

Approved: 3-11-99
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 16, 1999 in Room 423-S of the Capitol.

All members were present except: Rep. Henry Helgerson - excused
Rep. Melvin Minor - excused

Committee staff present: Raney Gilliland, Legislative Research Department
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee:

Lee C. Gerhard, Director & State Geologist, KS Geological Survey, 305 Moore Hall, Kansas University, Lawrence, KS 66045
Douglas Wareham, KS Fertilizer & Chemical Assoc. and KS Grain & Feed Assoc., 816 SW Tyler, Topeka, KS 66612
Jere White, KS Grain Sorghum Producers Assoc. and KS Corn Growers Assoc., No. 1 Easy Street, Garnett, KS 66032
Chris McKenzie, League of KS Municipalities, 300 SW 8th Street, Topeka, KS 66603
John Metzler, Board of County Commissioners, Johnson County, 7311 W 130th Street Ste 100, Overland Park, KS 66213
Bill Fuller, KS Farm Bureau, 2627 KFB Plaza, PO Box 3500, Manhattan, KS 66502
Charles Benjamin, KS Natural Resource Council and Sierra Club-KS Chapter, 935 S KS Avenue, Topeka, KS 66612
Dr. Ronald Hammerschmidt, Director, Div. of Environment, KDHE, Forbes Field Bldg. 740, Topeka, KS 66620-0001
Clark Duffy, Assistant Director, KS Water Office, 109 SW 9th, Ste 300, Topeka, KS 66612-1249
Mary Jane Stattelmann, Assistant Secretary, Department of Agriculture, Mills Bldg., 901 S Kansas Avenue, 1st Floor, Topeka, KS 66612-1280
Leo Dorzweiler 2260 Catherine Road, Hays, KS 67601
Kyle Bauer, PO Box 96, Clay Center, KS 67432
Robert Oswald, 509 S Hanover, Hanover, KS 66945
Representative Sharon Schwartz, District 106
Franklin Pacey, 1180 Meridian Road, Miltonvale, KS 67466-9114
David Wirth, Cheyenne Alfalfa Farms, 673 NE 150 Avenue, Ellinwood, KS 67526
Stanley Parsons, Manhattan, KS
Mike Stewart, 6138 SE Stubbs, Berryton, KS 66409
Shawn Harding, KS Bowhunters Assoc., 2237 SE Shawnee Drive, Tecumseh, KS 66542
Mike McFadden, President, KS Chapter Wildlife Society, Lawrence, KS 66047
Secretary Steve Williams, Department Wildlife and Parks, 900 SW Jackson, Ste 502, Topeka, KS 66612
Ron Klataske, KS Audubon Council, 813 Juniper Drive, Manhattan, KS 66502
Spencer Tomb, KS Wildlife Federation, 5321 Thompson Road, Manhattan, KS 66503
Representative Gene O'Brien, District 7

Others attending: See attached list

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She asked if there was a motion to approve minutes of the January 28 and February 2 meetings.

Rep. Sharon Schwartz made a motion to approve minutes of January 28 and February 2 meetings. Rep. Gerry Ray seconded the motion. Motion carried.

The Chairperson reviewed the agenda for Thursday February 18. There will be possible action on **HB2404**, **HB2124**, and **HB2480**, and hearings on **HB2264** and **HB2490**. No action will be taken today on **HB2124**-Concerning solid waste; relating to certain accumulations of used or discarded materials. She opened public hearing on **HB2289**:

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MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 423-S Statehouse, at 3:30 p.m. on February 16, 1999.

HB2289: An act establishing the commission on surface water quality standards; providing For the powers and duties thereof; repealing K.S.A. 1998 Supp. 65-1,175, 65-1,176 and 65-1,177 and repealing the existing sections.

Raney Gilliland, Legislative Research Department, explained the bill. He also presented an e-mail message from Dr. James R. Triplett, College of Arts and Science, Pittsburg State University, concerning **HB2289** and **HB2291**. (See attachment 1)

The Chairperson welcomed Lee C. Gerhard, Director and State Geologist, Kansas Geological Survey. He appeared in support of the bill (See attachment 2) and recommends the bill be amended to add the field of geology to the list of appropriate backgrounds for members of the commission and to add the Kansas Geological Survey to the list of cooperating agencies.

Douglas Wareham was welcomed to the committee. He appeared on behalf of both the Kansas Fertilizer and Chemical Association and Kansas Grain and Feed Association in support of the bill. While they support the general intent of the bill they do have some suggestions that they believe will improve the practical implementation of this legislation and will better focus the role of this proposed commission on matters desperately in need of attention. (See attachment 3)

Jere White was welcomed to the committee. He appeared on behalf the Kansas Grain Sorghum Producers Association and Kansas Corn Growers in conceptual support of the bill. They strongly support the increased stakeholder participation that is inferred by the establishment of a commission on surface water quality standards and encourages the committee to consider a few amendments they believe will enhance that ability of the state to promulgate good science based water quality standards. (See attachment 4)

Chris McKenzie appeared before the committee on behalf of the 528 member cities of the League of Kansas Municipalities in support of the bill. The only question they would raise concerning the bill is the prohibition found in subsection (b) of section 1 against any employee or former officer or employee of the department and any officer, employee or agent of a licensed entity serving on the commission. (See attachment 5)

John Metzler, Chief Engineer for Johnson County Wastewater, was welcomed to the committee. He appeared in support of the bill and recommends that section 1 be modified so that current employees of KDHE could not be a member of the commission, and that former employees of KDHE could not be members of the commission unless at least two years have expired since their date of departure from the department. He further recommends the deletion of section 2 in its entirety. (See attachment 6)

Bill Fuller, Kansas Farm Bureau was welcomed to the committee. He appeared in support of the bill. Kansas Farm Bureau believes it is essential that the process for establishing water quality standards allows, in fact encourages, involvement. Involving all stakeholders must be the first step and a high priority in the process. Involving the public and property owners in establishing the goals will create awareness and develop support, even ownership, in the plan for protecting the water resources of the state. (See attachment 7)

Clark Duffy, Assistant Director, Kansas Water Office was welcomed to the committee and appeared in support of the bill. The Kansas Water Office/Kansas Water Authority has always supported public participation as the most important element in addressing water issues. The Kansas Water Planning Process is known nationally as the "Kansas Model" because of its unique opportunities for extensive public participation. Suggested clarifying amendments were included. (See attachment 8)

Written testimony was distributed from Chris Wilson, Executive Director, Kansas Agricultural Aviation Association. (See attachment 9) They support the bill, which would establish a commission on surface water quality standards. They believe that this kind of input, such as the previous commission established by the Legislature, improves the process and makes for better decision making.

Dr. Ronald Hammerschmidt, Director, Division of Environment, KDHE, was welcomed to the committee and

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MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 423-S Statehouse, at 3:30 p.m. on February 16, 1999.

appeared in a neutral position and presented comments on the bill. This bill creates a permanent commission similar to the commission which worked under the leadership of Dr. James Triplett of Pittsburg State University. He feels the Department of Health and Environment is faced with a dilemma in that they recognize the positive effects of the special commission, but find it difficult to support the creation of a permanent advisory commission. (See attachment 10)

Charles Benjamin, Kansas Nation Resource Council and Sierra Club, Kansas Chapter was welcomed to the committee. He appeared in opposition to the bill on behalf both organizations. That opposition comes from the experience of the Surface Water Quality Commission set up by **HB2368** in 1997. Their criticisms are not directed toward the individual members of the commission but rather the motivations behind the setting up of that commission and what they fear is the similar motivation behind setting up a permanent Surface Water Quality Commission. (See attachment 11) Questions and discussion followed.

The Chairperson closed the hearing on **HB2289**. She opened hearing on **HB2291**:

HB2291: **An act concerning water quality; concerning processes for establishment of water quality standards.**

Raney Gilliland, Legislative Research Department, explained the bill

Chairperson Freeborn welcomed Douglas Wareham, Kansas Fertilizer and Chemical Association and Kansas Grain and Feed Association, to the committee. He appeared in support of the bill which established new processes for increased citizen participation in the establishment of surface water quality standards for Kansas. He offered one proposed amendment and recommends that disputes regarding water quality criteria also be submitted to the commission on surface water quality standards. (See attachment 12)

Jere White, Kansas Grain Sorghum Producers Association and Kansas Corn Growers Association was welcomed. He offered comments in support of the bill.

Chris McKenzie, Executive Director, League of Municipalities was welcomed. He appeared in support of the bill. The League endorses the public participation process and designated use determination requirement of the bill. He has few doubts that if such a process had been in place prior to 1994 that some of the major impacts associated with the 1994 Surface Water Quality Standards could have been avoided. (See attachment 5)

John Metzler, Chief Engineer for Johnson County Wastewater was welcomed back to the committee. He appeared in support of the bill and endorses the concepts embraced in the bill, which in turn are consistent with the recommendations of the special commission on water quality standards. This bill provides for the enhancement of both the public participation process and the all important stream use designation process. (See attachment 6)

Bill Fuller, Kansas Farm Bureau, was welcomed. Farm Bureau supports the bill and believes the process of developing water quality standards should encourage more stakeholder participation and input from the entities being regulated. (See attachment 7)

Clark Duffy, Kansas Water Office, appeared in support of the bill. The Kansas Water Office/Kansas Water Authority has always supported public participation as the most important element in addressing water issues. They believe it is especially important in establishment of water quality standards. They do propose one clarifying amendment. (See attachment 13)

Written testimony was distributed from Chris Wilson, KS Agricultural Aviation Association in support of the bill, which would provide for greater public input into the establishment of water quality standards. (See attachment 14)

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MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 423-S Statehouse, at 3:30 p.m. on February 16, 1999.

Dr. Ronald Hammerschmidt, Director, Division of Environment, KDHE, was welcomed to the committee. He appeared in a neutral position to the bill and offered comments. This bill would require the Kansas Water Office to create a public process as per the recommendations of the Special Commission on Water Quality. In addition, the bill creates a list of requirements for KDHE in assigning designated uses for the streams of the state. He reviewed the agency's current process. (See attachment 15)

Charles Benjamin, KS Natural Resources and Sierra Club, was welcomed back to the committee. He appeared in opposition to the bill and recommends the committee seriously looks at developing a fiscal note for the bill. Section 3 (3) of the proposed bill appears to require the development of use attainability analyses for all rivers, streams and wetlands in Kansas. These procedures are extremely time consuming and costly. (See attachment 11) Questions and discussion followed.

Chairperson Freeborn closed the hearing on **HB2291**. She opened hearing on **HB2404**:

HB2404: **An act concerning water appropriation rights; relating to abandonment; amending K.S.A. 82a-718 and repealing the existing section.**

Raney Gilliland explained the bill and distributed Special Water Issues and Concerns. (See attachment 16)

Chairperson Freeborn welcomed Bill Fuller, Kansas Farm Bureau. He appeared in support of the bill. Policy developed and approved by the farm and ranch members of the 105 county Farm Bureaus in Kansas recommends "water permits should not be jeopardized even if the water allocation authorized is not fully utilized by the permittee". (See attachment 17)

Mary Jane Stattelmen, Assistant Director, KS Department of Agriculture, was welcomed by the Chairperson. She presented testimony in support of the bill. This bill would require KDA to notify the water right holder prior to the water right potentially becoming subject to the abandonment process. (See attachment 18)

David Pope, Chief Engineer Director, Department of Agriculture, Water Resources Division, was in attendance and answered committee questions concerning water appropriation rights.

The Chairperson closed the hearing on **HB2404**. She opened hearings on **HB2480** and **HB2379**:

HB2480: **An act concerning hunting of deer; relating to certain fees; providing for controlled deer shoots in certain areas; amending K.S.A. 1998 Supp. 32-937 and 32-988 and repealing the existing sections.**

HB2379: **An act relating to reducing deer population along state highways.**

Raney Gilliland, Legislative Research Department, explained the bills.

Chairperson Freeborn welcomed Leo Dorzweiler, Hays, KS, to the committee. He testified in support of both bills. He feels the people of Kansas send lawmakers to Topeka to enact laws to make Kansas a safer place to live and raise their dear children. He wants the legislature to introduce a bill and pass it that the Department of Wildlife and Parks cannot introduce any wild animals into the state without a two-thirds agreement in the House and Senate. (See attachment 19)

Kyle Bauer, Clay County Farmer and Motorist, testified in support of the two bills and believes the Department of Wildlife and Parks have proven they are unable or, possibly, unwilling to address the problem without the help of the legislature. He reviewed a Crop Damage Control Summary, which was taken from a KDWL publication and proposed an amendment to **HB2480** on page 8, line 19. (See attachment 20)

Robert L. Oswald, Hanover, Kansas appeared in support of the two bills and addressed the issue of illegal deer kills. He has heard rumors of an increase of unreported "road kills". He would like the legislature to pass

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laws which require all hunters to carry liability insurance against any harm they may do to any persons, farm animals or property while hunting. (See attachment 21)

The Chairperson recognized Rep. Sharon Schwartz, she addressed the committee in support of **HB2480**. Last week she requested the committee introduce a bill to give landowners the ability to request Wildlife and Parks to hold a controlled hunt in areas that the deer populations are damaging crops, fences, and property and have not been controlled with current methods. (See attachment 22) She also offered three amendments to the bill. (See attachment 23)

Franklin Pacey, Miltonvale, Kansas testified in support of both bills and feels the deer herd has out grown a level the public will tolerate. He discussed anaplasmosis, an infectious rickettsial (parasite in ticks and lice) disease of domestic cattle that has been detected in many species of ungulate (hoofed animals) in North America and Africa. (See attachment 24)

Bill Fuller, Kansas Farm Bureau, appeared in support of **HB2480** and expressed strong support to eliminate the "transfer fee" for special landowner or tenant hunt-on-your-own-land deer permits. He this bill accomplishes this objective in lines 37 and 38 on page 2 and in line 2 of page 5 of the bill. (See attachment 25)

David Wirth, Cheyenne Alfalfa Farms, Ellinwood, Kansas, appeared in support of **HB2480**. He does not feel it is the responsibility of the farmer to change his cropping practices in order to control the deer population and feels this bill would expand the responsibilities of the state to deal with the overpopulation and extensive damages caused by deer. (See attachment 26)

Stanley Parsons, Manhattan, Kansas appeared in support of **HB2480** and opposition to **HB2379**. He agrees the deer population needs to be reduced and feels the KDWP should consider giving a free second tag for an antlerless only deer with the purchase of the first tag. (See attachment 27)

The Chairperson welcomed Rep. Gene O'Brien to the committee. He testified in support of **HB2379**. He feels this bill does not attempt to manage the deer herd at large, nor does it interfere with the sports hunter. This bill deals with controlling deer population one mile either side of the state highway for public safety only. These drives would be patterned after the coyote drives of the 1950's. (See attachment 28)

