

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Thursday, February 19, 2004, in Room 123-S of the Capitol.

Members were present and on time except:

Senator Barbara Allen - arrived 9:39 a.m.
Senator David Haley - arrived 9:57 a.m.
Senator Derek Schmidt - arrived 9:47 a.m.
Senator Edward Pugh - arrived 9:40 a.m.
Senator Kay O'Connor - arrived 9:53 a.m.
Senator Lana Oleen - arrived 9:42 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator Greta Goodwin
Senator Robert Tyson
Larry Womacks, Cowley County landowner
Bill House, S.E. Kansas, Ark City/Cedarvale
Allie Devine, Vice President and General Counsel, Kansas Livestock Association (written)
Roger Black, Kansas Livestock Association
Terry Holdren, Kansas Farm Bureau (written)
Donna Martin, Save Our Industries & Land (SOIL), Dexter, KS (written)
Charles Benjamin, Sierra Club, Lawrence, KS
Robert Voegele, President of Cowley County Farm Bureau (written)
John Todd, John Todd & Associates, Wichita (written)
Bud & Jan Nitschke, Cowley County concerned citizens (written)
Sandy Jacquot, League of Kansas Municipalities
Bob Courtney, Regional Area Economic Partner (REAP), South Central Kansas (written)
Mike Pepoon, Sedgwick County (written)

Others attending:

See Attached List.

Chairman Vratil admonished Committee members about the problem of members arriving late to Senate Judiciary Committee meetings. Twice, during previous meetings, the Chair asked members to arrive on time. He asked the Committee Secretary to record arrival times of Committee members beginning with today's meeting, and incorporate the times into the official Committee record. He instructed Committee members who have a valid reason for being late or know in advance if they are going to be late, to contact the Committee Secretary.

Final Action on:

SB 420 – Costs of a civil action; offer of judgment

Chairman Vratil called for discussion and final action on **SB 420**. The Chairman explained the bill, and said that the legislation would amend the existing statute relating to offer of judgment. He stated that a balloon amendment was submitted. The amendment would limit the amount of reasonable attorney fees that could be recovered to the lesser of attorneys' fees incurred by the plaintiff or the defendant. The purpose of the amendment was to ensure that one party could not run up attorney fees as a bargaining lever with the other party. (Attachment 1)

Senator Umbarger made a motion to accept the balloon amendment, seconded by Senator Goodwin to amend SB 420 in accordance with the balloon amendment presented, and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Thursday, January 19, 2004 in Room 123-S of the Capitol.

The Chairman requested discussion on the bill. He called for a motion on the bill. Senator Goodwin made a motion to recommend the bill favorably as amended, seconded by Senator Pugh.

Chairman Vratil called for discussion on the motion to pass the bill out favorably as amended. Senator Allen asked if the amended bill would have any impact on the Kansas Trial Lawyers Association's (KTLA) position on the bill, as there was strong opposition expressed by KTLA during the hearing on the bill.

Senator Oleen stated that she had considerable concerns with the bill in creating a level playing field in regards to right to appeal, and would be voting "no" on the bill. The Chairman explained that **SB 420** as amended does not effect the right to appeal. Senator Oleen explained that her concern related to a plaintiff not being able to continue their appeal and juries not being told that insurance companies are part of the suit that is before them.

Senator Goodwin commented that everyone had been involved with issues within the court system where the process goes on and on at the detriment of both the plaintiff and the defendant. She looked at this bill as a way of controlling some of those costs for both parties. Senator Goodwin said that any time mediation can be utilized outside the courtroom instead of using courtroom time or judges' time, it is good for the process. Cases that drag on and on are a detriment to the legal system and comes down as to who has the most money. She stated she saw it as a way of not having all of these cases continuing on in the court system at the cost of the taxpayers.

Chairman Vratil explained that the bill was an effort to deal with the overburdened and under funded judicial system, because it will have the effect of causing cases to be settled rather than going to trial. Senator Umbarger inquired if the judge didn't have some discretion on this subject. The Chairman said that the judge had some discretion in determining reasonable attorney fees. The bill requires the judge to award reasonable attorney fees.

Senator Pugh said that he did not think **SB 420** would be passed by the Legislature or signed by the Governor, but he was going to vote to move it out of Committee. He stated that he felt the bill was not the most well-reasoned legislation; however, the Legislature needs to initiate discussion about making everybody that is a party to claims or issues that go before the courts, responsible for the outcome. The number of cases is increasing every day. He added that the Legislature should have the Judiciary exercise Rule 11 privileges more frequently.

Chairman Vratil stated that was exactly what motivated him to introduce **SB 420**, and was why he sponsored it. He agreed 100% with Senator Pugh. Chairman Vratil commented that each year the Legislature talks about the over-crowded and under funded judicial system, but nothing much is ever done about the situation.

Chairman Vratil called for a vote on the motion to recommend the **SB 420** as amended. By voice vote the Committee approved the motion, with Senator Betts requesting his "no" vote be recorded.

SB 436 – Statute of limitations on childhood sexual abuse extended to 30 years

Chairman Vratil explained the bill, and called for final action on **SB 436**. He reminded Committee members that there were no amendments offered from any of the conferees. Senator Donovan stated that he could not support the bill with the 30 year term in it.

Senator Donovan made a motion to amend **SB 436** by deleting the numeral 30 in Line 15, page 1, and inserting the numeral 5, and doing the same on Line 16. The motion was seconded by Senator Oleen.

The Chair called for discussion on the proposed amendment. Senator Donovan commented that some of the conferees referred to all the different individuals whose lives could be put on hold for 30 years, i.e. schoolteachers, counselors, Boy Scouts and Girl Scouts troop leaders. He said that it might become difficult to find people to serve in voluntary positions with this law on the books. He recalled that there was one state in the northeast part of the country that allowed for a 30 year limitation in the case of

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Thursday, January 19, 2004 in Room 123-S of the Capitol.

childhood sexual abuser. He explained that under current law, a person can report such a crime until the age of 18. Senator Donovan added that any time after age 18 until an individual is one hundred years old, the victim has a three year time period to file a suit if the person recalled an incident which happened at a younger age. He felt that five years was reasonable.

Senator Oleen commented that she had trouble accepting the proposed 30 year limitation because she questioned the ability to reconstruct the crime when one was looking at something 20 years old. She said she would have liked possibly a ten year term better, but would support five years due to the difficulty of going back 30 years and having accurate evidence.

Senator Pugh asked the Revisor if Kansas presently had a separate Statute of Limitations on sexual abuse in civil cases. The Revisor, Jill Wolters, responded that the existing law addressed by **SB 436** was the law that governed civil cases involving sexual abuse. Senator Pugh stated he was not going to vote for the change from 30 years to 5 years. He felt the law ought to remain as is.

Senator Betts stated that sexual abuse totally violates the victims and takes their personal rights and power away from them. He affirmed that he supported the increase to 30 years, and if he had to he would support 50 years as he felt very strongly it was an issue that is somewhat taken for granted when one has have not been a victim of such a crime.

Following Committee discussion, Chairman Vratil called for a vote on the motion to adopt Senator Donovan's amendment. By voice vote the amendment was adopted and the motion carried.

Senator Goodwin made a motion to pass the bill out of Committee favorably as amended; seconded by Senator Schmidt, and the motion carried. Senators Pugh and Betts requested their dissenting votes be recorded.

Senator Betts asked that his "no" vote be explained, as follows: *"I have voted against SB 436 because I believe victims of child sexual abuse should be entitled to more than five years to seek civil and/or criminal damages against the accused. The infliction of sexual abuse has been known and proven to cause mental illness and physical damage; therefore, it may take victims more than an amended five years for the victim to gather the strength and confidence to bring the accused to justice."*

SB 461 – Limitations on acquisition of land by eminent domain by a port authority and county

Chairman Vratil opened the hearing on **SB 461**, and announced that due to the large number of conferees wanting to appear before the Committee that he would divide the time remaining equally between the proponents and opponents. He instructed conferees to keep their testimony as brief as possible, and make an effort not to repeat the same points made by other conferees have made to eliminate redundancy in the testimony presented to the Committee. The Chair also announced that questions would be held until after all conferees had testified. If time allowed, there would be Committee questions following all testimony.

Senator Greta Goodwin testified as the sponsor of **SB 461**. She explained that the proposed lake project in Cowley County was a private development project, which the media accurately described as the taking of private land by eminent domain for the benefit of private developers. She stated that as a concerned citizen and landowner, she was introducing **SB 461** to clarify that neither the counties, port authorities or other quasi-public bodies may take land from private citizens through the use of eminent domain powers and use the land for recreational purposes only. Senator Goodwin said that if governmental entities use eminent domain powers to acquire land, and recreation is part of the purpose for the use of eminent domain, then the governmental body may not allow private development upon such acquired land or site for 30 years.

Senator Goodwin stated that most of the residents in Cowley County would join her in supporting a much smaller scale lake if water were truly needed for that area of the state. The residents recognize how important clean water is for the county. She said it was her hope that when this proposed bill became law, private landowners in Cowley County would be assured that their property would not be taken indiscriminately for the profit or gain by private developers. She shared that the Cowley County affected

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Thursday, January 19, 2004 in Room 123-S of the Capitol.

landowners first found out about the private developer's plan through local newspaper articles. One family had owned and farmed property in the area where the lake is proposed since before Kansas was a state. The outcry from Cowley County landowners was that money cannot sway them to give up their land and livelihood.

Senator Goodwin explained that the Wichita developer's hope was that the lake would be built and owned by a quasi-governmental organization, a port authority of sorts, made up of city and county governments in south-central Kansas. She described the developer's visionary plans to turn the area into Kansas' answer to Grand Lake, Oklahoma, with cabins, resorts and retirement homes. She added that the developer thought that the sale of building sites and perhaps drinking water for Wichita could help offset the costs of building the lake. Senator Goodwin quoted a Wichita Eagle story that described said that the proposal by the Wichita developer and a commercial real estate broker as a \$400 million lake development 50 miles southeast of Wichita near Dexter.

Senator Goodwin testified that the landowners were never given a public forum to offer their opinions, ask questions, or speak to the developers in public. She concluded by asking her colleagues in the Kansas Legislature to join her in assuring that eminent domain powers or other quasi-public body powers are used only for public purposes and not for private profit. (Attachment 2)

Senator Goodwin also furnished to the Committee copies of Ron Pray's, (owner and operator of Pray Stone Company in Winfield) written testimony. Mr. Pray described his company's use of Silverdale limestone which has been used in many notable buildings in Kansas and throughout the country. Mr. Pray stated if the lake was built, and land within three miles of the lake was appropriated by eminent domain for development of the lake, all past and present reserves of Silverdale limestone would be affected. (Attachment 3)

Senator Robert Tyson testified in support of **SB 461**, and talked about the problem of eminent domain for port authorities in a single county. He said that eminent domain is the responsibility of the Legislature, and is used by other entities only as the Legislature directs. Senator Tyson explained that the Legislature has delegated its authority so much in recent years that it has lost any oversight in the process of eminent domain. He quoted the rule often stated by Kansas courts, "The power of eminent domain can only be exercised by virtue of a legislative enactment. The right to appropriate private property to public use lies dormant in the state until legislative action is had pointing out the occasions, mode, conditions and agencies for its appropriation."

Senator Tyson offered an amendment to **SB 461** for the Committee's consideration which he believed would solve the problem with eminent domain. (Attachment 4)

Terry Holdren, Associate State Director-Kansas Farm Bureau Governmental Relations, conceded his time to the landowners from Southeast Kansas, and submitted his testimony as written in support of the proposed legislation. (Attachment 5)

Allie Devine, Vice President and General Counsel for the Kansas Livestock Association (KLA), conceded her time to the citizens of the affected area who had traveled to Topeka to testify. She asked that her testimony in support of **SB 461** be submitted as written in order to allow more time for the landowners. (Attachment 6)

Larry Womacks, Cowley County landowner, submitted his testimony as written in support of **SB 461**. (Attachment 7)

Bill House, landowner and cattleman with residences in Ark City and Cedar Vale, testified in support of the proposed legislation. Mr. House stated that he had been in the business of raising cattle continuously since 1939, and operated ranches in Chautauqua and Cowley Counties in Kansas as well as Osage County, OK. He explained that the proposed lake project would effectively destroy the Cowley County ranch which is composed of 4,500 acres, including approximately 400 acres of river bottomland. Mr. House said he understood that the proposal would include an area adjoining the lake and would probably

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Thursday, January 19, 2004 in Room 123-S of the Capitol.

include another 2,100 acres. He asked the Legislature to re-examine the authorization of and limit eminent domain to constitutional provisions. ([Attachment 8](#))

Roger Black, Kansas Livestock Association (KLA), Save Our Industry and Land (SOIL), and Grouse-Silver Creek Watershed Board, appeared before the Committee in support of **SB 461**. He stated that the bill was about basic respect for property. He said that respect for persons and property are in separable in many ways. He said in his written testimony that it was unethical to plan a project for at least five years without input from the people most affected, and on whom the greatest costs fall. ([Attachment 9](#))

Donna Martin, Save Our Industry and Land (SOIL) and Kansas Livestock Association (KLA), spoke in favor of **SB 461**. She told the Committee that at a public meeting on October 27, 2003, Lieutenant Governor Moore stated, "If there is no need for water, this is a dead issue." She said his statement appeared to be withdrawn on January 29, 2004, at the Lower Arkansas and Walnut Basin Advisory Committee (BAC) by one of his subordinates when he said, "Our goal is economic development through water." Ms. Martin stated that the Corps of Engineers Study indicated that area has adequate water through 2080, and that an El Dorado lake official mentioned offering to supply water for western Butler County, but Wichita officials rejected the offer. She concluded that the exploitation of eminent domain has got to end, and asked the Committee to pass **SB 461**. ([Attachment 10](#))

Charles Benjamin, Attorney at Law, Lawrence, KS, appeared on behalf of the Kansas Chapter of the Sierra Club. In the interest of time he submitted his testimony as written in support of **SB 461**. The bill as written would go a long way toward protecting Grouse Creek and its tributaries. ([Attachment 11](#))

Robert Voegelé, farmer from Cowley County who lives in Ark City, submitted written testimony in support of **SB 461**. ([Attachment 12](#))

John Todd, John Todd & Associates, Wichita, submitted written testimony in favor of **SB 461** ([Attachment 13](#))

Bud and Jan Nitschke, Cowley County concerned citizens, submitted written testimony, which included copies of speeches, letters, public forums, letters to-the-editor and editorials, in support of the proposed legislation. ([Attachment 14](#))

Chairman Vratil called upon the opponents of **SB 461** to testify. Sandy Jacquot, General Counsel for the League of Kansas Municipalities, explained that the primary concern for the League was the language in Section 1(a) and in Section 3 that would affect all existing and future port authorities. She said if the concern needing to be addressed in this bill encompasses only one area, Sections 1 and 3 could be amended to limit the impact to port authorities created for the purpose of completing a project in Cowley County. Ms. Jacquot stated that the League generally does not support legislation targeting one specific area, the greater concern is limiting all current and future port authorities in Kansas because of one localized situation. She offered an amendment for the Committee's consideration, and added that if that issue was addressed then the League would withdraw its opposition to **SB 461**. ([Attachment 15](#))

Bob Courtney, Regional Area Economic Partner (REAP), submitted written testimony in opposition to **SB 461**. ([Attachment 16](#))

Michael Pepoon, Director of Government Relations for Sedgwick County, KS, submitted written testimony in opposition to **SB 461**. ([Attachment 17](#))

Following brief Committee comments and discussion, Chairman Vratil closed the hearing on **SB 461**.

The Chairman expressed the Committee's appreciation to all the conferees for appearing before the Committee.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 20, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Thurs, Feb. 19, 2004

NAME	REPRESENTING
Sandy Jacquot	LKM
Fred Swanson	LKM
Julia Butler	KSC
Lanny Swanson	Cowley county
Bill Grosz	Shownee Mission Med Ctr
Tom Bell	Ks. Hosp. Assn
Kevin Radcliff	Grouse/Silver Watershed
Dusti Harelison	Little Government Relations
Jeff Bottenberg	State Farm
Bob Mattingly	Cowley County KLA/Soil
Larry Womack	self
Doc. Stoltz	Cowley County
Les. Trotter	DEXTER, KS.
Bert Martin	Dexter Cowley County Ks
Don Doll	Garden City
Elizabeth Geimer	OSA
Denise Noonan	Cowley County Farm Bureau Assoc.
Debbie Meador	KLA
Allie Devine	KLA

SENATE JUDICIARY COMMITTEE GUEST LIST

pg. 2

DATE: 2-19-04

NAME	REPRESENTING
Steve Swaffar	KFB
BRAD HARRELSON	KFB
Roger Black	KLA Cowley Co.
Sandy Bennett	KCSOV
Brian Black	KLA Cowley Co.
Travis Brown	KLA Cowley Co.
Walter David	Cowley Co. Grouse Creek
Iris David	Cowley Co. Grouse Creek
BUD NITSCHKE	Cowley Co. GROUSE CREEK
JAN NITSCHKE	Cowley Co. GROUSE CREEK
Bernie Koch	Wichita Area Chamber
Natalie Bredis	REAP
Bill House	Cowley County - Grouse Creek
Carol House	Cowley County v v
Emily Watson	Sen. Allen
Sarah Bouker	Sen. Lee
Carmen ALDENY	KDOR
Martha Bean	KDOR - Driver Review
Diane Albert	"

SENATE JUDICIARY COMMITTEE GUEST LIST pg 3

DATE: Thurs, Feb. 19, 2004

NAME	REPRESENTING
<i>Ed May</i>	<i>Kan Inv Fm</i>
<i>Rhonda Sloan</i>	<i>SOIL</i>
<i>Ron Sloan</i>	<i>SOIL</i>
<i>Kent Askren</i>	<i>KFB</i>
<i>Ken Grotowicz</i>	<i>Kansas Water Office</i>
<i>Donna Martin</i>	<i>SOIL</i>
<i>TERRY HOLDREN</i>	<i>KS FARM BUREAU</i>
<i>Robert Voegelé</i>	<i>Cowley Co. Farm Bureau</i>
<i>Jim Chank</i>	<i>KBA</i>
<i>Bonnie Drake</i>	<i>SO SOIL</i>
<i>Jessie Bradley</i>	<i>SOIL</i>
<i>Hazel Young</i>	<i>SOIL</i>
<i>Kelly Williamson</i>	<i>KLA / SOIL</i>
<i>Kelly Williamson Suppt</i>	<i>KLA / SOIL</i>
<i>Bonita Mattingly</i>	<i>KLA / SOIL</i>

SENATE BILL No. 420

By Senator Vratil

2-2

Proposed amendment
Senator Vratil
February 18, 2004

Senator Vratil

9 AN ACT concerning civil procedure; relating to costs; amending K.S.A.
10 60-2002 and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 60-2002 is hereby amended to read as follows: 60-
14 2002. (a) *As of course.* Unless otherwise provided by statute, or by order
15 of the judge, the costs shall be allowed to the party in whose favor judg-
16 ment is rendered. The court shall have the discretion to order that the
17 alternative dispute resolution fees be, in whole or in part, paid by or from
18 any combination of any party or parties, from any fund authorized to pay
19 such fees, or from the proceeds of any settlement or judgment.

