

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairperson Robert Tyson at 8:30 a.m. on March 1, 2001 in Room 423-S of the Capitol.

All members were present except: all present

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Judy Krase, Committee Secretary

Conferees appearing before the committee:

Dr. Charles Perry, Research Hydrologist, U.S. Geological Survey
Edward R. Moses, Kansas Aggregate Producers' Association
Terry Leatherman, Kansas Chamber of Commerce Industry
Jere White, Kansans for Common Sense Water Policy
Allie Devine, Kansans for Common Sense Water Policy
Dave Murphy, Friends of the Kaw
Dwight Metzler, private citizen, Topeka Kansas

Others attending: See attached list

Senator Tyson stated that this committee meeting would be a continuation of the February 8 hearing on **SB 204**. Staff of the Revisor of Statutes office reviewed the subcommittee report from February 28 on the **proposed substitute for SB 204 (Attachment 1)**. Jill Wolters pointed out that there is a minor amendment needed in Section 4 under (b)(4), inserting the word "designated" before the words "use attainability analyses" for clarification.

The first conferee was Dr. Charles Perry, Research Hydrologist, U.S. Geological Survey, who briefed the committee on Kansas streams. Dr. Perry said he was here to give facts and examples, not to recommend any values or maps but to present what is available for use. He then defined what a stream is according to Webster's Dictionary, which says it is a flow of water along the depression of the earth. He said the U.S. Geological Survey prides itself on knowing the flow of water in streams. He handed out a map showing two different types of streams and a chart showing Kansas streamflow data (Attachment 2) and said that whatever method is used to classify streams it needs to be scientific, defensible and equitable across the state.

The second conferee was Edward R. Moses, a proponent of the bill, representing the Kansas Aggregate Producers Association (Attachment 3).

The third conferee was Terry Leatherman, a proponent of the bill, representing the Kansas Chamber of Commerce (Attachment 4).

The fourth conferee was Jere White, a proponent of the bill, representing Kansans for Common Sense Water Policy (Attachment 5).

The fifth conferee was Allie Devine, a proponent of the bill, also representing Kansans for Common Sense Water Policy. Questions and discussion followed.

The sixth conferee opponent of **SB 204** was Dave Murphy, Friends of the KAW, who said he still has a lot of reservations and the new substitute bill presents a whole new set of issues that need to be worked out.

The seventh conferee and opponent of the bill was Dwight Metzler (Attachment 6).

Written testimony was submitted by DeEtte Huffman, Arkansas River Coalition, Inc. (Attachment 7). He

was an opponent of **SB 204**.

Senator Tyson said the hearing would continue at the next committee meeting.

The meeting adjourned at 9:30.

The next meeting is scheduled for March 2 at 8:30 a.m.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: 3-1-01

NAME	REPRESENTING
Ron Gaches	KSPE
Kent Muldren	KDHE
Mike /	KDHE
Joe Fund	KDHE
Ed Rowe	League of Women Voters / KS
Joe Hoeber	KS Gov. Council
Dag Wareham	KGFA / KFCA
John Barnes	KNRC
Jim Putnam	USGS, LAWRENCE
Dave Wolock	USGS
Charles Perry	USGS Lawrence
Terry Leatherman	KCCT
Mike Beam	Ks LUSTK Assn.
Leslie Kaufman	Kansas Farm Bureau
Bill Jolley	Kansas Farm Bureau
Joe White	KCGA - KGSPA
Greg Krissch	KCGA - KGSPA
Steve Montgomery	CAS Construction
Susan Stover	Kansas Water Office
Miko Jensen	Ks Park Assoc
Bob Tolan	Ks Contractors
Ed Moran	Ks. Agg. Prod. Assn.
Don Reyer	KCA

3
4 AN ACT concerning the waters of the state; relating to classified stream segments and designated
5 uses of classified stream segments.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8
9 Section 1. As used in this act:

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

13
14 (A) Are indicated on the federal environmental protection agency's reach file 1 (RF1)
15 (1982) and have a 30-year median flow of equal to or in excess of 1 cubic foot per second based
16 on data collected and evaluated by the United States geological survey or in the absence of
17 stream segment flow data, calculations of flow conducted by extrapolation methods by the
18 United States geological survey;

19
20 (B) have a 30-year median flow of equal to or in excess of 1 cubic foot per second based
21 on data collected and evaluated by the United States geological survey or in the absence of
22 stream segment flow data, calculations of flow conducted by extrapolation methods by the
23 United States geological survey;

24
25 (C) that are actually inhabited by threatened or endangered aquatic species listed in rules
26 and regulations promulgated by the Kansas department of wildlife and parks or the United States
27 fish and wildlife service; or

28
29 (D) (i) Scientific studies conducted by the department show that pooling of water
30 during periods of zero flow provides important refuges for aquatic life and permits biological
31 recolonization of intermittently flowing segments; and

32
33 (ii) social and economic studies by the department indicate, by clear and convincing
34 evidence, that the benefits of stream segment classification outweigh the social, economic or
35 regulatory costs to the state and the regulated community.

36
37 (2) Classified stream segments shall not include ephemeral streams; grass, vegetative or
38 other waterways; culverts; or ditches.