Mike Stewart, Berryton, Kansas, a deer hunter, appeared in opposition to both bills. He believes **HB2480** requires the department to put on a hunt but does not define what a hunt is. He also believes Rod and Gun Clubs may know how to do a deer drive but it is unlikely that most participants from a local civic group or church group would. Therefore this is inherently unsafe. (See attachment 29)

Shawn Harding, Kansas Bowhunters Association, Tecumseh, Kansas, testified in opposition to both bills. He is opposed to both for similar reasons and itemized the Bowhunters association concerns to help explain the problems they read with the bills. Safety, deer management, and landowner concerns over lobbyist interests was discussed. (See attachment 30)

Mike McFadden, President, Kansas Chapter Wildlife Society, testified on behalf the Society in opposition to both bills. They believe professional oversight is necessary to ensure that harvest strategies are on target. These bills remove professional input in program administration and can result in less control of the deer resource when decisions are not based on sound biological information. (See attachment 31)

The Chairperson welcomed Secretary Steve Williams, Kansas Department Wildlife and Parks, to the committee. He appeared in opposition to both bills. He feels **HB2480** would eliminate the transfer fee associated with hunt-on-your-own-land deer permits. It also directs the department to conduct controlled deer hunts at the request of a private owner or municipality. In its current form, they have concerns and issues that should be addressed before taking action on the bill. (See attachment 32) He feels there is nothing in **HB2379** that would add to the department's ability to control deer and feels it would have little, if any, impact on

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deer-vehicle accidents. (See attachment 33)

Ron Klataske, Kansas Audubon Council, Manhattan, Kansas, appeared in opposition to both bills. The Audubon Council urges the committee to give the KWLP, working with sportsmen and outdoors women of the state, and with landowners, more time to address the need for increased harvest in specific localities and larger areas. (See attachment 34)

Steve Sorenson, Kansas Wildlife Federation, presented testimony for Spencer Tomb, also from Kansas Wildlife Federation, Manhattan, Kansas, in opposition to both bills. They feel **HB2480** is not the way to manage an important biological resource and feel it is not good public policy to pay a highly educated and competent staff to do a job and then tie their hands with this kind of legislation. (See attachment 35)

Stanley Parsons, Manhattan, Kansas, appeared in opposition to **HB2379**. He feels a deer drive using buckshot or slugs in shotguns would be very dangerous and feels the liability to anyone organizing such a drive would be tremendous. (See attachment 27) Questions and discussion followed.

The meeting adjourned at 7:00 p.m.

The next meeting is scheduled for February 18, 1999.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 16, 1999

NAME	REPRESENTING
Michael T. McFadden	Kans. Chapter - The Wildlife Society
Jennifer Honas	Steve Montgomery
Kyle Bauer	Clay County Farmer
Dr. Stanley Parsons	Riley Co Farmer
Bill Long	Riley County Fish & Game Assn.
Franklin J. Pacey	FARMERS & LAND OWNERS
Amelia Pacey	" " "
COAA Schlotzer	League of Women Voters
Do Dorzwiler	Citizen Concerned
David Wind	FARMER
Paul M. Leicht	Ks Biological Survey
Tom Hammerhant	KDHE
Joe Cochran	Ks. Geol. Survey
James Tomme	Ks. Wildlife Federation
Ted Schultz	MKC Moundings, Ks
Joan Schauf	KFAA Andale Farmers Coop
Jim Haggerty	Stirling Ks ADM Milling
Roy House	McPherson Concrete Storage Systems
Roger Long	Novartis Crop Protection

John Metzler
 Mike Stewart
 Bill Fuller
 Lere White

self
 Ks. Farm Bureau
 KCGA - K6SPA

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 16, 1999

NAME	REPRESENTING
John Metzler	Johnson County Wastewater
Doug Wareham	Ks. Grain & Feed Assn Ks. Fert & Chemical Assn.
Edie Sutton	City of Topeka
DUSTIN KUNTZ	Harveyville Seed Co Inc.
SHAWN W. HARDING	KANSAS BOWHUNTER ASSOC
Chris Biester	Kansas Bowhunters - Farmer
Alan Stone	Collingwood Grain.
Geoff Kemmerer	Conex Harvest States Corp
J. Deuninger	Palmer Grain Inc.
Tom Lechtenberg	Collingwood Grains.
Chris McKersie	League of Ks. Municipalities
Wendy Harms	Ks Aggregate Producers Assn.
George Barbee	Barbee & Assoc's
Jamie Clover Adams	Governor's office
Charles Benjamin	KNRC / KS Sierra Club

From: "James R. Triplett" <jtriplett@pittstate.edu>
To: <RaneyG@klrd.state.ks.us>
Date: Tue, Feb 16, 1999 10:34 AM
Subject: Legislative hearings

Raney, thanks for alerting me to the hearings today on HB 2289 and HB 2291 relative to the recommendations "special commission". Mary Torrence gave me an opportunity for input in the drafting stage. As I read the bills, they look good to me. The only addition I thought of later was to include "water-based recreation" as an additional area of interest to be represented on the standing commission. As that contingency continues to grow in Kansas, they will eventually speak with a large voice. We should probably start planning to accommodate that interest group now.

Also, it would be good if Jamie could kick out some information to the old committee members via email on the hearings and how to access the bills on the internet. I am sure they would appreciate being kept informed. I don't have all of their email addresses or I would do it.
Thanks, JT

CC: Jamie Clover Adams <JamieA@governor.wpo.state.ks.u...

*House Environment
2-16-99
Attachment 1*

Testimony regarding HB 2289

Lee C. Gerhard
Director and State Geologist
Kansas Geological Survey
February 16, 1999

Madam Chair, members of the Environment Committee, my name is Lee Gerhard, and I am your state geologist. Thank you for the opportunity to comment on HB 2289 which would establish a state surface water quality standards commission.

Water quality is of great interest to all, but particularly so to geologists who constantly work with the interaction between surface and subsurface water. Water quality constraints such as sediment transfer, natural salinity, irrigation-induced salinity, and mixing of ground waters with surface waters are areas of interest to geologists, and particularly to the Kansas Geological Survey, that are major issues in Kansas water quality determinations.

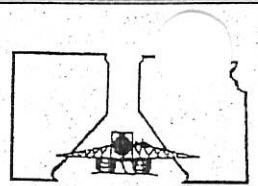
The Survey recommends that HB 2289 be amended to add the field of geology to the list of appropriate backgrounds for members of the commission (Sec. 1 (b), page 1, lines 20-28) and to add the Kansas Geological Survey to the list of cooperating agencies (Section 1 (e), pg. 2, lines 3-8). These changes would insure the availability of our expertise and the identification of issues for the proposed commission.

Thank you again for the opportunity to comment and suggest these amendments. I would be happy to answer any questions you may have.

*House Environment
2-16-99
Attachment 2*



KANSAS GRAIN & FEED ASSOCIATION
KANSAS FERTILIZER & CHEMICAL ASSOCIATION



STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND THE
KANSAS FERTILIZER & CHEMICAL
ASSOCIATION
BEFORE THE
HOUSE ENVIRONMENT COMMITTEE
REP. JOANN FREEBORN, CHAIRMAN
REGARDING H.B. 2289

FEBRUARY 16, 1999

KGFA & KFCA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTREGAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 - 785-234-0461 - Fax: 785-234-2930

House Environment

*2-16-99
Attachment 3*

3

Madam Chair and members of the committee, I am Doug Wareham appearing today on behalf of both the Kansas Fertilizer and Chemical Association (KFCA) and the Kansas Grain and Feed Association (KGFA). KFCA's nearly 500 members are primarily plant nutrient and crop protection retail dealers with a proven record of supporting Kansas producers by providing the latest crop protection products and services available in today's rapidly changing agricultural industry. KGFA is comprised of 1150 member firms including country elevators -- both independent and cooperative -- terminal elevators, grain merchandisers and feed manufacturers all of which rely on the production of Kansas producers for the vital raw ingredients which make our grain and feed industry the envy of the world.

I appreciate the opportunity to appear today in support of House Bill 2289, which establishes a commission on water quality standards for the state of Kansas. The need for an independent advisory panel to review proposed changes to Kansas's surface water quality standards became very apparent to our industry in 1996. It was at that time, we realized that quality standards adopted in 1994 would likely lead to mandatory restrictions on some vital crop protection chemicals our industry provides and often applies for Kansas producers.

In 1994, the establishment of new designated uses and the adoption of stringent water quality criteria had essentially gone unnoticed by much of the agriculture industry in Kansas. To complicate matters, economic impact statements issued by KDHE at the time indicated that little if any negative economic impact would be realized by the Kansas agriculture industry giving even less reason for concern. That situation changed dramatically in 1996 as the formal triennial review of Kansas surface water quality standards began and the production agricultural industry in Kansas learned of the exorbitant costs associated with complying with the standards adopted two years earlier. It was at that time the crash course of "How Surface Water Quality Standards are Developed" began for many of us and I believe we all learned a valuable lesson.

The lesson I believe we learned is: "there is was an immediate need in 1996 and there is a long-term need today for an independent advisory panel to not only recommend, but mediate disputes over surface water quality issues in Kansas." Just as there were disputes in 1996, there will be disputes in the future regarding current and proposed designated uses and there will be disputes regarding the appropriateness or inappropriateness of water quality criteria. We believe the Commission on Surface Water Quality Standards established by H.B. 2289

should be designed to focus on those areas of contention to ensure Kansas surface water quality standards are adopted based on stakeholder consensus and not the personal agendas of individuals, organizations or even industries. There is need for an advisory commission that can independently evaluate all factors and outcomes associated with surface water quality standards including environmental, social and economical factors and outcomes.

While we support the general intent of House Bill 2289, we do have some suggestions that we believe will improve the practical implementation of this legislation and will better focus the role of this proposed Commission on matters desperately in need of attention.

- First, we recommend striking subsection (2) or lines 32 and 33 on page 1 which states that no person or officer, employee or agent of an entity that is licensed, inspected or regulated by KDHE can serve on this commission. It is our opinion this section would severely limit, if not entirely, the pool of qualified individuals able to serve in this vitally important role. Furthermore, while we firmly believe this commission should consist of individuals with scientific or expert technical backgrounds relating to water quality, we believe it is paramount that stakeholders including licensed, inspected or regulated stakeholders be allowed to serve. This commission should be about inclusion of stakeholder participation, not exclusion.
- Second, we recommend language be included in House Bill 2289 that specifically charges this Commission on Surface Water Quality Standards with overseeing the Kansas Department of Health and Environment's Triennial Review of our state's surface water quality standards.
- Finally, while this item is touched on in House Bill 2291, which is scheduled for consideration later this afternoon, we recommend language be included in House Bill 2289 indicating that disputes regarding designated uses and water quality criteria be referred to the Commission on Surface Water Quality Standards when controversy arises.

We respectfully request the committee's consideration of the aforesaid recommendations, which we believe will enhance stakeholder participation and again, focus this commission's efforts on areas of immediate concern.

Thank you for the opportunity to appear in support of H.B. 2289 and I would be happy to respond to any questions at this time.



TESTIMONY

TO: Kansas House Committee on the Environment
FROM: Jere White, Executive Director
DATE: 16 February 1999
SUBJECT: H.B. 2289

The Kansas Corn Growers Association and Kansas Grain Sorghum Producers wish to submit this testimony in conceptual support of H.B. 2289. We strongly support the increased stakeholder participation that is inferred by the establishment of a commission on surface water quality standards. We do encourage this committee to consider a few amendments that we believe will enhance that ability of the state to promulgate good science based water quality standards.

As introduced, H.B. 2289 would basically create a citizen body appointed by the Governor to advise the Governor, Legislature and Secretary on issues related to Kansas surface water quality standards. We suggest that this advisory function can be met within the existing procedures available to the agency. In fact the Federal Clean Water Act, in our opinion, not only provides for this stakeholder involvement, it is required. If the agency will operate in a more transparent manner, as we believe they have made great strides to do in recent times, and if all stakeholder will engage this process, as more have done in recent times, the checks and balances of the commission described in H.B. 2289 should be fully functional.

As a strong advocate for the temporary creation of such a commission a few years ago, we were responding to what we believed to be a closed minded triennial review of the 1994 standards. There appeared to be tremendous pride of authorship within the agency, as well as a disregard for sound science. The legislation and resulting commission were a response to a system and process that was not functioning. And we all had some blame to share in that malfunction. Things are better, but yes, improvement is available.

The broad range of disciplines laid out in this bill would be a valuable asset for the agency to have as a resource. There is no doubt in that. We believe that the agency can and should be doing that anyway, and as stated before, feel they are making great strides to do just that. Rather than a citizen commission, we support

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the establishment of a Scientific Advisory Panel (SAP) that would only be made up of scientists. This SAP could be called upon to review science related proposals by the agency, or for that matter, proposals made to the agency. This system is currently in use by US EPA. Even the city of Columbus, Ohio has a SAP to call upon as needed. Generally, they are a roster of available scientists that are then chosen to participate in a review of some specific issue or policy.

While the commission proposed in this bill would likely be comprised of some individuals that would be qualified to serve on such an SAP, there would likely be others more rooted in political science, that would not. In addition, this SAP could function to the benefit of the agency in all areas and not be limited to surface water quality. In terms of providing review and recommendations, that function could be the same, however appointment to the broad SAP should not be for the set terms outlined in the bill. Also language that prohibits the selection of a person to serve that is regulated, inspected, or licensed by the agency might require all commissioners to be residents of another state. KDHE reaches out and touches our lives in many ways.

We urge this committee to consider our proposed changes to H.B. 2289. We believe they are consistent with the spirit of the original language.



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (785) 354-9565 FAX (785) 354-4186

TO: House Committee on Environment
FROM: ✓ Chris McKenzie, Executive Director
DATE: February 16, 1999
SUBJECT: Support For HB 2289 and HB 2291

(1) Support for HB 2289

Thank yo for this opportunity to appear today on behalf of the 528 member cities of the League of Kansas Municipalities in support of HB 2289, establishing the commission on surface water quality standards. The Kansas Special Commission on Water Quality Standards helped establish the need for a deliberative body to consult with and advise state policy makers on revisions to the state's surface water quality standards. That Commission proved its worth over and over again as it tackled the complex scientific and policy issues connected with stream use designations, water quality criteria, and the need to develop site specific criteria that are scientifically defensible. HB 2289 would involve such a group in the decision making process long before final decisions have been made that may impact the environment and municipal treasuries.

The only question we would raise concerning the bill is the prohibition found in subsection (b) of Section 1 against any employee or former officer or employee of the department and any officer, employee or agent of a licensed entity serving on the Commission. At times these may be exactly the persons you would want to serve because of their expertise. One option would be to let the Governor use discretion whether to include such individuals or not.

(2) Support for HB 2291

We also endorse the public participation process and designated use determination requirements of HB 2291. I have few doubts that if such a process had been in place prior to 1994 that some of the major impacts associated with the 1994 Surface Water Quality Standards could have been avoided.

