Approved: April 26, 2001
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 20, 2001 in Room 231-N of the Capitol.

All members were present except:

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: Paul Liechti, Assistant Director, State Biological Survey, University of Kansas, 2021 Constant Avenue, Lawrence, KS 66047-3729

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She introduced Mr. Paul Liechti, Assistant Director of the Kansas Biological Survey.

Mr. Liechti presented information to the committee regarding intermittent and ephemeral streams. The Kansas Biological Survey (KBS) is a research and service unit of the University of Kansas and a non-regulatory agency of the State. KBS strives to provide accurate and objective information to decision makers based on scientific research. Over the last 100-plus years of cataloging and studying the plants, animals, and natural communities of Kansas, they have learned much about the State's biological resources; not only where things are found but also how the flora, fauna, and ecology of the State has changed over time. There is little doubt that, except for infrequent natural catastrophes, that the most dramatic changes that have occurred in the biological resources of Kansas have been the result of our own actions; making the responsibility of managing our natural resources increasingly complex. Intermittent and ephemeral streams are harsh environments compared to perennial streams. But these streams provide habitat for an array of highly adapted macroinvertebrates and fishes that have unique life histories, biotic interactions and functions. It is because of this that the intermittent and ephemeral stream systems themselves are unique and add to the local and regional species diversity. (See attachment 1)

The Chairperson thanked Mr. Liechti for his presentation. She opened **Senate Substitute for SB204**.

Senate Substitute for SB204; Classified stream segments and designated uses of classified stream segments.

She welcomed Dave Murphy, Friends of the Kaw, to the committee. Mr. Murphy had presented written testimony to the Sub-Committee and made comments in opposition to the bill. He believes no one wants to take the chance that the bill will have the affect of lowering the water quality standards or reduce KDHE's ability to protect public health. However the choice of words in the bill and the amendments may do just that unless the bill is amended to address those errors. (See attachment 2)

Mary Torrence, Revisor of Statutes, distributed the Sub-Committee report on **Senate Substitute for SB204** and explained the changes that were made. (See attachment 3) The Chairperson asked if committee members wished to adopt the Sub-Committee report.

Rep. Jeff Peterson made a motion the Sub-Committee report be adopted. Rep. Sharon Schwartz seconded the motion. Motion carried. Questions and discussion followed.

Rep. Dan Johnson made a motion the bill be passed favorably as amended. Rep. Sharon Schwartz seconded the motion.

Rep. Ted Powers made a motion to table the bill. Rep. Jonathan Wells seconded the motion. Motion failed.

Rep. Dan Johnson had made a motion the bill be passed favorably as amended. Seconded by Rep. Sharon Schwartz. Motion carried. Rep. Ted Powers voted no. Rep. Jonathan Wells voted no. Rep. Jeff Peterson will carry the bill on the House Floor.

The Chairperson opened **SB237** for discussion and possible action.

SB237: **Groundwater right holder allowed to take average annual water use times five and use that resulting amount at any time over five years.**

Mary Torrence, Revisor of Statutes, distributed a balloon to the bill and explained the changes that had been made. (See attachment 4)

Rep. Tom Sloan made a motion the balloon be adopted. Rep. Vaughn Flora seconded the motion. Motion carried. Questions and discussion followed.

Rep. Tom Sloan made a motion to amend the bill on page 1 line 35, strike "provide", add "implement a program providing". Rep. Vaughn Flora seconded the motion. Motion carried.

Rep. Laura McClure made a motion to amend the bill on page 1, after line 28, insert "(2) the withdrawal of water pursuant to the water right shall be properly and adequately metered;" (See attachment 5, #1). Rep. Vaughn Flora seconded the motion. Motion carried.

Rep. Laura McClure made a motion to amend the bill on page 2, after line 11, insert "(f) The provisions of this section shall expire on July 1, 2011." (See attachment 5 #2) Rep. Vaughn Flora seconded the motion. Motion failed.

Rep. Becky Hutchins made a motion to amend the **House Version of HB2047** into the bill. Rep. Dennis McKinney seconded the motion. Motion carried.

Rep. Becky Hutchins made a motion to amend the **House Version of HB2316** into the bill. Rep. Sharon Schwartz seconded the motion. Motion carried.

Chairperson Freeborn recognized Jamie Clover Adams, Secretary of Kansas Department of Agriculture. She proposed an amendment to the bill.

Rep. Tom Sloan made a motion, in response to a request by the Secretary of Agriculture, Jamie Clover Adams, to adopt an amendment to KSA 2000 Supp. 65-171d which would clarify current law regarding the respective jurisdictions of the Secretary of Health and Environment and the Secretary of Agriculture/Chief Engineer of the Division of Water Resources over matters pertaining water. Rep. Dan Johnson seconded the motion. Motion carried. Rep. Vaughn Flora voted no. Rep. Laura McClure voted no.

Rep. Becky Hutchins made a motion the bill be passed as amended. Rep. Bill Light seconded the motion. Motion carried.

Chairperson Freeborn thanked the committee for all of their hard work.

