Approved: 3-19-97
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Steve Lloyd at 3:30 p.m. on March 5, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. Kent Glasscock - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Hank Avila, Legislative Research Department
Mary Torrence, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Rep. Bruce Larkin, State Representative
David Pfrang, Golf, KS
Ginny Pfrang, Golf, KS
Virgil Huseman, Ellsworth, KS
Tracy Streeter, Exec. Director, State Conservation Commission
F.Vic Robbins, Professional Engineer
Mary Jane Stattelman, Chief Legal Counsel, KS Department of Agriculture
Mike Beam, KS Livestock Association
Lynn Wobker, President State Association of KS Watersheds
Ben Rogers, Manager, Wet Walnut Watershed District
Keith Engle, Turkey Creek Watershed District
Joseph Baumchen, Cross Creek Watershed District
Roger D. Coleman, Delaware 10 Watershed District

Others attending: See attached list

Chairman Steve Lloyd called the meeting to order at 3:30 p.m. He called the committee's attention to minutes of the February 10, 11, 12 and 13 meetings, that had been distributed.

Testimony from F. Vic Robbins concerning **HB 2368** (See Attachment 1) was distributed for the committee to review along with a letter from EPA concerning information pertinent to activity on **HB 2368**. (See Attachment 2)

The Chairman opened public hearing on **HB 2435**:

HB 2435: **An act concerning watershed districts; concerning election of directors; relating to exercise of eminent domain; amending K.S.A. 24-1211 and repealing the existing section.**

Mary Torrence, Revisor of Statutes, explained the bill.

The Chairman welcomed Rep. Bruce Larkin to the committee. Rep. Larkin spoke to the committee concerning **HB 2435**, of which he is the sponsor. He introduced the bill at the request of constituents that were having problems with a watershed district in their area. He feels there is a problem that needs to be addressed and urged the committee to keep an open mind on the issue.

The Chairman welcomed David and Ginny Pfrang, Golf, KS, to the committee. They provided testimony in support of the bill. (See Attachment 3 and 4) They live on a farm in Nemaha county, where they raise cattle and hogs. They appreciate that a bill has been written to address the problems with their watershed district but feel the changes made in the bill need to be reconsidered to protect landowners.

The Chairman welcomed Virgil Huseman. He provided testimony in support of the bill. (See attachment 5)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

He along with other citizens feel the power of eminent domain should be taken out of the Watershed District Act and that the watershed district organization election needs scrutiny.

The Chairman welcomed F. Vic Robbins, a registered professional Engineer. (No written testimony) Mr. Robbins spoke in support of the bill. He supports the watershed project but feels there should be guide lines for eminent domain. Discussion and questions followed.

The Chairman welcomed Tracy Streeter, Executive Director of the State Conservation Commission. He spoke to the committee in a neutral position (See Attachment 6) and appeared today to provide an overview of the Commission's role as it pertains to watershed districts.

The Chairman welcomed Mary Jane Stattelman, Chief Legal Counsel, KS Department of Agriculture. (See Attachment 7) The Department of Agriculture recommends that new section 2, requiring a watershed district to submit a dispute regarding acquisition of real property to mediation in front of the Chief Engineer, be deleted and that the bill be amended to have the mediation handled under the direction of the district court.

The Chairman welcomed Mike Beam, KS Livestock Association, to the committee. He feels his members have serious concerns about several provisions of the Watershed District Act. He asks the committee to delay any action on the bill until the 1998 Legislative Session. (See Attachment 8) Discussion and questions followed.

The Chairman welcomed Lynn Wobker, President of the State Association of KS Watersheds. He provided testimony opposing the bill. (See Attachment 9) He asked why watershed districts should be the only entity of government to have a different set of rules for eminent domain and believes the current watershed law is effective and does not need to be changed.

The Chairman welcomed Ben Rogers, Manager and Contracting Officer for Wet Walnut Watershed Joint District #58. He provided testimony in opposition to the bill. (See Attachment 10) He believes the existing statutes concerning election of directors and the acquisition of real property have worked for many years and that new legislation is not needed.

The Chairman welcomed Keith Engle, past President of Turkey Creek Watershed. He provided testimony in opposition to the bill. (See Attachment 11) He feels the power of eminent domain should remain as it is, which he feels is used very reluctantly.

The Chairman welcomed Joseph Baumchen, officer and board member of Cross Creek Watershed #42. He provided testimony in opposition to the bill, (See Attachment 12) and feels the existing watershed laws pertaining to elections and eminent domain have worked well in the past and should not be changed.

The Chairman welcomed Roger Coleman, Delaware 10 Watershed District, to the committee. He presented testimony in opposition to the bill. (See Attachment 13) He is not sure how a vote of eminent domain will effect the watershed program and if it is passed should apply to all projects , such as highway, power lines, and many other projects that benefit the public and not just single out watersheds.

Written testimony was distributed from Beverly Nelson, Spillman Watershed District #43. (See Attachments 14 and 15) She supports the bill and believes eminent domain should be taken away and make participation in a watershed a voluntary donation or sale of land.

Written testimony was distributed from James C. Donahue, Hayhook Ranches. (See Attachment 16) He believes the power and authority of watershed districts should be reviewed.

Written testimony was distributed from Vara Hall LaFoy, Wet Walnut Creek Watershed District #58. (See Attachment 17) She supports the bill and feels the power that has been given the watershed boards leads to dictatorial arrogance.

Written testimony was distributed from Melissa A. Wagemann, Legal Counsel, Deputy Assistant, Secretary of State. (See Attachment 18) The Office of the Secretary of State has received calls and complaints about watershed board of director elections, and understand that there is a desire to amend the statute relating to this type of election.

Discussion and questioning of conferees followed. David Pope,Chief Engineer/Director, Water Resources Division, Department of Agriculture, answered questions concerning how a watershed district is formed.

The Chairman, hearing no others to address the committee, closed the hearing on **HB 2435**. He brought the

committee's attention to the minutes of meetings February 10, 11, 12, and 13.

Rep. David Huff made a motion the minutes be approved, Rep. Marti Crow seconded. Motion passed.

The Chairman thanked the conferees for appearing today and the committee for their attention. He announced that **HB 2368** will be discussed in tomorrow's meeting, with possible final action.

The meeting adjourned at 5:30 p.m.

The next meeting is scheduled for March 6, 1997

HOUSE ENVIRONMENT COMMITTEE COMMITTEE
GUEST LIST

DATE: 3-5-97

NAME	REPRESENTING
Ben Rogers	SAKW & Wet Walnut Creek W.S.
Lynn Wobker	SAKW & Pottawatomie Creek Watershed
Keith Engle	Turkey Creek Dickinson Co. Watershed
Lowell K. Abeldt	SAKW. Abilene
Elizabeth Ensley	KS CO Clerks Assn.
Charles Benjamin	KS Sierra Club/KNRC
Mark Armfield	KS Dental Assn.
Daniel [illegible]	Cross Creek 42
Dennis D. Hall	Cross Creek Watershed #42
Kenneth Kerwin	Cross Creek Water Shed #42
Joseph Baumcher	Emmett Ks Cross Creek 42
Butch Harris	Soldier, Cross Creek 42
Wayne D Pollock	Soldier Cross Creek 42
Roger D Coleman	Delaware 10 Watershed
JACQUELINE L. COLEMAN	OSKALOOSA, KS.
Don Ryan	Farmer Rancher
Hank Ernst	Kansas Farmer
Mary Jane Stattelman	KS Department of Ag
Vic Robbins	Myself - Private Citizen

HOUSE ENVIRONMENT COMMITTEE COMMITTEE
GUEST LIST

DATE: 3-5-97

NAME	REPRESENTING
Tracy Streeter	Cons Comm.
Leslie Kaufman	Ks Farm Bureau
LaVene Schneider	Ks Livestock Assoc.
Lisa Meyer	KS Gov. Consulting
Alex Cordier	myself
Bill Fuller	Kansas Farm Bureau

TESTIMONY ON HOUSE BILL 2368

PRESENTED TO HOUSE COMMITTEE ON ENVIRONMENT

March 5, 1997
by F. V. Robbins, P.E.