39
40 (3) Any definition of "classified stream" or "classified stream segment" in rules and
41 regulations or law that is inconsistent with this definition is hereby declared null and void.

42
43 (b) "Department" means the department of health and environment.

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

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

4
5 (A) "Irrigation" means the withdrawal of water from a classified stream segment for
6 application onto land;

7
8 (B) "livestock watering" means the provision of water from a classified stream segment
9 to livestock for consumption; or

10
11 (C) other agricultural use.

12
13 (2) "Aquatic life support use" means the use of a classified stream segment for the
14 maintenance of the ecological integrity of streams, lakes and wetlands, including the sustained
15 growth and propagation of native aquatic life; naturalized, important, recreational aquatic life;
16 and indigenous or migratory semi aquatic or terrestrial wildlife directly or indirectly dependent
17 on surface water for survival. Categories of aquatic life support use include:

18
19 (A) "Special aquatic life use" means classified stream segments that contain
20 combinations of habitat types and indigenous biota not found commonly in the state, or classified
21 stream segments that contain representative populations of threatened or endangered species, that
22 are listed in rules and regulations promulgated by the Kansas department of wildlife and parks or
23 the United States fish and wildlife service.

24
25 (B) "Expected aquatic life use" means classified stream segments containing habitat types
26 and indigenous biota commonly found or expected in the state.

27
28 (C) "Restricted aquatic life use waters" means classified stream segments containing
29 indigenous biota limited in abundance or diversity by the physical quality or availability of
30 habitat, due to natural deficiencies or artificial modifications, compared to more suitable habitats
31 in adjacent waters.

32
33 (3) "Domestic water supply" means the use of a classified stream segment, after
34 appropriate treatment, for the production of potable water.

35
36 (4) "Food procurement use" means the use of a classified stream segment for the
37 obtaining of edible forms of aquatic or semi aquatic life for human consumption.

38
39 (5) "Groundwater recharge use" means the use of a classified stream segment for the
40 replenishing of fresh or usable groundwater resources. This use may involve the infiltration and
41 percolation of surface water through sediments and soils or the direct injection of surface water
42 into underground aquifers.

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

3
4 (7) (A) "Recreational use" means:

5
6 (i) Class A primary contact recreation use is use of a classified stream segment for
7 recreation during the period from May 1 through September 30; such classified stream segment is
8 open to and accessible by the public; and capable of supporting the recreational activities of
9 swimming, skin diving, water-skiing or wind surfing where the body is intended to be immersed
10 in surface water to the extent that some inadvertent ingestion of water is probable;

11
12 (ii) Class A secondary contact recreation use is use of a classified stream segment for
13 recreation; such classified stream segment is open to and accessible by the public; and capable of
14 supporting the recreational activities of wading, boating, fishing and mussel harvesting where the
15 body is not intended to be immersed and where ingestion of surface water is not probable;

16
17 (iii) Class B primary contact recreation use is use of a classified stream segment that is
18 used during the period from May 1 through September 30; such classified stream segment is not
19 open to and accessible by the public under Kansas law, except with written permission of the
20 land owner; and capable of supporting the recreational activities of swimming, skin diving,
21 water-skiing or wind surfing where the body is intended to be immersed in surface water to the
22 extent that some inadvertent ingestion of water is probable. If written permission of the
23 landowner has not been granted no recreational use shall be attainable and no recreational
24 designation shall be assigned; or

25
26 (iv) Class B secondary contact recreation use is use of a classified stream segment used
27 during the period from May 1 through September 30; such classified stream segment is not open
28 to and accessible by the public under Kansas law, except with written permission of the land
29 owner; and capable of supporting the recreational activities of wading, boating, fishing and
30 mussel harvesting where the body is not intended to be immersed and where ingestion of surface
31 water is not probable. If written permission of the landowner has not been granted no
32 recreational use shall be attainable and no recreational designation shall be assigned.

33
34 (B) Recreational use designations shall not apply to stream segments where the natural,
35 ephemeral, intermittent or low flow conditions or water levels prevent recreational activities.

36
37 (d) "Ephemeral stream" means streams that flow only in response to precipitation and
38 whose channel is at all times above the water table.

39
40 (e) "Secretary" means the secretary of health and environment.

41
42 Sec. 2. Notwithstanding any other provisions of law and in addition to the powers of the
43 secretary pursuant to K.S.A. 65-171d, and amendments thereto, the secretary shall establish

1 classified stream segments in Kansas and following such classification, designate use of such
2 classified stream segments pursuant to sections 3 and 4, and amendments thereto.

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

11
12 (b) Prior to December 31, 2005, the department shall review all stream segments listed on
13 the 1999 Kansas surface water register which do not meet the definitions of classified stream
14 segments pursuant to paragraph (a)(1)(A) or (a)(1)(B) of section 1, and amendments thereto, and
15 determine whether such stream segments meet the definitions of classified stream segments
16 pursuant to paragraph (a)(1)(C) or (a)(1)(D) of section 1, and amendments thereto. The
17 department shall establish a procedure, adopted in rules and regulations, requiring that all of the
18 reviews and findings have been met pursuant to paragraph (a)(1)(D) of section 1, and
19 amendments thereto.