20 (b) *Offer of judgment.* At any time more than 15 days before the trial
21 begins, a party ~~defending against a claim to a lawsuit~~ may serve upon ~~the~~
22 ~~any~~ adverse party an offer ~~to allow of judgment to be taken against such~~
23 ~~party~~ for the money or property or to the effect specified in such party's
24 offer, with costs then accrued. If within 10 days after the service of the
25 offer the adverse party serves written notice that the offer is accepted,
26 either party may then file the offer and notice of acceptance, together
27 with proof of service thereof; and thereupon the clerk shall enter judg-
28 ment. An offer not *timely* accepted shall be deemed withdrawn and evi-
29 dence thereof is not admissible except in a proceeding to determine *an*
30 *award of attorney fees and costs.* ~~If the, from the perspective of the offeror,~~
31 ~~the final judgment finally obtained by the offeree is not~~ more favorable
32 than the offer, the offeree must pay ~~the~~ to the offeror the court costs
33 incurred after the making of the offer and reasonable attorney fees in-
34 curring by the offeror after the making of the offer. ~~The fact that an offer~~
35 ~~is made but not accepted does not preclude a subsequent offer.~~ When
36 the liability of one party to another has been determined by verdict or
37 order or judgment, but the amount or extent of the liability remains to
38 be determined by further proceedings, ~~the any party adjudged liable~~ may
39 make an offer of judgment; which shall have the same effect as an offer
40 made before trial if it is served within a reasonable time prior to the
41 commencement of proceedings to determine the amount or extent of
42 liability.

43 (c) *Duty of clerk.* The clerk of the court shall tax the costs and, upon

Reasonable attorney fees awarded by the court shall not exceed the lesser of: (1)
reasonable attorney fees incurred by the offeror after the making of the offer, or
(2) reasonable attorney fees incurred by the offeree after the making of the offer.

Senate Judiciary
2-19-04
Attachment 1

1 request, shall furnish a cost statement to counsel of record for the party
2 ordered by the court to pay costs. The taxation of the costs by the clerk
3 shall be subject to review by the judge on timely motion by any interested
4 party.

5 Sec. 2. K.S.A. 60-2002 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its
7 publication in the statute book.

SENATE BILL No. 420

By Senator Vratil

2-2

Proposed amendment
Senator Vratil
February 18, 2004

1-3

9 AN ACT concerning civil procedure; relating to costs; amending K.S.A.
10 60-2002 and repealing the existing section.

11

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

13 Section 1. K.S.A. 60-2002 is hereby amended to read as follows: 60-
14 2002. (a) *As of course.* Unless otherwise provided by statute, or by order
15 of the judge, the costs shall be allowed to the party in whose favor judg-
16 ment is rendered. The court shall have the discretion to order that the
17 alternative dispute resolution fees be, in whole or in part, paid by or from
18 any combination of any party or parties, from any fund authorized to pay
19 such fees, or from the proceeds of any settlement or judgment.

20 (b) *Offer of judgment.* At any time more than 15 days before the trial
21 begins, a party ~~defending against a claim~~ to a lawsuit may serve upon ~~the~~
22 ~~any~~ adverse party an offer to allow of judgment to be taken against such
23 ~~party~~ for the money or property or to the effect specified in such party's
24 offer, with costs then accrued. If within 10 days after the service of the
25 offer the adverse party serves written notice that the offer is accepted,
26 either party may then file the offer and notice of acceptance, together
27 with proof of service thereof; and thereupon the clerk shall enter judg-
28 ment. An offer not *timely* accepted shall be deemed withdrawn and evi-
29 dence thereof is not admissible except in a proceeding to determine *an*
30 *award of attorney fees and costs.* ~~If the, from the perspective of the offeror,~~
31 ~~the final judgment finally obtained by the offeree is not~~ more favorable
32 than the offer, the offeree must pay ~~the~~ to the offeror the court costs
33 incurred after the making of the offer ~~and reasonable attorney fees in-~~
34 ~~curring by the offeror after the making of the offer.~~ ~~The fact that an offer~~
35 ~~is made but not accepted does not preclude a subsequent offer.~~ When
36 the liability of one party to another has been determined by verdict or
37 order or judgment, but the amount or extent of the liability remains to
38 be determined by further proceedings, ~~the any party adjudged liable~~ may
39 make an offer of judgment; which shall have the same effect as an offer
40 made before trial if it is served within a reasonable time prior to the
41 commencement of proceedings to determine the amount or extent of
42 liability.

43 (c) *Duty of clerk.* The clerk of the court shall tax the costs and, upon

Reasonable attorney fees awarded by the court shall not exceed the lesser of: (1) reasonable attorney fees incurred by the offeror after the making of the offer, or (2) reasonable attorney fees incurred by the offeree after the making of the offer.

1 request, shall furnish a cost statement to counsel of record for the party
2 ordered by the court to pay costs. The taxation of the costs by the clerk
3 shall be subject to review by the judge on timely motion by any interested
4 party.

5 See. 2. K.S.A. 60-2002 is hereby repealed.

6 See. 3. This act shall take effect and be in force from and after its
7 publication in the statute book.

SENATE BILL No. 420

By Senator Vratil

2-2

Proposed amendment
Senator Vratil
February 18, 2004

1-5

9 AN ACT concerning civil procedure; relating to costs; amending K.S.A.
10 60-2002 and repealing the existing section.

11

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

13 Section 1. K.S.A. 60-2002 is hereby amended to read as follows: 60-
14 2002. (a) *As of course.* Unless otherwise provided by statute, or by order
15 of the judge, the costs shall be allowed to the party in whose favor judg-
16 ment is rendered. The court shall have the discretion to order that the
17 alternative dispute resolution fees be, in whole or in part, paid by or from
18 any combination of any party or parties, from any fund authorized to pay
19 such fees, or from the proceeds of any settlement or judgment.

20 (b) *Offer of judgment.* At any time more than 15 days before the trial
21 begins, a party ~~defending against a claim to a lawsuit~~ may serve upon ~~the~~
22 ~~any~~ adverse party an offer ~~to allow~~ of judgment ~~to be taken against such~~
23 ~~party~~ for the money or property or to the effect specified in such party's
24 offer, with costs then accrued. If within 10 days after the service of the
25 offer the adverse party serves written notice that the offer is accepted,
26 either party may then file the offer and notice of acceptance, together
27 with proof of service thereof; and thereupon the clerk shall enter judg-
28 ment. An offer not *timely* accepted shall be deemed withdrawn and evi-
29 dence thereof is not admissible except in a proceeding to determine *an*
30 *award of attorney fees and costs.* ~~If the, from the perspective of the offeror,~~
31 ~~the final judgment finally obtained by the offeree is not~~ more favorable
32 than the offer, the offeree must pay ~~the~~ to the offeror the court costs
33 incurred after the making of the offer and reasonable attorney fees in-
34 curring by the offeror after the making of the offer. ~~The~~ fact that an offer
35 is made but not accepted does not preclude a subsequent offer. When
36 the liability of one party to another has been determined by verdict or
37 order or judgment, but the amount or extent of the liability remains to
38 be determined by further proceedings, ~~the any party adjudged liable~~ may
39 make an offer of judgment; which shall have the same effect as an offer
40 made before trial if it is served within a reasonable time prior to the
41 commencement of proceedings to determine the amount or extent of
42 liability.

43 (c) *Duty of clerk.* The clerk of the court shall tax the costs and, upon

Reasonable attorney fees awarded by the court shall not exceed the lesser of: (1) reasonable attorney fees incurred by the offeror after the making of the offer, or (2) reasonable attorney fees incurred by the offeree after the making of the offer.

1 request, shall furnish a cost statement to counsel of record for the party
2 ordered by the court to pay costs. The taxation of the costs by the clerk
3 shall be subject to review by the judge on timely motion by any interested
4 party.

5 Sec. 2. K.S.A. 60-2002 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its
7 publication in the statute book.

GRETA H. GOODWIN
 SENATOR, 32ND DISTRICT
 COWLEY AND SUMNER COUNTIES

STATE CAPITOL BUILDING
 ROOM 403-N
 TOPEKA, KANSAS 66612-1504
 (785) 296-7381
 420 E. 12TH AVE.
 WINFIELD, KANSAS 67156
 (620) 221-9058
 e-mail: ggoodwin@ink.org



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER:
 JUDICIARY
 CORRECTIONS/JUVENILE JUSTICE
 STATE BUILDING CONSTRUCTION

MEMBER: ASSESSMENT AND TAXATION
 TRANSPORTATION
 CONFIRMATION OVERSIGHT
 KANSAS SENTENCING COMMISSION
 STATE CAPITOL RESTORATION
 HEALTH CARE STABILIZATION FUND
 LEGISLATIVE OVERSIGHT
 JUDICIAL COUNCIL JUVENILE OFFENDER/
 CHILD IN NEED OF CARE ADVISORY
 JUDICIAL COUNCIL PROBATE LAW
 ADVISORY

TESTIMONY ON SENATE BILL 461SENATE JUDICIARY COMMITTEEJanuary 19, 2004

I am proud to have served all of the people of Cowley County for the past 11 ½ years. During my service I have learned and understood the love the people of Cowley County have for their land and communities. Being born and raised in rural Cowley County I share that same love.

The bill you have before you today could appropriately be described as not just a Cowley County issue. The media has accurately described the Grouse Creek proposed Lake Project as a private development project by the use of private land being taken by eminent domain or other quasi-public body for the benefit the private developers. I have heard from Kansas landowners from the Nebraska state line, to the Missouri, Oklahoma and Colorado state line. Landowners can not believe how this proposal has gotten this far into the process or why is it even being discussed further. I have the same concerns.

Over the past few months, I have received hundreds of emails, telephone calls and letters opposing the proposed lake in Cowley County. People are scared that private developers will push local governmental officials to support and assist in the use of eminent domain or other similar powers to take their land for the building of a recreational lake.

As a concerned citizen and landowner, I introduced Senate Bill 461 to clarify that neither the counties, port authorities or other quasi-public body may take land from private citizens through the use of eminent domain powers for recreational purposes only. Further, if land is acquired with the use of eminent domain powers by governmental entities and recreation is part of the purpose for the use of eminent domain domain, then the governmental body may not allow private development

Senate Judiciary

2-19-04

Attachment 2

upon such acquired land or site for 30 years. I believe all Cowley County residents will join me in support of a much smaller scale of a lake if water is truly needed for our area of the state recognizing how important clean water is for our county. It is my hope that when my legislation becomes law, private landowners in Cowley County may rest assured that their property will not be taken indiscriminately for the profit or gain by private developers.

For many years, a Wichita developer and real estate broker has had an ambition to take up to 10,000 of prime agricultural land in Cowley County to personally profit him and other developers. No one had ever made the affected Dexter landowners aware of his scheme.

On August 25, 2003, this private profit making announcement was made public by Mr. Mike Loveland in the headlines of an area newspaper. His venture was called "a viable plan and could be the spearhead of new economic development in the area". The Wichita developer went on to publicly say its use would be governed by a port authority, a quasi-public body. This project was announced at the South Central Kansas Prosperity Summit. Cowley County affected landowners first heard of the Wichita developer's ambitious proposal for their land in the newspapers. To say this has been a very disruptive issue to Cowley County is an understatement. At that time the statements made to the media was that an "entity" might be formed to involve the Port Authority, which they believe has the right to impose eminent domain on reluctant land owners. The urban developers found out that in rural Kansas agriculture property which has been in the family for 4-5-6 generations is sacred. One family has owned and farmed property in the area where the lake is proposed since before Kansas was a state. The outcry from Cowley County landowners was that money cannot sway them to give up their land and livelihood. Wichita developers continued to forge ahead and continued their media releases.

"For years, Wichita developer Mike Loveland has watched friends drive five hours to Grand Lake in Oklahoma and Lake of the Ozarks in Missouri on weekends. He has also complained about the shortage of tourist attractions. Now Mr. Loveland thinks he has the answer to all those problems. Several developers hope to build a reservoir near Wichita that would be Kansas' answer to Grand

Lake, with cabins, resorts and retirement homes lining the bluffs overlooking the water. They have found what they think is the perfect location – Grouse Creek south of Dexter, about an hour’s drive from Wichita”. “His hope is that the lake would be built and owned by a quasi-governmental organization, a port authority of sorts, made up of city and county governments in south-central Kansas”. The Wichita Eagle, August 29, 2003. His thought was that the sale of building sites and perhaps drinking water for Wichita could help offset the costs of building the lake. “Loveland was taken when he made his first trip to Grouse Creek by the high quality clear water, rolling hills and steep bluffs”. (August 30, 2003). The Developers and others called for the state to pay for a \$300,000 feasibility study for the project.

“The Wichita developer and commercial real estate broker, is promoting a proposed up to a \$400 million lake development 50 miles southeast of Wichita, near Dexter. Loveland envisions a resort similar to Grand Lake in Oklahoma – a place where retirees could live, Wichita families could vacation, and tourists would enjoy Kansas’ great outdoors. The development ... would feature marinas, waterfront homes, condominiums, hotels, retail, restaurants, parks, golf resorts and other recreation-related businesses and commercial development” The proposed ownership would be a port authority authorized by the State of Kansas and made up of cities and counties participating in the project. The project would be funded by the issuance of bonds by the Port Authority, and paid for with the revenue from water sales, land sales, and the increase in tax revenue from development”. Wichita Business Journal, September 15, 2003.

During the time from the first announcement in August until the end of October were the landowners ever given a public forum to offer their opinions, ask questions, or speak to the Developers in public. At no time had it ever been reported that anyone in Cowley County, and more particularly landowners in the Dexter area, would ever realize any benefit from this project. On October 28, 2003, a special meeting was held in Arkansas City. Lt. Governor-Commerce Secretary John Moore, commercial real estate broker Loveland and engineer Tim Austin received a strong message from area landowners “you don’t own our land and it is not for sale”. Landowners asked “What part of “NO” do these people not

Office be asked to study this question through the Water Planning Process. This requested study is in lieu of the approximate \$300,000 feasibility study the developers asked the state to fund.

I call upon my colleagues in the Kansas legislature to join with me to assure that eminent domain powers or other quasi-public body powers are used only for public purposes and not private desires. I look forward to working with supporting organizations like the Kansas Livestock Association, Kansas Farm Bureau, SOIL (Save Our Industry and Land) and other groups to pass this legislation.

I thank you for allowing me to give you the background information on the reason for introducing this bill and voice my utmost concerns over this proposed private development plan being continued at the expense and trauma of landowners of my district, as well as the feeling of vulnerability of other Kansas landowners.

I ask for your support of SB 461.

Sprawl is everyone's burden

Sprawling cities across America threaten the livelihoods of many farmers and ranchers. Every single minute of every day, America loses 2 acres of farmland, according



Greg Henderson

to a study by the American Farmland Trust. From 1992 to 1997, America converted more than 6 million acres of agricultural land to developed use—an area the size of Maryland.

Those statistics are alarming enough, but the rate of sprawl continues to escalate. For instance, we lost farm and ranch land 51 percent faster in the 1990s than in the 1980s. And we're losing our best land, the most fertile and productive, the fastest. According to AFT, the rate of conversion of prime land was 30 percent faster, proportionally, than the rate for non-prime rural land from 1992 to 1997. This results in marginal land, which requires more resources, like water, to be put into production.

Obviously, uncontained sprawl is a waste of resources. America's rapid income growth has encouraged people to build their dream homes on acreage, and we're building new roads to those subdivisions so they can commute farther to work. According to AFT, since 1994, 10-plus-acre housing lots have accounted for 55 percent of the land developed.

Sprawl, however, is not just a problem for displaced farmers and ranchers. It's a problem for everyone. A new study by Colorado State University indicates sprawling low-density residential areas require more funds than are covered by the taxes they generate.

According to the Colorado State research, farm and forest land uses, on average, require 35 cents of every dollar of tax revenue generated for services. However, disperse rural residential development, such as urban sprawl with one residence per 35 acres, costs taxpayers \$1.15 for every

dollar generated. Transforming a low-intensity area into a high-intensity area creates a number of changes, many unintentional.

"Rural residential development affects wildlife, public land access, open spaces and the fiscal structure of the county," says Andy Seidl, Colorado State University agriculture and resources economics associate professor and cooperative extension public policy specialist. "Current residents of Colorado communities are subsidizing the sprawling new residential developments now characteristic of the Western landscape."

Sprawl in western states is an issue many local governments face. Even in the seven Northern Plains states (Mont., Wyo., Colo., N.D., S.D., Neb. and Kan.) sprawl has taken more than 1 million acres since 1982. Roughly half of that growth was around the Denver and Kansas City areas, but every state saw substantial growth in their urban metro areas.

For ranchers, conversion of ranchland to 35-acre ranchettes has driven land values higher and squeezed small communities to provide services. But more important is the decline of the prairie and rangeland ecosystem. There are 861 million acres of grassland and shrubland (including pastures) in the lower 48 states. That accounts for about 45 percent of the total land area. In the 15 years from 1982 to 1997, 11 million acres of non-federal grasslands and shrublands were converted to other uses.