H.B. 2368 deals with surface water quality standards and surface water quality protection. I wish to express my strong opposition to this bill. This bill is special interest legislation of the worst possible sort. It would put the potential polluters in charge of water pollution control in Kansas.

I would like to give you a little information about my education and employment, as it affects my ability to comment on this subject. I am a registered professional engineer and a practicing consulting engineer specializing in environmental and agricultural engineering. I am also an independent farmer. I operate approximately 1000 acres in eastern Kansas. Before entering private consulting, I worked for the Kansas Department of Health and Environment (KDHE) for eight years, from 1985 to 1993, in the areas of surface and groundwater quality assessment and water pollution control.

I will now state my specific concerns with this bill and note many problems with it. First, during the time the numeric water quality criteria for ammonia, atrazine and chloride are suspended what will the standards for water quality be? Why were just these pollutants selected for suspension? Pollution control permits must be written and revised on a continuous basis. Discharges for permitted facilities must be evaluated for water quality compliance. How will these activities be accomplished with no water quality standards in place? I point out that the beneficial use designations for surface water bodies and the water quality standards for support of those uses are the foundation and backbone of the entire water quality protection program.

Secondly, the two questions the "special commission on surface water quality standards" is to address have already been answered. The State employs a cadre of water quality specialists, including aquatic biologists, environmental scientists, and environmental toxicologists. These people worked tirelessly for literally thousands of hours over an eight year period developing the current water quality standards. The State has already spent hundreds of thousands of dollars to develop the standards. The Kansas Surface Water Quality Standards were developed through a long, detailed, rigorous scientific process in conformance with both State and Federal Law. They are based on the best available scientific information on pollutant toxicities and on indigenous Kansas aquatic organisms and aquatic habitats. The standards were developed using methods specified by the Environmental Protection Agency (EPA). The current standards were reviewed by outside experts and approved by the EPA. They were presented to the public for review and comment in several hearings prior to adoption. By Federal law, surface water quality standards must be reviewed every 3 years and revised to include any new scientific information.

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A rigorous scientific process is already in place to develop water quality standards. The process allows for review and comment by private sector experts in the field and by the general public. Why is a "special commission" needed and how could it improve the process? What special knowledge of water quality protection would persons with experience in business, industry, public finance, wastewater treatment, agriculture or law provide? How can it be assured the commission will be objective and not biased in their conclusions?

Kansas ranks last in the nation in compliance of our surface water with quality standards for beneficial uses such as, fishing, swimming and aquatic life support. Rather than work to improve water quality, the response of promoters of this bill is simply to lower the standards. What really is at issue here is not whether the current standards are appropriate to protect the surface waters of the state of Kansas, but rather the fact that they will force a small percentage of wastewater dischargers to expend considerable sums of money to upgrade treatment to comply and thereby improve water quality. As usual, money is the driving force. I point out the Federal Clean Water Act requires surface water quality standards to be based solely on scientific information. The standards are to be set at levels which will protect all "beneficial uses of the waters" without regard to economic impact. However, economic considerations are addressed in the standards which include a provision for a variance. Upon application by a discharger, if it can be proved by reason of widespread socioeconomic impact that strict enforcement of the water quality criteria is not feasible, KDHE must permit a variance from the standards.

If this law were passed, and the "special commission" suspended and subsequently lowered the water quality standards, it is quite likely the EPA would simply de-certify Kansas as being qualified to implement the Clean Water Act in Kansas. They could then revoke all Federal funds for pollution control, take over the water pollution control program and implement their own water quality standards, which would likely be more stringent than the current Kansas standards. EPA has not even approved a portion of the current water quality standards (numeric criteria for priority toxic pollutants) because the state criteria are too lax in EPA's opinion.

Last year, the legislature considered turning the water programs back to the EPA and it was determined this was not a desirable option. In fact, a long list of regulated entities and others submitted testimony against that proposal. H.B. 2368 would most likely have the very same result.

This bill is the most blatant example I have seen of putting the fox, no, the wolves, in charge of protecting the henhouse. It should be killed, post-haste.

C - Senator Anthony Hensley
Representative Joe Humerickhouse

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WATER, WETLANDS & PESTICIDES DIVISION
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

TO: Rep. Laura McClure FAX #:913-296-0251

FROM: Larry Shepard

PHONE #: 913-551-7441 FAX #:913-551-7765

SUBJECT: Comment letter from EPA Region 5 to Minnesota PCA

COMMENTS:

Information pertinent to activity on Bill 2368. I am faxing this information to KDHE and the League of Municipalities as well. Please call if you have any questions.

TOTAL PAGES INCLUDING COVER: 5

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 05 1997

REPLY TO THE ATTENTION OF: **R-19J**

Mr. Peder Larson
Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Dear Mr. Larson:

Thank you for providing the United States Environmental Protection Agency, Region 5, (USEPA) with the opportunity to comment on the proposed, "Water Quality Standards Review Act," (HF 874, SF 676) under consideration in the Minnesota Legislature. The stated purpose of these bills is to ensure that Minnesota's water quality standards and their application are supported by the best available scientific knowledge and are implemented in the most cost-effective manner possible. The bills would accomplish this by authorizing the University of Minnesota Center for Environment and Health Policy (UM-CEHP) to review water quality standards and National Pollutant Discharge Elimination System (NPDES) permitting decisions made by the Minnesota Pollution Control Agency (MPCA). I appreciate this chance to share USEPA's perspective on the proposed legislation.

While USEPA fully endorses the use of the best available scientific and technical information in the development and implementation of water quality standards, I have serious concerns regarding the effects of the proposed legislation on MPCA's programs. The legislation would delay adoption of new or revised water quality standards by up to one year, exposing the citizens of Minnesota and their environment to unnecessary risk. Water quality criteria could also be modified based on a cost/benefit analysis, resulting in criteria that would not be protective of human health and the environment, contrary to the requirements of the Clean Water Act. In addition, the legislation would impose changes on MPCA's NPDES permit program that would affect the timeliness of permits issued by the MPCA and could affect the ability of the MPCA to issue permits that comply with the requirements of the Clean Water Act and Federal regulations. At a minimum, the changes to Minnesota's programs resulting from this legislation would necessitate a much greater level of scrutiny by USEPA of the MPCA's water quality standards and NPDES permit programs than occurs at the present. USEPA would be forced to take direct Federal action including promulgation of Federal water quality standards, objection to Minnesota NPDES permits and issuance of Federal NPDES permits where necessary, and ultimately, withdrawal of Minnesota's NPDES permit program where Minnesota's water quality standards and permits fail to comply with the minimum requirements of the Clean Water Act.

Delaying the effectiveness of water quality standards to accommodate review by the UM-CEHP raises concerns about the ability of Minnesota to adopt new or revised water quality standards in a timely manner. For example, pursuant to Section 118 of the Clean Water Act, Minnesota is

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required to adopt water quality criteria, methods for calculating water quality criteria, antidegradation procedures, and implementation procedures consistent with the Great Lakes Water Quality Guidance for the Lake Superior basin by March 23, 1997. Minnesota has already indicated to USEPA that it will be unable to meet this deadline. An additional delay of a year or more could result in USEPA being obliged to promulgate the Guidance for Minnesota. This would be unfortunate given the time and effort already invested by the MPCA and the public in developing water quality standards consistent with the Guidance.

In addition, the legislation mandates that UM-CEHP's review of water quality standards include a cost/benefit analysis. Under the legislation, cost may serve as the basis for UM-CEHP rejecting water quality standard proposed by the MPCA. Consistent with Section 303(c) of the Clean Water Act, water quality criteria developed and adopted by States must protect designated uses. Water quality criteria employ the best available scientific information to establish the maximum amount of a pollutant that may be present in a water body without causing unacceptable impacts on human beings, aquatic organisms and wildlife. Where the protectiveness of State water quality criteria is compromised by consideration of cost, those criteria would not comply with the Clean Water Act. Further, such cost-based criteria would betray the public trust that human health, aquatic organisms and wildlife will be protected if water quality criteria are attained.