The meeting adjourned at 5:55 p.m. No further meetings have been scheduled.

Committee minutes for February 1, 6, 8, and March 1 were distributed to committee members and approved on March 29, 2001. Minutes for February 13, 15, 20 and March 6 were distributed to committee members and approved April 25, 2001. Minutes for March 8, 13, 15, and 20 were distributed to committee members and approved April 26, 2001.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 20, 2001

NAME	REPRESENTING
Dave Murphy	Friends of the Kaw
Paul Liechti	Kansas Biological Survey - KU
[illegible]	KBB
Jerry Eggleston	Kansas Farm Bureau
Linda Lauerman	Kansas Farm Bureau
Donna Eckenberger	Franklin Co. Farm Bureau
Doug Wareham	KFCA/KGFA
Almeda Edwards	Franklin Co. Farm Bureau
Mike Beam	Ks. Lvstk. Assn.
Alice Devine	KLA
[illegible]	KFB
Leslie Kaufman	KFB
Kathy Olds	KFB
Joe Miller	PW
Theresa Hedges	KDHE
Ron Hammerschmidt	KDHE
MIKE TATE	KDHE
Karl Mueldener	"
Pat Casey	KDHE
Jim Heinicke	City of Newton

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
Alene M. Gabel	KEAP
Jim Heinecke	City of Neaton
Mike Reedy	KEAP
Jamie Clover Adams	KS Dept. of Agriculture

The University of Kansas

Kansas Biological Survey

Comments To:

House Environment Committee

Regarding intermittent and ephemeral streams

Submitted by: Kansas Biological Survey

March 20, 2001

Representative Freeborn, members of the Committee, my name is Paul Liechti. I am the Assistant Director of the Kansas Biological Survey and I would like to thank you for the opportunity to speak before the committee.

As background, the Kansas Biological Survey (KBS) is a research and service unit of the University of Kansas and a non-regulatory agency of the State. As such, the KBS strives to provide accurate and objective information to decision-makers based on scientific research, which is perhaps a reason the Survey was asked to address the committee. Over the last 100-plus years of cataloging and studying the plants, animals and natural communities of Kansas, we have learned much about the State's biological resources; not only where things are found but also how the flora, fauna, and ecology of the State has changed over time. There is little doubt that, except for infrequent natural catastrophes, that the most dramatic changes that have occurred in the biological resources of Kansas have been the result of our own actions; making the responsibility of managing our natural resources increasingly complex.

I believe we all recognize the economic and ecological importance of larger streams and rivers, so I would like to focus on the smaller water bodies we in the field of aquatic biology frequently refer to as intermittent and ephemeral streams. My intent is to convey to you information mostly from a biological and ecological perspective so that you can take this into consideration as you continue to deliberate on Substitute for Senate Bill No. 204.

To the causal observer, non-perennial streams are easily overlooked because they provide little habitat for sport fishes and wildlife. Consequently, these streams are not often considered in land use planning and have generally received little in the way of protection efforts even though they have at least some legal status, which I believe was brought to your attention in testimony last week. One exception might be some level of protection afforded streams designated as critical habitat under the Kansas Nongame and Endangered Species Act.

Terminology and stream classification (scientific context, not regulatory) vary, but, in general, intermittent streams do not necessarily maintain surface flow throughout the year but usually retain pools, while ephemeral streams typically flow only for a few weeks or months during the year and usually dry completely. Intermittent and ephemeral stream ***ecosystems*** are common landscape features in Kansas. There are roughly 122,000 miles of streams in Kansas of which about 22,000 miles (18%) have sustained annual flow in most years. The remaining 100,000 miles (82%) are intermittent. (Mileages rounded from RF3 data.)

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I just used the term ***ecosystem***, and this is an important factor to keep in mind because this is truly an interconnected network or *system* where all the parts make up the whole. Individual streams or stream reaches are not isolated systems. Think of it like the human circulatory system with the small capillaries flowing into larger veins and arteries being analogous to tributary streams flowing into perennial streams and rivers. You have a healthy system when all the connected, contributing parts function properly.

Why should we pay attention to these ephemeral and intermittent streams? These streams are where there is the most contact between the terrestrial landscape and aquatic system. This is where natural storage and controlled release of sediments occurs, and where the processing and delivery of organic and inorganic material, and breakdown of contaminants begins. Initial break down of energy-rich, coarse plant material occurs here along with the conversion of elemental nutrients, like nitrogen and phosphorus, into forms more easily used by organisms in streams lower in the watershed. The break down is carried out by bacteria and fungi, and primary producers (algae) convert the elemental nutrients into a more usable form through photosynthesis.

Aquatic macroinvertebrates (insects, crustaceans, snails, worms, etc.) are the most important animals of intermittent streams, both functionally and numerically. Virtually all biological processes in intermittent streams involve or are mediated by macroinvertebrates. They promote further decomposition of coarse plant material by shredding it into smaller pieces and eating some of it. Aquatic macroinvertebrates are in turn eaten by larger macroinvertebrates, fish, birds, and amphibians that also inhabit these streams or near-stream habitats. The diversity of species in a given intermittent stream can run from a few to five dozen or more with numbers of individuals ranging from a handful to thousands per square meter. This rivals what we find in some of our perennial streams.