Programs such as the Grassland Reserve Program, which provides incentives to leave pasture and rangeland undisturbed, can help discourage sprawl. And ranchers can help by supporting effective planning and smart growth in local communities. Communities can adopt land-use plans that designate specific areas of protection where development is discouraged. Sprawl is a burden we must deal with now, because once land is developed, it will never be converted back to farm or ranchland.

1/29/04

Good afternoon, and thank you for the opportunity to say a few words about the proposed Grouse Creek Lake. My name is Ron Pray, and I'm owner and operator of Pray Stone Company in Winfield.

The name of my company may not be significant to you, but I'm guessing you've seen the stone that we quarry.

Maybe on the way over here today you drove past Crum Castle, or past the Old Sedgwick County Court House, or the Old Wichita City Building. Maybe you came from the south, and passed the Cowley County Courthouse.

Or maybe you've been to Ahearn Fieldhouse or Archer Hall at K-State, or Lindley Hall at the University of Kansas, or the Union Building at Fort Hays. Maybe you've seen the Kansas City Scottish Rite Temple.

These buildings all represent the very best of Kansas—they're solid, and majestic, and built to last hundreds of years. And they all have one thing in common: They're built of Silverdale limestone, one of the most beautiful and useful natural resources on earth.

Silverdale limestone was first quarried in the mid-1800s for local projects in Cowley County, but it was so unusual and special that word of its quality and beauty soon began to spread. By 1870, stone from the Grouse Creek Valley was being shipped as far as Wichita, and as modern methods of transportation were introduced, use of Silverdale stone expanded through the state and country.

Today thousands of people across our nation can point proudly to their churches, their schools, their homes, and say that they were built with Silverdale limestone, knowing that no finer building material exists.

Unfortunately, plans for this lake may mean that future generations don't have the opportunity to use Silverdale limestone.

You see, Silverdale limestone outcrops only on the plateaus overlooking the Grouse Creek and Silver Creek Valleys. This stone is in the Barneston Geological formation, which is about 100 feet thick and runs north and south across the state with outcrops occurring in this valley in about a 10-foot thick section.

The stone in this section is unique in the color, quality, and characteristics that only Silverdale stone possesses.

If the lake is built, and land within 3 miles of the lake is appropriated by eminent domain for development of the lake, all past and present reserves of Silverdale limestone will be affected.

Senate Judiciary

2-19-04

Attachment 3

No longer will we be able to see new buildings continuing the Silverdale tradition of excellence and beauty.

And the loss of the quarry will mean loss of jobs—not just those men and women who work in the quarries themselves, but also the cutters and the equipment operators who prepare and transport the stone, and the architects, masons and builders who use the stone.

The idea of abandoning an industry, and a heritage, and destroying this amazing natural resource of Kansas, simply to satisfy the greed and profit motives of a few people, is not only a terrible mistake—

IT'S JUST WRONG!

Ronald Pray
Pray Stone Company, Inc.



TOPEKA

SENATE CHAMBER

ROBERT TYSON
SENATOR, TWELFTH DISTRICT
Home Address: 19045 DEVLIN ROAD
PARKER, KANSAS 66072
(913) 898-6035
Office: STATE CAPITOL BUILDING—128-S
TOPEKA, KANSAS 66612-1504
(785) 296-7380
1-800-432-3924

COUNTIES
ANDERSON, BOURBON
FRANKLIN, LINN & MIAMI
COMMITTEE ASSIGNMENTS
CHAIRMAN: NATURAL RESOURCES
MEMBER: AGRICULTURE
UTILITIES
JOINT COMMITTEE ON
SPECIAL CLAIMS AGAINST
THE STATE
<http://skyways.lib.ks.us/kansas/government/tyson/>
email: rtyson@ink.org

Testimony SB 461
Senate Judiciary Committee
February 19, 2004

Thank you Chairman Vratil and members of the Senate Judiciary Committee for allowing me time today to speak. I support SB 461, which addresses the problem of eminent domain for port authorities in a single county.

My hope is to address the problem of eminent domain in a broader context. Eminent domain is a responsibility of the legislature. It is used by other entities only as the legislature directs. We have delegated our authority so much in recent years that we have lost any oversight in the process of eminent domain.

Remember, local units of government in Kansas may exercise the power of eminent domain only where the legislature has delegated this authority to such units. The rule often stated by Kansas courts is that:

“The power of eminent domain can only be exercised by virtue of a legislative enactment. The right to appropriate private property to public use lies dormant in the state until legislative action is had pointing out the occasions, mode, conditions and agencies for its appropriation.”

Strain v. Cities Service Gas Co., 148 Kan. 393, 83 P. 2d 124 (1938)

I have with me an amendment that addresses this problem. I bring as a suggestion before this committee for your consideration. Hopefully you will find it helpful.

Senate Judiciary
2-19-04
Attachment 4

PROPOSED AMENDMENT TO SENATE BILL NO. 461

Sec. 6. K.S.A. 26-513 is hereby amended to read as follows:
26-513. (a) Necessity. Private property shall not be taken or damaged for public use without just compensation. Notwithstanding any provision of law to the contrary, in any taking of private property pursuant to law there shall be no private development upon such property for a period of 30 years after appropriation of such property, except upon specific approval by virtue of legislative enactment that specifies the occasions, modes, conditions and agencies for such property's appropriation.

(b) Taking entire tract. If the entire tract of land or interest in such land is taken, the measure of compensation is the fair market value of the property or interest at the time of the taking.

(c) Partial taking. If only a part of a tract of land or interest is taken, the compensation and measure of damages is the difference between the fair market value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(d) Factors to be considered. In ascertaining the amount of compensation and damages, the following nonexclusive list of factors shall be considered if such factors are shown to exist. Such factors are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section. Such factors are:

(1) The most advantageous use to which the property is reasonably adaptable.

(2) Access to the property remaining.

(3) Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.

(4) Productivity, convenience, use to be made of the property taken, or use of the property remaining.

(5) View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.

(6) Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.

(7) Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.

(8) Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that such loss affects the value of the property remaining.

(9) Destruction of a legal nonconforming use.

(10) Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.

(11) Proximity of new improvement to improvements remaining on condemnee's land.

(12) Loss of or damage to growing crops.

(13) That the property could be or had been adapted to a use which was profitably carried on.

(14) Cost of new drains or loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.

(15) Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

(e) Fair market value. "Fair market value" means the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the

parties are acting without undue compulsion. The fair market value shall be determined by use of the comparable sales, cost or capitalization of income appraisal methods or any combination of such methods.



Kansas Farm Bureau

2627 KFB Plaza, Manhattan, Kansas 66503-8155 • 785.587.6000 • Fax 785.587.6914 • www.kfb.org
800 SW Jackson St., Ste. #1008, Topeka, Kansas 66612 • 785.234.4535 • 785.234.0278

PUBLIC POLICY STATEMENT

SENATE JUDICIARY COMMITTEE

Re: SB 461— Concerning the use of eminent domain for the acquisition of land by a port authority or county government

**February 19, 2004
Topeka, Kansas**

**Presented by:
Terry D. Holdren
Associate State Director—KFB Governmental Relations**

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to share our strong support for SB 461 and the protection it will provide to land owners and the environment in Cowley County. As you know Kansas Farm Bureau, (KFB) is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

For some time, there have been discussions regarding the establishment of a port authority and the exercise of eminent domain powers by that authority or by county government to establish a 10,000-acre lake in Cowley County. This kind of action would have very serious impacts on the local economy, the tax base, and specifically on production agriculture in the area. The proposal before you today provides much needed protection by:

- Precluding a port authority or county government from acquiring land for recreational purposes by eminent domain;
- Restricting private development on land acquired by the use of eminent domain for 30 years; and
- Requiring a port authority or county government to satisfy all state and federal permitting agencies before the use of eminent domain powers.

Kansas Farm Bureau has been a long-standing and outspoken advocate of the rights of landowners. Our policy, developed in a yearlong grassroots process, seeking input from across the state, supports the concept that eminent domain procedures only be used for legitimate governmental purposes. Further, any use of eminent domain should include the development of a comprehensive impact statement which considers interstate water compacts, water quality standards, water appropriation rights, historic

Senate Judiciary
2-19-04
Attachment 5

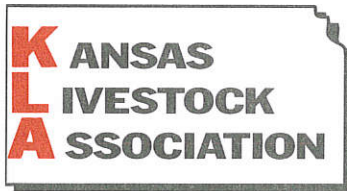
preservation, and endangered species protection. Because the impact of this project would be broad, we would also ask that any impact statement also include analysis of the economics associated with the loss of thousands of acres of farm and ranch lands. KFB policy also opposes the acquisition of privately owned land and, thus the expansion of the total number of acres of land owned by the state or any other governmental entity.

Among the many impacts likely resulting from this project is the reality that development of the lake could result in destruction of important habitat in Grouse Creek. Grouse Creek is designated as special aquatic life use water and classified as Outstanding National Resource Water by the Kansas Department of Health and Environment (KDHE). Surface waters designated as Special Aquatic Life Use are characterized by having unique biota or harboring threatened or endangered species. Outstanding National Resource Waters are those waters contained within State or National Parks, wildlife refuges, or have outstanding fisheries or recreational value. It is unclear what the ramifications of destroying this habitat or the species currently inhabiting the area might be, but the habitat consequences, permitting requirements, and compliance with state and federal laws must be examined prior to any construction in the area.

Owners of land in Cowley—farmers and ranchers, and others—deserve the protections offered by this bill. We strongly support the requirement that state and federal permits be acquired for any project before eminent domain procedures are used. Additionally, we support the restriction of any private development on lands obtained by eminent domain for a period of 30 years. These provisions will ensure that projects are legitimate and in compliance with regulatory agencies before the homes and lands of private citizens are taken from them, jobs are lost, and the vitality of communities in Cowley County threatened.

Ladies and Gentlemen, we are grateful for the opportunity to appear before you today. KFB will continue to vigorously support initiatives that protect private landowners who reside and make their living by farming and ranching in the great state of Kansas. We urge your favorable, and speedy, action regarding this proposal.

Thank you.



Since 1894

TESTIMONY

To: Senate Judiciary Committee
Senator John Vratil, Chair

From: Allie Devine, Vice President and General Counsel

Subject: **Support for SB 461**

Date: February 19, 2004

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

Good morning Mr. Chairman and members of the Committee. My name is Allie Devine and I am here today representing the Kansas Livestock Association and especially our members in Cowley County.

KLA strongly supports the passage of SB 461. KLA has a long history of defending the private property interests of our members. This bill is especially important to our members in Cowley County who are facing a proposed development of a nearly 10,000 acre lake. This lake would be built on private lands secured through the use of eminent domain. There are many physical and environmental reasons why this lake should not be located in Cowley County. Senator Goodwin and local representatives will outline those reasons.

In addition to the presentations you hear this morning, please be advised that the Kansas Water Authority through its planning process has been begun gathering data on the feasibility of this lake. The Walnut Basin Advisory Committee (a local unit of the Kansas Water Authority) held a hearing on the issue on January 19, 2004. Documentation regarding oil and gas wells, stone quarries, threatened and endangered species, historic sites, and water supply needs (or the lack thereof) was presented. This information has been forwarded to the Technical Advisory Committee (TAC), established by the Kansas Water Authority for review. The TAC is scheduled to report on the general feasibility of the lake by late summer 2004.

Senate Judiciary
2-19-04
Attachment 6

KLA supports the review of this proposal by the Kansas Water Authority and has encouraged the Authority to conduct a “comprehensive” review including a review of interstate water compacts; state and federal water quality laws; state water appropriation laws; state and federal endangered species laws; and state and federal historic site preservation laws. We ask that any economic feasibility analysis include a comprehensive review of *all* economic factors including, but not limited to, the loss of prime farmland and ranch land and ranching operations. We are hopeful that the legislature through the budgetary process will assure that if a study is conducted, it is done in a fair and comprehensive manner.

Today, I would like to address the specifics of the bill. This bill places limitations on two entities that have eminent domain authority and likely would be participants in such a lake project. Those entities are Cowley County and a port authority.

Port authorities, as outlined on page 1, lines 31-37 are created by the legislature and may be restricted by the legislature. Today, we are asking you to place restrictions on port authorities that may be organized and active in Cowley County.

The language on page 1, lines 40-43, page 2 lines 1-8, page 3, lines 13-16 and page 5, lines 37-43, restricts a created port authority to the purpose for which it was created. This language would assure that a port authority, once created could not morph itself into something else. Creation of a port authority requires approval of the Legislature. This language assures that entities approved by the Legislature, local governments, and local citizens for a specific purpose serve that purpose and not another. For example, a port authority created for development of a multi-purpose lake (multipurpose meaning water supply, flood control, recreational or other purposes) could not then change into a port authority for creation and development of a recreational-use lake. This language assures no “bait and switch” purposes for creation of port authorities with eminent domain powers.

The language on page 4, lines 26-37 does the following:

- Precludes a port authority in Cowley County from using eminent domain powers to acquire land for recreational purposes;
- Restricts the use of land acquired through the use of eminent domain to public purposes and does not allow private development for 30 years; and
- Sets a condition precedent that a port authority must show that all state and federal permits to use or develop the land as specified in the port authority is obtained prior to use of eminent domain powers.

It is solely within the purview of the legislature to restrict entities that it creates such as a port authority or to place restrictions on the powers of eminent domain. In *Concerned Citizens, United, INC. v. Kansas Power and Light Company*, 215 Kan. 218, 523 P.2d. 755 (1974) the Kansas Supreme Court noted numerous cases when the legislature placed conditions precedent upon the use of eminent domain power. Without the legislature placing these restrictions, there would be no requirement that the port authority conduct this basic environmental and legal review prior to taking the private land of private

citizens. We strongly support these restrictions and can think of no greater injustice than to have someone's land taken for a "public purpose" only to later learn that the project could not be accomplished.

We strongly support the restriction that no private development occur on the property obtained by eminent domain for 30 years. This language assures that this project is not for a private person's financial gain at the expense of other private persons.

The language in new section 4 on page 6 lines 3-11 applies these same restrictions to the county. The language on page 8 lines 24-25 precludes the county from legislating or in any manner exempting itself from this state law.

Mr. Chairman, members of the Committee, Cowley County residents have lived under the threat of this development long enough. Please give them some legal assurance that their land will not be taken indiscriminately; and without regard to state and federal environmental laws; or for the benefit of a few developers. We ask your support for SB 461.

WE THE PEOPLE

Larry Womacks

February 19, 2004

I. Good morning - Thank you for allowing me to appear before the Senate Judiciary Committee. My name is Larry Womacks.

II. My Purpose - I am only one, but I am one. I can't do everything, but I can do something. What I can do is what I should do and that is why I am here.

III. I represent myself, my wife, our three sons, our daughter-in-laws and our 8 grandchildren.

A. Tell about our Family Farm

IV. We try to march to the beat of the Master Drummer.

A. We don't take what belongs another

B. We speak the truth.

C. We don't look across the fence and desire another's property.

V. Rights of the People in the State of Kansas

A. Declaration of Independence, U.S. Constitution, U.S. Bill of Rights, Constitution of the State of Kansas, gives us the right to Life, Liberty, and to own private property.

B. Port Authority, eminent domain, mixed with county and municipal governments along with private interests appears to give rights to unjustly take private property.

C. Now that concerns me about our family farm.

D. Plea to the State of Kansas for protection.

VI. Close

A. Quote Abe Lincoln

B. "The only thing necessary for wrong doing to triumph is for good men and women to do nothing".

Senate Judiciary

2-19-04

Attachment 7

1. I'm here because of the proposal to build a lake in the Grouse Creek Valley 7 miles East of Arkansas City, by a representative of Weigand Realtors of Wichita.

2. My name is Bill House, with a residence in Cedar Vale, Ks 1006 Cedar, Phone # 620-758-2208 but also keep a residence in Arkansas City.

3. ~~I have~~ been in the business of raising cattle continuously since 1939, operating ranches in Chautauque County, Kansas, Osage County, Oklahoma, and Cowley County, Kansas.

4. The lake proposal would effectively destroy the Cowley County ranch - 15 miles East of Arkansas City, and on the North side of Highway 166. This ranch is composed of 4500 acres, including approximately 400 acres of river bottom land exactly in the middle of the proposed lake. I understand that the proposal would include an area adjoining the lake and that would probably include another 2100 acres.

5. To accomplish this proposal the promoters would seek a "port authority" designation with the power of eminent domain to condemn the land necessary for their purposes

The proposal lists water and electricity as possible developments, but also lists 1. retirement homes, Tourism, resorts and parks, waterfront second homes, Vacation homes, and recreation. ~~According to the No. 6 refers to the~~ suggests the project would help retention and recruitment of "quality people" and "quality employers." I would assume this would include present land holders.

KSA 12-1774 "Port Authority" is a dangerous statute, leaning toward letting predators take anything they desire. If Sedgwick County issued the authority, Cowley county would lose control over the entire entity.

The legislature should re-examine this authorization and limit Eminent Domain to constitutional provisions

WHY: 1. To provide water for many communities in South Central Kansas. It could be used by the city of Wichita to take some pressure off the aquifer beds, a major source of water, which has had dropping water levels, salt infiltration and demands of farmers and ranchers to the north. Also Cheney reservoir has algae bloom problems, which possibly could be more fully addressed if a third water source was available.

2. Retirees are leaving the state to surrounding lake communities. Many retirees have to make the decision to leave family and friends for retirement areas. This lake area could be a mini-Branson type area, slightly more than an hour from Wichita.

3. Tourism, resorts, and parks.

4. Waterfront second homes, vacation homes. Most large lakes in Kansas are US Army Corps of Engineers lakes, which do not allow or limit development or private access to the lakes. Our hope would be that this lake would be developed similar to Grand Lake, Lake of the Ozarks, etc. where private home development can take place along with resort development, marinas, restaurants, etc.

5. Recreation- Grouse Creek is the clearest stream in Kansas and in hilly rock territory, an amenity that a lot of lakes in Kansas don't have.

6. Electricity- depth of the lake makes this possible.

7. Flood control- this location will help in regards to past area-flooding problems.

8. Economic Development- having a significant project like this helps in the retention and recruitment of quality people and quality employers in South Central Kansas.