In addition to its effects on water quality standards, the proposed legislation, if enacted, appears to modify or supplement the MPCA's statutory authority to issue and enforce compliance with NPDES permits. Pursuant to 40 CFR 123.62, the proposed legislation would therefore trigger the need for EPA review and approval of this revision to Minnesota's authorized NPDES program. I am concerned also that the appeal process could result in a substantial number of expired permits. Federal regulations at 40 CFR 123.63(a)(2)(I) specify that failure to issue permits as grounds for withdrawal of a State's NPDES program authorized by USEPA.

In determining whether the revisions are approvable, USEPA would also evaluate whether final effluent limitations resulting from the review process would ensure that point source discharges comply with water quality standards as required by Federal regulations at 40 CFR 122.44(d). Federal regulations at 40 CFR 123.63(a)(5) specify that failure of a State to adopt an adequate regulatory program for developing water quality-based effluent limits in NPDES permits is grounds for withdrawal of a State's NPDES program authorization.

Regardless of effects on program authorization, passage of the bill would compel USEPA to institute direct and thorough oversight of Minnesota's implementation of the NPDES permit program. At present, owing to the degree of confidence USEPA has in the integrity of the NPDES permit program conducted by the MPCA, USEPA allows considerable autonomy in the day-to-day operations of the MPCA's program. USEPA's confidence in the MPCA's program reflects years of experience working with the MPCA. This experience demonstrates that permits issued by the MPCA are protective of the quality of Minnesota's water resources. Should this legislation become law, USEPA could no longer have such certainty that the NPDES permits issued by the MPCA would be protective of Minnesota's environment and consistent with the

Clean Water Act and Federal regulations. Consequently, USEPA would be obliged to reinstate review of all NPDES permits prior to issuance by the MPCA. When Minnesota NPDES permits are found to be inconsistent with the requirements of the Clean Water Act and Federal regulations, USEPA would exercise its authority under Section 402(d)(2) of the Clean Water Act to object to the permits. As you are aware, Minnesota may not issue permits over the objection of USEPA. Where Minnesota is unable or unwilling to revise a permit to address an objection to USEPA's satisfaction, USEPA and not the State becomes the NPDES permitting authority.

In addition to being disruptive of water quality protection programs in Minnesota, the proposed legislation seems unnecessary. The procedures employed by the MPCA to develop water quality standards and issue permits have always included mechanisms for obtaining the input of technical and scientific experts, as well as individuals affected by the water quality standards. Input is obtained early in the process, permitting technical and scientific experts to work with the MPCA in shaping new water quality standards rather than oversee the MPCA's efforts as envisioned by the proposed legislation. This early, direct input to the MPCA results in water quality standards that reflect the best possible scientific knowledge without delaying the process as would the proposed legislation. The Water Quality Standards Advisory Committee convened by the MPCA last October is an excellent example of this process. The Water Quality Standards Advisory Committee includes the expertise of UM-CEHP, as well as representatives from the interested public and regulated community, including the Coalition of Greater Minnesota Cities. It will conduct a complete review of Minnesota's water quality standards in a public forum without the creation of an additional and unnecessary layer of oversight or disruption the MPCA's existing programs.

It should also be noted that the technical and scientific data used to derive water quality criteria and guide water quality standards are readily available through the published literature and existing computerized databases. It is unlikely that the UM-CEHP has access to sources of data that are unavailable to the MPCA. In fact, the MPCA may have access to data that the UM-CEHP is unaware of through its contacts with other agencies within Minnesota, as well as other States.

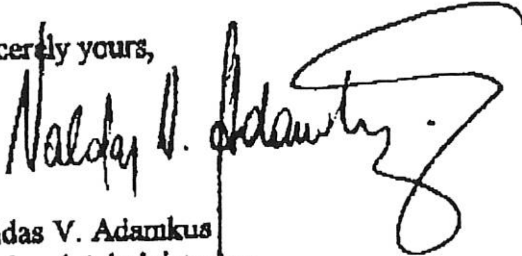
While the proposed legislation is unlikely to appreciably improve the technical or scientific underpinnings of the water quality standards developed by the MPCA, it is likely to create duplication of effort between the MPCA and UM-CEHP as well as increase costs. This will occur when the UM-CEHP is forced to retrace the steps taken by the MPCA in developing a water quality standard. Rather than have UM-CEHP repeat analyses already conducted by the MPCA, thereby incurring delay and added cost, it would seem to make more sense to use a system such as the Water Quality Standards Advisory Committee to allow early input by the UM-CEHP and other sources of expertise.

Finally, I must take issue with the underlying assumption of the bill, specifically, that the staff of the MPCA are not scientifically or technically competent for making decisions regarding water quality standards or their implementation. In my experience, the staff of the MPCA have always

demonstrated the highest level of scientific and technical capabilities. Staff from the MPCA are often called upon to participate in Regional and National initiatives and workgroups because of their scientific and technical expertise. MPCA staff played a major role in the technical workgroup that developed the Great Lakes Water Quality Guidance. MPCA staff are also active participants in the National workgroup reevaluating USEPA's current criterion for ammonia. Furthermore, the MPCA is playing a pivotal role in ongoing efforts to identify the causes of deformities in amphibian populations. All of these activities attest to the talent of the staff employed by the MPCA.

Thank you again for this opportunity to express USEPA's reservations regarding the proposed, "Water Quality Standards Review Act" (HF 874, SF 676). USEPA will continue to review the proposed legislation and will forward any further concerns to you. Please contact me if you have any questions regarding USEPA's position on this matter.

Sincerely yours,



Valdas V. Adamkus
Regional Administrator

2-5

Minnesota Pollution Control Agency April 12, 1996

MPCA's Interim Ammonia Strategy

The water-quality standard for ammonia is coming under increasing scrutiny in many states. This is because the standard is used to set limits for ammonia allowed in wastewater discharges. Some municipalities are concerned that the ammonia standard is too stringent, in part because it is outdated. The Minnesota Pollution Control Agency is working with the U.S. Environmental Protection Agency to resolve these problems. To provide context for this effort, some background on water-quality standards is helpful.

Background

The protections of the Clean Water Act are founded on the concept of water-quality standards. These are the numerical values used to set the maximum amounts of pollutants allowed in lakes or streams. Under the Act, all states must adopt water-quality standards. But the states also are given flexibility to adopt standards that reflect their unique needs or values.

In order to set standards, states first establish "designated uses" for all their water resources. These are classifications that reflect how the citizens of a state value or use their lakes and rivers. Examples of designated uses include drinking-water supply, cold-water fishery, or use for human contact such as swimming. Numerical standards are drafted for the level of specific pollutants that will be allowed in those waters while still protecting the use.

Standards are derived in part from the water-quality *criteria* set by the EPA in the 1980s. These criteria reflected what was known at that time about the potential harm associated with different pollutants.

In some cases this is creating a problem. The science used to determine adequately protective criteria has changed, but the criteria for ammonia have not been updated for more than 10 years. The ammonia criteria need to be changed to reflect new information.

The MPCA has requested that EPA review and address concerns with the national ammonia criteria immediately and work in partnership with the MPCA and interested Minnesota dischargers to resolve these questions.

In the meantime, the MPCA is addressing the ammonia question on a number of fronts. We are actively working with many partners in a Red River water-quality workgroup to determine appropriate ammonia limits for dischargers in the Fargo-Moorhead area.

We are also proposing a statewide water-quality standards advisory group to begin in September, 1996 to meet with stakeholders to consider and address water-quality standards issues such as ammonia, dissolved oxygen, dissolved metals, mixing zones, etc. In addition, we're also surveying other Upper Midwest and Great Lakes states to better understand their approaches to water quality standards listed in the preceding paragraph. And we're striving to consider not only good science but the input and participation of our stakeholders in these questions.