What about fishes? Although the numbers of different kinds of fishes is low (especially sport fishes) in comparison to perennial streams, intermittent streams do serve as refuge for a few tolerant and several adapted juvenile and adult fish species. But these fish assemblages do not utilize intermittent streams in a transient fashion. The assemblages often are highly stable and persist over long time periods through patterns of emigration and recolonization following the dry periods.

Yes, intermittent and ephemeral streams are harsh environments compared to perennial streams. But these streams provide habitat for an array of highly adapted macroinvertebrates and fishes that have unique life histories, biotic interactions and functions. It is because of this that the intermittent and ephemeral stream systems themselves are unique and add to the local and regional species diversity.

Due to your busy schedule and time constraints, I will end here. But please be aware that I have only scratched the surface of a large, complex topic.

Again, I would like to thank the committee for the opportunity to provide this information, and it would be my pleasure to answer any questions you may have.

Following is a list of factors known to impact or alter the natural biological character of intermittent streams. Although some may occur naturally, most result from human activities.

Channelization

Land use changes

Reduced flow

Impoundment

Riparian loss

Excessive organic enrichment

Pesticide exposure

Excessive sedimentation

Thermal pollution

page 1

Dear Representatives Freeborn and McLure:

As you know substitute SB 204 succeeded with amendments on the floor of the senate yesterday evening. The amendments have prompted the need for more changes from a water quality perspective, yet we must preserve the things that this bill is supposed to accomplish

I am sicker than a dog today. Rather than taking the chance of spreading my germs to the committee, I felt my time was better spent rethinking and rewording a few sections of the bill. I apologize that I cannot be there in person to present the ideas that I expressed below, but I know you will address my ideas fairly.

Nobody wants to take the chance that substitute SB 204 will have the affect of lowering the water quality standards or reduce KDHE's ability to protect public health. However the choice of words in the bill and the amendments may do just that unless the bill is amended to address those errors.

Proposed Subcommittee Amendment to Sub SB 204 as amended 3-12-01
March 13, 2001
>From Dave Murphy, Friends of the Kaw/River Keepers

Substitute for SENATE BILL No. 204

By committee on Natural Resources

3-12-01

AN ACT concerning the waters of the state, relating to classified stream segments and designated uses of classified stream segments.

Be it enacted by the Legislature of the State of Kansas:
Section 1. As used in this act:
(a) 1(1) "Classified stream segments" shall include all stream segments that are waters of the state as defined in subsection (a) of K.S.A. 65-161, and amendments thereto, and waters described in subsection (d) of K.S.A. 65-171d, and amendments thereto, that:
(A) Are indicated on the federal environmental protection agency's reach file 1 (RF1) (1982) and have the most recent 10-year median flow of equal to or in excess of 1 cubic foot per second based on data collected and evaluated by the United States geological survey or in the absence of stream segment flow data, calculations of flow conducted by extrapolation methods provided by the United States geological survey;

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(B) have the most recent 10-year median flow of equal to or in excess of 1 cubic foot per second based on data collected and evaluated by the United States geological survey or in the absence of stream segment flow data, calculations of flow conducted by extrapolation methods provided by the United States geological survey;
(C) are actually inhabited or have a history of being inhabited by threatened or endangered aquatic species listed in rules and regulations promulgated by the Kansas Department of Wildlife and Parks or the United States Fish and Wildlife Service;
(D) (i) scientific studies conducted by the department show that pooling of water during periods of zero flow provides important refuges for aquatic life and permits biological recolonization of intermittently flowing segments; and
(ii) the department conducts a cost/benefit analysis that takes into account the economic and social impact of classifying the stream segment and such analysis indicates that the benefits of classifying the stream segment outweigh the costs of classifying the stream segment; or
(E) are at the point of discharge on the stream segment and downstream from such point where the department has issued a national pollutant discharge elimination system permit. This paragraph shall not include permits for confined animal feeding operations.

Sub 204

(7) (A) "Recreational use" means:
(i) Primary contact recreational use is use of classified stream segment during the period from April 1 through October 31 of each year for human activities such as swimming, skin diving, water-skiing, wind surfing, boating or mussel harvesting where the entire human body is intended to be exposed to surface water to the extent that some inadvertent ingestion of water is probable;
(ii) Secondary contact recreational use:
(a) Is use of classified stream segment for human activities such as wading and fishing where the entire human body in not intended to be exposed to surface water to the extent that some inadvertent ingestion of water is not probable.

LEAVE THE REST OF THE BILL ALONE UNTIL YOU GET TO MY NEXT CHANGE IN SECTION 5 ON THE NEXT PAGE

Sec. 5 (a) Prior to October 31, 2001, the secretary shall publish as guidance designated use attainability analyses protocols for the revision and adoption of designated uses of classified stream segments to protect the public health or welfare and to enhance the quality of classified stream segments. The secretary shall take into consideration the uses and values of such waters for public water supplies, propagation of fish and wildlife, navigation and recreational, agricultural, industrial and other purposes. The designated use attainability analysis protocols shall include the expedited protocols as submitted by KDHE and as amended and approved by EPA through the rules and regulations process.