20
21 (c) All current stream classifications shall remain in effect until December 31, 2005 or as
22 deleted or changed through the procedures set forth above.

23
24 Sec. 4. (a) Prior to July 15, 2001, the department shall make available a listing of all
25 currently classified stream segments for which use attainability analyses have been completed,
26 and such stream segments for which use attainability analyses have not been completed.

27
28 (b) For classified stream segments identified in subsection (a) for which use attainability
29 analyses have not been completed, the department, at a minimum, shall complete use attainability
30 analyses for aquatic life support and recreation use according to the following schedule:

31
32 (1) An aggregate of at least 30% of such classified stream segments shall have use
33 attainability analyses completed prior to October 31, 2002.

34
35 (2) An aggregate of at least 60% of such classified stream segments shall have use
36 attainability analyses completed prior to October 31, 2003.

37
38 (3) An aggregate of at least 90% of such classified stream segments shall have use
39 attainability analyses completed prior to October 31, 2004.

40
41 (4) All of such classified stream segments shall have use attainability analyses completed
42 prior to October 31, 2005.

1 (c) Barring flooding or acts of God, which would prevent the department from
2 completing use attainability analyses, the schedule outlined in subsection (b) shall be accelerated
3 to allow for completion of use attainability analyses prior to October 31, 2005.
4

5 (d) All current designated uses of classified stream segments listed on the Kansas surface
6 water register 1999 shall remain in effect until December 31, 2005 or until deleted or changed
7 through the procedures set forth above.
8

9 Sec. 5. (a) Prior to October 31, 2001, the secretary shall publish as guidance use
10 attainability analysis protocols for the revision and adoption of designated uses of classified
11 stream segments to protect the public health or welfare and to enhance the quality of classified
12 stream segments. The secretary shall take into consideration the uses and values of such waters
13 for public water supplies, propagation of fish and wildlife, navigation and recreational,
14 agricultural, industrial and other purposes.

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

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

18 (2) analysis of naturally-occurring pollutant concentrations and conditions affecting
19 attainment of a use or uses;

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

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

25 (5) analysis of hydro logic modifications such as dams and diversions affecting
26 attainment of a use or uses;

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

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

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

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

2 (c) A use or uses shall not be designated unless it is demonstrated that such use or uses
3 are actually existing and attainable, or unless it is demonstrated that the social and economic
4 impact of designating a use or uses that are not actually existing are outweighed by the
5 attainment of such use or uses.

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

9 (e) Any person aggrieved by such approval or disapproval may within 15 days of receipt
10 of such approval or disapproval request in writing a hearing on the approval or disapproval.
11 Upon receipt of a timely request, a hearing shall be conducted in accordance with the provisions
12 of the Kansas administrative procedure act. Any action of the secretary pursuant to this
13 subsection is subject to review in accordance with the act for judicial review and civil
14 enforcement of agency actions.

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

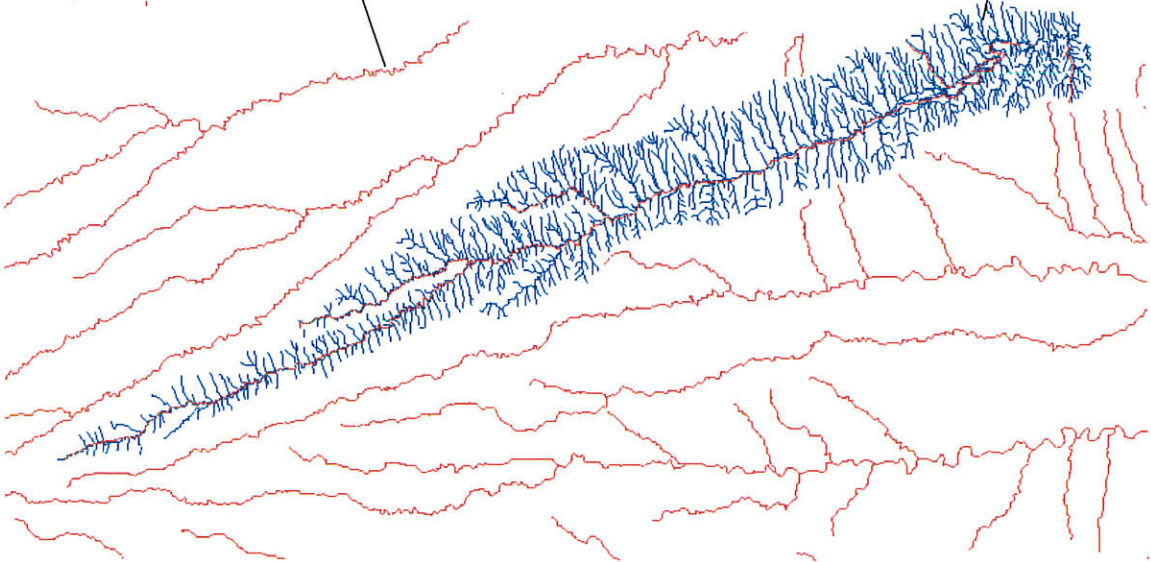
17 Sec. 6. (a) Annually, on or before the first day of the legislative session, the secretary
18 shall prepare and submit a report to the governor and the chairperson, vice-chairperson and
19 ranking minority member of the standing committees of the House of Representatives and the
20 Senate on environment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