Interim strategy

Because of the uncertainty surrounding ammonia limits at this time, the MPCA has developed an interim strategy for some permits with ammonia limits. This is so that permittees will have the

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information they need to adequately design, construct and operate municipal and industrial wastewater treatment facilities until these issues can be resolved.

In cases where there are ammonia (NH3) limits in a permit and the permittee has demonstrated the ability to comply with them, an interim strategy is not needed. In these cases, final ammonia limits will be maintained and enforced. This position is consistent with federal regulations which prohibit relaxation of final effluent limits when it would lead to backsliding.

A number of factors can trigger the need for new ammonia limits in a permit. These include facility expansions and upgrades, change from a controlled to a continuous discharge, new information on a discharge, or new information about the receiving water.

If it is determined under existing rules that a permit should have ammonia limits, the permit will be issued with final ammonia limits. However, in this case special language will be included in the permit to protect the permittee while the MPCA works with EPA to upgrade the federal criterion and state water-quality standards. The permit will state that the MPCA will not take enforcement action against the permittee for failing to meet the final ammonia limits as long as the discharge is not acutely toxic. When Minnesota's water-quality standard for ammonia is revised, the permit will be modified and final ammonia limits will apply.

For further information on these issues or the MPCA's interim ammonia policy, please contact John Hensel, Supervisor, Standards unit, (612) 296-7213 or toll-free (800) 657-3864.

This hearing is an arena of ideas coming together to come up with some solutions, and I thank you for your time. The watershed system is being abused in some cases. I have ground in 3 different watershed districts, and it's clear to me that many board members are there because they want a dam on their ground, they want to eliminate a dam on their ground, or they want to protect their bottom ground. They tend to lose sight of the fact that their goal is to make wise use of tax payers' money.

Watershed districts should be required to publish their minutes in newspapers. This would hold them more liable for their actions and where tax money is going.

All landowners should be eligible to vote. Right now you can't vote if your land is in a trust or a corporation. You can only vote if you attend the meeting. We'd like to see voting by mail as an option.

We'd like to see limits on taxes. Right now there's a limit of 4 mills, but they can raise it any amount to pay for a project.

No taxes should be used to form a district. Let the ones who want to form a district pay for it themselves.

There definitely needs to be a standard form for figuring cost/benefit analysis.

I'd like to see the elimination of eminent domain. A watershed district can legally take your ground without your consent. They can even sell your ground to someone else. This law is being and has been abused time and time again. A lot of landowners don't think they can win -- and they can't-- so they just give up their ground.

According to the Army Corps of Engineers, a study has shown that too many watershed ponds actually can to more harm than good, and

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I've seen it happen. My dad has some ground with a creek runnin through it. It used to be narrow and deep due to the fast-flowing water from the rains. Now there are 3 watershed ponds above it in one section. There is water running all the time, and the creek bed is now shallow and wide. The banks are always wet, amd now they're caving in. We're losing a lot of ground and even trees so fast that it's hard to believe. This never happened before these 3 ponds were built.

I jumped into this situation because I thought it would be so obvious to everyone why this structure was so wrong. It's hard to believe that a watershed district is accountable to no one and the law is in their favor. I guess I was hoping to find a Harry Truman!

It's been a long and frustrating journey, but we've met some really wonderful people along the way. Tonight I'll go home and box up all my papers and put them in the closet. I'll ask myself if it was worth it. I'll answer that question in a year or so.

David E Pfeany

TESTIMONY ON HB 2435
GIVEN ON MARCH 5, 1997

My name is David Pfrang, and this is my wife, Ginny. We live in Nemaha County where I farm and raise cattle and hogs. Ginny is a stay-at-home mom with our 2 little girls. We started this up-hill battle a year ago after we received a letter out of the blue from Cross Creek Watershed District saying that they were going to use eminent domain to take our easements for the floodwaters of a watershed pond. It's not easy to condense this complex, aggravating year into a few minutes, so alot of details will have to be left out.

We've dealt with 2 main problems-- the threat of eminent domain and the members on the watershed board, including their lawyer and their engineer. The board has never been willing to work with us on this situation. The floodwaters will affect our native prairie pasture where we graze cattle every summer. We've suggested several other options to them which would eliminate us from the situation, but they said no to all of the suggestions.

It has taken us a year to realize that a watershed district is accountable to no one. Whatever they want they get. If a board member wants to remove a proposed structure from his ground, or if he wants a structure to protect his ground, consider it done. It doesn't matter if the landowner doesn't want it or even if it's not economically feasible. They get whatever they want. And in the hands of the wrong people, this is a loaded gun. This is not right! Everyone wants to see less government, but if a group of people can't use their power wisely and fairly, they need to be reined in by laws.

We are in favor of term limits. Two of the members of Cross Creek have been on the board for 30 years. Two other members got on because they replaced 2 members who died. Elections need to be changed to encourage wider participation. We would like to see the watershed board elections added to the general elections in the spring rather than the absentee ballot proposed in HB 2435. This could save substantial tax dollars and be much more practical.

HB 2435 also proposes that the Chief Engineer either appoint a mediator or handle disputed cases involving eminent domain. This is a good start, but we hope it doesn't end there. Even though we proved that the pond was neither feasible nor necessary, (we have 3 state funded ponds above it) everyone at DWR said that since it was approved in the general plan it was worthy of a permit regardless of its feasibility. In talking with a watershed engineer from Nemaha County, the only thing that DWR looks at in considering a pond for the general plan is a drainage area of around 100 acres. Then they just hope that the board's engineer has a conscience as he figures the feasibility analysis.

Cross Creek asked us several times how much we wanted for our easements. We told them that we would give them our easements for nothing if they could show us it was feasible. According to their engineer's cost/benefit analysis, it was feasible. We hired our own unbiased professional ag engineer to

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Attachment 4

do a cost/benefit analysis, and he showed that it was far from being feasible. We would like to see a practical and standard formula used by all engineers to determine cost/benefits. Engineers themselves have told us that any engineer can play with the figures to make any structure feasible. We feel this is what happened in our situation.

The majority of watershed districts are very cooperative with landowners. At a recent KLA meeting, several KLA members affiliated in some way with watershed boards said they have never used eminent domain. So why have it? We have no choice but to give them our easements since we want to keep control of the rest of our ground. A lawyer recently told us that even though we've got facts and truth on our side, we'll never win a court battle because the judge would automatically rule in favor of DWR's recommendation. We would like to see an end to eminent domain where watershed districts are concerned. It's not right that they can take your land. They can even sell your land. If not total removal, then there needs to be some other option other than taking someone's ground without their consent.

As we mentioned earlier, there are already 3 state funded ponds above this watershed structure. If its purpose is actually for flood or erosion control, we doubt very seriously if it will even get full as there will be only 164 acres draining into it. And the ground above it is native prairie pasture with gentle, rolling hills and absolutely no gullies or wash-outs from erosion. We'll probably never have any floodwater on our ground. So you may be wondering why we're fighting this so hard since our land may never be affected. We're doing it for 3 reasons: 1. It's a terrible waste of tax dollars; 2. After giving all of our information to the Kansas Watershed President, he was very understanding and sympathetic to our cause. He said that Cross Creek is abusing their power of eminent domain to cover up their mistakes. Our rights are being taken away because of it., and 3. We think it's pathetic what some other people are going through at the hands of watershed districts. We want to do what we can to help them and others avoid the mess and frustration that we've dealt with this past year.

We appreciate very much that a bill is being written up to address this problem. However, we feel that the changes proposed in HB 2435 need to be reconsidered and a few more changes made to protect landowners. Thank you.

David + Ginny Pfrang

March 4, 1997

The Honorable Steve Lloyd
Committee on Environment

Mr. Chairman;

I am pleased that the Committee on Environment has introduced HB No. 2435 concerning watershed districts. Having just completed an election to organize a watershed district I and many of my neighbors have read the watershed district act thoroughly and hired private legal council to help us understand it. In this area (Ellsworth, Lincoln, Saline and Ottawa counties) private citizens organized to oppose the proposed Westfall Watershed District and defeated the proposition on a vote of nearly three to one.