(b) DELETE THIS PARAGRAPH

(c) A use or uses shall not be designated unless it is demonstrated that such use or uses are historical uses or attainable, or it is demonstrated that the social and economic impacts of non-attainment of such use or uses outweigh the benefits resulting from the attainment of such use or uses.

17 I APOLOGIZE THAT I WAS NOT ABLE TO BE HERE TO PRESENT THESE IDEAS MYSELF.
I HOPE THE THOUGHTS ARE EASILY TRANSFERABLE TO THE BILL AS AMENDED ON 3-12-01.
18
19 NOTES: SECRETARY GRAEBER HAS SUBMITTED EXPEDITED UAAs TO EPA. THE EXPEDITED PROCESS IS EXPECTED TO COMPLY WITH THE CLEAN WATER ACT AND EPA REGULATIONS. THIS FACT, TOGETHER WITH THE APPROPRIATENESS OF THE CURRENT LANGUAGE OF THE BILL MAKES THE CHANGES ABOVE IMPORTANT.

COST/BENEFIT COMPARISONS SHOULD BE PROTECTIVE OF WATER QUALITY AND ECONOMIC USE, BUT THE CLEAN WATER ACT REQUIRES THE QUALITY OF THE WATER BE PROTECTED UNLESS A UAA SHOWS THAT SUCH USE IS NOT ATTAINABLE DUE TO THE ECONOMIC/SOCIAL ANALYSIS, NOT THE OTHER WAY AROUND.

WE CANNOT EXEMPT FEED LOTS FROM THIS BILL. SUCH AN EXEMPTION WILL LIMIT KDHE'S ABILITY TO PROTECT HUMAN HEALTH AND WATER QUALITY STANDARDS ACROSS THE STATE.

THE AMENDMENTS MADE ON 3-12-01 REMOVE ALL PRIMARY CONTACT RECREATION USES (AND THE ASSOCIATED WATER QUALITY TANDARDS) FROM ALL PRIVATE STREAMS AND ALL PUBLIC STREAMS THAT ARE NOT OPEN AND AVAILABLE TO THE PUBLIC. THE LAST AMENDMENT TO THE BILL CLEARLY STATES THAT "NOTHING IS THIS ACT SHALL BE
CONSTRUED TO AUTHORIZE PUBLIC ACCESS TO PRIVATE PROPERTY UNLESS SUCH PUBLIC ACCESS IS OTHERWISE AUTHORIZED BY LAW OR BY WRITTEN PERMISSION OF THE LANDOWNER.

[As Amended by Senate Committee of the Whole]

Session of 2001

Substitute for SENATE BILL No. 204

By Committee on Natural Resources

3-2

AN ACT concerning the waters of the state; relating to classified stream segments and designated uses of classified stream segments.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) (1) "Classified stream segments" shall include all stream segments that are waters of the state as defined in subsection (a) of K.S.A. 65-161, and amendments thereto, and waters described in subsection (d) of K.S.A. 65-171d, and amendments thereto, that:

(A) Are indicated on the federal environmental protection agency's reach file 1 (RF1) (1982) and have the most recent 10-year median flow of equal to or in excess of 1 cubic foot per second based on data collected and evaluated by the United States geological survey or in the absence of stream segment flow data, calculations of flow conducted by extrapolation methods provided by the United States geological survey;

(B) have the most recent 10-year median flow of equal to or in excess of 1 cubic foot per second based on data collected and evaluated by the United States geological survey or in the absence of stream segment flow data, calculations of flow conducted by extrapolation methods provided by the United States geological survey;

(C) ~~that~~ are actually inhabited by threatened or endangered aquatic species listed in rules and regulations promulgated by the Kansas department of wildlife and parks or the United States fish and wildlife service; ~~or~~

(D) (i) scientific studies conducted by the department show that pooling of water during periods of zero flow provides important refuges for aquatic life and permits biological recolonization of intermittently flowing segments; and

~~(ii) social and economic studies by the department indicate, by clear and convincing evidence, that the benefits of stream segment classification outweigh the social, economic or regulatory costs to the state and the regulated community.~~

[(ii) [~~the department conducts~~] a cost/benefit analysis [~~that takes~~] conducted by the department and taking *nto account the economic and social impact of classifying the*

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stream segment ~~*and such analysis*~~ *indicates that the benefits of classifying the stream segment outweigh the costs of classifying the stream segment; or*

, as consistent with the federal clean water act and federal regulations

[(E) are at the point of discharge on the stream segment and downstream from such point where the department has issued a national pollutant discharge elimination system permit. ~~*This paragraph shall not include permits for confined animal feeding operations.*~~*]*

other than a permit for a confined feeding facility, as defined in K.S.A. 65-171d, and amendments thereto

(2) Classified stream segments shall not include ephemeral streams; grass, vegetative or other waterways; culverts; or ditches.

other than those described in subsection (a)(1)(E)

(3) Any definition of classified stream or "classified stream segment" in rules and regulations or law that is inconsistent with this definition is hereby declared null and void.