RECOMMENDATION: For the above reasons, we urge your favorable action on these bills.

President: John R. Zutavern, Commissioner, Abilene * Vice President: Carol Marinovich, CEO/Mayor, Wyandotte County/Kansas City * Past Presidents: Donald L. Anderson, Mayor, Lindsborg * Chris Cherches, City Manager, Wichita * Ed Eilert, Mayor, Overland Park * Irene French, Mayor, Merriam * Ralph T. Goodnight, Mayor, Lakin * Directors: James Arnold, Mayor, Scott City * Joan Bowman, Mayor, Lenexa * Delores Dalke, Mayor, Hillsboro * Tony Fiedler, Commissioner, McPherson * Rod Franz, Finance Director, Salina * Warren C. Hixson, Mayor, Colby * Don J. Knappenberger, City Attorney, St. John * J. Patrick Lawless, Jr., Mayor, Osage City * Ralph Soelter, Mayor, Paxico * Joan Wagnon, Mayor, Topeka * Glen Welden, City Manager, Parsons * Ed Wiltse, Councilmember, Ulysses * Executive Director: Christopher K. McKenzie

*House Environment
2-16-99
Attachment 5*

HOUSE ENVIRONMENT COMMITTEE HEARING

February 16, 1999
3:30 p.m.

TESTIMONY ON HOUSE BILLS 2289 AND 2291

My name is John Metzler, I am Chief Engineer for Johnson County Wastewater, a county operated sewer utility, which provides sanitary sewer service to approximately two-thirds of the Johnson County population. I am offering the following comments on behalf of the Johnson County Board of Commissioners.

HB 2289 - Establishment of Permanent Commission on Surface Water Quality:

- The special commission on Surface Water Quality Standards authorized by Sub. for House Bill 2368 in the 1997 session recommended the establishment of a permanent commission as its first and highest priority recommendation. This recommendation received broad support from most stakeholders in the water quality standards process.
- A permanent commission will enhance public input into the water quality standards setting process by providing a permanent public forum where scientific debate can take place. As an active participant in the special commission process during 1997 and 1998 (I believe I attended all but one commission meeting), it was clear that just the existence of the special commission, and its periodic meetings, brought out input from the regulated community, environmental groups, regulatory agencies, and the public-at-large.
- The proposed permanent commission will be strictly advisory. While we believe ultimately a permanent commission should have some rule-making or rule approval authority, we believe that the establishment of this "science advisory board" on water quality standards is an important first step to establishing better water quality standards.
- We believe Sections 1.(b)(1) and (2) are too restrictive in setting out requirements for the membership of the commission. The first section prohibits current and former employees of KDHE from being members of the commission, and the second section prohibits anyone in the regulated community from being a member. There are probably only 50 people in the entire state knowledgeable about water quality standards, and many of these are former KDHE employees and/or members of the regulated community. It should be noted that the prohibition

against members of the regulated community to be on the commission was not in the original substitute for House Bill 2368, and adds an additional restriction that will make it difficult to find qualified members. While the original special commission did an outstanding job, I believe only two of those seven members had even seen the water quality standards before their appointment. Consequently, there was a substantial learning curve at the beginning of the process. If the bill is passed as is, members of the commission could only be picked from environmental groups, consultants and academia. While these groups should be represented, the Commission recommended that "Members should represent the diverse interests that span the state with respect to water quality." These restrictions do not meet this goal.

In summary, with respect to this section, we recommend that Section 1 be modified so that current employees of KDHE could not be a member of the commission, and that former employees of KDHE could not be members of the commission unless at least two years have expired since their date of departure from the department. We further recommend the deletion of Section 2 in its entirety.

HB 2291 - Implementation of recommendations of the Kansas Special Commission on Water Quality Standards, Processes for Establishing Standards:

- We endorse the concepts embraced in House Bill 2291, which in turn are consistent with the recommendations of the special commission on water quality standards. This bill provides for the enhancement of both the public participation process and the all important stream use designation process.

Thank you for this opportunity to present testimony before the committee. I would be happy to answer any questions the committee may have.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENVIRONMENT

RE: HB 2289 – Creating a Commission on Surface Water Quality Standards.

RE: HB 2291 – Developing a process for establishing water quality standards.

February 16, 1999
Topeka, Kansas

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

It is essential that the process for establishing water quality standards allows, in fact encourages, involvement! Involving all stakeholders must be the first step and a high priority in the process. Involving the public and property owners in establishing the goals will create awareness and develop support, even ownership, in the plan for protecting the water resources of the state.

My name is Bill Fuller and I am the Associate Director of the Public Affairs Division for Kansas Farm Bureau.

Kansas Farm Bureau policy developed by the farm and ranch members of the 105 county Farm Bureaus states:

“The process of developing water quality standards should encourage more stakeholder participation and input from the entities being regulated. We support the establishment of a Water Quality Commission to advise the Governor and the legislature on water quality issues. The Commission will provide a system of checks and balances between the regulators and the regulated in order to focus more resources on improving water quality and reduce litigation.”

We believe HB 2289 and HB 2291 are meaningful steps that will assist in meeting those goals. We encourage passage of both bills. Thank you!

*House Environment
2-16-99
Attachment 7*

**TESTIMONY OF THE KANSAS WATER OFFICE
TO THE HOUSE ENVIRONMENT COMMITTEE
ON HOUSE BILL 2289
BY CLARK R. DUFFY, ASSISTANT DIRECTOR
February 16, 1999**

The Kansas Water Office supports the intent of House Bill 2289. We do believe that some clarifying amendments to the bill might be appropriate.

The Kansas Water Office/Kansas Water Authority has always supported public participation as the most important element in addressing water issues. The Kansas Water Planning Process is known nationally as the "Kansas Model" because of its unique opportunities for extensive public participation.

Although the Kansas Water Office uses technical advisory committees in the development of specific water issues. Scientific and technical expertise envisioned by a commission established in House Bill 2289 has clearly been lacking from this process. House Bill 2289 would address that omission.

Role of the Kansas Water Office

The Kansas Water Office and Kansas Water Authority have specific water planning and policy development responsibilities under the law. K.S.A. 84-2622 *et seq* requires that the Kansas Water Authority, comprised of private citizen representation, consult with and give advice to the Governor, Legislature and the Director of the Kansas Water Office. The Kansas Water Authority is also required to make recommendations to each regular session and to the Governor concerning legislation on any of the matters or subjects that are required to study.

The Kansas Water Office is also required to annually submit to the legislature an updated Water Plan containing recommendations which are necessary to achieve the long-range goals and objectives required by the State Water Resources Planning Act in K.S.A. 82a-8927. This section of law includes several responsibilities for the protection and improvement of water quality in the state and the maintenance of surface waters of the state within the water quality standards adopted by the Kansas Department of Health and Environment.

This responsibility has been under way for a number of years and as we reported to this committee earlier this year, we are in the process of "focusing" that planning effort.

The Need a "Commission"

In recent years there has been dramatic advancements in technology. These advancements have made the scientific understanding of issues critical for sound decision making.

A Commission such as envisioned by this bill working with state government would be a tremendous advantage to the Kansas Water Office and Kansas Water Authority in development of policy recommendation for the Governor and Legislature.

*House Environment
2-16-99
Attachment 8*

We would note that the establishment of a "scientific based" commission would have application beyond the narrow issue of establishing Water Quality Standards. Such expertise from the private sector, working with government officials would be valuable on all water issues. For example, technology has advanced the science of risk management at a rapid pace. This type of information would be invaluable in the Kansas water planning process.

Suggested Clarifying Amendments

1. The Kansas Water Office would like to work with the committee to ensure that the language in House Bill 2289 is not duplicative of language in the enabling legislation of the Kansas Water Office and Kansas Water Authority and the State Water Planning Act.
2. Kansas Water Office would be willing to work with the committee to broaden the scope of this commission to include assistance with all "scientific" aspects of water issues.

**Statement of Kansas Agricultural Aviation Association
To the House Environment Committee
Rep. Joann Freeborn, Chair
Regarding H.B. 2289
February 16, 1999**

Madam Chair and Members of the Committee, I am Chris Wilson, Executive Director of KAAA. We support H.B. 2289, which would establish a commission on surface water quality standards. We believe that this kind of input, such as the previous commission established by the Legislature, improves the process and makes for better decision making. It is critical that agencies have the best data and most public input available in making policies concerning our water resources. We would recommend that this commission include persons who would bring the best technical and scientific expertise possible to this effort.

We thank the Committee for your consideration of this important step.

*House Environment
2-16-99
Attachment 9*



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

Testimony presented to

House Environment Committee

February 16, 1999

by

Ronald F. Hammerschmidt, Ph.D.
Director, Division of Environment
Kansas Department of Health and Environment

House Bill 2289

Good afternoon Representative Freeborn and members of the committee. I am here today to present the Department of Health and Environment comments on House Bill 2289. This bill creates a permanent commission similar to the commission which worked under the leadership of Dr. James Triplett of Pittsburg State University. Staff of the department worked closely with the commission during its deliberations. We had a positive experience and have implemented a number of their formal and informal recommendations in our operations. Our discussions with the commission caused us to examine some of the fundamental procedural and operational concepts used in development and implementation of water quality standards. It was a productive experience with positive effects.

Presently the department is conducting a review of the water quality standards with the intent of meeting the July 1, 1999 deadline established by HB 2368 in 1997. Karl Mueldener and his staff have considered the recommendations of the commission during this review. Tom Stiles recently described for this committee plans for the development of TMDLs which are dependent upon the criteria of the water quality standards and the public process including the Basin Advisory Committees. This approach was developed with the benefit of the commission's recommendations. We are currently working with the City of Topeka on a review of the conditions of the Kansas River using a broad based advisory group representing a number of interest. These efforts indicate the willingness of the department to use the recommendations of the Triplett commission in our water quality programs.

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*House Environment
2-16-99
Attachment 10*

We are faced with a dilemma in that we recognize the positive effects of the special commission, but find it difficult to support the creation of a permanent advisory commission. The development of the water quality standards in the current cycle is being performed using the special commission's recommendations. A review in the normal public hearing process and review by the Joint Committee on Rules and Regulations will provide further public participation on the water quality standards. The development of TMDLs for the Kansas Lower Republican basin will require a great deal of public outreach including the basin advisory committee following on our discussions with the Kansas Water Authority. In addition, the governor is faced with the appointment of a new department secretary of Health and Environment. All of these will keep us quite busy in the near future. We see a need for an advisory panel to provide the department with the peer review that is an essential part of the scientific process but are faced with the pragmatic problems of resource allocation and timely completion of our tasks.

Thank you for your attention.

Testimony before the House Committee on the Environment
Regarding H.B. 2289 and 2291
February 16, 1999

By Charles Benjamin, Ph.D., J.D.
Attorney at Law and Legislative Coordinator
Kansas Natural Resource Council and Kansas Chapter of Sierra Club
935 S. Kansas Ave., Topeka, KS 66612
(785) 232-1555

Madam Chair, members of the Committee, thank you for the opportunity to testify on behalf of the Kansas Natural Resource Council and Kansas Chapter of Sierra Club on H.B. 2289.

As it stands both organizations are opposed to H.B. 2289. That opposition comes from the experience of the Surface Water Quality Commission set up by H.B. 2368 in 1997. Our criticisms are not directed toward the individual members of the Commission but rather the motivations behind the setting up of that commission and what we fear is the similar motivation behind setting up a permanent Surface Water Quality Commission.

It seemed clear to environmental groups in Kansas that the motivation behind H.B. 2368 and the purpose of the Surface Water Quality Commission was to provide a rationale for lowering surface water quality standards in Kansas. The commission spent the majority of its time looking at ammonia standards for municipal sewage treatment plants, atrazine widely used by corn growers, and chloride standards affecting salt producers. These were the concerns of the groups who wrote H.B. 2368/ During the course of the Commission proceedings fecal coliform standards were thrown in for good measure at the behest of the Kansas Livestock Association. The Commission proceedings seemed to be simply a forum for the paid staff, lobbyists and consultants to the Kansas League of Municipalities, the Kansas Livestock Association, Novartis, the Corn growers, the salt producers and others to convince the Commission that water quality standards needed to be lowered. While environmental groups and scientists gave testimony as to why these standards were necessary most of us felt like we were simply going through the motions, and we might as well not have shown up.

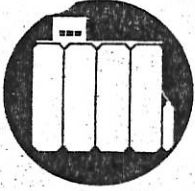
*House Environment
2-16-99
Attachment II*

In short the groups I represent have no confidence whatsoever that any surface water quality commission as set up in this legislation will be fair and impartial or make recommendations based on scientific evidence. Instead we believe that it will be dominated by representatives of the very interests that want to continue to use the rivers and streams of Kansas as sewers.

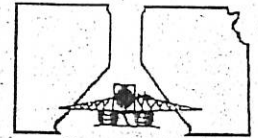
If you are serious about "good science" then we recommend any surface water quality commission contain only scientists. Remember that under the Clean Water Act states can only promulgate standards that are more stringent, not less stringent, than federal standards. Therefore, Commission members should be composed of aquatic biologists and other scientists who can examine evidence as to why surface water quality standards should be strengthened beyond federal standards to account for unique characteristics in Kansas that threaten aquatic life and human beings.

Furthermore, we recommend that you seriously look at developing a fiscal note for H.B. 2291. Section 3 (3) of the proposed bill appears to require the development of use attainability analyses for all rivers, streams and wetlands in Kansas. These procedures are extremely time consuming and costly. Similarly the recommendation in Section 3 (4) that economic impact assessments seems to be impossible. The Surface Water Quality Commission set up as part of H.B. 2368 was supposed to develop cost-benefit model but failed to do so. Also, why is it necessary to justify in Section 3 (5) state standards that are more stringent than federal standards? This provision clearly shows the bias of this legislation from the outset.

Since our recommendations have generally fallen on deaf ears in the legislature we continue to find our only recourse is relief in the courts. With that in mind I have been instructed by the Kansas Natural Resource Council Board of Directors to work with our attorneys to begin the process of suing the Environmental Protection Agency for failure to promulgate water quality standards for Kansas. We intend, in the next two weeks, to file what is called a sixty day notice of intent to sue. The Executive Committee of the Kansas Sierra Club will be sharing in the costs of this litigation. We regret having to continue to take these actions. However, it seems to be the only way we can get the Clean Water Act fully implemented in Kansas.



