

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 1, 2001 in Room 231-N of the Capitol.

All members were present except: Representative Clay Aurand - excused  
Representative Dennis McKinney - excused

Committee staff present: Emalene Correll, Kansas Legislative Research Department  
Raney Gilliland, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statute's Office  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Terry Duvall, Kansas Water Office 901 S. Kansas Avenue,  
Topeka, KS 66612-1249  
Donna Denton, RR2 Box 168, Alma, KS 66401  
Tracy Streeter, Exec. Director, Conservation Commission,  
109 SW 9<sup>th</sup>, Ste 500, Topeka, KS 66612-1299  
Representative Tom Sloan, District 45

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She announced that the Kansas Water Office will be presenting an overview on the Corps of Engineers use of Kansas Reservoirs and other drought issues.

Terry Duvall, Kansas Water Office, was welcomed to the committee. She is the manager of the Public Water Supply Unit, KWO and introduced two other staff members, Earl Lewis, Engineer, and Cathy Tucker-Vogel, Environmental Scientist. They were requested to brief the committee on the events of the past summer as they relate to the Kansas River Basin. With the creation of the State Water Marketing Program in the early 1970's, the Kansas Water Office was authorized to contract with the Corps of Engineers for municipal and industrial water supply storage space in federal lakes. In the Kansas Basin, contracts were signed and approved for 300,000 acre-feet of space (entire conservation pool) in Milford, and 150,000 acre-feet of space (the entire conservation pool) in Perry. These contracts allow the state to call this storage space into service incrementally, as the need for the water supply develops over time. Once the state calls an increment into service, they are required to begin making payment for both the construction costs of the storage, and a proportionate share of the operation and maintenance costs on each new increment. In the meantime, the Corps reserves the right to use the remaining storage for other authorized purposes. (See attachment 1)

Earl Lewis, Engineer, KWO, was welcomed to the committee. His discussion was in regard to the Corps of Engineers decision of this past summer to use Milford, Tuttle Creek and Perry lakes for navigation support on the Missouri River. The State of Kansas, led by Governor Graves and represented by Assistant Attorney General John Cassidy filed suit over this issue and won a temporary restraining order. The temporary restraining order remained in place until the State of Kansas dismissed the case on November 22, 2000. The main reason the State decided to dismiss the case is that the Corps of Engineers has agreed to complete a hydrologic computer model of the Kansas River and tributaries. General Carl Strock, the commanding officer for the Northwest Division, which includes the Kansas and Missouri River basins, has also agreed that the State of Kansas will be allowed to cooperate in this effort. While the cooperation on the modeling effort is a major step forward, it does not prohibit the same decision from being made in the future. In order to permanently stop navigation releases, the State of Kansas would need to call into service the remaining storage under contract, or show through the modeling effort that the harm caused by the release is greater than the benefit derived downstream. This same cost/benefit decision could be made within a lawsuit, but believes it is better done through the cooperative modeling effort. (See attachment 1)

Kathy Tucker-Vogel, Environmental Scientist, KWO, was welcomed to the committee. She briefed the

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on February 1, 2001.

committee on an issue related to Kansas River Operations, the Missouri River Biological Opinion. The Biological Opinion was prepared by the U.S. Fish and Wildlife Service for the Corps of Engineers as part of the Missouri River Master Manual Review. The Kansas Water Office is coordinating with the Kansas Department of Agriculture, Division of Water Resources; Kansas Department of Wildlife and Parks; the Corps of Engineers and the Missouri River Basin Association on implementation plans associated with the Biological Opinion. They are also working with the Attorney General's Office to determine the best course of action related to operations on the Kansas River. Kansas Water Office Assistant Director, Clark Duffy and Cathy Tucker-Vogel will be meeting with the Kansas Congressional Delegation staff members on February 15 and 16, 2001. They plan to discuss their concerns related to the Biological Opinion and the potential impacts that may occur. They will encourage them to include funding from the federal budget for implementation measures on the Kansas River. (See attachment 1) Committee questions and discussion followed.

Chairperson Freeborn thanked the Kansas Water Office staff for their presentation. She opened the hearing on **HB 2133**.

**HB 2133: An act amending the multipurpose small lakes program act.**

Terry Duvall, Kansas Water Office, was welcomed to the committee. She testified in support of the bill. (See attachment 2) The Multipurpose Small Lakes Program was established in 1985 and is administered by the State Conservation Commission. The program was designed to allow for the addition of public water supply storage space and/or recreation benefits to proposed watershed projects. Following a review and study of the program and its operating policies by the KWO, the Kansas Water Authority, in 1998 established a moratorium on consideration of new projects until problems and issues identified by the study were addressed. These changes have been made with the exception of those changes proposed in this legislation. In order to lift the moratorium imposed by the Kansas Water Authority, and to ensure the efficient and proper utilization of the program, the Kansas Water Authority has authorized the KWO to submit this legislation during the 2001 Session of the Kansas Legislature to address these issues. These changes are embodied in this bill.

Donna Denton, resident of Lake Wabaunsee, was welcomed. She represented a number of residents of the lake and testified in support of the bill. Lake Wabaunsee is located 45 minutes southwest of Topeka in the Kansas Flint Hills, the lake provides recreation for the public such as boating, fishing, camping and has a swimming area. It is owned by the City of Eskridge and does not have flood control. Near by residents feel that the lake and it's water supply are at risk because of the silting that has been going on for over 50 years. They feel this legislation would restore flood control, provide lake dredging, and/or drinking water storage capacity. (See attachment 3)

Tracy Streeter, Executive Director, State Conservation Commission, was welcomed to the committee. He testified in support of the bill and offered amendments. He believes the bill as amended, if passed, will enable the Multipurpose Small Lakes Program to assist local public entities in the renovation of existing water supply and recreation lakes. The bill will modify the MPSLP Act by addressing three issues: (1) rules and regulation authority for the Kansas Water office, (2) eligibility requirements for renovation projects, and (3) maximum cost-share levels for renovation projects. The first provides the Kansas Water Office with the authority to develop rules and regulations for the portion of the Act for which they are responsible. The second issue relative to renovation project eligibility, allows flood control to be an optional feature for renovation projects. The third issue relates to the cost-share percentage allowed for water supply renovation. (See attachment 4) Questions and discussion followed.