(b) "Department" means the department of health and environment.

(c) "Designated uses of classified stream segments" shall be defined as follows:

(1) "Agricultural water supply use" means the use of a classified stream segment for agricultural purposes, including the following:

(A) "Irrigation" means the withdrawal of water from a classified stream segment for application onto land; or

(B) "livestock watering" means the provision of water from a classified stream segment to livestock for consumption.

(2) "Aquatic life support use" means the use of a classified stream segment for the maintenance of the ecological integrity of streams, lakes and wetlands, including the sustained growth and propagation of native aquatic life; naturalized, important, recreational aquatic life; and indigenous or migratory semi aquatic or terrestrial wildlife directly or indirectly dependent on surface water for survival. Categories of aquatic life support use include:

(A) "Special aquatic life use" means classified stream segments that contain combinations of habitat types and indigenous biota not found commonly in the state, or classified stream segments that contain representative populations of threatened or endangered species, that are listed in rules and regulations promulgated by the Kansas department of wildlife and parks or the United States fish and wildlife service.

waters

(B) "Expected aquatic life use" means classified stream segments containing habitat types and indigenous biota commonly found or expected in the state.

(C) "Restricted aquatic life use waters" means classified stream segments containing indigenous biota limited in abundance or diversity by the physical quality or availability of habitat, due to natural deficiencies or artificial modifications, compared to more suitable habitats in adjacent waters.

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(3) "Domestic water supply" means the use of a classified stream segment, after appropriate treatment, for the production of potable water.

(4) "Food procurement use" means the use of a classified stream segment for the obtaining of edible forms of aquatic or semi aquatic life for human consumption.

(5) "Groundwater recharge use" means the use of a classified stream segment for the replenishing of fresh or usable groundwater resources. This use may involve the infiltration and percolation of surface water through sediments and soils or the direct injection of surface water into underground aquifers.

(6) "Industrial water supply use" means the use of a classified stream segment for nonpotable purposes by industry, including withdrawals for cooling or process water.

(7) (A) "Recreational use" means:

~~(i) Class A primary contact recreation use is use of a classified stream segment for recreation during the period from April 1 through October 31 of each year, such classified stream segment is open to and accessible by the public, and capable of supporting the recreational activities of swimming, skin diving, water-skiing, wind surfing, boating or mussel harvesting where the body is intended to be immersed in surface water to the extent that some inadvertent ingestion of water is probable;~~

~~(ii) Class A secondary contact recreation use is use of a classified stream segment for recreation, such classified stream segment is open to and accessible by the public, and capable of supporting the recreational activities of wading and fishing where the body is not intended to be immersed and where ingestion of surface water is not probable;~~

~~(iii) Class B primary contact recreation use is use of a classified stream segment that is used during the period from April 1 through October 31 of each year, such classified stream segment is not open to and accessible by the public under Kansas law, except with written permission of the land owner, and capable of supporting the recreational activities of swimming, skin diving, water-skiing, wind surfing, boating or mussel harvesting where the body is intended to be immersed in surface water to the extent that some inadvertent ingestion of water is probable. If written permission of the landowner has not been granted, no recreational use shall be attainable and no recreational designation shall be assigned, or~~

~~(iv) Class B secondary contact recreation use is use of a classified stream segment used during the period from April 1 through October 31 of each year, such classified stream segment is not open to and accessible by the public under Kansas law, except with written permission of the land owner, and capable of supporting the recreational activities of wading and fishing where the body is not intended to be immersed and where ingestion of surface water is not probable. If written permission of the~~

~~landowner has not been granted, no recreational use shall be attainable and no recreational designation shall be assigned.~~

[(i) Primary contact recreational use is use of a classified stream segment for recreation during the period from April 1 through October 31 of each year, provided such classified stream segment (a) by law or written permission of the landowner is open to and accessible by the public and (b) is capable of supporting the recreational activities of swimming, skin diving, water-skiing, wind surfing, boating or mussel harvesting where the body is intended to be immersed in surface water to the extent that some inadvertent ingestion of water is probable;

[(ii) Secondary contact recreational use:

[(a) is use of a classified stream segment for recreation, provided such classified stream segment (1) by law or by written permission of the landowner is open to and accessible by the public; and (2) is capable of supporting the recreational activities of wading and fishing where the body is not intended to be immersed and where ingestion of surface water is not probable; or

[(b) may apply to classified stream segments that are not open to and accessible by the public under Kansas law provided such classified stream segment is capable of supporting the recreational activities of swimming, skin diving, water-skiing, wind surfing, boating, mussel harvesting, wading or fishing.]

~~(B)~~ Recreational use designations shall not apply to stream segments where the natural, ephemeral, intermittent or low flow conditions or water levels prevent recreational activities.