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

28 Sec. 6. This act shall take effect and be in force from and after its publication in the
29 statute book.

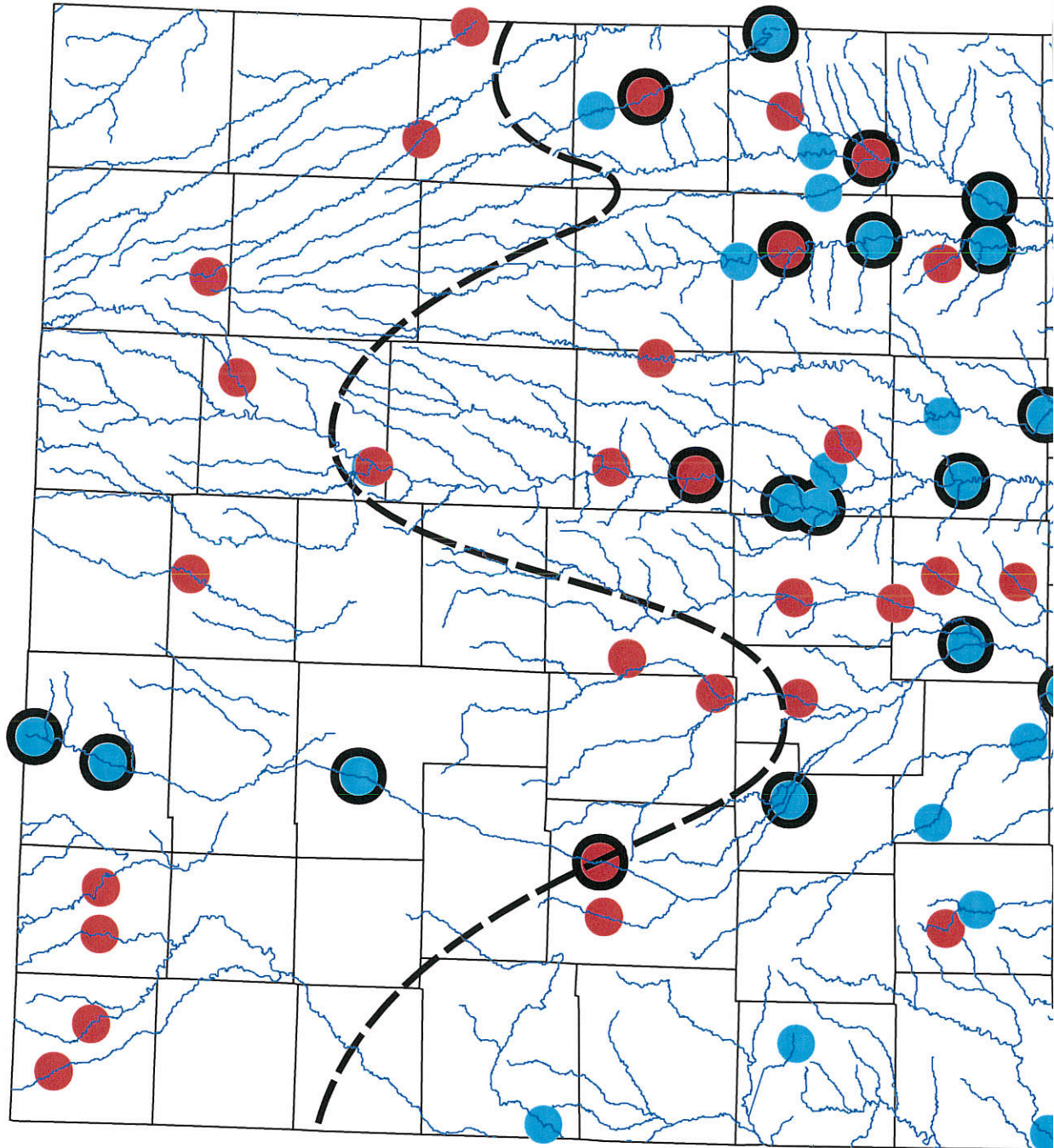
EPA Reach File 1 (RF1)

National Hydrography
Dataset (NHD)



Kansas Streamflow

(at least 10 years of data)