9. An overall improvement in the quality of life.

COST: \$150 to \$400 million dollars depending on many variables and what is included in the project (pipelines, electric generation, etc.) Additionally, there could easily be \$100-\$200

Initial references in paragraphs are to note numbers in original text.

August 1, 1888, authorizing condemnation whenever an officer of the government is authorized to procure property for public uses, the application of this act of Congress not being affected by the act of April 24, 1888, authorizing condemnation proceedings to acquire land, right of way, or material needed for improvement of rivers and harbors. *Hanson Lumber Co. v. United States*, 261 U. S. 581, 43 S. Ct. 442, 67 U. S. (L. ed.) 809.

Right of Emergency Fleet Corporation to Requisition Property.—See UNITED STATES, § 42.

4 (p. 25). Conflicting Definitions of "Public Use."—*Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510.

View that Public Must Be Entitled as of Right to Use or Enjoy Property Taken.—*Fountain Park Co. v. Hensler*, — Ind. —, 155 N. E. 465, 50 A.L.R. 1518; *Paine v. Savage*, 126 Me. 121, 136 Atl. 664, 51 A.L.R. 1194; *Richmond v. Carneal*, 129 Va. 388, 106 S. E. 403, 14 A.L.R. 1341.

Quoted in *Gravelly Ford Canal Co. v. Pope, etc., Land Co.*, 36 Cal. App. 556, 178 Pac. 150; In re Opinion of Justices, 118 Me. 503, 106 Atl. 865. Cited in *Vetter v. Broadhurst*, 100 Neb. 356, 160 N. W. 109, 9 A.L.R. 578; *Moseley v. Bradford*, — Tex. Civ. App. —, 190 S. W. 824.

To constitute a public use for which the power of eminent domain may be exercised, the general public must have the right to a definite and fixed use of the property appropriated, not as a mere matter of favor or permission of the owner, but as a matter of right, and it is insufficient that the public has a theoretical right to use it, or will receive an incidental or prospective benefit from it. *Fountain Park Co. v. Hensler*, — Ind. —, 155 N. E. 465, 50 A.L.R. 1518.

5 (p. 25). View that Public Use Means Public Advantage.—Quoted in *Gravelly Ford Canal Co. v. Pope, etc., Land Co.*, 36 Cal. App. 556, 178 Pac. 150; *Vetter v. Broadhurst*, 100 Neb. 356, 160 N. W. 109.

6 (p. 26). View that Public Use Is Not Synonymous with Public Benefit.—*Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510; *Reed v. Seattle*, 124 Wash. 185, 213 Pac. 923, 29 A.L.R. 446; *Richmond v. Carneal*, 129 Va. 388, 106 S. E. 403, 14 A.L.R. 1341.

Private enterprises are not public uses within the law of eminent domain, although they give employment to many people and produce large quantities of commodities of various kinds. *Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510.

That a gasoline filling station is a convenience to the traveling public does not authorize the leasing of land condemned for a highway for such station, where the constitution forbids the taking of private property for private use. *Reed v. Seattle*, 124 Wash. 185, 213 Pac. 923, 29 A.L.R. 446 and note.

Use by the General Public as a Uni-

versal Test Inadequate.—*Mt. Vernon Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U. S. 30, 36 S. Ct. 234, 60 U. S. (L. ed.) 507.

6a (p. 26). Classes of Takings Included in "Public Use."—*Pontiac Imp. Co. v. Cleveland Metropolitan Park Dist.*, 104 Ohio St. 447, 135 N. E. 635, 23 A.L.R. 866.

§ 23

Taking by Private Individual Sometimes Regarded as for Public Use.—Quoted in *Gravelly Ford Canal Co. v. Pope, etc., Land Co.*, 36 Cal. App. 556, 178 Pac. 150.

§ 24

7-9 (p. 27). Taking Must Be Necessary for Public Use.—To justify a taking of property under the power of eminent domain it must be established that the taking is necessary for a public use. *Piper v. Ekern*, 180 Wis. 586, 194 N. W. 159, 34 A.L.R. 32.

State Cannot Authorize Taking of Property for Private Use.—*Fountain Park Co. v. Hensler*, — Ind. —, 155 N. E. 465, 50 A.L.R. 1518; *Paine v. Savage*, 126 Me. 121, 136 Atl. 664, 51 A.L.R. 1194; *Vetter v. Broadhurst*, 100 Neb. 356, 160 N. W. 109, 9 A.L.R. 578 and note; *Pontiac Imp. Co. v. Cleveland Metropolitan Park Dist.*, 104 Ohio St. 447, 135 N. E. 635, 23 A.L.R. 866; *Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510; *Richmond v. Carneal*, 129 Va. 388, 106 S. E. 403, 14 A.L.R. 1341.

Quoted in *Gravelly Ford Canal Co. v. Pope, etc., Land Co.*, 36 Cal. App. 556, 178 Pac. 150. Cited in *North Carolina Public Service Co. v. Southern Power Co.*, 282 Fed. 837.

"Legislation designed or framed to accomplish the ultimate object of placing property in the hands of one or more private persons, after it has been taken by the superior power of the government from another private person avowedly for a public use, is unconstitutional." *Wright v. Walcott*, 238 Mass. 432, 131 N. E. 291, 18 A.L.R. 1242.

"A few state constitutions contain an express prohibition against taking private property for a private use. But the language of most of the constitutions, including the federal constitution, is either the same as or equivalent to the language appearing in our constitution; and it is uniformly held that such language prohibits the taking of private property for a private use." *Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510.

§ 25

11 (p. 28). Fourteenth Amendment of Federal Constitution Violated by Taking for Private Use.—*O'Neill v. Leamer*, 239 U. S. 244, 36 S. Ct. 54, 60 U. S. (L. ed.) 249.

§ 26

14 (p. 29). Public Use as Dependent on

TESTIMONY

To: Senate Judiciary Committee
Senator John Vratil, Chair

From: Roger Black
Kansas Livestock Association (KLA), Save Our Industry and Land (SOIL), and
Grouse-Silver Creek Watershed Board

Date: February 19, 2004

Re: Support for SB 461

Chairman, Members of Senate Judiciary Committee:

Since this economic development initiative known as Grouse Creek Lake project first came to my attention last August, I have experienced about every emotion know to mankind. I believed, however, that what I wanted, probably did not count for much in the final outcome as the facts of the proposal should carry the day. On this basis I have tried to pursue the facts.

My wife and I made a commitment to each other that we would pursue a full understanding of the factors affecting this challenge. If after that, the lake proposal prevailed, we could accept the consequences with our heads held high because we believe the "system can work", that Kansans want the best possible outcome for our state and that we have a basic respect for one another. SB 461 is about basic respect for property. Respect for persons and property, in many ways, are inseparable. SB 461 is a small move toward greater respect for one another.

The proposed lake development has created a class of victims that reaches far beyond the project boundaries. I know of new homes put on hold and remodeling and maintenance projects that will have to wait to see if the property will be lost. These, including fences, corrals, houses, barns, ditches and equipment replacement, will have to wait for less uncertain times. All this translates into lost economic activity, which impacts providers far beyond the five-mile perimeter. There have been at least two real estate transactions that were put on hold pending the outcome of this storm. We need some relief, a way to bring this uncertainty to an end.

I've been told that people incarcerated in our prison systems age at twice the rate of the general population. This may be worse. SB 461 may not be the end all do all for this cloud of despair, but I believe it represents Greta Goodwin's best effort to provide some relief to citizens she represents. The last time I saw her this passionate was when she was trying to protect the best interest of the people who lived in the Winfield State Hospital. I would not say that was solved perfectly, but it was the best we could do. SB 461 represents today's "best we can do" and I hope you will do no less.

Most projects are measured by three standards: Is it legal? Is it moral? Is it ethical?
Legal: The purpose of SB 461 is to assure that the Grouse Lake project follows state and federal laws prior to the use of eminent domain. Moral: It is immoral to ask Kansans to sacrifice so much for a project of such high public and private costs. From our research, lake projects of this type do not have a return for at least 35 years. Ethical: It is unethical to plan a project for at least five years without input from the people most affected and on whom the greatest costs fall.

Senate Judiciary
2-19-04
Attachment 9

I have come to see this community through new eyes. I have come to believe you cannot own a treasure like our community. You can only take care of it on your watch and then pass it on to the next generation. What we have here is our heritage from the past generations. What we do with it will be our legacy to generations yet unborn. Our challenge is to be good stewards of this resource and make wise decisions about its future.

An attempt to put facts on the table so that good decisions could be made has developed a heightened appreciation for the future possibilities for the Grouse-Silver Watershed. I have heard this legislature discuss agri-tourism. There is one farm that would be flooded which was bought by retired NFL player, Les Miller, an Ark. City native, which is being developed as a sportsmen's destination today. His fields are wildlife food plots, his pastures are managed for habitat. The signs say designated shooting area which allows him to do release and hunt over an extended bird season. Another neighbor has decided to go public with information on a stone building on his property, which is probably a French fur buying outpost. The Kansas Historical Society, based on an early 1990 dig for the US 166 corridor, study, has said the field near this stone cabin may be of national historical significance. The owner of that property is looking to the local museum to handle publicity, public access and protection of this piece of Kansas' past in exchange for protection from liability and cost to him. A team, including the museum, the Sierra Club and WSU personnel, plans an investigational trip to the site next week.

I believe the true leadership of this community, from the town hall to the state house, will be the ones who embrace this renewed appreciation and community involvement that exists today and develop a vision for the future. What we need help with is not to cover the whole community with water in pursuit of economic development, but a home grown, internally developed vision of what we want to leave for future generations. I suggest to you that the Grouse Silver Valley can't go back to pre-August, 2003 any more than the USA can recapture pre-911. Our eyes have been opened. While they are open, join with us in finding a compatible, sustainable, credible, doable roadmap to the future. I believe Cowley County needs help. We have lost proportionally as many manufacturing jobs from Ark City as if Wichita would lose the entire aircraft industry. We have not done an in depth visionary process since 1991. While we are still seeing some initiatives developed from that process, we need help in creating a new vision to design economic development for the next 15 years.

I believe there is a way to share this treasure with developers, tourists, second homes, and traditional values. Only with a cooperative spirit and true leadership can we see that kind of sustainable economic development engine created that can open the door to a future we can proudly nurture into existence.

I challenge you to join hands with those of us in this room, both sides of the room, and support SB 461, put this lake to rest and pursue a future of which we can all be proud.

TESTIMONY

To: Senate Judiciary Committee
Senator John Vratil, Chair

From: Donna Martin
Save our Industry and Land (SOIL) and Kansas Livestock Association (KLA)

Date: February 19, 2004

Subject: Support SB 461

Chairman Vratil and Members of the Committee:

On September 13, in the Wichita Business Journal, a Wichita Real Estate developer made public a five-year-old plan to stir interest in water and build the first preplanned developer's lake in the nation. According to the article, this Wichita group planned to pay for the lake by taking enough extra land for resale. In order to acquire more land than was actually needed for the project, their way of skirting the law was to have a Port Authority named. This entity would enable them to acquire the governmental authority to condemn and take the extra, desired land.

At a public meeting on October 27, we were told by the Lieutenant Governor Moore, "If there is no need for water, this is a dead issue." His statement appeared to be withdrawn on January 29, at the Lower Arkansas and Walnut BACs by one of his subordinates when he said, "Our goal is economic development through water." What is the issue here?

The 1971-89 Corps of Engineers Study indicates our area has adequate water through 2080. It indicates a water project of this sort is near the bottom on priorities. At the BACs on January 29, an El Dorado lake official mentioned offering to supply water for Western Butler County. Wichita officials rejected the offer. Our phone survey of all our surrounding towns indicated absolutely no need for additional water. We know that water is not an issue.

The Walnut BAC was told that the issue would not be handled in the traditional way and that they would not be able to deal with it. The Kansas Water Office appointed a special group called the TAC.

This lake project is having a profound effect on the people in our community and everyone connected to them. That is why the 300 seats at the Ark City meeting were full and people lined the walls and filled the hallway. That is why they filled the 80 seats and lined the walls on a snowy day in Wichita at the Walnut BAC meeting. That is also why most of these people left at 4:00 a.m. this morning to come here.

We know that governing bodies such as port authorities can zone three miles around their designated area. Ladies and gentlemen, we are talking about 29,000 acres within this lake in the one-mile range and an additional 30,000 acres within the three-mile range—about 60,000 total acres. We know that simply taking additional land would absorb these costs. In the Cowley County Lake situation, it could mean entire farms or ranches, not just a path through it. They do not make more land like they make street corners. It is irreplaceable. People would be forced to

Senate Judiciary
2-19-04
Attachment 10

move away from their community, family and friends in an attempt to replace the jobs or retirements that their land is now providing. (Map Included).

This has taught us we live in an amazing community with many enviable assets and possibilities. These are at risk and we need your help to protect them.

We learned through the Kansas Historical Society and their nineteen listed archeological digs that men have lived in our valley since thousands of years before Christ. They regard our area as extremely significant in explaining our past.

We learned we would lose a portion of the Black Dog Trail. It has major significance for both the Indian culture and the settlement of Kansas. Its proximity to the Indian territories gives us hands-on authenticity to the many legends of the history books. Dozens of 1800s houses and barns are still in use. One 1801 house is particularly fascinating because it would be the earliest known house in Kansas—before the Louisiana Purchase and the Lewis and Clark Expedition.

We learned about the huge typhoid death loss of an Indian tribe in our valley and of the other surrounding burial grounds. We learned about the 1990 Native American Graves Protection and Repatriation Act.

We learned about the two stone companies and that the high-quality stone they quarry is available from this area only. We were disappointed to find we might lose them.

It was surprising to find that our new US Highway 166 would need to be re-routed. Additional land would be necessary.

An oilman described our area as being like “swiss cheese” with the 699 listed oil and gas wells that would have to be purchased and plugged.

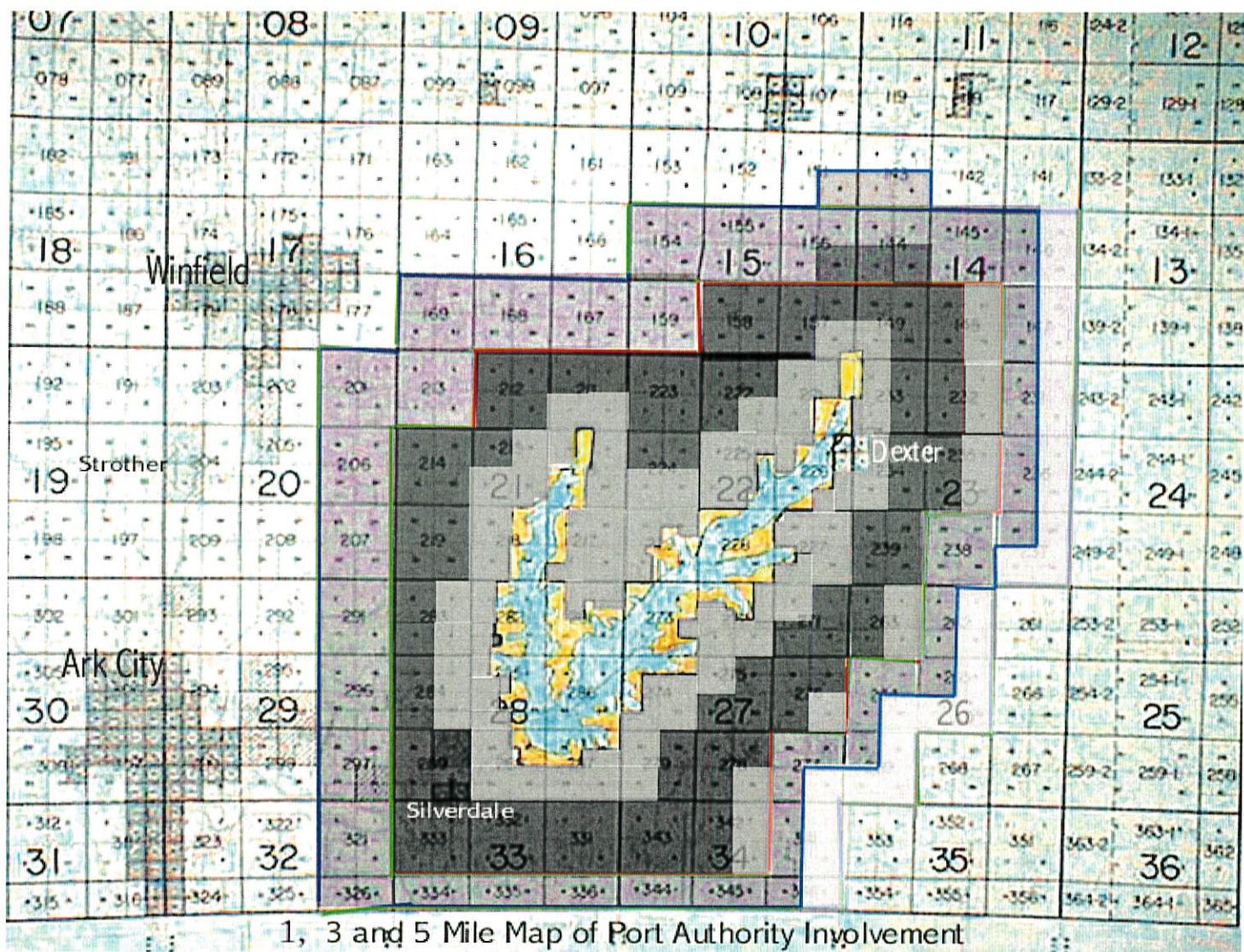
Most of us were surprised to learn that the Humbolt Fault was under our valley.

The saddest thing we learned was that the bill for all of this would be paid for by us. Their plan was simply taking our land by eminent domain and reselling it.

The exploitation of eminent domain has got to end. Please pass Senate Bill 461! We have been taught when something is bad to just say “no”. Ladies and gentlemen, we want you to just say no. Not here! Not now! Never again!

Ladies and Gentlemen, we are thankful that we live in a democracy. We know wars have been fought; blood shed and lives lost for less than what they are trying to do to us! It happened in the 1800s with the “first taking of the land.” The “second taking of the land” will not be allowed. With the passion of the wronged and the perseverance of a mama grizzly, we will follow this to the end!