KANSAS GRAIN & FEED ASSOCIATION
KANSAS FERTILIZER & CHEMICAL ASSOCIATION



STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND THE
KANSAS FERTILIZER & CHEMICAL
ASSOCIATION
BEFORE THE
HOUSE ENVIRONMENT COMMITTEE
REP. JOANN FREEBORN, CHAIRMAN
REGARDING H.B. 2291

FEBRUARY 16, 1999

KGFA & KFCA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTREGAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 - 785-234-0461 - Fax: 785-234-2930

*House Environment
2-16-99
Attachment 12*

Madam Chair and members of the committee, I am Doug Wareham appearing today on behalf of both the Kansas Fertilizer and Chemical Association (KFCA) and the Kansas Grain and Feed Association (KGFA). KFCA's nearly 500 members are primarily plant nutrient and crop protection retail dealers with a proven record of supporting Kansas producers by providing the latest crop protection products and services available in today's rapidly changing agricultural industry. KGFA is comprised of 1150 member firms including country elevators -- both independent and cooperative -- terminal elevators, grain merchandisers and feed manufacturers all of which rely on the production of Kansas producers for the vital raw ingredients which make our grain and feed industry the envy of the world.

I appreciate the opportunity to appear today in support of House Bill 2291, which establishes new processes for increased citizen participation in the establishment of surface water quality standards for Kansas. By establishing new parameters for citizen participation, public awareness, economic impact assessment, consequence analysis and dispute resolution, House Bill 2291 will lead to increased participation by the general public when surface water quality standards are amended in the future.

We do respectfully offer one proposed amendment to House Bill 2291. On Page 2, subsection (7), we recommend that disputes regarding water quality criteria also be submitted to the commission on surface water quality standards. Our industry has witnessed first-hand the U.S. Environmental Protection Agency's unwillingness to adjust water quality criteria even when provided adequate scientific information. If water quality criteria is not scientifically justified, then any costs associated with complying with standards based on those criteria are unnecessary costs paid for by the citizens of Kansas. We hope the Kansas commission on surface water quality standards as proposed in H.B. 2289 will have the ability to make scientific decisions and not political decisions regarding designated uses and water quality criteria.

Thank you for the opportunity to appear in support of H.B. 2291 and I would be happy to respond to any questions at this time.

**TESTIMONY OF THE KANSAS WATER OFFICE
TO THE HOUSE ENVIRONMENT COMMITTEE
ON HOUSE BILL 2291
BY CLARK R. DUFFY, ASSISTANT DIRECTOR
February 16, 1999**

The Kansas Water Office supports House Bill 2291. We do propose one clarifying amendment which is attached.

The Kansas Water Office/Kansas Water Authority has always supported public participation as the most important element in addressing water issues. We believe it is especially important in establishment of water quality standards. In fact, this bill would codify the process already underway under an agreement with Kansas Department of Health and Environment and the Kansas Water Office.

The Continuing Planning Process (CPP) submitted on December 30, 1998, by Kansas Department of Health and Environment pursuant to section 303(e) of the Federal Clean Water Act (33 U.S.C. 1313(3) and 40 CFR 130.5) indicates that Kansas intends to use the existing water planning process to create opportunities for coordination with agencies, interest groups and the general public in the development of Total Maximum Daily Load (TMDL). There is a preliminary draft of a *Kansas Water Plan* subsection on TMDL's for the Kansas-Lower Republican Basin currently moving through the process. The CPP also indicates that the Basin Advisory Committee will be used to examine the designated uses of streams in the basin and that the Kansas Water Office will develop stakeholder participation for conducting and evaluating Use Attainability Analysis using the State water planning process, as recommended by the special commission.

One recommendation in the report of the special commission as a first step in stakeholder participation is the creation of stream teams. The Kansas Water Authority in July 1998 adopted the "Water Based Education" subsection of the *Kansas Water Plan* which recommended the development of stream team program for Kansas. The Kansas Water Office is currently implementing this recommendation.

*House Environment
2-16-99
Attachment 13*

Proposed amendment to House Bill 2291

In Section 2, Line 24 after the word "committees", insert the phrase, "established pursuant to K.S.A. 82a-903"

In Section 2, Line 25 after the word "shall" strike the words "establish a process" and insert in lieu thereof the following: "Use the State Water Planning process pursuant to K.S.A. 82a-902 *et seq*".

In Section 2, Line 26 and 27 after the word "shall" strike "develop in accordance with" and insert in lieu thereof the word "include".

In Section 3(c), Line 23 strike the work "committee" and insert in lieu thereof "commission".

**Statement of Kansas Agricultural Aviation Association
To the House Environment Committee
Rep. Joann Freeborn, Chair
Regarding H.B. 2291
February 16, 1999**

Madam Chair and Members of the Committee, I am Chris Wilson, Executive Director of KAAA. We support H.B. 2291, which would provide for greater public input into the establishment of water quality standards. We believe it is of utmost importance in our system of government that decisions are made with public input. This simply makes for better decisions and greater compliance by the public. People support what they help create. More public input provides for greater understanding and awareness on the part of all involved.

The Legislature spent many hours developing legislation two years ago to address public concerns with water quality standards. We believe such crises in confidence and resulting problems can be avoided by having greater public input in the process.

We applaud the Committee for your consideration of this legislation.

*House Environment
2-16-99
Attachment 14*



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Acting Secretary

Testimony presented to

House Environment Committee

February 16, 1999

by

Ronald F. Hammerschmidt, Ph.D.
Director, Division of Environment
Kansas Department of Health and Environment

House Bill 2291

Representative Freeborn and members of the committee. I am here this afternoon to provide comments on House Bill 2291. This bill would require the Kansas Water Office to create a public process as per the recommendations of the Special Commission on Water Quality. In addition, the bill creates a list of requirements for the Department of Health and Environment in assigning designated uses for the streams of the state. Rather than speak to the specifics of the bill, let me quickly review the agency's current process.

The assignment of designated uses is made for all classified waters in the state which invokes water quality standards and criteria specific to the use. In Kansas we have classified all streams with a summer base flow greater than 0.1 cfs of those which pool during no flow periods, public lakes, private lakes which serve as public drinking water supplies or are open to the general public, and some wetlands. All classified waters in the state are designated for some level of aquatic life support and secondary contact recreation. The USEPA currently rejects our use of secondary contact recreation as a default for all streams. The federal view is that all streams should be designated for primary contact, that is swimming, until we can categorically show that swimming is not possible. In addition, the streams may be designated for other uses including water supply, livestock watering, irrigation, etc.

Among their recommendations, the Surface Water Quality Commission made a point of recommending the Basin Advisory Committees assist the Department in examining the designated uses of streams and evaluating use attainability analyses performed within their basin. We have proposed in the context of performing TMDLs, as Tom Stiles described for this committee, the following approach for Use Attainability Analysis, UAAs:

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*House Environment
2-16-99
Attachment 15*

1. The department will develop draft protocols for performing Use Attainability Analyses for each of the eight designated uses. (These protocols would be used by any party performing UAAs whether it is the department, a permit holder or an interest group such as the Sierra Club.)
2. Conduct public meetings regarding the draft UAA protocols and revise the protocols based upon the public meetings.
3. Adopt and publish the UAA protocols.
4. Brief each of the individual Basin Advisory Committees on the designated uses of water bodies within their basin.
5. Receive input from each BAC regarding the priority water bodies within their basin, in particular those needing a review of the designated uses through the performance of a UAA.
6. Establish a priority or rank ordered list of the BAC and TMDL priority water bodies needing UAAs.
7. Conduct the UAAs for priority water bodies.
8. Review the findings and conclusions of the UAAs with the Basin Advisory Committees and the public.
9. Submit the completed UAAs to the US EPA for approval.
10. Incorporate reviewed and revised designated uses for water bodies in the next revision of the surface water quality standards.

This procedure is contained in the Continuing Planning Process document submitted to US EPA Regional Administrator Dennis Grams of the Kansas City office on December 30, 1998. This process also contemplates any interested party using the adopted protocol can perform a UAA for a stream segment and submit it for review and consideration by the BAC, public, department and eventually EPA.

The department working with the Kansas Water Office has begun the process to utilize the Basin Advisory Committees in the designated use and UAAs process. In addition, we are currently working with the Kansas Lower Republican BAC on the TMDLs for that basin and are committed to a similar activity with each BAC as we move through the schedule presented to the committee in Tom Stiles' report. Thus much of the effort contemplated in HB 2291 is currently in motion. Regardless of the outcome of bill we are willing to keep you updated on our progress in implementing this process.

Thank you for your attention.

DIVISION OF ENVIRONMENT

SPECIAL WATER ISSUES AND CONCERNS

ABANDONMENT (K.S.A. 82a-718)

Water is a life sustaining natural resource. Every Kansan is entitled to the opportunity to beneficially use the water resource to the limits of its availability. If water is not to be used as prescribed under the terms, conditions, and limitations of a water right the owner must show due and sufficient cause for non use so as not to deprive others that opportunity. Prior appropriation doctrine and related statutes define water held by the state as a public resource to be beneficially used by the people. This fact obligates the Chief Engineer to protect the water right owners opportunity to use the water beneficially. It is further provided in the statutes that if the water resource is not used beneficially for 3 consecutive years without due and sufficient cause the owner shall forfeit his right to its use in order to ensure others are not deprived of the opportunity to use it for their beneficial use.

The concept of beneficial use is considered so important that it is defined specifically in the statutes by type of use, some of which are non consumptive. However, it is also recognized that users may endure circumstances that would prevent them from reasonably maintaining beneficial use even after three years. Therefore, regulations set forth a number of acceptable reasons (due and sufficient cause) for not using water beneficially that will protect the water right against forfeiture.

Specific circumstances that are considered due and sufficient cause for non use (KAR 5-7-1)

- 1) Adequate moisture is provided by natural precipitation for production of crops normally requiring full or partial irrigation within the region of the state in which the place of use is located
- 2) A water right has been established or is in the process of being perfected for use of water from one or more preferred sources in which a supply is available currently but is likely to be depleted during periods of drought
- 3) water is not available from the source of water supply for the authorized use at times needed.
- 4) water use is temporarily discontinued by the owner for a definite period of time to permit soil, moisture and water conservation, as documented by:
 - a) enrollment in a multi year federal or state conservation program
 - b) enrollment in the Division of Water Resources water right conservation program (KAR 5-7-4)
 - c) any other conservation method acceptable to the Chief Engineer in advance
- 5) management and conservation practices are being applied which require the use of less water than authorized
- 6) a well has been previously approved as a standby well
- 7) physical problems exist with the point of diversion, distribution system, place of use or operator: reasonable efforts must be taken to correct the problems
- 8) conditions exist beyond the control of the owner which prevent access to the place of use or point of diversion: reasonable efforts must be taken to gain access
- 9) an alternate source of water supply was not needed and was not used because the primary source was adequate
- 10) any other reason constituting due and sufficient cause as determined by the Chief Engineer

Every effort is made to provide a way to protect a water right if the circumstances for non use are legitimate. However, the Division of Water Resources is obligated to ensure that negligence or selfish interests are not depriving others of an opportunity for beneficial use of water.

The water right owner is statutorily entitled to a notice and hearing, before a final decision is made on abandonment. The Division is not proactively seeking abandoned water rights. However, water rights that are part of a property transaction, seeking a certificate of appropriation, or change application are examples of circumstances when the water right must be in good standing and not abandoned for the transaction to proceed.

*House Environment
2-16-99
Attachment 16*



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENVIRONMENT

RE: HB 2404 – Developing a notification procedure that protects water rights during periods of non-use.

**February 16, 1999
Topeka, Kansas**

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

Conserving water must be a goal for all Kansans. It is a high priority for farmers and ranchers.

We certainly appreciate this opportunity to express support for HB 2404 that creates a notification process that protects water rights during periods of non-use.

My name is Bill Fuller. I serve as the Associate Director of the Public Affairs Division for Kansas Farm Bureau.

Policy developed and approved by the farm and ranch members of the 105 county Farm Bureaus in Kansas recommends:

“Water permits should not be jeopardized even if the water allocation authorized is not fully utilized by the permittee.”

We believe HB 2404 will increase water conservation, and at the same time protect water rights. The measure will assist landowners in moving away from the concept of “use it, or loose it” when it comes to utilizing our vital water resource. Changes in weather conditions and in cropping systems often varies the need for water from year to year.

We encourage passage of HB 2404. We will respond to any questions the committee may choose to ask. Thank you!

*House Environment
2-16-99
Attachment 17*

STATE OF KANSAS

BILL GRAVES, GOVERNOR
Alice A. Devine, Secretary of Agriculture
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KANSAS DEPARTMENT OF AGRICULTURE

TESTIMONY TO THE

HOUSE ENVIRONMENT COMMITTEE

HB 2404

BY

Mary Jane Stattelman
Kansas Department of Agriculture
February 16, 1999

Chairperson Freeborn and members of the House Environment Committee, thank you for giving me the opportunity to discuss HB 2404 with you this afternoon.

Currently, the staff at the Kansas Department of Agriculture usually discovers water rights that have not been used for a period of time when they are processing an application or change to the water right or certifying a water right. If it is unclear whether the non-use has been for beneficial purposes or not, KDA sends a letter to the water right holder asking for more information.

HB 2404 would require KDA to notify the water right holder prior to the water right potentially becoming subject to the abandonment process. It is our understanding that this bill is to ensure that water right holders understand the severe consequences that can occur if their water right is deemed to be susceptible to an abandonment action. While we have not systematically informed water right holders of the consequences of non-use of water, we have and do attempt to notify the water right holders when their file and situation come to our

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attention. To notify all water right holders that have a water right that has not been used for beneficial purposes for two successive years would require approximately 300 informational letters to be sent out this year and an estimated 65-140 letters the following years. We have begun efforts to improve our communication with water right holders and have discussed a similar concept, therefore, we are not opposing this bill.

I would be glad to stand for any questions that you may have regarding this bill.

Ladies and Gentlemen:

It is an honor for me to address you today, but it is sad that I have to for a man made epidemic.

This is what happens when you give individuals a badge, a gun and unlimited authority. This is what gave Adolph Hitler a start. Our Wild Life and Parks are out of control.