(d) "Ephemeral stream" means streams that flow only in response to precipitation and whose channel is at all times above the water table.

(e) "Secretary" means the secretary of health and environment.

Sec. 2. Notwithstanding any other provisions of law and in addition to the powers of the secretary pursuant to K.S.A. 65-171d, and amendments thereto, the secretary shall establish classified stream segments in Kansas and following such classification, designate use of such classified stream segments pursuant to sections 3 and 4, and amendments thereto.

Sec. 3. (a) Prior to December 31, 2002, the department shall review all stream segments listed on the 1999 Kansas surface water register and determine whether such stream segments meet the definitions of classified stream segments pursuant to paragraph (a)(1)(A) or (a)(1)(B) of section 1, and amendments thereto. The department shall begin the review with stream segments listed on the 1999 Kansas surface water register west of the 98th longitude line and consider stream flow data or methodologies of extrapolating flow from the United States geological survey.

(b) Prior to December 31, 2005, the department shall review all

or

is use of a classified stream segment for recreation, provided such classified stream segment (1) is

and (2)

(B) If opposite sides of a classified stream segment would have different designated recreational uses due to differences in public access, the designated use of the entire classified stream segment may be the higher attainable use, notwithstanding that such designation does not grant the public access to both sides of such segment.

(C)

stream segments listed on the 1999 Kansas surface water register which do not meet the definitions of classified stream segments pursuant to paragraph (a)(1)(A) or (a)(1)(B) of section 1, and amendments thereto, and determine whether such stream segments meet the definitions of classified stream segments pursuant to paragraph (a)(1)(C) ~~or (a)(1)(D)~~ of section 1, and amendments thereto. The department shall establish a procedure, adopted in rules and regulations, requiring that all of the reviews and findings have been met pursuant to paragraph (a)(1)(D) of section 1, and amendments thereto.

(c) All current stream classifications shall remain in effect until December 31, 2005 or as deleted or changed through the procedures set forth above.

~~Sec. 4. (a) Prior to July 15, 2001, the department shall make available a listing of all currently classified stream segments for which designated use attainability analyses have been completed, and such stream segments for which designated use attainability analyses have not been completed.~~

~~(b) For classified stream segments identified in subsection (a) for which designated use attainability analyses have not been completed, the department, at a minimum, shall complete a designated use attainability analyses for aquatic life support and recreation use according to the following schedule:~~

(1) An aggregate of at least ~~50%~~ of such classified stream segments shall have a designated use attainability analyses completed prior to October 31, 2002.

(2) An aggregate of at least ~~60%~~ of such classified stream segments shall have a designated use attainability analyses completed prior to October 31, 2003.

(3) An aggregate of at least ~~90%~~ of such classified stream segments shall have a designated use attainability analyses completed prior to October 31, 2004.

(4) All of such classified stream segments shall have designated use attainability analyses completed prior to October 31, 2005.

(c) Barring flooding or acts of God, which would prevent the department from completing designated use attainability analyses, the ~~schedule outlined in subsection (b)~~ shall be accelerated to allow for completion of designated use attainability analyses ~~prior to October 31, 2005~~.

(d) All current designated uses of classified stream segments listed on the Kansas surface water register 1999 shall remain in effect until December 31, ~~2005~~ or until deleted or changed through the procedures set forth above.

Sec. 5. (a) Prior to ~~October 31~~, 2001, the secretary shall publish as guidance designated use attainability analysis protocols for the revision and adoption of designated uses of classified stream segments to protect

, (a)(1)(D) or (a)(1)(E)

Sec. 4. (a) Prior to October 15, 2001, the department shall make publicly available a listing of all currently classified stream segments for which: (1) Designated use attainability analyses for recreational use have been completed; (2) recreational use has been determined not attainable; or (3) designated use attainability analyses for recreational use have not been completed. For such classified stream segments for which designated use attainability analyses for recreational use have not been completed, the department, at a minimum, shall complete a designated use attainability analysis for recreational use according to the following schedule:

25%

for recreational use

50%

for recreational use

75%

for recreational use

(b) Prior to October 15, 2002, the department shall make publicly available a listing of all currently classified stream segments for which: (1) Designated use attainability analyses for use other than recreational use have been completed; (2) use other than recreational use has been determined not attainable; or (3) designated use attainability analyses for use other than recreational use have not been completed. For such classified stream segments for which designated use attainability analyses for use other than recreational use have not been completed, the department, at a minimum, shall complete a designated use attainability analysis for use other than recreational use according to a schedule adopted before June 1, 2003, by rules and regulations of the secretary.

schedules provided for pursuant to subsections (a) and (b)

for all designated uses on or before December 31, 2007

2007,

December 1

3-5

the public health or welfare and to enhance the quality of classified stream segments. The secretary shall take into consideration the uses and values of such waters for public water supplies, propagation of fish and wildlife navigation and recreational, agricultural, industrial and other purposes.