10-3



1, 3 and 5 Mile Map of Port Authority Involvement

Charles M. Benjamin, Ph.D., J.D.
Attorney at Law
P.O. Box 1642
Lawrence, Kansas 66044-8642
(785) 841-5902
(785) 841-5922 facsimile
chasbenjamin@sbcglobal.net

Testimony on Support of S.B. 461
An act concerning eminent domain, relating to the
acquisition of land for certain purposes by a port
authority or county

On behalf of the Kansas Chapter of the Sierra Club

Before the Kansas Senate Committee on Judiciary
February 19, 2004

Mr. Chairman, members of the Judiciary Committee, thank you for the opportunity to testify this morning in support of S.B. 461. I am here representing the Kansas Chapter of the Sierra Club. The Sierra Club is the largest grass-roots environmental organization in the world with over 800,000 members including over 4,000 in Kansas. More information about the Sierra Club can be found at www.kansas.sierraclub.org.

Conservation of natural resources is the overriding concern of the members of Sierra Club. The Kansas Sierra Club supports S.B. 461 because it deals directly with a proposal to dam Grouse Creek in southern Cowley County in order to create a Grand Lake/Lake of the Ozarks type of development. Influential members of the Republican and Democratic parties in Wichita and Arkansas City support this proposal so the Sierra Club has grave concerns that this project could become a reality.

Why are we so concerned about Grouse Creek? The National Park Service has recognized Grouse Creek as an "Outstandingly Remarkable Stream" based on scenic, historical, and ecological attributes. Moreover, the state's former Fish and Game Commission listed Grouse Creek as a "Highest-Valued Fishery Resource". Recently, Kansas Magazine reported on the historic limestone bridges over Grouse Creek and its tributaries. There appear to be no federal or state listed Threatened and Endangered species in Grouse Creek. The creek continues to support most of its originally occurring fish and shellfish taxa, including

Senate Judiciary
2-19-04
Attachment 11

five extant SINC species or "species in need of conservation." The Kansas Department of Wildlife and Parks gives the SINC designation to certain species pursuant to K.S.A. 32-959 - a statute intended to acknowledge and encourage the protection of declining forms of native wildlife. I have attached to this testimony a list of SINC known or likely to occur in Cowley County and a list of various fish other aquatic species known to occur in Grouse Creek. The conservation status of native Kansas fish was reexamined by a special task force this fall. It is possible that some additional elements of the Grouse Creek assemblage will be designated eventually as SINC species or, in the case of the spotted sucker, elevated in status from SINC to threatened. Sadly, most of the fish and mussel species listed below are dependent on flowing water habitats and would not survive the impoundment of the stream.

The proponents of destroying Grouse Creek have proposed creating a port authority for this purpose. S.B. 461 would amend the port authority statutes in three important ways. First it would prohibit a port authority from using its powers of eminent domain to acquire land for the purpose of creating a dam for a "recreational-use purpose". Second, if a port authority is created for the purpose of using its powers of eminent domain to acquire land for the public purpose of a water supply for Cowley County, a private development could not occur on that land for at least 30 years. Third, if a port authority were created for a particular purpose by the legislature that purpose cannot change without the legislature having an opportunity to approve or disapprove of that change.

S.B. 461 would also prevent private development for 30 years on any land acquired by the Board of Cowley County Commissioners, using its home rule and eminent domain powers, for the purpose of creating a recreational lake.

We think that the provisions of S.B. 461 would go a long way toward protecting Grouse Creek and its tributaries. We commend Senator Goodwin for her efforts. We especially commend the farmers and ranchers of Cowley County for the outstanding job they have done to preserve this wonderful Kansas resource.



Species In Need of Conservation Known or Likely to Occur in Cowley County, Kansas

- Black Tern** - *Chlidonias niger* (Linnaeus)
- Bobolink** - *Dolichonyx oryzivorus* (Linnaeus)
- Cerulean Warbler** - *Dendroica cerulea* (Wilson)
- Creeper Mussel** - *Strophitus undulatus* (Say)
- Curve-Billed Thrasher** - *Toxostoma curvirostre* (Swainson)
- Eastern Hognose Snake** - *Heterodon platirhinos* (Latreille)
- Fat Mucket Mussel** - *Lampsilis radiata luteola* (Gmelin)
- Ferruginous Hawk** - *Buteo regalis* (Gray)
- Golden Eagle** - *Aquila chrysaetos* (Linnaeus)
- Plains Minnow** - *Hybognathus placitus* (Girard)
- Red-Shouldered Hawk** - *Buteo lineatus* (Gmelin)
- River Shiner** - *Notropis blennioides* (Girard)
- Short-Eared Owl** - *Asio flammeus* (Pontoppidan)
- Spotted Sucker** - *Minytrema melanops* (Rafinesque)
- Texas Mouse** - *Peromyscus attwaterii* (Allen)
- Wabash Pigtoe Mussel** - *Fusconaia flava* (Rafinesque)
- Western Hognose Snake** - *Heterodon nasicus* (Baird and Girard)

(Continued)

Cowley County, Kansas (cont.)

Whip-Poor-Will - *Caprimulgus vociferus* (Wilson)

Yellow Sandshell Mussel - *Lampsilis teres* (Rafinesque)

Fish species (KDWP):

Bigeye shiner
Blackstripe topminnow
Bluegill
Bluntnose minnow
Brook silverside
Bullhead minnow
Central stoneroller
Channel catfish
Channel darter
Common carp
Emerald shiner
Flathead catfish
Freckled madtom
Freshwater drum
Gizzard shad
Golden redhorse
Green sunfish
Largemouth bass
Logperch
Longear sunfish
Longnose gar
Mimic shiner
Orangespotted sunfish
Orangethroat darter
Red shiner
Redfin shiner
River carpsucker
Rosyface shiner
Shorthead redhorse
Slender madtom
Slenderhead darter
Slim minnow
Smallmouth buffalo
Spotted bass
Spotted sucker (SINC)
Suckermouth minnow
Western mosquitofish
Yellow bullhead

Mussel species (KDHE):

Bleufer
Creeper (SINC)
Fat mucket (SINC)
Fragile papershell
Giant floater
Mapleleaf
Pimpleback
Pink papershell
Pistolgrip
Plain pocketbook
Pondmussel
Threeridge
Wabash pigtoe (SINC)
White heelsplitter
Yellow sandshell (SINC)

Other reported mussel species (Metcalf 1980; KDWP):

Deertoe (SINC, probably extirpated in basin)
Lilliput
Paper pondshell
Pondhorn
Threehorn wartyback (probably extirpated in basin)



**COWLEY COUNTY
FARM BUREAU**

**1200 MAIN, PO BOX 635
WINFIELD KS 67156**

TO: SENATE COMMITTEE ON JUDICIARY
RE: SUPPORT OF SB 461
FROM: ROBERT VOEGELE OCCUPATION - FARMER
29414 41ST RD
ARK CITY KS 67005

February 19, 2004

Chairman Vratil and members of the committee. Thank you for this opportunity to provide comments on Senate Bill 461. I am Robert Voegele from Arkansas City and I farm in Cowley County. I am here to today to testify in favor of SB 461.

SB 461 proposes to limit the abilities of counties or port authorities to use eminent domain power to develop recreational-use facilities or allow private development of land taken through the use of eminent domain in Cowley County. This is an issue specific to Cowley County because of efforts currently underway to develop a 10,000-acre reservoir for recreational uses and high dollar housing areas.

The planned construction of Kanza lake, also known as Grouse Creek reservoir, is an attempt by private developers to acquire land in Cowley County using the excuse that a public water supply is needed or the project will stimulate economic development in Cowley County. However, those of us who reside in Cowley County know this is merely an attempt to hide the real motivation behind the project, personal financial gain by the developers. The proposed area for the project would take prime agricultural land out of production in south-central Cowley County; this area has some of the best agricultural land in the county. The developers and supporters of the lake talk about the need for economic development in the county, but these individuals fail to recognize the immediate loss to Cowley County's economy by taking this land out of production agriculture.

I ask the committee to consider the desires of those of us who live and work in Cowley County and our opposition to this project. We have been living with this threat to our land and our economy long enough. I ask you to vote in favor of Senate Bill 461 and put an end to the debate and discussion surrounding the Kanza lake project. I assure you if you pass this bill the developers will no longer see a profit to be made and will abandon this effort. Thank you for your time and this opportunity.

Senate Judiciary
2-19-04
Attachment 1/2

From: "John Todd" <john@johntodd.net>
To: "John Vratil" <vratil@senate.state.ks.us>
Date: Thu, Feb 19, 2004 12:22 AM
Subject: SB#461EminentDomainWrittenTestimonyJudiciary Committee 19Feb04.doc

1559 Payne
Wichita, Kansas 67203
(316) 262-3681 office

February 18, 2004

To: Senate Judiciary Committee Members
C/o Senator John Vratil, Chair
vratil@senate.state.ks.us

Subject: Written Testimony, Senate Bill No. 461 concerning eminent domain.

Dear Senator Vratil and Committee Members:

My name is John Todd. I am a licensed real estate broker in the state of Kansas. I live and operate my business in the Wichita area.

The only legitimate taking of private property that I support is the taking of private property only for public use.

I am categorically opposed to government involvement in the taking of private property for private use. State law should be drafted and passed into law that forbids eminent domain takings of private property for private use.

Secure private property rights are the basis of our individual freedom in this country. The high standard of living and economic prosperity we enjoy in this country is directly related to secure private property rights.

My wish would be for the legislature to follow the full letter and intent of the Fifth Amendment's takings clause of the U. S. Constitution. It specifically restricts eminent domain takings to the need for "public use" with the requirement for "just compensation". Taking private property from a small car dealer for a larger car dealer is not acceptable and should be prohibited.

The only thing the legislature needs to do is to follow the Constitution that each member has sworn to uphold.

Sincerely,

John R. Todd

Senate Judiciary
2-19-04
Attachment 13

C ngs,

We thank you for your time and talents in helping to bring about sound and fair government in Kansas.

Would you please read the enclosures (speeches, letters, public forums, letters to-the-editor and editorials). They will explain the concern we have in preventing two private developers in Wichita from taking over 27,000 acres in Cowley County (10,000 acres for a lake and 17,000 acres around the lake for houses, marinas, a golf course and restaurants).

This would be a gross misuse of eminent domain. It would adversely affect over 1,000 people in four townships and the town of Dexter. It would totally devastate the present landowners whose land would be taken and their houses put under water.

The claim that the lake is needed for water for Cowley county and/or surrounding counties has been proven false.

Please help us stop this greed for private financial gain.

Bud and Jan Nitschke
and other concerned citizens
of Cowley County.
1-620-876-5496

Senate Judiciary
2-19-04
Attachment 14

STOP THE LAKE

1. Mike Loveland, age 48, is a Wichita real estate promoter who works for Weigand, the largest real estate company in Wichita. He started to secretly plan this project over five years ago.
2. The general public, including those who would be forced out of their homes and off their land, were not informed until late August of this year after the entire plan was put together and maps distributed showing where everything would be.
3. He has dreamed and schemed to make a lake of 8,000 acres with a drainage area of 362 sq. miles and take another 17,000 acres of land around the water. This is a deceitful and malicious misuse of the Eminent Domain law, which was passed in the infancy of our nation in 1795. The rightful purpose of the law is the taking of private land for governmental possession to be used for public need. It was never meant to be the taking of land from private owners and turning it over to other private people for their own personal gain.
4. If the proposed lake would come about, it would drastically affect over 1,000 people in this county in four eastern townships (Liberty, Dexter, Silver Creek and Silverdale). Many families would be driven off their land, and the town of Dexter would either be submerged, or the back water of the lake would reach the south edge of town, as shown by Loveland's map. This could end up being a mosquito-infested swamp for West Nile Disease.
5. The almost-new Dexter School of K-12 would most likely fold due to the removal of many children from the school, because of their families being forced off their land. This is a school with good administration, excellent teachers, supportive parents, very few discipline problems and high scores on State tests.
6. Those remaining in the four townships would be required to pay the lost taxes when the condemned land would be taken off the tax roles. This deficit figure would be well over \$100,000 annually.
7. There is no fair market price for the buy-out of land. It is an asset of perpetuity. It was the means of families making a living in generations past and is for generations to come. There is no way to replace land. Where would the ranchers and farmers go with their cattle herds and machinery?
8. Planet Earth is 2/3 water and 1/3 land; of that 1/3 land, only 1/8 is tillable to provide food for 6 billion people. And the limited tillable land is decreasing every year due to urban expansion. Why destroy good land for another recreational lake when both Kaw Lake, with 17,500 acres of water and Winfield City Lake, with 1,200 acres of water, are both less than 15 miles away and are underutilized as to recreational use.
9. This greedy land grab to provide another playground is an insane invasion of people's property. It is evil to take their property from them and then pass it on to other people for their personal pleasure and financial gain.
10. This proposed lake would destroy fertile valleys of cropland and pristine prairie for cattle grazing, containing the best grasses in the USA. Thousands of acres of additional land will be taken on all sides of the 8,000 acres of water.



Draft 1.

Walnut Basin Advisory Committee

Dear Committee Member:

I am appearing today on behalf of the Kansas Livestock Association (KLA). The Kansas Livestock Association is a non-profit trade association representing over 6,000 livestock producers and landowners throughout Kansas.

KLA members in Cowley and surrounding counties are very concerned with the proposed lake to be built in Cowley County. Frankly, we oppose the development of such a lake, as it would take our land.

We have expressed concerns with the *review process* to the Kansas Water Authority in a letter dated January 16, 2004. A copy is attached for your review. In that letter we asked that any review include analysis of all state and federal laws that would affect the permitting and building of a lake. It is imperative that no project moves forward without the knowledge that state and federal laws can be met. It would be a terrible injustice if local, state, or federal officials or private developers were allowed the use of eminent domain powers to take private land without knowing the project could ever be completed.

In 1971 the U.S. Army Corp of Engineers conducted a study of the Arkansas River Basin and concluded that a lake on Grouse Creek was not a high priority. In that review, the Corp analyzed many issues. We ask that the Walnut Basin Advisory Committee and the Kansas Water Authority analyze *all probable* issues, including those raised by the Corp, (water supply, flood control etc) and other affects of such a development on: (1) interstate water compacts and intra and interstate flows between Kansas and Oklahoma; (2) watershed projects and the watershed board; (3) Indian burial sites; (4) oil and gas wells; (5) salt sites; (6) wildlife and wildlife enthusiasts in the area; (7) state and federal historic sites; (8) the agricultural economy of the county; (9) county property taxes; (10) quarry businesses; (11) and public and private water supply needs.

As you consider issues to be addressed, we ask that you listen carefully to the specific concerns raised by Kent Radcliff, Roger Black, Donna Martin, Jeremy Nelson, Ron Pray, Jan Nitchke, Jay Newton and others. These are dedicated life long citizens of Cowley County who have gathered data on a number of issues that need to be included in your analysis. If these issues are not addressed, a complete picture of the feasibility of this project will not be presented and a great injustice to this community will likely occur.

We stand ready to assist in the gathering of data, and trust this committee, as members of our community, will take the necessary time to analyze completely all issues and not act upon emotion or personal desire. Thank you.

Kelly Williamson
Dexter, Kansas

Walnut Basin Advisory Committee

January 29, 2004

I am Donna Martin, a Grouse Creek resident, and I am appearing on behalf of S.O.I.L. Inc. I represent many of the Grouse and Silver Creek Landowners. We believe a complete study of this project will prove this is not the proper place for a lake.

There are two very important aspects that are at risk of being lost from our community forever. I am speaking about our history. Every community deserves to maintain its history, but the content of ours is extremely rich. Both Silver and Grouse Creek Valleys contain both prehistoric sites and more recent historical sites.

According to Mark Stein, an archeologist of the Kansas Historical Society, there are 19 recorded, prehistoric sites dating from 3000 BC to 1780 within our valleys. The largest cluster of these is near the confluence of the two affected creeks. He agrees with our residents that there are many more unexplored sites. Residents rarely openly share the knowledge of these sites because of the onslaught of artifact seekers. One dig was recently completed on Grouse Creek near Dexter on Highway K15. Dr Blakeslee of WSU agrees that our valleys are extremely rich in prehistoric artifacts. We took a large plastic bag of artifacts to his office and he told us some of the arrowheads were from a period 1000 years BC. Our area is an import archeological area and would definitely require section 106 surveys and millions of dollars.

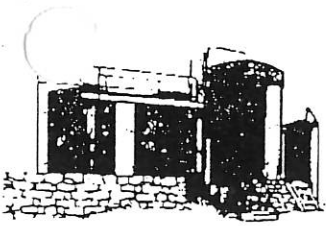
Ancient trails went directly through our region. The Black Dog Trail was a major route. There are six markers across southern Kansas denoting this trail, with one marker being in Dexter. The trail was a major Indian hunting, gathering and mourning route of early times. The Proposed Lake reservoir would intersect this trail. Later travelers of this trail were the Daltons, Billy-The-Kid, the Youngers, Frank and Jesse James, Chief Joseph, Belle Starr, Pretty Boy Floyd and the list goes on.

Our bridges are more recent historical sites. One stone bridge is on both the Kansas and National Registry. It is built on a solid rock bottom next to a community-swimming hole that has undeniably been used for centuries for swimming. The Ech Spur Bridge on Grouse Creek is also on the Registry. It is a 3-Arch Bridge. The Brown Bridge, which is known for its unique construction, is on Silver Creek. Crab Creek Bridge is other.

Since many of the valley residents are long-term families whose ancestors settled the valley, we have numerous structures that are eligible for placement on the Historical Registry. A few of these are:

- The 1880 Jr. Hoyt house on Plum Creek north of Dexter and his 1878 barn--both rock construction
- The 1878 Mike Steinbach home on Crab Creek and their barn
- The Boggs barn south of the dam site.
- The 1928 Rahn barn which has a spring within the structure. The house was built shortly after
- The 1929 Scout Encampment
- The house where Ron Howard's father grew up





BEAUCHAMP OIL & ROYALTY CO.