We spend millions of Dollars to build the best and safest roads that can be built. We build overpasses, underpasses, guard rails around all obstructions to cushion the impact. We install stop signs and all other signs for the public to obey just to make our roads safer for us and our dear ones. We enact laws and try to enforce them for speeding, signaling for changing lanes, going wrong way, wreckless driving and I could go on and on. Then we see that we have a few million left and we give it to the Wild Life and Parks Department so they can protect the deer population, and multiply in such numbers that they swoop down on our highways to damage, injure and kill our dear ones. Every person should be held accountable for their actions. When one of my animals gets out on the roadway, a deputy will call me or stop by any time of the day or night to put it back in where it belongs. And rightfully so. You don't see the Wild Life and Parks herding their animals. They are herding the public so the deer can multiply to injure and kill more of our dear ones. A few months ago a Kansas Highway Patrol Trooper was chasing a motorcycle for speeding at Junction City. The trooper ran into a lady from Codell Kansas, close to my home town and killed her. He was held responsible for this accident and death. He will carry this on his conscience the rest of his life. A little over one year ago an individual disregarded a stop sign in the country, a road that he traveled every day, ran into my daughter and killed her on the spot. At present he is being held

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responsible for this tragic event and will have to carry her blood on his hands the rest of his life. Several months ago in northern Kansas a man was sitting in his car and a high powered rifle shell hit him and killed him. It was thought that it came from a stray bullet while hunting deer. Who would be and should be held responsible? The organization that sells tickets to such events. We cry for help when we have drive by shootings, and they sell tickets for such events to happen. Several years ago we heard that some were dropping rocks from over passes on the highway. People were injured and killed. The end was the same result. I was visiting with a man in a small town the other day. He told me that a high powered bullet hit right next to him in his yard. The more tickets that they sell, the more accidents are sure to happen. Let us put a stop to this now. I have an article out of the Hays Daily News, Jan. 31, 1999, Headline Capitol Notebook where Rep. Eugene O'Brien of Parsons would like to see a plan to cut deer numbers within a mile each side of state highways. He further states that he does not know how this can be done, and would like to see the Wild Life and Parks to come up with something. Don't let the Wild Life and Parks come up with something. They are to blame for the epidemic that we now have. They have enough human blood on their hands already. Then the article goes further with Chad Luce, which regulates hunting, stating I just don't see how you would do that. Fencing would be the only way, but cost would be prohibitive. And when you restrain animals like that they are no longer wild. The ones that I saw lying next to the road aren't wild either anymore. How much is a human life worth. Look in the mirror sometime. But he did hit the nail on the head, "Fencing". I had the opportunity to visit New Zealand. They have deer farms with high enough fences. Wow.

How many lakes and state parks do we have in the state of Kansas?

Let the park rangers start building fences and put the deer where they belong. When we have a murderer on the street we put them behind fences and don't say it is cost prohibitive. We sometimes even call them an animal. We may have to quit that because they could be an endangered species.

Another event happened just recently on highway 183 north of Hays. A person hit a deer and killed it. A trooper was working the accident scene and wanted to remove the animal. A young local man going by stopped to help the trooper. A car coming on the scene did not see the young man and killed him. Deer related. You all have stories from your area. We could talk about them the rest of the day. You may also have lost some of your dear ones. I would only have to look at your eyes and I could pick you out in an instance.

Our ancestors came to western Kansas in 1876. They had epidemics to overcome. They were not man made. They had dust storms, jackrabbits, coyotes. They had jackrabbit drives and eliminated them. They had coyote drives and eliminated them. Who says we don't know what to do? We have many hungry people in Kansas, other states and the world. We can harvest these animals in an orderly method to feed starving people. This can be done starting tomorrow while the rangers are building their fences.

We send our lawmakers to Topeka to enact laws to make Kansas a safer place to live and raise our dear families. We demand it. I want the legislature to introduce a bill and pass it that the Wild Life and Parks cannot introduce any wild animals into the state of Kansas without a two-thirds agreement in the house and senate. Also if they have introduced some secretly that they are fair game to eradicate.

This is not an issue Eastern Kansas against Western Kansas. Democrat against Republican. The total population of the deer is not worth one of our dear ones. If anyone wishes to argue this point, first look around your dinner table and pick out which one you would eliminate. If you wish to appoint a committee, I am willing to serve. We have a war and we need action.

While leaving Topeka I want to do better than Pope John Paul. He saved one man from death. I want to save more and it could be one of your dear ones. Thank you. Any Questions.

Sincerely yours,



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Deer Control Solution
prepared and presented by
Kyle Bauer
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785-632-6579

Presented 2-16-99 to House Environment Committee

Thank you for the opportunity to address the committee this afternoon. I am Kyle Bauer. I live in rural Clay County near Morganville. I farm and run a radio station there. My testimony represents my views and opinions, but all of my facts can be documented. I would be glad to answer questions at the end of my presentation.

It is no secret that in some parts of the state, the over population of deer has created a huge traffic problem as well as continued crop damage. From July 12 through December 2, 1998 my family and employees had six car accidents involving deer. The damage ranged from \$200 to \$6800. In one case, the employee required treatment at the hospital with a workers comp claim of over \$500. My deductibles have amounted to over \$1500.

I have two teenage drivers in my family. Most mornings will find one of them leaving for school near 7:00 am to attend trumpet lessons, debate, FFA, drill team, sports, or choir events and practices. Most nights they aren't home until after 8:00. My wife and I have become so concerned for their safety, we purchased cell phones for their cars. We just hope they will be physical able to place the call if they need help. We saw a friend about a week ago with a big black eye. Her husband had hit a deer the night before. The air bag deployed at 60 miles per hour. In 1998 the Clay County Sheriffs department worked 176 accidents. 109 were deer related. This does not include accidents worked by the Kansas High Patrol in Clay County.

I believe Wildlife and Parks have proven they are unable or, possible, unwilling to address the problem without your help. Year after year they have proposed token measures. They have no incentive to reduce the problem. They come before hearings like this one and convinced you they will solve the problem this year because they are going to lengthen the muzzle loader season, issue 5% more licenses, or that there is no problem with crop damage because they have a program that handles that. Let me read what their solution to crop damage as quoted from the KDWP publication obtained last week.

Crop Damage Control Summary: In summary depredation control measures which landowners and operators should attempt before seeking a deer control permit include:

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1. Modified cultural practices such as harvesting crops as early as possible or planting a lure crop.
2. Use deer frightening devices such propane cannons, pyrotechnic, or dogs.
3. Allow hunting during regular deer season.

If such measure fail to alleviate damage problems or are not feasible a deer control permit may be issued after the following conditions have been met:

1. A documented complaint has been received from the owner/operator/manager.
2. An on site inspection by DWP and owner has confirmed substantial deer caused damage
3. The owner has presented evidence that regular hunting and non lethal control methods have been exhausted.
4. The owner has completed a deer control permit application
5. Damage is on going and anticipated to continue.
6. Destruction of deer under authority of the control permit is expected to alleviate immediate additional loss of property value.

Does this sound like DWP is interested in controlling deer or protecting deer. They have no motivation to control deer. The more deer the farmers raise for them, the more licenses they sell. If deer numbers were 50% less, would DWP make more money or less. If the Secretary lost his job next January if car-deer accidents increased, would we see more aggressive action. If DWP had to pay the deductible for each car-deer accident would we see more aggressive action. If DWP lost 1 % of their budget for every 100 car-deer accidents in the state, with an estimated 20,000 car-deer accident claims in 1998, would we see more aggressive action. DWP has not changed there approach to hunting in the state of Kansas significantly since the days of limited numbers. Do you realize that in some states a deer permit allows you to kill up to 7 deer. DWP still have a lottery. Not a practice that invites hunters. Deer permits continue to increase and deer damage continues to increase. Obviously DWP does not understand why hunters are not killing enough deer. No one has held them accountable.

About two weeks ago, I was headed home from working in the field, as I passed a small creek patch of wheat I say 12 doe grazing on the wheat. Not an unusual site. As I continued home I thought, next year with average births of only 1.5 fawns per doe, that herd will be 30 deer. If there was 10 deer harvested out of that group this season. Next year there has to be 28 just to maintain the number, not to reduce it. You can imagine how fast the herd could and has gotten out of control. Last night as I pulled anhydrous ammonia tanks to my field from Morganville.. About 7:00, 3 doe ran out from behind the elevator and across the street in Morganville. Now Morganville is only about 200 people but obviously not worrisome to deer. Or maybe there is no longer any room for them in the country. We must have an aggressive, fresh approach.

I would propose an amendment to HB 2480 on page 8 line 19. "The secretary shall allow for the sale of special permits in any county when deer-car accidents exceed 75% of all other car accidents in the county. Each permit shall cost \$10. There shall be no limit to the number of permits a hunter can purchase. The season will be the second and third weekends in January and the week between. Only antlerless deer shall be harvested. The Kansas Dept of Wildlife and Parks shall do all in its power to promote those permits until such time as deer-car accidents have been reduced to 50% of all non deer related car accidents. At that time the permits shall be discontinued in that county".

My proposal is measurable and objective. It varies within distinct, existing areas of the state. With the promotion aspect, DWP can direct hunters where the problems are the greatest. The cost of implementation is minimal. We are not forced to count deer but only deer damage. Farmers in those areas could even charge to hunt because the hunters and farmers would know that they would get a license. Hunters would not be limited to one deer so they would not continually pass up deer after deer for "that trophy buck." Currently if you harvest a deer early in the season, your hunt is over. Again a practice not designed to control populations. By issuing these permits in January, you have given archery, muzzle loader, and trophy hunters there opportunity in the fall. Deer licensing could be as simple as walking into the county clerks office, or sporting goods store.

I understand, that in the past, when aggressive measures have been presented, DWP has used excuses like, "This needs to be studied." "It would greatly reduce our revenue in the long term." "Local hunters will not support that measure." "There may be a safety problem". "It may over hunt the deer." Again DWP has no motivation to solve the problem. They have every motivations to take conservative approaches and mobilize vocal advocacy groups. It is past time that we accept lame excuses. If any of you were put personally accountable of reducing the deer population, we all know you would get it done because you are being held responsible. Please hold DWP responsible for results, not token effort and excuse of the day. Some body has to care enough to do something. If teenage drivers, or old drivers or people with brown hair were causing 109 of 176 accidents in Clay County, don't you think they would have been dealt with years ago. \$37.8 million in car damage due to deer in Kansas last year yet, we continually accept the unacceptable. Thank you for the opportunity to visit with you.

ILLEGAL DEER KILLS

In a February 2, 1999 letter to members of the committee I wrote:

“A very serious consideration in solving the deer problem is one of what people do when they face a situation of “bad laws” which are unenforcable, for the most part. I have heard rumors of an increase of unreported “road kills”. This action will eventually solve the problem, but it seems very bad government to let a situation exist which makes law-breaking the only solution. Not only is it bad practice to encourage such action, but it is wasteful of a resource as well.”

From THE HIAWATHA DAILY WORLD, January 28, 1999:

Hoffman (earlier identified as Brown County Game Warden, Dave Hoffman) said 150,000 firearm permits were given out for the 1998 season. “Everybody had a lot of permits this year,” he said, “but not everybody filled them.” However, he said that for every legal deer kill, there are at least three to five illegal kills in the state of Kansas. “So, if you figure the illegal kills into the total,” he said, “we’re killing a lot of deer. “The higher the numbers are, the more poaching you’re going to have,” Hoffman said.

Robert L. Oswald
509 S. Hanover St.
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February 16, 1999

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HUNTER LIABILITY

With a January 25, 1999 letter to members of the committee I enclosed a "PLAN TO PROFIT FROM KANSAS DEER HERD" Document. In the plan I wrote:

"Pass laws which require all hunters to carry liability insurance against any harm they may do to any persons, farm animals or property while hunting. Require that an insurance card be left with the property owner before the hunter goes on the property. Possibly deny insurance to convicted trespassers."

In a February 2, 1999 letter to members of the committee I wrote:

"Concerning the recommendation for a law to require hunters to have liability insurance, enclosed is a pamphlet about Walk-In Hunting Areas which has a section about LIABILITY. It states, "Liability is a valid concern. However, state law provides that private individuals who lease their land to the state for recreational purposes are immune from damages or injuries resulting from ordinary negligence." This is an advantage that the WIHA lessors (should be lessors) have over the owners not enrolled in the program, but points out that there is a need for someone to be responsible for the damage hunters may do. Although the WHIA contract seems to limit the landowner's liability, it does not seem to cover damages caused by hunters."

The controlled hunting area proposal might be more acceptable to landowners if at least the same liability exclusion were made as the WIHA program has. It seems that to be successful an entire area would have to be hunted by a drive to one area and pockets where access is denied would provide refuge. In Colorado and other mining states, there is a right to pass on private property for certain activities, such as staking mining claims. As far as I know, no such right exists in Kansas and the right to deny passage would have to be respected. In the coyote drives of the past, I assume that all landowners were involved and gave passage rights, as I don't remember any refuge pockets in the hunts I was on.

Robert L. Oswald
509 S. Hanover St.
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February 16, 1999

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 NATURAL RESOURCES BUDGET
 HOUSE AGRICULTURE
 HOUSE ENVIRONMENT

HB. 2480

Madam Chairman and Fellow Committee Members

I appear before you in support of H.B. 2480. Last week I requested the committee to introduce a bill to give landowners the ability to request Wildlife and Parks to hold a controlled hunt in areas that the deer populations are damaging crops, fences, and property and have not been controlled with current methods. According to current rules and regulations (**115-16-4(b)**) of Wildlife and Parks any owner or operator of land may apply to the secretary for a big game control permit when big game animals are found destroying property or when creating a public safety hazard. However the, permit can be denied by the secretary, if **the applicant has not made reasonable effort to alleviate the problem by hunting or by other means or methods.(d(2))**

This is the frustration of constituents trying to alleviate damage done by deer. The current deer depredation control measures which landowners and operators are required to attempt before seeking a deer control permit are unreasonable. Some of these measures, which are published by the Wildlife and Parks in a Deer Damage brochure in the Crop Damage Control Summary, are listed below.

- modify cultural practices, such as harvesting crops early or planting lure crops
- use deer frightening devices such as propane cannons, pyrotechnics, or dogs
- use repellents or deterrents
- allow hunting during regular deer seasons

With the deer population continuing to grow rather than decrease, it is common for landowners to watch 25-50 deer at a time harvesting their crops on a regular basis. According to constituent letters I have received the measures which require them to change their cropping plans, harvest crops before maturity, and frighten deer over to the neighbors property, are not reasonable requests.

It is with mixed emotions that I request this measure. I personally enjoy wildlife however, the balance of deer and humans in today's environment is out of hand. We have all heard the statistics of increased accidents. The agency has stated that they currently have all the tools needed to manage the deer population. This measure would give Wildlife and Parks the responsibility, if requested by any landowner or operator, to take control of a specific area and bring the deer numbers back to manageable number. This would maybe eliminate the illegal hunting that is taking place by the frustrated public. Kansas is recognized for the Trophy Deer population. It is important to me that we maintain this recognition while at the same time manage the deer population to keep the accidents and property damage at a minimum.

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NATURAL RESOURCES BUDGET
HOUSE AGRICULTURE
HOUSE ENVIRONMENT

Rep. Schwartz

Amendments to HB 2480
February 16, 1999

Asking to have this bill drafted is an attempt to address landowners concerns who allow hunters to hunt during the regular season on their property, without significantly reducing the deer population and damage. After reviewing this legislation, I have a suggested these amendments.

1. Further Amendments New Section 3 (a) lines 39 & 40 striking "to liberally construe the provisions of this section"
2. Section 3 (b) line 6 "cross out "not" and insert shall
3. Section 3 (d) line 13 insert after word Parks insert "in cooperation with the landowner"

Wildlife and Parks currently have the authority to conduct "controlled hunts". It has not been broadly utilized as landowners are virtually asked to use unreasonable efforts to alleviate the problem before they are allowed to issue the controlled hunt. Last year Wildlife and Parks issued 16 deer deprivation permits, which resulted in 52 deer killed. In addition, it seems landowners have been given the responsibility of managing the deer numbers without the necessary tools and safeguards.

