowledge.

12. The applicant agrees to waive any right to a hearing on the matter of abandonment of this appropriation right and further agrees that this appropriation right may be dismissed and terminated upon completion of the proposed project, said dismissal date to be on \_\_\_\_\_ or within any extension of time authorized by the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture.

13. The applicant agrees to provide water to nearby water users, at no charge to said users, should their rights to use water become impaired by the project proposed by this application.

14. Water use contact person (in event emergency contact is needed):

Name: \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant or Authorized Representative Date  
\_\_\_\_\_  
Applicant's Name Printed Title \_\_\_\_\_

**DO NOT WRITE BELOW THIS LINE**

**CONDITIONS OF APPROVAL:**

The applicant shall maintain accurate and complete records from which the quantity of water diverted during each calendar year may be readily determined. Accurate and complete records shall be furnished to the Chief Engineer by March 1 following the end of each calendar year. Failure to file the annual water use report by the due date, shall cause the applicant to be subject to a civil penalty.

The use of water herein authorized shall not be made so as to impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.

The Chief Engineer specifically retains jurisdiction in this matter with authority to make such reasonable reductions in the approved rate of diversion and quantity authorized, and such changes in other terms, conditions, and limitations set forth in this approval and permit to proceed as may be deemed to be in the public interest.

TESTIMONY BEFORE SENATE  
COMMITTEE ON  
ENERGY & NATURAL RESOURCES

Mr. Chairman, members of the Committee, I am M.S. Mitchell, appearing here today to oppose Senate Bill 621. As a long time resident of south central Kansas I am very familiar with the operations and importance of the Sand and Gravel industry to Kansas builders of all types of public and private structures. No road, highway or street can be built with all-weather surfaces without sand and gravel. What are commonly called "sand roads" are really dirt roads which have been stabilized and covered with layers of sand and gravel to provide reliable transportation links for the supplies that farmers use to plant and fertilize the crops, feed the stock and fuel the machines that drive modern agriculture.

As population density increases, homes are needed, streets and highways are paved, manufacturing and commerce flourish and cities and towns grow. In each of those activities, the products of the Sand and Gravel industry are needed everywhere.

There is an old joke about the hog operation where it is claimed that everything but the squeal is used. This is an apt characterization of the sand and gravel industry. Often starting with poor or marginal farm land, the top soil, if it is of good

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quality, is stripped off and sold for a variety of landscaping uses. Next, if there is silt, it is carefully separated and stockpiled as a premium ingredient in asphalt paving. Any heavy soil not good for topsoil is sold for random fill, and finally the top layers of sand are removed to start the hydraulic dredging of sand and gravel. Highly sophisticated machinery washes, separates, grades and stockpiles the sand and gravel to meet a variety of specifications for concrete, asphalt, cement blocks, base course and subgrade stabilization, snow and ice control and surfacing material. Even the clods of heavy soil and outsized aggregate are saved for sale as "mudballs" or further separated to produce decorative landscaping pebbles or used as surface material for exposed aggregate concrete.

Fine sand is kept for use as backfill for trenches, around basement walls; gradations are produced which are used as filter material for sub-drains for building foundations and other gradations are placed around pipelines, drainlines and sewers to be hydraulically compacted by water flooding to produce maximum density. In Sedgwick County, the daily cover material for Brooks Landfill which is required by federal law, comes from sand and gravel operations, either from overburden or dredged sand. All in all, nothing is wasted.

As the sand and gravel are extracted by hydraulic dredging, groundwater fills the excavated area, replacing the 80 percent of volume formerly occupied by the sand and gravel. In these "sandpit lakes" groundwater is being conserved instead of

flowing thorough the soil down-gradient and eventually entering local rivers and streams as surface flow.

When all of the sand and gravel have been extracted from a plant site, the resulting body of clean, fresh, clear water is left behind for wildlife habitat, water recreation and prime open space. These "sandpit lakes" have become the core amenity for commercial and residential development, providing water based communities impossible to find in nature in most parts of Kansas. When I describe these communities to persons living in other parts of the country, they are consistently envious of the availability, relatively low cost and ease of maintenance of the water amenity around which the communities are located.

All of this is under attack by those who would place a major restriction on the opening, operation and future use of sand and gravel production sites. Not before 1993 was the concept of calling evaporation from "sandpit lakes" a beneficial use requiring a water appropriation. There is no scientific evidence that these "sandpit lakes" have reduced the volume of groundwater available to those who have valid appropriations.

Also there is no scientific evidence that over thirty years experience with using "sandpit lakes" as storage basins for stormwater runoff has adversely affected the quality of water in those "sandpit lakes", or the groundwater up or down gradient from the lakes.



Mr. Chairman, members of the Committee, please do not pass Senate Bill 621 out of Committee. If there are no valid reasons which would require the Chief Engineer of the Division of Water Resources of the Kansas State Board of Agriculture to determine that there would be a substantially adverse impact on an area's groundwater supply, then there should be no water appropriation required for the future opening, operation and maintenance of sand and gravel pits.