Many of us feel that;

1) The power of eminent domain should be taken out of the Watershed District Act.
   A loosely organized, volunteer board of directors such as a watershed district should not be given the power to condemn and take property from private individuals. Unlike other governmental entities with the power of eminent domain, watershed districts are not building highways or power lines, necessities for the public good. They can and do build ponds and dams on the whim of some board member or other influential person for personal gain. They can and do take title to property, build structures on it and then sell it to private individuals or other government entities. We can site specific examples.
2) The watershed district organization election needs scrutiny.
   a.) People who have put their land in a trust are not allowed to vote in watershed district elections.
   b.) The election is run entirely by the steering committee for the proposed watershed district. The proponents hire the poll workers, they canvas the vote and in many cases the polling place is actually in the home of the steering committee board member.
   c.) Absentee ballots are not allowed, etc.

I could go on with numerous other deficiencies in the act and hope to do so at some future date.

However, at this late date may I suggest that this bill be held over for further consideration. Ag groups such as the Kansas Livestock Association and Kansas Farm Bureau should be given time to develop policy on this issue.

In the meantime HB 2435, while it's intention is appreciated ---- doesn't begin to do justice to what must be done to the Watershed District Act.

Virgil Huseman
Ellsworth, Kansas

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Attachment 5

State Conservation Commission

109 SW 9th Street
Suite 500, Mills Building
Telephone: (913) 296-3600
Topeka, KS 66612-1299
FAX (913) 296-6172

TESTIMONY TO THE HOUSE ENVIRONMENT COMMITTEE
HB 2435
March 5, 1997

Mr Chairman and Members of the Committee:

Good afternoon, my name is Tracy Streeter, Executive Director of the State Conservation Commission. I am appearing before the Committee today to provide an overview of the Commission's role as it pertains to watershed districts. Our role is two-fold:

1) Providing administrative assistance regarding the operation of the district. This includes receipt and review and meeting minutes, financial statements and five-year construction plans. We also provide an administrative handbook for watershed districts which contains statutory information affecting districts and related governmental sub-divisions.

2) Administering the Watershed Dam Construction and Planning Assistance Programs. As the name implies, the Commission provides financial assistance (through State Water Plan Funds) for the construction of flood detention and grade stabilization dams. Limited financial assistance is also provided to assist districts in the development of watershed plans or related studies. The construction program provides a maximum of 80 percent cost-share assistance for the development of eligible projects, not to exceed $120,000 per project or fiscal year. Eligible projects must:

    - be included in the district's general plan, approved by the Chief Engineer.
    - be contained in the district's current five-year construction plan.
    - have a cost-benefit ratio of 1 to 1 or greater.
    - have all required permits issued.

The Commission prioritizes eligible projects for funding based upon their relative flood, erosion control and water quality benefits, cost per drainage acre controlled by the project, and the level of riparian or wetland habitat impacted by the project.

The State Conservation Commission has reviewed the proposed language contained within HB2435. We raise the same issues contained in testimony provided by the Secretary of State's office regarding the "by mail" provision for district elections. Without additional provisions for this type of election, the proposed legislation could harm the current election process rather than improve it.

I appreciate the opportunity to present information on behalf of the State Conservation Commission. I will be glad to answer any questions raised by the Committee.

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STATE OF KANSAS

BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture
901 S. Kansas Avenue
Topeka, Kansas 66612-1280
(913) 296-3558
FAX: (913) 296-8389

KANSAS DEPARTMENT OF AGRICULTURE

Testimony
of

Mary Jane Stattelman, Chief Legal Counsel
Kansas Department of Agriculture

Before the
House Environment Committee

March 5, 1997

on

HB 2435

Equal Opportunity in Employment and Services

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Chairman Lloyd, and members of the Committee, thank you for this opportunity to appear and testify in opposition to new section 2 of HB 2435 which puts the office of Chief Engineer of the Department of Agriculture in the role of a mediator and economist.

New section 2 of the bill provides, "(a) Before acquiring any real property by eminent domain, a district shall submit the dispute regarding acquisition of such real property to dispute resolution mediated by the Chief Engineer or a person designated by the Chief Engineer." (emphasis supplied)

It is our understanding that section 2 of HB 2435 was requested to address landowners' concerns with the use of the eminent domain power by watershed districts. It is also our understanding that some individuals have concerns about the ability of a watershed district to exercise its eminent domain powers in a situation where the proposed project does not have a positive cost/ benefit ratio. In order to mediate such a type of dispute, the Division of Water Resources would be thrust into the roles of a mediator and an economist. Although our engineers certainly have training in analyzing construction costs of dams and other projects, mediation of a dispute involving a controversial flood control cost benefit analysis is not something currently within the range of duties or expertise of the Division of Water Resources. If the Division were to assume such duties, there certainly would be the need for additional training and/or staffing to adequately perform such duties as prescribed by the statute.

We have considered the problem presented and suggest the following alternative when a watershed district uses their eminent domain powers: (a) require the watershed district to give

adequate notice to the affected parties, (b) have a statutorily set length of time in which those parties could petition the district court hearing the eminent domain action for mediation, and (c) then the court would order mediation under its authority and jurisdiction. This process would address the concerns of the landowners but would place the court in charge of the mediation process. We believe the district courts are the best equipped for this role since the district courts are currently set up to provide for mediation and currently do so in other types of matters.

The Department of Agriculture recommends that new section 2 requiring a watershed district to submit a dispute regarding acquisition of real property to mediation in front of the Chief Engineer be deleted and that the bill be amended to have the mediation handled under the direction of the district court.

Thank you for your time and consideration. I would be happy to stand for questions.

Since 1894

March 5, 1997

To: House Environment Committee

Rep. Steve Lloyd, Chairman

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

Re: House Bill No. 2435 - Amendments to the Watershed District Act

Thank you, Mr. Chairman, for scheduling a hearing on House Bill No. 2435. This bill amends two sections of the watershed statutes. First, the amendment on line 26 (page 1) would allow absentee voting for the election of a district's directors. The second change in New Sec. 2 (lines 3-6 of page 2) would require mediation by the chief engineer of the Division of Water Resources before a district could acquire real property by eminent domain.

In the past six months, we have heard from several Kansas Livestock Association (KLA) members who have concerns about specific provisions of the watershed district act. You will hear from some of these individuals at today's hearing.

This issue was debated at our annual policy meeting last fall in Wichita. Much of the discussion centered on the issue of eminent domain. There are individuals across this state who feel they are getting run over by a watershed district and are adamantly opposed to a watershed district's authority to use eminent domain.

We also have many members who have organized watershed districts in their local community. They will tell you watershed districts serve an important conservation and safety purpose. These individuals tend to defend the watershed district act, including the right of eminent domain.

At our annual meeting, our members reached a consensus that these issues were deserving of further research, review, and discussion. They voted to form a task force to meet this summer and fall and report back to the full KLA membership in early December.

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6031 SW 37th Street Topeka, KS 66614-5129 (913) 273-5115 Fax (913) 273-3399 E-MAIL: kla@kla.org

My purpose in appearing before this committee today is three-fold. First, to confirm our members indeed have serious concerns about several provisions of the watershed district act.

Secondly, to inform you that we plan to explore these concerns and determine if there is a consensus among our membership regarding possible solutions and subsequent legislation.

Finally, I respectfully ask this committee to delay any action on HB 2435 until the 1998 Legislative Session. Perhaps next year this committee, the entire legislature, and other interested groups can take the time and devote the energy to make changes that have been fully explored and debated. Thank you!

STATE ASSOCIATION OF KANSAS WATERSHEDS
P.O. BOX 182
NEWTON, KANSAS 67114

Written Testimony for House Bill 2435

House Environment Committee
Representative Steve Lloyd, Chairman

Good afternoon. My name is Lynn Wobker, I am President of the State Association of Kansas Watersheds. I am here to testify against House Bill 2435 for the following reasons;

1.) We have concerns about the cost of the vote by mail and who will handle the paperwork. Most watersheds do not have the staff to handle such a project.