EXPLANATION

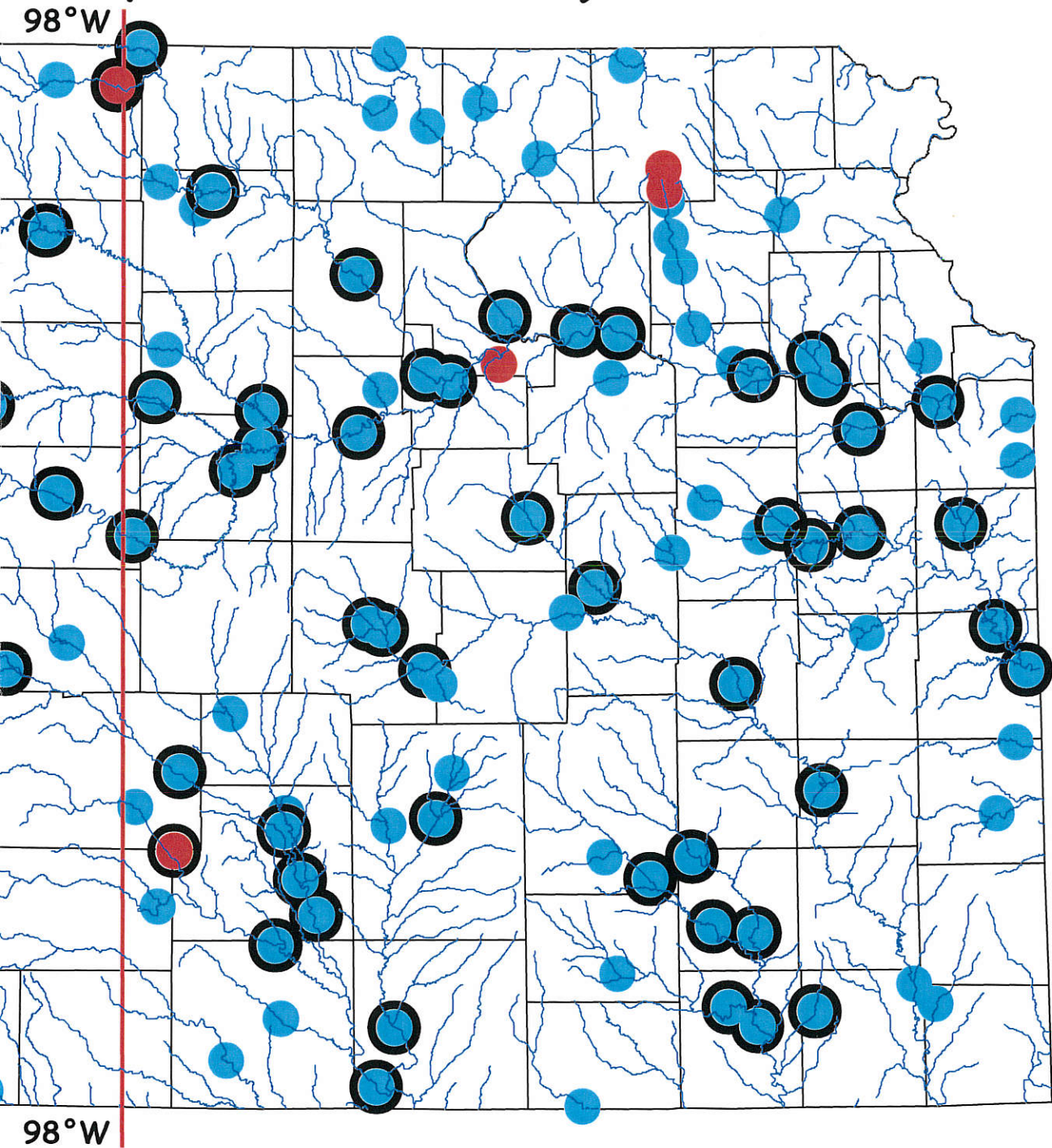
Median streamflow at USGS gaging stations, in cubic feet per second (cfs)

- Less than 1 cfs
- Greater than 1 cfs

- Stream from
- Streamflow
- Median streamflow per mile basin

Streamflow Data

(daily data since 1967)



EPA Reach File 1

affected by reservoir

streamflow of 500-square-
feet is 0.1 cfs



Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: March 1, 2001
By: Edward R. Moses, Managing Director
Kansas Aggregate Producers' Association
Regarding: Senate Bill 204
Before: Senate Natural Resources Committee

Mr. Chairman and Members of the Committee:

My name is Edward R. "Woody" Moses appearing on behalf of the Kansas Aggregate Producers' Association. The Kansas Aggregate Producers' Association is an industry wide trade association comprised of over 250 members located in all 165 legislative districts in this state, providing basic building materials to all Kansans. We are happy to be here today to give our support for SB 204.

The Kansas Aggregate Producers' Association has long supported the need for effective conservation and environmental protection legislation. One of our primary guiding principles is to conduct our operations in such a manner as to utilize our natural resources in an environmentally friendly manner. In pursuit of this goal, we have supported legislation in the past, examples of which are the Surface-mining Land Conservation and Reclamation Act, the NPDES permitting process, and the establishment of the stormwater discharge program for the state of Kansas. While our industry always strives to maintain high environmental standards and play by the rules, it is sometimes difficult due to the fact that the rules are not always clear or practical.

We appear before you in support of SB 204, as we believe it, by clearly defining standards, will allow our industry to more effectively comply with the overall goals of the Clean Water Act. SB 204 would codify the manner in which use designations and stream classifications are established. Stream classification and use designations are important elements of the Clean Water Act and must be achieved by a sound and logical process in order for our industry to understand what it is that we are to comply with. The current classification and designation process has resulted in a hodge-podge of streams being listed on the surface water registry with little or no real data to support the classification or designation.