The Chairperson closed the hearing on **HB2133** and opened hearing on **HB2044**.

**HB2044: An act concerning the multipurpose small lakes program.**

The Chair recognized Representative Tom Sloan. He addressed the committee in support of the bill. The State Conservation Commission and State Water Office have funds available to construct new multi-purpose lakes, but cannot expend monies to preserve the ones in which we have already invested. During the 2000

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Legislative session, the House and Senate passed bills on this subject, but were unable to reach consensus. **HB2044** and **HB2133** are similar bills. Both will provide the authority to assist communities to renovate and thereby preserve existing multi-purpose lakes. They differ in how recreational features at those lakes will be treated. During the 2000 session, many members of this committee believed it was more appropriate to focus on drinking water storage and flood control with our scarce resources. Others believed that recreation is an integral part of the multi-purpose small lakes program and thereby should be addressed in any renovation legislation. Representative Sloan supports both bills and believes we can resolve the recreation issues as the committee members wish, so long as we recognize and address the core provision of both bills, renovating and preserving our existing drinking water supply lakes. (See attachment 5)

Chairperson Freeborn closed the hearing on **HB2044**. She reviewed the agenda for next week, committee meetings for Tuesday, February 6 and Thursday, February 8.

The meeting adjourned at 5:00 p.m. The next meeting is scheduled for Tuesday, February 6, 2001.

# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 1, 2001

NAME	REPRESENTING
Ron Appletoft	WATER DIST. No 1 of b Co
Cindy Shaw	Kearney Law Office
Norman & Linton	Lake Wabaussee Imp. Dist.
David C Pope	WDA Power
Earl Lewis	Kansas Water Office
Doug Dwyall	Ko Water Office
Tracy Stout	Ks Cons Comm.
E.A. Moses	Ks. Agg. Prod. Comm.
John Cassidy	Ks Attorney General
Rebecca Reed	KDA
Steve Adams	Wildlife & Parks
Tom Bruno	LBBA
David Miller	DOB
C. Benjamin	Sierra Club
C. Wilson	Ks Ag Aviation Ass'n
Emily Hutchins	Intern - Hutchins

STATE OF KANSAS



Bill Graves, Governor

KANSAS WATER OFFICE  
Al LeDoux  
Director

901 S. Kansas Ave.  
Topeka, Kansas 66612-1249

**TESTIMONY FOR THE HOUSE ENVIRONMENT**  
**Thursday, February 1, 2001 at 3:30 p.m. in Room 231-N**  
**Kansas River Operations**  
**By Terry Duvall, Earl Lewis and Cathy Tucker-Vogel**

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My name is Terry Duvall, and I am the manager of the Public Water Supply Unit of the Kansas Water Office. With me today are other members of the staff of the Public Water Supply Unit: Earl Lewis, Engineer, and Cathy Tucker-Vogel, Environmental Scientist. We have been requested to brief this committee on the events of the past summer as they relate to the Kansas River Basin. My part of this briefing is to provide some background information on the state's involvement in the operations of the Kansas River Basin reservoirs. Earl will speak specifically about last summer's drought and the lawsuit filed last fall to prevent the Corps of Engineers from evacuating up to six feet of water from three of the Kansas Basin reservoirs. Cathy will discuss the state's concern about a recent biological opinion issued by the federal Fish and Wildlife Service and its potential impact on operation of these reservoirs.

**BACKGROUND**

With the creation of the State Water Marketing Program in the early 1970's, the Kansas Water Office was authorized to contract with the Corps of Engineers for municipal and industrial water supply storage space in federal lakes. In the Kansas Basin, contracts were signed and approved for 300,000 acre-feet of space (entire conservation pool) in Milford, and 150,000 acre-feet of space (the entire conservation pool) in Perry. These contracts allow the state to call this storage space into service incrementally, as the need for the water supply develops over time. Once the state calls an increment into service, we are required to begin making payment for both the construction costs of the storage, and a proportionate share of the operation and maintenance costs on each new increment. In the meantime, the Corps reserves the right to use the remaining storage for other authorized purposes.

Of the 300,000 acre-feet of storage under contract with the Corps in Milford, 198,350 acre-feet remains to be called into service. In Perry, 125,000 acre-feet of storage remains to be called into service.

*House Environment  
2-1-01  
Attachment 1*

With the creation of the Water Assurance Program in the mid-1980's the state was able to purchase 50,000 acre-feet of reallocated storage space in Tuttle Creek Reservoir. Technically, all of this storage space is "in service" as the state has paid the entire capital costs for construction of the storage space in one lump sum payment and is making annual payments on a proportionate share of the operation and maintenance costs. The entire conservation pool at Tuttle Creek contains 112,000 acre-feet of storage space.

During times of drought or low flow on the Missouri River, the Corps of Engineers calls upon the Kansas River reservoirs to help meet target flows at Kansas City for navigation purposes. This occurred in 1991, during a drought year, over the protests of the State of Kansas. It is our contention that the dumping of up to six feet of water from Milford, Tuttle and Perry only raises the elevation of the river 1" at Kansas City. We believe this is a very high price for Kansas to pay in terms of precious water resources, for very little gain for barge traffic at Kansas City.