2.) Eminent domain was created to assist government entities in constructing projects that are beneficial for the community. This allows elected officials to make decisions at the local level instead of a state or federal agency making these determinations. Most Watersheds in Kansas have never used eminent domain. I work for Pottawatomie Creek Watershed Joint District No. 90 whose General Plan was approved in 1972. The District has constructed twenty flood control dams and has never used eminent domain. There are many other Watershed Districts in Kansas that also have never used eminent domain.

Why should Watershed Districts be the only entity of government to have a different set of rules for eminent domain. We believe the current Watershed law is effective and does not need to be changed.

Thank you for allowing me time to address this committee.

Written testimony of Ben Rogers concerning House Bill No. 2435

My name is Ben Rogers and I am the manager and contracting officer for Wet Walnut Watershed Joint District No. 58 and treasurer for the State Association of Kansas Watersheds. I would like to thank the committee for this opportunity to testify concerning the proposed changes to the Watershed Act in House bill 2435.

The Wet Walnut Creek Watershed District is located along the Wet Walnut Creek between Lane and Barton counties covering almost 1600 square miles. We are one of the largest watershed districts in the nation. The State Association of Kansas Watersheds represents most of the watershed districts in the state of Kansas.

We have some serious concerns about the proposed changes to the Watershed District Act. First, the proposal to add the words "by mail" to those entitled to vote at annual watershed meetings will, quite frankly, be a nightmare to interpret and enforce. As the legislation is presently written, there is no procedure by which mail votes would be obtained or properly validated. There is no reference to any other statutory procedure and thus every district would be left to devising a system of their own which certainly would give rise to much confusion. More importantly, the present system of requiring attendance has worked very well in our experience. We have found that those people who are interested in the affairs of the watershed districts will make the effort to attend the annual meeting. A mail vote for many districts would create a huge expense for the taxpayers because of the large numbers of potential voters who may or may not have any interest in the watershed district. For example, in our own district, we would have to send ballots to every 18 year old voter in each city contained within the district, in addition to all other land owners within the district. We do not have the resources to conduct such an election although we do have part time secretarial help. Many districts do not have any employed help to manage such an election. We believe more thought needs to be given to any changes along these lines keeping in mind the concerns I just mentioned.

We are also concerned about new Section 2 requiring mediation before acquisition of any property by eminent domain. Watershed districts are municipalities just like any other city or state agency or federal agency. The present eminent domain statutes apply uniformly to all of these agencies. We believe making an exception for watershed districts does not make any sense because there are adequate safeguards in the current legislation. In the case of our own district we have obtained nearly 200 easements over the years, either by donation or by purchase, to build our structures. We have only two easements that we have acquired through eminent domain after extensive negotiations were conducted. We must all understand that some folks are simply opposed to particular public projects and there is no amount of negotiation or mediation that will be acceptable. This is true not only for watershed districts, but for streets, highways, schools, airports and other works of improvement. Where federal funds are involved, the federal Real Property Acquisition Act provides numerous safeguards in addition to state statutes to insure the fairness of the process.

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If the real purpose for amending the act is to insure that benefit/cost ratios are appropriate, then we see no problem with appropriate legislation to insure such benefits. This, however, is a separate issue and should not be dealt with under the eminent domain statutes.

In summary, we believe the existing statutes concerning the election of directors and the acquisition of real property have worked very well for many years and that new legislation is not needed. We certainly think that the proposed legislation would add another layer of expense and bureaucracy on local governments in a time when everyone is talking about reducing government and saving expense to the taxpayer.

I appreciate the opportunity to present testimony to the committee and I would be happy to answer any questions that you might have. Thank you.

My name is Keith Engle. I am past president of Turkey Creek Watershed in Dickinson County.

We recently completed Dam #15, which was the last one in our plan. The people of Turkey Creek Watershed approved this plan years ago. We are very pleased with the result; but we would never have completed our plan without the power of Eminent Domain. We used this power very reluctantly, in only one case on one dam. Most of the easements in our Watershed were donated. This one dam was a very key dam. It controlled 12 square miles of drainage. It was one of only two dams on a branch of Turkey Creek that flooded a highway regularly. A few years ago, I witnessed a man get out of a stalled car, where this branch crosses the highway. The water was high enough to go into the car when he opened the door. He could have easily lost his life. There is also a public school about 1½ miles from this point that would have been affected.

This area obtained by our use of Eminent Domain was mostly pasture land. It would have been a shame if we would not have been able to complete the plan, because of one man's lack of cooperation.

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CROSS CREEK WATERSHED JOINT DISTRICT NO. 42
P.O. Box 454
Rossville, Kansas 66533

Kenneth Kerwin, President
913-771-3875
Joseph Baumchen, Vice-President
913-535-8315
Joseph Conley, Secretary
913-771-3963
Joseph VandeVelde, Treasurer
913-584-6309

March 5, 1997

TESTIMONY BEFORE HOUSE ENVIRONMENT COMMITTEE IN OPPOSITION TO HB 2435

My name is **Joseph Baumchen**, and I live at Emmett, Kansas. I am a farmer, landowner, taxpayer, Officer and Board Member of Cross Creek Watershed No. 42, which was organized in 1966 and is located in parts of Jackson, Pottawatomie and Shawnee Counties. I am appearing here today to testify on behalf of Cross Creek Watershed and myself in opposition to House Bill 2435.

There are two (2) parts of HB 2435 pertaining to different subjects, and I want to address each part. The first part of the Bill changes landowner voting rights at watershed district annual meetings by allowing voting by mail. The language of this Bill is very vague with regard to how voting by mail is to be accomplished. However, we foresee the implications and the impact this Bill would have on watershed districts and the county clerks for the counties in which a watershed is located may be quite significant. We envision and anticipate the watershed districts and county clerks will have to develop and maintain annually a complete list of qualified voters within the District, prepare ballots annually and very possibly mail notice of the annual meeting and right to vote by mail to each of these landowners. The administration, materials and postage costs would be staggering and further strain budgets of the districts and counties. We do not believe these costs can be justified. Surely, qualified voters who are interested in the activities of a district and who want to exercise their voting rights can attend, or their representative by proxy attend, one district meeting per year.

Our Watershed District and myself are also opposed to the second part of HB 2435 which concerns modification of eminent domain procedures only for watershed districts. The language in the Bill on this subject is also very

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vague, but it apparently imposes mandatory mediation by the Chief Engineer of the Division of Water Resources on watershed districts who are acquiring landrights in pursuance of their purposes. The Bill does not say how mediation is to be conducted nor the purpose to be accomplished. It is obvious, though, that such mediation process will only cost watershed districts and DWR more money and create another administrative bureaucracy. The power of eminent domain granted to watershed districts has been in existence since creation of watershed districts by the Legislature in 1953, and the present eminent domain procedure act has been in effect since January 1, 1964. Does this Committee really want to change the eminent domain laws which have worked very well in the past? The Kansas eminent domain procedure act and the U.S. Constitution provide more than adequate due process protection to safeguard the rights and property of landowners to assure they are fairly compensated for any property involuntarily taken from them. The mandatory mediation provision in HB 2435 would in reality serve no purpose and probably only enhance the controversy between the parties.

As I stated at the beginning, I am a landowner as are all of the Board Members in our Watershed District, and we are proud and protective of our land as all landowners are. The use of eminent domain by our District has only occurred three times in the 30 years of its existence, and I participated in those decisions. I can assure you the final decision to exercise eminent domain power is distasteful and not made hastily, but is made only when necessary.

The existing watershed laws pertaining to elections and eminent domain have worked well in the past. In conclusion I would like to quote an old saying, "If it ain't broke, don't fix it". Thank you for the opportunity to speak to you. If you have questions, we will certainly try to answer them.