Don W. Beauchamp, Petroleum Geologist

1401 S. 359th St. W. • Cheney, KS 67025 • 316 542-0103

Grouse Creek Project Cowley County, Kansas

As shown on the enclosed generalized Physiographic map of Kansas, Cowley County lies at the extreme south end of the Flint Hills Uplands (shown in light blue) and adjacent to the Oklahoma border to the south. Cowley County is one of the largest counties in the state, extending 35 miles from north to south and 34 1/2 miles from east to west, and comprising an area of about 1136 square miles.

The principal streams for surface drainage are the Arkansas River located in the southwest part of the county and the Walnut River located on the western side of the county. Grouse and Silver Creeks and their tributaries located to the east, drain about a third of Cowley County, and join the Arkansas River about a mile above the Oklahoma border south of Silverdale. The valleys of these streams, except the Arkansas River valley are relatively narrow with steep walls and are rimmed with resistant limestone.

Structural Features

Besides the Nemaha Ridge which traverses the entire state of Kansas from Nebraska into Oklahoma and cuts across the extreme northwestern part of Cowley County, the most pronounced surface structural anomaly in the county is the Dexter Anticline, which trends due north from a point near Otto school to Dexter and then northeasterly. This anticline is divided into a series of local "highs" traversed by sags or saddles. Many producing oil and gas wells have been drilled on these "highs" and anticlines. In fact for the past 100 years since the discovery of the first gas well near Dexter in 1903, (the famous gas well that wouldn't burn because the nitrogen and helium content were too high), oil companies have been drilling for oil and gas in this area.

Production

In just the area of interest of the proposed Grouse Creek project from Dexter south to Silverdale and between Grouse Creek on the east and Silver Creek on the west some 699 test wells have been drilled. These include dry holes, oil wells, gas wells, injection wells, and disposal wells. In fact it is estimated that 220 wells are



14-5

My name is Bud Nitschke. I live in the township of Dexter, near Dexter, Kansas. Grouse Creek runs through our ranch.

At Topeka, Kansas on Wednesday, January 21, 2004, I met Jennifer Epperson, Archeologist, Cultural Resources Division of the Kansas State Historical Society. I showed her a copy of the proposed lake. After she located the area in her records, she told me that at the time Highway 166 was redone many sites of Native American culture were discovered. The area is one of the few prime locations for historical Indian settlements, but has not been explored. Jennifer also showed me a copy of the results of the recent dig that Dexter conducted by the State Historic Preservation Office (SHPO). The find was a major one. Jennifer marked on my copy the locations in the Dexter area of past finds and noted the significance of each. She told me the finds were sufficient to stop activity in the area until a volume of tests could be made and the costs would be tremendous.

On December 1, 2003 at the Kaw Nation in Kaw City, Oklahoma, I met Crystal Douglas, Kanza Museum Director for the Kaw Nation. Crystal is involved with the application of Native American Graves Protection and Repatriation Act (NAGPRA). This act became a law on November 16, 1990 (Public law 101-601;25 USC 3001 et seq.). I showed her a copy of the proposed lake and after locating the area in her records, she told me that that area would probably contain numerous Native American graves which many may not be marked. The Dexter area was located on or near the Black Dog Trail. The trail was used extensively before the opening of the Cherokee Strip. The Kaw, Osage, Cherokee and possibly other tribes' graves and artifacts could be found. Crystal further said that 1600 Kaw were moved from Council Grove, Kansas in 1872 enroute to Oklahoma. The Nation spent one winter in Kansas, just south of Dexter, before completing their journey the following year in 1873. Records show about 500 died before reaching their destination across the state line to the area now known as Ponca City. Typhoid fever was the main cause of death. Crystal said that Kaw Nation has a machine capable of locating objects underground. If the need arose, it is available. She also said that the Native American Grave Protection and Repatriation Act could be used to require a permit from the tribe before action could be taken regarding the lake bottom. A search for human bones and artifacts would be required, which is very expensive. Crystal gave me several pictures of human remains that washed ashore and embedded in the banks of the Kaw Lake. She had received the pictures from the U.S. Corps of Engineers. The Corps had moved the cemeteries that were possible to be moved, but some graves were not marked or were not in shape to be moved or were not moved for other reasons.

On October 29, 2003, in Ponca City, Oklahoma at the Kaw Nation Office, I met Linda Carlyn, who works in the Grants and Contracts Department. She supplied me with a copy of the Native American Graves Protection and Repatriation Act. Linda stated that one of the most appalling experiences was seeing in person the bones of their ancestors washed ashore. Linda said some Native American tribes consider graves sacred ground and should not be disturbed. She was familiar with the Dexter area and advised the use of the Act, as the situation may fit regarding removal of graves, artifacts and human remains.

Tom Trueblood, Restaurant Owner - Kaw City; Sandy Stevens, Nurse - Kaw City; Jan Heffner, Program Development Services - Kaw Nation, Kaw City; Wayne Leven, County Commissioner - Newkirk; and Craig Countryman, Sheriff - Newkirk are long-time residents and are familiar with the Dexter area and acknowledge the high probability of unmarked Native American graves. They also affirmed the trauma that was experienced with the sight of human bones. Sheriff Countryman had the duty of removing the bones and taking them to Wichita State University for validation.

Thank you for your attention

Bud Nitschke

14-6

January 28, 2004

Roger Black
16672 US 166
Arkansas City, KS 67005
620-442-1953

To: Walnut Basin Advisory Committee

Roughly half of the agriculture land in Cowley County is pasture and half crop land. Most of the pasture land is east of Cowley County 1 Road. The Grouse and Silver Creek watershed is in these grasslands. Based on calcareous soils, these grasslands produce "Limestone hay". These native grass hays are considered medicine for stressed cattle, new arrivals at feedyards and sale barns, newly weaned calves and many horses and zoos. There are several thousand acres of alfalfa in Cowley County largely concentrated in the soils along the creeks of this same region. According to Kansas Farm Management records, most years alfalfa hay is the most profitable farm crop enterprise, acre for acre, in Cowley County. In a recent year my farm records show we shipped hay to 22 states.

The grasslands support the largest cow herd of any county in Kansas. This region is also the destination for thousands of stockers each year. These are typically calves that come to the Flint Hills from all over the U.S. for 90-120 days, where they sometimes gain over 3 pounds per day prior to entering the feedlots of western Kansas.

The watershed we have today is a product of naturally stable soils, undisturbed native grasslands, and the stewardship of generations. These stewards have preserved and protected these resources because they are economically viable. They have come to be a large part of our identity as a part of Kansas' past, present and future.

The Grouse-Silver Watershed has never had to mitigate serious soil erosion problems above any of the water shed detention structures. This is a very rare situation among watershed districts in the United States. The U.S. Corp of Engineers, in their 2000-2004 study of the lower Walnut and Grouse-Silver watersheds, identified the Grouse-Silver as an area to preserve. The balance of the area was targeted for restoration. This distinction is a reflection of the health and good care this ecosystem has received.

Challenges to this picture come in various forms: exotic, non-native species, including *Serecia Lepidosa* which threatens to crowd out native grasses and introduced old world blue stems, which are a God-send to recovery and restoration projects, but pose a threat to the native grasses because of its prolific reproduction and low palatability.

Oil production, which has been active for 70 years or more, currently includes approximately one-third of the active wells in Cowley County. The affect of oil production has included extensive pipelines and tank batteries, salt water leaks and disposal wells, and slush pits. The KCC is more conversant in the effects of oil production in the area, but I know that salt water occasionally flows to the surface, that domestic water wells hit salt water at 30-60 feet below the surface and that at least once in August of 1970 Grouse Creek turned to salt. (see picture and rock display). This picture shows Grouse Creek flowing underground on the current House Hereford Ranch. DeVore Hog Farm had been diverting Grouse Creek water for use by their pigs. The water became too salty for the pigs to drink. Jasper DeVore took the picture you have. That was when rural water lines were extended to the homes and farms in the Valley.

Could I answer any questions?



1/29/04

Good afternoon, and thank you for the opportunity to say a few words about the proposed Grouse Creek Lake. My name is Ron Pray, and I'm owner and operator of Pray Stone Company in Winfield.

The name of my company may not be significant to you, but I'm guessing you've seen the stone that we quarry.

Maybe on the way over here today you drove past Crum Castle, or past the Old Sedgwick County Court House, or the Old Wichita City Building. Maybe you came from the south, and passed the Cowley County Courthouse.

Or maybe you've been to Ahearn Fieldhouse or Archer Hall at K-State, or Lindley Hall at the University of Kansas, or the Union Building at Fort Hays. Maybe you've seen the Kansas City Scottish Rite Temple.

These buildings all represent the very best of Kansas—they're solid, and majestic, and built to last hundreds of years. And they all have one thing in common: They're built of Silverdale limestone, one of the most beautiful and useful natural resources on earth.

Silverdale limestone was first quarried in the mid-1800s for local projects in Cowley County, but it was so unusual and special that word of its quality and beauty soon began to spread. By 1870, stone from the Grouse Creek Valley was being shipped as far as Wichita, and as modern methods of transportation were introduced, use of Silverdale stone expanded through the state and country.

Today thousands of people across our nation can point proudly to their churches, their schools, their homes, and say that they were built with Silverdale limestone, knowing that no finer building material exists.

Unfortunately, plans for this lake may mean that future generations don't have the opportunity to use Silverdale limestone.

You see, Silverdale limestone outcrops only on the plateaus overlooking the Grouse Creek and Silver Creek Valleys. This stone is in the Barneston Geological formation, which is about 100 feet thick and runs north and south across the state with outcrops occurring in this valley in about a 10-foot thick section.

The stone in this section is unique in the color, quality, and characteristics that only Silverdale stone possesses.

If the lake is built, and land within 3 miles of the lake is appropriated by eminent domain for development of the lake, all past and present reserves of Silverdale limestone will be affected.



Walnut Basin Advisory Committee

January 29, 2004

My name is Kent Radcliff. I am a Kansas Livestock Association member, producer and landowner, located North of Dexter, Kansas.

I'm Chairman of the Grouse Silver Creek Watershed District #92. This district is a Governmental Taxing Authority legally formed in August of 1971. I have held the Chairmanship for 27 years.

Grouse-Silver Creek Watershed consists of two [2] main streams, Grouse Creek and Silver Creek. Silver Creek outlets into Grouse Creek at the lower end of the watershed in the flood area of the Kaw Reservoir, Oklahoma.

The reason for organizing is to reduce the flood damages and the protection of life and property in the Grouse and Silver Creek floodplain.

This watershed is somewhat unique in that most cropland for cash and livestock feed is either on the top of the hills, which is subject to drought or in the fertile floodplain of the creeks, which usually gets enough moisture to produce regardless of drought.

The area coverage for our District is approximately 249,700 acres, East of Arkansas City Kansas and North of US-166, thence North and Easterly to and including the Southeast of Butler and the Northwest of Elk Counties or the headwaters of Grouse. We are funded by a mill levy on all the land located in these areas. The District has an overriding Water Right on the main watercourse of both these streams. Some years ago the District subrogated the water rights South of US-166 to the U. S. Army, Corps of Engineers, Tulsa, Oklahoma, for their Kaw Reservoir project.

What does the District protect? At the present rates of valuation, over \$1.6 million in Agricultural land, over \$318,000 in Agricultural buildings, over \$2,000,000 in Residences. We are in the process of arriving at a value for the oil leases and equipment, but suffice to say, at the current price of oil; it would be in the millions of dollars.

The District has an agenda of 20 sites, of which 6 have been constructed and a 7th is in arbitration.

The District, when organized, was a bit late in the funding game with the Federal Government. Our sites have been constructed with local tax monies, approximately every 4 years, together with a matching fund from the State Conservation Commission.

The District has an Annual Budget of \$52,000 to perpetually operate and maintain the existing 6 structures. The Officers and Directors receive no salary and minimum compensation for their duties.



Members of the Advisory Committee:

I, Jan Nitschke, of the Dexter community and I would like to thank you for giving of your time as volunteers to serve on the Walnut River Basin Advisory Board. You are our direct contact to bring to you our justifiable concerns.

The purpose of my report is to refute the developer's fabrication of the water needs in the surrounding area.

Mike Loveland claims that this proposed lake could provide water for many southcentral Kansas communities, including Wichita. My assignment was to call surrounding water districts in a five-county area. Not one was even vaguely interested in piping water from this proposed lake in Cowley County. Here are some of the responses.

Wichita has ample water for the city, plus Wichita sells water to 10 surrounding towns and a rural water district. The way it looks now, Wichita could supply every community in Sedgwick County through 2050. If ever they would need to look for another lake source, they would consider Milford Lake to the north, not a lake in Cowley County. Source of information was Jerry Blain, head of Wichita Utilities, also a member of the Kansas Water Authority Board.

Belle Plaine in Sumner County is very close to underground water and has all the wells they need, according to Tami McCannon with the Belle Plaine Water Department.

Wellington, also in Sumner County, has recently doubled the size of their lake, which gives them an ample supply of water. For any possible additional needs they have nine good wells. They are also close to the Chicaskia River. This information was from Jason Blazing of the Wellington Water Department.

El Dorado, in Butler County, has ample water from their 10,000 acre lake.

Cedar Vale in Chautauqua County, has recently received a grant and is laying a pipe line to Quiviara Lake in Chautauqua County as reported by the Cedar Vale City Clerk.

As to water needs within Cowley County where the lake is proposed, Arkansas City has ample water using 10 good wells drawing from the alluvium area near the Arkansas River on the west edge of town. In addition, if needed, they have a pipe line in place in the Walnut River on the east edge of town. Arkansas City also supplies a Rural Water District. Information from Clay Randel, Director of the Arkansas City Water Department in a phone visit on December 3, 2003.

Winfield, in Cowley County, has a 1200 acre lake. It supplies Winfield, Burden, and partial needs for Oxford in Sumner County (partial now, but more later if needed). Winfield's lake also supplies five Rural Water Districts in Cowley County. The Rural Districts supply the towns of Atlanta, Cambridge and Dexter. The engineer reports show that the lake is good for at least 20 more years. There are adequate slopes on land near the existing lake for a possible secondary lake source. Right away for the pipe line already exists.

On October 1, 2003 four of us visited with Mike Loveland in his office at Weigand's Real Estate Building in downtown Wichita. He laid out a large map and proudly showed his plans and places for vacation homes, marinas restaurants, parks and a golf course. The Wichita Business Journal, September 13, 2003 quotes him saying, "If I don't push this project, who will?"

In closing, let me make mention that Grouse Creek Valley is home to several men in the Military Service. We also have many veterans in the area from ages 33 to 84. They went off to wars in the past five decades to fight for our country's freedom and for the security of their property. They see no reason to give up their property to provide a playground for the rich in Wichita.

Thank You

Jan Nitschke

Water Advisory Committee

In 1879 Lincoln freed the negro slaves. This act brought a great negro migration to Kansas.

Disinherited by the war, bewildered, hungry and tired the pitiful bands trudged northward. The news that Kansas was a Free State had spread rapidly across the south, carrying hope to people who had not had hope before. A stake in Kansas meant freedom.

Kansas, having suffered enough to know the meaning of privation, turned none away. Day after day, the ragged half starved freedmen stumbled into Dexter town. It was late October and the warm fall was fading fast.

The Grouse Creek Valley folks could hear the bands of negroes coming down the trail from far off. They announced their coming with their melancholy chant. The valley folks lined the streets awaiting their arrival. Many had never seen a negro before. The singing became louder as they neared Dexter.

The Kansas people meant their promises but their generosity was far greater than their ability to meet it. They themselves had been through a drought and grasshopper plagues. A few good years had not been sufficient to create a surplus to share with so many, and still leave enough for their own families. The free land the government promised was true but the free mule part of it was not. The land could scarcely support ~~ce~~ a man, much less a family, let alone without tools and equipment. Nevertheless, as they saw the black people, weak to the point of not being able to walk, many Dexter people helped the negro people carry their children that stumbled down the street too tired to walk.

The two churches gathered clothing, food, blankets, and whatever shelter they could provide. Most of the rags they were wearing would not have been adequate to keep them warm for the chilly October weather. Many of the newcomers straggled on through town near Grouse Creek. The hill sheltered them from the East wind and there were berries and water from the creek. There were rabbits to snare. This was a place to put down their roots and to start forgetting their bitter years.

Some stayed in the valley and built cabins under the trees. Dexter began to take the name of Cabin Valley. Others trudged on to another part of the country.

One young negro mother, heavy with her fourth child, had TB and in birthing the baby, died, leaving her four children to a white woman that had helped her. The young mother was buried in a lonely grave where the violets grew along Grouse Creek.

Many negro people died that fall and winter due to the coldness of their new land. There was no money for dynamite to blast a grave from the flint hill where the town cemetery was located. So most all the negro people were buried in the soft land along the valley near Grouse Creek.

Qn old negro woman missed going to her own church and she asked a white woman if she could just slip into the back pew on Sunday morning. The white woman said "You may go to church with me, but you will come sit on the front seat with me. You are my friend"

To bury "Cabin Valley" under a recreational lake is to consign a crucial part of our historical heritage to a watery grave. Gone forever will be the opportunity to sit on a quiet hillside and envision a panorama of life as it was in a day long gone. Surely there are places where there is less vital history to be lost forever.

Rhea Sloan
Dexter, Kansas

Notes on the Presentation to the Walnut Drainage Basin Committee January 29, 2004 at the Sedgwick County Extension Service offices in Wichita, Kansas.

Mr. Chairman:

I have been requested to comment on the loss of taxes to the community should a lake be constructed at the confluence of Grouse Creek and Silver Creek in the Dexter area of Cowley County. The tax loss number I will give you is just that, not the loss of assessed value for tax purposes.

The surface area of the proposed lake will cover approximately 8,000 to 9,000 acres. Using the project proponents figure of 8,000 acres, the direct tax loss will amount to \$90,823.93 per year based on current taxes and assessed valuation of property. However, the actual loss of taxes would amount to approximately three times the amount of tax loss for land located adjacent to the lake as needed to complete a project such as the one being proposed. Actual tax loss due to acquisition of right-of-way needed for the entire project will result in an annual tax loss of approximately \$250,000.00.