The estimated cost to the state to call the remaining storage into service in Milford and Perry is \$25,137,694 if made in a lump sum. If paid to the Corps over the 50-year repayment allowed under our contracts, the cost would be approximately \$947,190 per year. In addition, the state would assume responsibility for the annual operation and maintenance costs associated with that storage. This cost is estimated at \$314,315 for FY 2002.

I will now turn the podium over to Earl Lewis to discuss the drought of 2000 and the actions taken to prevent the Corps from, once again dumping six feet of water from the Kansas Basin reservoirs.

ESTIMATED COSTS TO CALL MILFORD AND PERRY INTO SERVICE

	AF under Comtr. w/Corps	AF currently "in service"	Bal. AF not "in service"	Cap. Cost to call "in service"	Cap. Cost/yr. w/50 yr. Payback	Additional O&M FY 2002
Milford	300,000	101,650	198,350	\$12,736,145.00	\$460,974.00	\$88,984.00
Perry	150,000	25,000	125,000	\$12,401,694.00	\$486,216.00	\$225,331.00
Tuttle*	50,000	50,000	0	\$0.00		\$0.00
TOTALS				\$25,137,839.00	\$947,190.00	\$314,315.00

\*Currently, all but 8,650 af of this storage space is dedicated for use by the Kansas River Water Assurance District, and they are responsible for the capital costs and operation and maintenance costs for their share of the storage. The 8,650 af is considered "excess capacity" and was financed as part of a loan from the Pooled Money Investment Board. This annual payment on this 10-year loan is being made with State Water Plan Funds, as well as the annual operation and maintenance costs attributable to this 8,650 af.

1-3

Thank you madam chairwoman and members of the committee for giving us this opportunity to talk with you today about issues surrounding the Kansas River. My portion of the discussion today is in regard to the Corps of Engineers decision of this past summer to use Milford, Tuttle Creek and Perry lakes for navigation support on the Missouri River.

As I am sure you are aware, the State of Kansas, led by Governor Graves and represented by Assistant Attorney General John Cassidy filed suit over this issue and won a temporary restraining order. You may not be aware of the activity and issues that led up to the Corps' decision to use Kansas' lakes and the State of Kansas decision to file suit.

The drought that affected both the Missouri and Kansas River basins last summer actually began in the fall of 1999. Like the Kansas River tributaries, the Upper Missouri Basin experienced extremely low flows for almost the entire year of 2000. Inflows to mainstem reservoirs on the Missouri River ran at 10 to 15 percent of normal. However, at the beginning of the navigation season, the mainstem reservoirs were relatively full and the navigation industry and the State of Kansas were told that there would be full service for the entire year. As a side note, full service for navigation on the Missouri River means having a flow of 40,000 cubic feet per second at Kansas City.

At the same time the Upper Missouri Basin was experiencing low flows, drought conditions were worsening in the Kansas-Lower Republican Basin. Flows into both Milford and Perry lakes were around 15 percent of normal for most of the year. The low flows even led to the administration of minimum desirable streamflows on the Republican and Delaware Rivers.

The extremely dry conditions, including low streamflow, led the Director of the Kansas Water Office to advise the Governor to activate the Drought Response Team. The Drought Response Team was activated on June 12, 2000, and the Kansas-Lower Republican was the first basin to be targeted.

A part of the normal Drought Response Team activities is the compilation of information about current conditions so that team members, as well as the public, have a good idea of the total drought picture. The current navigation situation on the Missouri River is included in this compilation. Starting in early May, I was told by the Corps of Engineers that the Missouri River would be at full navigation service, and that the support would come from the mainstem Missouri reservoirs.

In early July, the Corps of Engineers determined that storage within the mainstem reservoirs would not be sufficient to support full navigation through the end of the season, December 1, 2000. Therefore, they lowered the level of service, and the Kansas City target flow to 38,500 cubic feet per second. I was again assured that support for navigation would come from the mainstem reservoirs.



In early August the Reservoir Control Center in Omaha decided that water from Kansas River tributary lakes would be needed for navigation support. The Kansas Water Office, the Kansas Department of Agriculture – Division of Water Resources, the Kansas Department of Wildlife and Parks and a representative from the Governor's office met with Corps of Engineer's staff from both Kansas City and Omaha shortly after this decision to voice opposition. The message from the Corps however, was loud and clear, any change in the decision would be made at a higher level. The Corps of Engineers was more interested in gaining Kansas' support for modeling the Kansas River Basin than they were talking about the immediate decision of the releases. The State of Kansas had been requesting the modeling effort for 10 years with the Corps declining to do so.

The Governor and leadership of this legislature both sent letters to Brigadier General Carl Strock requesting that the Kansas River lakes not be used for navigation support and outlining reasons why such a decision would be detrimental to the State of Kansas. General Strock is the commanding officer for the Northwest Division, which includes the Kansas and Missouri River basins.

General Strock responded on September 22, and indicated that drought conditions in the Upper Missouri Basin made the use of Kansas River lakes necessary.

The General's decision left only three options to deal with the issue: accept the decision and take the economic and environmental loss, buy the remaining storage under contract in Milford and Perry, or file suit against the Corps of Engineers. Acceptance of the decision would mean economic harms totaling several million dollars. The option to buy the storage had the benefit of giving the State of Kansas a greater amount of control, but would be very expensive as Terry indicated in her testimony here today. Litigation was left as the most viable alternative.