SB 204 would provide the Kansas Department of Health & Environment and related agencies with clear direction regarding the classification of streams and use designations. Having a reliable system in law will achieve many long term benefits. Most importantly, for our industry, it will allow us to continue providing natural resources to the public in an environmentally friendly and economical manner. We urge this committee to take positive action on SB 204. We thank you for your time and consideration. I will be happy to respond to any questions at this time.

Senate Natural Resources Committee

Date 3-1-01

Attachment # 3

LEGISLATIVE TESTIMONY



The Unified Voice of Business

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: kcci@kansaschamber.org • www.kansaschamber.org

SB 204

March 1, 2001

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Commerce

by

Terry Leatherman

Vice President -- Legislative Affairs

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I represent the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to comment on SB 204, and to express KCCI's support for legislative action to address state management of water quality in Kansas.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The Kansas Chamber has been very concerned about the actions of the federal Environmental Protection Agency this past summer and fall regarding water quality issues in Kansas. Overall, the

Senate Natural Resources Committee

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Attachment # 4

... efforts are an example of Washington D.C. at its worst, imposing sweeping changes in water regulation, with little positive environmental impact, and without the direction of Congress.

In September, the EPA action prompted the KCCI Board of Directors to support a policy statement opposing this federal takeover of the state's responsibility to regulate the water quality in Kansas. The business community's concern about this EPA initiative was also evident at KCCI's Kansas Business Congress last fall in Wichita. At that annual Kansas Chamber event, our members develop a list of major state legislative objectives. Supporting state initiatives to address the federal effort involving Kansas water quality became the 5th item on this year's list of major legislative objectives developed at the Business Congress.

KCCI supported SCR 1605, which was approved by the Kansas Senate, which urges the EPA action be reversed. However, in light of the EPA actions, state legislation to clarify and direct the Kansas Department of Health and Environment in managing state water quality is needed. As a result, KCCI supports and applauds the efforts of this Committee to develop Substitute for SB 204.

Thank you for the opportunity to comment on KCCI's concerns regarding water quality regulations. I would be happy to respond to any questions.

Kansans for Common Sense Water Policy

Kansas Farm Bureau • Kansas Livestock Association • Kansas Corn Growers Association • Kansas Grain Sorghum Producers Association • Kansas Association of Wheat Growers • Kansas Fertilizer and Chemical Association • Kansas Grain and Feed Association • Kansas Dairy Association • Farmland • Agriliance • U.S. Premium Beef

Thank you Mr. Chairman and members of the committee for the opportunity to provide testimony today. I am Jere White, spokesperson for the Kansans for Common Sense Water Policy Coalition. Members of this coalition are the Kansas Association of Wheat Growers, Kansas Corn Growers Association, Kansas Dairy Association, Kansas Farm Bureau, Kansas Fertilizer and Chemical Association, Kansas Grain and Feed Association, Kansas Grain Sorghum Producers Association, Kansas Livestock Association, Farmland, Agriliance, and U.S. Premium Beef.

We provided extensive comments to this committee earlier in support of the original bill. At that time, we indicated that we were ready to roll up our sleeves to work on improving that bill. And while we are not satisfied that this revised bill meets all of the expectations placed on us by our members and the hundreds that testified before the EPA last fall, we are here today to provide testimony in support of Substitute for Senate Bill 204. The revised bill provides a pragmatic approach to protecting the water quality of Kansas and allows precious economic resources allocated for that protection to be targeted towards the highest priority waters and not towards dry and intermittent streams. It is a compromise that works for Kansas.

As we have constantly maintained, it is clearly the role of the state under the Clean Water Act to define which waters should be classified. Since 1994, when KDHE began using the US EPA River Reach 2 map to determine what streams would be classified, the state has not acted responsibly in this role; passage of this legislation is the first step toward correcting the problem and the state assuming that responsibility. The sad fact is that the River Reach 2 system was being replaced by most who had ever thought of using it