(b) The designated use attainability analysis protocols shall include procedures for:

(1) ~~[Analysis]~~ of physical, chemical, biological and economic and social factors affecting attainment of a use or uses;

(2) ~~[analysis]~~ of naturally-occurring pollutant concentrations and conditions affecting attainment of a use or uses;

(3) ~~[analysis]~~ of natural, ephemeral, intermittent or low flow conditions or water levels affecting attainment of a use or uses;

(4) ~~[analysis]~~ of human conditions that prevent attainment of a use or uses, including state laws, and that cannot be remedied or that would cause more damage or an inproportionate cost to remedy than to leave in place;

(5) ~~[analysis of hydro-logic]~~ modifications such as dams and diversions affecting attainment of a use or uses;

(6) ~~[analysis]~~ of physical conditions related to natural features such as lack of proper substrate, cover, flow, depth, pools, riffles and other stream morphology affecting attainment of a use or uses;

~~[(7) analysis of economic and social factors, and for determining whether economic and social impact would be caused that is not outweighed by the benefits of attainment of a use or uses;~~

~~(8) analysis of whether there are~~ cost-effective and reasonable best management practices for non-point source pollutant control where such control would be needed to attain a use or uses; and

~~(9)~~ qualified persons outside the department to conduct designated use attainability analyses.

(c) A use or uses shall not be designated unless it is demonstrated that such use or uses are actually existing and attainable, or unless it is demonstrated that the ***[adverse]*** social and economic ~~impact~~ ***[impacts]*** of designating a use or uses that are not actually existing are outweighed by the ***[social and economic benefits resulting from the]*** attainment of such use or uses.

~~(d) Within 60 days of receipt of a designated use attainability analysis the department shall review and provide a written determination as to whether a proposed designated use is approved or disapproved.~~

~~(e) Any person aggrieved by such approval or disapproval may within 15 days of receipt of such approval or disapproval request in writing a hearing on the approval or disapproval. Upon receipt of a timely request a hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any action of the secretary pursuan-~~

, if applicable for the respective designated use,

Review

review

review of hydrologic

review

(7) identification and description of

(8)

3-4

~~to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.~~

~~(f) At least once each calendar year, the department shall publish in the Kansas register any changes in the designated uses of any classified stream segments.~~

Sec. 6. (a) Annually, on or before the first day of the legislative session, the secretary shall prepare and submit a report to the governor and the chairperson, vice-chairperson and ranking minority member of the standing committees of the house of representatives and the senate on environment and natural resources regarding the status of completing the classification of streams as required in section 3, and amendments thereto, and designated use attainability analyses as required in section 4, and amendments thereto.

(b) On or before February 15, 2003, the secretary shall report to the governor and the chairperson, vice-chairperson and ranking minority member of the standing committees of the house of representatives and the senate on environment and natural resources regarding the status of new methodologies of measuring stream flow, in particular that under development by the United States geological survey.

[Sec. 7. Subject to appropriations, there shall be an additional employee at the state conservation commission to work on total maximum daily load compliance and to coordinate with the department and other appropriate federal and state agencies to further implement voluntary incentive based conservation programs to protect water quality.

[Sec. 8. Nothing in this act shall be construed to authorize public access to private property unless such public access is otherwise authorized by law or by written permission of the landowner.]

Sec. ~~7.~~ [9] This act shall take effect and be in force from and after *[September 1, 2001, and]* its publication in the statute book.

(d) Within 60 days after receipt of submission of a use attainability analysis, the department shall review and provide a written determination of whether the documentation submitted is complete

(e) Within 60 days after receipt of submission of a complete use attainability analysis, the department shall review and provide a written determination of whether revision of the designated use will be proposed as a rule and regulation. Any person aggrieved by such determination may make written request, within 30 days after receipt of such determination, for a meeting with the secretary or the secretary's designee to discuss the determination and exchange information.

(f) All proposed revisions to the surface water register shall be proposed for adoption in accordance with the rules and regulations filing act (K.S.A. 77-415, and amendments thereto).

(g) Following the promulgation of a revision of the surface water register as a proposed rule and regulation pursuant to subsections (d) and (e), any person aggrieved by such promulgation, within 15 days after publication of the proposed rule and regulation, may request a hearing by filing an application for an order under the Kansas administrative procedure act. Any action of the secretary in a proceeding pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(h) The Kansas surface water register shall be updated and published annually.

;

(1) Require the secretary to designate the use of any classified stream as secondary contact recreational use pursuant to subsection (c)(7)(A)(ii)(b) of section 1, and amendments thereto; or

(2)

Sec. 9. If any provisions of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.

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[As Amended by Senate Committee of the Whole]

Session of 2001

SENATE BILL No. 237

By Senator Huelskamp

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AN ACT supplementing the Kansas water appropriation act; providing for certain accounts for deposit of certain water under a water right; providing for term permits for use of such water, less a conservation element*[; amending K.S.A. 82a-708a and repealing the existing section]*.

Be it enacted by the Legislature of the State of Kansas:

[New] Section 1. (a) As used in this section:

(1) "Base average usage" means the average amount of water actually used for a beneficial use under a groundwater water right during calendar years ~~1998, 1999 and~~ 2000, excluding any amount used in any such year in excess of the amount authorized by such water right.