On September 25, 2000 Governor Bill Graves, represented by the Attorney General's office filed suit against the Corps of Engineers and requested a temporary restraining order. U.S. District Court Judge Dale Saffels held a hearing on September 26 and issued a temporary restraining order on September 29, 2000.

The temporary restraining order remained in place until the State of Kansas dismissed the case on November 22, 2000. The main reason the State decided to dismiss the case is that the Corps of Engineers has agreed to complete a hydrologic computer model of the Kansas River and tributaries. General Strock has also agreed that the State of Kansas will be allowed to cooperate in this effort. While the cooperation on the modeling effort is a major step forward, it does not prohibit the same decision from being made in the future. In order to permanently stop navigation releases, the State of Kansas would need to call into service the remaining storage under contract, or show through the modeling effort that the harm caused by the release is greater than the benefit derived downstream. This same cost/benefit decision could be made within a lawsuit, but we believe it is better done through the cooperative modeling effort.

So where are we at today. At the beginning of this week, Tuttle Creek Lake was 6.19 feet below the top of the conservation pool. Milford and Perry lakes are 1.43 and 1.07 feet below the top of the conservation pool, respectively. Releases are being made at this time for Kansas River Water Assurance District benefit.

The same situation exists in a number of other basins. Most notably the Marais des Cygnes and Neosho where assurance districts were in operation last year and remain so now. There have been more releases made under the Water Marketing and Water Assurance programs this past year than at any other time in the history of the programs. I believe that is an indication of the extent and severity of the drought of 2000.

Dry conditions continue to exist in the Upper Missouri Basin as well. If significant spring rains do not materialize over the entire Missouri Basin, we will most likely once again be dealing with navigation releases from Kansas's lakes in 2001.

I will now turn you over to Cathy Tucker-Vogel to discuss endangered species issues regarding the Kansas River.

# Hydrologic Modeling of the Kansas River System

Current Water Issue Sheet No. 2

January 2001

Kansas Water Office

## Background

The summer of 2000 brought to light a number of issues regarding management of the Kansas River and the associated federal lakes. Drought in both the Kansas and larger Missouri basins raised questions regarding water releases for navigation support from Kansas's lakes. Threatened and endangered species on sandbars in the Kansas River limited normal operation of Tuttle Creek Lake. In addition, low streamflow placed the Kansas River Water Assurance District into operation.

It has become extremely clear over the past year that the current tools and understanding available to the State of Kansas are inadequate to deal with the increasingly complex issues surrounding the Kansas River and its tributary lakes.

## Purpose

The purpose of hydrologic computer modeling of the Kansas River System is to develop a comprehensive analytical tool to evaluate the effects of various river management techniques on all users of the river and reservoirs.

## Overview

During the summer and fall of 2000, decision-making regarding Kansas River operations became very complex and decisions were often called into question. The main reason for this problem is that the complexity of the river system has increased as well as the limitations and demands that are placed upon it. To remedy this situation, the Kansas City District of the Corps of Engineers has initiated development of a hydrologic computer model of the system. That model will include all of the major reservoirs in the Kansas-Lower Republican, the Solomon and the Smoky Hill-Saline basins. The modeling process will be completed over the next two years.

While it may appear appealing to allow the Corps of Engineers to complete this modeling

work with little additional work and input by the State of Kansas, this places the state's interests in jeopardy.

During the late summer of 2000 drought in the Missouri River Basin caused the Corps of Engineers to call upon water stored in Kansas's reservoirs to support navigation on the Missouri River. The State of Kansas ultimately went to court to fight this decision. Without Kansas involvement in the process, assumptions and analyses may be made that will lead the Corps to follow a similar course of action when it does not appear that the economic benefit equals the harm to the State of Kansas.

The Corps of Engineers also released a biological opinion for the threatened and endangered species on the Kansas River that could limit the state's ability to manage the water that has been placed under contract. While the biology issue may not appear to have an effect on water stored in reservoirs, it can affect operations through limiting the amount of water released. Without appropriate analytical tools, the State of Kansas will not be able to develop operational rules to deal with this issue as well.

The State of Kansas and the Kansas River Water Assurance District have previously developed a computer model of the Kansas River system. That model is very general in nature and covers only one aspect of the river's uses and needs. It also does not take into account, or give the State the ability to evaluate, the effect of the differing uses and factors on each other.

The Kansas Water Office has begun to coordinate this modeling effort with the Corps of Engineers. While the Corps will remain the primary entity responsible for the modeling effort, additional funding received through a State Finance Council action will give the Kansas Water Office the ability to make sure that the state's interests are being protected.

Additional hydrologic modeling staff support will be added, as well as obtaining additional expertise under contract. An additional computer model is being purchased and the existing Kansas River model will be enhanced.

These three activities, along with the increased coordination, will place the Kansas Water Office in a stronger position to protect the State of Kansas interest in this river.

As the modeling process develops, both the Corps of Engineers and the Kansas Water Office will seek public input. In addition, the number of interested parties participating in the process can be expected to increase. The early and strong involvement of the Kansas Water Office will insure continued protection for the state's interests.

### **Additional Information**

Further information on this subject may be obtained from: Kansas Water Office, 901 S. Kansas, Topeka, Kansas 66612, (785) 296-3185 or toll free at 1-888-KAN-WATER. Fact sheet also available on the Missouri River Biological Opinion the Water Assurance Program, and Drought.

Expiration 1/2003

Madam Chairwoman and members of the committee, I am happy to be here this afternoon to brief you on one additional issue related to Kansas River Operations, the Missouri River Biological Opinion. The Biological Opinion was prepared by the U.S. Fish and Wildlife Service for the Corps of Engineers as part of the Missouri River Master Manual Review. The Master Manual Review has been an ongoing process for the past 10 years.