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Thank you committee for allowing me to present some views on deer out of control. The deer herd has out grown a level the public will tolerate. In 1994 there were 6,571 collisions reported. In 1995 there were 6,746. In 1996 there were 8,415. In 1997 there were an amazing 9,116 collisions between vehicles and deer. This was the last year which full figures are available. The numbers were compiled by the Kansas Department of Transportation for the wildlife and parks department.

The states attitude-legal and cultural- is that it owns the deer even though more than 90% of the habitat deer need is privately owned and managed. Farmers and ranchers feed and water them without payment. Damage to farmers crops and fences is great as well as the disease they carry which can be spread to cattle.

SEE PAGE 1A

It is quite frustrating to check your livestock in the pasture only to find about as many deer there as cattle. Go to check your crops and find a herd of deer helping themselves, eating and trampling down your crops. Wheat, corn, soybeans, oats, alfalfa, milo and just plain pasture grass-nothing is off limits to them.

Deer move considerable distances 5 to as much as 15 miles. The land owner should be able to eliminate or harvest deer on his own property without red-tape hassle.

SEE PAGE 1B

As a motorist you pay considerable in higher insurance costs.

There have been fatalities caused by deer-vehicle accidents.

People safety and crop damage should come ahead of deer protection.

With the numbers of deer running loose the motorist and the farmer are fast becoming the endangered species! Think about this. Thank you.

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Anaplasmosis is an infectious rickettsial (parasite in ticks and lice) disease of domestic cattle that has been detected in many species of ungulate (hoofed mammals) in North America and Africa. Transmission can occur in several ways. Ticks are important vectors (carriers) but biting flies can also transmit the disease. In addition, fresh blood in needles or on surgical instruments has also been incriminated in transmission. ^{1.}

The disease has a worldwide distribution. Although it is considered principally to be one of tropical and subtropical regions it has occasionally been detected in parts of Canada and occurs in several areas of the United States. Among native North American species, it has been detected in mule deer, white-tailed deer, pronghorn antelope bison, and wapiti (elk) ^{1. 2.}

REFERENCES

1. Howe DL: Anaplasmosis. In Davis JW, Karstad LH, Trainer DO (eds.): Infectious diseases of wild mammals, ed 2, Ames, Ia, 1981, Iowa State University Press.
2. Kuttler KL: Anaplasma infections in wild and domestic ruminants, J Wildl Dis 20: 12-20, 1984.

Bovine Anaplasmosis

E. J. Richey, D. V. M.

Anaplasmosis is an infectious, noncontagious, transmissible disease of cattle caused by the intraerythrocytic parasite *Anaplasma marginale*.

EPIZOOTIOLOGY (confined)

In the United States, anaplasmosis is enzootic in the southern Atlantic states, the Gulf Coast states, the lower plains and western states but is sporadic in the northern states. All ages of cattle may become infected with anaplasmosis. The severity of illness and the percentage of deaths increases with age. Calves less than 6 months old seldom exhibit clinical signs of anaplasmosis. Cattle, ages 6 months to 3 years, become more ill, and more deaths occur with ^{age}. After 3 years of age, a 30 to 50 per cent mortality rate is reported in cattle exhibiting clinical anaplasmosis.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENVIRONMENT

RE: HB 2480 – Repealing the transfer fee for special landowner or tenant hunt-on-your-land deer permits.

**February 16, 1999
Topeka, Kansas**

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

Chair Freeborn and members of the House Committee on Environment, my name is Bill Fuller. I serve as the Associate Director of the Public Affairs Division for Kansas Farm Bureau.

We are here to express strong support to eliminate the "transfer fee" for special landowner or tenant hunt-on-your-land deer permits. HB 2480 accomplishes this objective in lines 37 and 38 on page 2 and in line 2 of page 5 of the bill.

With 97 percent of the land area privately owned, it is obvious landowners provide the bulk of the feed and habitat for deer. Unfortunately, the same landowners suffer the economic hardships from the growing deer population. Examples include damage to crops, hay and equipment. Therefore, we believe eliminating the transfer fee, in a small way, compensates those who provide for deer.

We certainly appreciate the cooperation between the Legislature and the Department of Wildlife and Parks during the past several sessions in expanding

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the opportunities for landowners to make their hunt-on-your-own land permits available for use by more of their family members.

The 435 farm ranch members serving as Voting Delegates at the 80th Annual Meeting of Kansas Farm Bureau adopted policy concerning deer permits:

- ◆ ***“We believe each farmer, whether landowner or tenant, who requests a big game permit for hunting on his own land or land on which he is tenant or operator, should be guaranteed the permit at no cost.”***
- ◆ ***“We support the transfer of landowner permits to family members without the imposition of a transfer fee.”***

Kansas Farm Bureau has no policy on the provision of the bill that strikes the fee for a nonprofit group fishing license and the fee for a nonresident mussel fishing license.

While the new section providing for a controlled deer shoot may be helpful in reducing the size of the deer herd in certain areas, we point out other Farm Bureau policy adopted by farmers and ranchers aimed at reducing the unacceptable crop and vehicle damage:

- ◆ ***“We strongly support extending the hunting seasons and increasing the number of big game permits.”***
- ◆ ***“Any person receiving a deer permit in Kansas should be allowed and encouraged to harvest an additional antlerless deer in management districts identified by the Secretary of the Kansas Department of Wildlife and Parks as areas where excessive deer damage occurs.”***
- ◆ ***In management districts where permits are available and not requested by Kansas residents, those permits should be made available to non-residents.”***

On behalf of landowners, we encourage the committee to approve the provision in HB 2480 that eliminates the “transfer fee” for the special hunt-on-your-own-land deer permits.

Thank you!

Cheyenne Alfalfa Farms
David Wirth
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February 16, 1999
Testimony to House Environment Committee

Proponent to HB 2480

Thank you madam chair for the opportunity to speak in front of the committee today. I am here to support House bill 2480. I do not feel it is the responsibility of the farmer to change his cropping practices in order to control the deer population.

I farm approximately 6,000 acres and I have one field in particular that in a given evening one can see 50-75 deer grazing on planted alfalfa. I do not believe it is my responsibility to use repellants, deterrents, or other costly methods to control the deer population. I myself am a busy businessperson with many other responsibilities than to manage the population of deer on my property. I am not an avid hunter and I have allowed people to hunt on my property in the past and am willing to now. I do not believe though that it is my responsibility to find hunters that will take does or non-trophy deer only, and are willing to harvest deer off of my property for purposes of controlling the amount of deer on my property. I believe this bill would require the Department of Wildlife and Parks to become more responsible for the deer populations on private property.

Over the last year I have experienced over \$8,000 in damages to vehicles in three separate deer vehicle accidents that were turned into my insurance company that could further increase my deductible. I raise livestock on my farm and if I allowed my livestock to roam onto the highway and the county sheriff receives three complaints pertaining to the absence of my responsibility of my herd management. I would be liable for the damage caused by these animals. I merely feel that the Department of Wildlife and Parks should take responsibility for managing their deer population.

I further reiterate that HB 2480 would expand the responsibilities of the state to deal with the overpopulation and extensive damages caused by deer.

Sincerely,

David P. Wirth



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Reduction of the Deer Population in Kansas

I am Stanley Parsons from Manhattan. My residence is about seven miles southeast of Manhattan on the edge of the Deep Creek valley. I am 73 years of age and have been a farmer or have worked directly with farmers all my life. Also, I have hunted all my life. The first deer I shot was in 1965 during the first season deer hunting was allowed after many years of rebuilding the deer population in Kansas. Since 1965 I have hunted deer almost every year. I have seen the deer population grow from almost none to the serious over population we now have. As you well know this over population is costing the people of Kansas millions of dollars in crop loss as well as increased auto insurance rates. Also, several people have been killed in deer auto crashes.

Therefore, I fully agree that the deer population needs to be reduced. My concern is how this is to be done. Fifty years or more ago I participated in a few coyote drives such as you are proposing for deer. Shotguns were the only firearms allowed and number 4 shot was the heaviest shot that was supposed to be used. When the circle closed together the captains or organizers would call out for everyone to stop while they were out of shotgun range of the hunters on the other side of the circle. By the time the circle had gotten that small the hunters would be several ranks deep. The hunters behind would push foreword so they could be in the front, this jockeying continued until the sides of the circle would be well within shotgun range of each other. I knew several people that had been stung with shot on coyote hunts. I heard of other drives where hunters were seriously wounded.

I feel a deer drive using buckshot or slugs in shotguns would be very dangerous. The liability to anyone organizing such a drive would be tremendous. I know I very definitely would not participate in any such drive.

My recommendation is to leave the control in the hands of the department of Wildlife and Parks. I would suggest that you strongly urge the department to extend the fall rifle season and to advance the dates so at least part of the season would occur in the rutting season of the deer. It is argued that the farmers do not want a longer season, this is true with some, however in my area, most of the farmers are quite willing to have a longer season just to get the deer population reduced.

Bow hunters have been strongly opposed to an extension of the rifle season in the fall. I would suggest starting the bow season the first of September instead of the first of October. While I admire anyone with the patience and skill to become an effective bow hunter, the fact remains the effective bow hunters are in small number and can not reduce the deer population to the extent it is needed.

Further, I feel the department should consider giving a free second tag for an antlerless only deer with the purchase of the first tag. This would only be done until the deer population is reduced to the desired levels in the different management units. The game biologists in the wildlife department are best qualified to manage the deer population in Kansas, but I do feel they have been too timid in increasing the deer harvest.

Thank you for your consideration of these remarks.

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HOUSE OF
REPRESENTATIVES

MEMBER: INSURANCE
UTILITIES
AGRICULTURE
KANSAS 2000

February 16, 1999

TESTIMONY FROM REPRESENTATIVE GENE O'BRIEN
PARSONS, KANSAS
ON HOUSE BILL 2379

Chairperson Freeborn and Members of the Committee,

Thank you for the opportunity to appear before you today. My name is Gene O'Brien and I represent the Seventh District, which is located in Labette County.

In the late 1950ies and early 1960ies, if a farmer saw a deer on his property it was news of local interest. Deer were very rare. The deer population has made a remarkable recovery since then. It was estimated in 1996 that the deer population has topped 422,000 and is increasing at the rate of 7 % per year. This information was provided by the Legislative Research Department.

HB 2379 addresses the issue of highway safety as related to deer. In researching the information for the year 1997, the Kansas Department of Transportation reported there were 9,116 accidents involving deer. There have been 350 injuries, and five deaths attributed to these accidents

Official record of car and truck damage is not available. The Kansas Insurance Department estimates the damage to be over \$24 million for the year 1997.

HB 2379 does not attempt to manage the deer herd at large, nor does it interfere with the sports hunter. HB 2379 deals with controlling deer population one mile either side of the state highway for public safety only. These drives would be patterned after the coyote drives of the 1950ies.

Thank you for the opportunity of sharing this information with you. I look forward to responding to any questions you may have.

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I am not representing any organization. I am a deer hunter. My wife and most of my family are deer hunters also, having hunted deer in Kansas since 1966.

Speaking on the following points:

PERSONAL TESTIMONY OF MIKE STEWART, REGARDING HOUSE BILL 2379:

1. No deer permit required.
2. Shotgun only will limit the effective range to well under 100 yards. Does ~~not~~ list slugs or buckshot. If this is for buckshot, there would be a high risk of people getting shot by inexperienced shooters. If slugs, there would be a high risk of lots of crippled or missed deer. Net result is not many deer would be harvested cleanly.
3. Any loosely defined group will qualify. Rod and gun clubs may know how to do a deer drive, but it is unlikely that most participants from a local civic group or church group would, therefore this is inherently unsafe.
4. Doing this within one mile of a highway is limiting the area to the most unsafe parts of the state. What if some of the deer decide to jump across the highway in front of the traffic?
5. Poorly thought out, unsafe, and unlikely to harvest many deer.
6. Who carries the liability?

PERSONAL TESTIMONY OF MIKE STEWART, REGARDING HOUSE BILL 2480:

1. No deer permit required.
2. REQUIRES the department to put on a hunt, however does not define what a hunt is. If 3 guys show up and don't kill any deer, has the requirement for a controlled deer shoot been fulfilled? Describes sweeping the area for deer. This sounds more like a SWAT-team exercise than a deer hunt. I've been on many deer drives over the years and this would be one thing I would avoid like the plague. Not knowing the people you are hunting with is one of the variables all responsible hunters watch out for. So the hunt would necessarily involve lots of inexperienced shooters, out to help out their farmer friend, but with little or no training or safety knowledge.
3. Does not require the landowner to make reasonable efforts with the already existing programs to alleviate the problem. There is a program in place to allow for any individual landowner to shoot off extra deer.
4. Who carries the liability?

Offered for your consideration by Mike Stewart, 6138 SE Stubbs Rd., Berryton, Ks. 66409, 785-379-0865.

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The Kansas Bowhunter Association is opposed to these two bills, House Bill 2379 & House Bill 2480, for very similar reasons. I have itemized our concerns to help explain the problems we read with these bills.

Concern number 1. Safety. The bills Sponsor desires to legislate big game management and remove KDWP from the role they are hired to do. However the Secretary and his Field Staff are responsible/liable for carrying out the hunt? The designated "hunters" are not required to have a hunting license, therefore they have not had to pass a hunter safety course. You as elected Legislators can't expect one of our State agencies to accept responsibility/liability for the possibility of fatal accidents by untrained or inexperienced persons carrying loaded weapons in or around traveled roads, urban, suburban and rural areas.

Kids play along creeks, wooded patches and ditches without always asking permission. Neighborhood pets or livestock might be loose and moving through an area being hunted. This is an accident waiting to happen.

Concern number 2. Deer Management. This bill doesn't differentiate between species or sex of the deer. This bill doesn't even evaluate that there is a true problem in that Applicant's property. The Landowner or Applicant "shall not be required to show that the Applicant has made reasonable efforts to alleviate the problem."

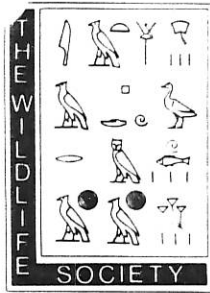
These bills follow on the heels of a deer season where KDWP biologists have made major changes in tag numbers, have added additional days to the season and are still evaluating the results. There should be a moratorium on changes until we know the effect of those efforts.

Concern number 3. Landowner concerns over Lobbyists interests Crop damage permits are available to any Landowner for eliminating problem populations of deer. The effectiveness of trying to eliminate deer near roadways is questionable at best. Deer have a home range that would require a much larger area to be "driven" than just along the draws near roads. This would most certainly require more Field Officers to manage "hunters" as well as follow up on all wounded animals. Apparently the money isn't available for more manpower or we would have a much larger Field Staff to utilize Statewide.