The distribution of tax funds from this area is shared by the county, the township and the school district. The loss of taxes due to construction of the lake would have minimum impact on the county and the township but would be catastrophic to a small school district and would be tantamount to bankruptcy for the Dexter School District..

Thank you for your time and attention.

Jay Newton

January 28, 2004

785-776-3944

mclange@kansas.net

Carroll A. Lange

Certified Wildlife Biologist

7102 Abbott Dr.

Manhattan, Kansas 66502

Cowley Lake Project: Wildlife Damage Assessment.

Many native game and furbearer species, including White tail deer, wild turkeys, greater prairie chickens, bobwhite quail, raccoons, beaver, bobcats, coyotes and others, do not adapt to lakes, urban and suburban environments planned by urban developers. Those species and many native non-game species will decline and disappear. Urbanization including shade trees will destroy all remaining greater prairie chickens in the suburbanized areas.

Grouse and Silver Creeks are two of few remaining Flinthills streams in near pristine condition. They are a delight for canoe and float trips. Much of their native aquatic life will be severely degraded by travel upstream of predators from the new lake.

We should make an all out effort of restoring Grouse and Silver Creeks and their adjoining true prairies so that prairie chicken and quail populations might return to normal, that we may again enjoy the beauty of prairie birds and prairie wild flowers.

We should make a strong effort to control noxious plants of foreign origin, including *Serecia lespidesa*, Johnson grass, hedge and cedar trees and others. We should not give in to inland lakes and urban development.

The Agony of the Prairie Continues:

Do you have questions?

AGRICULTURAL VALUES FOR COWLEY COUNTY

COWLEY COUNTY AGRICULTURE FACTS

Total Agricultural Acres 642,549

Market value of all Agricultural products sold \$67,530,000

Market value of Livestock products sold \$44,231,000

Livestock constitutes 65% of all the agricultural market value

Market value of Crops sold \$23,299,000

LAND VALUATION/ACRE

Value of land in Cowley County on the average is \$540 per acre.

A 10,000 acre lake would have the average land value of \$5,400,000.

If a perimeter was to take 30,000 acres including lake the value would be \$16,200,000

VALUE FOR LIVESTOCK PRODUCTION:

State average of 3.9 acres per head for full summer season, for 500-699lb steers and heifers

10,000 acres could hold 2,564 calves.

State average of \$67.20 per head lease value for full summer season, for 500-699lbs steers and heifers

The value of leasing out 10,000 acres for steers and heifers weighing 500-699lbs for the full summer would be \$172,300.80.

State average of 7.4 acres per pair for cow calf pairs for full summer season.

10,000 acres could hold 1351 cow calf pairs

State average of \$110.50 per pair lease value for full summer season, for cow calf pairs

The value of leasing out 10,000 acres for cow calf pairs for a full summer season would be \$149,285.50

All facts obtained from the National agricultural Statistic service and the Kansas Agricultural Statistic Service
1997 census of agriculture. Bluestem pasture report

Presentation and preparation of this document does not constitute support or opposition ,to the Konza Lake Project, by the Cowley County Extension Council, K-State Research and Extension, or any agents involved.



14-14

Table 1--BLUESTEM PASTURE LEASE RATES & PERCENT LEASED, 1999-2003

Year	Average Lease Price per Head for Full Summer Season							Price for Pastures Rented on "Per Acre" Basis	Percent of Pastures Leased Mid-April
	Steers and Heifers				Cow/Calf Pairs				
	Under 500 Pounds	500-699 Pounds	Under 700 Pounds	700 Pounds or More	With Fall Calves	With Spring Calves	Average for Pairs		
----- Dollars -----									Percent
1999	56.00	58.80	57.90	63.80	108.10	100.90	102.90	16.00	96
2000	60.40	63.70	62.30	75.50	115.00	106.50	108.80	16.30	97
2001	59.00	65.50	63.00	75.40	113.60	104.10	107.00	16.30	97
2002	62.50	62.80	62.70	78.30	109.50	107.80	108.30	16.90	95
2003	62.30	67.20	65.50	79.80	115.20	108.60	110.50	16.30	97

Table 2--BLUESTEM PASTURE RENTAL ACREAGE GUARANTEES, CONDITION, & CATTLE PRICES, 1999-2003

Year	Average Acres of Grass Guaranteed per Head for Full Summer Season							Pasture Condition Percent of Normal Mid-April	Prices Received by Farmers during February per 100 Pounds		
	Steers and Heifers				Cow/Calf Pairs				Beef Cattle	Calves	
	Under 500 Pounds	500-699 Pounds	Under 700 Pounds	700 Pounds or More	With Fall Calves	With Spring Calves 1/	Average for Pairs 1/				
----- Acres -----									Percent	Dollars	
1999	3.7	3.9	3.8	4.7	7.5	7.0	7.2	94	63.80	92.00	
2000	3.6	3.9	3.8	4.9	7.6	7.1	7.2	93	70.70	107.00	
2001	3.8	4.0	3.9	5.1	7.8	7.2	7.7	87	78.70	107.00	
2002	3.8	4.1	4.0	5.1	7.6	7.4	7.5	62	72.60	107.00	
2003	3.8	3.9	3.9	5.0	7.5	7.3	7.4	82	78.00	99.30	

1/ 2002 data revised.

Table 3--BLUESTEM PASTURE LEASE RATES & ACREAGE GUARANTEES, SHORT SUMMER SEASON, 1999-2003

Year	Average Lease Price per Head for Partial Season (Dollars)				Average Acres of Grass Guaranteed per Head			
	Steers and Heifers				Steers and Heifers			
	Under 500 Pounds	500-699 Pounds	Under 700 Pounds	700 Pounds or More	Under 500 Pounds	500-699 Pounds	Under 700 Pounds	700 Pounds or More
1999	47.10	48.70	48.10	60.30	2.4	2.6	2.6	2.8
2000	50.90	54.40	53.00	63.90	2.4	2.7	2.6	3.0
2001	51.40	53.40	52.60	58.40	2.6	2.7	2.7	3.2
2002	50.50	52.90	52.30	59.60	2.9	2.8	2.8	3.6
2003	49.20	53.50	52.30	65.30	2.5	2.6	2.6	3.7

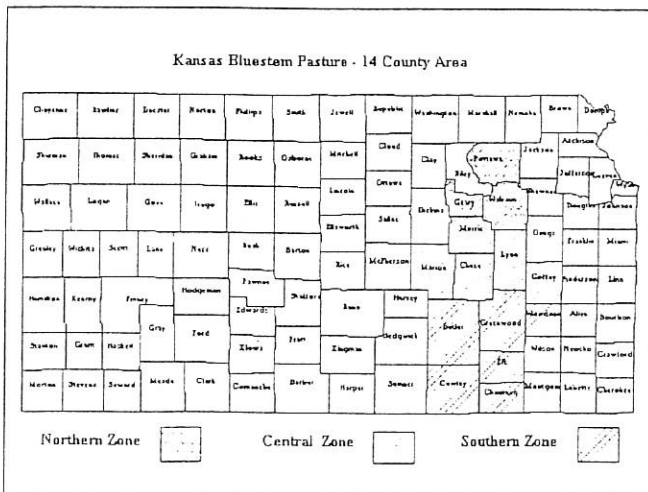


Table 4--FULL YEAR LEASING

	Cows with Fall Calves	Cows with Spring Calves
Avg. Lease Price per Head	121.10	115.90
Avg. Acres Guaranteed per Head	8.7	8.4
Price for Pastures Rented on 'Per Acre' Basis	15.00	



KANSAS DEPARTMENT OF AGRICULTURE
 DIVISION OF STATISTICS
 PO BOX 3534
 TOPEKA, KS 66601-3534

PRESORTED
 STANDARD
 US POSTAGE PAID
 PERMIT NO. 392
 TOPEKA, KANSAS

RETURN SERVICE REQUESTED

Table 7--RANGE OF BLUESTEM PASTURE LEASE RATES, 2003. FULL SUMMER SEASON 1/

Type of Lease	Lease Price Range per Head for Season (Dollars)							Price for Pastures Rented on "Per Acre" Basis
	Steers and Heifers				Cow/Calf Pairs			
	Under 500 Pounds	500-699 Pounds	Under 700 Pounds	700 Pounds or More	With Fall Calves	With Spring Calves	Average for Pairs	
NORTHERN ZONE 2/								
With Service	59-75	62-81	59-81	75-90	100-137	90-126	90-137	10-23
Without Service	53-70	50-80	50-80	60-105	70-140	45-130	45-140	10-21
Combined Average Lease Rate	53-75	50-81	50-81	60-105	70-140	45-130	45-140	10-23
CENTRAL ZONE 2/								
With Service	50-80	55-86	50-86	65-100	75-160	53-140	53-160	10-23
Without Service	45-80	36-88	36-88	60-95	90-140	45-130	45-140	10-22
Combined Average Lease Rate	45-80	36-88	36-88	60-100	75-160	45-140	45-160	10-23
SOUTHERN ZONE 2/								
With Service	42-80	60-90	42-90	65-90	60-144	60-130	60-144	10-22
Without Service	30-80	30-78	30-80	70-80	55-135	45-150	45-150	10-23
Combined Average Lease Rate	30-80	30-90	30-90	65-90	55-144	45-150	45-150	10-23
14 COUNTY BLUESTEM PASTURE AREA								
With Service	42-80	55-90	42-90	65-100	60-160	53-140	53-160	10-23
Without Service	30-80	30-88	30-88	60-105	55-140	45-150	45-150	10-23
Combined Average Lease Rate	30-80	30-90	30-90	60-105	55-160	45-150	45-160	10-23

1/ "Range" is defined as those values between which 80 percent of the reported lease rates fall.

2/ Zones are defined on the Kansas Bluestem Pasture map, page 2.

Dona Ratliff, Research Analyst
 Joel Golz, Agricultural Statistician

Eldon J. Thiessen, State Statistician
 Eddie Wells, Deputy State Statistician



Livestock and poultry:

Cattle and calves inventory...farms..	36 244	37 889
number..	6 506 089	6 066 493
Beef cowsfarms..	29 446	30 308
number..	1 466 429	1 434 017
Milk cowsfarms..	1 466	2 165
number..	82 080	85 132
Cattle and calves soldfarms..	36 207	37 893
number..	8 271 113	7 699 746
Hogs and pigs inventoryfarms..	2 831	5 684
number..	1 585 224	1 584 048
Hogs and pigs soldfarms..	2 873	6 089
number..	3 184 437	2 992 913
Sheep and lambs inventoryfarms..	1 478	2 120
number..	119 099	206 566
Layers and pullets 13 weeks old and older inventory.....farms..	2 019	2 407
number..	1 805 127	1 926 383
Broilers and other meat-type chickens sold.....farms..	93	80
number..	35 018	88 483
Selected crops harvested:		
Corn for grain or seedfarms..	10 833	9 604
acres..	2 497 516	1 748 802
bushels..	356 413 100	258 720 259
Corn for sil or green chop....farms..	1 765	1 797
acres..	117 472	105 469
tons, green..	2 042 941	1 810 537
Sorghum for grain or seed.....farms..	20 398	23 820
acres..	3 077 984	2 957 276
bushels..	231 561 211	222 145 624
Wheat for grainfarms..	30 392	36 623
acres..	9 560 615	9 942 149
bushels..	407 515 802	329 082 833
Oats for grain.....farms..	2 603	4 659
acres..	79 163	118 788
bushels..	4 530 823	6 024 886
Soybeans for beansfarms..	14 733	14 743
acres..	2 208 642	1 669 958
bushels..	78 563 054	56 854 327
Hay-alf, other, wild, silage..farms..	30 573	32 926
acres..	2 565 482	2 509 904
tons, dry..	6 147 197	5 938 634

@1Data are based on a sample of farms.

Legend:

- (D) Withheld to avoid disclosing data for individual farms
- (X) Not applicable
- (Z) Less than half the unit shown
- (NA) Not available

Source: 1997 Census of Agriculture, Volume 1 Geographic Area



AHLERICH FARMS
7585 82nd Road
Winfield, Ks. 67156

STAN AHLERICH

620-221-7189

To: Chairman WBAC Jim Fry
Technical Advisory Committee

From: Stan Ahlerich WBAC Member

RE: Grouse Creek Lake Proposal

Dear Chairman Fry,

As instructed by you at our last basin advisory committee meeting I am submitting my comments to you and the technical advisory committee in regards to the Grouse Creek Lake proposal.

First let me say that I have no personal bias either pro or con toward the Lake proposal. I believe that to be an appropriate stance as a representative on the Walnut River Basin Advisory Committee. However, I do have a personal bias when it comes to an open, fair and transparent process to ascertain the facts for the maintenance, restoration and protection of this basin and it's stakeholders.

In that regard, I must say that I am personally and professionally disappointed and disturbed with the process that the Kansas Water Office and / or Water Authority has chosen to research this particular issue.

Let me digress for a moment. Kansans of all walks of life have a tremendous interest in the quantity and quality of water in this state. It is safe to say, even to a casual observer, that in our recent past the entire water management process languished and became ineffective relative to planning, implementation and inter- agency coordination and has left something to be desired. This has been lifted up and highlighted by our own Governor, as per her charge to once again bring credibility and vitality to the process, so as to provide the citizens of this state the confidence in the water management process that they deserve.

As an individual that has worked with and supported the overall structure of our state's multi-agency approach, I was most heartened with the proposals and changes initiated by Interim Director Joe Harkins. Specifically, I was impressed with the very thoughtful and directed flow chart put in place to surface issues, research the aspects of the issues, conduct due diligence and employ continual evaluation by the stakeholders to the needs and merits of any such issue. (See enclosure A- Flow chart entitled "Coordination of Basin Planning and Implementation"). As one can clearly see the process uses the individual Water Basin Advisory Committees as a cornerstone to surface issues, evaluate and review issues, and to advise when appropriate. This entire process meets the test that the Governor has put forward and it meets the test put in place by law. (K.S.A. 82a-903 states that: ...the Kansas Water Office and the Kansas Water Authority shall seek advice

geologist, a wildlife biologist, the Cowley County Extension Agent, the chairman of Grouse-Silver Creek Watershed District, the Cowley County Administrator, a representative of the local Kansas Livestock Association and several other concerned citizens. We also had written material provided by Senator Greta Goodwin representing the 32nd district in Kansas regarding the feedback that she had received and her proposed legislation.

Their questions and concerns covered the full gamut of potential challenges. From protecting the pristine landscape, concerns over historical artifacts (both recent history and native American history), apprehension over the oil production in the area and how it would be affected from an environmental standpoint and from a lessening of the tax base. Several speakers brought information forward that spoke to the overall economic impact that this proposal might have on the community. There was also a question and the legitimate point made as to the real need for this lake as a potential source of water uses other than recreation. Reference was made to the close proximity of Kaw Lake in Oklahoma and a reference was sited in regard to a 1971 U.S. Army Corps of Engineer study that concluded that a lake on the Grouse Creek was not a high priority. Another point raised was the feeling that this project was being driven by forces other than those that are grounded in facts and supported by research.

As to my personal analysis of the initiative being put forward they fall within two general categories. The first is funding for any potential study would divert dollars away from the Corps of Engineer's study on the Walnut River. I have been concerned with the environmental damage that I have witnessed to our river since the establishment of the El Dorado Lake and the continued negative impact of housing developments that are on going in the basin. In the past several years bank erosion has accelerated to the point that our river is no longer a stream but merely a ditch that transports water from one place to another. The bank erosion must be adding to the sediment load that the rivers carries. I was in hope that the study by the Corps on the entire river would research the facts in this arena and provide some solutions. However, the scope has been scaled back and the Corps focus of this study is now relegated to just El Dorado Lake and above. And one of the main reasons for doing so was because of the expense. Now we are going to potentially take funds from that much needed project (which by the way did go through the KWA planning process) and divert some of those funds to this new lake initiative. Also, I question the need to do another water assessment study for the area when one was just completed in November of 1998 with the recommendation that "because of the existing water supply in El Dorado Lake, the development of additional water supply storage was not warranted". This proclamation took off of the table the proposed Douglas Lake project, a project that one could argue did considerably more good for the entire basin, particularly when it comes to clean water, water storage, recreation, logistics and flood control.

The other specific problem that I ascertained from the information put before our committee is that it looks as though a train wreck is about to happen. Developers obviously want to do this to develop. However, the developers do not want a Corps run lake because that precludes many, if not all development opportunities. But a thorough and well researched study will take considerable funds and everyone seems to be looking to the Corps for a portion of those funds. My caution in all of this is that if this project is brought to fruition in the wrong manner then quite possibly everyone loses.



There's a strong cattle culture in the Grouse Creek Valley

By Dave Seaton



As one who always wants to see for himself, I took a tour of the Grouse Creek Valley south of Dexter last weekend.

The area is part of the 8,000 acres that would be inundated by the proposed Konza Lake. I don't think that lake will ever materialize, so my tour was more a Flint Hills outing than a journalistic field trip.

But I could not forget that if this land ever became a recreation reservoir, a complete way of life would be ended. That way of life is neither prosperous nor modern, but it is very much part of the production of food for the American table.

My tour took place on a gray day.

Early in the morning ground fog shrank oncoming headlights. The roads we took followed water to cultivated land. The damp kept dust down. Swirls of blackbirds danced over fields of milo and soybean stubble.

Soon we climbed to a pasture. There a buck deer bolted in the distance and then stopped in plain sight. Black cows kept their heads down in the fall grass, foraging

without success for shoots that were green and tender.

This was cattle country — not the romantic kind, not the kind you see in the movies, but the kind that keeps going in spite of everything. This rolling land supports a culture that has adapted to new ways without throwing out the discipline of the old.

Lately, historic high cattle prices have been the reward.

We fed cattle without getting out of the truck. Two-way radios were our link with home. Big round bales of hay stood single-file at the edge of fields, and we lifted them with hydraulic arms on the back of our truck.

The best houses we passed were small and simple. Some had been rehabilitated at considerable expense. Many others were abandoned.

Talk in our truck was about hard work and spending little. This was country where big tractors pulled big implements through black earth once tilled by oxen. This was country where thousands of cows were fed with grain grown just across the road. Machines made it all work, but the hours of operators were long.