I have attached to my written testimony a Fact Sheet that provides some background information related to the Biological Opinion. There are a few key points I want to touch on with you today.

- The Species included are the bald eagle, piping plover, least tern and pallid sturgeon.
- The U.S. Fish & Wildlife Service concluded that past and current Corps of Engineers' operations on the Missouri River jeopardize the continued existence of the piping plover, least tern and pallid sturgeon. Under the Endangered Species Act the Corps must take action to protect the species.
- The Kansas River was included in the Biological Opinion over the objections of the State of Kansas. It was included because of the occurrence of terns and plovers on Kansas River sandbars after the 1993 and 1995 flood events.
- The Biological Opinion indicates that the primary focus on the Kansas River will be monitoring and evaluation for the long-term ability of the River to support the species.
- This evaluation will include viability of habitat for terns and plovers. And evaluation of barriers on the Lower Kansas River and the impacts on pallid sturgeon migration and spawning.
- The Corps will continue to operate the reservoirs to protect the species, while trying to meet the other authorized purposes such as water supply, flood control and navigation.

While we recognize and support the importance of protecting threatened and endangered species, there are several issues of concern related to the operations of the Kansas River.

- The potential exists for the corps to withhold requested releases for public water supply to prevent flooding of tern and plover nesting sites. This means that the State may not be able to meet contractual obligations under the Water Assurance and Water Marketing programs.
- The Corps is passing a portion the costs for monitoring and evaluation of the species on the Kansas River on to the State through Operation and Maintenance charges associated with water supply storage in the reservoirs. Water Marketing and Water Assurance customers pay the Operation and Maintenance costs

associated with public water supply storage. We do not believe that it is appropriate for municipal and industrial users to bear the costs associated with threatened and endangered species management.

- The potential also exists that barriers on the Kansas River (Bowersock Dam in Lawrence and Johnson Co. Water District # 1 weir) will have to be removed or altered for pallid sturgeon migration and spawning. Sand and gravel dredging operations may also be impacted. The State would like to have the U.S. Fish and Wildlife Service and the Corps determine if pallid sturgeon can survive on the Kansas River before any alterations are required.

The Kansas Water Office is coordinating with the Kansas Department of Agriculture, Division of Water Resources; Kansas Department of Wildlife and Parks; the Corps of Engineers and the Missouri River Basin Association on implementation plans associated with the Biological Opinion. We are also working with the Attorney General's Office to determine the best course of action related to operations on the Kansas River.

Kansas Water Office Assistant Director, Clark Duffy and I will be meeting with the Kansas Congressional Delegation staff members on February 15 and 16. We plan to discuss our concerns related to the Biological Opinion and the potential impacts that may occur. We will encourage them to include funding from the federal budget for implementation measures on the Kansas River.

# Missouri River Biological Opinion

Current Water Issue Sheet No. 1

January 2001

Kansas Water Office

## Introduction

On August 31, 2000, the U.S. Army Corps of Engineers released the Missouri River Draft Biological Opinion for public comment. The Biological Opinion was prepared in response to the impacts of the operations of the Missouri River System on federally listed threatened and endangered species and as part of the Missouri River Master Manual review. The Biological Opinion was developed by the U.S. Fish and Wildlife Service under Section 7 of The Endangered Species Act of 1973. Section 7 gives the U.S. Fish and Wildlife Service authority to consult with other federal agencies regarding agency actions that might have an adverse impact on federally listed threatened or endangered species.

## The Opinion

It is the opinion of the U.S. Fish and Wildlife Service that past and present operations of the Missouri River System jeopardize the continued existence of the piping plover, interior least tern and the pallid sturgeon. A jeopardy opinion requires the U.S. Corps of Engineers to take action to protect the species. Therefore, included in the Biological Opinion are recommended Reasonable and Prudent Alternatives the U.S. Corps of Engineers should take to prevent jeopardy to the species. The most notable of these are a spring rise on the Missouri River, followed by a low summer flow, and a potential restocking program for the pallid sturgeon in selected reaches of the Missouri River. The Corps is also directed to implement adaptive management as one tool to preclude jeopardy to least terns, piping plovers and pallid sturgeon. An extensive monitoring and analysis program is also recommended.

## State Response

The Kansas Water Office reviewed the Biological Opinion and submitted the State's response to the U.S. Corps of Engineers on

October 10, 2000. This response outlined the State's opposition to the inclusion of the Kansas River in the Biological Opinion as part of the Missouri River Master Manual Review. The U.S. Fish and Wildlife Service prepared a previous Opinion in 1990 that did not include the Kansas River System. The Kansas River System was included in the current Biological Opinion due to the occurrence of piping plovers and least terns on the Kansas River and the U.S. Fish and Wildlife Service ecosystem approach to management of the Missouri River. It is the position of the State that before significant changes in Kansas River System operations are implemented, a comprehensive study should be completed. The Kansas Water Office is currently working with the Kansas City District Corps to develop a model that both the State and the Corps of Engineers can use for evaluation and analysis of the Kansas River System for all authorized purposes.

## Current Situation

A Final Biological Opinion was released by the U.S. Fish and Wildlife Service on November 30, 2000. This Final Biological Opinion included the Kansas River System. On December 14, 2000, the U.S. Corps of Engineers released a Draft Implementation Plan for the Biological Opinion. The Draft Implementation Plan indicates that the primary focus on the Kansas River will be monitoring and evaluation of the System. However, the potential exists for the U.S. Corps of Engineers to rely more on the Kansas River System for support of navigation to off-set changes in management for threatened and endangered species on the Missouri River. The State will argue that this is not allowed under current operations. The Kansas Water Office will participate in the development of the Final Implementation Plan and ongoing activities associated with the Biological Opinion through the Missouri River Basin Association and coordination with the U.S. Corps of Engineers.