IN REFERENCE TO: HOUSE BILL No. 2435

Delaware 10 Watershed built their first watershed dam in 1960 and used the right of eminent domain to purchase this land. The resulting forty acre lake was managed by wildlife and parks, and was used by many people in northeast Kansas for fishing and recreation.

Recently, Delaware 10 Watershed, working with Jackson County and the small lakes program, built the Banner Creek Lake. This lake consists of 535 surface acres. Jackson County used the right of eminent domain to obtain land from five property owners. Water from the lake will be used by the city of Holton and Water District No. 3 for their water supply. Recreation facilities will be used by people residing in northeast Kansas.

We do not understand why, in Section I 24 -1211, it was proposed to be changed as stated in line 25 that "qualified voters ~~in attendance~~ shall be entitled to vote at any such meeting (or by mail)."

It would be difficult for the watershed to conduct any business, including the right of eminent domain, if we need to wait for this type of vote.

Throughout the years, the Delaware 10 board of directors have been opposed to the use of the right of eminent domain. However, there may be a time in the future when the right of eminent domain is needed.

We are not sure how a vote of eminent domain will effect the watershed program, but we think if this is passed, it should apply to all projects such as highway projects, power lines, and many other projects that benefit the public and not just single out watersheds.

In new section 2(a), we do not understand why the chief engineer of the Division of Water Resources will be involved in this process. The chief engineer is responsible for inspecting the design of dams to see that they meet the requirements of the Kansas law and also ~~direct~~ inspects construction to see if it is built properly.

He does not play a part in easements, and we do not see a reason for this as specified in House Bill 2435.

Roger L Coleman
Delaware 10 President

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Re: HB2435

Spillman Watershed Dist # 43 was established and organized in 1966. At that time, the board members approached my father, asking if he would surrender his land for a watershed dam. He said no, explained that the creek which crosses our land does not and never has flooded, and believed the matter to be closed. He was a reasonable man who made the mistake of believing that he was dealing with reasonable men.

Ten years later, the watershed board was back, this time offering control of all waters impounded if my father would surrender his land. Ruining his best farm land and jeopardizing his home in addition to his income were not pertinent issues in their minds. Again, my father refused, and, again, believed that a simple "No" to a voluntary act was sufficient.

Five years after his death, I was approached to reason with my mother and explain to her how advantageous loss of income and home would be to her. This time I refused for her. She found surveyors in her pasture within three days--uninvited and unwelcome. Now a property tax credit was offered in exchange for her surrender of land and income. She refused and believed it to be a dead issue.

One month after my mother's death the wife of one of the watershed board members attempted to rent our farm for their hunting lodge. I refused. What I did not know was that a new plan was in the offing--a 160 acre lake, to be developed for recreational purposes, under the guise of flood control.

My refusal spawned a torrent of bureaucratic abuses. Simply put, the demands escalated from a request to relinquish all claims, donate my inherited home and allow whatever might come next to happen to coercion--I am endangering my own community with my stubbornness and ignorance (parenthetically, the fact that 125 years this creek has never flooded except downstream from me was pointedly ignored), followed by threats and intimidation--give us your land or we will invoke our powers of eminent domain, take your land and throw you off--or leave you living on twenty-five acres thirty yards from a "High Risk to Human Life" dam. Those are my choices.

I can not make myself believe that the authors of the existing law ever intended that property owners be threatened, harassed, or intimidated by members of their own community, serving on elected boards. The power of eminent domain in the hands of greedy, self-serving individuals is a monster unleashed. To live in constant fear of ones own government is to live in 1939 Germany. To live in the fear of a veiled threat being carried out to wonder why this law still stands.

The Kansas State Legislature has a chance to right a wrong, to put a stop to the bullying tactics of these individuals who use public office for personal gain. Please use this opportunity and use it well--remove eminent domain from the hands of these Watershed boards before any more damage is done, before any more tax dollars are used to line the pockets of unscrupulous developers and real estate agents. Please do not allow

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another family to suffer through thirty years of demands, attacks, threats and fear as has my family.

Thank you

Beverly Nelson

Beverly Nelson

Denmark, Kansas

913-277-3495

Mailing address

Beverly Nelson

P.O. Box 55

Lincoln, Kansas

67455

David Pfrang
RR2 Box 98B
Goff, Ks. 66428

Feb. 28, 1997

Dear David,

You asked for my thoughts and input regarding the right of eminent domain as it pertains to Watershed Boards. My feelings are really very simple: Eminent domain in the hands of unscrupulous, unethical, power-mad local boards is a loaded revolver in the hands of a four-year-old.

The argument that "greedy" landowners would inflate the price of their land if not for eminent domain is ludicrous. Watershed boards take homes, heritage, the legacies of generations to come, call it "flood control", and begrudge the property owner the most basic right of ownership--the right to choose whether to sell, and if the choice to sell is made, to set the asking price. In no other real estate transaction does the buyer tell the seller "Sell, at the price I set, or I will take your property at the price I choose to pay." Perhaps in the former Soviet Republic this was acceptable, but surely not here, in a country and a state that prizes individual rights.

The idea that eminent domain precludes the right of the individual to receive sufficient payment to relocate and replace lost income is unconscionable. Too many times in our country's history has land been wrested from its rightful owners, too seldom has the end result been for the greater good. Land stolen is land lost. Land lost is lost heritage, lost legacy, lost faith in a way of life.

Favorite preys of these vulture boards are aging widows, grieving families, people known to be having financial difficulties. I was given less than a month to mourn the loss of my mother before I was embroiled in the fight to save my land, my home from profiteers masquerading as concerned citizens. I, too, have been given the choice--cooperate, or when we get the money we will take it.

Eminent domain is rape. Resist, and you will be punished, crushed, left to bleed. Submit and only your pride will be sodomized. Is this what the Legislature intended?

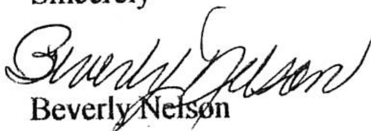
Watershed districts are no longer about water. They are about power, greed, dishonesty, threats, intimidation, and fear. They function through harassment, deception, avarice, and the desire to dominate those perceived as being weaker than their neighbors--lesser beings as it were.

Take away eminent domain--make participation in a watershed voluntary--donation or sale of land. Allow property owners to function, to live, to prosper in an atmosphere free from the continual harassment, the thinly veiled threats. If these so-called flood retention dams were as wonderful as our local boards would have us believe, we would all want one. If they worked, we'd all be standing in line to have one built.

One of my local board members has a watershed dam on his property--he is trying to sell that particular piece of land, and advertises it, through his real estate agent as "excellent hunting and fishing". I know, because his agent tried to sell that parcel to me--indicating I probably would need to relocate in the near future. Incidentally, the asking price was nearly two and a half times the going rate--should I tell him that I don't want to pay that much and that he must sell to me at what I want to pay or I will simply take it for the price I want to pay? I could, if I were a watershed board and lusted after that particular property. Does anyone besides me see the inequity and hypocrisy here?

The abuses by local watershed boards would fill volumes--the horror stories are encyclopedic in their scope. Please end this nightmare now. Take away the loaded revolver from the four-year-old. End eminent domain.

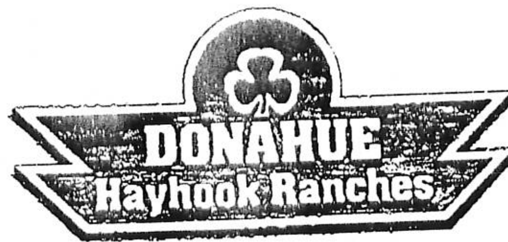
Sincerely



Beverly Nelson

cc: Laura McClure

Beverly Nelson
Rt. 1, Box 55
Lincoln, KS 67455



Registered and commercial
Brangus and Angus cattle

March 5, 1997

Fax - 913-939-2121

To Whom This May Concern:

I, James C. Donahue in partnership with my sons, Dudley and Tim operating 14,000 acres in Marion and Chase Counties. Am also president of The Donahue Corporation in Durham, Kansas, manufacturer of farm equipment.