Senate Natural Resources Committee

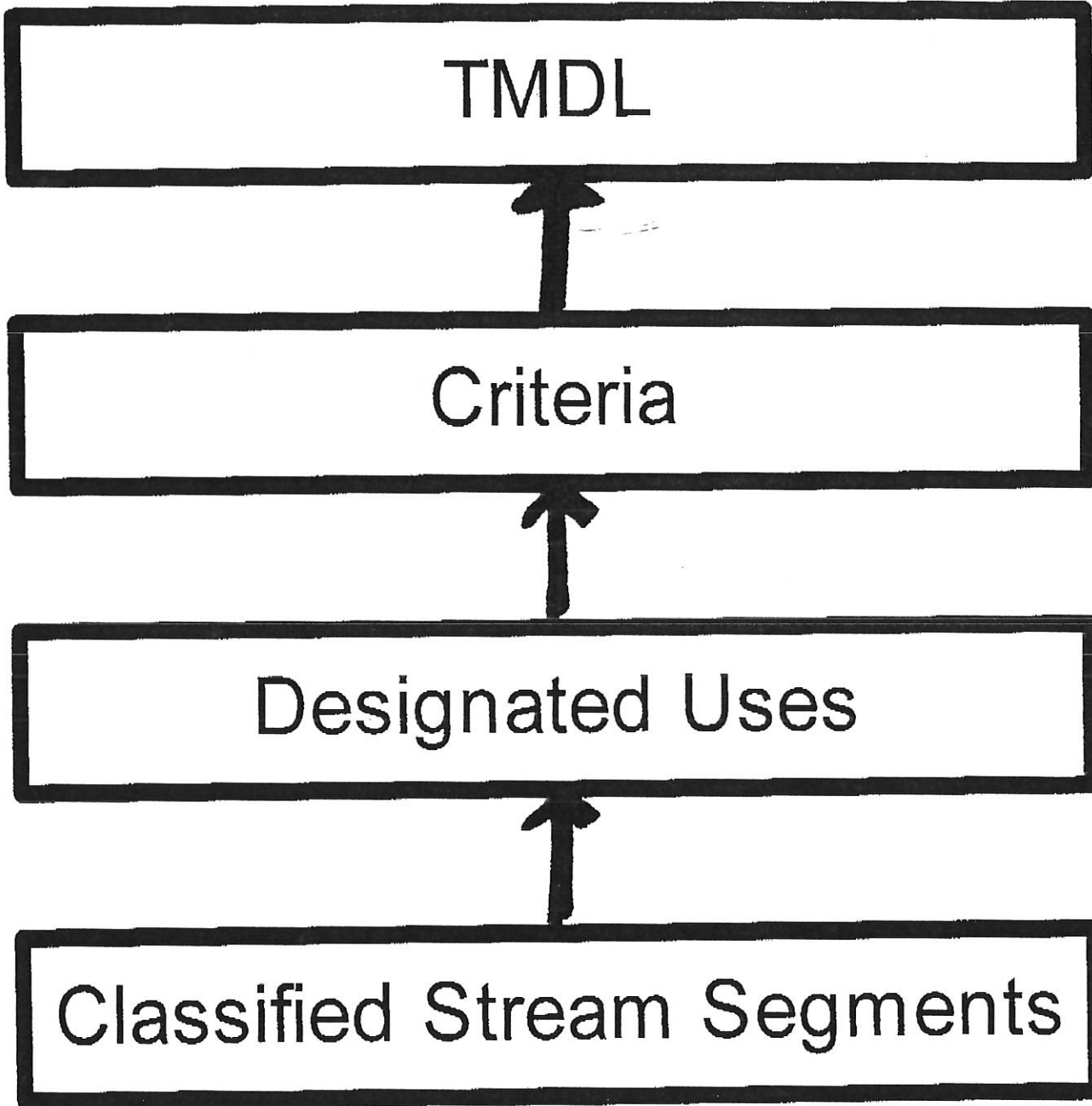
Date 3-1-01

Attachment # 5

even before KDHE implemented its use in Kansas. This bill now would have Kansas utilizing a system that is known and used all over the United States, River Reach 1.

Substitute for SB 204 would put in law what is reality in Kansas. First, by changing the definition of a classified stream, the bill would classify only those streams with flow, threatened or endangered species, or those needing protection based upon scientific reviews. Second, by breaking the recreational use provisions into subcategories, there is recognition of private property rights and an affirmation of state law that nonnavigable waters are not open to the public. It is not the intent of the coalition that these streams not be listed for other uses. The coalition simply does not support listing of such streams for recreational uses.

Mr. Chairman, members of the committee, we have worked with your subcommittee to improve the language of SB 204. It has been a long task for everyone. This substitute bill is an improvement and it is a compromise on many issues that are important to our constituents...to your constituents. It provides for a process that is clear and transparent, a process that is based on science. On behalf of my colleagues, and the tens of thousands of Kansas citizens and landowners we represent, I ask for the committee's favorable passage of Substitute for SB 204. Thank you.



Technical corrections to the Proposed Substitute for Senate Bill 204

Section 1 outlines what stream segments will be classified under the proposed substitute. We support the subcommittee's efforts in developing definitions that are based on tangible, measurable flows. (Page 1, lines 9-23) We believe flow data is the most logical means of classification of streams. After hours of analyzing the various methodologies proposed, we support the concepts in the substitute bill.

We also support the adoption of the concepts of the original SB 204 that sought to classify streams inhabited by threatened and endangered species (Page 1, lines 25-27) We also support the sections that allow classification of stream segments by KDHE after conducting weighing the benefits of classification against the costs of regulation. It appears that this is a simple cost benefit analysis that should be done whenever regulation is being proposed. (Page 1, lines 29-35).

With regard to the definitions of designated uses on page 2 line 11, we suggest striking "(C) other agricultural use". We had discussion among the coalition members and believe that this language is too vague and may cause more misinterpretation and confusion than good.

On page 3 line 7. We suggest that the dates be changed to be completely compatible with existing regulations. We suggest striking "May 1 through September 30" and inserting "April 1 through October 31 of each year". The April 1 through October language is currently in regulation. The dates in the substitute reflect dates that were in the original version of SB 204 and were taken from another state's law. We think it is appropriate to adopt the dates that are in Kansas's regulations.

On page 3 line 9 we suggest that "boating" and "mussel harvesting" be added to the list of recreational activities. This is a technical mistake that was in the original bill. These are included in the July 1999 regulation.

On page 3 line 14 we suggest that "boating" be deleted, because it is listed in the previous section.