## Species Addressed in Biological Opinion

The Biological Opinion addresses the following listed species: threatened bald eagle, endangered Interior population of the least tern, threatened Northern Great Plains population of the piping plover, and endangered pallid sturgeon. The first consultation completed in 1990 did not include the pallid sturgeon.

Terns and plovers were first documented on the Kansas River after the 1993 and 1995 flood events. There is no historical documentation of these two species occurring prior to 1993. Both species prefer sandbar habitat with no vegetative cover. The flooding in 1993 and 1995 created this type of habitat on the Kansas River. Since discovery of terns and plovers on the Kansas River, the U.S. Corps of Engineers has tried to manage the Kansas River System in a manner that reduces the risks to the birds, while at the same time meeting the authorized purposes of the reservoirs. The U.S. Fish and Wildlife Service recommends that the U.S. Corps of Engineers continue operations of the Kansas River System to protect these species. It also recommends that the U.S. Corps of Engineers conduct a study to determine the long-term potential of the Kansas River System to support these species.

The pallid sturgeon was last documented on the Lower Kansas River in 1952. The U.S. Fish

and Wildlife Service has designated the Kansas River as a moderate priority river segment for the pallid sturgeon. Johnson County Water District #1's weir and Bowersock Dam have been identified as migration barriers on the Kansas River. The U.S. Fish and Wildlife Service recommends that the U.S. Corps of Engineers evaluate barriers that prevent spawning adults from reaching known or potential spawning habitat and remove or modify passage barriers that block upstream passage of pallid sturgeon to spawning sites. Instream sand and gravel dredging operations will also be evaluated for impact on the sturgeon. A restocking program is recommended once potential river segments are identified. Segment selection should focus on priority recovery reaches for the pallid sturgeon. Operations to protect the pallid sturgeon will become an important issue if the Kansas River is included in a restocking program.

### Additional Information

Fact sheet also available on "Hydrologic Modeling of the Kansas River System". Further information on this subject may be obtained from: Kansas Water Office, 901 South Kansas Avenue, Topeka, KS 66612-1249, (785) 296-3185.



# Missouri River Basin



STATE OF KANSAS



Bill Graves, Governor

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Al LeDoux  
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**TESTIMONY BEFORE THE  
HOUSE ENVIRONMENT**

**Thursday, February 1, 2001 at 3:30 p.m. in Room 231-N  
Presented by Terry Duvall, Kansas Water Office on  
Multipurpose Small Lakes Legislation**

**Background**

The Multipurpose Small Lakes Program (K.S.A. 82a-1601) was established in 1985 and is administered by the State Conservation Commission. The program was designed to allow for the addition of public water supply storage space and/or recreation benefits to proposed watershed projects. One of the guiding principles behind the development of this program was that the State would pay for the costs of including public water supply storage in the lake over and above that needed immediately by a local public water supply sponsor, if it is determined by the Director of the Kansas Water Office (KWO) that the additional public water supply will be needed in the area within the next 20 years. By statute, the KWO obtains the water right for the add-on public water supply. Users of this "future use" water supply will, through a contract with the KWO, repay the State's costs for the public water supply storage space. Upon payment of those costs, the water right is transferred to the user.

Following a review and study of the program and its operating policies by the KWO, the Kansas Water Authority, in 1998 established a moratorium on consideration of new projects until problems and issues identified by the study were addressed. These changes have been made with the exception of those changes proposed in this legislation.

**Purpose of Proposed Amendments to the Act**

As we have gained experience in operating the program, several problems have emerged:

1. Due to language in existing rules and regulations promulgated by the Conservation Commission, local sponsors have the mistaken idea that the program provided for a "construction loan" for their immediate use portion of the water supply storage space. Since by statute the KWO is the agency responsible for determining the need for the "future use" public water supply

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storage space, filing for the required water right to store water in that space, and contracting with users to recapture the State's investment costs, we propose that the KWO be given authority to promulgate rules and regulations relative to this process.

2. Revisions to the Act in 1991 provided for interest to be calculated and charged to the ultimate user on Class III projects only. Because there is no significant difference between the three classes of projects as it pertains to the financing of the public water supply portion of the projects, we believe there should be no interest penalty to one class of projects over another. If interest is to be charged on the State's investment in public water supply storage space, it should be charged for all three classes of projects.
3. Renovation of existing projects has been provided for in the Act since it was established. As a practical matter; however, proposals for renovation of public water supply lakes has not been allowed because the Act requires that flood control storage space **must** be included in the project. Most public water supply lakes were built by cities and rural water districts without a flood control component, and may not be within an area needing flood protection. Even though the city or rural water district may have the **required** taxing authority, or the right of eminent domain, because the proposed project did not have a flood control, it cannot be renovated under this program.

In order to lift the moratorium imposed by the Kansas Water Authority, and to ensure the efficient and proper utilization of the program, the Kansas Water Authority has authorized the Kansas Water Office to submit this legislation during the 2001 Session of the Kansas Legislature to address these issues. These changes are embodied in House Bill 2133.

TESTIMONIAL - BILL 2133 - Thurs, Feb 1, 3:30 pm

I'm Donna Denton and a resident of Lake Wabaunsee. I'd like to tell you a little something about our lake. The lake is located 45 minutes SW of Topeka in the beautiful Kansas Flint Hills. The lake provides recreation for the public such as boating, fishing, camping and has a swimming area. It is owned by the City of Eskridge and we do not have flood control.