Hanging on and liking it

One is easily deceived by the people in this country.

They dress down for work. Men's hats flop. Bib overalls are common. Women of all sizes wear

jeans. There are no Marlboro men. Most of those who work the land are farmer-ranchers, pulling both discs and calves to make a living.

A little Extra

This is not big ranch country. There are absentee landlords here, but their holdings are not large. With exceptions, four- or six-hundred acre tracts comprise this country.

We stopped to look closely at a three-arched bridge over Grouse Creek. Its walls had been topped with concrete, but the bridge itself looked to be all limestone. Little water flowed beneath it.

With Crab Creek to our left, we drove southwest from Dexter to the Esch Spur, a settlement that had grown up years ago where the road met a Missouri Pacific Railroad track. Cattle pens collected animals there. The railroad track is abandoned and torn up now, but this quiet crossroads retains an air of importance.

I was shown storm cellars near collapsed stone houses, built by settlers as early as the 1870s or 1880s. Some of those houses and their out-buildings are valuable archeological sites. They should be preserved. Stone fences at one such site formed what looked to be corrals, constructed, no doubt, before lumber was

readily available.

We passed twice through the town of Dexter, home to about 375 people, a school district, several churches and a main street struggling to keep local customers. Dexter was never a lot larger, I'm told, but it once had four grocery stores, numerous cafes, the Nicely Ford dealership, a few bars and a bank.

Like much in the Grouse Creek Valley, Dexter hangs on, school classes meeting four days a week, students and teachers working hard, people generally getting along with less but choosing — like a lot of us — to believe it's all they want.

You can't easily get ahead of people like that. And you can't easily take away what they have. What they have is a way of life that may be sparse in some ways, but is integral to the cattle economy of this country. As long as there are mouths to feed in the world, and as long as an increasing number of those mouths eat beef, Dexter, Kansas, will be very much with us.

Winfield Courier

Nov. 19, 2003

*Dave Seaton
is the owner
and editor of
the paper.*

14-21

Fri., Oct. 17, 2003

Public forum

Let's stop the lake project

In 1998 I realized a lifelong dream. I was able to purchase a small piece of land near Grouse Creek, just east of Silverdale. My family is from Cowley County, and though I grew up in Wichita, my childhood weekends were spent visiting relatives in Ark City, and roaming the surrounding countryside.

I spent enough of my formative years in the area to feel as if Cowley County is where I am from. My purchase of the land by Grouse Creek was an attempt to retain a part of my heritage, and to have a place to retire to. It is a legacy that I hope to leave to my children.

When I was first informed of the possibility of a project that would involve damming Grouse Creek to create a massive lake in Cowley County, I was greatly disheartened. The project would almost surely result in my property being condemned. The initial information that I received seemed to be directed at reassuring the local population that the lake project was just in a planning stage, and that if it did occur, it would happen so far off in the future that no one need worry.

That was when the warning bell sounded for me. My plans for retirement, and for becoming a full-time Cowley County resident, coincided directly with the time period that was cited as being probable for the implementation of the lake project. I got discouraged because it seemed that there was no concerted effort directed toward opposing what appeared to be something like a sleight-of-hand trick on the part of some local and regional interests to wrest a large part of the county away from its rightful owners.

by Judy Welch on Tuesday
County Commission meeting that was attended by numerous irate Grouse Creek residents, I was encouraged. I drew the conclusion that there is indeed some righteous opposition to the Grouse Creek lake project, and to the initial feasibility study that would assess the practicality of such an endeavor. Another meeting on the subject has been scheduled by the county commission to accommodate the attendance of more people.

That meeting will be held at the senior center in Ark City. It is scheduled for Oct. 27 from 3 to 5 p.m. I wish that I could be there. If I could be, I would ask these questions of Cowley County's elected representatives. What in the heck is going on? Does the feasibility study happen without the approval of those affected?

I have heard that the study will be financed with taxpayer money. The ultimate irony, should the study take place, is that taxpayers who own land on Grouse Creek will be compelled to suffer the indignity of financing a study that will recommend the condemnation and forced sale of their property. That is a nice racket! And that is, in my opinion, just plain wrong!

What is truly the underlying impetus for this project? Who and what is driving this thing? And more importantly, who really profits? Don't the folks who live in the area, and own the land, have anything to say?

The county commission has arranged for the lieutenant governor to attend the meeting on Oct. 27. Word is that he favors the deal.

How is it that a project of this magnitude can be formulated in secret, as some claim, over a period of two years? The residents and land owners of the affected area are just now being informed of the

high-level maneuvering that has taken place that may eventually relieve them of their property.

The Regional Economic Area Partnership, a consortium of governmental entities who've come together to "research" projects for economic growth in south-central Kansas, are fundamental to the development and promotion of this enterprise. To my mind, REAP sounds like an acronym for a land swindle. One only has to slightly re-arrange the letters in the acronym to come up with a more apt representation of what, in my perception, is being perpetrated on

Do fishermen need water to keep their lawn and golf courses nice and green through the summer? Or is it that the folks in Sedgwick County just have to have another lake to float their bass boats on? Is that reason enough to submerge some of the finest farm and ranch land that is left in this country? Is that reason enough to displace residents and landowners, some of whom have occupied the land for generations, and are adamantly opposed to the project? Or is it that sharp and far-seeing, out-of-area, real estate developers see the potential for building high-priced, elitist, lakeside getaways, designed for the urban rich?

I have heard that one of the major selling points this project offers is that there will be the possibility of development, right down to the lake's edge. That brings another important question to mind. Once the land is condemned, who owns it? Who profits from its development, and how is it taxed? If the port authority is responsible for administering the property, as has been suggested, then do they receive some sort of compensation?

Who cashes in on the sale of lakeside property, acquired at bargain basement prices? And maybe most importantly, what will the lake project and the subsequent lakeside real estate development do to county fees and taxes? My bet is that the charges to Cowley County taxpayers will skyrocket.

As I understand it, if the study is approved, if it is judged practical to proceed, then the next step is a vote by the county commission to turn the project over to the port authority. Then it goes from there. Once it is at that stage, voted into the port authority's administrative realm, then it happens, the lake becomes a reality. The long process of development and displacement begins.

A question I might ask at this point is, who is going to do the feasibility study? Will it be an impartial assessment or will it be done by persons who are positioned to profit from the project? What guidelines to insure fairness will be imposed on this secretive deal that has been contrived without the knowledge or participation of those who it has been designed to exploit?

Before anything at all happens, two votes by the Cowley County

County taxpayers into subsidizing the interests of big business, the Wichita metropolitan area, and a government entity (the port authority) that is totally detached from the needs or wishes of the local population.

In addition to displacing people from the land, it creates a liability for the whole county. The project would rob locals of their property, and it indentures all Cowley.

At those two points, if I understand it correctly, the whole deal rests in the hands of the Cowley County Commission. I urge you to contact the commission, voice opposition to this project and discourage it at the offset.

Commission must take place. They must vote to approve the feasibility study, and then at some point in the future, after the study has been completed, they vote on whether to allow the project to proceed. At that time, if they vote to proceed, the port authority becomes involved, and the lake falls under its jurisdiction.

Mick Watts
Raleigh, N.C.

Public forum

Don't put site of helium discovery under water

Over the Thanksgiving holiday, I learned of the proposal to build a lake along the Grouse Creek Valley. My mother and daughters were visiting from Winfield and explained the proposal to me. Having been raised in Dexter, I immediately started looking for all the information I could find regarding this proposal.

As soon as I was informed of the plan, my first thought was how could anyone get away with this. After all, Dexter is the site of the discovery of helium gas in 1903. The American Chemical Society celebrated this fact in a ceremony at the University of Kansas on April 15, 2000. They placed a plaque at the site of the lab where the samples from a well near Dexter were analyzed in 1905.

In 1903, Dexter prospectors had drilled a new well. The well released about 9 million cubic feet of gas until it was capped. To mark the assumed prosperity to come, civic leaders decided to ignite the escaping gas during a town celebration. When a burning bale of hay was placed over the "howling gasser," however, it was quickly put out. After several failed attempts, leaders gave up, explaining that the well must be full of "wind gas" or "hot air."

Two years later, two scientist

were experimenting with a sample of the gas from Dexter at the University of Kansas and found it was 1.5 percent helium. From this discovery, a plant was built in Dexter during the 1920s. In 1927, the first cylinder of helium was shipped and a big celebration was held. During the celebration over 2,000 helium-filled balloons were released.

The government took over operation of the plant in 1927. In 1942, the plant was dismantled, and the era of helium production in Dexter ended.

It surprises me that the State of Kansas has not made the original site a historic landmark. It certainly is surprising to see the state contemplating putting this historical site under water instead of trying to use it to market tourism to the area.

As to the man who said he would personally donate \$100,000 to fight this project, call and let's talk. I have already spoken with the American Chemical Society. There is a very good chance we can block this thing once and for all.

In one of the articles in the Courier, you quoted an article in the "Watermark Guide to Fishing in Kansas" describing what a great setting Grouse Creek is. I agree with your comment of "... why anyone would want to fiddle with such a setting."

Keith D. Miller
Mayor
Republic, Mo.

Letters to the editor

Foreign Tyrants of the lake project

You ask what is our policy? I can answer in one word. Victory! Victory at all cost, however long and hard the road may be, for without victory there is no survival.

Failure will result in the principle of sacred land ownership being negated.

The efforts of the many lives that preceded us will be negated. These people have no regard for the preservation of the beautiful Grouse Valley with its wildlife habitat, history and wonderful agricultural qualities.

They have shown no regard for the tremendous anger, depression and anxiety they have caused many citizens. People are frustrated, as they do not know whether to work on their properties, make improvements, etc. To give you some idea as to the amount of land they plan to take initially for their speculation, it runs along US 166 from Cowley One east to Milepost 39. They will take a huge chunk of land on both sides of US 166 for about 10 miles. Those people and / or organizations that favor this project should be identified and vilified as enemies of Cowley County.

To paraphrase Winston Churchill's speech of June 4, 1940, to the House of Commons.

We will defend our native soils, aiding each other like good comrades to their utmost of their strength. We shall not flag or fail. We shall go on to the end. We shall fight on beaches, landing grounds, in fields, in streets, on the hills (and in the Courts). We shall never surrender. We offer blood, toil, sweat (and money).

You ask what is our policy? It is to wage war. War with all our might and with all the strength God has given us, and to wage war against a monstrous tyranny never surpassed in the dark and lamentable catalogue of human crime. That is our policy.

R.E. Lindly, Dexter

Story Of Greed

Eminent Domain: While the power of the state to seize private land for public use is disturbing enough, even more so is the trend toward taking it for private use.

The practice of eminent domain was initially used to condemn private property for public use. It was also understood that, as the Constitution demands, government must pay just compensation in its takings.

But the power to seize is the power to abuse. In 1795, in the infancy of this nation, the Supreme Court, for good reason, called eminent domain "the despotic power." The justices were apparently alarmed at just how potentially corruptive the practice could be.

What they didn't know is how right they were. Over a five-year period that began on Jan. 1, 1998, governments across the country were busy filing or threatening at least 10,000 condemnations against private property owners for the benefit of private use.

The true number, according to the Institute for Justice, which issued the report, is likely far higher. Because there's no single source from which to gather the data, the study, "Public Power, Private Gain," had to rely on published reports and court papers and therefore couldn't provide an adequate count as only a small portion of actual cases make the news, and authorities just don't keep up.

To get a sense of this, consider that in Connecticut, the only state that keeps records of redevelopment condemnation cases, there were 543 instances documented by the courts, but only 31, the Institute for Justice tells us, made it into the media.

So it's anyone's guess as to how many cases have gone unreported, but it would be safe to say it's far more than 10,000, which is a staggering number on its own.

One case that is getting media attention is in Alabaster, Ala., where the city is trying to seize 10 acres for part of a 400-acre shopping center. The same story of greed is also being played out in Denver and Las Vegas.

For every news report, there are many more private homeowners being stripped of their property on behalf of private interests.

We tend to dismiss most populist blather about the small guy vs. the corporate giant because it's an exercise in anti-capitalist propaganda. Yet the comparison applies in many eminent domain cases. Too often big business is favored at the expense of the poor who tend to live in homes that are easy to consider as blighted and don't have the resources to fight.

But fight they must. If government abuse of property rights proceeds unchecked, it opens the door wide for ever-greater tyranny.



League of Kansas Municipalities

To: Senate Judiciary Committee
From: Sandy Jacquot, General Counsel
Date: February 19, 2004
Re: Opposition to SB 461

Thank you for allowing the League to testify in opposition to SB 461 in its current form. The primary focus of concern for the League is the language in Section 1(a) and in Section 3 that would affect all existing and future port authorities. Specifically, the proposed language would prohibit all existing and future port authorities from modifying, amending or extending the port authority's original plan unless approved by the Legislature, and would prohibit ever changing the character of work. In addition, Section 3 would not allow the use of eminent domain for a recreational-use purpose or private development. Currently, existing port authorities may modify, amend or extend the character of the work originally undertaken by holding a public hearing. If the concern needing to be addressed in this bill encompasses only one area, Sections 1 and 3 could be amended to limit the impact to port authorities created for the purpose of completing a project in Cowley County. While the League generally does not support legislation targeting one specific area, the greater concern is limiting all current and future port authorities in Kansas because of one localized situation. If that issue is addressed, the League would withdraw its opposition to SB 461.

Senate Judiciary
2-19-04
Attachment 15

Testimony presented in opposition to SB 461

Date: February 19, 2004

To: Senate Judiciary Committee

From: REAP Vice Chair Commissioner Bob Courtney

Thank you for allowing me to submit testimony on behalf of the Regional Economic Area Partnership (REAP), a coalition of 31 local governments located in South Central Kansas.

Why does REAP oppose SB 461?

- An ongoing priority of REAP is to maintain our home rule authority. In our opinion, SB 461 places restrictions that will erode home rule authority for local governments.

How does SB 461 erode home rule authority for local governments?

- The purpose of the port authority statute is to promote, stimulate and develop for the general welfare, economic development and prosperity of the state by authorizing port authorities to be established in each city and county of the state. While there are only a few port authorities in Kansas, a port authority is a tool for economic development available to local governments.
- SB 461 limits the authority of local governments when utilizing this tool as it eliminates the option for any recreational use and requires approval by the state legislature for any private development for 30 years. These are decisions that should be made by the local governments that have established a port authority.
- There are several checks and balances in the current state statutes as to the establishment of a port authority and its ability to utilize eminent domain.

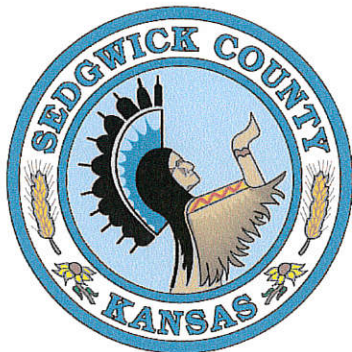
What are the existing checks and balances for port authorities and their use of eminent domain?

- A port authority can only be created by a specific act of a local government and a joint agreement is required if more than one local government is involved.
- The statute also requires passage of a concurrent resolution by the Kansas Legislature before a port authority may transact business.
- A port authority may only levy taxes after the question has been approved by the voters.
- The use of eminent domain must be approved by 2/3 vote of the port authority governing body, plus a port authority cannot exercise eminent domain without first having received approval, by resolution, of the governing body of the city or county which created the port authority.
- If the port authority was created by two or more cities and counties, it shall not exercise the right of eminent domain without the port authority first having received approval, by resolution, of the governing body of the city or county in which such property is located.

REAP understands the concerns over the use of eminent domain, but as it relates to port authorities there are sufficient checks and balances in the current state statutes. For these reasons, REAP respectfully opposes SB 461. We would ask you to support continued strict enforcement of existing statutes.

Thank you for the opportunity to offer comments on this legislation.

Senate Judiciary
2-19-04
Attachment 16



GOVERNMENT RELATIONS

Sedgwick County Courthouse
525 N. Main, Suite 365
Wichita, KS 67203
Phone: (316) 660-9378
Fax: (316) 383-7946
mpepoon@sedgwick.gov

Michael D. Pepon
Director

**TESTIMIMONY SB 461
SENATE JUDICIARY COMMITTEE
FEBRUARY 19, 2004**

Chairman Vratil and members of the committee, I appreciate the opportunity to submit written testimony on behalf of the Board of County Commissioners of Sedgwick County in opposition to SB 461. This is a bill that would greatly restrict the eminent domain authority of a port authority established by a city or county. The bill further restricts the board of county commissioners of Cowley County from exercising the right of eminent domain to acquire land for a recreational use or to allow private development on such land for a period of 30 years.

SB 461 proposes establishing new law relating to port authorities for the entire state of Kansas because of a local dispute in Cowley County. The dispute stems in part to the fact that the Regional Economic Area Partnership (REAP), a coalition of cities and counties in south central Kansas, supports a feasibility study for a multiple use lake in Cowley County. REAP understands the potential for the long-term benefits this lake would bring to the region in the areas of economic development, water supply, flood control and tourism. Sedgwick County is an active participant and strong supporter of REAP and the principle of local control over issues of local importance. This proposed legislation is an attempt to preempt local control on this issue prior to a feasibility study even being conducted.

No local government in Cowley County has even expressed an interest to create a port authority, yet this bill is an attempt to prematurely address a problem that doesn't even exist. There are numerous safeguards in the port authority statutes, as they exist today, to prevent the acquisition of land in Cowley County for a new lake. First of all, a local governing body would have to create the port authority over the objection of local citizens. Secondly, current statutes require a concurrent resolution by the legislature before a port authority can transact business. And finally, any use of eminent domain would have to be approved by a 2/3 vote of the port authority governing body.

Sedgwick County also objects to language in this bill that singles out one county and restricts its eminent domain authority in an attempt to resolve a local dispute. The Kansas Legislature should not enable citizens from across the state that object to a county's use of eminent domain, to take their case before state legislators to referee such matters. This would be bad public policy and we ask you to oppose SB 461.

"Sedgwick County...working for you."

Senate Judiciary
2-19-04
Attachment 17