The insurance industry probably won't lower rates even if a lower deer population is obtained. The type of hunt described in this bill could have huge implications on the insured parties of the State, the Landowner, The Department of Wildlife and Parks and the "designated hunters".

These bills have other concerns that affect the States revenue and ultimately the KDWP budget that we will let them address. The Kansas Bowhunter Association feels that we need to evaluate current deer management policy based on the 1998 season and not make rash decisions that have Statewide implications. The control of specific areas where the deer population is still growing cannot be taken care of with broad brushed legislative measures, they must be worked through the KDWP. They are one of the most respected deer management agencies in the United States.

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Kansas Chapter

THE WILDLIFE SOCIETY

Summary of Testimony Regarding Bill # 2840 & 2379

Michael T. McFadden, President
Kansas Chapter of The Wildlife Society

February 15, 1999

1. Introduction

The Wildlife Society is a non profit scientific and educational society of nearly 10,000 professionals and students. These professionals are employed in government, academic institutions, and in private industry. Other members not professionally employed are sympathetic to the organizations goals.

Several of the organization's goals are pertinent to these hearings (See attachment 1):

- Specifically:
3. **Advance professional stewardship of wildlife resources and their habitats.**
 4. **Advocate the use of sound biological information for wildlife policy decisions.**
 5. **Increase public awareness and appreciation of the wildlife profession.**

TWS has developed policy statements that are pertinent to these hearings (See attachment's 2-4):

- Specifically:
- Responsible Human Use of Wildlife** (attachment # 2)
 - Wildlife Damage Control** (attachment # 3)
 - Hunting** (attachment # 4)

2. Position

The Kansas Chapter of The Wildlife Society is **OPPOSED** to these bills for the following reasons:

HB 2379 & 2480

Each bill sets deer population reduction procedures without consideration of the latest sound biological or scientific data. What has been the result of KDWP's recent deer management efforts? Without this information, this bill is contrary to TWS goal (#4) by not using sound biological information for wildlife policy decisions. These bills are **UNNECESSARY** because current procedures are being used by KDWP to manage deer. These have not been proven ineffective.

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Summary of Testimony Regarding Bill # 2840 & 2379

Kansas Chapter of The Wildlife Society
February 15, 1999

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These bills also usurp sound deer management procedures already in use by KDWP. Procedures are in place where landowners can receive depredation permits without charge to the landowner. Landowners are an integral part of a deer management program. These bills are contrary to TWS goal (#3) by removing professionalism from the management program.

These bills do not encourage hunter ethics and responsibilities (see attachment # 4). Hunting is a management tool that is used to control deer populations. Efforts to foster appreciation for and access to the deer resource is important in maintaining or improving that tool. Landowners also have a responsibility in being a partner in this process by allowing access (Some do not). Turning loose deer shooters does not encourage respect for deer or foster good landowner relations. Deer drives are the most hazardous method of hunting. Are you willing to volunteer to be a driver with unlicensed, perhaps untrained shooters -- not having completed hunter safety courses.

If deer values are decreased by unsound deer reduction methods ("another 4 legged rat"), where is your future population control going to come from? Hired shooters or other more expensive procedures -- who will be funding that? At this time, Kansas enjoys a valued deer resource which hunters respect. With selective harvest management, in specific areas on antlerless deer, population control is possible to achieve acceptable parameters. Those does can represent a significant potential increased population -- each pregnant with 1-3 fawns, at sexual maturity.

The Wildlife Society Bulletin, Vol. 25, Number 2, dated Summer 1997, is devoted to the issues of Deer Overabundance. A copy of the table of contents is enclosed. Contact me if you desire reprints.

3. Summary:

Kansas did not get an abundant deer population overnight; it took many years. This increase in deer populations is the result of many complex factors. These factors include improved deer habitat - the land producing more deer. Another factor is man's intolerance of some natural predators. Conservation harvest regulations which have become much more liberal in recent years, also helped restore deer which were very rare as recently as the late 1950's. The adaptability of the deer to increasing human use of the land has also been a factor. Deer know where they are safe on property that does not welcome hunters, or in the cities.

The most practical and safe way to manage deer is by promoting a deer hunting culture that can work in cooperation with the private landowners in harvesting deer.

Professional oversight is necessary to ensure that harvest strategies are on target. These bills remove professional input in program administration and can result in less control of the deer resource when decisions are not based on sound biological information.

Attachment # 1:

About the Society

The Wildlife Society, founded in 1937, is the non profit scientific and educational society of nearly 10,000 professionals and students. Society members are dedicated to sustainable management of wildlife resources and their habitats. Ecology is the primary scientific discipline of the wildlife profession. The interests of the Society, therefore, embrace the interactions of all organisms with their natural environments. The Society recognizes that humans, as other organisms, have a total dependency upon the environment. It is the Society's belief also that wildlife, in its myriad forms, is basic to the maintenance of a human culture that provides quality living.

The mission of The Wildlife Society is to enhance the ability of wildlife professionals to conserve diversity, sustain productivity, and ensure responsible use of wildlife resources for the benefit of society.

The Society's Goals

Develop and maintain professional standards for wildlife research and management.

Enhance knowledge and technical capabilities of wildlife managers.

Advance professional stewardship of wildlife resources and their habitats.

Advocate the use of sound biological information for wildlife policy decisions.

Increase public awareness and appreciation of the wildlife profession.

The Wildlife Society's unique emblem features Egyptian hieroglyphics and depict our broad interest. The literal translation of the hieroglyphics, from top to bottom, is: beasts (mammals), birds, fishes, and flowering plants (vegetation).

Responsible Human Use of Wildlife

The continued well-being of humans and wildlife is dependent of a diverse, functioning environment sustained through skilled and responsible management of resources. As human populations increase, the quality and availability of habitats for many wildlife species and populations decreases. Each species, including humans, has evolved its own unique set of behavioral and social patterns for its welfare and survival in the environments it occupies. Human societies have recognized and accepted uses of wildlife for food, clothing, shelter, hunting, fishing, trapping, recreation, and as an indicator of environmental quality. These uses generate tangible goods, income, and contribute to the economic and spiritual well-being of society.

Humans are a part of a functioning environment and, as such, ultimately and legitimately derive their livelihood from the resource base. All humans and human societies use wildlife directly and/or indirectly. However, human uses of natural resources, including wildlife, must be carried out in a responsible manner so that ecological processes can continue to function and sustain a healthy environment.

Worldwide, the major factor in ecosystem disruption is human activity. Growth and development of human civilizations and technology have resulted in dramatic reduction and alteration of pristine habitats, greater dependence of man on domesticated animals, and changes in the functioning of most ecosystems. It has been demonstrated that regulation-minded citizens and resource management professionals, has slowed or reversed declines of many wildlife species. Prudent management practices and regulations, supported by a conservation-minded public have resulted in restoration of wildlife species and populations, and restoration of habitat productivity. This has allowed the continued responsible use--both consumptive and non-consumptive --of most wildlife by humans.

Failure to manage and regulate uses of wildlife and their habitats has resulted in declines in some wildlife populations and deterioration of ecosystem capabilities to support wildlife and human populations. The maintenance, restoration, and enhancement of wildlife populations and suitable habitats through scientific management and regulations are vital to ecological functioning, genetic diversity, and perpetuation of wildlife populations, species, and habitats.

The social acceptance of each use of wildlife reflects the cultural value systems of a particular society, the human benefits derived from the use, and the liabilities associated with using or not using the resource in a particular manner.

Humans are responsible for the stewardship of wildlife. Humans should manage and regulate uses of wildlife and their habitats in an ecological and social context that promotes sustained survival and welfare of wildlife populations in a variety of ecosystems.

Management of wildlife uses generally is achieved by regulating the human activities associated with those uses. The best way to maximize benefits to both wildlife and humans involved in these activities is through scientifically based and implemented management.

Human activities, particularly those altering habitats, have caused many significant environmental changes and corresponding adjustments in wildlife populations. Even inadvertent habitat impacts may have significant influence on wildlife sustainability.

Certain human activities have a minimal impact on the environment or wildlife. However, these activities are sometimes questioned. Responsible hunting, fishing, trapping, wildlife rehabilitation, wildlife feeding, and other appreciative or recreational uses of wildlife are among those activities. The "wise use" doctrine of conservation should place all activities on a sustainable basis.

Social appropriateness of any human activity is determined by members of society. However, the decision of an individual to participate or not in an activity should not prevent others from exercising their own freedom of choice within the realm of constitutional and statutory legality. Participation in or support of wildlife-related activities that do not have long-term detrimental impacts to wildlife populations or their habitats should be a matter of personal choice.

Attachment # 2: TWS Position Statement, Page 2:

When people choose to be involved directly in responsible wildlife activities, the overall value of wildlife is enhanced. This enhanced resource value includes, but is not limited to, increased:

- economic importance;
 - cultural importance;
 - understanding of roles and needs of the resources;
 - ability in the long-term to support and perpetuate the resources;
 - ability to protect the ecological processes that sustain the resources; and
- ability to control negative aspects of the resource, such as crop depredation or disease implications.

The policy of The Wildlife Society with respect to responsible human use of wildlife is to:

1. Support and promote the philosophy that it is consistent with ecological principles and appropriate for humans to responsibly use wildlife for food, clothing, shelter, hunting, fishing, trapping, recreation, and as an indicator of environmental quality. These uses contribute to the economical and spiritual well-being of society.
2. Support and promote the philosophy that it is equally appropriate for humans to manage wildlife in ways to sustain and enhance wildlife populations, species, and habitats for human benefits, while responsibly protecting property and other resources and preventing health and safety hazards.
3. Support and promote the philosophy that it is consistent with ecological principles and appropriate for each individual to choose whether she or he should be directly involved in any wildlife-related activity.
4. Support and promote the philosophy that management of wildlife-related activities utilizes only those practices that do not threaten the integrity of a population of species for its long-term survival or significantly inhibit the health or integrity of the ecosystem(s) supporting that population or species.
5. Support and promote the philosophy that human wildlife-related activities enhance the overall value of wildlife resources. These enhanced values improve potential opportunities to protect and perpetuate wildlife, understand their habitat needs, and improve their economic, cultural, and social importance.
6. Support and promote the position that the future of wildlife and diverse ecosystems is dependent on human stewardship. Such stewardship must take into account the growing human population, decreasing availability of pristine wildlife habitats, and the need to maintain and manage wildlife populations for sustained human use and enjoyment in economically, socially, and environmentally acceptable ways for present and future generations.
7. Support and promote the position that humans are responsible for promulgating and enforcing laws and developing management programs essential to sustaining the long-term welfare of wildlife.
8. Support and promote the position that wildlife laws, management policies, and programs should enhance the values and benefits of wildlife resources, while minimizing liabilities associated with wildlife populations, species, and habitats.

Attachment # 2: TWS Position Statement, Page 3:

9. Support and promote the principle that options for wildlife management activities and habitat alterations be developed by trained wildlife professionals, and be implemented and coordinated through resource management agencies that are legislatively mandated and empowered to do so.
10. Support and promote positive educational efforts that emphasize:
 - the interdependence of humans and wildlife;
 - the obligations to manage uses of wildlife and impacts on habitats under the public trust doctrine of law; and
 - management programs based on the best available information from science and accumulated experiences.

Wildlife Damage Control

Wildlife sometimes causes significant damage to private and public property, other wildlife, their habitats, agricultural crops and livestock, forest and pastures, urban and rural structures, and they may threaten human health and safety or be a nuisance. Prevention or control of wildlife damage, which often includes removal of the animals responsible for the damage, is an essential and responsible part of wildlife management. Before wildlife damage control programs are undertaken, careful assessment should be made of the problem, with assurance that the techniques to be used will be effective and biologically appropriate.

The policy of The Wildlife Society, in regard to wildlife damage control and the alleviation of wildlife problems is to:

1. Support those wildlife damage prevention and/or control programs that are biologically, environmentally, and economically valid, effective and practical.
2. Encourage research to improve the methods of: (a) preventing and controlling wildlife damage, including health hazards and nuisance problems; (b) delineating the effectiveness and environmental impact of damage control programs; (c) assessing the damage caused by wildlife; and (d) assessing the alternatives available to landowners/managers for wildlife damage prevention and/or control.
3. Recommend wildlife damage control programs that are cost-effective with benefits outweighing the risk that might be encountered in preventing, reducing, or eliminating the damage problem.
4. Support the use of efficient, safe, and economical methods of controlling depredated animals.
5. Encourage and support educational programs in wildlife damage prevention and control.
6. Support biologically sound laws and regulations governing wildlife damage prevention and control directed at individual animals and/or populations.
7. Examine and consider the impact on all wildlife resources when landowners/managers do not have effective control measures and resort to the elimination of wildlife habitat to reduce serious depredation, or threats to human and domestic animal health and safety.

Hunting

Hunting has co-evolved with the needs and cultures of mankind. Archaeological evidence indicates that early cultures are dependent upon wild animals for subsistence. As skills in animal husbandry and agriculture were acquired, dependence on hunting for subsistence decreased. Today hunting is principally useful for recreational purposes, for utilization of the harvestable surplus to benefit man, and for controlling populations. Most wild animal populations produce more animals than their habitats can support. These surplus animals are removed by mortality factors that regulate population numbers within the limits of the habitat. Hunting can be used to remove a portion of these excess animals that would otherwise be lost to natural mortality. Professional wildlife managers are charged with the responsibility of managing wildlife populations in an ecologically sound and socially acceptable manner. Hunting, when based on biological information and properly regulated, can be used effectively to satisfy this responsibility. In addition, hunting, through licenses and taxes, provides the major source of financing for habitat acquisition, law enforcement, research, and management programs for wildlife, both game and nongame species.

The policy of The Wildlife Society, in regard to hunting, is to:

1. Assist decision makers so that judgements on hunting and the welfare of wildlife are guided by both biological and societal considerations.
2. Endorse the principle that hunting, when properly regulated, is a biologically sound means of managing wildlife populations.
3. Encourage expansion of programs for hunters to increase their knowledge of wildlife ecology and management and to emphasize hunter ethics and responsibilities.



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

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MEMORANDUM

To: Rep. Joann Freeborn, Chair
House Environment Committee

From: Steve Williams, Secretary

Date: February 13, 1999

Subject: Testimony on HB 2480 - Regarding HOYOL transfer fee, controlled deer shoots

Thank you for the opportunity to comment on HB 2480. This bill would eliminate the transfer fee associated with Hunt-On-Your-Own-Land deer permits. It also directs the department to conduct controlled deer hunts at the request of a private property owner or municipality. In its current form, we have concerns and issues that should be addressed before taking action on this bill.

First, the department concurs with the amendment to eliminate the \$10.00 transfer fee. Although we intended this fee to cover administrative costs (consistent with the user fee concept), the number of transactions are relatively few and landowner good will associated with the elimination makes sense. In the last few years, the department and legislature have made numerous changes in state law and regulations to improve department and landowner relations. This change is consistent with that trend and we support this amendment.