The lake also has historical value. It was a WPA project and the home of POW's during WW II. The lake is a water supply for Rural Water District #1 up to Maple Hill, the City of Eskridge and future water supply for Lake Wabaunsee.

We feel that the lake and it's water supply are at risk because of the silting that has been going on for over 50 years. One of our residents who is a diver said the center of the lake has risen over 30 feet since the 50's. Two of the main coves are completely silted in and the resulting debris has become a hazard and eye sore. The historical stone bridges at the end of each cove are deteriorating because of a lack of flow of water.

With the passing of the 2133, we are hoping for assistance in getting our lake dredged. We should have minimal additional silting because of recently built water sheds. That is the perfect time for dredging.

We ask for your help on this bill so that future generations will have an ample water supply of water and will continue to enjoy this beautiful and historical lake.

I also have signatures of several interested parties that I have already passed out to the committee.

Thank you!

Donna Denton  
RR 2 Box 168  
Alma, KS 66401  
work 785-295-2458  
home 785-449-7251

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29-Jan-01

Representative Joann Freeborn  
State Capitol  
155 East  
Topeka, KS 66612-1504

Dear Representative Freeborn:

The undersigned are in support of bill #2133 which will help Lake Wabaunsee restore flood control, provide lake dredging, and/or drinking water storage capacity.

Lake Wabaunsee, located in the Kansas Flint Hills is a public lake and provides a water supply for outlying areas. It is owned by the City of Eskridge.

Janice K. Turnbull

Janice K. Turnbull  
PO Box 274 Eskridge City Treas.  
Eskridge, KS, 66423

Martha Reynolds

~~RR 1~~ MARTHA REYNOLDS  
RR 2 BOX 190 LAKE WABAUNSEE  
ALMA, KS 66401 RESIDENT

Sam Elliott

SAM ELLIOTT  
PO Box 188 Lake Wab  
ESKRIDGE, KS 66423 resident

Marita L. Elliott

Marita L. Elliott  
P.O. Box 188  
ESKRIDGE KS 66423  
Lake Wabaunsee Improvement District, Pres.

Kenneth G. Kelley

Kenneth G. Kelley  
R-2 Box 242  
ALMA KS, 66401  
LAKE WABAUNSEE Improvement District - Treasurer

Jay R. McKenna

JAY R. MCKENNA  
RT 2, Box 233  
ALMA, KS 66401

Becky L. Tinklin

Becky Tinklin  
112 Cedar Circle, Alma, Mo. 66401  
Lake Wab resident

Karen Baker

Karen Baker  
114 Cedar Circle  
Lake Wabaunsee, KS

Marsha J. Ridinger

Marsha J. Ridinger  
Rt 2 Box 213 D  
Alma, KS 66401

Lake Wabaunsee resident  
JAMES V. SCHOOLER  
RR2 Box 213 B  
Alma, KS 66401

Lake Wabaunsee resident  
CHARLES L. RIDGWAY  
Rt. 2, Box 203 B  
Alma, KS 66401

Lake Wabaunsee resident  
Donna Denton  
RR2 Box 168  
Alma, KS 66401

Lake Wabaunsee resident  
Terry N. White  
RR2 Box 192 (300 Lakeshore Dr.)  
Alma, KS 66401

Roy Barnes  
281 E Flint Hills Dr  
Alma, KS 66401  
Lake Wabaunsee

Juan Ostlander  
RR-2 - Box 212 - A  
Alma, KS, 66401  
Lake Wabaunsee Resident

Rose A. Wallbron  
RR2 Box 213 AA  
Alma KS 66401  
Lake Wabaunsee resident

Corbett Workman  
RT 2 Box 213 A  
Alma KS 66401  
Resident

Vernon Breeden  
Rt. 2, Box 232  
Alma, KS. 66401  
Lake Wabaunsee Resident

Roger Manz  
Rt 2 Box 239  
Alma, KS. 66401  
Lake Wabaunsee

James V. Schooler

Charles L. Ridgway

Donna Denton

~~\_\_\_\_\_~~

Roy Barnes

Juan Ostlander

Rose A. Wallbron

Corbett L. Workman

Corbett Workman

VERNON & JOY BREEDEN

Roger & Cynthia Manz

Linda Barnes

Linda J. Barnes  
Rt 2 Box 240 Alma, KS  
Lake Resident

Connie S Blades

Connie S. Blades  
Lake resident  
Box 132  
ESKridge, KS 66423

Arden Haresnape  
VIRGINIA Haresnape

Arden Haresnape  
LAKE RESIDENT  
22 ROCKY LEDGE DR.  
R2 ALMA 66401

Darrell L. Mitchell

Darrell L. Mitchell  
LAKE RESIDENT

Pete Stauffer

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Rt 2 ALMA KS  
Pete Stauffer  
LAKE RESIDENT  
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Rt 2 Box 185 ALMA, KS.

J. York

LAKE RESIDENT  
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Connie Eazbrenner

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Maryanne McMullen

MARYANNE McMullen  
Box 246 RR2 Cabin 50  
Alma, KS 66401

Michelle A. Pierce

Michelle A. Pierce  
RD. Box 296 113 Pine  
ESKridge, KS. 66423

Lynda D Reed

Lynda D Reed  
RR2 Box 174C-360  
Alma, KS 66401



# State Conservation Commission

109 SW 9<sup>th</sup> Street  
Suite 500, Mills Building  
Topeka, KS 66612-1299

Telephone: (785) 296-3600 • Fax (785) 296-6172



## MEMORANDUM

February 1, 2001

**MEMO TO:** House Environment Committee

**FROM:** Tracy Streeter, Executive Director

**SUBJECT:** HB 2133

Madam Chair and Members of the Committee, thank you for the opportunity to appear before you today in support of HB 2133, with suggested amendments. This bill as amended, if passed, will enable the Multipurpose Small Lakes Program (MPSLP) to assist local public entities in the renovation of existing water supply and recreation lakes.