On page 3 line 21 we suggest, "boating and "mussel harvesting" be added to the list of recreational activities.

On page 3 line 29 we suggest that "boating" be deleted. Again these were technical errors.

On page 4 Section 3 we support the "expedited" process that the bill suggests. We believe this adopts the concepts that the Coalition and KDHE tried to articulate as a process for evaluating the current classified stream segments in light of the new definitions. This section also incorporates the offer EPA Assistant Director Gale Hutton made during the public meetings and in meetings here in Topeka with legislators and interested parties.

METZLER GROUP

Testimony on Senate Bill 204
presented by
Dwight F. Metzler P.E.
To the
Senate Energy and Natural Resources Committee

March 1, 2001

Thank you for considering my views on S204. Your efforts to change Kansas stream classifications are commendable. Unfortunately, your efforts do not end there.

I will not repeat the valid objections voiced by the Kansas Society of Professional Engineers, the League of Kansas Municipalities, and others. Secretary of KDHE, Clyde Graeber, has courageously pointed out the negative impact of this proposal on Kansas water law. The basic water laws in Kansas were adopted in 1907 and have been expanded as necessary since that time.

I appear before you today as a fifth generation Kansan, and as President of the Metzler Group. I have been privileged to work on projects for cleaner water and more of it for Kansas. This could not have been done without strong legislative and public support. The Kansas Legislature funded water pollution clean-up and recently purchased storage in 10 federal reservoirs. **S204 violates federal law. Even more importantly, it violates the natural laws of chemistry and biology.**

If Kansas enacts this bill, it will violate federal law, as I have already said. Region 7, EPA, will take over the enforcement of Kansas water laws. They did this in Iowa several years ago with the enforcement of Iowa's water supply responsibilities. After a couple of years of this experience, Iowa made some changes and took the program back.

S204 prevents attempts to limit the nutrients, especially nitrogen and phosphorous, from contaminating the ground and surface water. Aging of the downstream water bodies will accelerate at an alarming pace. The lakes in which Kansas owns storage will have their useful life cut short. Doubters should visit Tuttle Creek. The upper ends of the lake have filled with masses of algae and lower life forms that feed on the nutrient-rich water coming in the Blue River from Nebraska. Do you want to do the same for Kansas lakes and streams? Of course not!

Reject this bill. Then, draft one in accord with state and federal law, and Kansas' needs.

-30-

*Dwight F. Metzler 900 SW 31st Suite 325A Topeka, KS 66606
Phone: 785-266-4646 E-Mail: dfox@cjnetworks.*

Senate Natural Resources Committee

Date 3-1-01

Attachment # 6

Testimony to the Senate Natural Resources Committee on S.B. 204

Regarding Senate Bill 204 and on behalf of the Arkansas River Coalition, we are strongly opposed to the bill. Since it would set specific streams apart and de-classify them, it would, in effect, make all of Kansas waterways too polluted for human contact and would therefore be in violation of the Clean Water Act of 1972, which states that "all waterways of the United States will be fishable and swimmable". At least that was the goal thirty years ago. The argument has been that some of the streams are dry at certain times of year and that it would impose undue hardships on "farmers" in other areas. This type of thinking is unrealistic, since pollution would accumulate in the "dry" streams and, when the rains come, all of that pollution would then empty into a larger waterway and so on. The only "farmers" that don't understand the hydrology of their waterways are those that are removed from the land, i.e., corporate agribusiness.

Kansas has continually attempted to lure sport fishermen, etc., to our state. How many will come when all of the aquatic life is gone and the birds and wildlife that depend on them are gone? Where will your economics be then? It is a known fact that non-motorized boating is becoming increasingly popular on the Kansas streams that carry enough water and that this activity also brings desirable income into the state but these boaters do not like to be in polluted water. It is almost assured that the passage of this bill to de-classify certain streams and segments of waterways would result in polluted water in all of our lakes, wetlands and streams.

We do not want to see the system of triennial review changed because it allows time to educate the public and to get all the stakeholders involved, not just agricultural people as appears to be happening now in the process of writing this bill. Congress intended, and

wrote into law, that it is the duty of the state's executive branch, not the legislative branch, to set the water quality standards for the state. That should absolutely not be changed. If it is true, according to supporters of this bill, that it was written to avoid monitoring and compiling reports on stream beds that carry little water most of the year, then their understanding of water hydrology is seriously flawed. Having many people involved in these types of decisions instead of only those who find it advantageous to pollute is a good reason not to change the triennial review system.

The Arkansas River Coalition has trained 109 volunteers this past year to do biomonitoring surveys on the Arkansas River and its tributaries. We will have another seminar April 18 to add to the number of Ark River Keepers. These people will be dedicated stakeholders in the welfare of the streams in the Arkansas River Basin.

Many of our members are landowners along streams and all of our members are stakeholders who want to preserve the gains that we have made as well as to continue improvement in water quality where needed. They find it hard to understand why such a bill as S.B. 204 would even be written at this time in our history when we have been making gains in water quality.

All people in the state of Kansas should have access to clean water in order to remain free from the threat of disease and to live in an environment where all species are healthy.

Submitted by,



DeEtte Huffman, President

Arkansas River Coalition, Inc.