(2) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(b) Any holder of a groundwater water right may establish a flex account where the holder may deposit, in advance, water from such water right for any five consecutive calendar years, subject to the following:

(1) The water right must be vested or shall have been issued a certificate of appropriation;

(2) the water right shall not have been abandoned and shall be in good standing, based on past water usage and compliance with the terms of the holder's permit and all applicable provisions of law and orders of the chief engineer; and

(3) the amount of water that shall be deposited in the account shall be 90% of the amount of the holder's base average usage times five.

(c) The chief engineer shall provide for the issuance of term permits to holders of groundwater water rights who have established flex accounts in accordance with this section. Such term permits shall authorize the use of water in a flex account at any time during the five consecutive calendar years for which the application for the term permit is made, without annual limits on such use. Application for any such term permit shall be filed not later than October 10, of the year preceding the first year for which the application is made.

(d) *[All costs of administration of this section shall be paid from*

1996 through

not located within the boundaries of a chartered water bank

Term permits provided for by this section shall be subject to the following:

(1) A separate term permit establishing the maximum combined water allocation shall be required for each point of diversion using the base average usage for such point of diversion. All other requirements of the Kansas water appropriation act shall apply to such term permit and the total water right, except for the annual appropriation amount which is replaced by the maximum combined allocation for the term of the permit.

(2) The authorized place of use for the term permit shall not be greater than that authorized by the existing groundwater right or rights that authorize the point of diversion.

(3) The total diversion of water from the point of diversion authorized pursuant to all water rights shall be limited to the quantity authorized by the term permit for the five-year period of the permit.

(4) The chief engineer may adopt rules and regulations to define criteria for such term permits when a water right authorizes multiple points of diversion or multiple water rights authorizing a point of diversion or overlapping places of use.

(5) The priority of the term permit shall be the date the application for the permit is received.

(6) Except as explicitly provided for by this section, such term permits shall be subject to all provisions of the Kansas water appropriation act, and rules and regulations adopted under such act, and nothing in this section shall authorize impairment of any vested right or prior appropriation right by the exercise of such term permit.

(e)

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fees for term permits provided for by this section. Any appropriation or transfer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be repaid to the fund from which such appropriation or transfer is made. At the time of repayment, the secretary of agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.

~~(e)~~ This section shall be part of and supplemental to the Kansas water appropriation act.

[Sec. 2. K.S.A. 82a-708a is hereby amended to read as follows: 82a-708a. (a) Any person may apply for a permit to appropriate water to a beneficial use, notwithstanding that the application pertains to the use of water by another, or upon or in connection with the lands of another. Any rights to the beneficial use of water perfected under such application shall attach to the lands on or in connection with which the water is used and shall remain subject to the control of the owners of the lands as in other cases provided by law.

[(b) Except as otherwise provided in subsections (d) ~~and (e)~~, (e) and (f), each application for a permit to appropriate water, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of acre feet in accordance with the following:

[Acre Feet	*Fee*
[0 to 100	*$100*
[101 to 320	*$150*
[More than 320	*$150 + $10 for each additional 100 acre feet or any part thereof*

[(c) Except as otherwise provided in subsections (d) ~~and (e)~~, (e) and (f), each application for a permit to appropriate water for storage, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

[Storage-Acre Feet	*Fee*
[0 to 250	*$100*
[More than 250	*$100 + $10 for each additional 250 storage-acre feet or any part thereof*

[(d) Each application for a term permit pursuant to section 1, and

(f) The chief engineer shall submit a written report on the implementation of this section to the house standing committee on environment and the senate standing committee on natural resources on or before February 1 of each year.

(g)

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amendments thereto, shall be accompanied by an application fee established by rules and regulations of the chief engineer in an amount not to exceed $400 for the five-year period covered by the permit.

[(e) For any application for a permit to appropriate water, except applications for permits for domestic use, which proposes to appropriate by both direct flow and storage, the fee charged ~~shall be only one fee and~~ shall be the fee under subsection (b) ~~or subsection (c), (c) or (d), whichever is~~ larger, but not both fees ~~largest~~

[~~(e)~~ (f) Each application for a permit to appropriate water for water power purposes shall be accompanied by an application fee of $100 plus $200 for each 100 cubic feet per second, or part thereof, of the diversion rate requested in the application for the proposed project.

[~~(f)~~ (g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

[Sec. 3. K.S.A. 82a-708a is hereby repealed.]

Sec. ~~2.~~ *[4]* This act shall take effect and be in force from and after its publication in the statute book.

or subsection (c), whichever is larger, but not both fees

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PROPOSED AMENDMENTS TO SENATE BILL 237, AS AMENDED BY SCOW

(1) On page 1, after line 28, insert:

"(2) the withdrawal of water pursuant to the water right shall be properly and adequately metered;"

and renumber the remaining subsections accordingly

(2) On page 2, after line 11, insert:

"(f) The provisions of this section shall expire on July 1, 2011."

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