The State Conservation Commission administers the MPSLP. The Kansas Water Office and the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture is also charged with specific duties as prescribed in the MPSLP Act. Currently, the MPSLP provides state financial assistance for the construction or renovation of a lake containing at least two of the following purposes: 1) Flood control, 2) Water supply, 3) Recreation. The statute requires flood control to be included in all projects. The statute also establishes the cost-share arrangements for each purpose as follows:

- 1) Flood control – Up to a 100 percent grant for the flood control storage portion of the project.
- 2) Water Supply – Based upon a future need determination by the Kansas Water Office, the state may pay for up to 100 percent of the water supply if no local water supply sponsor is identified. The state may recover its cost through the sale of all or a portion of the water right.
- 3) Recreation – Up to a 50 percent grant for the recreation storage, recreation land rights and facilities.
- 4) Non-Point Source Pollution – Each funded project must have a NPS pollution management plan for the lake's drainage area. Cost-share funding may be provided through the MPSLP to protect the lake from NPS pollution.

HB 2133, as amended, will modify the MPSLP Act by addressing three issues: 1) rules and regulation authority for the Kansas Water Office, 2) eligibility requirements for renovation projects, and 3) maximum cost-share levels for renovation projects. The first provides the Kansas Water Office with the authority to develop rules and regulations for the portion of the Act for which they are responsible.

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House Environment Committee

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The second issue relative to renovation project eligibility, allows flood control to be an optional feature for renovation projects. Most of Kansas' lakes constructed prior to the 1950's do not contain flood control storage. In other words, runoff entering a lake with normal water levels is allowed to pass through the spillway with a minimal amount of detention. In order to be eligible for renovation assistance, these lakes would be required to add dam height to detain runoff from at least a 25 year, 24 hour runoff event. In addition to dam enhancement, additional land adjacent to the existing lake would have to be acquired to temporarily store the floodwater. Existing infrastructure, roads, parks, buildings, and in some cases, homes would have to be moved to provide for the additional flood storage. As a result, the addition of flood control to an existing reservoir has been and will continue to be unacceptable to local sponsors and could be cost prohibitive.

A number of the older, existing lakes do provide public water supply storage. These lakes have lost capacity over the years due to siltation and in some cases, have dam and spillway repair needs. The proposed language does provide an opportunity to address lakes containing water supply storage. The MPSLP is currently capable of also providing recreation assistance for both new and renovation projects. Most existing lakes provide some form of water-based recreation and as such, should be eligible to receive assistance for the renovation of recreational storage.

The third issue relates to the cost-share percentage allowed for water supply renovation. The current statute allows the state to provide financial assistance up to 100% for water supply only if the Water Office determines that a future need for water exists in the area within the next 20 years. To provide water supply assistance in a renovation project, the following is suggested as amendments to HB 2133:

Page 3, line 8 – Delete the words *future use*.

Pages 3, 4 and 5 – Add the following statement after paragraph (b) – *The state shall not participate in the costs of public water supply storage in a renovation project unless the Kansas water office determines that renovation is the most cost effective alternative for such storage. The state shall be authorized to pay only up to 50% of the engineering and construction costs of public water supply storage in such a renovation project.*

In summary, HB 2133, with the suggested amendments, contain the necessary modifications to the MPSLP Act to provide greater opportunities for the renovation of Kansas lakes. Thank you for the opportunity to provide information. I will be pleased to answer questions at the appropriate time.

TOM SLOAN  
REPRESENTATIVE, 45TH DISTRICT  
DOUGLAS COUNTY

COMMITTEE ASSIGNMENTS  
VICE-CHAIR: UTILITIES  
MEMBER: ENVIRONMENT  
HIGHER EDUCATION  
KANSAS FUTURES



TOPEKA

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**TESTIMONY  
HOUSE BILL 2044  
MULTI-PURPOSE SMALL LAKES PROGRAM  
February 1, 2001**

**Madam Chairman, Committee Members:**

Several years ago, Dr. Ed Martinko and Dr. Jerry DeNoiles from the Kansas Biological Survey made a presentation to this Committee. Among their comments that made a deep impression on me, was that even if no humans lived in Kansas, our drinking water storage and flood control lakes would fill with sediment because of the nature of our soils.

The State Conservation Commission and State Water Office have funds available to construct new multi-purpose lakes, but cannot expend monies to preserve the ones in which we have already invested.

During the 2000 Legislative session, the House and Senate passed bills on this subject, but were unable to reach consensus. HB 2044 and HB 2133 are similar bills. Both will provide the authority to assist communities to renovate and thereby preserve existing multi-purpose lakes. They differ in how recreational features at those lakes will be treated. During the 2000

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**Testimony**  
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session, many members of this Committee believed it was more appropriate to focus on drinking water storage and flood control with our scarce resources. Others believed that recreation is an integral part of the multi-purpose small lakes program and thereby should be addressed in any renovation legislation.

HB 2044 reflects the 2000 session Environment Committee majority position that recreation should be excluded; HB 2133 includes that feature. I believe it is essential that we preserve our existing lakes through cost-sharing provisions with local communities and through the Water Office have Rules and Regulations authority to recover our State investments.

Therefore, I support HB 2044 and HB 2133. We can resolve the recreation issues as the committee members wish, so long as we recognize and address the core provision of both bills—renovating and preserving our existing drinking water supply lakes.

**TOM SLOAN**  
**Representative—45th District**