We believe the proposed, new subsection 3 is problematic for the department, landowners, and hunters alike. Although the department's current goal to reduce deer numbers is consistent with the intent of the bill, we question the bill's appropriateness as a permanent law. We believe the direction to "liberally construe" provisions of this bill is unnecessarily vague and leaves the department in a untenable position. Subsection 3(b) provides that, "Upon application by any owner of land, or the governing body of any city, located in an area of the state where the deer population has not been effectively controlled by current measures, the secretary of wildlife and parks shall provide for a controlled deer shoot ...". The ability of any individual to demand a controlled shoot at any time does not contemplate public participation in a decision involving a public resource. Neither does it contemplate involvement of neighboring landowners. We do, however, appreciate the recognition that landowners hold the key to deer population control and that "key" is public access to hunt deer. If landowners continue to restrict hunter access, reducing the deer population will be a difficult task to accomplish.

This bill directs the department to select hunters without landowner approval, a situation that puts

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the state in control of access to private property, something we expect would clash with private property rights interests. Effective and efficient controlled hunts require technical and logistical planning and implementation. "Sweeps" (as stated in the bill) of an area may actually be counter productive to killing deer because deer may simply move, in mass, to adjacent property during the hunt. Classic controlled hunts are usually conducted on large areas, which may be fenced in, for a prolonged period of time to allow hunters to reduce deer numbers. I have been personally involved in controlled hunts in Massachusetts and Pennsylvania and have studied the components of these hunts in other states. Controlled hunts on 80-160 acres would be inefficient and probably unproductive. Sustaining a sufficient level of hunting effort requires time, staff, and financial resources that the department does not currently employ. This bill does not define or provide for minimum acreage, time of the year, time period, legal weapons, or repetitive hunts. All of these factors are important in administering effective controlled hunts.

The idea of dozens of such hunts, being conducted throughout the state at any given time, creates a tremendous logistical problem for the department. In contrast to the rigid structure of controlled hunts, Kansas landowners already have the right and ability to concentrate hunting pressure (i.e, controlled hunts) on their property during established deer seasons with relatives, friends, and neighbors without the burden of department oversight and control.

Further, the department is very concerned about the provision that shooters would not be required to have a hunting license and/or hunter's education certificate (if required by law). This provision is inconsistent with the department's goal to conduct hunts with properly licensed individuals trained in hunter safety. I am sure that adjacent property owners would also share this concern.

Subsection 3(b) contains another provision that is troublesome. This subsection states that landowners would not be required to use efforts to alleviate the deer problem prior to demanding a state-sponsored controlled hunt. The department believes that landowners should be encouraged or required to use public hunting during the regular seasons. As a matter of public policy, this is the most cost effective and proven technique to manage deer. Our primary means of controlling deer is through legal and regulated seasons. This subsection contradicts public policy and law across the country. To further complicate matters, landowners may be involved in feeding, baiting, or posting property for no hunting, all of which are activities that are discouraged by the department in our efforts to control deer numbers but would apparently meet legal standards to engage the provisions of this bill.

Subsection 3(d) requires the department to establish standards and methods for evaluating hunter selection, hunting results, and control methods. These provisions are inconsistent with previous subsections. For example, this subsection calls for "safe, humane, and efficient conduct" which contradicts the lack of a requirement for a hunting license and necessary hunter education training. Requirements to evaluate deer population levels may be irrelevant given the subjective nature of a landowner's request for a hunt as described in subsection 3(a). The use of the term "humane" in the description of the conduct of a controlled deer shoot is strongly discouraged. I know from personal experience with national animal rights activist organizations, that the use of this highly subjective term in state law would be a lightning rod for legal challenges that could tie up landowners, the department, and the state for months or years.

As I testified last month, we are in complete agreement on the need to focus hunting efforts on problem areas in the state. However, we do not believe that the current form of this bill provides an improvement nor an extension of our legal responsibility or authority to do so. I recently sent a "Deer Management Directive" to department staff that formally directs our employees to improve the administration of the deer depredation permit program (see attached). This memo directs a change in the current way we define "reasonable measures" to alleviate damage, the issuance of these permits, and the brochure describing the depredation permit procedure. I believe this directive and our increased efforts to control deer numbers through the expanded seasons and permits, already accomplishes the intent of this bill and will exceed its effectiveness in controlling deer numbers. It is our opinion, that this bill creates a bureaucratic process that is not needed, describes mandatory actions that are unclear, and does not significantly advance the ability to control deer numbers.

For the described reasons, the department does not support passage of HB 2480.

attach.



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

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MEMORANDUM

COPY

To: Rob Manes, Assistant Secretary of Operations
Joe Kramer, Fish and Wildlife Division Director
Steve Stackhouse, Law Enforcement Division Director

From: Steve Williams, ^{GW} Secretary

Date: February 10, 1999

Subject: Deer Management Directive

I have attached copies of two letters provided to the Legislature, Governor, Kansas newspapers, and this office. A quick read of these letters and the proposed deer management plan shows a speculative and naive approach to this issue. However, these and other letters, newspaper articles, and media coverage show the intense interest in deer management that exists in the state. As you are aware, the Kansas Legislature has expressed a sincere and strong desire to reduce deer numbers statewide. It is more than possible, that some of these ideas may appear in legislation that would severely affect our ability to manage deer on a scientific basis and as a public resource. As you also are aware, deer-vehicle accidents and crop damages continue to rise indicating a growing deer population. Although the department has taken significant steps to reduce deer numbers through permit allocations, expanded seasons, increased opportunities, and game tags; we must continue aggressive efforts to reduce deer numbers to levels compatible with landowner tolerance. This message should be received, loud and clear, by all employees.

To that end, permit allocations should continue to increase until we see a resultant decline in deer populations in management units. These allocations should include consideration of expanding the geographic coverage of "game tag units." Further, we need to expand the extended season for antlerless deer hunting only, perhaps for a week or longer.

In addition, I expect an intensified commitment to the goal of the depredation permit program - to directly reduce crop damage by killing deer during the year that occur on those lands. Please direct biologists responding to crop damage complaints to only provide guidance that will directly reduce damage. Directions to landowners that include purchasing dogs to harass deer, using noise making devices, "lure crops", repellents, and fencing large tracts of land are impractical, unproductive, and are no longer acceptable responses to crop damage complaints. We must be responsive to landowners and provide them with the means to control deer numbers through depredation permits.

As we have discussed, department staff who make it difficult for landowners to participate in the program are giving us a "black eye" and more importantly, are not meeting public expectations. I expect staff to give the landowner the benefit of the doubt in reviewing crop damage complaints. This direction does not mean that we should issue permits to individuals without legitimate cause. Last year we issued 16 permits statewide which resulted in 52 deer killed. Contrast that to the preliminary harvest estimate for the hunting seasons which was 80,000 deer killed. The unlimited nature of game tags is designed to reduce deer numbers during the season. Depredation permits are intended to provide relief to landowners who suffer damage outside of the season by removing those deer existing on their land and should be administered as such.

Please review the entire depredation permit brochure and revise it, including the "Legal Obligation" section which states, "The landowner must demonstrate that deer caused substantial damage to property and that non-lethal remedies provided by law to alleviate the problem have been exhausted." The apparent strict adherence to this wording places the entire onus on the landowner, with our staff serving as judge and jury. Quite frankly, I believe that some of our decisions have been overly restrictive, arbitrary, and burdensome to landowners.

The goal of this directive is to retain the department's authority to exercise scientific management of the state's deer herd for the long-term benefit of the public. I expect that you will take all actions necessary to implement this directive immediately, so that our goal can be achieved. Please inform me of your plan to carry out the direction of this memo. If you have additional questions, do not hesitate to contact me. If you need assistance in providing direction to your staff, I will be happy to direct them on your behalf.

attach.

cc: Clint Riley, Department Legal Counsel



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

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MEMORANDUM

To: Rep. Joann Freeborn, Chair
House Environment Committee

From: Steve Williams, Secretary *SW*

Date: February 13, 1999

Subject: Testimony on HB 2379 - Regarding deer drives along state highways

Thank you for the opportunity to comment on HB 2379. This bill would allow the department to establish deer drives along and within 1 mile of state highways during October. Although the intent is to reduce deer-vehicle accidents, a goal shared by the department, this bill suffers from a lack of understanding of deer and hunter behavior. The Department of Wildlife and Parks is opposed to the passage of this bill.

Lining up hunters along side of portions of state highways and marching in a uniform direction to shoot deer will not have a significant impact on deer populations. During October, the time of rut or breeding behavior, deer may travel distances of 1 to more than 15 miles in the course of their daily travels. Under hunting pressure, deer will simply move off of the 1 mile buffer onto other areas. Imagine the controversy that would surround a situation where such a state sponsored hunt would result in causing a deer-vehicle accident or the shooting of a dwelling within the area. We believe these hunts would have little impact on deer numbers but would lead to negative public reaction.

There is nothing in this bill that would add to our ability to control deer. The real key to controlling deer numbers is adequate access to property where deer are living. Short of making it mandatory for landowners to open their land to hunting, this bill would have little if any impact on deer-vehicle accidents.

The department does not support passage of HB 2379.

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**Statement of Ron Klataske
Director, Kansas Audubon Council
to the Kansas House of Representatives,
Committee on Environment
concerning HB 2379 and HB 2480**

My name is Ron Klataske and I live in Manhattan. I have a Bachelor's degree in wildlife biology from Kansas State University and a Master's degree from the University of Maine where I conducted research on deer census techniques and the effect of high deer populations on physical characteristics of deer on an island where residents did not allow hunting. I am a native of Kansas and have been involved in farming and ranching most of my life. I am responsible for management of approximately 1,100 acres of grazing land, cropland and property devoted to wildlife habitat enhancement.

I am here today on behalf of the Kansas Audubon Council. The council represents 5,000 members of the National Audubon Society in Kansas and ten local Audubon chapters. Audubon members enjoy the wildlife resources of the state and support professional wildlife management. The economic importance of hunting, wildlife watching, fishing and wildlife-associated recreation is nationally significant and of great importance to Kansas. Birds alone accounted for nearly \$20 "Billion" in economic activity and over 234,000 jobs, according to a 1995 study commissioned by the International Association of Fish and Wildlife Agencies.

Kansas deer populations add to the economies of communities throughout the state and to the quality of life of the state's residents. Many people enjoy hunting, watching wildlife (including deer), and having deer on their land. However, we do acknowledge that population levels in some areas do present problems with crop damage, and the incidence of vehicle accidents involving deer is well documented.

We appreciate the effort of elected officials to try to minimize the conflicts and economic impacts of localized situations, however we believe that organization of deer drives as outlined in these bills is not the best approach--and should only be considered as a last resort. The answers to the problems are already available. In recent years the Kansas Department of Wildlife and Parks has been making substantial strides in dealing with deer population numbers with increased permits, longer seasons and other measures available to private landowners.

Deer drives present a number of problems. Deer drives would project this valued wildlife species as vermin. Drives bring to mind the type of drives used to kill jack rabbits in Idaho and coyotes in Kansas several decades ago. The image of Kansas as a progressive state with professional wildlife management would be undermined by news accounts of community deer drives.

There are undoubtedly other approaches that can be explored to address specific areas that have high deer population levels. For example, enhanced funding from the general fund for the walk in hunting access program could be targeted to these same areas. This would be a win-win situation for hunters, the sportsmanship of hunting, landowners and the local community requesting a higher level of deer harvest.

We urge you to give the Kansas Department of Wildlife and Parks--working with sportsmen and outdoors women of the state, and with landowners--more time to address the need for increased harvest in specific localities and larger areas. We request that you place these bills on hold.

*House Environment
2-16-99
Attachment 34*

KANSAS WILDLIFE FEDERATION



The voice of outdoor Kansas

February 16, 1999

Testimony in Opposition to House Bill 2480

By

Spencer Tomb

Vice President and Chair

KWF Issues and Actions Committee

The Kansas Wildlife Federation is a broad based conservation education organization dedicated to the sustained use and conservation of natural resources. We consist of 14 affiliate clubs and individual members with a total membership of about 2,000. We are the Kansas affiliate of the National Wildlife Federation.

We appreciate the opportunity to comment on this bill. We oppose HB 2480 on the basis that new section 3 of the bill will create far more problems than it will solve if it is passed. We feel that the \$10.00 fee to transfer a permit should be reduced to a fee that will cover the cost of the paperwork. This would be consistent with the fees for replacing a lost license or hunter education card. We consider this a very minor point.

We oppose this bill because it would etch in stone a controlled deer shoot system that has no scientific or biological component and is not clearly restricted to where deer are problem. It appears to us that landowners or governmental entities could demand to have a deer shoot without any data. These shoots are not focused on taking does and have no provision for input from the public (including the neighboring landowners who may feel that there are too few deer in the area). As recently as 1997, a KDWP survey of landowners statewide showed that 21% wanted more deer and over 30% indicated that they were satisfied with deer numbers on their lands. There are deer problems in Kansas, but these are local in nature and do not require an ill-advised, statewide program that directs the Secretary of Wildlife and Parks to establish controlled deer shoots.

The significant increase in the white tailed deer population in Kansas is a result of several factors. Weather has been kind to deer over the last several years as we have had neither a harsh winter nor a summer drought. Landowners also should share the blame for the population increase. The 1985 Farm Bill's Conservation Reserve Program (CRP) established a system to pay landowners a rent payment to take crop land out of production and plant native grass areas. These CRP plots provided a large increase in deer habitat that increased fawn survival and even made deer harder to hunt in the fall seasons.

KDWP has responded to the population increase with more permits, more permits per hunter and last year with a two day special January antlerless season. Data from the 1998 season are still being compiled and analyzed to determine the effect of the increased tags and special season. The KDWP also has a departmental deer depredation policy that can be used locally to reduce deer numbers. This system is in place and has many of the components that this bill addresses. It is our understanding that KDWP is in the process of making the deer depredation regulations more widely understood.

*House Environment
2-16-99
Attachment 35*

Other parts of this bill that give the Federation serious concern are as follows:

1. Participants in these shoots should have a hunting license and have hunter education.
2. That there is no scientific assessment of need required to have one of these "shoots".
3. Hunters would be selected by the KDWP. That would require personnel that KDWP does not have.
4. Landowners would not be required to reduce their deer problem by other means before having a controlled shoot.
5. The internal contradiction of the bill that calls for the deer to be taken in a safe, humane and efficient way yet there is no requirement for a license and hunter education.

We think that the Kansas Department of Wildlife and Parks is acting in a responsible and thoughtful way to manage deer in Kansas. The deer population did not get to the current levels in a year or two and it will take several years to reduce the herd in the areas where deer are above landowner tolerance. That is just a fact of biology. HB 2480 is not the way to manage an important biological resource. Furthermore, we feel that it is not good public policy to pay a highly educated and competent staff to do a job and then tie their hands with legislation like this.

We urge you not to pass any part of new section 3.