I was approached several years ago regarding donating easement on approximately 70 acres for Site 6 in Middlecreek Watershed District. This Site 6 is in Marion County Kansas. The site offers no flood protection to our operation, and/or cannot be used for irrigation because of it's location in our operation. Site 11 is approximately 2 miles above our ranch headquarters, upstream and would offer a benefit to our operation. The watershed district has easement for this location.

I ask that the district put in site 11, and as a result of this consideration we would give a easement for Site 6. They would not agree to this, and proceeded to survey and take 120 acres, 50 acres more than required to complete Site 6, to force us to agree to their terms, or force legal action.

I believe my request was reasonable in asking for Site 11 to be completed first to give our operation some benefit before starting Site 6 on our Donahue Hayhook Ranch.

We are happy that Site 6 will benefit farmers and ranchers below our operation downstream, but using strong arm tactics on taking additional 50 acres is abuse of power and I believe that this is a good example showing the power and authority of watershed districts that should be reviewed.

This meeting was very recent, held March 4, 1997 (last night).

Sincerely,

James C. Donahue

James C. Donahue

James C. Donahue
Lincolnville, Kansas 66858
(316) 382-2589

Dudley J. Donahue
Durham, Kansas 67438
(316) 732-2741

Timothy P. Donahue
Lincolnville, Kansas 66858
(316) 924-5500

D. Thomas Donahue
Durham, Kansas 67438
(316) 732-3511

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3-5-97
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442 N. 53rd St.
Ft. Smith, AR 72903
February 28, 1997

Representative Steve Lloyd
Room 180 West
State Capitol Building
Topeka, KS 66612-1504

Dear Representative Lloyd,

RE March 5 Hearing concerning Watershed

I will not be able to attend referenced meeting nor will I be represented. Therefore, I beg you to include this letter with my comments at this hearing.

I have inherited and am the owner of the quarter where the present dam site is located. This land, my only quarter, has been in my family for generations in an area that was homesteaded in the 1870 - 1880's. I, and my family, cherish this land. I was born there. I oppose the building of this dam on my land.

The present construction plan, which consumes even more acreage than that quoted in a 1984 Watershed map, takes the heart of my best cultivated land -- 1997 milo crop made 86.7 bushels to the acre. The farm is a beautiful place, with a small pasture, to quote Watershed Engineer, "heavily treed, all must be removed." It has a creek, which during all my days on the farm did not ever once go out of its banks nor did water even back up in the small draw by our house. And this was before terracing and small dams were built in the pasture.

I have never been able to plan, plant or build on this land. Buildings were to be bulldozed. I have been heavily pressured to donate the easement; I have been bullied and threatened by watershed officials.

On May 29, 1996, I went before the District Watershed Board Directors, Ben Rogers, and their attorney, Tom Toepfer, and told them that I wanted them as my witnesses that I wished to retain title to my land and had of the options presented to me, chosen the option where Watershed would purchase USE of an easement. I also advised them that I was being forced to do this against my will; that I opposed the dam on my quarter.

Prior to this board meeting, the Kansas Legal Officer at Hays, Mr. William Madden, had represented me. Mr. Madden worked with Watershed on an easement agreement, never the sale of my land.

Attorney Toepfer sent a history of the dam site to my attorney, Mr. Pierce, in a September 6, 1996 letter, again listing options and the benefits of donation of an 85-acre easement, even though he was present at the May 1996 meeting where I made the statement

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expressing my choice of options. In October I accompanied the appraiser; on January 6 of this year I received the appraisal for the entire quarter; the 85-acre easement was not mentioned.

To go back over the history of this dam, I received a September 5, 1985 letter from Watershed, giving me my options, stressing benefits of donation. Nothing was ever mentioned nor was I ever made aware of, the choice of purchase of use of the easement. Since I could not donate that many acres, and condemnation would have taken my land and title, I had no choice but the sale of land. Watershed had the quarter appraised; I was given the appraisal value. I refused that offer. Mr. Toepfer then wrote me July 25, 1986 requesting a counteroffer with willingness to negotiate. I was forced to put a price on my land, although I informed them that the land had not ever been for sale at any price. I asked a price of $800 an acre which had been quoted to my brother when land values had been higher, later asking $600 an acre if the sale would go through before the change in capital gains taxes (December 4, 1986 minutes). Watershed discussed trading one quarter of the south half-section, but neither quarter was as valuable as my quarter.

This dam location has been moved to the west; it has been moved to the east. On May 18, 1993, Mr. Rogers informed me, and my cousins, that the dam was canceled on my farm forever. In November 1995, Mr. Rogers wrote me that the location had been moved back to my quarter. I had/have not received minutes of meetings since 1986. As a land owner, not on the Board of Directors, I am excluded from executive meetings. I was forced to go through the Freedom of Information Act for information on my own land. I have no rights, no recourse.

Every man of our farm family served their country in wartime. Not one stayed home with an exemption. Cousins that my family raised and my brother were all either wounded or killed. I was mortared and teargassed during over four years in Vietnam. We were all betrayed.

In regard to this hearing, I feel the power that has been given the Watershed Boards leads to dictatorial arrogance. My treatment by Watershed attests to this. And the threat of emminent domain strikes fear and submission into hearts of long-time farm owners who will be faced with high legal costs and unprecedented capital gains taxes. Emminent domain is Watershed's ultimate weapon. There are absolute rights and wrongs in this world and this is wrong. I also question if this dam is really needed, and why aren't dams built where they are wanted. I am 75. I had hoped for a peaceful last few years with much time spent on my precious farm with my family.

Sincerely,

Vara Hall LaFoy

Vara Hall LaFoy

Ron Thornburgh
Secretary of State

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STATE OF KANSAS

TESTIMONY TO THE HOUSE ENVIRONMENT COMMITTEE ON HB 2435
MARCH 5, 1997

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to submit written comments on HB 2435. The Office of the Secretary of State has received calls and complaints about watershed board of director elections. We understand that there is a desire to amend the statute relating to this type of election.

HB 2435 would allow voters to vote for the board of directors by mail as well as voting in person at the board of directors meeting. HB 2435 amends K.S.A. 24-1211, the statute outlining the procedure for selecting the board of directors, by adding only one provision stating that the qualified voters shall be entitled to vote "by mail." The bill does not include provisions that would direct the implementation of this new voting procedure.

The committee may wish to review either the Kansas corporate code or the election statutes to determine the best procedure for allowing votes to be submitted by mail. The corporate code allows shareholders to vote for a board of directors by use of a proxy. The committee may choose instead to look to election law, and specifically those statutes on advanced voting, for guidance on voting by mail.

The committee might consider the following points in discussing HB 2435.

1. Will the voters who choose to vote by mail be voting by a ballot?
2. If a ballot is used to vote by mail, who will prepare the ballot?
3. Who will mail and receive ballots?

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4. Will there be deadlines for sending the ballot and receiving the ballot?

5. Should the person selected to process the ballots be a neutral person who has no association with the watershed board of directors?

6. How will the authenticity of the mail ballot be ensured? Will each ballot be returned in an envelope containing a signed affidavit on the envelope so as to protect against fraudulent or forged ballots? (Advanced voting ballots must be submitted in an envelope with a signed affidavit pursuant to K.S.A. 25-1120).

7. Will director nominations be made in advance of the board meeting so that the names can be printed on the ballot? Is a deadline for nominations necessary to ensure that the names are received and printed on the ballot?

8. How will a voter apply for a ballot? What are the deadlines for applying for a ballot?

9. Who will ensure that the voters voting by mail are qualified voters and can vote?

10. Will there be penalties for forged votes or for persons using the mail process to vote more than once?

Procedural safeguards may be necessary to prevent fraudulent voting and multiple votes. The committee may wish to address these issues before passage of HB 2435 so that implementing HB 2435 will not be the subject of confusion and questions.

I thank you for the opportunity to raise these points. Please feel free to call me at 296-4801 if you have any questions.

Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State